

Enduring Power of Attorney Factsheet: for Attorneys

An Enduring Power of Attorney is a legal document which allows the donor (the person making the document) to appoint one or more people (the attorneys) to manage his or her financial affairs.

The rights and obligations of an attorney are governed by the *Powers of Attorney and Agency Act (SA)*.

In essence, in agreeing to be someone's attorney you are agreeing to:-

- manage someone else's financial affairs for their benefit;
- conduct the person's financial affairs honestly and in a timely manner;
- keep a proper record of transactions which you conduct on behalf of the donor.

The terms of the Enduring Power of Attorney document determine the order and circumstances in which your role as an attorney becomes activated. You might, for example, only be appointed as an attorney only in the event that someone else is unable or unwilling to act as the attorney. Alternatively, you might be appointed to act as an attorney in the first instance jointly with one or more other people. The order and terms of the appointment need to be read carefully to ensure you understand the position you are accepting.

In addition to the order of appointment, the Enduring Power of Attorney document will state one of the following two phrases:-

1. "Upon the execution of this Deed and remain effective notwithstanding that I may suffer any subsequent legal incapacity"; or
2. "Only in the event of my suffering any subsequent legal incapacity".

If the first phrase is listed then the authority of the relevant attorney(s) is exercisable immediately upon the document being signed by all listed persons. This means that you are authorised to assist the donor with their financial affairs at any time as necessary. Whilst you do have this authority it is very important that you allow the donor to manage their own affairs for as long as they are willing and able to do so.

If the second phrase is listed then your authority as an attorney is exercisable only in the event that the donor has lost the capacity to handle their own affairs (usually determined by a medical practitioner). You should not use the document in the absence of a letter from the medical practitioner who has assessed the donor and determined that he/she no longer has the ability to manage their own financial affairs.

Note: *if you accept the position of attorney and the donor loses capacity to handle his/her own affairs, you cannot be released from your role without an order from the South Australian Civil and Administrative Tribunal (SACAT). Thus, please consider your ability and willingness to accept the role before agreeing to be an attorney.*