

Powers of Attorney in New South Wales

This fact sheet also contains the forms to make a general power of attorney or an enduring power of attorney.

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' which is attached to this factsheet for your use.

A general power of attorney can be useful for a

¹Previously the same form could be used to create both. Recent changes to the Act have created two separate forms to correspond to the type of power given.

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' which is attached to this factsheet for your use.

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.

Explanation of terms

Principal: Person who makes a power of attorney giving someone else the authority to manage the principal's legal and financial affairs.

Attorney: Person with the principal's authority to manage the principal's legal and financial affairs.

Power of Attorney: A document signed by the principal that gives the attorney the authority to manage the principal's legal and financial affairs.

Prescribed forms: Forms to create a valid general power of attorney or enduring power of attorney as set out in the *Powers of Attorney Regulation 2011*.

The forms became available for use from 13 September 2013 following amendments to the *Powers of Attorney Act 2003* and the *Powers of Attorney Regulation 2011*. The amendments were made to make it easier for a person to make a power of attorney while at the same time providing increased security measures against fraudulent acts by an attorney.

Before 13 September 2013 there was only one prescribed form, which could be used to create either a general power of attorney or an enduring power of attorney. This form was set out in the *Powers of Attorney Act 2003*.

Prescribed witness: Person who is a solicitor, barrister, Registrar of a Local Court, licensed conveyancer, NSW Trustee & Guardian employee or Trustee company employee who has successfully completed a course of study approved by the Minister.

Loss of mental capacity: When a principal makes or revokes a power of attorney, loss of mental capacity means the loss of the ability to understand the nature and effect of that action. When a principal cannot manage his or her legal affairs, loss of mental capacity means being unable to carefully consider and decide issues relating to accommodation, bills, food, clothing, banking, investments and the like. If there is any doubt, seek legal or medical advice.

Jointly: Where two or more attorneys are appointed they must act together e.g. both attorneys must sign documents.

Joint and several: Where two or more attorneys are appointed they can act individually or together e.g. one of the attorneys can sign a document without the other attorney's signature or agreement.

Vacates office: An attorney vacates office if the attorney dies, resigns, becomes bankrupt, loses mental capacity or the authority to act is revoked.

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 attached to this fact sheet?

No. However the forms attached to this fact sheet 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 attached to this fact sheet 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. See **What happens if there is a dispute?** for information on disputes.

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. A suggested Revocation of Power of Attorney form is attached to this fact sheet and can be used for this purpose if necessary.

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. See **NSW Civil and Administrative Tribunal** section for contact details.

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. For information on cancelling a power of attorney see the section **Can I change my mind and cancel a power of attorney?**

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.

Do I have to register my power of attorney?

You must register your power of attorney if your attorney is going to sell, mortgage, lease or otherwise deal with your real estate. Otherwise, it is not necessary to register it. However, by registering your power of attorney it will be:

- on record as a public document
- safe from loss or destruction
- more easily accepted as evidence that your attorney is allowed to deal with your legal and financial affairs.

Powers of attorney are registered at the Sydney office of Land and Property Information. Anyone can lodge it for registration – either you, your attorney or someone else. You cannot post or fax it. The original power of attorney and a photocopy of it should be taken to:

Land and Property Information

1 Prince Albert Road
Queens Square
Sydney NSW 2000

You will also need to pay the current registration fee. At LPI, the staff will stamp a number on the original power of attorney and return it to you. This number is evidence that the power of attorney has been registered. Your attorney should use this number when they sign a document on your behalf. Your power of attorney will be digitally scanned and placed on public record, for anyone to see.

What about stamp duty?

In NSW, it is not necessary to pay stamp duty on general or enduring powers of attorney.

Where can I get more information?

Land and Property Information

Contact LPI Customer Service Centre with your inquiry.

T: 1300 052 637

F: 02 9233 4357

E: GeneralEnquiry@lpi.nsw.gov.au

www.lpi.nsw.gov.au

Private Solicitors

Most private solicitors can prepare a power of attorney. They can also give you advice on making a power of attorney, the obligations of the attorney and disputes involving powers of attorney.

NSW Trustee & Guardian and trustee companies

The NSW Trustee & Guardian and other trustee companies will prepare a power of attorney at no cost on condition that they are appointed as the attorney. They will then charge a fee for acting as attorney.

NSW Trustee & Guardian has a network of branches throughout metropolitan Sydney and regional areas across NSW. Call toll free on T: 1300 364 103 for enquiries or to find out the location of your nearest branch or see their website www.tag.nsw.gov.au.

Registrars of the Local Court

The Registrar of the Local Court can explain the effect and give the certificate necessary to make an enduring power of attorney. This service is free. The Registrar cannot provide you with legal advice. You should telephone the court office to check when they are available. Find your nearest Local Court at www.lawlink.nsw.gov.au/lc.

Law Access NSW

Law Access NSW is a free legal information, assistance and referral service for people who live in NSW. Contact Law Access NSW on T: 1300 888 529 (TTY 1300 889 529) or see their website www.lawaccess.nsw.gov.au.

NSW Civil and Administrative Tribunal

Information on enduring guardianship or making an application for the appointment of a guardian or financial manager is available from the NSW Civil and Administrative Tribunal Guardianship Division:

Locked Bag 9

Balmain NSW 2041

T: 02 9556 7600

Toll free T: 1800 463 928

www.ncat.nsw.gov.au

Disclaimer

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.
© February 2014 LPI (B) P14/10/013

Copyright

© State of New South Wales through NSW Land and Property Information. This work may be freely reproduced and distributed for most purposes, however some restrictions apply. See the copyright notice on www.lpi.nsw.gov.au or contact Land and Property Information.

Customer Services

T 1300 052 637
T +61 2 9228 6666
F +61 2 9233 4357
www.lpi.nsw.gov.au

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. The Powers of Attorney Fact Sheet is also available from the Land and Property Information website at 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.

(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.

LPI OFFICE USE ONLY

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.

Further information

For information on powers of attorney, the attorney's duties and registration, contact Land and Property Information www.lpi.nsw.gov.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.

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

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

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]

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.

(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]

LPI OFFICE USE ONLY

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.

Further information

For information on powers of attorney, the attorney's duties and registration, contact Land and Property Information www.lpi.nsw.gov.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.