



Being an attorney

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Being an attorney

An attorney has both the duty and the privilege of enabling another person to live the life they wanted to lead by understanding and enacting their wishes and preferences. It's also a formal, legal role with responsibility and it may not always be easy.

While the rules about being an attorney and making decisions vary from state to state, there are guiding principles for an attorney to follow.

In general, the law says that someone appointed as an attorney must:

- keep the person's money and property separate from their own
- maintain the person's financial records
- act with honesty, care and diligence
- avoid conflicts of interest

An attorney can only make the decisions set out by the law and by the person's enduring power. In most states the enduring power does not allow them to make, for example, lifestyle decisions (like when or where the person goes out socially) or medical decisions. Depending on the state or territory, those decisions are managed through other documents, like an enduring guardianship.

Having 'capacity'

The law presumes adults have the 'capacity' to make their own decisions, until proven otherwise. But capacity isn't always straightforward.

For more information visit the [Having Capacity section on Compass.info](#)

Some attorneys may never need to act in the role, because the person they've been appointed for maintains capacity throughout their life. For others, being an attorney might be a long-term commitment with day-to-day responsibilities, both big and small.



How to approach making decisions

An attorney may feel that the real challenge will be to make the 'right' decisions for the person and to ensure their rights are respected.

A good approach is for the attorney to imagine themselves as the person and make the decision the person would make, not the one the attorney thinks should be made. They must not assert authority or personal preferences over the person's affairs.

For example, if the person has regularly made donations to a particular charity, it is appropriate to continue this as long as they can still afford to do so.

Decisions must be made in line with the person's wishes and preferences, and if it's not clear what those would be, the attorney will need to do everything they can to find out.

Sometimes a person only partially loses capacity and is still able to make some of their own decisions. The attorney must consult with the person, as far as possible, in all decisions that need to be made and be guided by their will and preference.

Supporting the person's independence and assisting them with making their own decisions (big or small) whenever they can is part of an attorney's responsibility. They should take each decision one at a time and make sure that the person has as much information and control over their decision-making as they can possibly have.

A good approach to decision-making for someone else is to think about the person's human rights (see here for more information – link to human rights topic page), such as the rights to freedom and to participation in the community regardless of age.

This may help the attorney to see their role as an enabler: enabling the person to live their best possible life in the community by making the best possible decisions on their behalf.



Protection against misuse of power

Making a carefully considered enduring power of attorney can help to safeguard an older person against elder abuse – which may be intentional or inadvertent – if they lose capacity. Appointing the best person for the role is important.

An attorney needs to understand, and meet, the legal obligations of the role to be sure they don't misuse the position.

They must be careful only to make the decisions they are authorised to make. They must maintain financial records for the person and make sure to keep the person's money and property separate from their own.

So, for example, if the attorney is doing grocery shopping for the person while doing their own, they must pay for the two purchases separately and get separate receipts. They must also make sure that any change from the shopping goes back to the person and doesn't get mixed up with their own money.

The attorney must undertake the role with honesty, care and diligence, and they must avoid any conflict of interest.

e.g. If the attorney is planning to sell the person's car to their friend or relative, they must obtain a market value and keep records. In some states it is a requirement to obtain approval from the Tribunal prior to completing the transaction.

While making a mistake may seem trivial, attorneys are bound by the law and there can be serious consequences for not acting as they should.



Appoint an attorney carefully

When making an enduring power, a good way to minimise any risk of elder abuse is for:

- the older person to think carefully about who to appoint as their attorney(s), and
- the chosen attorney(s) to think carefully before accepting the role

If you are asked to be an attorney, think about whether you're the best person to enable the person's wishes and preferences.

Regardless of your relationship with the person, you may not be the best fit if, for example:

- there is a history of conflict between you and the person or
- you are unsure about what being an attorney might mean or
- you're not certain whether you have the time or skills for the role

It's okay to say 'No', even if there are family expectations on you to agree (for example, being the oldest child) that make it difficult.

Choosing an Attorney

The person you appoint as your attorney in your enduring power of attorney may need to make important financial decisions on your behalf, so you should choose someone you really trust.

For more information visit the [Choosing an Attorney](#) section on [Compass.info](#)



Resources

Here are some resources about the role of an attorney and how to do it well and meet the legal obligations. Keep in mind that each state has different rules, but in general, the principles are similar.

Responsibilities of an attorney under an enduring power of attorney

Tip sheet by the Office of the Public Guardian, Queensland.

This resource can be found on [Compass.info](https://compass.info)



How to act appropriately as an attorney under an enduring power of attorney in Queensland

A video by Aged and Disability Advocacy [ADA] Australia.

This resource can be found on [Compass.info](https://compass.info)



Handbook for attorneys

Booklet by Legal Aid for Tasmanians

This resource can be found on [Compass.info](https://compass.info)



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The information provided in this document is not a substitute for individual legal advice.

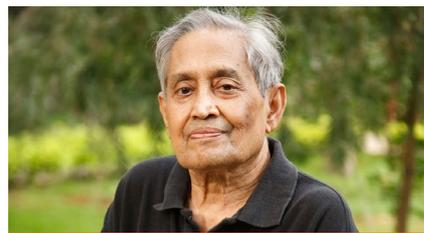
Find the following at [Compass.info](https://compass.info)



Introduction to enduring power of attorney



Future planning



Having 'capacity'



Choosing an attorney



LGBTQIA+ people and enduring power of attorney



Your rights and enduring power of attorney



Helpful terms to know



Frequently asked questions



Powers of attorney in each state and territory



Made for all Australians regardless of nationality, culture or language, Compass is an inclusive website navigating elder abuse.



Australian Government
Attorney-General's Department



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