



# legal chat

with Solicitor

MARK TOBIN

## ENDURING GUARDIANSHIPS

Many people know what a Power of Attorney is but not so with an Enduring Guardianship. The word enduring in this sense means that it continues to apply if the person loses capacity. A Guardian appointed under the Guardianship Act has the responsibility for making decisions about a person's health and lifestyle as opposed to an attorney who has rights to deal with a person's legal and financial affairs. If you think of it as similar to when you were raising your own children, until they became adult's they needed a guardian to make those important decisions for them. In the eyes of the law, as minors they lacked the legal capacity to make such decisions. It is an unfortunate fact of life that many of us, as we age, can lose that legal capacity to make decisions for ourselves and so then, even as adults, we will need a guardian. An Enduring Guardianship document, which must be made by a solicitor, allows you to appoint someone to make those decisions for you when you can't. The law says the power only applies if because of disability you become totally or partially incapable of managing your person, until then you make your own decisions. Sometimes that might be from a stroke or other serious medical condition. That decision might be to decide where you need to live, what health care or personal services you receive or to authorise the carrying out of medical procedures. In the past hospitals and nursing homes often accepted the word of next of kin but these days far more legal issues arise and they look for a legally authorised person, especially with serious medical decisions. The law sets out a hierarchy of who has the right to exercise such authority starting with a person appointed

under an Enduring Guardianship. While it does then continue to refer to a spouse, a carer or relative there are qualifications for each to prove, if they aren't appointed under an Enduring Guardianship. This is also the document used to make an 'advance directive', that is the ability to write down your wishes, preferences and instructions for future health care or end of life decisions such as if there is a preference for a 'do not resuscitate' clause, if your health situation becomes dire. An enduring guardian is automatically revoked if the appointor marries after the date of the appointment, except if they marry the person already appointed, a problem where a parent appoints their adult child as guardian, then later remarries, so you need to keep it up to date.

**Johnston Tobin Solicitor can help you with your Enduring Guardianship.**



**JOHNSTON TOBIN**  
**Solicitors**

Ph 4421 5344

74 Berry St, Nowra

[www.johnstontobin.com.au](http://www.johnstontobin.com.au)