



# A guide to Enduring Powers of Attorneys in Queensland

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In Queensland, [Enduring Powers of Attorney](#) documents are key documents in the estate and future planning process, and therefore, it is important that those who create the document, or are given responsibilities and powers pursuant to the documents, fully understand them.

## What is the purpose of an Enduring Power of Attorney?

An Enduring Power of Attorney ('EPOA') is a that nominates a person (referred to as the Attorney) to make decisions for the person who creates the document (referred to as the Principal) when the Principal does not have [capacity to make those decisions for themselves](#) (or earlier in certain situations).

In an Enduring Power of Attorney document, a Principal can appoint an Attorney to make either:

health and personal decisions;

financial decisions; or

both health/personal **and** financial decisions.

EPOA forms can be downloaded from the Queensland Government publications portal. There are two options for an EPOA.

**Enduring Power of Attorney – short form**

Use this form to appoint:

an Attorney for health and personal matters only;

an Attorney for financial matters only; or

the same attorney for both personal/health matters and financial matters.

[Download the form here.](#)

## Enduring Power of Attorney – long form

Use this form to appoint different attorneys for health and personal decisions and for financial matters.

[Download the form here.](#)

The Principal can also provide some details about any particular views they would like the Attorney to take into account when performing their duties as an Attorney. This could include some particular wishes about health preferences or ways they would like the financials to be handled.

If the Principal has some specific wishes they would like to include, then they may also wish to consider signing an '[Advanced Health Directive](#)' to convey those wishes. This is a different document in the estate planning process than an EPOA.

## Who can the Principal appoint as an Attorney?

Most commonly, Principals will appoint a trusted friend or family member (or multiple people), but who is appointed is a choice entirely for the Principal.

In some circumstances, the Principal may choose to appoint the Public Guardian or the Public Trustee for their decisions. The [Public Guardian](#) and the [Public Trustee](#) are both independent government-funded offices that assist those who are unable to make their own decisions.

Ultimately, the decision of who is appointed as the Attorney is entirely up to the Principal, but there are some particular requirements of who is eligible to be an Attorney in Queensland, including that:

the Attorney must be 18 and, themselves, have capacity;

the Attorney must not be a paid carer of the Principal (including in the last three years); and

the Attorney must not be your health provider.

Principals may also wish to appoint multiple people to act as their Attorney. Where that is the case, the Principal will also have to nominate how those multiple Attorneys will need to work together in those roles. Some of the options include:

By unanimous decision – all of the Attorneys need to agree on any decisions that are made;

By majority decision – a majority of the Attorneys need to agree on any decisions that are made;

Jointly or severally – the Attorneys can either make decisions together or individually;

Severally – the Attorneys are able to make decisions individually.

## Making sure your Enduring Power of Attorney is valid

There are several items that are required in order to ensure that an EPOA document is compliant and valid.

A few common errors include:

the Attorney signing the acceptance section before the Principal executes the document;

the signature of the Principal not being witnessed (or not being witnessed by an appropriately qualified witness); and

required sections being missed.

More information about the steps required to make a compliant EPOA is contained in the [Queensland Government's enduring power of attorney explanatory guide](#).

## What happens if I lose capacity and I haven't made an Enduring Power of Attorney?

Unfortunately, you are not able to make an Enduring Power of Attorney if you do not have capacity.

If you were to lose capacity and require a decision maker without having first made an EPOA, then your friends or family who would be assisting you to make decisions in your place, would be required to apply to the Queensland Civil and Administrative Tribunal (QCAT) to be appointed as either a Guardian (for health/personal matters) or an Administrator (for financial matters), or both.

QCAT provides more [information about administrator or guardian applications on their website](#).

## Responsibilities of an Attorney under an Enduring Power of Attorney?

Being appointed as an Attorney pursuant to an EPOA comes with important responsibilities to act in the best interest of the Principal when making decisions on their behalf. Initially, Attorneys must read and understand the EPOA document to understand the Principal's wishes in relation to decisions made. If an Attorney has any questions about how they can make decisions and act for the Principal in line with the EPOA document, they may wish to seek legal advice.

[FREE ADVICE FROM AN ESTATE PLANNING LAWYER: 1800 001 339](#)

The Public Guardian in Queensland has developed some helpful materials for Attorneys, [including this publication](#).

## Concerns about an Attorney's actions and decisions under an EPOA

An Attorney, pursuant to an EPOA, has a significant amount of power over the Principal, particularly given that once the EPOA is enacted, the Principal will usually have lost capacity and be vulnerable. Where an Attorney may not be performing their duty properly (and in the best interests of the Principal), there are mechanisms in place for these concerns to be raised and addressed if needed.

Firstly, a report can be made to the Office of the Public Guardian in Queensland (OPG), which will consider the report and whether an investigation or further steps may be required to intervene.

Alternatively, or in conjunction with the report to the OPG, the concerned person may make an application to QCAT for the Attorney to be removed or restricted in some other way.

The person who makes the application does not necessarily have to be the person who is appointed as the new Attorney, although they may apply for that to be the case. Ultimately, QCAT will be the decision maker of who should be appointed and may eventually conclude that either the Public Guardian (for personal/health decisions) or the Public Trustee (for financial decisions) are the most appropriate decision makers to be appointed.

## What do I do if I need some help with creating my Enduring Power of Attorney?

You may wish to seek legal advice about your options about an Enduring Power of Attorney and other estate planning documents (like your Will or an Advance Health Directive). IM Lawyers has the expertise and experience to help you through this process and support you to finalise all the necessary steps.

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*This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.*