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# ENDURING POWERS OF ATTORNEY

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## **INTRODUCTION**

People of all ages should consider making an Enduring Power of Attorney. It is far more important to do so the older you get as health related problems which often cause incapacity increase with age.

However, anyone of any age can be in an accident. Without an Enduring Power of Attorney, your family may experience delay, difficulties and extra expense in ensuring your affairs are handled for you. Having a Power of Attorney is like having an insurance policy "just in case" you are suddenly incapacitated through accident or illness.

### **WHAT IS AN ENDURING POWER OF ATTORNEY?**

It is a separate document to your will which gives someone you name the power to act on your behalf. There are two types of Power of Attorney:-

- A GENERAL Power of Attorney which ceases to operate if you become mentally incapacitated.
- An ENDURING Power of Attorney which is specifically designed to be used after the time of any mental incapacity.

An ENDURING Power of Attorney is therefore the most important type as it allows the named person to act for you if you have become mentally incapacitated. You can have a General and Enduring power which incorporates both types and can be used from when you sign it and continue on after any incapacity.

### **WHAT ABOUT POWER OF ATTORNEY KITS?**

Although you can buy Power of Attorney forms and kits, these are not recommended for the following reasons:-

- You get no advice or options that are available to you in setting up the power with inbuilt safeguards and/or flexibility.
- You may set up the power incorrectly or choose the wrong type to use.
- You may inadvertently have left yourself and assets open to greater risks.
- A well-meaning relative may present you with something to sign that you have not received adequate advice about.

Once you have become incapacitated, it is too late to fix up any difficulties caused by incorrectly completing the forms.

These errors can cause delay and expense for your family or losses to you if the person you have appointed misuses the power that you have given them. The cost of a properly drawn Power of Attorney and the advice about ways to protect you and your assets provides peace of mind and is prudent insurance.

### **WHAT HAPPENS WHEN YOU DO NOT HAVE AN ENDURING POWER OF ATTORNEY?**

Do not assume that your wife or husband or other family member can automatically act for you. This is not the case. In the case of jointly held assets, one person cannot sell or deal with assets in two names as two signatures are required. The Guardianship Board is the only authority that can appoint someone to handle your affairs for you. It may appoint the Public Trustee or a family member. The decision is in their hands not yours and it may be traumatic for your family to have to deal with this bureaucratic procedure in what may be difficult times anyway.

### ***WHO DO YOU APPOINT AS YOUR ATTORNEY?***

Remember it is a powerful tool that you are giving to someone and you must have utmost faith and trust in the person you nominate to act in your best interests and not to follow their own agenda. Commonly husbands and wives or long term partners give the power to each other so that if one were incapacitated the other could continue to manage the joint affairs or sell property if it were needed. It can be tailored to best suit your needs and circumstances.

### ***WHAT ABOUT SAFEGUARDS?***

- You can require a medical certificate to be obtained before the person can act for you.
- You can name more than one person and indicate how many signatures are required.
- You can limit the matters that the person can do for you.
- You can arrange an alternate or “substitute” attorney if your first choice of person dies or cannot act through their own incapacity.

### ***WHAT DOES A POWER OF ATTORNEY COVER?***

Someone acting as an Attorney will be able to handle almost anything for you to do with business, property, money or other such matters. Health and care issues should be dealt with by an Advance Care Directive as these issues are not covered by an Enduring Power of Attorney. You can restrict your attorney by nominating conditions in certain circumstances. You should discuss your requirements at your initial appointment so the documents can be set up to best suit your needs.

**We offer a home visit service for those unable to get to one of our offices.**

***Check our website for more information at [www.adelta.com.au](http://www.adelta.com.au)***