

Enduring Power of Attorney

What is an Enduring Power of Attorney?

An Enduring Power of Attorney (EPA) 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. You may be too ill to make choices about your medical treatment, or you could suffer a disability that prevents you from communicating your wishes to others.

The advantage of an EPA is that you will have chosen who you would like to make decisions on your behalf.

How does it work?

You appoint an 'attorney'. This person does not need to be a lawyer. You may select a relative, friend, professional person 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.

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. Your attorney's decisions will have the same legal power as if you had made them yourself.

What type 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 add to your attorney's power, or limit it, and set out detailed instructions to follow.

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 on your EPA form.

You can still continue to make any of your own decisions while you are capable of doing so.



Contact Us

Office of the Public Guardian

t. 3234 0870 or 1300 653 187

e. adult@publicguardian.qld.gov.au

www.publicguardian.qld.gov.au

The EPA form is available from newsagencies, GoPrint bookshops and legal stationers, or it can be downloaded for free at <http://www.publicguardian.qld.gov.au>.

If the person selected as attorney agrees, they will need to sign the acceptance section of the form after you have completed and signed it in front of an eligible witness.

Can I have more than one attorney?

Yes, you may have as many attorneys as you think are necessary to act for you. You may appoint someone as your attorney for financial matters and another as your attorney for personal matters. Or you can appoint two or more attorneys for each matter.

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 either attorney can act, or if you want one attorney to act only when the other is no longer able.

Who should I appoint?

Choose people who you trust and feel would do well in the role—and would be willing to take on the responsibility. For personal matters, consider family members or a close friend 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 decide 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 do not have anyone suitable to appoint, you can ask the Public Guardian, an independent statutory officer who protects the rights and interests of people with impaired capacity, to be your personal attorney.

Can I end an EPA at any time?

Yes, provided you still have the decision-making capacity to do so. Simply fill out the Revocation of Enduring Power of Attorney form. You can also appoint a replacement attorney, but you must inform your original attorney of these decisions. Certain life circumstances can also bring your EPA to an end, such as if you were to get married or divorced, or if your attorney becomes bankrupt.

What if my attorney does not act properly?

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 (QCAT) for an order appointing someone else as your guardian and/or administrator.

Do I have to register the EPA?

There is no general registry for Powers of Attorney in Queensland, but you must register the form with the Land Titles Office if your attorney buys or sells land on your behalf.

Keep the original form in a safe place. Keep a copy for yourself and give a copy to anyone else who needs to know its contents—your attorney, solicitor, doctor or accountant.

What would happen if I did not have an attorney to act for me?

In the case of health matters, your statutory health attorney makes decisions for you. This is a person close to you, such as your spouse, 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.

For financial and personal matters, your family or a friend may be able to make some other 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 QCAT 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.

How do I go about arranging an EPA?

You can complete an EPA yourself but you may wish to first consider talking to your solicitor, the Public Trustee, a private trustee company, financial planner, or others who can give you professional advice tailored to your circumstances.