

FACT SHEET: ENDURING POWER OF ATTORNEY

What is a Power of Attorney (PoA)?

A legal document made by a person (the 'principal') that gives authority on another person, the 'attorney', to make decisions regarding their property or financial affairs.

Why Should I appoint an enduring Power of Attorney?

By appointing an enduring PoA, you are able to choose who you want to manage your financial affairs. If you do not have an enduring PoA and lose capacity, there may be no one with legal capacity to manage your financial affairs.

What powers are given under a PoA?

A power of attorney gives the attorney authority to:

- Buy and sell real estate;
- Shares and other assets for you;
- operate the your bank accounts;
- spend money on your behalf.

It is important to note that a PoA does not give the attorney authority to make decisions regarding the health or lifestyle of the principal.

Who may be appointed as attorney?

Persons over 18 years or Public Trustee

Difference between General Power of Attorney and Enduring Power of Attorney

General Power of Attorney needs only to be witnessed by a person over 18 yrs and will cease to be valid if the principal loses mental capacity whereas an **enduring power of attorney** will continue to operate after the principal loses mental capacity & must be witnessed by a 'prescribed witness' (for example, a solicitor, barrister or Registrar of NSW Local Court).

How to make a valid Enduring Power of Attorney

The application must be made on a prescribed form (available at Post Office or from Guardianship Tribunal). At the time of signing the document you must have mental capacity and be capable of understanding the nature & effect of the document and the decisions the attorney will make on your behalf. In completing the form, you must also ensure:

- that you state you intend the PoA to continue after you lose mental capacity;
- your signature is witnessed by a 'prescribed witness' (for example, a solicitor);
- the prescribed witness signs a certificate stating enduring PoA has been explained to the you & that you appeared understand the nature of the document;
- the attorney/s must sign form – PoA will not begin to operate until they have signed the form; and
- if the PoA deals with land, it must be registered with NSW Lands Property Information (LPI)

What are the duties of the attorney?

Attorney is legally responsible to you and must:

- act in your best interest;
- avoid any situations where a conflict of interest may arise;
- obey your instructions & directions (providing you are mentally capable);
- act according to the limits placed on their authority;
- not give gifts to themselves or others unless authorized;
- keep their finances & money separate from yours ;
- keep accurate & proper records.

Ending an Enduring Power of Attorney

Enduring Power of Attorney may end if:

- you revoke it (providing you have mental capacity);
- you die;
- you become bankrupt;
- where attorney dies or can no longer act;
- where 2 or more attorneys are appointed to act jointly & one dies.

'Irrevocable' PoA can only be cancelled if attorney agrees or by order of the Supreme Court

Review of an Enduring Power of Attorney

Any interested person (For example: attorney, principal, guardian or person genuinely concerned for the welfare of the principal) that has concerns about the making of a PoA or about the operation and effect of a PoA, may apply to the Guardianship Tribunal for review of the PoA.

Review of the making of an enduring power of attorney

Tribunal may make either or both of the following orders:

- That the principal did or did not have mental capacity to make a valid Enduring PoA;
- An order declaring the Enduring PoA is invalid if satisfied that the principal did not have capacity; or the PoA did not comply with legislative requirements; or the PoA is invalid for another reason (eg undue influence).

Review of the operation & effect of an Enduring Power of Attorney

If satisfied it is your best interest the Guardianship Tribunal may make following orders:

- varying a term of or power conferred by the PoA;
- removing the attorney and appointing a substitute attorney;
- reinstating a PoA that has lapsed by reason of vacancy of attorney;
- order redirecting attorney to provide accounts & info;
- revoke all or part of the PoA;
- declare that the principal lacked capacity because of mental incapacity at a specified time.

Appealing Tribunal Decision

If you are not satisfied with the outcome of a hearing at the Guardianship Tribunal, providing you were a party to the hearing, you may be appeal to the **Supreme Court** or the **Administrative Decisions Tribunal** on a question of law. Appeal must be made **within 28 days** of receiving decision.

Contacts

Guardianship Tribunal (www.gt.nsw.gov.au)

Ph: 1800 463928

Land & Property Information (NSW) (www.lands.nsw.gov.au)

Ph: 02 9233 4357

Disclaimer: This fact sheet provides general information and does not provide legal advice. If you have a legal issue,

you should contact a lawyer before making a decision about what to do or applying to a court.