

STRICTLY CONFIDENTIAL

Archon Legal

Enduring Power of Attorney

Information and instruction sheet



Current as of 18 August 2016
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18 August 2016

About this guide

At Archon Legal, we understand that you need comprehensive information about your legal rights and how to protect them, but don't want to read through reams of overly complicated paperwork. That's why we've prepared this brief and easy to understand guide about an Enduring Power of Attorney (**EPA**), which includes our fact finding questionnaire, to let us know what you require.

What is an Enduring Power of Attorney?

An EPA is a legal document that enables you (the donor) to appoint a person or persons (called an agent or donee or attorney) of your choice to make property and financial decisions on your behalf should you ever not have the ability to make those decisions yourself.

Many decision making incapacities are caused by illness, accident or trauma and unfortunately there is no way of knowing when we may lose the ability to make decisions for ourselves, or be physically unable to attend to property or financial matters. By appointing an attorney, you can authorise a person or persons (or agency), who you know and trust, to make any property or financial decision that you could otherwise legally make. The EPA does not allow the attorney to make personal, lifestyle or treatment (medical and health issues) on your behalf. These kind of decisions are covered by an Enduring Power of Guardianship (**EPG**) (guide also available on our website).

An attorney can also act on the donor's behalf under an EPA where the donor has travelled overseas and wishes to appoint someone to attend to specific matters relating to their property and finances.



What are the requirements of an EPA donor?

An EPA donor needs to be 18 years of age or older and have full legal capacity to make an EPA.

What are the obligations of an EPA donee?

An attorney will owe fiduciary duties to the donor to act in their best interest. What this means is that the attorney must act in the donor's interest and cannot spend any monies on themselves or make gifts that the donor would not have normally made.

Who can I appoint as my attorney?

Anyone can be appointed as your attorney, provided they are 18 years of age or older and have full legal capacity.

It is important to appoint people you trust as your attorney(s), as an EPA will give them considerable power, which could be abused.

Can I appoint more than one attorney?

You may appoint up to two attorneys who can act jointly or jointly and severally.

Can I revoke an EPA?

An EPA can be revoked by a donor while they still have legal capacity. Once legal capacity has been lost the donor is no longer able to revoke the EPA.

What is the difference between an EPA and an EPG?

Having an EPA means that your nominated attorney(s) can make decisions on your behalf that relate to your finances or property matters.

If you have an EPG, your nominated guardian can make decisions on your behalf that relate to medical, healthcare and/or lifestyle choices.

The same person(s) can be appointed to be both your attorney and guardian but both EPA and EPG documents must be prepared separately.

Issues for consideration before you finalise your EPA

1. Will your EPA be valid?

Common EPA issues often stem from the document itself being invalid which can be a result of the document not being drafted in the form prescribed by the regulations and/or not being witnessed correctly. This is why it is important to seek legal advice when you wish to prepare an EPA.

Landgate is the WA authority dealing with issues relating to real property. It is Landgate's policy that if an attorney wishes to deal with real property on behalf of a donor then either the EPA should be registered or a statutory declaration lodged (if after 3 months).

2. Should you register your EPA?

It is important to consider if you are going to register your EPA with Landgate. Registering your EPA will incur a lodgement fee (please see table on next page for current Landgate fees). However, if your EPA is not registered with Landgate within 3 months of it being executed, then your attorney may not be able to deal with your real property (real estate).

If you have not lodged your EPA with Landgate within the 3 month time limit, then it is possible to lodge a statutory declaration with Landgate.

3. Should your attorneys act jointly or jointly and severally?

It is important to carefully consider if you want your attorneys to act jointly or jointly and severally.

Joint attorneys have to make all decisions together, which can have practical implications if they do not get along or if one is not available.

Joint and several attorneys have the flexibility of making decisions together, and separately depending on how they choose to work together. This will allow the attorneys some flexibility in managing your property and finances if one is not available or if they want to separate the work.

4. When will your EPA take effect?

When you make an EPA you can choose to have an immediate EPA or a dormant EPA.

If you choose to have an immediate EPA it will come into effect as soon as it has been signed. This will mean that both you and your attorney will have legal authority to manage your finances. This can be beneficial if an illness or disability make it difficult for you to physically go out and attend to your property and/or financial affairs.

If you choose to have a dormant EPA, it will only come into effect when a declaration by the State Administrative Tribunal (**SAT**) has been made that you no longer have legal capacity. This means that without such a SAT declaration, notwithstanding your dormant EPA, only you have legal authority to manage your affairs while you have capacity. If your nominated attorney believes you have lost capacity, they will need to make an application to the SAT for a declaration to that effect before your EPA is enlivened.

Professional fees

Archon Legal charges professional fees at a fixed rate for preparing EPAs.

Clients who use us to prepare both their Will and their EPA receive a discounted rate for their EPA.

	Fixed rate
EPA prepared with a will	\$150 plus GST and disbursements
EPA prepared without a will	\$200 plus GST and disbursements

Please note that rates are subject to annual review.

Landgate lodgement fees

	Landgate fee
EPA Lodgement Fee	\$164 as at the 2 March 2016
Requisition Fee	\$82 as at the 2 March 2016

Please note that if Landgate identifies any correctable error or defect in a lodged EPA, the lodging party may be required to have the error or defect corrected within 14 days. This is usually done by Landgate issuing a Requisition Notice, which may incur a Requisition Fee.

What's next?

If you would like Archon Legal to prepare your EPA please fill out the attached EPA instruction sheet and return it to our office by email at admin@archonlegal.com.au, or call us on 92283010 and one of our experienced solicitors will be happy to answer any questions.

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Enduring Power of Attorney instruction sheet

Donor

Full name:

Address:

Nominated Attorney 1

Full name:

Address:

Relationship to you:

Nominated Attorney 2 (if applicable)

Full name:

Address:

Relationship to you:

Substitute Attorney 1 (if applicable)

Full name:

Address:

Relationship to you:

Substitute for:

- any nominated attorney; **OR**
 specify:

A substitute will act where the Nominated Attorney cannot act for specific reasons that you choose

When will substitution take effect? Please tick all that apply:

- attorney has died
 attorney has lost capacity to act
 attorney out of jurisdiction
 other:

Substitute Attorney 2

(if applicable)

A substitute will act where the Nominated Attorney cannot act for specific reasons that you choose

Full name:

Address:

Relationship to you:

Substitute for:

any nominated attorney; **OR**

specify:

When will substitution take effect? Please tick all that apply:

attorney has died

attorney has lost capacity to act

attorney out of jurisdiction

other:

Capacity

Do you want your nominated attorneys to act jointly or jointly and severally?

Jointly

Jointly and severally

Taking effect

When will the Enduring Power of Attorney take effect? Please tick one:

immediately

at any time that a declaration by the State Administrative Tribunal that you do not have legal capacity is in force.

Restrictions

Please specify any conditions or restrictions on the Enduring Power of Attorney:

Registration

Do you want us to register the Enduring Power of Attorney at Landgate to enable your attorney(s) to deal with land you own?

Yes

No

Please note that as at 2 March 2016, Landgate charges a \$164 registration fee.

Thank you for reviewing our EPA information sheet and completing the attached instruction sheet. Upon receiving your completed instruction sheet our team will be able to commence preparing your EPA for you.

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