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Power of Attorney—Rights and Obligations

By Amy McLennan



A Power of Attorney can be a very useful document to have in place, especially if you are travelling overseas. Under this document you can appoint somebody to act on your behalf and make decisions for you, however it only has effect while you are alive. There are two different types of Powers of Attorney. You can have a Power of Attorney for your Property and for your Personal Care and Welfare.

A Power of Attorney in relation to your Property is where you appoint someone or more than one person to act on your behalf and deal with your property. Your Attorney can deal with everything you own, not just real estate. For example, your Attorney can sign cheques on your behalf, have full access to your bank accounts or act on your behalf to buy or sell property.

It is very important that the person making the Power of Attorney (the Donor) appoints a person that they trust to be their Attorney. The Attorney has the ability to make decisions about any of the Donor's property including making any gifts or donations to charity on the Donor's behalf. However, the Donor can limit the Power of Attorney to certain property only. For example, the Attorney can only sign documentation for the purchase of a par-

ticular property or the Attorney can only sign cheques on behalf of the Donor. The Donor must also choose whether they want the Power of Attorney to have effect during the whole of their lifetime, regardless of their mental capacity, or whether they only want the Power of Attorney to have effect if the Donor is unable to make decisions in relation to their property.

The second type of Power of Attorney is in relation to Personal Care and Welfare. Under this document you can appoint one person to be your Attorney and make decisions about your personal care and welfare. For example, if you need medical care but you are unable to make decisions in regard to your medical treatment, your Attorney can make these decisions on your behalf. Again, you can appoint someone to act in relation to your personal care and welfare generally or only for specific matters such as particular treatment.

The Attorney has several responsibilities under these documents. Before an Attor-

ney makes a decision about the Donor's personal care and welfare, the Attorney must consider the welfare and best interests of the Donor. The Attorney must also encourage the Donor to understand the medical decisions, and encourage them to make the decision themselves.

The Attorney also has a duty to consult with the Donor as far as practicable and any other person named in the Power of Attorney before making a decision.

If requested, the Attorney must also provide information on the decisions they have made and they must keep records of each financial transaction entered into while the Donor is mentally incapable.

The Donor can revoke the Powers of Attorney at any stage. This is done by simply writing a letter to the Attorney stating that the Power of Attorney is revoked. A copy of this letter must also be held with the original Power of Attorney.

These are just some of the rights and obligations under a Power of Attorney. If you have any questions regarding Powers of Attorney, please do not hesitate to contact us.

The next issue of the Collins & May Law newsletter covers the topic of Debt Consolidation by Paul Whitmarsh.