

Enduring Power of Attorney

Choosing who should speak for you in the future if you're not able to.

An Enduring Power of Attorney is an important legal document you prepare to allow someone else (your attorney) to make personal and/or financial decisions on your behalf if you aren't able to.

Why is completing one important?

You may not always be able to make decisions when you need to. For example, you may become seriously ill, have an accident or get dementia. You may not be able to make your own decisions or communicate what you want or need – about your money, your personal affairs or your health. The advantage of an Enduring Power of Attorney is that you can choose who will be able to make decisions on your behalf in this scenario.

If you lose decision-making capacity and don't have an Enduring Power of Attorney in place, your friends and family may be able to informally support you (although there will be no written record of your wishes). However sometimes it will be necessary to have a formal decision-maker (a guardian and/or an administrator) appointed by the Queensland Civil and Administrative Tribunal, and you may not have control over who this is.

What decisions can an attorney make?

You can give your attorney responsibility for your:

- personal matters, such as where you live and who you have contact with
- health care, including choosing medical and dental treatments
- financial matters, like collecting your income, paying your bills and taxes or selling your home.

Note that if you have very specific health care needs or wishes you might want to detail these in an Advance Health Directive. Please see our Decisions about your Future Health Care [factsheet](#) for more information.

Your attorney is able to make any decisions that you could legally make in the areas you have appointed them for. However you can choose to include wording that sets out conditions or limits for how your attorney makes these decisions.

Who should I choose to be my attorney?

You can appoint any adult over the age of 18 who has capacity for the matter you are appointing them for and who you trust and you believe to have the necessary abilities to carry out your wishes and manage your affairs. This can include a relative, friend, or a professional such as your accountant, but cannot be a paid carer, or have been your paid carer at any time in the previous three years, (someone who receives a carer's pension to care for you isn't considered to be a paid carer) or be a service provider at a residential service you are residing at.

However it's vital you choose someone you trust to act in your best interests and follow your wishes, so it should be a decision you make very carefully. Remember, you shouldn't feel obliged or pressured to choose your partner or adult children, or anyone in your family if you don't think they will be able to fulfil the role for you. Other people in your life such as a longstanding friend may be more suitable. Key questions to ask yourself when nominating someone to be your attorney are:

- Do you trust them?
- Do they know you well and what's important to you?
- Do they have the right qualities to be your attorney?

You are able to appoint more than one person to be your attorney. So for example if you know one person would be able to make your personal and health decisions but wouldn't be confident to make financial decisions, you could consider appointing another person to make your financial decisions.

What if I have no one to act as my attorney?

If you don't feel confident that you have suitable people in your life to undertake this responsibility, you are able to nominate the Public Guardian as your attorney for personal and health care decisions only (not financial). If you don't have anyone suitable to manage your financial matters the Public Trustee or a private trustee firm can take on this role for a fee.

How does it work if I nominate more than one attorney?

As noted above you can nominate more than one attorney. As described in the previous example, you might choose to have different attorneys make decisions about different areas of your life, but there are multiple other ways you can choose to have your attorneys make decisions. These include:

- jointly – your attorneys must make all decisions together
- severally – any one of the attorneys can make a decision
- jointly and severally – this means that your attorneys can make decisions together or separately
- as a majority – if you are appointing more than three attorneys, you would need to specify, e.g. 'simple majority', 'two-thirds majority'.

If you choose to appoint joint attorneys you can only appoint a maximum of four for a matter (so you could appoint up to four attorneys to act jointly for personal matters, and up to four attorneys to act jointly for financial matters). In all cases, attorneys must keep each other informed about the decisions they are making.

There is also the option to choose successive attorneys. In this situation, one or more attorneys act initially, but you also nominate another to take over if the first appointed attorney(s) can no longer carry out the role, for example if they become ill or die.

When does the power begin?

For personal and health care matters, your attorney's power begins only if and when you lose capacity to make those decisions. For financial matters, your attorney's power begins whenever you want it to and you nominate the start date in your Enduring Power of Attorney form. You can still continue to make any of your own decisions while you are capable of doing so.

Can I cancel or change my Enduring Power of Attorney?

You can cancel (revoke) or change your Enduring Power of Attorney at any time as long as you still have the decision-making capacity to do so. You should fill out the Revocation of Enduring Power of Attorney form and give a certified copy of it to your original attorney, bank, doctor and anyone else who would have known about your existing documents. You can also appoint a replacement attorney, but you must inform your original attorney of these decisions. Certain life circumstances will also bring your Enduring Power of Attorney to an end, such as if you were to get married, divorced or die. If your attorney becomes bankrupt, loses capacity or dies, their power to act on your behalf ceases.

How do I arrange an Enduring Power of Attorney?

You can download the forms from publications.qld.gov.au, or alternatively they can be purchased from most newsagencies. You can complete the form yourself, which has explanatory notes to guide you. You will also need it formally witnessed. Alternatively, you may wish to get professional help with completing the form instead of doing it yourself. Qualified solicitors (generally those specialising in estate planning) and the Public Trustee of Queensland both provide this service for a fee.

When completed, keep the original form in a safe place. Keep a certified copy for yourself and give certified copies to anyone else who needs to know its contents – for example, your attorney, family, solicitor, doctor or accountant. There is no central register for Powers of Attorney in Queensland, but the completed form must be registered with the Titles Registry if your attorney buys or sells land on your behalf.

Find out more

For more information on Enduring Powers of Attorney, Advance Health Directives and planning for the future, go to publicguardian.qld.gov.au/planahead

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