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Legal results

Information to persons appointing enduring powers of attorney (personal matters)

What is an enduring power of attorney (personal matters)?

An enduring power of attorney (personal matters) is a legal document which enables you to appoint a person to make decisions about your lifestyle on your behalf. The person you appoint is called your attorney. The power is “enduring” because it continues to be effective even if you later lose decision making capacity. The attorney you appoint is able to make lifestyle and personal choices for you. For example, your attorney can decide where you live and make decisions about your health care.

Why you should appoint a personal attorney

You should appoint a personal attorney to ensure that if you become incapable of making any decisions about your lifestyle someone you trust can make these decisions on your behalf. If you do not make such an appointment and you lose capacity it may become necessary for the Victorian Civil & Administrative Tribunal (VCAT) to appoint someone as your attorney to make lifestyle decisions on your behalf. This selection process can be stressful for your family and can lead to disputes.

How you appoint a personal attorney

To appoint an attorney you must be over 18 years of age. You must also have capacity. That is, you must understand what you are doing by granting the power.

You appoint an attorney by signing a prescribed form. Your signature must be witnessed by two adult witnesses, one of whom is authorised to witness affidavits (such as an Australian lawyer or a public notary) or is a medical practitioner. They must both certify that you have signed freely and voluntarily and that you appear to understand the effect of the document you are signing.

The attorney must also sign a statement of acceptance of appointment and that signature must also be witnessed by one adult witness.

The same witnessing requirements apply if there is an alternate attorney appointed.

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

To understand the effect of the document you and the attorney must understand that the attorney can:

- make decisions on your behalf about health care and lifestyle matters;
- consent or withhold consent to medical and dental treatment; and
- decide where you are to live and with whom.



Your options in appointing an attorney

When completing the form appointing a personal attorney, you need to decide:

- whether you want the power to commence immediately, at some future date or on some future occasion (i.e. upon losing decision making capacity);
- whether you want to specify the powers you are giving and place conditions on the decisions your attorney may make;
- whether you want to place limitations on your attorney's powers, for instance, in relation to medical treatment, you may have specific preferences and you may choose to confine your attorney's choices to particular types of treatment;
- whether you wish to appoint one or more than one personal 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 personal 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.

Your attorney cannot make decisions about your assets or your finances, unless an enduring power of attorney has been made in respect of financial and personal matters.

If you appoint an attorney in respect of personal matters as well as a medical treatment decision maker pursuant to the Medical Treatment Planning and Decisions Act (Vic) 2016 there is some overlap in the powers given to both. In relation to medical treatment, your medical treatment decision maker can override your attorney (personal matters). Your medical treatment decision maker can also elect to withdraw medical treatment to you. Your attorney (personal matters) cannot do this

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.

By signing the statement of acceptance of appointment, your attorney undertakes to exercise his or her powers honestly and in accordance with the Powers of Attorney Act (the Act).

The Act says the attorney must act in your best interests, which includes acting as follows:

- as an advocate for you;
- to encourage you to participate in community life;
- to assist you to become capable of caring for yourself and to make reasonable judgments;
- to protect you from neglect, abuse or exploitation; and
- to take into account your wishes by consultation with you.

Cancellation of the appointment

You can cancel the appointment at any time by signing a revocation of appointment of attorney. To do this you must have decision making capacity. A copy of the form must be given to your attorney.

VCAT can cancel the appointment if it believes your attorney is not acting in your best interests.

There is no public register kept of appointments of enduring attorneys, apart from appointments made by VCAT, and there is no requirement for enduring attorneys to report to any authority about their decisions.

Important

This document is a guide only. It is not comprehensive legal advice. You should consult us about appointing an enduring attorney.

Sladen Legal
Tower 2 | Collins Square
Level 22, 727 Collins Street
Melbourne 3008
Victoria Australia

PO Box 633
Collins Street West
Victoria 8007

T +61 3 9620 9399
F +61 3 9620 9288

sladen.com.au

