

How to Act Appropriately as an Attorney under an Enduring Power of Attorney (EPOA) in Queensland

Video Transcript:

Being appointed as someone's attorney under an Enduring Power of Attorney document means that person has placed their trust in you to make decisions for them if they are unable. Such as if they become sick or injured.

You may be required to make small or very large decisions.
Your role is to make the same decisions the person would have made themselves.

It's a bit like standing in someone else's shoes.

Even though the role is voluntary it still carries strict legal and ethical responsibilities.

That's why it's important that you fully understand your role.
This video will guide you on how to act appropriately as an Attorney in Qld.

Before you start making decisions read the Enduring Power of Attorney document carefully.

This will outline what decisions you can make, how to make them and when you must do so.

You have the responsibility to make these decisions, but not a right to control the person's life.

You may be appointed for:

- financial decisions, such as paying bills
- personal or health decisions, such as organising doctors, or
- you may be appointed for both

The person may also have other Attorneys.

In this case the document will tell you how the decisions are to be made between you.

They could be made jointly, severally or separately, as a majority or in a successive order.

The document may also include special instruction or terms to follow. Such as:

- How to manage investments.
- Directions about personal matters, such as people they do and do not want to have contact with.
- Authority to make specific transactions.

Your duties as Attorney don't automatically start as soon as you accept the role.

Depending on the document you may be required to start making decisions immediately, on a certain date, or when the person loses capacity.

Before you make any decisions you must always consult the person first as their views and preferences should lead the way.

Sometimes you may need to provide information to help the person participate or you may need to look into their past choices to inform yourself as to what they would want.

Any decisions must be for the persons benefit and not to satisfy your personal preferences or for the benefit of anyone else.

These decisions can be challenging so we have outlined six key considerations to guide your decision making.

(These considerations are based on the general principles and Health Care Principles in the Powers of Attorney Legislation).

Step 1 – Capacity for Decision making

Your role is to encourage the person to participate in decisions that affect them.

The law presumes every person can make their own decisions until it is clear this is no longer the case.

If you or others have concerns about the person's decision making capacity, it is your duty to organise a formal assessment with a health professional to identify which decisions they can and cannot make.

Most people are still able to make some decisions for themselves.

You can only make decisions for the areas the person no longer has capacity for.

For example, they may lose capacity for financial decisions but retain capacity for decisions about living arrangements.

Step 2 – Respect rights and needs

All people have the same basic human rights which protect their individual dignity, regardless of their abilities.

A loss of capacity does not change a person's right to be valued and shown respect.

You need to respect the persons:

- Rights
- Values
- Safety, health, wellbeing
- Language, culture, and religious beliefs

The consequences of any decision should preserve the person's independence, while being appropriate to meet their needs.

The person should be encouraged to be as self-reliant as possible, and to participate in community life. This includes keeping their existing friendships.

Step 3 - Communicate with others

Communication will be a large part of your role and your main communication will be with the person.

If there is more than one attorney, you always need to consult between yourselves when making decisions.

It's your job to ensure that you gather as much information and insight as possible, so you can make informed decisions that accurately reflect the person's views and current needs.

Others can assist you by providing valuable information, these may be extended family, close friends, health, financial or legal professionals.

This can be difficult as you may not share the same close relationship, with these people. However, you cannot cut off these key people or withhold basic information from them, about the person.

You must ensure the person's right to privacy by only talking to people relevant to the decision to be made.

Keeping relevant people informed about key decisions will also reduce the chance of problems arising later

Step 4 – Manage money and property carefully

If you are making financial or legal decisions you must remember that it is not your money or property.

Decisions you make must only benefit the person you are making decisions for.

You are required to:

- Keep the person's money and property separate from your own or that of other Attorneys, unless already jointly owned.
- Act carefully and diligently with the persons money and property, even for small amounts
- Keep accurate records of financial or property transaction you make.
- Obtain financial or taxation advice for decisions or investments (these costs can be recovered)
- Only invest in authorised investments
- Avoid conflict transactions
- Provide for the reasonable needs of a dependent of the person

Be aware your actions must be transparent and they may be questioned or challenged by others.

Step 5 – Avoid Conflict Transactions

The person's financial interests should always be your first priority.

It is important to be on the lookout for any financial decisions which may directly or indirectly benefit someone other than the person you are making decisions for. This may include actual or perceived benefits to yourself, other attorneys, relatives, friends or business associates.

These are called conflict transactions.

Examples of this might be selling the person's home below market value to your relative or friend, unusual gifts of money, or starting a joint account without authorised direction.

When holding existing property and finances in joint names with the person, you will need to seek advice from your solicitor or the Queensland Civil and Administrative Tribunal before making decisions.

The person's financial interests should always be your only priority.

Financial penalties may apply if unauthorised or unapproved conflict transactions occur.

Step 6 – Keep the person informed

You will need to keep the person updated about decisions you make for them. This respects their rights and promotes a positive relationship.

Keep them informed about:

- Bank balances, by providing regular copies of statements
- Property sales or transfers
- Changes in contact information for friends and family
- Any other changes to their affairs, such as having new service providers

Stepping into someone's shoes to make decisions for them is an important role. As you can see there is a lot to think about when making decisions.

You need make be sure that any decisions you make link back to making the person's life better.

For more information, you can access the following resources.

Enduring Power of Attorney Forms

Queensland Government Publications

www.publications.qld.gov.au

Office of the Public Guardian (OPG)

Phone: (07) 3234 0870 or 1300 653 187

Email: adult@publicguardian.qld.gov.au

www.publicguardian.qld.gov.au

Pubic Trustee of Queensland (PT)

Phone: 1300 360 044

www.pt.gov.au

Queensland Civil and Administrative Tribunal (QCAT)

Phone: 1300 753 228

Email: enquiries@qcat.qld.gov.au

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