



RetireLaw

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Experts in the protection of inheritances from:

- Unnecessary Taxes
- Divorce Settlements
- Bankruptcy
- Litigation and Disputes
- High Estate Administration Costs

Experts in the protection of:

- Business Assets via Safety Net Provisions

Experts in protection provisions for:

- Superannuation
- Child or Vulnerable Beneficiaries
- Inheritance Equality

Introducing ENDURING POWER OF ATTORNEY

It is now a common part of Modern Estate Planning that, besides making a Will, a person (known as the principal or donor) also appoints an **Enduring Power of Attorney** to make sure that, should they become incapacitated, their property and financial affairs can still be managed without the need for the intervention of the courts or government agencies.

For this type of 'enduring' Power of Attorney to be created, a certificate must be attached to the Power of Attorney to the effect that the principal understands that the Power of Attorney will operate even when the principal loses legal capacity.

The absence of such a statutory certificate would mean that the Power of Attorney is not 'enduring', and would cease to operate once the principal loses legal capacity, a time when the principal generally needs their designated attorney to be protecting their financial interests the most.

WHY HAVE AN ENDURING POWER OF ATTORNEY?

In many ways, creating an **Enduring Power of Attorney** is like **insurance** against the possibility that, during your lifetime, you may lose the capacity to manage your own affairs, and wish to have a plan in place which **avoids putting your financial position at risk**.

At **RetireLaw**, our solicitors are experts in drafting Power of Attorney documentation to implement such prudent planning.

RetireLaw's Modern Estate Planning automatically includes Enduring Power of Attorney documentation.

IS IT SAFE TO GRANT SUCH POWER?

Yes. Previous complaints about abuses of the powers granted to some attorneys under the old form of Power of Attorney led to a review of the legislation by the NSW Government, resulting in the Parliament enacting the **Power of Attorney Act 2003**.

POWER OF ATTORNEY ACT 2003

The Act sets **new requirements** in respect to the granting of Powers of Attorney, and imposes some **new limits** on attorneys receiving such powers. **Key changes are:**

- A Power of Attorney will not operate until it is endorsed by a written acceptance by the person granted the powers.
- Greater freedom is granted to the principal to indicate when they wish the Power of Attorney to operate from.
- The new prescribed form contains a statement of important information for both principals and attorneys emphasising the significance and scope of the powers conveyed to the attorney.
- The new prescribed form contains more information and more choices to enable people to make better informed decisions about what they want to authorise their attorney to do.
- A prescribed Power of Attorney does not authorise an attorney to give a gift of all or any of the principal's property to any other person unless expressly authorised by the principle in the Power of Attorney document. However, S.11(2) allows the giving to family and friends of traditional gifts for occasions such as Christmas, birthdays and marriages.
- An attorney must now keep reasonable accounts and records about the principal's money and property and always act in the best interests of the principal.
- Specific authorisation by the principle in the Power of Attorney document can be given to an attorney to use funds of the principal to give benefits to the attorney or to dependants for reasonable living (including housing, education transportation) and medical expenses (S.12(2) and S.13(2)).
- The Act provides relief where an attorney sells assets in order to benefit the principal (e.g. to cover unexpected surgery bills). When such assets are the subject of a specific gift in a principal's Will, the new Act stipulates that the beneficiary is entitled to the remaining funds or other property arising from the sale.

- A wider group can now witness Enduring Powers of Attorney – also included are licensed conveyancers and qualified Public Trustee and trustee company employees.
- Where more than one attorney is appointed and one dies, provided they were appointed ‘severally’ or ‘jointly and severally’, under the new Act the death of one does not terminate the Power of Attorney.

WHAT CAN'T AN ATTORNEY DECIDE?

An attorney cannot consent to anything unlawful or perform services such as vote on your behalf, consent to marriage, or override your objections, if any, to medical treatment. In case of disputes regarding treatment an application can be made to the Tribunal.

DO I NEED TO SPEAK TO AN EXPERT?

Yes. It is important that you discuss all relevant issues, including the following points below with a trusted legal adviser who is an expert in Modern Estate Planning when considering appointing an Enduring Power of Attorney:

- The choice of the person or persons to be appointed your Power of Attorney - one or more can be appointed, also reserve Attorneys.
- What conditions or limits should be placed on the grant of Power of Attorney and in what circumstances should the Attorney be free to make decisions.
- The circumstances in which a Power of Attorney would become ineffective.
- When and how a grant of Power of Attorney can be cancelled or revoked.
- What risks there are in granting a Power of Attorney.

ABOUT RETIRELAW

RetireLaw was established with the express intention of making available to the wider community the significant long-term benefits of Modern Estate Planning.

As a result, RetireLaw works closely with experienced professional advisers to provide their valued clients with expert Modern Estate Planning services and documentation.

WHAT RETIRELAW CLIENTS RECEIVE

Once we have clarified and verified which assets you own and control, our expert **RetireLaw** solicitors will provide you with the cutting edge documentation (listed below) needed to both protect and financially maximise your family interests.

- **Modern Estate Planning Wills** offering beneficiary controlled testamentary trusts (including a Business Succession Trust if required)
- **Enduring Powers of Attorney**, including provisions covering superannuation, with primary and substitute appointees – a must for everyone.
- **Appointments of Enduring Guardian** with primary and substitute appointees – recommended for everyone.
- **Written explanatory material** covering each document category as well as a **detailed guide for your executors**.
- **Safe custody** of clients' Wills, plus **registration** with the NSW Registry of Births, Deaths & Marriages.

TO FIND OUT MORE, SPEAK TO RETIRELAW TODAY

Call solicitors **Terry Purcell** or **Dawn Wong**

1300 584 782 or **(02) 8908 9700**

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Would you like to know more about Estate Planning?

Visit www.modernestateplanning.com.au to watch **The Convenient Truth**, a short online presentation explaining the real world advantages of modern Estate Planning over simple Wills.

To view, click on the link to **The Convenient Truth** and enter **username: guest** and **password: retirelaw**

www.modernestateplanning.com.au

modern ESTATE PLANNING
presented by RetireLaw

THE CONVENIENT TRUTH
The true story about why the era of simple wills is over!

Click Here to watch the presentation and learn about the significant real world personal & financial advantages that Modern Estate Planning has over simple wills...

*This presentation is password protected. If you would like the username and password, please call 1300 584 782 or email info@retirelaw.com.au