

WHAT IS A POWER OF ATTORNEY?

A Power of Attorney is a legal document that gives another person or persons the power to deal with your assets and financial affairs while you are still alive. It ceases to operate once you pass away, and your Will then takes effect.

A Power of Attorney can be *general* or *enduring*, and with a delayed start or for a set period of time only.

Giving another person your Power of Attorney enables your financial affairs to be managed and legal decisions made on your behalf when required. You may appoint one or more persons, either to act together, independently, or both, whichever you direct.

WHAT IS MEANT BY A GENERAL POWER OF ATTORNEY AND AN ENDURING POWER OF ATTORNEY?

A General Power of Attorney is one where you direct the Attorney(s) to act immediately, or for a set period only (e.g. if you travel overseas for a lengthy period), to make your legal and financial decisions. It *cannot* be used once you lose capacity due to illness or unsound mind.

An *enduring* Power of Attorney can commence immediately **or can remain dormant, activated only when required** e.g. when your doctor certifies in writing that it is required.

An *enduring* Power of Attorney will remain effective even though you may suffer loss of capacity due to illness or unsound mind.

WHY DO I NEED A POWER OF ATTORNEY?

Appointing an attorney is a safeguard for your interests and those of your loved ones. You may be able to look after your interests now, but this may not be so in the future. For example, you may be injured or suffer ill health and cannot attend to your financial affairs. You may suffer what is called loss of legal capacity, that is, loss of understanding to deal with your affairs. Or you may simply want someone else to take responsibility for your financial affairs if you become frail, for instance.

Some institutions may insist that you have a Power of Attorney e.g. an aged care facility or hospital.

WHAT IS INVOLVED IN MAKING A POWER OF ATTORNEY?

A solicitor will prepare the Power of Attorney form and advise you of the implications and legalities where appropriate. The solicitor will witness the document for you and can hold the original in their safe custody so that it is kept secure.

WHAT ARE THE DUTIES OF AN ATTORNEY?

A Power of Attorney gives your Attorney(s) power to take care of your legal and financial matters in accordance with your instructions. If you are incapable of giving instructions, then your Attorney(s) must make decisions that are in your best interests. This power is governed by legislation so the attorney cannot gain from the appointment, unless you give those written instructions in the Power of Attorney form. The duties may include collecting and recording all your income, dealing with real estate and other assets such as shares, collecting rents, and banking. The Attorney can also manage your accounts and bills as required. This includes the preparation and lodgement of your tax returns.

WHO SHOULD I APPOINT AS MY ATTORNEY?

The position of Attorney is a vital and important one. The person(s) you appoint should be able to deal with all your financial and legal affairs professionally and safely. It is a task that requires a high level of responsibility and skill. By law, the person you appoint as your attorney must be over the age of 18 years. If you wish, you can appoint your solicitor.

HOW MUCH WILL IT COST?

A reasonable consultation fee is charged by us to prepare and witness your signing of the document appointing your chosen Attorney(s), arranging signing by your Attorney(s), and including correspondence and postage. Ask us about discounts.

A further government fee is charged for optional registration of the Power of Attorney with the Land & Property Information Office. A Power of Attorney document must be registered to deal with real estate and long-term leases, although registration can be deferred until needed.

WHAT DO I DO NOW?

With a matter as important as Power of Attorney it is advisable to act now. You must have adequate capacity to give instructions. Once you suffer loss of capacity then it is too late, and in that case the Guardianship Tribunal must become involved in the decision as to who to appoint. The Tribunal may decide that the government should manage your financial affairs. Of course, that is not a desirable outcome.

Simply give Baker & Borthwick a call on (02) **6555 5555** to discuss your needs.

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POWER OF ATTORNEY EXPLAINED