



Appointment of Enduring Guardian

Appointing someone to make decisions on your behalf.

What is an Enduring Guardian?

An Enduring Guardian is someone you can appoint to make decisions on your behalf about your health-care and other personal matters if you are no longer able to do so. The person must be over 18 years of age and needs to agree to the appointment; they should be someone you trust, who is prepared to carry out your wishes as far as is possible. Most people appoint a close family member or friend as their Enduring Guardian.

Appointing an Enduring Guardian

Every competent adult has the legal right to accept or refuse any recommended health care. This is relatively easy when people are well and can speak for themselves. Unfortunately, during severe illness people are often unconscious or otherwise unable to communicate their wishes – at the very time when many critical decisions need to be made. If you have not yet appointed anyone and you wish to do so, you will need to complete an Appointment of Enduring Guardian form.

What happens if I have not appointed an Enduring Guardian?

If you do not appoint your own Enduring Guardian, the law provides that someone called the Person Responsible can make health care decisions for you if you lose the capacity to make your own decisions. The Person Responsible is the first, in order of authority, of the following people:

- Your spouse or partner (including same sex partner).

If you do not have a spouse or partner:

- Your carer (this is the family member or friend who provides direct personal care to you (eg. showering, housework, shopping, or arranges for someone else to do that, or who most often comes to visit you and looks after your needs.) This does not include someone who is being paid to care for you but it could include someone who is receiving a Carer's Pension.

If there is no carer

- A close relative or friend of yours. Sometimes there will be more than one person in this category and if they cannot agree about what treatment you should receive, the doctor or hospital staff may have to organise mediation to solve the dispute.

Note: The Person Responsible is not necessarily your Next-of-Kin.

Enduring Power of Attorney (for money or property)

You may also wish to give someone Enduring Power of Attorney for financial matters in case you need someone to manage your property or money. If you wish to do that, you will need to complete a separate Enduring Power of Attorney form.

Note: Enduring Power of Attorney does not give the appointed person the right to make decisions about your health-care or other personal matters.

Form of Appointment of Enduring Guardian/s

SECTION 1: Appointment of enduring guardian or enduring guardians

I, Name _____
Address _____
Occupation _____

(a) appoint

Name _____
Address _____
Occupation _____ Phone: _____
Mobile: _____

and

Name _____
Address _____
Occupation _____ Phone: _____
Mobile: _____

to be my enduring guardian or enduring guardians if because of a disability I am partially or totally incapable of managing my person.

- NOTE:** (i) An Enduring Guardian must be at least 18 years of age.
(ii) You may appoint one or more than one enduring guardian.
(iii) If you want to appoint more than one enduring guardian and you want your enduring guardians to have the same functions, then you should fill out this form by inserting the names of all your proposed enduring guardians in the place indicated. Each person must sign this form to show that he or she accepted the appointment. However, if you want to appoint more than one enduring guardian and want your enduring guardians to have different functions and act separately, you should fill out a different form for each enduring guardian appointed.

(b) I appoint my enduring guardians to act jointly OR severally OR jointly and severally

NOTE: This relates to the appointment of two more enduring guardians. If you are only appointing one enduring guardian, then cross out this section and put your initials beside any writing you have crossed out. If you want to appoint more than one enduring guardian and you want your enduring guardians to have the same functions, then, you should also indicate whether you want them to act jointly, severally or jointly and severally. If you specify that they are to act jointly, they will only be able to act if they all agree on the course of action. If you specify that they are to act severally or jointly and severally, they will be able to act independently of each other. (Cross out whichever does not apply and put your initials beside any writing you have crossed out.)

(c) The death, resignation or the incapacity of one or more of my joint enduring guardians does not operate to terminate the appointment of any other of my joint enduring guardians.

NOTE: If you appoint one enduring guardian, or if you appoint more than one enduring guardian and direct that they act severally or jointly and severally, then cross out this section and initial it. If you appoint two or more enduring guardians jointly, you may state that the death, resignation or incapacity of one enduring guardian will not terminate the appointment of the other enduring guardians. However, if you cross the section out and one of your joint enduring guardians dies, resigns or becomes incapacitated, the appointment of the other joint enduring guardian(s) will be terminated.

SECTION 2: Functions

I authorise my enduring guardian or each of my enduring guardians to exercise the following additional functions:

- (a) to decide where I live.
(b) to decide what health care I receive,

- (c) to consent to the carrying out of medical or dental treatment on me (in accordance with Part 5 of the Guardianship Act)
- (d) to decide what other kinds of personal services I receive

NOTE: Your enduring guardian or enduring guardians will automatically exercise all of the functions listed above unless you cross out the functions you do not want your enduring guardian to exercise. You can cross out any or all of the above functions. You need to put your initials beside any writing you have crossed out. If you cross out all the functions, you need to list the functions that you want your enduring guardian or enduring guardians to exercise. If you would prefer, you can give your enduring guardian or enduring guardians power to exercise only part of any function.

SECTION 3: Additional Functions

I also authorise my enduring guardian or each of my enduring guardians to exercise the following additional functions:

NOTE: You can add any additional functions here or leave this blank by crossing it out and putting your initials beside it.

SECTION 4: Directions

I require that my enduring guardian (or each of my enduring guardians) exercise his or her functions subject to the following directions:

NOTE (1) You can add any specific requirements or limitations here or leave this blank by crossing it out and putting your initials beside it.

(2) If you have completed an Advance Health Care Directive, you may wish to attach a copy to this document and write on the lines above "see attached Advance Health Care Directive".

SECTION 5: Alternative enduring guardian

I also appoint

Name _____

Address _____

Occupation _____ Phone: _____

Mobile: _____

to be an alternative enduring guardian.

NOTE: You can choose to appoint an alternative enduring guardian to exercise the functions of your enduring guardian if the enduring guardian dies, resigns or becomes incapacitated. An alternative enduring guardian is not authorised to exercise these functions until (or unless) that happens. If you do not want to appoint an alternative enduring guardian, cross this out and put your initials beside any writing you have crossed out.

SECTION 6: Your signature to make the appointment

Signature: _____ Date _____

I directed: Name _____

Address _____

to sign this document on my behalf.

NOTE: If needed, you can direct a person to sign the document on your behalf. This person must be at least 18 years of age, not a witness to this form of appointment, and not someone you are appointing as your enduring guardian or alternative guardian. You should give this direction to sign on your behalf in the presence of the person who is witnessing the signatures. If you are signing this document yourself, then this statement does not apply. Cross it out and put your initials beside any writing you have crossed out.

SECTION 7: Acceptance of appointment

I accept my appointment as enduring guardian/alternative enduring guardian

Signature: _____

Name: _____

Date: _____

I accept my appointment as enduring guardian/alternative enduring guardian

Signature: _____

Name: _____

Date: _____

I accept my appointment as enduring guardian/alternative enduring guardian

Signature: _____

Name: _____

Date: _____

NOTE: Each enduring guardian and alternative enduring guardian needs to sign here in the presence of the witness. Cross out and initial whichever does not apply.

SECTION 8: Certificate of witness

I, _____ of _____

being a NSW solicitor/NSW barrister/Registrar of a Local Court/interstate legal practitioner/prescribed person certify that:

(a) I witnessed the execution of this instrument by/for (name of appointer)

and by (name of appointee or appointees)

and

(b) this/these person(s) executed the instrument voluntarily and each appeared to understand the effect of the instrument, and

(c) the appointor in my presence instructed the person named in the instrument to sign the instrument on the appointor’s behalf.

NOTE: A person may witness both the signatures of the appointor and the appointee or appointees. Where the signatures of the appointor and appointee are witnessed by different persons, each witness should sign a certificate in respect of the signatures witnessed.

If an appointor has instructed another person to sign the instrument on his or her behalf, the witness must certify the matter referred to in (c). Cross out and initial if this does not apply.

Signature of witness: _____

State or Territory where signature witnessed (if witnessed outside NSW): _____

Date: _____