



What legal issues should you be aware of if you have Power of Attorney for a senior?

(Feedsy Exclusive)

Many of us want to care for our ageing loved ones; but this isn't always straightforward – especially for the “sandwich generation” who have the added pressure of caring for children at the same time. This is why it's essential to be aware of the issues that can arise, particularly if you have power of attorney for a senior. Here we take a look at the legal implications and the questions you should be asking if you're going to take on this responsibility.

What is a Power of Attorney?

Powers of Attorney are legal documents through which someone – often an elderly relative – gives you the authority to make important decisions on their behalf if they are no longer able to do so. There are two main Powers of Attorney you can be granted:

- **Enduring Power of Attorney.** This gives you the authority to manage the financial affairs and in some cases, personal affairs of someone who has nominated you, if they are unable to do so.
- **Medical Power of Attorney.** This makes you responsible for decisions about the medical treatment of the person who has nominated you if they have become mentally or physically unable to make these decisions themselves.

However, the rules on Powers of Attorney differ between states and territories – it's important to check the law where you live before you agree to anything.

Considerations before agreeing to be someone's attorney

Taking on power of attorney for someone is a serious, legally binding responsibility. If someone wants to nominate you, make sure they are willing to discuss it thoroughly with you first so you can decide if this is something you really want to do. It's important to understand exactly what they expect from you – taking on responsibility for their finances, for example, could mean they expect you to take over a business they run, or even pay their debts.

Remember, this responsibility might not come into effect straight away – the person who nominates you chooses when your power of attorney should start. This may not be for many years if they continue to be capable of making their own decisions. It's important to think about what you want from your own life in the future before you accept the responsibility.

Once you've accepted, you can't then delegate the responsibility to anyone else. However, the person nominating you can nominate more than one attorney. You are all obliged to act in that person's best interests at all times but sometimes attorneys can disagree over decisions and a consensus has to be reached. If the other attorneys are family members or close friends, this can cause a strain in your relationships with them.

Perhaps the most important thing to think about is that having power of attorney for someone means you are likely to have to make some very difficult decisions on their behalf – from how their money is spent to where they are going to live, and possibly even what medical treatment they should receive. It is a lot of responsibility and can be painful to act as an attorney for someone you're close to. However, it can be a huge relief to the person who has nominated you if you agree.

What are the responsibilities of an attorney?

Your responsibilities depend on what powers of attorney you have been granted. It's essential that you do not overstep these at any time – the wishes of the person who has granted you powers of attorney have

to come first at all times. Most people retain some decision-making capacity for the whole of their lives; so even if the Power of Attorney has already come into effect and you have the legal responsibility for decisions, their wishes should still be respected.

Just because someone is old, it doesn't mean they don't know their own mind. If you suspect they might have lost the capacity for decision-making, you should have them assessed by a medical professional. Once their incapacity is confirmed, you should start acting as their attorney straight away to make sure their rights and assets are protected.

What are the legal obligations of having power of attorney?

You have a legal obligation to act honestly at all times.

You should keep detailed records of any decisions or transactions you make on the other person's behalf so everything is completely transparent.

You are also legally obliged to obey the wishes of the person who nominated you. If you deviate from them at all, even if you believe you're acting in their best interests, you can have legal action brought against you. You would then be liable for the cost of any compensation the court decided was owed.

As soon as you sign a Power of Attorney document, it becomes legally binding. It's vital that you talk it over thoroughly and think about it carefully before agreeing to take this step.

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