

Powers of Attorney

ATTORNEYS

ON 1 September 2015 the *Powers of Attorney Act 2014* (“the Act”) came into effect.

As an Attorney (person being given the power) there is certain information that you need to be aware of.

Responsibilities of the Enduring Attorney

Being appointed an Attorney comes with responsibilities. The Act states that an Attorney must:

- Act in a way that is as least restrictive of the Principal’s ability to decide and act as is possible in the circumstances
- Ensure that, the Principal is given practicable and appropriate support to enable the Principal to participate in decisions affecting the Principal as much as possible in the circumstances

If the Principal does not have decision making capacity, the Attorney must:

Take any steps that are reasonably available to encourage the Principal to participate in decision making, even though the Principal does not have decision making capacity

- Give all practicable and appropriate effect to the Principal’s wishes
- Act in a way that promotes the personal and social wellbeing of the Principal, including –
 - Recognizing the inherent dignity of the Principal

- Having regard to the Principal’s existing supportive relationships, religion, values and cultural and linguistic environment
- Respecting the confidentiality of confidential information relating to the Principal

Restrictions on the Enduring Attorney

An Attorney CANNOT undertake the following on behalf of the Principal:

- Make or change a Will or Power of Attorney
- Act as a Director
- Act as a Trustee/Appointor of a Trust unless the Deed specifically allows
- Vote in an election
- Consent to an adoption
- Consent to a marriage or a Divorce
- Make or give effect to a decision about the care and wellbeing of any child of the principal
- Manage the estate of the Principal upon the death of the Principal
- Consent to an unlawful act

The duties of an Enduring Attorney include:

- Act honestly, diligently and in good faith
- Exercise reasonable skill and care
- Not use the position for profit
- Must avoid acting where there is or may be a conflict of interest, unless the power so authorizes
- Must not disclose confidential information gained as the Attorney under the power unless authorized by the power, or by Law to do so
- Must keep accurate records and accounts

- An Attorney for financial matters has a duty NOT to enter into a transaction, in that capacity, if the transaction in one in which there is or may be a conflict
- The Attorney may make RESTRICTED gifts
- The Attorney may provide from the Principal's property for the needs of a dependant of the Principal, if the power so provides

Supportive Attorney Appointments

The role of a Supportive Attorney is to support the Principal in making and giving effect to decisions by exercising certain powers as allowed for in the Act, including:

- Access, collect or obtain from or assist the Principal in doing so from any person any personal information about the Principal
- Communicate any information about the Principal that is relevant or necessary to the making of or giving effect to a supported decision
- Take any reasonable action or to do anything that is reasonably necessary to give effect to a supported decision, other than a decision about a Significant Financial Transaction

Significant Financial Transaction includes:

- Making or continuing an investment for the principal, including taking up rights to issues of new shares or options for new shares to which the Principal becomes entitled by the Principal's existing shareholding
- Undertaking any real estate transaction for the Principal, excluding entering into a residential tenancy for a premises in which the principal lives or intends to live
- Dealing with land on behalf of the Principal including taking out a loan on behalf of the Principal or giving a guarantee on behalf of the Principal
- Undertaking a transaction for the Principal involving the use of the Principal's property as security for an obligation
- Buying and selling substantial personal property on behalf of the Principal

Duties and obligations of a Supportive Attorney

- Act honestly, diligently and in good faith

- Exercise reasonable skill and care
- Not use the position for profit
- Avoid acting where there is or may be a conflict of interest and if acting where there is a conflict of interest, must ensure that the interests of the Principal are the primary consideration
- Discuss anything about a supported decision with the Principal in a way the Principal can understand and that will assist the Principal to make the decision

A Supportive Attorney under a Supportive Attorney Appointment is not entitled to receive any remuneration for acting as supportive attorney.

A care worker, a health provider or an accommodation provider of the Principal is NOT eligible to be the Principal's Supportive Attorney.

The Role of VCAT

The Victorian Civil and Administrative Tribunal ("VCAT") have jurisdiction to make Orders in relation to Enduring Powers of Attorney.

Such Orders may include, but are not limited to:

- The scope of the Power of an Attorney
- The validity of the document and of transactions by Attorneys
- Lodgment with VCAT of accounts and other documents and the examination and auditing of Accounts
- Penalties for offences including dishonesty, obtaining a financial advantage and causing loss to the Principal or another person

We can help!

Please telephone our friendly Team on 5427 2477 in order to answer your Power of Attorney questions and discuss your specific needs.



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