

Update: 11 December 2012 Enduring powers of attorney – a case study



Fleming Muntz
Solicitors



Summary

Many of our updates have mentioned the importance of having an enduring power of attorney.

A recent case in which I was involved highlighted how critical these documents can be.

The facts

I received a telephone call from Samuel, the only child of Jane (not their real names). Jane, a seemingly fit and healthy woman in her late 40s, had suffered a stroke which rendered her incapable of managing her own affairs.

Samuel, a university student in his early 20s, was not in a financial position to make payment of Jane's mounting medical expenses. He sought advice as to how he could access Jane's bank account to make payment of her medical bills.

What was the problem?

Jane did not have an enduring power of attorney, and without one, Samuel was not able to access her bank account to meet her medical expenses.

After receiving legal advice, Samuel made application to the Guardianship Tribunal to be appointed as Jane's "financial manager". Samuel was required to provide extensive evidence as to his suitability to be appointed, and following a Tribunal hearing, was finally appointed as Jane's financial manager.

While the appointment gave Samuel the power to access Jane's accounts to meet her expenses, it also imposed an obligation on Samuel to report regularly to the Tribunal on his management of Jane's financial affairs. These reporting requirements can be onerous, time consuming and expensive.

How can this situation be avoided?

The situation for Samuel was already an emotional and stressful one. The need for Samuel to apply to be appointed as Jane's financial manager made a difficult time even more so, and could have been avoided if Jane had signed an enduring power of attorney whilst she had the capacity to do so.

How can Fleming Muntz help?

An enduring power of attorney is an important document which each of us, and our clients, should have.

Fleming Muntz has experienced estate planning lawyers who would be pleased to assist you or your clients.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

We resent unwanted email as much as anyone – if you would prefer not to receive any further updates, please telephone us on (02) 6021 2222 or email to enquiries@flemingmuntz.com.au.

For more information, please contact:



Kellyanne Allwood
Solicitor
Telephone: (02) 6021 2222
Email:
kellyanne.allwood@flemingmuntz.com.au

**Solicitors for New South Wales
and Victoria**

568 Kiewa Street
Albury New South Wales
Australia

PO Box 910
Albury NSW 2640

enquiries@flemingmuntz.com.au
www.flemingmuntz.com.au

Facsimile (02) 6041 1804

Telephone (02) 6021 2222



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