



Wills and Estates

Information to Donors about Enduring Powers of Attorney (Financial)

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WHAT IS AN ENDURING POWER OF ATTORNEY (FINANCIAL)?

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

The person you appoint is called your financial attorney. The power is "enduring" because it continues to be effective even if you later lose legal capacity.

WHY YOU SHOULD APPOINT A FINANCIAL ATTORNEY

Appointing a financial attorney ensures that decisions about your assets and your finances are made by a person of your choice in the event of you being unable to make those decisions yourself. You could lose that ability if you became incapacitated due to dementia, illness causing unconsciousness or an accident. If any of these incidents occur and you have not appointed an attorney the Victorian Civil and Administrative Tribunal (VCAT) will need to appoint someone to make decisions on your behalf. The person appointed may not be the person you would have wished to have appointed or it might be a trustee company.

YOUR FINANCIAL ATTORNEY IS GIVEN SUBSTANTIAL POWERS

The power to make decisions about your finances and assets are substantial powers. For instance, your financial attorney can sell your house and withdraw money from your bank account. You therefore need to appoint someone you have complete confidence in and whom you believe understands you and will act in your best interests.

Your financial attorney cannot make decisions about lifestyle issues, such as where you live, nor decisions about medical treatment. These powers can be given by an appointment of enduring guardian and an enduring power of attorney (medical treatment) respectively.

HOW YOU APPOINT A FINANCIAL ATTORNEY

To appoint a financial attorney you must be over 18 years of age and you must have capacity. That is, you must understand what you are doing by granting the financial power of attorney.

You appoint a financial attorney by signing a prescribed form. Your signature must be witnessed by two adults, one of whom is authorised to witness statutory declarations. The witnesses must both certify that you are signing freely and voluntarily and that you appear to have legal capacity.

To have the necessary legal capacity you must understand:

- ▶ The types of decisions your financial attorney can make;

- ▶ That you have the right to specify conditions, limitations or instructions in the document granting the power;
- ▶ That the power can be expressed to commence immediately or at another time;
- ▶ That the power can be revoked at any time while you have capacity;
- ▶ That the power continues even if you become incapacitated; and
- ▶ That once incapable, you cannot revoke the power or effectively oversee its use.

If you do not have the necessary capacity to appoint a financial attorney it will be necessary for someone to apply to VCAT to be appointed as your administrator.

Your financial attorney must sign an acceptance of the appointment to validate it. There is a further prescribed form for this.

YOUR OPTIONS IN APPOINTING AN ATTORNEY

When completing the form appointing a financial attorney you need to decide:

- ▶ Whether you want the power to commence immediately, at some future date or on some future occasion;
- ▶ Whether you want to stipulate any conditions or limitations in the document;
- ▶ Whether you wish to appoint one or more than one financial attorney; and
- ▶ If you appoint more than one you need to decide whether they are to act jointly, so that they must make decisions unanimously, or whether they may act severally, meaning that any one of them can

make a decision on your behalf.

Another option you have is to appoint an alternative financial attorney for each principal attorney you appoint. For example, you can decide to appoint A, but if A is unable to act for any reason, such as death, illness or being absent, then you appoint B.

USE OF THE POWER

We recommend that once the appointment of your financial attorney is signed the original be kept securely at our office. If the power does not need to be exercised immediately we suggest your financial attorney be aware of the location of the original so that he or she can, when necessary, obtain certified copies of the document from us. If it becomes necessary to use the power, your financial attorney may find that several copies are needed for various institutions such as banks, share registries and Centrelink.

There is no public registry which records appointments of financial attorneys and no requirement for attorneys to report to any authority about their decisions. It is necessary to safeguard the original document and be careful about distribution of copies.

CANCELLATION OF THE APPOINTMENT

You can cancel the appointment by signing a revocation document. This can only be done if you have the necessary capacity to understand the effect of what you are doing. Your financial attorney needs to be notified of the cancellation of the appointment. It is preferable that the original appointment and any copies be destroyed.

If it is not cancelled by revocation the power remains in place until your death unless your financial attorney becomes legally incapable, bankrupt or dies. After your death the executor of your estate appointed in your will becomes responsible for your assets and finances.

If you or your financial attorney have any questions which arise about your enduring power of attorney, Harwood Andrews Lawyers can provide specialist advice.

IMPORTANT

This document is a guide only. It is not comprehensive legal advice. You should consult us about appointing a financial attorney.