



DURAL LEGAL
CENTRE

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POWERS OF ATTORNEY

WHAT IS A POWER OF ATTORNEY?

In NSW it is a legal document that appoints one person (the attorney) to act on behalf of another (the principal or donor) in relation to their property and financial affairs. For example, the appointed attorney can buy and sell property and operate your bank accounts. It does not allow anyone to make medical or life decisions on your behalf. The attorney is someone you trust – usually a family member or close friend.

You can make either an ordinary or enduring power of attorney

An ordinary power of attorney ceases to have effect if you lose the mental capacity to make financial decisions, but an enduring power of attorney continues to have effect despite any such loss of capacity.

Who can make a power of attorney?

Anyone over 18 who wishes to and is capable of understanding the nature and effect of the document. Some adults with a disability are capable of doing this, but if capacity is in doubt, an appropriate professional should assess the person's understanding.

Why make an ordinary power of attorney?

You may want to make an ordinary power of attorney for a limited time if you:

- ⇒ Are going overseas or interstate
- ⇒ Are going into hospital
- ⇒ Are physically unable to look after your affairs
- ⇒ Want something dealt with in another part of the country

But remember that an ordinary power of attorney has no effect if you lose the mental capacity to manage your own affairs.

Why make an enduring power of attorney?

Because it will continue to have effect even if you lose capability, for example if you have a stroke or are injured in a car accident.

Making an enduring power of attorney allows you to choose who you want to manage your financial affairs if you lose the capability to do this for yourself. It is a cheap and easy alternative to other forms of financial management such as a financial management order made under the Protected Estates Act.

Who should I appoint as my Attorney?

You will need to choose a person who is trustworthy and responsible enough to manage your finances, especially as (unless there are special conditions) your attorney has power to dispose of your assets.

Before you appoint someone you should be sure that they will do all the things you want. Your attorney is legally bound to carry out the written instructions in the power and any other instructions you give while of sound mind. The Courts can intervene if your attorney acts dishonestly or improperly, but this may be hard to prove and can be expensive so be sure to choose your attorney carefully.

You can appoint more than one attorney but you should choose people who can coordinate well. You will need to see a Solicitor or Chamber Magistrate to decide whether you want your attorneys to act jointly (together) or severally (separately).

Do I lose my rights if I make an enduring power of attorney?

When you make an enduring power of attorney you are giving someone else the right to make financial decisions for you. It is effective as soon as it is signed and certified but you can:-

- ⇒ Tell your attorney not to use it until you say so or until you become incapable
- ⇒ Keep the document in your possession, which prevents it from being used against your wishes
- ⇒ Limit the power, for instance by allowing the attorney to pay only certain bills or limiting the time the power will operate

You should see a Solicitor if you wish to put limits or conditions on your attorney.

Do I need to register my power of attorney?

Although it is not always necessary, the advantages of registering your power of attorney are that it will be:-

- ⇒ On record as a public document
- ⇒ Safe from loss or destruction
- ⇒ More easily accepted as evidence that your attorney acts with your authority

Your power of attorney must be registered if you want your attorney to sell, or in some cases to lease your real estate.

How long will my power of attorney last?

Until you notify your attorney that the power has ceased or your attorney notifies you that they will no longer act under the power. It also ceases if either of you dies or becomes bankrupt.

Can I change my mind?

You can cancel your power of attorney at any time as long as you are of sound mind. Make sure that you destroy the document and that your attorney knows that you are cancelling it. You can tell your attorney in person or over the phone but it is best to do it in writing so that your intention is clear to everyone.



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