



A Village Manager's Guide to Enduring Power of Attorneys

It is not uncommon for a resident's attorney to assert to a retirement village that they have the right to make decisions on the resident's behalf. The attorney may be a spouse, child, other relative or unrelated person. However, before you can accept the resident's attorney's instructions you should establish whether the enduring power of attorney ("EPA") the attorney is relying on is valid.

As you may be aware, there has been a recent law

change in relation to EPAs. A new law became operative from 26 September 2008 and the required form and content of an EPA has now changed. This means that all EPAs dated **later than** 26 September 2008 must now comply with the new law and all EPAs dated prior to this date continue to be governed by the old law.

The new EPAs are similar in form and wording to previous EPAs. However, the new form of EPA contains a number of optional provisions which

were not contained in the previous form. It is also signed as a deed and as such has new and stricter witnessing requirements.

Listed below are three things that you can check to ensure that an EPA dated after 26 September 2008 is valid.

- 1. Whether the EPA has been correctly signed by the resident.** The EPA must be signed by the resident and the resident's signature must be witnessed. The

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Settlement Services Limited welcomes Jo Robertson, our new General Manager

Many of you will already know me from my time as Sales Manager at Maygrove Village, which was a relatively new venture when I started over five years ago. Watching the village grow through the construction phase to being largely operational was valuable in terms of knowledge gathered along the way.

As well as sales I handled all settlements, inclusive of transfers and terminations on site. I have extensive experience in dealing with residents and their families

and some of the issues that operators and managers deal with on a daily basis, especially some of the more practical complexities surrounding the implementation of the Act and the Code.

I look forward to meeting up with those of you I know and also to forming working relationships with those of you I don't. Settlement Services is committed to providing you with an excellent service, however if there are any areas you feel we could adapt to make the



settlements process easier, or in terms of the information available to you through VillageInfoNet more valuable to your organisation, please contact me. ■

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Three things to check to ensure an EPA dated after 26 September 2008 is valid...

witness must be a lawyer, legal executive or a representative of a trustee corporation such as Public Trust. Below the witness's signature the witness must have completed their name, city of residence and occupation.

- 2. Whether the EPA has been correctly signed by the attorney.** The EPA must also be signed by the attorney and the attorney's signature must be witnessed as described above. Anyone can be a witness for the attorney but the attorney's witness and the resident's witness **cannot** be the same person.
- 3. The extent of the EPA.** The EPA should include a statement outlining the extent of the attorney's powers and whether the attorney may act generally or whether the attorney is authorised only to act in specific matters.

Once you are satisfied that an EPA is valid and the attorney has been given the right to act in the specific matter you may rely on

the attorney's decisions in respect of the resident.

Certificate of non-revocation of power of attorney

When the attorney makes decisions or signs any documents on behalf of the resident they must complete a "certificate of non-revocation of power of attorney" as shown below and provide you with the original certificate. You should request a new certificate for every transaction the attorney enters into on the resident's behalf. This certificate should ideally be dated the same date as the attorney's action and it is very important that it is not dated after the transaction has occurred.

You must keep these certificates for your records to prove that the attorney was lawfully entitled to act as they did.

If you are uncertain as to whether you can rely on an EPA or a certificate of non-revocation of power of attorney, then a photocopy can be sent to Settlement Services Limited for confirmation. ■

Certificate of non-revocation and non-suspension of Enduring Power of Attorney

Section 103C, Protection of Personal and Property Rights Act 1988.

I, [full name, address, occupation of attorney], certify that—

[For this paragraph select the statement that applies.]

Statement A On [date], [full name of donor] granted to me an enduring power of attorney to act in relation to his/her property.

Statement B On [date], [full name of donor] granted to me an enduring power of attorney to act in relation to his/her personal care and welfare.

Statement C On [date], [full name of donor] granted to me an enduring power of attorney to act in relation to his/her personal care and welfare and his/her property.

I have not received notice of an event revoking my authority to act under the enduring power of attorney.

I have not received written notice from [full name of donor] suspending my authority to act under the enduring power of attorney.

Date:

Signature of attorney:

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Settlement Services will be closed from Wednesday 24 December 2008 to Tuesday 13 January 2009 inclusive. We will reopen in the New Year on Wednesday 14 January 2009.