

Understanding ... Powers of Attorney



What is a power of attorney?

There are two types of powers of attorney:

- an *Enduring Power of Attorney*
- a *General Power of Attorney*

A *General Power of Attorney* is given to someone to make financial decisions on your behalf when you are absent, for example, if you are overseas and need someone else to pay your bills.

An *Enduring Power of Attorney* is given to someone to make personal/health and/or financial decisions on your behalf, even if you lose the capacity to make decisions for yourself. You may not always be able to make decisions when you need to, for example, you may be too ill to make choices about your medical treatment or where you should live. Giving someone an *Enduring Power of Attorney* means that your attorney will have the power to make decisions in your interests and to sign all the necessary legal documents. There are some limitations (discussed below) on the types of decisions your enduring attorney will be able to make for you.

When does the power begin?

For personal/health matters, your attorney's power will only begin if you are incapable of making decisions yourself. For financial matters, you can specify whether the power is to begin immediately, on a particular date or on a particular occasion.

What types of decisions can an attorney make?

You can give your attorney power to make decisions on your behalf about:

- financial matters (a *General Power of Attorney*), for example:
 - doing your banking
 - paying bills
 - deciding how your income should be invested, including purchasing property on your behalf
 - undertaking a legal matter relating to your property on your behalf
- financial matters and personal matters, including health care (an *Enduring Power of Attorney*). These matters include:
 - deciding where you live, and with whom
 - giving consent for medical treatment
 - day to day issues including diet and dress
 - health care

What types of decisions can't be made by an enduring attorney?

An attorney has no power to make decisions about:

- special health matters, for example:
 - special medical research or experimental health care
 - blood or organ donations while you are alive



- special personal matters, for example:
 - making a will on your behalf
 - making or revoking a power of attorney on your behalf
 - voting in an election or referendum
 - obtaining probate of a deceased estate
 - acting as a director of a company in their capacity as attorney

What happens if you don't have an enduring power of attorney?

Without a valid *Enduring Power of Attorney*, if you were to temporarily or permanently lose the capacity to make decisions:

- the Public Trustee would step in to make financial decisions for you (for a scale fee); and
- health matters would be decided by your "statutory health attorney". This could be your spouse, a carer, a relative or a close friend.

What are an attorney's responsibilities?

An attorney can only act in your best interests and must act with honesty and care. It is an offence not to do so.

In relation to your health care, your enduring attorney must ensure that any decision made for you contributes to your health and wellbeing and must take into account the advice of your doctor or health care provider.

Your attorney also has a duty to keep records of financial dealings and transactions and must keep your property separate from their own unless it is owned jointly.

When should a power of attorney be registered with the Land Titles Office?

In Queensland, you are only required to register your *Power of Attorney* with the Land Titles Office if your attorney will be buying or selling land on your behalf.

How should an attorney sign documents when acting as an attorney?

If an attorney is executing a Land Titles Office document, the attorney should execute the document as:

"Signed by *[insert principal's full name]* by his/her attorney *[insert attorney's full name]* under Power of Attorney *[insert registration number]* who certifies that at the time of execution he/she has received no notice of revocation of the Power".

When executing any other document, an attorney should execute the document as:

"*[insert attorney's full name]* as attorney for *[insert principal's full name]*".

Need to know more?

Telephone 4616 9898 to make an appointment or to speak to a member of our Asset Strategies Group.

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