

Enduring power of attorney

Anyone can talk to a lawyer for free at Tasmania Legal Aid.

To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

An enduring power of attorney is a legal document in which you appoint another person to make property and financial decisions for you.

What is an enduring power of attorney?

An enduring power of attorney is a legal document in which you appoint another person to make property and financial decisions for you.

An enduring power of attorney must be made while you have mental capacity. If you lose mental capacity, an enduring power of attorney cannot be signed. The time for making an enduring power of attorney is when you are healthy, aware and still have the capacity to manage your own legal and financial affairs.

An enduring power of attorney gives your attorney the power to make financial decisions for you. This power can start straight away, and unless you state otherwise it starts when it is signed and registered. You can instruct your attorney to do things for you in relation to your finances while you still have the mental capacity to do so. Or, if you say so, it can instead start when you are no longer able to make decisions for yourself. This could be due to an accident, illness, or disability, such as dementia. An enduring power of attorney continues to be valid through mental incapacity but is only valid during your lifetime.

What is a 'donor' and 'attorney'?

An enduring power of attorney will often refer to a 'donor' and an 'attorney'. A donor is the person who makes the enduring power of attorney (you), and the attorney is the person (or persons, if more than one) who is being given the power to make decisions on your behalf.

What does mental capacity mean?

The law requires that we have mental capacity when making certain decisions during our life, in order for them to be valid. This can be confirmed by a doctor, or the person can be referred to a doctor if there is a dispute about that person's mental capacity.

Having mental capacity means that we can:

- understand information given to us
- weigh up the information available to make a decision
- remember that information long enough to be able to make a decision
- communicate the decision to other people.

Can my attorney make medical decisions for me?

No. An enduring power of attorney only gives the attorney power to make property and financial decisions for you. See our [Enduring guardianship webpage](#) for information regarding medical and lifestyle decisions.

What should I consider when choosing an attorney?

Your attorney will be able to do anything you can lawfully do with your assets and finances, including using your bank account and selling your house or other assets, so it's important to choose this person carefully. Your attorney should be trustworthy, honest and act in your best interests at all times. If the relationship with your attorney deteriorates, you can revoke the enduring power of attorney and appoint someone else who you do trust as a new attorney.

Your attorney must exercise their power responsibly. They must keep accurate records and accounts of all their dealings and transactions made on your behalf.

How can I protect my finances?

You can require your attorney to provide an account to your financial advisor every 12 months. This will introduce another level of financial protection to ensure that your finances are being used in the way you want them and for your ongoing care.

Should I consider appointing more than one attorney?

Appointing 2 or more attorneys is a good way to ensure decisions that are being made for you are in your best interests. It is a good idea to appoint more than one person in case that person can't carry out their duties for some reason, such as their own illness or incapacity, or if they're travelling overseas.

If more than one attorney is appointed, you will have to nominate whether the attorneys are acting 'jointly' or 'jointly and severally'. Jointly means that both attorneys must act together and agree with every decision that is made. 'Jointly and severally' means that either attorney can make decisions by themselves, independently of each other. When you have made your decision, you need to cross out either jointly OR jointly and severally on the form to show your decision.

The form must then be witnessed by 2 people who are not a close relative to either the donor or the attorney(s). They must witness both signatures at the same time.

[Power of attorney forms](#) are found on the Department of Natural Resources and Environment Tasmania website.

Can I limit the power given to my attorney?

Yes. You can specify which powers you wish to give your attorney, or you can give your attorney unlimited power. You can also specify whether you want the attorney to be able to act on your behalf for a certain period, for example while out of the country on an extended holiday, or whether you want it to be enduring, that is, continued until it is revoked or stopped.

Refer to the Self Help section for the following:

- [Form 1](#) – for limited ('particular') power set for a certain period
- [Form 2](#) – for unlimited ('general') power set for a certain period
- [Form 3](#) – for limited power and ongoing ('enduring')
- [Form 4](#) – for unlimited power and ongoing ('enduring').

Is my enduring power of attorney legally valid once I have signed it?

To be legally valid and enforceable, an enduring power of attorney must be registered, using Form 5. This is included with the other power of attorney forms. An enduring power of attorney is registered by lodging the form at the Lands and Titles Office and paying a fee.

What if I need more help?

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This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.