

Information Sheet

Protecting the human rights of adults with decision-making disabilities

9. ENDURING POWERS OF GUARDIANSHIP

The Public Advocate provides a telephone advisory service (1300 858 455) that provides information about enduring powers of guardianship. Recorded information, including answers to a range of common questions regarding enduring powers of guardianship, is available 24 hours a day. To speak to an advisory officer, call the service between 9am and 4.30pm, Monday to Friday.

WHERE CAN I FIND AN ENDURING POWER OF GUARDIANSHIP FORM?

The Enduring Power of Guardianship form is at the back of the Office of the Public Advocate's Guide to Enduring Powers of Guardianship and Enduring Power of Guardianship Information Kit.

Both of these publications contain step-by-step instructions on how to complete the form and can be downloaded free of charge from the Office of the Public Advocate's website.

WHAT IS AN ENDURING POWER OF GUARDIANSHIP?

An enduring power of guardianship is a legal tool which enables a competent adult to appoint another person to make personal, lifestyle and treatment decisions on his or her behalf. The person giving the power is called the appointor. The person accepting the power is called the enduring guardian or appointee. An enduring power of guardianship comes into operation only if the appointor loses capacity to make reasoned decisions for themselves.

CHOOSING AN ENDURING GUARDIAN

You can appoint anyone as your enduring guardian, provided they are 18 years of age or older and have full legal capacity.

The person or persons you choose to act as your enduring and substitute enduring guardian(s) is up to you. It may be your spouse or partner, another family member or close friend. As your enduring guardian's authority will override the authority of your spouse or de facto partner, if you want your spouse or de facto partner to make decisions for you, you need to appoint them as your enduring guardian.

It is important to carefully consider who you choose to be your enduring guardian(s) as they will have the legal decision-making authority for you. You should ensure that they are trustworthy and likely to always act in your best interests.

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WHAT CAN I DO IF I AM UNABLE TO SIGN AN ENDURING POWER OF GUARDIANSHIP?

Where a person giving the power is unable to sign his or her name, because for example:

- they understand English but cannot write
- they understand English but cannot read or write
- they do not understand English and cannot write

a mark of any kind by that person, including an initial, cross or even a thumb print will suffice, provided an appropriate explanatory clause is inserted into the enduring power of guardianship. This clause is known as a marksman clause.

Where a person giving the power is unable to understand English the form must be read to them by an accredited interpreter to ensure they understand the power they are executing. A readover clause must be inserted into the enduring power of guardianship stating that the form has been read to the person and they understand the power.

The Public Advocate recommends that legal advice (from a solicitor or community legal centre) is sought where a marksman or readover clause is required.

WHO CAN WITNESS AN ENDURING POWER OF GUARDIANSHIP?

In Western Australia, an enduring power of guardianship must be signed by the person giving the power, in the presence of two independent witnesses. One of the witnesses must be a person authorised to witness documents under the *Oaths, Affidavits and Statutory Declarations Act 2005*. This includes Justices of the Peace, medical practitioners, State and Commonwealth public servants and police officers. A full list of authorised witnesses is included in both the enduring power of guardianship guide and kit. It is acceptable to use two witnesses from this list, however the legal requirements for the second witness are that the person is at least 18 years of age, and is not a person being appointed as enduring or substitute enduring guardian.

DO I HAVE TO REGISTER MY ENDURING POWER OF GUARDIANSHIP?

There is no need to register an enduring power of guardianship as it is a private document. However, to ensure that your wishes are followed the Public Advocate recommends that you give certified copies of your enduring power of guardianship to your enduring guardian, your general practitioner, any other relevant health professionals and your family members.

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IS THE APPOINTOR REQUIRED TO HAVE LEGAL CAPACITY?

The appointor of an enduring power of guardianship must be capable of making reasoned decisions at the time of completing the enduring power of guardianship. If there is any doubt about the decision-making capacity of the person making the enduring power of guardianship, the written opinion of a doctor or other appropriately qualified health professional should be sought.

HOW DO I END MY ENDURING POWER OF GUARDIANSHIP IF I NEED TO?

Provided you still have legal capacity, you can revoke an enduring power of guardianship at any time you wish. If you no longer wish the enduring power of guardianship to apply, you should inform your enduring guardian and all other relevant people and agencies, preferably in writing. You should request your enduring guardian and other parties return copies of the enduring power of guardianship to you. It is advisable that you keep a copy of your written revocation together with a list of all people and agencies to which you have sent it.

An appointor who has lost capacity cannot revoke an enduring power of guardianship. They may however, apply to the State Administrative Tribunal for an intervention order.

FOR FURTHER INFORMATION CONTACT

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