

CASE FOR REFUGEES

Centre for advocacy, support and education for refugees

Enduring Power of Attorney Fact Sheet

What is an Enduring Power of Attorney?

An Enduring Power of Attorney is a formal legal agreement that you voluntarily enter into allowing you (as donor) to appoint another person or people (your attorney) that you trust to make financial and property decisions on your behalf.

An Enduring Power of Attorney differs from an ordinary Power of Attorney in that it continues to operate after you lose full legal capacity.

You must sign the Enduring Power of Attorney while you have legal capacity. Full legal capacity means you must be able to understand the nature and effect of the Enduring Power of Attorney you are signing, and understand the nature and extent of your assets. The Enduring Power of Attorney cannot be made when there are any doubts regarding your legal capacity, for example, where there may be mental illness, brain injury or dementia.

Why Do You Need an Enduring Power of Attorney?

An Enduring Power of Attorney allows you to nominate an attorney to handle your financial affairs in specific circumstances. This is useful, for example, should a financial matter need to be resolved while you are overseas and unable to attend to it, or if, due to illness, you are unable to make financial decisions.

Choosing an Attorney

You should carefully consider who you will appoint as an attorney as the powers conferred on them are significant. An attorney can be a spouse or partner, family member, friend, solicitor, accountant or the Public Trustee.

Questions you should consider when choosing an attorney include:

- is the attorney trustworthy and likely to act in your best interests when making financial decisions on your behalf?
- is the attorney willing to take on the responsibilities set out in the Enduring Power of Attorney?
- is the attorney competent to deal with your financial matters and keep all necessary accounting and transaction records made under the Enduring Power of Attorney?

Important Elements of an Enduring Power of Attorney

In choosing your attorney, you can appoint:

- a sole attorney authorised to make decisions alone;
- two people as joint attorneys who must agree on all decisions; or
- two people as joint and several attorneys who can make decisions independently or together.

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The attorney must accept the appointment under the Enduring Power of Attorney and the document must be witnessed correctly. There are specific requirements regarding who can be a witness.

You may also impose conditions or restrictions on the extent of the attorney's authority to act on your behalf. Examples include making the power only for a specific amount of time, only in relation to certain property or only to apply in certain States or Territories of Australia. You should obtain legal advice if you intend to impose restrictions on the powers of your attorney.

When Can an Enduring Power of Attorney be used?

The person who you nominate as your attorney can:

- collect and account for your income, including dividends from shares, rents, pensions and interest from investments;
- pay your accounts and bills, for example rates, utilities and hospital charges;
- manage any real estate on your behalf; and
- prepare taxation documents on your behalf.

If you want the attorney to be able to deal with land, then you should lodge the Enduring Power of Attorney with Landgate, the agency responsible for Western Australia's land and property information.

An Enduring Power of Attorney does not permit the attorney to make personal or lifestyle decisions on your behalf. For example, your attorney will not be authorised to make decisions about medical treatment.

Revoking an Enduring Power of Attorney

An Enduring Power of Attorney is legally binding and will remain effective until one of the following events happen:

1. you revoke the Enduring Power of Attorney. This should be done in writing; or
2. by application to the State Administrative Tribunal, for example, where the attorney does not wish to manage your financial affairs.

Where to Go to Get Help

CASE for Refugees Inc. is a non-government, non-religious community legal centre that provides migration and general legal services to the culturally and linguistically diverse (CaLD) communities of Western Australia. CASE for Refugees Inc. can assist you with advice and preparation of your Enduring Power of Attorney.

All services are free of charge, although donations from individuals and organisations are gratefully accepted. All donations of more than AUD\$2.00 are tax deductible.

The contact details for CASE for Refugees Inc. are as follows:

245 Stirling Street, Perth

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