

Why should I have an Enduring Power of Attorney?

Estate Planning Information Sheet

Most of us may have a current Will, but how many of us have thought about who will manage our affairs if we become incapacitated?

A Power of Attorney is a legal document under which you can appoint a person as your attorney to make decisions for you.

How does an Enduring Power of Attorney differ from a General Power of Attorney?

A General Power of Attorney ceases to have effect after you lose the mental capacity to make financial decisions. An Enduring Power of Attorney will continue to have effect whatever your mental capacity.

Why make an Enduring Power of Attorney?

By making an Enduring Power of Attorney, you are choosing who you want to manage your financial and personal affairs if you lose mental capacity.

If you lose mental capacity without an Enduring Power of Attorney in place, there may be no one with legal authority to manage your financial and personal affairs. Your family or advisers would then need to apply to the Queensland Civil and Administrative Tribunal to have someone appointed for that purpose.

Who can make an Enduring Power of Attorney?

Anyone can make an Enduring Power of Attorney if they are capable of understanding the nature and effect of the Power of Attorney and the range of decisions that their attorney is authorised to make.

If there is any doubt about whether a person has the capacity to make an Enduring Power of Attorney, an appropriately qualified medical practitioner should assess the person's understanding beforehand.

Who should I appoint as my attorney?

An attorney can have enormous power over your affairs. You should only choose an attorney who you trust completely and who will manage your finances in a responsible manner. If your financial affairs are complex, you should appoint an attorney who is capable of managing complex affairs and is available to do so.

You may wish to appoint a family member or a close friend as your attorney. You can also appoint the Queensland Public Trustee or a professional trustee company. However, if you wish to do that, you need to be aware of the charges the Public Trustee or trustee company can make for acting as your attorney and the likelihood that the Public Trustee and a trustee company will not be as flexible as a family member or friend when making decisions for you.

How Many Attorneys Can I Appoint?


You can appoint more than one attorney. When appointing more than one attorney, you should choose people who can cooperate with each other and work together in your best interests.

You can appoint your attorneys to act:

- Jointly (the attorneys must agree on all decisions);
- Severally (the attorneys can act separately)
- Jointly and severally;
- As a majority (a majority can make a decision);
- Successively (another attorney can act when the power given to your first choice attorney ends).

What powers can I give an attorney under an Enduring Power of Attorney?

You can give your attorney the power to make any decision about your finances or property which you could make yourself. These broad and general powers include paying bills, selling property, making investments, accessing cash and buying or selling shares.



If you lose capacity your attorney may also make decisions about personal and health matters (e.g. where you live, who you live with, day to day matters like your diet and clothes, certain types of medical treatment etc).

You can control the powers you give to the attorney by placing limits or conditions in the Enduring Power of Attorney. For example, you can give the attorney authority to pay bills but not to sell property. If you wish to include limits or conditions in your Enduring Power of Attorney you should seek expert legal advice about the best way to do this.

You cannot give your attorney power to make decisions about:

- Special personal matters such as decisions about your Will, appointing someone as your attorney, voting at elections or consenting to adoption or marriage; and
- Special health matters such as donation of body tissue, sterilisation, pregnancy termination, research or experimental health care, or certain psychiatric or other health care.

If you no longer have capacity your attorney can make decisions regarding withholding or withdrawing life sustaining measures subject to the decision being consistent with good medical practice.

When does an Enduring Power of Attorney commence?

For financial matters you can choose when you would like your Enduring Power of Attorney to commence. You may want it to start immediately after you appoint the attorney or at some future date. You may wish to start it only when your attorney thinks you need help with managing your financial affairs.

You indicate on the Enduring Power of Attorney when it is to commence. If you do not indicate a commencement time, the Enduring Power of Attorney will come into effect once you have signed the document and the attorney accepts the appointment.

Your attorney's power in relation to personal and health matters begins only if you lose capacity.

What are the duties and responsibilities of an attorney?

An attorney is in an important position of trust. The attorney has a responsibility to always act only in your best interests.

Among other things, the attorney must:

- Avoid doing anything as an attorney which would mean that their interests conflict with your interests;
- Obey your instructions while you are mentally capable and any directions you make in the Enduring Power of Attorney
- Act according to any limits or conditions placed on their authority;
- Not give gifts, or give themselves or others a benefit using your finances unless you specifically authorise this;
- Keep their finances and money separate from yours;
- Keep accurate and proper records of their dealings with your finances or property.

If your attorney abuses their position of trust, legal action can be taken to protect your interests.

Do I need to register the Enduring Power of Attorney?

If your attorney wants or needs to use the Enduring Power of Attorney to deal with any real estate, the Enduring Power of Attorney will need to be registered with the Queensland Department of Environment and Resource Management. There is a fee charged for registering an Enduring Power of Attorney.

How do I revoke my Enduring Power of Attorney?

You can revoke your Enduring Power of Attorney any time provided you have mental capacity to understand what you are doing at the time you revoke it.

You must take responsible steps to notify the attorney that you have revoked the Enduring Power of Attorney in writing. You will also need to take additional action to cancel the registration of the Enduring Power of Attorney if it is registered. If you do not notify the attorney about the revocation, the attorney can keep dealing with your finances and property.

After revocation, you should destroy the original and any copies of the Enduring Power of Attorney.



When does an Enduring Power of Attorney end?

An Enduring Power of Attorney ends:

- If you get married (subject to the terms of the document);
- If you get divorced (so far as the ex-spouse's appointment as attorney is concerned);
- If you die;
- If you make an inconsistent document;
- If your attorney resigns;
- If your attorney becomes your paid carer or health-care provider;
- If your attorney becomes incapable;
- If your attorney becomes bankrupt or insolvent;
- If your attorney dies.

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