

Wills and Estates

Information to an Enduring Guardian Appointed Under Division 5a Part IV of the Guardianship and Administration Act

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WHAT IS AN ENDURING POWER OF GUARDIANSHIP?

An Enduring Power of Guardianship is a legal document which enables a person to appoint another person to make lifestyle decisions on their behalf, such as choice of accommodation and decisions about health care. The person appointed is called an enduring guardian. The power is “enduring” because it continues to be effective even if the person giving the power loses legal capacity.

OBLIGATIONS

If you accept an appointment to act as an Enduring Guardian for someone (called ‘the appointor’) you must sign an Acceptance of Appointment wherein you state that you undertake to exercise the powers conferred honestly and in accordance with the provisions of the Guardianship and Administration Act 1986.

Your signature of the acceptance must be witnessed by two witnesses, one of whom is authorised to witness statutory declarations. They are required to certify that you have signed the acceptance freely and voluntarily in their presence and that you understand the effect of the document.

The witnesses are therefore certifying that you understand what it means to undertake to act honestly and in accordance with the Act.

The requirement to act honestly is simple. You must not lie or cheat in acting as an Enduring Guardian.

The requirement to act in accordance with the Act may not be so simple. The Act requires that you be at least 18 years of age. You must also not be directly or indirectly responsible for, or involved in, the care or treatment of the

appointor. That prohibition applies whether you provide such care or treatment in a professional or an administrative capacity. Furthermore, you must not provide accommodation to the appointor.

If you do not provide such care, treatment or accommodation now, but do so in the future, then you will be ineligible to continue to act as Enduring Guardian and the appointment lapses.

If you are a son or daughter of the appointor and the appointor lives with you then you cannot accept the appointment. Similarly, if you provide accommodation to the appointor at a later date the appointment will then become invalid.

You must always act in the best interests of the appointor. This means that you must act, as far as possible:

- ▶ As an advocate for the appointor; and
- ▶ In such a way as to encourage the appointor to participate as much as possible in the life of the community; and

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- ▶ In such a way as to encourage and assist the appointor to become capable of caring for himself or herself and of making reasonable judgements on matters relating to her or his person; and
- ▶ In such a way as to protect the appointor from neglect, abuse or exploitation; and
- ▶ In consultation with the appointor, taking into account, as far as possible, the wishes of the appointor.

POWERS

You are appointed to exercise the powers listed in the document relating to the appointor's personal circumstances. Your power, however, does not commence immediately as it is only effective to the extent that the appointor subsequently becomes unable by reason of disability to make reasonable judgements in respect of those matters.

Therefore if the document gives you powers in relation to certain matters, some of which the appointor can still manage adequately himself or herself, but others of which are beyond their management, your power will only be effective in relation to those matters where the appointor does not have the ability to manage himself or herself.

In general terms, the powers given under an Appointment of Enduring Guardian are the same powers and duties which a parent has in relation to his or her child. However these may be expressly limited by the document itself. You must therefore be familiar with the specific terms of the document appointing you.

The power given to you does not authorise you to control or make

decisions about the appointor's assets or finances. Those powers are given by an Enduring Power of Attorney (Financial).

An Appointment of Enduring Guardian can enable the guardian to make decisions about healthcare and lifestyle matters. If you are given powers to make decisions about healthcare, you will be able to consent or withhold consent to medical or dental treatment. However you cannot refuse medical treatment on behalf of the appointor. That can only be done by a person appointed under an Enduring Power of Attorney (Medical Treatment).

REVOCATION OF THE POWER

The appointor may revoke the appointment by statement in writing. If you become aware that this has happened you must cease to act as guardian.

If you wish to have the appointment revoked, you need to persuade the appointor to cancel the appointment. If the appointor will not revoke the appointment or is unable to do so due to incapacity, you need to apply to the Guardianship and Administration Board to have the appointment revoked.

ADDITIONAL INFORMATION

If you seek further information concerning your appointment you can contact the Office of The Public Advocate or visit its website, www.publicadvocate.vic.gov.au.

CAUTION

This document is a guide only. It is not comprehensive legal advice.