

Estate Planning – Powers of Attorney

A power of attorney can give you peace of mind knowing that your affairs can continue to be taken care of in the event that you are not in a position to make certain types of decisions yourself. For example, this can include situations where you're overseas, or incapacitated.

Benefits

- Your attorney will be able to deal with your assets as required under certain situations. This can enable payment of your expenses, including medical and ongoing bills.
- Your affairs may be conducted in a manner similar to how you would conduct them by someone you trust.
- The potential for family disputes may be minimised and your affairs can be kept in order.

How it works

A power of attorney is a legal document giving your nominated attorney the right to act on your behalf in certain events. You are only able to sign a power of attorney whilst you have mental capacity.

Powers of attorney are very important documents. If you become incapacitated without a power of attorney, a person from the Guardianship Board may be appointed to make your decisions, and this person may not be aware of how you like your affairs to be managed. It can cause stress for your family or friends if they are unable to access your funds to cover expenses, such as medical and other ongoing bills.

There are a variety of powers of attorney available. The ones that are appropriate for you will depend on your circumstances and what decisions you think are important in the event that you are unable or unavailable to make those decisions yourself. The broad concepts are discussed below, but the types of documents you can choose from may depend on the state in which you live, as rules and available options can vary.

- General power of attorney – allows the attorney to make financial or legal decisions on your behalf whilst you retain mental capacity. These decisions may include signing legal documents, selling property or doing banking. This power is often used for a specified period of time (such as while you are holidaying overseas), but could also be for a longer period. Actions can be limited to certain assets (such as a particular bank account) or broad powers can be granted to enable the attorney to deal with all financial and legal affairs.
- Enduring power of attorney – allows the attorney to make financial or legal decisions on your behalf, even if you become mentally incapacitated. It is important to think ahead and have this power in place in case it is needed.
- Medical power of attorney – allows the attorney to make medical decisions on your behalf (such as agreeing to or refusing surgery) in the event that you become incapable of making those decisions yourself.

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- Enduring power of guardianship – allows the enduring guardian to make day-to-day lifestyle decisions on your behalf in the event that you cannot make these decisions yourself. Lifestyle decisions may include deciding where you will live or health care issues.

When choosing your attorney or guardian, you can appoint a trusted friend or family member solely, jointly, or in conjunction with a solicitor or professional trustee company. The person you choose must be comfortable with taking on this responsibility and you should consider any family conflicts. To help relieve this burden, it can be a good idea to explain your wishes with your attorney in advance or ask the attorney to consult other people when making decisions.

Revoking a Power of Attorney

A power of attorney can be revoked at any time by simply tearing up the document. However, it is preferable to put the revocation in writing so it is clear to the attorney that their power has ended. A copy of the revocation letter should also be sent to all relevant organisations (such as banks, etc).

In the event of your death, all powers of attorney automatically cease and the executor of your Will takes over responsibility.

Risks and Consequences

- You should review your power of attorney regularly to ensure it continues to be appropriate for your circumstances.
- It is best to seek legal advice and have the attorney documents drawn up by a solicitor.
- Legislation relating to powers of attorney varies between Australian states and Territories. If you move interstate it is important to review any existing powers of attorney and they may need to be redrafted.
- A power of attorney can only be signed whilst you have legal capacity so planning ahead is important. In some cases this may need to be verified by a doctor or solicitor. You can cancel or change your power of attorney at any time whilst you continue to have legal capacity.

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