

Estate planning

Enduring powers of attorney

1. An enduring power of attorney allows someone else to make decisions for you during your lifetime if you cannot make decisions for yourself.
2. You can appoint attorneys for two types of decisions:
 - (a) financial matters; and
 - (b) personal and health matters.
3. You can appoint the same attorneys for the two types of decisions, or you can split the role so you have different attorneys for financial matters to personal and health matters.
4. Examples of financial matters include:
 - (a) deciding how your income should be invested;
 - (b) selling any of your assets;
 - (c) paying your debts; and
 - (d) paying maintenance and accommodation expenses for you.
5. Examples of personal or health matters include:
 - (a) decisions about where and with whom you live;
 - (b) whether you work or undertake education or training;
 - (c) day-to-day issues like diet and dress;
 - (d) whether to consent, refuse to consent or withdraw consent to particular types of health care for you (such as an operation); and
 - (e) consent to the withdrawing or withholding of life-sustaining medical treatment if, for instance, you become terminally ill or are in a state of permanent or persistent unconsciousness.
6. If you appoint more than one attorney, you can appoint them to act:
 - (a) jointly (all agreeing);
 - (b) severally (any one to decide);
 - (c) by majority; or
 - (d) a combination of the above.



7. You may consider whether you should allow your attorney to enter into conflict of interest transactions. For example:
 - (a) If you own assets in individual names, those assets may be needed by both of you for nursing home entry or living once one of you has lost capacity.
 - (b) You may specifically allow for the confirmation and renewal of binding nominations in circumstances where your attorney may need to renew or confirm the binding nomination for your superannuation.
 - (c) You may allow your attorney to vote on your behalf as a shareholder in any company, and for the attorney to use those voting rights to appoint themselves as a director. That power is not automatic under some company constitutions.
8. You may also include particular instructions or exclusions to your attorney's powers.
9. Generally we recommend keeping the document simple where possible.
10. Your attorney's powers in relation to personal and health matters do not begin until you are not capable of making decisions.
11. For the financial power, you can nominate whether it commences on the loss of capacity or some other time, e.g. immediately or at a certain point in time.

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These comments and opinions are of a general nature and are based on Cooper Grace Ward's interpretation of the law as at the date the document was prepared. The position may alter if the law changes as a result of legislation, new rulings or cases.

