

Information for Enduring Guardians

Estate Planning Client Guide

What does being appointed an Enduring Guardian mean?

Every day there are people who, due to illness, accident or other events, lose their ability to make decisions for themselves. They may lose mental capacity or become unable to communicate and tell us what they want.

An Enduring Power of Guardianship comes into force when the person appointing you has lost their mental capacity. In such a case, an Enduring Guardian makes the day-to-day care, lifestyle, medical and dental decisions for the person appointing them.

What is the difference between Enduring Powers of Attorney and Enduring Powers of Guardianship?

An Enduring Power of Guardianship enables the management of a person's day-to-day care, lifestyle decisions, medical and dental decisions whereas an Enduring Power of Attorney enables the management of a person's financial and legal affairs.

What does 'jointly' and/or 'jointly and severally' mean?

'Jointly' means that the Guardians must act together and agree about decisions. 'Jointly and severally' means that the Guardians can act together, or they can make decisions individually (eg. a Guardian may be overseas on holiday and the other Guardian is still able to make decisions).

Where you have appointed more than one Enduring Guardian (either 'jointly' or 'jointly and severally') and they cannot agree on an issue concerning your welfare, an application to the Guardianship Board may need to be made.

What responsibilities does an Enduring Guardian have?

Although an Enduring Guardian has a responsibility to protect a person's interests, he or she does not have the obligation to care for the daily needs of that person.

The types of decisions an Enduring Guardian may make include:

- which doctor a person should be treated by
- what treatment/surgery/medication a person should have (with some exceptions) and whether to give, or refuse consent



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- whether a person should go to the doctor or the dentist and what recommended treatment should be carried out
- to provide consent for the person to live in a retirement village, hostel or nursing home
- to authorise leisure activities such as a holiday – where and with whom
- to authorise participation in a particular day programme
- with whom a person can associate, or have visits from.

It is important that an Enduring Guardian be aware of and follow the principles laid down in the law. These are:

- any decisions the Enduring Guardian makes should be as close as possible to the decision the person would make if he/she could
- any expressed wishes of the person must be considered
- any decisions should be the least restrictive option for the person with reduced capacity.

There are other considerations that an Enduring Guardian should take into account. These are:

- an Enduring Guardian must take into account any professional advice
- an Enduring Guardian must be careful to preserve relationships valued by the person
- an Enduring Guardian can request information from service providers and ensure that services needed are being provided
- an Enduring Guardian responsible for making health care decisions must ensure that the person has appropriate medical attention.

An Enduring Guardian needs to communicate with the person(s) responsible for money management and consult with them about important decisions involving money. In other words, the Enduring Guardian and Enduring Attorney have a duty to work co-operatively. If agreement cannot be reached an application may need to be made to the Guardianship Board.

An Enduring Guardian found to be exploitive, abusive or neglectful in any way in his or her role, may be found guilty of a criminal offence.

How long does it last?

An Enduring Power of Guardianship lasts until the person appointing you dies, unless:

- they decide to withdraw it, whilst of sound mind
- they have given an expiry date in their directions
- you die, resign or are removed because you are unwilling or unable to act on their behalf.

Accepting the role of an Enduring Guardian is not a decision that should be made lightly. It is a serious role and the person appointing you trusts that you will make decisions in their best interests (as you are obliged to do by law).

What provisions do you have in place for the management of your affairs?

It may also be appropriate for you to consider appointing an Enduring Guardian(s) to attend to your day-to-day care, lifestyle decisions and medical decisions should you ever lose your legal capacity.

Would you like further information?

For further information please contact your AET Estate Planner on 1800 882 218.

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