

Some Handy Information On Enduring Powers Of Attorney

What is an Enduring Power Of Attorney?

An Enduring Power of Attorney is a document which authorises a person (called an "Attorney") to act on another person's behalf in relation to financial and business affairs.

Who can appoint an Enduring Power Of Attorney?

The person appointing an Attorney must be over the age of 18 years and have mental capacity.

The person appointing an Attorney is called the "donor".

An Attorney may be a family member, a friend or a professional adviser and Attorneys can be appointed to act together or separately.

An Attorney may be appointed to act:

- immediately when the document is signed and notwithstanding that the donor has mental capacity, the Attorney can continue to act even if the donor has lost his or her mental capacity; or
- immediately while the donor has mental capacity and continues to act if the donor suffers from a loss of his or her mental capacity; or
- only if the donor loses his or her mental capacity and is unable to make his or her own decisions.

What does an Enduring Power Of Attorney do?

An Attorney must act with due diligence in the best interests of the donor and must keep records of all transactions.

An Attorney should be someone you trust as they will have significant power over your assets.

Once an Attorney has accepted the appointment, he or she must continue to act until either the donor appoints another person to act in his or her place or, if the donor no longer has mental capacity, until SACAT (South Australian Civil and Administrative Tribunal) or the Supreme Court relieves the person appointed of the responsibility.

An Attorney's right to act ceases to be effective on the death of the donor.

What happens if you become mentally incapacitated and do not have an Enduring Power Of Attorney?

If you become mentally incapacitated and you have not validly appointed an Attorney, SACAT may appoint a Manager to look after your business affairs. The Manager may be Public Trustee or a private person. Alternatively, a relative or friend may apply to SACAT for appointment as an Administrator.

It is important to note that an Enduring Power of Attorney covers only financial and business matters, not lifestyle or medical decisions. If you wish to grant a person these additional powers, then it is necessary to appoint a "Substitute Decision-Maker" under an Advance Care Directive.

Mellor Olsson has experienced practitioners who can provide advice on which document might be appropriate to suit your individual circumstances.

To find out more about our services & experience visit www.mellorolsson.com.au

Adelaide: Level 5 80 King William Street Adelaide SA 5000 **Phone:** (08) 8414 3400 **Email:** lawyers@mellorolsson.com.au

Port Lincoln: 11 Mortlock Terrace Port Lincoln SA 5606 **Phone:** (08) 8682 3133 **Email:** pl@mellorolsson.com.au

Clare: 165 Main North Road Clare SA 5453 **Phone:** (08) 8842 1833 **Email:** ganderson@mellorolsson.com.au

Bordertown: (By appointment) 22 Binnie Street Bordertown SA 5268 **Phone:** 1300 414 414 **Email:** dferguson@mellorolsson.com.au

Kadina: (By appointment) 26 Taylor Street Kadina SA 5554 **Phone:** 1300 414 414 **Email:** dferguson@mellorolsson.com.au

Keith: (By appointment) Cnr Makin & Hender Street Keith SA 5267 **Phone:** 1300 414 414 **Email:** dferguson@mellorolsson.com.au

McLaren Vale: (By appointment) 178 Main Road McLaren Vale SA 5171 **Phone:** 1300 414 414 **Email:** dferguson@mellorolsson.com.au

Nuriootpa: (By appointment) 45 Murray Street Nuriootpa SA 5355 **Phone:** 1300 414 414 **Email:** garthur@mellorolsson.com.au

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