

# 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.lpi.nsw.gov.au](http://www.lpi.nsw.gov.au)

### Principal

You, the person who appoints the attorney.

### The Attorney

The person you nominate to look after your legal and financial affairs. Your attorney may also be a company or other organisation such as the NSW Trustee and Guardian.

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.

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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 Guardianship 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.

## 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.

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**Complete this section only  
if more than one attorney  
is appointed.**

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

If you ticked box **a)**, you must also tick box i or ii.

If your attorney/s vacates office, you have the option to nominate someone to take their place. (See **Notes for completion** regarding the meaning of 'vacates').

You can choose more than one substitute attorney.

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)

**My attorneys are appointed:**

- a) ☒ Jointly (your attorneys must all act together).

Tick the applicable box below (only one)

- i) ☐ I want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.
- ii) ☐ I do not want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.

Or

- b) ☐ 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 my attorney/s vacates office, I appoint:

This image shows a full page of white paper with ten horizontal dashed lines, typical of primary school handwriting practice paper. The lines are evenly spaced and extend across the width of the page. There is no text or other markings on the paper.

[insert full name and address of 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).

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

If you have ticked **box (c)**, please complete this section. You can confer benefits on as many people as you wish.

You can place limits and conditions on your attorney.

If you do not want to place conditions or limitations on your attorney, please write the word **NIL** in the space provided.

(Please initial the bottom of this page)

## 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)*

- ☐ a) I authorise my attorney to give reasonable gifts as provided by section 11(2) of the *Powers of Attorney Act 2003*.
- ☐ b) 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*.
- ☐ c) 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]*

and (delete if not required)

.....  
.....  
*[insert full name and address]*

## 3. Conditions and Limitations

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

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

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

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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/s (including any of your substitute attorney/s) 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

Tick the applicable box below (one only)

This power of attorney operates:

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

## 5. Your signature to make the appointment

Signature: .....

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature of prescribed witness.....

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 have witnessed the signature of this power of attorney by the principal.
- e) I am not an attorney under this power of attorney

Signature: ..... Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Tick the appropriate category

- ☐ Solicitor/barrister,
- ☐ Registrar of the Local Court,
- ☐ Licensed Conveyancer,
- ☐ NSW Trustee and Guardian employee,
- ☐ A trustee company employee who has successfully completed a course of study approved by the Minister.

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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/s signs here. Add pages if there are more than two attorneys, including any substitute attorney/s.

## 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]*

LPI 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 Guardianship 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 designed 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 Land and Property Information NSW. Please contact LPI 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 a previous power of attorney which you do not want to continue, you must revoke the previous power of attorney by serving a notice on your previous attorneys, if you have not already done so.

# Enduring Power of Attorney

## 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 Land and Property Information [www.lpi.nsw.gov.au](http://www.lpi.nsw.gov.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.