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The Duties and Responsibilities of your Enduring Power of Attorney

Key Points

A donor is the person who gives the Enduring Power of Attorney (EPA) to another person. A donor can appoint an attorney to act immediately and/or on loss of mental capacity.*

A donee is the person who accepts the Enduring Power of Attorney - called an attorney. An EPA allows the attorney to make financial decisions on behalf of the donor after he/she loses mental capacity. An attorney cannot make medical, health care, accommodation or lifestyle decisions.

***Mental capacity refers to the ability to understand the nature and consequences of a decision and the alternative choices and consequences available or likely.**

Role and Responsibilities of the Attorney

The attorney(s) becomes legally responsible when the EPA is activated. This may be immediately on signing the EPA or when a doctor or neuropsychologist says that the donor has lost the ability to make financial decisions. If there is more than one attorney appointed jointly, they must agree on all financial decisions.

The attorney(s) has an absolute duty to act in the best interest of the donor at all times. It is an offence to act otherwise.*

***An attorney(s) who acts improperly can be held personally and criminally liable for losses – the attorney's house, valuables and income may be at risk.**

The attorney(s) must take into account any instructions from the donor in the EPA. The attorney's main role is to pay the donor's bills and accounts with the donor's money.

The attorney(s) can also buy and sell property on behalf of the donor, but only if it is in the donor's financial interest to do so (eg to pay for residential care).

The attorney(s) must keep and preserve accurate records and accounts for all dealings and transactions when exercising his/her powers. Failure to do so is an offence.

The attorney(s) does not have any right to his/her inheritance before the donor's death.

The attorney(s) cannot be paid for work done on behalf of the donor, except out of pocket expenses directly connected to carrying out his/her duties.

The attorney(s) cannot pay him/herself a wage for duties performed under the EPA but may claim travelling expenses incurred in the performance of his/her duties.

The attorney(s) is not personally liable for any debts of the donor. The attorney(s) does not have to pay the donor's bills and accounts out of his/her own pocket. If the donor has insufficient funds, the attorney(s) should inform the creditors of the donor's financial circumstances as soon as practical.

If the attorney(s) no longer wishes to be the attorney or joint attorneys cannot agree he/she/they can apply to the South Australian Civil and Administrative Tribunal (SACAT) to consider appointing an administrator of the donor's financial affairs. The administrator may then consider revoking the EPA, if necessary.

The attorney(s) must continue to act until alternative arrangements are made. Family members and friends can also apply on behalf of a mentally incapacitated donor for an administrator to be appointed if the attorney(s) has died; is considered incapable or there are concerns about the financial management.

Disclaimer: Information provided is of a general nature to be used as a guide only. It is not a substitute for legal advice.

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