

Talking Law Article – August 2009

Legal Capacity in Making Powers of Attorney

In a recent Talking Law we discussed whether someone who suffers from dementia or has suffered a stroke can make a will. In this month's article we discuss whether a person in a similar situation can make a power of attorney.

The test for capacity to make a power of attorney is different from that for a will. In this case, we need to know if the person understands:

- the nature of the document when it is explained;
- that the attorney appointed will be able to assume complete authority over the donor's affairs.
- That the attorney will be able to do anything with the donor's property that the donor could have done;
- at the time of signing the power of attorney the person must be able to understand and carry out the sort of transactions contemplated by the power;
- that the power of attorney will continue if the person becomes incapable (enduring power);
- that after the person becomes incapable, the power will not be able to be revoked except with the consent of the Court.

This article is for general information and is not to be taken as specific legal advice. If you require advice on any matters relating to powers of attorney or any other legal matters please contact Dawes & Vary Pty Ltd.

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