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## Newsletter

# *Powers of Attorney*

The information provided in this newsletter is merely a guide and is not meant to be a detailed explanation of the law on each subject. Please contact us for legal advice. Information content provided by courtesy of © Allan Swan. SJQ Services.

## Take Control

A preparation of a Power of Attorney is an essential part of your estate planning.

## Appoint an agent

A Power of Attorney is an appointment of an agent. The appointment can be very broad in the powers that are given to the agent or it can be restricted. There are some things that just can not be delegated to an agent eg. Voting at an election.

## Several forms

Powers of attorney can be in several forms and subject to various limitations eg. They can take effect at any time nominated by the principal and can be revoked at any time. Depending on their form, they can cease to be effected when the principal loses mental capacity, or they can continue after he or she has lost the ability to care for them.

## Your choice

Powers of Attorney are about choice. You make the choice of who is going to look after you and care for your property if you are unable to do so. You don't just have to suffer from dementia. Unexpected illness or accident can happen to us all.

## Limits to making a Power of Attorney

Any person above the age of 18 who has capacity can make a Power of Attorney. Capacity is defined as an understanding of the nature and effect of the document together with an ability to communicate the decision to sign the Power of Attorney.

All Powers of Attorney cease on the death of the principal, or on the attorney being unable to act. It is possible to delegate authority for the attorney to manage your financial affairs (look after your property, your income and your expenses) or your personal and health care matters (eg. Where you live and certain health care) or both financial and personal health care matters. Making an Enduring Power of Attorney requires that you be eighteen (18) years of age and understand what you are doing.

The ordinary Power of Attorney ceases to have effect if the principal no longer has an understanding of what they are doing. The Enduring Power of Attorney is "enduring" in that it continues to take effect after the principal has lost the capacity to understand what they are doing, required by law to enable them to make independent decisions.

## Delegation

An Enduring Power of Attorney is a delegation of power to make life decisions about many things, including disposal of assets. It is not a Will, as that document takes effect on death.

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## **Value for money**

Powers of Attorney pay for themselves when the principal is unable to make the decisions, either through loss of capacity or through not being here physically eg. Work commitments or holidays have them somewhere distant such that it is inconvenient to do things where required. If a person is ever unable to manage their own affairs, they would have not opportunity to express their wishes and, if they haven't completed an Enduring Power of Attorney, the Public Trustee would manage their affairs - for a price. The Public Trustee makes an annual profit in the vicinity of \$13 million dollars in carrying out its role. Family members will probably charge less.

## **The Powers**

Enduring Powers of Attorney can be granted in:

- Financial matters
- Personal matters

The expression financial matters includes, unless limited:

- carrying on any trade or business for the principal
- otherwise preserving or improving the principal's estate
- investing for the principal
- Undertaking a transaction for the grantor involving the use of the principal's property as security (including by way of guarantee) for an obligation the performance of which is beneficial to the principal.
- a legal matter involving the principal or the principal's property

## **Personal matters**

Any matter relating to the principal's care, including health care or welfare.

## **The opportunities in estate planning**

An essential ingredient to estate planning is to arrange our affairs in life to ensure our assets are left in a sound condition on death. It is not inconceivable therefore, that an attorney will be faced with the prospect of making decisions about person's affairs which will have a significant bearing on their estate both while they are alive and when they have died. It is the very thing capable people do for themselves, not only when they make their Will, but also in terms of plans they put into effect for their estate while they are alive.

## **No Will making power**

An Attorney has not power to make a will for the principal.