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ENDURING POWER OF ATTORNEY

SAFEGUARDING YOUR INTERESTS

An Enduring Power of Attorney is a legally binding document that enables a competent adult to give another person or agency legal authority to make certain decisions on his or her behalf, in the event the person suffers from some legal incapacity in future. The person giving the power is called THE DONOR (you). In New South Wales this person is called the PRINCIPAL. The person or agency accepting the power is called THE ATTORNEY. If the Donor/Principal retains legal capacity, an Attorney has no right to make decisions on behalf of the Donor/Principal. The Attorney can only do what they are directed to do by the Donor/Principal.

The Power of Attorney can be made so that it only comes into effect when the Donor/Principal loses legal capacity. If the Donor/Principal remains of sound mind throughout their life, it may never come into effect. The document should nevertheless be prepared, just in case.

Importantly, a General (or ordinary) Power of Attorney becomes invalid if, for any reason, the Donor/Principal becomes incapable of making reasoned decisions.

IMPORTANT CONSIDERATIONS

An Enduring Power of Attorney gives you the power to choose whom you want to make important decisions, such as financial decisions, on your behalf.

Timing: There are many reasons why an EPA is made to have immediate effect – elderly people become frail or people who travel a lot may want somebody to sign documents or perform tasks on their behalf.

If you lose your decision-making ability before making provisions for another agency or person to manage your financial affairs, an Administrator may be officially appointed on your behalf to make those decisions. In this case an appointed person may be different from the person you would choose.

ARE YOU LEGALLY COMPETENT TO COMPLETE AN ENDURING POWER OF ATTORNEY?

It is very important that you are aware of the implications of the power you are giving to your Attorney and what it will mean regarding the administration of your affairs.

Your Enduring Power of Attorney will be valid only if you (the person giving the power) are legally competent to make decisions at the time of signing. If for any reason you are unsure about your competency, you should seek written advice from your medical practitioner or other professional.

Principal: **Greg Martin**
BA LLB

WHOM SHOULD YOU APPOINT AS YOUR ATTORNEY?

The decision as to whom you choose as your Attorney is entirely up to you.

The most important consideration in choosing an Attorney is whether you can completely trust the person or agency to manage your affairs in your best interests. You should be extremely careful when selecting your Attorney.

CAN I APPOINT JOINT ATTORNEYS?

The Donor/Principal has the choice to appoint a sole Attorney, Joint Attorneys or Joint and Several Attorneys:

- A Sole Attorney is one person who makes decisions on your behalf.
- Joint Attorneys are two people who must act together and sign together.
- Joint and Several Attorneys are two people who can either act together or separately.
- A Substitute Attorney may also be nominated to make decisions on your behalf if your original Attorney is no longer able to continue in his or her role.

WHAT RESTRICTIONS COULD BE APPLIED TO YOUR ATTORNEY?

The authority of your Attorney can be limited if you wish by placing conditions or limitations on his, her or their powers.

WHEN WILL THE APPOINTMENT OF MY ATTORNEY BECOME EFFECTIVE?

As the Donor/Principal, you will need to choose when you would like the decision-making power of your Attorney to come into effect. Under the relevant clause in each State's Enduring Power of Attorney form, you should make this decision, either:

- a) Immediately (subject to any conditions) and to continue in the event that you lose decision-making capacity; **or**
- b) If and when you lose capacity to make reasoned decisions for yourself.

WITNESSES TO AN ENDURING POWER OF ATTORNEY

It will be necessary for you to obtain the signature of a Clerk of Court or a solicitor or barrister. This person is to insert their name and address where indicated and sign where indicated under the words "I have attested to the execution of this Power of Attorney by the Principal".

ACCEPTANCE BY ATTORNEY(S)

The Attorney(s) must indicate acceptance of their appointment by completing and signing the relevant document.

REGISTRATION OF AN ENDURING POWER OF ATTORNEY

You must register your Power of Attorney if your Attorney is going to sell, mortgage or lease your house or property. Also, if your Attorney is going to sell or deal with your shares, the Power of Attorney needs to be registered. Otherwise, it is not necessary to register it. However, by registering your Power of Attorney, it will be on record as a public document; safe from loss or destruction; and more easily accepted as evidence that your Attorney is allowed to deal with your money and property.

Powers of Attorney are registered at Land and Property Information NSW. There is a registration fee. At Land and Property Information NSW, the staff will stamp a number on the original Power of Attorney and return it to you. This number is evidence that the Power of Attorney has been registered. Your attorney should use this number when he or she signs a document on your behalf. Your Power of Attorney will be filmed and placed on public record, for anyone to see.

REVOKING AN ENDURING POWER OF ATTORNEY

An EPA can be revoked at any time by informing your Attorney and all other relevant people or agencies in writing. An EPA can also simply be destroyed. However if the Power of Attorney has been registered, a written revocation of the Power should also be registered. This must also be done if the Power of Attorney requires it. Registration fees and Stamp Duty must be paid to register a revocation.

DUTIES OF AN ATTORNEY

If an Attorney exceeds the authority granted in the Power of Attorney, they may be liable for any damage suffered by the Donor/Principal or others, and will in any event, be guilty of a misdemeanour. The Attorney must act in good faith and must tell the Donor/ Principal about any conflict of interest. They must not delegate their powers and duties unless the Power of Attorney authorises them to do so. If the power is delegated, the new Attorney has the same duties. When signing a document under a Power of Attorney, then there is a special form of words that the Attorney should use, as follows:

"John Smith, by his Attorney Julie Smith pursuant to Power of Attorney registered Book 1234 Number 123, and I declare that I have no notice of revocation or suspension of the said Power of Attorney."