

Enduring Power of Attorney

An Enduring Power of Attorney is a legal document in which you choose a person to manage your assets and financial affairs should you become unable to do so.

There are many reasons why you may become unable to make decisions about your finances, including accidents and illnesses.

The person you appoint in your Enduring Power of Attorney is known as your 'Attorney'. In this information guide, the word 'Attorney' is used to describe the person you have appointed to manage your assets and financial affairs.

Why should I have an Enduring Power of Attorney?

In order to move into an aged care facility you must have an Enduring Power of Attorney. It is recommended that all adults have an Enduring Power of Attorney.

With an Enduring Power of Attorney in place your financial affairs will be looked after by the person of your choice should you no longer be able to manage them. It will generally only take effect if you become unable to make your own decisions. However you can choose to have it take effect immediately, for a fixed period or for a specific task.

Your Attorney can be any competent adult who is able and willing to act on your behalf. Often this is an immediate family member, however it can be anyone who will act in your best interests. You may appoint more than one person to be your Attorney.

You must have an Enduring Power of Attorney in place even if you want your spouse, partner and/or children to act as your Attorney. They do not automatically have the right to make financial decisions on your behalf.

If you do not have an Attorney in place, and you become unable to make financial decisions you will have an Attorney appointed for you by the Guardianship Board of South Australia

What is the role of an Attorney?

Your Attorney will have control of your financial affairs should you become unable to manage them yourself. This includes the ability to spend money from your bank accounts, as well as sell or manage any houses or properties that you own. You can set some limitations and conditions, and your Attorney is required by law to act in your best interests.

The person you appoint as your Attorney cannot make decisions about your medical treatment or ongoing medical care. Those decisions are made by the person you nominate in a separate legal document, such as an Advanced Care Directive.

Appointing an Attorney

To appoint an Attorney you must be over 18 years of age and sign an Enduring Power of Attorney. You must sign the document in the presence of an authorised witness, such as a lawyer or Justice of the Peace.

Simplifying access to aged care

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The person you select must give their consent to becoming your Attorney by also signing the document. In South Australia this does not need to be witnessed. It is important to talk with your Attorney to make sure they understand their responsibilities. This also helps ensure that the decisions your Attorney makes are what you would have wanted.

You can revoke (cancel) an Enduring Power of Attorney at any time providing you have the mental capacity to do so.

There is no legal requirement that a lawyer prepare your Enduring Power of Attorney however it is strongly recommended that you seek legal advice.

Becoming an Attorney

Becoming an Attorney is a very serious responsibility. If you are appointed as an Attorney you must:

- Act in the best interests of the person who appointed you as their Attorney.
- Retain accurate records of all transactions and dealings made in your role as an Attorney.
- Know your rights and responsibilities.
- Understand that it is very difficult to renounce the role of Attorney should the person for whom you have been appointed Attorney become mentally incapacitated.

The Enduring Power of Attorney document will indicate whether or not your responsibilities as an Attorney start immediately.

It is more likely that they will commence only should the person for whom you are an Attorney loses the mental capacity to manage their own affairs.

Determining when the Enduring Power of Attorney takes effect may require specialist medical opinion as to the person's mental capacity.

On the death of the person who appointed the Attorney the Executor nominated in the person's Will becomes responsible for the assets and finances.

Further information

Welden & Coluccio Lawyers

<http://www.welcolawyers.com.au>

Powers of Attorney, Law Handbook, Legal Services Commission of South Australia

<http://www.lawhandbook.sa.gov.au/ch02s01.php>

Enduring Powers of Attorney and Enduring Guardianship, Carers SA

<http://carers-sa.asn.au/advice/plan-ahead/powers-of-attorney>

This information guide prepared with the assistance of **Welden & Coluccio Lawyers**, The Estate Experts.
www.welcolawyers.com.au

Important!

This information sheet contains general information only and does not constitute legal advice. Your individual circumstances must be reviewed by a qualified and experienced lawyer.