

This fact sheet provides general information only and does not purport to be legal advice.

An Enduring Power of Attorney is an important legal document you prepare to give someone else the power to make personal and/or financial decisions on your behalf.

Why would I prepare such a document?

You may not always be able to make decisions when you need to. You may be too ill to make choices about your medical treatment, or you could suffer a disability (such as a stroke) that prevents you telling others what decisions you want made.

How does it work?

You appoint an 'attorney.' However this person need not be a professional or lawyer. You may select a relative, friend, a professional person (such as your accountant) or someone else whom you trust and believe to have the necessary abilities to carry out your wishes when you can no longer make decisions for yourself. You should be very careful whom you select as your attorney.

Treat an Enduring Power of Attorney with the same care as your will. Remember... you are giving another person total control over your assets, plus the ability to make personal decisions regarding your health and accommodation.

Your attorney's decisions will have the same legal force as if you had made them yourself, so your attorney must not only be capable of making decisions for you, but must respect your wishes. The powers of your attorney end with your death or if you decide to revoke them.

What type of decisions can my attorney make for me?

You can give your attorney the power to decide about personal matters such as where you live, whom you have contact with, and consent for medical/dental treatment.

You can give your attorney power over your finances. For instance, he/she may collect your income, do your banking, pay your bills and taxes, sell or rent your home if you need the proceeds to pay for aged care, use your income to pay for your needs, or invest your money.

When does the power begin?

For personal matters, your attorney's power begins only if and when you become incapable of making decisions.

For financial matters, your attorney's power begins whenever you want. You can choose to give your attorney immediate power or at a particular time. However, if you don't specify a time, your attorney can make decisions on your behalf straight away; and if you name a particular time and you lose capacity to make decisions before that time, then the Enduring Power of Attorney begins as soon as your attorney is notified of your condition.

For these reasons, it is best to carefully consider what you want and take advice first from your solicitor, the Public Trustee or a private trust company.

Do I pay my attorney?

Usually there is no need to pay your attorney unless you appoint a professional person or an organisation to act as your attorney for financial matters.

Can I make my own decisions even if I appoint an attorney?

Appointing an attorney does not prevent you from continuing to make your own decisions while you are capable of doing so. During this time, your attorney must act on your instructions.

Can I have more than one attorney?

Yes, you may appoint someone as your attorney for financial matters and another as your attorney for personal matters. Or you can appoint two or more attorneys for each matter.

To avoid any conflict, appoint people who you know will work well together for your best interests. Also consider if you want your attorneys to make each decision together, or if you want one attorney to act only when the other is no longer able to act for you.

Who should I appoint?

For personal matters, consider a family member or a close friend who understands your personal and health care needs.

For a financial attorney, consider someone who is responsible with his/her own money. If your financial affairs are complicated or you have a lot of money or property, you may prefer to appoint a professional person like an accountant or an organisation such as the Public Trustee or a private trustee company.

Whoever you decide to be your attorney must be over 18 years, and not a paid carer (such as a nurse or home help). A person receiving a carer's pension is not regarded as a paid carer.

What are my attorney's responsibilities?

Your attorney must act honestly and with care; recognise your right to confidentiality; take into account your existing supportive relationships, values and culture; and apply the general principles of the *Powers of Attorney Act 1998*.

In relation to health care, your attorney must:

- ensure that any decision made for you contributes to your health and wellbeing
- choose the least intrusive method of treatment (when there is a choice)
- take into account your views and wishes, and
- take into account the advice of your doctor or other health care providers.

In relation to financial matters, an attorney must:

- keep records and accounts of dealings and transactions
- keep your property separate from that of the attorney (unless it is owned jointly), and
- not give away your property, and make only reasonable gifts for birthday or Christmas presents, or donations that you would normally make yourself.

Can anyone prepare an Enduring Power of Attorney?

You must be an adult with the capacity to make personal and financial decisions—and you must:

- be able to understand the nature and effect of a decision

- freely and voluntarily make those decisions
- communicate the decisions in some way
- know your assets and income, and
- know your expenses/bills and debts.

You should also understand the consequences of preparing an Enduring Power of Attorney, its contents and when the power begins.

Can I limit the power that my attorney has?

Yes, you may limit the power and instruct your attorney about exercising the power. For instance, you might instruct your attorney to make financial decisions for you only after a certain event or at a specific time.

Can I end an Enduring Power of Attorney at any time?

Yes, provided you still have the decision-making capacity to do so. Simply fill out a Revocation of Enduring Power of Attorney form. You can also appoint a replacement attorney; however you must inform your original attorney of any decisions.

What happens if my attorney does not act properly?

If you can still make decisions for yourself, fill out a Revocation of Enduring Power of Attorney form so the person can no longer act for you.

If you do not have decision-making capacity, the Adult Guardian may investigate the attorney's actions where there is a complaint of neglect, exploitation or abuse, and take measures to protect your interests. If necessary, the attorney's power can be suspended, and application made to the Guardianship and Administration Tribunal (GAAT) for an order appointing someone else as your guardian and/or administrator.

Alternatively, if someone acting in your best interests believes that your attorney is not making appropriate decisions for you, he/she can apply directly to GAAT for an order appointing a guardian and/or administrator.

Do many attorneys abuse the power they are given?

There have been cases where attorneys have abused their powers by spending assets unwisely or selling the family home inappropriately; however they are a minority.

Do I have to register the Enduring Power of Attorney?

There is no general registry for Powers of Attorney in Queensland, however you must register the form with the Land Titles Office if your attorney buys or sells land on your behalf. You pay a fee to the Land Titles Office for this service.

What would happen if I did not have an attorney to act for me?

In the case of health matters, your Statutory Health Attorney makes decisions for you. This is a person close to you, such as your spouse or a family member, who is available (and culturally appropriate) to consent to your health care.

You do not have to sign any documents to officially appoint a Statutory Health Attorney because this person automatically becomes your Statutory Health Attorney, if or when necessary.

Your family or a friend may be able to make some other decisions informally, for instance, arrange Meals on Wheels, other services, such as personal care, or when you become too frail to cope at home alone, transfer you to more suitable accommodation. However, if formal authority is needed or if disagreements arise, your family or friend may apply to GAAT to have someone appointed to act on your behalf. A guardian would be appointed for personal and health matters. An administrator would be appointed only for financial issues.

For more information, please read the fact sheet on Statutory Health Attorney.

What if I don't have anyone whom I trust or believe can act as my attorney?

As a last resort, you can ask the Adult Guardian to agree to be your personal attorney. The Adult Guardian is an independent official responsible for protecting the interests of adults with impaired capacity.

Please refer to the fact sheet on the role of the Adult Guardian.

How do I go about appointing the Adult Guardian as my personal attorney?

First complete an additional form called a 'personal profile form' so you can explain why you regard the Adult Guardian as a last resort and why you want to

appoint the Adult Guardian, plus contact details of friends, family, your doctor, other service providers (such as nursing or meals services) and relevant professionals (such as your accountant or solicitor).

If the Adult Guardian is satisfied that the appointment is a last resort, the Adult Guardian will sign the Enduring Power of Attorney.

How do I go about arranging an Enduring Power of Attorney?

First, talk to your solicitor, the Public Trustee, a private trustee company, financial planner, or others who can give you professional advice tailored to your circumstances.

An Enduring Power of Attorney form is available from newsagencies, GoPrint bookshops and legal stationers, or it can be downloaded from the Department's website at www.justice.qld.gov.au/guardian/poa/forms.htm.

If the person you select as attorney agrees, he/she signs the acceptance section of the form after you have completed and signed it in front of a witness. (If you are acting as witness, read 'Capacity guidelines for an Enduring Power of Attorney', posted on the Department's website.)

Keep the original form in a safe place. Keep a copy for yourself and give a copy to anyone else who needs to know its contents—your attorney, solicitor, doctor, accountant, relative or friend.

Other information resources

The Public Trustee, telephone 3213 9288 or 1300 651 591, or visit their website www.pt.qld.gov.au.

Queensland Law Society (for a list of solicitors), telephone 3842 5899, or visit their website at www.qls.com.au.

Contact details:

Office of the Adult Guardian
PO Box 13554 GEORGE STREET QLD 4003

Phone: (07) 3234 0870 or
1300 653 187 (outside Brisbane)

Fax: (07) 3239 6367

Email: adult.guardian@justice.qld.gov.au

Web: www.justice.qld.gov.au/guardian/