

## WHAT ARE ENDURING POWERS OF ATTORNEY?

**Enduring Powers of Attorney** are documents that enable people to plan for their future through the appointment of a person or persons to make decisions on their behalf for financial matters, personal (lifestyle) matters and medical treatment.

The term '**Enduring**' means that the appointment continues even if and when the person making the appointment loses the capacity to make their own decisions.

Let's look at these in more detail:

### FINANCIAL & PERSONAL (LIFESTYLE) MATTERS

The appointment of an attorney for financial and/or personal matters is governed by the *Power of Attorney Act 2014*.

The person making the appointment is called **the Principal**. The person given the power is called **the Attorney**. The appointment is made through a written document called an **Enduring Power of Attorney Appointment**. The Principal can decide who to appoint as attorney, attorneys and back up attorneys (called alternate attorneys); what powers to give to them; when it starts and if there are any special conditions or instructions. The Principal can be very specific about the powers they give to an Attorney.

#### Who to Appoint?

It is very important that the Principal appoints a person or persons who they completely trust to manage their affairs and make decisions on their behalf. The person or persons can be appointed to act independently, jointly with another person, jointly and severally (together or independently) or even by majority (where three or more persons are appointed and a majority need to agree to take action or make a decision).

The Principal can also appoint alternate (back-up) attorneys who are appointed to act only in the event that the original attorney/s appointed refuse or are unable to act.

There are certain limitations on persons who can act as attorney. For example, a Principal cannot appoint a child, a bankrupt or their care worker, health provider or accommodation provider as attorney.

## What Powers?

**The Principal** can give **the Attorney** the power to make decisions in relation to:

- financial matters (such as financial, legal and property affairs);
- personal matters (such as lifestyle decisions, general health care decisions, living arrangements); or
- both financial matters and personal matters.

## When Does the Power Start?

The Principal nominates when the Power starts. This can be:

- Immediately (the Principal oversees the use of the Power)
- When the Principal ceases to have decision making capacity for the matter/s (the Attorney may be asked to provide medical evidence before they can act)
- Another time or circumstance specified by the Principal (for example, with the written consent of the Principal).

The Principal may elect to have different start dates for financial matters and personal matters.

## Special Conditions or Instructions

The Principal may impose certain conditions on the appointment or provide specific instructions. For example, the Principal may wish for certain payments or gifts to continue to family members if the Principal loses capacity. The Principal may limit the power to only operate in relation to specific financial or personal matters. Or, the Principal may specify that the Attorney is to be paid for their services.

This information needs to be particularised in the Enduring Power of Attorney Appointment.

## Protection for The Principal

The Attorney is under a legal obligation to:

- act honestly, with diligence and in good faith
- exercise reasonable care & skill
- not profit from the role, avoid conflicts of interest and not disclose confidential information (unless authorised to do so); and
- keep accurate records and accounts.

The *Enduring Power of Attorney Act* imposes criminal penalties for failing to act in accordance with these requirements.

Having Attorney's act jointly or by majority also provides additional protection for the Principal.

## MEDICAL TREATMENT

The appointment of an agent for medical treatment is governed by the *Medical Treatment Act 1988*.

A person (**the Principal**) can appoint an individual known as a **Medical Agent** to make decisions about their medical treatment on their behalf should they lose capacity to make their own decisions. The Principal may have lost capacity due to illness (such as dementia) or an acquired brain injury. The incapacity may be temporary or permanent.

The Principal can also appoint one back up agent (**Alternate Medical Agent**) should the Medical Agent be unable to act.

Under Victorian law, a **Medical Agent** has priority over any other family member in making medical treatment decisions on behalf of the Principal. It is therefore very important that the Principal communicates to their Agent and Alternate Agent their wishes and views about medical treatment. This can also be done through an Advanced Care Plan.

## ADVANCED CARE PLANS/DIRECTIVES

An **Advanced Care Plan/Directive** is a document used to assist your Medical Agent and doctor to make informed decisions based on your particular wishes. The document is a reflection of your wishes in relation to future medical treatments and health care values.

You may also choose to complete a **Refusal of Treatment Certificate** in which you can give legally binding directions about medical treatment you do not want relating to a current medical condition.

For further information on Advanced Care Plans/Directives and Refusal of Treatment Certificates, I refer you to Advance Care Planning Victoria at [www.advancecareplanning.org.au](http://www.advancecareplanning.org.au)

## GENERAL POWERS OF ATTORNEY

A General Power of Attorney, also known as a General Non-Enduring Power of Attorney, is a document whereby the Principal appoints one or more persons to act on their behalf for financial matters.

The term “non-enduring” means that the General Power of Attorney only operates whilst the Principal **has** decision making capacity. The attorney cannot make decisions where the Principal has lost capacity.

Most people use General Powers of Attorney for a specific purpose, for example to purchase property or run a business in the Principal’s absence.

Like an Enduring Power of Attorney, the Principal under a General Power of Attorney Authority can specify when the power begins, the type of power held by the Attorney/s and any limitations or conditions. They can also appoint Alternate (back up) Attorneys.

I hope you have found this information useful.

If you have any questions at all or would like to make an appointment to meet with me to discuss your estate planning requirements, please contact me on 0417 531 924 or at [meagan@devoillaw.com.au](mailto:meagan@devoillaw.com.au)

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