

## Planning Ahead for your family – Enduring Guardianship



### Why appoint an enduring guardian?

We all prefer to decide for ourselves where we live, whom we see, which doctor we go to, what medical treatment we will receive and what services we will have. Unfortunately, this is not always possible. Every day people are involved in accidents or become sick. Sometimes this can lead to them being incapable of making decisions for themselves.

People are able to appoint a person under an enduring power of attorney to make decisions about their money and property when they lose the capacity to do this for themselves. There is also a similar way to appoint someone with legal authority to make personal or lifestyle decisions on your behalf.

The *Guardianship Act* gives you a way to appoint an enduring guardian.

### What is an enduring guardian?

An enduring guardian is someone you choose to make personal or lifestyle decisions on your behalf when you are not capable of doing this for yourself. You choose which decisions you want your enduring guardian to make. You can give your guardian directions on how to carry out your wishes.

### What decisions can an enduring guardian make?

You can give your enduring guardian as many or as few functions as you like. You cannot give your

guardian the authority to override your objection to medical treatment. Only the Guardianship Tribunal can do this.

### What decisions is an enduring guardian unable to make?

An enduring guardian cannot make a will for you, vote on your behalf, consent to marriage, manage your finances or override your objections, if any, to medical treatment.

### Who can appoint an enduring guardian?

If you are over 18 years, you can appoint a guardian. When you appoint an enduring guardian you must have the capacity to understand what you are doing.

### Who can be an enduring guardian?

The person you appoint as your enduring guardian must be at least 18 years old. Your chosen guardian should be someone you trust to make decisions in your best interests if you are not capable of making decisions for yourself. Your guardian must act within the principles of the *Guardianship Act*, in your best interests and within the law. You cannot give your guardian a function or a direction which would involve them in an unlawful act.

The appointed guardian cannot be a person providing treatment or care to you on a professional basis at the time of appointment.

### How do I appoint an enduring guardian?

You need to discuss the appointment with your chosen guardian and make sure they are willing to take on this responsibility if you can no longer make decisions for yourself. It would be wise to discuss the functions in detail and ensure that your guardian clearly understands your wishes and any direction associated with any function.

You may also wish to discuss the appointment with other significant people in your life. You need to complete the document and have a lawyer or the

Clerk of a Local Court witness you and your enduring guardian signing the form.

### **What should I do with the appointment?**

It's a good idea to keep the appointment form in a safe place like a solicitor's office. Tell someone else where it is. Give a copy to your guardian. You may wish to give copies to significant people in your life.

### **When does it take effect?**

The appointment of your enduring guardian takes effect only if you become unable to make your own personal or lifestyle decisions. Your guardian may wish to seek the opinion of a medical practitioner about your capacity to make decisions before acting on your behalf.

### **Can I change my mind?**

While you are capable of making your own decisions, you can revoke the appointment of an enduring guardian. To do this you need to complete a *Revocation of Appointment of Enduring Guardian* form. This form will also need to be witnessed by a lawyer or the Clerk of a Local Court. You have to advise the enduring guardian in writing that their appointment has been revoked.

You can appoint a new person as your enduring guardian. You will need to complete a new form provided they accept their appointment.

If you are still capable of making your own decisions you can amend the appointment by completing another form. Only the Tribunal can make changes to the appointment if you have lost the capacity to do this for yourself.

### **What if someone else has concerns about the actions of my enduring guardian?**

If you are not capable of making your own decisions and others are concerned about your welfare because of your enduring guardian's actions, anyone with a genuine concern for your welfare can apply to the Tribunal for a review of the appointment. The Tribunal can revoke the appointment or confirm it. It may also change the functions in the appointment or make a guardianship order.



The Tribunal does not supervise enduring guardians and will only become involved if it receives an application with respect to you or receives information which leads it to initiate a review of your appointment in your interests.

### **When does enduring guardianship end?**

Enduring guardianship ends when you die, if you revoke the appointment, or if the Tribunal makes a guardianship order or suspends the appointment.

## **About Us - Baldock Stacy & Niven**

### **Who are we?**

Baldock Stacy & Niven is a firm of lawyers with offices in Western Sydney and in Central Western New South Wales. We have a heritage going back more than 100 years to the firm's founding by Herbert Henry Lee in 1891.

### **What is our aim?**

Over a century after the firm's founding our focus remains unchanged: a belief in the importance of understanding our client's needs, of adapting to the continuing challenges of business, and of delivering quality professional services in a timely and cost effective manner.

### **Who are our clients?**

Baldock Stacy & Niven has a wide range of city and country clients from various industries and lifestyles. We offer a broad legal practice offering professional legal advice and service in many varied areas.

### **How do you arrange to see us?**

If Baldock Stacy & Niven are already your solicitors please ring and speak to the solicitor you normally deal with.

**If Baldock Stacy & Niven are not your solicitors, please ring Stuart Niven in our Parramatta Office on (02) 9891 6444 to make an appointment.**

*The material in this information sheet is not a replacement for legal advice and is only general in nature. No person should act or not act solely on the basis of this information sheet. It is not legal advice and your possession of this information sheet does not create a client/lawyer relationship. If you would like to discuss your particular circumstances please contact **Baldock Stacy & Niven** and we would be pleased to be of assistance to you*

#### **Parramatta Office**

Suite 2, Level 4, 91 George Street, Parramatta NSW 2150  
Ph: (02) 9891 6444 Fax: (02) 9891 6507

**Baldock Stacy & Niven**  
Solicitors and Notaries