

LEGISLATIVE CHANGES TO NSW POWERS OF ATTORNEY

The *Powers of Attorney Amendment Act 2013* (“Amending Act”), assented to on 7 May 2013 introduced changes to the *NSW Powers of Attorney Act 2003* (“Act”) with effect from 13 September 2013. The changes introduced as a result of the amendments to the Act are described in this article.

Appointment of Substitutes

Previously, there was some question as to whether the appointment of a substitute attorney in a power of attorney was effective. A new section 45A has now been inserted stating that a principal has the right to appoint one or more substitute attorneys in a power of attorney. A substitute attorney may act as attorney under the power of attorney during a vacancy in the office of the specified attorney or a vacancy of a kind specified in the instrument creating the power of attorney.

Vacation of office of joint attorneys

A new section 46(1A) has been introduced to provide for the continuation of the power of attorney where the office of one or more joint attorneys becomes vacant provided there is at least one of the attorneys or a substitute attorney in office. (Previously, the power of attorney was terminated if the office of one or more of the joint attorneys became vacant).

Revocation

The Guardianship Tribunal has been provided with the authority to determine disputes relating to the *revocation* of a Power of Attorney (formerly a function of the Supreme Court).

Prescribed Form

The prescribed form for Powers of Attorney have been removed from the Act and relocated in Schedule 2 of the Regulations. Two forms replace the previous prescribed single form so it is now much easier to distinguish between the two different types of powers of attorney (general and enduring).

The forms also include more guidance for the attorneys on their roles and duties as an attorney, are easier to read, contain more useful information and have more options than the old form.

These forms are prescribed for the purposes of section 8 of the Act, which provides that *an instrument (whether or not under seal) that is in or to the effect of a form prescribed by the regulations for the purposes of this section and is duly executed creates a prescribed power of attorney for the purposes of the Act* (emphasis added).

A phase in period has been allowed up to 1 March 2014 for enduring powers of attorney, during which the single form currently used and the new forms introduced are all prescribed powers of attorney.

- From 1 March 2014, the use of the new form (or a form to its

effect) to create an enduring power of attorney will become mandatory.

- A general power of attorney created using the previous single form on or after 1 March 2014 will continue to be accepted for lodgment at the Land and Property Information Division (LPI).

It is important to note that all NSW Powers of Attorney executed prior to 13 September 2013 will continue to be valid despite the legislative changes.

Attorneys Acceptance

The new prescribed form sets out additional requirements for the attorney’s acceptance. Attorneys must now acknowledge their responsibilities in clear terms as follows:

I accept that I must always act in the principal's best interests.

I accept that as attorney I must keep my own money and property separate from the principal's money and property.

I accept that I should keep reasonable accounts and records of the principal's money and property.

Current as at 13 December 2013

Please note this article is for information purposes only and does not constitute legal advice.

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I accept that unless expressly authorised, I cannot gain a benefit from being an attorney.

I accept that I must act honestly in all matters concerning the principal's legal and financial affairs.

Topdocs Powers of Attorney

Topdocs provides all types of Powers of Attorney, including Financial, Guardian, Medical and General, for all Australian states.

Our NSW Powers of Attorney forms all meet the new requirements, and include the additional acceptance requirements for attorneys outlined in this article.

More information

Should you have any queries or require more information, please contact the team at Topdocs on 1300 659 242.