

Responsibilities of an attorney under an Enduring Power of Attorney

If someone has asked you to act as their attorney under an Enduring Power of Attorney, they have placed a great deal of trust in you. They have asked you to stand in their shoes, and make decisions about their life when they are no longer able to.

An Enduring Power of Attorney is a legal document, which means it's very important you understand what your rights and responsibilities are as an attorney. This also ensures you don't do the wrong thing and cause harm to the adult.

This factsheet outlines what you should do when exercising your power as an attorney.

NOTE: Ultimately, you must always act with honesty and reasonable diligence.

Carefully read the Enduring Power of Attorney document

The first step is to read the Enduring Power of Attorney document as it explains everything you need to know about making decisions for the person with impaired capacity. The document will explain:

- what decisions you can make – these could be just financial, just personal/health matters, or both financial and personal/health matters
- when you can start making decisions – immediately, on a specific date, or when the adult loses capacity
- if there are any other attorneys appointed, and if so whether decisions must be made jointly
- any special instructions, such as the adult's views and wishes.

NOTE: You cannot make decisions if the Enduring Power of Attorney has been cancelled, or if it hasn't come into effect.

Respect and protect the person's rights, interests and opinions

Every person, even if they have impaired capacity, has the human right to be valued and respected. This means that whenever you make a decision you must always take into account their views and wishes. (The exception to this is where it is necessary to go against an adult's wishes to keep them safe and ensure their care needs are met). Their views and wishes may be explained in the document, and where possible you should speak with the adult to seek their views. If this isn't an option due to the nature of their impaired capacity, you should look at the past decisions they made when they did have capacity to help guide you, as well as regularly communicate with the people in their life to get a better picture of their views and wishes.

Other things to consider when making a decision include:

- protecting the adult's safety, health and wellbeing
- understanding the adult's language, culture and religious beliefs
- preserving the adult's independence, whilst meeting their needs
- making sure the adult is participating in community life, including keeping existing friendships.

NOTE: The decisions you make must always benefit the adult – this must be your priority.

Follow the General and Health Care Principles

Whenever you make a decision for an adult with impaired capacity, you must be guided by the General and Health Care Principles. These are rules that you have to follow whenever you are making a decision to ensure the person's human rights are always protected. These principles are outlined in our [General Principles factsheet](#) and [Health Care Principles factsheet](#).

Ensure open communication

As noted above, it is your responsibility to gather as much information and insight as possible to ensure decisions are made that reflect the adult's views and wishes.

However you must also keep the adult informed about the decisions you are making for them. This isn't just about maintaining a good relationship with the adult; it is actually their right to get up-to-date information about the decisions being made about them. The adult has a right to know about any financial statements or transfers, as well as updated contact information of people close to them, and any other change in their affairs.

You must also keep accurate, up-to-date records for each financial decision you make, whether it is a big or small decision.

If there are other attorneys appointed, it's also important to maintain strong communication with them. This helps avoid conflict and allegations of improper or inadequate conduct.

NOTE: The adult's information is private, so you can only talk about the person and their issues to others who are close to them.

Avoid conflict transactions

Conflict transactions are transactions that may seem to have benefit to yourself as the attorney, or to your family members or friends. For example, a conflict can be selling the adult's house to one of your relatives. So as an attorney you must not enter into a transaction that may (or even appear to) benefit you personally or financially, unless specifically allowed in the Enduring Power of Attorney document.

You need to remember that whenever making a financial decision, the person's financial interests must be your only priority.

NOTE: You should keep your money and property separate from that of the adult. However if you do hold joint accounts or property with the adult, you must get advice from a solicitor or Queensland Civil and Administrative Tribunal before making any decisions.

An attorney is accountable

The Public Guardian has powers to investigate complaints if an attorney is acting inappropriately, and to suspend a power of attorney. More information on the investigations process can be found on our [website](#).

NOTE: An attorney is personally accountable for their actions.

More information

You can find more information about your responsibilities as an attorney on the [Queensland Government website](#).

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