

# Enduring Power of Attorney

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An enduring power of attorney is a legal document that allows you (the 'principal') to nominate one or more persons (referred to as an attorney) to act on your behalf. An enduring power of attorney gives the attorney the authority to manage your legal and financial affairs, including buying and selling real estate, shares and other assets, operating your bank accounts and spending money on your behalf.

The attorney's power continues even if for any reason you lose the mental capacity to manage your own affairs. Once you lose mental capacity you cannot revoke this power of attorney. If you want the power of attorney to cease if you lose mental capacity, use the **General Power of Attorney** form. An attorney under an enduring power of attorney cannot make decisions about your lifestyle or health; these decisions can only be made by a guardian (whether an enduring guardian appointed by you or a guardian appointed by the Civil and Administrative Tribunal or the Supreme Court).

The Prescribed Witness Certificate must be completed. Before acting as your attorney/s, the attorney/s (including any substitute attorney/s) must sign the acceptance section.

Please read the **Important Information** set out at the end of this document. It includes notes to assist in completing this document and more fully explains the role and responsibilities of an attorney.

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Principal – The person who appoints the attorney is known as the principal.

Attorney – The person you nominate to look after your financial affairs is known as the attorney. You can appoint more than one attorney.

## 1. Appointment of attorney by the Principal

I,

*[insert full name and address],*

**appoint**

 **and also appoint**

*[insert full name and address of each attorney – add more pages if necessary]*

**to be my attorney/s.**

(Please initial bottom of this page)

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 My attorneys are appointed: [Tick one option only]

- Jointly (*your attorneys must all act together*). I want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.
- Jointly (*your attorneys must all act together*). I do not want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.
- Jointly and Severally (*Your attorneys may act individually, or together with the other attorneys if they choose*).


**If no option is selected or the option chosen is unclear or inconsistent, I intend my attorneys to act jointly and severally.**

 **Nomination of substitute attorney/s** (*optional*)

***If your attorney vacates office, you have the option to nominate someone else to take their place.***

If my attorney/s vacates office, I appoint:

*[insert full name and address of substitute attorney/s]  
to be my substitute attorney/s.*

 My substitute attorney/s are to be appointed:

c)  Jointly (*your attorneys must all act together*).

Or

d)  Jointly and Severally (*your attorneys may act individually, or together with the other attorneys if they choose*).

(Please initial the bottom of this page)

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## 2. Powers

**My attorney/s may exercise the authority conferred on my attorney/s by Part 2 of the *Powers of Attorney Act 2003* to do anything on my behalf I may lawfully authorise an attorney to do.**

**I give this power of attorney with the intention that it will continue to be effective if I lack the capacity through loss of mental capacity after its execution.**

## Additional powers (optional)

- I authorise my attorney to give reasonable gifts as provided by section 11(2) of the *Powers of Attorney Act 2003*.
- I authorise my attorney to confer benefits on the attorney to meet his/her reasonable living and medical expenses as provided by section 12(2) of the *Powers of Attorney Act 2003*.
- I authorise my attorney to confer benefits on the following person/s to meet their reasonable living and medical expenses as provided by section 13(2) of the *Powers of Attorney Act 2003*. *[insert full name and address of each person below]*

and (delete if not required)

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## 3. Conditions and Limitations

**I place the following limits and/or conditions on the authority of my attorney/s:**

(Please initial the bottom of this page)

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*[insert any limits and conditions - add more pages if necessary]*

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## Commencement

This power of attorney operates:  
*Tick the applicable box below (one only)*

- Once the attorney/s have accepted his/her appointment by signing this document.
- Once a medical practitioner considers that I am unable to manage my affairs (and provides a document to that effect).
- Once my attorney considers that I need assistance managing my affairs.
- Other.

**If no option is selected or the options chosen are unclear or inconsistent, I intend that the power of attorney will operate once my attorney/s have accepted their appointment by signing this document.**

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## Your signature to make the appointment

Date:

Signature of witness:

Signature of principal:

Name of witness:

Address of witness:

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## 6. Certificate under section 19 of the *Powers of Attorney Act 2003*

I,

*[insert full name and address]*

certify the following:

- a) I explained the effect of this power of attorney to the principal before it was signed.
- b) The principal appeared to understand the effect of this power of attorney.
- c) I am a prescribed witness.
- d) I am not an attorney under this power of attorney.
- e) I have witnessed the signature of this power of attorney by the principal.

Signature:

Date:

*Signatory's Capacity*

*Tick the appropriate category*

- Australian legal practitioner,
- Registrar of the Local Court,
- Licensed Conveyancer who has successfully completed a course of study approved by the Minister,
- NSW Trustee and Guardian employee who has successfully completed a course of study approved by the Minister,
- A trustee company employee who has successfully completed a course of study approved by the Minister,
- Legal Practitioner qualified in a country other than Australia who is instructed and employed independently of any legal practitioner appointed as an attorney under this power of attorney.

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## 7. Acceptance by attorney

- a) I accept that I must always act in the principal's best interests.
- b) I accept that as attorney I must keep my own money and property separate from the principal's money and property.
- c) I accept that I should keep reasonable accounts and records of the principal's money and property.
- d) I accept that unless expressly authorised, I cannot gain a benefit from being an attorney.
- e) I accept that I must act honestly in all matters concerning the principal's legal and financial affairs.

**Failure to do any of the above may incur civil and/or criminal penalties.**

Signature:

Date:

Name:

**And**

Signature:

Date:

Name:

*[add more pages if necessary]*

NSW LRS OFFICE USE ONLY

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# Enduring Power of Attorney

## Important information

- A power of attorney is an important and powerful legal document. You should get legal advice before you sign it.
- It is important that you trust the person you are appointing as attorney to make financial decisions on your behalf. They must be over 18 years old and must not be bankrupt or insolvent. If your financial affairs are complicated, you should appoint an attorney who has the skills to deal with complex financial arrangements.
- A power of attorney cannot be used for health or lifestyle decisions. You should appoint an enduring guardian under the *Guardianship Act 1987* if you want a particular person to make these decisions. For further information, contact the Civil and Administrative Tribunal or NSW Trustee and Guardian.
- Clause 2 of the power of attorney contains powers which will permit your attorney to use your money and assets for the attorney or anyone else as provided. You should only tick those boxes in Clause 2 if you choose that your attorney is to have that power/s.
- This power of attorney is for use in New South Wales only. If you need a power of attorney for interstate or overseas, you may need to make a power of attorney under their laws. The laws of some other States and Territories in Australia may give effect to this power of attorney. However, you should not assume this will be the case. You should confirm whether the laws of the State or Territory concerned will in fact recognise this power of attorney.
- Your attorney must keep the attorney's own money and property separate from your money and property, unless you are joint owners, or operate joint bank accounts. Your attorney should keep reasonable accounts and records about your money and property. Usually the cost of providing and maintaining these records by the attorney may be recoverable from you.
- If your attorney is signing certain documents that affect real estate, the power of attorney must be registered at NSW Land Registry Services NSW. Please contact NSW LRS on T: 1300 052 637 to see whether the power of attorney must be registered.
- An attorney must always act in your best interest. If your attorney does not follow your directions, or does not act in your best interest, you should consider revoking the power of attorney. You will be only able to do so whilst you retain capacity. If you revoke the power of attorney you should notify the attorney of the revocation, preferably in writing, that they are no longer your attorney. The attorney must stop acting immediately once they have knowledge of the revocation.
- This power of attorney does not automatically revoke prior powers of attorney made by you. If you have made an earlier power of attorney that you do not want to continue, you must revoke the earlier power of attorney. It is advisable that you notify the attorney, preferably in writing, of the revocation, if you have not already done so. You should also give notice of the revocation to anyone who is aware of the earlier power of attorney, such as a bank.

## Notes for completion

### Joint attorneys

If you appoint more than one attorney, you should indicate whether the attorneys are to act jointly, or jointly and severally. Attorneys who are appointed jointly are only able to act and make decisions together.

Attorneys who are appointed jointly and severally (i.e. together or separately) are able to act and make decisions independently of each other. However, you can specify that a simple majority (if you appoint 3 or more attorneys) must agree before they can act.

### Substitute attorney/s

If you appoint a substitute attorney, they will only have authority to act as your attorney if the first appointed attorney dies, resigns or vacates their position.

You can specify for whom the substitute is to act (e.g. if you appoint A and B as attorneys and X and Y as substitutes, you can specify that X takes A's place if A vacates office).

A substitute attorney must sign an acceptance of their appointment in Clause 7 before they can act as attorney.

If you have appointed a substitute attorney, it may be helpful that some sort of documentation evidencing the vacation of the original attorney is attached to this power of attorney, when that vacancy happens. This will assist to satisfy a third party that the substitute attorney is entitled to act for you.

### Attorney vacates office

Section 5 of the *Powers of Attorney Act 2003* states that there is a vacancy in the office of attorney if the attorney dies, resigns, becomes bankrupt, loses mental capacity or the authority to act is revoked.

### Further information

For information on powers of attorney, the attorney's duties and registration, contact NSW Land Registry Services [www.nswlrs.com.au](http://www.nswlrs.com.au), the NSW Trustee and Guardian [www.tag.nsw.gov.au](http://www.tag.nsw.gov.au), a solicitor, or a trustee company.

The NSW Government's Planning Ahead Tools website [www.planningaheadtools.com.au](http://www.planningaheadtools.com.au) provides up-to-date information and resources about powers of attorney, enduring guardianship, wills and advanced care planning.