POWER OF ATTORNEY INFORMATION BROCHURE

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What is a Power of Attorney?

A Power of Attorney is a legal document that allows you (the appointor) to appoint one or more persons (your attorney) to make legally binding decisions on your behalf while you are living. It can be used for financial, personal care, health care, and medical research decisions.

Types of Powers of Attorney

- **General Power of Attorney**
  Authorises your attorney to act on your behalf while you have decision-making capacity. It ceases to have effect if you lose capacity.
- **Limited (or Specific) Power of Attorney**
  Restricts your attorney's authority to a particular act or for a specified period (for example, selling a specific property or managing your affairs while you are overseas).
- **Enduring Power of Attorney**
  Continues to operate even if you lose decision-making capacity. The authority ceases when you die or if it is validly revoked.
- **Company Power of Attorney**
  A company (as a legal entity) can appoint an attorney to act on its behalf for company business. This is done by resolution of the company's directors and is governed by the *Corporations Act 2001* (Cth). A company power of attorney is separate from personal powers of attorney and is used for company matters only.

Why Give an Enduring Power of Attorney?

If you own assets and lose decision-making capacity, someone will need to be appointed to look after your affairs. Without an Enduring Power of Attorney, a family member or other person may need to apply to the ACT Civil and Administrative Tribunal (ACAT), which can be costly and time-consuming.

Even if you retain capacity, you may need someone to access your bank accounts or conduct transactions for you if you are overseas, hospitalised, or otherwise unable to attend to matters personally.

Capacity Requirements

You must have decision-making capacity when signing the document. This means you must understand:

- The nature and effect of the appointment

- The range of decisions your attorney can make
- That your attorney can make decisions without consulting you
- That you can revoke these powers while you have capacity
- That the powers will continue if you lose decision-making capacity

If there is any doubt about your capacity, an independent medical assessment should be obtained.

Witnessing and Execution Requirements

- Your signature must be witnessed by two adults, one of which must be a person authorised to witness a statutory declaration such as a solicitor or a justice of the peace.
- The signature of your attorney does not need to be witnessed.

Choosing Your Attorney

Key Considerations:

- **Trust:** Appoint someone you trust to act in your best interests.
- **Skills:** If your affairs are complex, consider someone with financial or legal skills.
- **Risks:** Be aware of the potential for financial abuse or mismanagement. Consider safeguards such as appointing more than one attorney or requiring regular reporting.
- **Professional Attorneys:** You may appoint a professional (e.g., solicitor or accountant) if appropriate.

It is advisable to discuss your intentions with the proposed attorney and, where appropriate, with family members to avoid misunderstandings or disputes.

Appointing Multiple Attorneys

You may appoint more than one attorney:

- **Jointly:** All attorneys must agree on every decision.
- **Severally:** Any attorney can act independently.
- **Jointly and Severally:** Attorneys can act together or independently.

Practical Considerations:

- If attorneys are appointed jointly and one cannot act, the appointment may be affected.
- You can appoint alternate attorneys to step in if your first choice is unable or unwilling to act.
- Consider how disagreements between attorneys will be resolved and whether you wish to set out specific dispute resolution mechanisms (e.g., mediation, majority decision-making).

Scope and Limitations of Attorney Powers

Attorneys can generally make decisions about your finances and property plus lifestyle and medical decisions, including:

- Operating bank accounts
- Paying bills
- Managing investments
- Selling or buying property
- Personal care decisions (e.g., where and with whom you live)
- Health care decisions (e.g., consenting to or refusing medical treatments, organ donation, end-of-life decisions)
- Medical research decisions (e.g., consent to new or experimental treatments)

Limitations:

- You may set specific conditions or restrictions (e.g., limiting authority to certain transactions or requiring consultation with another person).
- Attorneys may be restricted from making large gifts, changing superannuation arrangements, or dealing with digital assets unless expressly authorised.

Digital Assets:
Consider expressly authorising your attorney to manage digital assets (e.g., online banking, email, social media, cryptocurrency).

Superannuation:
Attorneys generally cannot make binding death benefit nominations for superannuation unless the trust deed allows it and you expressly authorise this power.

Gifts and Benefits:
You may authorise your attorney to make reasonable gifts (e.g., for birthdays or charitable

donations) or to meet reasonable living and medical expenses for themselves or others, but this should be specified in the document.

Duties and Responsibilities of Attorneys

Attorneys must:

- Act in your best interests
- Keep your assets separate from their own
- Not confer benefits on themselves or others unless expressly authorised
- Keep accurate records and accounts of dealings with your assets
- Avoid conflicts of interest and not profit from their position
- Act honestly at all times

Fees and Compensation:
Attorneys are generally not entitled to payment unless you expressly authorise it in the document. They may be reimbursed for reasonable expenses incurred in carrying out their duties.

Consequences of Breach:
Failure to comply may result in civil or criminal penalties, and the attorney may be liable to compensate you for any losses caused.

ACAT can review the making and operation of an Enduring Power of Attorney if there are concerns about its validity or the actions of the attorney.

Commencement of Power of Attorney

You may choose for your Power of Attorney to:

- Operate immediately, or
- Only come into effect if you lose decision-making capacity

Considerations:

- Immediate commencement allows your attorney to act if you are physically incapacitated or unavailable.
- If you restrict commencement to loss of capacity, your attorney may need to prove incapacity, which can cause delays.
- Some institutions may not accept a Power of Attorney with restrictive conditions without extensive evidence.

Revocation

- You can revoke your Power of Attorney at any time while you have capacity.
- Notify your attorney and any relevant third parties (e.g., banks, land registries) in writing, and retrieve all copies of the document.
- If the original was registered, register the revocation as well.
- Changes in circumstances (such as marriage, divorce, bankruptcy, or death) may also affect or revoke the document. Seek legal advice if you wish to revoke your Enduring Power of Attorney.

Interaction with Wills and Estate Planning

- Attorneys cannot make or alter your Will.
- It is helpful for your attorney to know the contents of your Will, especially if specific assets are bequeathed, to avoid unintended consequences.
- Review your Power of Attorney, Will, and other estate planning documents together to ensure consistency and avoid conflicts between attorneys and executors.

Recognition in Other Jurisdictions

- Powers of Attorney made in the ACT may not be recognised in other states or overseas.
- If you have assets outside the ACT, seek legal advice about recognition or the need for separate documents in those jurisdictions.

Registration Requirements

Registration is only required if your attorney needs to deal with land on your behalf. The original document must be registered at ACT Land Titles, and a fee applies.

Registration creates a public record accessible to anyone searching for it.

Risks and Safeguards

There is a risk of financial abuse or mismanagement by an attorney. Safeguards include:

- Appointing more than one attorney
- Setting reporting requirements

- Involving professionals
- Requiring dual signatures for significant transactions
- Regular audits

If you suspect abuse, contact the Public Trustee and Guardian or seek legal advice immediately.

ACAT can review and intervene if there are concerns about misuse or abuse.

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