

# Wills & Powers of Attorney Dictionary

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## GLOSSARY OF COMMON TERMS

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# WILL KEY TERMS EXPLAINED

## administrator

V'eZghdc d'gdg Vc hVi dc Veed ci ZY Whi] Z Xdj g id VYb c hi ZgV YZXZVhZY eZghdc h Zhi Vi Z [i] Zn Y Y cdi aV kZ V kVa Y i a dg [ i] Z gi a Y Y cdi Veed ci Vc Zn ZXj idg dg [ i] Z Veed ci ZY Zn ZXj idg h j cV W Z dgj cl a c id VXi c i] Vi XVe VX n tX [ Zn ZXj idg #

## beneficiary

a person who is given a gift or other benefit under a will.

## bequest

hZZ \ #

## child

c Xj YZ h Vcn c Vij g v d g c X] a Vc Y Vcn VY dei ZY X] a VY i Yd Zh c di c Xj YZ Vcn hi Ze X] a dg X] a \ kZc j e [ dg VY dei dc #

## disability

V b Zci Va c i Za ZXj V ad ge] nh X Va b e V g b Zci #

## domestic relationship

V g Z a i d ch] e V Zi l Z Zc i l d e Z gh d ch l ] d i Va] d j \ ] c di b V g g Z Y id Z V X] d i] Z g V g z a k c id \ Z i] Z g V h e V g c Z g Ch j X] g Z a i d ch] e h V g Z Y Z [ c Z Y Vc Y g X d \ c h Z Y! Vc Y b Vn c hdb Z X V h Zh W Z [ d g b V a h Z Y! j c Y Z g i] Z a l h d [ Z V X] H i Vi Z Vc Y l Z g g d g n #

## estate

V a e g l e Z g n Vc Y e d h h Z h h d ch d l c Z Y V h V e Z gh d c! l ] Z i] Z gh d a Z a n d g l # d c Z d g b d g z d i] Z g e Z gh d ch #

## executor

V'eZghdc d'gdg Vc hVi dc Veed ci ZY Whi] Zhi Vi dg c V l a i d X V g g n d j i i] Z e g k h d ch d [ i] Z l a H d b Z i b Z h g [ Z g g Y id c V l a V h b n Zn ZXj idg Vc Y ig hi Z Z d g h b e a n b n i g hi Z Z t X [ V b c h i g i d g l ] Z g i] Z g z h c d Zn ZXj idg #

## gift

hdb Zi b Zh X Va Z Y V V Z j Z h i # Hdb Zi c \ i] Vi h \ kZc id V W Z c Z [ X V g n j c Y Z g V l a # ; dg Zn V b e Z l V l a b Vn c Xj YZ \ f i h d [ b d c Z n l g Z Va Z h i Vi Z d g e Z gh d c Va Z [ Z X i h t h j X] V h Z l Z a Z g n #

## guardian

V'eZghdc l ] d ] V h e g b V g n g Z h e d ch W a n [ d g i] Z \ Z c Z g V a l Z a V g z d [ V b c d g Z k Z c [ i] Z e Z gh d c Y d Zh c di ] V k Z Y V n id Y V n X j hid Y n Vc Y X d ci g l a d [ i] Vi X] a #

## intestacy

i] Z h t j Vi dc V g h c \ j e d c i] Z Y Z Vi] d [ V e Z gh d c l ] d ] V h c i a Z i V k Va Y l a dg] V h [ V a Z Y id \ k Z V l V n i] Z l ] d a z d [ i] Z g e g l e Z g n c i] Z g l a #

## intestate

V'eZghdc l ] d Y Zh Z t j Z g l # d j i] V k c \ a Z i V k Va Y l a dg a Z V k c \ V l a i] Vi Y d Zh c i \ k Z V l V n i] Z l ] d a z d [ i] Z g e g l e Z g n #

## letters of administration

V Y d X j b Zci h h j Z Y Whi] Z Xdj g Xdc [ g b c \ i] Z Veed cib Zci d [ Vc VYb c h i g i d g i d VYb c h i Z g i] Z Zhi Vi Z d [ V Y Z X Z V h Z Y e Z gh d c l ] Z g i] Z g z h c d k Va Y l a dg c d Zn ZXj idg] V h W Z c Veed ci Z Y l dg [ i] Z Veed ci Z Y Zn ZXj idg h j c V W Z dgj cl a c id VXi c i] Vi XVe VX n tX [ e g l W i Z l ] Z g i] Z Xdj g Xdc [ g b h i] Z Veed cib Zci d [ Vc Zn ZXj idg #

WILL KEY TERMS

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|----------------------------------|---|
| <b>minor</b>                     | a child under the age of 18 years.  |
| <b>predecease</b>                | to die earlier in time than another person. For example, 'My father died in August, but my mother predeceased him, having died in February'.  |
| <b>probate</b>                   | 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).  |
| <b>residuary estate/ residue</b> | 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.  |
| <b>specific gift</b>             | a gift in a will of a particular asset or specified sum of money to a particular person.  |
| <b>spouse</b>                    | 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). |
| <b>ntary capacity</b>            |   |
| <b>testame</b>                   | 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.          |
| <b>testator</b>                  | a person who makes a will.  |
| <b>trustee</b>                   | 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.   |
| <b>trustee company</b>           | a company authorised by statute or by its constitution to act as a trustee, executor or administrator, as required.   |
| <b>will</b>                      | a written statement of intention concerning arrangements to take effect on or after a person's death.   |
| <b>will writing professional</b> | 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

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### **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**

An alternative attorney is an appointed person who may act in the circumstances specified in the power of attorney or, if the original attorney's appointment ceases, for example, due to loss of capacity, death, or revocation of their appointment.

### **alternative supportive attorney**

An alternative supportive attorney is an appointed person 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 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, 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, a person must be capable of understanding the legal implications of doing so, including the nature and effect of the power of attorney document. So, a power of attorney will not be valid if the person who signs it does not have 'capacity' – or 'decision making capacity' – in relation to making the power of attorney. However, even if a person 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 whether 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 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 from any source, 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'.

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### **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. It ceases to be effective if the principal no longer has 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.

### **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 or they do not need to act unanimously.

### **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.

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### **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.

### **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 that can be used for the group of documents by which you formally authorise someone else to act on your behalf or make decisions for you. The general non-enduring power of attorney document usually authorises an attorney to undertake specific tasks for a limited period of time. A general non-enduring power of attorney automatically becomes ineffective if the principal loses capacity. The attorney must at that time immediately cease entering into any transactions on behalf of the principal. An enduring power of attorney on the other hand continues to be valid if the principal loses capacity.

### **principal**

A term used to describe the person who appoints an attorney or supportive attorney.

### **revoke**

A 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 each other; that is, they do not need to act unanimously.

### **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 legally binding documents require that the person signing the document has their signature witnessed. Some documents only require the witness to be an independent adult. Some documents require that at least one of the witnesses be a person authorised by law to witness statutory declarations or affidavits, 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.