

Enduring Powers of Attorney

What is an Enduring Powers of Attorney?

It is a legal document that appoints another person (or persons) to make financial and legal decisions for you. Unlike a general power of attorney, an enduring of attorney continues even if the person giving it loses the capacity to make decisions.

It is useful as a means of ensuring that someone, chosen by you, takes control of your financial and legal affairs if and when you are ever unable to do so yourself.

Why give someone an Enduring Power of Attorney?

Having a Power of Attorney in place means that you have nominated someone you trust to not only make decisions on your behalf, but of equal importance, to protect your legal and other interests. There are also some circumstances in which you may be unable to make decisions about matters that concern you. For example, you may be overseas, or you may be too ill. Your spouse or partner is not always able to make these decisions for you unless a power of attorney is in place.

If you give someone a *general power of attorney*, for instance, to sign documents for you in your absence, that power will come to an immediate end if for some reason you lose legal capacity to make decisions.

Prerequisites for making an Enduring Power of Attorney?

The law expects that you are 18 years of age or over and that you have sufficient capacity to make the appointment. This means that you must be able to understand the significance of the decision, things like what sort of powers and decisions will the attorneys be able to make, the effects that their power could have on you and on the things that are important to you.

New Enduring Power of Attorney regime

The law governing powers of attorney in Victoria changed on 1 September 2015, with the commencement of the *Power of Attorney Act 2014*. Powers of attorney under the previous laws remain valid under the new Act.

The new Act aims to improve protections against abuse of enduring powers of attorney by providing for new requirements such as principles to guide decision making, setting out clear duties of attorneys, setting out more stringent execution requirements, introducing new prohibitions for conflicts of interests, regulating gifts to attorneys, giving additional powers to VCAT to order compensation for loss caused by an attorney breaching the Act and creating new offences for an attorney dishonestly obtaining and using an enduring power of attorney punishable by up to five years imprisonment.

What used to be the Enduring Power of Attorney (Financial) and the Enduring Power of Guardianship has now been combined into a single 'Enduring Power of Attorney'. A new type of appointment known as 'the supportive attorney' is now available. This supportive attorney is someone appointed to make and give

effect to some or all of the decisions of an adult who has capacity to make various decisions for themselves.

The change described above does not affect the medical enduring power of attorney which allows you to appoint someone to make medical decisions on your behalf if you are unable to make them for yourself.

Should you need assistance in determining who the most appropriate person or persons is for this important responsibility, or for more information about Powers of Attorneys, please contact our office on (03) 8555 3895.

Lyttletons Lawyers