

What is an enduring power of attorney?

An enduring power of attorney is a formal instrument by which one person empowers another person to act on their behalf for certain legal and financial purposes (e.g. dealing with bank accounts, transferring money, paying bills, dealing with investments, or buying and selling real estate) when they are unable to manage their own affairs.

For example, you might be unavailable to make financial decisions or you may be unable to manage your finances due to serious illness or accident, or loss of capacity.

An enduring power of attorney will give that person the authority to act on your behalf. You can appoint an attorney for a limited period, or an indefinite period. The latter applies until you pass away or act to revoke it.

A 'general' power of attorney ceases to be valid when the person who donated the power loses capacity to manage their own legal and financial affairs.

An 'enduring' power of attorney is required should you suffer loss of mental capacity

For a power of attorney to remain valid after you lose your mental capacity, you must make an 'enduring' power of attorney while you still retain mental capacity. An enduring power of attorney is an important consideration for everyone, not just people who are older or with a known illness that may affect mental capacity.

For example, if you have an accident or a sudden illness that causes you to lose capacity to manage your financial affairs, no one will be able to access your assets on your behalf, such as your bank account or superannuation, unless you have an enduring power of attorney and ensure your needs and wishes are paramount and taken into consideration as financial decisions are made.

Your investments may require an important action to be taken, but you might not be in a position to do so.

A family member or a friend could apply to be appointed as your financial manager or administrator, either through a Civil and Administrative Tribunal or the Guardianship Board (depending on the State in which you live), but this could take considerable time.

It is therefore in your best interests to have already prepared an enduring power of attorney so that the appropriate actions can be made in a timely manner.

Who can you appoint as your attorney?

Your attorney has full authority to deal with your legal and financial affairs and you should appoint someone you trust. Most people chose either a family member or close friend or a trustee company (such as Australian Unity Trustees Ltd) to act as their attorney.

What about lifestyle and medical decisions?

You may want someone to make decisions on your health, medical treatment and living arrangements if you are unable to do so due to serious illness or accident (e.g. where you should live, what services you should receive and what medical and dental treatment you might need).

Depending on the State in which you live, this person is called an 'enduring guardian', 'attorney', 'medical agent' or a 'substituted decision maker' and is appointed under either an Enduring Power of Guardianship, Enduring Power of Attorney or an Advance Care Directive.

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