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What is a Power of Attorney?

A power of attorney is a formal instrument by which one person empowers another person to act in their place for certain legal and financial purposes (e.g. dealing with bank accounts, transferring money, paying bills, dealing with investments, or buying and selling real estate) when they can't do so themselves.

For example, you might be unavailable to make financial decisions (e.g. because you are overseas or spending time in hospital). Or you might be unable to manage your finances due to serious illness or accident, or loss of mental capacity.

A power of attorney will give that person the authority to act on your behalf. You can appoint an attorney for a limited period, or an indefinite period. The latter applies until you die or revoke it.

A 'general' power of attorney ceases to be

valid when the person who donated the power loses mental capacity.

An 'enduring' power of attorney is required should you suffer loss of mental capacity

For a power of attorney to remain valid after you lose your mental capacity, you must make an 'enduring' power of attorney while you still retain mental capacity. An enduring power of attorney is an important consideration for everyone, not just people who are older or with a known illness that may affect mental capacity.

For example, if you have an accident or a sudden illness that causes you to lose mental capacity, nobody will be able to access your assets on your behalf, such as your bank account or superannuation, unless you have an enduring power of attorney. And you might need that money to pay for your medical treatment.

Or your investments might require an important action to be taken, but you might not be in a position to do so.

A family member or a friend could apply to be appointed as your financial manager or administrator, either through a Civil and Administrative Tribunal or the Supreme Court (depending on the State in which you live), but this could take considerable time.

It's therefore in your best interests to have already given someone an enduring power of attorney so they could take the appropriate actions on your behalf in a timely manner

Who can you appoint as your attorney?

Your attorney has full authority to deal with your legal and financial affairs. You should appoint someone you trust. Most people chose either a family member or close friend. A fiduciary company that can also act as your attorney.

What about lifestyle and medical decisions?

You may want someone to make decisions on your health, medical treatment and living arrangements if you are unable to do so due to serious illness or accident (e.g. where you should live, what services you should receive and what medical and dental treatment you might need).

Depending on the State in which you live, this person is called an 'enduring guardian', 'attorney' or a 'substituted decision maker'

and is appointed under either an Enduring Power of Guardianship, Enduring Power of Attorney or an Advance Care Directive. benefits are complex and different taxation treatments may apply depending on who receives your superannuation benefit.

Please seek advice from your trusted adviser.

***Disclaimer**

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If any products are discussed, you should obtain a Product Disclosure Statement relating to the products and consider its contents before making any decisions. It is recommended to seek advice from a qualified professional relevant to your particular needs or interests. (For instance, Tax Advice from a Tax Agent, Financial Advice from a Licensed Financial Adviser and so on and so forth).





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