

Powers of Attorney

At different stages in life, it may be necessary or convenient to authorise someone to handle your financial affairs for you. Whether because of illness or overseas travel, there may be times when it is impractical to manage your own affairs. A power of attorney provides a way of ensuring that your interests are protected.

Different regulations exist in each State and Territory for powers of attorney. The information below is based upon the laws in New South Wales under the Powers of Attorney Act 2003.

What is a power of attorney?

A power of attorney is a legal document by which you give another person (the attorney) authority to act on your behalf in relation to your financial affairs. A power of attorney enables the attorney to conduct your affairs when you are unwilling or unable to conduct them personally.

Do I need a power of attorney?

Since you never know what the future holds, having a power of attorney is always a worthwhile precaution. There are some circumstances, however, in which having a power of attorney is particularly important. If you are suffering from a serious illness, undergoing a major operation, travelling for an extended period or travelling in remote areas, having a power of attorney can be very useful. In such circumstances, a simple power of attorney is sufficient. Should you become incapable of managing your own affairs, whether due to age or illness, an enduring power of attorney will be important in ensuring that your interests are protected.

What can my attorney do?

By making a power of attorney, you can authorise your attorney to do anything with your property and finances that you could do yourself. Your attorney is able to handle matters such as the receipt of income, payment of bills, taxation issues and investment or property management. A power of attorney can be general in the authority it gives or can grant powers for a specific purpose only. For example, an attorney could be authorised only to operate a specific bank account or to sell certain property.

An attorney can only be authorised to act on your behalf in relation to financial or legal matters and cannot make medical or lifestyle decisions on your behalf. In NSW, the transfer of decision-making power with regard to your health and lifestyle is done by appointing an enduring guardian under the Guardianship Act 1987.

Who should I appoint as my attorney?

This is a very important decision and should be considered carefully. Any lawful action taken by the attorney under the power of attorney is binding on you. It is important therefore that you appoint someone you trust. Usually a close friend or family member is appointed. The person you appoint must be over 18 years of age and should be someone whom you feel confident will be able to conduct your affairs competently. If necessary, the Public Trustee NSW or a trustee company can be appointed as your attorney. You may appoint more than one attorney.

How long does a power of attorney last?

A power of attorney can be drawn up to operate for a specified period of time or it can operate indefinitely. It can be cancelled at any time while you have the capacity to make the decision. Powers of attorney cease to operate if you lose the ability to make decisions or when you die.

What is an enduring power of attorney?

Should you lose your capacity to manage your own affairs, a simple power of attorney will cease to operate. An enduring power of attorney, on the other hand, continues to operate even if you later become unable to make legal or financial decisions. An enduring power of attorney must be made when you are of sound mind. It is too late to appoint an attorney after you have lost capacity to make decisions for yourself.

An enduring power of attorney is created by attaching a certificate to the power of attorney, signed by a prescribed person, to the effect that you understand that the power of attorney will continue to operate should you lose legal capacity. Even the grant of an enduring power of attorney, however, does not mean that the attorney is authorised to make personal or medical decisions for you.

How do I set up a power of attorney?

Both simple and enduring powers of attorney are legal documents which need to be appropriately signed and witnessed. You should obtain legal advice to ensure that your attorney is properly appointed and is authorised to carry out your intentions. Your lawyer can prepare and explain the necessary documents and answer any questions you may have.