



# Powers of Attorney

Our core purpose is  
**'HELPING CLIENTS ACHIEVE FINANCIAL SECURITY'**

MULCAHY & CO | P 03 5330 7200 | INFO@MULCAHY.COM.AU | 300B GILLIES ST NTH, BALLARAT

## INTRODUCTION

A Power of Attorney is a legal document that allows you (the donor) to give someone else (the Attorney), the authority to make decisions on your behalf.

There are different types of powers of attorney for different types of decisions i.e. financial, lifestyle, health or medical.

Once the powers of attorney are in place they can be used in the event you cannot make these decisions for yourself.

It doesn't matter what age you are, or what state of health you are in powers of attorney are relevant for everyone because you never know what might happen.

There are three main enduring powers of attorney recognised in most states of Australia.

## ENDURING FINANCIAL POWER OF ATTORNEY

The enduring financial power of attorney is the most common one used. It empowers another person (your Attorney) to make financial and legal decisions on your behalf. Unless otherwise specified, it is effective from the date of signing.

Amongst other things it covers:

- Banking (e.g. withdrawing or depositing money)
- Real Estate transactions (e.g. signing documents needed to buy or sell a house)
- Stock market transactions

An enduring financial power of attorney continues even if the donor becomes mentally incapacitated. So for example, a family member could use it to look after your finances if you have a stroke or get alzheimer's.

There are some limitations on the use of an enduring financial power of attorney. For example, it does not allow the attorney to draw up or modify a Will on behalf of the donor.

It also does not authorise your attorney to make decisions about the medical treatment you will get if you become mentally incapable of making decisions yourself.

An enduring financial power of attorney is one of the most important and useful legal documents a person can make.

It enables the donor to appoint an attorney that they know and trust, and thus prevent the appointment of an administrator that would need to occur if they were to lose legal capacity.

We recommend everyone should have an enduring financial power of attorney in case they become incapacitated, even if for a short time.

## ENDURING LIFESTYLE (GUARDIANSHIP) POWER OF ATTORNEY

This allows the guardian to make health care and lifestyle decisions for you in the event you suffer a disability i.e. an intellectual impairment, mental disorder, brain injury, physical disability or dementia, and are unable to make reasonable judgements.

Lifestyle and health care decisions that can be made include:

- those about where you live including consent to enter a nursing home or hostel
- the health care you receive including type of treatment, surgery or medication
- the people who can associate with you including who is able to visit you.

You can give your guardian any lifestyle decision-making powers you like, specifying the powers you are giving and placing conditions on the decisions they can make on your behalf.

If you give them power to make health decisions your enduring guardian can consent, or withhold consent (but not refuse), to medical or dental treatment on your behalf.

If the guardian withholds consent however, a practitioner may provide the treatment if they believe on reasonable grounds, that it is in your best interests to do so. If the guardian disagrees with the medical practitioner they can apply to a government tribunal for a determination.

In fulfilling the role, the guardian must take into account:

- any wishes you have expressed
- act in your best interests
- wherever possible, make the same decisions you would have made.

The guardian has the responsibility to protect a person's interests but does not have the obligation to care for the needs of that person.

Note that if you also appoint someone with an enduring medical power of attorney they will take precedence over your guardian for all medical treatment decisions.

The difference between the two powers of attorney is discussed in more detail on the following page.

**We offer a free no obligation meeting to review your situation. Call us today on 03 5330 7200 and take advantage of this valuable offer.**

IMPORTANT DISCLAIMER: This document does not constitute advice. Clients should not act solely on the basis of the material contained in this document. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly and we therefore recommend that our formal advice be sought before acting in any of these areas. This document is issued as a helpful guide to clients and for their private information.

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## ENDURING MEDICAL POWER OF ATTORNEY

An enduring medical power of attorney is granted to enable the attorney to make medical treatment decisions when the donor becomes incompetent.

This means they are in a condition where they are unable to make an informed decision about a particular medical procedure, such as a medical operation or a course of medication.

It does not cover palliative care, which includes the provision of reasonable medical procedures for the relief of pain, suffering and discomfort or the reasonable provision of food and water.

Medical treatment may only be refused on behalf of a patient if:

- a) the medical treatment would cause unreasonable distress to the patient; or
- b) there are reasonable grounds for believing that the patient, if competent, and after giving serious consideration to his or her health and well-being, would consider that the medical treatment is unwarranted.

## SO DO I NEED BOTH AN ENDURING LIFESTYLE (GUARDIANSHIP) AND AN ENDURING MEDICAL POWER OF ATTORNEY?

An enduring medical power of attorney covers a narrower range of powers than an enduring lifestyle (guardianship) power of attorney in that it does not cover lifestyle decisions. Whilst there is some overlap when it comes to medical treatment, there is a subtle difference between the two.

The key is that an Enduring Medical Power of Attorney gives you the right to refuse treatment rather than just allow you to withhold consent which is what the enduring lifestyle power of attorney allows you to do.

The difference is subtle but may be important for example, if you are a Jehovah's Witness and you want to be able to refuse a blood transfusion.

If you only have an enduring lifestyle power of attorney and you withhold consent, the doctor can go ahead with the treatment if they believe it is in the patient's best interests. You would need to apply to a government administrative tribunal to try and stop that treatment.

If however, you have an enduring medical power of attorney and have refused treatment e.g. for a blood transfusion, the doctor needs to approach the administrative tribunal in order to proceed.

Permission may still be granted at that point, but the onus is on the doctor to seek permission to proceed rather than you having to approach them to have it stopped.

## RECOMMENDATION

For most people, an enduring financial power of attorney and an enduring Lifestyle (guardian) power of attorney should be enough to cover their likely needs.

## WHEN TO PUT THEM IN PLACE

Before they are needed! For all of these arrangements, you need to have legal capacity at the time you sign the forms appointing the attorney or guardian. This means that you need to be able to understand the implications and consequences of what you are doing otherwise the appointment will not be legally valid.

This provides a time imperative to have these in place before they are needed.

All powers of attorney become invalid upon death. The Will then takes over, providing the power to the executor to take care of the deceased estate.

## CHOOSING YOUR ATTORNEY

Given the significance of the position of attorney, it is important to choose someone you trust, who knows you and what you want e.g. your spouse, a family member or close friend.

You can choose different people to make financial decisions versus someone to make decisions about your health care. This doesn't mean they need to be an expert, but it does mean they need to know what they're doing, and to seek out advice from others when necessary.

## ANNUAL REVIEW

Circumstances can change. Someone who is the right person for you to appoint now might not be the right person in a year or so. Set yourself annual reminders to check whether or not the people whom you have appointed as your attorney/s and/or guardian are still the right ones for the job.

## SECURITY

Given the importance of these documents we recommend that we retain the original signed copies of your powers of attorney in our office.

If the documents are required, the attorney contacts us. We, in turn, verify that person's identity before we provide a certified copy of the document to them, at no additional charge.

## SUMMARY

Having valid powers of attorney in place is essential and having them in place before you need them is critical as they cannot be executed once you have lost legal capacity.

Make it easier on your family and loved ones to help look after you, and your financial affairs, in the best way possible.

If you would like powers of attorney contact **Mulcahy & Co Legal** today on 03 5330 7200. We look forward to working with you, keeping you informed and securing your outcome.