

Wills & Powers of Attorney Dictionary

GLOSSARY OF COMMON TERMS



WILL KEY TERMS EXPLAINED

administrator	a person or organisation appointed by the court to administer a deceased person's estate if they did not leave a valid will; or if their will did not appoint an executor; or if the appointed executor is unable or unwilling to act in that capacity (cf executor).
beneficiary	a person who is given a gift or other benefit under a will.
bequest	see gift .
child	includes any natural-born child and any adopted child but does not include any stepchild or child given up for adoption.
disability	a mental, intellectual or physical impairment.
domestic relationship	a relationship between two persons who, although not married to each other, are living together as partners; such relationships are defined and recognised, and may in some cases be formalised, under the laws of each State and Territory.
estate	all property and possessions owned by a person, whether solely or with one or more other persons.
executor	a person or organisation appointed by a testator in a will to carry out the provisions of the will. Sometimes referred to in a will as 'my executor and trustee' or simply 'my trustee' (cf administrator , where there is no executor).
gift	sometimes called a bequest . Something that is given to a beneficiary under a will. For example, a will may include gifts of money, real estate or personal effects (such as jewellery).
guardian	a person who has primary responsibility for the general welfare of a minor, even if the person does not have day-to-day custody and control of that child.
intestacy	the situation arising upon the death of a person who hasn't left a valid will, or has failed to give away the whole of their property in their will.
intestate	a person who dies either without having left a valid will or leaving a will that doesn't give away the whole of their property.
letters of administration	a document issued by the court confirming the appointment of an administrator to administer the estate of a deceased person where there is no valid will, or no executor has been appointed, or if the appointed executor is unable or unwilling to act in that capacity (cf probate , where the court confirms the appointment of an executor).

minor	a child under the age of 18 years.
predecease	to die earlier in time than another person. For example, <i>'My father died in August, but my mother predeceased him, having died in February'.</i>
probate	a document issued by the court confirming that a will has been proved (determined) as valid, and authorising the person or organisation named in the will as executor to administer the estate (cf letters of administration).
residuary estate/residue	what is left of a deceased person's property and possessions after funeral and administration expenses, debts and other liabilities have been paid and specific gifts have been distributed.
specific gift	a gift in a will of a particular asset or specified sum of money to a particular person.
spouse	a person who is legally married. Sometimes used today to also describe a person who is a de facto partner (whether a same-sex or opposite-sex partner), although 'domestic partner' is the more formal legal term for a person in such a relationship (cf domestic relationship).
testamentary capacity	a person's ability to validly make a will, meaning that they must be of sound mind, understand what a will is and what it does, what property they own, and who they wish to leave it to; and must be able to consider any claims that may be made against their estate.
testator	a person who makes a will.
trustee	a person or organisation that holds property for another under a trust. In a will, it is quite common for the 'executor' and the 'trustee' to be the same person or organisation.
trustee company	a company authorised by statute or by its constitution to act as a trustee, executor or administrator, as required.
will	a written statement of intention concerning arrangements to take effect on or after a person's death.
will writing professional	a person or organisation with generally recognised experience and/or qualifications to help a testator draw up their will if needed, such as a lawyer or State Trustees.

POWER OF ATTORNEY

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.

alternative attorney

A person appointed in a power of attorney who may act in the circumstances specified, or if the original attorney's appointment ceases (for example, due to loss of capacity, death, or revocation of their appointment).

alternative supportive attorney

A person appointed in a power of attorney 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 for so long as the principal still has decision-making capacity.

appointment of enduring guardian

Before 1 September 2015, it was possible to appoint someone to make lifestyle and health decisions on your behalf by using an appointment of enduring guardian (also referred to as an 'enduring power of guardianship'). Unless revoked, such an appointment will remain valid; however, it is no longer possible to make a new appointment of enduring guardian under Victorian law.

attorney

A person authorised to act on behalf of another person, most usually under a **power of attorney**.

authorised witness

In order for the signing of some types of power of attorney documents to be valid, at least 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.

capacity

To be able to make a valid power of attorney, the principal must have 'capacity' – or 'decision-making capacity' – i.e, they must be capable of understanding the legal implications of doing so, including the nature and effect of the power of attorney document.

However, even if a principal 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 when an appointed attorney 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 own 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, 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 type of power of attorney that enables you to appoint an attorney to act for you in relation to financial matters and personal matters (other than medical treatment decisions). Alternatively, you can give them powers for financial matters only, personal matters only, or only the particular matters you specify. Unlike a **general non-enduring power of attorney**, an enduring power of attorney continues to be effective (i.e., it endures) if the principal ceases to have capacity. So the attorney(s) you appoint will be able to make decisions for you when you no longer have decision-making capacity. This document can be activated immediately, at a specified time or in specified circumstances (eg when a doctor certifies you have lost capacity).

enduring power of attorney (medical treatment)

Before 12 March 2018, it was possible to appoint someone to make medical decisions on your behalf using an enduring power of attorney (medical treatment). Unless revoked, such an appointment will remain valid.

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 (for example, to manage your business while you are abroad). It ceases to be effective if you lose 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 (cf **several/severally**).

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 but they do not need to do so.

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.

medical treatment decision

A decision to consent to, or refuse, the commencement or continuation of medical treatment or a medical research procedure.

Medical treatment means treatment by a health practitioner (for the purpose of diagnosis, disease prevention, restoration of bodily functions, or improving comfort and quality of life), and includes physical or surgical therapy, treatment for mental illness, dental treatment, palliative care, and treatment with prescribed pharmaceuticals. A principal may no longer give the power to make a medical treatment decision in an enduring power of attorney (however, see **enduring power of attorney (medical treatment)**).

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, and daily living issues such as diet and dress. A personal matter does not include any **medical treatment decision** matters.

power of attorney

The general name for a document by which you formally authorise one or more people (**attorneys**) to act on your behalf or make decisions for you in particular circumstances. For the different types, see **general non-enduring power of attorney** and **enduring power of attorney**.

principal

The person who formally appoints an attorney or supportive attorney using a power of attorney document. (In this Dictionary, we often refer to the principal as "you".)

revoke

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 the other/s; that is, they do not need to act unanimously (cf **joint/jointly**).

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 legal documents require that the person signing the document has their signature witnessed. Some documents only require the witness to be an independent adult. Others require that at least one of the witnesses meets particular criteria under relevant State or Territory law, 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.