



The Public Trustee's required clauses in the EPA where the Public Trustee is the proposed Attorney for Financial Matters and there is a proposed Nominated Person for Financial Matters

The Public Trustee requests the clauses outlined in this document are included in Enduring Power of Attorney (EPA) documents where the Principal wishes to nominate the Public Trustee as their Attorney for Financial Matters and also wishes to nominate one or more persons to receive information on their financial matters (that is, to act as their "Nominated Person").

The Public Trustee can only be effectively appointed as the Attorney for financial matters for the Principal under the Principal's Enduring Power of Attorney with the Public Trustee's consent.

The Public Trustee's consent to act as the Attorney for financial matters will be evidenced by the execution of the Enduring Power of Attorney by the Public Trustee after the Enduring Power of Attorney is executed by the Principal and witnessed by a qualified witness.

The Public Trustee's Policy on acting as Attorney for financial matters where there is a Nominated Person for financial matters can be found on the Public Trustee's website.

General terms and instructions

In the General terms and instructions section on page 6 of the EPA Short Form or page 9 of the EPA Long Form the Public Trustee requests the insertion of the following clauses if appointing the Public Trustee as financial attorney where one or more persons are appointed as nominated persons for financial matters.

"The clauses set out below (the **Nominated Person for financial matters Clauses**) apply to the terms and instructions (notifications for financial matters) in this Enduring Power of Attorney document.

1. Definitions:
 - 1.1 **Disclosable Information** is the information, data and documents that my Attorney for financial matters is required or authorised to disclose to the Nominated Person for financial matters.
2. In addition to the categories of documents listed in the Terms and instructions (notifications for financial matters) in this Enduring Power of Attorney document, my Attorney for financial matters may also share any other additional documents, data or information about my personal or financial affairs with my Nominated Person for financial matters at its discretion.
3. My Attorney for financial matters may provide a copy of documents and is not



required to provide the original documents.

4. For the purposes of the *Information Privacy Act (Qld) 2009* and *Privacy Act 1988 (Cth)* I direct my Attorney for financial matters to provide the Disclosable Information to my Nominated Person for financial matters regardless as to whether the Disclosable Information is confidential to me or whether it is Personal Information and/or Sensitive Information for the purposes of those Acts.
5. I authorise my Attorney for financial matters to deduct the reasonable costs of providing the Disclosable Information to my Nominated Person for financial matters from my assets.
6. My Attorney for financial matters shall wherever practicable provide to the Nominated Person for financial matters the Disclosable Information by email. A copy of the email sent by my Attorney for financial matters to my Nominated Person for financial matters providing and/or attaching the Disclosable Information shall be a sufficient discharge to my Attorney for financial matters as to the provision of the information.
7. If, in the opinion of my Attorney for financial matters, there is any doubt regarding the obligations of my Attorney for financial matters to provide my Nominated Person for financial matters with the Disclosable Information, or if, in the opinion of my Attorney for financial matters, there is an actual or potential detriment to me if my Nominated Person for financial matters receives the Disclosable Information, my Attorney for financial matters may, at the sole discretion of my Attorney for financial matters, apply to the Queensland Civil and Administrative Tribunal (QCAT) for directions and/or other orders pursuant to the Powers of Attorney Act 1998 (or its successor provisions). My Attorney for financial matters will not be in breach of the terms of my Enduring Power of Attorney for not providing my Nominated Person for financial matters with the Disclosable Information until directions and/or other orders have been made by QCAT. Subject to any contrary directions from QCAT, I authorise the reasonable costs (including legal costs) of such application shall be paid from my assets.
8. Notwithstanding any other clauses in my Enduring Power of Attorney, my Attorney for financial matters may in its absolute discretion choose not to disclose to the Nominated Person for financial matters any information or documents regarding any investigations, negotiations or any other matters involving the Nominated Person for financial matters, a relation, business associate or close friend of the Nominated Person for financial matters or a corporation or trust in which the Nominated Person for financial matters or a relation, business associate or close friend of the Nominated Person for financial matters has or may have an interest or entitlement (including a potential interest or entitlement).
9. Notwithstanding any other clauses in my Enduring Power of Attorney, my Attorney for financial matters may in its absolute discretion choose not to disclose to the Nominated Person for financial matters any information or documents that contain legal advice or are legally privileged.”



Terms and instructions (notifications for financial matters) “What to notify”

A Principal needs to be aware that the extent of the documents and/or information that are required to be provided by the Attorney for financial matters to the Nominated Person for financial matters and the frequency that the documents and/or information are to be provided will affect the costs of the Public Trustee acting as Attorney for financial matters.

The Public Trustee suggests the insertion of one or more of the following clauses in the section on page 8 of the EPA Short Form or page 10 of the EPA Long Form under “What to notify”. The Public Trustee routinely creates these documents when acting as Attorney for financial matters so limiting the documents and/or information required to be provided to these documents will assist in minimising costs.

- written notice that my attorney(s) intend to begin exercising power for financial matters under this enduring power of attorney before exercising the power for the first time.
- Other – Provide details
 - “A certified copy of my Enduring Power of Attorney (unless the nominated person for financial matters named above has advised the Attorney in writing that this is not required).”
 - “Annual Statement(s) of transactions created by my Attorney.”
 - “Annual Assets and liabilities list(s) created by my Attorney [*OPTIONAL*: including any supporting documentation such as valuations, appraisals and insurances].”
 - “My yearly Budget(s) created by my Attorney.”

Terms and instructions (notifications for financial matters) “When to notify”

A Principal should be aware that the frequency that documents and/or information are required to be provided by the Attorney for financial matters to the Nominated Person for financial matters will impact the costs of the Public Trustee in acting as the Attorney for financial matters.

The Public Trustee’s policy is to accept appointment as Attorney for financial matters where the obligation to provide documents and/or information to a Nominated Person for financial matters can be met within the Public Trustee’s existing practices when acting as Attorney for financial matters.



Where the Public Trustee is the Proposed Attorney for Financial Matters: Suggested clauses unrelated to appointment of a nominated person

With a view to minimising the cost of the administration of the Principal's deceased estate, the Public Trustee suggests the Principal consider the insertion of the following clause where the Principal has made or may make a Will which includes specific, general or demonstrative gifts:

"I direct my attorney for financial matters to prepare and keep records of any dealings with my assets which may cause section 61B of the *Powers of Attorney Act 1998* (or its successor legislation) to apply to my estate upon my death. The reasonable costs (including legal costs) of my attorney for financial matters preparing and keeping these records shall be paid for from my assets PROVIDING HOWEVER, I acknowledge that:

- there is no obligation on my attorney for financial matters to prepare such records if I have not provided a copy of my last Will to my attorney for financial matters, and
- there is no obligation on my attorney for financial matters who has dealt with my assets to keep any surplus money or any other property arising from the dealing with the property separate from my other assets."

The Public Trustee will need a copy of the Will to be able to attend to the instruction set out above and this should be brought to the attention of the Principal.