



ADLV Law Acting as your General/Enduring Attorney

Sometimes it's not convenient (or possible) to carry out legal transactions or make financial decisions for yourself.

For example, if you are interstate or overseas, it may not be convenient for you to sign legal documents or complete a legal transaction. If you lose your mental capacity, for example if you suffer a brain injury or other mental impairment, your legal affairs will effectively be 'locked up' until you either regain mental capacity, or someone is appointed by the Government to act for you.

In these circumstances, having a General and/or Enduring Attorney in place can be a lifesaver.

We are sometimes asked if we provide this service to our clients, i.e. if we are prepared to act as your General and/or Enduring Attorney. The short answer is yes. However, it is important you understand how we carry out this role, and what choices you have available to you before appointing us.

When will our appointment take effect?

The first question you need to consider is whether you appoint us to act **immediately**, or only if and when you lose **mental capacity**.

If you appoint us to act immediately, we will have the power to undertake transactions on your behalf even if you still have the capacity to do this yourself. In effect, we will act alongside you, and at your specific direction. This is referred to as a **General Power of Attorney**. As your General Attorney, you may direct us to sign a specific document on your behalf while you are interstate or overseas, or you may give us a more general direction to perform certain acts in certain circumstances, for example, to pay bills if and when they arise from time to time.

If you only appoint us to act if lose mental capacity, then we will not have the power to undertaken transactions for you until we have received confirmation from a medical doctor that you have lost mental capacity. This is referred to as an Enduring Power of Attorney.

Will there be any limitations on our authority?

When you appoint us to act you can place **restrictions on our powers**. For example, you can appoint us for a very limited purpose (e.g. to sign a single document, or series of documents), you can place limits on the value of transactions that we can carry out, and you can impose time limits on our authority (e.g. only while you are away for a defined period of time).

If you do not place any specific limits on our powers, then we will have the same legal authority as you – subject to the strict general laws that apply to attorneys. One of the more important limitations that applies to our powers under general law is that we cannot do anything that personally benefits us, unless you give us specific authority. (See below in relation to our fees.)

How many people will you appoint?

You have the option to appoint more than one person to act as your attorney. If you appoint more than one person you need to decide whether all of your attorneys must act together (i.e. jointly), or whether they can each act separately (i.e. severally). As a general rule, we recommend that your



attorneys be **appointed to act together** (i.e. jointly), so they can act as a 'check-and-balance' on each other.

Our preference is that we are appointed to act **with at least one other person**. This person may be a family member, or another one of your advisers (e.g. your accountant or financial adviser).

Who within our firm will act for you?

Our standard practice is to appoint the founding principal of our firm, **Andrew Andreyev**. We also include a clause to appoint another one of our trusted and senior lawyers as a backup, to cover the unlikely event that Andrew is not able to act for some reason.

What obligations do we have?

As your attorney we are under a legal obligation to **act in your best interests**, and to not personally benefit from carrying out our role. This is a strict legal obligation that we take very seriously. In some circumstances you may want to increase our authority to benefit people other than yourself. For example, you may want to give us the power to benefit your spouse and children. We also have an obligation to **maintain records** of the transactions that we undertake on your behalf.

Some issues you should consider

We suggest you give us specific directions about a number of important issues that are likely to come up. These include:

- What limitations, if any, you would like to place on our authority?
- Whether we are able to benefit your spouse and children (or other family members or friends), and if so, to what extent?
- The sort of lifestyle that you would like us to maintain on your behalf if you lose mental capacity? For example, if you would like us to maximize your comfort and lifestyle, or to maximize the preservation of your assets. You can also be more specific about this issue, i.e. where you would like to live, and what creature comforts you would like to maintain.
- Whether we can deal with your trusts, superannuation and life insurance policies? This is usually a good idea, so that we can ensure that your super is dealt with tax-effectively, and your life insurance is preserved.

What does it cost to get us involved?

We do not charge an initial fee to be appointed as your attorney. However, we do charge our standard fee to prepare the document.

If and when we act as your attorney, we charge our standard hourly fee for the services we provide. This covers our time, as well as our internal administration costs and insurance.

We do not charge a percentage of the value of the transactions that we carry out for you, nor do we charge a percentage of the value of your overall assets.

What next?

It's very important that you fully understand that nature of any appointment you make. If you have any more specific questions, or if you would like to begin the process of appointing a General and/or Enduring Attorney, call us on **1300 654 590** or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.