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Enduring Powers of Attorney (QLD)

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What is a Power of Attorney?

A Power of Attorney is just as important as a Will. Whilst a Will operates on your death, a Power of Attorney operates during your lifetime.

It is a legal document authorising another person to act on your behalf in managing your affairs.

A Power of Attorney is a convenient method of allowing someone to handle your affairs if you go overseas, take an extended holiday, suffer from poor health, have an accident or reach a stage in your life when you need greater assistance.

There are two types of Power of Attorney:

- 1: General; or**
- 2. Enduring.**

'Enduring' simply means that the power continues even if the person giving it loses the capacity to make decisions.

Why give someone Enduring Power of Attorney?

There are some circumstances in which you may be unable to make decisions about matters that concern you. For example, you may be overseas, or you may be too ill.

If you give someone a General Power of Attorney, for instance to sign documents for you in your absence, that power will come to an immediate end if you lose capacity. This could be very awkward if your attorney is in the process of conducting business affairs for you.

Giving someone Enduring Power of Attorney means that they are able to continue to act for you if you lose capacity. For example, if you develop a medical condition (such as Alzheimer's or dementia), suffer a head injury or have a stroke which results in you being left in a vegetative state, you may still live for quite a long time but be completely unable to make any decisions.

You should safeguard your affairs by making an Enduring Power of Attorney whilst you are in good health and able to decide who you wish to be legally appointed to act on your behalf.

What types of decisions can an attorney make?

You may give your attorney power to make decisions about personal/health matters and financial matters.

Examples of personal/health decisions may be deciding where and with whom you live, whether you work or undertake education or training, whether you apply for a licence or permit, day-to-day issues like diet and dress, and whether to consent, refuse to consent or withdraw consent to particular types of health care for you (such as an operation).

An example of a financial matter is deciding how your income should be invested, buying and selling real estate, shares and other assets, operating your bank accounts and spending money on your behalf.



Who should I appoint as my attorney?

Your appointed attorney must be over the age of 18 years, must not be your health care provider (ie your doctor), must not be bankrupt, must not be a paid carer (receiving a carer's pension does not preclude a person from being your attorney).

Your attorney could be a close family member (such as a spouse or child), a trusted friend or professional advisor (such as an accountant or lawyer).

You should ask the person you want to appoint if they will agree to be your attorney. You should only appoint a person you can trust to look after your affairs. You may want to appoint more than one attorney.

Most couples appoint each other as their sole attorney and this is usually fine. However, there can be some difficulties when couples have children from previous marriages. Sometimes it might be wise to appoint one of your own children or an independent person as a co-attorney with your spouse.

Many parents appoint the eldest

child or one of their children to be their attorney in the event that something happens to one or both of them. This can be fraught with difficulty. If you appoint a single person, no matter how trustworthy they are, this can place a lot of pressure on them and leaves the door open for abuse or just bad decisions to be made.

You should consider always appointing 2 or 3 children jointly as a simple majority to make sure that your affairs are handled correctly. Many parents have difficulty in appointing their children either singularly or together because they do not trust

them or their children do not get on.

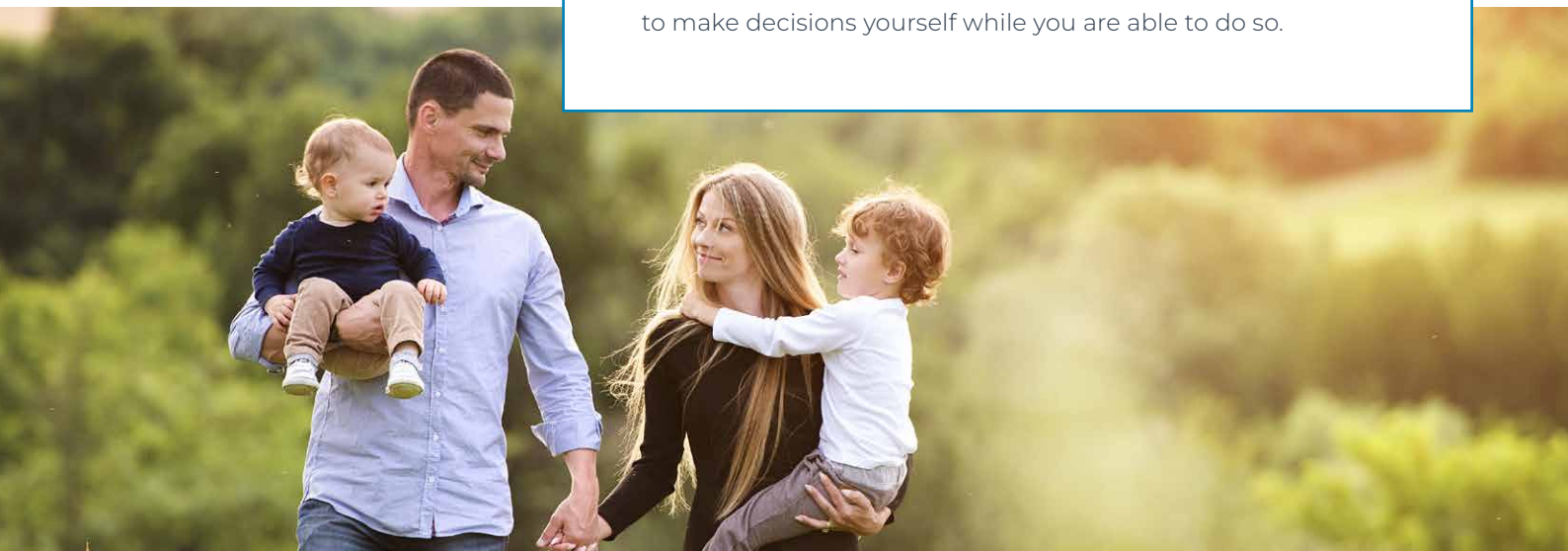
In these circumstances, it may be appropriate to consider appointing an independent person to handle your affairs (e.g. your lawyer or accountant). Another variation of this is to appoint a professional person to act jointly with 1 or 2 of your children.

There are fees payable to a professional person if you appoint them to conduct this role but in many cases these fees are quite modest and are worth every penny if this guarantees that your affairs will be handled correctly when you are unable to make your own decisions.

When does the attorney's power begin?

With personal/health matters, your attorney's power to make decisions does not begin until (if ever) you have lost capacity.

With financial matters, you may nominate when your attorney's power is to begin. If you do not name a date or an occasion, it begins immediately. On the other hand, if you lose the capacity to make such decisions before the date or occasion you name, the power begins at that point. Even if you give your attorney power immediately, you may also continue to make decisions yourself while you are able to do so.



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What happens if you do not have an attorney to act for you?

Depending on your circumstances, the problems could be far-reaching if you lose capacity without appointing an attorney. There is a possibility that your affairs may be handled by a government department, for a fee.

In some circumstances financial matters may be dealt with on an informal basis. However if you do not have an Enduring Power of Attorney and formal authority is needed for a transaction, or if disagreements between family members arise, the Queensland Civil and Administration Tribunal (QCAT) decides the appointment of an administrator. This can be a lengthy and frustrating experience at a time when stress levels are very high. By making an Enduring Power of Attorney you choose the trusted person to administer your financial, personal and health affairs for you.

What is 'capacity'?

To make an enduring power of attorney you must be an adult capable of making your own personal and financial decisions. Having the capacity to make decisions means that you can:

- understand the nature and effect of a decision
- freely and voluntarily make those decisions; and
- communicate the decisions in some way

You also need to understand the nature and effect of an enduring power of attorney including the contents of the document, consequences of preparing the document and when the power begins.

Helping people and changing their lives for the better.

Integrity. Understanding. Responsibility.

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Robina Town Centre

Shop 4135, Robina
Town Centre,
Robina
PO BOX 4358 Robina
QLD 4230

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Southport

Suite 10, Level 10,
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Contact Attwood Marshall Lawyers on **1800 621 071** or email info@attwoodmarshall.com.au to speak to one of our experienced lawyers today.



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