



Information of Attorneys under an Enduring Power of Attorney

A power of attorney is where an adult appoints another adult to make decisions on their behalf. The scope and conditions of the authority will depend on the type of power of attorney document.

An **Enduring Power of Attorney ("EPA")** is a special class of power of attorney which continues to have force even if the person who appointed you becomes incapable by reason of a disability to make those decisions for themselves.

For simplicity, this factsheet refers to the person who appointed you as "the Principal" even though some types of Enduring Powers of Attorney use different terminology.

What decisions can I make and when can I make them?

You may be appointed to make decisions regarding a combination of Medical Treatment, Financial Matters and Personal Matters.

The types of decisions that you can make will depend on:

- The form of EPA document used;
- When you were appointed;
- The relevant rules and law (including any court or tribunal Orders) which apply; and
- Restrictions and conditions contained within the EPA document itself such as when you can act and whether you are appointed with another person/s.

Please note that EPAs have changed over time. In general, an existing EPA which was validly enacted under old law remains valid however your role and liabilities may have changed with recent legislative amendments.

Please speak with RNG Lawyers if you have any concerns regarding the validity of your appointment and for advice as to the scope of your duties, rights and responsibilities.

Medical Treatment

If you are appointed under an EPA for Medical Treatment you have authority to make decisions about the Principal's medical treatment but **only if they become unable** to make those decisions by reason of a disability. The scope of your powers are:

- ✓ Full power to **make medical decisions** that the Principal would otherwise be able to make
- ✓ Right to **refuse treatment** other than palliative care or provision of food and water
- ✗ You do not decide whether to "**turn of the switch**" – this is decided by the medical team
- ✗ Does not extend to **euthanasia** as this is not legally possible in Australia



Financial Matters

If you are appointed under an EPA for Financial matters you may make decisions regarding the Principal's financial or property affairs subject to the terms and conditions set out in the EPA document. This may include:



Managing their Day to Day Finances

- ✓ Arranging personal funds for them
- ✓ Paying the Principal's bills and debts
- ✓ Paying their rent/mortgage fees
- ✓ Withdrawing and depositing money
- ✓ Receiving & recovering money for them
- ✗ You cannot make gifts to yourself*
- ✗ You cannot pay yourself remuneration*



Dealing with their Assets (including real estate)

- ✓ Arranging payment of rates, outgoings, taxes and insurances
- ✓ Arranging maintenance
- ✓ Preserving and improving the assets
- ✓ Buying and selling the assets
- ✓ Discharging mortgages
- ✓ Creating securities such as mortgages
- ✗ You cannot gift an asset to yourself*



Future planning and long term decisions

- ✓ Managing their investments
- ✓ Planning accommodation options
- ✓ Arranging financial planning advice
- ✓ Arranging taxation advice
- ✓ **Must be in their best interest**



Handling their general financial affairs

- ✓ Liaising with Centrelink
- ✓ Ensuring tax returns are completed
- ✓ Document management
- ✓ Carrying on their business or trade
- ✓ Performing their contracts

* Unless otherwise permitted in the EPA document.



Personal matters (previously known as “Guardianship”)

If you are appointed under an Enduring Power for Attorney for Personal Matters (previously known as “Guardianship”) you have authority to make decisions the Principal’s personal or lifestyle affairs, including:

- ✓ Where they live and with whom they may live
- ✓ With whom they can associate
- ✓ Whether they work and if so the kind and place of work and employer
- ✓ Whether they undertake education or training
- ✓ Daily living issues, such as diet and dress
- ✓ Health care matters

Am I eligible to be an Attorney?

In order to be appointed as an attorney under the Powers of Attorney Act 2014, you must be:

- ✓ Over 18 years old
- ✗ Not insolvent or under administration
- ✗ Not been convicted or found guilty of an offence involving dishonesty unless disclosed on the EPA (if appointed for Financial matters)
- ✗ Not a care worker, health provider or accommodation provider for the Principal

For eligibility requirements under older EPA documents, please contact RNG Lawyers.

What are my duties?

The general duties of Attorneys are as follows:

- ✓ act honestly, diligently and in good faith
- ✓ exercise reasonable skill and care
- ✗ not use the position for profit (except for remuneration as provided under the legislation)
- ✗ not disclose confidential information gained in the role of Attorney unless authorised by the document or by Law



- ✓ keep accurate records and accounts

You may be required to produce the records and accounts of dealings for auditing if requested by the VCAT or the Supreme Court.

What are my rights?

As an Attorney, you have the following rights:

- Where acceptance of your appointment is required, you may **refuse** to accept the appointment.
- Once appointed, you may **resign** from your appointment at any time while the Principal has capacity. If the Principal has lost capacity, it is still possible to resign but conditions apply. Please contact RNG Lawyers for more information.
- If appointed with co-attorneys, you have right to relevant information and to be involved with decision making in accordance with the terms of the EPA document.
- You have the right to obtain reasonable professional advice when performing your role (such as accountancy, financial and legal advice) and to claim these expenses from the Principal.
- You have the right to approach VCAT for clarification of your rights and responsibilities on particular issues.

When happens if things go wrong?

There can be issues with EPAs even if they were valid and appropriate at the time that they were made. Common issues include:

- The EPA was not validly made
- A decision is required which falls outside the scope of the Principal's existing EPAs
- Attorneys in dispute with each other

If the Principal has the capacity to make new EPAs or to at least revoke the existing ones, this is usually the easiest method to resolve issues with EPAs.

If the Principal does not have such capacity, it is possible to approach VCAT for a determination. VCAT has the power to amend or revoke EPAs and to appoint Guardians and Administrators if required. They can also resolve disputes between Attorneys and make determinations on particular issues (such as whether the house can be sold for a particular purpose).

RNG Lawyers has experience in such matters and can work with you and your family to resolve EPA issues and to commence VCAT applications where necessary.



Attorney Checklist

The following checklist is a starting point for your role as Attorney. For specific advice in regards to your particular situation, please contact RNG Lawyers

- Obtain a copy of the EPA document (ideally a certified copy)
- Review the EPA document and determine –
 - What are my powers?
 - When do my powers begin?
 - Am I appointed with another person? If yes, how are we required to make decisions (e.g. jointly, jointly and severally or by majority)
 - Are there special conditions or limitations on my powers in the document?
 - Is the current document suitable for the Principal's needs?
 - Is a change required? If yes, is the Principal able to sign new documents? If not, do we need to make an application to VCAT.

When you commence acting as attorney

- Consider a family meeting to discuss wishes, roles and responsibilities
- Obtain appropriate professional advice, e.g. legal, financial and accounting advice
- Arrange a recordkeeping system to record all dealings, receipts and invoices.
- Visit the Office of Public Advocate website for information
- Contact the Principal's bank, Centrelink, utility service providers etc when you commence acting and provide them with a certified copy of your authority to act
- Schedule payments as much as possible (e.g. direct debit) for ease of recordkeeping
- Consider applying to VCAT for clarification before making any controversial decisions



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Where can I find out more?



For more information please contact **Siew Goh**. Siew was admitted to practice law in Victoria in 2002 and in Malaysia in 2003. Siew is also a Registered Migration Agent (MARN 0850066) and leads RNG Lawyers' immigration and commercial law team. Siew's main areas of interest and expertise are immigration law, commercial law and estate planning. She also speaks Cantonese and Mandarin.



Estate planning is about protecting family and ensuring the right assets go to the right people. RNG Lawyers work alongside your other professional advisers to ensure your matters are looked after holistically.

Siew leads the estate planning team with partner **Adrian Riccioni**. They are supported by **Stephanie Rendell** and **Sharon Ewington**. Our team will provide you with expert and compassionate advice, sensitive to the emotional aspects of dealing with estate planning issues and estate administration to get it right for you.

142 Main Street, Lilydale • 26 Argyle Place, Carlton

03 9739 7377

www.rnglawyers.com.au

DISCLAIMER: The above information is general in nature and believed to be correct at the time of writing. All matters should be discussed fully with your solicitor before any action is taken. No responsibility will be accepted by this firm for any loss or damage suffered by anyone as a result of the information contained above.



Information current as at 20 April 2017

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