



Information for an Attorney (SA)

What are your powers and responsibilities when acting as an Attorney?

A Power of Attorney is a legal document by which a person (the **Donor**) appoints someone else (the **Attorney**) to make financial and legal decisions on the Donor's behalf when they are not capable of making the decisions themselves.

Attorneys are agents authorised to make decisions on behalf of the Donor. Attorneys are authorised under the *Powers of Attorney and Agency Act 1984* (SA).

Depending on the terms of the document, you will either be able to make decisions for the Donor:

- From when the document is signed and continuing when the Donor becomes unable to make their own decisions (i.e. lost capacity) – this is known as a **General and Enduring Power of Attorney**; or
- Only when they are unable to make decisions for themselves – this is known as an **Enduring Power of Attorney**.

When you act as an Attorney while the Donor still has capacity, your actions must be specifically approved by the Attorney. For example, an Attorney may use their power, at the Donor's direction, to sign a document on behalf of the Donor while the Donor is overseas.

When you act as an Enduring Attorney because the Donor has lost capacity, you must only use your power to act in the best interests of the Donor. As an Enduring Attorney, you will be able to make decisions including the investment of the Donor's assets, the sale of the Donor's property, operation of the Donor's bank accounts, and loans to or from the Donor.

Any time you act as an Attorney, your decisions will be subject to any conditions or limitations imposed in the Power of Attorney document.

If your power only takes effect once the Donor has lost capacity, it will be up to you to consult with the Donor's doctor about the Donor's capacity to make decisions before taking any steps on their behalf. This is done by approaching the Donor's doctor for a letter or report to the effect that the Donor is totally or partially incapable of managing their own affairs.

You may be appointed as an Attorney solely, jointly with another person, or 'jointly and severally' (meaning you can either act jointly or separately). If you have been appointed solely, you will be free to exercise your power individually and without approval or signatures from other persons. If you have been appointed jointly, you must reach agreement with the other Attorney(s) before making any decisions.

Your role as an Enduring Attorney is similar to that of a trustee. You have been entrusted by the Donor with all of their assets. Your duty, when and if it comes into play, is to take care of those assets and use them only for the benefit of the Donor. You must also honour any conditions set out in the Power of Attorney document.

You must at all times remember that the interests of the Donor are paramount. You must not use their assets to benefit yourself or anyone else other than the Donor unless the Power of Attorney specifically authorises otherwise. If you are the partner or child of the Donor, you may have been given the power to confer benefits on yourself. You should read the Enduring Power of Attorney document carefully to check for this power. If you have any doubts, you should ask your solicitor.



You must make and keep accurate records and accounts of all dealings and transactions made by you as Attorney. Those records may need to be provided as evidence subsequently if your actions are questioned.

To exercise your power as Attorney, you will need to produce the original or a certified copy of the Power of Attorney document together with the certificate of incapacity from the Donor's doctor (if applicable). These documents provide evidence to others of the fact that you are entitled to make decisions on the Donor's behalf.

Your role as Attorney ends when the Donor dies or when your appointment is revoked.

As Attorney, you do not have any powers or responsibilities relating to the medical or personal wellbeing of the Donor. This is the role of Substitute Decision-Maker appointed under an Advance Care Directive. A Donor may appoint the same person as both their Attorney and their Substitute Decision-Maker.

What next?

If you would like to speak to someone about your responsibilities as an 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.