

## POWERS OF ATTORNEY

If you have ever worried about what would happen if you lost your ability to manage your own affairs and make your own personal or property decisions, you would be wise to consider granting a Power of Attorney or Enduring Power of Attorney. Although losing your mental faculties or losing your eyesight may be the type of circumstances that come to mind, simply heading overseas for an extended holiday may create difficulties with respect to the way your affairs are managed at home unless you have appointed an attorney.

A **Power of Attorney** is an authority which you give another person to act on your behalf in relation your property affairs and/or personal care and welfare. You can grant a general Power of Attorney authorising your Attorney to do anything which you could do personally, or limit the authority given to your Attorney so that it applies to certain specified assets or certain circumstances only. A specific Power of Attorney may be limited to a certain period of time, for example, while you are out of the country, or may confer signing rights in relation to your bank account only.

It is quite common for a family member to be chosen to act as an Attorney but many people prefer to appoint an unrelated professional advisor such as a lawyer or an accountant. When considering who to appoint as your Attorney, you will need to consider the age and financial circumstances of the person you have in mind. An Attorney must be an individual over 20 years of age and who is not bankrupt or subject to a personal or property order. Trustee corporations are available to act as your Attorney, but only in relation to property matters. You are able to appoint different people to act as your Attorney in relation to property matters, and in relation to your personal care and welfare. You may prefer a relative to make decisions with regard to any personal issues, and your lawyer to deal with any property or business issues which may arise.

Usually the Power of Attorney is designed to remain in force until you die or the authority is revoked. One possible disadvantage with the ordinary Power of Attorney is the fact that the authority you give your Attorney will cease to be effective if you become mentally incapable. This problem has since been remedied by the Protection of Personal Property Rights Act 1998, and the introduction of the Enduring Power of Attorney.

An **Enduring Power of Attorney** takes effect from the date that it is conferred and will remain valid and effective even if you later become mentally incapable. If you would prefer that your Attorney not be in a position to act on your behalf until such time as you are mentally incapable of making your own decisions, it is possible to specify that the Enduring Power of Attorney shall become effective only if that situation arises.

The procedure for putting in place an Enduring Power of Attorney is simple and inexpensive, and it enables you to appoint an Attorney of your choice. If you lose your mental faculties without having an Enduring Power of Attorney in place, it is usually necessary for a family member or someone else to apply to the District Court to be appointed as manager of your property. This can be an expensive process and can result in stress for family members. The person eventually appointed by the Court as your Property Manager may also not be the person whom you would have chosen prior to your incapacity.

Although having a wide range of powers, your Attorney cannot act for you on certain matters. For example, your Attorney cannot make decisions relating to your marriage or its dissolution, or the refusal of consent to any standard medical treatment or procedure intended to save your life or to prevent serious damage to your health. There are a number of other examples, mainly relating to family and medical matters.

An Enduring Power of Attorney will cease to have effect when you die or revoke the grant, or the Attorney dies. If your Attorney is adjudged bankrupt or themselves become incapable of acting their authority will also end. In addition the District Court can revoke the appointment of an Attorney if the Court is satisfied the Attorney has not acted, or is not acting, in your best interests.

**The above information is of a very general nature only and you should contact our firm regarding specific advice relating to the general information above.**