



Enduring Medical / Guardian Power of Attorney - Victoria

Full Service Order Form

What you are required to do to order your Document:

1. Complete all relevant fields in BLOCK LETTERS
2. Mail, fax or email this form to Topdocs –
Address: Ground Floor, Suite 4 / 24 Albert Road South Melbourne Vic 3205; Fax: (03) 98256 0108; Email: orders@topdocs.com.au

SECTION A (I): PERSON / ADVISOR ORDERING DETAILS

YOUR NAME				Signature	
YOUR COMPANY NAME					
YOUR POSTAL ADDRESS					
DATE OF ORDER		/ /		Your Ref.	
Phone		Fax		Email	

SECTION A (II): PAYMENT DETAILS

Enclosed is Payment for the sum of \$

- Direct Debit*
 Visa Card
 MasterCard
 Cheque

Card Holder Name			
Credit Card Number	- - -		
Expiry Date	/	Authorised Card Signature	

*To pay by Direct Debit you must have a current Direct Debit arrangement with Topdocs Pty Ltd.
If you would like to arrange for Direct Debit for future purchases please contact Topdocs Pty Ltd on 1300 65 92 42.

What type of Power of Attorney do you wish to purchase?

<input type="checkbox"/>	Enduring Medical Power of Attorney
<input type="checkbox"/>	Enduring Guardian Power of Attorney
<input type="checkbox"/>	Enduring Medical Power of Attorney and Enduring Guardian Power of Attorney on the same terms

SECTION B: DONOR(S)

The Donor(s) are the person or persons to whom the Enduring Financial Power of Attorney applies to.

1 - Full Name	
Alias (if any)	
Address	

2 - Full Name	
Alias (if any)	
Address	

SECTION C: AGENT(S) IN ORDER OF APPOINTMENT

The Agent(s) are the person or persons the Donor wishes to appoint as their Agent

AGENT	
Full Name	
Alias (if any)	
Address	
Occupation	
Relationship to the Donor	
FIRST ALTERNATE AGENT	
Full Name	
Alias (if any)	
Address	
Occupation	
Relationship to the Donor	
SECOND ALTERNATE AGENT	
Full Name	
Alias (if any)	
Address	
Occupation	
Relationship to the Donor	
THIRD ALTERNATE AGENT	
Full Name	
Alias (if any)	
Address	
Occupation	
Relationship to the Donor	

SECTION D: LIMITATIONS / CONDITIONS OF APPOINTMENT

Binding limitations or conditions you want to place on your attorney:

ENDURING POWERS OF GUARDIANSHIP AND MEDICAL TREATMENT INFORMATION

Both changes to medical treatment and the introduction of enduring powers of guardianship resulted from amendments to the *Guardianship and Administration Act 1986* (Vic) by the *Guardianship and Administration (Amendment) Act 1999*.

The amendment Act introduces a new Division 5A into Part 4 of the parent Act providing for the new instrument of an enduring power of guardianship. It also introduces a new Part 4A into the parent Act concerning the administration of medical treatment to people with long term or permanent disabilities in situations where they are unable to give informed consent to such treatment.

ENDURING POWERS OF GUARDIANSHIP (Div 5A, Sections 35A—35C *Guardianship and Administration Act 1986*)

1. Introduction

An enduring power of guardianship is an instrument that enables a person (called the *appointor* or sometimes the donor) to appoint an *enduring guardian* to make decisions about the appointor if the appointor at a *later time* cannot make those decisions for him or herself. It is similar in form and philosophy to other documents which are executed by a person enabling them some control over the process of who makes decision on their behalf, if and when, the donor or appointor is no longer able to do so.

Similar instruments include general (financial) powers of attorney under the *Instruments Act 1958* and medical powers of attorney under the *Medical Treatment Act 1988*.

Powers of Attorney also avoid the necessity of a hearing before the Guardianship and Administration Tribunal where, for whatever reason, decisions in respect to that person cannot be made.

2. Who can appoint an Enduring Power of Guardianship?

Adults eighteen years of age or over may appoint an enduring guardian.

All adults should consider making an enduring power of guardianship. The appointor does not need to have a disability to appoint an enduring guardian. In fact, it is best for a person to make an enduring guardianship appointment while still healthy.

The concept behind enduring guardianship is that there may come a time for all of us when we are unable to make decisions about our finances, medical treatment or daily lives because of temporary or permanent illness, accident, injury or old age. When that happens, and we are no longer able to make our own decisions, then it will be too late to try and make such an appointment.

It may be particularly crucial, however, when someone who is ill or is about to undertake a serious operation, needs to make arrangements to ensure that appropriate decisions are taken regarding their well being when they no longer become competent to do so.

In short, an enduring power of guardianship allows us the security of choosing *now* the person who will make these important decisions for us when we are no longer able to do so for ourselves.

3. Who may be a valid Enduring Guardian?

An appointor may appoint as their enduring guardian anyone who is eighteen years of age or over.

The guardian must not be involved in a professional sense, directly or indirectly, in the appointor's care, treatment or provision of accommodation. This means that a carer who charges a fee for looking after the appointor must not be appointed as the guardian.

This does not include a family member caring for the appointor at home (unless they were charging a fee to the appointor to do so), but it does include the manager of a nursing home. The enduring guardian must also be mentally competent. If any of these conditions are not met the appointment of the enduring guardian automatically lapses.

4. Making the Appointment

An appointment of an enduring guardian *must be in writing*. There is a standard form that the appointor must fill out in order to appoint an enduring guardian.

To fill in the form correctly the appointor needs to:

- Sign the form;
- Have the appointor's proposed guardian sign the form;
- Have the form witnessed by two other people. One of these people must have the authority to be able to witness statutory declarations, such as a solicitor, justice of the peace, doctor or member of the police force. Please note that a witness cannot be a relative of either the appointor or the proposed guardian

The appointor's proposed enduring guardian will need to sign a form of acceptance of the appointment. This will also need to be witnessed in the same way as the form of appointment as noted above.

5. Powers and Authority of the Enduring Guardian

In the document appointing the enduring guardian the appointor may choose to specify exactly the type of decisions the guardian can make, those he or she cannot make, and any factors the guardian should take into account in making those decisions.

If the appointor does not state clearly the powers the guardian is to have, and the time comes when the appointor is no longer able to make decisions for him or herself, then the guardian will be deemed to have the same powers as if she or he were the parent and the appointor were their child.

In particular the enduring guardian is deemed to have all the powers of a plenary guardian under section 24 of the *Guardianship and Administration Act 1986*. These include the right and power to make decisions with regard to the finances, accommodation, medical treatment, employment and general lifestyle decisions of the appointor. This may also include making decisions as to the persons the appointor may visit or associate with.

Given the wide nature of this authority, the appointor should be specific as possible in detailing (or excluding) the powers the appointor wishes the enduring guardian to have

The enduring guardian does not have the power to authorise *special procedures*. These are medical procedures that can only be authorised by the Guardianship List of the Victorian Civil and Administrative Tribunal. They include procedures such as sterilisations, terminations of pregnancy, and transplantation of body tissue.

6. Revocation of Enduring Powers of Guardianship.

Revocation by Appointor

An appointor may cancel or revoke an appointment of an enduring power of guardianship at any time, as long as he or she has the mental competence or capacity to do so.

The cancellation must be in writing. It also needs to be signed by the appointor and two witnesses, one of whom is authorised to witness statutory declarations. A witness cannot be a party to the instrument of appointment or a relative of a party to it.

In particular, the guardian whose authority the appointor is seeking to revoke must not be a witness to this document.

A new and validly executed appointment of an enduring power of guardianship will automatically revoke or cancel any previous powers of guardianship made by the appointor. In other words, the most recent validly executed power of guardianship takes precedence.

Revocation by Guardianship List

The Guardianship List of VCAT may cancel the appointment at any time after the appointor loses mental capacity if:

- The enduring guardian indicates she or he no longer wishes to act on the appointor's behalf; or
- VCAT believes that the enduring guardian has acted incompetently, negligently or otherwise in a manner that is not in the appointor's best interests

An enduring power of guardianship will not be automatically revoked merely because the appointor has become a represented person (that is, subject to an administration order). If VCAT does decide to revoke the appointment and remove the guardian, they may appoint another guardian in her or his place.

An application for revocation by VCAT can be made by

- The Public Advocate;
- The Enduring Guardian;
- The Administrator of a represented person's estate;
- Any person whom VCAT is satisfied has a genuine interest in the appointor or his or her estate.

7. The relationship of Enduring Powers of Guardianship to other types of Powers of Attorney or nominating instruments.

In many cases the role of an enduring guardian may be similar or the same to that of a person nominated under a power of attorney or enduring power of attorney.

Both may have power to make decisions with regard to the finances of the donor or appointor.

However, the key difference is that a general power of attorney, if the instrument allows it, may enable an attorney to act on behalf of a donor who is still competent.

An enduring power of guardianship on the other hand, similar to an enduring power of attorney, is only operative when the appointor has lost capacity or competence.

Depending on the scope of the enduring power of guardianship instrument of appointment, if there is disagreement between an attorney and an enduring guardian in a matter which falls within the authority of the enduring guardian, the decision of the enduring guardian will prevail.

There can also be overlap between the role of an enduring guardian and that of an agent under the *Medical Treatment Act* 1988. If these are two different people and they disagree between themselves as to the appropriate decision with regard to decisions concerning the appointor's medical treatment, then under the new laws the decision of the agent under an enduring power of attorney (medical treatment) will prevail.

8. Summary

Being an enduring guardian is a responsible and on occasion arduous or difficult task. It is not a commitment that a proposed guardian should enter into lightly

Whoever has the role of being a guardian, an appointor is entitled, by law, to expect two main things:

- One: that the guardian will take notice of the appointor's stated wishes, and,
- Two: that the guardian will act in the appointor's best interests.

This means that a relationship of trust should exist between the appointor and the proposed guardian. It should be someone who knows the appointor well, or at very least, someone who is prepared to spend enough time getting to know what is and isn't important to the appointor. This may be particularly the case where the appointor has an intellectual disability but is still sufficiently competent to execute an enduring power of guardianship.

The guardian's role is in effect to make the decisions that an appointor would make if they were able to do so. That might mean very different decisions for two different people in the same circumstances. The guardian should always know enough about the appointor to be able to decide the things that are right for him or her.

Under the *Guardianship and Administration Act*, an enduring guardian has the right to apply to VCAT for an advisory opinion or directions on any matter relating to his or her appointment as enduring guardian. In giving that opinion VCAT may modify or vary the effect of the instrument appointing the enduring guardian.

ENDURING POWERS OF ATTORNEY (MEDICAL TREATMENT)

Your Enduring Power of Attorney (Medical Treatment) gives your appointed *agent* (also known as your donee) the authority to make decisions about your medical treatment on your behalf if you become incompetent through ageing, mental or physical illness or injury.

Medical Treatment:

Means an operation, the giving of medicine or drugs or any other medical procedure. However, it does not normally include treatment to relieve pain, suffering and discomfort or providing food and water.

Your Agent:

Can be a family member, friend or professional person. You cannot appoint two people jointly. You can appoint an alternative agent should your original agent die, become incompetent or can't be contacted. Appointing an agent is an important decision, as you are giving your agent the power to make decisions you would have made regarding your medical treatment if you had been able to.

What You Need To Know About Your Enduring Power of Attorney (Medical)

Be aware that the agent you appoint will be able to make decisions about refusing medical treatment on your behalf if you become incompetent.

It would be helpful for you to discuss your medical needs with your agent, and in particular the circumstances in which you would refuse medical treatment, even if this means ending your life.

This is because your agent has the power to refuse treatment on your behalf. There must be sufficient information from the treating doctor to enable your agent to make such a decision, and your agent must be able to form the reasonable belief that continuing treatment would cause you unreasonable distress or that you would have objected to such treatment as being unwarranted.

Put another way, your agent can only refuse medical treatment on your behalf if:

- Such treatment would cause unreasonable distress, or
- There are reasonable grounds for the agent's belief that, if you were competent, you would have considered such treatment unwarranted.

A further important point is that an Enduring Power of Attorney (Medical Treatment) does not empower an agent to arrange euthanasia or refuse palliative care.

- There are safeguards to protect you if the agent acts improperly. For instance, before making any decision the agent must discuss your condition with your doctor.

Formal Requirements under the *Medical Treatment Act 1988*

Two independent witnesses must witness the Enduring Power of Attorney document.

- One witness must be a person authorised to take statutory declarations, such as a legal practitioner or a doctor.
- Both witnesses must be satisfied the agent has received and understood sufficient information to make a decision.

Refusal of Medical Treatment

To be effective, your agent must sign a refusal of treatment certificate also signed by two witnesses.

- One of the witnesses has to be a medical practitioner
- These witnesses must not have witnessed the enduring power of attorney.

Anyone who believes your agent is not acting in your interests can apply to the Guardianship and Administration List of VCAT to challenge the decision to refuse medical treatment.

Revoking power of Attorney

To revoke a power of attorney, sign a Revocation of power of attorney form.

- You can also revoke your Enduring Power of Attorney (Medical Treatment) by executing a later one.
- If you revoke your power of attorney, ask your agent to hand back the power of attorney and destroy it.
- Give your agent a copy of the revocation form.

If the document is not returned:

- Inform the agent that the document has been revoked, either by letter or by notice in the newspaper.
- Notify close friends and relatives that you have revoked the document.