

# WILLS & ENDURING POWERS OF ATTORNEY FAQ'S

## **Why do I need a Will?**

The main objective of a Will is firstly to make sure that everything that you have managed to gather around you during your lifetime (valuable and sentimental), goes where you want it to go; and secondly to ensure that your family are not left with a mess to sort out at a time of grief and heartache as this is also very expensive

## **What if person dies with no Will?**

The assets go to the next-of-kin according to schedule set out in the Succession Act 1981. Court must appoint an executor which may be a family member or the Public Trustee.

## **Why can't the Public Trustee prepare my Will?**

If your Will is prepared by the Public Trustee, they will appoint themselves as Executor of your estate. If we prepare your Will, you will nominate your chosen person or persons to act as executor of your estate.

## **Is my current Will valid?**

Your current will may be invalid if:

- It is not prepared in accordance with the relevant legislation
- If you marry your will is revoked with certain exception
- If you divorce certain provisions of your Will may be revoked

## **How can I avoid a challenge to my Will?**

By ensuring that your Will is valid, current and has been drawn up by a professional, such as Bennett Carroll. We will advise you on the most effective means of distributing your assets and ways in which assets can be protected.

## **Why do I need an EPOA?**

If you lose mental capacity, without an Enduring Power of Attorney in place, there may be no one with the legal authority to manage your financial affairs. Your family or advisers would then need to apply to the government in your State or Territory to have someone appointed. This can be expensive and a difficult process.

## **Who can be my attorney?**

You may appoint up to four attorneys and they:

- Must be 18 years of age or over
- Must not be your health care provider (i.e. your doctor, nurse or carer)
- Must not be a bankrupt
- Must not be a paid carer

## **Why can't the Public Trustee prepare my EPOA?**

The Public Trustee will draw a Power of Attorney for free on the condition that they are appointed your attorney. They then charge fees on transactions carried out on your behalf. A solicitor will charge you a one-off fee for drawing the document and you can choose your attorney.

## **How does an Enduring Power of Attorney differ from a General Power of Attorney?**

A General Power of Attorney ceases to have effect after you lose the mental capacity to make financial decisions. An Enduring Power of Attorney will continue to have effect whatever your mental capacity.

## **Do you need to register the Enduring Power of Attorney?**

If your attorney wants to use the Enduring Power of Attorney to deal with any real estate, the Enduring Power of Attorney may need to be registered with the Land Titles Office. Even if there is no requirement you may be able to do so voluntarily. By registering it, the Enduring Power of Attorney:

- will be on record as a public document
- will be kept safe from loss or destruction
- may be more easily accepted as evidence that your attorney has authority to deal with your property or financial affairs.

## **How do you revoke your Enduring Power of Attorney?**

You can revoke your Enduring Power of Attorney at any time, provided you have mental capacity to understand what you are doing at the time you revoke it.

## **Contact Us**

Don't delay—plan for your future today. Contact Bennett Carroll Solicitors for expert advice on Wills, Powers of Attorney, and more.

**Call:** 1300 334 566  
**Email:** [info@bcglaw.com.au](mailto:info@bcglaw.com.au)  
**Visit:** [www.bcglaw.com.au](http://www.bcglaw.com.au)

