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DO I NEED AN ENDURING POWER OF ATTORNEY?

An Enduring Power of Attorney is an important document to have in place as it enables you to appoint someone to act on your behalf as your Attorney.

There are two types of Enduring Powers of Attorney. You can appoint someone as your Attorney to make decisions on your behalf in relation to your property or your personal care and welfare.

Your Attorney in relation to Personal Care and Welfare can only make decisions in relation to your personal care and welfare if you are mentally incapable whereas your Attorney in relation to Property can act on your behalf regardless of whether you are mentally capable of making decisions yourself.

By appointing an Attorney in relation to Property, you authorise your Attorney to act in relation to all of your property matters, not just Real Estate. For example your Attorney can access information and withdraw funds from your bank accounts, buy and sell shares or sign documents on your behalf in relation to buying and selling property.

It is particularly important to consider appointing someone as your Attorney in relation to Property if you find it difficult to attend to these matters yourself or if you may find it difficult to attend to these matters in the future.

Another instance of when it is important to have an Enduring Power of Attorney in place is if you are travelling overseas. This was particularly the case for Mr and Mrs Smith who entered into a contract to purchase their first home. The deposit of \$20,000.00 was payable once the Agreement was confirmed as unconditional with settlement due to

take place on 29 April.

Mr Smith is in the Army and the night before the Agreement was due to be confirmed, he was called up for an overseas operation which was scheduled to leave the next morning. They were expecting to receive their unconditional finance approval from the Bank the next day and once this was received, they would be in a position to confirm the Agreement as unconditional. The operation was only for two weeks which would give Mr Smith plenty of time to sign the bank documents before settlement.

Shortly after Mr Smith had left, Mrs Smith received the written finance approval and instructed her solicitor to confirm the Agreement as unconditional. The \$20,000.00 deposit became immediately payable however the deposit funds were in Mr Smith's personal account. The vendor gave the Smiths written notice requiring the deposit to be paid within 3 working days. Mrs Smith did not know where her husband was operating and was unable to contact him. She went to the bank to try to access the funds but she was unable to do so without her husband's authority. Subsequently once the three working days had passed, the vendor cancelled the Agreement. This situation could have been avoided if Mr Smith had appointed his wife as his Attorney in relation to Property.

Should you have any further queries in relation to Enduring Powers of Attorney or if you would like to appoint someone as your Attorney, please do not hesitate to contact the Collins & May Law Team.

Next Issue: Occupation Order - Property owned by Family Trust