

## POWER OF ATTORNEY

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A power of attorney is a formal document prepared and signed by one person ('the principal') to give another person ('the attorney') authority to make certain personal and/or financial decisions for them. Depending on the principal's needs, they may choose to appoint either a general or enduring power of attorney.

A power of attorney can only be signed by a principal who has capacity to understand the nature and effect of the document at the time they are signing it.

### Types of powers of attorney

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- Under a **general power of attorney** an attorney can make *financial* decisions (not personal decisions) on behalf of an adult with a disability for either a *fixed period* (if the principal goes on holidays and needs assistance managing financial affairs while away) or a *continuing period*. Under a general power of attorney the principal retains their own decision-making authority, but is supported to make decisions by their attorney.
- Under an **enduring power of attorney** an attorney makes *financial and/or personal* decisions and continues to operate (endures) when the principal loses their ability to make a decision. For this type of power of attorney, the principal specifies how many attorneys they want, the way in which the attorney/s can make a decision (e.g. unanimously or by majority), the types of decisions they can make (e.g. financial and/or personal), when the power to make financial decisions comes into effect (e.g. when a principal has lost capacity), and the limits on their power (e.g. they might be restricted from selling property or investing in certain companies).

### Choosing an attorney

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- An attorney must be at least 18 years old and must NOT be the principal's paid carer, health provider or service provider, or bankrupt (if they have the power to make financial decisions).
- The attorney must be someone who the principal trusts to protect their interests. This might be a spouse who understands the principal's wishes and health needs or a close friend who is capable and responsible in the management of finances. Alternatively, the [Public Guardian](#) can be appointed as attorney for personal decisions and the [Public Trustee](#) can be appointed as attorney for financial decisions.
- An attorney must act honestly and with reasonable diligence, follow the **general principles and health care principles** in [Schedule 1 of the Powers of Attorney Act 1998](#), and make competent [financial decisions](#). If an attorney fails to abide by these duties, they may be removed and required to pay compensation.

### Revoking a power of attorney

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- A **general power of attorney** can be revoked if the principal loses capacity or dies (in which case it is revoked automatically), if a principal chooses to revoke it (in which case they must notify the attorney/s) or if its terms specify that it should be revoked for a particular reason (e.g. it may only be in effect for a defined period of time). It will also be revoked if an attorney withdraws, loses capacity, dies or becomes bankrupt.
- An **enduring power of attorney** may be changed or revoked by the principal so long as they have capacity to do so, or it may be revoked according to its terms (e.g. it may only be in effect for a defined period of time). An enduring power of attorney will also be revoked if **the principal** gets married (except to their attorney), gets divorced (if their spouse was their attorney), dies, or executes a later enduring document that is inconsistent with the existing one OR if **the attorney** withdraws, becomes the principal's paid carer or health care provider, loses capacity, becomes bankrupt or dies.

To find out more about setting up powers of attorney, call Disability Law Queensland on 3622 1250.