

# Information Sheet

Protecting the human rights of adults with decision-making disabilities

## 8. ENDURING POWERS OF ATTORNEY

The Public Advocate provides a telephone advisory service (1300 858 455) that provides information about Enduring Powers of Attorney (EPA). Recorded information including answers to a range of common questions regarding EPAs is available 24 hours a day. To speak to an advisory officer, call the service between 9am to 5pm, Monday to Friday.

### WHERE CAN I PURCHASE AN ENDURING POWER OF ATTORNEY INFORMATION KIT?

The Enduring Power of Attorney Information kits (which include an Enduring Power of Attorney form) can be downloaded free of charge from the Office of the Public Advocate's website, or printed copies of the kit are available for a minimal cost from the State Law Publisher and newsagencies.

### WHAT IS AN ENDURING POWER OF ATTORNEY?

An Enduring Power of Attorney enables anyone who is 18 years of age or older and has legal capacity to give another person or agency, legal authority to make financial and/or property decisions on his or her behalf. The person giving the power is called the DONOR. The person or agency accepting the power is called the Attorney or DONEE. An Enduring Power of Attorney comes into operation from the time specified in the EPA. It is important to be aware that these powers will continue to operate even if the Donor becomes incapable of making reasoned decisions at some time in the future. The only way to stop the powers of an EPA is to revoke them.

### WHAT CAN I DO IF I AM UNABLE TO SIGN AN ENDURING POWER OF ATTORNEY?

Where a person giving the power is unable to sign his or her name, because for example:

- they understand English but cannot write
- they understand English but cannot read or write
- they do not understand English and cannot write
- they do not understand English but can write

then a mark of any kind by that person, including an initial, cross or even a thumb print will suffice, providing an appropriate explanatory clause is inserted into the EPA.

These clauses are called marksman or readover clauses. It is advisable to seek legal assistance (from a solicitor or community legal centre), to prepare an EPA which incorporates such a clause.



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## **WHO CAN WITNESS AN ENDURING POWER OF ATTORNEY?**

In Western Australia, an EPA must be signed by the person giving the power, in the presence of two independent witnesses. One of the witnesses must be a person authorised to witness documents under the *Oaths, Affidavits and Statutory Declarations Act 2005*. This includes Justices of the Peace, medical practitioners, officers of the State and Commonwealth public service and police officers. A full list of authorised witnesses is included in the EPA kit. It is acceptable to use two witnesses from this list, however the legal requirements for the second witness are that the person is at least 18 years of age, and is not the person being appointed as attorney or substitute attorney.

## **DO I HAVE TO REGISTER MY ENDURING POWER OF ATTORNEY?**

There is no need to register an EPA unless there is a likelihood of land or property transactions now or in the future. In this case, two EPA forms with original signatures should be lodged with Landgate (formerly the Department of Land Information) as soon as possible after the EPA is signed. Landgate is located at Mt Newman House, 200 St Georges Terrace, Perth, at Midland Square in Midland and at 61 Victoria St, Bunbury. You will need to contact the Land Registration Centre on (08) 9273 7044 for current fees for lodging or revoking an Enduring Power of Attorney with Landgate, or for further information and advice on lodging an EPA with Landgate.

## **IS THE DONOR REQUIRED TO HAVE LEGAL CAPACITY?**

The Donor of an EPA must be capable of making reasoned decisions at the time of completing the Enduring Power of Attorney. If there is any doubt about the decision-making capacity of the person giving the EPA, the written opinion of a doctor or other professional should be sought.

## **HOW CAN I REVOKE MY ENDURING POWER OF ATTORNEY IF I NEED TO?**

Provided you still have legal capacity, you can revoke an EPA at any time you wish. If you no longer wish the EPA to apply, you should inform your attorney and all other relevant people and agencies, preferably in writing. You should keep a copy of your written revocation together with a list of all people and agencies to which you have sent it.

If you have lodged your EPA with Landgate, you will need to lodge a formal revocation with Landgate for which a fee will be charged.

## **CHOOSING THE ATTORNEY/S**

The person or persons you choose to act as your attorney/s is up to you. It may be your spouse or partner, another family member or close friend, an accountant, lawyer or a trustee company or the Public Trustee. It is important that the person you choose as your attorney is trustworthy and likely to always act in your best interests. No more than two people can be attorneys at any one time.



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## **TO PURCHASE COPIES OF THE EPA KIT CONTACT**

### **State Law Publisher**

Ground Floor, 10 William St, Perth WA 6000

Telephone: (08) 9426 0000

Facsimile: (08) 9321 7536

Email: [sales@dpc.wa.gov.au](mailto:sales@dpc.wa.gov.au)

Web: [www.slp.wa.gov.au](http://www.slp.wa.gov.au)

## **FOR FURTHER INFORMATION CONTACT**

### **Office of the Public Advocate**

Level 1, 30 Terrace Road, EAST PERTH WA 6004

PO Box 6293, EAST PERTH WA 6892

Telephone: 1300 858 455

TTY: 1300 859 955

Facsimile: (08) 9278 7333

Email: [opa@justice.wa.gov.au](mailto:opa@justice.wa.gov.au)

Web: [www.publicadvocate.wa.gov.au](http://www.publicadvocate.wa.gov.au)

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