Government of **Western Australia**
Department of **Justice**

Enduring Power of Attorney Information Kit

Office of the
PublicAdvocate

Enduring Power of Attorney Information Kit

This information kit has been prepared by the Office of the Public Advocate to give people a basic understanding of enduring powers of attorney and to assist them in completing the form. If you are completing an enduring power of attorney and you have specific or complex issues, it is recommended that you **seek legal advice**.

For more information about enduring powers of attorney and the role of an attorney, including a comprehensive guide to enduring powers of attorney, visit the Office of the Public Advocate's website www.publicadvocate.wa.gov.au or call the office's telephone advisory service on 1300 858 455.

Additional copies of this kit can be downloaded for free from the Office of the Public Advocate's website. If you are unable to do this, contact the Office of the Public Advocate on 9278 7300 for options to get printed copies of the kit.

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Contents

1.0 What is an enduring power of attorney? 2
1.1 What is the difference between 'sole', 'joint' and 'joint and several' attorneys? 2
1.2 What is a substitute attorney? 2
2.0 Why appoint an attorney? 3
3.0 Who can appoint an attorney? 4
3.1 What if I cannot read or write, sign my name and/or understand English? 5
4.0 Who can be appointed as an attorney? 5
5.0 What should I consider when choosing an attorney? 6
6.0 How do I appoint an attorney? 7
7.0 When does an enduring power of attorney come into operation? 7
8.0 What should I do with my enduring power of attorney when I have completed it? 8
8.1 Do I need to lodge my enduring power of attorney with Landgate? 8
9.0 Can an enduring power of attorney be cancelled? 9
10.0 How to complete the enduring power of attorney form 11

Appendices

Appendix A: Certifying copies of documents 17
Appendix B: People authorised to witness enduring powers of attorney .. 19
Appendix C: Marksman and readover clauses 21
Appendix D: Contact details of relevant agencies 23

Attachments

Enduring power of attorney form (2 copies) 25

1.0 What is an enduring power of attorney?

An enduring power of attorney is a legal document which allows you (the donor) to appoint a person or agency of your choice to make financial and/or property decisions on your behalf. This person or agency (the donee) becomes your attorney.

An enduring power of attorney **cannot** be used to appoint someone to make personal, lifestyle or treatment (medical and health care) decisions on your behalf. If you want to appoint someone to make these kinds of decisions, you may want to make an enduring power of guardianship. For more information about enduring powers of guardianship visit the Office of the Public Advocate's website – www.publicadvocate.wa.gov.au.

1.1 What is the difference between 'sole', 'joint' and 'joint and several' attorneys?

A **sole attorney** is one person appointed as attorney.

Joint attorneys are two people appointed as attorney, who must act together and agree on all decisions that are made.

Joint and several attorneys are two people appointed as attorney, who can make decisions independently or together.

1.2 What is a substitute attorney?

A substitute attorney is a person you can appoint to act as your attorney in the event that your originally appointed attorney is ever unavailable, unsuitable or unable to act as your attorney.

2.0 Why appoint an attorney?

By appointing an attorney, your property and financial affairs can continue to be managed in your best interests, even if you become unable to manage them yourself.

You can authorise your attorney to make property and financial decisions on your behalf:

(a) at anytime, including while you still have legal capacity:

you may choose to appoint an attorney with the authority to make property and financial decisions on your behalf at anytime, because it is difficult for you to attend to these matters yourself. For example, if you are travelling overseas and are unable to attend financial institutions or if you are unwell and physically unable to leave home.

or

(b) only if you lose legal capacity:

you may chose to appoint an attorney whose authority only starts in the event that you lose legal capacity. This person will only be able to legally act as your attorney after the State Administrative Tribunal determines you have lost capacity. You may prefer this option because you want to continue to manage your financial affairs while you have capacity and have an independent authority determine if you ever lose capacity. This independent authority (the Tribunal) will then authorise your attorney to begin acting on your behalf.

The ability to appoint an attorney who can continue to make decisions on your behalf after you lose legal capacity, is what makes an *enduring* power of attorney different to an ordinary power of attorney. An attorney who is appointed under an ordinary power of attorney, loses the power to act as your attorney if you lose legal capacity. An enduring power of attorney on the other hand, enables you to appoint an attorney who will be able to continue acting as your attorney, even if you lose legal capacity. The power 'endures' beyond your loss of capacity.

3.0 Who can appoint an attorney?

If you are 18 years of age or older and have full legal capacity (that is, you can make a formal agreement, you understand that you are appointing someone to manage your financial affairs, you are able to understand the implications of statements contained in the document and you understand your attorney does not need to discuss their actions with you), you can appoint an attorney by making an enduring power of attorney.

If you are considering making an enduring power of attorney but your capacity to do so might be questioned, you are advised to seek the opinion of at least one doctor qualified to assess your capacity. When seeking this opinion, you should advise the doctor of your intention to make an enduring power of attorney and request a written report on the assessment which clearly states whether or not you have capacity.

If you require an assessment of your capacity and English is not your first language, it is recommended you have an accredited interpreter attend the assessment.

If you are assessed as having full legal capacity it is advisable that the doctor who made the assessment, be one of the two people who witness your enduring power of attorney.

If you are assessed as not having capacity, you will be unable to make an enduring power of attorney.

Making an enduring power of attorney on behalf of another person is not possible under any circumstance. If a person has lost capacity and financial decisions are required it may be necessary to make an application to the State Administrative Tribunal for the appointment of an administrator.

3.1 What if I cannot read or write, sign my name and/or understand English?

Being unable to read or write, sign your name or understand English will not prevent you from making an enduring power of attorney.

If you are unable to sign your name, because for example:

- you understand English but cannot write
- you understand English but cannot read or write
- you do not understand English and cannot write.

A mark of any kind, including an initial, cross or even a thumb print is sufficient. However, an explanatory clause known as a 'marksman clause' will need to be included in your enduring power of attorney.

If you cannot understand English, the form must be read to you by an accredited interpreter to ensure you understand exactly what you are doing by completing an enduring power of attorney. An explanatory clause known as a 'readover clause' must be inserted into your enduring power of attorney stating that the form has been read to you by an accredited interpreter and that you understand the effect of making an enduring power of attorney.

The Public Advocate recommends that you seek legal advice (from a solicitor or community legal centre) if a marksman or readover clause needs to be included in the enduring power of attorney.

Examples of marksman and readover clauses can be found at Appendix C.

4.0 Who can be appointed as an attorney?

You can appoint anyone as your attorney, provided they are 18 years of age or older and have full legal capacity.

Your attorney does not need to live in Western Australia, although their availability and ability to make property and financial decisions on your behalf from another State or country should be considered.

5.0 What should I consider when choosing an attorney?

Who you appoint as your attorney is a very important decision. This person will be responsible for managing your financial security and therefore the decisions this person makes, can have a significant influence on your lifestyle.

When choosing an attorney, it is recommended that you consider:

- Is this person trustworthy and likely to always act in my best interests?
- Is this person willing to take on the responsibilities of the role?
- Is this person capable of dealing with all of my property and financial matters?
- Is this person capable of keeping accurate records and accounts of all of my property and financial transactions?
- Does this person live in close enough proximity to be able to physically attend to these matters?
- Could my choice of attorney create conflict within my family?
- Although it appears immediately obvious that I should appoint a particular family member as my attorney, do they have the skills that they would need for the role?
- If I am appointing joint attorneys, will they be able to work well together?
- If I am appointing joint and several attorneys, although they will legally be able to make decisions independently of each other, will they be able to do so in a co-operative way that is in my best interests?
- If I am married/have a de facto partner, have I considered appointing my spouse/de facto partner? Because if I appoint someone else, they (my attorney) will have the power to make property and financial decisions on my behalf, rather than my spouse/de facto partner.

If you are considering appointing a professional or body corporate as your attorney, the Public Advocate recommends that you seek legal advice.

6.0 How do I appoint an attorney?

To appoint an attorney you must complete an enduring power of attorney form. To be legally enforceable, your enduring power of attorney must be in the form, or substantially in the form, specified in Schedule 3 of the *Guardianship and Administration Act 1990*. The form at the back of this kit meets these requirements.

Step-by-step instructions on how to complete the form can be found at section 10.0 of this kit.

7.0 When does an enduring power of attorney come into operation?

When you complete your enduring power of attorney form, you have two choices regarding when your attorney can start to make your property and financial decisions. The choices are:

(a) immediately

or

(b) only in the event that you lose legal capacity (therefore your attorney's authority will only start after the State Administrative Tribunal determines that you have lost capacity).

Choosing to have your attorney's authority start immediately does not mean that your attorney must start making your financial decisions immediately. You continue to manage your financial affairs, but know that if you lose capacity, your attorney can start making these decisions for you. Your attorney must act in accordance with your instructions while you have capacity.

8.0 What should I do with my enduring power of attorney when I have completed it?

There is no register for enduring powers of attorney in Western Australia. Therefore it is your responsibility to ensure all relevant people are provided with a copy of your enduring power of attorney.

However, if you own property, your enduring power of attorney can be lodged with Landgate (see section 8.1 for more information).

The Public Advocate recommends that you make certified copies of your enduring power of attorney and provide them to your attorney, any relevant family members or friends, financial institutions and insurance companies (see Appendix A for information on certifying copies).

Keeping a list of who you have provided a copy of your enduring power of attorney to, will make it easier if you decide to cancel the power in the future (see section 9.0 of this kit for information about cancelling an enduring power of attorney).

Your original enduring power of attorney should be stored in a safe place, possibly with other important documents you have made, such as your enduring power of guardianship, advance health directive and will. It is also highly recommended that you tell your attorney where your original enduring power of attorney is stored, so they can access it if required.

8.1 Do I need to lodge my enduring power of attorney with Landgate?

Landgate is the State Government authority, which maintains the register of land ownership in Western Australia.

Landgate require an original enduring power of attorney to be held on their records at the time of a property transaction. As you should retain an original enduring power of attorney yourself, it is recommended that at the time of completing your enduring power of attorney, you make two originals (that is, you complete two identical enduring powers of attorney at the same time). For this reason, two forms are provided in this kit.

If you own a property, you may wish to lodge your enduring power of attorney with Landgate so that if transactions relating to that property need to be made in the future by your attorney, their authority to do so will be recognised. If you want to lodge your enduring power of attorney with Landgate, you must do so within three months of making it.

If you have not lodged your enduring power of attorney and have lost capacity at the time of the property transaction, your attorney will be required to complete a Statutory Declaration stating the enduring power of attorney is still in effect. Alternatively the attorney may seek an Order from the State Administrative Tribunal stating the enduring power of attorney is in effect. They can then lodge it with Landgate to enable them to carry out property transactions.

A fee is charged for lodging or revoking an enduring power of attorney with Landgate.

9.0 Can an enduring power of attorney be cancelled?

While you have capacity:

You can cancel your enduring power of attorney at anytime while you have legal capacity. It is recommended that you do so in writing. A letter explaining that you wish to cancel (revoke) your enduring power of attorney, should be given to your attorney and any other interested party to whom you had provided a copy of your enduring power of attorney. Where possible, you should collect the copies of your enduring power of attorney that you circulated and destroy them.

If your attorney is no longer willing or able to act in the role, and you still have capacity, written renouncement should be provided to you by the attorney and the same process followed, as described above.

Following the revocation of an enduring power of attorney, if you make a new enduring power of attorney it is recommended that you attach the old enduring power of attorney and the written revocation to it, to make it clear which enduring power of attorney is in force.

If your enduring power of attorney has been lodged with Landgate, a revocation of your enduring power of attorney will not take effect until the revocation is also lodged with Landgate.

It is recommended that you contact Landgate for the type of information they require on the written revocation.

If you have lost capacity:

You cannot cancel your enduring power of attorney if you have lost legal capacity. This is a safeguard against people taking advantage of someone after they have lost capacity.

If you have lost capacity and you or another relevant person believe that the attorney is not acting in your best interests, an application must be made to the State Administrative Tribunal. The Tribunal will then decide if the enduring power of attorney should be cancelled (revoked).

Similarly, an application must be made to the State Administrative Tribunal if you have lost capacity and your attorney is no longer willing or able to act in the role.

10.0 How to complete the enduring power of attorney form

These instructions refer to the form at the back of this kit. At the top of the form, in the spaces provided, insert:

- the date (day, month and year) you are completing your enduring power of attorney form
- your full name
- your residential address
- your date of birth (day, month and year).

1 Appointment of attorney(s)

If you want to **appoint one person** as your sole attorney, write their full name and address in the space provided at clause 1, under the heading 'sole attorney'. To make your choice clear, you could then cross out and initial the following two sections, which are titled 'joint attorneys' and 'joint and several attorneys'.

OR

If you want to **appoint two people** as **joint attorneys** (i.e. they must act together and agree on all decisions), write their full names and addresses in the space provided at clause 1, under the heading 'joint attorneys'. To make your choice clear, you could then cross out and initial the section above (which is titled 'sole attorney') and the section below (which is titled 'joint and several attorneys').

OR

If you want to **appoint two people** as **joint and several attorneys** (i.e. be able to make decisions together or independently), write their full names and addresses in the space provided at clause 1, under the heading 'joint and several attorneys'. To make your choice clear, you could then cross out and initial the two sections above.

Note: You can only appoint a maximum of two attorneys to act jointly or jointly and severally.

1a Appointment of substitute attorney(s)

If you **do not want to appoint a substitute** attorney, you can leave clause 1a blank. Or to make your choice clear, you could cross out and initial clause 1a.

OR

If you want to **appoint one or more substitute** attorneys, you need to complete the relevant part of clause 1a as follows:

You can either appoint:

- a sole substitute attorney,
- joint substitute attorneys, or
- joint and several substitute attorneys.

If you want to appoint a **sole substitute attorney**, write their full name and address in the space provided and then write the name of your attorney (for whom they will act in substitution), in the space provided after 'In substitution of".

OR

If you want to appoint **two substitute attorneys**, write their full names in the spaces provided under the heading 'Joint/Joint and several substitute attorneys' (maximum of two) and to make your choice clear, you could cross out and initial the section above titled 'Sole substitute attorney'.

If you want your substitute attorneys to **act jointly** (i.e. have to act together and agree on all decisions), cross out and initial the words 'jointly and severally to be my substitute attorneys'.

OR

If you want your substitute attorneys to **act jointly and severally** (i.e. be able to make decisions together or independently), cross out and initial the words 'jointly to be my substitute attorneys'.

If you want to appoint two attorneys in substitution of a sole attorney; or a sole attorney in substitution of joint, or joint and several original attorneys, the Public Advocate recommends that you seek legal advice.

When appointing a substitute you must specify in the space provided, the circumstances in which you want your substitute to act.

For example:

If either of my joint attorneys is unable to continue in the role for any reason, then the substitute attorney named here is to take the place of either attorney.

If my sole attorney is overseas for periods of three months or more at any time, my substitute attorney is to act in his/her place.

2 Authorisation

You are not required to do anything at section 2. It is simply a legal statement that you are authorising your attorney to act on your behalf as an attorney. If you mark or cross out this section, you could invalidate your enduring power of attorney.

3 Conditions or restrictions

If you have any **conditions or restrictions** that you want your attorney to act under, this section needs to be completed accordingly.

It is recommended that you **seek legal advice** if this is the case, as the incorrect completion of this section could limit your attorney's ability to carry out the role or may invalidate your enduring power of attorney.

OR

If you do not have any **conditions or restrictions**, to make this clear, you could cross out and initial this section.

4 Choosing when your enduring power of attorney starts

You **must** make a choice at this section of the form to ensure your enduring power of attorney is valid. To indicate your choice, you need to cross out and initial the option you DO NOT want to apply.

If you want your **attorney's power to start immediately** (i.e. as soon as you have completed the form and had it appropriately witnessed and accepted), **cross out and initial part b** of clause 4.

OR

If you want your **attorney's power only to start in the event that you lose legal capacity**, cross out and initial **part a** of clause 4. If you ever lose capacity, your attorney will have to make an application to the State Administrative Tribunal for a declaration that you have lost capacity, before they can start acting as your attorney.

Signing the enduring power of attorney

You (the donor), must sign your enduring power of attorney form with your usual signature, in the space provided, in front of two witnesses.

If you are unable to sign the form yourself, you will need to insert a marksman clause into your enduring power of attorney. The Public Advocate recommends that you seek legal advice (from a solicitor or community legal centre) if this is the case.

Witnessing the enduring power of attorney

When you sign your enduring power of attorney form, your signature must be witnessed by two people.

Both witnesses must:

- be present when you sign the form
- be 18 years of age or older
- have full legal capacity

At least one of your witnesses must be a person authorised to witness statutory declarations under the *Oaths, Affidavits and Statutory Declarations Act 2005* (see Appendix B). You may choose to have two authorised witnesses, but this is not essential.

The person who is not an authorised witness must not be a party to the enduring power of attorney (i.e. a witness cannot be a sole, joint or substitute attorney or a person involved in a marksman or readover clause in the enduring power of attorney).

It is however also recommended that the authorised witness is not a party to the enduring power of attorney, and can be seen as an independent witness.

After you sign your enduring power of attorney, both witnesses must (in the spaces provided on the form):

- sign with their usual signature
- write their full name and address
- state their current occupation (if an authorised witness).

Acceptance of the enduring power of attorney

Your attorney(s) do not need to be present when you complete and sign your enduring power of attorney. The document is not complete however, until your attorney(s) complete and sign the acceptance section of the form. It is recommended that this be done as soon as possible after you have completed and signed your enduring power of attorney.

Sole and joint attorneys (appointed under **section 1** of the form) must:

- write their full name in the space provided at section 1 of the acceptance section of the form,
- cross out and sign either ‘a’ or ‘b’ to acknowledge when the enduring power of attorney comes into effect. This must be the same as at section 4 of the form, and
- sign the form with their usual signature and date it, in the spaces provided at section 1 of the signature section of the form.
- Sole and joint **substitute attorneys** (appointed under **section 1a** of the form) must:
- write their full name in the space provided at section 1a of the acceptance section of the form,
- cross out and sign either ‘a’ or ‘b’ to acknowledge when the enduring power of attorney comes into effect. This must be the same as at section 4 of the form, and
- sign the form with their usual signature and date it, in the spaces provided at section 1a of the signature section of the form.

Appendix A

Certifying copies of documents

What is a certified copy?

A certified copy is a photocopy of a document which has been certified as a direct copy of the original document.

Who can certify a copy?

There is no legislation in Western Australia that stipulates either how to certify a copy of a document or who can do it. However, it is usual for documents to be certified by a person who is authorised as a witness for statutory declarations under the *Oaths, Affidavits and Statutory Declarations Act 2005* (see Appendix B).

How do I certify a copy?

Before certifying a document, you must ensure that the copy to be certified is an identical copy of the original. A suggested wording for the certification is as follows:

I certify that this appears to be a true copy of the document produced to me on <date>.

Signature

Name

The person certifying the document is stating their opinion that the document is a true copy, not that the original document is authentic. Certifying a copy does not in any way 'authenticate' either the copy or the original document.

Documents in languages other than English

You should not certify a document in a language other than English unless you can be sure that the original and the copy are identical. A solution to this is to have the original photocopied in your presence.

Multiple-page documents

If the original is a multiple-page document, each page must be checked against the copy to ensure that it is correct. You can then proceed as follows:

- sign or initial each page
- number each page of the copy as ‘page 1 of 40’, ‘page 2 of 40’ and so on
- certify the last page as follows:

I certify that this <number of pages> page document, each page of which I have numbered and signed/initialled, appears to be a true copy of the document produced to me on <date>.

Signature

Name

Qualification (e.g. Justice of the Peace, Doctor)

Appendix B

People authorised to witness enduring powers of attorney

Please note one of your witnesses must be from this list.

Schedule 2 of the *Oaths, Affidavits and Statutory Declarations Act 2005* lists the people who are authorised to witness declarations in Western Australia. These are:

- Academics (post-secondary institution)
- Accountants
- Architects
- Australian Consular Officers
- Australian Diplomatic Officers
- Bailiffs
- Bank managers
- Chartered secretaries, governance advisers or risk managers
- Chemists
- Chiropractors
- Company auditors or liquidators
- Court officers
- Defence force officers
- Dentists
- Doctors
- Electorate officers of a member of State Parliament
- Engineers
- Industrial organisation secretaries
- Insurance brokers
- Justices of the Peace
- Landgate officers
- Lawyers
- Local Government CEOs or deputy CEOs
- Local government councillors
- Loss adjusters
- Marriage celebrants
- Members of Parliament
- Midwives
- Ministers of religion
- Nurses
- Optometrists
- Paramedics
- Patent attorneys
- Physiotherapists
- Podiatrists
- Police officers
- Post office managers
- Psychologists
- Public notaries
- Real estate agents
- Settlement agents
- Sheriffs or deputy sheriffs
- State and commonwealth public servants
- Surveyors
- Teachers
- Tribunal officers
- Veterinary surgeons

and anyone authorised under the *Commonwealth Statutory Declarations Act 1959* to take a statutory declaration.

NOTE: No person under the age of 18 years is qualified to witness any Statutory Declarations or instruments.

Different criteria apply for execution of an enduring power of attorney witnessed in places other than Western Australia. If the enduring power of attorney is signed and witnessed elsewhere you should seek legal advice.

Witnesses must be registered at the time of signing. For example a registered teacher can be a witness (i.e. a person registered under the *Teacher Registration Act 2012*), but a retired teacher cannot.

The *Oaths, Affidavits and Statutory Declarations Act 2005* which came into operation on 1 January 2006 abolished the Office of Commissioners and therefore the Commissioner for Declarations position in Western Australia.

If you need more information about a person's eligibility to be a witness, see the Office of the Public Advocate's website www.publicadvocate.wa.gov.au or call the Telephone Advisory Service 1300 858 455.

Appendix C

Marksman and readover clauses

Samples of these clauses are included below for guidance. All witnesses should meet the requirements of any particular clause. Where necessary, an interpreter should sign the document as witness if qualified to do so or if not so qualified, sign in addition to the two qualified witnesses.

1. A person who understands English but cannot write

Signed by *(name of marksman)* _____
by making (his or her) mark, (he or she) being incapable of signing (his or her) name.

Mark_____

In the presence of *(witness's signature)* _____

(witness's full name) _____

(witness's address) _____

(occupation of witness) _____

on *(date)* _____

2. A person who understands English but cannot read or write

Signed by *(name of marksman)* _____
by making (his or her) mark, (he or she) being unable to read or write, after this instrument had been read and explained to (him or her) and (he or she) then appearing to understand fully its nature and effect.

Mark_____

In the presence of *(witness's signature)* _____

(witness's full name) _____

(witness's address) _____

(occupation of witness) _____

on *(date)* _____

3. A person who does not understand English and cannot write

Signed by *(name of marksman)* _____
by making (his or her) mark, (he or she) being unable to read in the English language after this instrument had been read and explained to (him or her) in (name of second language) _____
by (name of interpreter) _____,
a person understanding both languages, (he or she) then appearing to understand fully its nature and effect.

Mark _____

In the presence of *(interpreter's signature)* _____

(interpreter's full name) _____

(interpreter's address) _____

_____ on *(date)* _____

4. Execution by a person who does not understand English but who can write

Signed by *(name of person)* _____
(he or she) being unable to read in the English language after this instrument had been read and explained to (him or her)

in (name of second language) _____

by (name of interpreter) _____,

a person understanding both languages, (he or she) then appearing to understand fully its nature and effect.

Mark _____

In the presence of *(interpreter's signature)* _____

(interpreter's full name) _____

(interpreter's address) _____

_____ on *(date)* _____

Appendix D

Contact details of relevant agencies

Office of the Public Advocate

Address: PO Box 6293, East Perth WA 6892
Phone: (08) 9278 7300
Telephone Advisory Service: 1300 858 455
Fax: (08) 9278 7333
Email: opa@justice.wa.gov.au
Website: www.publicadvocate.wa.gov.au

The Public Advocate provides advice and information on guardianship and administration, enduring powers of attorney and enduring powers of guardianship. Further copies of this publication and a range of other publications are available to download from the office's website.

State Administrative Tribunal (the Tribunal)

Phone: (08) 9219 3111 or 1300 306 017
Website: www.sat.justice.wa.gov.au

The State Administrative Tribunal can be contacted for information and advice on applications for guardianship, administration, enduring powers of attorney, enduring powers of guardianship and advance health directives. Information about how to apply to the Tribunal is also available on the Tribunal's website.

Landgate

Phone: (08) 9273 7373
Email: customerservice@landgate.wa.gov.au
Website: www.landgate.wa.gov.au

Enduring power of attorney

This enduring power of attorney is made under the *Guardianship and Administration Act 1990* Part 9 on the

_____ day of _____ 20 _____

by *(donor's full name)* _____

of (donor's residential address) _____

_____ *born on (donor's date of birth)* _____

1 Appointment of attorney(s)

Sole attorney

I appoint *(attorney's name)* _____

of _____ to be my sole attorney.

OR

Joint attorneys

I appoint *(attorney's name)* _____

of _____

and *(attorney's name)* _____

of _____ JOINTLY to be my attorneys.

OR

Joint and several attorneys

I appoint *(attorney's name)* _____

of _____

and *(attorney's name)* _____

of _____

JOINTLY **AND** SEVERALLY to be my attorneys.

Signing each page is not compulsory but may provide a safeguard against pages being substituted. Signature of:

(person making the power) _____ (witness 1) _____ (witness 2)_____

1a Appointment of substitute attorney(s)

Sole substitute attorney

I appoint *(attorney's name)* _____

of _____ to be my sole substitute attorney

IN SUBSTITUTION OF _____

OR

on (or during) the occurrence of the following events or circumstances:

_____

_____

Joint / joint and several substitute attorneys

I appoint *(attorney's name)* _____

of _____

IN SUBSTITUTION OF _____

AND/OR _____

_____ JOINTLY / JOINTLY AND SEVERALLY to be my substitute attorney

on (or during) the occurrence of the following events or circumstances:

_____

_____

I appoint *(attorney's name)* _____

of _____

IN SUBSTITUTION OF _____

AND/OR _____

_____ JOINTLY / JOINTLY AND SEVERALLY to be my substitute attorney

on (or during) the occurrence of the following events or circumstances:

_____

_____

2 Authorisation

I AUTHORISE my attorney(s) to do on my behalf anything that I can lawfully do by an attorney.

Note: An attorney cannot be authorised to make personal, lifestyle or medical treatment decisions.

3 Conditions or restrictions

The authority of my attorney(s) is subject to the following CONDITIONS or RESTRICTIONS:

_____

_____

Signing each page is not compulsory but may provide a safeguard against pages being substituted. Signature of:

(person making the power) _____ (witness 1) _____ (witness 2)_____

4 Choosing when your enduring power of attorney starts (you MUST strike out (a) or (b)

I DECLARE that this POWER of ATTORNEY:

A will continue in force notwithstanding my subsequent legal incapacity.

OR

B will be in force ONLY during any period when a declaration by the State Administrative Tribunal that I do not have legal capacity is in force under Section 106 of the *Guardianship and Administration Act 1990.*

Signed as a deed by:

(signature of person making the enduring power of attorney) _____

Witnessed by a person authorised to witness statutory declarations:

(authorised witness's signature) _____

(authorised witness's full name) _____

(authorised witness's address) _____

_____

(occupation of authorised witness) _____ on *(date)* _____

And by another person:

(other witness's signature) _____

(other witness's full name) _____

(other witness's address) _____

_____ on *(date)* _____

Acceptance of the enduring power of attorney

The person(s) or agency nominated as attorney(s) is/are required to indicate their willingness to accept the power vested in them under this enduring power of attorney and the legal obligations which go with that power. The attorney(s) must sign the Statement of Acceptance in the space provided as soon as possible after the document conferring the authority has been completed.

Acceptance by attorneys

1. I / We _____

the person(s) appointed **to be the attorney(s) under clause 1** of the instrument (enduring power of attorney) on which this acceptance is endorsed [or to which this acceptance is annexed]

AND **(IF ONE OR MORE SUBSTITUTE ATTORNEYS ARE BEING APPOINTED):**

Acceptance by substitute attorney(s)

1A. I / We _____

the person(s) appointed **to be the substitute attorney(s) under clause 1a** of the instrument (enduring power of attorney) on which this acceptance is endorsed [or to which this acceptance is annexed]

Accept the appointment and acknowledge:

- that the power of attorney is an enduring power of attorney;
- that I/we will, by accepting this power of attorney, be subject to the provisions of Part 9 of the *Guardianship and Administration Act 1990;*

AND

A the enduring power of attorney will continue in force notwithstanding the subsequent legal incapacity of the Donor.

OR

B the enduring power of attorney will be in force only during any period when a declaration by the State Administrative Tribunal that the Donor does not have legal capacity is in force under Section 106 of the *Guardianship and Administration Act 1990.*

Signed

1 ……
(Attorney appointed under **clause 1** of the power)

……..
(Date)

……..
(Attorney appointed under **clause 1** of the power)

……
(Date)

1a ……
(Substitute Attorney appointed under **clause 1a** of the power)

……..
(Date)

……
(Substitute Attorney appointed under **clause 1a** of the power)

……
(Date)

Please note: The Office of the Public Advocate does **NOT** require a copy of your enduring power of attorney. There is no formal registration process for enduring powers of attorney, however if you own land/real estate and wish to record your enduring power of attorney with Landgate, you should refer to the information in the Office of the Public Advocate's Enduring Power of Attorney Information Kit or Guide about the Landgate requirements for accepting your enduring power of attorney.

Enduring power of attorney

This enduring power of attorney is made under the *Guardianship and Administration Act 1990* Part 9 on the

_____ day of _____ 20 _____

by *(donor's full name)* _____

of (donor's residential address) _____

_____ *born on (donor's date of birth)* _____

1 Appointment of attorney(s)

Sole attorney

I appoint *(attorney's name)* _____

of _____ to be my sole attorney.

OR

Joint attorneys

I appoint *(attorney's name)* _____

of _____

and *(attorney's name)* _____

of _____ JOINTLY to be my attorneys.

OR

Joint and several attorneys

I appoint *(attorney's name)* _____

of _____

and *(attorney's name)* _____

of _____

JOINTLY **AND** SEVERALLY to be my attorneys.

Signing each page is not compulsory but may provide a safeguard against pages being substituted. Signature of:

(person making the power) _____ (witness 1) _____ (witness 2)_____

1a Appointment of substitute attorney(s)

Sole substitute attorney

I appoint *(attorney's name)* _____

of _____ to be my sole substitute attorney

IN SUBSTITUTION OF _____

OR

on (or during) the occurrence of the following events or circumstances:

_____

_____

Joint / joint and several substitute attorneys

I appoint *(attorney's name)* _____

of _____

IN SUBSTITUTION OF _____

AND/OR _____

_____ JOINTLY / JOINTLY AND SEVERALLY to be my substitute attorney

on (or during) the occurrence of the following events or circumstances:

_____

_____

I appoint *(attorney's name)* _____

of _____

IN SUBSTITUTION OF _____

AND/OR _____

_____ JOINTLY / JOINTLY AND SEVERALLY to be my substitute attorney

on (or during) the occurrence of the following events or circumstances:

_____

_____

2 Authorisation

I AUTHORISE my attorney(s) to do on my behalf anything that I can lawfully do by an attorney.

Note: An attorney cannot be authorised to make personal, lifestyle or medical treatment decisions.

3 Conditions or restrictions

The authority of my attorney(s) is subject to the following CONDITIONS or RESTRICTIONS:

_____

_____

Signing each page is not compulsory but may provide a safeguard against pages being substituted. Signature of:

(person making the power) _____ (witness 1) _____ (witness 2)_____

4 Choosing when your enduring power of attorney starts (you MUST strike out (a) or (b)

I DECLARE that this POWER of ATTORNEY:

A will continue in force notwithstanding my subsequent legal incapacity.

OR

B will be in force ONLY during any period when a declaration by the State Administrative Tribunal that I do not have legal capacity is in force under Section 106 of the *Guardianship and Administration Act 1990.*

Signed as a deed by:

(signature of person making the enduring power of attorney) _____

Witnessed by a person authorised to witness statutory declarations:

(authorised witness's signature) _____

(authorised witness's full name) _____

(authorised witness's address) _____

_____

(occupation of authorised witness) _____ on *(date)* _____

And by another person:

(other witness's signature) _____

(other witness's full name) _____

(other witness's address) _____

_____ on *(date)* _____

Acceptance of the enduring power of attorney

The person(s) or agency nominated as attorney(s) is/are required to indicate their willingness to accept the power vested in them under this enduring power of attorney and the legal obligations which go with that power. The attorney(s) must sign the Statement of Acceptance in the space provided as soon as possible after the document conferring the authority has been completed.

Acceptance by attorneys

1. I / We _____

the person(s) appointed **to be the attorney(s) under clause 1** of the instrument (enduring power of attorney) on which this acceptance is endorsed [or to which this acceptance is annexed]

AND **(IF ONE OR MORE SUBSTITUTE ATTORNEYS ARE BEING APPOINTED):**

Acceptance by substitute attorney(s)

1A. I / We _____

the person(s) appointed **to be the substitute attorney(s) under clause 1a** of the instrument (enduring power of attorney) on which this acceptance is endorsed [or to which this acceptance is annexed]

Accept the appointment and acknowledge:

- that the power of attorney is an enduring power of attorney;
- that I/we will, by accepting this power of attorney, be subject to the provisions of Part 9 of the *Guardianship and Administration Act 1990;*

AND

A the enduring power of attorney will continue in force notwithstanding the subsequent legal incapacity of the Donor.

OR

B the enduring power of attorney will be in force only during any period when a declaration by the State Administrative Tribunal that the Donor does not have legal capacity is in force under Section 106 of the *Guardianship and Administration Act 1990.*

Signed

1 ……
(Attorney appointed under **clause 1** of the power)

……..
(Date)

……..
(Attorney appointed under **clause 1** of the power)

……
(Date)

1a ……
(Substitute Attorney appointed under **clause 1a** of the power)

……..
(Date)

……
(Substitute Attorney appointed under **clause 1a** of the power)

……
(Date)

Please note: The Office of the Public Advocate does **NOT** require a copy of your enduring power of attorney. There is no formal registration process for enduring powers of attorney, however if you own land/real estate and wish to record your enduring power of attorney with Landgate, you should refer to the information in the Office of the Public Advocate's Enduring Power of Attorney Information Kit or Guide about the Landgate requirements for accepting your enduring power of attorney.

Government of **Western Australia**
Department of **Justice**

Office of the
PublicAdvocate

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