

## Enduring Powers of Attorney and Guardianship – Information Guide

### Enduring powers of attorney

Powers of attorney generally cease to be effective when the giver loses mental capacity.

An enduring power of attorney is one that remains effective after the giver has lost mental capacity. It will remain in force until death, unless it is revoked while the giver has the mental capacity to revoke it.

### Do I need an enduring power of attorney?

If you own assets and you lose mental capacity, someone will have to be appointed to look after your affairs. If you have granted an enduring power of attorney, you will have chosen that person (or persons) for yourself.

If you have not granted an enduring power of attorney, someone (e.g. your spouse, son or daughter) will need to apply to a court or a government tribunal to be appointed. It is likely that an officer of the government will also need to be involved in the management of your affairs.

### Appointing a guardian by your Will

If you have children who are under 18 years, a significant decision for you is who to nominate as guardians of your children if you (and your spouse) die while your children are minors. The appointed guardian will have all the rights and responsibilities of the parent or parents they replace. The only way the guardian may be removed is if the appointment is challenged by another interested party making a court application.

If you are divorced or separated from your child's parent, then it is possible for you to nominate a guardian. The guardian will have the rights, powers and responsibilities you would otherwise have had in relation to the long-term care, welfare and development of your child. Where the Family Court has awarded custody to one parent and that parent subsequently dies, the surviving parent does not have an automatic right to custody of the child, although the Family Court will generally prefer to see this outcome.

The surviving parent can make an application for guardianship and custody, as can any person who has the care and control of the child at the time.

If the deceased custodial parent has appointed a guardian under their will, that guardian will have the right of custody over the surviving parent, subject to the exercise of the Court's power to appoint an alternate guardian.