

Article

WILLS & ESTATES

Powers of Attorney

By Mark Minarelli

A Power of Attorney is a document that gives a person (called the Donee, Attorney or Appointee) the power to act on behalf of the person or company who gives the power (called the Donor, Principal or Appointor).

General and Enduring Powers of Attorney in South Australia are regulated by the Powers of Attorney & Agency Act 1984 (SA).

Giving an Enduring Power of Attorney means giving someone the authority to deal with your financial affairs. This is different from an Advance Care Directive which enables you to say what you want to happen in relation to certain areas of your life or to appoint another person to make decisions for you regarding certain matters regarding your health care, residential and accommodation arrangements and your personal affairs.

In South Australia, any person who is over 18 years and who has "legal capacity" can make a Power of Attorney. No one else can make a Power of Attorney for you. The issue of whether someone under 18 can make a Power of Attorney is the subject of some legal debate. If you are 18 and considering giving a Power of Attorney, it is suggested you make an appointment to discuss this.

There are two different forms of Power of Attorney with some similarities but also some important differences:

1. A General Power of Attorney is an authority given to a Donee to deal with a Donor's financial affairs; for example, it allows a Donee to buy and sell things or to operate a Donor's bank account.
2. An Enduring Power of Attorney is a Power of Attorney that operates even though the Donor is legally incapacitated. For example, he/she is unable to communicate after a stroke or becomes senile and loses legal capacity. In these circumstances, a General Power of Attorney ceases to operate, and actions taken after that time would be invalid.

Both a General Power of Attorney and Enduring Power of Attorney give the Attorney authority to deal with a person's financial affairs. However, while a General Power of Attorney is cancelled automatically if a person becomes legally incapacitated, an Enduring Power of Attorney will continue to be effective.

Giving either type of Power of Attorney does not mean you lose control of your affairs. On the contrary, a person can still manage his or her affairs if he/she so chooses, while the Donee can only do the things the Power of

Attorney document allows. However, it is dangerous to give Power of Attorney to someone who is not absolutely trustworthy.

The Power of Attorney document provides proof of the Donee's power to act on the Donor's behalf and must be shown whenever the Donee is doing something on behalf of the Donor. A Donor acting as a trustee or personal representative for another person cannot use a Power of Attorney to pass on these functions to someone else.

A Power of Attorney ends when a Donor dies. At this point, a Will takes over.



MORE INFO

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