



Important Things To Know About Powers Of Attorney

What is an enduring power of attorney?

A power of attorney is the legal power to make decisions on behalf of someone else. A person who gives a power of attorney to another is called a “donor”. The person to whom the power of attorney is given is called the “attorney”. A power of attorney is enduring if it is prepared on the basis that it will continue even if the person giving the power loses the capacity to make decisions for themselves.

Why give someone enduring power of attorney?

Powers of attorney can be given for a variety of reasons including convenience, for example, if the donor is going overseas and will be out of contact for a period but primarily they are given as a result of prudent planning for the future, for example, to ensure that your personal financial and health affairs and your business affairs may be dealt with by someone you trust should you lose capacity to do this for yourself, for example, as a result of injury or illness which leaves you incapacitated.

What types of decisions?

As mentioned above, you may give your attorney power to make decisions about:

- Personal/health matters (such as where and with whom you will live, whether you work, day-to-day issues such as diet and dress)
- Financial matters (such as deciding how your income should be invested or signing documents on your behalf).

Can I limit my attorney’s powers?

It is possible to limit the power given to your attorney and direct your attorney to make or refrain from making certain kinds of decisions. Your attorney must act in accordance with your instructions. There are some limits on this, however.

Can I appoint more than one attorney?

You can appoint more than one attorney and when so doing, may direct how they collectively make decisions for you, for example, by majority or unanimously. You may also appoint attorneys to act in the event that the original attorney is no longer able to act for you.

When does the attorney’s power begin?

Your attorney’s power to make decisions with respect to your personal and health affairs does not commence until (if ever) you lose capacity to make those decisions for yourself. Your attorney’s power to make decisions with respect to your financial affairs commences on the date nominated by you. This may be immediate, at a set future date or upon the occurrence of an event. The giving of a power of attorney does not prohibit you from acting on your own behalf should you have legal capacity to do so.

Can I change or revoke this power of attorney?

A donor may change or revoke a power of attorney he or she has given at any time, so long as he or she is capable of understanding what he or she is doing. If a donor changes or revokes a power of attorney, he or she must inform the attorney.

Is there anything else that will end this power?

By law, a power of attorney will end if any of the following events occur:

- If the donor gets married – unless the new spouse is the attorney
- If the donor gets divorced – if the attorney is the now former spouse
- If the donor dies
- If the donor makes a later, inconsistent document
- If the attorney withdraws
- If the attorney becomes the donor’s paid carer or health-care provider
- If the attorney becomes incapable/loses capacity
- If the attorney becomes bankrupt or insolvent
- If the attorney dies