

Information for Enduring Attorneys

Estate Planning Client Guide

What is an Enduring Power of Attorney?

An Enduring Power of Attorney is a legal document that appoints an Attorney to attend to a person's financial affairs. The South Australian Powers of Attorney and Agency Act 1984 provides for Enduring Powers of Attorney that enable a person's financial affairs to be handled both before and after the loss of legal capacity.

An Enduring Power of Attorney can be effective immediately or held for use only if a person suffers a legal incapacity. In the latter case, it may also be activated by the person making it if they provide you with a written and signed authority.

What is the difference between Enduring Powers of Guardianship and Enduring Powers of Attorney?

An Enduring Power of Attorney enables the management of a person's financial and legal affairs whereas an Enduring Power of Guardianship enables the management of a person's day-to-day care, lifestyle decisions, medical and dental decisions.

What does 'jointly' and/or 'jointly and severally' mean?

'Jointly' means that the Attorneys must act together and agree about decisions. 'Jointly and severally' means that the Attorneys can act together, or they can make decisions individually (eg. an Attorney may be overseas on holiday and the other Attorney is still able to make decisions).

Where you have appointed more than one Attorney (either 'jointly' or 'jointly and severally') and they cannot agree on an issue, an application to the Guardianship Board may need to be made.

How is legal capacity assessed?

A medical report from the Medical Practitioner of the person appointing you will confirm whether or not they are capable of managing or conducting their own business or financial affairs.



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What responsibilities does an Enduring Attorney have?

An Attorney is required to act in the best interests of the person appointing them and ensure:

- the protection and preservation of their assets and interests
- that the person appointing them is kept fully informed of their business affairs
- prudent investment of their assets
- full and accurate records are kept that are capable of being audited.

Can an Enduring Power of Attorney be revoked?

Provided the person appointing you has legal capacity, they can revoke the Enduring Power of Attorney at any time. Once legal capacity is lost, they are unable to revoke your appointment and you are unable to resign as an Attorney without Supreme Court approval.

Does an Enduring Power of Attorney need to be registered anywhere?

No. In most circumstances, it does not need to be registered. However, if real estate needs to be sold or purchased, the Power of Attorney must be registered at the Lands Titles Office. Once the Power of Attorney is registered (registration fees are incurred), one original stays at the Lands Titles Office so the Attorney can act in relation to the real estate and the other is kept by the Attorney to use for other matters (such as collecting pensions, reviewing investments etc).

Accepting the role of an Attorney is not a decision that should be made lightly. It is a serious role and the person appointing you trusts that you will make decisions in their best interests (as you are obliged to do by law).

What provisions do you have in place for the management of your affairs?

It may also be appropriate for you to consider appointing an Enduring Attorney(s) to attend to your financial and legal decisions should you ever lose your legal capacity.

Would you like further information?

For further information please contact your AET Estate Planner on 1800 882 218.

Australian Executor Trustees Limited ABN 84 007 869 794 AFSL No 240023
RSE Licence No L0002554 www.aetlimited.com.au

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