



Financial and legal considerations - Part 1

Enduring Powers of Attorney/Instruments Appointing an Enduring Guardian

Two 'Powers' you need to know about

The following two legal documents are important to know about:

- ▣ Enduring Power of Attorney.
- ▣ Instrument Appointing an Enduring Guardian.

Each has a different purpose - they are not interchangeable.

Each one awards a different 'Power' to a nominated person, to assist with planning, decision making or taking actions when someone is not able to do this for themselves. For example, an Enduring Power of Attorney gives 'Power' to a daughter so that she can help with financial decisions such as banking and re-investing funds.

Some people find that being a co-signatory to their family member's bank account and the Centrelink nominee is sufficient. However, if your family member became incapable of agreeing to this, you may not be entitled to access the account. Nor would you be able to sell the house, if needed. The same difficulty would arise for those holding a General Power of Attorney, as this assumes your family member is still able to consent to your actions.

This is where an [Enduring Power of Attorney](#) can be beneficial - it is enduring or ongoing.

An Instrument Appointing an [Enduring Guardian](#) refers to the appointment of a person to make personal, lifestyle and health care decisions on behalf of another, when they are no longer able to do this for themselves. For example, this may involve decisions about medical treatment, living arrangements, and services needed. Enduring

Most guardianship decisions can be made without a formal guardian being appointed, however the appointment of an Enduring Guardian allows a person to direct their guardian in advance, to carry out their wishes.

How to appoint an Enduring Power of Attorney or Enduring Guardian

To make an Enduring Power of Attorney or appoint an Enduring Guardian, a person must have the capacity to make decisions about themselves and their circumstances. This means that they must understand the document they are signing and the effect signing it will have.

Sometimes a person's 'capacity' can be difficult to gauge, particularly in the early stages of dementia. If in doubt, ask your family member's GP for their advice or assessment. Then if the legal document is ever disputed you have support.

Enduring Powers of Attorney can be made through a Trustee Company, a solicitor or with help from the Community Legal Service. More information on Enduring Guardianship is available from the Public Guardian on 6233 7608. Alternatively, a [do-it-yourself kit](#) is available from the Guardianship and Administration Board.

Enduring Powers of Attorney and Appointments of Enduring Guardian assume a great deal of trust is held between the persons giving and receiving the 'Powers'. In the event that this trust is misplaced, they can be reviewed, varied or revoked by the Guardianship and Administration Board. Attorneys and Guardians are able to contact the Board for advice and/or direction if they have difficulty carrying out the wishes of the person who appointed them.



It's also important to make a Will

Some people feel uncomfortable about making a Will. The truth is, if you don't make a Will you will die 'intestate' and a standard process will be used for deciding who gets what. For some, this still works in favour of their immediate family however this is not always the case.

Making a Will is not a complex task. It can be as detailed or as general as you like. Some people choose to leave all their belongings to their spouse. Others like to include a chosen charity - this is called 'making a bequest'. The important thing is that your estate is divided as you choose - and that a family member knows where to find your Will.

A Will can be made by contacting a solicitor, or by obtaining advice from the Public Trustee. An information brochure on bequests can be obtained confidentially and obligation-free from your chosen charity.

How to raise these issues with your family member or friend

It can be difficult talking about legal and financial issues with a family member or friend. However, good planning is early planning - the earlier the better, to give you peace of mind.

Here are some tips that might help:

- ☑ Talk about this as a normal part of planning.
- ☑ Mention that this is a way of making one's wishes clear.
- ☑ Perhaps speak to your family member's GP, who may be prepared to raise the issue at the next visit.
- ☑ Give your family member time to think about what you've said.
- ☑ Suggest having your own Will, Enduring Power of Attorney and Enduring Guardian documents written up at the same time.
- ☑ Take the initiative and make an appointment.

Further information:

- ☑ [Office of the Public Guardian](#) - ph: 6233 7608.
- ☑ [The Public Trustee](#) - ph: 1800 068 784.
- ☑ [Guardianship and Administration Board](#) - ph: 6233 3085.
- ☑ [Financial and legal considerations - Part 2](#): Guardianship and administration orders - information sheet.

Contact the [Commonwealth Carer Resource Centre](#) on 1800 242 636* to request the above information sheet be sent to you - or to find out about other information sheets in this series.

*Free call except from mobile phones. Mobile calls at mobile rates.

We do our best to keep these links up to date, but the internet changes all the time. If you can no longer access any of the above resources, please go to our [Internet Troubleshooting Guide](#), or email us at website@carersvic.org.au