



PARSONSLAW
WILLS & ESTATES

ENDURING POWERS OF ATTORNEY

WHAT IS AN ENDURING POWER OF ATTORNEY?

An Enduring Power of Attorney is a legal document that gives another person the authority to make personal and/or financial decisions on your behalf.

Financial decisions relate to the management of your finances (for example, paying your bills and taxes, selling or renting your home, using your income to pay for your needs or invest your money). Personal decisions relate to your care and welfare, including your healthcare (for example, deciding where or with whom you live or consenting to medical treatment).

An Enduring Power of Attorney is an important way in which you can decide who should make decisions for you and manage your affairs, should the need arise in the future.

CHOOSING YOUR ATTORNEY

You may have as many attorneys as you think are necessary to act for you. You may appoint one or more persons as your attorney/s for financial matters and another set of attorney/s for personal matters. You are also able to nominate substitute attorneys to act when the first-named attorney or attorneys are no longer able to do so.

If multiple attorneys are appointed, you can decide how they must act. For example, whether they are to act unanimously, severally or by majority.

When considering who to appoint as your attorney, you should choose people who you trust and feel would do well in the role. They should also be willing to take on the responsibility. For a financial attorney, you should consider someone who is responsible with their own money and understands financial matters. For personal matters, consider family members or a close friend who understands your personal and healthcare needs and wishes.

Importantly, your appointed attorney must be over the age of 18 years and cannot be your paid carer (however a person receiving a carer's pension is not regarded as a paid carer). For financial matters, it is also important that your nominated attorney is not bankrupt.

If you feel you do not have anyone suitable to appoint as your attorney for financial decisions, you could appoint the Public Trustee to this role. Also, if you don't have anyone suitable to appoint as your attorney for personal decisions, you could apply to appoint the Public Guardian as your attorney for these types of decisions.

WHEN CAN AN ATTORNEY MAKE DECISIONS FOR YOU?

In respect of financial decisions, you can nominate whether you want the attorney to begin making financial decisions for you immediately or from a date or occasion, such as only if you have lost the capacity to make these types of decisions for yourself.

This publication is for information only and is not legal advice. You should obtain advice that is specific to your circumstances and not rely on this publication as legal advice. If there are any issues you would like us to advise you on arising from this publication, please let us know.

Your attorney's power to make personal/health decisions for you will only ever commence if or when you lose capacity to make these types of decisions for yourself.

WHAT YOUR ATTORNEY MUST DO

Your attorney must act honestly and with care and recognise your right to confidentiality. They must also consider your existing supportive relationships, values and cultures. Further, an attorney is required to apply the general principles, obligations and duties which are set out in the *Powers of Attorney Act 1998* (Qld).

WHAT IF MY ATTORNEY ACTS INAPPRPRIATELY?

If your attorney acts inappropriately, provided you can still make decisions for yourself, you can cancel or revoke your Enduring Power of Attorney using the prescribed form.

If you are unable to continue to make decisions on your behalf, the Public Guardian can investigate an attorney's actions and take measures to protect your interests. If necessary, the attorney's power can be suspended and an application made to the Queensland Civil and Administration Tribunal (QCAT) for an order appointing someone else as your guardian (for personal and health decisions) and/or administrator (for financial decisions).

HOW TO MAKE AN ENDURING POWER OF ATTORNEY

To make an Enduring Power of Attorney, you must understand the nature and effect of this document. Your Enduring Power of Attorney must also be in the approved form and comply with strict witnessing requirements.

Given the serious nature of the document, it is recommended that you seek legal advice when making an Enduring Power of Attorney. This is to ensure that you properly understand the nature and effect of it and the extent of powers given to your attorneys by it.

WHAT HAPPENS IF YOU DON'T MAKE AN ENDURING POWER OF ATTORNEY

If you don't have an Enduring Power of Attorney, your Statutory Health Attorney will make health decisions for you. This is a person who is close to you and could include your spouse, a family member or friend or it could be the Public Guardian. In respect to financial and personal matters, it may be necessary for someone to apply to QCAT to be appointed to make these types of decisions on your behalf. A guardian could be appointed for personal and health matters, and if needed, an administrator appointed for financial decisions.

FURTHER INFORMATION

If you would like further information or to discuss making an Enduring Power of Attorney, please contact Parsons Law.

You can also find further information about Enduring Powers of Attorney and Statutory Health Attorneys here (www.publicguardian.qld.gov.au).

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