

ENDURING POWER OF ATTORNEY - INFORMATION SHEET FOR ATTORNEYS

BELL DIXON BUTLER
L A W Y E R S

Your Responsibilities—‘Personal Matters’

ATTORNEY ACROSTIC

A ct together with joint attorneys
T alk to the adult
T ake steps necessary to care
O bserve the principal to know their needs
R ecord all transactions
N ever over—step power
E ncourage self-reliance
Y ou must be a person of trust

REVOCAION OF POWER

- ◆ If the adult revokes their Enduring Power of Attorney (in other words—they no longer wish to appoint you as their attorney) you are not permitted to act in your capacity as their attorney.
- ◆ If you continue to act, once the document has been revoked, you can be held liable and penalized by the Guardian and Administration Tribunal.
- As long as the adult has ‘capacity’ they can validly revoke the document.

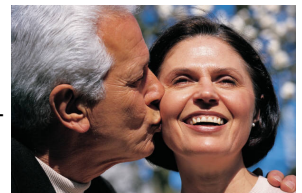
When does this power begin?

The power to make decisions about Personal Matters, *only* begins when the person loses capacity and *not* before. A medical certificate must be obtained before any decisions of this kind can be made.

What are ‘Personal Matters’?

It is a matter about the person’s health care or welfare, for example—

- Where the person lives and with whom, where they work, education;
- Applying for licenses, or permits;
- Day to day issues, like diet and dress;
- Consent to forensic examination of the person;
- The person’s health care;
- A legal matter, not regarding the person’s financial matters or property.



ATTORNEY’S SHOULD BE
COMPLETELY TRANSPARENT
AND TRUSTWORTHY

Personal Matters do NOT include (and the Attorney therefore cannot make decisions about) —

- Making / revoking a will, Enduring Power of Attorney or Advance Health Directive;
- Voting, exercising right to adopt a child, or enter into marriage.
- Special Health Care decisions, like removal of tissue and sterilization.

What responsibilities do you have?

- An attorney must act honestly and with reasonable diligence to protect the persons interests.

NB—A court or the Guardian and Administration Tribunal can order the Attorney to compensate the person for any loss caused by the attorney.

- An attorney must keep private information confidential and not disclose it recklessly to anyone.
- Ensure the adult is not deprived of necessary health care because they have impaired capacity;
- Ensure their health care is adequate to maintain or promote the adult’s health care and in the best interest’s of the adult.

Your Responsibilities—Financial Matters



ALL DECISIONS SHOULD
HAVE THE BEST INTERESTS
OF THE ADULT IN MIND

“THE GUARDIAN
AND
ADMINISTRATION
TRIBUNAL IS THE
WATCHDOG FOR
ATTORNEYS.
ANYONE) CAN MAKE
A COMPLAINT TO THE
TRIBUNAL AND THEY
WILL ALWAYS
INVESTIGATE”



TO MAKE APPLICATION TO THE GAAT SEE
[WWW.JUSTICE.QLD.GOV.AU/GUARDIAN/
GAAT.HTM](http://WWW.JUSTICE.QLD.GOV.AU/GUARDIAN/GAAT.HTM)

When does this power begin?

Unlike personal health matters, the power for financial matters begins when the document says it begins. This can either be immediately, or when they lose capacity, on a certain date or occasion or at another time nominated by the adult.

What kind of decisions does this include?

You will have complete authority over the adult's financial affairs, such as selling his or her house or transacting on his/ her bank account. You have the authority to do anything with the adult's property that he / she could have done themselves. You can sign on behalf of the adult.

This authority continues even when the adult has lost capacity.

What responsibilities do you have?

- You must exercise your power honestly and with reasonable diligent to protect the adult's interests.
- You must preserve confidentiality.
- You can invest, but only in authorised investments.
- You must keep and preserve *accurate* records and accounts of **ALL** dealings and transactions made for the adult.
- You must keep all property of the adult *separate* from your own property.
- You may need to provide for needs of dependant but must not be more than what is reasonable having regard to the adult's financial circumstances.

What is prohibited?

If there is a transaction between the adult and you or your relation or your business associate or close friend, there will be a 'presumption that the adult was induced to enter into the transaction by your undue influence.

You cannot enter into a transaction which has a conflict of interests between your duty and the duty of the adult (in relation to interests of the attorney, or relation, business associate or close friend, or other duty) unless the adult has specifically authorized the transaction.

Can you give gifts?

You can only give gifts (unless there is contrary intention in the EPA) -

- To a relation or close friend of the principal,
- Of a seasonal nature / because of special event (eg. birth / marriage);
- It must be of the nature that the adult made when they had capacity that they might reasonably be expected to make;
- The value is not more than what is reasonable having regard to all circumstances and in particular the adult's financial circumstances.

Can I be penalised for doing the wrong thing?

Yes. Anyone (neighbour, doctor, relative, health care provider) can make a complaint to the Guardian and Administration Tribunal. This application is free. The tribunal will investigate all claims and can impose penalties. They also have the power to recover any loss sustained, or remove you as attorney.