

What is a Power of Attorney?

A Power of Attorney is a legal document that lets you appoint one or more persons to make decisions on your behalf. There are two types of Powers of Attorney:

1. General Powers of Attorney (GPA);
2. Enduring Powers of Attorney (EPA).

What is a General Power of Attorney?

A GPA lets you appoint one or more persons (your 'attorneys') to take actions and make financial decisions on your behalf within the limits and circumstances that you set out for your attorneys in the GPA.

It may be that you are overseas and are in the process of selling your home and want to appoint your friend to sign transfer documents whilst you are away. The GPA can be set to expire on the date on which you are due home and your friend is permitted to do nothing on your behalf but sign the transfers applicable to the sale.

A GPA comes to end, however, if you lose capacity to make decisions yourself. For example, if you had a car accident whilst overseas and suffered brain damage. In these circumstances, the GPA would not be enough to allow your friend to sign the transfer documents on your behalf.

What is an Enduring Power of Attorney?

An EPA allows you to appoint one or more persons to make decisions on your behalf just like a GPA, however unlike a GPA an EPA endures or survives the loss of capacity of the person making the EPA, allowing the attorneys to continue to make decisions, sign documents and take actions on your behalf.

There are two types of decisions or powers under an EPA:



- **personal and health care power** – your attorney can consent to most forms of medical treatment, decide where you live, who you have contact with and, if you do not have an Advance Health Directive, the power to withdraw or withhold life sustaining measures; and
- **financial power** – your attorney has the ability to pay your bills, sell your assets, deal with your service providers eg. power and telephone, sign contracts, deal with banks and government departments, and attend to most other financial matters which you could do yourself, if you were able.

Who should you appoint?

You may appoint any person over the age of 18 years who agrees to act provided they are not a paid carer (a person receiving a carer's pension is not a paid carer for these purposes) – such as a relative, a friend or a professional person. You should be very careful about who you choose and only choose people who you trust. For personal matters, consider someone who understands your personal and health care needs and wishes. For financial matters, consider someone who is responsible with their own money and understands financial matters. You can appoint different people for each power.

When does the power begin?

Your attorney for personal/health matters cannot make any decisions on your behalf unless you become incapable of making these decisions for yourself. However, you can specify when the power of your attorney for financial matters starts – immediately, on a nominated date, or only if you become incapable of making financial decisions. You can still continue to make any of your own decisions while you are capable of doing so, even if your attorney has power to act for you.

When does the power end?

You may revoke or end your attorney's power at any time provided you still have the decision-making capacity.

Certain life circumstances, such as marriage or divorce, can also bring an end to your EPA (either partially or fully), or if your financial attorney becomes bankrupt. Alternatively, your attorneys may change their minds and withdraw their consent to act as your attorney. If you have lost capacity, your attorneys cannot withdraw their consent unless the Court agrees.

What happens if my attorney does not act properly?

If you are unhappy with the actions of your attorney and you can still make decisions for yourself, you should take steps to remove that attorney and end his or her powers. You may also wish to get some legal advice and, depending on what your attorney has done, this might involve reporting your attorney to the police.

If you do not have decision-making capacity, a concerned person can tell the Adult Guardian. The Adult Guardian may investigate your attorney's actions and take measures to protect your interests. If necessary, your attorney's power can be suspended and an application made to the Queensland Civil and Administrative Tribunal (QCAT) for an order appointing someone else as your guardian (personal/health powers) and/or administrator (financial matters). If you don't have anyone else in your life who is capable of doing this job, the Public Trustee can and will do it.

What would happen if I lost capacity and did not have an EPA?

In the case of health matters, your statutory health attorney makes decisions for you. This is a person close to you, such as your spouse, a family member or friend, or it could be the Adult Guardian if there is no one else available. You do not have to appoint someone to do this as they automatically act in this role when the need arises. However, it may not be someone who you would want to be in this role and you have no control over their identity.

For financial and personal matters, someone from your support network may need to apply to QCAT to have a person appointed to act on your behalf. This involves a hearing before QCAT. If a person is appointed, that person must prepare a financial plan for your affairs and keep records of your accounts and transactions and file them periodically with QCAT. The appointment is not permanent and the person may be removed if QCAT does not think the person is doing a good job or if the person does not comply with the rules of their appointment. We have been told by persons so appointed that they have incurred significant costs complying with the planning and reporting obligations of QCAT. If their loved one had made an EPA, this would not have been necessary. It is also possible that the Public Trustee could be appointed.

If you would like to make an appointment with a solicitor from Rapid Legal Solutions' estate planning team to discuss the preparation of your Wills, please contact us on 4755 9100 or enquiries@rapidlegal.com.au

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