



## Duties of an Attorney

What are your attorney's rights and responsibilities?

An attorney has certain legal duties and responsibilities and must act in the best interests of the donor (the person who has granted the Power of Attorney) at all times. The person (or organisation) to whom you give a Power of Attorney should be able to fulfil the following responsibilities.

#### **What are your attorney's responsibilities?**

When your attorney is acting on your behalf, one of the main responsibilities is to pay your bills/accounts using your money. Sometimes, the attorney may be required to buy or sell property on your behalf if it is in your best interests (eg purchasing aged care accommodation).

In doing so, your attorney must keep accurate records and details of all transactions.

Your attorney can be held personally and criminally liable for any losses incurred by acting improperly.

However, your attorney is not liable for any of your personal debts.

#### **Whose money gets used to pay bills/accounts?**

Your attorney does not have to pay your bills/accounts out of his or her money. If you do not have enough money to pay debts, your attorney must inform your creditors as soon as possible.

#### **Do you pay an attorney?**

An individual attorney cannot be paid for his or her work except for out-of-pocket expenses related to looking after your affairs. Such expenses could be the cost of travelling to pay a bill or the cost of making photocopies of documents for your records.

#### **What if your attorney stops acting on your behalf?**

If your attorney stops acting on your behalf without getting your approval first, he or she may be liable for any losses incurred as a result of him or her ceasing to act.

#### **What happens if you lose your legal capacity?**

Your attorney can continue acting for you even if you lose legal capacity if the Power of Attorney you signed is an Enduring Power of Attorney.

However, if your attorney wishes to give up his or her power, your attorney must apply to the Supreme Court which may then appoint an administrator such as Public Trustee.

#### **What rights does your attorney have regarding any inheritance?**

Your attorney does not have any right to inheritance before you die. Your attorney must not 'preserve' his or her anticipated inheritance to your detriment. For example, if your house has to be sold to meet your debts, it should be sold even if the house has been promised to your attorney upon your death. Similarly, your attorney must not take or use any of your assets, including money.



#### **Public Trustee**

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