

Form 9

Powers of Attorney Act 1998 (section 161)
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Enduring power of attorney explanatory guide (Queensland)

Your guide to completing an
enduring power of attorney (Queensland)

Read this guide before you begin filling in your [Form 2 – Enduring power of attorney – short form](#) or [Form 3 – Enduring power of attorney – long form](#). It provides detailed explanatory notes about the information required to complete these forms. It also has a step-by-step guide to each section of your enduring power of attorney form.

Forms and explanatory guides are available at www.qld.gov.au/guardianship-planahead

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Checklist for completing your enduring power of attorney

Checklist items in **bold** must be completed for your enduring power of attorney to be valid.

- Decide whether you wish to complete:
 - » [Form 2 – Enduring power of attorney – short form](#) to appoint:
 - » attorney(s) for personal (including health) matters only
 - » attorney(s) for financial matters only
 - » the same attorney(s) for both personal matters and financial matters
 - » [Form 3 – Enduring power of attorney – long form](#) to appoint different attorneys for personal (including health) matters and financial matters
- Read the enduring power of attorney form to understand what kind of information you need.
- Read [Form 9 – Enduring power of attorney explanatory guide](#) (this document).
- Talk to close family and friends about what is important to you.
- Consider who you want to appoint as your attorney(s) and talk to them about your wishes.
- Talk to a professional (such as a lawyer, doctor or financial planner) that can provide you with advice or help you complete the form, including how an enduring power of attorney may impact any previous documents you have completed.
- Complete the details in your enduring power of attorney form, either by hand or on a computer.**
- Sign your enduring power of attorney in the presence of an eligible witness (such as a justice of the peace (JP), commissioner for declarations or lawyer).**
- Have your eligible witness sign the form.**
- After your eligible witness has signed, have your attorney(s) sign section 5 ‘Attorney(s) acceptance’ of the original form.**
- Make certified copies (see pages 18–19 to find out how to do this).
- Keep the original in a safe place and tell your attorney(s) where it is.
- Give certified copies to people who need to know about its contents (e.g. your appointed attorney(s), family, lawyer, doctor, etc.).
- Give your attorney(s) a copy of [Form 9 – Enduring power of attorney explanatory guide](#) (this document).

About enduring powers of attorney

What is an enduring power of attorney?

An enduring power of attorney allows you (the ‘**principal**’) to appoint people you trust (an ‘**attorney**’) to make decisions about ‘**personal (including health) matters**’ and/or ‘**financial matters**’.

Personal matters relate to decisions about your care and welfare such as where and with whom you live and support services you may need. They include legal matters that do not relate to your financial or property matters.

Health matters are a personal matter and relate to decisions about your health care. Health care includes most medical treatments, procedures and services to treat both physical and mental conditions. When you are nearing the end of your life, health care also includes treatments aimed at keeping you alive or delaying your death (life-sustaining treatments).

Financial matters relate to decisions about your financial or property affairs, including decisions about paying expenses, making investments, selling property (including your home) or carrying on a business.

Why is an enduring power of attorney important?

If you have decision-making capacity, you can make your own decisions about personal, health or financial matters. At some point in the future, a situation may arise where you are unable to make your own decisions about these matters. This might be because of an accident, a medical condition or a mental illness. An enduring power of attorney allows you to appoint people you trust to make decisions for you if you are unable to.

An enduring power of attorney is a legal document that can significantly affect your legal rights. It is recommended that you seek independent legal advice before completing an enduring power of attorney form.

Who can make an enduring power of attorney?

To make an enduring power of attorney you must be at least 18 years old and have capacity to understand the document you are signing and the powers it gives. You must also be capable of making the enduring power of attorney freely and voluntarily, not due to pressure from someone else. To find out more about the capacity to make an enduring power of attorney see the [Queensland Capacity Assessment Guidelines 2020](#).

When will my enduring power of attorney be used?

If you appoint an attorney(s) to make **personal (including health) decisions**, your enduring power of attorney can only operate during those times you do not have capacity to make those decisions.

If you appoint an attorney(s) to make **financial decisions**, your enduring power of attorney allows you to specify when they can begin making decisions, including:

- » when you do not have capacity to make decisions about financial matters
- » immediately
- » at a particular time
- » in particular circumstances or occasions.

Having capacity to make a decision for a matter means that you are capable of:

- » understanding the nature and effect of decisions about the matter
- » freely and voluntarily making decisions about the matter
- » communicating the decisions in some way.

For more information about capacity to make a decision for a matter, refer to the [Queensland Capacity Assessment Guidelines 2020](#).

Preparing to make your enduring power of attorney

You should read through the enduring power of attorney form and this guide carefully to see what kind of information you will need to complete this form. You should also:

- » **seek legal advice** — it is recommended that you discuss making an enduring power of attorney with a lawyer. An enduring power of attorney can provide a lot of power to an attorney(s) and you may not be able to control what decisions your attorney(s) makes for you
- » **think about your views, wishes and preferences** — think carefully about the things that are important to you now and into the future. Discuss these things with your attorney(s), family and friends
- » **consider who you would like to appoint as your attorney(s)** — you should only appoint someone you trust to safeguard your interests, advocate for you and respect your views, wishes and preferences.

What is the difference between the short and long forms?

There are two separate enduring power of attorney forms — the short form (Form 2) and the long form (Form 3).

Form 2 — Enduring power of attorney — short form allows you to appoint:

- » attorney(s) for personal (including health) matters **only**

OR

- » attorney(s) for financial matters **only**

OR

- » the same attorney(s) for personal (including health) matters **and** financial matters.



Examples showing when to use the short form

1. Carol would like to appoint her two children, Jordan and Sofia, as her attorneys for both personal and financial matters. Carol should use the short form.
2. Vince would like to appoint his wife Carol as his attorney for financial matters. He does not want to appoint an attorney for personal matters. Vince should use the short form.

Form 3 — Enduring power of attorney — long form allows you to appoint different attorneys for personal (including health) matters and financial matters.



Example showing when to use the long form

1. James would like his friends Aarav and Monty to be his attorneys. James wants to appoint Aarav as his attorney for personal matters and Monty for financial matters. James should use the long form.

If you only want to appoint an attorney(s) for health matters, then you should consider making an advance health directive.

Using this guide

This guide can be used when completing **Form 2 — Enduring power of attorney — short form** or **Form 3 — Enduring power of attorney — long form**. In both forms, section 3 ‘Your attorney(s)’ allows you to appoint one or more attorney(s) to make decisions for you. Section 3 is set out differently in the short form and long form to accommodate different types of appointments, e.g. the same attorney for personal (including health) matters and financial matters, or different attorneys for personal (including health) matters and financial matters.

To help you complete section 3, this guide will refer to corresponding page numbers from the short form and long form.

Instructions for completing enduring power of attorney forms

This part of the explanatory guide will take you through each section of [Form 2 — Enduring power of attorney — short form](#) and [Form 3 — Enduring power of attorney — long form](#).

SECTION 1: YOUR PERSONAL DETAILS

You **must** fill in your full name and address so you can be identified. Your phone number and email address are optional but recommended.

If you currently use, or have previously used, different legal names, or if your identification documents contain different names, please also indicate those other names here. Depending on your circumstances you may also need to complete a statutory declaration that you are one and the same person and keep it with this document — you may need to discuss this with the person who witnesses this document. It is not necessary to list nicknames.

A change in your address, phone number or email will not make your enduring power of attorney invalid.

SECTION 2: YOUR VIEWS, WISHES AND PREFERENCES

You are not required to fill in this section. You should cross it out if you do not want to complete it. If you do complete this section cross out any space in the box that you do not use.

You are letting your attorney(s) and other people know about your views, wishes and preferences in this section, but **you are not giving instructions**. An attorney(s) must take your views, wishes and preferences into consideration when making decisions on your behalf.

Think about what matters most to you and what is important for your quality of life now and into the future. This might include where you would prefer to live, the friends and family you like to see, your healthcare preferences, your culture and your religion.


Example

1. The most important thing to me is that I live in my own home, even if that means I will receive assistance with self-care and housework.
2. I want to live as close as I can to my family and friends.

Section 3 allows you to give legally binding instructions to your attorney(s).

SECTION 3: YOUR ATTORNEY(S)

You must complete this section.

 Remember, section 3 is set out differently in the Enduring power of attorney – short form (Form 2) and long form (Form 3).

WHO ARE YOU APPOINTING AS YOUR ATTORNEY(S)?

You must fill in each attorney's name and address. As your attorney(s) may need to be contacted at short notice, it is recommended that you also include their phone number and email address.

To be eligible to be an attorney, a person must:

- » have capacity to make the decisions they are appointed for
- » be 18 years or older
- » not be your paid carer or have been your paid carer in the last three years
- » not be your health provider
- » not be a service provider for a residential service where you live
- » not be bankrupt or taking advantage of the laws of bankruptcy, if appointed for financial matters.

An attorney does not have to be a lawyer to carry out this role.

See:

- » **short form** page 4 for personal (including health) matters and financial matters
- » **long form** page 4 for personal (including health) matters and page 7 for financial matters.

NOTE:

A **paid carer** is someone who is paid a fee or wage to care for a person but not someone receiving a carer's pension or benefit.

A person who is living with you and receives a carer's allowance from the government can be your attorney. A health provider, such as a nurse or medical practitioner who provides care for you, cannot be your attorney.

Your **health provider** is a person who provides you with health care as a professional or in the ordinary course of business such as your doctor, dentist or nurse.

A **residential service** is rooming accommodation regulated under the [Residential Services \(Accreditation\) Act 2002](#). A residential service is sometimes called a boarding house.

Who should you choose as your attorney(s)?

You should choose your attorney(s) carefully. Unfortunately, some attorneys may mismanage their role. This could include using your money to pay their own expenses or selling your assets and keeping your money for themselves. Only appoint people you trust to look after your affairs.

Attorney(s) for personal (including health) matters

If you are appointing an attorney(s) to make decisions about **personal (including health) matters**, your attorney(s) should be someone that:

- » you trust to make decisions you would agree with about your personal care and health care and welfare
- » you have discussed your views, wishes and preferences with
- » will put your needs, rights and interests ahead of their own and others in all decisions
- » will understand their legal obligations and duties as an attorney for personal (including health) matters
- » will be available to make healthcare decisions and decisions about your care and welfare on your behalf
- » will be confident in discussing your health care with your health providers.

If you do not feel confident that you have suitable people in your life to undertake these responsibilities, you can nominate the Public Guardian as your attorney for personal (including health) matters. To find out more about appointing the Public Guardian, contact details for the Office of the Public Guardian can be found at the end of this guide.

Attorney(s) for financial matters

If you are appointing an attorney(s) to make decisions about **financial matters**, your attorney(s) should be someone that:

- » you trust to make sound decisions about your financial and property affairs
- » will put your needs, rights and interests ahead of their own and others in all decisions
- » is able to manage property and money well
- » will understand their legal obligations and duties as an attorney for financial matters
- » can communicate effectively and protect and promote your interests
- » is confident liaising with financial institutions, lawyers and property agents.

You can also appoint the **Public Trustee** to act as your attorney for financial matters. You should contact the Public Trustee before appointing the Public Trustee to act as your attorney. Other options include appointing a trustee company. Contact details for the Public Trustee can be found at the end of this guide.

You should ask about any fees an attorney may charge for this appointment and any other requirements they have for appointment.

How many attorneys can you appoint?

There is **no limit** on the number of attorneys you can appoint in an enduring power of attorney, except that you can only appoint a maximum of four joint attorneys for a matter (i.e. you can only appoint a maximum of four people who must agree on all decisions).

Having more than one attorney may be helpful, as it means more than one person may be able to make decisions for you if needed. If one of your attorneys is unavailable, another attorney could make the decision.



Examples of joint attorneys

1. You appoint your spouse and your four children and then specify that your spouse is appointed first and your children will become appointed jointly if your spouse is unwilling or unable to act.
2. You appoint four people to act jointly for financial matters and another four people to act jointly for personal matters.

If you appoint more than one attorney, you will need to decide how those attorneys exercise their power (e.g. jointly, severally, by a majority, successively or alternatively — see ‘How must your attorneys make decisions?’ on pages 10–11 for more information).

If you need more space to appoint additional attorney(s), you can attach another page with those details to the form. See ‘How to add additional pages’ on page 18 for more information on how to do this.


WHAT DECISIONS CAN YOUR ATTORNEY(S) MAKE?

You only need to complete this part if you are completing [Form 2 – Enduring power of attorney—short form](#).

You can appoint an attorney(s) to make decisions about:

- » personal (including health) matters only
- » financial matters only
- » personal (including health) matters and financial matters.


If you want to appoint different attorneys for personal (including health) matters and financial matters, use [Form 3 – Enduring power of attorney—long form](#).

 **See:**
» **short form** page 5.

WHEN DOES YOUR ATTORNEY(S)' POWER BEGIN FOR FINANCIAL MATTERS?

You only need to complete this part if you are appointing an attorney(s) for financial matters.

This part allows you to specify when your attorney(s) can start making decisions about your financial affairs and property. If you do not complete this part, your attorney(s)' power for financial matters will begin **immediately**.

 **See:**
» **short form** page 5
» **long form** page 8.

You have **three** options for when your attorney(s)' power to make decisions about your financial matters will begin:

1. **when I do not have capacity to make decisions for financial matters**

- ✓ If you tick this box, your attorney(s) can only make decisions during those times you do not have capacity to make financial decisions yourself.

OR

2. **immediately**


- ✓ If you tick this box, your attorney(s) can start making decisions about all your financial and property affairs straight away, including when you have capacity.

OR

3. **at this time, in this circumstance or on this occasion**

- ✓ If you tick this box, you must specify a time, circumstance or occasion when your attorney(s) can start making financial decisions. For example:

1. when I am admitted to hospital...
2. when I am travelling overseas...

 **NOTE:** The power of an attorney(s) appointed to make decisions about personal (including health) matters will only begin during periods when you do not have capacity to make those decisions yourself. You do not need to specify this in the enduring power of attorney.

Refer to the [Queensland Capacity Assessment Guidelines 2020](#) for more information about capacity.

HOW MUST YOUR ATTORNEYS MAKE DECISIONS?

You do not need to complete this part if you have only appointed one attorney.

If you are appointing more than one attorney, you can choose how your attorneys must make decisions. If you do not specify how your attorneys are to make decisions, your attorneys will be required make decisions jointly (i.e. all of your attorneys must agree on every decision to be made).

 **See:**

- » **short form** page 6
- » **long form** pages 5 and 8.

You have four options for choosing how your attorneys must make decisions. Your attorneys can make decisions:

1. jointly

- ✓ all of your attorneys must agree on every decision before a decision is made and exercise powers unanimously (e.g. signing documents putting a decision into action). You can only appoint a maximum of four joint attorneys for a matter

OR

2. severally

- ✓ any one of your attorneys can make the decision without having to agree with any other attorney

OR

3. by a majority

- ✓ if you have more than two attorneys, more than half of your attorneys must agree before a decision is made

OR

4. other

- ✓ you must specify how your attorneys must make decisions (e.g. jointly and severally or appointing a successive or alternative attorney).

Regardless of the option you choose, multiple attorneys **must** consult with each other regularly to make sure your interests are always looked after.

Successive and alternative attorneys

If you tick 'other' you can appoint a *successive attorney* or *alternative attorney* to replace an attorney.

 **NOTE:**

Successive attorneys only have power to act when the power given to an original attorney ends. You may specify the circumstances when your successive attorney(s)' power will begin.

An attorney's power can end for a number of reasons. For example, the attorney may die, or lose capacity to make decisions for you due to illness or an accident. In this case you can nominate another replacement attorney (your **successive attorney**) to take over as your attorney and the circumstances when their powers begin.

Alternative attorneys only have power to act in particular circumstances. You must specify the circumstances where your alternative attorney(s) can act. For example, you might have appointed an attorney who often travels overseas for work. Therefore you may want to appoint an **alternative attorney** to act only when that particular attorney is overseas.



Example of a successive attorney

Laura has appointed her husband Robert as her attorney and her son Richard as the successive attorney under her enduring power of attorney. When Laura loses capacity to make decisions, Robert begins to make decisions on behalf of Laura.

When Robert dies, Richard is able to make decisions for Laura.

Laura ticks the ‘other’ box and writes:

I have appointed Robert Smith as my attorney. If Robert dies or he loses capacity I want Richard Smith to be my attorney.



Example of an alternative attorney

Yusuf wants to make his partner Ayah his attorney to make decisions when he loses capacity. But Ayah is often travelling overseas due to her musical career, so she may not always be available.

Yusuf decides to make his friends Winston and Emir the alternative attorneys at times Ayah is overseas so that important decisions are not delayed when Ayah is not available.

Yusuf ticks the ‘other’ box and writes:

I have appointed Ayah Aksoy as my attorney. When Ayah Aksoy is unavailable to make decisions, including when she is overseas, I appoint Emir Tekin and Winston Smith to be my attorneys. Emir and Winston must make decisions severally, that is any one of them may decide without the other’s agreement.



NOTE: If you appoint more than one successive attorney or more than one alternative attorney, you will need to specify how they must make decisions. For example, will they be required to make decisions jointly, severally or by a majority?

TERMS AND INSTRUCTIONS FOR YOUR ATTORNEY(S)

You are not required to fill in this part. You should cross it out if you do not want to complete it. If you do complete this part cross out any space in the box that you do not use.

There are three parts in the enduring power of attorney form where you can provide terms and instructions to your attorney(s).

1. **General terms and instructions** – this part can be used to set terms or limits on an attorney(s)’ power or instructions to your attorney(s) (whether the attorney(s) is appointed for personal matters (including health matters) or financial matters).
2. **Notifications for personal (including health) matters** – this part can be used to require your attorney(s) to notify others when they begin exercising power for personal (including health) matters or whenever they make decisions about specific personal matters or health matters (which you can specify).
3. **Notifications for financial matters** – this part can be used to require your attorney(s) to notify others when they intend to begin exercising power for financial matters or require your attorney(s) to provide information about their dealings with your finances or investments (which you can specify).

See:

- » **short form** page 6 for personal (including health) matters and financial matters
- » **long form** page 5 for personal (including health) matters and page 9 for financial matters.

TERMS AND INSTRUCTIONS (GENERAL TERMS AND INSTRUCTIONS)

You can set terms on how your attorney(s) are required to make decisions and/or give specific instructions that your attorney(s) must follow.

The following are some examples of terms or instructions to your attorney(s).

Example wording for personal (including health) matters

1. My attorney can make all decisions about personal matters except for decisions about the friends and family members I have contact with.
2. I do not consent to my children or their families living in my home, with or without me.

See:

- » **short form** page 6 for personal (including health) matters and financial matters
- » **long form** page 5 for personal (including health) matters and page 9 for financial matters.

Example wording for financial matters

1. My attorney is not to sell my house at _____ unless they have exhausted all other options to pay for my aged care accommodation and services.
2. My attorney must not make any investments with my money.

Conflict transactions: a conflict transaction happens when there is a conflict between an attorney's duty to you and the attorney's own interests. An attorney cannot enter into a conflict transaction unless you (or a court or the Queensland Civil and Administrative Tribunal) have authorised it. See more information about an attorney's duties and obligations in 'Information for attorneys' on pages 21–24 of this guide.

There may be a situation where you want to authorise your attorney to enter into a conflict transaction. This might include where you have appointed your spouse as your attorney and you want them to be able to sell the family home if they need to. However, you should seek legal advice before including any such term in your enduring power of attorney. Allowing an attorney to engage in conflict transactions may have unintended and serious financial consequences for you.


TERMS AND INSTRUCTIONS (NOTIFICATIONS FOR PERSONAL (INCLUDING HEALTH) MATTERS)

You are not required to fill in this part. You should cross it out if you do not want to complete it. If you do complete this part cross out any space in the box that you do not use.

Completing this part will increase the obligations on your attorney(s). You should seek legal advice before you complete this part and discuss these obligations with your attorney(s) to make sure that they understand them and are willing and able to carry them out.

See:

- » **short form** page 7
- » **long form** page 6.

 **NOTE:** 'Terms and instructions (notifications for personal (including health) matters)' only apply to attorney(s) appointed for personal (including health) matters.

You can choose who your attorney(s) for personal (including health) matters must provide information to:

» you (the principal)

- ✓ While your attorney(s) must always keep you informed and seek your views about every decision they make, this instruction will require your attorney(s) to notify you in writing, even if you have lost capacity. Your capacity may change or fluctuate over time, and your attorney(s) has a duty to keep you informed about decisions they are making.

» the other current attorney(s) that you have appointed

- ✓ If you have appointed multiple attorneys, you can require an attorney(s) to notify other current attorney(s) before they make a decision. A current attorney means any other attorney appointed for personal (including health) matters and who can also make decisions for you at the time the notification must be given.

» a person you nominate

- ✓ You can nominate a trusted person who your attorney(s) is required to notify. It is a good idea to nominate a trusted person who is completely independent from your attorney(s) and who can check that your attorney(s) is making decisions in your best interests.

You can choose what information your attorney(s) for personal (including health) matters must provide:

» written notice that my attorney intends to begin exercising powers for personal (including health) matters under this enduring power of attorney for the first time

- ✓ If you tick this box your attorney(s) must notify your nominated person(s) when they first start exercising powers for personal matters under your enduring power of attorney.

» other information

- ✓ You can tick this box and say what other types of information regarding decisions about personal (including health) matters you want your attorney(s) to send (e.g. decisions about changing where you live, major health decisions or who you have contact with).


TERMS AND INSTRUCTIONS (NOTIFICATIONS FOR FINANCIAL MATTERS)

You are not required to fill in this part. You should cross it out if you do not want to complete it. If you do complete this part cross out any space in the boxes that you do not use.

Completing this part will increase the obligations on your attorney(s). You should seek legal advice before you complete this section and discuss these obligations with your attorney(s) to make sure that they understand them and are willing and able to carry them out.

 See:

- » **short form** page 8
- » **long form** page 10.

 **NOTE:** 'Terms and instructions (notifications for financial matters)' only apply to attorney(s) appointed for financial matters.

You can choose who your attorney(s) for financial matters must provide information to:

» you (the principal)

- ✓ While your attorney(s) must always keep you informed and seek your views about every decision they make, this instruction will require your attorney(s) to notify you in writing, even if you have lost capacity. Your capacity may change or fluctuate over time, and your attorney(s) has a duty to keep you informed about decisions they are making.

» the other current attorney(s) that you have appointed

- ✓ If you have appointed multiple attorneys, you can require an attorney(s) to notify other current attorney(s) before they make a decision. A current attorney means any other attorney appointed for financial matters and who can also make decisions for you at the time the notification must be given.

» a person you nominate

- ✓ You can nominate a trusted person who your attorney(s) is required to notify. It is a good idea to nominate a trusted person who is completely independent from your attorney(s) and who can check that your attorney(s) is making decisions in your best interests.

You can choose what information your attorney must provide:

Notice about exercising powers

» **written notice that my attorney(s) intends to begin exercising powers for financial matters under this enduring power of attorney for the first time**

- ✓ If you tick this box, your attorney(s) must notify your nominated person(s) when they first start exercising powers for financial matters under your enduring power of attorney.

Other financial information

» **all financial records and accounts**

- ✓ This would include all financial documents such as bank statements and receipts showing any transaction your attorney(s) has made for you.

» **records relating to transactions above a nominated amount**

- ✓ If you set a limit of \$500 for example, your attorney(s) will need to provide receipts or statements showing all transactions of \$500 or more.

» **records and accounts for all assets including property, investments and vehicles**

- ✓ Whenever your attorney(s) deals with your assets, they will need to provide records of their dealings. This could include records showing the receipt of the proceeds of sale of your car or any shares that you own.

» **summaries of income, expenditure and assets**

- ✓ Your attorney(s) will need to provide a summary of financial transactions that they have made for you.

» **copies of financial management plans and financial advice obtained**

- ✓ If your attorney(s) engages a financial adviser or planner to give them advice about your finances, then your attorney(s) will be responsible for providing a copy of the advice or plan.

You can choose when your attorney must provide this information:

» **on request at any time by the nominated person**

- ✓ If you tick this box, your attorney(s) will only have to provide the information on request.

» **on a regular timeframe**

- ✓ If you tick this box you must specify when the information must be provided (e.g. annually starting on 1 July or quarterly starting on 1 July).


» **other**

- ✓ If you tick this box, you must specify a time or circumstance (e.g. when your attorney(s) spends over a certain amount of money).

SECTION 4: DECLARATIONS AND SIGNATURES

It is very important that you complete this section correctly or your enduring power of attorney may not be valid. You must follow these steps to complete this section correctly:

- » **STEP ONE** Read the statement under **'Principal's signature'** carefully.
- » **STEP TWO** **Sign and date** where indicated **in the presence of an eligible witness** (a justice of the peace (JP), commissioner for declarations, notary public or lawyer). If you are physically unable to sign the form, you can instruct another person to sign for you. They must sign **in the presence of you and an eligible witness**.
- » **STEP THREE** The **eligible witness** must witness your signature and **sign and date the 'Witness certificate'** confirming that they are an eligible witness and that you have capacity to make the enduring power of attorney.

 **NOTE:** digital (electronic) signatures cannot be used to sign an enduring power of attorney form. If you are printing the form, you may print it in colour or in black and white.

PRINCIPAL'S SIGNATURE

You must have capacity to make an enduring power of attorney.

When you sign this part you confirm that you:

- » **are making this enduring power of attorney freely and voluntarily** — this means that no one is pressuring you to make the enduring power of attorney, you have come to your own decision and you are making it of your own free will
- » **understand the nature and effect of the document you are signing** — this means you understand the powers the document gives to any attorney(s) you have appointed, including their power to make decisions and carry out affairs on your behalf.

Understanding the nature and effect of the document you are signing means that you understand:

- » **that you may specify or limit your attorney(s)' power and instruct your attorney(s) about the exercise of the power** — that is, you may set terms on the exercise of powers by your attorney(s) or give instructions to your attorney(s) about how they must exercise their power (refer to section 3, pages 11–14 of this guide)
- » **when the power given to your attorney(s) begins** — that is, your attorney(s) for personal (including health) matters can only begin exercising powers when you lose capacity to make those decisions for yourself. Whereas, you have a choice about when you want your attorney(s) for financial matters to begin exercising their powers. If you don't make a choice your attorney(s) for financial matters can begin exercising their powers immediately on signing this document. Make sure you understand the choices you have made (refer to section 3, page 9 of this guide)
- » **that once the power for a matter begins, your attorney(s) will have full control and power to make decisions about the matter, subject to any terms or information included in the enduring power of attorney** — that is, when your attorney(s)' power for a matter begins, your attorney(s) will be able to make almost any decision that you could have made in relation to your affairs (unless they are limited by law or the terms and instructions in your document). Make sure you understand the types of decisions your attorney(s) can make and the powers they can exercise with regard to your affairs
- » **that you may revoke the enduring power of attorney at any time if you are capable of making another enduring power of attorney giving the same power** — that is, you can cancel your enduring power of attorney at any time while you still have capacity to make another enduring power of attorney
- » **that the power you are giving to your attorney(s) continues even if you do not have capacity to make decisions about the matter** — that is, your attorney(s) will be able to continue to make decisions and exercise powers about your affairs even when you do not have capacity to make those decisions yourself

- » **that if you are not capable of revoking the enduring power of attorney, you are unable to effectively oversee the use of the power given to your attorney(s) by this document** — that is, at times when you do not have capacity to make decisions yourself, your attorney(s) can make those decisions and exercise powers about your affairs without any supervision from you. They will only be restricted by the law or the terms and instructions of your enduring power of attorney. However, your attorney(s) must take into account your views, wishes and preferences in making decisions for you — no matter how you have expressed them.

It is okay if you did not understand these things until someone else explained them to you. But you must understand these things before you sign the document.



Remember, when signing this part you must do so when you are in front of the eligible witness signing the ‘Witness certificate’. Your witness will ask you questions to make sure you have capacity to make your enduring power of attorney.

Person signing for the principal

Only complete this part if you (the principal) are physically unable to sign the form yourself, for example, due to a physical impairment.

The person signing for you must:

- » confirm that you instructed them to sign the document
- » be 18 years or older
- » not be the witness for this document
- » not be your attorney (e.g. under an enduring power attorney or advance health directive).



Remember, the person signing for you must sign in front of the eligible witness. You must be present too.

WITNESS CERTIFICATE

This **must** be completed, signed and dated. It is a legal requirement that an eligible person witnesses your signature.

The witness **must** tick the relevant boxes to confirm that:

- » the principal signed the enduring power of attorney in the presence of the witness, or instructed another person to sign the enduring power of attorney for the principal, and that person signed it in the presence of the principal and witness
- » they are eligible to witness this form.

A witness **must** be a:

- » justice of the peace (JP)
- » commissioner for declarations
- » notary public
- » lawyer.

The witness must **not** be:

- » the person signing for you
- » your attorney (e.g. under an enduring power of attorney or advance health directive)
- » related to you or your attorney
- » if the enduring power of attorney appoints an attorney for personal (including health) matters, a paid carer or health provider for you (i.e. your health provider)

The witness is not simply witnessing your signature. They are certifying that, at the time of making the enduring power of attorney, you appeared to have the capacity to do so.



NOTE: If an interpreter assisted in the preparation of this document or if an interpreter is present when this document is witnessed, complete [Form 7 — Interpreter’s/translator’s statement](#) at www.publications.qld.gov.au

SECTION 5: ATTORNEY(S)' ACCEPTANCE

This section **must** be completed **by your attorney(s)**.


Your attorney(s) can only sign this section **after** both you and the eligible witness have signed section 4 of the enduring power of attorney. **All your attorney(s) must sign the original copy of your enduring power of attorney.**

Your attorney(s) do not have to sign it immediately after or on the same day you and the eligible witness sign. However, the attorney(s) must sign it before they can begin making decisions on your behalf.

It does not matter which order your attorney(s) sign this section. Your attorney(s)' signature does not need to be witnessed.

By signing this section your attorney(s):

- » declare that they are eligible to be appointed as your attorney
- » confirm that they:
 - » have read the enduring power of attorney
 - » understand that they are only permitted to make decisions in accordance with the enduring power of attorney and relevant legislation
 - » understand their obligations as an attorney, including the obligation to apply the general principles and health care principles (if appointed for health matters), when exercising a power (refer to 'The duties and obligations of an attorney' explained on pages 21–24 of this guide)
 - » understand the consequences of failing to comply with their obligations as an attorney (including civil and criminal liability if they fail to comply with their legal obligations, explained on page 24 of this guide).

 **NOTE:** You should provide a copy of [Form 9 – Enduring power of attorney explanatory guide](#) (this document) to your attorney(s) to read 'Information for attorney(s)' on page 21.

SECTION 6: WHAT TO DO WITH YOUR COMPLETED ENDURING POWER OF ATTORNEY

You are not required to record or register this enduring power of attorney for it to have effect. However, if your attorney(s) wish to deal with land in Queensland on your behalf, your enduring power of attorney must first be registered with the Queensland Titles Registry by lodging a [Form 16 – Request to register power of attorney](#) together with a single-sided certified copy of the enduring power of attorney. Please be aware that upon registration an image of the enduring power of attorney will form part of a publicly searchable register.

It is strongly recommended that you:

- » keep the original in a safe place
- » give a certified copy to your attorney(s), doctor, other health provider(s), bank or lawyer
- » notify your close family and friends that you have made an enduring power of attorney and where to find the document

You should review your enduring power of attorney if your personal circumstances change.

My Health Record

If you wish your document to be in My Health Record you can upload it via the My Health Record website at www.myhealthrecord.gov.au. Your document will be valid regardless of whether it is uploaded. To access your My Health Record online, you need to have a myGov account and link it to your record. Apart from you, the only people who can view or access your My Health Record are: your healthcare providers (e.g. general practitioners, specialists or hospital staff), people you invite to help you manage your record (nominated representatives) and people who manage your record for you if you are not able to (authorised representatives).

Office of Advance Care Planning

You are able to have your enduring power of attorney uploaded to your Queensland Health electronic record. To do this, send a copy of your document to the **Office of Advance Care Planning**. This way it will be easily available to authorised clinicians involved in your care when it is required. A copy of your document can be sent to the **Office of Advance Care Planning** at acp@health.qld.gov.au, PO Box 2274, Runcorn, Queensland 4113 or fax 1300 008 227.

Further information

HOW TO ADD ADDITIONAL PAGES

There may be times when you are completing your enduring power of attorney that you need additional space to add more information. For example, you may want to add more attorney(s) or add more terms and instructions than the space on the form allows.

You can **only** add additional pages at the time you are completing your enduring power of attorney, **not** afterwards.

To add additional pages, follow these instructions:

1. physically attach (e.g. staple) an additional page to your enduring power of attorney at the end of the form with the extra information
2. clearly indicate at the top of the page what you are adding and what part of the enduring power of attorney it relates to (e.g. you should state at the beginning ‘This additional page is for the purposes of adding an additional attorney under section 3’)
3. add all required information (e.g. if you are adding an extra attorney, in addition to their name, add their address and other contact details exactly as they appear on the form)
4. sign and date the additional page when signing the enduring power of attorney in front of your witness
5. make sure your witness completes the total number of pages of the enduring power of attorney (including any additional pages) in section 4
6. your witness should sign any additional pages attached to the enduring power of attorney at the same time they sign section 4
7. you can use [Form 8 — Additional page](#) for this purpose.

HOW TO MAKE A CERTIFIED COPY OF AN ENDURING POWER OF ATTORNEY

A certified copy of an original enduring power of attorney can be made by having one of the following people certify a copy of the original enduring power of attorney to the effect that it is a true and complete copy of the original:

- » the principal (the person who made the enduring power of attorney)
- » a justice of the peace (JP)
- » a commissioner for declarations
- » a notary public
- » a lawyer
- » a trustee company under the [Trustee Companies Act 1968](#)
- » a stockbroker.

The following process is suggested to make a certified copy of an original enduring power of attorney:

1. make a photocopy of the completed original enduring power of attorney (including any additional pages)
2. provide the photocopy and original enduring power of attorney to a person from the above list
3. the person from the above list:
 - » compares each page of the photocopy with the original enduring power of attorney to verify that the photocopy is a true and complete copy of the original enduring power of attorney (including any additional pages)
 - » checks that the number of pages (including any additional pages) corresponds with the number of pages indicated on the witness certificate in the document
 - » signs or initials each page of the photocopy (including any additional pages), other than the page on which the certification below is made

- » makes a certification on the first or last page:

This is to certify that this _____ page document is a true and complete copy of the original _____ page enduring power of attorney.

Date: _____

Signed: _____

Name: _____

Position/Qualification: _____

The above suggested process is an example of one process that a person from the above list can use to make a certified copy of an enduring power of attorney. Justices of the peace (JPs), commissioners for declarations, lawyers and other witnesses may have their own processes and certifications (stamps) which are equally as valid.

REVOKING (CANCELLING) YOUR ENDURING POWER OF ATTORNEY

You may revoke (cancel) your enduring power of attorney any time you have capacity to do so. See the [Queensland Capacity Assessment Guidelines 2020](#) for information about the capacity required to revoke an enduring power of attorney.

[Form 6 — Revocation of enduring power of attorney](#) can be used to revoke (cancel) your enduring power of attorney. If you revoke your enduring power of attorney, you must take all reasonable steps to advise all of your attorneys that it has been revoked.

If your enduring power of attorney has been registered with the Queensland Titles Registry, then your revocation of the enduring power of attorney should also be registered by lodging a Titles Registry [Form 16 — Request to register power of attorney](#), along with a single-sided certified copy of [Form 6 — Revocation of enduring power of attorney](#).

Other circumstances when your enduring power of attorney may be revoked (cancelled)

Other circumstances in which your enduring power of attorney may be revoked (cancelled) include if:

- » **you make a later enduring power of attorney or advance health directive (which may include one made in another state or territory)** — your earlier enduring power of attorney is revoked to the extent of any inconsistency with the later document
- » **you die** — your enduring power of attorney is automatically revoked on your death (your attorney(s) only has power to make decisions while you are alive)
- » **the terms of your enduring power of attorney provide for its revocation** — for example, if your enduring power of attorney is expressed to operate only for a specific period or specific purpose then it is revoked at the end of the period, or when the specific purpose is achieved
- » **you get married or enter into a civil partnership** — unless your enduring power of attorney states otherwise, your enduring power of attorney is automatically revoked to the extent it gives power to someone that is not your current spouse or civil partner
- » **you get divorced or your civil partnership is terminated** — your enduring power of attorney is automatically revoked to the extent it gives power to your previous spouse or civil partner
- » **the Queensland Civil and Administrative Tribunal (QCAT) or the Supreme Court orders that your enduring power of attorney is revoked.**

Your enduring power of attorney may also be revoked, to the extent that it gives power to an attorney, if your attorney:

- » **dies**
- » **resigns** — an attorney can resign by giving you a signed notice when you still have capacity to make another enduring power of attorney
- » does not have **capacity** for the matter for which they have been appointed
- » is declared **bankrupt** — to the extent it gives power for financial matters to your attorney
- » is or becomes your **paid carer** (including if they have been your paid carer within the previous 3 years)
- » is or becomes your **health provider**
- » is or becomes a **service provider for a residential service** where you reside.

A paid carer is someone who is paid a fee or wage to care for a person but not someone receiving a carer's pension or benefit.

INFORMATION FOR THE WITNESS

Who can witness an enduring power of attorney?

An **eligible witness** for an enduring power of attorney must be a:

- » justice of the peace (JP)
- » commissioner for declarations
- » notary public
- » lawyer.

The eligible witness **must not be**:

- » the person signing the enduring power of attorney for the principal
- » the principal's attorney (e.g. under an advance health directive or enduring power of attorney)
- » a relation of the principal or a relation of an attorney of the principal
- » if the enduring power of attorney gives power for a personal (including health) matter — a paid carer or health provider of the principal.

The role of the witness

The witness is not simply witnessing the principal's signature. The witness has an important role in certifying that the principal appeared to have capacity to make the enduring power of attorney.

Capacity to make the enduring power of attorney means that the principal:

- » is capable of making the enduring power of attorney freely and voluntarily
- » understands the nature and effect of the enduring power of attorney.


The witness should **confirm the identity** of the principal through an official form of identification, such as a driver's licence.

If the principal wants to add **additional pages** to the enduring power of attorney, it is recommended that both the principal and the witness sign and date each additional page and fill in the total number of pages (including any additional pages) on the witness certificate in section 4.

Keeping a written record of your conversation with the principal

It is strongly recommended that the witness makes a written record of the conversation and the evidence that the witness relied upon to come to the conclusion that the principal appeared to have capacity to make the enduring power of attorney.

For further information about assessing a person's capacity to make an enduring power of attorney, refer to the [Queensland Capacity Assessment Guidelines 2020](#).

 **NOTE:** If an interpreter assisted in the preparation of this document or if an interpreter is present when this document is witnessed, complete [Form 7 — Interpreter's/translator's statement](#) at www.publications.qld.gov.au

INFORMATION FOR ATTORNEYS

When can an attorney begin making decisions?

An attorney appointed by an enduring power of attorney can only start to make decisions as an attorney when:

- » the attorney has **signed the ‘Attorney(s)’ acceptance’** in section 5 of the enduring power of attorney
- » for **personal matters** – during times when the principal does not have capacity to make decisions about the matters the attorney is appointed for
- » for **financial matters** – immediately, or when the principal has specified under section 3 ‘When does your attorney(s)’ power begin for financial matters?’

All adults are presumed to have capacity to make their own decisions until it is proven otherwise. Just because a person is older, ill or has an impairment does not mean that they do not have capacity to make their own decisions.

For a principal to have capacity to make their own decisions, they must be capable of:

- » understanding the nature and effect of the decisions they are making
- » making the decisions freely and voluntarily
- » communicating the decisions they have made in some way.

A person’s capacity can be increased with support. Before deciding that a person does not have capacity to make decisions they should be provided with the support and information they need to make the decision themselves.

For more information about capacity and conducting an assessment to determine if a principal has capacity to make their own decisions, the attorney should read the [Queensland Capacity Assessment Guidelines 2020](#).

It is strongly recommended that an attorney seek a capacity assessment from an independent person (e.g. a general practitioner or other health practitioner).

If it is unclear whether the principal has capacity to make their own decisions, a medical practitioner can provide an assessment and report or the Queensland Civil and Administrative Tribunal (QCAT) or the Supreme Court can make a declaration about the principal’s capacity.

The duties and obligations of an attorney

An attorney has important legal duties and obligations that they must comply with. It is strongly recommended that a person **seek advice from a professional (such as a lawyer) when considering whether to accept an appointment as an attorney.**

An attorney’s legal duties and obligations include:

- » **Applying the general principles and the health care principles**

In making decisions for the principal, an attorney must apply the **general principles** and (if making decisions about health care) the **health care principles** under the [Guardianship and Administration Act 2000](#) and the [Powers of Attorney Act 1998](#).

The **general principles** require an attorney to:

- » presume that the principal has capacity to make their own decisions
- » recognise and protect the principal’s right to make their own decisions
- » if possible, support the principal to make and communicate their own decisions
- » when making decisions on behalf of the principal, recognise and take into account their views, wishes and preferences.

The general principles also reflect important human rights, such as the right to privacy, and require the attorney to make decisions in a way that is least restrictive of the principal’s rights, interests and opportunities.

When making a decision about health care for the principal, the **health care principles** also require an attorney to take into account the views and wishes of the principal (including those in the principal's enduring power of attorney). An attorney must also consider information from the principal's health provider and if health care is proposed consider the following:

- » any alternative health care available
- » any significant risks associated with the health care
- » if the health care can be postponed because a better option may become available within a reasonable time, or the principal may regain capacity to make their own decision
- » the consequences for the principal if the health care is not carried out
- » the benefits and burdens of the proposed health care for the principal
- » the effect of the health care on the principal's dignity and autonomy.

For further information see [Factsheet: General principles and health care principles under Queensland's guardianship framework](#)

» **Exercising powers in accordance with the terms and conditions of the enduring power of attorney**

Any attorney appointed under an enduring power of attorney must read the document first. It may contain important information about how they exercise their power to make decisions on behalf of the principal. For example, the enduring power of attorney may state:

- » if there are multiple attorneys, how the attorneys must exercise their powers (section 3) — the attorneys must exercise their powers jointly, severally, by a majority or any other way specified by the principal
- » terms and instructions for the attorney(s) (section 3) — the principal may decide to set terms on the exercise of powers by an attorney(s) or provide instructions.

» **Acting honestly and with reasonable diligence**

Attorneys must be careful to act only in the principal's interests, not any other person's interests, including their own. They must also act diligently and pay reasonable attention when making personal decisions for the principal so their decisions have the best chance of protecting the principal's interests. This may include, for example:

- » seeking all the relevant information about the principal's condition and treatment options before making a healthcare decision
- » seeking a second opinion for treatment that may pose a particular risk to the principal
- » making sure the principal has regular check-ups and has access to preventative care and screening relevant to their age and health conditions.

» **Consulting with the principal's other attorney(s)**

If more than one attorney is appointed in the enduring power of attorney, attorney(s) are obliged to consult with each other regularly to ensure that the principal's interests are not negatively affected by a breakdown in communication by the attorneys.

» **Being careful not to inappropriately disclose confidential information**

Attorneys will likely have access to confidential information about the principal, which may include the principal's health conditions and treatment and financial details. An attorney must protect the principal's privacy and keep this information confidential, except where it must be disclosed in performing their role as a decision-maker.

Specific rules for attorneys for financial matters

Rules around certain financial matters are especially complicated. It is strongly recommended that both the principal and attorney get independent legal and financial advice before decisions are made about appointment and acting on complex financial decisions.

» **Gifts and donations**

Attorneys can only use the principal's money or other property to give gifts and donations if it is:

- » of the nature of gift or donation the principal would have given when they had capacity
- » of the nature of gift or donation the principal might have been expected to have made.

Such gifts and donations must be of reasonable value, taking into consideration all of the circumstances, including the principal's financial position.



Example of gifts

Emily's gifts to her grandchildren: Richard is Emily's attorney for financial matters through an enduring power of attorney. After Emily has lost capacity to make financial decisions, Richard has become her attorney. Emily has a number of grandchildren, and while she had capacity she had always sent a birthday card and \$50 to them.

If Richard begins to act as Emily's attorney, Richard can continue to send the grandchildren a birthday card and \$50 from Emily's funds so long as she is able to afford this.

» Conflict transactions

A conflict transaction happens when there is a conflict between an attorney's duty to the principal and the attorney's own interests. This can include the interests of the attorney's friends, relatives and associates. An attorney cannot enter into a conflict transaction unless the principal has authorised the attorney to do so in the enduring power of attorney, or if a court or tribunal has authorised it.

» Maintaining the principal's dependants

An attorney can use the principal's money and property to provide for the needs of people that are already financially dependent on the principal (such as the principal's spouse or children).

An attorney can only do this if it is reasonable looking at all the circumstances, including the principal's financial position.

The principal can be specific about what and how much support they wish to provide in their enduring power of attorney, including placing any limits on what support is provided.

» Investments

An attorney can only invest in 'authorised investments' or continue investments that exist at the time the attorney's power begins. The principal can use an enduring power of attorney to specify the types of investments that they want the attorney to make, including what not to invest in.

An **authorised investment** by law is one of the following:

- » an investment which, if the investment were of trust funds by a trustee, would be an investment by the trustee exercising a power of investment under the [Trusts Act 1973](#), part 3 (also known as the 'prudent person rule')
- » an investment approved by QCAT.

An attorney can make an application to QCAT for approval to make an authorised investment.

The **prudent person rule** means that when investing, a person must exercise the care, diligence and skill a prudent person of business would exercise in managing the affairs of other persons. This rule is complicated and can be very easily broken even with the best of intentions. An attorney wishing to make investments for a principal should obtain advice from a professional with knowledge of this rule before making any investments.

» Keep records

An attorney must keep accurate records and accounts of all dealings and transactions made under the enduring power of attorney (e.g. bank account statements or receipts). An attorney may consider buying a diary and keeping a record of all dealings and transactions that they make.

» Keep property separate

An attorney must keep their property separate from the principal's property. This does not apply to property owned jointly by the principal and the attorney before the enduring power of attorney came into effect, or property acquired jointly by the principal and the attorney in place of property that was already jointly owned.

What are the consequences if I do not fulfil my obligations as an attorney?

The consequences of failing to comply with the duties and obligations described above could include:

- » **removal as an attorney** — QCAT has the power to remove a person as an attorney where the attorney has not complied with their obligations
- » **criminal liability** — failing to act honestly and with reasonable diligence in your role as an attorney is a criminal offence
- » **paying compensation** — QCAT or the Supreme Court can order an attorney or former attorney to compensate the principal or the principal's estate for any loss caused by their failure to comply with their obligations
- » **accounting for profits** — QCAT or the Supreme Court can order an attorney or former attorney to account for any profits they gained as a result of their failure to comply with their obligations
- » **other remedies against an attorney** — QCAT or the Supreme Court has the power to make other orders against an attorney or former attorneys, including power to require the attorney or former attorney to perform certain actions (such as producing records and audited accounts).

If you are unsure about your role or obligations as an attorney, you should seek independent legal advice.

If I no longer want to act as an attorney, how do I resign?

You can resign as attorney for a matter by giving written notice to the principal, provided the principal has the necessary capacity. However, if the principal does not have capacity for the matter, you can only resign with the approval of the QCAT or the Supreme Court.

Frequently asked questions (FAQs)

Do I have to register my enduring power of attorney?

No. See section 6 ‘What to do with your completed enduring power of attorney’.

When does my enduring power of attorney end?

Your enduring power of attorney continues even if you lose capacity. For more information about when an enduring power of attorney may end see pages 19–20 ‘Revoking (cancelling) your enduring power of attorney’.

How do I revoke (cancel) an enduring power of attorney?

See pages 19–20 ‘Revoking (cancelling) your enduring power of attorney’.

I completed an enduring power of attorney under the other previous approved form for an enduring power of attorney – is it still valid?

Yes. If your enduring power of attorney was made correctly using an older version of the form and it was valid, it will continue to be valid.

How do I get a certified copy of my enduring power of attorney?

See pages 18–19 ‘How to make a certified copy of an enduring power of attorney’.

How do I make changes to an enduring power of attorney once it has been completed and signed?

If you want to make changes, you can revoke your current enduring power of attorney and make a new one, or make a new enduring power of attorney which will override your earlier enduring power of attorney to the extent of any inconsistency. See page 19 ‘Revoking (cancelling) your enduring power of attorney’.

It is not recommended that you write on your existing enduring power of attorney once it has been signed and witnessed. For minor changes, like updating your address, you may not need to make a new enduring power of attorney. If you want to update certain details such as your phone number, it may be better to simply let the people you have given a copy of the enduring power of attorney to know your updated details. It is recommended that you seek advice from a lawyer about changing your enduring power of attorney.

How do I appoint extra attorneys if there is not enough space in the enduring power of attorney form?

If you are completing [Form 2 – Enduring power of attorney – short form](#), tick the box in section 3 on page 4 ‘I am appointing additional attorney(s) and need more space’.

If you are completing [Form 3 – Enduring power of attorney – long form](#) for personal (including health) matters, tick the box in section 3 on page 4 ‘I am appointing additional attorney(s) and need more space’, or for financial matters, tick the box on page 7 ‘I am appointing additional attorney(s) and need more space’.

Then add an additional page(s) to the enduring power of attorney with the details of the extra attorney(s) and for the attorney(s) to sign to accept their appointment – see page 18 ‘How to add additional pages’.

Can an attorney under an enduring power of attorney complete an advance health directive on behalf of a principal?

No, an attorney cannot make an advance health directive for a principal. However, an attorney appointed for personal (including health) matters may have power to make decisions about health care for the principal.

What is the difference between a general power of attorney and an enduring power of attorney?

There are two main differences: firstly, a general power of attorney cannot appoint an attorney for personal (including health) matters and secondly, general powers of attorney do not continue to operate when you do not have capacity to make decisions (there are exceptions to this second part, such as a power of attorney as a security, but this situation is only done in very specific circumstances).

Types of substitute decision-making arrangements

Queensland's guardianship legislation recognises a number of substitute decision-makers and authorises the exercise of power for a matter for an adult with impaired capacity for a matter.

Depending on the type of matter, a substitute decision-maker may be:

An informal decision-maker	A member of the adult's support network acting on an informal basis (Queensland's guardianship legislation recognises that a member of an adult's support network may make decisions for them on an informal basis). An informal decision-maker cannot make an enduring document on behalf of an adult.
An attorney for personal (including health) matters	An attorney for personal (including health) matters appointed by the adult under an enduring power of attorney or advance health directive. The enduring document must have been made by the adult at a time when they had capacity to make the document.
An attorney for financial matters	An attorney for financial matters appointed by the adult under an enduring power of attorney. The enduring power of attorney must have been made by the adult at a time when they had capacity to make the document.
A statutory health attorney	A statutory health attorney (listed in order of priority in Queensland's guardianship legislation) is an adult's spouse, unpaid carer, or close friend or relative over the age of 18 years who has automatic authority under Queensland's guardianship legislation to make decisions about health care. If none of the above people are available or culturally appropriate, the Public Guardian is an adult's statutory health attorney.
A guardian for personal (including health) matters	A guardian may be appointed by QCAT or the Supreme Court to make decisions about the adult's personal (including health) matters.
An administrator for financial matters	An administrator may be appointed by QCAT or the Supreme Court to make decisions about the adult's financial matters.
QCAT or the Supreme Court	There are certain matters for which QCAT and the Supreme Court can make an original decision.

If you need further assistance

Online resources

For information about enduring powers of attorney, advance health directives and substitute decision-making under the guardianship framework in Queensland, guidance on assessing the capacity of an adult to make decisions or an enduring document (including the *Queensland Capacity Assessment Guidelines 2020*) and copies of all related forms and explanatory guides, visit www.qld.gov.au/guardianship-planahead

Office of the Public Guardian

Find information about the role of the Public Guardian at: www.publicguardian.qld.gov.au

You can appoint the Public Guardian as your attorney for personal and health care matters.

Tel: **1300 653 187**

The Public Trustee of Queensland (PTQ)

Find information about the role of the PTQ at:

www.pt.qld.gov.au

Email: Clientenq@pt.qld.gov.au

Tel: **1300 360 044**

Monday to Friday, 8:15am–5pm

Queensland Law Society

For information about finding a solicitor for legal advice:

www.qls.com.au

Tel: **1300 367 757**

Monday to Friday, 8:30am–5pm.

Justices of the Peace Branch

Information on how to locate the services of a Justice of the Peace or Commissioner for Declarations can be found at

www.qld.gov.au/findjp

Email: jp@justice.qld.gov.au

Tel: **1300 301 147**

Monday to Friday 8:30am–5pm

Community Legal Centres

Call or visit your nearest community legal centre, Seniors Legal and Support Service or specialist legal centre for people with disability or mental illness. Community legal centres can provide free legal advice for your situation.

You can find local legal help at:

www.communitylegalqld.org.au

Queensland Civil and Administrative Tribunal (QCAT)

Applications for guardianship and administration, as well as applications regarding capacity and attorneys can be made at QCAT.

Information about making an application to QCAT is available at: www.qcat.qld.gov.au

Tel: **1300 753 228**

Monday to Friday, 8:30am–3pm.

13 HEALTH

13 HEALTH is a confidential phone service that provides health advice to Queenslanders. The service can direct you to a local GP service who can provide advice and assistance to complete an enduring power of attorney or advance health directive form.

You can phone and talk to a registered nurse 24 hours a day, 7 days a week for the cost of a local call.

Tel: **13 43 25 84**

Office of Advance Care Planning

The Office of Advance Care Planning is a free statewide service that helps Queenslanders plan and share their healthcare wishes. The Office of Advance Care Planning is able to upload a copy of your advance health directive, enduring power of attorney, revocation documents and Statement of Choices to your Queensland Health electronic record. Only authorised clinicians involved in your care can access uploaded advance care planning documents.

For more information, please contact the Office of Advance Care Planning via:

Phone: 1300 007 227, email: acp@health.qld.gov.au or

visit: www.mycaremychoices.com.au

If you need an interpreter



If you have difficulty understanding this publication and need language assistance, please call **13QGOV (137468)**, ask for an interpreter and ask them to telephone any of the agencies in this section.

If you are deaf or have a hearing or speech impairment



Use the National Relay Service to phone any of the agencies in this section.

For more information visit:

www.communications.gov.au/accesshub

Form 9 — Enduring power of attorney explanatory guide
(Queensland)