

APPOINTMENT OF ENDURING GUARDIAN

25th October 2004

What is an enduring guardian?

An enduring guardian is someone you choose to make health or lifestyle decisions on your behalf when you are no longer capable of doing so yourself. You may choose which decisions you want your enduring guardian to make. You can give directions to your guardian as to how these decisions are to be carried out.

What sort of decisions can an enduring guardian make?

Generally a guardian is appointed to make decisions such as where you are to live, what sort of medical and other health treatments you are to receive and in certain circumstances, when health treatments are to be stopped.

What sort of decisions is an enduring guardian unable to make?

An enduring guardian cannot make any decisions on your behalf whilst you are still capable of making decisions for yourself. An enduring guardian cannot manage your financial affairs, or make a Will for you.

Who can be an enduring guardian?

The person you appoint must be at least 18 years old. The guardian should be someone you trust to make decisions in your best interests and within the law. Your chosen guardian cannot be a person providing treatment or care to you on a professional basis at the time of appointment.

You can appoint more than one person as your enduring guardian. If you do this, the persons may be appointed to act independently of each other, or you may decide to direct them to act jointly in exercising their powers. It is also possible to appoint a substitute guardian in the event that the person you initially appoint becomes incapable of carrying out their powers as your guardian.

How do I appoint an enduring guardian?

You should discuss the appointment with your chosen guardian or guardians, and make sure they are willing to fill this role.

Enduring guardians can only be appointed by an Appointment of Enduring Guardian document which must be prepared on your behalf. This document must be explained to you by a solicitor before you sign it. Your guardians must also sign the document as evidence of acceptance of their appointment after having the document explained to them by a lawyer. The lawyer must also sign the document to say that the document was explained to each guardian, before the appointment is valid.

When does the appointment take effect?

The appointment only takes effect if you become unable to make your own health and lifestyle decisions. Your guardian may wish to seek the opinion of your doctor about your ability to make decisions on your own behalf before exercising any powers.

When do the powers of your guardian end?

The appointment of an enduring guardianship ends when you die, or when you cancel the appointment. The appointment can be cancelled whilst you are capable of making your own decisions. To do this you must complete a form of Revocation of Appointment of Enduring Guardian. This form must be witnessed by a lawyer, and your guardian must be informed in writing that their appointment has been cancelled.

How do I obtain further information?

The lawyers at McDonald Johnson have had many years of experience of preparing Appointments of Enduring Guardian and can assist you with any further information you may require.

