

APPOINTMENT OF ENDURING GUARDIAN

WHAT IS MEANT BY AN ENDURING GUARDIAN?

An enduring guardian is someone that you appoint to make personal, medical and lifestyle decisions for you, if there comes a time when you are no longer properly able to make those decisions for yourself. You may choose what types of things you wish your enduring guardian to do for you in those circumstances – these are called “*functions*”. You can give directions about how you want your enduring guardian to carry out those functions. It is important that you choose a person or persons that you trust and can rely upon to act as your enduring guardian.

WHAT IS THE PURPOSE OF APPOINTING AN ENDURING GUARDIAN?

In the past, people have been able to appoint someone to make decisions for them about money, property, and other assets. This appointment was under a document called a *Power of Attorney*.

A Power of attorney cannot, however, authorise a person to make personal, medical or lifestyle decisions for you. For those types of decisions, you need to appoint someone under a separate document, called an *Appointment of Enduring Guardian(s)*.

It is important that the appointment is made whilst you are still capable, as you will not be able to do so if you should lose capacity. Once made, the document should then be held in a safe place, in case circumstances may arise where, through illness or injury, you become no longer able to look after yourself.

YOU CAN DECIDE WHAT *FUNCTIONS* YOU WANT YOUR ENDURING GUARDIAN TO HAVE

There are some examples of *functions* on the Appointment form. You can leave those functions as they are, or you can add to or delete some of them. On the form, you are also able to direct your guardian as to *how* you would like those *functions* to be carried out, if you have any particular wishes in that regard.

THERE ARE LIMITS ON THE DECISIONS A GUARDIAN CAN MAKE

An enduring guardian is not permitted to make a Will for you, consent to marriage or vote for you. Your enduring guardian cannot override any objections you may have to medical treatment. (The *Guardianship Tribunal* has the power to do that).

Your enduring guardian has no legal right to make decisions for you about your property or financial matters. For those types of decisions you would need to appoint someone to act for you under a *Power of Attorney*.

SOME OF THE THINGS YOU SHOULD KNOW ABOUT THE APPOINTMENT OF AN ENDURING GUARDIAN

- **To appoint** an enduring guardian, you must be over 18 years of age and you must have sufficient capacity to understand what you are doing at the time you make the appointment.
- After you have made the appointment, it will not take effect unless you lose capacity in the future, or can no longer care for yourself properly.
- If you change your mind, you can revoke or cancel the appointment, provided you have sufficient capacity to understand the effect of what you are doing at the time. This can be done by signing a document called a *Revocation of Appointment of Enduring Guardian(s)*, which must be witnessed by a lawyer or other legally qualified person. You must then serve notice on each of the guardians named in the document you are revoking, informing each guardian that you are revoking his or her appointment under that document.
- If you want to appoint a new person as your enduring guardian, you must complete a new form, have it correctly witnessed by a prescribed witness, and be mentally capable at the time. If you are no longer capable, then only the *Guardianship Tribunal* or other review body which has authority at the time, can change the appointment.
- Once your *Appointment of Enduring Guardian(s)* has become effective (if you lost capacity) – the enduring guardianship continues until you die or your guardian is no longer able to act for you, unless the *Guardianship Tribunal* (or other review body at the time) suspends the appointment or makes a guardianship order.
- **The person (or persons) you appoint** must be over 18 years of age, and should be someone you can trust and rely upon.
- **A person who, at the time of appointment, is providing treatment or care to you on a professional basis, cannot be appointed as your enduring guardian.**
- If you appoint more than one enduring guardian, and you are happy for them to carry out the same *functions*, you will only need to use one form.

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- If you want to give each of the guardians *different functions*, then you will need to appoint them under separate forms, and clearly set out the function each is to have.
- The appointment takes effect only if you become unable to properly look after yourself and to make your own personal or lifestyle decisions. If that time comes, it may be advisable for your guardian to seek the opinion of a medical practitioner about your capacity to make decisions, before acting on your behalf.

IF SOMEONE HAS GENUINE CONCERNS ABOUT MY ENDURING GUARDIANS ACTIONS, WHAT CAN THEY DO?

If you become incapable of making your own decisions, and others are genuinely worried about your welfare and your enduring guardian's actions, they can make application to the *Guardianship Tribunal* for a review of the appointment. If the *Tribunal* believes it to be in your best interests, it can revoke the appointment, confirm it, make changes to it, or make a Guardianship Order.

There is no automatic supervision of enduring guardians by the *Guardianship Tribunal*. Someone would need to bring any such matters to the attention of the Tribunal, before it would investigate the matter, or take any action.

MEDICAL TREATMENT

Your guardian can consent to most minor and major medical and dental treatments, (provided you have no reasonable objections), but there are certain major medical treatments that only the *Guardianship Tribunal* can consent to.