



Financial and legal considerations - Part 1

Enduring Powers of Attorney/Enduring Guardianship

Two 'Powers' you need to know about

The following three legal documents are important to know about:

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

Each of these has a different and distinct purpose.

Each one awards a different 'power' to a nominated person, to assist with planning, decision making or taking actions when not able to do this for themselves. For example, an Enduring Power of Attorney gives 'power' to a daughter so that she can help with financial decisions such as banking and re-investing funds.

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

Enduring Guardianship is the appointment of a substitute decision maker for someone who is no longer capable of making their own decisions.

An Enduring Guardian can make decisions about lifestyle and health care, as well as medical and dental treatment, if appointed to do so. The previously expressed wishes of the person and the views of their family or close friends, are taken into account.

How to make an Enduring Power of Attorney/Enduring Guardianship

To make an Enduring Power of Attorney/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 Power of Attorney and Enduring Guardianship can be made by contacting a solicitor. Alternatively, contact the enquiry staff at the [Guardianship Tribunal](#) (ph: 1800 463 928) for more information.

Enduring Power of Attorney and Enduring Guardianship assume that a great deal of trust is held between the person giving and the person receiving 'powers.' In the event that this trust is misplaced, the Guardianship Tribunal can review these arrangements.

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](#) (ph: 1300 364 103). 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/ Enduring Guardianship documents written up at the same time.
- ☒ Take the initiative and make the appointment with a solicitor.

Further information:

- ☒ [Enduring Guardianship - Your Way to Plan Ahead](#) - brochure (includes do-it-yourself forms).
- ☒ [Financial and legal considerations - Part 2: Guardianship and financial management orders](#) - information sheet.

Contact the **Carer Line** 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