

Enduring Powers of Attorney

Appointing an attorney

Key points

- An Enduring Power of Attorney allows someone to make decisions on your behalf, and continues even if you lose capacity to make decisions and cannot give instructions to your attorney
- You can appoint attorneys for financial matters, which include selling assets and paying your debts, and for personal and health matters, being decisions about where you live and whether you consent to certain treatment
- You can determine when your attorneys can act and also how they can act if there is more than one of them

What is an Enduring Power of Attorney?

1. An Enduring Power of Attorney is a legal document that allows someone to make decisions on your behalf. It continues even if you lose capacity to make decisions and cannot give instructions to your attorney.
2. You can appoint an attorney for financial, personal and health matters.
3. You can have a different person as a financial attorney and personal/health attorney.

What are financial matters?

4. Examples of financial matters include:
 - (a) deciding how your income should be invested
 - (b) selling any of your assets
 - (c) paying your debts
 - (d) paying maintenance and accommodation expenses for you.

What are personal and health matters?

5. Examples of personal or health matters include:
 - (a) decisions about where and with whom you live
 - (b) whether you work or undertake education or training
 - (c) day-to-day issues, like diet and dress
 - (d) whether to consent, refuse to consent or withdraw consent to particular types of health care for you (such as an operation)
 - (e) consent to the withdrawing or withholding of life-sustaining medical treatment if, for instance, you become terminally ill or are in a state of permanent or persistent unconsciousness.

How your attorneys can make decisions

6. If you appoint more than one attorney, you can appoint them to act:
 - (a) jointly (all agreeing)
 - (b) severally (any one to decide)
 - (c) by majority
 - (d) a combination of the above.

Commencement of your power of attorney

7. You can specify that your attorney's powers in relation to financial matters begin immediately (the date you sign the document) or commence on a date specified by you or on a specified occasion, such as when you actually lose capacity.

8. Your attorney's powers in relation to personal and general health care matters begin only if you are incapable of understanding the nature of and foreseeing the effects of a decision or of communicating that decision.

What are personal and health matters?

9. Personal matters include decisions such as where and with whom you live. Health matters include all decisions about your health care. Your attorney can consent to the withdrawing or withholding of life-sustaining medical treatment if, for instance, you become terminally ill or are in a state of permanent or persistent unconsciousness.
10. You can give instructions about health care decisions if you make an advance health directive. This overrides any decision of your attorney for matters that are covered by the advance health directive. Your attorney still has the authority to make decisions for matters outside of the advance health directive.

What are your attorney's responsibilities?

11. The duties of your attorney include:
 - (a) acting with honesty and care
 - (b) recognising your right to confidentiality and dignity
 - (c) taking into account your existing relationships, values and culture
 - (d) respecting your views and wishes.

Conflict transactions

12. You may consider whether you should allow your attorney to enter into conflict of interest transactions. For example:
 - (a) If you own assets in individual names, those assets may be needed by both of you for nursing home entry or living once one of you has lost capacity.
 - (b) You may specifically allow for the confirmation and renewal of binding death benefit nominations in circumstances where your attorney may need to renew or confirm the binding death benefit nomination for your superannuation.
 - (c) You may allow your attorney to vote on your behalf as a shareholder in any company, and for the attorney to use those voting rights to appoint themselves as a director. That power is not automatic under some company constitutions.
13. You may also include particular instructions or exclusions to your attorney's powers.
14. Generally, we recommend keeping the document simple where possible.

What happens if you do not have an attorney to act for you?

15. Depending on your individual circumstances, the problems could be far-reaching if you are injured or become ill and do not have the capacity to make your own decisions. Personal and health matters can often be dealt with on an informal basis. Financial matters may be dealt with on an informal basis in some limited cases. However, if you do not have an Enduring Power of Attorney and formal authority is needed for a transaction, or if disagreements between family members arise, the Queensland Civil and Administration Tribunal decides who will act for you. They will appoint an administrator for your financial affairs and a guardian for your personal and health affairs. By making an Enduring Power of Attorney you choose the trusted person to administer your financial, personal and health affairs for you.
16. If you do not have an Enduring Power of Attorney and you are a member of a self-managed superannuation fund, you may not be able to remain a member and your benefits may have to be transferred to a retail fund.

Advance health directives

17. An advance health directive is a document that provides instructions about your choices for future health care. It comes into effect only if you are unable to make your own decisions and only if you are terminally ill. If you wish to complete an advance health directive, you will need to consult with a doctor in relation to the document.
18. It is also possible to make an advance health directive for mental health regarding future treatment and care.

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