



Financial and legal considerations - Part 1

Enduring Power of Attorney

What you need to know

It is important that you know about the following legal document:

- ▣ Enduring Power of Attorney

Enduring Power of Attorney awards 'Power' to a nominated person to assist with financial planning, decision making or taking actions when someone is not able to do this for themselves. For example, an Enduring Power of Attorney 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 or 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](#) can be beneficial - it is enduring or ongoing.

Health care decisions (such as medical or dental treatment) cannot be made under an Enduring Power of Attorney. If someone is unable to make these decisions for themselves, an informal approach is often used. Under the Guardianship and Administration Act, a hierarchy exists for determining who can make decisions about medical and dental treatment - for example, a spouse, followed by the eldest child.

Where it is not clear who should take on this informal role, or conflict exists, the appointment of a formal Guardian or Administrator is necessary. This requires an application to be made to the State Administration Tribunal.

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.

An Enduring Power of Attorney can be made by contacting a solicitor or the Public Trustee. Alternatively, a [free do-it-yourself kit](#) and telephone advisory service is available from the Public Advocate on 9278 7301 (or freecall 1800 807 437 for country callers).

Enduring Powers of Attorney assumes 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 can be reviewed and/or revoked by an application to the State Administrative Tribunal.

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 Trust. Do-it-yourself kits are also available from newsagencies. 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 written up at the same time.
- ☒ Take the initiative and make the appointment, or get the do-it-yourself kits.

Further information:

- ☒ [The Public Advocate](#) - ph: 9278 7300 (or freecall 1800 807 437 for country callers).
- ☒ [The Public Trust Office](#) - ph: 1800 642 777.
- ☒ [State Administrative Tribunal](#) - ph: 9219 3111 (or 1300 306 017 for country callers).
- ☒ [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