Government of Western Australia
Department of Justice

A Guide to Enduring Power of Attorney in Western Australia

Office of the Public Advocate

Preface

This guide is produced by the Public Advocate, the independent statutory officer appointed by the Western Australian Government under the *Guardianship and Administration Act 1990* to protect and promote the human rights of Western Australian adults with a decision-making disability. It provides information for people wanting to understand or complete an enduring power of attorney.

This Guide replaces the publication '*A Guide to Enduring Power of Attorney in Western Australia (2007)'* to include changes to the *Guardianship and Administration Act 1990* which came into effect on 15 February 2010. These included minor revisions to the witnessing requirements of enduring powers of attorney.

The changes to the legislation in 2010 also introduced a new document in Western Australia, called an enduring power of guardianship. This legal document complements an enduring power of attorney, by giving adults the ability to appoint a person to make their personal, lifestyle and treatment decisions. More information about enduring powers of guardianship is available in the Office of the Public Advocate's publication '*A Guide to Enduring Power of Guardianship in Western Australia'.*

Pauline Bagdonavicius
Public Advocate
October 2025

Copies of this guide, the Enduring Power of Attorney Information Kit and both the Enduring Power of Guardianship Guide and Kit can be downloaded from the Office of the Public Advocate's website. Further information and advice can also be obtained from the Office's Telephone Advisory Service.

Office of the Public Advocate
PO Box 6293 East Perth WA 6892
T: 1300 858 455
F: (08) 9278 7333
E: opa@justice.wa.gov.au
W: www.publicadvocate.wa.gov.au

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Disclaimer

The materials presented in this Guide are provided voluntarily as a public service. The information and advice provided is made available in good faith but is provided solely on the basis that readers will be responsible for making their own assessment of the matters discussed herein and that they should verify all relevant representations, statements and information. Neither the State of Western Australia ("State") nor any agency or instrumentality of the State, nor any employee or agent of the State or any agency or any instrumentality of the State shall be responsible for any loss or damage howsoever caused and whether or not due to negligence arising from the use or reliance on any information or advice provided in the Guide. Changes in circumstances after the date of publication of the Publication may impact on the currency of the information contained in the Publication. No assurance is given that the information contained in the Publication is current at the time it is provided to the reader.

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Introduction

You make a range of decisions and choices about how you spend and invest your money on an almost daily basis. The types of decisions you make are unique to your individual circumstances, based on your values and take into consideration your income and assets.

If an accident or illness prevented you from being able to make financial decisions, or attend to the payment of bills and expenses, you would most probably want to have some level of control over how these transactions were carried out on your behalf.

Due to the legal requirements of banking and other institutions including insurance, telephone and power companies, if you are unable to attend to transactions yourself, the person you ask to make transactions for you will require legal authority to do so.

Making an enduring power of attorney while you have full capacity enables you to give someone this legal authority. This person (your attorney) will then be able to assist in your financial affairs and make financial decisions on your behalf if you are unable to do so yourself due to illness or loss of capacity.

If you choose to make an enduring power of attorney, this guide will help you to understand the power and the authority you will be giving to your attorney. It also contains information to assist you in completing the form. The section on the role of the attorney will be useful to the person you appoint, to ensure that they understand their role and responsibilities.

While it is possible to appoint a professional or a body corporate as your attorney this guide is written in the context of a person being appointed. However the steps for making the power and the role of the attorney are the same, whoever is appointed.

The *Guardianship and Administration Act 1990* is the legislation which establishes enduring powers of attorney and sets out the requirements for the form. It also establishes two other future planning tools which are called enduring powers of guardianship and advance health directives.

An enduring power of guardianship enables you to appoint someone to make personal, lifestyle and treatment decisions on your behalf if you lose capacity. More information on enduring powers of guardianship is available from the Office of the Public Advocate on 1300 858 455 or online at www.publicadvocate.wa.gov.au

An advance health directive enables you to make decisions about your future health care by providing or withholding consent to receive your choice of medical, surgical and dental treatment, or other health care including life sustaining measures and palliative care. This document will be followed if you ever lose capacity to make the decision about treatment. More information on advance health directives is available on the Department of Health's website: www.healthywa.wa.gov.au/AdvanceHealthDirectives.

An enduring power of guardianship is complementary to an enduring power of attorney since together the two powers cover decision making in all areas of your life. However it is up to you to decide if you wish to make any, or all of these powers.

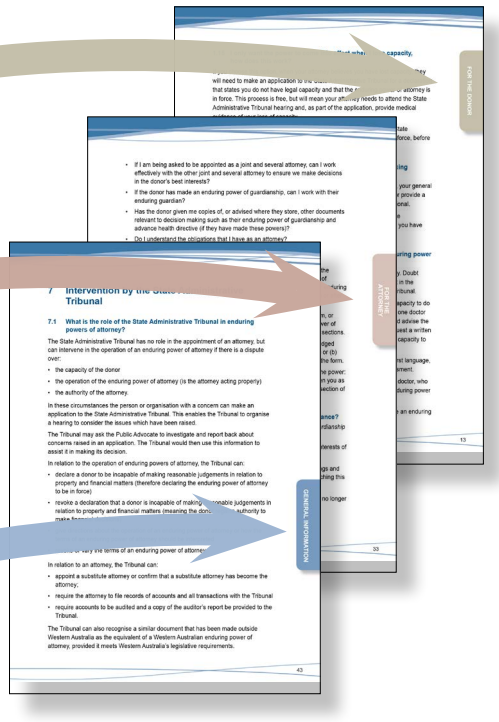
Using this Guide

Every attempt has been made to keep this guide as user-friendly as possible. It is made up of three main parts:

Parts 1 to 4 are aimed at people planning to make an enduring power of attorney.

Part 5 is aimed at people who had been asked to become an attorney or substitute attorney.

Parts 6 to 10 contain general information.



Although the term "attorney" is used, a person can appoint two attorneys and substitute attorneys. The attorney can be a person or an agency (professional or body corporate)

The "Act" refers to the *Guardianship and Administration Act 1990*.

The "Tribunal" refers to the State Administrative Tribunal.

The "donor" is the person who makes an enduring power of attorney.

The "donee" is the person, agency or body corporate being appointed as attorney.

"Full legal capacity" means the capacity to make a formal agreement and to understand the implications of statements contained in that agreement.

"Landgate" is the State government authority which maintains the register of land ownership in Western Australia.

A full list of the terms used in this guide (a glossary) is on page 55.

FOR THE DONOR
(the person making the enduring power of attorney)

1 Planning tools

1.1 What is an enduring power of attorney?

An enduring power of attorney is a legal document that enables an adult who has legal capacity (the donor) to appoint a person or agency of their choice (as their attorney) to make property and financial decisions on their behalf. The rules establishing enduring powers of attorney are set out in Part 9 of the *Guardianship and Administration Act (1990)*.

The role of your attorney is restricted to making decisions about your property and financial affairs. An enduring power of attorney does not give your attorney the authority to make personal, lifestyle and treatment decisions.

1.2 Why appoint an attorney?

Many decision-making disabilities are caused by illness, accident or trauma. There is no way of knowing if or when any of us will lose the capacity to make decisions for ourselves, or be physically unable to attend to property and financial matters.

By completing an enduring power of attorney you can authorise a person (or agency), who you know and trust, to make property and financial decisions for you in your best interests, in the event that you lose capacity or are physically unable to manage your finances.

1.3 How is an enduring power of attorney different to an ordinary power of attorney?

An enduring power of attorney differs significantly from an ordinary power of attorney, as it continues to operate (it endures) after the donor loses legal capacity.

An ordinary power of attorney only operates while the person who made it has legal capacity.

1.4 Can my spouse or de facto partner make decisions for me?

If you want your spouse or de facto partner to make property and financial decisions on your behalf, and you want to make an enduring power of attorney, you should name your spouse or de facto partner as your attorney as this will give them the authority to make these decisions. If you name another person as your attorney, that person - and not your spouse or de facto partner - will have this decision-making authority.

1.5 What should I think about when deciding who to appoint as my attorney?

Giving someone else the authority to manage your finances who will continue in this role if you ever lose capacity is a very serious decision.

Making an enduring power of attorney is a private decision, and there is no requirement for your attorney to have your accounts audited or to prepare annual reports on how your money is being managed.

The choice of attorney is therefore critical – and you must ensure the person is someone you know well and can trust to look after your finances in your best interests.

Sometimes, even with the best plans an attorney may act inappropriately. This may be because:

- they make a mistake – for example forget to pay a bill;
- they do not fully understand the role – for example gift some money to your grandchildren when there are limited funds to do so;
- take steps to set up an advancement on what they see as family members' inheritance, rather than ensuring funds are spent on the person (the donor) while they are alive.

In cases where it has been discovered that the attorney has used the money for themselves rather than for the person who appointed them, the *Guardianship and Administration Act 1990* enables someone to intervene to stop this type of abuse of the power.

1.6 Can I appoint more than one attorney?

You can appoint:

- a sole attorney: a single person or agency
- joint attorneys: two people who must act together and agree on all decisions that are made, or
- joint and several attorneys: two people who can make decisions together and/or independently.

If you appoint more than one attorney (joint or joint and several attorneys), you need to think about whether they will be able to work together to manage your property and financial affairs.

When completing your enduring power of attorney form, if you appoint more than one attorney, it is very important that you clearly state whether the attorneys are to act as joint attorneys or as joint and several attorneys.

The maximum number of people you can appoint as your attorney is two.

1.7 Can I appoint two people as a safeguard because I am not sure that I can trust one person acting alone?

It is up to each individual to decide if they want to appoint one or two people. You might want to appoint two people so they can share the role of attorney and share the work.

However appointing two people because you are not sure that one of those people can be trusted, if acting alone, to manage your property and finances is not advisable. If you are not sure that you can trust the person you are considering appointing it is best to think again about who you will appoint.

1.8 How can I ensure that I am protected against financial abuse?

People are often concerned about financial abuse, and how they can be protected from it. Making an enduring power of attorney is one way to protect yourself from financial abuse in the event that you ever lose capacity to manage your finances as you will have given someone you trust legal authority to look after your property and financial affairs.

Your attorney will be in a position to notice if someone else is trying to take advantage of you financially. As your attorney has authority to manage your finances they will then be able to take action to make sure that person cannot access your money. If it appears that financial abuse has occurred the attorney may also be able to take steps to recover money or property which has been taken.

1.9 How can I be certain that my attorney will not abuse the power?

The best protection to ensure your enduring power of attorney works properly is to choose someone you know well and trust as your attorney.

However if something does go wrong, and you have lost capacity, an application can be made to the State Administrative Tribunal which has a role in overseeing the use of these powers. The Tribunal can end the power if it is not being used appropriately and appoint an administrator to manage your finances instead.

Applications to the Tribunal may be made by anyone who is concerned about you and whether your finances are being managed in your best interests. This could include family or friends, a service provider when fees are not being paid and even a local council if the rates have not been paid. Usually when it comes to money someone will need payment – and so if your attorney is not acting properly and paying bills on time it will come to someone's notice quite quickly.

1.10 How does a joint appointment work?

There are practical implications to consider if you choose to appoint joint attorneys, as they must always make decisions together.

You should consider how easy it will be for your joint attorneys to meet up to sign documents. If this is difficult, there may be delays in financial transactions or decisions being made in a timely way.

If a joint appointment results in delays to the management of your finances an application could be made to the State Administrative Tribunal for directions about how the attorneys should manage your finances (see part 7).

However, as stated earlier, the greatest safeguard for your finances is to ensure that you choose an attorney who you know well, and trust to make decisions in your best interests.

If you appoint joint attorneys and one attorney dies, unless you have also appointed a substitute attorney to act jointly with the remaining attorney, the enduring power of attorney can no longer be used. If you have lost capacity the remaining attorney will need to make an application to the State Administrative Tribunal to either vary the terms of the enduring power of attorney or to be appointed as the administrator.

1.11 How does a joint and several appointment work?

Joint and several attorneys have the flexibility of making decisions together, and separately. This allows the attorneys some flexibility in managing your property and finances and also means they have the support of another person which can be useful in making more complex decisions.

It will be up to the attorneys to decide how they will work together, and there are a range of options.

For example after assessing your finances your attorneys can decide:

- to do some transactions separately and other transactions jointly;
- to always act jointly; or
- to always act separately.

What is important is that they understand the role, always make decisions in your best interests and communicate with each other.

1.12 Can I appoint a substitute attorney?

You can appoint a substitute attorney who can act as your attorney in the event that your originally appointed attorney is unable to act.

Your attorney may be unable to carry out the role for a number of reasons. For example your attorney goes on an overseas holiday, loses capacity themselves or dies.

You do not have to appoint a substitute attorney, the decision is up to you.

If you want to appoint a substitute attorney, you may choose to appoint:

- One person to be a sole substitute attorney, in substitution of a sole attorney. I

appoint *Joe Bloggs* of *20 Any Street, Any Suburb*
in substitution of *Sarah Bloggs* to be my substitute attorney on the occurrence of the following events or circumstances:
my attorney has died, or is unable to act due to lack of capacity, or at any time my attorney is temporarily unable to act due to overseas travel.

- One person to act jointly as attorney with the remaining original joint attorney if one of your joint attorneys is unable to act.

I appoint *Joe Bloggs* of *20 Any Street, Any Suburb*
in substitution of *Sarah Bloggs* OR *Jack Bloggs* JOINTLY to be my substitute attorney on the occurrence of the following events or circumstances:
either of my attorneys is unable to act due to death or lack of capacity, or either attorney is temporarily unable to act due to illness or personal commitments.

- One person to act jointly and severally with the remaining original joint and several attorney if one of your attorneys is unable to act.

I appoint *Joe Bloggs* of *20 Any Street, Any Suburb*

in substitution of *Sarah Bloggs* OR *Jack Bloggs* JOINTLY AND SEVERALLY to be my substitute attorney on the occurrence of the following events or circumstances:

either of my attorneys is unable to act due to death or lack of capacity, or either attorney is temporarily unable to act due to illness or personal commitments.

- Two people as substitute attorneys to act as joint and several attorneys in place of an original sole attorney.

I appoint *Sarah Bloggs* AND *Jack Bloggs* of *20 Any Street, Any Suburb* JOINTLY AND SEVERALLY to be my substitute attorneys in substitution of Joe Bloggs on the occurrence of the following events or circumstances:

my attorney has died or is unable to act due to lack of capacity, or is temporarily unable to act due to illness or personal commitments.

- Two people as substitute attorneys to act as joint attorneys in place of an original sole attorney.

I appoint *Sarah Bloggs* AND *Jack Bloggs* of *20 Any Street, Any Suburb* JOINTLY to be my substitute attorneys in substitution of Joe Bloggs on the occurrence of the following events or circumstances:

my attorney has died or is unable to act due to lack of capacity, or is temporarily unable to act due to illness or personal commitments.

It is also possible to choose to appoint two substitute attorneys in substitution of joint, or joint and several original attorneys. However as this is a more complex substitute arrangement the Public Advocate recommends that legal advice is sought to ensure you complete the substitution section of the form correctly. If you complete this section incorrectly, there could be confusion about who is to act and under what circumstances at any given time, which may make your enduring power of attorney invalid.

Landgate has specific requirements where a substitute attorney, acting in a temporary capacity, is involved in any land transaction eg buying or selling of property, on the donor's behalf.

If your substitute attorney is involved in a land transaction it is recommended that they contact Landgate for advice and information.

1.13 When would my enduring power of attorney come into effect?

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 (this means that 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 has to take over and start making your financial decisions straightaway. You may continue to manage your financial affairs, but know that if you lose capacity, your attorney is able to start making these decisions for you.

1.14 Can I still manage my finances if my enduring power of attorney comes into effect immediately?

If you choose for the power to come into effect immediately both you and your attorney will have legal authority to manage your finances.

However, while you continue to have legal capacity, if you ask your attorney for assistance they must act in accordance with your directions and it will be your responsibility to ensure that your attorney is exercising his or her authority appropriately.

If you believe your attorney is acting inappropriately, you should revoke the power immediately and ensure your attorney no longer has authority to access your financial information or access to make any financial transactions (see part 9).

The advantage of your enduring power of attorney coming into effect immediately is that your attorney can assist you if an illness or disability makes it difficult for you to physically go out and attend to your financial affairs, for example going out to pay bills. It also allows your attorney to assist in circumstances where there is a gradual decline in capacity, or you experience an episodic illness. In this way you continue to be involved in the management of your finances and your attorney can gradually assume more responsibility as your capacity declines, ultimately taking over full management.

Your attorney may experience difficulty where there is no proof of your loss of capacity. This could result in your attorney being unable to prevent you from dealing with your finances, for example accessing your bank account. If this occurs your attorney may need to provide a capacity assessment to relevant institutions to demonstrate that you no longer have capacity to make informed decisions. If this is not sufficient your attorney may need to obtain an order from the State Administrative Tribunal stating that you have lost capacity (see part 7).

1.15 I only want the power to come into effect when I lose capacity, how does this work?

If you choose this option, when your attorney believes you have lost capacity, they will need to make an application to the State Administrative Tribunal for a declaration that states you do not have legal capacity and that the enduring power of attorney is in force. This process is free, but will mean your attorney needs to attend the State Administrative Tribunal hearing and, as part of the application, provide medical evidence of your loss of capacity.

Your attorney must make this application, and have an order from the State Administrative Tribunal saying that the enduring power of attorney is in force, before they can start making decisions as your attorney.

1.16 What if there is doubt about my capacity to continue making decisions for myself?

If there is uncertainty over your capacity to make decisions for yourself, your general practitioner should be asked to make an assessment of your capacity or provide a referral for an assessment of your capacity with an appropriate professional.

If the situation is still unclear, an application should be made to the State Administrative Tribunal which can make a determination about whether you have capacity to make informed decisions for yourself.

1.17 What if there is doubt about my capacity to make an enduring power of attorney?

You must have full legal capacity to make an enduring power of attorney. Doubt about your capacity to make an enduring power of attorney could result in the enduring power of attorney being revoked by the State Administrative Tribunal.

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 to make an enduring power of attorney.

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, is one of the two people who witnesses your enduring power of attorney.

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

1.18 What if I temporarily lose decision-making capacity?

In some situations your ability to make reasoned decisions may fluctuate with the severity of your condition. For example if you have a diagnosed mental illness there may be times when you lack capacity and times when you are well and capable of making your own decisions. If this is likely to apply to you it may be helpful to discuss this with your attorney.

In such circumstances, it would be possible for your attorney to assume decision-making responsibility only during times when you are unable to make decisions for yourself.

1.19 Can I place any restrictions on my attorney?

Section 3 of the enduring power of attorney form allows you to include some conditions and restrictions for your attorney. In simple terms these could be seen as a way of you making some of your wishes known, while you have capacity.

However it is not possible to include any condition or restriction which would in some way prevent your attorney from being able to properly manage your property and financial matters.

An example you could include is:

- Every year my attorney is to take the financial records to an accountant to check and sign off on them. My children are each to be given a copy of the signed records.

It is recommended that if you are considering making any condition or restriction that you seek advice to ensure this will not impact on the ability of your attorney to act properly in the future. This also applies to part 1.20 on gifting.

1.20 I want my attorney to be able to provide money for family presents, how can I do that?

If you lose capacity your attorney will have to manage your money in your best interests. Although there is nothing in the Act to say an attorney cannot give money for presents it can be an area that is difficult for an attorney, as they must always be managing your money in your best interests.

If you have always bought presents for your family for special occasions, you might want to include your wish to continue making such gifts in section 3 of the enduring power of attorney document. For example you might say:

- As long as my funds allow it I would like my attorney to provide up to $50 a year per person on gifts for each of my children and grandchildren.

However, your attorney will always need to make sure that you have enough money to meet all your expenses. If you include a condition about gifting your attorney will have to consider if you have sufficient funds for your own needs before following any stated wish about gifting.

1.21 How much will it cost me to make an enduring power of attorney?

There is no further cost in making an enduring power of attorney using the form in this guide. More copies can be downloaded free of charge from the Office of the Public Advocate's website at www.publicadvocate.wa.gov.au

1.22 Will an enduring power of attorney made in Western Australia be valid interstate and vice versa?

If you move interstate you will need to check with the relevant authority in that State or Territory to find out whether your enduring power of attorney will be recognised.

If you have moved to Western Australia and you want a similar document made in another State or Territory to be valid in this State, you will need to make an application to the State Administrative Tribunal for recognition of that document (see part 7).

If you have full legal capacity when you move interstate, it may be easier to make the equivalent document in that State or Territory.

1.23 Can I make a Western Australian enduring power of attorney if I am overseas?

If you live overseas and have property or finances in Western Australia which you want someone to manage, you may want to make a Western Australian enduring power of attorney.

You can make the enduring power of attorney – using the Western Australian form – wherever you are. However the witnessing requirements interstate or overseas may be different to the requirements in Western Australia. It is recommended that you seek advice in the place where you are making your enduring power of attorney to ensure that you meet the witnessing requirements for the enduring power of attorney.

If you are overseas the Australian consulate may be able to assist in providing this information.

To assist in preventing fraudulent property transactions, Landgate has specific requirements in relation to an enduring power of attorney which is made overseas being used for a property transaction. These requirements include the donor being able to verify their identity when the power is made, and the witnesses to the document being Australian consular officers.

Landgate also has specific requirements for lodging and accepting an enduring power of attorney with Landgate when it has been made overseas. If you want to make an enduring power of attorney overseas it is recommended that you contact Landgate before completing the document (see part 10).

1.24 Do I need to obtain legal advice to make an enduring power of attorney?

The information contained in this Guide, and instructions on completing the enduring power of attorney form, should enable most people to complete their enduring power of attorney independently.

The Public Advocate recommends that you consider obtaining legal advice if you are making a more complicated enduring power of attorney. Examples of a more complicated enduring power of attorney are where you may wish to:

- appoint two attorneys in substitution of joint or joint and several attorneys;
- impose special conditions or restrictions on the decision-making authority of appointed attorney(s);
- nominate unusual or complex events or circumstances upon which substitute attorneys are to be appointed;
- protect assets outside Western Australia;
- appoint a body corporate as your attorney; or
- insert a marksman or read over clause where you do not read, write or understand English (see Appendix C).

1.25 What is the role of the witnesses when I make an enduring power of attorney?

The role of the witnesses is to verify that you signed the document on the date specified. You must sign your enduring power of attorney with both your witnesses present at the time you sign it. Their role is to sign to say they watched (witnessed) you sign the document.

If you do not know the witnesses, for example you go to a Justice of the Peace, it is recommended you take with you some proof of identity as the witness may want to see this before witnessing your document, to confirm that you are in fact who you say you are.

1.26 Who can witness my enduring power of attorney?

You will need two people to witness your enduring power of attorney and both witnesses must be at least 18 years of age and have full legal capacity. One of the two witnesses must be a person authorised to witness statutory declarations under the *Oaths, Affidavits and Statutory Declarations Act 2005* (see Appendix B). The person who is the authorised witness must still be working in the occupation listed in the *Oaths, Affidavits and Statutory Declarations Act 2005.*

The person who is the second witness is not required to be an authorised witness, but cannot be the donor, any person who has signed on behalf of the donor, or any person named as an attorney or substitute attorney.

See part 4.3 for more information on the witnessing requirements.

1.27 Do I need to register my enduring power of attorney?

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

However, if you own property, you may wish to lodge your enduring power of attorney with Landgate. An attorney cannot conduct any transactions on property or land unless the enduring power of attorney has been lodged with Landgate.

1.28 How do I lodge my enduring power of attorney with Landgate?

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

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

Landgate require an original enduring power of attorney to be held on their records. As you may also wish to 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 by completing two identical enduring power of attorney forms at the same time.

When you lodge your enduring power of attorney, you should provide both originals to Landgate. Both originals will be stamped - one will be kept with Landgate and one will be returned to you.

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 before they are able to conduct the property transaction. If this occurs it is recommended that your attorney contact Landgate at the time to obtain the current information on the Landgate requirements for lodging the document (see part 10).

Alternatively if this is not sufficient to lodge the enduring power of attorney at Landgate, the attorney may seek an Order from the State Administrative Tribunal stating that the donor has lost capacity and the enduring power of attorney is in effect. This can then be submitted to Landgate.

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

1.29 Where should I keep my enduring power of attorney?

There is no formal registration process for an enduring power of attorney, although it must be lodged with Landgate before your attorney can conduct a property transaction.

It is recommended that you store your enduring power of attorney in a safe place, possibly with other important documents such as your enduring power of guardianship, advance health directive and your Will – if you have made any of these.

It is essential that you and your attorney know where the original document is stored so that it can be found easily should your attorney need to act on its authority.

1.30 Should I give copies of my enduring power of attorney to anyone else?

As an enduring power of attorney is a private document it is up to you to decide who you want to give a copy to.

The Public Advocate recommends that you make certified copies of your enduring power of attorney and provide them to your attorney, your enduring guardian, any relevant family members, friends and financial institutions.

A certified copy is a document that is certified as being a genuine copy of the original, by a person who is authorised to sign legal documents. The person certifying your copy will need to sight your original document (see Appendix A).

If you do decide to give copies to other people you may wish to keep a list of those people. This will assist people if they need to find a copy of the enduring power of attorney in the future. It will also be useful if you decide to revoke the enduring power of attorney as you will be able to check that you have got all the copies back.

1.31 What happens if I decide not to make an enduring power of attorney and I lose capacity?

It is your choice whether or not you make an enduring power of attorney. If you decide not to make an enduring power of attorney and at some stage during your life there is concern about your capacity to manage your property and finances, someone involved in your life will be able to lodge an application for an administration order to the State Administrative Tribunal (see part 7).

The person appointed under an administration order will have the same responsibilities as an attorney, however the decision about who will be appointed will be made by the State Administrative Tribunal.

The administrator will be required to submit annual accounts to the Public Trustee for auditing. The Public Trustee has a private administrator's support team that provides information, support and training to private administrators.

The Telephone Advisory Service of the Office of the Public Advocate may be contacted for information and advice about the possible need for an administrator and how to apply to the Tribunal.

1.32 Other planning documents

1.32.1 What is an enduring power of guardianship?

An enduring power of guardianship is a legal document that enables you to appoint a person of your choice to make important personal, lifestyle and treatment decisions on your behalf should you ever lose capacity and become incapable of making these decisions for yourself. This person becomes your enduring guardian.

1.32.2 Why make an enduring power of guardianship?

By appointing an enduring guardian you will be giving a person you know and trust the authority to make personal, lifestyle and treatment decisions on your behalf, if you become unable to do so in the future due to a decision-making disability. This may be caused by illness, accident or trauma.

1.32.3 What is an advance health directive?

An advance health directive is a legal document that allows you to make a treatment decision in advance. That can be a decision to provide or withhold consent for specific health care, medical, surgical or dental treatment or procedures including life-sustaining measures and palliative care.

An advance health directive would come into effect only if you lost the capacity to make decisions for yourself.

1.32.4 Why make an advance health directive?

If you require treatment but were unable to make decisions about or communicate your wishes regarding your treatment, your advance health directive would speak for you.

Health professionals would have to refer to your advance health directive even if you had an enduring guardian because by law an advance health directive has priority over the authority of an enduring guardian.

1.32.5 How can an enduring power of attorney and enduring power of guardianship help me plan for the future?

Making an enduring power of attorney and an enduring power of guardianship can give you some control over how decisions are made for you in the future if you ever lose capacity.

The authority of the person appointed under each power is very different. Under an enduring power of attorney your attorney is only authorised to make property and financial decisions. Under an enduring power of guardianship your enduring guardian is only authorised to make personal, lifestyle and treatment decisions.

It is up to you to decide which, if any, of the powers you wish to make but if you want to ensure future decision-making in all areas of your life is covered you may wish to make both enduring powers.

2 The functions of an attorney

2.1 What decisions can an attorney make?

An attorney can make decisions about property and financial matters only.

This can involve decisions about day-to-day budgeting, banking, investments, and decisions about the purchase or sale of property and any other matters which arise in relation to your financial affairs.

2.2 Is there anything an attorney cannot do?

An attorney cannot:

- do any act requiring the donor's personal skill or discretion, for example:
  - swear an affidavit or make a statutory declaration,
  - make a Will,
  - vote, or,
  - where the donor is a trustee or executor, the attorney may not exercise his or her powers as trustee or executor;
- do any act which is illegal or which has an unlawful purpose;
- deal with any property held in trust by the donor (unless the Trust Deed allows this);
- perform the functions of a director or secretary of a company on behalf of the donor unless authorised by the constitution of the company;
- appoint a substitute attorney; or
- dispose of assets at less than market value when this is not in the donor's best interests.

An attorney is not authorised to make personal, lifestyle and treatment decisions. If you wish to give someone authority to make personal, lifestyle and treatment decisions on your behalf, you will need appoint an enduring guardian by completing an enduring power of guardianship (see part 1.32).

3 Making an enduring power of attorney

3.1 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 to make an enduring power of attorney.

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, is one of the two people who witnesses your enduring power of attorney.

If you are assessed as not having capacity, you will be unable to make an enduring power of attorney. If this is the case and there is a need for a substitute decision-maker to be appointed to make your property and financial decisions, an application for the appointment of an administrator can be made to the State Administrative Tribunal (see part 7).

3.2 Can someone else appoint an attorney for me?

Making an enduring power of attorney is an individual choice, and no one can make an enduring power of attorney on behalf of another person, under any circumstance.

If a person has lost capacity and property and financial decisions need to be made, it may be necessary to make an application to the State Administrative Tribunal for the appointment of an administrator (see part 7).

3.3 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. For more information about what to consider when choosing your attorney see parts 1.5 and 3.7.

You may choose to appoint your spouse or de facto partner, a family member or a friend as your attorney. Alternatively you may choose to appoint a professional such as an accountant or a trustee company. This could be a private trustee company or the Public Trustee. As conditions will apply in appointing the Public Trustee it is recommended that you contact the Public Trustee's Office to discuss this (see part 10).

If appointing a professional or trustee company you may wish to consider the fees they will charge in managing your financial affairs.

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

3.4 Can I appoint someone who does not live in Western Australia?

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. It is important that they should be easily contactable to be able to make decisions in a timely way.

3.5 How do I appoint an attorney?

To appoint an attorney you must complete an enduring power of attorney form and to be legally enforceable, this form must meet the legal requirements set out in the legislation. The enduring power of attorney form at the back of this guide meets these requirements.

Step-by-step instructions on how to complete the form can be found at part 4 of this guide.

3.6 Why are there two copies of the form in this guide?

There are two copies of the enduring power of attorney form in this guide to enable you to meet the requirements to lodge your enduring power of attorney at Landgate.

For your attorney to carry out a land transaction your enduring power of attorney must be lodged with Landgate. If you have property you may wish to lodge your enduring power of attorney with Landgate (see part 10).

When you lodge your enduring power of attorney Landgate will keep one original document in their records. By completing two original documents you will also be able to have an original for yourself.

The two documents must be completed at the same time, appointing the same attorney, with the same witnesses to be identical originals.

If you wish to give copies of your enduring power of attorney to other people, you should make certified copies so that you keep the original document yourself (see Appendix A).

3.7 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 ask the following questions:

- 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 (as my attorney) will have the power to make my 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.

3.8 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 should 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 if a marksman or readover clause needs to be included in your enduring power of attorney.

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

3.9 Can I give directions about how I want my attorney to manage my affairs?

While it is possible to include conditions and restrictions on the authority of your attorney(s), this requires careful consideration.

The conditions or restrictions included, if any, will be related to your circumstances. Examples of conditions or restrictions may include:

- that your attorney provides copies of all records and accounts to your family or specified family members, during the period of legal incapacity;
- that records and accounts be audited professionally on an annual basis;
- that gifts, if any, be made to specified persons only;
- that an annual limit be placed on the value of the gifts; or
- that assets be sold in a specific order in accordance with the demonstrated need of the donor.

The Public Advocate recommends that you seek legal advice if you are considering including conditions and restrictions, particularly where the estate is large or complex and where the conditions and restrictions you wish to include in your enduring power of attorney seek to direct your attorney on how to act in relation to the management of specific aspects of the estate.

It is not possible within the conditions or restrictions section to:

- make provision for the appointment of substitute or conditional attorneys;
- specify the powers which your attorney is authorised to exercise;
- elect the time at which your enduring power of attorney comes into operation (as this must be stated by your choice at section 4 of the form); or
- authorise payment of fees and expenses to your attorney.

3.10 What happens if my attorney loses capacity or dies?

When you complete your enduring power of attorney, you can if you wish, appoint a substitute attorney who can take over the role if your attorney loses capacity or dies.

If you do not appoint a substitute attorney and your attorney loses capacity or dies, provided you still have full legal capacity you can make a new enduring power of attorney.

If you have not appointed a substitute and you no longer have capacity it may be necessary for an application to be made to the State Administrative Tribunal for the appointment of an administrator (see part 7).

3.11 Have I got it right? My final checklist for choosing an attorney

When selecting an attorney, consider the following questions:

- ☐ Is this person someone I trust to:
  - consider my wishes
  - make the decisions I would be likely to make in the same circumstances
  - always act in a manner that is in my best interests?
- ☐ Will this person be easy to contact to ensure that decisions can be made in a timely manner?
- ☐ Could my choice of attorney cause conflict within my family? If so, is there someone else more suitable for the role?
- ☐ Is this person likely to have the time and ability to carry out the role of attorney?
- ☐ Is this person likely to be willing to take on such decision-making responsibilities?
- ☐ If I am appointing joint or joint and several attorneys, could these people work together to make decisions on my behalf?

4 Completing an enduring power of attorney form

4.1 Completing clauses 1 – 4

These instructions refer to the form at the back of this guide. If you use a different version of the enduring power of attorney form (for example, a form provided by a solicitor) some details on the form may differ.

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', 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** (ie 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', 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** (ie 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', then cross out and initial the two sections above (which are titled 'sole attorney' and 'joint attorneys').

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, 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 of), 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 cross out and initial the section above titled 'Sole substitute attorney'.

If you want your substitute attorneys to **act jointly** (ie have to act together and agree on all decisions), cross out and initial the words 'JOINTLY AND SEVERALLY'.

OR

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

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**, cross out and initial this section.

4 Choosing when your enduring power of attorney starts

If you want your **attorney's power to start immediately** (ie as soon as you have completed the form and had it appropriately accepted and witnessed), **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 and have them declare that you have lost capacity, before they can start acting as your attorney.

You must complete this section or your enduring power of attorney will be invalid.

4.2 Signing the enduring power of attorney form

You (the donor), must sign the 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 if this is the case.

See part 1.23 for the Landgate verification of identity requirements if you are making your enduring power of attorney overseas.

4.3 Witnessing the enduring power of attorney

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

Both witnesses must:

- be present when you sign the document
- 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 (ie 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 occupation (if the authorised witness).

See part 1.23 for the Landgate witnessing requirements if you are making your enduring power of attorney overseas.

4.4 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 your attorney(s) sign as soon as possible **after** you have completed and signed your enduring power of attorney. The attorney(s) **must not** sign and date the form until you (the donor) have completed making the enduring power of attorney. This can be on the same day you make the enduring power of attorney but **cannot** be accepted and dated before you make the 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 enduring power of attorney 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 enduring power of attorney 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.

4.5 Have I got it right? My final checklist for completing an enduring power of attorney form

To ensure you have completed your enduring power of attorney form correctly, you must:

- ☐ be at least 18 years of age and have full legal capacity
- ☐ have nominated only people as attorney(s) and substitute attorney(s) who are at least 18 years of age and have full legal capacity
- ☐ have used the form at the back of this guide or a form which meets the legislative requirements
- ☐ have provided the full names and current residential addresses of your attorney(s) and substitute attorney(s)
- ☐ have completed all sections of the form as required and crossed out and initialled clauses that do not apply to your situation
- ☐ have completed clause 4 to make the choice of when you want your enduring power of attorney to come into effect
- ☐ have stated conditions or restrictions your attorney(s) are to follow OR crossed out and initialled clause 3 if you do not want to state any conditions or restrictions
- ☐ have signed the form, including any pages you have added to your enduring power of attorney, with your usual signature or have followed the terms of a marksman or readover clause (see **Appendix C)**
- ☐ have considered signing and having witnessed, the first two pages of the enduring power of attorney in the space provided (optional)
- ☐ have had two eligible witnesses (see **Appendix B**) present when you signed the enduring power of attorney or when it was signed using a marksman or readover clause
- ☐ have had two eligible witnesses sign and date the form
- ☐ have had one witness state their qualifications as an authorised witness
- ☐ have had all attorney(s) and substitute attorney(s) accept the appointment by completing the acceptance section of the form

5 Becoming an attorney

5.1 What should I know about the role?

Being an attorney is a voluntary role. As an attorney you would have legal authority to make property and financial decisions on behalf of another person (the donor).

You may be asked to do this only if they ever lost the ability to make those decisions for themselves, or you may be asked to do this while they still have capacity.

The person making the enduring power of attorney decides when they want your role to start. You should ensure you are aware of the choice the person has made by looking at clause 4 on the enduring power of attorney form.

In making decisions you are legally required to act in the donor's best interests at all times.

If you no longer wanted to act as an attorney you would need to resign or be discharged from the role. How you did this would depend on whether or not the donor still has capacity (see part 9).

5.2 Should I accept the role?

Never accept an appointment as attorney unless you are sure the donor has full legal capacity. If you are unsure about the capacity of the donor (the person wishing to appoint you as their attorney), you might want to suggest they have a capacity assessment to confirm they have the capacity to make an enduring power of attorney (see part 1.16).

Other questions you should ask yourself before deciding whether to accept an appointment as someone's attorney include:

- Do I know the donor well enough to make decisions that would be in line with their wishes and beliefs, and the decisions they would make for themselves?
- Do I have a good understanding of the donor's finances?
- Do I know how to gain information about the donor's property and finances including investments?
- Do I have a good understanding of how to maintain records of expenditure, in case I am ever required to produce these records?
- Do I understand what I would be required to do and am I confident I could carry out the role?
- If I am being asked to be appointed as a joint attorney, can I work with the other attorney to make decisions in the donor's best interests?

- If I am being asked to be appointed as a joint and several attorney, can I work effectively with the other joint and several attorney to ensure we make decisions in the donor's best interests?
- If the donor has made an enduring power of guardianship, can I work with their enduring guardian?
- Has the donor given me copies of, or advised where they store, other documents relevant to decision making such as their enduring power of guardianship and advance health directive (if they have made these powers)?
- Do I understand the obligations that I have as an attorney?

5.3 How do I accept?

To accept an appointment as an attorney you must complete the section of the enduring power of attorney form entitled "acceptance of an enduring power of attorney". This should only be done after the donor has fully completed their enduring power of attorney, and when you date your acceptance the date must be on or after the date on which the donor completed the power.

It is not necessary for all parties to be present when the donor signs the form, or to all be present when the acceptance is signed. However, the enduring power of attorney will not be fully completed until all parties have signed the relevant sections.

When accepting the appointment, you must ensure that you have acknowledged when the power is to commence. This is done by selecting either clause (a) or (b) which is the same as the donor selected when they completed section 4 of the form.

Therefore, if at section 4 of the form, the donor selected clause (a) stating the power: "will continue in force notwithstanding my subsequent legal incapacity", when you as the attorney accept the authority, you must strike out (b) in the acceptance section of the form.

5.4 What are the obligations that I accept when I sign the acceptance?

Your obligations as an attorney are clearly set out at section 107 of the *Guardianship and Administration Act 1990.* They state that:

- you must exercise your power with reasonable diligence to protect the interests of the donor (you will be liable for any loss caused if you fail to do this);
- you must keep and preserve accurate records and accounts of all dealings and transactions made under the power (there is a financial penalty for breaching this requirement);
- you must make an application to the State Administrative Tribunal if you no longer wish to act and the donor has lost capacity; and
- if you become bankrupt you must report that bankruptcy to the State Administrative Tribunal.

5.5 When would I act in the role?

When the donor completes the enduring power of attorney form, they decide when you will begin in the role. This decision is made at section 4 of the form where there are two options:

4(a): If this clause applies (ie the donor has struck out 4(b)) you have immediate authority to make property and financial decisions on behalf of the donor.

When acting as attorney while the donor still has capacity, you must follow any directions and instructions from the donor.

4(b): If this clause applies (ie the donor has struck out 4(a)) you only have authority to act when, and if, the donor loses decision-making capacity. In order to start acting in the role, you must make an application to the State Administrative Tribunal for an order stating that the donor has lost capacity (see part 7) and that the enduring power of attorney is in force.

Whenever the power comes into effect, your authority as attorney is always subject to any conditions and restrictions which have been specified in section 3 of the enduring power of attorney and you are subject to the directions of the donor while he or she retains capacity.

It is important that you make sure you are familiar with how the enduring power of attorney has been completed to ensure you only act when authorised.

5.6 What should I do if I am unsure about the donor's capacity?

If you are unsure if the donor has lost capacity and therefore whether you should start acting as their attorney, you might, in the first instance, suggest that they have an assessment of capacity by their general practitioner, or that they ask their general practitioner to refer them to a specialist who can assess capacity.

Ultimately if you are still in doubt you can make an application to the Tribunal which can make an order stating whether the person has capacity, and whether the enduring power of attorney should be in force. This will give you the reassurance that you are entitled to act in the role.

If clause 4(b) applies you must make an application to the State Administrative Tribunal for an order stating the person has lost capacity and the enduring power of attorney is in force (see part 5.5 and part 7).

5.7 What kind of decisions would I make as attorney?

An attorney is authorised to make decisions in relation to the management of the donor's property and finances.

5.8 How must I act as an attorney?

As an attorney, you are entrusted under the Act to manage and protect the donor's property and financial interests. The actions which you take when using this power have significant implications for the donor's financial well-being.

It is important that wherever possible, you discuss financial decisions with the donor. Even when a person has lost capacity to manage their property and finances, they may still be able to provide a view about what they would like to occur and as the attorney, you can consider the donor's view when making decisions in their best interests.

Case study

Issue	Some assets need to be sold to pay for extra support services to enable the donor to remain living at home.
Function	Attorney has full authority in relation to financial decision-making.
Decision to be made	Which assets to sell.
Consultation with donor	The donor advises that he has left his vintage car to his son in his Will as even though he can no longer drive, his son takes him out in the car regularly.
Decision made by attorney	The attorney makes an inventory of the donor's assets, and works out an approximate value. He then works out the amount needed to pay for the extra services. The donor has enough to pay for the extra services without the car being sold. The attorney sells the assets, except the car, and deposits the money in an online savings account. This provides money to pay for services, and the account accrues interest.

If the donor has joint attorneys both would need to be involved in the decision-making process and agree on the decision.

The Public Advocate recommends that you manage the finances in a way which allows the donor the greatest degree of autonomy possible in their particular circumstances. For example, you may provide the donor with a weekly allowance which they can use for small items, while you manage the rest of the finances. This allowance may be paid in cash or as a deposit into an account which the donor can access. This allows the donor a degree of financial independence while their assets are protected, and they are protected from financial exploitation or abuse.

As attorney you are legally obliged to act in the best interests of the donor and manage their estate responsibly, while also ensuring that the donor enjoys as good a standard of living as his or her estate can provide. While there are no compulsory annual reporting requirements under the Act, you are responsible for your actions and for making prudent financial decisions.

5.9 What information should I record when I first act in the role?

To be able to carry out the role of attorney effectively, it is essential that you have a good understanding of the nature and extent of the person's property and financial matters. It may be useful to discuss this with the donor prior to them losing capacity. This will enable you to have a good understanding of their financial situation, wishes and arrangements before you start acting in the role.

The Public Advocate recommends that once it is determined that the donor has lost capacity and you as attorney have full responsibility for property and financial decisions you ascertain the nature and extent of the donor's assets as soon as possible, if you have not done this earlier. This would include identifying and recording any assets including property, bank accounts and investments. It is also essential to find out about any liabilities to the estate including loans and regular bill payments.

Having this information will provide you with the basic information which you need to make financial decisions within the person's means.

As attorney you may be required to make decisions in a range of areas including:

- general expenditure of the donor's funds;
- purchase, sale, lease, maintenance or improvement of property;
- payment of debts;
- investments;
- arrangement and payment of insurance;
- operation of bank accounts;
- receipt of income;
- management of the donor's business interests;
- share voting rights;
- entering into, completing or terminating contracts;
- taxation;
- Centrelink entitlements.

Having a good understanding of the donor's financial arrangements will assist in good financial management.

5.10 What will affect my decisions?

There are a number of factors that may affect the decisions you make as attorney, such as:

- recommendations made by an enduring guardian appointed under an enduring power of guardianship or a guardian appointed by the Tribunal;
- any conditions or restrictions in clause 3 of the enduring power of attorney
- the donor's immediate and long term needs;

- the views of the donor, enduring guardian, guardian, family members and other interested parties;
- the current financial situation of the donor;
- lifestyle choices made by the donor, for example, religion and customs;
- the donor's family commitments; and
- the need for specialist advice, for example, from a lawyer, accountant or stockbroker.

This list is not exhaustive and attorneys will always need to take into account the specific circumstances of the donor when making decisions.

5.11 Do I need to know about the donor's Will?

There is no requirement for the attorney to have a copy of, or be aware of the contents of, the donor's Will. Like an enduring power of attorney this is a private document and the maker will have decided who should have a copy.

The role of the attorney is to manage the donor's money in their best interests while they are alive. The decisions you make should be based on using the donor's estate to maintain their lifestyle and to ensure they have the support and services they require during their lifetime.

Although there is no legal requirement to do so, you may wish to discuss with the donor prior to loss of capacity if they are wishing to leave particular sentimental belongings to particular people. You may use this information in future decision-making however, ultimately if all assets have to be sold to maintain the donor's lifestyle this should be the priority.

5.12 Can I get any instructions if I am not sure what to do as attorney?

It is possible for you, as the attorney, to apply to the State Administrative Tribunal for directions about how you should act in particular circumstances. For example, you may seek clarification about whether you have the authority to sell the donor's property; or you may want to obtain a ruling on how a condition or restriction in the enduring power of attorney is to be interpreted.

However, it is not the role of the State Administrative Tribunal to make decisions for you. For example, the Tribunal cannot order you to sell the donor's property, but they can clarify your authority to do so. Subsequently you are responsible for making the decision about proceeding with the sale.

Similarly an attorney contemplating extensive gifting, where it could be considered this is not in the best interests of the donor, may seek direction from the Tribunal in relation to such a proposal.

5.13 Should I have a separate bank account to the donor?

The Public Advocate recommends that in the interests of good accounting practices and to protect you from allegations of exploitation, funds belonging solely to you should not be mixed with those of the donor and vice versa. However, it is acknowledged that in cases where existing bank accounts are held jointly by you and the donor, for example as husband and wife, this may not be practical.

In these circumstances you may wish to commence in your role by identifying the proportion of money belonging to the donor, and identify the income of the donor. In recording expenditure you would be responsible for identifying how the donor's money was spent in their best interests.

5.14 How should I record financial transactions?

As attorney you are legally required to keep accurate records of financial transactions, even though accounts are not routinely audited. Therefore it is recommended that you establish a process of financial record keeping, and ensure the records are kept up to date.

This is important as, while there are no annual reporting requirements, you may be required to present accounts to the Tribunal if anyone ever has concerns about the management of the donor's finances.

5.15 How should I record the property and financial decisions that I have made?

While it is not a legal requirement for accounts to be audited, or for the attorney to record how and why particular decisions were made, the Public Advocate recommends that you keep details of any decisions you make, including how each decision was reached.

For example, when you make a decision you could note:

- the decision (what property or financial decision was made, whether other options were available and if so, why you chose a particular option)
- the date the decision was made
- the names of any professionals or other persons you consulted in the process
- the main reason/s for making that decision.

These records can be important if decisions are ever questioned, or if another party with an interest in the matter makes an application to the Tribunal.

5.16 What do I do if there is conflict between myself and other interested parties?

At times, conflict may arise between you in your role as attorney and other interested parties (for example, guardians, carers, friends or relatives) in relation to the management of the donor's property and finances. In these circumstances, it is suggested that all efforts be made to resolve the issues in the best interests of the donor and with as little disruption as possible to his or her lifestyle.

If you want to discuss an individual matter regarding conflict with interested parties and how the situation might be resolved, you can call the Office of the Public Advocate's Telephone Advisory Service. The advisory officer cannot tell you what to do but may be able to assist in suggesting how to explore the matter.

While conflict or disagreement with other parties does not prevent you from carrying out your role and exercising your authority as attorney it may strain relations with family or friends or put stress on the donor. Therefore, if it is not possible to resolve the conflict and the conflict is impacting on your ability to make decisions you may wish to apply to the Tribunal for direction or to be discharged from the role.

5.17 Can I give presents or gifts using the donor's money?

The Act does not make provision for you (as attorney) to make gifts from the estate of the donor. However, the Tribunal has previously made a decision that as an attorney, you are not prevented from making a gift on behalf of the donor (unless the enduring power of attorney prohibits gifting). When looking at gifting you must be directed by your duties and obligations to the donor and, in particular, must consider whether the giving of the gift is in the best interests of the donor.

Some factors you might want to consider when making this decision are:

- the relationship between the donor and the beneficiary of the gift;
- the purpose of the gift;
- the extent of the donor's estate;
- the needs of the donor and any other person dependent on the donor;
- the likelihood of the donor making the gift if he or she had capacity;
- the attitude of those with a similar relationship to the donor who have not had a gift.

You must also comply with any conditions or restrictions in the enduring power of attorney.

It would be unusual for an attorney to make a gift to himself or herself from the estate of the donor. This could lead to significant problems for the attorney and it is recommended that an attorney considering making a gift to him or herself seeks advice about this action.

If you are in doubt about gifting from the estate of the donor, you should consider applying for directions from the Tribunal.

5.18 Can I claim expenses?

The Act does not say anything about the payment of fees and expenses for attorneys. The payment of fees and expenses therefore, is governed by common law. Under common law, you are only entitled to receive payment for your services as attorney, where there is a contract, express or implied, in relation to payment.

Therefore if there is a contract between you and the donor, where you agree to perform the duties of attorney in return for the payment of fees for your services, you are entitled to such payment.

Where the fees are not specified, you will be entitled to reasonable remuneration in accordance with the circumstances of the case. If you are not clear about what level of fees to charge you may wish to consider an application to the Tribunal in relation to fees.

Where there is no express agreement about the payment of fees, if you are a professional person and have been appointed as attorney in the capacity of your profession (rather than because you are a close family member or friend), there may be a presumption that you will be paid for your services. In this situation you may wish to consider an application to the Tribunal in relation to fees.

However, an attorney is entitled to reimbursement for expenses they incur in carrying out the role. This entitlement exists whether you are acting in a professional capacity or are a family member or friend who has been appointed as attorney. For example, if the donor requires residential care and you drive to visit several facilities to assist in choosing the appropriate facility you could claim for petrol expenses, but you could not claim for your time.

5.19 What should I do if the donor is involved in legal proceedings?

The Public Advocate recommends that if the donor is involved in any legal proceedings, legal advice should be sought to determine if the attorney has sufficient authority to act in the legal proceedings or if an administration order is required.

5.20 How do I sign for the donor?

When you exercise your authority as attorney on behalf of the donor, you should sign documents in your own name as "Attorney for (insert *the donor's name*)".

For example: *Joe Bloggs*
Attorney for Rita Smith

5.21 How do I sign for the donor for a property transaction?

If you need to sign for the donor to conduct a property transaction Landgate require more information, including that you note the enduring power of attorney (EPA) document number and have a witness to your signature.

You should sign documents as follows:

Signed by: Joe Bloggs
As attorney for Rita Smith

Signature: *Joe Bloggs*

EPA Number: *0000*

In the presence of Sarah Jones

Signature: *Sarah Jones*

Full name:

Address:

Authority to witness:

If you need further information about how to sign for a property transaction it is recommended that you contact Landgate (see part 10).

5.22 Do I continue to act after the donor dies?

The death of the donor automatically ends the enduring power of attorney and therefore your authority as attorney. You must stop using the enduring power of attorney once you become aware that the donor has died. At this time, the executor of the Will would normally take over in gathering information about monies owed by, or to, the estate.

You may also be appointed as the executor of the donor's Will. However in managing the affairs after the donor's death you will be acting under the authority of the Will and not the enduring power of attorney.

5.23 Do I have a responsibility to secure the estate on the death of the donor?

As attorney you are responsible for the management of the donor's finances while they are alive.

While not specifically required in the *Guardianship and Administration Act 1990* it would be expected that as an attorney you would ensure that the estate was secure following the death of the donor, and hand over matters to the executor of the Will.

If there is no Will the *Administration Act 1903* states how a person's property is to be divided. It will be necessary for an interested party to apply to the Probate Office of the Supreme Court for 'letters of administration' to settle the estate of the deceased person. An attorney has no authority to disburse the donor's estate, dispose of assets or gift belongings to family members after the donor has died.

More information on what how to proceed where there is no Will is available from the website of Legal Aid WA: www.legalaid.wa.gov.au and the website of the Public Trustee: www.publictrustee.wa.gov.au

6 Information on witnessing

6.1 Should I agree to be a witness if I am not sure the person has capacity?

While the role of the witness is not to assess capacity, the Public Advocate recommends that witnesses should decline to witness the enduring power of attorney if there is any doubt about the donor's capacity to understand what is being signed.

In these circumstances, the witness may suggest that the donor obtains a capacity assessment and provide this to the witness before they agree to witness the enduring power of attorney.

6.2 Should I agree to be a witness if I believe the person may be under duress to make the enduring power of attorney?

The Public Advocate recommends that the witness may also decline to witness the enduring power of attorney if the donor appears to be signing the enduring power of attorney under duress or under the influence of others.

If the witness is concerned about the donor being coerced to make the enduring power of attorney they may wish to talk to the donor alone to confirm they wish to make the enduring power of attorney.

If the witness believes the donor is under duress, and possibly vulnerable to financial abuse and/or financial exploitation they may wish to contact the telephone advisory service of the Office of the Public Advocate to discuss their concerns before proceeding (see part 10).

6.3 Witnessing when the donor lives overseas or interstate, with property in Western Australia

There are situations where people who are overseas or interstate have property in Western Australia and wish to complete a Western Australian enduring power of attorney. Selecting people qualified to witness an enduring power of attorney overseas and interstate is affected by the location where the enduring power of attorney is to be signed. If you are not in Western Australia when you make your enduring power of attorney, you should seek advice about who can witness documents in the place where you are making the enduring power of attorney.

As stated at part 1.23 Landgate have specific requirements in relation to the witnessing of an enduring power of attorney made overseas. It is recommended that you contact Landgate to ensure you meet these requirements or your enduring power of attorney may not be considered as a valid document by Landgate. This would mean that your attorney would be unable to conduct a land or property transaction.

7 Intervention by the State Administrative Tribunal

7.1 What is the role of the State Administrative Tribunal in enduring powers of attorney?

The State Administrative Tribunal has no role in the appointment of an attorney, but can intervene in the operation of an enduring power of attorney if there is a dispute over:

- the capacity of the donor
- the operation of the enduring power of attorney (is the attorney acting properly)
- the authority of the attorney.

In these circumstances the person or organisation with a concern can make an application to the State Administrative Tribunal. This enables the Tribunal to organise a hearing to consider the issues which have been raised.

The Tribunal may ask the Public Advocate to investigate and report back about concerns raised in an application. The Tribunal would then use this information to assist it in making its decision.

In relation to the operation of enduring powers of attorney, the Tribunal can:

- declare a donor to be incapable of making reasonable judgements in relation to property and financial matters (therefore declaring the enduring power of attorney to be in force)
- revoke a declaration that a donor is incapable of making reasonable judgements in relation to property and financial matters (meaning the donor regains authority to make financial decisions)
- give directions about the operation of an enduring power of attorney or how the terms of an enduring power of attorney should be interpreted
- revoke or vary the terms of an enduring power of attorney.

In relation to an attorney, the Tribunal can:

- appoint a substitute attorney or confirm that a substitute attorney has become the attorney;
- require the attorney to file records of accounts and all transactions with the Tribunal
- require accounts to be audited and a copy of the auditor's report be provided to the Tribunal.

The Tribunal can also recognise a similar document that has been made outside Western Australia as the equivalent of a Western Australian enduring power of attorney, provided it meets Western Australia's legislative requirements.

If the State Administrative Tribunal makes an order recognising an interstate power it is recommended that the attorney contact relevant financial institutions in relation to their requirements to accept this document. For example an attorney may need to show a bank the original interstate power and the Tribunal's order before being authorised to act. The bank may keep a certified copy of both documents to record the authority of the attorney.

Landgate should also be contacted regarding their specific requirements in relation to accepting the document (see part 10).

7.2 Who can apply to the Tribunal to intervene in an enduring power of attorney?

Anyone with a proper interest can apply to the Tribunal for a decision about any aspect of an enduring power of attorney or the actions of an attorney.

While the Tribunal will decide whether a person has a proper interest a donor, an attorney, or substitute attorney would generally be considered to have a proper interest. Others who may have an interest include family members, friends, service providers and financial institutions.

A donor may apply to the Tribunal, even if he or she has lost capacity.

If you have been appointed as an attorney and are unable to continue in your role for any reason, if the donor has lost capacity you must apply to the Tribunal to be discharged from the role.

However if the donor still has capacity it would be simpler to advise them in writing that you no longer wish to act and at the same time return any copies of the enduring power of attorney and any financial records you may hold.

7.3 When might an interested party need to apply to the Tribunal?

Circumstances when it may be necessary for someone to make an application to the Tribunal in relation to an enduring power of attorney, include:

- where there are concerns about the execution of the document, and the donor has lost capacity
- where there are concerns about the actions of the attorney

The Tribunal can act to ensure the enduring power of attorney operates in the best interests of the donor.

Where genuine concerns are held about the actions of the attorney the Public Advocate recommends that for the immediate protection of the donor with a decision-making disability, it may also be necessary to take steps to inform relevant persons or bodies of concerns held, for example a bank manager or real estate agent. These agents can then determine if they need to act to protect the person's assets.

7.4 What does it cost to apply to the Tribunal?

There is no cost for lodging an application with the Tribunal or for the Tribunal to hold a hearing.

7.5 How do I apply to the Tribunal?

The forms needed to make an application are available on the Tribunal's website www.sat.justice.wa.gov.au or can be obtained by contacting the Tribunal (see part 10).

There are a number of different applications in relation to an enduring power of attorney. It is recommended that you contact the Tribunal to discuss the purpose of the application to enable the correct application form and supporting documents to be sent to you.

If you are unsure if you should make an application about the operation of an enduring power of attorney, you can discuss your concerns with an advisory officer from the Office of the Public Advocate's Telephone Advisory Service on 1300 858 455.

7.6 When does a decision made by the Tribunal come into force?

A decision made by the Tribunal can come into force at the time it is made, or at a time specified by the Tribunal. Under the Act, the Tribunal may backdate the time from which an order takes effect.

7.7 Can Tribunal decisions be appealed?

Interested parties may appeal a decision made by the Tribunal. Information on the appeals process can be obtained from the Tribunal at the end of the hearing, or can be found on the Tribunal's website www.sat.justice.wa.gov.au

8 Investigative role of the Public Advocate

8.1 Who is the Public Advocate?

The Public Advocate is an independent statutory officer appointed under section 97 of the *Guardianship and Administration Act 1990* to protect and promote the human rights of adults with a decision-making disability and to reduce their risk of neglect, exploitation and abuse.

8.2 What authority does the Public Advocate have to investigate concerns about enduring powers of attorney?

The Public Advocate is authorised under section 97(1)(c) of the Act to investigate any concern or allegation that a person is in need of a guardian or administrator.

If you believe an attorney is not acting in the best interests of a donor, or may be abusing the donor, you should contact the Office of the Public Advocate's Telephone Advisory Service on 1300 858 455 to discuss your concerns.

The Office of the Public Advocate may conduct an investigation or refer you to the Tribunal. The Tribunal can also refer matters before it to the Office of the Public Advocate for further investigation.

If it appears that a criminal offence has been committed, the Public Advocate will refer the matter to the Western Australian Police.

9 Revoking/Renouncing an enduring power of attorney

9.1 Why might an enduring power of attorney end?

An enduring power of attorney might end because the person who made it no longer wants to have it in place, or the person they appointed no longer wishes to be the attorney or is no longer able to be the attorney.

An enduring power of attorney will automatically end on the death of the person who made it. At that point the provisions of the person's Will take over.

9.2 How can I (the donor) revoke my enduring power of attorney?

To revoke your enduring power of attorney, you must have full legal capacity.

The Act does not specify any requirements for the revocation of an enduring power of attorney by a donor. Revocation is governed by common law.

However a revocation is not in effect until the attorney has been advised by you (the donor) that the enduring power of attorney is revoked.

The Public Advocate recommends that the donor give written notification of the fact they are revoking their enduring power of attorney to:

- all attorneys and substitute attorneys. They should be asked to return all copies of the completed enduring power of attorney form, so that they can be destroyed.
- any financial institutions where the enduring power of attorney has been lodged. They should be asked to return any copies of the enduring power of attorney which they hold.
- any other people or organisations who have been given a copy of the enduring power of attorney, asking that they return the copies to the donor.

If the donor is going to make a new enduring power of attorney it is recommended that a copy of the revocation is kept with the new enduring power of attorney.

Landgate has specific requirements for the revocation of an enduring power of attorney which has been lodged with Landgate. For further information on these requirements contact Landgate (see part 10).

9.3 What if an attorney wants to resign and the donor has capacity?

If an attorney is no longer willing or able to act on the donor's behalf and the donor has capacity, the attorney may renounce the authority given to him or her under the enduring power of attorney. The Public Advocate recommends that the attorney tells the donor that he/she no longer wishes or is no longer able to accept the role of attorney in writing. At the same time the attorney should return to the donor any copies of the enduring power of attorney and other personal records in their possession.

9.4 What if an attorney wants to resign and the donor has lost capacity?

In these circumstances the attorney has an obligation to ensure there is a process in place to manage the donor's financial affairs, since the donor can no longer do this.

The attorney must make an application to the State Administrative Tribunal for an order revoking the enduring power of attorney and for the appointment of an administrator.

9.5 What if an attorney dies or loses capacity after the donor has lost capacity?

In these circumstances any person who has a proper interest can make an application to the State Administrative Tribunal for the appointment of an administrator. This could include family and friends, service providers or any agency which has financial dealings with the donor.

9.6 What happens if an attorney becomes bankrupt?

If the donor has legal capacity the Public Advocate recommends that the donor considers whether they want the enduring power of attorney to continue.

If an attorney becomes bankrupt and the donor has lost capacity, the attorney must report this to the State Administrative Tribunal. When the Tribunal receives a report of the attorney's bankruptcy, the Tribunal has the ability to look at how the power will continue. The Tribunal may make orders about the exercise of the attorney's powers, or may make an order revoking the enduring power of attorney.

9.7 Will my enduring power of attorney end if my spouse is my attorney and we get divorced?

Divorce does not automatically revoke an enduring power of attorney. In the event of divorce a donor may wish to consider whether to keep the enduring power of attorney in place or whether to revoke it.

9.8 Will a new enduring power of attorney automatically revoke an older one?

It is the Public Advocate's view that an existing enduring power of attorney is not revoked automatically by the person making a new enduring power of attorney. An enduring power of attorney which has been lodged at Landgate will not be considered revoked unless the specific Landgate requirements for revocation have been met.

The Public Advocate strongly recommends that where a new enduring power of attorney is made and it is intended to replace an existing enduring power of attorney, the existing enduring power of attorney should be revoked in writing (see part 9.2).

10 For Further Information

10.1 Office of the Public Advocate

PO Box 6293, East Perth WA 6892
Telephone: 1300 858 455
Facsimile: (08) 9278 7333
Email: opa@justice.wa.gov.au
Internet: 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. A kit which assists people to complete an enduring power of attorney, and a guide and kit to assist with the completion of an enduring power of guardianship are also available from the office's website.

10.2 State Administrative Tribunal (the Tribunal)

Level 6, State Administrative Tribunal Building,
565 Hay Street, Perth WA 6000
Telephone: (08) 9219 3111 or 1300 306 017
Internet: www.sat.justice.wa.gov.au

Applications can be lodged on the eCourts portal on the Tribunal's website.

The State Administrative Tribunal can be contacted for information and advice on applications for guardianship, administration, enduring powers of guardianship, enduring powers of attorney and advance health directives and to obtain the application forms. Information and application forms are also available from the Tribunal's website.

10.3 Public Trustee

553 Hay Street, Perth WA 6000
Telephone: 1300 746 116
Facsimile: (08) 9222 6617
Internet: www.publictrustee.wa.gov.au

The Public Trustee offers independent, professional trustee and asset management services to the WA community. These include Will and enduring power of attorney drafting, deceased estate administration, executor support, financial administration and trust management services.

10.4 Landgate

1 Midland Square, Midland, WA 6056
PO Box 2222 Midland 6936 WA
General enquiries: (08) 9273 7373
Telephone: 1300 556 224
Email: customerservice@landgate.wa.gov.au
Internet: www.landgate.wa.gov.au

Landgate can be contacted for information and advice, the cost of lodging the enduring power of attorney with Landgate, the requirements for lodging an enduring power of attorney and the specific Landgate requirements for revoking an enduring power of attorney which has been lodged and recorded with Landgate. There is an enduring power of attorney coversheet available online which provides a list of Landgate requirements to accept an enduring power of attorney.

10.5 Department of Health

Telephone: (08) 9222 2300
Email: acp@health.wa.gov.au
Internet: www.healthywa.wa.gov.au/advancecareplanning

The Department of Health provides advice and information on advance health directives. A consumer booklet to assist people considering making an advance health directive is available from the Department of Health's website.

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

Qualification (eg Justice of the Peace, Doctor)

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 (eg* Justice of the Peace, Doctor*)

APPENDIX B

List of persons authorised to witness an enduring power 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
State & Commonwealth public servants
Real estate agents
Settlement agents
Sheriffs or Deputy Sheriffs
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 by witnesses in places other than Western Australia. If the enduring power of attorney is signed 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.

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.

The Public Advocate recommends that legal advice is sought in the preparation of any enduring power of attorney which includes marksman, read over or directional clauses.

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

Glossary of terms used in this guide

Act
Guardianship and Administration Act (1990) (Western Australia)

Administrator
A person appointed by the State Administrative Tribunal to make property and financial decisions on behalf of a person with a decision-making disability

Advance Health Directive (AHD)
A document in which a person makes decisions about their future treatment.

Agency
Professional body or corporation which can be appointed to be an attorney under an enduring power of attorney.

Attorney
A person or body accepting an appointment under an enduring power of attorney (also known as 'donees')

Capacity
The extent to which a person is capable of making reasonable decisions about all aspects of matters relating to their property and finances. See also 'full legal capacity'.

Certified copy
A photocopy of a document which has been certified as a direct copy of the original document by an authorised witness (see Appendix B). For details on certifying copies of document see Appendix A.

Donor
A person who appoints another person or body under an enduring power of attorney to make property and financial decisions on his or her behalf

Enduring guardian
A person appointed under an enduring power of guardianship to make personal, lifestyle and treatment decisions on behalf of the appointor.

Enduring Power of Attorney (EPA)
A document in which a person nominates someone (known as an attorney) to manage their financial affairs.

Enduring Power of Guardianship (EPG)

A document in which a person nominates someone (known as an enduring guardian) to make personal, lifestyle and treatment decisions on their behalf in the event that they lose the capacity to do so themselves.

Full legal capacity

The capacity to make a formal agreement and to understand the implications of statements contained in that agreement.

Guardian

A person appointed by the State Administrative Tribunal to make personal and lifestyle decisions on behalf of a person with a decision-making disability.

Landgate

The State government authority, which maintains the register of land ownership in Western Australia. This authority was previously called the Department of Land Administration (DOLA).

Proper interest

A term used in the Act. It would usually include a person with a close relationship to the donor, or someone who expressed a genuine concern about the welfare of the donor.

Public Advocate

The Public Advocate is a statutory officer appointed under the Act to protect and promote the rights of adults with a decision-making disability.

State Administrative Tribunal (the Tribunal)

The judicial body which, under the Act, hears matters about the operation of enduring powers 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)

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

…….. (Date)

…… (Date)

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

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

…….. (Date)

…… (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)_____

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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.

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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)

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

…….. (Date)

…… (Date)

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

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

…….. (Date)

…… (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.

Office of the
PublicAdvocate