

Using an enduring power of attorney to reduce the risk of financial abuse

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☎ 1300 360 044

🌐 www.pt.qld.gov.au

The abuse of older people can take many forms including financial, physical, psychological, sexual and neglect, which can be easily hidden until somebody speaks out.

Queensland Public Trustee (QPT) works with government agencies and community organisations to raise awareness of older people dealing with financial abuse, and to advocate on their behalf.

Completing well-considered documentation such as an enduring power of attorney and a Will is vital to safeguard your future. It is always recommended that you use a professional such as your lawyer or QPT to prepare an enduring power of attorney or a Will.

The strategies outlined below do not take account of your personal circumstances and may not be suitable for everybody. This fact sheet is intended to raise awareness of some of the issues associated with making an enduring power of attorney and **is not a substitute for advice**.



❑ **Appoint a capable attorney**

An attorney can be personally liable if they make a mistake or do the wrong thing. To be an attorney you need to understand the rules that apply under the [Powers of Attorney Act 1998](#)¹ (the Act). There are serious risks and penalties if an attorney doesn't meet the required standards.

If your financial affairs are complicated, you may need to consider who will have the technical ability to be your attorney. Common complexities include taxation, Centrelink benefits, investment of funds, and superannuation issues. Professional fiduciaries, such as trustee companies, lawyers, accountants and QPT, are often appointed as an attorney because of their expertise (however they charge fees to perform this work).

¹ www.legislation.qld.gov.au/view/pdf/inforce/current/act-1998-022

- Consider appointing an attorney who isn't in conflict with other people in your life**

Many disputes involving attorneys result from the appointment of an attorney who does not get along with other important people in the principal's life. When there is conflict, or a real risk of conflict that could not be well managed, you should consider whether it may be better to appoint someone else or a professional fiduciary as your attorney.
- Appoint more than one attorney**

When making your enduring power of attorney, consider having more than one attorney. This can prevent a single attorney from keeping affairs to themselves, making careless decisions or decisions that benefit them. Having too many attorneys can also cause problems, so it is best to strike a balance.
- Consider when your attorneys need to act jointly and when they can act by themselves**

You may choose one attorney to be able to make small decisions by themselves, but larger decisions, such as the investment of your funds and the sale of your home, may need all of them to agree.
- Consider limiting the powers of your attorneys so that major decisions require more procedure and oversight**

An attorney can have complete or partial power when it comes to decision making. For example, you may decide to exclude your attorney from selling treasured items you have gifted to a loved one without the approval of a specified person. However, your attorney does need to have sufficient powers to undertake their role and responsibilities. If they do not, they may need to apply to the Queensland Civil and Administrative Tribunal (QCAT).
- Appoint nominated person(s)**

Nominated persons (there can be more than one) are people who the attorney must keep informed about the financial decisions they are making. If you are appointing one of your children as a (sole) attorney, then appointing your other children or someone else you trust as nominated persons may be a good idea. You may also give directions or powers to your attorney to provide certain types of documents and information to certain people.
- Non-binding directions (wishes)**

You can create a record of your wishes for the future. Your attorneys would be acting poorly if they disregard your wishes. This may tie in with the way your Will disposes of your property. It is important to let your attorney(s) know about your wishes when you have the capacity to tell them. If you write them down, then they are available for your attorneys to consider in the future.
- Your Will**

Make sure you have a Will because your enduring power of attorney is only effective while you are alive. It can be helpful for your attorney to know about your Will and your wishes so they can take account of them when making financial decisions for you. You may want to balance this against keeping the contents of your Will private (which is your right). You can make a list of your valuable property to be kept with your Will or in a safe place (or you can provide this list to trusted people in your life). Such a list may ensure those who administer your deceased estate know about the property you had in your life (before your attorney took over).

Your choice of executor (the person who will administer your deceased estate) is also important. You may choose an executor who is not your attorney as a safeguard.
- Where capacity to make an enduring power of attorney may be challenged**

Many disputes come about because the person making the enduring power of attorney (called the principal), who has declining capacity, makes a number of enduring power of attorneys. This can happen because the attorneys appointed in these documents are trying to ensure they (and not others) become the attorney for the principal. Disputes, which need to be resolved legally through QCAT, often result in deep family divisions. If you want proof of your capacity to make an enduring power of attorney, consider seeing your regular GP to get a record of your capacity on the day you make it.