

Wills and Enduring Powers of Attorney

Your Will

Your Will is a legal document which sets out your testamentary wishes. It is in this document that you describe how you want your estate assets to be distributed upon your death.

In Victoria if you do not leave a valid Will on your death then it is the law that will stipulate how your estate assets will be distributed.

Currently if you die intestate (without a valid Will) in Victoria your estate assets will in simple terms be distributed as follows:

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1. If you die leaving only a surviving spouse then 100% to your spouse;
2. If you die leaving a spouse and children then, the personal chattels, \$100,000 and 1/3 of the balance of your estate (and a right to the matrimonial home) will go to your surviving spouse and the remaining 2/3 will be distributed equally among your children.

If you wish to ensure that your family and friends benefit from your estate in the proportions you desire then it is imperative that you prepare a valid Will.

Enduring Powers of Attorney

In Victoria there are currently two separate types of enduring documents which protect various aspects of your life. Each document allows you to appoint an individual to act on your behalf should you lose the mental capacity to manage your affairs, whether they be financial, lifestyle or medical.

The two governing documents are:

- Enduring Power of Attorney (for financial, legal and lifestyle matters); and
- Enduring Medical Power of Attorney.

The word 'Enduring' means that the appointment will continue even if you have lost the necessary mental capacity to make decisions for yourself.

It is important to note that anyone over the age of 18 years who has the required mental capacity can appoint someone to act on their behalf.

Enduring Power of Attorney

An Enduring Power of Attorney allows you (the Donor) to appoint someone (the Attorney) to make financial, legal and lifestyle decisions on your behalf. It does not have to be the same person for each area of your life, and you can have more than one person appointed. As mentioned above this document continues to operate even after you are no longer capable of making financial decisions yourself.

What decisions can my Attorney Make?

Your Attorney can make any decisions you can legally make. You can however place limitations or restrictions on what your Attorney can do. For



example you can restrict their ability to deal with your residential home.

However, before you include any limitations, conditions or restrictions you should speak with your solicitor to discuss any potential ramifications.

Your Attorney must act in your best interests at all times, they must keep accurate records of all dealings and transactions, and avoid situations which could give rise to a conflict of interest. Your Attorney must also keep your property and money separate from their own.



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Your Attorney can make any lifestyle decisions which you are able to make for yourself. They can decide where you live, how your healthcare is maintained, consent to medical treatment, determine whether you work and who may visit you.

Additionally your Attorney has certain responsibilities; they must take into account any wishes you have expressed in the appointment document and they must act in your best interests.

Why should I appoint an Attorney?

You should consider appointing an Attorney to manage your finances for the following reasons:

- To ensure your financial and legal affairs are managed by someone you trust;
- To provide a mechanism for the continuity in management of your financial and legal affairs, thereby minimising any immediate financial hardship which may otherwise result if your decision-making ability was suddenly and unexpectedly taken away from you;
- To maintain a level of confidentiality with respect to your affairs;
- To allow you to restrict or set limits on your Attorney, eg you can stop them from selling your home. Alternatively you can grant them greater power;
- Gives you the power to choose the person who will make lifestyle decisions on your behalf. Ensuring that the person you trust will be the person who makes the decisions regarding your welfare, including deciding where you live;
- Minimises the risk of government interference in the management of your wellbeing and life.

If you have not appointed an Attorney and you subsequently lose capacity, then it is likely that someone will be appointed to act as your administrator. This person or Trustee Company will be appointed by the Victorian and Civil Administrative Tribunal (**VCAT**). Unfortunately



you do not have a say in who VCAT appoints as your administrator.

Medical Power of Attorney

An Enduring Power of Attorney for medical treatment allows you (the Donor) to appoint someone (the Agent) to make medical treatment decisions on your behalf.



3 What decisions can my Medical Agent Make?

A Medical Agent unlike your Guardian has the power to consent to and/or refuse medical treatment on your behalf. A Guardian can only consent to treatment.

There are however some restrictions placed on your Agent; they cannot consent to medical procedures which are likely to lead to infertility, will terminate a pregnancy or procedures which will remove tissue for transplant purposes.

Your medical Agent must always act in your best interests and wherever possible make the same decisions you would have made if you were capable of making them. They must also avoid conflict of interest situations.

Who should you appoint as your Medical Agent?

You should appoint someone who you trust will make medical decisions in accordance with your wishes. Usually a family member or close friend.

Contact us to discuss your estate planning needs.



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