

THE IMPORTANCE OF HAVING A WILL & POWERS OF ATTORNEY

We recommend to all our clients that they should have a will and both Financial & Medical Enduring Powers of Attorney.

What is a Power of Attorney ?

A Power of Attorney is an instrument in writing by which authority, either specific or general, is delegated to one or more persons by the donor.

When an adult becomes unable to make reasonable judgements because of a disability, the Guardianship List of the Victorian Civil and Administrative Tribunal has powers to select and appoint guardians and administrators if there is a need to do so. Generally speaking, the existence of a Power of Attorney means such a need will not exist, and the cost and inconvenience of such a hearing and the ongoing involvement of periodic reviews and fees can be avoided.

General Power of Attorney

A General Power of Attorney is used by a person to authorise another person to make decisions in relation to your financial and legal affairs. The scope of the authority and the length of time it will be in place depends entirely on what is included in the terms of the document. Unless a specific date is provided for ceasing of the authority, the authority will last until you choose to withdraw it or your Attorney chooses to disclaim it. It is automatically terminated when you die, become bankrupt or become incapable of making reasonable judgement due to some sort of disability.

Enduring Powers of Attorney

Both the Medical and Financial Powers of Attorney forms should ONLY be used if you wish your attorney(s) to act for you, or continue to act for you, when you have lost the capacity to make decisions for yourself

Under the new legislation, every Enduring Power of Attorney (Financial) will need to be accompanied with a certificate, signed by two adult witnesses, to the effect that the person creating the Enduring Power of Attorney signed the document freely and voluntarily in the presence of both witnesses. One witness must be a qualified person to witness such documents.

We advise that your Attorney(s) must sign and date a statement accepting their appointment under your new Enduring Powers of Attorney (Financial). This will mean that they are aware of their responsibilities, which include an undertaking from them that they will do the following:

- Act with diligence to protect your interests;
- Avoid any conflict of interests; and
- exercise their powers conferred under the legislation

Enduring Power of Attorney (Financial)

The Enduring Power of Attorney (Financial) is the same as a general Power of Attorney, however it continues to have force even if you become incapable of making those decisions yourself by reason of a disability. In other words, it continues to operate even after you become unable to make reasonable judgements.

THE IMPORTANCE OF HAVING A WILL & POWERS OF ATTORNEY continued

We advise that where you have large capital assets, such as property or shares, you should leave clear instructions for your attorney(s) as to how to deal with or distribute or dispose of these assets.

You can nominate when your attorney(s) power is to begin and whether you want your attorney to assume power:-

- Immediately; or
- On a specified date; or
- On a specified occasion.

We advise that if you intend to appoint a friend or family member as your Attorney, you should discuss this with them to ensure that they have the ability and time available to properly act on your behalf.

Enduring Power of Attorney (Medical)

This is a written instrument by which one person appoints another to be their medical attorney. It gives the attorney the authority to make decisions about medical treatment on your behalf if you become unable to make those decisions yourself by reason of a disability.

The document only takes effect if you become incompetent. The document gives the agent full power to make medical decisions that the appointor has a right to make while competent to do so, including the right to refuse any medical treatment whatsoever, except for palliative care which includes the provision of reasonable medical procedures for the relief of pain, suffering and discomfort and the reasonable provision of food and water.

The giving of a medical treatment enduring power of attorney does not empower the agent to arrange euthanasia for the donor.

We note for all Powers of Attorney an agent who is a beneficiary under the Will of a patient can forfeit all rights of inheritance if he or she acts deceptively or fraudulently.

Power of Attorney by a Company

If you are a director of a company and will be overseas for an extended period of time, you must have this document that will allow another person(s) to act on your behalf with specific instructions so that the business can operate properly in your absence.

For further details please contact Alana Gorton in Lilydale on 9739 7377 and Frank Lamari in Carlton on 9344 1700.