

What is a power of attorney?

A power of attorney is a formal instrument by which one person empowers another person to act on their behalf for certain financial purposes (e.g. dealing with bank accounts, transferring money, paying bills, dealing with investments, or buying and selling real estate) when they can't do so themselves.

For example, you might be unavailable to make financial decisions (e.g. because you are overseas or spending time in hospital). Or you might be unable to manage your finances due to serious illness or accident, or loss of mental capacity.

A power of attorney will give that person the authority to act on your behalf. You can appoint an attorney for a limited period, or an indefinite period. The latter applies until you die or revoke it. A 'general' power of attorney ceases to be valid when the person who donated the power loses mental capacity.

An 'enduring' power of attorney is required should you suffer loss of mental capacity

For a power of attorney to remain valid after you lose your mental capacity, you must make an 'enduring' power of attorney while you still retain mental capacity. An enduring power of attorney is an important consideration for everyone, not just people who are older or with a known illness that may affect mental capacity.

For example, if you have an accident or a sudden illness that causes you to lose mental capacity, nobody will be able to access your assets on your behalf, such as your bank account or superannuation, unless you have an enduring power of attorney. And you might need that money to pay for your medical treatment. Or your investments might require an important action to be taken, but you might not be in a position to do so.

If an enduring power of attorney is not in place, a family member or a friend would need to apply to be appointed as your financial manager or administrator, either through a Civil and Administrative Tribunal or the Supreme Court (depending on the State in which you live), but this could take considerable time and may not create the outcome you want.

It is therefore in your best interests to have already given someone an enduring power of attorney so they can take the appropriate actions in a timely manner.

How can an attorney act?

The rules relating to a power of attorney will depend on the state/territory you live in. Generally, the power of attorney must:

- Act as the donor would act
- Transactions must be in the interests of the donor and for the donor's benefit (fiduciary duty)
- In many states, the attorney, an associate or family member cannot benefit from the power unless it is expressly stated in the power of attorney document. This can limit the gifting of cash or assets from the donor to the attorney (or an associate).

Who can you appoint as your attorney?

Your attorney has full authority to deal with your legal and financial affairs. You should appoint someone you trust. Consider someone who is responsible with their own money and understands financial matters. Most people chose either a family member or close friend or a trustee company that can act as your attorney. You can nominate just one person or more than one person to act jointly or on their own.

You should seek legal advice to draft and put into effect the enduring power of attorney documentation.



What about lifestyle and medical decisions?

You may want someone to make decisions on your health, medical treatment and living arrangements if you are unable to do so due to serious illness or accident (e.g. where you should live, what services you should receive and what medical and dental treatment you might need). Consider someone who understands your personal wishes relating to your health care needs.

Depending on the State/Territory in which you live, this person is called an 'enduring guardian', 'attorney' or a 'substituted decision maker' and is appointed under either an Enduring Power of Guardianship, Enduring Power of Attorney or an Advance Care Directive.

Our services



Health

- Health insurance
- Overseas visitors cover
- Dental services
- Chronic disease management
- Hospital in the home



Wealth

- Investments
- Estate planning
- Trust and estate administration services
- Financial planning
- Investment, education and funeral bonds
- Banking and home loans
- General insurance



Living

- Aged care and accommodation
- Personal and business insurance
- Aboriginal home care
- Disability services
- Retirement communities