

Power of attorney guide

At Heartland we are proud to have helped over 21,000 Australian seniors live a more comfortable retirement with the Heartland Reverse Mortgage. We aim to provide customers with peace of mind and have a culture that places significant importance on the duty of care we have for every customer.

Subject to Heartland's assessment and approval, our loans may be signed for by a power of attorney (POA), or through a guardianship or administration order (in either case, this is to act as an 'agent'). They also may, after settlement, commence acting on behalf of a customer. However, Heartland takes extra care when assessing and approving loans under power of attorney to ensure that they are suitable.

What is a power of attorney?

A POA is a legal document that gives someone (called an 'attorney') the power to act on behalf of the person who grants that power (the 'donor'). It allows the attorney to sign or act for the donor, subject to any conditions or limitations in the document.

There are two types of powers of attorneys that are used for managing a donor's interests (including finances), general and enduring.

General power of attorney

This operates for a particular period of time or purpose. It is generally used to put a temporary formal arrangement for a specific purpose in place, or a period of time (for example, if you go overseas for a year, a family member may take care of your bills). Unless specifically noted, it will not be valid for a lack of physical or mental capacity.

Enduring power of attorney

An enduring POA can commence once the attorney has accepted his/her appointment or at a later time that is specified in the document. This type of authority remains valid even when the customer may no longer be capable of making their own decisions (i.e. lack of capacity). It is possible for an enduring POA to specifically state that it is to only take effect when capacity is lost (evidence of this may be required), or to be triggered by another event.

Heartland applications

Heartland will only allow applications signed under POA, guardianship or administration orders when:

- customer lacks mental capacity or cannot physically sign for themselves; and
- funds will benefit the Nominated Borrower.

Each party to the loan must be onboarded and vetted, this means we will need to confirm details regarding the customer agent, including their identification.

The loan purpose will always be assessed. Funds can only be paid into account in the name of the Nominated Borrower, to their lawyer, or to a debtor on their behalf.

Loan Conditions:

Heartland will also require a Letter of Comfort from the lawyer providing the independent legal advice. This must confirm:

- funds are for benefit of nominated borrower(s);
- reason why they cannot sign; and
- the power has not been revoked.

Depending on the POA document, Heartland's legal advisers may be required to review its terms prior approving the loan and issuing a loan agreement. Depending on jurisdiction, it will require registration at the relevant Land Titles Office and/or an originally certified copy of the document will be required prior to settlement.

Gifting will not be accepted as a loan purpose when signed by a customer agent.

Capacity

Heartland only allows a POA to sign when there is a lack of capacity, this includes when a customer is physically incapable of signing.

Under an enduring power of attorney, it is most likely to be the attorney who will decide when the donor loses capacity. For this reason, Heartland requires the lawyer completing the independent legal advice to certify that the customer cannot sign in our letter of comfort.

Medical Review	<p>Only a medical practitioner can give a professional opinion on whether someone has lost capacity to make their own decisions. In some cases, the power of attorney may only come into effect if evidence is provided by a medical practitioner. If in doubt (of capacity or lack thereof) Heartland's process is to request a medical certificate.</p>
What is joint and several?	<p>When setting up a POA, more than one can be appointed. When there is more than one, the designation can be jointly, or jointly and severally.</p> <p>Jointly - means that all must agree to decisions and every document must be signed by all POA's listed.</p> <p>Jointly and severally - means that any POA listed can make a decision and sign documents, either together (jointly) or without the others as an individual (severally). If a POA has passed away, a certified death certificate will be required.</p> <p>Even if a POA is jointly and severally, Heartland will require confirmation that all POA's are aware of the application and, if not, why.</p>
POA conditions	<p>Heartland will review the POA carefully to determine:</p> <ul style="list-style-type: none"> • whether it is general or enduring; • that it is for financial matters; • the commencement date and duration of appointment; • if general, that it covers loss of capacity; • that it has been formally signed, accepted and witnessed; and • any specific conditions or restrictions (i.e. does not include sale of property). <p>Heartland will only allow a POA which includes financial purposes, and allows the security property transaction.</p>
POA obligations	<p>An attorney must:</p> <ul style="list-style-type: none"> • act in the donor's best interests, except as otherwise noted specifically in the POA; • make the same decision that the donor would make; • keep accurate records of interactions, transactions, and keep these separated from their own assets; and • avoid any conflict of interest. <p>An attorney must not exceed the POA document's authority, if they do so they may be liable for any damages suffered by the donor.</p>
Guardianship and administration orders	<p>If someone is unable to manage their affairs due to lack of capacity from a decision-making disability (dementia, mental illness, intellectual disability) and does not have a valid POA, a court or tribunal may legally appoint an administrator or guardian to make decisions for them through an administration or guardianship order. The Order can be for a set period of time.</p> <p>Guardianship</p> <p>A guardianship involves making personal, medical and lifestyle decisions about a person's work, living arrangements or medical care and treatment.</p> <p>Administration</p> <p>Administration is related to financial decision making regarding certain financial decisions, such as purchasing or selling property or assets, paying debts and investing money.</p> <p>Differences between jurisdictions</p> <p>Guardians in QLD, SA, TAS, VIC, NSW and WA cannot make financial decisions for the person they represent.</p> <p>Guardians in ACT and NT can make financial decisions.</p> <p>There can be terms in the order document, which Heartland will review.</p>

Obligations

An administrator must:

- protect the represented person from abuse, exploitation and neglect;
- make decisions which are in the represented person's best interests;
- take into account the represented person's wishes; and
- encourage the represented person to make their own decisions, where possible.

Post settlement

If we are advised by a power of attorney, guardian or administrator post-settlement that they are now acting and signing on behalf of a customer, they must be vetted, legally confirmed and onboarded just like a new customer.

If you are looking to be added to a loan post settlement, please contact Heartland's Customer Care team for our customer agent application.

Elder abuse

Heartland staff are trained to have an awareness of elder financial abuse, including undue influence and unconscionable conduct, and take steps to both detect and prevent its occurrence where possible.

If an application includes any red flags, our team will ask further questions and follow our [Elder Abuse Guide](#) to ensure that the loan is not unsuitable.

Questions?

Heartland's Customer Care team can be contacted on 1300 889 338, enquiries@heartlandfinance.com.au or at www.heartlandfinance.com.au. Please feel free to contact us if you would like to discuss your application or loan. We are here to help you.

This guide does not constitute legal or professional advice. If you require assistance, you should obtain independent legal advice.

Every situation is different - this information has been prepared without taking into account your needs, objectives, or financial situation. If you are considering a reverse mortgage, we encourage you to understand how it may affect your personal circumstances - talk to friends and family, speak to professionals, and use the resources and tools Heartland has available.

Loans are subject to loan approval criteria. Terms, conditions, fees and charges apply. Credit provided by ASF Custodians Pty Ltd (ACN 106 822 780 / Australian Credit Licence No. 386781).

Information provided is accurate as at 19 April 2021 and may change from time to time.