



Enduring Power of Attorney

What is a Power of Attorney

A Power of Attorney is a legal document authorising another person, such as a trusted friend or relative, to act on your behalf in your affairs. This person is known as your "attorney".

It is a convenient method of allowing someone to handle your affairs if you: go overseas; take an extended holiday; suffer poor health; or reach an age when you need greater assistance.

Knowing you have an attorney capable of dealing with your affairs when you are absent or infirm gives you peace of mind.

A Power of Attorney is just as important as a Will. While a Will operates on your death, a power of attorney operates during your life.

Types of Powers of Attorney

A Power of Attorney: a General Power of Attorney, or an Enduring Power of Attorney.

General Power of Attorney

A General Power of Attorney is usually used in a business context by a corporation or an individual. It can authorise your attorney to deal with your personal or financial affairs, or both, and comes into effect on the date you elect. It may limit the extent to which your attorney may deal with those matters.

A General Power of Attorney does not operate when you lose capacity to make decisions.

Enduring Power of Attorney

Under an Enduring Power of Attorney, you may give your attorney the power to deal with all or any part of your financial, personal and health matters.

An Enduring Power of Attorney for financial matters comes into effect immediately it is signed or at your option on the date or event (eg. Incapacity) you elect, and continues to operate when you lose capacity to make decisions.

Your attorney can deal with your financial affairs at the same time as you, unless you specify otherwise.

For personal and health matters, your Enduring Power of Attorney comes into effect on the date of incapacity.

Appointing an attorney

Your appointed attorney must be over 18 years of age; must not be your health care provider (for example your doctor); must not be bankrupt; or must not be a paid carer (receiving a carer's pension does not stop a person from becoming an attorney).

It is important you choose someone you trust, who is capable of looking after your affairs. You may wish to appoint more than one attorney.

Under the law, to appoint an attorney you must be able to understand fully what the appointment means.

Making an Enduring Power of Attorney

Speak with your solicitor about:

- Your choice of attorney and number of attorneys
- The scope of power given to your attorney
- Any additional clauses (conditions/requirements) you may wish to add to the standard form
- When you would like the Enduring Power of Attorney to commence.

Your solicitor will arrange for the appropriate form to be signed and for its proper witnessing.

To be valid, your Enduring Power of Attorney must be in the approved form and comply with strict witnessing requirements.

Revoking an Enduring Power of Attorney

Your Enduring Power of Attorney is automatically revoked;

- On your death
- When you marry, unless your new spouse is your existing attorney
- When you divorce, if your attorney was your spouse
- When you appoint a new attorney
- If your attorney dies or loses decision-making capability
- If your attorney becomes unqualified eg. Bankrupt or a paid health care provider

You can choose to revoke your Enduring Power of Attorney at any time providing you are capable of understanding what you are doing. Your solicitor will advise you on the procedures you should follow.

Advance Health Directive

An Advance Health Directive is a document which allows you to give directions about your future health care should you lose the capacity to make decisions. It can include instructions to withdraw medical treatment designed to prolong life.

This does not mean euthanasia which is performing an act designed to cause death.

Your Advance Health Directive only comes into effect after you have lost decision-making capacity.

When making your Enduring Power of Attorney, speak to your solicitor about giving an Advance Health Directive. Before entering into a health directive it is advisable to seek your doctor's advice and help to complete the document.

Your options in making an Enduring Power of Attorney

You can make your own Enduring Power of Attorney, but you do so at your own risk.

Certain legal requirements must be followed to ensure the validity of an Enduring Power of Attorney.

The Public Trustee and some trustee companies offer to make free of charge an Enduring Power of Attorney on the condition that they are appointed your attorney. They then charge fees on transactions carried out on your behalf.

A solicitor will charge you a one-off fee for preparing the document and you can choose your attorney. Your attorney cannot charge a fee for the service.

Where to from here?

Contact us and make an appointment to discuss your requirements for your Enduring Power of Attorney.

A: Level 3, 13 Carnaby Street
Maroochydore, QLD, 4558

P: (07) 5443 5266

E: lawyers@simpsonquinn.com.au
W: www.simpsonquinn.com.au