



# Financial and legal considerations - Part 1

## Enduring Power of Attorney

### What you need to know

It is important to know about the following two legal documents:

- ▣ Enduring Power of Attorney (Financial).
- ▣ Enduring Power of Attorney (Personal and Health Care).

Both have a distinct purpose. Each one awards a different 'Power' to a nominated person, to assist with planning, decision making or taking actions when someone is not able to do this for themselves. For example, an [Enduring Power of Attorney \(Financial\)](#) gives 'Power' to a daughter so that she can help with financial decisions such as banking and re-investing funds.

Some people find that being a co-signatory to their family member's bank account and being the Centrelink Nominee is sufficient. However, if your family member became incapable of agreeing to this, you may not be entitled to access the account. Nor would you be able to sell the house if needed.

The same difficulty would arise for those holding a General Power of Attorney, as this assumes your family member is still able to consent to your actions. This is where an Enduring Power of Attorney (Financial) can be beneficial - it is enduring or ongoing.

Enduring Power of Attorney (Personal and Health Care) allows a nominated person to make decisions about medical and dental treatment, as well as decisions about lifestyle and living arrangements. This is often used in end of life situations when a person is no longer able to state their wishes.

It is expected that these wishes would have been communicated to the person nominated as the Enduring Power Of Attorney (Personal and Health Care), as they will then be able to make decisions in the way the person would want.

### How to make an Enduring Power of Attorney

To make an Enduring Power of Attorney, a person must be deemed of sound mind or 'competent'. Sometimes this can be difficult to gauge, particularly in the early stages of dementia. If in doubt, ask your family member's GP for their advice or assessment. Then if the legal document is ever disputed you have support.

Enduring Powers of Attorney can be made by contacting a solicitor, the Public Trustee or a financial advisor. [Do-it-yourself forms](#) are also available from news agencies.

Enduring Powers of Attorney assume that a great deal of trust is held between the person giving and the person receiving the 'Power'. In the event that this trust is misplaced, Enduring Powers of Attorney can be revoked by completing a [Revocation of Enduring Power of Attorney Form](#).

If the person who gave the 'Power' does not have the capacity to do this for themselves, an [application](#) can be made (by any concerned individual) to the Guardianship and Administration Tribunal. A Guardian or Administrator may then be appointed instead.



## It's also important to make a Will

Some people feel uncomfortable about making a Will. The truth is, if you don't make a Will you will die 'intestate' and a standard process will be used for deciding who gets what. For some, this still works in favour of their immediate family however this is not always the case.

Making a Will is not a complex task. It can be as detailed or as general as you like. Some people choose to leave all their belongings to their spouse. Others like to include a chosen charity - this is called 'making a bequest'. The important thing is that your estate is divided as you choose - and that a family member knows where to find your Will.

A Will can be made by contacting a solicitor or the Public Trustee, or by purchasing a Will kit from a newsagency. An information brochure on bequests can be obtained confidentially and obligation-free from your chosen charity.

## How to raise these issues with your family member or friend

It can be difficult talking about legal and financial issues with a family member or friend. However, good planning is early planning - the earlier the better, to give you peace of mind.

Here are some tips that might help:

- ☑ Talk about this as a normal part of planning.
- ☑ Mention that this is a way of making one's wishes clear.
- ☑ Perhaps speak to your family member's GP, who may be prepared to raise the issue at the next visit.
- ☑ Give your family member time to think about what you've said.
- ☑ Suggest having your own Will and Enduring Power of Attorney documents written up at the same time.
- ☑ Take the initiative and make the appointment.

## Further information:

- ☑ [The Office of the Adult Guardian](#) - ph: 1300 653 187.
- ☑ [Public Trustee Office of Queensland](#) - ph: (07) 3213 9288.
- ☑ [The Guardianship and Administration Tribunal](#) - ph: 1300 780 666.
- ☑ [Financial and legal considerations - Part 2: Guardianship and Administration Orders](#) - information sheet.

Contact the [Commonwealth Carer Resource Centre](#) on 1800 242 636\* to request the above information sheet be sent to you - or to find out about other information sheets in this series.

\*Free call except from mobile phones. Mobile calls at mobile rates.

We do our best to keep these links up to date, but the internet changes all the time. If you can no longer access any of the above resources, please go to our [Internet Troubleshooting Guide](#), or email us at [website@carersvic.org.au](mailto:website@carersvic.org.au)