



Factsheet - Powers of Attorney

What Is A Power Of Attorney?

A power of attorney is a document that appoints a person (called an "attorney"), to act on behalf of another person who grants the power (the "donor") during the donor's lifetime. The purpose of a power of attorney is to provide proof of the attorney's powers. It allows the attorney to sign any document or do any thing which the donor can do legally, subject to any conditions or limitations stated in the document.

Why Make A Power Of Attorney?

A power of attorney enables a donor's affairs to be managed by a person of their choice when they are unable to conduct them personally, such as if they are ill, travelling overseas or become mentally incapacitated.

Powers of attorney may be used for almost any purpose, including authorising the attorney to collect debts, vote at meetings, operate a bank account or to carry out any other function which can be lawfully delegated. An attorney cannot make personal, medical or lifestyle decisions for a donor. A donor may appoint an enduring guardian for this purpose. For further information on enduring guardians, go to the Guardianship and Administration Board website.

Who Can Make A Power Of Attorney?

To make a valid power of attorney the "donor" must be at least 18 years old and must understand the nature and effect of the document creating the power.

What If I Don't Have A Power Of Attorney?

If a person is unable to manage their own legal and financial affairs due to mental incapacity and does not have a valid power of attorney, it may be necessary for the Guardianship and Administration Board to appoint an administrator to make those decisions for the donor.

Types Of Powers Of Attorney

Powers of attorney may be general or specific. The authority conferred by the power of attorney may be unlimited or limited to specific acts, which may relate to the manner in which, or the time and place at which the authority may be exercised. For example, if a donor is going overseas for 12 months, they may wish to make a power of attorney so someone can look after their finances during that period.

Enduring Powers Of Attorney

An enduring power of attorney authorises an attorney to make property and financial decisions for the donor, which continues to have effect even if the donor becomes mentally incapacitated at a later date. There are special rules concerning enduring powers of attorney, both as to their creation and the responsibilities of the attorney. For further information on enduring powers of attorney see the Public Trustee website.

How To Make A Power Of Attorney

To make a power of attorney you can either engage a solicitor or use a trustee company to draw up the document. Trustee companies will require you to nominate the company as the attorney.

HOBART

158 Liverpool St Hobart 7000
GPO Box 1422 Hobart 7001
Telephone 03 6236 3800
Facsimile 03 6236 3811
DX 123

LAUNCESTON

64 Cameron St Launceston 7250
PO Box 810 Launceston 7250
Telephone 03 6336 2050
Facsimile 03 6336 2074
DX 70126

BURNIE

50 Alexander St Burnie 7320
PO Box 550 Burnie 7320
Telephone 03 6434 6444
Facsimile 03 6434 6440
DX 70209

DEVONPORT

8 Griffith St Devonport 7310
PO Box 87 Devonport 7310
Telephone 03 6421 7870
Facsimile 03 6421 7871
DX 70354

Registering A Power Of Attorney

A Power of Attorney must be registered before it becomes effective. The document must be lodged with the Recorder of Titles and a fee of \$90.50 must be paid.

Duration Of A Power Of Attorney

A power of attorney remains in force until:

- it is revoked under the Powers of Attorney Act 2000;
- it is terminated by the death, bankruptcy or insolvency of the donor in accordance with the Powers of Attorney Act 2000; or
- the purpose or time for which it was created has been fulfilled or has passed.

Duties Of An Attorney

An attorney must not exceed the authority given under the power of attorney. If the attorney does exceed their authority, he or she may be liable for any damages suffered by the donor or others. The attorney may, however, do all those acts which are authorised, but only by a particular method, if the power of attorney so indicates.

Where the attorney acts on a reasonable interpretation of the wording of the power of attorney, the donor is bound by his or her acts and the attorney is protected. If, however, the attorney acts on an unreasonable interpretation, he or she will be liable. If there is some doubt as to the wording of the power of attorney, a solicitor should always be consulted.

The attorney must also act towards the donor with the utmost good faith and tell the donor the nature and extent of any interest which may conflict with his or her duty unless the donor already knows.

An attorney may pass on his or her powers and duties to another person but only if authorised to do so by the power of attorney. Again, where there is doubt, advice from a solicitor should be sought.

RELEVANT LEGISLATION

Powers of Attorney Act 2000

CONTACTS

The Public Trustee
Guardianship and Administration Board
Recorder of Titles

RESOURCES

Power of Attorney Forms - there are 4 forms contained in Schedule 1 of the Powers of Attorney Act 2000

The information contained in this factsheet is not legal advice. If you have a legal problem you should talk to a lawyer before making a decision about what to do. The information in this factsheet is written for people resident in, or affected by, the laws of Tasmania, Australia only. All questions concerning this factsheet to info@legalaids.gov.au.