



## FACT SHEET

### PLANNING AHEAD: ENDURING POWER OF ATTORNEY

#### Why should I plan ahead and what should I plan for?

No one knows what will happen in the future. You can become ill or suffer a serious injury, which might leave you unable to make your own decisions. In legal terms, this means that you **no longer have capacity**.

In NSW, you can legally authorise someone to make the following decisions for you when you lose capacity:

1. Legal and financial decisions (e.g. paying your bills, managing your bank accounts); and
2. Health and lifestyle decisions (e.g. where you live, treatment you receive)

You should also prepare for how you want your property to be divided after you pass away.

You will need to prepare different legal documents for each of these decisions.

#### What is an Enduring Power of Attorney?

It 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**.

#### 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, 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 also 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 will affect a gift that 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, and can, 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 who only makes decisions for you if your original Attorney/s is no longer able to or dies.

**Warning:** This fact sheet is for information purposes only and should not be relied upon as legal advice.

This information applies only in New South Wales.

Fact sheet updated 21 April 2021.

## How to create an Enduring Power of Attorney

You can use the [Appointment of Enduring Guardian Form](#) prepared by the NSW Land Registry.

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 I change my mind?

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

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 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 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.

## What about health and lifestyle decisions after I lose capacity?

To legally authorise another person to make health and lifestyle decisions for you when you lose capacity, you must appoint an Enduring Guardian or authorise someone to do so under an Advance Care Directive. See our *Fact Sheet: Planning Ahead: Appointment of an Enduring Guardian and Advance Care Directives* for more information.

## Who can help- legal services?

1. [South West Sydney Legal Centre](#) (click [here](#) for our current free telephone legal advice times);
2. [Senior Rights Service](#) 1800 424 079
3. [NSW Trustee and Guardian](#) 02 8688 2600
4. Contact the [Law Society of NSW Solicitor Referral Service](#) on 02 9926 0300 for help to find a private lawyer