

# GUIDELINES ABOUT: WHAT YOU HAVE TO KNOW TO MAKE AN APPOINTMENT OF ATTORNEY OR GUARDIAN OR EXECUTOR

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Based on the from the Side by Side brochure – Victoria Office of the Public Advocate  
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## Introduction

We all have the right to make decisions. Decisions are like choices.

Sometimes we need help to make decisions.

Making decisions for ourselves is one of the rights we have as adults. It is useful to make some decisions in advance to make sure we have help when we need it most.

Normally, a person is assumed to have full decision making ability. When a person has a disability, we cannot make this assumption and have to have clear evidence of the ability of a person to make decisions and direct their affairs.

The purpose of these notes is to help people whose decision making is in doubt to demonstrate their intentions and ability to make decisions about who will act with or instead of them in making key life decisions.

The questions are intended to elicit instructions on which a professional adviser can act and therefore **MUST** be responded to by the person who wants to make the representative appointments.

The appointment documents must reflect the free and voluntary will and preference of the person making the appointments.

Let us know if any questions need further explanation.

## Appointing Someone Else as Your Representative

Our ability to make decisions can be taken away from us if, for example, we have an accident. It is normal for adults to plan ahead and make decisions in advance of who can help them in the future to deal with problems like:

1. Where will I live?
2. How will I pay my bills?
3. What medical treatment or assistance do I need?
4. How will I manage my money?
5. How do I make promises and commitments, for example, to agree to support services or accommodation services being provided to me?

The law allows us to choose one or more people to make decisions for us or to help us make decisions. In New South Wales the law allows us to choose who will help us during our life and who will be responsible for managing our property when we die. These roles are called:

**Guardian** (health, medical, wellness, care, and lifestyle decisions)

**Attorney** (legal, business, and financial decisions) This is normally made as an Enduring Power of Attorney so the person you appoint can still operate as your attorney even if you lose the ability to direct your affairs.

**Executor** (the person who manages your property after you die, pays your debts and hands over the remaining property to who you choose).

When you are choosing people for these roles you need to make sure they will act in your interests because in some circumstances they can act without reference to you. By making these appointments you are telling them and the world you trust your representatives to act in your interests even if you cannot see what they are doing or control them.

You need to write down in a separate document you sign and have witnessed who you want to have each of these roles. These documents are called your:

**Enduring Power of Attorney,**  
**Power of Enduring Guardianship, and**  
**Will**

When you make these appointments, you are also telling the people you choose the kinds of things they can do for you.

You can also tell your representatives what you do not want them to do for you.

In appointing representatives, you do not stop or reduce your ability to make decisions about your life and affairs.

You will need to tell the people you want to help you make these appointments information that will help write up these documents for you.

You will need to be able to tell anyone helping you what you want the documents to achieve for you. This is the same as any other adult.

## **Making the Appointments**

If you want us to help you appoint your personal representatives, you need to tell us:

*(Please fill this out or tell us this information separately)*

Who you are:

Where you live:

What is your date of birth:

What property do you have:

Possessions:

Assets (E.g., cash and bank accounts):

Other Property:

Who is in your family:

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Who you want to appoint to help with:

1. Your legal business, contractual and financial decisions:
  - a. What is the first representatives' full name and address?
  
  
  
  
  
  
  
  
  
  
  - b. If that person is not available to help, who should act instead of them? Please give us their full name and address:
  
  
  
  
  
  
  
  
  
  
  - c. What kinds of decisions do you want them to help you manage?
  
  
  
  
  
  
  
  
  
  
  - d. What kinds of property that you own do you want them to help you manage?
  
  
  
  
  
  
  
  
  
  
  - e. Is there anything you do not want them to do for you?
  
2. Your health medical and lifestyle decisions:
  - a. What is the first representatives full name and address?
  
  
  
  
  
  
  
  
  
  
  - b. If that person is not available to help, who should act instead of them? Please give us their full name and address:
  
  
  
  
  
  
  
  
  
  
  - c. What kinds of medical and health decisions do you want them to help you manage?
  
  
  
  
  
  
  
  
  
  
  - d. What kind of lifestyle do you want them to help you manage?

Is there anything you do not want them do for you?

How do you want contact with you managed?

Who you want to benefit from your property while you are alive other than the people contracted to provide services to you?

The law says unless you make a will, if you are unmarried and have no domestic partner and no children your property is given to such of your parents who survive you and if more than one equally between them.

Is this what you want?

If not, then;

Who you want to receive your property after you die:

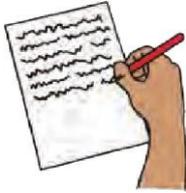
Do you want any person to receive any specific gift (amount of cash or other thing you own?)

Who receives the remainder?

Do you have any other questions?

*(Please use this page to set out any other questions or objectives you have that we have not covered)*

## Some Reminders



You can **appoint** someone to help you make decisions. Appoint means you fill out a form and sign the form in front of other people called witnesses.

You can appoint a person to make for you or help you make:

- **medical, health and lifestyle support decision (guardian)**
- **legal, business, and financial decisions (attorney)**



**These are separate roles to help you live in the way you want.**

- **These roles deal with supporting you during your life.**

Guardian means a person to make or help you make decisions about, for example:

1. what to do when you are sick or hurt, or
2. Where to live, or
3. What health or medical services you need, or
4. What other services or help you need to support your living arrangements



Attorney means a person to help you make decisions about other things. For example,



1. What bills to pay, or
2. Operating your bank account, or
3. What contracts or promises you need to make for example when contracting with people to provide you services.



The law says you can only appoint someone if:

- You understand what authority means. This includes:
  - Getting information, you need to make a decision.
  - Talking to people and organisations about you and decisions you need to make
  - Telling people and organisations about decisions you have made
  - Going to meetings with you
  - Helping to say what you want when you are sick and when you are well
- The person you choose says yes.
- You can tell people the kinds of things that your representatives can do for you.

