

EPOA Checklist NSW



This checklist will guide you through the process of making an enduring power of attorney (EPOA) in New South Wales. It will show you what to think about and connect you to relevant information.

HOW TO USE THIS CHECKLIST



Think about each point before you start to complete your EPOA form and make notes of your preferences, questions and decisions.



Tick the boxes once you've completed each step.



A PDF version is also available for you to download should you want to go through this process offline.

1 GET READY

Background information and resources to help you research and prepare to make an EPOA

2 GET STARTED

Practical information you will need to consider before completing the EPOA form

3 COMPLETE THE FORM

Helpful information to help you complete the EPOA form

4 SIGN AND WITNESS

Information about how to correctly sign and witness your EPOA

5 REGISTER AND STORE

Information about registration requirements and tips on where and how to store your EPOA

6 CHANGING OR REVOKING YOUR EPOA

Information to assist you should you want to change or revoke your EPOA

Disclaimer: The information provided in this checklist is not a substitute for individual legal advice.

1 GET READY

Knowing as much as possible about an enduring power of attorney (EPOA) before you start to make one will make the process easier.

Have you read the information about EPOAs? Do you know where you can find out more?

- Compass.info – [Introduction to enduring power of attorney](#)
- NSW Government – [Enduring power of attorney](#)
- NSW Land Registry – [Powers of attorney fact sheet](#)
- NSW Trustee & Guardian – [What is a power of attorney?](#)
- NSW Civil and Administrative Tribunal – [Enduring power of attorney](#)

Do you understand the key terms that relate to powers of attorney in NSW?

If you're unsure about any of these, visit the Compass.info '[Helpful terms to know](#)' webpages or NSW Government '[Glossary of terms](#)' page.

- **Principal** (you, the person making the power of attorney)
- **Attorney** (the person you appoint under a power of attorney to make decisions for you)
- **Capacity or mental capacity** (your ability to understand facts about your decisions, weigh up the consequences—i.e. the risks and benefits—of making decisions, and communicate consistent choices)
- **General power of attorney** (a legal document that authorises an attorney to make legal and financial decisions on your behalf while you still have capacity)
- **Enduring power of attorney** (a legal document that authorises an attorney to make legal and financial decisions on your behalf if you lose capacity)
- **Jointly** (if you appoint two or more attorneys, you can stipulate that they must all make your decisions together)
- **Jointly and several** (if you appoint two or more attorneys, you can stipulate that they can make your decisions either on their own or together)
- **Vacates office** (when your attorney no longer acts as your attorney)
- **Prescribed forms** (forms that the Powers of Attorney Regulation 2016 says should be used to make a power of attorney in NSW)
- **Revoke** (cancel)

Are you confident that you understand the difference in NSW between a general power of attorney (GPOA) and an enduring power of attorney (EPOA)?

- Compass.info – [Powers of attorney in New South Wales](#)
- NSW Land Registry – [Powers of attorney in New South Wales fact sheet](#)
- NSW Trustee & Guardian – [What is a power of attorney?](#)

Have you decided that you want a power of attorney that covers your legal and financial decisions but only if you lose capacity to make them yourself?

- If so, an EPOA is the right option for your needs.
- If you want your legal and financial decisions to be looked after while you still have capacity (for example, if you are in hospital or travelling overseas), you should make a GPOA.

Do you also want a future planning tool that will cover other types of decisions for you (for example, medical and lifestyle)? Your options in NSW include an enduring guardianship and an advance care directive.

- An enduring guardianship authorises someone that you nominate (your 'guardian') to make lifestyle or medical decisions for you. (Read more about enduring guardianships on the NSW Trustee and Guardian's '[What is an enduring guardianship?](#)' webpage.
- You can appoint an enduring guardian yourself, and you will need to set up your enduring guardianship separately from your EPOA. For information and instructions, visit the [NSW State Government](#) website or the [NSW Trustee and Guardian](#) website.
- If something happens to make a guardianship necessary and you haven't already appointed a guardian, one can be appointed for you by the NSW Supreme Court or the NSW Civil and Administrative Tribunal.
- An advance care directive is a record you can make of the health care treatments you'd like to have, or refuse to have, if you become unable to make the decisions yourself at the time. Find out more on the [NSW Government](#) website.

If you've ticked all those boxes, you should feel confident you have all the information you need. Move on to the next section.

All of the following three statements must be true for you to be able to make your EPOA:

1. You are over 18 and
2. you understand the effect of making a power of attorney and
3. you currently have capacity to make your own legal and financial decisions.

There is a lot of support and assistance available to people who are making their EPOAs. The next list will help ensure that you know who you can contact for advice and help.

Getting legal advice from a solicitor about making your EPOA is highly recommended. They can also help you complete the [EPOA form](#). Fees will apply.

- If you don't currently have a solicitor, you can find one by searching on the '[Register of solicitors](#)' page on the Law Society of New South Wales website.

You may also be able to get information and help from these services:

- [LawAccess NSW](#) (a free legal information service)
- [Seniors Rights Service](#) (an advocacy service for seniors)
- [Legal Aid NSW](#)
- [NSW Trustee & Guardian](#)
- [NSW Civil and Administrative Tribunal](#)

Would having an interpreter, Braille reader, scribe or other accessibility service be helpful when making your EPOA? You may be able to get assistance from:

- Multicultural NSW (a State Government department)
- LawAccess NSW's telephone interpreter service (phone 131450)
- NSW Communities & Justice's Diversity Services section.

Now you should be ready to start making your EPOA.

2

GET STARTED

The way to make your EPOA is to [complete an official form](#) that is available from the NSW Land Registry website.

Download the official EPOA form from the Land Registry website and save a copy to your computer.

- You must use the most recent version of the form (currently September 2013) when you make your EPOA. If you wait a while before filling in the one you downloaded, check the Land Registry website again to make sure there isn't a newer version.

Also, download and read the Land Registry's '[Powers of attorney fact sheet](#)'.

Before you start filling in the [EPOA form](#), read through it and the fact sheet. The form includes explanations and tips to help you complete it, but you may still think of questions you want answered. Write down any questions you have if they're not answered in the fact sheet.

Look for answers to your questions. These resources may be helpful:

- Compass.info '[Powers of attorney](#)' webpage.
- [NSW Civil and Administrative Tribunal](#)
- [NSW Trustee & Guardian](#)
- [LawAccess NSW](#)
- [Seniors Rights Service](#)
- your solicitor
- your accountant
- trusted family members
- close friends whom you trust.

You'll need to decide who you'd like to be your attorney(s). Remember that in NSW you can appoint more than one attorney, and you can also have substitute attorneys as a back-up in case an appointed attorney vacates office. To appoint someone as an attorney or a substitute attorney, you must obtain their written acceptance of the role in the [EPOA form](#).

Read about how to [choose an attorney](#) on this Compass webpage.

Read about [appointing substitute attorneys](#) on this Compass webpage.

There are lots of people you can consider to be your attorney, but whoever you choose should be someone you trust.

- Family members (it doesn't have to be your closest relative, if you don't believe they are suitable)
- Close friends
- Neighbours
- Your partner (however, you should consider their own age and decision-making capacity)

If you believe you don't have anyone suitable to ask, there are other options you can consider. Fees may apply.

- [NSW Trustee & Guardian](#)
- A trustee company
- Your solicitor
- Your accountant

Check that your chosen person(s) meets the criteria for being your attorney:

- They are over 18 years old.
- They are not bankrupt.
- You trust them.

Talk to your chosen attorney(s) about what the role would involve, how you would like your decisions to be made, and how they could support your participation in decision-making. Do they listen to what you want?

Make sure they understand what the job will involve. You could look at these resources together:

- Compass.info, ['Being an attorney'](#)
- NSW Land Registry ['Powers of attorney in New South Wales'](#) fact sheet.

Now that you've had the discussion, has the person agreed to be your attorney?

- If the person you've chosen doesn't agree, consider someone else and talk to them about it.
- If they do agree, they will need to sign your completed [EPOA form](#) at clause 7.

If you chose more than one attorney, decide how you'd like this to work and whether you want to include any specific instructions for sharing the role.

- Do you want the attorneys to act 'jointly' (together) or 'jointly and severally' (either together or alone) for you? (You'll indicate this on the form in clause 1.)
- Do you want each attorney to notify the others whenever they make a transaction or decision for you?

Consider what should happen if one of your attorneys 'vacates office' (i.e. becomes bankrupt, loses capacity, dies or no longer wishes to be your attorney).

- Remember, you will already have lost capacity for your EPOA to be in effect, so if your attorney vacates office, you won't be able to say then what you want to happen. You need to decide it now.
- You'll be able to indicate on the [EPOA form](#) what you want to happen.
- Do you want your EPOA to end, or to continue without the attorney? You can nominate substitute attorneys as a back-up, and they can step into the role for you.
- If you decide to nominate substitute attorneys, you'll indicate this in clause 1 of the [EPOA form](#) and state whether they may act 'jointly' or 'jointly and severally'.

Next, decide on the details of your EPOA and how you would like it to work for you.

Think which decisions you might need your attorney to look after and consider how you'd like each of them to be made. Some of the decisions could, for example, relate to:

- real estate – selling your property, renting out your house
- paying bills – anything from buying groceries to paying for aged care services (think about what bills you pay now)
- arranging for aged care services
- managing any investments you may have
- taking money out of your bank accounts.

Are there any additional powers you'd like to authorise? You will need to note these in clause 2 of the [EPOA form](#). For example:

Should your attorney notify someone (e.g. your lawyer, your bank) that the EPOA is taking effect before they make any of your decisions?

- Do you authorise for your attorney to give gifts from your finances?
- Can your attorney use your money for their own benefit or that of someone else (e.g. your children), such as paying for rent, food, education or medical care?
- Is there anything else you'd like to authorise?

Are there any limits or conditions you'd like to place on your attorney's decision-making powers? (These will be noted in clause 3.) Here are some examples, but you may think of others that are relevant to your circumstances.

- You could require them to submit accounts to your accountant every year.

Think about what you would like to have as the trigger for the EPOA to take effect. (You'll note this in clause 4.)

- When your doctor decides that you have 'lost capacity'?
- When your attorney believes that you need help with managing your affairs?
- Do you want to instruct your attorney to get an independent assessment of your capacity before they start making any decisions for you?

Once you have thought through all your preferences and found answers to your questions, you should be ready to fill in the [EPOA form](#).



3

COMPLETE THE FORM

The EPOA form is in PDF format. You can complete the form on your computer if you have a PDF-editing program, such as Adobe Acrobat Reader (a free program—download from the [Adobe website](#)). Otherwise, you can print the form and fill it in by hand with a pen.

If you are completing the form on paper, you might like to think about printing two copies: one as a draft that you can change and make mistakes on, the other to become the final, unaltered copy.

Read the 'Important information' section of the form on page 6.

Turn to page 1, question 1.

- Fill in your full name and address on the first blank lines, then the name and address of your attorney on the second set of blank lines. If you are appointing a second attorney, fill in their name and address on the third set of blank lines.
- If you are appointing more than two attorneys, use extra copies of page 1 of the form and add them to the main form. If not, cross out the third set of blank lines with a ruler.
- Once you are sure your entries are correct, sign your initials on the bottom of page 1.

Page 1 is completed. Turn to page 2.

- Indicate whether you want your attorneys to act 'jointly' or 'jointly and severally', and whether the EPOA is to end if an attorney vacates office.
- Rule a line through the options that you don't want to apply.
- If you would like to nominate a substitute attorney(s), complete the rest of page 2.
- If you **would not** like to nominate substitute attorney(s), rule a line through the 'Nomination of substitute attorney' section.

Page 2 is completed. Turn to page 3.

- If you want to give your attorney any of the additional powers listed under clause 2, 'Powers', tick the relevant box.
- If you are authorising the living and medical expenses of another person to be met (in the third option), provide the full name(s) and address(es) of each person in the blank lines.
- If you do not want to authorise any additional powers in clause 2, rule a line through the text—from 'Additional powers (optional)' down to the solid line above clause 3—and the blank lines.
- In clause 3, 'Conditions and limitations', you may—but do not have to—record details of any limits or conditions that you want to place on what your attorney is authorised to do. (See the explanatory text in the grey column to the left of the form for examples.)
- If you do not want to record any conditions or limitations, write NIL in the blank lines.

Page 3 is completed. Turn to page 4.

- In clause 4, 'Commencement', tick one box to indicate when your EPOA is to take effect. (If you choose 'Other', use the blank line to specify the details that you want.)

4 SIGN AND WITNESS

You must sign your EPOA in front of a **'prescribed witness'**. This can only be a solicitor, barrister, local court registrar, licenced conveyancer, or authorised employee of the NSW Trustee & Guardian or of a trustee company. Your attorney cannot be a witness to your signature.

Arrange a time and day with the prescribed witness that you've chosen. Ask them what fees will apply for the service.

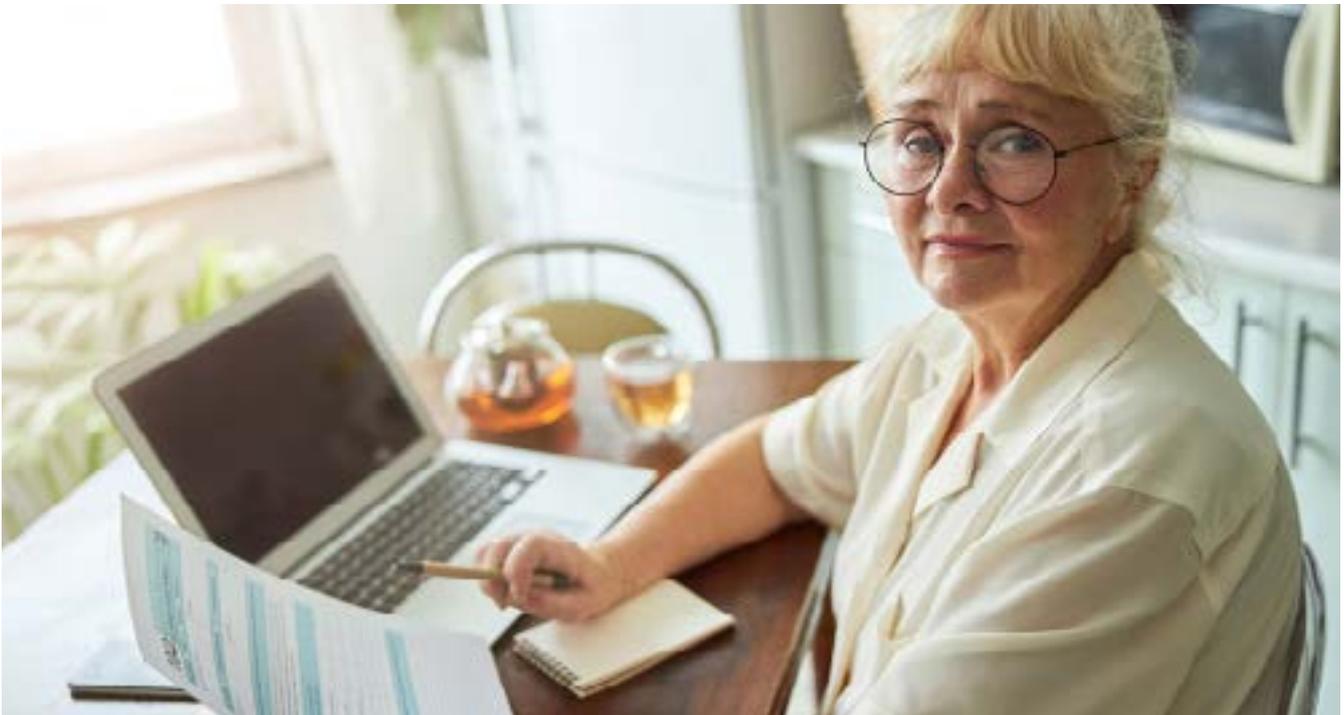
- At the appointed time, sign and date your EPOA at clause 5 in the presence of the prescribed witness. Do not sign your EPOA alone or in the presence of someone else who is not a prescribed witness.
- The prescribed witness should sign your EPOA at clause 5 and fill in their name and address.
- The prescribed witness should explain the effect of the enduring power of attorney to you and be satisfied that you understand their explanation before they complete the certificate at clause 6.

Have your attorney(s) complete clause 7, 'Acceptance by attorney', by signing and dating it.

- The form has spaces for two attorneys to sign their acceptance. If you have more than two attorneys, print or photocopy enough blank copies of page 5 for every attorney to sign, and attach the additional pages to your EPOA behind page 5.

Your [EPOA form](#) is complete! There are a few more steps to finalise it.

Once your EPOA has been correctly witnessed, the last step is to decide where to keep it.



5 REGISTER AND STORE

You can register your completed and witnessed EPOA with NSW Land Registry Services. Some EPOAs must be registered (see below). A fee applies for registration.

Registration ensures there is a record of your wishes and that the document is safe from loss or destruction. It also provides acceptable evidence that your attorney is authorised to deal with your legal and financial affairs, if there is ever any doubt.

Does your EPOA authorise your attorney(s) to deal with real estate?

- If 'yes', you **must register the EPOA** with NSW Land Registry Services.
- If 'no', you **can choose to register it**.

If your EPOA is to be registered, lodge it with the NSW Land Registry, Sydney, in person during business hours. You can lodge it yourself or have someone else lodge it for you. A fee will apply.

- You may be able to lodge your EPOA by post if you are unable to go to the Land Registry offices in Sydney or have someone go for you. [Find out if you are eligible to post your EPOA here.](#)
- Pay the applicable fee when you lodge your form. [Find the fees here.](#)

Make and distribute certified copies of the original, signed EPOA, whether you register it or not. ([The NSW Police Force website](#) lists people authorised to certify documents.)

- Keep at least one certified copy for yourself in a safe place at home—perhaps with your will and other important papers.
- Give certified copies to your attorney(s).
- Give certified copies to other relevant people, such as your solicitor, bank, accountant, family members and trusted close friends.
- You might like to keep a copy of this checklist with the certified copies of your EPOA.

And finally ...

Make a diary note to review your EPOA in 2 to 3 years.

- Circumstances and relationships change, so it's wise to review your plans regularly and make adjustments if needed.

Sometimes things change, and you may decide later that you want to appoint a different attorney, alter the preferences that you recorded in your EPOA, or revoke (cancel) your EPOA completely.

6

CHANGING OR REVOKING YOUR EPOA

In NSW, you may change or revoke your EPOA at any time as long as you still have capacity.

- Think through why you want to change your EPOA and what the changes will be.**
 - Has your attorney become bankrupt, lost mental capacity, died or changed their mind about being your attorney? (This is known as 'vacating office'.)
 - Has your good relationship with your attorney changed, or do you have doubts now that the person you nominated will act in your best interests?
 - Will someone else now be better to handle your financial decisions for you?
 - Have your financial circumstances or living arrangements changed?
 - How do you now want your future decisions to be made if you should lose capacity?
- Have you read the available information about changing or revoking an EPOA in NSW?**
 - Compass.info, ['Powers of attorney in New South Wales: can I change or cancel my power of attorney?'](#)
 - NSW Land Registry, ['Powers of attorney in New South Wales'](#) fact sheet.
- Have you discussed the changes you want to make with other people, such as family members, your attorneys, friends, your solicitor, or a professional trustee or legal advisory service?**

Now you should be prepared to make the changes that you want.

Do you want to **revoke** an existing EPOA? You must do this in writing.

- Write your revocation of the existing EPOA.**
 - You can write a letter, or you can use forms provided by the Land Registry.
 - There's a [manual form](#) that you can print out and fill in with a pen.
 - Alternatively, you can use the [interactive PDF form](#) available on the Land Registry website, complete it onscreen and save it to your computer.

If the existing EPOA was registered with the NSW Land Registry, you should also register the revocation letter or form.

Provide all attorneys with a copy of the revocation.

To **change** an existing EPOA, you must revoke the previous one **and** issue a new one.

- Make a new EPOA by completing a new [EPOA form](#), following this checklist again.**

Finally ...

- Provide copies of the new EPOA to other relevant people, such as your solicitor and bank.**
- File a copy for yourself with your other important paperwork.**

Disclaimer: *The information provided on this website is not a substitute for individual legal advice.*

