

APPOINTMENT OF ENDURING POWER OF ATTORNEY

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What Is An Enduring Power Of Attorney?

An enduring Power of Attorney is a document by which you appoint someone to have power to deal with your financial assets.

A Power of Attorney is therefore an important and powerful legal document. A Power of Attorney gives the attorney the authority to buy and sell real estate, shares, and other assets for you, to operate your bank accounts, to spend your money on your behalf and to exercise many other powers. It may not be used after you die.

An "Enduring" Power of Attorney endures, or remains in effect if you lose capacity due to unsoundness of mind.

What Sort Of Decisions Is An Attorney Unable To Make?

An attorney cannot make health or lifestyle decisions, or consent to medical treatment on your behalf. For these decisions, you should appoint an enduring guardian. We can assist you in this regard as well.

Your attorney has no power to make, amend or demand a copy of your Will. A Power of Attorney prepared under New South Wales law is primarily for use in New South Wales only.

A Power of Attorney may be valid in some other Australian States, such as Victoria and Queensland. If you need a Power of Attorney for use interstate or overseas, you may need to make a Power of Attorney under the laws of those jurisdictions.

Does My Power Of Attorney Need To Be Registered?

Generally, a Power of Attorney document only requires registration if your attorney is signing documents that affect real estate.

Can I Put Limits On The Powers Of My Attorney?

Yes you can. A Power of Attorney may be limited as to time or as to use. For example, if you are going overseas, you may wish your attorney to be appointed only for a specific period of time.

Who Can Be An Attorney?

The person you appoint must be at least 18 years old and be a person you trust to make decisions in your best interests. The attorney cannot gain a benefit from being an attorney, unless expressly authorised by you.

An attorney should keep reasonable accounts and records about your money and property and keep these accounts and records separate from their own.

How Do I Appoint An Attorney?

You should discuss the appointment with your chosen attorney or attorneys, and make sure they are willing to fill this role.

If you are appointing more than one attorney, you can choose whether each attorney can act individually, or whether they must act jointly.

If you are signing an Enduring Power of Attorney (that is the powers given to your attorney remain in effect if you lose capacity due to unsoundness of mind, then the document is not effective until each appointed attorney signs the document to accept their appointment.

Further, an Enduring Power of Attorney is ineffective unless a legal practitioner signs a certificate forming part of the document to acknowledge that the document was explained to you before you signed it.

When Do The Powers Of Your Attorney End?

Any Power of Attorney ends when you die, or when you cancel the appointment. The appointment can be cancelled whilst you are capable of making your own decisions.

To do this you must complete a form of Revocation of Power of Attorney. If revocation is urgent, you may tell the attorney clearly that you are revoking the power. You should make a note of the time and date that you did this. Otherwise, McDonald Johnson Lawyers can help you complete a formal Revocation document.

If the Power of Attorney document notes a date when the power is to cease, the powers of your attorney cease on that date.

How Do I Obtain Further Information?

The lawyers at McDonald Johnson have had many years experience of preparing Powers of Attorney and can assist you with any further information you may require.

