



# Wills and Estates

## Powers of Attorney and Guardianship

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There may be times when you are not able to manage your own affairs. This may occur if you have a serious health problem or you lose mental faculty. The law allows you to appoint other people to make decisions for you when you are not able to do so or it is inconvenient for you to do so. This brochure outlines the scope of powers of attorney and guardianship.

### ABOUT POWERS OF ATTORNEY AND GUARDIANSHIP

There are four main legal documents that allow you to appoint people to manage different areas of your life:

- ▶ General power of attorney;
- ▶ Enduring power of attorney (financial);
- ▶ Enduring power of attorney (medical treatment); and
- ▶ Enduring power of guardianship.

### WHO MAY MAKE POWERS OF ATTORNEY AND GUARDIANSHIP?

You are able to make powers of attorney and guardianship as long as you are over 18 years of age and have the capacity to do so. In general, you have capacity if you are able to:

- ▶ Understand the nature and effect of the document when it is explained to you;
- ▶ Understand the nature and extent of your assets; and
- ▶ Make decisions freely, without being unduly pressured by any person.

You do not have to undergo any special tests to establish your capacity. The people who witness your enduring powers of attorney and guardianship must satisfy themselves that you have capacity. They should ask you questions

to ensure you understand the nature and effect of the documents you sign. If your witnesses are in any doubt about your capacity they may ask if they should talk to your doctor.

### GENERAL POWER OF ATTORNEY

This document enables you to appoint one or more persons to make financial or legal decisions on your behalf. The person appointed is called your attorney. You can give your attorney broad or limited power.

As soon as you lose capacity to make decisions for yourself, the general power of attorney ceases to operate. This power is less commonly used than the others.

### ENDURING POWER OF ATTORNEY (FINANCIAL)

Unlike the general power of attorney, an enduring power of attorney (financial) will continue to operate if you lose capacity but is otherwise similar in giving the attorney power to make decisions about assets. It gives you the flexibility to decide how and when your attorney can exercise the power.

You can choose:

- ▶ To limit your attorney's powers;
- ▶ To place special conditions on your attorney;

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- ▶ To include instructions for your attorney;
- ▶ To include (non-binding) wishes; and
- ▶ When your attorney's power is to begin.

When your attorney agrees to act on your behalf, he or she takes on a number of responsibilities, including:

- ▶ Acting only in your best interests;
- ▶ Avoiding acting where there is a conflict between your interests and your attorney's interests;
- ▶ Keeping records and accounts of all transactions carried out on your behalf; and
- ▶ Keeping your money and other assets separate from the attorney's money and assets.

### ENDURING POWER OF ATTORNEY (MEDICAL TREATMENT)

This document enables you to appoint someone to make decisions about your medical treatment where you have lost capacity. The person appointed is called your agent. Your agent can consent to medical treatment on your behalf and can refuse medical treatment on your behalf. This includes turning off life support systems. Your agent can only refuse medical treatment on your behalf if:

- ▶ The treatment would cause you unreasonable distress; or
- ▶ Your agent has reasonable grounds to believe that you would not want the treatment to continue.

Your agent cannot refuse palliative care, which includes pain relief and the reasonable provision of food and water. The power only commences upon your incapacity.

### ENDURING POWER OF GUARDIANSHIP

This document enables you to appoint someone to make lifestyle decisions on your behalf, as opposed to decisions about

finances or assets. Lifestyle decisions include where you should live, whether or not you should work and who looks after you. The person you appoint is called your enduring guardian.

You can limit the type of decisions that your enduring guardian makes on your behalf. Your guardian can make decisions about medical treatment but cannot refuse treatment on your behalf. The power only commences upon your incapacity.

### WHO SHOULD I APPOINT?

It is important that you carefully consider the powers that each document gives and decide which person is suitable to act on your behalf in each different role. In deciding who to appoint, consider:

- ▶ Do you trust the person?
- ▶ Will the person carry out your wishes and act in your best interest?
- ▶ Can the person manage their own affairs?

You can only appoint one person at a time to be your agent under the enduring power of attorney (medical treatment) and only one person at a time to be your enduring guardian. One or more attorneys can be appointed for both the general power of attorney and the enduring power of attorney (financial).

Where more than one person is appointed you can appoint them:

- ▶ Jointly - Your attorneys can only act on your behalf if all of them agree and sign documents; or
- ▶ Jointly and severally - Any one of your attorneys may act on your behalf and can sign documents together with another attorney or alone.

You can appoint an alternative person to act on your behalf in all documents except a general power of attorney.

### REVOCATION

You are able to cancel any appointment of the powers of

attorney and guardianship at any time, providing you still have capacity to do so. Until the person you have appointed has been notified that you have revoked the power, that person can continue to act on your behalf. It is therefore important that a power is revoked appropriately. You should contact us to assist you with this.

### WHY DO I NEED HARWOOD ANDREWS LAWYERS?

Harwood Andrews Lawyers can assist you by:

- ▶ Advising whether or not powers of attorney and guardianship are suitable for you;
- ▶ Drafting documents that meet your particular needs and meet the legal requirements to make the documents effective; and
- ▶ Advising you on the implications of the documents. A solicitor is qualified to act as a witness to the signing of powers of attorney and guardianship and will ensure that you understand what you are signing.

### CONTACT US

If you require additional information about Harwood Andrews Lawyers' products or services or would like to arrange an appointment please contact us at one of our locations.