Enduring Powers

Take control over who makes decisions on your behalf.

Powers of Attorney

A 'Power of Attorney' is a legal document which appoints one or more persons to look after your financial affairs on your behalf while you are still alive. This is why it is sometimes called a "Living Will".

Powers of Attorney come in several types.

General Power of Attorney

A General Power of Attorney gives the appointed Attorney the power to look after your **legal and financial affairs** on your behalf, but **only while you still have *full mental capacity***.

People might choose to appoint a General Power of Attorney if, for example, they are going overseas for a while and need someone to look after their affairs here in Australia.

Enduring Power of Attorney

The **Enduring Power of Attorney** gives the appointed Attorney the power to look after your legal and financial affairs ***once you lose mental capacity***. For example, if you fall into a coma or suffer from Alzheimer's and are no longer capable of making financial decisions.

In this situation, the appointed Attorney must obtain a declaration that you have lost mental capacity before they can act. Once that is done, he or she is free to take over your financial affairs.

General and Enduring Power of Attorney

This is the most complete financial Power of Attorney. It combines the above two powers. It means that the person appointed as your Attorney has the power to act on your behalf at any time after signing (or a specified date), whether or not you later lose mental capacity.

What can your Attorney do?

Powers of Attorney give the appointed person the power to do many things on your behalf. This includes:

- Opening, closing and operating your bank accounts;
- Sign cheques on your behalf;
- Purchasing and selling shares (in both listed and private companies);
- Granting leases;
- Receiving rents;
- Paying debts;
- Borrowing money and providing security against your assets;
- Purchasing and selling land and other assets;
- Performing contracts on your behalf;
- Removing and appointing employees;
- Carrying on business on your behalf (for example, in a partnership);

- Investing moneys;
- Executing deeds and other legal documents; and
- Employing solicitors, accountants, and other professionals on your behalf.

The Attorney must generally look after your personal and business financial affairs. Laws govern the conduct of your Attorneys and impose strict legal duties requiring your Attorney to act in your best interest.

Medical and welfare

A Power of Attorney does not give someone else the right to make decisions about your welfare or medical treatment. There are other documents that deal with non-financial matters.

Enduring Power of Guardianship

When you are too ill or in a serious accident and are unable to make your own decisions, a Guardian can make decisions on medical advice, about what to do in a situation when you are on a life support machine or in a persistent vegetative state. Your Guardian can also make decisions about your general welfare (e.g. choosing a nursing home) and medical care, if you have lost the mental capacity to make these decisions yourself.

It is especially important to have a Guardian if you feel that your next of kin will not be able to agree on your medical treatment and care.

Medical Power of Attorney

A Medical Power of Attorney has a similar purpose to a Power of Guardianship, but a Medical Power of Attorney is a more specific power in relation to decisions about medical treatment, when you cannot make your own decisions.

In the document which appoints your Guardian or Medical Attorney, you are entitled to express any wishes that you might have regarding the medical treatment you are to receive. For example, a person who is a Jehovah's Witness can specify in their Medical Power of Attorney that they do not wish to receive blood transfusions.

Why is it important to have Powers in place?

It is just as important to have up-to-date Powers as it is to have a Will.

If you lose your mental capacity but you don't have an Enduring Power of Attorney, then no one has any power to deal with your finances in any way until after a formal application is decided upon by the Guardianship Board. This could cause problems if you live for many years lacking mental capacity.

For similar reasons, it is highly desirable to appoint an Enduring Guardian, to act in your best interests to deal with your care and medical treatment, in the event you become mentally incapable of making these decisions yourself.

Also, when people become less independent, they will appreciate having someone they trust to help them out with their financial and medical affairs.

We can assist you with making your Powers and answering any further questions you may have.

What next?

If you would like to speak to someone about putting in place an Enduring Power of 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.