

# **Enduring Power of Attorney (financial) – FAQs**

## **How many people can be appointed as attorney?**

An attorney must be over 18 years of age and have the capacity to carry out the role of attorney. Any person can be appointed, as long as they agree to take on the role. They should be someone that is trusted by the person making the power of attorney to manage their affairs, and look after their best interests. There is the choice to appoint more than one attorney, when making this choice consideration should be given to ensuring the document is workable. Their power can be exercised:

jointly (meaning the attorneys must always act together) or

jointly and severally (meaning the attorneys can act together or can act separately)

An alternative attorney can also be appointed but they can only make decisions when the first attorney is unable to. For instance, an alternative attorney can act if the first attorney loses capacity, dies or they are absent for a period of time, such as when they are travelling overseas.

The attorney/s must accept the appointment in writing.

## **What is the difference between jointly, and, jointly and severally?**

Jointly means the attorneys must all agree to any decisions and every document must be signed by all attorneys.

Jointly and severally, means that any of the attorneys can make a decision and sign documents together or without the others.

## **Can an attorney charge a fee?**

An attorney does not need to be paid unless it is a professional person or organisation. Attorneys are able to claim from the donor's estate any out of pocket expense they have incurred in carrying out their role. If the donor wishes to pay their attorney, they should document this. If the attorney wishes to charge a fee and the donor is no longer competent and left no direction, the attorney should seek advice from VCAT.

## **When does the power begin?**

The donor can nominate when they wish for their attorney's power to begin. There is a section on the form that asks whether the power of attorney will begin:

immediately

on a specified date

on a specified occasion.

If one of these options is not selected the power begins immediately.

If the choice is made to start it immediately, the attorney can act even if the donor still has capacity.

The donor can also continue to make decisions while they have capacity, and any decisions made by the attorney must be in accordance with the donor's directions.

### **Can someone appointed as an attorney under an Enduring Power of Attorney (financial) also make decisions about medical treatment?**

An attorney can make any financial and legal decisions that can be made by donor. The donor can place limits or conditions upon how they want their attorney/s to carry out their responsibilities. However, an enduring power of attorney (financial) cannot be used to make medical treatment or lifestyle decisions.

### **I have an Enduring Power of Attorney made before 2004 on a form that just says Enduring Power of Attorney. What sort of power is this? Is it still valid?**

This document is an Enduring Power of Attorney (financial) and has the same authority as an existing EPA financial. As long as it was completed in accordance with the law at the time it was made, it is still valid.

### **Who can witness an Enduring Power of Attorney (Financial)?**

Two witnesses are required and one must be someone authorised to witness statutory declarations. (See [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)) or Take Control- a kit for making powers of attorney for detailed list)

Only one can be a relative. The attorney cannot be a witness.

### **Does the alternative attorney's have to sign the statement of acceptance form?**

Yes, everyone appointed as attorney or alternative attorney needs to sign a statement of acceptance. It is not possible for the attorney to rely upon the document until they sign the acceptance.

### **What should be done with the Enduring Power of Attorney (financial) form when it is completed?**

Enduring powers of attorney are not registered in Victoria. The donor should keep the original in a safe place along with other important personal documents and tell family or close friends where these are kept. The donor should give a certified copy to their attorney/s and to anyone else who may need to be involved, such as their solicitor, accountant or stockbroker. It is also a good idea to give a copy of the form to their financial institutions/representatives for their records. The donor could also carry a card in their purse or wallet that has the details of their attorney.

## **Can an Enduring Power of Attorney (financial) be changed?**

There are different reasons why the donor might want to change or cancel a power of attorney. These may include:

- the donor's relationship with the attorney has changed.
- the donor now know someone who would be more suitable for the role.
- the donor or the attorney may have moved.
- the donor's financial circumstances have changed so much that the attorney is no longer suited to make decisions on their behalf, such as the donor's financial situation has become more complex, and the attorney is no longer appropriate for the role.
- the donor's wishes have changed and they want to change their attorney's instructions.

Depending on what the donor's new wishes are, this could mean appointing a different person or the same person again with different responsibilities

If the donor chooses to change their attorney, they have the option to revoke all previous enduring powers when they complete a new form. The donor must have the capacity to understand the nature and effect of cancelling the form.

The donor should tell the previous attorney that the power has been revoked. It is also a good idea to tell any organisations or people who have a copy of the forms.

The donor can also revoke a power of attorney by:

- telling the attorney that their power is withdrawn
- destroying the document and any copies
- putting it in writing or filling in a revocation form.

## **Can an attorney delegate their power to anyone else?**

No, only those people appointed by the donor are able to exercise the power. If an attorney is no longer able to carry out the role only an alternative attorney already appointed by the donor is able to step in.

## **Does the attorney have to tell other family members about the decisions they are making?**

The law does not require that the attorney tell other family members about the decisions they are making. However, the law does require that the attorney:

- act in the donor's best interests
- not exercise powers beyond those set out in the form of appointment
- does not have a conflict of interest with the interests with the donor
- recognise the donor's right to participate in decisions as much as possible

respect the donor's worth, dignity and human rights

recognise the donor as a valued member of the community and encourage their self-reliance and participation in the community

take into account the donor's supportive relationships, values, culture and language

ensure the decisions are appropriate to the donor's characteristics, needs and wishes

ensure confidentiality.

These expectations may mean that at times the attorney will need to consult with family members and share information about the decisions they are making.

### **Does the attorney need to keep accounts?**

The attorney must keep a record of income and expenditure and an up-to-date list of assets and liabilities. The attorney must also keep receipts, payment slips and all necessary documents for tax purposes.

Where there is concern that the attorney is not acting in the best interests of the donor, the Victorian Civil and Administrative Tribunal (VCAT) may require an audit or lodgement of these accounts. The Office of the Public Advocate may require the attorney to provide information including accounts if it is investigating any matter on behalf of VCAT.

### **Can an Enduring Power of Attorney made in another state be used in Victoria?**

Most enduring powers of attorney (financial) made in other states are recognised in Victoria. Please call the OPAAdvice Service on 1300 309 337 or email [publicadvocate@justice.vic.gov.au](mailto:publicadvocate@justice.vic.gov.au) for further clarification.

### **Can an Enduring Power of Attorney - financial made in Victoria be used in overseas?**

The Victorian enduring power of attorney (financial) (EPA - financial) may be able to be used in another country. The person wanting to use it (the attorney) will need to check its validity with the country in which they wish to use the EPA - financial. The attorney should contact the country's consulate or embassy for further details.

### **Can a person living overseas make an Enduring Power of Attorney (financial) for use in Victoria? Who can witness the document?**

A person living overseas can make an Enduring Power of Attorney (financial) (EPA - financial) so long as that person (the donor) has financial or legal matters in Victoria and is competent.

When making an EPA - financial overseas it is important to ensure that the people who are witnessing it can be found in the future so that, if required, they can give evidence that it was actually signed by the donor of the power.

Under the Evidence Act it is required that it be witnessed by:

an Australian consular officer acting in that country; or

an ambassador, envoy, Minister, chargé d'affaires, secretary of embassy or legation, consul-general, consul, vice-consul, acting consul, pro-consul, or consular agent of any part of Her Majesty's dominions who is acting in that role in that country, or

any person who has the power in that country to take an oath in that country; or

a public notary (or notary public as known in some countries).