



The Enduring Power of Attorney

By Tony Crilly

Why you need one

The average person will make three wills in their lifetime. Most people will review their Binding Super Nominations at least once during that time. **However, few people are willing to make an Enduring Power of Attorney to safeguard their interests during their lifetime.**

This trend is alarming, considering that the Enduring Power of Attorney is one of the most powerful documents you can have to ensure your wishes regarding personal and financial matters are maintained during temporary or permanent incapacity.

What is an Enduring Power of Attorney?

An Enduring Power of Attorney is a legal document which allows you to appoint one or more persons to make decisions for you concerning personal and financial matters. The legal forms vary from state to state; for example, in Queensland the document provides you with a measure of flexibility, allowing you to nominate when their appointment begins and also allowing you to limit or expand the powers of the Attorney. You may appoint an Attorney for:

- ▼ personal matters only; or
- ▼ financial matters only; or
- ▼ both financial and personal matters.

When does the power begin?

If you appoint an Attorney to look after your personal matters, the appointment only begins if and when you become incapable to make those personal decisions for yourself.

For financial matters, you may elect the time for which the Attorney's appointment begins. For instance, you may elect that the power begins straight away (even if you have not lost capacity). Alternatively, you may appoint an Attorney for financial matters when you lose capacity, or at the start of a specific occasion (a particular date).

Who should you appoint as Attorney?

An Attorney should be someone whom you trust and who you believe will best look after your personal and financial interests. In some circumstances, that may be a close friend or family member to look after your personal matters, and a professional (whether that be an accountant, financial adviser or the public trustee) or any other close friend or family member who has experience in financial matters to look after your financial decisions.

An Attorney must also be someone who is:

- ▼ over 18 years of age;
- ▼ not insolvent or bankrupt; and
- ▼ not your paid carer (which includes doctor or nurse).

You may appoint more than one Attorney and you may appoint different people for personal and financial matters. You may also decide if you appoint more than one Attorney, whether they are to make decisions unanimously or with a majority rule.

Can you revoke or change your Enduring Power of Attorney?

If you have the decision making capacity to do so, you may either change your Enduring Power of Attorney or revoke the Enduring Power of Attorney by completing and signing a *revocation form*. Once you sign and complete the revocation form, for it to have effect, you must notify all the Attorneys of the revocation.

You may also revoke your Enduring Power of Attorney by making a new Enduring Power of Attorney.

General Power of Attorney

As the name suggests, a General Power of Attorney is a legal document that allows someone to act on your behalf with respect to general affairs, usually property matters.

To do this, the General Power of Attorney will need to be registered at the Titles Office. An Enduring Power of Attorney does not need such registration; however, the original needs to be kept in a safe place with copies given to you, the principal, your Attorneys and any other institution that requests the Attorney.

Do you need one?

An Enduring Power of Attorney is a powerful document that allows you to protect your personal and financial interests in the event that you lose capacity to make those decisions for yourself. It also ensures that your autonomy is respected, especially in relation to important financial and personal decisions.

An Enduring Power of Attorney is your best security to safeguard your financial and personal interests. Ultimately, these are decisions that should be made by you, so you are safe in the knowledge that you will be looked after by those you trust.

Case Study

Mr and Mrs Smith had decided that an Enduring Power of Attorney was not necessary as they were both in good health and did not foresee any impediments on their decision making abilities.

Mr Smith was using his income to pay their mortgage and Mrs Smith was using her income for their living expenses. They both held separate bank accounts in their own name. Unfortunately, Mr Smith suffered a stroke which rendered him unable to speak and make decisions. Mrs Smith was unable to pay all the medical and other household expenses, as well as the mortgage, with her own income. As such, they defaulted on their mortgage. Luckily, Mrs Smith was able to persuade the bank on compassionate grounds to postpone repossession. During that time, Mr Smith recovered and was able to communicate his decisions. He promptly signed an Enduring Power of Attorney stating that his wife could make payments from his account. This would have been a very different ending if Mr Smith had not recovered from his stroke.