

Enduring Guardianship *infosheet*



What is an enduring guardian?

An enduring guardian is **a person you appoint to make your personal or medical decisions if you should lose the ability to decide for yourself because of a disability.**

As adults, we can choose where we live, whom we see or visit, what medical treatment we want, and what services we will have.

Generally, if a person loses ability to make decisions, decisions are still made by family or carers. Usually these arrangements work well, completing and registering this document will give you certainty regarding the person who makes decisions for you. You may also want to ensure that your wishes are known and followed. It is wise to choose someone you trust who will be decisive and who will be a good advocate for you.

Under Tasmanian law, even if you have granted someone Power of Attorney, he or she cannot make your medical decisions. In Tasmania a Power of Attorney only relates to your financial estate.

The appointment of your enduring guardian takes effect **only if you become unable** to make your own medical or personal decisions. Your enduring guardian can then communicate your wishes on your behalf after you have lost the ability to communicate.

What decisions would my enduring guardian make?

Your enduring guardian would make your medical and lifestyle decisions.

These could include what medical treatment you have, whether you live in your own home or a nursing facility. He or she could decide who visits you and what personal services you receive, such as home support or meals on wheels.

Your enduring guardian is legally bound to:

- Follow your specific directions.
- Act in your best interests.
- Ensure that decisions about your life promote your dignity and freedom **as much as possible.**

Conditions.

You may include particular decisions about your medical care or lifestyle on the form when you appoint your enduring guardian. These are called **conditions**. You do not have to include any conditions if you do not want to.

You can write your conditions in your own words. As long as your conditions are clear, lawful, and practically possible to carry out, they are binding on your enduring guardian and must be respected.

Here are some examples of conditions:

- I direct my guardian to consult my friend (name) on any important decisions about my health and welfare.
- If I require long-term care in a facility outside my home, I would prefer to live close to my brother, (name).
- When my guardian assumes his or her role, I direct my guardian to notify my relative (name, address) of the nature of my illness.
- Because of my religious beliefs I do not wish to receive a blood transfusion or blood products under any circumstances.
- I would like life-prolonging treatments to be commenced and continued, including Cardio Pulmonary Resuscitation (CPR), while they are medically appropriate and remain in my best interests.
- If I am acutely ill and unable to communicate responsively with my family and friends and it is reasonably certain that I will not recover, I want to be allowed to die naturally and to be cared for with respect for my dignity. I do not want to be kept alive by extraordinary or overly burdensome treatments that might be used to prolong my life. If any of these treatments have been started, I request that they be discontinued. However, I do want palliative care that includes medications, and other treatments to alleviate suffering and keep me comfortable, and to be offered something to eat or drink.
- I direct my guardian to arrange for a priest of (my religion) to attend to me on a regular basis.
- I am a registered organ donor and would like to donate my eyes, liver and any other organs that can be used.
- When my guardian assumes his or her role, I direct my guardian to advise my lawyer of my condition so that they may arrange for my Power of Attorney to take effect.

Who can I appoint as my enduring guardian?

You can appoint anyone over the age of 18. Most people choose a relative or close friend whom they trust.

You have **four options** for choosing people. You can:

1. **Appoint one person.** For example, your spouse.
2. **Appoint a first guardian, and name an alternative guardian in case your first guardian cannot assume the role.** For example, you could appoint your husband, and if he was not able to act as your guardian for any reason, you could name your son as your alternative guardian.
3. **Appoint joint guardians.** Joint guardians must agree on any decision they make. It is important if you select joint guardians that they are willing to work cooperatively. Joint guardians can however work jointly or severally. Disputes between joint guardians will be resolved by the Guardianship and Administration Board.
4. **Appoint an alternative guardian for any of your joint guardians (except the Public Guardian).** The enclosed form is not suitable for this. You can draft your own form or seek legal advice.

Can I change my mind?

Yes. You can revoke your appointment of an enduring guardian at any time, and appoint someone else if you wish, as long as you have the capacity to understand what you are doing. You can add conditions or change your mind about what conditions you make, but you must fill out and register a new document to do this.

What factors should I consider?

Before you appoint an enduring guardian, consider these factors.

Who would I trust most to make my medical decisions? Consider who knows you and your preferences best. Think about whether you want to appoint one person, one person and an alternate person, or two or more people who must agree on your decisions. It would be best to select a person whom you know to be a good decision maker and a good advocate.

Will the person(s) feel comfortable about being appointed as my guardian(s)?

Talk to the person or persons you would like to appoint before you fill out the form. Show them this infosheet so that they understand what they would need to do. Discuss with them your conditions and how you want them to be interpreted.

Is there anyone I would want my guardian to consult? Your guardian will have the final decision, but you may want to direct them to consult specific members of your family or friends and take their views into account.

Are there any decisions I want to make in advance? Think about the types of care and medical treatment you **would** want and the types you **would not** want.

If there is medical treatment you would not want, you may decide to explain this to your family now.

Once you have considered these factors, you are ready to fill out the Enduring Guardianship form enclosed with this info sheet.

How do I make this legally binding? You must register this document with the Guardianship and Administration Board in order for it to be valid. You may post it to the Board at GPO Box 1307, Hobart 7001. There is no fee payable for registration. Once you register your appointment, it is a public document. The Guardianship and Administration Board will enter your appointment in its records and return copies of your document to you. You will also get a wallet card to carry with you.

Why does the Board send me more than one copy of my registered instrument? It is a good idea to give a copy of the instrument to your guardian, to your usual doctor, and to anyone else you may wish to know about the instrument. If you have regular contact with a hospital you should also give the hospital a copy.

What if I am away from Tasmania when my enduring guardian needs to act? In some states and territories, interstate guardianship appointments are legally recognised and your enduring guardian will be able to act. In other cases, your guardian may need to contact the local guardianship board or tribunal.

What if my enduring guardian does not act in my best interests? If your enduring guardian is incompetent, negligent or acts contrary to your best interests, a person may apply for the Guardianship and Administration Board to review the appointment and revoke it if necessary.

Want more information?

Free legal advice is available between 9am and 5pm
Monday to Friday on 1300 366 611

If you would like more copies of this kit or form, visit any Service Tasmania shop or phone the Guardianship and Administration Board on 6233 3085 or download a copy from www.guardianship.tas.gov.au/publications