



What you need to know about Enduring Powers of Attorney

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What is an Enduring Power of Attorney?

A Power of Attorney is a document by which you authorise another person or persons, to make financial and legal decisions for you during your lifetime.

Most people like to have what is called an Enduring Power of Attorney, as it continues to operate in the event that you later become mentally incapacitated after, for example, an accident or suffering a stroke or becoming senile.

By signing a Power of Attorney or an Enduring Power of Attorney, you do not lose control over your affairs while you are able to manage them. You can place limitations on your attorney which vary according to your requirements. However, most people execute an unrestricted Enduring Power of Attorney. For obvious reasons, you have to be careful who you appoint as your attorney - it must be somebody you can trust.

When should I sign a Power of Attorney?

Immediately. It can be just as important to have a Power of Attorney as it is a Will, as the unexpected can happen at any time. You cannot sign a Power of Attorney after you become of unsound mind.

If, for any reason, you become incapable of handling your affairs and Power of Attorney is not in place, a costly application to the Supreme Court may be involved, or the appointment of a person to act on your behalf made by the South Australian Civil and Administrative Tribunal (SACAT).

The person appointed may not be someone you would want and payment of commissions and other expenses could be involved.

Who can I appoint as my attorney?

You can appoint any adult person or persons, however it is important to appoint someone you trust to look after your interests. Such people could include your spouse, your children, your relatives or perhaps close friends. While it is wise to appoint someone you believe to be honest and have common sense, it is not necessary for your attorney to have legal or accounting skills as your attorney can always seek professional assistance if necessary.

Responsibilities of your attorney

The responsibilities and general legal requirements relating to Powers of Attorney are set out in the Powers of Attorney and Agency Act.

- . Your attorney must keep full and proper records of everything done for you.
- . Your attorney must act in your best interests.
- . If your attorney acts improperly, he or she may be personally liable for any loss caused and may even be found guilty of a criminal offence.
- . Your attorney cannot stop acting for you if you become of unsound mind, except with the permission of the Supreme Court.

Ending a Power of Attorney

You can end your Power of Attorney at any time while you are of sound mind. You should do so in writing and send a copy to your attorney and to any place with which your attorney has had dealings, such as a bank, a company in which you may have shares or perhaps the Lands Titles Office (where a special form is required).

Other relevant information

- . Your attorney does not have the right to make decisions about your medical treatment or about looking after you. An Advance Care Directive is necessary for this and we usually recommend that you have both documents.
- . There is no stamp duty payable.
- . You do not need to register the Power of Attorney at the Lands Titles Office unless it is needed to be used for dealings in land.
- . If your attorney is acting for you, involving dealings with banks or companies in which you may have shares, the Power of Attorney document will need to be produced to the bank or company.
- . The attorney must agree to act for you as you cannot make someone your attorney against his or her wishes.
- . You can appoint one or more persons to act as your attorney. If you appoint more than one person you can authorise any one of them to act in their sole capacity, or you can require two or more to sign before anything can be done.
- . An attorney cannot make a Will for you, sign affidavits for you, or give evidence in Court for you.
- . An Enduring Power of Attorney will be effective throughout your life, unless revoked by you.
- . The Power of Attorney ceases upon your death, at which time the terms of your Will come into force.