

Guardianship

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Making an enduring power of attorney

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(<http://www.derm.qld.gov.au/>) To make an enduring power of attorney you must be an adult capable of making your own personal and financial decisions. You need to be able to:

- understand the nature and effect of a decision
- freely and voluntarily make those decisions; and
- communicate the decisions in some way.

When preparing an enduring power of attorney it is also helpful to:

- know your assets and income
- know your expenses, bills and debts.

You also need to understand the consequences of preparing the document, its contents and when the power begins.

When making an enduring power of attorney, it is a good idea to talk to your solicitor, the Public Trustee, a private trustee company, financial planner or others who can give you professional advice about your circumstances.

Steps for making an enduring power of attorney

1. Complete a form giving enduring power of attorney to a person or persons of your choice. You can download the Enduring Power of Attorney form, or pick one up from newsagents or legal stationers
2. Specify the types of decisions that you would like your attorney to make
3. If appointing an attorney for financial matters, state when the power will begin
4. sign the form in front of an eligible witness (justice of the peace, commission for declarations, lawyer or a notary public)
5. the person you select as attorney must sign the acceptance section of the form.

Keep the original form in a safe place. Keep a copy for yourself and give a copy to anyone else who needs to know its contents, such as the person acting as your attorney, your solicitor, doctor, accountant, relative or friend.

Witnessing an enduring power of attorney

To be an eligible witness a person must have qualification as one of the following:

- Justice of the Peace
- Commissioner for Declarations
- Notary Public
- Lawyer.

A person that is an eligible witness can not be:

- the person signing the document for the person making the enduring power of attorney
- an attorney of the person making the enduring power of attorney

- a relation of the person making the enduring power of attorney or a relation of the attorney
- if the document gives power for a personal matter – a paid carer or health provider of the person making the enduring power of attorney.

Capacity guidelines for witnesses

In your role as a JP, commissioner for declarations, notary public or lawyer you may be required to witness an enduring power of attorney. You are not just witnessing the signature of the person making the document; you have a statutory duty to determine whether the person appears to have the necessary capacity to make the document. If a person already lacks capacity, they cannot make an enduring power of attorney or an advance health directive.

It is important that you know your duties as a witness as there can be important implications for both the person making the document and yourself as witness. It is possible that a person witnessing an enduring power can be accountable to a court if a person's capacity is called into question. See the [capacity guidelines for witnesses](http://www.justice.qld.gov.au/__data/assets/pdf_file/0009/7569/capacityguidelines.pdf) (http://www.justice.qld.gov.au/__data/assets/pdf_file/0009/7569/capacityguidelines.pdf) of enduring power of an attorney.

Getting a certified copy of your power of attorney form

If you would like to get a certified copy of an enduring power of attorney form made, the copy must be certified by one of the following persons:

- principal (the person who made the enduring power of attorney)
- Justice of the Peace
- Commissioner for Declarations
- Notary Public
- lawyer (barrister, solicitor, legal practitioner of the High Court or the Supreme Court of a state, including the Australian Capital Territory and the Northern Territory)
- trustee company under the *Trustee Companies Act 1968 (Qld)*
- stockbroker.

Each page of the copy, except the last page, must be certified that the copy is a true and complete copy of the corresponding page of the original. The last page of the copy must be certified that the copy is a true and complete copy of the original.

Registering an enduring power of attorney

You do not need to register an enduring power of attorney. However, if your attorney buys or sells land on your behalf, you must register the enduring power of attorney form with the Land Titles Office, Department of Environment and Resource Management . You will also be required to pay a fee to the Land Titles Office for this service.

For more information visit [Department of Environment and Resource Management](http://www.derm.qld.gov.au/) (<http://www.derm.qld.gov.au/>) or call 13 13 04.

Resources

[Adult Guardian](http://www.justice.qld.gov.au/justice-services/guardianship/adult-guardian)

(<http://www.justice.qld.gov.au/justice-services/guardianship/adult-guardian>)

[Advance health directives](http://www.justice.qld.gov.au/justice-services/guardianship/making-health-care-decisions/advance-health-directives)

(<http://www.justice.qld.gov.au/justice-services/guardianship/making-health-care-decisions/advance-health-directives>)

[Advance Health Directive Form \(Form 4\) \(PDF File, 273.4 KB\)](http://www.justice.qld.gov.au/__data/assets/pdf_file/0007/15982/advance-health-directive.pdf)

(http://www.justice.qld.gov.au/__data/assets/pdf_file/0007/15982/advance-health-directive.pdf)

[Enduring power of attorney](http://www.justice.qld.gov.au/justice-services/guardianship/power-of-attorney/enduring-power-of-attorney)

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