

### DISCLAIMER

This Factsheet provides an outline of Enduring Power of Attorneys as they exist both at South Australian common law and in statute. This factsheet is **not intended to be a substitute for professional legal advice** and no reliance should be placed on the information as if it were such. Please consult Guarna Legal should you have any queries regarding your role as an attorney or about setting up an enduring power of attorney document.

### Introduction

An enduring power of attorney ('EPOA') is a legal document. An EPOA gives a person(s) of your choice the power to make decisions on your behalf when you no longer have legal capacity. An EPOA deals with contractual and financial decisions.

### What are some examples of what may be included in an EPOA?

An EPOA deals with legal and financial decisions. It should not be confused with the role of a substitute decision maker in Advanced Care Directives, which deal with health and living arrangement decisions.

#### Examples of areas you could include are:

- Financial affairs such as paying bills, making investments, and selling shares.
- Property affairs such as selling and buying houses.
- Legal Affairs such as dealing with contractual agreements.

### What is the difference between an EPOA and a general power of attorney?

A power of attorney is a document that gives a person (the attorney) the power to act on your behalf in relation to financial and contractual matters.

#### Different Attorneys for Different Decisions:

**Enduring Power of Attorney:** The role of an enduring power of attorney can begin whether or not you have legal capacity to make decisions around your affairs and automatically continue once you lose legal capacity, i.e. when you cannot communicate due to stroke or senility.

**General Power of Attorney:** This gives someone authority to deal with your financial affairs only while you are legally of sound mind, for example if you went overseas on holiday.

### What roles and duties do attorneys have?

Attorneys are in a huge position of trust and have the ability to make serious decisions on your behalf.

1/327 King William St  
ADELAIDE SA 5000

P | 08 8373 6473  
E | [hello@ylplegal.com.au](mailto:hello@ylplegal.com.au)  
W | [www.ylplegal.com.au](http://www.ylplegal.com.au)

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#### An attorney must:

- Avoid acting in a way that would create conflicts of interests
- Follow your instructions outlined in the EPOA.
- Act in accordance with limits or conditions you have placed on their decision-making powers.
- Keep their finances and money separate from yours.
- Maintain accurate and true records of their dealings with your finances or property.
- At all times act in accordance with the *Powers of Attorney and Agency Act 1984 (SA)*.

### Controlling the power an attorney under an EPOA

You can customize how much (or how little) decision making ability your attorney has through the way you draft an EPOA. By limiting an attorney's power, you can ensure your wishes are met.

- For example, you could decide that your attorney only has the ability to make decision over a certain property. Or, perhaps you wish someone to make decisions about selling a property, but you do not want their assistance in selling shares.
- You can also decide when you would like your EPOA to commence if you wish.

### Does an EPOA end?

Yes an EPOA ends when you pass away or if you or a Court or a Tribunal make such an order to terminate the EPOA.

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