

27 February 2020

## Power of attorney appointment does not license early access to inheritance

Understanding your responsibilities if you have a [power of attorney](#) appointment for your parents is as much about ethical as well as legal responsibilities, Australia's leading trustee company, Equity Trustees, has cautioned.

Being appointed an attorney under an enduring power of attorney authorises you to make important legal and financial decisions when someone loses capacity - or chooses not to make these decisions for themselves.

"It means you have to step into the shoes of the person you are acting for, and act only in their best interests. Ordinarily, an attorney is not allowed to benefit from the assets of that person while they are acting as an attorney – which makes sense since it can create a situation where judgment can be clouded," said Marie Brownell, National Manager of Estate Planning at Equity Trustees.

Examples of appropriate and common use of an enduring power of attorney include buying and selling real estate, transacting on bank accounts, paying bills and ensuring the principal's assets are properly protected and maintained.

"We have seen too many situations where children have been appointed as attorney for their mum or dad and have decided to give themselves an early inheritance, although mum or dad are still alive and may need the funds themselves for their own needs and circumstances," Ms Brownell said.

"It's a really sad situation – especially when someone has to go into care and finds that they don't have the assets they thought they did – because their kids have accessed their money as attorney for their parent. Unfortunately, it happens more than we'd like to think."

When appointing an attorney to manage your financial decisions, Equity Trustees recommends:

- Careful consideration of who you are appointing as your attorney
- Thinking about appointing more than one person so they must act jointly
- Considering if an independent appointment, such as a professional trustee company, is better suited to your circumstances
- Having a 'plan B' by appointing a substitute attorney to act if the first person can't act for any reason
- Making specific and clear provisions in the power of attorney document about what benefits, if any, your attorney can derive from your assets
- Obtaining advice about whether to give expanded powers for your attorney to, for example, renew a superannuation binding death benefit nomination or to make seasonal gifts
- Looking at whether you should have separate powers of attorney dealing with different assets, and
- If you need to have restrictions around what an attorney can do.

"Everyone who has mental capacity can and should make plans to ensure they have an enduring power of attorney in place. Appointing your children is very common. However, if you have any doubts about who you have appointed, you can change your mind and revoke it at any time before you lose capacity," explained Ms Brownell.

She urged anyone concerned about the behaviour of a friend or relative's attorney, to seek advice.

"If someone has lost capacity and there is concern around the decisions made by an attorney or if an attorney is not acting in the best interests of a principal, it is possible to have the attorney's appointment and decision making reviewed by the relevant State and Territory Tribunal or Supreme Court," she said.



“However, like many things in life, a little planning goes a long way – and thinking carefully about this document before there is any pressure or expectation to do so is the best course of action,” she concluded.

[Read more about Wills and Estate Planning and find out more about Equity Trustees.](#)

---

## Media inquiries

Alicia Kokocinski  
General Manager – Marketing & Communications  
03 8623 5396 / 0403 172 024  
akokocinski@eqt.com.au

Equity Trustees was established in 1888 for the purpose of providing independent and impartial Trustee and Executor services to help families throughout Australia protect their wealth. Estate planning services are provided by EQT Legal Services Pty Ltd (ABN 32 611 391 149), administration services are provided by Equity Trustees Limited (ABN 46 004 031 298) AFSL 240975 and Equity Trustees Wealth Services Limited (ABN 33 006 132 332) AFSL 234528 are part of the EQT Holdings Limited (ABN 22 607 797 615) group of companies, listed on the Australian Securities Exchange (ASX:EQT).

This communication is intended as a source of information only. No reader should act on any matter without first obtaining professional advice which takes into account an individual's specific objectives, financial situation and needs.