

Powers of Attorney

A Power of Attorney is the appointment of a person in which the power to make financial and legal decisions is delegated. The donor can limit the extent of the powers or vest with the attorney specific powers. The power of attorney can be of limited time or enduring and would come into effect when the donor was unable to exercise such power. Power of attorney may be granted to one or a number of attorney's and can be exercised individually, by majority or unanimously depending on the terms of the Power of Attorney.

An example of when a power of attorney would have been useful:-

■ *A couple had been married 40 years and were planning to sell their home and move into a retirement village. The wife had a stroke and was placed in a nursing home. The husband was unable to sell the home as he did not have power of attorney over his wife. The husband's only option was to apply for Guardianship through VCAT. This is a time consuming process, and there is no guarantee guardianship will be granted. Once granted however the guardian is required to on an ongoing basis account for all income and expenditure pertaining to his wife and is strictly accountable for expenditures and decisions made.*

Preferably Power of Attorney would have been granted by husband and wife for each other and in favour of one or all of their children.

Whilst this example relates to an elderly couple it is not difficult to think of examples where young people would also have been adversely effected by the lack of a Power of Attorney.

We urge all clients to consider granting power of attorney to a trusted person/s.

Enduring Power of Attorney

(Medical Treatment)

This type of Power of Attorney relates specifically to medical decisions such as medication, surgery and other procedures.

The power takes precedence over a Guardian and should be accompanied with specific directions to the attorney.

For instance:-

■ *In the event that the only means by which the donor is able to continue to live is by life support the donor requests such life support to be withdrawn and empowers the attorney to make such a decision.*

In summary the Enduring Power of Attorney only relates to financial and legal decision making whereas should the donor specifically wish to empower an attorney to make decision in relation to medical treatment they will need to grant Medical Treatment power of attorney.