



Enduring Guardians – New South Wales

If you live in New South Wales and you lose capacity (due to illness or injury, for example) you will need two documents to ensure that your affairs are appropriately managed:

- + For your financial affairs – an **Enduring Power of Attorney** document (see our Factsheet for more information); and
- + For personal and health affairs – an **Enduring Guardian** document.

What is an Enduring Guardian document?

An Enduring Guardian document is a legal document that allows you to appoint one or more people as your guardian to make lifestyle, health and medical decisions on your behalf, if you are no longer capable of doing so. It can be prepared by anyone who is over 18 years of age and who has the capacity to understand the nature and effect of the document.

The types of decisions that your Guardian can make on your behalf include decisions relating to:

- + **Accommodation** – to decide where

you live (e.g. do you need to move into respite care or an aged care facility, and if so, which facility).

- + **Health Care** – to decide what health care you receive. Your Enduring Guardian is authorised to decide which health care professionals you will be treated by and can also make decisions about end of life treatment such as palliative care. Importantly, you can also prepare an Advance Care Directive in New South Wales which pre-emptively allows you to make your own decisions about what medical treatment and health care you would or would not want to receive in certain medical circumstances (essentially at the 'end of life' stage). See our Factsheet on **Health and Medical Directives** for more information.
- + **Services** – to decide what personal services you receive (such as domestic support and in-home care and other recreational services etc.)
- + **Consent to medical and dental treatment** – your Enduring Guardian has the authority to give or withhold consent

to medical and dental treatment on your behalf.

Importantly, your Enduring Guardian cannot make financial decisions on your behalf, and you need an Enduring Power of Attorney document in order to appoint someone as your Attorney to handle your financial affairs on your loss of capacity.

Why is an Enduring Guardian document important?

Appointing a guardian under an Enduring Guardian document can give you peace of mind knowing that if you are ever unable to make decisions for yourself (due to illness or injury, for example) you have appointed one or more trusted persons to make medical, health and lifestyle decisions on your behalf. Having a well drafted and appropriate Enduring Guardian document in place can save a lot of pain and heartache for your loved ones, as they are authorised to make important decisions on your behalf with minimal 'red-tape'. This can be a great relief at what is often a very stressful and emotionally draining time for them.

If you lose capacity and have not appointed an Enduring Guardian to make medical, health and lifestyle decisions, someone will need to be make an application to the Guardianship Division, NSW Civil & Administrative Tribunal (NCAT) to be appointed as your Guardian. You will not have any say over who is appointed and it may not be who you would have wanted.

If no one suitable is available or applies to be your Guardian, the Tribunal may appoint an independent Public official (called the Public Guardian) to make lifestyle and medical decisions on your behalf. This would be someone who does not know you, your thoughts or your values, and yet they will be making extremely personal decisions for you.

Who should I appoint as my Enduring Guardian?

You need to think carefully about who to appoint as your Enduring Guardian. Some factors that you should consider include:

- + Their willingness to take on the role;
- + Their age and health;
- + Their ability to make difficult decisions at an emotionally charged time; and
- + Their understanding of your needs, wishes, values and beliefs (including any cultural or religious factors, where relevant).

You can appoint more than one Enduring Guardian and have them act jointly (meaning they must act unanimously), severally (meaning they can act separately or independently of one another) and jointly and severally (meaning they can act either unanimously or independently of one another). We can talk you through your options in this regard and work out which appointment is best for your needs.



What are the benefits of preparing an Enduring Guardian document with my lawyer?

There are certain restrictions on who you can appoint as your Enduring Guardian and it is important to ensure that the document is not invalid from the start. Estate First Lawyers can talk you through whether any directions or limitations should be included in the document, depending on your particular circumstances. We are also able to witness your signature on the document as well as the signatures of the people you appoint, if required, which can streamline the process of finalising the document.

Estate First Lawyers can assist you with implementing an Enduring Guardian document that is suitable and appropriate for your current and future needs. Please contact us on 1300 132 567 or email us at info@estatefirst.com.au to discuss how we can help you with this.

This information is general in nature and should not be acted upon without first obtaining legal advice on your particular situation.

Individual liability limited by a scheme approved under Professional Standards Legislation.