

Enduring Power of Attorney, Power of Attorney & Enduring Guardianship

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Outline:

- What is an EPOA ?
- What is the difference between a POA and EPOA ?
- Changes to POA legislation – POA Act 2003
- What is Enduring Guardianship ?
- The appointment of an EG
- Decisions an EG can & cannot make
- Private Guardian Support Unit

What is an EPOA ?

- A legal document appointing a person or trustee organisation of your choice to manage your LEGAL & FINANCIAL affairs while you are alive. They CANNOT make decisions about your lifestyle, medical treatment or welfare.
- An EPOA ceases when you die.
- Matters may include : receiving income, paying bills, taxation & contractual issues, investment or property management.

What is the Difference Between a POA & EPOA ?

- POA loses effect if a person loses mental 'capacity'.
- EPOA continues after a person loses capacity to manage their own affairs.
- If you don't have an EPOA and don't have capacity to manage your financial affairs, an application to NCAT for FINANCIAL GUARDIANSHIP is needed.
- An EPOA requires:
 1. Principal must state they want it to continue after losing mental capacity;
 2. Attorney to sign the form showing they consent to the act;
 3. Principal's signature to be witnessed by a prescribed witness;
 4. Prescribed witness to sign a certificate on the form stating principal appeared to understand.

Changes to POA Legislation – POA Act 2003

- EPOA Witnesses:

1. Who is able to certify as a prescribed witness along with;
 2. The witness explaining the effect of the POA directly before it is signed & be satisfied this is understood.
- Principal must decide when the POA is to start operating & the power(s) the attorney has.

- Joint Attorney:

Must indicate whether they are to act JOINTLY or JOINT & SEVERALLY (separately).

- Substitute Attorneys:

Only have authority if the first appointed attorney dies, becomes bankrupt, loses mental capacity or resigns/vacates their position.

Changes to POA Legislation cont....

- Registering EPOA

- EPOA from interstate:

Automatically recognised in NSW, but NOT if made overseas.

- Revoking an EPOA:

Can be revoked at any time if the principal has mental capacity.

What is Enduring Guardianship ?

- An EG is appointed to make HEALTH & LIFESTYLE decisions if you lose the capacity to make these decisions for yourself in the future:
 1. Accommodation
 2. Health care
 3. Medical/dental consent
 4. Services at home
- A person appointed EG is at the top of the person responsible hierarchy.

The Appointment of an EG

- A FORM of APPOINTMENT must be signed and certified
- An ELIGIBLE SIGNER may sign on your behalf in the presence of a witness
- There is NO formal register, so informing relevant is important
- No requirement for an EG to report on their decision making role
- An application may be made to NCAT if:
 1. Your EG dies or becomes incapacitated
 2. There is genuine concern over decisions your EG is making
- The tribunal may REVOKE or CONFIRM the appointment or vary functions of the appointment of the EG

Decisions an EG can and cannot Make

An EG CAN:

- Choose decision making FUNCTIONS you give your EG
- ACCESS & RESTRICTIVE PRACTICES functions
- Guardians ensure decisions made consider the general principles of the Guardianship Act 1987:
 1. Independence & choice of the person
 2. Care & protection from neglect & exploitation

An EG CANNOT:

1. Make decisions contrary to the law (ie Euthanasia)
2. Consent to medical treatment where you are objecting
3. Make a will on your behalf
4. Vote or consent to marriage on your behalf

Private Guardian Support Unit

- Provides information, support & a referral service to legally appointed guardians
- Assists with queries about their role as legally appointed guardians
- Funded & staffed by NSW Public Guardian
- PGSU is independent of the Guardianship Tribunal and may be contacted on (02) 8688 6060