

TFR-07 Transfers by an Attorney under EPA or by Administration Order (SAT)

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1 General

An Attorney appointed under an Enduring Power of Attorney (EPA) under the Guardianship Administration Act has all the powers under the Act. Those persons appointed hold that position on trust and must act in the best interest of the Donor/Incapable person. Whilst the Attorney can do anything the Donor may do themselves, they must act in good faith and not deprive the Donor of any assets. Some acts are deemed to be a breach of the fiduciary duty.

Note: An Enduring Power of Attorney is for personal use only and cannot be used in a person's capacity as Director/Secretary of a Company or where that person is an appointed Executor/Administrator of another's estate.

Where a person loses capacity prior to the drawing up of an Enduring Power of Attorney (EPA) or where an EPA is invalid or made void, the State Administrative Tribunal (SAT) may appoint one or more Plenary Administrators to manage the estate of the incapable person. An Order may be issued with all of the powers under the Act or limited powers. See 'Dealings by a Manager or Administrator' ([CAP-02 Incapable Persons](#)) for preparation, supporting evidence and execution of documents.

Independent legal advice should be sought when completing these transaction types. When lodged, the transfer will generally be sent for legal advice within Landgate.

2 Gift of Donor's Property

Where the Attorney seeks to transfer the Donor's property to himself or herself or to a member of the Attorney's family via a gift, then this is not registerable as it is a breach of the fiduciary duties of the Attorney. However, if the Attorney can provide an order made by the Board or other court order giving effect to the gift, then the transfer may be registered.

3 Transfer of a Donor's Property to a Single Enduring Attorney

A transfer of the Donor's property by an Attorney appointed under an Enduring Power of Attorney to him/herself or to a member of the Attorney's family is prohibited because it is in breach of the fiduciary duties of the Attorney. However, the transfer may be registrable if the Attorney provides a statutory declaration advising all of the following:

- The reason for the transfer, e.g. request or wishes of Donor
- Demonstrates that the transfer is in the best interests of the Donor
- Evidence of payment of the consideration to the account of the Donor
- There is evidence that the Attorney or the family member has paid full market value for the property
- Annexes a sworn valuation of the property made by an independent valuer.

If the transfer from the Attorney to him/herself has been made under either an Order of the Board (SAT) or of a Court, then this may be registered subject to a copy of the extracted order being lodged with the transfer.

4 Transfer of the Donor's property to one of two Enduring Attorneys

Where two or more Attorneys have been appointed by a Donor, a transfer of the Donor's property to one Attorney appointed under an Enduring Power of Attorney may be registrable if both Attorneys agree and provided that the Attorneys provide a statutory declaration advising all of the following:

- The reason for the transfer, e.g. request or wishes of Donor
- Demonstrates that the transfer is in the best interests of the Donor
- Evidence of payment of the consideration to the account of the Donor
- There is evidence that the Attorney has paid full market value for the property
- Annexes a sworn valuation of the property made by an independent valuer.

Alternatively, an Order of the Board (SAT) or of a Court consenting to the Transfer then this may be registered subject to a copy of the extracted order being lodged with the transfer.

5 Transfer of Donor's Property to Appointed Administrator

A transfer of the Donor's property to the Administrator appointed by the Guardianship and Administration Board to him/herself or to a member of the Administrator's family is prohibited

because it is a breach of the fiduciary duties of the Administrator. However, the transfer may be registered if the Administrator provides either:

– an Order from the Board authorising that particular transfer

or

– the powers conferred by the order authorise a transfer and the Administrator provides a statutory declaration advising all of the following:

- The reason for the transfer, e.g. request or wishes of the Donor

- Demonstrates that the transfer is in the best interests of the Donor

- Evidence of payment of the consideration to the account of the Donor

- There is evidence that the Administrator or the family member has paid full market value for the property

- Annexes a sworn valuation of the property made by an independent valuer.

- That the incapacity still existed, the incapable person was still alive and the appointment had not been revoked, at the time of signing the instrument.
