

Appointing an attorney

Your appointed attorney:

must be	must not be
over 18 years of age	your health care provider (e.g. your doctor)
someone you trust	bankrupt
able to understand fully what the appointment means	a paid carer (receiving a carer's pension does not stop a person from being an attorney)
capable of looking after your affairs	limited to one person
	acting in anyone's interests but yours (defined as a 'conflict transaction')

Enduring Power of Attorney

Under an Enduring Power of Attorney (EPA), you may give your attorney the power to deal with all or any part of your financial, personal and health matters, an EPA for financial matters can come into effect either immediately when you lose capacity, on a specific date or at a specific event. There are a number of considerations regarding this decision so it is advisable you seek our advice to ensure your choice is fully informed.

Revoking an Enduring Power of Attorney

Your EPA is automatically revoked:

- › on your death
- › when you marry, unless your new spouse is your existing attorney
- › when you divorce, if your attorney was your spouse
- › when you appoint a new attorney
- › if your attorney dies or loses decision-making capacity
- › if your attorney becomes unqualified, for example, bankrupt or a paid health care provider.

You can choose to revoke your EPA at any time providing you are capable of understanding what you are doing. We can advise you on the procedures to follow.

Legal Costs

Just as estates vary in size and complexity, the legal costs to prepare a Will and power of attorney will differ. Ask us about the costs involved.

The information in this brochure is merely a guide and is not meant to be a detailed explanation of the law and does not constitute legal advice. We recommend that you consult with one of our solicitors about your individual circumstances.



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ESTATE PLANNING

A legal guide to structuring your affairs.

What is estate planning?

Estate planning is the overarching term used for structuring your affairs and making decisions in relation to:

- › preparing a Will – which allows you to nominate who the executors and trustees of your estate are, how your assets are to be distributed and who are the guardians of your children
- › preparing an Enduring Power of Attorney – which allows you to nominate how you would like to have your personal, financial and health care matters managed, should you lose capacity to make those decisions
- › considering nominations in relation to life insurance policies and/or a Binding Death Benefit Nomination (BDBN) in relation to superannuation benefits
- › preparing an Advance Health Directive – which allows you to give directions about your future health care.

What is a Will?

A Will is a legal document which, as far as possible, ensures your assets are distributed according to your wishes after you die. Your Will can cover all assets such as your house, land, car, shares and bank accounts. It does not cover life insurance or superannuation.

In your Will you appoint an executor to distribute your assets to your beneficiaries (those you choose to receive your assets). Your choice of an executor should be carefully considered as the role can be very demanding and often complex, requiring legal and financial knowledge or guidance.

Any person of sound mind from the age of 18 years, or under 18 if married, can make a Will.

What happens if I don't make a Will?

Dying without a Will (called 'intestacy') means your assets will be distributed according to rigid formulae set down by the laws of intestacy. Those laws may:

- › force the sale of the family home or family car so that debts can be satisfied and allow other beneficiaries to claim their share of your assets
- › not provide future financial protection for your children and grandchildren
- › give your assets to the government, if you have no relatives or any other persons who are entitled to benefit.

Furthermore, you lose your autonomy as to who will administer your estate and be appointed guardian of your children and dependants under 18 years of age.

Preparing your Will

A Will is a complex legal document which should be prepared by a solicitor. Before visiting us, you should consider:

- › who to appoint executor and their powers
- › who to appoint guardian of your children and how you would like to provide for your children's future
- › what your current assets and liabilities are and how they are held (e.g. joint tenants or tenants in common)
- › who should receive your assets
- › your life insurance
- › your preferred funeral arrangements.

Can I prepare my own Will?

You can prepare your own Will but you do so at the risk of causing costly and emotional legal battles among relatives, should a dispute arise after you die. When preparing a Will, a number of legal requirements must be followed or else it may be deemed invalid. If this occurs, and you have no valid earlier Will, you may be presumed to have died intestate, with the laws of intestacy to apply, unless the invalidity is rectified by court process, which can be expensive.

If your Will is considered valid but your words fail to express your wishes accurately, the court may need to interpret your Will, which may add further costs and emotional burden to your loved ones.

Changes to your Will

You are free to alter your Will at any time and as often as you wish.

Your circumstances may change significantly over time so it is advisable to regularly review your Will in the event of:

- › the birth of children or grandchildren
- › the death of a beneficiary or executor
- › financial changes
- › home or property changes.

Marriage and Divorce

On marriage, your current Will is automatically revoked unless it states it is made in contemplation of your marriage. Any Will you have in favour of a divorced spouse is immediately revoked once the divorce becomes finalised. For these reasons it is important you prepare a new Will if either of these circumstances apply to you.

What is a Binding Death Benefit Nomination?

A Binding Death Benefit Nomination (BDBN) is a written direction of your superfund fund which directs the trustee to pay your superannuation benefits, in the event of your death, to certain dependants and/or their legal personal representative in the proportions set out in the BDBN. If the superannuation fund is not a self-managed fund (SMSF) a BDBN remains valid for 3 years from the date of signing, however, for a SMSF the nomination may be valid until it is altered or revoked.

If the BDBN is valid and in effect at the date of your death, the trustee must pay the superannuation monies to the beneficiaries nominated in the proportions set out in the nomination.

What is an Advance Health Directive?

An Advance Health Directive (AHD) is a legal document which allows you to give directions about your future health care should you lose the capacity to make decisions. It allows you to stipulate certain types of health treatments you may (or may not) want in circumstances where you are unable to make those decisions yourself.

An AHD can include instructions to withdraw medical treatment designed to prolong life but does not permit euthanasia, which is performing an act designed to cause death.

Can I appoint someone else to act on my behalf?

You can legally appoint a trusted friend or relative, to act on your behalf to handle your affairs. This person is known as your attorney and is allowed to handle your affairs, or have the power to act on your behalf, if you: go overseas; take an extended holiday; suffer poor health; or reach an age when you need greater assistance.

A power of attorney is just as important as a Will. While a Will operates on your death, a power of attorney operates during your life.