

Enduring power of attorney (financial)

Instructions

Please read 'What is an enduring power of attorney (financial)?' before filling in the form that follows.

Use this form only if you wish your attorney(s) to act for you, or continue to act for you, when you have lost the capacity to make decisions for yourself. If you do not wish your attorney to act for you if you have lost this capacity, use the general power of attorney form.

As the person making the enduring power of attorney you are called 'the donor'. To make an enduring power of attorney (financial) for financial and legal matters you need to complete the following three forms.

Enduring power of attorney

You, as the donor, need to fill in the 'Enduring power of attorney financial' form. If you have a physical disability that prevents you from filling in and signing the form you may instruct another person to do this for you. When this person signs the form, they must do so at your direction in your presence and before two witnesses. This person must be 18 years old or more and must not be a witness or your attorney. They must complete the statement at the end of the second page.

If you want this power to begin only once you have lost capacity, write in section 4 next to 'on this occasion': *'When I become unable to make reasonable judgements relating to all or any part of my estate'*.

Certificate of witnesses

The two witnesses must sign the 'Certificate of witnesses'. You cannot be a witness and neither can your attorney. At least one of the witnesses must be someone who is not related to you or the person(s) you appoint as your attorney(s). One of the witnesses must be authorised by law to witness the signing of statutory declarations.

See 'Who can sign statutory declarations?'

The witnesses must sign this form together and in front of you. They must choose one of the statements under part (a) that applies to your situation and cross out the option which does not apply.

This means:

- if you signed the form yourself, they select the first option and cross out the second (a)
- if someone else signed the form for you, they select the second option and cross out the first (a).

If a witness is not sure that you understand the nature and effect of the document, they should refuse to sign the document.

Statement of acceptance

Your attorney must sign and date the 'Statement of acceptance'. This can be done at a later date. Make sure your attorney reads the 'Information for attorneys' before they sign the form.

Do not use any forms that were published before 1 April 2004. They will not be valid if you are making a new power of attorney.

See 'What do these words mean?' for an explanation of jointly, severally, alternate attorney or any other words that you do not understand on these forms.

Information for witnesses

As a witness, your responsibility goes beyond making sure that the signature of the person making the power is genuine. You also need to certify that this person, called the donor, has:

- signed the form freely and voluntarily in your presence without any undue influence or pressure
- has the capacity to make the power of attorney.

Capacity, or legal capacity, means you have the ability to reason things out. You can understand, retain, believe, evaluate (that is, process) and weigh up relevant information.

This means that at the time of making the appointment the donor must be able to understand matters such as:

- what sorts of powers the attorney will have
- what sorts of decisions they will have the authority to make
- when and how they will have the authority to exercise that power
- the effects that their power could have on the donor
- how to cancel the arrangement in the future.

In examining the capacity of the donor you should respect their privacy. You do not need to know the specific details of the estate, such as the balance of the donor's bank accounts or exactly how many properties the donor may own. Rather you should make sure that the donor understands that they are giving the attorney the same power that the donor has to deal with any of the donor's assets.

You may have to give information in the future about the donor's capacity at the time the powers were made. If you have any doubts about the donor's capacity you can make appropriate inquiries with the donor's consent. For example, you could contact the donor's doctor. You could also ask for a medical certificate confirming the donor's capacity and attach it to the forms.

If you have any doubts it is strongly recommended that you make a written record of your concerns and any questions you asked to work out the donor's capacity. If you think that the donor does not understand the nature and effect of the document, you should refuse to sign the form. You should also refuse to sign the form if the donor appears to be signing it under duress, undue influence or pressure from another person.

Where an interpreter is required it is important that you are satisfied that the form has been explained in a language that the donor understands.

Information for attorneys

Important notice

The donor, in choosing you to be their enduring power of attorney, is entrusting you to act in their best interests. If you accept this trust and the enduring power of attorney you will be taking on serious responsibilities. If you fail to observe these responsibilities you could be removed as attorney or even convicted of an offence and required to pay compensation.

Besides the particular responsibilities mentioned in this document, there are responsibilities imposed by the *Instruments Act 1958* and under the common law.

What are these responsibilities?

They are both general and specific.

General responsibilities guide you in decision-making:

- You must exercise the power given to you honestly and with reasonable care. It is an offence not to do so, and you may also be required to compensate the donor.
- You must comply with the terms of the enduring power of attorney and any other requirement of the Supreme Court or VCAT. In addition you must abide by the general principles on which the Act is based.

General principles include:

- presuming that the donor has the capacity to make a particular decision until there is conclusive evidence that this is not the case
- recognising their right to participate in decisions affecting their life to the maximum extent for which they have capacity
- respecting the donor's human worth and dignity and equal claim to basic human rights, regardless of their capacity
- recognising the donor's role as a valued member of society and encouraging their self-reliance and participation in community life
- taking into account the importance of the donor's existing supportive relationships, values and cultural and linguistic environment
- ensuring that your decisions are appropriate to the donor's characteristics and needs
- recognising the donor's right to confidentiality of information.

Specific responsibilities include:

- **Duty to keep records.** You must keep accurate records of dealings and transactions made under the power as VCAT or the Supreme Court or the Public Advocate may require you to produce them. You must keep these records separate from your own affairs where possible. For example, if you dispose of an asset you should keep records about the disposal. Where there are joint attorneys, then it is sufficient that by agreement one of the attorneys will retain a record or account of transactions or dealings.
- **Duty to keep property separate.** You must keep your property separate from the donor's property unless you and the donor own the property jointly. If the donor's capacity to make decisions is impaired, you must also get approval from VCAT or the Supreme Court for any transactions that have not been authorised in this document.
- **Duty to avoid transactions that involve conflict of interest.** You must not enter into transactions that could or do bring your interests (or those of your relation, business associate or close friend) into conflict with those of the donor. However, you may enter into such a transaction if it has been authorised in this document or by VCAT or the Supreme Court.

How do I complete a document for the donor?

If you have the power to execute (complete) a document for the donor, you do so in the ordinary way but you must note on the document that you are executing it as the donor's attorney under an enduring power of attorney (for example, 'John Smith, by his duly appointed attorney, Mary Jones').

Proof of your authority

It is recommended that you keep the Enduring Power of Attorney document in a safe place. Sighting of the document may be a requirement of your authority by financial institutions, banks etc.

When does my power to make decisions begin?

The donor may nominate in this document when your power to make financial decisions begins. If the donor does not nominate a date or event or occasion when a power becomes exercisable, then your power begins immediately. However, while the donor retains capacity, you must act in accordance with the donor's directions.

When does my power end?

Though there is no time limit on enduring powers of attorney, certain actions by you or the donor or VCAT or the Supreme Court can bring your power to an end.

Your actions could include:

- **Your resignation.** So long as the donor is capable of using the power given to you, you can resign by giving the donor a signed notice. However, if the donor is incapable of using the power, then you may only resign by getting leave of VCAT or the Supreme Court.
- **Becoming incapable.** Your power is revoked if you become incapable of understanding the nature and foreseeing the effects of a decision, and communicating that decision.
- **Becoming bankrupt or insolvent.** If this happens, your power is revoked.
- **Your death.**

The donor's actions could include:

- **Revoking your power.** The donor may revoke your power at any time so long as they have the capacity to revoke it. That is, the donor understands the nature and effect of revoking the power. If the donor revokes your power, the donor has an obligation to inform you. If the donor neglects to advise you that the power is revoked and you continue to exercise the power in good faith, then you will be protected under the legislation.
- **Appointing a new attorney exclusively to have your powers.** If the donor completes a new document giving your powers to another attorney exclusively, your powers are revoked to that extent. Because the new document has a later date and is inconsistent with your powers it overrides the earlier document.
- **The donor's death.** If the donor dies your enduring power of attorney is revoked in its entirety.

Actions by the Supreme Court or VCAT could include:

- Your power may also be changed or revoked by the Supreme Court or VCAT if you have failed to act in the donor's interests.

Can I be held liable?

Yes, you can be held liable if you use the enduring power of attorney knowing that it has been changed or revoked, or knowing of an event that effectively revokes it, or even if you have reason to believe that it has been revoked.

The Supreme Court, VCAT and the Office of the Public Advocate have the power to protect the donor's interests. You may be required to produce a summary of receipts and expenditure or more detailed accounts, and these may be audited. You may also be required to give evidence in relation to the exercise of your powers. If VCAT, the Supreme Court or the Public Advocate believes that you have not adequately protected the donor's interests, you may be removed or your enduring power of attorney may be revoked, and you may be required to compensate the donor.

Where can I go for advice?

The Office of the Public Advocate, a community legal centre, a solicitor, VCAT, the Supreme Court, State Trustees or a trustee company can advise you about this document and your power and responsibilities under it. VCAT and the Supreme Court can also make a declaration about the validity of this document or whether your power to make a decision for the donor has begun.

Enduring power of attorney (financial)

This enduring power of attorney is made under Part XIA of the *Instruments Act 1958* and has effect as a deed.

Print date here

This enduring power of attorney is made on _____

Cross out the following option if you wish to appoint more than one attorney.

Print your full name here

1. I, _____

Print your address here

of _____

Print the full name of your attorney here

appoint _____

Print your attorney's address here

of _____

to be my attorney

OR

Cross out the following option if you wish to appoint one attorney.

Print your full name here

1. I, _____

Print your address here

of _____

Print the full name of your first attorney here

appoint _____

Print your first attorney's address here

of _____

Print the full name of your second attorney here

and _____

Print your second attorney's address here

of _____

Cross out the following next two lines if wish to appoint only two attorneys

Print the full name of your third attorney here

and _____

Print your third attorney's address here

of _____

Tick one of the following options

jointly to be my attorneys jointly and severally to be my attorneys

Cross out the following option if you do not wish to appoint an alternative attorney

Print your full name here

1a. I, _____

Print your address here

of _____

Print the full name of your alternative attorney here

appoint _____

Print the address of your alternative attorney here

of _____

Print the name of the original attorney(s) you are appointing here

as an alternative attorney for _____

Enduring power of attorney (financial)

2. I authorise my attorney(s) to do on my behalf anything that I may lawfully authorise an attorney to do.

Cross out the following option if it does not apply

3. The authority of my attorney(s) is subject to the following conditions, limitations, and instructions:

Four horizontal lines for writing conditions, limitations, and instructions.

4. I declare that this power of attorney begins:

Tick one box only

immediately.

on this date: _____

on this occasion: _____

Print the date you want the power of your attorney(s) to begin here

Print the occasion you want the power of your attorney(s) to begin here

If you do not complete this clause, the power begins immediately.

5. I declare that this power of attorney will continue to operate and have full force and effect even if I subsequently become legally incapable.

Cross out the following option if it does not apply

6. I declare that all previous enduring powers of attorney (financial) signed by me are hereby revoked.

Sign your name here

Signed as a deed by _____

or

Cross out the following option if it does not apply

Person signing for the donor prints his/her full name here

I, _____

state that: a) I am at least 18 years old

b) I am not a witness for this document or an attorney for the donor.

Person signing at the direction and in the presence of the donor of the power signs here

Horizontal line for signature of the person signing at the direction of the donor.

Note: If this enduring power of attorney confers power on two or more attorneys to act jointly, then they have equal authority and can only act with the agreement of them all, and any documents must be signed by all of the attorneys together. If this enduring power of attorney confers power on two or more attorneys to act jointly and severally, then in exercising the powers under the enduring power of attorney any of the attorneys can act and sign documents together or alone.

Certificate of witnesses

Print the full name of the witness authorised to witness the signing of statutory declarations here

We, _____

Print the address of your first witness here

of _____

Print the full name of your second witness here

and _____

Print the address of your second witness here

of _____

certify:

Cross out whichever option a) does not apply

a) that the donor has signed this enduring power of attorney (financial) freely and voluntarily in our presence;

or

a) that this enduring power of attorney (financial) has been signed in our presence at the direction and in the presence of the donor of the power, and the donor of the power gave that direction freely and voluntarily;

AND

b) that at the time of signing, the donor appeared to each of us to have the capacity necessary to make the enduring power of attorney.

Witness authorised to witness the signing of statutory declarations signs here

Other witness signs here

Statement of acceptance for attorneys

Print the full name of proposed attorney here I, _____

Print address of proposed attorney here of _____

Print date here on _____

accept appointment as an attorney under

Tick one box only

this enduring power of attorney

the attached enduring power of attorney

and undertake -

a) to exercise the powers conferred with reasonable diligence to protect the interests of the donor; and

b) to avoid acting where there is any conflict of interest between the interests of the donor and my interests; and

c) to exercise the powers conferred in accordance with Part XIA of the *Instruments Act 1958*.

Signature of the attorney goes here

Cross out the following option if it does not apply

Print the full name of proposed attorney here I, _____

Print address of proposed attorney here of _____

Print date here on _____

accept appointment as an attorney under

Tick one box only

this enduring power of attorney

the attached enduring power of attorney

and undertake -

a) to exercise the powers conferred with reasonable diligence to protect the interests of the donor; and

b) to avoid acting where there is any conflict of interest between the interests of the donor and my interests; and

c) to exercise the powers conferred in accordance with Part XIA of the *Instruments Act 1958*.

Signature of the attorney goes here

Statement of acceptance for attorneys

Cross out the following option if it does not apply

*Print the full name of
proposed attorney here*

I, _____

*Print address of proposed
attorney here*

of _____

Print date here

on _____

accept appointment as an attorney under

Tick one box only

this enduring power of attorney

the attached enduring power of attorney

and undertake -

- a) to exercise the powers conferred with reasonable diligence to protect the interests of the donor; and
- b) to avoid acting where there is any conflict of interest between the interests of the donor and my interests; and
- c) to exercise the powers conferred in accordance with Part XIA of the *Instruments Act 1958*.

*Signature of the attorney
goes here*

Statement of acceptance for alternative attorneys

*Print the full name of proposed
alternative attorney here*

I, _____

*Print address of proposed
alternative attorney here*

of _____

Print date here

on _____

accept appointment as an attorney under

Tick one box only

this enduring power of attorney

the attached enduring power of attorney

and **undertake** -

- a) to exercise the powers conferred with reasonable diligence to protect the interests of the donor; and
- b) to avoid acting where there is any conflict of interest between the interests of the donor and my interests; and
- c) to exercise the powers conferred in accordance with Part XIA of the *Instruments Act 1958*.

*Signature of the attorney
goes here*
