

What is a Power of Attorney (POA)?

A Power of Attorney is a legal document that grants someone, referred to as your “attorney”, the authority to make decisions on your behalf.

What powers can I grant to my attorney?

The powers can be broad or specific, covering financial, legal and property matters. You decide what powers you wish to grant.

What types of POA are available?

There are three main types: General Power of Attorney (GPA), Enduring Power of Attorney (EPA), and Specific Power of Attorney (SPA). A GPA is for a specific period, while EPA remains valid indefinitely if you become mentally incapacitated. An SPA is for a specific period or circumstance.

Who should be my attorney?

You should choose someone trustworthy, reliable and willing to act in your best interests. We encourage you to discuss your expectations with them and ensure they understand and will act according to your wishes. You can have more than one attorney who can act jointly (making decisions together), or severally (making decisions alone).

How do I create a Power of Attorney?

Choose your “attorney” and speak to them about your wishes. Either using a prescribed form, or in conjunction with a legal professional, draft your document outlining the powers you wish it to cover. Execute the document, signing it in the presence of an eligible witness such as a lawyer, registered professional, public servant with more than five years’ service, lawyer, Justice of the Peace or Minister of Religion. You can also choose to register your Power of Attorney. Registering it with the SA Land Services can provide additional security and evidence of its existence should there be a dispute in the future.

Do I need a lawyer to prepare a Power of Attorney?

You do not need to hire a lawyer to prepare your Power of Attorney, but the document will require your signature along with that of an eligible witness. We recommend you consult a lawyer to ensure your document is legally binding and that your wishes have been properly represented. The lawyer can also act as the independent witness to the document. A lawyer can assess your capacity to enter into a Power of Attorney and ensure it is properly witnessed. They can also certify copies of the POA to be provided to designated parties such as financial institutions or government departments.

What happens if I don’t have a POA?

If you become incapacitated the South Australian Civil & Administrative Tribunal may appoint a guardian or administrator to make decisions on your behalf.

DEFINITIONS

The following are some common words used in relation to a Power of Attorney (POA):

Donor: The person granting the power (you) to someone else (the attorney).

Attorney: The person you’re granting power to act on your behalf. This does not necessarily need to be a legal professional.

Scope of Authority: This part of the POA outlines the powers granted, whether general, enduring or specific.

Execution Requirements: These are the requirements to make your POA legally valid. Your POA must be in writing, signed by you (the donor) and witnessed by an authorised person.

Advanced Care Directive - a written legal declaration of your wishes in terms of health care, end of life, living arrangements and personal matters while you are still alive.

Substitute Decision-Maker - a person who you appoint to make decisions on your behalf in an Advanced Care Directive if you are no longer in a position to make those decisions, or communicate those decisions.

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Elise Thomson, Principal Lawyer

The three types

The following outlines the three Power of Attorney types:

General Power of Attorney (GPA): This document grants broad powers to your attorney for a specific period or until you become mentally incapacitated.

Enduring Power of Attorney (EPA): This document remains valid even if you become mentally incapacitated, ensuring continuity of decision-making.

Specific Power of Attorney (SPA): This document limits the attorney's powers to specific tasks or transactions, such as selling property, or managing business affairs.

The triggers

A POA may be effective immediately upon execution or upon the occurrence of a specified event, such as incapacity. Mental incapacity must be confirmed by a medical or legal professional. Some other triggers might include when the donor is out of the country or specifically unable to be reached for an extended period of time.

Who can witness a POA?

This must be someone who is independent of you. They cannot be a beneficiary in your will, nor your appointed attorney named in the Power of Attorney. They can be an eligible witness such as a lawyer, registered professional, public servant with more than five years' service, lawyer, Justice of the Peace or Minister of Religion.

How long is a POA valid?

It remains valid until revoked, but it's advisable to review and update it regularly, especially if there are changes in circumstances.

What protection is there against misuse of a POA?

Witnesses and legal requirements ensure the validity of a POA and your attorney has a fiduciary duty to act in your best interests. There are legal consequences for misuse of a POA.

What happens if the chosen attorney is unable or unwilling to act?

If this occurs you should appoint a replacement or seek legal advice on the appropriate course of action.

Are there limitations on what my attorney can do on my behalf?

The limitations are defined by your POA document. Ensure it clearly outlines the powers you grant and any restrictions you wish to impose on those powers.

What happens if I move interstate or overseas?

Generally, a Power of Attorney is recognised in other states of Australia. It's advisable to check and, if necessary, make provisions for interstate matters, or to update your POA if you move. With so many different laws in place overseas you are advised to seek legal advice before travelling or moving overseas.

Do I need an Advance Care Directive if I have Power of Attorney?

Yes. A Power of Attorney and Advance Care Directive serve different purposes and address distinct aspects of decision-making. A POA primarily deals with financial and legal matters while an ACD focuses on healthcare and personal decisions. Your Substitute Decision Maker in your ACD may not necessarily be your chosen attorney in a POA.

Can a POA be used for managing my business affairs?

Yes. A Power of Attorney can be used to manage business affairs, but it's essential to ensure the document specifies the authority granted for business matters, and keeps them separate from personal matters.

Can a POA be used for healthcare decisions?

No. For healthcare decisions, you need an Advance Care Directive or a Medical Power of Attorney, which are separate documents.

Can I revoke or change my Power of Attorney?

Yes. You can amend or revoke it at any time provided you have the mental capacity to do so. Notify your attorney and relevant parties. We recommend you also seek legal advice before making changes.

NEED MORE HELP?

At **Thomson & Associates** we offer a caring and understanding approach to our Will and Estate services, and can assist you with the preparation of a legal Power of Attorney and to answer any other questions you may have.

You can book an appointment directly through:

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