Powers of Attorney (VIC)

The most under-rated legal document of all time

Try changing your phone company when your spouse is in a coma - or even getting a current balance on your electricity bill. If your spouse's name is on the title to the property, and you do not have an Enduring Power of Attorney - your first stop is the Victorian Civil and Administrative Tribunal (VCAT). Not a pleasant experience...

A Power of Attorney is a legal document which appoints one person (the 'Attorney') to act on your behalf (as 'Donor') in respect of your legal and financial affairs, as to make personal and lifestyle decisions on your behalf when you are not capable of doing so yourself.

An 'Attorney' in this sense does not necessarily mean your lawyer. The Attorney is usually a family member or close friend.

A Power of Attorney is a safe way of **preparing for your future**. It allows you to choose who you want to manage your affairs in the event that you are not able to yourself.

How far does an Attorney's power stretch?

A Power of Attorney is a **very powerful document**.

Your Attorney cannot make a Will, consent to marriage or vote on your behalf, but can have wide powers in relation to things such as:

- Choosing where you live (for example, a hospice or nursing home);
- What personal services you will receive;
- Selling any real property that you own;
- Mortgaging your property;
- Making a binding death benefit nomination on your behalf;
- Investing your money; and
- Collecting rental payments on your behalf.

A Power of Attorney does not enable your Attorney to make medical decisions on your behalf. The person to make these decisions is your Medical Treatment Decision Maker (appointed in a separate document).

A Power of Attorney can be completely general in the powers and authority that it gives to your Attorney. This is what most people choose to do. However, you can also limit the power as you like. You might want to limit the Attorney to do something specific such as paying bills or selling your house.

Who can appoint an Attorney?

Anyone can develop conditions like dementia or suffer a stroke or be injured in a car accident, so that they are unable to manage their financial and personal affairs. Making an Enduring Power of Attorney is a practical step you can take while you still have mental capacity. It means that essential financial and personal matters will be attended to by someone you choose on your behalf.

Any adult can appoint a Power of Attorney. If a person has a mild intellectual disability or is in the early stages of dementia, they may still be able to make a Power of Attorney. This will depend on their understanding of the nature and effect of the document. If their capacity is in doubt, then an assessment of the person's understanding should be made by a medical practitioner.

As long as you retain mental capacity you retain full authority to deal with financial and personal affairs, even if a Power of Attorney is in place. Also, you can state in the Power of Attorney that it is not to come into effect unless you become of unsound mind or are incapable of making your own decisions. Your Attorney can be required to obtain a doctor's certificate which says this.

When should I appoint an Attorney?

In our view, the sooner the better. You can only appoint a Power of Attorney while you are of **sound mind**. It is too late if you become of unsound mind.

If you become of unsound mind and have not made an Enduring Power of Attorney, then you lose the ability to appoint someone to manage your property and finances. Someone will need to apply to the VCAT or the Supreme Court to have a manager appointed. This means a government official could be making decisions on your behalf. Regular fees are charged for this service. Having a caring friend or relative acting as your Attorney is usually a much cheaper and better alternative.

You can appoint more than one Attorney, and this is often a good idea. You should choose people who are able to coordinate well with each other. You will need to decide whether you want your Attorneys to act jointly (together) or severally (individually). The benefit of having two attorneys acting jointly is that there is less chance of both attorneys acting contrary to your interests.

Who should I choose as my Attorney?

Your Attorney will be able to do anything you legally could do. Therefore, you need to choose a person who is trustworthy and responsible enough to manage your property and finances to be your Attorney. Before you appoint someone, you should be sure the he or she will in fact do all the things that you want. Your Attorney is legally bound to carry out the written instructions in the document.

What next?

If you would like to speak to someone about putting in place a 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.