Enduring Power of Attorney

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

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

Why would I prepare one?
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 have chosen who will be able to make decisions on your behalf.

How does it work?
You appoint an ‘attorney’. This person does not need to be legally trained. They must make decisions that are in keeping with what you would have wanted. You may choose a relative, friend, a professional such as your accountant, or someone else you trust and believe to have the necessary abilities to carry out your wishes and manage your affairs. Your attorney’s decisions will have the same legal power as if you had made them yourself.

What types of decisions can my attorney make for me?
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.

You can also include detailed instructions for your attorney to follow or to limit their power.

If you have specific or complex requirements about future health treatments, you may also wish to complete an Advance Health Directive – go to publicguardian.qld.gov.au/planahead for more information.

Can I have more than one attorney?
You can name more than one person to be your attorney, and choose what powers you give them. To avoid any conflict you should 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, whether just one attorney can act, or if you want one attorney to act only when any others are no longer able.

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.

Who should I appoint?
You should be very careful about who you choose as your attorney. You are potentially giving another person total control over your assets, plus the ability to make personal decisions regarding your health care and accommodation when you are unable to do so. Choose people who you trust and those who would be willing and able to carry out the role. It can be a big responsibility. For personal matters, consider someone who understands your personal and health care needs and wishes. For a financial attorney, consider someone who is responsible with their own money and understands financial matters.

Whoever you choose to be your attorney must be over 18 years, and not be your paid carer. A person receiving a carer’s pension is not regarded as a paid carer.

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). To find out more about this option.
contact us. Please note the Public Guardian does not make decisions about financial matters. If you don’t have anyone suitable to manage your financial matters, you may wish to get legal or financial advice about the options.

**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 or divorced, or if your attorney becomes bankrupt or dies.

**What do I do with the form once I have completed it?**

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 you must register the completed form with the [Titles Registry](#) if your attorney buys or sells land on your behalf.

**What if my attorney does not act in my best interests?**

If you can still make decisions for yourself, fill out the [Revocation of Enduring Power of Attorney form](#) so the person can no longer act for you. You may also wish to get some legal advice, depending on what the attorney has done.

If you do not have decision-making capacity, the Public Guardian may investigate the attorney’s actions and take measures to protect your interests. If necessary, the attorney’s power can be suspended, and an application made to the [Queensland Civil and Administrative Tribunal](#) for an order appointing someone else as your guardian and/or administrator.

**What would happen if I did not have an attorney to speak on my behalf?**

For financial and personal matters, your family or a friend may be able to make some decisions informally, to assist in your daily living. However, if formal authority is needed or if disagreements arise, someone from your support network may apply to the Queensland Civil and Administrative Tribunal to have a person appointed to act on your behalf. A guardian could be appointed for personal and health matters if needed, and an administrator could be appointed for financial issues.

In the case of health care decisions, your statutory health attorney will be able to make decisions for you. This is a person close to you, such as your partner, a family member or friend, or it could be the Public Guardian if there is no one else available. You do not have to appoint someone to do this as they automatically act in this role when the need arises.

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

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 elder law and/or estate planning) and the Public Trustee of Queensland both provide this service for a fee.

**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](#)