



Didn't make a Power of Attorney?

What happens if a person needs help to manage their affairs but has not made a Power of Attorney and no longer has the required legal ability to do so due to either having suffered an injury, or a debilitating illness or due to the onset of diminished mental capacity?

In these circumstances it will be necessary for someone else to make an application for the appointment of a Financial Manager for the incapacitated person. Usually the applicant will be a family member, friend, social worker or health care professional who seeks that they or someone else be appointed as the Financial Manager.

What is a Financial Manager?

A Financial Manager is someone who is legally authorised to make financial and legal decisions on behalf of a person who is not capable of managing their financial affairs. Subject to the terms of the order appointing them, a Financial Manager can generally make decisions about any aspect of the incapacitated person's financial affairs however, this does not include making personal or lifestyle decisions for the incapacitated person.

Application and Assessment Process

An application for appointment of a Financial Manager is generally lodged with the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT).

The application and assessment process is involved and can be quite daunting as NCAT will only hear an application for financial management if it can be shown that the person is not capable of managing their affairs, and there are no appropriate arrangements already in place, or if any appropriate alternative to an application is not available. The Application form lodged by the applicant with NCAT should include the following:

1. Evidence about the person's disability and current capacity to make decisions such as a health professionals report;
2. A statement by the applicant about why the person needs a financial manager;
3. Details of the income, assets and liabilities of the incapacitated person;
4. Information and contact particulars about the person's spouse or de facto, their carer and other people in their life, whether or not these people support the application;
5. A statement from the person themselves, if they are capable of making one, about their inability to make decisions and what they think about having a Financial manager appointed to manage their financial affairs;
6. Letters or statements of support from the other persons named in the application.



The applicant is also required to give a copy of the application and any supporting documents lodged with NCAT to the person the subject of the application, to the person's spouse or de facto partner (if any), the person's unpaid carer and to the NSW Trustee & Guardian (TAG).

If NCAT determines to hear the application, the parties to the application being the applicant, the person the subject of the application, and any other person who supports or objects to the appointment of a Financial Manager can give oral evidence, call and cross examine witnesses and be represented by a Lawyer or agent if given leave to do so by NCAT. They can also appeal NCAT's decision.

Financial Management Orders

At the end of the hearing NCAT may make an order appointing:

- the individual proposed in the application or another individual as the person's Private Financial Manager; or
- appoint TAG the Financial Manager for the person; or

Alternatively, if NCAT considers that the evidence presented is inadequate it can refuse to appoint a Financial Manager.

If NCAT appoints a Private Financial Manager it will generally be made subject to the Private Financial Manager being supervised by TAG.

The length of a Financial Management Order is usually indefinite and is not reviewed unless the order specifies a time at which this should occur or if another person at some later date believes the appointed Financial Manager is not acting in the best interests of the person whose finances are being managed. NCAT can also revoke the order if it is satisfied that the person the subject of the order becomes capable again of managing their financial affairs and it's in their best interest for the Financial Management Order to be revoked.

Who can be a Private Financial Manager?

An applicant or person proposed to be a Private Financial Manager does not need any formal qualifications or experience, however they must:

- be at least 18 years old;
- be prepared to always act in the best interests of the managed person;
- declare any possible conflicts of interest and avoid making financial decisions about the person's financial affairs which could compromise their capacity to plan in the managed person's best interests;
- be prepared to maintain close contact with the person and consult them, where possible, about decisions relating to the management of their financial affairs; and
- be willing and able to keep records of all income and expenditure for the person and provide annual accounts to TAG.

How to ensure you decide who manages your Financial Affairs

The only way that you can choose who will manage your financial affairs when you're incapacitated is to make an Enduring Power of Attorney while you have the capacity to do so, appointing an Attorney or Attorneys you trust in this



role. In doing so you can dictate not only who can make financial decisions for you when you can't, but also determine the parameters of their powers by deciding in advance in the Power of Attorney document when they can act on your behalf and any limitations on what they can do.

If you need advice or assistance in relation to the preparation of a Power of Attorney, please contact [John Bateman](#) or [Lisa Delalis](#) at our office on 02 4731 5899 or email willsestates@batemanbattersby.com.au.