

PART ONE: INTRODUCTION TO WELFARE GUARDIAN AND PROPERTY ORDERS

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The Protection of Personal and Property Rights Act 1988 (the **PPPR Act**) governs the area of law that relates to a person losing mental capacity and how their affairs are to be managed if this happens.

An Enduring Power of Attorney (**EPOA**) allows you (the **donor**) to appoint another person (the **attorney**) to act on the donor's behalf if the donor becomes incompetent.

Putting in place EPOAs allows you to appoint people you trust with the responsibility of managing your affairs and minimises the pressure on your loved ones when you no longer have the capacity to make decisions for yourself. This is not only an age concern but covers losing capacity in all instances, such as being in an accident resulting in temporary or permanent incapacity.

What happens if I don't have an EPOA?

If you do not have an EPOA and you lose mental capacity, there is no automatic right for anyone to step in and manage your affairs on your behalf.

It is then up to individuals aged 20 years and over to apply to the Family Court for Orders.

The Family Court can make the following Orders:

1. An **Order Appointing a Welfare Guardian**; and
2. An **Order Appointing a Property Administrator**; or
3. An **Order Appointing a Property Manager**.

The PPPR Act provides two types of property applications. Each option is dependent on the subject person's assets and income:

- **Property Administrator Order:** If the subject person's income or benefit is **less than \$20,000.00** a year and none of the property to be managed is worth more than **\$5000**; or
- **Property Manager Order:** If the property or income of the subject person is worth more than this. A Property Manager is also required to file financial statements to the Court.

Below are some general scenarios to illustrate when an application to the Court may be appropriate.

Welfare Guardian

Patrick and Sally have been married for 30 years and share one adult son, Thomas (25). Tragedy struck the family when Sally suffered a severe stroke resulting in permanent incapacity. Sally has no EPOAs in place.

Patrick or Thomas may apply to the Family Court for an Order Appointing a Welfare Guardian for Sally. It is decided between them that it is in the best interests of Sally that Patrick be appointed. Patrick makes an application to the Court for Appointment as Welfare Guardian of Sally.

Once Patrick is appointed as Welfare Guardian of Sally, he has the legal authority to make decisions regarding her personal care and welfare, such as, where she will live, communicating with doctors, organising care and support, and any other decisions to protect her welfare and best interests.

Property Manager

Patrick spoke to his lawyer who also advised that a Property Manager Order is appropriate as Sally's individual and their joint assets are above the threshold for a Property Administrator Order.

A Property Order will give Patrick the power to make decisions on behalf of Sally regarding any assets, liabilities, and income in her name and gives him the authority to manage them in a way that is in Sally's best interests.

Patrick is required to file financial statements within three months of the Order commencing, then 30 days after the expiry of each year the managership continues. The financial statements are filed to the Court and the Public Trust examines the statement and prepares a report.

Property Administrator

Kerry and Angela have been a de facto couple for 3 years and they keep all their respective assets and liabilities separate. While on holiday in Mount Cook, Kerry had a rock-climbing accident and hit her head, resulting in temporary incapacity.

Angela consults with her lawyer and Kerry's family and they decide that Kerry's father, Brian, will apply to the Court to be the Property Administrator for Kerry while she has lost mental capacity.

An Order to Administer Property is appropriate because the subject person does not own any assets over the value of **\$5000** and has a yearly income under the threshold of **\$20,000 p.a.**

Brian applies for an Order to administer property of Kerry that specifies which property is to be covered. The Order can also be made temporarily so that once Kerry regains mental capacity and is certified by a Registered Medical Practitioner, the Order will cease to have an effect.

CONCLUSION

It is often presumed by individuals that if something were to happen to them, a significant other or close family member could make decisions on their behalf. This is incorrect.

To avoid the need to make an application to the Court during a time of stress, we advise anyone over the age of 18 to put in place EPOAs while they have the mental capacity to do so. This will ensure that you, your property, and your loved ones are looked after. It is important that you appoint a person you trust and review your EPOAs when significant life changes occur, such as a relationship breakdown or separation.

For further assistance, please contact our Private Clients team.

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