



Factsheet:

Appointment of Enduring Guardian

What is an Appointment of Enduring Guardian?

An Appointment of Enduring Guardian is an important legal document which enables you to appoint one or more people to make personal lifestyle or medical decisions on your behalf, if you have lost the ability to make those decisions yourself. While you still have full mental capacity, you continue to make these decisions for yourself.

Who can make an Appointment of Enduring Guardian?

Anyone over the age of 18 can make an Appointment of Enduring Guardian as long as they have the mental capacity to understand what they are signing. If a person's capacity is in doubt, an assessment of their capacity will need to be made by their lawyer (who may also seek advice from a doctor, psychologist or psychiatrist) before they can sign the document.

What can my Enduring Guardian do?

If you have lost the ability to make decisions for yourself, your guardian can make decisions on your behalf regarding:

- where you are to live and which facility you may need such as aged or respite care.

- what health care you receive and which doctors or other health care professionals you see.
- giving or refusing consent to specific medical and dental treatments.
- what personal services you receive.
- end of life treatment, palliative care or even when to stop life support if machines are keeping you alive.

An Appointment of Enduring Guardian only authorises your guardian to act in relation to personal lifestyle and medical matters. It does not allow the guardian to make legal and financial decisions for you.

If you want another person to make these types of decisions for you, please speak to us about making an Enduring Power of Attorney.

Why do I need to make an Appointment of Enduring Guardian?

You have no way of knowing if or when you will lose your decision making ability in the future since loss of mental capacity can be caused by illness, accident or trauma. It is important to plan ahead and prepare the document now because you can only prepare an Appointment of Enduring Guardian while you have the mental capacity to sign it. If an unexpected event occurs which causes you to lose your mental capacity, it will be too late to then appoint an Enduring Guardian.

What happens if I don't make an Appointment of Enduring Guardian?

If you lose mental capacity and you haven't made an Appointment of Enduring Guardian, there won't be anyone with legal authority to manage your personal health and lifestyle matters for you, unless you have a family member who is taking responsibility for your care and support. A relative or another person may need to apply to the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT) or the Supreme Court will appoint a guardian for you. The person appointed as your guardian may or may not be aware of your personal views or requirements and may not be the person you would have chosen to take on this role.

When should I make an Appointment of Enduring Guardian?

It is important to plan ahead and make an Appointment of Enduring Guardian now because it will be too late to do so once you have lost mental capacity. An Appointment of Enduring Guardian can only be effective if you understand what you are signing at the time of making it, so it has to be in place before any loss of capacity.

Who should I choose to be my Enduring Guardian?

Your Enduring Guardian should be someone you know and trust over the age of 18 and of sound mind. Your Enduring Guardian cannot be a person who provides medical treatment or care services to you on a professional basis or a relative of one of those people.

When choosing an Enduring Guardian you should consider how well the person understands your needs, wishes, values and beliefs. It is also important that your Enduring Guardian can be easily contacted when a decision needs to be made. It is also a good idea to nominate an alternative enduring guardian. The alternative enduring guardian can only act if the original enduring guardian dies, resigns or becomes incapacitated.

Can I choose more than one person to be my Enduring Guardian?

You can appoint more than one Enduring Guardian but you should choose people who can cooperate with each other and who you trust to work together in your best interests.

If you appoint more than one person, the document will need to specify whether the Enduring Guardians are to act jointly where they are expected to work together and reach agreement on the decisions that need to be made, or jointly and severally which will allow them to work together or independently.

How can an Appointment of Enduring Guardian be cancelled or revoked?

Your Appointment of Enduring Guardian can be cancelled at any time provided you have the mental capacity to do so and it will automatically cease to have an effect when you die.

What about an Advance Care Directive?

An Advance Care Directive is a statement that sets out your directions including your wishes and values that need to be considered before medical treatment decisions are made on your behalf. We often incorporate an end of life directive in our Appointment of Enduring Guardian, if the appointor requires it. You should discuss these issues with your Guardian and/or your doctor. There is no prescribed format or form for an Advance Care Directive, you can simply write down your wishes or use pro-forma documents supplied by some health bodies. You should then give your doctor a copy of your Advance Care Directive to keep on file. It is also a good idea to give a copy to your next of kin and to your Enduring Guardian.

What should I do now?

After reading through this guide,
call us on (02) 9411 4466 or email@avlawyers.com.au
to arrange an appointment to discuss your requirements with a
solicitor from our Estates team.

Wills and Estates

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