

FACT SHEET

Powers of Attorney – what should I know?

Everyone over 18 years of age should really consider appointing someone who could step in when we are either unable or unwilling to make financial decisions ourselves. Powers of Attorney are not just for older people!

What actually is a Power of Attorney?

A power of attorney is a legal document that gives the attorney the power to act on behalf of the person who has given the power (this person is known as “The Principal”).

Powers of Attorney can be General or Enduring. The difference is that a General Power of Attorney ceases to have effect when a person loses mental capacity, whereas an Enduring Power of Attorney endures on, (that is, it continues to have effect after we lose mental capacity).

What is an Attorney?

An attorney is a person – or it could be a trustee organisation – that we (the Principal) appoint to look after our financial and legal affairs. We do this by completing a Power of Attorney form.

What to think about when appointing an attorney

It is important to do some research into powers of attorney (resources can be found at the end of this brochure) and discuss this topic with your financial institution and your solicitor.

In selecting who to be an attorney it is important to consider if the person has the qualities necessary to carry out the role and ask these questions:

- Do you trust this person?
- If no-one is checking up on this person would they still be acting in your best interest?
- Does this person know you and what is important to you?
- Has this person a proven track record of being “good with money”?
- Is this person actually willing to be your attorney?

An attorney is a person – or it could be a trustee organisation – that we appoint to look after our financial and legal affairs.

What happens if I lose mental capacity and have not appointed an attorney, using an Enduring Power of Attorney form?

It is important to remember that there are no laws in Australia which insist that we must appoint someone as our financial attorney. However, there are laws which dictate what will happen if we have, for example, lost mental capacity and we have not already appointed someone as our Attorney by making an Enduring Power of Attorney.

In these situations someone, who has a genuine interest in the person, can make an application to the Guardianship Division of the New South Wales Civil and Administrative Tribunal (NCAT) for someone to be appointed as a Financial Manager. That person, however, may not be the person that we would have chosen to look after our affairs.

When does a Power of Attorney come into effect?

Irrespective of whether we are appointing our attorney under a General Power of Attorney, or an Enduring Power of Attorney, we can choose when it is to come into effect. We might, for example only want a General Power of Attorney for while we are on a holiday (and can't be contacted) so it is only in effect for a certain period of time.

Or we can appoint our attorney using an Enduring Power of Attorney form, in which case we might want it to come into effect immediately, or when a medical practitioner believes that we no longer have mental capacity. But it is our choice which option we choose, so it is important to give a good deal of thought to the options.

Revoking (cancelling) the power of attorney

As long as we have mental capacity we can always revoke the power of attorney, though we do need to inform the attorney and obviously our financial institution. The attorney can also resign their position, but only while we still have capacity – otherwise we could be left without someone to look after our affairs. If an attorney wants to resign after we have lost mental capacity then they will need to make an application to the Guardianship Division of NCAT to be relieved of their position as attorney and then a Financial Manager would be appointed.

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Further information

New South Wales
Trustee and Guardian
<https://www.tag.nsw.gov.au/powers-of-attorney-landing.html>

New South Wales
Land Registry Services
(formerly Land and
Property Information).
Put "powers of attorney"
in search bar on
homepage
<https://www.nswlrs.com.au/>



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