



DURAL LEGAL
CENTRE

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ENDURING GUARDIAN

WHAT IS AN ENDURING GUARDIAN?

An enduring guardian is someone you choose to make personal or lifestyle decisions on your behalf when you are not capable of doing this for yourself. You choose which decisions (called functions) you want your enduring guardian to make and you can direct your enduring guardian on how to carry out the functions.

WHO CAN APPOINT AN ENDURING GUARDIAN?

If you are over 18 years and have the capacity to understand what you are doing, you can appoint one or more people to be your enduring guardian.

WHO CAN BE AN ENDURING GUARDIAN?

The person you appoint as your enduring guardian must be:-

- ⇒ At least 18 years old
- ⇒ Someone you trust to make decisions in your best interests.

The appointed enduring guardian cannot be a person who, at the time of appointment:

- ⇒ Provides medical treatment or care to you on a professional basis;
- ⇒ Provides accommodation services or support services for daily living on a professional basis; or
- ⇒ Is a relative of one of the above.

WHAT SORT OF DECISIONS CAN AN ENDURING GUARDIAN MAKE?

You can give your enduring guardian as many or as few functions as you like. For example, you can give them the power to decide on your health care but not where you live. You may also give the enduring guardian directions about how to exercise the functions you give them. For example, you can direct your enduring guardian to consult with a particular close friend before making a decision.

If your enduring guardian has a health care function, they will be able to see your medical records to help make decisions for you.

WHAT SORT OF DECISIONS CAN'T AN ENDURING GUARDIAN MAKE?

An enduring guardian cannot consent to anything unlawful and cannot:

- ⇒ Make a will for you;
- ⇒ Vote on your behalf;
- ⇒ Consent to your marriage;
- ⇒ Manage your finances; or
- ⇒ Override your objections, if any, to medical treatment.

An application must be made to the Guardianship Tribunal to authorise medical treatment to which you strongly object. Only the Tribunal can consent to certain "special" medical treatments.

WHAT PRINCIPLES GUIDE AN ENDURING GUARDIAN?

Your enduring guardian must act within the principles of the Guardianship Act, in your best interests and within the law. You cannot give your enduring guardian a function or a direction which would involve them in an unlawful act.

HOW MANY GUARDIANS CAN I APPOINT?

You can appoint one or more persons as enduring guardian. If you appoint more than one enduring guardian, you can direct them to act jointly (the enduring guardians must agree on all decisions) or severally (each enduring guardian can make decisions separately from the others) or jointly and severally (the enduring guardians can act together or separately).

You can choose to have the remaining joint enduring guardian(s) continue even though one or more of the others die, resign or become incapacitated. You can also appoint an alternative enduring guardian who can act only if the original enduring guardian(s) dies resigns or becomes incapacitated.

WHEN DOES AN ENDURING GUARDIANSHIP TAKE EFFECT?

The appointment of your enduring guardian takes effect only if you become unable to make your own personal or lifestyle decisions. If there is any doubt about your capacity to make decisions, your enduring guardian may wish to seek the opinion of a medical practitioner before acting on your behalf.

CAN I CHANGE MY MIND?

While you are capable of making your own decisions you can revoke the appointment of an enduring guardian by completing the appropriate form. You also have to advise the enduring guardian in writing that their appointment has been revoked.

You can appoint a new person as your enduring guardian, or change the functions or directions given to your enduring guardian simply by completing a new form of appointment.

Only the Guardianship Tribunal can make changes to the appointment if you have lost the capacity to do this for yourself.

WHAT HAPPENS IF I GET MARRIED?

If you marry after appointing an enduring guardian, the appointment is automatically cancelled. If you wish to reappoint the same or a different enduring guardian, you need to complete a new form.

WHAT IF SOMEONE IS WORRIED ABOUT WHAT MY ENDURING GUARDIAN IS DOING?

Anyone with a genuine concern for your welfare can apply to the Guardianship Tribunal for a review of the appointment if they feel that your enduring guardian is not making appropriate decisions on your behalf. The Tribunal can revoke an appointment or confirm it, and may change the functions in the appointment. However the Tribunal does not supervise enduring guardians and will act only if it receives an application from a concerned person or receives information which leads it to review the appointment.

WHAT HAPPENS IF MY ENDURING GUARDIAN CANNOT CONTINUE?

If the person you have appointed dies, resigns or becomes incapacitated, the Guardianship Tribunal can in limited circumstances appoint another person as enduring guardian on your behalf.

WHEN DOES ENDURING GUARDIANSHIP END?

Enduring guardianship ends when you die or when you revoke the appointment or if the Guardianship Tribunal revokes it. The appointment is suspended if the Guardianship Tribunal makes a guardianship order.



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