



**Hobart Community
Legal Service Inc.**

GUARDIANSHIP and POWER OF ATTORNEY

If you have an accident, illness or disability, such as dementia of Alzheimer's Disease, you may not be able to make decisions for yourself. It may be best to choose someone you trust in advance to make decisions for you for when you are no longer able to make them for yourself.

YOU CAN APPOINT A GUARDIAN TO LOOK AFTER YOUR PERSONAL AND MEDICAL MATTERS

A guardian can be authorised to do the following for you:

- give and withdraw consent to medical and health treatments;
- decide what support services you will have;
- decide where you live and with whom;
- decide whether you should stop working;
- make restrictions on your visitors.

YOU CAN APPOINT A POWER OF ATTORNEY TO LOOK AFTER YOUR FINANCIAL AND PROPERTY MATTERS

An attorney can be authorised to do the following for you:

- operate your bank accounts and pay your debts;
- enter into legal action;
- carry on business;
- sell your house or any other assets.

A GUARDIAN OR ATTORNEY MUST BE APPOINTED WHILE YOU HAVE MENTAL CAPACITY

In order for another person to be validly made your guardian or be granted power of attorney you must have mental capacity. Having mental capacity means that you can:

- understand information that is given;
- make a decision based on information that is given;
- remember information long enough to make a decision;
- be able to communicate your decision to other people.

A doctor can be used to confirm whether someone has mental capacity.

KEEPING YOU SAFE

Any complaint about decisions made by a guardian or attorney is heard by the Public Guardian. The Public Guardian is a government agency which protects the rights and interests of adults with impaired capacity. Choosing someone you trust to be a guardian or attorney and letting friends and family know of your arrangements will assist in keeping you safe.

WHO CAN BE YOUR GUARDIAN OR ATTORNEY?

The time to appoint a guardian and attorney is when you are healthy and still have the capacity to make good decisions for your health and personal care. Your guardian and attorney will only make decisions for you if in the future you lose capacity to make decisions for yourself. Many people choose to make an appointment just in case they may need them in the future.

The person you appoint must be over 18 years of age. A guardian cannot be involved in your medical care or treatment (ie. they cannot be your doctor). You should appoint someone you can trust and who is decisive and can make decisions under pressure. You can appoint one person or more than one person. If you appoint two or more guardians all guardians need to act jointly and cannot make decisions independently. You can appoint multiple attorneys or nominate if they are to act 'jointly' (that is, decide and agree on everything together) or 'jointly and severally' which means one can act independently of another. It is therefore important to choose people who can cooperate together and who you are satisfied will make decisions that you are happy with.

You are able to give directions or conditions to your guardian, which they must then follow. Some examples are where you live, what type of medical treatment you would like, or whether you would like them to consult or advise another person about changes in your situation. You can also appoint an attorney to act for a limited period, for example if you are going to be away, or limit an attorney's power over certain things. For example, you may appoint one attorney to make decisions regarding your family home, and another to make decisions regarding a business.

It is not enough to simply elect someone to be your guardian or attorney. A guardian can be formalised by completing the Enduring Guardianship form and lodging it at Service Tasmania. This form can be found on the Guardianship and Administration Board website - <https://www.guardianship.tas.gov.au/forms2>. An attorney can be formalised by completing the appropriate form found on the Department of Primary Industries, Parks Water and Environment website - <https://dpiwpe.tas.gov.au/land-tasmania/land-titles-office/power-of-attorney-forms> and lodging it at the Lands and Titles Office. Lodgement of either guardianship or power of attorney form will require a fee.

FAQs

What if I change my mind? You can revoke an enduring guardianship and make amendments to the conditions or directions of a guardian, however if you do not have capacity at the time of these changes they will be invalid.

Will my guardian be able to make decisions for me if I move away? Most Australian States and Territories recognise a Tasmanian enduring guardianship. South Australia and the Northern Territory do not recognise these enduring guardianships.

What if I don't have mental capacity to authorise a guardian or attorney? It is always best to appoint your chosen guardian and attorney when you have mental capacity. However The Public Guardian can take over the decision-making role for personal care matters and the Public Trustee can administer the financial affairs of a person without capacity.

Notes:

*Information taken from the Legal Aid Commission of Tasmania, Caxton Legal Centre, Guardianship and Administration Board and Department of Primary Industries, Parks Water and Environment.
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This factsheet is intended to give general information about the law in Tasmania. While every effort has been made to ensure accuracy at the time of writing, the law is complex and constantly changing. Moreover, legal exactness is not always possible in a publication of this nature. The factsheet should not be used as a substitute for legal advice. No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on the information contained in it or omitted from it.

Providing legal direction ● ● ●

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