

# PROPERTY LAW ACT AMENDMENT ACT

## ANALYSIS OF CONTENTS

1. Short title and citation
2. Amendment of s. 76. Deposit of title deed and conveyance
3. New heading
4. Amendment of s. 168. Application of Part
5. Amendment of s. 170. Form and revocation of power of attorney
6. New heading and sections 175A, 175B and 175C
  - Enduring power of attorney
  - Restriction upon revocation of enduring power of attorney.
  - Revocation of enduring powers of attorney
7. New ss. 175D, 175E and 175G
  - Duty to maintain records
  - Obligations under enduring power of attorney
  - Public Trustee may act in interest of donor of enduring power of attorney
8. New ss. 175G, 175H and 175I
  - Applications to the Court
  - General duty of donee of an enduring power of attorney
  - Power of Court to relieve donee from personal liability
9. Amendment of Second Schedule

Queensland



ANNO TRICESIMO NONO

ELIZABETHAE SECUNDAE REGINAE

**No. 54 of 1990**

**An Act to amend the Property Law Act 1974-1989 in certain particulars**

[ASSENTED TO 3RD SEPTEMBER, 1990]

---

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

**1. Short title and citation.** This Act may be cited as the *Property Law Act Amendment Act 1990*.

(2) In this Act the *Property Law Act 1974-1989* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Property Law Act 1974-1990*.

**2. Amendment of s. 76. Deposit of title deed and conveyance.** Section 76 of the Principal Act is amended in subsection (4) by—

(a) omitting paragraph (d) and substituting the following paragraph:—

“(d) a solicitor or conveyancer or firm of solicitors or conveyancers, other than a solicitor, conveyancer or firm whom the Council of The Queensland Law Society Incorporated has resolved should not be a prescribed authority,”;

(b) omitting the words “or (d)”.

**3. New heading.** The Principal Act is amended by inserting before section 168 the following heading:—

*“Division 1—General Provisions”*.

**4. Amendment of s. 168. Application of Part.** Section 168 of the Principal Act is amended by—

(a) inserting in the note to the section after the word “**Part**” the words “**and interpretation of term**”;

(b) adding at the end thereof the following subsection:—

“(3) In this Part, “registered” when used as a verb, means recorded in the appropriate register kept by the Registrar.”.

**5. Amendment of s. 170. Form and revocation of power of attorney.** Section 170 of the Principal Act is amended by adding after subsection (2) the following subsection:—

“(3) A donee of a power of attorney, knowing that power to be revoked, shall not do or purport to do any act or thing under the authority of that power.

Penalty: 20 penalty units.”.

6. **New heading and sections 175A, 175B and 175C.** The Principal Act is amended by inserting after section 175 the following heading and sections:—

*“Division 2—Enduring Powers of Attorney*

**175A. Enduring power of attorney.** A power of attorney is an enduring power of attorney if—

(a) the instrument which creates the power—

(i) is in or to the effect of Form 16A of the Second Schedule;

(ii) is executed as prescribed in the presence of and attested by a witness, being a justice of the peace or a duly qualified legal practitioner, who is someone other than the donee and who certifies thereon that at the time the donor executed the power the donor appeared to the witness to understand the nature and effect of the power;

and

(iii) is signed by the donee acknowledging the creation of the power;

and

(b) the donee has attained the age of 18 years.

**175B. Restriction upon revocation of enduring power of attorney.** An enduring power of attorney is not revoked by the subsequent legal incapacity of the donor of the power other than by virtue of the death of the donor unless the Court in the exercise of any power expressly revokes it.

**175C. Revocation of enduring powers of attorney.** [cf. Instruments (Enduring Powers of Attorney) Act 1981 (Vic.), s.116]

(1) Except as provided in section 175B, an enduring power of attorney may be revoked in the same way as a power of attorney may be revoked.

(2) An enduring power of attorney is revoked—

(a) if the donee of the power with the leave of the Court retires;

(b) if the donor or the donee becomes bankrupt or compounds with creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy;

(c) if the donee being a corporation is wound up or dissolved or suffers the appointment of a receiver or an administrator;

(d) if the donee of the power becomes legally incapable at any time after the execution of the instrument creating the power;

(e) if, under section 175G, the Court makes an order revoking the power, but subject to the provisions of that order.”.

7. New ss. 175D, 175E and 175G. The Principal Act is amended by inserting after section 175C the following sections:—

**“175D. Duty to maintain records.** [cf. Powers of Attorney and Agency Act 1984 (S.A.) s. 8 and s. 11]. The donee of an enduring power of attorney shall keep and preserve accurate records and accounts of all dealings and transactions made in pursuance of the power.

Penalty: 20 penalty units.

**175E. Obligations under enduring power of attorney.** (1) Without affecting any other obligation imposed by law, in exercising powers under an enduring power of attorney—

- (a) the donee must not, unless the power of attorney expressly authorizes it, enter into a transaction if the donee’s interests and duty in relation to the transaction could conflict with the donor’s interests and duty in relation to the transaction;
- (b) the donee must keep the donee’s property and money separate from the donor’s.

(2) The obligation of a donee under an enduring power of attorney to keep the donee’s property and money separate from the donor’s property and money does not apply in relation to property and money owned jointly by the donor and the donee.

**175F. Public Trustee may act in interest of donor of enduring power of attorney.** Where the Public Trustee suspects on reasonable grounds that the interests of the donor under an enduring power of attorney are not being protected as required by this Act, the Public Trustee may, by writing given to the donee, require the donee to produce to the Public Trustee specified records and accounts kept by the donee of dealings and transactions made by the donee in pursuance of the power.”.

8. New ss. 175G, 175H and 175I. The Principal Act is amended by inserting after section 175F the following sections:—

**“175G. Applications to the Court.** (1) The Public Trustee, or any person who in the opinion of the Court has a proper interest in the matter, may, at any time during a period of legal incapacity of the donor of an enduring power of attorney, apply to the Court for an order—

- (a) that the donee of the power file in the Court and serve on the applicant a copy of all records and accounts kept by the donee of dealings and transactions made by the donee in pursuance of the power;
- (b) that those records and accounts be audited by an auditor appointed by the Court and that a copy of the report of the auditor be furnished to the Court and the applicant for the order;

or

- (c) to revoke or vary the terms of the power or remove or appoint a donee or acting donee of the power.

(2) The donee of an enduring power of attorney may apply to the Court—

- (a) for an order referred to in subsection (1) (c);  
 (b) for advice and direction as to matters connected with the exercise of the power or the construction of its terms.

(3) The Court has, upon an application under this division, power—

- (a) to appoint a donee although the enduring power of attorney has been revoked by the operation of section 175C (2);  
 (b) to appoint a person who may act in the place of the donee of the enduring power of attorney during any absence or legal incapacity of the donee within a specified period;  
 (c) to make all or any of the orders referred to in subsection (1);  
 (d) to make such other order as to the exercise of the power, or the construction of its terms, as the Court thinks fit;  
 and  
 (e) to make an order with respect to the costs of any audit of records and accounts ordered by the Court.

(4) An order under this section may be made subject to such terms and conditions as the Court thinks fit.

(5) A person who pursuant to an order made under subsection (3) (b) duly acts as a donee of an enduring power of attorney in respect of those actions is to be deemed to be the donee.

**175H. General duty of donee of an enduring power of attorney. [cf. Powers of Attorney and Agency Act 1984 (S.A.) s.7].** (1) The donee of an enduring power of attorney must at all times exercise his powers of attorney honestly and with reasonable diligence to protect the interests of the donor.

Penalty: 200 penalty units.

(2) In addition to any other liability the donee of an enduring power of attorney may incur, the donee may be required by the Court to compensate the donor for a loss occasioned by the donee's failure to comply with the provisions of subsection (1).

**175I. Power of Court to relieve donee from personal liability.** If it appears to the Court that a donee of an enduring power of attorney, whether appointed by the Court or otherwise, is, or may be, personally liable for any breach of this division, but has acted honestly and

reasonably and ought fairly to be excused for the breach and for omitting to obtain the directions of the Court in the matter in which the breach was committed, then the Court may relieve the donee either wholly or partly from personal liability for that breach.”

9. Amendment of Second Schedule. The Principal Act is amended in the Second Schedule by inserting after Form 16 the following form:—

“FORM 16A

ENDURING POWER OF ATTORNEY

Property Law Act 1974-1990, section 175A

This Enduring Power of Attorney is made on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by A.B. of \_\_\_\_\_ in accordance with section 175A of the Property Law Act 1974-1990.

1. I appoint C.D. of \_\_\_\_\_ (or C.D. of \_\_\_\_\_ and E.F. of \_\_\_\_\_ jointly (or jointly and severally)) to be my attorney(s).

2. I authorize my attorney(s) to do on my behalf anything that I may lawfully authorize an attorney to do.

3. I declare that this power of attorney shall continue to operate and have full force and effect notwithstanding that I may subsequently become incapable.

Signed Sealed and Delivered by .....

And in the presence of:—

.....  
(Signature of Witness)

.....  
(Name of Witness)

.....  
(Qualification of Witness)  
(J.P., Solicitor, Barrister at Law or equivalent)

.....  
(Address of Witness)

Witness’s certificate:

I the witness to the above donor’s signature certify that at the time the donor executed this power of attorney the donor appeared to me to understand the nature and effect of this power.

.....  
 (Signature of Witness)

Attorney's acknowledgement:

I have read this enduring power of attorney. I understand that by signing this document, I take on the responsibility of exercising the powers which I have been given by the document. I also understand that I must exercise these powers in accordance with the Property Law Act 1974-1990.

.....  
 (Signature of Attorney)

### IMPORTANT NOTICE TO ATTORNEY

By signing this power you will be taking on serious responsibilities. You should take particular note of Division 2 of Part IX (Enduring Powers of Attorney) of the *Property Law Act 1974-1990*.

Here is a summary of those provisions:

1. You must at all times exercise your powers honestly and with reasonable diligence to protect the interests of the donor.
2. You should not enter into transactions for the donor which may involve a conflict between your interests and those of the donor, unless the transaction is explicitly authorized by the donor in this document. For example, if it is necessary to sell some of the donor's property, it may be a breach of obligation to sell it to your own relative.
3. You must keep your money and property separate from the donor's money and property, unless you are joint owners, or operate joint bank (or similar) accounts.
4. You must keep proper accounts and records of how you handle the donor's money and property. The Public Trustee, or anyone interested in the donor's welfare, can require you to produce these accounts and records.
5. If you do not carry out your duties properly, you may be required to compensate the donor for loss occasioned.
6. If, after the donor becomes incapacitated, you wish to stop being the donor's attorney, you should seek legal advice.

You may wish to seek legal advice about your rights and obligations under this power of attorney."

