

Three 'Powers' you need to know about

The following three legal documents are important to know about:

- ▣ Enduring Power of Attorney (Financial).
- ▣ Enduring Power of Attorney (Medical).
- ▣ Enduring Power of Guardianship.

Each has a different purpose - they are not interchangeable.

Each one awards a different 'power' to a nominated person to assist with planning, decision making or taking action when the person 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 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 \(Medical\)](#) refers to decisions about medical treatment and is used when a person is no longer able to state their wishes. It is expected that their wishes will have been communicated to the person named as the Enduring Power of Attorney (Medical) who will take these wishes into account when making decisions on their behalf.

[Enduring Power of Guardianship](#) is a relatively new 'power' and refers to making lifestyle decisions on behalf of another, when they are no longer able to do this for themselves. For example, this may involve decisions about living arrangements. It may also involve decisions about medical treatment however this only extends to consent to treatment. Decisions about treatment refusal can only be made with an Enduring Power of Attorney (Medical).

How to make an Enduring Power of Attorney/Guardianship

To make an Enduring Power of Attorney/Guardianship, 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.

Each of the Enduring Powers of Attorney/Guardianship can be made by contacting a solicitor. Alternatively, the free do-it-yourself kit 'Take Control' is available from Office of the Public Advocate (OPA).

Enduring Powers of Attorney/Guardianship assume a great deal of trust is held between the persons giving and receiving the 'powers'. In the event that this trust is misplaced, Enduring Powers of Attorney/Guardianship can be revoked by the person who gave the 'power' (if they are still capable of doing so) or if there is abuse of the power, by the Guardianship List of the Victorian Civil and Administrative Tribunal (VCAT).



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.

Your Will 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 phoning State Trustees who offer discount rates to pensioners and seniors card holders. 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/ Guardianship documents written up at the same time.
- ☑ Take the initiative and make the appointment, or get the free do-it-yourself kit 'Take Control' from OPA.

Further information:

- ☑ [Office of the Public Advocate \(OPA\)](#) - ph: 1300 309 337.
- ☑ [Victorian Civil and Administrative Tribunal - Guardianship List](#) - ph: 1800 133 055.
- ☑ [State Trustees](#) - ph: 03 9667 6444.
- ☑ [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 sheets 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