

Powers of Attorney

PRINCIPALS

ON 1 September 2015 the Powers of Attorney Act 2014 (“the Act”) came into effect. As the Principal (person making the Power of Attorney) there is certain information that you need to consider.

Powers of Attorney are legal documents that enable you to choose someone to make decision for you and are designed to give you choice and control over how your affairs are handled.

A Power of Attorney allows you to appoint someone to deal with your financial matters (Enduring Power of Attorney) or someone to assist you generally (Supportive Attorney) or both, all on the same document.

A **Medical Treatment Decision Maker** remains a separate document.

Enduring Power of Attorney (Financial)

Appointing someone as your Enduring Power of Attorney with no limitations, gives the attorney (appointed person/s), the ability to such things as:

- Purchase and sell real estate in your name
- Control your investments and assets
- Collect your income
- Operate your bank accounts
- Organise your income tax or pension
- Generally manage your assets and legal affairs

Who can make A Power of Attorney?

Any person who is of, or over the age of 18 years and has decision making capacity, in relation to making the Enduring Power of Attorney.

When does the Appointment Begin?

Either immediately, upon mental incapacity or upon the occurrence of an event, or a specified date, whichever you choose to nominate.

When does the Appointment End?

Either by you signing a revocation document, or upon your death, or if the Attorney resigns, dies or becomes incapacitated.

Who can be my Enduring Power of Attorney (Financial)?

Any individual if such individual is a person:

- Who is of or over the age of 18 years
- Has not been convicted or found guilty of an offence involving dishonesty (unless this is disclosed and recorded in the Power of Attorney document)
- Is not a care worker, a health provider or an accommodation provider for the Principal.

A Trustee Company is eligible to be appointed, if the company is not a company against which a proceeding for winding up has commenced.

The Public Advocate is eligible to be appointed for personal matters.

Can I have more than One Enduring Power of Attorney (Financial)?

You may appoint more than one person and specify if they are to act jointly, severally, jointly and severally, or as majority Attorneys. If you do not specify how they are appointed, they are taken as being appointed to act as Joint Attorneys.

You may also appoint alternate Attorneys in the event the original Attorney is unable to act.

Decisions an Enduring Power of Attorney (Financial) Attorney cannot make:

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 adoption
- Consent to a marriage
- Consent to 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

- 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

An Enduring Attorney does not have the power to delegate a power under the Enduring Power of Attorney.

What types of things can I nominate in my Enduring Power of Attorney (Financial) document?

You can nominate such things as when the power is exercisable and you may place conditions on the exercise of the power or give instructions about the exercise of the power. An Attorney may not delegate a power under the enduring Power of Attorney.

Supportive Attorney/Guardian

Appointing someone as your Supportive Attorney with no limitations, gives the Attorney the ability to support you in making and giving effect to decisions as allowed for in the Act and as authorised by you. Such support duties may include:

- Accessing, collecting or obtaining (or assisting the Principal in same) from any person any personal information about the Principal
- Communicating any information about the Principal that is relevant or necessary to the making of or giving effect to a supported decision
- Taking any reasonable action or doing anything that is reasonably necessary to give effect to a supported decision, other than a decision about a Significant Financial Transaction

Decisions a Supportive Attorney cannot assist you with:

- Assist you with making Significant Financial Transactions
- Voting in an election
- Consent to an adoption
- Consent to a marriage
- Consent to a Divorce without the prior approval of the Tribunal
- Consent to you being sterilized without the prior consent of the Tribunal
- Swear an Affidavit as to your personal knowledge
- Make or change your Will

Who can be appointed as a Supportive Attorney?

Any person who:

- Is 18 years of age or older
- Agrees to Act
- Has mental capacity
- Is not bankrupt or insolvent

Does not provide you with professional treatment, accommodation or care or a direct relative of such carer

ATTORNEYS

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

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



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