

# Frequently Asked Questions

## General Power of Attorney

## Enduring Power of Attorney

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### What is a *General Power of Attorney*?

A General Power of Attorney is a legal document that allows you to nominate one or more Attorneys to act on your behalf for financial matters only. The Attorney's power ceases if for any reason you lose the capacity to manage your own affairs. A General Power of Attorney is typically used to give someone specific authority in commercial transactions or to pay bills while you are overseas.

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### What is an *Enduring Power of Attorney*?

Unlike a General Power of Attorney, the powers under an Enduring Power of Attorney continue even if you lose the capacity to make decisions for yourself. An Enduring Power of Attorney allows you to give your Attorney the power to make financial decisions and also personal and/or health decisions.

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### Why should I make an *Enduring Power of Attorney*?

If you are 18 years of age or older you should make an Enduring Power of Attorney. If there comes a time when you are unable to manage your own affairs, it may be too late to make your wishes clear to those who will care for you. The best way to provide peace of mind is to legally appoint someone now to manage your financial and personal/health matters in case you are unable to do so yourself in the future.

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### What would happen if I lost capacity and didn't have an *Attorney to act for me*?

If there are matters that require formal authority, or if there are disagreements between your family members, an application may need to be made to the Queensland civil and Administrative Tribunal for the appointment of an Administrator and/or Guardian. There is a risk that the person or organisation appointed (eg. The Adult Guardian) is someone that you do not want looking after your matters.

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### What are my Attorney's responsibilities?

All Attorneys must act with honesty and care. In exercising their power they must recognise your right to confidentiality and dignity; respect your views and take into account any existing relationships, values and culture. You can nominate one or more Attorneys to be both your Financial Attorney and Personal/Health Attorney, or you can nominate different people for each role.

A Financial Attorney is responsible for your financial matters including paying bills, receiving income, taxation and legal matters, investment and financial planning and property management. A Financial Attorney must keep records of dealings and transactions, keep your property separate from their property unless it is jointly owned and avoid transactions that conflict their interests with yours.

A Personal/Health Attorney is responsible for making decisions in relation to where you live, who you live with, daily issues like diet and dress and giving approval for you to receive certain types of health care. A Personal/Health Attorney must take into account the advice of your Doctor or health care provider, ensure that any decision made contributes to your health and wellbeing and must choose the least intrusive treatment when there is a choice.

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### Who should I appoint as my Attorney/s?

It is very important to choose people that you trust as decisions they make on your behalf are legally binding. They should be 18 years or over. If you have a carer who receives a carer's pension or a similar government benefit, they may be the right person to appoint. They should not be a doctor or nurse or anyone who is paid to care for you.

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### Financial Attorney

For personal and health care matters it is important to choose a close family member or friend who is aware of your personal and health care needs and wishes. If there is no one available, the Adult Guardian can be appointed to look after the interests of people with impaired capacity. The Adult Guardian is an independent statutory officer.

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### What power would my Attorney/s have?

Your Attorney/s will be able to make any decisions that you can make for yourself unless you provide specific limitations in your Enduring Power of Attorney.

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### What should I do if an Attorney is not acting properly?

Anyone who suspects that the Power of Attorney is not being exercised properly can inform the Adult Guardian. The Adult Guardian has the power to protect your interests if you are unable to do so yourself. Your Attorney may be required to provide accounts and details about any decisions that have been made. An Attorney who does not protect your interests adequately can be replaced. The Adult Guardian can be contacted by phoning 1300 653 187 or emailing:

[adult.guardian@justice.qld.gov.au](mailto:adult.guardian@justice.qld.gov.au) or [publicguardian@publicguardian.qld.gov.au](mailto:publicguardian@publicguardian.qld.gov.au)

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### When does the Enduring Power of Attorney begin?

**Financial Matters:** You specify when you want to powers of your financial attorney to begin. This could be immediately, on a particular date or on a particular occasion such as if you lose capacity. We can help you clarify the clauses you will need to put in place for your particular situation.

**Personal/Health Matters:** Decisions about personal/health care matters will remain in your hands unless for some reason you lose the ability to make such decisions and to communicate them. If there does come a time when you need the assistance of your attorney/s to make personal and health care decisions, they are still obliged to help you make decisions yourself to the fullest extent possible.

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### When does the Enduring Power of Attorney cease?

There are a number of situations under which an Enduring Power of Attorney may cease to be effective. These include:

- If you get married (unless your new spouse is already your Attorney)
  - If your Attorney withdraws
  - If you die or your Attorney dies
  - If you get divorced (any provision made to your former spouse is revoked)
  - If you revoke your Enduring Power of Attorney
  - If your Attorney becomes your paid carer or health-care provider
  - If your Attorney becomes incapable
  - If your Attorney becomes insolvent
  - If you make an inconsistent document (the Enduring Power of Attorney is revoked to the extent of any inconsistency with any later document you complete).
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### Do I have to register the Enduring Power of Attorney?

No. You or your Attorney are only required to register the document if it is to be used in transactions such as the purchase or selling of property. In that instance, the document must be registered with the Titles Registry.

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### What should I do with the Enduring Power of Attorney once it is completed?

An Enduring Power of Attorney should be kept in a safe place. We recommend that our clients leave their original document in our office safe and that you tell someone that you have done this. This is free.

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### Advance Health Directives

An Advanced Health Directive is a document which provides instructions about your choices for future health care and comes into effect only if you are unable to make your own decisions. If you wish to complete an Advance Health Directive, your doctor may be the most appropriate person to help you. It is also important that you discuss the Directive with your family and attorney for personal/health matters.

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### Why have O'Shea Dyer prepare your Enduring Power of Attorney?

We have experienced Solicitors and Lawyer to advise and draft your Enduring Power of Attorney (EPA). We make the process simple and easy using plain English when explaining. We make sure that your Enduring Power of Attorney caters to your individual needs.

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