

What happens if my attorney should die or lose capacity?

The effects differ depending in which State you live. To overcome any problems which may arise, many donors appoint several Attorneys should an appointee be unable or unwilling to act.

Can my attorney appoint someone else to take over as my attorney?

No. Only the donor while he or she is still mentally capable can appoint an Attorney.

Must I register the Enduring Power of Attorney?

Once you have signed the forms you have a valid Enduring Power of Attorney. You need only register the document if you wish your Attorney to deal with land in the State in which Real Estate is held.

When should I make an Enduring Power of Attorney?

An Enduring Power of Attorney can be made at any time subject to the provisions below.

While there is a tendency to consider the time to make an Enduring Power of Attorney is the onset of physical or mental frailty, you should seek advice while you have full capacity and can make balanced judgments.

For this reason, we recommend that you consider executing an Enduring Power of Attorney at the same time as preparing your Will or undertaking Financial or Estate Planning. Both documents are

an important part of your planning; an Enduring Power of Attorney is often referred to as a living Will. No one else can make an Enduring Power of Attorney for you. You must do it yourself while you are still able to do so.

May I revoke my Enduring Power of Attorney?

Yes. You may cancel or revoke the appointment at any time and either resume control yourself or appoint another Attorney, provided you have mental capacity.

The information in this pamphlet is provided to help you plan ahead. It is not legal advice.

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APPOINTING AN ATTORNEY



What is an Enduring Power of Attorney?

An Enduring Power of Attorney is a legal document (a Power of Attorney) in which you nominate someone you consider trustworthy, and with the required expertise to become your Attorney to manage your financial affairs in given circumstances and specifically, should you lose mental capacity or ability. Accordingly, your Attorney may act on your behalf to:

- Operate on your bank account
- Buy and sell assets
- Attend to your tax and financial affairs.

An Enduring Power of Attorney is preferable to an ordinary Power of Attorney in that it continues to operate (endures) even after the principal, that is, the person making the Enduring Power of Attorney, becomes mentally incapable through accident or illness.

Who can appoint an attorney?

Anyone can, provided he or she is 18 years or over and mentally capable.

What happens if you lose mental capacity?

You cannot make an Enduring Power of Attorney after you lose capacity and an ordinary Power of Attorney ceases automatically. A State Government established body is then responsible for deciding who can control your affairs. Therefore it is in your interests to be prepared.

By appointing someone as your Attorney under an Enduring Power of Attorney, while you are still mentally capable of doing so, ensures that your affairs will be managed by someone of your own choosing.

Who should I appoint as my attorney?

Because the whole of your financial affairs may pass into the hands of your Attorney, you will need to consider a suitable appointment very carefully.

While it is a criminal offence for an Attorney to abuse that position, the law does not check to see if the job is done correctly.

Clearly you need to appoint someone with the necessary experience and expertise to safeguard your investments and competently carry out the power of an Attorney in a professional manner.

They must also be available as and when required and have the time to devote to the job.

The general duties of an Attorney include:

- Collection of dividends, interest, rent and other income.
- Purchase and sale of investments/assets.
- Payment of household and medical accounts.
- Arranging hospital/medical fund rebates
- Attendance to income tax requirements.
- Exercising professional judgment.
- Keeping property books of account.
- Keeping capital gains tax records.
- Provision of ongoing management of your assets.

They could also include selling your house, car, etc. and reinvesting the proceeds for your ongoing financial welfare during your lifetime.

May I limit what I want my attorney to do?

Yes. When you decide it is time for your Attorney to act, it is advisable to prepare a letter of instruction which clearly sets out the services you want your Attorney to perform on your behalf.

Alternatively, you may prepare a specific Power of Attorney in which case your Attorney may deal only with those aspects of your affairs that you specify in the Enduring Power of Attorney.

You may also limit the duration of the appointment, say while you are absent interstate or overseas for extended periods.