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DO YOU NEED AN ENDURING POWER OF ATTORNEY?

BACKGROUND

An Enduring Power of Attorney ("**EPA**") is a document where a person (called "**the Donor**") gives another person or persons (called "**the Donee/s**") the legal authority to make legal and financial decisions on their behalf.

Your attorney therefore "stands in your shoes" and can do anything you could do, eg: sell and buy property, pay your accounts, attend to banking, manage investments, taxation and all other administrative matters.

Legally, your attorney must act with diligence and in your best interests and keep full and proper records of the actions undertaken on your behalf.

WHY HAVE AN ENDURING POWER OF ATTORNEY?

Accidents, illness or disability can happen suddenly without warning. It is not only disruptive but also means you need help from someone to manage your personal affairs.

Without an EPA your spouse or partner will need to apply to the State Administrative Tribunal ("**SAT**") for authority to act, which means strict supervision and attendant delay. Therefore, you should consider an EPA while you are healthy and in full control of your faculties. An EPA can only be signed whilst you have legal capacity and is "enduring" because it continues to operate when you are of unsound mind, illness or disability.

Once you have lost capacity because of illness or disability it is too late to sign an EPA. Whilst you continue to be of sound mind, you can revoke the EPA at any time should you so wish.

WHEN DOES THE ENDURING POWER OF ATTORNEY COMMENCE?

You can make the EPA commence from the date of signing and this is common where husbands and wives make mutual EPA's appointing each other as the attorney. The EPA is not necessarily acted on immediately.

Alternatively, the EPA can be formulated so that it is signed and then only activated in the event that you become incapacitated or of unsound mind.

It is important that your EPA is drafted as a formal legal document in conformity with the requirements of the Guardianship and Administration Act 1990 and when signed be witnessed by two appropriately qualified witnesses.

Butcher Paull & Calder can assist you in preparing your EPA and we recommend it as an integral part of your estate planning.