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# Information to persons appointing enduring powers of attorney (financial matters)

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## **What is an enduring power of attorney (financial matters)?**

An enduring power of attorney (financial matters) 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 decision making 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 lose decision making capacity due to dementia, other illness or an accident. If you become incapable 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, called an administrator, 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.

Decisions relating to lifestyle and personal matters can be given to an attorney under an enduring power of attorney in respect of personal matters. This document can be prepared as a separate document, or within an enduring power of attorney also dealing with financial matters if you wish to appoint the same attorney and alternative attorney.

This power can be given by an appointment of a medical treatment decision maker.

## **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 affidavits (such as an Australian lawyer or public notary) or a medical practitioner. The witnesses must both certify that you are signing freely and voluntarily and that you appear to have decision making capacity.

To have the necessary decision making 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 (such as upon you ceasing to have decision making capacity);
- that the power can be revoked at any time while you have capacity;
- that the power continues even if you lose decision making capacity; and
- that once you cease to have decision making capacity, 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 attorney must be witnessed when signing this statement of acceptance of appointment by one adult witness.

None of the witnesses can be related to the principal or attorney, or be a care worker or accommodation provider for the principal.

Your attorney cannot be a person who at the time of the appointment provides you with professional care, treatment or accommodation in a professional or administrative capacity.

## 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, severally, meaning that any one of them can make a decision on your behalf, or by majority, for example so that two of three attorneys would need to agree on decision making.

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. You can only appoint one alternative for each principal appointment.

Prior to accepting to act as your attorney or alternative attorney, your attorney must notify you if they have been charged with an offence of dishonesty. They must seek your approval that you are still happy to appoint them, and must include a sentence to this effect in the statement of acceptance.

## 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.

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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 ceases to have decision making capacity, becomes bankrupt or dies. After your death the executor of your estate appointed in your

will becomes responsible for your assets and finances. An attorney would also cease if they become a care worker, health provider or accommodation provider for you, as defined by the Act.

If you or your financial attorney have any questions which arise about your enduring power of attorney, Sladen Legal 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.

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