

What is an enduring power of attorney

An enduring power of attorney (**EPA**) allows you to appoint someone you trust to make property and financial decisions on your behalf in the event you lose the legal capacity to manage your own affairs. An EPA does not permit an attorney to make personal and lifestyle decisions, which includes decisions about medical treatment.

What is an enduring power of guardianship

An enduring power of guardianship (**EPG**) allows you to appoint someone to make personal, lifestyle and treatment decisions on your behalf should you ever become incapable of making these decisions yourself. This person becomes your enduring guardian and may make decisions specifically about:

- where you live (whether temporarily or permanently), who you will live with and who you will associate with
- whether you will work and decide what education and training you will receive
- any legal proceedings relating to you
- what personal services you should have to support and assist you, and
- giving or withholding consent, on your behalf, to any medical, surgical or dental treatment or other health care (including a life sustaining decision or palliative care).

However, an enduring guardian cannot make decisions for you on property or financial matters.

How are they created

EPA and EPGs are controlled by the *Guardianship and Administration Act 1990 (WA)*. They are created using documents in the form prescribed by the Act. The powers granted are subject to any conditions or limitations set out in the document.

When should you make an EPA and EGA

You should make these documents while you have capacity to make informed decisions and are able to understand the implications of them.

What happens if you lose mental capacity before appointing an attorney or guardian

Should you lose capacity without having made an EPA or EPG, the State Administrative Tribunal may appoint someone to act for you.

Who should you appoint to look after your affairs

An enormous amount of power can be conferred under an EPA and EPG. Usually a person appoints a spouse, a close friend, or someone they trust to manage their affairs responsibly and who is aware of your personal beliefs and lifestyle preferences. However, if your financial affairs are complicated, you should consider appointing someone with the ability to deal with complex financial arrangements, such as an accountant or lawyer. It does not matter if your enduring guardian or attorney does not reside in Western Australia.

Things you should consider when appointing an attorney or guardian include:

- whether they are 18 years of age or older
- whether they are or have ever been a bankrupt
- whether they have the ability to deal competently with your financial affairs, and
- whether they will be able to keep accurate records of transactions and accounts.

You may appoint two people as joint attorneys or guardians, but you should ensure these people are capable of working together and agreeing on decisions. You may also appoint a substitute attorney or guardian in the event that the original attorney cannot act.

Witnessing requirements

You require two witnesses. Examples of authorised witnesses include justices of the peace, accountants, lawyers, bank managers and doctors. A witness must be over 18 years of age. For an EPG neither of your authorised witnesses may be related to you or your attorney.

For an EPA only one of your witnesses must not be related to you or your attorney.

Neither your attorney, nor your guardian may witness the document creating their power (nor the document creating your other attorney or guardian's power).

Can you give directions or make restrictions

You are able to restrict the scope of your appointees' power, as well as limit the circumstances in which they can exercise that power. The specificity of your directions in the instrument will determine the restrictions upon your appointees. This includes choosing when the power will come into effect, such as, immediately, when you lose the legal capacity to make financial or medical decisions, or on a date to be specified in your documents.

Alternatively, you may limit the types of decisions your appointees can make. For example, you may allow an enduring guardian to make treatment decisions, but not decisions about where you live and who you associate with.

Is registration required

The instruments creating powers of attorney and guardianship are akin to deeds, and need not be registered to be effective, unless your attorney needs to deal with land. However, it is vital that both you and your guardian or attorney retain an original copy of each document, in a safe place, for future reference.

The Former Department of Land Information (**Landgate**) will accept an EPA regardless of whether the donor has an existing interest in a property at the time of the execution of an EPA. If you choose to lodge your EPA with Landgate, two original EPA forms are required (one to be retained by Landgate, and the other with you). It is also important to note that if an EPA is lodged with Landgate, more than three months after it is signed a Statutory Declaration may be required from the attorney stating the EPA has not been revoked.

Revocation

You may revoke your enduring power of attorney or guardianship at any time. Revocation in writing is not always necessary, however the Public Advocate recommends that written notification of any revocation to the attorney and to all relevant persons and organisations should be provided.

Alternatively, an attorney or guardian may resign from their role, so long as you (as donor) have not lost capacity.

Advance Health Directive

An Advance Health Directive (**AHD**) is a document that sets out your wishes in relation to future health care decisions. You can use it to provide or withhold your consent to receive specified medical, surgical and dental treatments and other health care including lifesustaining measures and palliative care.

If you require further information in relation to AHDs please contact the Office of the Public Advocate.

**Information Source – eLawyer*

NOTE: This information guide covers legal issues in a general way. It is not designed to express opinions on specific cases. It is intended for information purposes only and should not be regarded as legal advice. Further advice should be sought regarding your specific situation before taking any action.