

THE IMPORTANCE OF AN ENDURING ATTORNEY

Few people take the time to consider what would happen should they for some reason become incapable of looking after their own affairs. By appointing a person as your enduring attorney you can ensure your affairs can be looked after in the following circumstances:

- Temporary illness or hospitalization
- Permanent loss of capacity due to an illness such as Alzheimers
- Temporary absence from the state or country

Being an 'enduring' power it continues after the principal (the person who appoints an attorney) has lost the ability to make their own decisions.

In a recent case a German citizen aged in his 70's a resident of Queensland had in excess of \$6m assets in Queensland which included a residence and cash in a bank account. He flew to Switzerland for a few days before then flying on to Munich, Germany. On arrival at the airport in Munich, he had an episode where he was confused and displayed erratic/violent behaviour which we suspect may have been triggered by the physical stress of flying.

The police were called and he was hospitalised. A medical report was ordered and he was subsequently diagnosed with dementia and it soon became clear that he would likely never be able to travel anywhere again.

In Queensland he had left what purported to be a power of attorney but it was in the form of a handwritten letter and not in the proper form required by Queensland law. His purported attorneys were shocked to discover that because this purported power of attorney was not in the correct form, they were not able to deal with his Queensland assets. They were particularly surprised about this in light of the fact that it clearly showed his intentions that they were to manage his affairs.

We became involved at this stage and what followed was a lengthy and expensive process whereby an application had to be made to the Queensland Civil and Administrative Tribunal (QCAT) for an order appointing an administrator to the estate. Ultimately the person's nephew in Germany was appointed administrator as he was a relative and resided near the person in Germany and had also been appointed administrator by a German Court. The assets which were no longer required in Australia were then able to be shifted to Germany to assist with his upkeep.

These legal issues could have been avoided if he had appointed an enduring attorney in the prescribed form.

Whilst the facts of this case are very unusual, the same problems can occur in respect of any person wherever they are located if they have not appointed an enduring attorney. Careful thought needs to be given to the person you wish to appoint as an enduring attorney because an attorney can do almost anything on your behalf that you can legally do.

Article by Peter Zdanowicz, Senior Associate