

ENDURING POWER OF ATTORNEY: A SOLUTION ON THE HORIZON

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OVERVIEW

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- Issues

1. THE HUMAN PROBLEM: DIMINISHED CAPACITY

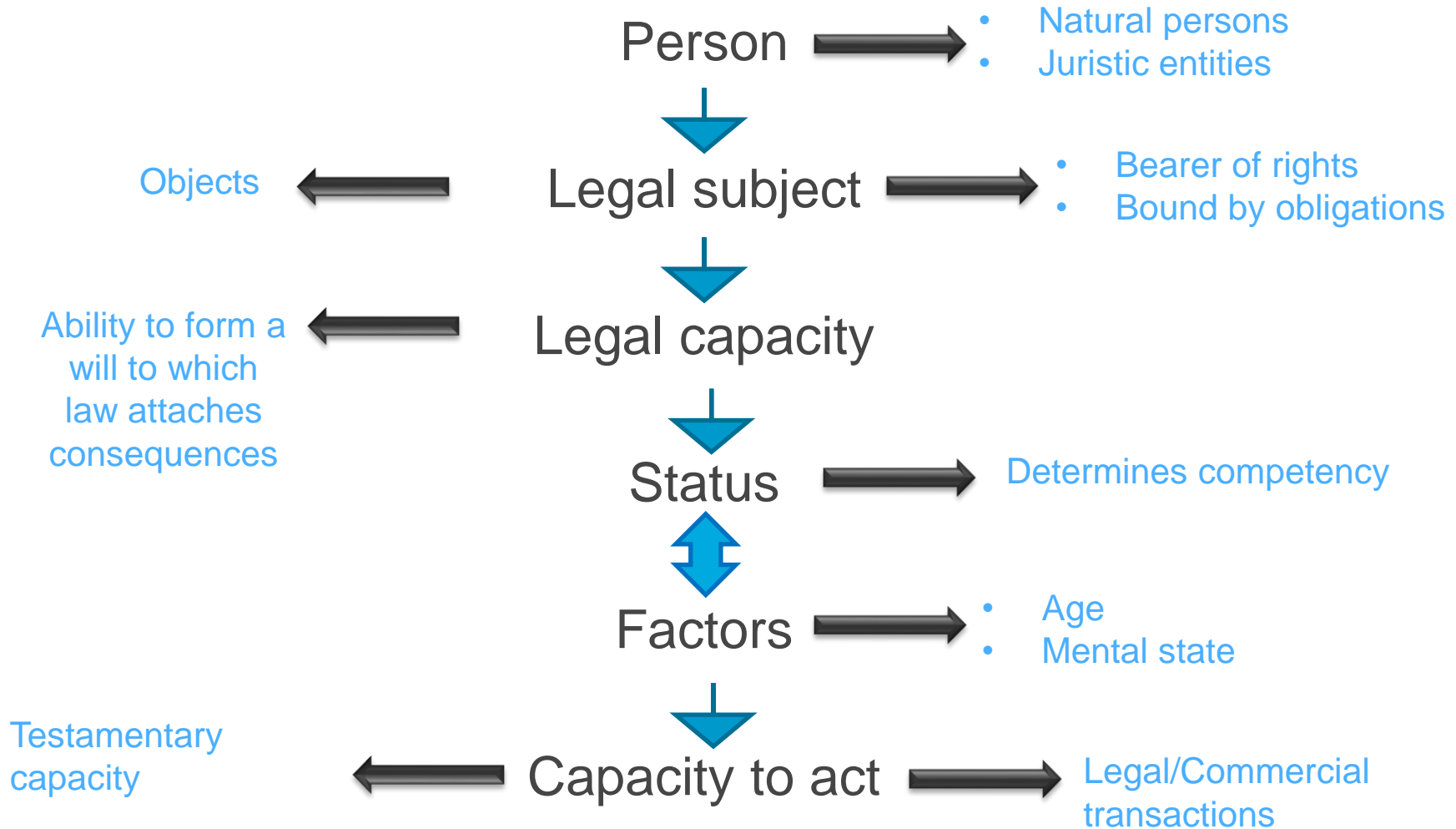
Manifest

- Related to property / person
 - Neglect of affairs
 - Unusual / untoward transactions
 - Inability to access the estate
 - Concerns relating to accountability and control

Causes


- Physical deterioration 
- Cognitive decline
- Inability to give instructions
- Do not understand the consequences of decisions

2. LEGAL CONTEXT: BASIC LEGAL CONCEPTS



FACTORS

 **AGE** – lack of understanding: experience / vulnerable

 **MENTAL CAPACITY** – to judge and act in accordance with such judgment (*compare: infans, pupillus, adult, advanced age*)

 **CAPACITY / INCAPACITY (DISABILITY)**

Causes:

- mental illness
- intellectual disability
- brain injury / disease
- dementia
- age related impairment

Symptoms / Behaviour

- thinking
- reasoning
- remembering
- ability to verbalise

Assess / Test: medical / case by case

3. PSYCHO-SOCIAL CONTEXTUAL FACTORS



- Longevity / Aging population
- Progressive / temporary / fluctuating cognitive related disabilities
- Dementia
- Additional care and expenses
- Privacy / dignity
- Loss of independence / power shift
- The era of personal responsibility for retirement
- Family / No / Conflict / Integrity / Diaspora
- Undue influence / Fraud
- Electronic / technology (advantages / disadvantages)
- Harsh economic times
- Accelerated battle for estates

4. CURRENT REMEDIES

4.1 RESPONSIVE MEASURES

4.1.1 CURATORSHIP APPLICATION :

- Common Law (*Ex parte Hill* 1970 (3) SA 411 (CPD)) – person/property
- High Court application – Rule 57(1) Unsound mind + (13) mental / physical / incapable of managing affairs
- Formal/ representation/ costly /rigid/paternalistic

4.1.2 ADMINISTRATOR ITO MENTAL HEALTH CARE ACT 17 / 2002 (Commencement 15/12/2004)

- Chapter 8: Care and administration of property of mentally ill person or person with severe or profound intellectual disability (defined)
- Appointment of Administrator / manage property ito section 59 – 69 / Regulations
- Application to Master (CB11)
- No representation/ proforma / less costly/ lay person app/ waive security/ prescribed amount

4.2 ANTICIPATORY MEASURES

4.2.1 IN PREPARATION – PERSONAL PREPARATION AND INFORMAL ARRANGEMENTS

- Have good records / known location
- Simplify estate
- Digitize / Electronic processes
- “Equalise” estates
- Independent funds / Emergency funds
- Have the conversation
- Identify someone you trust
- Put control mechanisms in place (assist / supplement / monitor)
- Promote transparency
- Establish accountability
- Resolve tensions
- Up to date Will
- Review Directorships / Trusteeships / Memberships


4.2.2 FORMAL ARRANGEMENTS

4.2.2.1 Testamentary Trusts

4.2.2.2 Inter vivos Trusts

4.2.2.3 Special Trusts

5. LEGAL LIMITATIONS: POWER OF ATTORNEY

- Type of mandant
 - Forms 
 - Key concepts
 - Principal
 - Agent
 - Revocable
 - Applicable law = Law of Agency
 - Agent cannot have more power than principal
 - Tucker's Fresh meat supply (Pty) Ltd v Echakowitz* 1957 (4) 354 (W) - confirmed 1958 (1) SA 508 (A)
 - Cannot be irrevocable
 - Not enduring
- General Power of Attorney
 - Special Power of Attorney
 - Bank's stationery

6. A SOLUTION ON THE HORIZON?

6.1: SALRC : PROJECT 122



- Scope
 - Protection of those with diminished capacity
 - Increase in numbers
 - Outdated / inappropriate solutions
 - Extensive reference to other jurisdictions
 - Follow up of 1998 enduring power of attorney proposals

- Report (446 pages)
 - Need for reform / outline of recommendations
 - Legal capacity (CRPD)
 - Fundamental aspects
 - Proposed measures: informal / formal
 - Enduring Power of Attorney
 - Draft Bill

- Chronology

- Paper 2001
- Discussion Paper January 2004 (comprehensive 342 pages)
- Comments by 31/03/2004 - Consultation / public input
- Interrupted September 2009: United Nations Convention on the Rights of Persons with Disability (CRPD)
- Further research / consultation
- Final draft approved 10/03/2013
- Commission approved 05/12/2013
- Report submitted to Minister of Justice 19/09/2016 // Minister acknowledged 07/10/2016
- Report published 10/07/2019
- Department of Justice / Recommendation to Minister
- Current status?

DRAFT BILL: SUPPORTED DECISION MAKING: ADULTS WITH IMPAIRED DECISION MAKING CAPACITY

- Object
- Definitions
- Chapters
 - Fundamental provisions
 - Informal support
 - Formal support wrt property
 - Formal support wrt personal welfare
 - Enduring Power of Attorney
 - Supervisory provisions
 - Powers of the Master / Court
 - General Provisions (training / offences / incremental provisions / education)
 - Proforma EPOA
 - Schedule 2 – repeal of Acts

DEFINITIONS (s4)



- Disability – *“means any cognitive, developmental, mental, neurological, psychological, sensory or other impairment that may be permanent, temporary or episodic in nature and that hinders a person’s ability in exercising his/her legal capacity on an equal basis with others.”*
- Personal Welfare – *“includes matters relating to day to day issues (such as living, care and employment arrangements), healthcare and the general wellbeing”*
- Financial Supporter
- Health Care Practitioner- *psychiatrist, medical practitioner, occupational therapist, psychologist, Social worker, or psychiatric nurse registered in any relevant law*
- Informal Support
- Personal Welfare Supporter
- Primary Carer – *takes care of primary needs (not employed), substantial contact*
- Relative – parent / adult child / grandparent / adult sibling – substantial contact
- Sign
- Spouse: *legal / religious / permanent life partner*

FUNDAMENTAL PROVISIONS



- **Object of the Act**

- Measures for disabled to access support
- Recognising informal support (legitimising)
- Introducing alternate formal support

- **Application of the Act**

- Applies >18 / majority
- Does not affect the current position iro:
 - Consent: marriage / sexual relations / Mental Health Act / adoption
 - Making a Will
 - Voting

- **Disability**

- As defined
- Not regarded as having disability
 - Capable of understanding / explained
 - Unreasonable decisions
 - Inability to communicate

- **General principles**

- In accordance with: equality / dignity / autonomy / circumstances / cultural environment / past and present wishes / views of named person, spouse, relative and carer

6.2 RESPONSIVE MEASURES

6.2.1 INFORMAL SUPPORT

No Formal Appointment

- Incure Expenditure (No formal appointment)

- May lawfully provide (reasonable, principles, consult, consent)
- May not (Curator, Supporter, EPOA)
- Expenses (necessary and suitable)
- Prohibition against threat, force and detention
- Restrictions (alienate / mortgage / credit agreement / investment restrictions) /
- Restrictions; not extend to consent required by National Health Act
- Records (5 years / justify - call up)

- Authority to access bank accounts

- Bank accounts (transaction / savings / investment / loan)
- Authority continues- if written authority
- Scope / limitations (reasonable living expenses - common household)
- Keep records (sufficient to justify)
- Master may withdraw (application / good cause / serve / notify parties)
- Termination (ex-spouse / formal appointment / registration of EPOA)
- Records (5 years/ justify/ can call-up)

6.2.2 FORMAL SUPPORT



6.2.2.1 Formal support wrt property

- Application to Master; Financial Supporter
- Disability wrt to property
- Preference and regard to.
- Security; Master may
- Inventory
- Keep records
- Report and Account to Master
- Remuneration ; Reasonable and assessed/taxed
- Periodic review

6.2.2.2 FORMAL SUPPORT WRT PERSON

- Application to master; personal welfare supporter
- Disability wrt personal welfare
- Supporter; specific/all aspects
- Who is suitable for appointment
- Powers; health care/ residential facility
- Keep records
- Remuneration

6.3 ANTICIPATORY MEASURES

6.3.1 ENDURING POWER OF ATTORNEY



- **Introductory provisions**
 - Does not terminate
 - Must comply with execution formalities
 - Property / personal welfare (both)
 - Extent (specific / all matters / consent health services: National Health Act)
 - Subject to conditions / restrictions

- **Appointment of Agent – safeguards disqualified/power of agents**
 - Who? – 18 years plus, juristic / not Master
 - Different agents for property/personal
 - Joint appointments
 - Conflict – directions in EPOA / personal prevails
 - Substitution – principal may in EPOA/ cannot authorise agent

6.3.1 ENDURING POWER OF ATTORNEY (cont)

- **Execution formalities – execution safeguards**
 - Written / date / details of principal and agent
 - Statement of Intent / continue / come into effect
 - Grant of Authority (specific / general terms)
 - In form of example

 - Signed
 - Two witness present & certificate provider
 - Sign bottom of each page
 - Initials/mark/print or another person – further certificate
 - Witnesses
 - Two
 - Above 18 years old
 - Full names and identity number
 - Not agent, spouse or relative

 - Certificate of execution (Certificate Provider)
 - Who? – legal practitioner, health care practitioner, other professional skills
 - Known for 5 years
 - Not agent, spouse or relative
 - Must state at time: understand, no duress, sign each page
 - Made at time/included -sign each page/ presence of

6.3.1 ENDURING POWER OF ATTORNEY (cont)

- **Registration – triggering events safeguards**
 - On disability - Application to Master by agent
 - Prescribed Form: under oath/affirmation
 - Details of Agent, Principal and Property
 - Include - Health care report:
 - Recent / no connection / no interest
 - Nature, extent and duration of disability
 - Original EPOA with Master
 - Notice / Service: Principal, spouse, named person and primary carer
 - Disposal by Master (decline / register / notify / endorsed EPOA / security / exempt)

- **Security – financial safeguards**
 - Can be exempted in Power of Attorney
 - If not – Master may call (before, any time after, reduce and discharge)

- **General Powers and Duties – supervision safeguards**
 - Notification of changes / events
 - Publication of registration/cancellation in Gazette (may)
 - Furnish inventory of property (only if security called for)
 - Keep records / property & transactions
 - Report / Statement of transactions (must provide - when required by Master)
 - Fiduciary duty (no agreement to exempt)

MASTERS POWERS: (SUPERVISION SAFEGAURDS)

Keep records

Allow inspection

Make enquiries

Request information/get copies

Summons and question

Power of review; make directions

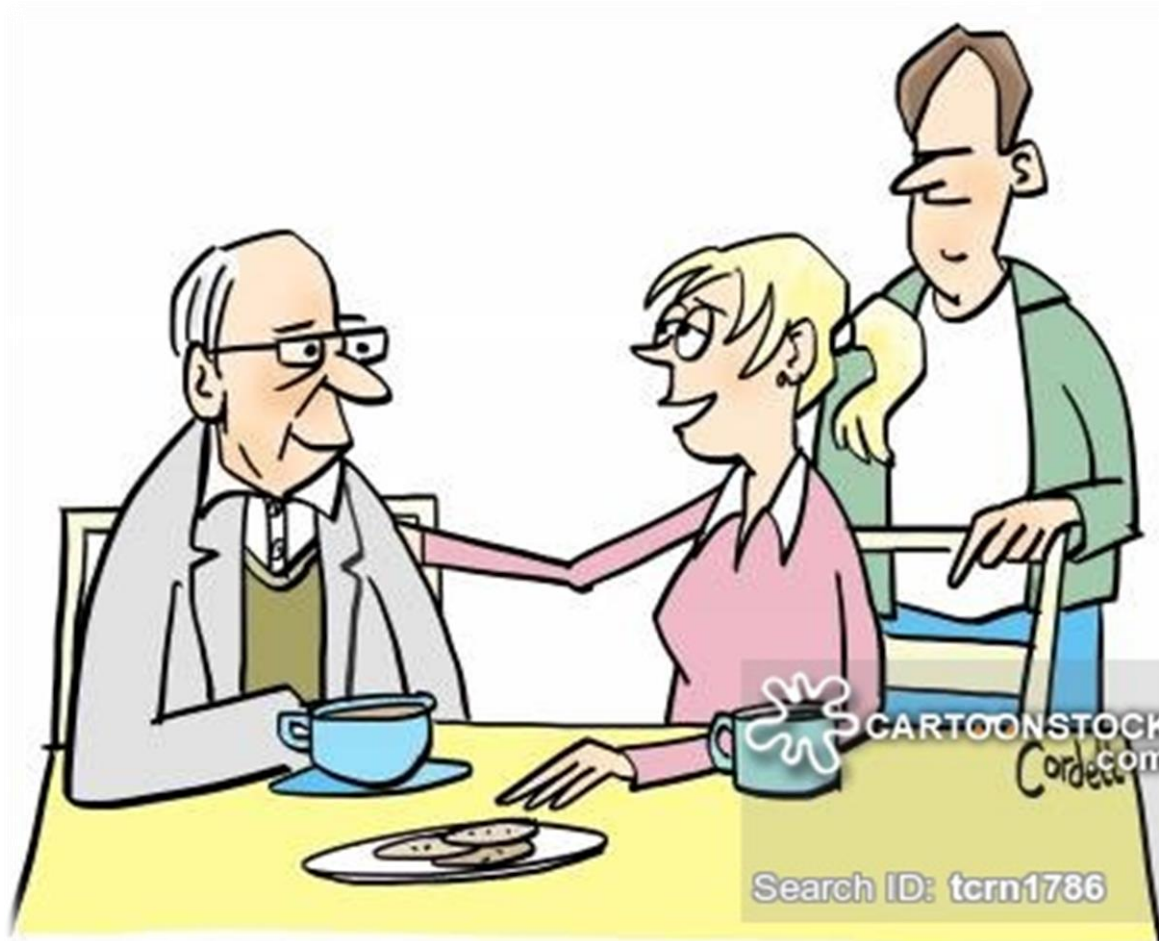
Offences and penalties

6.3.1 ENDURING POWER OF ATTORNEY (cont)

- **Restrictions**
 - ❑ Threat / Force / Detain ; Personal welfare only on disability
- **Termination** – **supervision safeguards**
 - ❑ Revocation - Principal notify
 - ❑ Resignation – notification by
 - ❑ Removal
 - Court
 - Master (fails, convicted, sequestered and dissolved marriage)
- **Destruction of documents**
 - ❑ 5 years
- **Proforma**
 - ❑ May be in form of example
 - ❑ Explanatory notes
- **Validation**
 - ❑ Power of Attorney executed before disability
 - ❑ Acts performed prior to registration
 - ❑ Recognition of foreign documents

- **Issues to consider**

- A new service
- Education
- Keep current
- Choice of agent
- Onerous
- Refund disbursements and remuneration
- Security
- Named person
- Regulations
- The masters office
- Not a panacea



**“Don’t worry - the Power of Dad still trumps
the Power of Attorney.”**

ANNEXURES

- Formal support wrt property
- Formal support wrt person
- Hullett Powers – “Annexure A”
- Example of Enduring Power of Attorney – “Schedule 1”

- **Appointment**

- Application to Master
 - Prescribed form
 - State (particulars / relationship / duration / property value / income)
 - 7 day proviso
 - Report Health Care Practitioner (nature and extent of disability)
 - Nominee
 - Consent / Serve
 - Master's assistance / free
- Who may be appointed
 - 18+
 - Juristic person
 - Preferences / having regard to...
- Disposal of application
 - Appoint / decline (direct to Court)
 - Review of application / notify / reasons
- Confirmation
 - LOA
- Security - may exempt

6.2.2.1 FORMAL SUPPORT WRT PROPERTY (cont)



- **Powers / Duties**

- Conferred by Letter of Appointment (specific / general / conditions / express consent)
- Taking control (property / documents / warrant)
- Inventory
 - 30 days
 - Property and values
- Prohibition of disposal
- Bank accounts (interest bearing)
- Notification (change of status)
- Keeping of records
- Report / account to Master (annually / termination / prescribed form / supporting documents)
- Inspection of securities
- Fiduciary duty and care (no indemnification)
- Remuneration and Expenses
 - On good cause
 - Assessed according to tariff
 - Taxed

6.2.2.1 FORMAL SUPPORT WRT PROPERTY (cont)



• Restrictions

- Threat / Force / Detain
- Wrt property
 - alienate / mortgage (unless authorised – consent)
 - Supporter may not purchase (prior consent / Master or Court consent)
- Personal welfare supporter's views prevale
- No substitution

• Review

- Periodic by Master (3 year intervals / any time)

• Resignation / termination / withdrawal

- Resignation (notify / effective date / one month)
- Termination application (by person receiving support: prescribed form / supporting documents)
- Withdraw by Court (any interested party)
- Withdraw by Master (fails to perform / dissolution of marriage / sequestration)
- Return / cancellation of appointment
- Discharge (written application)
- Destruction of records (5 years)

6.2.2.2 FORMAL SUPPORT WRT PERSON



- **Variance to property**

- Application: state particulars regarding support required, set out ground on which applicant believes support required
- May specifically authorise: consent National Health Care powers
- May not empower withdrawal of treatment
- Limited power wrt residency facilities
- Remuneration on good cause shown
- No notification of appointment and cessation
- Conflict personal supporter's views prevails
- In all other respects similar procedure

ANNEXURE "A"

- (a) To sell any property belonging to the patient;
- (b) To make exchange or partition of any property belonging to the patient or in which she/he is interested, and give or receive any money for equality of exchange or partition;
- (c) To carry on or discontinue any trade, business or undertaking of the patient;
- (d) To grant leases of any property of the patient;
- (e) To perform any contract relating to the property of the patient entered into by the patient before she/he become mentally disordered or defective;
- (f) To exercise any power or give any consent required for the exercise of any power where the power is vested in the patient for her/his own benefit, or the power is in the nature of a beneficial interest in the patient;
- (g) To raise money on mortgage of the patient's property for payment of her/his debts or expenditure incurred for the patient's maintenance or otherwise for her/his benefit, or for payment of, or provision for, the expenses of her/his future maintenance;
- (h) To apply any money for or towards the maintenance or the benefit of the patient;
- (i) To expend money in the improvement of any property of the patient by way of building or otherwise;
- (j) To expend any moneys belonging to the patient in the maintenance, education, or advancement of the husband/wife of the patient or of any relative of the patient or of any person wholly or partially dependant on the patient or continue such other acts of bounty or charity exercised or promised to be exercised by the patient as the Court or the Master having regard to the circumstances and the amount or value of the estate of the patient considers proper and reasonable;
- (k) To invest moneys of the patient which may be available for investment;
- (l) To take any proceedings which may be necessary in the interests of the patient or the due and proper administration of her/his property;
- (m) To make such reports concerning the patient's estate to the Court or to the Master as the Court or Master deems fit.

The above powers are subject to the approval of the Master of the High Court

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SCHEDULE 1

EXAMPLE OF ENDURING POWER OF ATTORNEY (Section 68(2) of the Supported Decision-making Act, 20 ..)

Purpose of Schedule 1

An example of an enduring power of attorney is included in this Schedule to provide guidance on the legally required content of an enduring power as provided for in the Supported Decision-making Act, 20 This Schedule is not part of the Supported Decision-making Act, 20.. and does therefore not have the force of law.

ENDURING POWER OF ATTORNEY

(Section 68(2) of the Supported Decision-making Act, 20 ...)

THIS ENDURING POWER OF ATTORNEY is made in terms of the Supported Decision-making Act, 20...
ON (Date)

BY

.....
(Full names, identity number, and address of principal)

***1. CANCELLATION OF PREVIOUS POWERS OF ATTORNEY**

I revoke the power of attorney previously given by me on
(Date of power of attorney now being revoked)
appointing
(Full names, identity number, and address of agent appointed in the power of attorney now being revoked)

2. APPOINTMENT OF AGENT

- (a) I hereby appoint
(Full names, identity number, and address of agent)
to be my agent.
- * (b) In addition to the person I appointed as my agent under paragraph 2(a), I appoint the following person/s to act *jointly / *jointly and severally with that person as my agent
(Full names, identity number, and address of joint agent/s)
- * (c) If a person I have appointed as my agent or joint agent under paragraph 2(a) or (b), is or becomes unable to act, then I appoint the following person/s as substitute for that person/s
(Full names, identity number, and address of substitute agent/s)

3. AUTHORITY GRANTED TO AGENT***3.1 The appointment in paragraph 2 in respect of my property is –**

- (a) *a general authority to act on my behalf / *authority to act on my behalf in the following respects only
- (b) in relation to *the whole of my property / *the following property only
- * (c) subject to the following conditions and restrictions

***3.2 The appointment in paragraph 2 in respect of my personal welfare is –**

- (a) authority to act on my behalf in relation to my personal welfare *generally / *the following specific matters relating to my personal welfare only
- * (b) subject to the following conditions and restrictions

* Delete if not applicable; or delete the option that is not applicable.

4. STATEMENT OF INTENT REGARDING OPERATION OF ENDURING POWER OF ATTORNEY

- * (a) I intend that the authority granted in paragraph 3 of this enduring power of attorney in relation to my property is to continue to have effect notwithstanding my subsequent disability / *is to come into effect only on my subsequent disability.
- * (b) I intend that the authority granted in paragraph 3 of this enduring power of attorney in relation to my personal welfare is to come into effect only on my subsequent disability.

5. GIVING SECURITY IN RESPECT OF ENDURING POWER OF ATTORNEY RELATING TO PROPERTY

I hereby *exempt / *do not exempt my agent from giving security to the amount which the Master of the High Court may determine.

6. PAYMENT OF AGENT

I authorise my agent to take annual payment from my property to the amount of

SIGNED BY
(Signature of principal or person acting on behalf of the principal)

IN THE PRESENCE OF

1
(Full names, identity number, and signature of witness 1)

2
(Full names, identity number, and signature of witness 2)

CERTIFICATE OF EXECUTION
(Sections 68(1)(h) and 70 of the Supported Decision-making Act, 20 ..)

I,
(Full names and address of certificate provider)

in my capacity as *(give particulars in the space provided):*

- *Legal Practitioner
- *Health Care Practitioner.....
- *Person with relevant professional skills.....
- *Person who has known the principal for at least 5 years and as more than an acquaintance

certify that I have satisfied myself that at the time the principal named in this enduring power of attorney grants this enduring power, *he / *she understands the nature and effect of this enduring power, and that I have no reason to believe that *he / *she is acting under undue influence or that any other factor vitiates the granting of the enduring power of attorney.

SIGNED BY
(Signature of certificate provider)

ON.....
(Date)

* Delete if not applicable; or delete the option that is not applicable.

When does an enduring power of attorney take effect?

As a rule, an enduring power of attorney relating to *personal welfare* takes effect only once the principal cannot exercise his or her legal capacity without support. This differs from the position of an enduring power relating to *property*, where an agent may act on behalf of the principal irrespective of whether the principal can act independently or not, unless the enduring power expressly states that it will take effect only once the principal needs support in exercising his or her legal capacity.

Must an enduring power of attorney comply with specific execution formalities?

To be legally valid, an enduring power of attorney must comply with the formalities as required by the Supported Decision-Making Act, 20..:

- It must be in writing and be dated.
- It must be signed by the principal in the presence of two witnesses. The principal may sign by making a full signature, making initials, making a mark or by placing his or her thumbprint on the enduring power. If the principal is physically incapable of signing the enduring power, some other person may sign the enduring power in the presence of the principal, and by the direction of the principal. Where the principal does not sign by making a full signature, additional formalities are required. Note also that certain persons are prohibited from witnessing an enduring power of attorney and from signing on behalf of the principal.
- It must contain a statement indicating the intention of the principal; that is, that the enduring power is to continue after its execution to have effect notwithstanding any disability of the principal that occurs after the execution of the enduring power; or that it is to take effect only on the disability of the principal.
- It must contain instructions regarding the extent of the authority granted to the agent.
- A certificate of execution must be included in the enduring power. The certificate provider must certify that the principal understands the nature and effect of the enduring power when the power is granted, and that there is no reason to believe that the principal was unduly influenced or that any other factor negates the legal force of the enduring power. A legal practitioner, a health care practitioner, or a person with other professional skills relevant to the purpose of the certificate must give the certificate. Alternatively, the certificate may be given by a person who has known the principal for at least five years and as more than an acquaintance.

Who should the principal choose as agent?

The agent must be a person who is 18 years of age or older; who is trustworthy; and willing to act as agent. The agent may not be a person who requires support in exercising legal capacity. One may also choose a juristic person as agent, in which case a natural person nominated by the juristic person will perform the duties of the agent.

More than one person can be appointed as agent. They may be appointed to act jointly (make decisions together), or jointly and severally (in which case they can all act together but they can also act separately if they wish). The principal may also name a specific person in the enduring power to act as substitute if the chosen person becomes unable to act as agent.

It is important for the principal to discuss the decision to appoint a specific person as agent with that person before appointing him or her.

Should an agent be paid?

A principal is under no legal obligation to pay his or her agent, and an agent has no right to claim payment. It is advisable for the principal to discuss the issue of payment with the agent. Should a principal wish to pay his or her agent, this must be stipulated in the enduring power of attorney. Any payment of an agent will be taken from the property of the principal.

The Master of the High Court may require an agent to give security for the proper performance of his or her duties

If a principal does not wish his or her agent to give security, the principal must expressly exempt the agent from this in the enduring power of attorney. If the principal does not exempt the agent, the Master of the High Court may require the agent at the time of registration of the enduring power, or at any later time, to give security, if the Master has good reasons for doing so. Note that security can only be required in the case of an enduring power relating to *property*. In addition, the reasonable cost of giving security is payable from the estate of the principal.

An enduring power of attorney must be registered

An agent is required to register the enduring power of attorney with the Master of the High Court at the stage when the principal needs support in exercising legal capacity. Once it has been established that the principal requires support, the agent will not be able to legally act in terms of the enduring power unless it is so registered.

What are the responsibilities of an agent?

A person who accepts an appointment as agent under an enduring power of attorney takes on serious responsibilities.

An agent should take particular note of the general principles that should guide support of a person in exercising their legal capacity, as required by the Supported Decision-making Act, 20..; and of the specific provisions of that Act that apply to an agent's general powers and duties.

An agent owes the principal a certain standard of care. This means that an agent must carry out the instructions under the enduring power with the care and diligence that can be expected of a careful person who acts on behalf of another person in managing that person's affairs. This standard of care applies whether or not the agent is paid for his or her services.

An agent owes the principal a fiduciary duty. This means that the principal has placed trust in the agent to properly exercise the powers granted to the agent, and the agent must act accordingly. Generally speaking, a list of duties arising from this position of trust would include the following:

- To act with the utmost good faith.
- To act in the best interests of the principal.
- To act within the authority granted by the enduring power.
- Not to benefit personally in carrying out any function or duty as agent.
- To fully disclose to the principal any interests that may conflict with the agent's responsibilities in terms of the enduring power.
- Not to misuse confidential information gained through being the agent.
- In the case of an enduring power relating to *property*, not to mingle the agent's property and that of the principal, except where there is already an interest in the same asset (for example where a spouse is appointed as agent).
- In the case of an enduring power relating to *property*, to keep proper records (including statements of monetary transactions) to show how the principal's property is handled; and to permit inspection of such records.

An agent must report to the Master of the High Court if required to do so. The Master may require an agent to report to the Master about how he or she has exercised authority in terms of the enduring power of attorney. In the case of an enduring power relating to *property*, the Master may require the agent to include in such report a statement of monetary transactions executed in terms of the enduring power.

Can a principal amend or revoke an enduring power of attorney?

The principal can amend or revoke an enduring power of attorney made by him or her at any time, as long as the principal is still capable of understanding the nature and effect of the amendment or revocation. It is in fact important that the principal, from time to time, reviews the enduring power after its execution and amends it if necessary. This revision will ensure that the enduring power continues to convey the principal's wishes accurately. Revocation of an enduring power is valid only if written notice thereof is given to the agent. If revocation takes place after registration of the enduring power, the Master must also be notified about the revocation so that the Master can cancel the registration.

If one revokes an enduring power of attorney and executes a subsequent enduring power, the revocation of the earlier power should be clearly indicated in the subsequent enduring power. This would ensure that there is certainty about which of the two documents the principal regards as reflecting his or her most recent wishes with regard to the authority granted to the agent.

Can an agent's powers be terminated?

The Court, or the Master of the High Court, may remove an agent if the agent does not properly carry out his or her duties in terms of the enduring power of attorney.

An agent may resign. If, after the registration of an enduring power of attorney an agent wants to resign, then he or she must inform the Master of the High Court of this intention.

SCHEDULE 2

Laws repealed or amended

No. and year of Act	Short Title	Extent of repeal or amendment						
Act No. 17 of 2002	Mental Health Care Act, 2002	The repeal of Chapter VIII						
Act No. 25 of 2002	Electronic Communications and Transactions Act, 2002	<p>1. The amendment of –</p> <p>(a) Schedule 1 by the addition of the following item:</p> <table border="1"> <tr> <td>5.</td> <td>Supported Decision-making Act, 20..</td> <td>11, 12, 13, 14, 16, 18, 19 and 20</td> </tr> </table> <p>(b) Schedule 2 by the addition of the following item:</p> <table border="1"> <tr> <td>5.</td> <td colspan="2">The execution, retention and presentation of an enduring power of attorney as defined in the Supported Decision-making Act, 20..</td> </tr> </table>	5.	Supported Decision-making Act, 20..	11, 12, 13, 14, 16, 18, 19 and 20	5.	The execution, retention and presentation of an enduring power of attorney as defined in the Supported Decision-making Act, 20..	
5.	Supported Decision-making Act, 20..	11, 12, 13, 14, 16, 18, 19 and 20						
5.	The execution, retention and presentation of an enduring power of attorney as defined in the Supported Decision-making Act, 20..							

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