

What you need to know about an Enduring Power of Guardianship...

Why an Enduring Power of Guardianship is relevant to you



Many people fail to consider the need for an Enduring Power of Guardianship (also referred to as an “EPG”). It is important to consider the possibility of losing mental capacity at some stage in your life due to unforeseeable illness or accident. By appointing an Enduring Guardian, you can have peace of mind knowing that a person you trust is making suitable personal, lifestyle, and healthcare decisions on your behalf.

Many people do not have their wishes upheld when they are incapacitated. The experienced lawyers at TLS can help you avoid this.

What is an EPG?

An Enduring Power of Guardianship is a legal document which allows you to appoint someone who you know and trust to make personal, lifestyle and medical treatment decisions in the event you are unable to make or communicate those decisions yourself. Through an EPG, you can decide which decisions your Enduring Guardian will be able to make, such as where you live or the type of medical treatment you will receive. The EPG will only come into effect when you lose the mental capacity to make decisions for yourself

A case example that explains why you need an Enduring Power of Guardianship

Mike is a 52-year-old man. He was fit, exercised regularly and had no known medical conditions. Mike began presenting with feverlike symptoms and headaches. Within days, Mike had been diagnosed with a rare infection of the brain and was induced into a coma in intensive care. The hospital concluded that it was unlikely Mike would come out of the coma and recover.



Mike and his wife Susy had spoken to each other about what they would do if one of them ended up on life support. However, they had not executed the authority they wished to provide each other in an EPG. Susy told the hospital that Mike had specifically said to her, “Don’t keep me alive on life support just for the sake of it.”

Susy was quick to learn that without an EPG providing for specific authority to turn off life support a doctor will do anything they can to prolong the life or the vegetative state of the person, even if that is contrary to their wishes. As a result of not having Mike’s intentions documented in an EPG, Susy was unable to uphold her husband’s wishes.

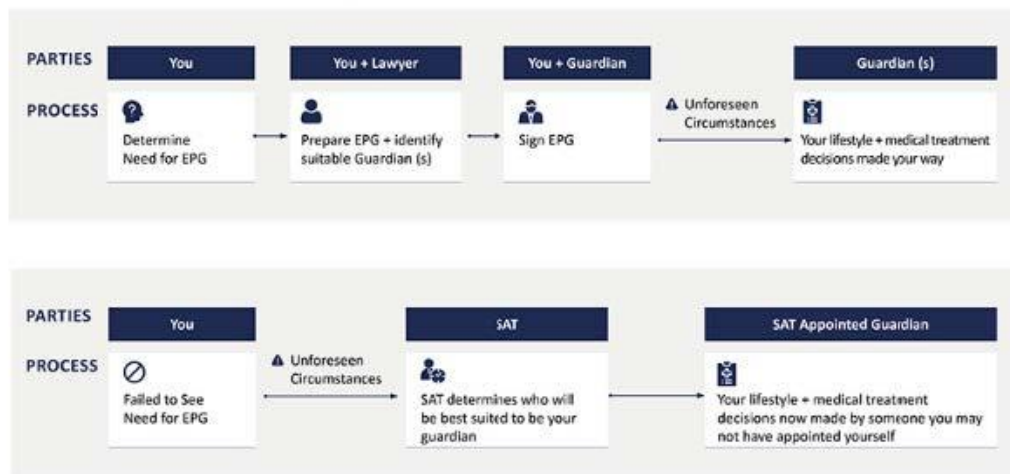
What if you don't have an EPG in place?

If you lose mental capacity, it is unfortunately too late to prepare an Enduring Power of Guardianship. In this instance, a family member or other interested person may apply to the State Administrative Tribunal (SAT) to appoint a Guardian, including themselves.

The SAT often asks the Public Advocate to prepare a report about whether a Guardian is required and make recommendations about who should be appointed. If they believe no other person is suitable to be a Guardian, the SAT can ask the Public Advocate to take on that role. This can be a long process and can lead to great stress for your loved ones, particularly if, for example, medical treatment decisions need to be made in a short period of time.

If you need assistance navigating through the SAT process, see one of our experienced lawyers.

What Happens if You Set up an EPG VS if you leave it to chance



What can you do now to ensure your wishes are upheld?

You should make an Enduring Power of Guardianship as soon as possible. Sadly, any of us can lose capacity to make decisions at any time because of an unforeseeable circumstance such as illness or accident.

The experienced lawyers at TLS can:

- Provide legal advice on your personal requirements and the benefits or risks of making an Enduring Power of Guardianship;
- Help you establish the scope of authority you would like to give to your Enduring Guardian or any authority you may wish to exclude; and
- Prepare your Enduring Power of Guardianship.

Note: An Enduring Guardian cannot make financial or property decisions. See our related article on Enduring Powers of Attorney.