

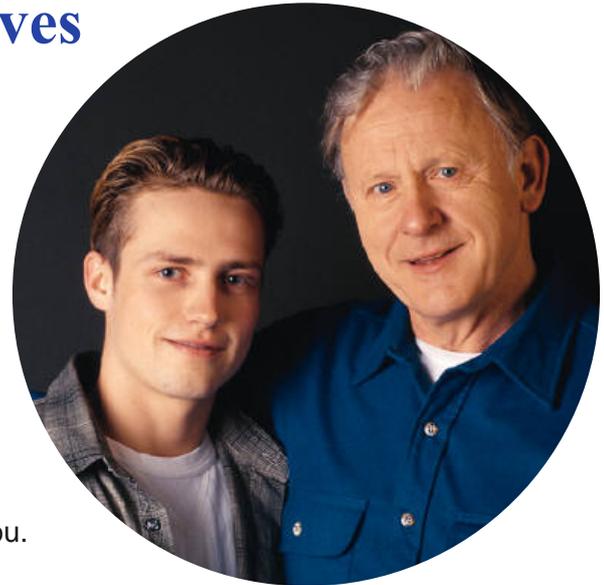
Enduring Powers of Attorney and Advance Health Directives

by Kylie Costigan

What is an enduring power of attorney?

An enduring power of attorney (EPA) is a document which allows you to appoint people of your choice to make decisions on your behalf for financial and/or personal/health matters.

The power is most commonly used in the situation where you lose capacity to be able to make or communicate decisions for yourself, and you need other persons (called 'attorneys') to be authorised to make those decisions for you.



Why do I need an enduring power of attorney?

Everyone over 18 years of age should have a current EPA.

If you do not have an EPA, certain family members are automatically recognised by law as 'statutory attorneys' and can therefore make **health** decisions for you if you are incapacitated. You have no say in who those statutory persons are, so they may not be the persons you would have selected.

There is not the same automatic recognition when it comes to your financial affairs. If, for example, your home needs to be sold in order to raise funds to place you in a nursing home, and you do not have an EPA, then your family members will probably need to go through the ordeal of applying to the Queensland Civil and Administrative Tribunal (QCAT) to be appointed as your Administrator, in order to be authorised to manage your financial affairs. Alternatively, the Public Trustee may take over management of your financial affairs. Administrators are also subject to annual reporting requirements to QCAT.

A much simpler solution is for you to have a valid, appropriate EPA in place now. You cannot make one once you are incapacitated and don't wait until you have "enough assets" to warrant it – imagine you are involved in an accident and lose capacity and then receive a large payout as a result of that accident?

Everyone over 18 should have a valid and current EPA to avoid the costs and inconvenience associated with not having one.

What considerations do I need to make in preparing an effective enduring power of attorney?

There are many restrictions and protections on the operation of an EPA. You should consider how you would like the document to operate, taking into account all your circumstances, including family circumstances, business interests (including any trusts and companies you are involved with), how you hold your assets and what your general health care wishes are.

Your choice of attorney is also important. The power you give away is an important one, which must only be given to those you trust and who will be best at acting on your behalf in relation to the decisions that need to be made. You can appoint different attorneys for financial matters as opposed to personal/health matters and you can appoint more than one attorney. There are some restrictions on who you can appoint, and it is important you do not invalidate your EPA before it needs to be used.

Estate First can assist you with drawing up an effective and appropriate EPA for a fixed fee.

“Pull the plug!” – Advance health directives (AHD)

Many people feel very strongly about what medical treatment they do or do not want to receive if they are in hospital, especially in the ‘end stage’ of life. Another reason for doing an AHD is that you don't want to burden your loved ones with these difficult decisions.

If that's how you feel, then you should consider the preparation of an AHD. This document allows you to give or withhold your consent now to certain medical treatments in certain medical situations. Effectively by preparing this document you take the decision-making power out of your attorney's hands, which can relieve them of the burden of making difficult decisions at what may be an emotionally charged time.

We can help

Our team at Estate First is experienced in preparing enduring powers of attorney and advance health directives. It is important that these documents are prepared with precision and care to cater for your specific circumstances and to ensure that they will be effective when they are needed most.

This information is general in nature and should not be acted upon without first obtaining legal advice on your particular situation. To find out more or to make an appointment, phone us on 1300 132 567 or email us info@estatefirst.com.au



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