

powers of attorney

General Advice Disclaimer

Information provided in this document is general in nature and does not constitute financial or legal advice.

Every effort has been made to ensure that the information provided is accurate, but information may become outdated as legislation and new government announcements are made. Individuals must not rely on this information to make a financial, investment or legal decision as it does not take into account their personal circumstance.

Before making any decision, we recommend you consult a licensed adviser or legal practitioner to take into account your particular objectives, circumstances and individual needs.



What is a power of attorney?

Powers of attorney can be general (appointing someone for a specific purpose and during a specific time) or enduring (appointing someone to make decisions on your behalf, with the appointment persisting through loss of capacity).

Our services are in relation to enduring powers of attorney (EPAs), and all information available from us in relation to EPAs. If you have a question relating to a general power of attorney, please contact us.

What can my attorney do?

Attorneys have powers under the relevant law allowing them to act for both personal and financial matters. You can however in most States, split the powers up so that different people act for financial matters to those that act for personal or medical matters (this is because people will often be looking for different qualities in terms of decision making for financial matters from personal or medical matters).

Ultimately however, what an attorney can do is subject to the terms of the document appointing them.

The terms of any power of attorney should accurately reflect your wishes.

There are however some important key powers in addition to the laws in each state that clients should consider adding to their attorney documents, including powers allowing your attorneys to:

- act in conflict transactions. For example, allowing your spouse to act in relation to your assets despite there being a benefit to them (direct or indirect)
- provide gifts (noting that these must be reasonable). For example, birthday presents for children and grandchildren
- update your superannuation nominations

The combination of changing superannuation laws and the often fluid nature of client circumstances can mean that your spouse might need to update any superannuation nominations. Not having this power can result in unintended tax consequences if you have lost capacity and your attorney cannot redirect your superannuation benefits

These are included as standard in our powers of attorney documents.

What if I have specific health care wishes?

You may see that some States allow the addition or restriction of some powers with respect to medical or personal decision making.

What if i have specific health care wishes? (cont)

We deliberately leave these blank as we believe there are other effective ways of ensuring your wishes come to pass.

Most States have a document that governs end of life decisions [often called 'health directives']. While each State has its own version of health directive (with the name and form varying in each State), it is largely consistent that the document is a medical document to be made in consultation with your medical practitioner.

It is also very important to have conversations with your loved ones about your wishes while you can. In an emergency situation, most medical practitioners will look to the closest next of kin in terms of critical decision making (and not ask to see an EPA due to the urgency of the situation).

As such, it is important that these people know what your wishes are so that in an emergency event, they can give instructions based on your wishes.

Does it matter what state I live in?

It is critical to be aware that each state has its own laws governing the appointment of attorneys, different forms and differing ways for

attorneys to act.

While there is legislation allowing powers of attorney prepared in one state to be accepted in other states, it can often be difficult when dealing with third parties (in particular land registries) when the form does not match the requirements of the particular state.

How many people can I appoint?

Each state has its own rules around how many people can act at any one time as your attorney and also, how many people you can appoint as back up attorneys.

To make this simple, we have a table at the end of this document with a summary of each State's rules. Please note that when entering instructions into our online instruction form, you will need to keep in mind what your particular State allows.

When should the document come into effect?

Most states have 2 options for when the power of attorney can come into effect for financial decisions:

- when you have been proven to have lost capacity; and
- immediately on signing the document.

We often recommend that the document come into effect immediately as loss of capacity is a very grey area of the law. The process for determining whether you have capacity can take several weeks (and sometimes months if your capacity is questionable) and in this time, no one can make decisions for you during what is already an incredibly stressful time.

Lots of people then ask about the document being misused. Its true, your attorney could sell your home and buy that bachelor pad they always wanted on Bondi Beach, but they need an original or certified copy (that must be produced from an original) to use it.

One way around this is to store any of your documents with an independent third party (such as one of your legal or financial advisors). In addition, you can simply choose to not inform your attorneys of when you have chosen for the document to come into effect and they will logically assume its only when you have lost capacity.



Do I need to register my power of attorney?

In some states you can register your power of attorney with local estate registers. Your attorney also needs to register your power of attorney with your local land registry if they intend to use it in relation to land that you own.

Proactively doing this can be a good idea. It enables your attorneys to do what they need to immediately. However, we here at Wise think that you should only register your attorney documents with the local land registry if it is absolutely necessary in the circumstances. If you wish to change your power of attorney, additional steps will need to be taken to revoke your existing, registered attorney document (as opposed to just creating a new one). This can lead to increased administrative burden and additional costs for you.

What else should i consider when appointing at attorney?

Given the nature of the powers, your attorney(s) should be people you trust implicitly.

It is however still important to appoint someone. Failure to nominate someone to act for you can result in your family having to spend large sums of money (and at great emotional cost) to be able to make decisions in your

Ensuring your estate planning documents are appropriate for your circumstances is something everyone needs to consider to reduce the financial and emotional burden on their families if you lose capacity.

For those that are concerned about an attorney acting outside the terms of their appointment, keep your eye out for our upcoming post on avenues for challenging a power of attorney.

To see what your State allows when it comes to appointing attorneys, see the next page.



Queensland

Financial matters

Maximum of 4 of initial and 4 back up attorneys.
Can act individually, jointly or by majority.

Medical/Personal matters

Maximum of 4 initial and 4 back up attorneys.
Can act solely, jointly or by majority.

New South Wales

Financial matters

Unlimited number of initial and back up attorneys.
Can act individually or jointly.

Medical/Personal matters

Unlimited number of initial attorneys.
Can act individually or jointly.
One individual back up attorney only.

Victoria*

Financial matters

Unlimited number of initial attorneys.
Maximum 3 back up attorneys per initial attorney.
Can act individually, jointly or by majority.

Medical/Personal matters

Unlimited number of attorneys but only one person can act at a time.

Western Australia

Financial matters

Maximum of 2 initial attorneys and 2 back up attorneys.
Can act individually or jointly.

Medical/Personal matters

Unlimited number of initial attorneys and back up attorneys.
Can act individually or jointly (if more than one attorney, they must act jointly) or alternately.



notes:

- this is current as at April 2020.
- this document pre-emptively includes the cap on number of attorneys in Queensland in line with the yet to be proclaimed law.
- attorney documents in Victoria are technically separated so that financial and personal decisions are governed by one document and medical by another.

Tasmania

Financial matters

Unlimited number of initial attorneys.
No Back up attorneys.
Can act individually or jointly.

Medical/Personal matters

Unlimited number of initial attorneys.
One individual back up attorney only.
Can act individually or jointly [if more than one attorney, they must act jointly]

South Australia

Financial matters

Unlimited number of initial attorneys.
Can act individually, jointly, successively or by majority (with some amendment to the standard form).

Medical/Personal matters

Maximum of 3 initial attorneys.
Can act individually, jointly, by majority or successively.

Northern Territory

Financial matters

Maximum of 3 initial and back up attorneys in total allowed.
Can act individually, jointly or alternately.

Medical/Personal matters

Maximum of 3 initial and back up attorneys in total allowed.
Can act individually, jointly or alternately.

Australian Capital Territory

Financial matters

Unlimited number of initial and back up attorneys.
Can act individually, jointly or by majority.

Medical/Personal matters

Unlimited number of initial and back up attorneys.
Can act individually, jointly or by majority.