



WHAT ARE POWERS OF ATTORNEY?

Powers of attorney are documents created to empower someone to make decisions on behalf of another. A person making a power of attorney can nominate one or more people to act on their behalf if they are incapacitated through illness, accident or old age, or are out of the jurisdiction. A power of attorney will specify the powers granted and can give directions about particular wishes.

The statutory forms for granting a power of attorney are different in every state.

Powers of attorney can be either general or limited. Under a general power of attorney, the attorney is able to do virtually all things the person giving the power could legally do. Under a limited power of attorney, the power is restricted in some way. For example, the attorney may be appointed only for a certain time or only to perform certain acts.

The main types of powers of attorney are:

- A general power of attorney - where the appointment is for financial and legal decisions, usually for a specified period of time and automatically ending if the donor loses capacity.
- An enduring power of attorney - where the appointment is for financial and legal decisions, and continues despite the donor losing the capacity to make decisions.
- A medical power of attorney or guardianship - where the appointment is for personal and medical decisions if the donor has lost capacity.

All forms of powers of attorney end immediately on death.

IS AN ENDURING POWER OF ATTORNEY NECESSARY?

In an estate planning exercise, enduring powers of attorney are recommended. This is because enduring powers of attorney continue to be valid, even if the donor loses capacity. In contrast, other types of attorney documents become void if the donor loses capacity.

If someone loses capacity without having appointed an enduring attorney, an 'interested party' (for example, a spouse, child (or children), trusted relatives or friends) will need to apply to a court or a government tribunal to be appointed. It is likely that an officer from the government will also need to be involved in the management of the person's affairs for a period of time, creating additional (and unnecessary) expense, both financially and emotionally.

HOW OFTEN SHOULD APPOINTMENTS BE REVIEWED?

It is important to regularly review and if necessary modify attorney nominations to ensure they are appropriate from time to time. Some of the reasons that may require an amendment of arrangements include:

- change in the matrimonial or life spouse arrangements of the donor or any attorney;
- death or incapacity of an attorney;
- the donor moving interstate;
- children turning 18;
- changes in the value or type of assets; or
- assets acquired in different jurisdictions.

The above summary is based on the law as at 1 October 2015.

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