

Information Sheet

Protecting the human rights of adults with decision-making disabilities

8. ENDURING POWERS OF ATTORNEY

The Public Advocate provides a telephone advisory service (1300 858 455) that provides information about enduring powers of attorney. Recorded information including answers to a range of common questions regarding enduring powers of attorney is available 24 hours a day. To speak to an advisory officer, call the service between 9am and 4.30pm, Monday to Friday.

WHERE CAN I FIND AN ENDURING POWER OF ATTORNEY FORM?

The Enduring Power of Attorney form is at the back of the Office of the Public Advocate's Guide to Enduring Powers of Attorney and Enduring Power of Attorney Information Kit.

Both of these publications contain step-by-step instructions on how to complete the form and can be downloaded free of charge from the Office of the Public Advocate's website.

WHAT IS AN ENDURING POWER OF ATTORNEY?

An enduring power of attorney enables anyone who is 18 years of age or older and who has legal capacity to give another person or agency, legal authority to make financial and/or property decisions on his or her behalf. The person giving the power is called the DONOR. The person or agency accepting the power is called the ATTORNEY or DONEE. An enduring power of attorney comes into operation from the time specified on the form.

It is important to be aware that an enduring power of attorney will continue to operate if the donor becomes incapable of making reasoned decisions at some time in the future. The only way to stop the authority of the attorney (donee) is to revoke the enduring power of attorney.



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WHAT CAN I DO IF I AM UNABLE TO SIGN THE FORM?

Where a person giving the power is unable to sign his or her name, because for example:

- they understand English but cannot write
- they understand English but cannot read or write
- they do not understand English and cannot write
- they do not understand English but can write

then a mark of any kind by that person, including an initial, cross or even a thumb print will suffice, providing an appropriate explanatory clause is inserted into the enduring power of attorney. These clauses are called marksman or readover clauses. It is advisable to seek legal assistance (from a solicitor or community legal centre), to prepare an enduring power of attorney which incorporates such a clause.

WHO CAN WITNESS AN ENDURING POWER OF ATTORNEY?

In Western Australia, an enduring power of attorney must be signed by the person giving the power, in the presence of two independent witnesses. One of the witnesses must be a person authorised to witness documents under the *Oaths, Affidavits and Statutory Declarations Act 2005*. This includes Justices of the Peace, medical practitioners, officers of the State and Commonwealth public service and police officers. A full list of authorised witnesses is included in the Enduring Power of Attorney Information Kit.

It is acceptable to use two witnesses from this list, however only one witness is required to be from this list. The minimum legal requirements for the second witness are that the person is at least 18 years of age and is not the person being appointed as attorney or substitute attorney.

DO I HAVE TO REGISTER MY ENDURING POWER OF ATTORNEY?

There is no register for enduring powers of attorney in Western Australia. Therefore it is your responsibility to ensure all relevant people are provided with a copy.

However, if you own a property, you may wish to lodge your enduring power of attorney with Landgate so that if transactions relating to that property need to be made in the future by your attorney, their authority to do so will be recognised.

Landgate (the State Government authority, which maintains the register of land ownership in Western Australia) require an original enduring power of attorney to be held on their records at the time of a property transaction.



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It is recommended therefore, that at the time of completing your enduring power of attorney, you make two originals (that is, you complete two identical enduring powers of attorney at the same time). You should retain an original enduring power of attorney for yourself and you can lodge the other original with Landgate.

If you want to lodge your enduring power of attorney with Landgate, you must do so within three months of making it.

If you have not lodged your enduring power of attorney and have lost capacity at the time of the property transaction, your attorney will be required to complete a Statutory Declaration stating the enduring power of attorney is still in effect. Alternatively the attorney may seek an Order from the State Administrative Tribunal stating the enduring power of attorney is in effect. They can then lodge it with Landgate and carry out property transactions.

A fee is charged for lodging or revoking an enduring power of attorney with Landgate.

IS THE DONOR REQUIRED TO HAVE LEGAL CAPACITY?

The donor of an enduring power of attorney must be capable of making reasoned decisions at the time of completing the enduring power of attorney. If there is any doubt about the decision-making capacity of the person making the enduring power of attorney, the written opinion of a doctor or other professional should be sought.

HOW CAN I REVOKE MY ENDURING POWER OF ATTORNEY IF I NEED TO?

Provided you still have legal capacity, you can revoke an enduring power of attorney at any time you wish. If you no longer wish the enduring power of attorney to apply, you should inform your attorney and all other relevant people and agencies, preferably in writing. You should keep a copy of your written revocation together with a list of all people and agencies to which you have sent it.

If you have lodged your enduring power of attorney with Landgate, you will need to lodge a formal revocation with Landgate for which a fee will be charged.

CHOOSING THE ATTORNEY/S

The person or persons you choose to act as your attorney/s is up to you. It may be your spouse or partner, another family member or close friend, an accountant, lawyer or a trustee company or the Public Trustee. It is important that the person you choose as your attorney is trustworthy and likely to always act in your best interests. No more than two people can be attorneys at any one time.



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FOR FURTHER INFORMATION CONTACT

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Landgate

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PO Box 2222, MIDLAND WA 6936

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Internet: www.landgate.wa.gov.au

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