



Financial and legal considerations - Part 1

Enduring Powers of Attorney/Guardianship

Two 'Powers' you need to know about

The following two legal documents are important to know about:

- ▣ [Enduring Power of Attorney](#) (Financial).
- ▣ [Enduring Power of Guardianship](#)

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 (Financial) gives 'Power' to a daughter so that she can help with financial and legal decisions such as banking and re-investing funds.

Some people find that being a co-signatory to their family member's bank account and being 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 (Financial) can be beneficial - it is enduring or ongoing.

Enduring Power of Guardianship allows a nominated person to make personal and lifestyle decisions on behalf of another, when they are no longer able to do this for themselves. This may involve decisions about medical and dental treatment, living arrangements, lifestyle activities, services used and access to people. Advance directions about end of life decisions may also be given to the person nominated as Enduring Guardian.

How to make an Enduring Power of Attorney/Guardianship

To make an Enduring Power of Attorney or Guardianship, a person must be deemed of sound mind or 'competent'. Sometimes this 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/Guardianship can be organised by contacting a solicitor. Alternatively, the Public Trustee can help you prepare an Enduring Power of Attorney. Alternatively, a do-it-yourself kit can be purchased from Information SA on 132 324.

Appointing someone as an Attorney or Enduring Guardian assumes a great deal of trust is held between the persons giving and receiving the 'Powers'. In the event that this trust is misplaced, Enduring Powers of Attorney or Guardianship can be revoked by the Guardianship Board. The Office of the Public Advocate can assist you.

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 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 and Enduring Power of Attorney/ Guardianship documents written up at the same time.
- ☐ Take the initiative and make the legal appointment

Further information:

- ☐ [Public Trustee](#) - ph: 8226 9204.
- ☐ [Office of the Public Advocate](#) - ph: 8269 7575 (or 1800 066 969 for country callers).
- ☐ [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 sheets 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