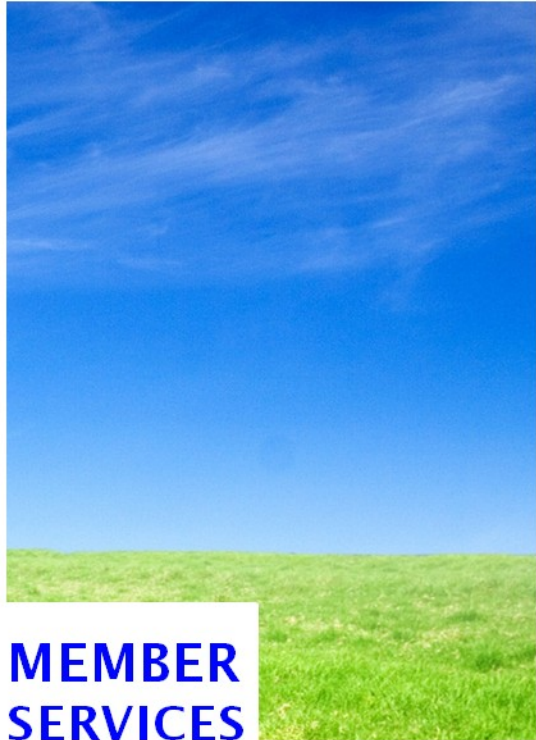
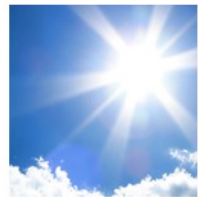




# Planning Ahead Kit



**MEMBER  
SERVICES**



# The Australian Legal Will Kit

Exclusively for ARPRA Members

Authored by qualified lawyers and supplied exclusively for ARPRA members, the Australian Legal Will Kit is both easy-to-use and easy-to-understand.

Written in layman's terms and accompanied by a step-by-step guide, this kit is designed to be

accomplished by simply filling in the blanks. Plus, each clause on the Will Form is numbered and comes with detailed instructions.

By using this user-friendly Australian Legal Will Kit, you could potentially save yourself hundreds of dollars in legal fees.

## Is a DIY Will legal?

The short answer is, “yes, it is.”

Some recent entrants to the Will Kit market seek to gain advantage by declaring that their kit is “legal” or “solicitor approved”, and that leads some people to ask,

### ***“Is a Do-It-Yourself Will legal?”***

The answer is, “Yes, of course it's legal”—although the question is not really meaningful.

Here's why:

“Legal”

To say a Will Kit is “legal” is meaningless because there is no approvals system of any kind for wills or will kits. A Will (whether solicitor-prepared or DIY) merely has to include the information needed for it to be accepted as valid when the executor presents it to the Probate Office (following the death of the person who made the Will). So the sensible question is not, “Is the Kit legal?”, but

### ***“Will the Probate Office accept the Will as valid and “grant” probate to the executor named in the Will?”***

The Probate Office doesn't care if the Will is a DIY Will or a lawyer-made Will—just as long as it meets the basic requirements for Wills (and in our DIY Will Kit, we bend over backwards to make sure they do).

Even if there is some minor flaw in a Will, the Probate Office rarely rejects them—they are there to accept Wills, not reject them. If they are not convinced about the Will, what

they do is ask the executor to provide further information before they grant probate to the executor.

And even if the unthinkable happened and the Probate Office just could not accept that the Will represented the last Will of the deceased, your estate doesn't disappear into a black hole. What happens is that one of your next of kin then applies for "Letters of Administration" instead of Probate, and they wind up the estate in the same way. That is no big deal.

So all the "marketeer-speak" about a Will Kit being "legal" is just an attempt to frighten people who don't know better.

After you download the Will Kit, simply type in:

- ✓ your name and address details
- ✓ your executors
- ✓ itemised gifts (e.g., jewellery to my niece)
- ✓ your inheritors in percentage shares
- ✓ guardians for your children
- ✓ funeral instructions.

## Clearly identify yourself as the willmaker

You should identify yourself by your full name and street address. Only one person can be named as the willmaker. So, if you have a partner, they will need to make a separate Will.

Our Australian Legal Will Kit is re-usable, which means that once you have filled in the details and printed it out, your partner can also use the same form simply by inserting their details in place of yours and making any other changes they require.

In some cases, a Will may become ineffective after you get married. So, if you are planning on getting married, you should state that you are making the Will in contemplation of marriage and name your prospective partner. That way, it will continue to have effect when you marry them.

## Gift your estate to inheritors

The main purpose of a Will is to name the people you want to give your assets to when you die. These people are generally known as beneficiaries or inheritors and you should name them clearly in your Will.

A carefully drafted Will should state what you want to happen if you give your estate to more than one inheritor and one of them dies before you. Do you want their share to go to their children or to the other inheritors?

In our example, let's say Wendy has named her children Cherry and Johnny as her substitute inheritors if her husband Harry dies before her. Wendy may state that she wants her children's share of the estate to go to their children (in which case, let's say Johnny dies before Wendy, his share will go to his children, in other words, to Wendy's grandchildren). Alternatively, Wendy may state that if she outlives one of her children, she wants that child's share to go to her other substitute inheritors (in which case, let's say Johnny dies before Wendy, his share will go to Cherry rather than to his children).

There are many contingencies to think about when you decide who to give your assets to, and our Australian Legal Will Form gives you the opportunity to cover these in detail.

## Appoint executors

When you make a Will, you should appoint someone to manage and administer your estate after you pass away. This person is usually referred to as an executor or trustee.

## Give funeral instructions

You may say in your Will how you want your body to be dealt with after you die, including, for example, whether it is to be buried or cremated. It is not strictly necessary to specify your wishes since it will be up to your executors to make this decision. However, it is generally helpful to give them guidance, to minimise the likelihood of disputes.

## Name guardians if you have children

If you have children under the age of 18 (also known as “minors”) then you should specify in your Will who you would like to look after them if both of you and their other parent die before they reach 18. This person is known as a guardian and will have the power to make decisions on their behalf such as signing legal documents or deciding where they live and what school they go to.

## Sign the Will properly

It is important that you follow these steps to reduce the likelihood that the Will could be challenged:

1. Make sure you sign and initial the Will in front of two independent adult witnesses.
2. You (the willmaker) and the witnesses should all use the same pen—use either a black or blue pen.
3. First, you should sign the Will (where indicated on the signing page) and initial all of the other pages. Then, print the date of signing.
4. After you have signed, each witness should also sign (where indicated on the signing page) and initial the other pages in front of you and the other witness.
5. Do not pin, staple or attach anything to the Will.

## Store the Will safely

The original document will be required in order for your executors to prove, with the minimum of fuss, that the document is valid. While it may be possible to prove that a copy is valid (if, for example, the original cannot be located), it can be a very difficult, costly and time-consuming process. Therefore, it is important that proper arrangements are made for the storage and retrieval of the original Will document.

*Disclaimer: The fact sheets and guides are not substitutes for legal advice. For complex wills and powers of attorney, you should seek legal advice.*

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**SUMMARY**

This is my last Will and takes effect when I die. In this document I appoint executors to manage my estate and give them instructions on how to distribute it to my inheritors. This Will is prepared for use in Australia.

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**USING THIS FORM**

Fill-in with Adobe Reader free at [www.get.adobe.com/reader/](http://www.get.adobe.com/reader/).

This form is of a general nature only. Consult a lawyer for specific advice on serious matters.

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# AUSTRALIAN LEGAL WILL

# My Last Will

## 1 My details

*My name and address*

FULL LEGAL NAME OF WILLMAKER

STREET ADDRESS OF WILLMAKER

- A I am married to my Partner named below and I acknowledge that if we divorce it may affect their legal entitlements in this Will.
- B I am making this Will in contemplation of marriage to my Partner named below and want their legal entitlements in this Will to continue after we marry.
- C I am neither married nor making this Will in contemplation of marriage to anyone.

*My Partner*

FULL LEGAL NAME OF MY PARTNER (IF ANY)

## 2 This Will

This Will is taken to revoke all of my former wills and testamentary acts and is to be interpreted as follows:

- “children” includes legally adopted children but excludes stepchildren and foster children unless I have named them as an inheritor of my main estate.
- “dies before me” means dies either before me or within 30 days of my death.
- “outlives me” means outlives me by at least 30 days.

## 3 My estate

My estate is to be managed by my Executors and applied as follows:

- first, my debts and the expenses of my funeral and the administration of my estate are to be paid out of my estate;
- second, the gifts of any particular items are to be distributed in accordance with section 6 of this Will; and
- third, the rest of my estate (referred to as my “main estate”) is to be distributed in accordance with section 4 of this Will.

### THESE TIPS

Follow these tips to complete the document. They will appear on screen but not in the printed document.

### EFFECT OF MARRIAGE OR DIVORCE

You must select either A, B or C.

If you select A or B, fill in the details for your Partner, otherwise leave it blank.

If you divorce your Partner after making this Will, at law, it can be treated as though they died before you, which may affect their legal entitlements.

If you marry after making this Will, generally, it will not affect your Partner’s legal entitlements so long as you stated that you made it in contemplation of marriage.

### CLARIFYING YOUR WISHES

Section 2 states that this document replaces any earlier Wills and some words used in it have a special meaning.

Section 3 sets out the order for distributing your estate.



INITIALS OF WILLMAKER



INITIALS OF WITNESS 1



INITIALS OF WITNESS 2

#### 4 The inheritors of my main estate

- A I give my main estate to the person named below at 4A as my Sole Inheritor.
- B I give my main estate in percentage shares to the people named below at 4B as my Inheritors.

##### 4A Sole Inheritor

100%   
 SHARE RELATIONSHIP TO THE WILLMAKER

FULL LEGAL NAME OF SOLE INHERITOR

However, if the Sole Inheritor dies before me then I give my main estate to the Inheritor/s named below at 4B.

##### 4B Inheritor 1

SHARE (%) RELATIONSHIP TO THE WILLMAKER

FULL LEGAL NAME OF INHERITOR 1

##### Inheritor 2

SHARE (%) RELATIONSHIP TO THE WILLMAKER

FULL LEGAL NAME OF INHERITOR 2

##### Inheritor 3

SHARE (%) RELATIONSHIP TO THE WILLMAKER

FULL LEGAL NAME OF INHERITOR 3

##### Inheritor 4

SHARE (%) RELATIONSHIP TO THE WILLMAKER

FULL LEGAL NAME OF INHERITOR 4

#### SPECIFYING THE INHERITORS

Select A if you want to give all of the main estate to one person, for example your husband, wife, partner or only child.

If you select A, fill in the Sole Inheritor's details at 4A and also fill in the details of who will inherit your main estate (and, if there is more than one Inheritor, their percentage shares) at 4B in case the Sole Inheritor dies before you.

Select B if you want to give your main estate to more than one person, for example your children, brothers and sisters or parents.

If you select B, leave the Sole Inheritor fields blank and fill in the details for the various Inheritors (and their percentage shares) at 4B.



INITIALS OF WILLMAKER



INITIALS OF WITNESS 1



INITIALS OF WITNESS 2



#### 4 The inheritors of my main estate (continued)

*Inheritor 5*

SHARE (%)	RELATIONSHIP TO THE WILLMAKER

FULL LEGAL NAME OF INHERITOR 5

*Inheritor 6*

SHARE (%)	RELATIONSHIP TO THE WILLMAKER

FULL LEGAL NAME OF INHERITOR 6

TOTAL (%)

4C If any of the Inheritors 1 to 6 die before me then I give that Inheritor's share of the main estate:

- A to any of their children who outlive me (and if more than one then in equal shares).
- B to any other Inheritors in their percentage shares.

4D If an Inheritor is under the Suggested Age of Entitlement (below) when I die, then my Executors have full discretion to distribute all or part of their gifts:

- for their benefit (for example, by paying their educational fees); and/or
- to their legal guardian; and/or
- directly to them immediately; and/or
- directly to them once they reach the Suggested Age of Entitlement (and hold their entitlements on trust in the meantime).

*Suggested Age of Entitlement*

FOR AN INHERITOR TO RECEIVE A GIFT DIRECTLY

END OF SECTION 4

**FILLING IN THIS SECTION**

You only need to fill in this section if you want to name more than 4 Inheritors

**TOTAL NUMBER OF SHARES**

Ensure all the shares you give to your Inheritors add up to 100%.

**IF AN INHERITOR DIES**

You must select A or B.

**ENTITLEMENT OF MINORS**

You can suggest an age at which your Inheritors are entitled to receive their gifts directly. However, your Executors still have the full discretion to distribute the gifts before then including, for example, by distributing all or part of them to a legal guardian or for their benefit by paying their educational fees.



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INITIALS OF WILLMAKER



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INITIALS OF WITNESS 1



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INITIALS OF WITNESS 2



## 5 Gifts of particular items

- A I am not making gifts of particular items of my estate. It is all gifted in section 4.
- B I give particular items of my estate to the inheritor/s named below. These gifts take effect before the gifts in section 4.

### Gift 1

DESCRIPTION OF ITEM

FULL LEGAL NAME OF INHERITOR

### Gift 2

DESCRIPTION OF ITEM

FULL LEGAL NAME OF INHERITOR

### Gift 3

DESCRIPTION OF ITEM

FULL LEGAL NAME OF INHERITOR

### Gift 4

DESCRIPTION OF ITEM

FULL LEGAL NAME OF INHERITOR

### Gift 5

DESCRIPTION OF ITEM

FULL LEGAL NAME OF INHERITOR

### Gift 6

DESCRIPTION OF ITEM

FULL LEGAL NAME OF INHERITOR

### FILLING IN THIS SECTION

Select either A or B.

If you select A, leave the rest of this page blank. All of your assets will be gifted in section 4 in any case, as part of the main estate.

If you select B, fill in details of the gift/s. You can gift a particular item (such as money, jewellery or a family heirloom) by describing the item and naming the Inheritor of the item.

Simply describe the gift, for example, as "\$1000" or as "my gold watch".

If you gift any particular items on this page they will not be available to gift to any of your Inheritors as part of your main estate in section 4.



INITIALS OF WILLMAKER



INITIALS OF WITNESS 1



INITIALS OF WITNESS 2

## 6 My executors

- A I appoint the Sole Executor, named at 6A below, as the executor of my estate.
- B I appoint the Executors, named at 6B below, as the executors of my estate.

### 6A Sole Executor

FULL LEGAL NAME OF SOLE EXECUTOR

STREET ADDRESS OF SOLE EXECUTOR

However, if the Sole Executor is unable or refuses to act, then I appoint the Executor/s named at 6B below as the executor/s of my estate.

### 6B Executor 1

FULL LEGAL NAME OF EXECUTOR 1

STREET ADDRESS OF EXECUTOR 1

### Executor 2

FULL LEGAL NAME OF EXECUTOR 2

STREET ADDRESS OF EXECUTOR 2

### Executor 3

FULL LEGAL NAME OF EXECUTOR 3

STREET ADDRESS OF EXECUTOR 3

END OF SECTION 6

### SPECIFYING THE EXECUTORS

You must Select A or B.

Select A if you want to appoint one person as your Executor, for example your husband, wife or partner. You then need to fill in this person's details as the Sole Executor at 6A.

You should also fill in the details at 6B of who will act as Executor/s if the Sole Executor is unable or refuses to act.

Select B if you want to appoint more than one person, for example your children, as Executors. You should then leave the Sole Executor fields at 6A blank and fill in the details for the various Executors at 6B.

### CHOOSING AN EXECUTOR

Executors are responsible for administering your estate and ensuring it is properly distributed to the Inheritors.

You should appoint a person you trust as an Executor as they have the power to make decisions about the management of your estate. They are also responsible for distributing your estate to the Inheritors.

An Executor must be over 18 years of age and may also be an Inheritor under the Will. For example, you may name your husband, wife or partner as an Executor and an Inheritor in this Will.

### NUMBER OF EXECUTORS

It is generally advisable to appoint no more than 3 Executors as they will all need to sign documents and take part in administering the estate.



INITIALS OF WILLMAKER



INITIALS OF WITNESS 1



INITIALS OF WITNESS 2

## 7 Guardian of my children

If I die leaving any children under the age of 18 without a guardian, I appoint Guardian 1 as their guardian.

*Guardian 1*

FULL LEGAL NAME OF GUARDIAN 1

STREET ADDRESS OF GUARDIAN 1

However, if Guardian 1 is unable or unwilling to act, or continue to act, as a guardian, then I appoint Guardian 2 to act instead.

*Guardian 2*

FULL LEGAL NAME OF GUARDIAN 2

STREET ADDRESS OF GUARDIAN 2

## 8 Funeral instructions

After my death, I wish to be:

A buried.

B cremated.

END OF SECTION 8

### CHOOSING A GUARDIAN

You can choose a person called a Guardian to look after your children in case both parents die. The Guardian will have legal responsibility for them.

If for example, your children's mother survives you, she may continue to act as their guardian but you need to appoint a Guardian in case she dies.

You should choose someone you can trust to take care of your children such as a family member or responsible friend.

### FUNERAL ARRANGEMENTS

Select either A or B.

\_\_\_\_\_  
INITIALS OF WILLMAKER 

\_\_\_\_\_  
INITIALS OF WITNESS 1 

\_\_\_\_\_  
INITIALS OF WITNESS 2 

## 9 Signatures

### Witness 1

FULL LEGAL NAME OF WITNESS 1

STREET ADDRESS OF WITNESS 1

### Witness 2

FULL LEGAL NAME OF WITNESS 2

STREET ADDRESS OF WITNESS 2

Signed by the Willmaker in the presence of Witness 1 and Witness 2. Each Witness confirms that the Willmaker signed this Will in front of them and the other Witness.

\_\_\_\_\_  
WILLMAKER SIGNS HERE 

\_\_\_\_\_  
PRINT DATE SIGNED 

\_\_\_\_\_  
WITNESS 1 SIGNS HERE 

\_\_\_\_\_  
WITNESS 2 SIGNS HERE 

END OF THIS WILL

### CHOOSING A WITNESS

You should ensure that each person you choose to act as a Witness is not an inheritor under the Will.

So, for example if you named your husband, wife, partner or children as inheritors or made a gift to them under the Will then they should not act as a witness. If they do, it could be difficult to prove the Will.

A Witness should be over 18.

A Witness does not need to read the Will. They simply need to see you and the other witness sign this page and initial the other pages of the Will.

### SIGNING INSTRUCTIONS

You and the Witnesses should all use the same pen – either a black or blue pen.

You (the Willmaker) should sign this page and initial the other pages in front of both Witnesses.

Also print the date of signing.

After you have signed, each Witness should also sign this page and initial the other pages in front of you and the other Witness.

Do not pin, staple or attach anything to the Will.

### STORING THE WILL

Keep the signed Will in a safe place and ensure that your Executors know where to find it. For example, you could store it with your accountant or in a bank safe.

# Power of Attorney

A Fact Sheet

## What is a power of attorney?

A power of attorney is a legal document made by one person, who is called the 'principal', that allows another person to do things with the principal's money, bank accounts, shares, real estate, and other assets. This can include spending and managing the principal's money, buying or selling shares for the principal, or buying, selling, leasing or mortgaging the principal's house or other real estate investments. The person who does these things for the principal is called the 'attorney'.

The word 'attorney', when used in the expression 'power of attorney', does not mean that the person appointed has to be a solicitor or lawyer. The person appointed as attorney can be any person over the age of 18 years who is able to assist the principal with money or property—a relative, friend or professional adviser.

A power of attorney only authorises an attorney to act in relation to legal and financial matters. It does not allow the attorney to make personal (including medical) decisions for the principal. Anyone who wants another person to make personal decisions for them should appoint an enduring guardian under the Guardianship Act 1987. See NSW Civil and Administrative Tribunal section for information on enduring guardians.

## Should I make a power of attorney?

A power of attorney can help if you cannot look after your finances for yourself. For example, if you become ill, are confined to hospital, go overseas, or become unable to go to banks, government offices or real estate agencies, then you may need someone else to do these things for you. By appointing an attorney, there will be someone who is legally authorised to do things for you when the need arises. It is possible that a bank might simply accept a letter of authority from you, but you should check this with the bank. If a letter of authority is not sufficient then a power of attorney will be necessary. If you want someone to be able to buy, sell or deal with real estate on your behalf, then a power of attorney is essential.

## **When should I make a power of attorney?**

It is important to make a power of attorney before you need it. This is particularly true for enduring powers of attorney. Once you have lost mental capacity, you cannot make a power of attorney because, for a power of attorney to be effective, you must be able to fully understand what you are signing.

A general power of attorney may start as soon as it is signed by you and given to your attorney. If you do not want your attorney to start using the power of attorney straight away, you can state on the power of attorney form when you want it to start. If you do this, then making your power of attorney early does not mean that you are handing over decision-making to your attorney straight away. An enduring power of attorney cannot start until the attorney/s accept their appointment.

## **What type of power of attorney should I make?**

There are two types of powers of attorney:

- General Power of Attorney
- Enduring Power of Attorney

There is a separate prescribed form for each type of power of attorney to correspond to the type of power given. Before 13 September 2013, the same form could be used to create both types of power of attorney.

### **GENERAL POWER OF ATTORNEY**

A general power of attorney should be made on the form called 'General Power of Attorney'.

A general power of attorney can be useful for a short term appointment, for example if you are going overseas for a month or two and wish to appoint an attorney to look after your legal and financial affairs while you are away. It is also useful if you want the attorney to act only in relation to certain one-off transactions—for example, to sell (or buy) property, shares or other financial assets on your behalf. A general power of attorney can be easily tailored to meet your requirements.

To make a general power of attorney, your signature need only be witnessed by a person over the age of 18 years (other than the attorney being appointed). It is not necessary for the attorney to sign the power of attorney.

It is important to understand that a general power of attorney automatically terminates if you lose mental capacity. If this happens, the attorney must immediately cease to act as your attorney. If you have a general power of attorney and subsequently lose capacity, you cannot make another power of attorney because you lack the mental capacity required to do so.

In this scenario, the only way to have someone make decisions on your behalf is to approach the Civil and Administrative Tribunal to seek the appointment of a financial manager. For this reason, most people (especially the elderly) should consider using the enduring power of attorney instead of the general power of attorney.

## ENDURING POWER OF ATTORNEY

An enduring power of attorney, unlike a general power of attorney, is one which continues to operate after the principal has lost mental capacity. An enduring power of attorney is normally used if the principal wishes their attorney to make decisions for them in the long term. An enduring power of attorney may be made on the form called 'Enduring Power of Attorney' .

An enduring power of attorney can be useful because you may become unable to look after things for yourself at some stage in the future. This could be due to physical problems, loss of mental capacity, or something unforeseen such as an accident.

Making an enduring power of attorney while you still have mental capacity is a cheap, easy, and practical step to prepare for the future. Once you have lost the mental capacity to understand what you are doing, you cannot make a power of attorney.

By making an enduring power of attorney, there will be someone who can legally look after your legal and financial affairs if you become unable to do so. Another advantage of making an enduring power of attorney is that you can choose the person who you want to be your attorney.

An enduring power of attorney can be tailored in the same way as a general power of attorney to meet your circumstances. You can make special directions in the power of attorney document about what you want your attorney to be able to do, or impose limits on what they can do.

There are additional requirements when using this form:

- The attorney (and any substitute attorney) has to sign the form to show that they consent to act. This can occur at the same time as you sign or at a later time. However, the enduring power of attorney will not begin to operate until the attorney has signed. (This is not required for a general power of attorney.)
- Your signature must be witnessed by a special witness (called a 'prescribed witness').
- The prescribed witness must sign a certificate on the form stating that they explained the enduring power of attorney to you and that you appeared to understand it.

### **Do I have to use one of the forms in this kit?**

No. However, the forms included in this kit comply with the prescribed forms in the Powers of Attorney Regulation 2011 to create a valid general power of attorney or enduring power of attorney.

It is recommended that you use one of the attached forms, but other forms that substantially comply with the prescribed forms in the regulation can be used.

### **Do I lose my rights?**

No. Making someone your attorney does not mean that you lose your right to operate your bank account, deal with your real estate, or exercise any other rights that you have. You can continue to look after your money and property while you still have mental capacity to do so.



## Who can I appoint as my attorney?

Any person over the age of 18 years can act as your attorney. It can be a close family member or a friend who you trust. You should ask the person you want to appoint if they will agree to be your attorney and look after your money and property. Only appoint a person you can trust to look after your affairs.

For example, there have been occasions where, due to family pressures, a principal has appointed a family member to be their attorney despite having reservations about their trustworthiness.

Unfortunately, in such circumstances, it is not unusual for the attorney to abuse their position and not act in the best interest of the principal. If you don't want to appoint a relative or friend, you can appoint the NSW Trustee & Guardian (T: 1300 364 103), a trustee company, or a professional such as a solicitor or accountant, but they will be entitled to charge a fee for acting as your attorney.

If you appoint more than one attorney, you need to indicate on the form whether you want your attorneys to act jointly (that is, only when they all agree, in which case, they all must sign any document) or jointly and severally (any one attorney will be able to act independently of the others).

If you appoint more than one attorney to act jointly, you should also indicate

whether you want the power of attorney to automatically terminate if one of those joint attorneys dies, becomes bankrupt, or does not want to act as an attorney any longer ('vacates office'). Some people feel comfortable to terminate the power if one of the joint attorneys vacates office, while others will want the power of attorney to continue despite one of the joint attorneys vacating office.

If you decide to appoint more than one attorney, and they are to act jointly, the forms attached to this fact sheet makes it easy to indicate whether or not you wish the power of attorney to continue if one of the attorneys vacates office.

You can also appoint one or more substitute attorneys to replace your attorney. This is helpful in situations where your original attorney leaves the country, no longer wants to be an attorney, or dies. If you decide to appoint a substitute attorney, again, be sure to appoint someone you trust who is capable of carrying out their duties as an attorney. The forms in this kit will assist you if you wish to appoint a substitute attorney.

# What can my attorney do?

With some exceptions, and depending on what limits or conditions you impose, your attorney can do all the things that you can do with your legal and financial affairs. For example, an attorney can sell, lease or mortgage your house, sell your personal belongings, take money out of your bank accounts, gain access to your documents (other than your will), and sell your shares. The prescribed forms allows you to impose limits or conditions on the attorney's authority.

It is important to understand that anything your attorney does for you under this power, as long as it is legal, is binding on you. For example, if your attorney lawfully enters into and signs a mortgage on your behalf, the law will see it as if you have signed the mortgage documents yourself. In such a case, you will be liable to repay the mortgage, not your attorney.

More generally, an attorney cannot vote in an election or make health or other personal decisions for you. See "What about medical decisions?" section for personal and health decisions. Also, your attorney cannot carry out your duties as trustee for someone else.

## What are my attorney's obligations?

An attorney is under a duty to act in your best interests, except as specifically authorised in the power of attorney document.

An attorney must:

- keep the attorney's money and assets separate from your money and assets (unless you and your attorney are joint owners or operate joint bank accounts)
- keep proper accounts and records of how the attorney handles your money and assets.

The NSW Trustee & Guardian, or anyone interested in your welfare, can require the attorney to produce these accounts and records. If the attorney does not carry out the obligations properly, they may have to

compensate you.

It is also possible that a transaction by the attorney may be cancelled, or that the power of attorney will be terminated, or the attorney replaced. Except where the power of attorney document says otherwise, the attorney cannot be paid for his or her work as attorney, although they can claim any out-of-pocket expenses directly connected with carrying out their duties as your attorney. The attorney should keep receipts to prove these costs.

If a solicitor, the NSW Trustee & Guardian or a trustee company is appointed as attorney, the power of attorney document may contain a clause allowing them to charge a fee for acting, or this may be covered by a separate agreement.

## **Can my attorney use my money for gifts?**

An attorney cannot make any gift of your money or property unless the power of attorney form specifically allows the attorney to do so. Both forms contain a clause (clause 2(a)) authorising an attorney to give reasonable gifts. If box (a) is ticked, the attorney will be able to use your money to make only certain types of gifts.

Allowable gifts are gifts to a relative or close friend of yours of a seasonal nature (for example, birthday, Christmas, or other religious occasion) or because of a special event (for example, birth or marriage).

Also permitted are donations of the kind that you have made before or might reasonably be expected to make (for example, to a favourite charity). However, the value of the gift or donation must be reasonable having regard to your financial circumstances and the size of your estate.

If you do not want your attorney to have the power to make such gifts, you should not tick box (a), and you should draw a line through clause 2(a).

## **Can my attorney use my money for their own benefit or the benefit of others?**

As with gifts, an attorney cannot use your money for their own benefit, or the benefit of any other person, unless the power of attorney form specifically allows the attorney to do so. If you tick clause 2 (b) or (c), you will allow an attorney to use your money for housing, food, education, transportation, and medical care for the attorney (i.e., clause 2(b)), or a person nominated in the power of attorney (for example, your children) (i.e., clause 2(c)).

The amount of the benefit must be reasonable having regard to your financial circumstances and the size of your estate. If you do not want your attorney to have these powers, you should not tick clauses 2 (b) and (c), and for good measure, you should also draw a line through the clauses on the form. Alternatively, one power may be chosen and the other not chosen. Care should be exercised in this situation.

## Can I change my mind and cancel a power of attorney?

You can revoke (that is, cancel) a power of attorney at any time as long as you still have mental capacity. There is no set form for revoking a power of attorney—a letter will do.

An attorney must not do any act or thing under the power of attorney if the attorney knows of the revocation. Whether you use a form or a letter, you must give a copy to the attorney to ensure that they know that the power of attorney has been revoked.

There is no obligation to register the revocation, but if the power of attorney has been registered, it is advisable to register the revocation. You should also inform your bank that it has been revoked, as well as anyone else who might be expected to act on the faith of the power of attorney.

## What happens if there is a dispute?

If there is a dispute involving a power of attorney and the people involved cannot settle it, they will have to go to either the Civil and Administrative Tribunal or the Supreme Court.

Under the Powers of Attorney Act 2003, both the Supreme Court and the Civil and Administrative Tribunal have the power to review enduring powers of attorney. The Civil and Administrative Tribunal is a faster and cheaper alternative to the Supreme Court for resolving disputes. The Supreme Court retains the sole right to review certain types of general powers of attorney.

Anyone seeking to review a power of attorney or challenge an attorney's authority should seek legal advice.

## What about medical decisions?

In NSW, a power of attorney only authorises an attorney to act in connection with legal and financial matters such as bank accounts, shares, or property.

It cannot be used to make medical or lifestyle decisions. If you want someone to make medical, treatment, and other personal or lifestyle decisions for you, you should appoint an enduring guardian. There is a separate form for appointment of an enduring guardian.

For more information on enduring guardianship, you should contact the Civil and Administrative Tribunal. They can send you explanatory material that also includes a blank enduring guardianship form.

Disclaimer: The fact sheets and guides are not substitutes for legal advice. For complex wills and powers of attorney, you should seek legal advice.

# Can I use a power of attorney in NSW if it is made interstate or overseas?

## GENERAL POWERS OF ATTORNEY

As a general rule, it is possible to use a general power of attorney in NSW even if it was made interstate or overseas. The power of attorney must, however, have certain basic features. It must:

- be in English, or translated into English by a qualified translator
- show the date that it was made, the name of the principal, and the name of the attorney
- have a statement that gives the attorney the power to act for the principal
- be signed by the principal
- be witnessed by an adult person.

## ENDURING POWERS OF ATTORNEY

Each state and territory of Australia has different requirements for making enduring powers of attorney. Under the Powers of Attorney Act 2003, enduring powers of attorney made in another state or territory of Australia will be recognised as valid in NSW to the extent that the powers given by the interstate power of attorney could validly be given in NSW.

However, in order to be registered in NSW, an interstate enduring power of attorney must be accompanied by a certificate from a lawyer from the state or territory where it was made saying that it was made in accordance with the laws of that state or territory, and stating that they:

- have been admitted to legal practice in that state or territory
- hold a practising certificate in that state or territory
- practise in that state or territory.

## Can I use a NSW power of attorney outside NSW?

If you want to use a NSW power of attorney outside NSW, you should check what the requirements are in the place where you want to use it. This applies to both general and enduring powers of attorney.

Some Australian states and foreign countries have different requirements. You should also check whether they have such a thing as an enduring power of attorney and what their requirements are for making and registering one.

## I appointed an attorney before 13 September 2013. Is the power of attorney still valid?

Yes. However, you may decide to update your power of attorney to ensure that it is still effective to carry out your wishes. You should be aware that if your power of attorney is dated prior to 16 February 2004, different laws apply in regard to how the sale of assets affects a gift in your will.

# General 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.

## 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.

(Please initial the bottom of this page)

A general 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. A general power of attorney gives the attorney the authority, if you choose, to manage your legal and financial affairs, including buying and selling real estate, shares and other assets for you, operating your bank accounts, and spending money on your behalf.

The power of attorney ceases if you lose your mental capacity after its execution. If you wish the power of attorney to continue if you lose mental capacity, use the **Enduring Power of Attorney** prescribed form. An attorney under general 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).

You may set whatever limitations or conditions on your attorney that you choose. 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 revoke the power of attorney. You or someone on your behalf should inform the attorney of the revocation, preferably in writing. The attorney must then immediately cease to act as your attorney. If anyone else, such as a bank, has been advised about the power of attorney, that person or entity should also be informed of the revocation.

The **Important Information** set out at the end of this form includes notes to assist in completing this form 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.**

# General Power of Attorney

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 (e.g. dies), you have the option to nominate someone else 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:

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

[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).



# General Power of Attorney

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. For example, you can specify that the attorney may only act to sell your house; or the attorney can only act to deal with shares; or the attorney must submit accounts to a nominated accountant every year for audit.

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.**

*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]*

# General Power of Attorney

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.

You must sign and your signature must be witnessed.

The witness must be someone over the age of 18 and who is not an attorney under this power of attorney.

Please make your attorney aware of their obligations by showing this clause 6 to them. You and your attorney/s should also read the **Important Information** section at the end of this document.

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.

(Please initial the bottom of this page)

## 4. Commencement

This power of attorney operates:

*Tick the applicable box below (one only)*

- a) Immediately;
- b) On and from \_\_\_\_/\_\_\_\_/\_\_\_\_ up to and including \_\_\_\_/\_\_\_\_/\_\_\_\_ ;  
(specify dates)
- c) Whilst I am overseas;
- d) Other.....

**If no option is selected or the options chosen are unclear or inconsistent, I intend that the power of attorney will operate immediately.**

## 5. Your signature to make the appointment

Signature: .....

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

Witness signature .....

Name and address of witness.....

.....

## 6. Attorney responsibilities

### Your attorney must do the following:

- a) Keep your money and property separate from the attorney's money and property.
- b) Keep reasonable accounts and records of your money and property.
- c) Not benefit from being an attorney, unless expressly authorised by you.
- d) Always act in your best interests.
- e) Always act honestly in all matters concerning your legal and financial affairs.

**Failure to do so may incur civil and/or criminal penalties.**

# General 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 boxes in Clause 2 if you want your attorney 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. The costs 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. 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 earlier 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 and give notice of the revocation to your previous attorneys, if you not already done so. You should also give notice of the revocation to anyone who is aware of the earlier power of attorney.

# General 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 individually) 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 otherwise 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).

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.

# 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.

## 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.

(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 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.

## 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.**

# Enduring Power of Attorney

**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:

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

*[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*).

# Enduring Power of Attorney

## 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]*

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)



# Enduring Power of Attorney

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 of the Commonwealth or of any State or Territory,
- 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.

# Enduring Power of Attorney

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]*

(Please initial the bottom of this page)

# 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 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.