



ENDURING POWER OF ATTORNEY – INFORMATION SHEET

Enduring Power of Attorney – Information Sheet

The following has been provided for information purposes only and does not cover all aspects of the current legislation. We recommend that you take legal advice before acting on any matters contained in this document.

Enduring powers of attorney have to be made in the approved form in accordance with the laws of the applicable State or Territory and the relevant legislation will impact on how an enduring power of attorney may be used inside an SMSF.

A 'power of attorney' is a document that a principal (a person or company) can sign to appoint another person (called the attorney) to act for the principal in relation to financial affairs, property matters, or even in some jurisdictions, lifestyle matters such as medical treatment, or where the principal lives and how they are cared for.

The most common use of a power of attorney is the appointment of a principal's spouse or other close relative to deal with the principal's property if the principal becomes of unsound mind. This is an enduring power of attorney.

But powers of attorney have wider uses than this.

The first is in the area of superannuation. The provisions that allow enduring attorneys to act as trustee (or director of the corporate trustee) of a Self Managed Superannuation Fund in place of the member are an important exception to the member-trustee requirement of Self Managed Super Funds ("SMSF").

This enables individuals to keep their SMSF and remain a member. It gives them the freedom to pursue lifestyle interests, live overseas and become non-resident, or to enjoy the benefits of longevity without having to run their SMSF.

An additional use of a power of attorney is for client share trading. A limited power of Attorney (LPOA) can be a very useful document for authorising and implementing some aspects of share trading for the principal by their broker or planner.

Substituting the trustee using an enduring power of attorney may also be a viable option for those who do not want to:

- Wind-up the SMSF
- Roll the money into another complying fund
- Appoint an APRA (Australian Prudential Regulation Authority) approved trustee and convert into a Small APRA Fund (SAF)
- Trigger a Capital Gains Tax event relating to wind-up/rollout of a member's balance.

When a member appoints their attorney as a trustee (or director of the corporate trustee) in their stead, the attorney:

- Takes all the responsibilities and duties as trustee in their personal capacity and do not merely act as an agent for the member
- Needs to remain in Australia for the purposes of management and control of the SMSF to make sure the SMSF continues to be a complying superannuation fund.

It is important for trustees to remember that they cannot forget any of their individual responsibilities in relation to the running of the fund. It is the trustee's responsibility to ensure that the operation of the fund remains within the confines of legislation and that due care is taken with the decisions that are enacted.

For further information or advice on the benefits and use of an Enduring Power of Attorney, please call on **02 8296 6222**.