

# why you must have an Enduring Power of Attorney Financial Matters and/or Personal Matters

HICKS  
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## What is an Enduring Power of Attorney (EPA)?

An EPA is an important legal document that you should have a solicitor prepare in the event that you are unable to make decisions about financial matters and/or personal matters for yourself.

You are no longer able to make an EPA (Medical Treatment). This has been replaced with another legal document known as an Appointment of a Medical Treatment Decision Maker. However, any EPA (Medical Treatment) made before 12 March 2018 is valid.

## EPA (Financial and/or Personal)

An EPA (Financial and/or Personal) allows you to appoint one or more people to make decisions that relate to personal matters and/or financial matters.

Without an EPA (Financial and/or Personal) only you can withdraw money from your bank accounts and make decisions about property and investments if those assets are in your name. Further, you alone can choose where and with whom you are to live. If you lose legal capacity, either temporarily or permanently, and you do not have an EPA (Financial and/or Personal) your family could be powerless to act on your behalf.

## Supportive Attorney Appointments

A Supportive Attorney can assist with the making and carrying out of decisions about financial matters and/or personal matters. For example, a Supportive Attorney could assist you to make and put into effect decisions relating to the payment of taxes and the withdrawal of money from a bank account.

## What is an EPA (Financial and/or Personal)?

An EPA (Financial and/or Personal) is a legal document by which you appoint another person, an attorney, to make decisions on your behalf in relation to financial and/or personal matters. You must be at least 18-years-old and have decision making capacity to make the appointment.

### Financial Matters

Decisions about financial matters include those relating to, for example:

- the purchase and sale of property
- the payment of bills
- bank accounts, and
- investments

### Personal Matters

Decisions about personal matters include those relating to, for example:

- where and with whom you live, and
- who may visit you

## How to make an EPA: decide What, When and Who

### WHAT powers to give?

Your attorney can make decisions about financial and/or personal matters on your behalf.

You decide the matters about which your attorney can make decisions. You can also place conditions on the exercise of power by the attorney and give instructions to your attorney about the exercise of that power. If you do not specify any limits to your attorney's power, they will be able to make any decisions about all financial and personal matters on your behalf.

### Powers a principal can't give an attorney

Under an EPA (Financial and/or Personal), you cannot give your attorney power to do any of the following on your behalf:

- vote
- make decisions about the care or wellbeing of children
- make (or revoke) a will
- make (or revoke) an enduring power
- consent to marriage or a sexual relationship or dissolve a marriage
- make decisions about adoption of a child
- enter into surrogacy arrangements
- manage the estate of the principal on their death
- consent to an unlawful act

## Contact us at:

### Melbourne Office

Phone: 03 9629 7411

[Google Map Link](#)

Level 18  
461 Bourke Street  
Melbourne 3000

Fax: 03 9629 7422  
DX: 31331 Mid-town  
PO Box 16067  
Collins Street West 8007

### Mt Waverley Office

Phone: 03 9550 4600

[Google Map Link](#)

Central 1, Level 2, Suite 17  
1 Ricketts Road  
Mt Waverley 3149

Fax: 03 9544 8711  
DX: 32002 Mt Waverley  
PO Box 2165  
Mt Waverley 3149

[enquiries@hocw.com.au](mailto:enquiries@hocw.com.au)  
[www.hocw.com.au](http://www.hocw.com.au)

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### Legal services include:

- Commercial Law;
- Commercial Litigation;
- Commercial Tenancy Law;
  - Family Law;
  - Wills & Estates;
- Property & Conveyancing



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## why you must have an enduring power of attorney (cont.)

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### **What an attorney can't do unless authorised by you to do so**

Your attorney appointed under an EPA is only entitled to be paid with your authority. This means that if you wish to pay your attorney, you need to specify this in your EPA.

If you want your attorney to provide for the financial needs of your dependents you will also need to specify this in your EPA.

Your attorney for financial matters cannot enter into a transaction where there is, or may be, a conflict between their duty to you and their interests, unless the principal or the Victorian Civil & Administrative Tribunal (VCAT) has authorised this transaction. A principal should consider getting legal advice before authorising this.

### **WHEN the power starts?**

**You can nominate when the attorney's power starts, this can be:**

- immediately
- when you cease to have decision making capacity, or
- another time you specify

**You can specify for the power to start at different times for financial and for personal matters**

For example, you may choose for the power to start:

- immediately for financial matters
- when you cease to have decision making capacity to make decisions about personal matters for personal matters

If you do not specify when the power starts, it will begin immediately. If the power begins immediately and you still have decision making capacity, you will oversee the use of the power.

If the power comes into effect when you cease to have decision making capacity then the attorney may be asked to provide evidence of your lack of capacity, such as a medical certificate.

### **The power 'endures'**

This means that it continues even if and when the person loses capacity to make their own decisions about matters. The attorney's decisions have the same legal force as if the person who appointed them had made them.

### **WHO to appoint?**

The most important decision when making an EPA is choosing who to appoint. You should appoint a person you trust to manage your affairs and fulfil the duties of an attorney.

**An attorney is required to:**

- be eligible to be appointed as an attorney, and
- agree to be an attorney

### **More than one attorney**

You may appoint more than one attorney and specify the matters for which each attorney is to act. If you appoint more than one attorney (for all or any matters) you can decide how the attorneys will make decisions. You may appoint the attorneys to act:

- jointly — the attorneys must make decisions together. For example, they would all be required to sign a document.
- jointly and severally — the attorneys can make decisions together or independently. For example, all the attorneys could sign one document or one of the attorneys could sign the document.
- severally — the attorneys can make decisions independently. For example, one attorney alone could sign a document.
- by a majority — a majority need to agree to make a decision (and the majority agree to sign any document)

If you do not specify how the attorneys are to be appointed, the attorneys are taken to be appointed to act jointly.

You can appoint an alternative attorney(s). This attorney can specify the circumstances and manner in which an alternative attorney is authorised to act.

### **What if I already have an EPA (Financial) and an Enduring Power of Guardianship?**

An EPA (Financial) and an Enduring Powers of Guardianship made before the current legislation, the *Powers of Attorney Act 2014*, came into effect, remain valid.