



**PUBLIC TRUSTEE
AND GUARDIAN**

POWERS OF ATTORNEY

Powers of Attorney

Appointing someone to make important decisions on your behalf when you are unable to make them yourself is a vital part of your personal estate planning.

A power of attorney is a legal document which gives the person you appoint, the power to manage your property, financial, personal and health care matters while you are alive and unable to make these decisions yourself.

The person you appoint is called your attorney. This person will, by your instructions, safeguard and manage your financial and personal affairs when you are unable to manage them yourself, or if you lose legal capacity.

There are two ways you can appoint an attorney to make these decisions, a General Power of Attorney and an Enduring Power of Attorney.

The Public Trustee and Guardian (PTG) will assist you to identify the Power of Attorney to suit your needs. PTG will only make an Enduring Power of Attorney for you if PTG is appointed as either the attorney or substitute attorney for either financial/property matters and/or personal and health care matters.

General Power of Attorney

A General Power of Attorney (GPA) is only valid while you have legal capacity. This may be useful if you are travelling overseas or interstate for an extended period. A GPA is not valid should you lose legal capacity, meaning your appointed person would cease to have authority to make any decisions for you.

Enduring Power of Attorney

An Enduring Power of Attorney (EPA) continues to be valid even if you lose legal capacity due to disability or illness. This allows your attorney to commence or to continue to manage your affairs even though you have become unable to make lawful decisions.

Why have a Power of Attorney?

When accidents, sudden illness, planned or unexpected absences occur, or when you can't cope, you may need someone to manage your affairs.

This should be considered a routine part of the management of your financial and personal affairs. It can be done in anticipation of a future need, for a special purpose or for a limited time.

PTG can prepare your EPA if you appoint PTG as your attorney or appoint your partner/spouse as



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your attorney and PTG as the alternate attorney should your partner be unable or unwilling to act.

What is legal capacity?

This term describes a person's ability to be aware of, and fully understand, the nature and implication of the document they are signing.

Anyone of 18 years and over with capacity can appoint an attorney. If there is any possible doubt about capacity, a medical report may be obtained and kept with the power of attorney.

When to make a power of attorney

Whether you choose a GPA or an EPA, you may wish to appoint an attorney now, but delay the time when the attorney commences to act. In this way the documentation is prepared, signed and held, pending further advice.

Under a GPA, you may choose to appoint an Attorney to make financial / property decisions on your behalf even though you continue to have capacity. The appointment may be for a fixed or indefinite period and can be revoked by you at any time providing you still have the legal capacity to do so.

An attorney can only act in relation to personal and health care decisions when you have lost capacity, such as under an EPA.

An EPA is signed by you while you have the required legal capacity to give your attorney clear and concise instructions. The attorney must also sign the document and accept the appointment.

If you lose capacity before making an EPA, the ACT Civil and Administrative Tribunal (ACAT) may appoint an individual or PTG as your guardian and/or manager. However, your wishes may not be known at this time and the appointment may not be who you would have chosen.

This person will act in a similar way to that of your attorney, but is also required to report at regular intervals to PTG.

Both GPA and EPA as well as any appointment of a guardian/manager cease to have effect on formal revocation or on your death. The executor named in your Will then takes over the responsibilities of your estate.

Who should I appoint as my attorney?

Acting under a GPA or an EPA is demanding, requiring special skill. The person you choose should have the skill to manage your affairs properly. An attorney must be available when needed, be able to make impartial decisions in keeping with your wishes or your best interests and be able to keep accurate records.



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You will be placing control of your affairs into the hands of your attorney....but your attorney has no legal obligation to report to any other person about the management of your affairs.

An attorney is required to -

- inform themselves of your views and wishes in the event of your incapacity;
- keep managed property separate from his or her own; and
- keep accurate accounts of transactions.

There are very good reasons why you should consider appointing an independent specialist such as PTG as your attorney.

In performing all of its roles, including acting as attorney, PTG is accountable to the government and the community.

Can I cancel an attorneyship?

You may revoke the appointment of your attorney at any time while you have capacity, using the prescribed form on the ACT Legislation Register at www.legislation.act.gov.au.

Someone you appoint as attorney may cancel their role as your attorney at any time provided they have the legal capacity to do so. This must be done in writing, using the prescribed form on

the ACT Legislation Register at www.legislation.act.gov.au.

How can PTG assist you in making an EPA?

PTG can prepare the legal document where you appoint your attorney provided you appoint PTG as your Attorney, or the substitute/alternate attorney where you appoint your spouse/partner as first attorney.

There is a small fee for this service, please refer to our fees and charges brochure for more information.

Power to Choose

Please refer to our publication 'The Power to Choose' for more information about EPA's.