



# Wills and Estates

## Information for Attorneys under an Enduring Power of Attorney (Financial)

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### WHAT IS AN ENDURING POWER OF ATTORNEY (FINANCIAL)?

You have been appointed by a person making the enduring power of attorney (financial), called the donor, to be his or her attorney. Serious responsibilities are imposed upon you by this appointment.

An enduring power of attorney (financial) is a legal document which enables the donor to appoint another person to make decisions about the donor's assets and finances. This could become necessary or useful if the donor becomes ill or incapacitated or is travelling.

The power is "enduring" because it continues to be effective even if the donor later loses legal capacity.

### YOUR RESPONSIBILITIES

A financial attorney must act in the best interests of the donor and must do so honestly and with reasonable care.

You should carefully check the terms of the document which appoints you as attorney. It may contain conditions or limitations in relation to the exercise of your powers. It may contain a commencement date or stipulate particular circumstances which must exist before the power commences.

The *Instruments Act* imposes the various requirements upon you.

You must keep and preserve accurate records and accounts of all dealings and transactions made under your power. The Supreme Court or the Victorian Civil & Administrative Tribunal (VCAT) can order you to produce these.

When you sign a document in your capacity as attorney you must indicate on the document that you are signing as attorney for the donor of the power. You are only authorised to make decisions about the donor's finances and assets. The power does not extend to decisions about medical treatment or lifestyle matters.

If VCAT makes an administration order in relation to the donor then you should check the terms of that order. It may revoke your power as attorney or may limit it in some way.

You must keep your property separate from the donor's property unless you and the donor own property jointly (which would be common between a husband and a wife).

You must avoid transactions that involve a conflict of interest. If a decision needs to be made in relation to the donor's interests that also affects your interests then you need to seek authority from VCAT or the Supreme Court before making a decision.

### THE DONOR'S WILL

You do not have an automatic right to obtain either the original or a copy of the donor's will. However if you are proposing to sell a significant asset, such as the donor's home, you should be allowed to view a copy of the donor's will to check whether your proposed sale will impact upon the will.

For instance, the donor may have become mentally incapacitated and you may wish to sell the donor's home

to pay for supported accommodation. You should check the donor's will. If you find that the donor has gifted the property in the will to a specific beneficiary, and the sale of the home will therefore upset the terms of the will by creating an unintended outcome, you may need to apply to the Supreme Court for a court made will. You should seek legal advice in these circumstances.

### **SIGNING AS ATTORNEY**

When you sign a document as attorney for the donor you should sign with your usual signature. Under the signature you should write "Signed by [your full name] on behalf of [donor's full name] under an enduring power of attorney dated [date of the enduring power of attorney] which is not revoked".

### **USE OF CERTIFIED COPIES OF THE POWER OF ATTORNEY DOCUMENT**

We recommend that the original document appointing you as attorney remain securely in our office. If you need to exercise the power you will need to produce evidence of your authority. You can do this by using a certified copy of the document.

We can provide you with certified copies of the enduring power of attorney upon request. We suggest that you give a certified copy to any institution holding assets on behalf of the donor and any other person or institution requiring a copy.

### **WHAT IF YOU WISH TO RESIGN?**

If the donor is still capable, and you wish to resign, you can give the donor a signed notice of your resignation.

However if the donor is incapable then you can only resign with the consent of VCAT or the Supreme Court.

### **WHAT IF YOU BECOME INCAPABLE?**

If you become incapable of understanding the nature of the power then the power is revoked.

### **WHAT IF YOU BECOME BANKRUPT?**

If you become bankrupt the power is revoked.

### **WHAT HAPPENS UPON YOUR DEATH?**

Upon your death the power is revoked.

### **REVOCATION OF YOUR POWER**

Provided the donor is capable the donor can revoke your power at any time, but must give you notice of the revocation. If you are not given notice and you do not know about the revocation then you are not committing an offence if you exercise the power.

However if you continue to act on behalf of the donor after receiving notice that the power has been revoked or cancelled in any other way you are committing an offence.

If anybody else believes that you are acting improperly and that you are not protecting the donor's interests you can be reported to VCAT, the Supreme Court or the Office of the Public Advocate. You could then be removed as attorney and have your power revoked. You may also have to pay compensation depending upon what you have done.

### **FURTHER ADVICE**

If you seek further advice in relation to your responsibilities we recommend that you contact the Office of the Public Advocate. You will find useful information on the website of the Office of the Public Advocate at [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au).

### **IMPORTANT**

This document is a guide only. It is not comprehensive legal advice.