



VICTORIA

POWER OF ATTORNEY KIT

COMPLIANT WITH NEW LEGISLATION THAT COMMENCED ON 1 SEPTEMBER 2015



PLANNING GUIDE



state
trustees
your interests at heart

Congratulations on choosing the State Trustees Power of Attorney Kit!

This kit will enable you to choose and appoint a person you trust to manage your affairs for you, including when you are not able to do so.

You may use this kit to appoint an individual or individuals as your attorney(s). This kit is not appropriate to appoint a trustee company as your attorney. For residents of Victoria, if you wish to appoint State Trustees as your attorney for financial matters, please contact us on (03) 9667 6444.

Power of attorney legislation is different in every State and Territory. It is important to make sure the kit being purchased is for the State or Territory in which you live, as each State and Territory has its own laws for: (a) the types of power of attorney documents that are able to be used; (b) how a power of attorney must be prepared, signed and witnessed; and (c) how the power of attorney may be used.

THIS KIT INCLUDES THE FOLLOWING:

1. POWER OF ATTORNEY PLANNING GUIDE

- » Step-by-step instructions on how to prepare your powers of attorney so that they are valid in Victoria
- » Information explaining the important aspects of each type of power of attorney

2. POWER OF ATTORNEY FORMS

- » Legally valid power of attorney appointment forms:
 - Enduring power of attorney (form 1)
 - Enduring power of attorney (medical treatment)
 - General non-enduring power of attorney
 - Appointment of supportive attorney (form 5)
- » Legally valid power of attorney revocation forms:
 - Revocation by principal of enduring power of attorney (form 2)
 - Notification by attorney for enduring power of attorney (form 3)
 - Resignation by attorney for enduring power of attorney (form 4)
 - Revocation of enduring power of attorney (medical treatment)
 - Revocation of general non-enduring power of attorney
 - Revocation by principal of supportive attorney appointment (form 6)
 - Resignation by supportive attorney (form 7)

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DISCLAIMER

The information given in this kit does not constitute legal advice and nor is it a substitute for legal advice. This kit provides you with the relevant documents and instructions that you will need in order to prepare your own powers of attorney for use in Victoria. Please refer to State Trustees' website at www.statetrustees.com.au/power_of_attorney_kit for any updates or upgrades to this kit. State Trustees has made every effort to ensure the information in the kit is consistent with the laws of Victoria as at the time of issue to you; however, those laws may change after the date of issue. To the extent permitted by law, and not excluding any non-excludable rights that you have under Australian Consumer Law, State Trustees accepts no responsibility for the manner in which you complete your power of attorney document(s) **nor whether it will be valid upon completion**, nor whether your power of attorney document(s) is/are appropriate, having regard to your particular circumstances. If you are unsure about how to proceed, we strongly recommend you seek the assistance of a legal professional.

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INTRODUCTION

WHAT IS A POWER OF ATTORNEY?

In simple terms, a power of attorney is a document which enables you to give another person (generally known as an ‘attorney’) the authority to make decisions on your behalf. You will be legally bound by any decision made by your attorney.

Within the scope of the particular type of appointment, your attorney will have the power to do everything that you could legally do, unless you have specified any conditions or limitations in the document, or any exceptions that apply under the law generally. It is therefore critical that you appoint someone you trust and who will act in your best interests.

You may only validly appoint an attorney when you have capacity to do so. Generally, you will be considered to have capacity if you are of sound mind, are able to understand the nature, effect and implications of making the document, and are at least 18 years of age.

WHY SHOULD I HAVE A POWER OF ATTORNEY?

Being able to formally appoint someone to make decisions for you means that you can put in place someone you trust as your attorney to manage certain aspects of your affairs when you are unable to do so.

The various powers of attorney contained in this kit are documents that enable a specified person or persons to manage certain aspects of your affairs while you are still alive, which is different to a will.

This kit includes two powers of attorney that are ‘enduring’. The power you give your attorney under these documents will continue (or ‘endure’) even if you subsequently lose capacity to make your own decisions.

By putting such powers in place now, you are able to exercise some control over how important aspects of your life – whether they be financial, or medical treatment, or personal matters – will be managed in the event that, through illness or accident, you lose the ability to make decisions yourself. However, if you put such an enduring power in place, and then become unable to make decisions, you will no longer be able to supervise or monitor how the person you have appointed carries out their role. So you should only ever appoint someone you can trust and who has the skills, competence and time to properly fulfil their duties.

This kit also includes a general non-enduring power of attorney. With this document you can empower your attorney to act and make decisions for you while you have capacity, such as completing specific transactions, or acting for you for a defined period of time, for example, when you are overseas.

The other power of attorney in this kit is an appointment of supportive attorney. Depending on the scope of the appointment you make, your supportive attorney is able to assist you by collecting information for you, communicating your decisions and carrying out your decisions, other than decisions about significant financial transactions. A supportive attorney can be of particular benefit if you have a disability that impairs your ability to gather information, or to communicate your decisions or put them into effect. The appointment of a supportive attorney will automatically cease to be effective in a number of circumstances, including during any period in which you no longer have decision making capacity for the matters included in the appointment.

WHEN TO USE THIS KIT

This kit is intended to help you prepare power of attorney documents valid in Victoria for circumstances that are straightforward and where you do not need the advice of a lawyer. If you have complex legal, personal, medical or financial affairs, or lifestyle needs or issues, you should seek professional estate planning or legal advice. For example, you should seek such advice if:

- » you have problems completing any aspect of the forms;
- » you have a complex family situation, or complex medical or financial arrangements;
- » your appointments of attorney(s) may be challenged by disgruntled persons;
- » you have concerns about your capacity to appoint an attorney;
- » you intend to use the document outside of Australia, or in another State or Territory; or
- » the person who intends to use this kit is visually impaired or unable to read or write English.

WHO CAN MAKE A POWER OF ATTORNEY DOCUMENT?

Anyone 18 years or over who has capacity to do so may make a power of attorney.

WHAT HAPPENS IF I DO NOT MAKE A POWER OF ATTORNEY?

You will not have control over who makes decisions on your behalf, which may lead to conflicts and delays if such decisions need to be made when you no longer have capacity.

Depending on the nature of the decision, a court or other administrative body may appoint an independent person to take care of financial, lifestyle or health decisions for you. In some instances this person will be, by default, your spouse or partner, unpaid primary carer or nearest relative, whilst in other cases it may be an organisation, like a trustee company. However, the appointment decision will be the decision of the court or other administrative decision making body, not your decision.

By having an enduring power of attorney document in place, your views and wishes are known in the event that you can no longer make decisions yourself.

ARE THE DOCUMENTS IN THIS KIT VALID LEGAL DOCUMENTS?

Yes, the documents in this kit are legal documents designed for use in Victoria. However, you should keep in mind the documents need to be completed correctly in order to be valid. Also note the limitations outlined in the instructions section of this kit, which may affect the validity of the document. If you are unsure, you should seek professional estate planning or legal advice.

DO I HAVE TO PRINT OUT THE POWER OF ATTORNEY DOCUMENT?

You will have to print out the relevant power of attorney form in this kit in order to execute it. The forms in this kit have fields you need to fill in by handwriting the text legibly on a printed-out version. You can write the text you want in the document yourself, or you can have someone else do so on your behalf. No matter who helps you to write your document, you yourself must sign it. Make sure all handwriting in the document is legible. To be legally enforceable, your document must be in writing.

HOW OFTEN SHOULD A POWER OF ATTORNEY BE REVIEWED?

Your circumstances may change and the right person appointed the power now may not be the right person to be your attorney in the future. We recommend you periodically consider whether:

- » your appointed attorney continues to hold your trust and continues to be a person whose interests do not conflict with your interests;
- » someone else may be more suitable for the role, for reasons such as age, health, location or level of contact; and
- » your circumstances or any of your attorney's circumstances have changed such that the role is no longer suitable or legally permissible for that person.

This may mean reviewing each of your power of attorney documents annually to consider whether your attorneys, and the scope of their roles, are still appropriate. So long as you still have the capacity to do so, you can revoke your current document and create a new one.

HOW AND WHEN MAY I REVOKE A POWER OF ATTORNEY?

You can revoke your power of attorney at any time when you have capacity to do so. There are different methods for revoking different types of power of attorney.

You can revoke a general non-enduring power of attorney by telling your attorney(s), and collecting and destroying the original appointment document under which your attorney(s) were appointed. You can also complete a formal revocation form if you wish by completing the relevant form set out in this kit.

To revoke an appointment of supportive attorney or an enduring power of attorney made under the *Powers of Attorney Act 2014* you must complete the appropriate prescribed form (copies of which are included in this kit), and have the document formally witnessed in the same manner that you made the original appointment. You should give a certified copy of the completed revocation document to your attorney(s), and record the process of how you advised them.

You should also consider speaking to the organisations (such as banks) with whom your attorney may be dealing, to ensure the person does not continue to act on your behalf after the revocation.

WHAT HAPPENS IF MY ATTORNEY ABUSES THEIR POWER?

The abuse of power by an attorney has serious legal consequences. Apart from considering revoking the power of attorney document, you should seek professional legal advice to assess your options if you feel your attorney may be abusing their power.

WHO NEEDS TO KNOW A POWER OF ATTORNEY HAS BEEN MADE?

It is important to notify your proposed attorney of your intention to nominate them before you create the document. A nominated attorney has no legal obligation to accept the appointment. It is also recommended, but not compulsory, that you advise other people who may have a need to know, such as close family members or carers, that a document has been created and that you have appointed a particular person as your attorney.

MUST I IDENTIFY ALL ASSETS AND LIABILITIES PRIOR TO MAKING A POWER OF ATTORNEY?

It is not legally necessary that you list all your assets and liabilities before making a power of attorney. However, where you are making a power of attorney appointment that may involve management of your finances and property (a general non-enduring power of attorney, an enduring power of attorney appointing an attorney for financial matters, or, in some cases, an appointment of supportive attorney) it may be appropriate to give the person you have appointed relevant information about your finances and property (assets, income, liabilities, etc.), or, if the appointment is not taking effect immediately, to let them know where to find such information when their powers commence.

This kit includes a personal details schedule to help you to identify all your assets, liabilities and professional contacts. It also allows you to set out your lifestyle preferences, if they may be relevant to the type of power of attorney you are making. You may wish to complete this document and provide a copy of it to your attorney(s), or let them know where it is located, to assist them in carrying out their role.

WHO CAN WITNESS POWER OF ATTORNEY DOCUMENTS?

For a power of attorney document to be valid, the document needs to be signed by you and, for some documents granting and revoking power, also by one or two witnesses. Your attorney(s) will also need to accept their appointment.

Witness requirements are different for each power of attorney document. Please refer to the instructions section for witness requirements and strictly comply with all instructions to ensure the documents are legally valid.

WHERE SHOULD I STORE MY POWER OF ATTORNEY DOCUMENT?

You should store your document in a secure place and let your family and intended attorney(s) know where it can be found. For example, in a safety deposit box with a bank, with your executor, with your attorney, or with a trustee company or law firm.

For Victorian residents, the Victorian Will Bank offers a safe and secure storage solution for your will and powers of attorney documents. For more details please visit www.statetrustees.com.au/will-bank.

WHAT OTHER DOCUMENTS SHOULD I HAVE?

The documents in this kit enable you to appoint a person or people you trust to manage your affairs when you are not able to whilst you are alive, as compared to a will which enables you to make decisions on how your assets will be distributed after your death. If you do not have a will, State and Territory laws will dictate who will benefit from your estate. This can mean your property and possessions might not be distributed as you would have wanted and you would not have a say on who should be the guardian of any minor children you have.

A legal will kit is also available from State Trustees, which includes a planning guide and legally valid forms, providing a cost-effective solution if you have simple circumstances. It is recommended you seek the assistance of a will writing professional if you have complex or specialised needs, such as:

- » interests in family trusts, private companies, self-managed super funds or partnerships;
- » a child or children from a previous relationship;
- » beneficiaries with special needs; or
- » you are considering leaving someone out of your will.

Please call us on (03) 9667 6444 to arrange a face-to-face appointment.

FURTHER INFORMATION

Further information on power of attorney matters is available from the public trustee in your State or Territory, contact details of which are available on their websites as listed below:

VIC: www.statetrustees.com.au

ACT: www.publictrustee.act.gov.au

NSW: www.tag.nsw.gov.au

NT: www.nt.gov.au/justice/pubtrust

QLD: www.pt.qld.gov.au

SA: www.publictrustee.sa.gov.au

TAS: www.publictrustee.tas.gov.au

WA: www.publictrustee.wa.gov.au

KEY TERMS EXPLAINED

accommodation provider

For an individual, means a person who is, in a professional or administrative capacity, directly or indirectly responsible for or involved in the provision of accommodation to the individual.

agent

A person, such as an attorney, appointed to make decisions on another person's behalf. The enduring power of attorney (medical treatment) refers to the appointed person as 'agent', not 'attorney'.

alternate agent

Under an enduring power of attorney (medical treatment), an 'alternate agent' is a person who can act if the first-named agent is not able to be contacted, does not have capacity, or has died.

alternative attorney

An alternative attorney is an appointed person who may act in the circumstances specified in the power of attorney or, if the original attorney's appointment ceases, for example, due to loss of capacity, death, or revocation of their appointment.

alternative supportive attorney

An alternative supportive attorney is an appointed person who may act if the original supportive attorney's appointment ceases, for example, due to loss of capacity, death, or revocation of their appointment. An alternative supportive attorney can only act so long as the principal still has decision making capacity.

attorney

A person authorised to act on behalf of another person, most usually under a power of attorney. Some types of attorney may also be formally known as an agent.

authorised witness

In order for the signing of some types of power of attorney documents to be valid, one of the witnesses must be a person having particular authority under the law of the State or Territory to which the power of attorney relates. The type of qualification the witness must have may differ according to the type of document being signed. A list of authorised witnesses relevant to each Victorian document is provided in the instructions section.

capacity

To be able to make a valid power of attorney, a person must be capable of understanding the legal implications of doing so, including the nature and effect of the power of attorney document. So, a power of attorney will not be valid if the person who signs it does not have 'capacity' – or 'decision making capacity' – in relation to making the power of attorney. However, even if a person has some impairment, due to illness or disability, they may nevertheless have sufficient decision making capacity to understand what they are doing when signing a power of attorney document. Capacity can also be a relevant factor in other situations, such as deciding whether an appointed attorney or agent can commence to make decisions under a power of attorney document, or whether an appointed attorney or agent can no longer act due to their loss of capacity.

care worker

For an individual, means a person who performs services for the care of the individual and receives remuneration for those services from any source, but does not include (a) a person who receives a carer payment or other benefit from the Commonwealth or a State or a Territory of the Commonwealth for providing home care for the individual; or (b) a person who is a health provider.

certified copy

A copy of a document that is signed by an authorised person who endorses on the copy that it is a true and complete copy of the original.

decision making capacity

See 'capacity'.

enduring power of attorney

A document that allows you to nominate one or more attorneys to make decisions for you for financial matters, or personal matters (or both), or to do anything on your behalf that you can lawfully do by an attorney. Unlike a general non-enduring power of attorney, the enduring power of attorney continues to be effective if the principal ceases to have capacity. So the attorney(s) you appoint will be able to make decisions for you even if you no longer have decision making capacity. This document can be activated immediately, at a specific time, or on a specific occasion, or in specific circumstances

enduring power of attorney (medical treatment)

A type of enduring power of attorney document that allows you to nominate an attorney, called an 'agent', to make 'medical treatment' decisions on your behalf should you become unable to do so. It comes into effect if you do not have capacity at the time that the decision needs to be made.

principal

A term used to describe the person who appoints an attorney, supportive attorney or agent.

revoke

A principal may take back or cancel the powers given to a person under a power of attorney document. This is referred to as 'revoking' the appointment, and generally must be done in writing, and in some cases in a prescribed form.

execute

To make a formal legal document in a valid, binding manner. There are specific signing and witnessing requirements that must be followed to execute a power of attorney document.

financial matter

Any matter relating to a principal's financial or property affairs, including any legal matter in relation to those affairs. Examples include: paying expenses and debts, receiving and recovering money, preserving or improving property, and making investments.

general non-enduring power of attorney

A type of power of attorney that enables you to appoint an attorney in relation to financial matters. It ceases to be effective if the principal no longer has capacity.

health provider

A person who provides health care in the practice of a profession or in the ordinary course of business.

joint/jointly

Where two or more appointed attorneys all need to approve a transaction or other decision to be made on behalf of the principal, i.e. they must act unanimously.

joint and several/jointly and severally

Where any of the appointed attorneys is authorised to approve, either independently of each other or together, a transaction or other decision to be made on behalf of the principal, i.e. they can act unanimously or they do not need to act unanimously.

majority

If the attorneys under an enduring power of attorney are appointed as 'majority attorneys', they will be able to make valid decisions so long as a majority of the attorneys, e.g. any 2 out of 3, or any 3 out of 5, agree.

personal matter

Any matter relating to a principal's personal or lifestyle affairs, including any legal matter relating to those affairs. Examples include where and with whom the principal lives or works, daily living issues such as diet and dress, and health care matters.

power of attorney

The general name that can be used for the group of documents by which you formally authorise someone else to act on your behalf or make decisions for you. The general non-enduring power of attorney document usually authorises an attorney to undertake specific tasks for a limited period of time. A general non-enduring power of attorney automatically becomes ineffective if the principal loses capacity. The attorney must at that time immediately cease entering into any transactions on behalf of the principal. An enduring power of attorney on the other hand continues to be valid if the principal loses capacity.

principal

A term used to describe the person who appoints an attorney, supportive attorney or agent.

revoke

A principal may take back or cancel the powers given to a person under a power of attorney document. This is referred to as 'revoking' the appointment, and generally must be done in writing, and in some cases in a prescribed form.

several/severally

Where any of the appointed attorneys is authorised to make decisions or enter into transactions for the principal, independently of each other; that is, they do not need to act unanimously.

supportive attorney

A person appointed under an appointment of supportive attorney to support the principal to make and carry out decisions. The principal can authorise the supportive attorney to collect information, communicate information and take steps to give effect to the principal's decisions. A supportive attorney can only act so long as the principal still has decision making capacity.

VCAT

The Victorian Civil and Administrative Tribunal, a tribunal that has wide powers to deal with matters affecting persons with impaired decision making, such as appointing a guardian or an administrator, or revoking or suspending an enduring power of attorney.

witness

Many legally binding documents require that the person signing the document has their signature witnessed. Some documents only require the witness to be an independent adult. Some documents require that at least one of the witnesses be a person authorised by law to witness statutory declarations or affidavits, i.e. that they be an authorised witness. It is important that requirements in relation to who can be a witness are followed to ensure that the document is legally valid.

PLANNING YOUR POWER OF ATTORNEY

TYPES OF POWER OF ATTORNEY

Each State and Territory of Australia has legislation that allows you, using a range of appointment documents, to give powers to other people over aspects of your personal, legal, financial and health affairs. Collectively we call these documents ‘powers of attorney’, but each type of document has a different purpose. The Victorian power of attorney documents are:

- » enduring power of attorney
- » enduring power of attorney (medical treatment)
- » general non-enduring power of attorney
- » appointment of supportive attorney

We explain each document in more detail in this section, as well as under ‘instructions on how to complete your power of attorney’ on page 19, which deals with how to create each specific document.

AN ENDURING POWER OF ATTORNEY

An enduring power of attorney allows you to nominate one or more attorneys to do anything on your behalf that you can lawfully do by an attorney, including to make financial or personal decisions on your behalf (or both), with the appointment continuing to have effect even if you lose the capacity to make your own decisions. For this reason, an enduring power of attorney may be a more useful document in the longer term, but you will need to be more careful when making it, because you will not be able to supervise the actions of your attorney once you no longer have capacity.

Under an enduring power of attorney, your attorney can make and carry out decisions relating to your financial and personal matters or broader matters if you choose.

Decisions on financial matters relate to your financial or property affairs, and any legal matter in relation to those affairs. Decisions on personal matters may include decisions as to where and with whom you should live, with whom you should have contact, and some types of health decisions. A personal matter can also include any legal matter relating to a particular personal matter.

It is possible to impose conditions on, or give instructions about, what your attorney or attorneys can do. For example, it may be that you only want your attorney to pay certain types of expenses for you (such as outgoings on a property).

When considering including conditions in your enduring power of attorney, remember that if you lose capacity, you will no longer be able to change your document to enable your attorney to act beyond the limitations you have set.

AN ENDURING POWER OF ATTORNEY (MEDICAL TREATMENT)

Under an enduring power of attorney (medical treatment), your attorney (known as an ‘agent’) is able to make decisions with regard to medical treatment you are receiving or might receive, whether in relation to an existing medical condition or one that arises in the future. The agent’s power only commences once you have lost capacity to make the decisions yourself. The types of decisions may include whether you should undergo a particular operation or medical procedure, whether you should be examined for particular conditions, and whether any particular course of preventive or rehabilitative care should be undertaken.

If you have not made an enduring power of attorney (medical treatment) and you lose the capacity to make decisions for yourself about medical treatment, there may be other people who can consent to you receiving a particular type of medical treatment if the need arises. Those people may include your spouse or domestic partner (if any), your nearest relative, or an attorney you have appointed to have power over health decisions under an enduring power of attorney. The full list of the categories of persons responsible for such decisions, and their order of precedence, is set out in legislation.

Appointing an agent under an enduring power of attorney (medical treatment) or an attorney for personal matters (including health matters) under an enduring power of attorney, enables you to retain some control over who will make health decisions for you if the need arises.

AN APPOINTMENT OF SUPPORTIVE ATTORNEY

A general non-enduring power of attorney allows you to nominate one or more attorneys to do anything on your behalf that you can lawfully do by an attorney. You may limit the role of the attorney to performing a specific task for you, such as collecting the rent from a property you own whilst you are overseas, or acting only for a specific period of time.

An attorney appointed under a general non-enduring power of attorney automatically loses legal authority to act for you if you lose capacity. So, whilst the general non-enduring power of attorney can be useful for a limited or short-term appointment, bear in mind that it will cease to be effective if, due to an accident or ill health, you lose capacity to make your own decisions.

AN APPOINTMENT OF SUPPORTIVE ATTORNEY

You can appoint one or more supportive attorneys to help you to make and carry out your own decisions. You can authorise a supportive attorney to assist you by obtaining information for you, communicating information relating to your decisions, and taking steps to have some types of decisions made by you carried out.

Such an appointment may be useful, for example, if you have a disability that makes it physically difficult for you to get hold of information relevant to your decisions, or to communicate or carry out your decisions.

You can give a supportive attorney three types of power: *information power* (the power to access personal information relating to a decision by you), *communication power* (the power to communicate information relating to a decision by you), and *effect-giving power*, which permits the supportive attorney to take reasonable steps to carry out some types of decisions you make (although this does not include decisions about significant financial transactions).

An appointment of supportive attorney will cease to be effective at any time in which you no longer have capacity in respect of the matters to which the appointment relates.

DUTIES OF AN ATTORNEY

It is important to understand exactly what duties are imposed on an attorney, as it may be that the person you have in mind as a potential attorney does not have the skills to fulfil these obligations.

Being appointed an attorney means taking on important responsibilities. An attorney must fulfil strict legal obligations, and if these are breached, there can be serious repercussions for you and for your attorney.

Your attorney will generally have the following duties:

- » to act honestly, diligently and in good faith;
- » to exercise reasonable skill and care;
- » to not use their position for profit (unless the appointment document or the law allows it);
- » to avoid acting where there is or may be a conflict of interest between their own affairs and yours (unless the appointment document allows them to do otherwise);
- » to not disclose confidential information they obtain as attorney (unless the appointment document or the law allows it);
- » to keep records of all dealings or transactions they make on your behalf;
- » to keep their property separate from your property (unless they already own property jointly with you, or are replacing jointly owned property);
- » to always act in your best interests.

Under an enduring power of attorney, your attorney will generally also need your permission (or the permission of VCAT) to enter into a transaction as attorney if it means their duty to you may conflict with their own interests or those of a relative, business associate or close friend of theirs.

If your attorney under an enduring power of attorney is acting for you when you no longer have decision making capacity, they have additional duties to you. They must as far as reasonably possible:

- » act in a way that does not restrict your own ability to make decisions and act;
- » help and encourage you to take part in decisions affecting you;
- » give appropriate effect to your wishes;

- » promote your personal and social wellbeing by treating you with dignity, respecting your supportive relationships, religion, values and cultural and linguistic environment; and
- » respect the confidentiality of confidential information relating to you.

CAN MY ATTORNEY MAKE GIFTS ON MY BEHALF?

Normally, your attorney cannot make gifts from your money or property unless you say so in the power of attorney document.

However, different rules apply where you appoint an attorney for financial matters after 1 September 2015 under a Victorian enduring power of attorney (such as the one included in this kit).

Unless you say in the enduring power of attorney document that they cannot, the attorney will be able to make certain types of gifts from your property on your behalf.

The gift must be reasonable in all the circumstances, especially taking account of your financial situation. The gift must also fall into one of two types: the first type is a gift to a relative or close friend of yours that is either of a seasonal nature (such as a Christmas present) or for a special event (such as a wedding or graduation); the second type is a donation of a type that you have made when you had decision making capacity (such as if you have regularly made donations to a particular charity), or that you might reasonably be expected to make, for example, if you or a family member are adversely affected by a particular illness, you might be expected to make donations to an organisation that is trying to find a cure for the illness.

The attorney may even make gifts to themselves, or to a relative of theirs, or to an organisation they have a connection to.

If you do not want your attorney to have these gifting powers, or want them to have a different type of gifting power, you will need to specify this in the 'conditions and instructions' section of your enduring power of attorney document.

CAN MY ATTORNEY GIVE SUPPORT TO MY DEPENDANTS?

If you want your attorney to be able to use your money or property to provide for the needs of any dependants you have (a spouse, or children of yours who are minors) you will need to say this in your document (general non-enduring power of attorney or enduring power of attorney). In your enduring power of attorney, you can include permission for your attorney to do this in the 'conditions and instructions' section, in which case any payments made by your attorney will need to be reasonable in all the circumstances (unless you say otherwise in the document).

WHAT AN ATTORNEY CANNOT DO

You should keep in mind there are some things an attorney cannot do for you, even if you want them to. For example, your attorney cannot:

- » make a will for you (If you have not made a will and you lose capacity then you will be unable to make one. In the absence of a will, after you die, your estate will be dealt with according to the laws of intestacy of the State or Territory in which you were residing at your death. If you have not already made a will, you should consider doing so at the same time as you are making any power of attorney appointments.);

- » take over your role as an executor of someone else's will;
- » take over your role as a trustee of a trust;
- » vote at an election on your behalf; or
- » decide whether or not you should marry or divorce someone.

WHO CAN I APPOINT AS MY ATTORNEY?

The main legal requirement when appointing an attorney is that the attorney is at least 18 years of age and (for most jurisdictions) is not bankrupt.

In Victoria, an attorney under an enduring power of attorney or a supportive attorney under an appointment of supportive attorney, must:

- » be over 18 years;
- » not be an insolvent under administration;
- » if being appointed in relation to financial matters, must not have been convicted or found guilty of an offence involving dishonesty, or if they have been, the conviction or finding of guilt must be disclosed to you and recorded in the power of attorney document; and
- » not be your accommodation provider, health provider or care worker.

When considering who to appoint as your attorney you should consider whether the potential attorney is someone who:

- » can be trusted to act in your best interests;
- » does not have, and is unlikely to have, a conflict of interest;
- » would understand what you would want to be done if you become incapacitated;
- » has good organisational skills, especially if they will have power for financial matters;

-
- » is willing to take on the role (you should discuss your proposed appointment with your intended attorney before writing up the document);
 - » is living near you and readily available to make decisions and execute documents; and
 - » will be able to cooperate with the other attorney(s) you appoint (if any).

If you are preparing more than one type of power of attorney, consider whether the same person is suited to take on the responsibilities of multiple attorney roles. For example, one person might be best suited to managing your finances, but may not be a good choice to make medical treatment decisions for you.

Trusted family and friends can be appointed as your attorney. Professionals such as trustee companies and solicitors can also be appointed but usually are only able to be appointed for financial or property decisions, not personal or medical decisions.

Appointing a trustee company or solicitor as your attorney for financial and property matters could have advantages in that they are independent and objective, are unlikely to have a conflict of interest, and will have experience in dealing with legal and financial matters. Appointing a professional to take on such responsibilities will generally involve fees for their services, which you should discuss with them prior to making the appointment.

For residents of Victoria, if you wish to appoint State Trustees as your attorney for financial matters, please contact us on (03) 9667 6444.

CAN I APPOINT MORE THAN ONE PERSON AS MY ATTORNEY?

You can appoint multiple attorneys under the powers of attorney in this kit, other than the enduring power of attorney (medical treatment). In respect of enduring powers of attorney (medical treatment), you cannot appoint multiple agents but you may appoint an alternative agent who can act if the original agent loses capacity, dies or is absent for a period of time.

If you appoint only one attorney, that person will have the authority to make decisions on your behalf, subject to any restrictions you create in the document when you complete it.

Depending on the type of power of attorney you are making, if you are appointing more than one attorney, there are a number of different ways in which you can appoint them to act.

For a general non-enduring power of attorney and an enduring power of attorney, you may appoint multiple attorneys to act jointly, severally, or jointly and severally, or to act by a majority:

- » 'Joint' attorneys are only authorised to act together. That is, they must be in agreement when making decisions on your behalf.
- » Where your attorneys are appointed as 'several' attorneys, each attorney can make decisions and sign documents without consulting the other attorneys.
- » 'Joint and several' attorneys can make decisions or enter into legally binding transactions either together or separately.
- » Where you authorise attorneys to act 'as a majority', they can act if the majority of attorneys agree, for example, 2 out of 3 attorneys.

If you want to provide for a more complex arrangement, for example appointing multiple attorneys, some of whom are appointed jointly and others severally, we do not recommend using this kit for that purpose, but instead recommend that you seek professional legal advice.

Under an appointment of supportive attorney, you may appoint multiple attorneys and specify the matters for which each of them is to act.

If you plan to appoint multiple attorneys or supportive attorneys, you should consider choosing people who (a) are unlikely to come into conflict with each other; and, if you are appointing them to act jointly, (b) live in reasonably close proximity to each other to ensure transactions are not unnecessarily delayed (for example, due to difficulties involved in arranging to get together to sign documents on your behalf).

CAN SOMEONE ELSE ACT AS AN ALTERNATIVE ATTORNEY IF THE FIRST ATTORNEY(S) CANNOT ACT?

You may appoint an alternative attorney to act in the event that your original attorney loses capacity, dies, resigns, is unable or unwilling to act, or their appointment is revoked by their becoming ineligible to be an attorney.

WHEN DOES A POWER OF ATTORNEY DOCUMENT CEASE TO BE EFFECTIVE?

The table below sets out how various events will generally affect the powers given under a general non-enduring power of attorney or an enduring power of attorney document.

Circumstance	General non-enduring power of attorney document	Enduring power of attorney document
You have lost capacity	Power ceases	Power continues
Your death	Power ceases	Power ceases
Your sole attorney resigns	Power ceases	Power ceases
Your sole attorney loses capacity	Power ceases	Power ceases
Your sole attorney becomes an insolvent under administration	Power continues	Power ceases
Your sole attorney dies	Power ceases	Power ceases
One of two joint attorneys dies (no alternative attorney provided for)	Power ceases	Power continues*
One of two joint attorneys resigns	Power ceases	Power continues*
One of two joint attorneys loses capacity	Power ceases	Power continues*

Circumstance	General non-enduring power of attorney document	Enduring power of attorney document
One of two joint attorneys becomes an insolvent under administration	Power continues	Power continues*
One of two joint and several attorneys dies	Power continues	Power continues*
One of two joint and several attorneys resigns	Power continues	Power continues*
One of two joint and several attorneys loses capacity	Power continues	Power continues*
One of two joint and several attorneys becomes insolvent	Power continues	Power continues*

* You may however specify in your enduring power of attorney document that your joint or joint and several attorneys' power ceases in these circumstances.

HOW DO I MAKE A CERTIFIED COPY OF MY POWER OF ATTORNEY DOCUMENT?

A certified copy of your document will often be required by third parties (such as banks) for their legal records. To certify a copy of the document, the original fully executed and witnessed document and a full photocopy of it must be presented to an authorised witness. A list of authorised witnesses is provided on page 36.

On each page of the copy, the authorised witness must write or stamp a certification, along with their signature, to verify the accuracy of the copy.

Commonly accepted certification wording is:

'I *[insert full name]*, being a *[insert qualification]*, HEREBY CERTIFY THAT this document is a true and complete copy of the original which contains ... *[insert No. of pages]* pages, and this is a true and complete copy of the corresponding pages of the original.'

WILL MY POWER OF ATTORNEY DOCUMENT REMAIN VALID IF I MOVE TO ANOTHER STATE OR TERRITORY WITHIN AUSTRALIA?

A power of attorney made in Victoria will be recognised in other States or Territories so long as it complies with the laws of the relevant state or territory in which you are seeking to enforce it.

Different States and Territories also have slightly different requirements. Some States and Territories will require the power of attorney to be registered, some will require registration only if the power of attorney is to be used to deal with land in that jurisdiction.

As a matter of practicality, a move interstate is a good opportunity to review whether your nominated attorney would be able to fulfil their duties from across State or Territory borders. It is recommended that if you do move interstate, you create a new document that fully complies with the requirements of the new State or Territory.

WILL MY POWER OF ATTORNEY DOCUMENT REMAIN VALID IF MY ATTORNEY MOVES TO ANOTHER STATE OR TERRITORY WITHIN AUSTRALIA?

The validity of a document is not impacted by an attorney's move interstate. However, as a matter of practicality, if your attorney no longer lives close to where you live, they may have difficulty fulfilling their role given the possible delays involved in approving transactions, or making other important decisions, from a distance. In some cases, if you have appointed an alternative attorney, they may be able to act in place of the original named attorney.

GUIDELINES FOR THE WITNESSES

Your witnesses should satisfy themselves that:

- » you appear to have capacity at the time you sign the document. They can do this by asking questions to make sure you understand:

- the document you are signing and the power you are giving to your attorney, agent or supportive attorney;
- your ability to revoke the appointment whilst you have capacity to do so; and
- documents are signed by you without any undue influence or pressure.

It is prudent for the witnesses to take notes of the signing process and keep these notes for future reference.

AS AN ATTORNEY, HOW DO I SIGN DOCUMENTS UNDER A POWER OF ATTORNEY?

When an attorney signs a legally binding document on your behalf, the following is a commonly accepted format for signing as a power of attorney:

For a document which is an Agreement:

Executed for and on behalf of *[insert name of principal]* by *[his/her]* attorney *[insert full name of attorney]* under power of attorney dated *[insert date]*, who at the time of signing has not received notice of revocation of the power of attorney, in the presence of:

For a document which is a Deed:

Signed, sealed and delivered for and on behalf of *[insert name of principal]* by *[his/her]* attorney *[insert full name of attorney]* under power of attorney dated *[insert date]*, who at the time of signing has not received notice of revocation of the power of attorney, in the presence of:

However, it is good practice that your attorney check with the party to whom the document is intended to be given as to any specific wording requirements they may have.

INSTRUCTIONS ON HOW TO COMPLETE YOUR POWER OF ATTORNEY

Take your time to read this entire kit, the step-by-step instructions provided in this section and the guidance notes provided on the blank power of attorney documents.

You will need to print out the power of attorney forms in this kit in order to complete the document. If the document you are completing consists of more than one sheet of paper, make sure you have all the sheets for the document together and in the correct page order. All sheets should then be stapled, so they remain together as one document, using one single staple in the top left-hand corner. Stapling helps reduce the risk of pages getting out of order or being lost, and helps avoid any suggestion that pages have been added, replaced or omitted after the document has been signed and witnessed.

Use a permanent ballpoint pen in black or blue. Write clearly and legibly. If you make a mistake, cross it out (do not use liquid paper or correction tape), initial the change and have all of your witnesses do the same. Do not alter the document after it has been signed.

If you are known by more than one name, then you may include the other names for example:

'I, DAVID ROBB, also known as DAVID ROBSON, also known as DALE ROBINSON'.

Do not enter a post office box as your address or your attorney/agent's address. State your current residential street address.

The legality of an enduring power of attorney document will not be affected by a subsequent change of your address, or the address or your attorney(s), agent(s) or witness(es).

ENDURING POWER OF ATTORNEY

An enduring power of attorney allows you to nominate one or more attorneys to do anything on your behalf that you can lawfully do by an attorney, including to make financial or personal decisions on your behalf (or both). You can impose conditions on what your attorney can do and you can give instructions as to how they should exercise their powers.

The defining characteristic of an enduring power of attorney is that, as with all 'enduring' appointments, the power you grant to your attorney continues even after you lose decision making capacity. This means that during any time in which you do not have decision making capacity, you will not be able to properly supervise what your attorney is doing on your behalf, and you will not be able to revoke their appointment.

You can also authorise your attorney(s) for personal matters to make some health decisions on your behalf. However, a person (agent) appointed under an enduring power of attorney (medical treatment) has power to make medical treatment decisions that are more binding, and have greater authority, than those of an attorney under an enduring power of attorney. You should also consider some of the other differences between these appointments, such as how many agents can be appointed, and when the agent's powers can commence. Under an enduring power of attorney (medical treatment) you may only appoint one agent, and one alternate agent, and the powers you give are not exercisable unless you no longer have decision making capacity. In general, if you want the person you appoint to be able to refuse medical treatment in all situations, it is better to appoint an agent under an enduring power of attorney (medical treatment).

MAY I APPOINT MORE THAN ONE ATTORNEY?

Yes. If you are appointing more than one attorney, you may appoint them to act jointly, severally, jointly and severally, or as a majority. Please refer to 'key terms explained' on page 8 for further explanation of the terms 'joint/jointly' and 'joint and several/jointly and severally' and 'can I appoint more than one person as my attorney?' on page 15 for further information. You can also appoint alternative attorneys in the event that any of your original named attorneys are unwilling or unable to act.

WHEN DOES MY ATTORNEY'S POWER BEGIN AND END?

You may choose whether your attorney's power begins immediately or whether their power starts on a specific time or date, or on a specific occasion, or in specific circumstances. However, even if the matter you have specified as starting your attorney's powers has not yet happened, your attorney may still act for you during any period in which you do not have decision making capacity for that matter. If your attorney does exercise their power during that time, they will be able to continue to do so even if you regain decision making capacity.

If you do not specify when your attorney's power is to begin, the power will begin immediately the document is created.

An attorney's power to act will come to an end:

- » on any specified date or occasion in your enduring power of attorney document;
- » if you revoke the attorney's appointment, or make a subsequent enduring power of attorney that is inconsistent with the attorney's being able to act under the previous enduring power of attorney;
- » if your attorney become an insolvent under administration;
- » if your attorney becomes your care worker, health provider or accommodation provider;
- » in the case of an attorney with power for financial matters, your attorney is convicted or found guilty of an offence involving dishonesty;
- » if your attorney's appointment is revoked or suspended by VCAT or the court;
- » if your attorney loses decision making capacity or dies; or
- » if your attorney is a trustee company, the trustee company is wound up or ceases to be registered.

However, even if a particular attorney can no longer exercise their powers (because of one or more of the reasons set out above), your document may continue to be effective if you have appointed more than one attorney, or at least one alternative attorney. The particular circumstances will determine whether the enduring power of attorney continues to be effective. Please see the table on page 16 of this kit which provides further detail in respect of these circumstances.

The enduring power of attorney itself will come to an end:

- » in accordance with any condition or specification you have included in the document;
- » if you wholly revoke it, for example, by making a subsequent enduring power of attorney that is entirely inconsistent with the previous enduring power of attorney;
- » if you die;
- » if the power of all attorneys and alternative attorneys you have appointed under it has irrevocably ended;
- » if it is revoked by VCAT or the court.

CAN I LIMIT MY ATTORNEY'S POWER?

Yes, you can limit your attorney's power by stating the conditions and instructions in the document. For example, 'I do not authorise my attorney to sell any real estate I own'.

STEP-BY-STEP GUIDE FOR COMPLETING AN ENDURING POWER OF ATTORNEY DOCUMENT (FORM 1)

You must have capacity at the time you sign the enduring power of attorney document.

The completed document must be witnessed by two adult witnesses who are both at least 18 years of age. One of your witnesses must either be a medical practitioner or a person authorised to witness affidavits. Please see 'persons authorised to witness affidavits' on page 36 for further information. Neither witness may be the alternative attorney appointed under the document.

Where indicated on the enduring power of attorney form:

Page 1

- (a) Write your full name and residential address as principal. Do not use a post office box address.
- (b) In section 1, 'Appointment', write the full name and residential address of your attorney(s) in the space provided. You may appoint one, two or three attorneys. Cross out any part you do not use.
- (c) Tick one box, and only one, indicating how you want your attorney(s) to act; either one attorney, or two or three attorneys acting jointly; or severally; or jointly and severally; or by majority.

If you have appointed more than one attorney and you do not specify how they are to act, your attorneys will be taken to act jointly.

Page 2

- (d) Tick the first box if you wish to revoke all previous enduring powers of attorney; otherwise, tick the second box and write in the date of each enduring power of attorney you are not revoking. Note you can use this form to revoke any previous enduring powers of attorney you have made under the *Powers of Attorney Act 2014* (which came into force on 1 September 2015) or any old enduring powers of attorney you made under the *Instruments Act 1958* (the old law). You cannot use this form (form 1) to revoke (i) an enduring power of attorney (medical treatment) or (ii) an enduring power of guardianship: you will need to use the revocation forms specific to those appointment types. See page 28 for further information on the revocation of enduring power of attorney (medical treatment). Visit www.statetrustees.com.au/power_of_attorney_kit/additional_forms to download a copy of the revocation of appointment of enduring guardian form.
- (e) If you are appointing one or more alternative attorneys, write each alternative attorney's full name and address, and the name of the attorney they are appointed as alternative for, and cross out any fields you do not use. Using the form in this kit, you may appoint up to three alternative attorneys. If you are not appointing any alternative attorneys, cross out the whole section.

Pages 3 & 4

- (f) If you have appointed one or more alternative attorneys and wish to specify the circumstances in which you are authorising the alternative attorney(s) to act, write the details in the space provided.

For example, you appoint your attorney Fred Smith to make decisions on all of your financial affairs, however you wish to specify that your alternative attorney Mary Jones has power to make financial decisions when Fred Smith is overseas. To provide for this, you could include the following text 'I authorise my alternative attorney, Mary Jones to deal with my financial affairs when my original attorney Fred Smith is outside Australia.' If you have not appointed an alternative attorney(s), cross out this section.

- (g) In section 2, 'Authorisation', you need to specify the authority you are giving to your attorney(s). You must choose either option 2.1 or 2.2.
- (i) Choose 2.1, if you want to specify the types of matters for which your attorneys are to have powers (personal, financial, or both), tick the box for the option you choose. If you are not authorising your attorney(s) to exercise power for all of your personal and/or financial matters but perhaps only some of those matters, specify in the space provided the matter(s) and the attorney(s) to whom the matter(s) apply. If different attorneys are appointed for different matters, specify how these attorneys are to act, e.g. jointly and for which matters. For example, 'my attorney John Smith has power over all of my personal matters. My attorneys Mary Jones and Samantha Jones, jointly, have power over my tax matters but no other financial matters.'
- (ii) Choose 2.2 if you want to give your attorney(s) power to do all things you can lawfully do by an attorney.
- (h) In section 3, 'Commencement':
- (i) Tick one box and only one box, indicating when you would like the powers to commence. Note: If you do not choose an option, the powers you give will be commence immediately after you make the enduring power of attorney.
- (ii) If you tick the third box ('from the following time, in the following circumstance or on the following occasion') and you want the power to commence at different times for different matters specify this in the space provided. For example, 'Financial matters: commences when I enter a nursing home. Personal matters: commences when I lose capacity.'

Page 5

- (i) In section 4, 'Conditions and Instructions', write any conditions and instructions you wish to include. If you do not wish to include any conditions and instructions, write NIL. Do not cross out any part of this section.
- (j) Sign and date the document in the presence of your witnesses. If another person is signing at the direction of you, they should complete the relevant section.

Page 6

- (k) Each of your two witnesses must write their full name and address, and complete the certification section by selecting either option A or option B. Both witnesses must then sign where indicated. The qualification of the relevant witness, and the date, should be completed. At least one of your witnesses must be either a medical practitioner or a person who is authorised to witness affidavits. See page 36 for further details on the list of authorised witness for affidavits.

Pages 7-9

- (l) (i) Each attorney must complete a statement of acceptance by writing their full name and address.
- (ii) If your attorney is appointed for financial matters and they have been convicted or found guilty of an offence involving dishonesty, they must tick the applicable box.
- (iii) Sign and date the acceptance in front of the witness. Your witness must be an independent witness who is at least 18 years of age.
- (iv) The witness needs to write their full name, address, and sign and date the statement.

Pages 10-12

- (m) (i) Each alternative attorney must complete a statement of acceptance by writing their full name and address.
- (ii) If your alternative attorney is appointed for financial matters and they have been convicted or found guilty of an offence involving dishonesty, they must tick the applicable box.
- (iii) Sign and date the acceptance in front of the witness. Your witness must be an independent witness who is at least 18 years of age.
- (iv) The witness needs to write their full name, address, and sign and date the statement.

STEP-BY-STEP GUIDE FOR REVOKING AN ENDURING POWER OF ATTORNEY DOCUMENT OR APPOINTMENT OF ATTORNEY/ALTERNATIVE ATTORNEY (FORM 2)

1. Where indicated on the revocation by principal of enduring power of attorney or appointment of attorney/alternative attorney form:
 - (a) Write your full name and residential address. Do not use a post office box address.
 - (b) Tick the first box if the entire power of attorney document is to be revoked.
 - (c) Tick the second box to revoke one, two or all three of your attorney appointments. Cross out any lines you do not use.
 - (d) Tick the third box to revoke one, two or all three of your alternative attorney appointments. Cross out any lines you do not use.
 - (e) Sign and date the document in the presence of your witnesses. If another person is signing at the direction of you, they should complete the relevant section.
 - (f) In the certificate of witnesses section, two witnesses must write their full name and address, complete the certification section by selecting either option A or option B. Both witnesses must sign, write their qualification and date in the section as marked. One witness must be acting as a medical practitioner or be authorised to witness affidavits. See page 36 for further details on the list of authorised witness for affidavits.

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2. You should provide a certified copy of the revocation document to your attorney and, if possible, also provide a certified copy to each institution or organisation (such as banks) which you know has been dealing with your attorney in their capacity as your attorney. If the original enduring power of attorney is held by an attorney whose appointment you have revoked, it is very important that you arrange for your attorney to return it to you, to avoid possible misuse.
- iv. if the principal does not have decision making capacity for the matter for which the attorney has power, and there is no person to notify under points (ii) or (iii) above:
- a. the nearest relative of the principal; or
 - b. if the attorney is not able to notify the nearest relative, the Public Advocate.

REVOCATION BY INELIGIBILITY: NOTIFICATION BY ATTORNEY

In some cases, an attorney's power is revoked if they are no longer eligible to act as attorney. For an attorney who is an individual, the law provides that their powers are revoked if they:

- » become an insolvent under administration;
- » become a care worker, health provider, or accommodation provider for the principal; or
- » (in the case of an attorney for financial matters) are convicted or found guilty of an offence involving dishonesty.

TO WHOM MUST THE ATTORNEY GIVE A NOTIFICATION?

If the appointment of the attorney is revoked for any of the above reasons, the attorney must take reasonable steps to give a notice, in the prescribed form, to:

- i. the principal, if the principal has decision making capacity for the matter for which the attorney has power;
 - ii. any other attorney appointed under the enduring power of attorney;
 - iii. any alternative attorney appointed under the enduring power of attorney; and
1. Where indicated on the revocation by attorney or alternative attorney form
 - (a) Write the full name and address of each person or organisation to whom you will be giving the form. If you are notifying a number of parties that will each require a separate notification, complete a separate form for each such party.
 - (b) Write your full name and residential address.

STEP-BY-STEP GUIDE FOR COMPLETING NOTIFICATION BY ATTORNEY (FORM 3)

This form is to be completed by the attorney whose appointment is revoked.

Before starting to complete the form, you will first need to decide which party or parties you need to give the notice to, including confirming their name and (where possible) address. Refer to the points under the 'to whom must the attorney give a notification?' earlier on this page. If you have access to the enduring power of attorney document, or a copy of it, you will be able to confirm whether there are any other attorneys or any alternative attorneys, and what their details are.

Once you have the details of all the persons you will be notifying, consider whether you will need to fill in a separate notification form for each of them, or whether some or all of them can be included on the same notification form:

-
- (c) Write the full name of the principal and, if known, the date the enduring power of attorney was made.
 - (d) Tick the applicable box(es) indicating the reason(s) your appointment is revoked.
 - (e) Sign and date the document.
2. You must take reasonable steps to give the complete notification(s) to each party to whom it/they are addressed. However, if you fail to give notification, or to take reasonable steps to do so, this will not affect the validity of the revocation of the power.

RESIGNATION BY ATTORNEY OR ALTERNATIVE ATTORNEY

An attorney or alternative attorney may resign if the principal still has decision making capacity. If the principal no longer has decision making capacity, and there is no attorney or alternative attorney who can act in the resigning attorney's place, the attorney must apply to VCAT or the Supreme Court for permission to resign. Where such permission is not required, the resignation must be done in writing in a prescribed form.

IN WHAT CIRCUMSTANCES CAN AN ATTORNEY UNDER AN ENDURING POWER OF ATTORNEY RESIGN?

The *Act* sets out the circumstances in which an attorney or alternative attorney under an enduring power of attorney, who has power for a matter, may resign as attorney or alternative attorney for that matter.

Section 56 provides that, if the principal has decision making capacity for the matter, the attorney or alternative attorney may resign at any time.

Section 59 deals with the situation where the principal does not have decision making capacity for the matter. It provides that:

- » the attorney may resign at any time:
 - if there is another attorney who has power for the matter: section 59(1)(a);
 - there is no other attorney for the matter, but there is an alternative attorney who (i) has power for the matter; and (ii) is able and willing to act: section 59(1)(b);
- » the alternative attorney who is not acting as attorney under the enduring power of attorney may resign as alternative attorney: section 59(3).

In some cases, a resignation may be specific to certain types of matters. For example, if you are appointed as attorney for financial and personal matters, and you would be permitted under the *Act* to resign as attorney, you may choose to resign for financial matters only, and continue as attorney for personal matters.

A resignation under section 56 or section 59(1)(a), section 59(1)(b) or section 59(3) must be in the prescribed form (form 4).

STEP-BY-STEP GUIDE FOR COMPLETING A RESIGNATION BY ATTORNEY OR ALTERNATIVE ATTORNEY (FORM 4)

This form is to be completed by the attorney or alternative attorney who is resigning.

Before starting to complete the form, check over the descriptions of circumstances described under 'in what circumstances can an attorney under an enduring power of attorney resign?' on earlier on this page to confirm whether form 4 can be used for the resignation. The attorney or alternative attorney will also need to decide whether they are resigning (if permitted to do so) for all matters or only some.

1. Where indicated on the resignation by attorney or alternative attorney document, the resigning attorney or alternative attorney must:
- Write their full name and address.
 - Tick the applicable option to reference the resignation back to the appropriate section of the *Act* as described in the explanatory text provided on the form.
 - Tick the applicable option of resigning from acting as attorney or alternative attorney.
 - Tick and write the scope of the power, if applicable, on the form.
 - Write the date, if known, or the approximate date when the power of attorney was made and write the full name of the principal.
 - Sign and date the document.
2. Once the resigning attorney or alternative attorney has completed the form, they will need to determine who needs to be notified of the resignation. The table below sets out the notification obligations you have under each resignation type.

If an attorney or alternative attorney is resigning under:	He or she must take reasonable steps to notify:
Section 56	<ul style="list-style-type: none"> » the principal; and » any other attorney and any alternative attorney under the enduring power of attorney.
Section 59(1(a))	<ul style="list-style-type: none"> » the other attorney who has power for the matter and any other attorney under the enduring power of attorney; and » any alternative attorney.
Section 59(1(b))	<ul style="list-style-type: none"> » the alternative attorney and any other alternative attorney under the enduring power of attorney.
Section 59(3)	<ul style="list-style-type: none"> » any attorney under the enduring power of attorney; and » any other alternative attorney.

ENDURING POWER OF ATTORNEY (MEDICAL TREATMENT)

An enduring power of attorney (medical treatment) allows you to nominate a person (referred to as your 'agent') to make medical treatment decisions on your behalf should you become unable to make such decisions yourself. The appointment only comes into effect if you have lost capacity and a decision about your medical treatment needs to be made.

MAY I APPOINT MORE THAN ONE AGENT?

You can only appoint one agent. However, you can appoint an alternate agent to act in the event that the first agent dies or loses capacity, or is unable to be contacted, or if their whereabouts are unknown.

An alternate agent cannot make any binding decision until seven days after submitting a statutory declaration that satisfactorily explains why the first-named agent cannot act.

WHEN DOES MY AGENT'S POWER BEGIN AND END?

The appointment will only begin when you have lost the capacity to make decisions about your medical treatment.

It will end when either you or VCAT revokes the power, or when you die. Your agent (including any alternate agent) will not be able to exercise their powers at any time when they do not have capacity.

CAN I LIMIT MY AGENT'S POWER?

Your agent's powers are prescribed by the *Medical Treatment Act 1988* and cannot be changed. In particular, unless they have obtained authorisation from VCAT to do so in a specific instance, your agent does not have the authority to make decisions that will, or are likely to, result in:

- » infertility;
- » termination of pregnancy;
- » removal of tissue for transplant; or
- » refusal of palliative care.

Your agent's decisions about your medical treatment will be given priority over any wishes of your family. However, a family member or other person with a special interest in your affairs may apply to VCAT to have the appointment of your agent revoked or suspended if they have evidence that the agent is not acting in your best interests.

You should seek professional legal advice if you need guidance about what other types of advance arrangements you could make for specific medical procedures or treatments.

WHAT IF I ALREADY HAVE AN ENDURING POWER OF ATTORNEY FOR HEALTH DECISIONS?

If you have already created an enduring power of attorney giving an attorney power for personal matters (which include some health matters), a subsequent enduring power of attorney (medical treatment) will take precedence in the event there are any disputes.

STEP-BY-STEP GUIDE FOR COMPLETING AN ENDURING POWER OF ATTORNEY (MEDICAL TREATMENT) DOCUMENT

1. This document must be witnessed by two adult witnesses who are both at least 18 years old. One of the witnesses must be authorised to witness statutory declarations and neither witness may be the agent appointed under the document. Please see 'authorised witness for the signing of statutory declaration' for further information on page 35.

-
2. Where indicated on the enduring power of attorney (medical treatment) document:
 - (a) Write the date on which the document is to be signed and witnessed.
 - (b) Write your full name and residential address. Do not use a post office box address.
 - (c) Use section 1(a) if you wish to appoint one agent and no alternate agent. Write the full name and address of your agent. Use section 1(b) if you wish to appoint one agent and an alternate agent. Write the full name and address of your agent and alternate agent. Cross out either statement 1(a) or 1(b) as relevant (whichever you do not use).
 3. You and your witnesses should initial any sections that have been crossed out or changes that have been made prior to signing the document.
 4. Sign the document in the presence of your witnesses.
 5. Have your witnesses clearly write their full name, address and qualification, and sign and date the document in the certificate of witness section.
- (a) Write the full name and residential address of your agent.
 - (b) Write your full name and residential address.
 - (c) Write the date when the original enduring power of attorney (medical treatment) document was signed.
 - (d) Sign the document in the presence of your witness.
 - (e) Have your witness clearly write their full name, residential address, and sign and date the document.
3. You should provide a certified copy of the revocation document to your agent and you should also provide a certified copy to your medical practitioner(s). It is very important that you ask your agent to return the enduring power of attorney (medical treatment) document to make sure that they do not commence or continue to act as your agent.

GENERAL NON-ENDURING POWER OF ATTORNEY

This document allows you to appoint a person as your attorney to act on your behalf either immediately, or during a specific period of time, or on a particular occasion. The appointment will no longer be effective if you lose capacity to make decisions in relation to your financial and property affairs.

STEP-BY-STEP GUIDE FOR REVOKING AN ENDURING POWER OF ATTORNEY (MEDICAL TREATMENT) DOCUMENT

You should have your revocation document witnessed by at least one adult witness.

1. Where indicated on the revocation of enduring power of attorney (medical treatment) document:

MAY I APPOINT MORE THAN ONE ATTORNEY?

Yes. Where more than one attorney is appointed, they may be appointed as 'joint attorneys' or 'joint and several attorneys'. If you do not specify how your attorneys are to operate, they will automatically operate as joint attorneys. Please refer to 'key terms explained' on page 8 for further explanation of the terms 'joint/jointly' and 'joint and several/jointly and severally' and 'can I appoint more than one person as my attorney?' on page 15 for further information.

WHEN DOES MY ATTORNEY'S POWER BEGIN AND END?

You may choose whether your attorney's power begins immediately, or whether their power starts on a specific time or date, for example from 1 January 2018, or on a specific occasion.

The appointment will automatically end on the earlier of:

- » any specified date or occasion in your general non-enduring power of attorney document;
- » you revoking it (see 'step-by-step guide for revoking a general non-enduring power of attorney document' on page 30);
- » your attorney resigning or dying;
- » you losing capacity; or
- » you dying.

For more information about when your general non-enduring power of attorney will end, see the table on page 16.

CAN I LIMIT MY ATTORNEY'S POWER?

Yes, you can limit your attorney's power by stating the limitations within the document. For example, 'I authorise my attorney to transact on any bank account in my name, but I do not authorise my attorney to sell any real estate I own'.

STEP-BY-STEP GUIDE FOR COMPLETING A GENERAL NON-ENDURING POWER OF ATTORNEY DOCUMENT

While you are not strictly required by law to have your document witnessed, it is recommended you have at least one independent person, who is at least 18 years of age, witness the signing of the document.

1. Where indicated on the general non-enduring power of attorney document:
 - (a) Write the date on which the document is to be signed and witnessed.
 - (b) Write your full name and residential address. Do not use a post office box address.
 - (c) Write the full name and residential address of your attorney(s) in the space provided. You may appoint one, two or three attorneys. Cross out any part you do not use.
 - (d) Tick one box, and only one, indicating how you want your attorney(s) to act, either one attorney, or two or three attorneys acting jointly, or two or three attorneys acting jointly and severally.

- (e) If you would like to appoint an alternative attorney, write the full name and residential address of your alternative attorney, and who they are to act as an alternative attorney for. Up to three alternative attorneys can be appointed. Cross out any part you do not use.
- (f) Write any conditions, limitations or instructions you wish to impose on your attorney(s) if applicable. Otherwise, write 'NIL' in the space provided. Do not cross out any part of this section.
- (g) Tick one box, and only one, indicating when you want the power of attorney to begin, either immediately, on a specific date, or on a specific occasion. If you do not tick an option, the power will begin immediately.
- (h) You and your witness should initial any sections that have not been used or changes that have been made prior to signing the document.
- (i) Sign the document in the presence of your witness.
- (j) Have your witness clearly write their full name and residential address, and sign the document.
1. Where indicated on the revocation of general non-enduring power of attorney document:
 - (a) Write the full name and residential address of your attorney.
 - (b) Write your full name and residential address. Do not use a post office box address.
 - (c) Write the date when the general non-enduring power of attorney document was signed.
 - (d) Sign the document in the presence of your witness.
 - (e) Have your witness clearly write their full name and residential address, and sign and date the document.
 2. You should give a certified copy of the revocation of general non-enduring power of attorney document to your attorney and, if possible, you should provide a certified copy to each institution or organisation (such as banks) which you know has been dealing with your attorney in carrying out their power. It is very important that you ask your attorney to return the original general non-enduring power of attorney document to make sure they do not continue to act as your attorney.
 3. If you need to revoke more than one attorney, make a copy of this form and follow the above instructions to revoke your other attorney(s).

STEP-BY-STEP GUIDE FOR REVOKING A GENERAL NON-ENDURING POWER OF ATTORNEY DOCUMENT

To revoke a general non-enduring power of attorney, you must have capacity at the time you sign the revocation of general non-enduring power of attorney document. Your witness must be over the age of 18 years and not be the attorney or alternative attorney of the power.

APPOINTMENT OF SUPPORTIVE ATTORNEY

This document allows you to appoint a person (a supportive attorney) to assist you with your decision making and putting your decisions into effect, by authorising the supportive attorney to collect and receive information, communicate your decisions, and/or carry out your decisions.

The decisions the supportive attorney assists you with must be your own decisions. It is important to note that your supportive attorney cannot make decisions for you. The appointment will only have effect while you have decision making capacity.

MAY I APPOINT MORE THAN ONE SUPPORTIVE ATTORNEY?

You may appoint more than one supportive attorney and may specify the matters for which each supportive attorney can act.

You may also appoint one or more alternative supportive attorneys. You can choose to specify the circumstances in which the alternative supportive attorney is to act. If you do not specify the circumstances, the alternative supportive attorney will be able to act if your first appointed supportive attorney dies, loses capacity, is not willing or not able to act, or becomes ineligible to act as your supportive attorney.

WHEN DOES MY SUPPORTIVE ATTORNEY'S POWER BEGIN AND END?

You may choose whether your supportive attorney's power begins immediately, from a specific time or date, on a specific occasion, or in a specific circumstance. If you do not specify when the power is to begin, it will begin automatically on creation of the document.

A supportive attorney appointment will only be of effect while you have decision making capacity for the matters to which the appointment relates.

The appointment of a supportive attorney will end:

- » if your supportive attorney loses decision making capacity for the matters for which the appointment applies;

- » if your supportive attorney dies;
- » on a date or occasion (if any) specified in your appointment document;
- » if you revoke the appointment of the supportive attorney (see 'step-by-step guide for revoking a power of supportive attorney document (form 6)' on page 33);
- » if your supportive attorney becomes an insolvent under administration, or resigns;
- » if your supportive attorney becomes your care worker, accommodation provider, or health provider;
- » if the appointment is for financial matters and your supportive attorney is convicted or found guilty of an offence involving dishonesty; or
- » if you die.

CAN I LIMIT MY SUPPORTIVE ATTORNEY'S POWER?

You may specify the type of personal information you authorise your supportive attorney to access, collect, or assist you in accessing or collecting that is relevant to a supported decision. Your supportive attorney will be permitted to disclose such information if it is relevant and necessary to your supportive attorney's carrying out their role.

You may also authorise your supportive attorney to communicate information relating to you that is relevant and necessary to giving effect to a supported decision, and to communicate your supported decisions. You can also authorise your supportive attorney to do anything that is reasonably necessary to give effect to a decision.

STEP-BY-STEP GUIDE FOR COMPLETING AN APPOINTMENT OF SUPPORTIVE ATTORNEY DOCUMENT (FORM 5)

The completed document must be witnessed by two adult witnesses who are both at least 18 years of age. One of the witnesses must be a person authorised to witness statutory declarations. Please see 'persons authorised to witness statutory declarations' on page 35 for further information. Neither witness may be the supportive attorney appointed under the document.

1. Where indicated on the appointment of supportive attorney form:
 - (a) Write your full name and residential address. Do not use a post office box address.
 - (b) In section 1, 'Appointment', write the full name and residential address of your supportive attorney(s) in the space provided. You may appoint one or two supportive attorneys. If you are not appointing a second supportive attorney, cross out this section.
 - (c) You may also appoint one or two alternative supportive attorneys. If you are not appointing any alternative supportive attorneys, cross out this section. If you are only appointing one alternative supportive attorney, cross out the section for appointing a second alternative supportive attorney.
 - (d) If you have appointed one or more alternative supportive attorneys, and are specifying the circumstances in which you are authorising the alternative supportive attorney(s) to act, complete the relevant section on the form, otherwise cross the section out.
 - (e) If you have appointed an alternative supportive attorney(s), and you wish to specify how the alternative supportive attorney(s) will act complete the relevant section. If you do not complete this section, then section 93(2)(b) of the *Act* will apply. This section provides that your alternative supportive attorney(s) will be authorised to act in the following circumstances: if the supportive attorney for whom the alternative supportive attorney is appointed (i) dies; or (ii) does not have decision making capacity for the matter(s) to which the appointment applies; or (iii) is otherwise not willing or able to act; or (iv) the power given to them is revoked because they have become an insolvent under administration, or they have become a care worker, health provider or accommodation provider for you, or, in the case of a supportive attorney for financial matters, they are convicted or found guilty of an offence involving dishonesty.
 - (f) In section 2, 'Authorisation', tick the box or boxes on how you would like your supportive attorney(s) to exercise their power.
 - (g) If you are appointing more than one supportive attorney, specify which powers are to be given to which supportive attorney. For example, you may wish to give one supportive attorney 'information power' and another supportive attorney 'communication power'.

-
- (h) Specify the type of matters (personal; financial; personal and financial; other) that the powers apply to. Tick one box, and only one box. For example, if you wish to appoint a supportive attorney to access information about your financial affairs, tick the 'information power' option in the first part of section 2 and the 'financial matters' option in the second part of section 2. For example, 'my supportive attorney Mary Wong has information power over all of my personal matters and my supportive attorney Joseph Lee has information power over all of my financial matters.'
- (i) In section 3, 'Commencement', tick the relevant box, and if necessary specify the details, for when the appointment of your supportive attorney commences. If you do not tick a box, the appointment of your supportive attorney will commence immediately.
- (j) Sign and date the document in the presence of your two witnesses. If another person is signing at the direction of you, they should complete the relevant section.
2. In the certificate of witness section:
- (a) In the space provided, each witness writes their full name and residential address.
- (b) Your witnesses must complete the certification section by selecting either option A or option B.
- (c) Both your witnesses must sign and date the document in your presence. One witness must write their qualification and must be authorised to witness statutory declarations.
3. Each supportive attorney or alternative supportive attorney must accept their appointment by completing a statement of acceptance.
- (a) In the statement of acceptance section, your supportive attorney or alternative supportive attorney writes their full name and residential address where indicated.
- (b) If your supportive attorney or alternative supportive attorney is appointed for financial matters and they have been convicted or found guilty of an offence involving dishonesty, they must tick the applicable box.
- (c) Your supportive attorney or alternative supportive attorney must sign and date the document in the presence of an independent witness who is at least 18 years of age.
- (d) The witness must write their full name, residential address and sign and date the document.

STEP-BY-STEP GUIDE FOR REVOKING AN APPOINTMENT OF SUPPORTIVE ATTORNEY DOCUMENT (FORM 6)

To revoke an appointment of supportive attorney document (form 6), you must have capacity at the time you sign the revocation by principal of supportive attorney appointment or appointment of supportive attorney/alternative supportive attorney document.

The completed document must be witnessed by an adult witnesses who is at least 18 years of age. The witness must be authorised to witness statutory declarations. Please see 'persons authorised to witness statutory declarations' on page 35 for further information.

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1. Where indicated on the revocation by principal of supportive attorney appointment or appointment of supportive attorney/ alternative supportive attorney form:
 - (a) Write your full name and residential address. Do not use a post office box address.
 - (b) Tick the first box if you are revoking the entire supportive attorney appointment including the power of all your supportive attorneys and all your alternative supportive attorneys.

Tick the second box if you are only revoking the appointment of one or more of your supportive attorneys.

Tick the third box if you are only revoking the appointment of one or more of your alternative supportive attorneys.
 - (c) Sign and date the document in the presence of your authorised witness. If another person is signing at the direction of you, they should complete the relevant section.
 - (d) The authorised witness must write their full name, address and qualification, and sign and date the document.
 1. Where indicated on the resignation by supportive attorney or alternative supportive attorney form, the resigning supportive attorney or alternative supportive attorney must:
 - (a) Write their full name and residential address.
 - (b) In the statement of resignation, cross out the position that does not apply (supportive attorney, or alternative supportive attorney).
 - (c) Write the full name of the principal and, if known, the date of the original appointment document.
 - (c) Sign and date the document.
 2. Once the resigning supportive attorney or alternative supportive attorney has completed the form, they will need to take all reasonable steps to notify the principal, and any other supportive attorney and alternative supportive attorney, that they have resigned. However, if they do not notify them, or take reasonable steps to do so, it does not affect the validity of the resignation.

STEP-BY-STEP GUIDE FOR COMPLETING A RESIGNATION OF SUPPORTIVE ATTORNEY OR ALTERNATIVE SUPPORTIVE ATTORNEY DOCUMENT (FORM 7)

This form is to be completed by the supportive attorney, or alternative supportive attorney, to resign from their appointment.

AUTHORISED WITNESS FOR THE SIGNING OF STATUTORY DECLARATIONS (RELEVANT TO ENDURING POWER OF ATTORNEY (MEDICAL TREATMENT) AND APPOINTMENT OF SUPPORTIVE ATTORNEY)

Any of the following persons may witness the signing of a statutory declaration:

1. a justice of the peace or a bail justice;
2. a public notary;
3. an Australian lawyer (within the meaning of the Legal Profession Uniform Law Application Act 2014);
4. a clerk to an Australian lawyer;
5. the prothonotary or a deputy prothonotary of the Supreme Court, the registrar or a deputy registrar of the County Court, the principal registrar of the Magistrates' Court or a registrar or deputy registrar of the Magistrates' Court;
6. the registrar of probates or an assistant registrar of probates;
7. the associate to a judge of the Supreme Court or of the County Court;
8. the associate of an associate judge of the Supreme Court or of an associate judge of the County Court;
9. a person registered as a patent attorney under Chapter 20 of the Patents Act 1990 of the Commonwealth;
10. a member of the police force;
11. the sheriff or a deputy sheriff;
12. a member or former member of either House of the Parliament of Victoria;
13. a member or former member of either House of the Parliament of the Commonwealth;
14. a councillor of a municipality;
15. a senior officer of a Council as defined in the Local Government Act 1989;
16. a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);
17. a person registered under the Health Practitioner Regulation National Law:
 - (i) to practise in the dental profession as a dentist (other than as a student); and
 - (ii) in the dentists division of that profession;
18. a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student);
19. a veterinary practitioner;
20. a principal within the meaning of the Education and Training Reform Act 2006;
21. the manager of an authorised deposit taking institution;
22. a person who holds a prescribed membership of a prescribed accounting body or association;
23. the secretary of a building society;
24. a minister of religion authorised to celebrate marriages;
25. a Victorian inspectorate officer within the meaning of the Victorian Inspectorate Act 2011;
26. a person employed under Part 3 of the Public Administration Act 2004 with a classification that is prescribed as a classification to which this section applies or who holds office in a statutory authority with such a classification;

-
27. an IBAC Officer within the meaning of the Independent Broad-based Anti-corruption Commission Act 2011; or
 28. a fellow of the Institute of Legal Executives (Victoria).

AUTHORISED WITNESSES FOR CERTIFICATION OF DOCUMENTS AND AFFIDAVITS (RELEVANT TO ENDURING POWERS OF ATTORNEY)

Any of the following persons may witness the signing of an enduring power of attorney document:

1. any judge or the associate to any judge;
2. an Associate Judge of the Supreme Court or the associate to such Associate Judge;
3. an Associate Judge of the County Court or the associate to such Associate Judge;
4. a justice of the peace or a bail justice;
5. the prothonotary or a deputy prothonotary of the Supreme Court, the registrar or a deputy registrar of the County Court, the principal registrar of the Magistrates' Court or a registrar or deputy registrar of the Magistrates' Court;
6. the registrar of probates or an assistant registrar of probates;
7. a senior member or ordinary member of the Victorian Civil and Administrative Tribunal who, immediately before the commencement of section 8.2.1 of the Legal Profession Uniform Law Application Act 2014, was the registrar or a deputy registrar of the Legal Profession Tribunal;
8. a member or former member of either House of the Parliament of Victoria;
9. a member or former member of either House of the Parliament of the Commonwealth;
10. a public notary;
11. a legal practitioner within the meaning of the Legal Profession Uniform Law Application Act 2014;
12. a member of the police force of or above the rank of sergeant or for the time being in charge of a police station;
13. a person employed under Part 3 of the Public Administration Act 2004 with a classification that is prescribed as a classification to which this section applies;
14. a senior officer of a Council as defined in the Local Government Act 1989;
15. a person registered as a patent attorney under Chapter 20 of the Patents Act 1990 of the Commonwealth;
16. a fellow of the Institute of Legal Executives (Victoria);
17. any officer or person empowered authorised or permitted by or under any Act of Parliament to take affidavits in relation to the matter in question or in the particular part of Victoria in which the affidavit is sworn and taken.

PERSONAL DETAILS SCHEDULE

Your name: _____

Current residential address: _____

Postal address (if different): _____

Date of birth: _____ / _____ / _____ Place of birth: _____

Occupation: _____

Marital status: Married Single Widowed Domestic/Registered partner

If applicable, name of spouse: _____

Current residential address of your spouse: _____

Postal address of spouse (if different to residential address): _____

Religious affiliation: _____ Blood type: _____

Medical conditions: _____

Details of children and grandchildren (if any)

Name	Address	Date of birth

Assets – real estate

Property address	Type of ownership*	Location of title	If mortgaged, who the lender (e.g. bank) is	Estimated value

* Sole, joint tenancy or tenants-in-common

Assets – bank accounts/other financial investments

Bank or financial institution	Account name	Account type	Balance

Assets - superannuation

Superannuation fund	Account number	Nominated beneficiary	Value (\$)

Assets - shares

Company	Account name	Number of shares	Securityholder Registration No. (SRN)

Assets – life insurance

Name of insurance company	Policy owner/ policy number	Person insured	Value (\$)

.....

Assets – other (e.g. antiques, art works, precious jewellery, motor vehicles)

Description of asset	Location of asset	Value (\$)

Other insurances

Type	Provider	Policy number
Health		
Home & contents		
Motor vehicle		

Income source

Details of any pension entitlement	Value (\$)

Liabilities and debts

Description of any liabilities/debts	Value (\$)

Your will

Location of your will _____

Your executor(s) name	Address	Contact number

AGENTS, ADVISORS AND MEDICAL PROFESSIONALS

Financial advisor

Name: _____

Address: _____

Phone number: _____

Email: _____

Tax agent/accountant

Name: _____

Address: _____

Phone number: _____

Email: _____

Solicitor

Name: _____

Address: _____

Phone number: _____

Email: _____

Doctor

Name: _____

Address: _____

Phone number: _____

Email: _____

Dentist

Name: _____

Address: _____

Phone number: _____

Email: _____

Where should you store your power of attorney documents?



Join over 80,000 other Victorians who have their will or power of attorney documents stored safely and securely with State Trustees.

An estimated 1.1 million Victorians store their will and power of attorney documents at home where they can be misplaced, stolen, lost or damaged through house fires, floods or storms. If you have a will and/or power of attorney documents it is important to take the next step and make sure they are stored securely.

The Victorian Will Bank at State Trustees is a low-cost and convenient will and power of attorney documents storage service to provide peace of mind and ease of access for those you have appointed.

You can join over 80,000 other Victorians who have their will and/or power of attorney documents stored with State Trustees, the experts who have been helping Victorians with estate planning for more than 75 years.

How do I deposit my power of attorney documents into The Victorian Will Bank?

Step 1 – Complete and sign the Will Bank deposit form contained in this kit. Please complete a separate deposit form for each person lodging a power of attorney document(s). You should also obtain a certified copy of your original power of attorney documents and retain it in a safe place until you receive your welcome letter from State Trustees.

Step 2 – Send your original power of attorney documents and the completed deposit form to The Victorian Will Bank, Reply paid 1461 Melbourne VIC 8060.

Step 3 – A welcome letter will be sent to you regarding the storage and retrieval details.

Your power of attorney documents will then be safely and securely stored in The Victorian Will Bank.

Fees

The Victorian Will Bank offer is available to customers whose principal place of residence is the State of Victoria.

- A single fee of:
 - » \$39 per lodgement per client for storage of one power of attorney document
 - » \$75 per lodgement per client for storage of two power of attorney documents
 - » \$110 per lodgement per client for storage of three power of attorney documents
 - » \$140 per lodgement per client for storage of four power of attorney documents
- No additional costs for the number of years you store your documents
- No costs for retrieval
- Convenient payment options

How can I access my power of attorney documents after I have stored them?

If you need to access your power of attorney documents, you can contact State Trustees to retrieve them from storage. Please allow 3 business days for delivery to one of our offices.

Be sure to let your attorney or other appointees know where your power of attorney documents are stored.

The Victorian Will Bank Power of Attorney Document Deposit Form



State Trustees' Victorian Will Bank provides a safe and secure storage solution for your power of attorney documents.

To deposit one or more power of attorney documents for safekeeping in The Victorian Will Bank, please fill out a deposit form for each person lodging the power of attorney document(s) and send the form(s) and your original document(s) to:

The Victorian Will Bank
Reply paid 1461
Melbourne VIC 8060

Your details

Title: Mr. <input type="checkbox"/>	Miss. <input type="checkbox"/>	Ms. <input type="checkbox"/>	Mrs. <input type="checkbox"/>	Other. <input type="checkbox"/>		
Surname:			Given names:			
Address:						
Suburb:		State:		Postcode:		
Date of birth:			Mobile:			
Home telephone:			Work telephone:			
Email address:						

Payment details

I wish to store my power of attorney document(s) at The Victorian Will Bank. Please debit my credit card with the nominated amount using the details provided below.

- Storage of one power of attorney document, \$39 per lodgement
- Storage of two power of attorney documents, \$75 per lodgement
- Storage of three power of attorney documents, \$110 per lodgement
- Storage of four power of attorney documents, \$140 per lodgement

Type of card: Visa MasterCard

Card number:

Expiry date: / Cardholder's name:

Signature:

Deposit declaration for power of attorney document(s)

By signing this document:

1. I acknowledge that:

- I have obtained a certified copy of my original power of attorney document(s), and I will retain the certified copy in a safe place at least until I have received written acknowledgment from State Trustees that State Trustees has received my original power of attorney document(s).
- State Trustees bears no responsibility for, or liability for consequences of, any loss or damage to my original power of attorney document(s) that occurs in the course of my original power of attorney document(s) being transmitted to State Trustees in the post.
- By accepting my power of attorney document(s) for storage, State Trustees does not check or express any opinion as to their wording or validity.
- It is my responsibility to keep my power of attorney document(s), and the contact details I provide to State Trustees, up to date if my circumstances change.
- If State Trustees is named as attorney of my power of attorney, it has the right (subject to any requirement under law) to renounce.
- I am depositing my original power of attorney document(s), which is/are dated, signed and witnessed correctly.
- Whilst State Trustees will endeavour to take reasonable steps in each case, in the event that State Trustees is notified of my loss of capacity or other circumstance (as the case may be), I release it from liability for loss by any person arising from its failure to notify, in a timely way or at all, the person(s), or the appropriate person(s), appointed to act under a power of attorney document of mine (as the case requires) of such circumstances.
- Where I give to State Trustees in, or in conjunction with, this form, personal information of any other individual, I have made or will make the individual aware of State Trustees' Privacy Policy. www.statetrustees.com.au/privacy-and-security.

2. I consent to State Trustees:

- Scanning and keeping an electronic copy of the document(s), so that a copy can be recovered in the unlikely event of a loss.
- Using the personal information I provide in data matching so that my personal situation can be confirmed and, where appropriate, the attorney/guardian/agent contacted or confirmed.
- Releasing the original documents as follows and (subject to any requirements under law) only as follows:
 - a) To me, or to a person authorised in writing by me to collect the document(s);
 - b) To a person or persons who furnish to State Trustees evidence that satisfies State Trustees that he/she/they or it are entitled to commence to act under or in respect of the document as:
 - i. In the case of an enduring power of attorney: an attorney (whether original or alternative);
 - ii. In the case of an enduring power of attorney (medical treatment): the agent (whether original or alternate); and
 - iii. In the case of an enduring power of guardianship; the guardian (whether the original or alternative); and
 - iv. In the case of an appointment of supportive attorney (whether the original or alternative).

Do you wish to receive correspondence regarding your power of attorney or changes to legislation that may affect your power of attorney? Yes No

Your signature:

Date:



Circumstances more complicated than you thought?

This power of attorney kit is perfect for those with straightforward circumstances. Your personal circumstances may turn out to be more complicated than you first thought, or may change and become more complicated over time. If any of the following situations apply to you, State Trustees recommends that you seek the advice of an estate planning expert.



you have problems completing any aspect of the forms



you have a complex relationship or lifestyle situation



you have a complex medical situation



you have complex financial arrangements



your appointment of an attorney may be challenged by disgruntled persons



If you are still unsure whether this power of attorney kit is the right option for you, contact State Trustees, the estate planning experts, for advice.

Book a face-to-face power of attorney appointment and we'll

**TAKE THE COST OF THIS POWER OF ATTORNEY KIT
OFF YOUR FEE***

Call us on **9667 6444** or visit **statetrustees.com.au** for more details or to book your appointment.

* Offer not valid in conjunction with any other offer. The offer must be mentioned at the time of booking. The Power of Attorney Kit or proof of purchase of the kit must be presented at the face-to-face appointment for redemption. This offer is only valid for residents of Victoria. Conditions apply.



About State Trustees

A Victorian State Government-owned business, State Trustees' core services include will preparation, providing financial administration services for people with a disability, acting under an enduring power of attorney, acting as executor or administrator of estates, and providing general trustee and related services for the Victorian community.

For further information about the State Trustees, visit www.statetrustees.com.au.

For residents of other States or Territories, contact details of your local public trustee are available on their websites as listed below:

ACT: www.publictrustee.act.gov.au

NSW: www.tag.nsw.gov.au

NT: www.nt.gov.au/justice/pubtrust

QLD: www.pt.qld.gov.au

SA: www.publictrustee.sa.gov.au

TAS: www.publictrustee.tas.gov.au

WA: www.publictrustee.wa.gov.au

Also available from State Trustees: Legal Will Kit

Without enduring power of attorney appointments, you will not have a say on who can manage your financial, medical or lifestyle affairs in the event that you are not able to during your lifetime. Similarly, if you don't have a will, State and Territory laws dictate who will benefit from your estate. It can mean that your property and possessions might not be distributed as you would have wanted and you would not have a say on who should be the guardian of any minor children you have.

The State Trustees Legal Will Kit is intended for people with straightforward circumstances to create a convenient and affordable will.

