

Enduring Power of Attorney

Complete this form by writing your responses on the lines. Clauses with options are to be completed by placing a tick in the appropriate box and ruling through those options that do not apply.

These margin notes are not part of the prescribed form and can be removed.

Please refer to the Powers of Attorney Fact Sheet that accompanies this form for more information. The Powers of Attorney Fact Sheet is also available from the Land and Property Information website at www.nswlrs.com.au

You can appoint more than one attorney. If you appoint more than one attorney, it may be useful to appoint people who can work cooperatively and in your best interest.

(Please initial the bottom of this page)

An enduring power of attorney is a legal document that allows you (the **principal**) to nominate one or more persons (referred to as **attorneys**) 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 your mental capacity to manage your own affairs. Once you lose your mental capacity you cannot revoke this power of attorney. If you want the power of attorney to cease if you lose your 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 in clause 6 of this form must be completed. Before acting as your attorney, the attorney (including any substitute attorney) must sign the acceptance section in clause 7 of this form.

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.

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

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.....

.....

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

to be my attorney/s.

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Tick the option that applies and rule through any that don't apply.

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 can act 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 (*optional*)

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

If my attorney vacates office, I appoint:

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

My substitute attorney/s are to be appointed:

- Jointly [*Your attorneys must all act together*].
- Or
- Jointly and severally [*Your attorneys may act individually or can act with the other attorneys if they choose*].

Only complete this section if more than one substitute attorney is appointed. Tick the option that applies and rule through any that don't apply.

(Please initial the bottom of this page)

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2. Powers

My attorney may exercise the authority conferred 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 their reasonable living and medical expenses as provided by section 12(2) to the *Powers of Attorney Act 2003*.
- I authorise my attorney to confer benefits on the following persons 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)

.....
.....

3. Conditions and Limitations

I place the following conditions and/or limitations on the authority of my attorney:

.....
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.....
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.....

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

You may choose to allow your attorney to use your money and assets to pay for those things listed. Tick options which you wish to apply and rule through any that don't apply.

If you have ticked the third box, please complete this section. You can confer benefits on as many people as you wish.

You can limit the attorney's power to only carry out certain tasks. For example, you can specify that the attorney may only act to sell your house, or that the attorney can only act to deal with your shares. You can also place any conditions on how those tasks are to be carried out. For example, you can require that the attorney must submit accounts to a nominated accountant every year for audit. If you do not want to have any conditions or limitations placed on your attorney, write "NIL".

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You may choose when this power of attorney is to commence operation. Tick the box that corresponds to when you want this power of attorney to operate. Your attorney (including any substitute attorney) must sign their appointment at Clause 7 below before they can act.

You must sign and have it witnessed by a prescribed witness (see Clause 6 for a list of prescribed witnesses).

A prescribed witness must complete this certificate.

Please note that a Justice of the Peace (i.e. a J.P.) is not a prescribed witness.

(Please initial the bottom of this page)

4. Commencement

This power of attorney operates: [Tick one option only]

- Once the attorney has accepted their appointment by signing this document.
- Once a medical practitioner considers that I am unable to manage my affairs (an 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 has accepted their appointment by signing this document.

5. Your signature to make the appointment

Signature:

Date: ____/____/____

Signature of prescribed witness

Full name of prescribed witness

Address of prescribed witness

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

I, *[insert full name]*

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: ____/____/____

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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Please see a solicitor should the attorney fail to abide by their responsibilities. The Police or the Supreme Court of NSW may also need to be involved.

The Attorney signs here. Add pages if there are more than two attorneys, including any substitute attorneys

(Please initial the bottom of this page)

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]

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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. Your attorney 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.
- 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. 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 only be able to do so while you retain your capacity. If you revoke the power of attorney you should notify the attorney, 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.

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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 attorneys

If you appoint a substitute attorney, the substitute attorneys 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.

Attorney vacates office

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.

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, the NSW Trustee and Guardian www.tag.nsw.gov.au, a solicitor, or a trustee company.

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