



Information for attorneys

As an attorney, you have obligations under the *Powers of Attorney Act 2014*. This fact sheet introduces your role.

Find more information in the Guide for attorneys (the guide) available on the 'Information for attorneys' page of the Office of the Public Advocate website at www.publicadvocate.vic.gov.au

Your powers as an attorney

You have been appointed by another person, called the 'principal', to have legal authority to make decisions for them.

You can only make decisions:

- about matters for which the principal has appointed you
- once your role starts.

Refer to the enduring power of attorney appointment form, to find out the types of decisions you can make and when your role starts.

Types of matters you can make decisions about

You will have been appointed to make decisions about:

- financial and personal matters
- financial matters only
- personal matters only or
- specific financial or personal matters.

A financial matter is any matter relating to the financial or property affairs of the principal. For example, paying expenses, undertaking a real estate transaction for the principal, and making money available to the principal for their personal use.

A personal matter is any matter relating to the principal's personal or lifestyle affairs. For example, services for the principal, and where and with whom the principal lives.

Things you cannot do

You cannot make decisions about medical treatment for the principal, unless you are also their medical treatment decision maker.

The Powers of Attorney Act includes a list of things you cannot do on behalf of the principal, for example, vote. Read the full list in the guide.

When your role starts

The enduring power of attorney may specify that the power starts at different times for different matters. For example, this could be immediately for financial matters and, for personal matters, when the principal ceases to have decision-making capacity for them.

If your role starts immediately, you will only need to assist the principal when they ask for your help. If your role starts when the principal ceases to have decision-making capacity for the matter(s), you may be asked to show evidence of this before you act.

Conditions and instructions

The appointment form will state whether the principal placed conditions on the exercise of your power, or gave instructions.

How you make decisions

If the power starts immediately (while the principal still has decision-making capacity for the matters), the principal oversees the use of your power, and you act at their direction.

If you make a decision on behalf of the principal when they do not have decision-making capacity to make the decision, you must:

- give all practicable and appropriate effect to the principal's wishes
- take steps (reasonably available) to encourage the principal to participate in the decision-making
- act in a way that promotes the personal and social wellbeing of the principal.

If the principal has appointed more than one attorney for any or all matters, refer to the appointment form to see how attorneys make decisions. For example, if you are appointed 'jointly', you make decisions together and must all agree.

Your duties

You must:

- Act honestly, diligently and in good faith.
- Exercise reasonable skill and care.
- Not use the position for profit (though an enduring power of attorney may authorise an attorney to be paid).
- Not disclose confidential information (unless authorised by the enduring power of attorney or by law).
- Keep accurate records and accounts of all dealings and transactions, for example, in a book or spreadsheet.
- Keep your property separate from the principal's property. This does not apply to property owned jointly by the principal and you.
- Avoid acting where there is, or may be, a conflict between your duty to the principal and your interests (or the interests of your relative, business associate or close friend), unless the principal or the Victorian Civil and Administrative Tribunal (VCAT) has authorised this.

If you act when you have a conflict and the principal has not authorised this, you may be liable to pay compensation. If you act dishonestly, you could be charged with an offence. A principal can only authorise a conflict transaction when they have the decision-making capacity to do so. If the authorisation is not in the enduring power of attorney, you may be asked to show evidence of this.

The principal's dependants

You can only provide from the principal's property for the needs of their dependant(s), if they authorised this.

Gifts

You can only give gifts from the principal's property in limited circumstances.

Compensation orders and offences

If you fail to properly undertake your duties or obligations, and this results in a loss to the principal, you may be ordered by VCAT or the Supreme Court to compensate the principal for the loss.

You can be charged with a criminal offence if you dishonestly use the enduring power of attorney to obtain financial advantage for yourself (or for another person) or cause loss to the principal (or another person).

If you want to resign

There are steps you must take to resign, or if you are no longer eligible to be the principal's attorney.

For more information, see the guide on the OPA website at www.publicadvocate.vic.gov.au

or contact OPA's Advice Service on 1300 309 337.

