

# ENDURING GUARDIANSHIP & POWER OF ATTORNEY

What is an Enduring Guardianship or Power of Attorney & why do I need one?

## WHAT IS A POWER OF ATTORNEY?

A power of attorney is a document you can sign to appoint another person as your attorney to act for you in legal, financial and property matters.

## WHAT IS AN APPOINTMENT OF ENDURING GUARDIANSHIP?

An appointment of enduring guardianship is a document you can sign to appoint someone, at a time when you have capacity, to make personal, health or lifestyle decisions on your behalf should you lose the capacity to make decisions of this nature for yourself.

## WHY DO I NEED A POWER OF ATTORNEY?

You may need a power of attorney:

- If you are going overseas and would like someone to have the power to deal with your financial, legal or property affairs while you are away
- If in the future, your decision-making capacity becomes impaired and you are unable to make decisions about your financial and property matters
- If you are unable to physically execute documents or would like another person to also be able to deal with your affairs
- If you are going into hospital for an indefinite period of time.

## HOW MUCH POWER SHOULD I GIVE MY ATTORNEY?

The power you give your attorney can be as wide or as narrow as you wish. You can give someone complete power over all of your financial, legal and property affairs, or you can give them limited power to reflect your specific intentions.

There are two types of powers of attorney:

1. General Power of Attorney
2. Enduring Power of Attorney

The NSW form of power of attorney does not give your attorney the power to make personal decisions or decisions relating to health care on your behalf. In this instance you will need to complete an appointment of enduring guardianship.

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### GENERAL POWER OF ATTORNEY

A general power of attorney is only valid while you have the ability to make decisions. If you make a general power of attorney, you can still personally carry out any of the powers you have given your attorney, such as banking and the sale of property.

### ENDURING POWER OF ATTORNEY

An enduring power of attorney allows for you to appoint a trusted person to manage your affairs and make decisions for you even if you lose capacity to make decisions for yourself.

An enduring power of attorney differs from a general power of attorney in that:

- The enduring power of attorney continues after you lose decision making capacity
- Your attorney must accept the appointment before the enduring power of attorney comes into effect
- Your signature must be witnessed by a person such as a Solicitor, Barrister or Local Court Registrar.

An enduring power of attorney must be made when you are of sound mind. It is too late to appoint an attorney after you have lost capacity to manage your own affairs.

You can make an enduring power of attorney that comes into effect immediately, or that only comes into effect in particular circumstances. For example, you can specify that your attorney may act only when you are unable to manage financial matters for yourself.

### WHY DO I NEED AN APPOINTMENT OF ENDURING GUARDIANSHIP?

An appointment of enduring guardianship is made if you wish to appoint someone to make decisions about your personal and health care matters. By appointing an enduring guardian you can choose a trusted person to make decisions for you if you lose the capacity to do this for yourself.

### WHAT DECISIONS CAN MY ENDURING GUARDIAN MAKE?

If you choose to complete an appointment of enduring guardianship, your enduring guardian may be empowered to make important personal decisions such as:

- Where you live
- What health care you receive
- What other personal services you receive
- Providing consent to medical treatment on your behalf

Your enduring guardian must always act in your best interests.

### WHO SHOULD I APPOINT AS MY ATTORNEY AND GUARDIAN?

You can appoint the same person to be your attorney and your enduring guardian, or you can appoint different people for each role. The attorney and enduring guardian must be over 18 years of age and be of sound mind.

You can appoint more than one attorney and enduring guardian and give them the power to act either together or separately, with the same functions or different functions.

You can also appoint an alternate attorney and guardian in the event that your original attorney or guardian is unable to act on your behalf.

### IS A NSW POWER OF ATTORNEY AND APPOINTMENT OF ENDURING GUARDIANSHIP VALID IN OTHER STATES?

Each state and territory of Australia has its own laws relating to powers of attorney and appointments of enduring guardianship. If you move interstate you may need to make a new power of attorney or appointment of enduring guardianship that complies with the laws of the state or territory to which you move.

If you continue to live in NSW, your power of attorney and appointment of enduring guardianship may be able to be used in another state or territory, subject to any registration requirements of that state or territory, and also to the provisions of that state or territory's laws.

### DOES MY POWER OF ATTORNEY HAVE TO BE REGISTERED?

If you want your attorney to be able to sell or deal with real estate on your behalf, the power of attorney must be registered with the Land and Property Management Authority.

Powers of attorney and appointments of enduring guardianship end when you die. The executors of your will then take over administering your affairs.

You may also revoke the appointment of your attorneys and guardians but this requires that you sign a formal written notice. A power of attorney or appointment of enduring guardianship is not automatically revoked if you make another power of attorney or appointment of enduring guardianship at a later date.

Powers of attorney and appointments of enduring guardianship may also be revoked if:

- One of your joint attorneys or guardians dies, resigns or becomes incapacitated
- You marry after appointing an enduring guardian
- Your attorney becomes bankrupt.

### CONTACT US

If you would like us to prepare a power of attorney and appointment of enduring guardianship on your behalf or require assistance with any other succession planning needs, please contact us.