



ADLV LAW

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SOLUTION BRIEF

Information for an Enduring Guardian (NSW)



An Appointment of Enduring Guardian is a legal document by which a person (the 'Donor') appoints someone else (the 'Enduring Guardian') to make medical, personal and lifestyle decisions on the Donor's behalf when they are not capable of making the decisions themselves.

Enduring Guardians are agents authorised to make decisions on behalf of the Donor. In New South Wales, Enduring Guardians are authorised under the Guardianship Act 1987 (NSW).

What decisions can you make?

As an Enduring Guardian, you will be able to make decisions including:

- Where the Donor lives (for example, in a hospice or nursing home);
- What health care the Donor receives;
- Who will be the Donor's treating doctor; and
- What other personal services the Donor receives (for example, home nursing support).

Your decisions will be subject to any conditions imposed in the Appointment of Enduring Guardian document.

When do you act?

You will only make decisions for the Donor when they are in a critical medical state and are unable to make decisions for themselves. For example, if the Donor is in a coma, you might be asked to agree to treatments being carried out, or to agree to have a life support machine switched off.

Acting alone or jointly

You may be appointed as an Enduring Guardian solely or jointly with another person. If you have been appointed solely, you will be free to exercise your power individually and without approval or signatures from other persons. If you have been appointed jointly, you must reach agreement with the other Enduring Guardian(s) before making any decisions. Regardless, it is always advisable to consult with the other members of the Donor's family in making decisions about medical treatment and welfare.

Your responsibilities as an Enduring Guardian

The Donor has made the decision to entrust you with their medical and general wellbeing. You must honour any conditions set out in the Appointment of Enduring Guardian document. Your power must at all times be exercised with the person's interests and wishes foremost in your mind. If

possible, we recommend that you should also speak with the Donor about their wishes prior to the Donor losing capacity.

It will be up to you as Enduring Guardian to consult with the Donor's doctor about the Donor's capacity to make decisions before taking any steps on their behalf. This is done by approaching the Donor's doctor for a certificate to the effect that the Donor is totally or partially incapable of managing their person.

Producing the appointment document

In order to exercise your power as Enduring Guardian, you will need to produce the original or a certified copy of the Appointment of Enduring Guardian document together with the certificate of incapacity from the Donor's doctor (at least on the first occasion). Together, these documents provide evidence to others of the fact that you are entitled to make decisions on the Donor's behalf.

When your role ends

Your role as Enduring Guardian ends when the Donor dies or when your appointment is revoked.

What lies outside your role

As Enduring Guardian, you do not have any powers or responsibilities relating to the financial or legal affairs of the Donor – this is the role of the Attorney appointed under a Power of Attorney document. The same person may be appointed both Enduring Guardian and Attorney.



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TALK TO US

What next?

If you would like to speak to someone about your responsibilities as an Enduring Guardian, call us on 1300 654 590 or email us at wehelp@adlvlaw.com.au.

Further information can also be found on our website at www.adlvlaw.com.au.

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