

Form 2
Queensland
Powers of Attorney Act 1998
(Section 44(1))

ENDURING POWER OF ATTORNEY

Short Form

Use this document if you wish to appoint ***the same*** attorney/s for both financial matters and personal matters (including health care).

You may also use it to appoint an attorney (or attorneys) for financial matters **only** or for personal matters (including health care) **only**.

This document can be used by non-English-speakers if a qualified interpreter/translator reads it to the person in the person's own language and a signed Statement of Interpreter/Translator is attached.

ver: 2-1/06/02

PART I:

For the person appointing an attorney

By completing this document, you can give a person of your choice the power to make decisions on your behalf about:

■ *personal/health matters*

and/or

■ *financial matters.*

These pages explain, in question-and-answer form, what you need to know to complete the document properly.

Because you are the person principally concerned, you are referred to as ‘the principal’.

What is enduring power of attorney?

Power of attorney is the legal power to make decisions on someone else’s behalf. ‘Enduring’ simply means that the power continues even if the person giving it loses the capacity to make decisions.

Why give someone enduring power of attorney?

There are some circumstances in which you may be unable to make decisions about matters that concern you. For example, you may be overseas, or you may be too ill.

If you give someone a *general* power of attorney, for instance to sign documents for you in your absence, that power will come to an immediate end if for some reason you lose your capacity to make decisions. This could be very awkward if your attorney is in the process of conducting business affairs for you.

Giving someone *enduring* power means that he/she is able to continue to act for you if you lose capacity to act for yourself.

What types of decisions?

You may give your attorney power to make decisions about:

■ *personal/health matters;*

■ *financial matters.*

Examples of personal/health matters are decisions about where and with whom you live, whether you work or undertake education or training, whether you apply for a licence or permit, day-to-day issues like diet and dress, and whether to consent, refuse to consent or withdraw consent to particular types of health care for you (such as an operation).

An example of a financial matter is deciding how your income should be invested.

Note:

You cannot give your attorney power to make decisions about:

- *special personal matters such as a decision about your will, appointing someone as your attorney, voting at elections, or consenting to adoption or marriage;*
- *special health matters, such as donation of body tissue, sterilisation, pregnancy termination, research or experimental health care, or certain psychiatric or other health care as specified in the regulations.*

Your attorney can consent to the withdrawing or withholding of life-sustaining medical treatment if, for instance, you become terminally ill or go into a state of permanent or persistent unconsciousness. You can give instructions about this type of decision if you make an Advance Health Directive.

These instructions will override any decision of your attorney.

Can I limit my attorney's powers?

Yes, you can specify decisions that you do not want your attorney to make. You can also include particular instructions about what you would like your attorney to do. Your attorney must act in accordance with your instructions.

There are also limits set by legislation. For example, the Trust Act names the types of investment that a trustee (in this case your attorney) is authorised to make. If you lose the capacity to make financial decisions, the only investments your attorney can make on your behalf are those that are named in the Act, unless the consent of the Court is obtained.

Can I appoint more than one attorney?

Yes. Several options are provided for in the Act. For example, you may appoint two or more attorneys to act jointly (together), or as a majority (simple, two-thirds, etc.), or severally (any one of your attorneys can sign), or successively (power is given to a particular attorney when the power given to another attorney ends, or when the other attorney is not available to make decisions).

If you choose two or more attorneys to make decisions jointly, they have equal authority and can act only with the agreement of them all. If one attorney dies, the remaining attorneys exercise the power.

It is important that your intentions be expressed clearly. There is space in this document to appoint up to three attorneys.

Whom should I appoint as my attorney?

You should appoint someone you trust. Many people choose their spouse or an adult child, but you may prefer to appoint another family member or friend with expertise in the area, or the Adult Guardian for personal/health matters, or the Public Trustee or a trustee company for all matters. (The Adult Guardian is appointed by

statute to look after the rights and interests of people with disabilities and, in certain situations, to give health-care consent.)

Your attorney must be over eighteen years of age, must not be your current paid carer or health-care provider (such as your nurse or your doctor), and (for financial matters) must not be bankrupt or insolvent.

Note: *'Paid carer' does not mean someone receiving a carer's pension or similar benefit, so you are free to choose someone who is receiving such a benefit for looking after you.*

Should I pay my attorney?

You do not need to pay your attorney for the power to be effective. Normally payment is not made unless a trust company is acting as attorney.

When does the attorney's power begin?

With personal/health matters, your attorney's power to make decisions does not begin until (if ever) you are incapable of understanding the nature and foreseeing the effects of a decision, and of communicating that decision.

With financial matters, you may nominate when your attorney's power is to begin. If you do not name a date or an occasion, it begins immediately. On the other hand, if you lose the capacity to make such decisions before the date or occasion you name, the power begins at that point.

Note: *Even if you give your attorney power immediately, you may also continue to make decisions yourself while you are able to do so.*

How much control will my attorney have?

Once the power to make a decision begins, your attorney will have full control over that decision unless you have explicitly limited that power in this document.

Note: *It is better not to place too many restrictions on your attorney's power, as this may make it difficult for your attorney to make decisions on your behalf.*

How long does the power continue?

For personal/health matters, it continues so long as you are incapable of understanding the nature and foreseeing the effects of a decision, and of communicating that decision.

With financial matters, it continues until it is revoked.

How can I be sure that my attorney will act in my interests?

While (if ever) you are unable to oversee your attorney's decisions, the Adult Guardian and the Court have the power to protect your interests. Your attorney may be required to produce a summary of receipts and expenditure or more detailed accounts, and these may be audited. An attorney who does not adequately protect your interests can be removed or changed.

Can I change or revoke this power of attorney?

Yes, you may change or revoke it at any time, so long as you are capable of understanding what you are doing. In other words, so long as you have the capacity to *make* an enduring power of attorney, you also have the capacity to *change or revoke* it.

If you do change or revoke this power, you must inform your attorney.

Is there anything else that will end this power?

Yes, several other circumstances will bring this enduring power of attorney to an end:

- **If you get married.** If you marry, the power of attorney is revoked unless your new spouse is already your attorney. (If your new spouse is your attorney, the only power that is revoked is the power of any other attorney you may have.)
- **If you get divorced.** If you divorce, the power of attorney is revoked to the extent that it was given to your former spouse.
- **If you die.** If you die, the enduring power of attorney is revoked in its entirety.
- **If you make an inconsistent document.** This power is revoked to the extent of any inconsistency with any later document you complete, such as an Advance Health Directive or another enduring power of attorney.
- **If your attorney withdraws.** Your attorney may withdraw by giving you a signed notice or by getting the Court's leave to withdraw.
- **If your attorney becomes your paid carer or health-care provider.** If this happens, your attorney's power is revoked.
- **If your attorney becomes incapable.** Your attorney's power is revoked if he/she becomes incapable of understanding the nature and foreseeing the effects of a decision, and of communicating that decision.
- **If your attorney becomes bankrupt or insolvent.**
- **If your attorney dies.**

Who is involved in completing this document?

At least three people:

- **You, as principal,** complete the section of Part 1 called *Appointing an Attorney* (Clauses 1 to 8).

If you have a physical disability which prevents you from signing, you may instruct another person to sign for you, but you must give the instruction in front of the witness, and the signing must be done in your presence. This person must be eighteen years old or more, and must not be the witness or your attorney. He/she must complete the statement beside the place for his/her signature.

- **The witness** must sign Part 1 after clause 8 and must also complete the section of Part 2 called *The Witness's Certificate* (Clause 9).

The witness must be a justice of the peace, commissioner for declarations, lawyer or notary public. The witness must not also sign for you and must not be your attorney, a relation of yours or of the person/s you appoint as attorney. If the power includes dealing with health matters, the witness must not be your current paid carer or health-care provider.

The witness must state that you appeared to understand what you were doing. If the witness is not sure that you understand the nature and effect of the appointment, he/she should refuse to sign the document.

- **The attorney** must complete the section in Part 3 called *Attorney's Acceptance* (Clauses 10–12).

Your attorney must be at least eighteen years old and must not be your current paid carer or health-care provider.

Where can I go for advice?

The Adult Guardian, the Public Trustee or a solicitor can advise you about the enduring power of attorney and how to complete this document.

If you are completing an enduring power of attorney for personal/health matters, it is strongly recommended that you notify your doctor.

What happens to this document when it is completed?

You should leave the original in a safe place, such as with your bank, but it's important to keep a copy to refer to.

You should also give a copy to anyone else who may need to be involved, such as:

- your attorney;
- your doctor;
- your solicitor;
- your accountant;
- your stockbroker.

You may also wish to carry a card in your purse or wallet, stating that you have made an enduring power of attorney and giving details of that appointment.

If your attorney will be making decisions about buying or selling land, this document must be registered with the Land Titles Office.

How do I register this document?

It is not necessary to do so unless it is likely to be used in transactions related to buying or selling land. If you register the document, you must take the original to the Land Titles Office and pay the fee.

If the power is revoked, you must deregister the document by lodging a revocation form in the Land Titles Office.

APPOINTING AN ATTORNEY

As principal, you complete this form by writing on the lines and ticking the appropriate boxes.

1. I, _____ ,
[Print your full name here]
of _____ ,
[Print your address here]

appoint _____ ,
[Print the full name of your first attorney here]
of _____
[Print your first attorney's address here]
_____ Ph: _____ ,

and _____ ,
[Print the full name of your second attorney if you wish to appoint more than one
OR rule a line through this and the next 5 lines if you wish to appoint only one.]
of _____
[Print here the address of your second attorney]
_____ Ph: _____

and _____ ,
[Print here the full name of your third attorney if you wish to appoint three
OR rule a line through this line and the next 2 lines if you wish to appoint only two attorneys]
of _____
[Print here the address of your third attorney]
_____ Ph: _____

as my attorney/s, under this enduring power of attorney, for *(Tick **one** box **only**):*

- ☐ financial matters
- ☐ personal/health matters
- ☐ financial *and* personal/health matters.

2. Do you want to set any terms for the power given in clause 1 (i.e. give specific information about your wishes)?

- ☐ No ➡ Go to 4.
- ☐ Yes.

3. **Write these terms here:** (For example: “My attorney/s is not authorised to invest in ABC Pty Ltd shares” or “If I need nursing-home care, I want my attorney to try XYZ Nursing Home first”.)

Note: These terms may limit your attorney in making decisions about financial matters.

4. **Have you given your attorney/s power to make decisions about financial matters?**

- ☐ No ➡ Go to 6.
☐ Yes.

5. **When do you want the power of your attorney/s for financial matters to begin?**
(Tick one box only)

- ☐ Immediately.
☐ On this date: _____
[Write here the date when you want the power of your attorney/s to begin]
☐ On this occasion: _____
[Write here the occasion when you want the power of your attorney/s to begin]

(If you do not complete this clause the power begins immediately.)

6. **Are you appointing more than one attorney?**

- ☐ No ➡ Go to 8.
☐ Yes.

7. **How do you prefer that they make their decisions?** (Tick one box only)

- ☐ Severally (any one of them may decide)
☐ Jointly (unanimously)
☐ As a majority (if you are appointing more than three attorneys, please specify, e.g. ‘Simple majority’, ‘Two-thirds majority’)

- _____
☐ Other*

***Note:** The Powers of Attorney Act 1998 allows you to appoint successive attorney/s for a matter so that the power is given to a particular attorney only when power to a previous attorney ends. You can nominate the circumstances that a power will end (e.g. if x is absent from the jurisdiction y may act).

8. STATEMENT OF UNDERSTANDING

- (1) I fully understand that, by signing this document, I give power to the attorney/s mentioned in clause 1 to make decisions on my behalf about matters mentioned in the same clause.
- (2) I understand that I may specify or limit the attorney/s power, and instruct the attorney/s about the exercise of the power.
- (3) I understand that this gives the attorney/s power to do, for me, anything I could lawfully do myself in relation to these matters (except for special personal/health matters), subject to any terms mentioned in this form.
- (4) I understand that:
 - (a) the power of attorney for financial matters (if applicable) begins at the time stated in Clause 5 and continues even if I lose capacity;
 - (b) the power of attorney for personal/health matters (if applicable) begins only if/when I lose capacity.
- (5) I understand that I may change or revoke this enduring power of attorney at any time so long as my power to make such a decision is not impaired—in other words, so long as I am capable of making another enduring power of attorney.

[Principal signs here]

or

If you are signing for principal:

[Witness signs here]

- (a) I am at least eighteen years old
- (b) I am not a witness for this enduring power of attorney or an attorney for the principal.

[Witness writes the date here]

[Person signing for the principal signs here]

[Person signing for the principal
print your full name here]

[Write the date here]

PART 2:

For the witness

Your role goes beyond ensuring that the signature of the principal (the person giving the power) is genuine. You certify that the principal appeared to understand the nature and effect of the document, including the matters stated in clause 8 (Statement of understanding). In the future, you may have to provide information about the principal’s capacity to understand these matters when giving the power. If you are doubtful about the principal’s capacity, you should make appropriate inquiries, e.g. from the principal’s doctor.

It is strongly recommended that, if you are in any doubt, you make a written record of the proceedings and of any questions you asked to determine the principal’s capacity.

WITNESS’S CERTIFICATE

Complete this form by writing on the lines and ticking the appropriate boxes.

9. I, _____ ,
[Print your full name here]

state that—

(a) I am a:

☐ justice of the peace

☐ commissioner for declarations

☐ lawyer

☐ notary public,

(b) I am not:

• an attorney for the principal

• or a relation of the principal or of the principal’s attorney

(c) (Tick **one box only**)

☐ I am not a current paid carer or health provider for the principal

☐ I am a current paid carer or health provider for the principal, but this enduring power of attorney appoints an attorney/s for financial matters only.

Note:

‘Paid carer’ does not mean someone receiving a carer’s pension or similar benefit.

(d) (Tick **one box only**)

☐ the principal signed this enduring power of attorney in my presence

☐ in my presence, the principal instructed a person to sign this enduring power of attorney for the principal, and that person signed it in my presence and in the presence of the principal

and

(e) at the time that this enduring power of attorney was signed, the principal appeared to me to understand the matters stated in Clause 8.

[Witness signs here]

[Witness writes the date here]

PART 3: For the attorney

IMPORTANT NOTICE

If you accept this power of attorney, you will be taking on serious responsibilities. If you fail to observe these responsibilities, you could be removed as attorney or even convicted of an offence and required to pay compensation.

Besides the particular responsibilities mentioned in Part 1 of this document, there are responsibilities imposed by the *Powers of Attorney Act 1998*.

What are these responsibilities?

They are both general and specific.

General responsibilities (to guide you in decision-making)

You must exercise the power given to you honestly and with reasonable care. It is an offence not to do so, and you may also be required to compensate the principal.

You must comply with the terms of the enduring power of attorney, any other Court requirement. In addition, you must abide by the general and health-care principles on which the Act is based.

General principles include:

- presuming that the principal has the capacity to make a particular decision until there is conclusive evidence that this is not the case;
- recognising his/her right to participate in decisions affecting his/her life to the maximum extent for which he/she has capacity;
- respecting the principal's human worth and dignity and equal claim to basic human rights, regardless of his/her capacity;
- recognising the principal's role as a valued member of society and encouraging his/her self-reliance and participation in community life;
- taking into account the importance of the principal's existing supportive relationships, values and cultural and linguistic environment;
- ensuring that your decisions are appropriate to the principal's characteristics and needs;
- recognising the principal's right to confidentiality of information.

The health-care principles is:

Any health-care decision you make for the principal must:

- maintain or promote the principal's health or well-being or is in all the circumstances, in the principal's best interests;
- be made in the way that is least restrictive of the principal's rights;
- where possible, take account of the principal's views and wishes, along with information given by the principal's health-care provider.

Financial decisions

Any investments you make on the principal's behalf while he/she lacks the capacity to make financial decisions must be those that are named in the Trusts Act as investments a trustee is authorised to make or are approved by the Court.

Note:

Court means either the Supreme Court or the Guardianship and Administration Tribunal.

For all decisions

If the principal has other attorneys, you must consult with them regularly and make your decisions as directed in clause 7. If you are a joint attorney, for example, you and the other attorney/s must make your decisions unanimously.

Specific responsibilities

- **Duty to keep records.** If you have the power to make financial decisions, you must keep reasonable records of dealings and transactions made under the power. It is an offence not to do so, and the Court or Adult Guardian may require you to produce them.
- **Duty to keep property separate.** You must keep your property separate from the principal's property unless you and the principal own the property jointly.
- **Duty to present a management plan and get approval for unauthorised transactions.** If you make a financial decision, you must present a plan of management to the Court if the Court requires it.

If the principal's capacity to make decisions is impaired, you must also get approval from the Court for any transactions that have not been authorised in this document.

- **Duty to avoid transactions that involve conflict of interest.** You must not enter into transactions that could or do bring your interests (or those of your relation, business associate or close friend) into conflict with those of the principal. For example, you must not buy the principal's car unless you pay at least its market value.

However, you may enter into such a transaction if it has been authorised in this document or by the Court, or if the transaction provides for the needs of someone that the principal could reasonably be expected to provide for, such as his/her child.

- **Duty in relation to gifts.** You must not give away the principal's property except where the principal would be likely to do so, for example as a marriage gift to a relation of the principal or a donation to his/her favourite charity (so long as the size of the gift is reasonable in the circumstances).
- **Power to maintain the principal's dependants.** You may give reasonable maintenance to the principal's dependants.

How do I complete a document for the principal?

If you have the power to execute (complete) a document for the principal, you do so in the ordinary way, but you must note on the document that you are executing it as the principal's attorney under enduring power of attorney (e.g. 'John Smith, by his duly appointed attorney, Mary Jones').

When does my power to make decisions begin?

It depends whether the power concerns personal/health matters or financial matters.

- **Personal/health matters.** Your power to make decisions for the principal about personal/health matters does not begin until (if ever) the principal is incapable of understanding the nature and foreseeing the effects of a decision, and of communicating that decision. However, you must continue to allow, and assist, the principal to make decisions in so far as he/she is capable.
- **Financial matters.** The principal may nominate in this document when your power to make financial decisions begins. If the principal does not nominate a date, then your power begins immediately.

When does my power end?

Though there is no time limit on enduring power of attorney, certain actions by you, the principal or the Court can bring your power to an end.

In personal/health matters, your power also ends if the principal regains the ability to make the decision in question.

Your actions

- **Your withdrawal.** So long as the principal is capable of using the power given to you, you can withdraw by giving him/her a signed notice or by getting the Court's leave to withdraw.
- **Becoming the principal's paid carer or health-care provider.** If this happens, your power is revoked.

Note:

'Paid carer' does not mean someone receiving a carer's pension or similar benefit.

- **Becoming incapable.** Your power is revoked if you become incapable of understanding the nature and foreseeing the effects of a decision, and of communicating that decision.
- **Becoming bankrupt or insolvent.** If this happens, your power is revoked.
- **Your death.**

The principal's actions

- **Revoking your power.** The principal may revoke your power at any time, so long as his/her capacity to make the decision is unimpaired. In other words, so long as the principal has the capacity to *make* an enduring power of attorney, he/she also has the capacity to *revoke* it.

If the principal revokes your power, he/she must inform you in writing.

- **Appointing a new attorney to have your powers.** If the principal completes a new document giving your powers to another attorney, your powers are revoked to that extent. Because the new document has a later date, it overrides the first.
- **Getting married.** If the principal marries, your power of attorney is revoked unless you are the principal's new spouse. (If you are the principal's new spouse, the only power that is revoked is the power of any other attorney.)
- **Getting divorced.** If the principal divorces and you were the principal's former spouse, your power of attorney is revoked.
- **The principal's death.** If the principal dies, your enduring power of attorney is revoked in its entirety.

Actions by the Court

Your power may also be changed or revoked by the Court if you have failed to act in the principal's interests.

Can I be held liable?

Yes, you can be held liable if you use the enduring power of attorney knowing that it has been changed or revoked, or knowing of an event that effectively revokes it, or even if you have reason to believe that it has been revoked.

The Court and the Adult Guardian have the power to protect the principal's interests. You may be required to produce a summary of receipts and expenditure or more detailed accounts, and these may be audited. You may also be required to give evidence in relation to the exercise of your powers. If the Court or Adult Guardian believes that you have not adequately protected the principal's interests, you may be removed or your enduring power of attorney may be revoked, and you may be required to compensate the principal.

Where can I go for advice?

The Court, the Adult Guardian, the Public Trustee or a solicitor can advise you about this document and your power and responsibilities under it.

The Court can also make a declaration about the validity of this document or whether your power to make a decision for the principal has begun.

ATTORNEY’S ACCEPTANCE

As attorney, you complete the section of this form that applies to you by writing on the lines and ticking the boxes. If you are not able to tick all the boxes truthfully, then you must not accept this appointment as attorney.

(First attorney completes this section)

10. I, _____, state that:
[Print your full name here]

- ☐ I am eighteen or over,
- ☐ I am not a current paid carer of the principal,
- ☐ I am not a current health-care provider for the principal,
- ☐ I have read Part 1, giving me enduring power of attorney,
- ☐ I understand that, by signing this document, I take on the responsibility of exercising the power I have been given in the document,
- ☐ I also understand that I must exercise the power in accordance with the *Powers of Attorney Act 1998* and the *Guardianship and Administration Act 2000*.

[Sign here]

[Write the date here]

(Second attorney, if any, completes this section)

11. I, _____, state that:
[Print your full name here]

- ☐ I am eighteen or over,
- ☐ I am not a current paid carer of the principal,
- ☐ I am not a current health-care provider for the principal,
- ☐ I have read Part 1, giving me enduring power of attorney,
- ☐ I understand that, by signing this document, I take on the responsibility of exercising the power I have been given in the document,
- ☐ I also understand that I must exercise the power in accordance with the *Powers of Attorney Act 1998* and the *Guardianship and Administration Act 2000*.

[Sign here]

[Write the date here]

(Third attorney, if any, completes this section)

12. I, _____, state that:
[Print your full name here]

- ☐ I am eighteen or over,
- ☐ I am not a current paid carer of the principal,
- ☐ I am not a current health-care provider for the principal,
- ☐ I have read Part 1, giving me enduring power of attorney,
- ☐ I understand that, by signing this document, I take on the responsibility of exercising the power I have been given in the document,
- ☐ I also understand that I must exercise the power in accordance with the *Powers of Attorney Act 1998* and the *Guardianship and Administration Act 2000*.

[Sign here]

[Write the date here]



**Department of Justice and Attorney-General
June 2002**