



## Powers of Attorney

*Some of the most commonly asked questions about Powers of Attorney are discussed on this page.*

### 1. What are the different types of Power of Attorney?

There are two types of Power of Attorney:

#### **'General' Power of Attorney**

This Power of Attorney can start at any time you choose, but will terminate if you lose mental capacity. Therefore this type of Power of Attorney is most suited to a short term appointment, for example if you are going overseas.

#### **'Enduring' Power of Attorney**

This Power of Attorney continues to operate even after you lose mental capacity. Because you will have lost control over your decision making ability by this stage, the Enduring Power of Attorney allows your attorney to keep making decisions for you. The requirements for making an Enduring Power of Attorney differ from those for a General Power of Attorney. We can advise you about these differences.

### 2. Who should be my Attorney?

It is vital that you choose somebody you trust to be your attorney. People usually choose their spouse; adult children or other close relative or friend who they trust will act in their best interests. It is possible and sometimes advisable to appoint more than one attorney. If you appoint more than one attorney you can choose whether you would like them to agree on decisions together, or whether they will be authorised to make decisions on their own separately. There are important ramifications for which option you choose, and we can advise you on these matters.

### 3. Who will have control over my affairs?

Giving a Power of Attorney does not mean that you lose control over managing your own affairs. For as long as you still have the mental capacity to do so, you will always have the right to deal with all your affairs yourself, and the attorney will only act in addition to you.

The attorney has a legal obligation to act only in your best interests, abide by your directions, and observe any limitations you place on your attorney. For example you may only want the Power of attorney to take effect while you are on holidays. Alternatively, you may only allow your attorney the power to operate a specific bank account or undertake specific transactions for a certain property.



#### 4. What if I lose mental capacity and do not have a Power of Attorney?

Unfortunately, we see many situations where people come to us after experiencing medical conditions such as a stroke or dementia where they have lost the mental capacity to appoint a Power of Attorney. At this stage it is too late to appoint a Power of Attorney.

Where a person has lost mental capacity, it is up to their family members or other people close to them to make an application to the Guardianship Tribunal. The Guardianship Tribunal can appoint a person (called a “Financial Manager”) to do the job that a friend or family member would have otherwise done under a Power of Attorney.

This process can be time consuming, burdensome and expensive. Furthermore, the Guardianship Tribunal may appoint a government body to act as your Financial Manager (which can be expensive), or a seemingly unsuitable family member. The Guardianship Tribunal will supervise the actions of the Financial Manager and will need to consent to certain decisions.

Not having a Power of Attorney is also a problem if family members require immediate access to your bank accounts in order to pay for any medical treatment you need, your everyday living expenses, or if a property needs to be sold urgently.

You can prepare for this possibility and prevent complications for your family by making a Power of Attorney while you are able to do so.

#### 5. What are the duties of an Attorney?

Your attorney must, by law, act in your best interests when it comes to dealing with your financial affairs. The attorney is not allowed to use your money to benefit themselves or anyone else unless you have specifically stated this in the Power of Attorney document.

The attorney must also keep your money and property separate from their own. Your attorney must also keep proper accounts and records of how they have handled your money and assets.

Unless the Power of Attorney document provides otherwise, your attorney cannot pay themselves from your money for their work in being an attorney. But an attorney can normally be compensated for out of pocket expenses arising directly from being an attorney.

If an attorney does not carry out their duties properly, then the attorney may be liable to pay compensation to you.

#### 6. Can I revoke my Power of Attorney?

Yes. You can revoke (that is, cancel) or change your Power of Attorney at any time as long as you still have mental capacity.

There are important steps to follow if you want to revoke or change your Power of Attorney. It is necessary to seek legal advice if you wish to revoke or change your Power of Attorney, as if the steps are not followed correctly, your old Power of Attorney may still have effect.



## 7. When does a Power of Attorney end?

A Power of Attorney ends when you either revoke the appointment, you die, or if a Tribunal or Court makes a particular Order ending the appointment.

*If you would like further information, or require assistance, please contact us (02) 4731 5899 or send us an email by clicking on the 'Contact Us' page on our website.*