

Planning Ahead

Enduring Power of Attorney

Many of us don't consider what might happen to us as we grow older or become unwell.

However, planning ahead and getting legal help while you are fit and healthy, allows you to choose who makes decisions for you well into the future.



As you get older, you will need to prepare legal documents for:

- **Legal and financial decisions** (e.g. paying your bills, managing your bank accounts)
- **Health and lifestyle decisions** (e.g. where you live, medical treatment you receive)
- How you want **your property** to be divided after you pass away.

What is an Enduring Power of Attorney?

If you become ill or suffer a serious injury, it may leave you unable to make your own decisions. In legal terms, this means that **you no longer have capacity**.

An Enduring Power of Attorney is a legal document that allows another person to make legal and financial decisions for you, **even after you lose capacity**.

In an Enduring Power of Attorney, the person you have chosen to make these decisions for you is called your **Attorney**. You are called the **Principal**.

Other factsheets to help you plan ahead:

- Planning Ahead: **Wills**
- Planning Ahead: **Enduring Guardian**
- Planning Ahead: **Advance Care Directives**

justicesupportcentre.org.au/free-services/factsheets-and-resources/

When should I appoint an Enduring Power of Attorney?

If you want to choose the person who will make legal and financial decisions for you, you must appoint an Attorney **before you lose capacity**.

If you do not appoint an Attorney before you lose capacity, a family member or other person will need to apply to the court or the NSW Civil and Administrative Tribunal for permission to make legal and financial decisions for you.

What is the difference between an Enduring Power of Attorney and a General Power of Attorney?

A **General Power of Attorney** also allows you to authorise another person to make legal and financial decisions for you. However, unlike an Enduring Power of Attorney, a General Power of Attorney **will end once you lose capacity**.

A General Power of Attorney is usually created for a specific purpose or for a set period of time only. For example, if an Attorney is appointed to operate your bank account while you are on holidays or to sell your house while you are in hospital recovering from an operation.

The [General Power of Attorney form](#) must be used to appoint a General Power of Attorney.

Will I lose my rights if I appoint an Enduring Power of Attorney?

As long as you have capacity, you will always have the right to make your own decisions.

Also, **you can choose what your Attorney can and cannot do**, and they must follow those instructions. For example, in the Enduring Power of Attorney you can give instructions stating that your Attorney:

1. cannot make decisions that affect a gift you included in your Will
2. must talk to a lawyer or other person before they can sell your property.

An Attorney is legally required to act in your best interests at all times.

Who should I appoint as my Enduring Power of Attorney?

- Your Attorney should be **someone you trust and who has the ability** to understand your financial and legal situation.
- Your Attorney should be **someone who will always act in your best interests**. Therefore, someone who may have interests conflicting with yours may not be suitable.

A family member, a close friend, a lawyer, the NSW Trustee and Guardian or another trustee organisation can be your Attorney.

Always talk to a lawyer about what would be best for you.

Can I appoint more than one Enduring Power of Attorney?

Yes. If you appoint more than one Attorney, you can:

1. require them to make decisions jointly (they must make decisions together); or
2. allow them to make decisions jointly and severally (they can make decisions together, or on their own without having to consult the other Attorney/s).

You can also appoint another person as a substitute Attorney if your original Attorney is no longer able to or dies.

How to create an Enduring Power of Attorney

You can use the Appointment of Enduring Guardian Form.

Once you have completed the form, you should keep it in a safe place. You should also give a copy to your family, bank, or other people you think should know.

In order for your Attorney to deal with your land, the Enduring Power of Attorney document must be registered with the NSW Land Registry.

You should always ask a lawyer or the NSW Trustee and Guardian for help to complete an Enduring Power of Attorney form.

What if my Enduring Power of Attorney does not act in my best interests?

An **'interested person'** can ask the NSW Civil and Administrative Tribunal to review a decision made by an Attorney by submitting an Application for Review of an enduring power of attorney form.

An interested person can be an Attorney, Principal, Guardian or Enduring Guardian or **any person who has a proper interest in the matter or a genuine concern for your welfare**. For example, a family member or relative. The Tribunal will look at the facts of each case to decide if a person has a proper interest in the matter or a genuine concern for your welfare.

What if I change my mind?

You can cancel (revoke) your Enduring Power of Attorney at any time, as long as you still have capacity.

To do this, you can fill out the Revocation of Power of Attorney form prepared by NSW Land Registry and give a copy to your previous Attorney/s, your family, bank, or other people you think should know.

You should always get legal advice before you revoke the Power of Attorney.

What happens if the Tribunal agrees that an Attorney has not acted in my best interests?

The Tribunal can make certain orders if it believes that your Attorney/s has not acted in your best interests. These may include:

1. removing the Attorney
2. replacing the Attorney with a substitute Attorney
3. ordering the Attorney to do certain things, for example, provide records or other information about what they have done with your money
4. cancelling all or part of the Enduring Power of Attorney.

If the Tribunal decides not to make any orders it might still treat the application as an application for a financial management order. This means that the Tribunal can decide to authorise a private financial manager or the NSW Trustee and Guardian to look after your finances.



Checklist

- Who do I want to be my Enduring Guardian?
- Do I want more than one Enduring Guardian to act together?
- Have I thought about what my Enduring Guardian can and cannot do?

Who can help?

Justice Support Centre

We can support you with free legal advice over the phone.

When to call:

If you call at the following times and give your details, a lawyer will aim to call you back within 7 working days:

Tuesday: 11.30 am – 1.30 pm

Thursday: 11.30 am – 1.30 pm

Phone: (02) 9601 7777

Email: info@justicesupportcentre.org.au

Seniors Rights Service

1800 424 079 | 02 9281 3600

NSW Trustee and Guardian

02 8688 2600

You can also contact **LawAccess** for legal help in NSW: 1300 888 529

You can contact the **NSW Law Society** for referrals to private solicitors: 9926 0300