

Fact sheet

Enduring Powers of Attorney

Powers of Attorney Act 2000

ENDURING POWERS OF ATTORNEY FACT SHEET

What is an enduring power of attorney?

An enduring power of attorney is a legal document which allows a person (“the donor”) to appoint one or more other persons (“the attorney/s”) to make property and financial decisions on their behalf and to administer their financial affairs.

An “enduring” power of attorney continues to have legal effect if the person loses the mental capacity to make property and financial decisions for themselves.

An enduring power of attorney is a very important document which places another person in a position of power and trust over the donor’s property and financial affairs.

Accordingly, independent legal advice should be obtained by anyone considering making an enduring power of attorney.

What is the law that governs creation of enduring powers of attorney?

In Tasmania, enduring powers of attorney are created by deed under the *Powers of Attorney Act 2000 (Tas)* (“the Act”).

The deed creating the enduring power of attorney must comply with the provisions of the Act.

For actions under the power of attorney to have legal effect, an enduring power of attorney must also be registered with the Recorder of Titles.

The Act may be found at www.thelaw.tas.gov.au.

What does an enduring power of attorney cover?

An enduring power of attorney only covers financial and property decisions.

It does not give the attorney any legal rights to make personal, medical or lifestyle decisions for the donor.

For more information about granting rights to a person to make personal, medical or lifestyle decisions on behalf of another person, a person should seek independent legal advice regarding Enduring Guardian Appointments and/or contact the Guardianship and Administration Board in relation to Guardianship Orders (www.guardianship.tas.gov.au or 1300 799 625).

What if someone needs an enduring power of attorney but does not have the mental capacity to make one?

A person must have mental capacity to make an enduring power of attorney. Seek independent legal advice and/or information from the Guardianship and Administration Board regarding Administration Orders as an alternative (www.guardianship.tas.gov.au or 1300 799 625).

Is there a prescribed form for creation of an enduring power of attorney?

Yes.

The Act prescribes forms for use to create an enduring power of attorney. An enduring power of attorney may be a *general* enduring power of attorney for all purposes or be desired to be a *particular* enduring power of attorney for specific purposes or circumstances.

There may be a need to tailor the enduring power of attorney to cover special conditions that a donor wishes to include.

Where can I find the forms, the fees and information on how to register?

A copy of the prescribed forms and general procedural information can be found on the DPIPWE website at www.dpipwe.tas.gov.au/land-tasmania/land-titles-office/power-of-attorney-forms.

The prescribed fees may be found using the following link:

www.dpipwe.tas.gov.au/land-tasmania/land-titles-office/forms-and-fees/land-titles-office-fees

Does an attorney who is being appointed also need to sign the enduring power of attorney?

Yes.

An attorney will need to sign a form of acceptance.

This is part of the prescribed form for an enduring power of attorney. The signature of the attorney does not need to be witnessed.

The attorney can either sign at the same time or after the enduring power of attorney has been signed by the donor.

The enduring power of attorney must be signed by the donor and attorneys before it can be registered.

How many witnesses are needed for an enduring power of attorney?

Two people are required to witness the donor signing the enduring power of attorney.

Both witnesses must be adults, provide their name and address on the form and certify that they are not a party to the enduring power of attorney (e.g. not an attorney who is being appointed) nor a close relative to a party to it.

Do I have to register my enduring power of attorney straight away?

No.

However, an enduring power of attorney does not have legal effect and it cannot be used unless it is registered. An enduring power of attorney must be registered with the Recorder of Titles for an act, deed or instrument done, executed or signed under the authority of the enduring power of attorney to have legal effect.

Independent legal advice as to the timing of when to register an enduring power of attorney should be sought.

Who knows if I have made an enduring power of attorney?

The powers of attorney register is a publicly searchable register maintained by the Recorder of Titles.

Once an enduring power of attorney is registered, a copy can be obtained by any person on payment of the prescribed fee.

Unless and until notice of revocation of the enduring power of attorney is lodged with the Recorder of Titles, the enduring power of attorney will remain registered.

Who do I contact if there is a question or dispute about a registered enduring power of attorney?

Disputes or questions regarding the operation or interpretation of an enduring power of attorney are within the jurisdiction of the Guardianship and Administration Board in Tasmania (www.guardianship.tas.gov.au or 1300 799 625).

The Recorder of Titles does not mediate disputes or provide advice regarding enduring powers of attorney. Independent legal advice should be obtained regarding these issues.

Who can make an enduring power of attorney?

Any person who is 18 years of age or over and has the requisite mental capacity can make an enduring power of attorney.

If there is any doubt about the donor's mental capacity to make an enduring power of attorney, legal advice should be obtained.

When does my enduring power of attorney start?

An act, deed or instrument done, executed or signed under a power of attorney has no legal effect in Tasmania unless it has been registered in the powers of attorney register, administered by the Recorder of Titles.

It is possible for a person with mental capacity to have a registered enduring power of attorney for estate planning or other purposes but still be carrying on their own property and financial affairs themselves.

Having an enduring power of attorney registered does not necessarily mean that a person has lost mental capacity or 'handed over' their affairs to be carried out by the attorney. For example, an attorney may act at the direction of a donor who still has mental capacity but wishes the attorney to carry out certain actions, or at the attorney's discretion in accordance with the terms of the enduring power of attorney and within the scope of legal obligations and responsibility.

If there is any query or doubt as to how an appointed or intended attorney may behave or how they may exercise powers given to them once an enduring power of attorney has been registered, it is important to take legal advice.

Can a power of attorney be cancelled by someone who has made one?

Yes.

A donor can revoke (cancel) an enduring power of attorney provided they have the requisite mental capacity to do so.

If an enduring power of attorney has been registered, to update the powers of attorney Register maintained by the Recorder of Titles, a donor needs to lodge notice of revocation with the Recorder of Titles and pay the prescribed fee.

The Recorder of Titles does not send notice to an attorney or any third party that a donor has revoked an enduring power of attorney.

The donor should take independent legal advice as to appropriate notifications to ensure the valid revocation of the enduring power of attorney.

More information about the required form to lodge with the Recorder of Titles and prescribed fee may be found at www.dpipwe.tas.gov.au/land-tasmania/land-titles-office/power-of-attorney-forms and at www.dpipwe.tas.gov.au/land-tasmania/land-titles-office/forms-and-fees/land-titles-office-fees

How else can an enduring power of attorney be ended?

- An enduring power of attorney ends automatically on the death of either the donor or the attorney (if only one attorney appointed).
- An enduring power of attorney ends automatically by the operation of other legal events such as the death, insolvency or bankruptcy of the donor or attorney, the dissolution of the relationship between couples or by order of the Guardianship and Administration Board.
- The Guardianship and Administration Board has powers to vary or revoke an enduring power of attorney and give directions and/or to make an Administration Order, for more information contact the Guardianship and Administration Board (www.guardianship.tas.gov.au or 1300 799 625).

How does the Powers of Attorney Register get updated if an enduring power is at an end?

To enable the powers of attorney register to be amended by the Recorder of Titles, notification of revocation and notification of events such as death or bankruptcy must be lodged for registration with the Recorder of Titles and be accompanied by payment of the prescribed fee.

It is the responsibility of the donor of the enduring power of attorney to ensure that notification of revocation or other critical event is lodged with the Recorder of Titles.

The Recorder of Titles has made a form available for use which can be found at www.dpipwe.tas.gov.au/land-tasmania/land-titles-office/power-of-attorney-forms. The prescribed fee may be found at www.dpipwe.tas.gov.au/land-tasmania/land-titles-office/forms-and-fees/land-titles-office-fees

I have been appointed as an attorney – what do I do?

The Act imposes a significant level of responsibility, duties and trust upon an attorney.

If an appointed attorney no longer wants to be an attorney or needs guidance or direction as to the terms and responsibilities of an enduring power of attorney and what they can or can't do, they should seek independent legal advice and/or consult with the Guardianship and Administration Board in Tasmania (www.guardianship.tas.gov.au or 1300 799 625).

[What if my enduring power of attorney is made in Tasmania and I have assets interstate?](#)

There is no legislative uniformity in Australia regarding enduring powers of attorney. It is recommended that residents with assets outside Tasmania should seek legal advice as to whether a Tasmanian enduring power of attorney is recognised in the jurisdiction where the assets are held. If not, it is recommended they seek advice as to whether they are required to execute and/or register an enduring power of attorney under the laws of that jurisdiction.

[What if I made an enduring power of attorney outside of Tasmania – can it be used or recognised in Tasmania?](#)

People wanting to use in Tasmania an enduring power of attorney executed under the laws of another jurisdiction and/or registered in another State or Territory need to seek legal advice as to whether or not it is recognised under the Act or if it needs to be registered under the Act.

Part 6 of the Act deals with 'foreign' powers of attorney.

The Recorder of Titles has made available a form for use if a foreign power of attorney is desired to be registered in Tasmania which can be found at www.dpipwe.tas.gov.au/land-tasmania/land-titles-office/power-of-attorney-forms.

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The information contained in this fact sheet is the practice of the Land Titles Office at the date of publication.

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