

Bankstown & District Law Society
Continuing Legal Education Seminar
19 March 2014

APPOINTMENT OF ENDURING GUARDIANS

AN OVERVIEW

1. Enduring guardianships are a creature of statute: the Guardianship Act 1987.
2. Any person aged 18 and over may appoint a guardian.
3. The guardian must be at least 18 years of age.
4. A person cannot be a guardian if he or she is, in a professional or administrative capacity, directly or indirectly responsible for, or involved in, the provision of any of the following services for fee or reward to the person making the appointment:
 - medical services (whether provided in a hospital, at home or otherwise) – unless they were not so involved the time of appointment, in which case the guardianship won't lapse,
 - accommodation,
 - any other services to support the person making the appointment in his or her activities of daily living,

or someone who is the spouse, parent, child, brother or sister of a person of any such person.

5. An appointment must be in writing and signed by the appointer and by the appointee.
6. The signing by both the appointer and appointee must be witnessed by an eligible witness, which includes a lawyer. The witness must certify that both appointer and appointee executed the instrument voluntarily in the presence of the witness and appeared to understand the effect of the instrument
7. The appointment must be in the prescribed form.
8. Two or more guardians may be appointed to act jointly, severally or jointly and severally.
9. An alternative guardian may also be appointed in the same manner. An alternative enduring guardian has (and may exercise) the functions of an original enduring guardian only:
 - if the original enduring guardian dies, or
 - if the original enduring guardian resigns, or
 - during any incapacity of the original enduring guardian.
10. An enduring guardian must, unless the Tribunal otherwise directs, exercise his/her powers in accordance with any lawful directions contained in the instrument.

11. Subject to any limitations expressed in the instrument, the guardian may exercise the following functions:
 - deciding the place (such as a specific nursing home, or the appointor's own home) in which the appointor is to live,
 - deciding the health care that the appointor is to receive,
 - deciding the other kinds of personal services that the appointor is to receive,
 - giving consent to the carrying out of medical or dental treatment on the appointor,
 - any other function relating to the appointor's person that is specified in the instrument.

12. The appointment only has effect in periods when the appointor is in need of a guardian (ie lacks capacity to carry out those functions him/herself).

13. There are several formal requirements for revocations:
 - Must be in writing in the prescribed form,
 - Must be signed and witnessed by an eligible witness,
 - The witness must certify that the appointor executed the instrument voluntarily in the presence of the witness and appeared to understand the effect of the instrument,
 - Must be given to the appointee.

14. An appointee may only resign:

- If the appointor is not in need of a guardian at the time – by giving written notice in the prescribed form, or
- If the appointor is in need of a guardian – with the approval of the Tribunal

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19 March 2014

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