

You have Questions We have Answers

POWERS OF ATTORNEY

What is a Power of Attorney?

Powers of Attorney are legal documents giving authority to someone to act for you in specified or all legal and financial matters, medical matters or guardianship matters, while you are alive. Once a person has passed, the Power of Attorney becomes invalid and their Will comes into play.

The 3 most common forms of Power of Attorney are Enduring Financial, Medical Treatment and Guardianship.

Of the 3, the most common form of Power of Attorney is an Enduring Financial Power of Attorney. This document can be used to give a person specific powers, for a specific purpose, for a specific period of time. For example if you were travelling overseas and your house was for sale, you may want to give someone authority to sign your sale contracts in the event that your house is sold while you are away.

On the other end of the scale, this document can also be used to give someone immediate full control of your finances. However it would be likely that unless it was for a specific reason, they would not commence using their power unless they had to or unless you requested them to.

This could be from as simple as deducting money from your bank account to pay a telephone bill while you are having a short stay in hospital or holiday, to managing all of your

financial affairs in the event that you were not able to yourself, or you just didn't want to!

Unfortunately sometimes real life catches up with us and it is not until the situation is dire, that action is taken, in which case it is usually too late. If a person no longer has their testamentary capacity, then they are not able to sign a Power of Attorney. The person or persons wishing to be appointed as Attorney for the individual, would be required to make an Application to the Victorian and Civil Administrative Tribunal ("VCAT") to be appointed as Administrator or Guardian or in some cases both.

The second most common form of Power Attorney is a Medical Treatment Power of Attorney. Doctors may be willing to discuss options with family members for your medical treatment in the event that you are unable to make decisions for yourself. However a problem may arise if you have close family members with differing views from each other, or views that are very different from yours. If you have one child who would prolong your life at any cost and one that would do away with you at the first sight of a runny nose – well then, you have a problem and so do the Doctors who are trying to do what is best for you! In this instance it would be better for all concerned, for you to make a Medical Treatment Power of Attorney.

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The third kind of Power Attorney is a Guardianship Power of Attorney. This gives someone the power to decide where you will live and make lifestyles choices on your behalf.

Who should I appoint as my Attorney?

Whether it be the Executor of your Will or the Attorney in your Power of Attorney, if you have the testamentary capacity, you have the right to choose who you want to appoint and how many people you want to appoint. You may choose just 1 person, but in that event it would be a good idea to appoint an alternative in case the original person was unable to perform their duties.

You should think sensibly about your choices, it would not be very useful to appoint a child living overseas as your Attorney, how would they be able to do what needs to be done? It would also not make sense to appoint 2 people jointly, if one was living next door and the other was living interstate, it would be quite a task for them both to sign everything all the time!

An Attorney must be over 18 years of age and have the capacity to carry out the role of Attorney. Any person can be appointed, as long as they agree to take on the role. They should be someone that you trust to manage your affairs and look after your best interests. Always ensure your document is workable by trying to appoint the right person or people!

Can an attorney charge a fee?

An attorney does not need to be paid unless it is a professional person or organisation. Attorneys are able to claim from the donor's estate any out of pocket expense they have incurred in carrying out their role. If the donor wishes to pay their Attorney, they should document this. If the Attorney wishes to charge a fee and the donor is no longer competent and left no direction, it is unlikely that an Attorney will be able to claim a fee.

Who can witness a Power of Attorney?

Two witnesses are required. One witness must be authorised to witness Statutory Declarations. Only one can be a relative and any appointed attorney cannot be a witness.

When does the power begin?

You can nominate when you wish for your Attorney's power to begin. If there is no particular date or specified occasion the power begins immediately.

This means that an Attorney can act even if the donor still has capacity! The donor can also continue to make decisions while they have capacity, and any decisions made by the Attorney must be in accordance with the donor's directions.

Where should I store my original Power of Attorney?

Powers of Attorney are not YET registered in Victoria. You should keep the original in a safe place along with all your other important documents, and make sure you tell your family where they are kept. Chinka (HEP) Steel safely store original deeds such as Wills and Powers of Attorney at no cost to you.

Can I change my Power of Attorney?

You can change your Power of Attorney, so long as you still have the CAPACITY to understand the nature and effect of cancelling the Power. It might be best to tell your previous attorney that their power has been revoked, along with any organization or person who has a copy of the Power.

You can also revoke your Power by:

- telling the attorney that their power is withdrawn,
- destroying the document and any copies

What are the responsibilities of an Attorney?

- An attorney cannot delegate their power to anyone else. If an attorney is no longer able to carry out the role only an alternative attorney already appointed by the donor is able to step in.
- The law requires that the attorney act in the donor's (your) best interests, and not exercise powers beyond those set out in the Power.
- However your attorney must recognise your right to participate in decisions as much as possible in order to respect your dignity and human rights etc.
- The attorney must keep a record of income and expenditure and an up-to-date list of assets and liabilities. The attorney must also keep receipts, payment slips and all necessary documents for tax purposes.

Where there is concern that the attorney is not acting in your best interests VCAT may require an audit or lodgement of your accounts.

Enduring Powers of Attorney (Financial) made elsewhere:

Most enduring powers of attorney (financial) made in other states are recognised in Victoria and in some other countries.

We can Help!

Please contact the friendly Chinka (HEP) Steel Team in order to discuss your individual concerns or requirements for all Power of Attorney and Administration and Guardianship matters.