

Enduring Powers of Attorney



What is a Power of Attorney?

A Power of Attorney (“POA”) is a legal document that allows you to appoint another person, or persons to act on your behalf in relation to your financial and property affairs while you are still alive. Examples of the types of powers that an attorney can have under a POA include signing documents and contracts in your name, dealing with your bank including withdrawing money from your bank account or closing an account, paying your bills and selling your house. A POA is automatically cancelled if you lose legal capacity.

What is an EPA?

An Enduring Power of Attorney (“EPA”) is the same as a POA but the advantage of an EPA is that it remains in force even if you become legally incapacitated and are unable to look after your own affairs.

An EPA cannot be used to make personal, lifestyle or treatment decisions on your behalf. If you require someone to make personal, lifestyle or treatment decisions for you then you need to make an Enduring Power of Guardianship.

Who can make an EPA?

Anyone who is over the age of 18 years and has full legal capacity can make an EPA which appoints one or more persons to be their attorney. They can also appoint one or more persons to be their substitute attorney.

Who is eligible to be appointed as an attorney?

Anyone who is over the age of 18 years and has full legal capacity can be appointed as an attorney.

When choosing an attorney or attorneys it is essential that you appoint someone you can trust who will respect your wishes and always act in your best interests.

An attorney does not need to reside in Western Australia although their ability to act and how readily available and contactable they are to assist in dealing with your affairs should be considered when appointing the attorney.

Why should you make an EPA?

Making an EPA enables you to appoint someone that you know and can trust to deal with your property and financial affairs on your behalf if you ever become incapable of making those decisions yourself. It also enables you to determine the scope of decision-making authority that your attorney will have by placing such conditions and/or restrictions on your attorney in the EPA as you require thereby ensuring that your property and financial affairs are handled as you would want them to be. In essence, making an EPA gives you control over who will deal with your property and financial affairs for you and how they are required to act.

If you do not make an EPA and you lose the capacity to deal with your property and financial affairs for yourself then an application will need to be made to the State Administrative Tribunal to have someone appointed to act for you as your administrator. If this occurs you will have no control over the administrator appointed by the Tribunal and the person so appointed may not be the person that you would want to have making such decisions for you.

When does an EPA take effect?

An EPA can come into effect immediately upon execution, while you still have capacity, and continue if you are no longer able to make reasonable judgments about your property and financial matters or only come into effect if you are no longer able to make reasonable judgments about your property and financial matters.

Can an EPA be terminated?

You may revoke your EPA at any time while you still have capacity. It is recommended that such notice of revocation be given in writing to all attorneys and substitute attorneys appointed under the EPA although this is not a legal requirement.

If your attorney wants to resign from the role as your attorney then provided you have capacity your attorney may resign at any time. Otherwise, if you have lost capacity at the time your attorney wants to resign, your attorney must apply to the State Administrative Tribunal for an alternative arrangement to be put in place.

Otherwise, an EPA will automatically be cancelled when you die, if your attorney dies or becomes legally incapable or if you become bankrupt.

Can an EPA be used in other States or Territories of Australia or overseas?

The laws relating to EPA are different in each State or Territory of Australia and in other countries. Some States, Territories or countries may recognise an EPA executed in

Western Australia and others may not. You should check with the authorities concerned and if necessary complete another EPA which is valid for the relevant State or Territory of Australia or in the other country.

What are your attorney's legal duties when acting under the EPA?

Your attorney is required to always act in your best interests. This means that they must act honestly and exercise reasonable diligence to ensure that your affairs are managed the way that you would wish them to be. Your attorney must also keep proper and accurate accounts of all dealings made under the EPA.

How do you make an EPA?

It is important that your EPA is drafted as a formal legal document in conformity with the requirements of the Act. Your EPA also needs to be executed correctly to ensure that it is valid.

Lotus Legal can help you prepare your EPA and ensure that it accurately reflects your wishes.

For more information or to discuss how we may be able to assist you, contact our legal team on (08) 9305 9529



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