

A power of attorney doesn't always have to endure

Giving someone a limited power to do something specific on your behalf, you may not want that power to continue for very long

When you have a myriad of things you want to get done and have to be in different places at the same time, you might need a helping hand to accomplish them.

When you want to give someone a limited power to do something specific on your behalf you may not want that power to continue for very long.

When you're going overseas and need a document signed while you're away you'll need help.

In all these cases you need a limited power of attorney, not one that is all-encompassing.

A power of attorney is a document where a person ("principal") authorises another person to act on their behalf. It provides not just the authority of what that person can do but also the limitations of that authority.

Powers of attorney are generally two types: general power of attorney (GPOA) and enduring power of attorney (EPOA).

Both types are similar in that these serve the same purpose - the principal can authorise someone to act on their behalf in respect of their financial matters. Both also do not allow the principal to authorise another to perform their duties as trustee.

What distinguishes one from the other are the following:

- authority given under a GPOA ends when the principal loses mental capacity whereas the authority under an EPOA continues to be effective or "endures" after the principal loses mental capacity;
- any person over the age of 18 years of age (but not the attorney) can witness the principal signing of the GPOA whereas only prescribed witnesses such as Australian legal practitioners can witness the principal signing the EPOA;
- the attorney is not required to sign the GPOA to accept the appointment but in some States the attorney has to sign the EPOA to accept the appointment.

The appropriate power of attorney to use will depend on the principal's intentions and the transactions the principal wishes to have managed.

A GPOA is appropriate if the principal wants their attorney to act on their behalf of only certain transactions such as managing bank accounts or properties. It is useful especially if the principal will be going interstate or overseas and needs someone to manage his affairs for the period of time they are away.

The power given to the attorney is usually meant to take effect in the short or definite term and can be revoked by the principal at any time even before the stated date of termination. Because a GPOA is easier to execute, it can be executed even if the principal is overseas.

As the power granted to an attorney under EPOA is meant to be effective beyond the time the principal loses mental capacity, an EPOA is executed to plan for the long term and usually forms part of the estate planning of the principal.

Legislation may also require an EPOA in certain circumstances such as in superannuation where an SMSF trustee needs to execute one so that the enduring attorney can be appointed as representative director of the SMSF trustee.

Although the power under an EPOA can be revoked by the principal, the latter cannot revoke once they lose their mental capacity. To tell whether a power of attorney is an enduring one, look for the clause which says that the power granted is to take effect even after the principal loses mental capacity (regardless of the title of the document).

For more information on any aspect covered in this article, please call SUPERCentral on 02 8296 6266 or email info@supercentral.com.au.