

Safeguarding your interests

You should always be careful when giving someone the power to act for you. Make sure your donee is someone you trust. You are giving that person authority to deal with your financial affairs.

A word of warning: your donee may use their power against your interests. Your donee may sell your house and take the money. If you lose legal capacity, you may not even realise what has happened. It is a criminal offence for a donee to misuse a Power of Attorney, but no agency oversees the use of the power to make sure donees are doing their job properly. If a donee has acted improperly, the Supreme Court can remove the Power of Attorney or SACAT can appoint an independent administrator.

You can protect yourself. You can limit the powers you give so that the donee cannot deal with all your property. If that does not suit your needs, you can appoint 2 people to act jointly, so that they both have to sign before anything can be done. You can also make your Enduring Power of Attorney come into effect only if you lose legal capacity, and require that a doctor certify that you have lost legal capacity.

Ending an Enduring Power of Attorney

You can **revoke** (cancel) your Enduring Power of Attorney at any time while you still have legal capacity. You should do this in writing, and send a copy to the donee and to anyone that the donee may have dealings with, such as a bank or Land Services SA. A revocation form is included in the Enduring Power of Attorney Kit.

Where can I get the kit?

You can access the Enduring Power of Attorney Kit for free online at lsc.sa.gov.au or you can buy a hard copy from:

- the Legal Services Commission (call Finance on 8111 5555 (option 5)), or
- any Service SA centre (call 13 23 24) or through the online shop at shop.service.sa.gov.au

What if there's no Enduring Power of Attorney?

If you have not made an Enduring Power of Attorney while you have legal capacity, your relatives may not be able to handle your affairs informally.

While banks, Centrelink and hospitals are generally sympathetic and will help with simple matters, it may be necessary to apply to SACAT for an Administration Order. These orders are made for the protection of persons who cannot manage their financial affairs.

SACAT

If there is no Enduring Power of Attorney, the South Australian Civil and Administrative Tribunal (SACAT) may appoint as administrator the Public Trustee, a trustee company or an individual such as a family member or friend, an accountant or a lawyer. In deciding who should be appointed, SACAT must consider:

- the wishes of the person with the legal incapacity, if these wishes can be established
- whether there are any family arrangements or relationships that should not be disturbed
- the compatibility of the proposed administrator with the person whose affairs they are to manage
- whether the proposed administrator is ready and able to perform the role
- whether a conflict of interest may arise from the appointment.

Often, the Public Trustee is appointed as the administrator, and a friend or relative is appointed as a liaison person. An administrator has similar powers to a Power of Attorney, but they are supervised by SACAT.

For further information, call:

Public Trustee: 8226 9200 (toll free 1800 673 119)

SACAT: 1800 723 767

Legal Helpline 1300 366 424
Child Support Advice 8111 5576

Legal Services Commission Offices

- Adelaide Office
159 Gawler Place
Adelaide 5000
Call 8111 5555
- Elizabeth Office
Suite 2 Windsor Building
1 Windsor Square
(off Playford Boulevard)
Elizabeth Shopping Centre
Elizabeth 5112
Call 8111 5400
- Noarlunga Office
Noarlunga House
Ramsay Place
Noarlunga Centre 5168
Call 8111 5340
- Port Adelaide Office
263 St Vincent Street
Port Adelaide 5015
Call 8111 5460
- Port Augusta Office
34 Flinders Terrace
Port Augusta SA 5700
Call 8686 2200
- Whyalla Office
17A Forsyth Street
Whyalla 5600
Call 8620 8500

Do you need help calling us?

- Translating and Interpreting Service 131 450
- National Relay Service TTY users call 133 677
- SMS Relay 0423 677 767
- Speak and Listen users call 1300 555 727
- Internet Relay users visit nrschat.nrsccall.gov.au

Visit us online at lsc.sa.gov.au

This information is general and not a substitute for legal advice. The Legal Services Commission provides free legal advice for most legal problems.

Power of Attorney



What is a Power of Attorney?

A Power of Attorney appoints one or more persons to manage your **financial** and **legal affairs** while you are alive. The person you appoint to act on your behalf (your **donee**) can only do the things you authorise them to do. This can include accessing your bank accounts, spending your money to pay your bills, and buying and selling real estate on your behalf.

A **General Power of Attorney** allows the donee to act immediately, usually for a certain period (such as while you are overseas). You can continue to manage your affairs while a General Power of Attorney is in force.

A General Power of Attorney ends when you die or lose legal capacity. If you want someone to continue to act on your behalf in the event that you lose legal capacity, you must make an Enduring Power of Attorney.

An **Enduring Power of Attorney** can take effect immediately or only during periods when you do not have legal capacity (for example, during or following an illness or injury that affects your ability to understand matters or communicate your wishes). Making an Enduring Power of Attorney can ensure that your financial and legal affairs will be looked after by someone you know and trust.

Your donee must **agree** to act for you. You cannot make someone your donee without their knowledge or consent.

Who can make a Power of Attorney?

In South Australia, you can make a Power of Attorney if you are **18 years** or older and you have **legal capacity**. No one can make a Power of Attorney for or on behalf of someone else.

An adult is presumed to have legal capacity. **Legal capacity** means that you understand the nature and effect of making a Power of Attorney and can communicate your wishes.

You cannot make a Power of Attorney if you have lost legal capacity. If legal capacity is in doubt, it is best to get a doctor's written opinion confirming that you understand the nature and effect of the document at the time you sign it.

How do I make an Enduring Power of Attorney?

The easiest way to make an Enduring Power of Attorney is to use the **Enduring Power of Attorney Kit** produced by the Legal Services Commission. The do-it-yourself kit includes the required forms, detailed instructions and answers to common questions. If you still have questions or concerns, seek legal advice.

You should first ask yourself what powers you want to give the donee. If you simply want someone to operate your bank account for you, you may not need a formal Power of Attorney. Ask your bank what form of authorisation they need to allow someone to act on your behalf.

If you want to give the donee other powers, you must complete an Enduring Power of Attorney Form. You may wish to prepare 2 original copies: one for you to keep and register if needed, and one for each donee.

Must I register a Power of Attorney?

Once your Power of Attorney has been completed and signed by you and your donees, you have a valid Power of Attorney. It does not need to be registered. However, if a donee needs to **buy or sell real estate** on your behalf, your Power of Attorney needs to be lodged with [Land Services SA](#). A fee is payable for lodgement.

If a donee does not need to deal with land now but might in the future, the form can still be lodged immediately to check that it has been completed properly. This avoids the risk that the form will need to be corrected later, which may not be possible if the donor does not have legal capacity when a correction is needed. Alternatively, the form may be kept in a safe place and lodged when the necessity arises.

A bank will usually want a copy of your Power of Attorney for their records. For shares, you may need to register your Power of Attorney in the company's share register.

Responsibilities of the donee

As a general rule, a donee can do anything that you can do for yourself, except things you must do personally such as marrying, voting and making a will.

For example, a donee may, on your behalf:

- enter into contracts for goods and services
- buy, sell, lease and invest in property
- operate bank accounts and borrow money
- commence and defend legal proceedings.

A donee has an absolute and unconditional duty to always **act in your best interests**. As your representative, they should make decisions consistent with your known wishes wherever possible. Other responsibilities include finding out your income, assets and financial obligations, paying from your own money your bills and accounts when they fall due, selling your property if necessary to fund other accommodation such as residential care, and keeping accurate records and accounts of all dealings.

Any interested person can ask to see the records. Other people may disagree with what the donee does with their power and challenge their actions. A donee cannot be paid for their work, except for any out-of-pocket expenses directly connected with carrying out the Power of Attorney. They will need to keep receipts to prove these costs.

Similarly, even if your donee believes they are a beneficiary in your will, having a Power of Attorney does not give them early entitlement to your assets. If they act improperly, they are personally responsible to pay for any losses caused. They may also be guilty of a criminal offence.

If you lose legal capacity, a donee under an Enduring Power of Attorney must continue to act for you. If they want to stop, they must ask the Supreme Court to remove them or have an administrator appointed by SACAT.

How is a Power of Attorney different from...?

A will

A will comes into effect **after you have died** and sets out who you want to inherit your estate. A Power of Attorney allows someone to manage your financial affairs **while you are alive**. When you die, your Power of Attorney (whether General or Enduring) ends automatically. It is important to have **both** an Enduring Power of Attorney and a will.

An Advance Care Directive

A Power of Attorney does not give the donee the right to make decisions about your welfare or medical treatment. It only deals with legal and financial matters.

For non-financial matters, you should complete an **Advance Care Directive**. This allows you to:

- write down your wishes, preferences and instructions for your **future health care**, end of life, living arrangements and personal matters, and
- appoint one or more **Substitute Decision-Makers** to make these decisions on your behalf if you are unable to make them for yourself.

An Advance Care Directive only has force during periods when you do not have legal capacity. It has no effect after you have died.

You may have heard of documents such as Enduring Power of Guardianship, Medical Power of Attorney and Anticipatory Direction. If you have completed one of these documents in the past, it will still be legally effective. If your circumstances or preferences have changed, you can make an Advance Care Directive to replace your old directive. For more information about how to complete an Advance Care Directive, visit [advancecaresdirectives.sa.gov.au](#) or call 1300 366 424.

An Enduring Power of Attorney and an Advance Care Directive are often referred to together as a **living will**. We recommend you have all 3 – a Power of Attorney, an Advance Care Directive and a will – to safeguard your future and ensure your wishes are respected throughout your life and after you die.

