



# Enduring power of attorney in New South Wales

Learn more about making and changing an enduring power of attorney in New South Wales.

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# Introduction

In New South Wales, someone appointed in the role of attorney can make financial decisions – including operating bank accounts, paying bills, managing shares and investments, and buying and selling real estate – on behalf of the principal.

In your power of attorney document, you can authorise your attorney to act in all financial matters, or you can limit the financial decisions they are able to make – for example, only decisions about buying and selling of real estate.

A power of attorney is only for financial decisions, so your attorneys can't make decisions about your health, lifestyle or where you live. To make sure those decisions will be looked after, you need to appoint an [enduring guardian](#).

## Enduring Guardianship

An Enduring Guardian is the person you legally appoint to make decisions about your health and lifestyle in the event you cannot make these decisions for yourself.

[More information](#)



To appoint a power of attorney, you must:

- be over the age of 18 and
- understand the effect of making a power of attorney

# Types of powers of attorney

In this state there are two types of powers of attorney. Other states and territories have similar documents, although they may have different names and different rules.

## 1. General power of attorney

A general power of attorney (sometimes called a POA or GPOA) can only be used while you have capacity to make your own decisions, and it can only be used to make decisions about financial matters. It ends if you lose decision-making capacity, so it's not a future planning tool. Typically, a general power of attorney is in place for a specific time – for example, if you are travelling overseas, or are injured, and therefore need someone else to manage your finances on a temporary basis.

Under a general power of attorney, the person you have appointed to act on your behalf is only able to do so for the time period, task or circumstances you've specified. For example, if you regularly travel, you might authorise your attorney to make financial decisions for you whenever you are overseas.

If your general power of attorney does not have any specified limits in place, it ends when you no longer have decision-making capacity or when you die.



## 2. Enduring power of attorney

An enduring power of attorney (EPOA) allows you to appoint someone to make financial decisions for you if you no longer have capacity to make them yourself. You can only make an enduring power of attorney while you have the capacity to make your own decisions.

You can specify whether the enduring power of attorney only comes into effect if you lose decision-making capacity or whether it may come into effect before that.

For example, you might specify in your enduring power that your appointed attorney can pay bills on your behalf whenever you are travelling overseas but only take over making all your financial decisions when you no longer have capacity.

You can specify when the enduring power of attorney starts. For example, you can authorise it to start when your appointed attorney believes you no longer have capacity to manage your own financial decisions or when your doctor assesses you as no longer having capacity to make decisions.

Powers of attorney in New South Wales are covered by the [Powers of Attorney Regulation 2016](#)

*Every Australian state and territory has different rules governing powers of attorney. It's important to check the rules in other jurisdictions if you think your attorney may need to act on your behalf in financial matters in other jurisdictions.*

## What is 'capacity'?

Capacity means the ability to make your own decisions. People may have capacity throughout their adult years and look after their own financial and other decisions, but they may lose capacity due to an accident, illness or adverse effects of ageing.

### An introduction to capacity

The law presumes adults have the 'capacity' to make their own decisions, until proven otherwise. But capacity isn't always straightforward.

[More information](#)



# Choosing an attorney

## Who can be appointed?

In New South Wales, you can appoint anyone over the age of 18 who has the capacity to make their own decisions. The person you appoint must understand what is involved in the role and agree to take on the role.

### Choosing an Attorney

The person you appoint as your attorney in your enduring power of attorney may need to make important financial decisions on your behalf, so you should choose someone you really trust.

[More information](#)



## Can I have more than one attorney?

In New South Wales you may appoint multiple people to act as your attorney. You can also nominate people as substitute attorneys if one of your other attorneys is no longer able to act on your behalf or wishes to resign.

This can be particularly important when making an enduring power of attorney because once you have lost capacity, it will no longer be possible for you to appoint a new attorney.

If you appoint more than one person to become your financial decision-maker, you may authorise them to make decisions individually (known as 'severally'), 'together (known as 'jointly'), or a combination of jointly and severally.

You could, for example, require all decisions related to real estate to be made jointly but allow each attorney to make individual decisions about spending money on your day-to-day expenses.

In this article, 'attorney' is used as a reference to both one appointed attorney or multiple appointed attorneys.



## What are the attorney's responsibilities when acting on my behalf?

The New South Wales law requires the attorney to act in ways that are in your interest and reflect or consider your wishes. Where possible, the attorney should support your participation in decision-making.

Your attorney must act in your best interests, keep good records of transactions and decisions, and keep your finances separate from their own.

### Being an Attorney

An attorney has both the duty and the privilege of enabling another person to live the life they wanted to lead by understanding and enacting their wishes and preferences.

**More information**



While you can choose to include a clause or option in your enduring power of attorney that allows your attorney to benefit from your money and property – for example, cover their living costs – they cannot use your money or property for their own benefit without your authorisation.

In New South Wales you can limit or place conditions on the attorney's decision-making power. So, for example, you can require them to submit accounts to a nominated accountant every year.

## What if my attorney is not acting in my best interests?

You may be able to change or revoke a power of attorney if you are concerned that your attorney is not acting in your best interests.

You can change or cancel a general power of attorney at any time, but you cannot change or cancel an enduring power of attorney if you have lost decision-making capacity.

However, another person with an interest in your welfare can apply to the [NSW Civil and Administrative Tribunal \(NCAT\)](#) to have the actions of your attorney investigated if they are concerned.

## What happens in New South Wales if you lose capacity and don't have an enduring power?

If there is a need to appoint an attorney in these circumstances, the [Guardianship Division of NCAT](#) may, upon application, appoint a guardian or financial manager to make decisions on your behalf.

The application will need to be lodged by a family member or other person with an interest in your welfare. You will be asked to participate in the process and your wishes will be listened to, but NCAT will not make a decision that is considered not to be in your best interests.



# Making and changing

You can make either a general power of attorney or enduring power of attorney in New South Wales by accessing and completing standard forms, available on the NSW Land Registry Services website.

- [General power of attorney](#)
- [Enduring power of attorney](#)

## Do I need to have a lawyer prepare my power of attorney?

The New South Wales regulation recommends getting legal advice before signing a power of attorney. In most cases you will need to pay for this advice and for any assistance in preparing the document.

The [NSW Trustee & Guardian](#) can provide preparation services. For most people a fee will apply, although they will provide advice and prepare the documents free of charge for people receiving a full Centrelink Age Pension or a Department of Veterans Affairs Pension.

## Do I have to register my general or enduring power of attorney?

In New South Wales you only need to register a power of attorney if the attorney will be involved in the buying and selling of real estate. However, there are good reasons to consider registering a power of attorney anyway. These are some of the reasons:

- Registration ensures there is a copy of the document if the original is lost.
- Registration creates a public record of the power of attorney.
- Registration provides the attorney with clear evidence to show others that they are authorised to act on your behalf

### Power of attorney forms in New South Wales

Power of attorney forms in New South Wales are registered with the NSW Land Registry Services, for a fee.

[More Information](#)





## Who can witness a power of attorney?

A general power of attorney can be witnessed by anyone over the age of 18. However, the person named as your attorney in the document is not allowed to be a witness.

An enduring power of attorney in New South Wales needs be witnessed by one of the following:

- an Australian solicitor or barrister
- a Registrar of a New South Wales Local Court
- an accredited employee of [NSW Trustee & Guardian](#) who has completed an approved course of study, or
- a private trustee company or licenced conveyancer who has completed an approved course of study

## Can I change or cancel my power of attorney?

You can change or cancel a general power of attorney at any time. The NSW Land Registry Service has a standard form for revoking a power of attorney in New South Wales.

If you registered your power of attorney, you would also need to register the revocation form with the NSW Land Registry Services. If you have not registered your power of attorney, you should still complete the revocation form. You also need to tell your attorney that you have changed or cancelled the power of attorney, and it's advisable to do this in writing.

An enduring power of attorney can only be cancelled or changed if you still have capacity to make your own decisions.

[Click here](#) to download the form to cancel (revoke) a power of attorney or enduring power of attorney.



# Checklist and resources

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.

**This checklist includes the following:**

- Background information and resources to help you research and prepare to make an EPOA.
- Practical information you will need to consider before completing the EPOA form.
- Helpful information to help you complete the EPOA form.
- Information about how to correctly sign and witness your EPOA.
- Information about registration requirements and tips on where and how to store your EPOA.
- Information to assist you should you want to change or revoke your EPOA.

## Make an EPOA checklist - NSW

This checklist will guide you through the process of making an enduring power of attorney (EPOA) in New South Wales.

[More information](#)




**Make an 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**

- 1** Think about what you need before you start to complete your enduring power of attorney form and make note of your preferences, questions and answers.
- 2** Tick the boxes once you've completed each step.
- 3** A PDF version is also available for you to download should you want to go through the process offline.

<b>4 GET READY</b> Gather all information and resources to help you research and prepare to make an EPOA.	<b>5 GET STARTED</b> A practical information page will cover the essential steps to completing the EPOA form.
<b>6 COMPLETE THE FORM</b> Checklist information to help you complete the EPOA form.	<b>7 SIGN AND WITNESS</b> Information about how to correctly sign and witness your EPOA.
<b>8 REGISTER AND STORE</b> Information about registration requirements and tips on where and how to store your EPOA.	<b>9 CHANGING OR REVOKING YOUR EPOA</b> Information to assist you should you want to change or revoke your EPOA.

Please to ensure this checklist is not a substitute for legal advice.  
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## More resources



Communities  
& Justice

### LawAccess NSW

Provides free telephone legal information, advice and referrals to other services, including to your nearest Legal Aid NSW office, community legal centres, private lawyers and other organisations.

Tel: [1300 888 529](tel:1300888529) (cost of a local call)

TTY: [1300 889 529](tel:1300889529)

Website: <https://www.lawaccess.nsw.gov.au/>



Seniors Rights  
Service

### Seniors Rights Service

Provides free legal and assistance for older people.

Tel: [1800 424 079](tel:1800424079)

Website: <https://seniorsrightsservice.org.au/>



NCAT  
NSW Civil &  
Administrative  
Tribunal

### NSW Civil and Administrative Tribunal (NCAT)

Provides information about enduring powers of attorney and enduring guardianship.

Tel: [1300 006 228](tel:1300006228)

Website: <https://www.ncat.nsw.gov.au/>



Justice  
NSW Trustee  
& Guardian

### NSW Trustee and Guardian

Can act as an independent and impartial executor, administrator, attorney and trustee for the people of New South Wales.

Tel: [1300 364 103](tel:1300364103) for enquiries about trustee services (wills, powers of attorney, trusts and estate administration)

Website: <https://www.tag.nsw.gov.au/>

### **Power of attorney: Planning for your future financial and legal decisions**

This is a downloadable booklet published by the NSW Trustee & Guardian in 2019. It provides a plain language overview of powers of attorney in New South Wales, including information about reasons to make a power of attorney and advice on choosing an attorney. It also lists the services NSW Trustee & Guardian offer for preparing power of attorney documents, including the fees that apply.

**More Information**



### **You Decide Who Decides: Making an enduring power for financial decisions**

This booklet explains the process, provides useful tips on completing the form, poses questions to consider when choosing the person who will act for you in financial matters when you no longer have capacity, and includes example wording and personal stories.

**More Information**



### **Power of Attorney: Information for older people in New South Wales**

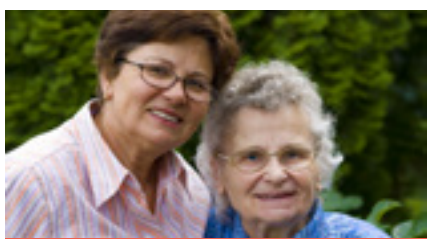
This is an Easy Read guide produced by Justice Connect on Powers of Attorney. This guide offers information on the following: What is an Attorney, What is a Power of Attorney, What are the types of Power of Attorney?, What decisions can your Attorney make?, What an Attorney must do, How to choose an Attorney, How to appoint an Attorney, How to cancel a Power of Attorney and more.

**More Information**



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

# Find the following at [Compass.info](https://compass.info)



**Introduction to enduring power of attorney**



**Future planning**



**Having 'capacity'**



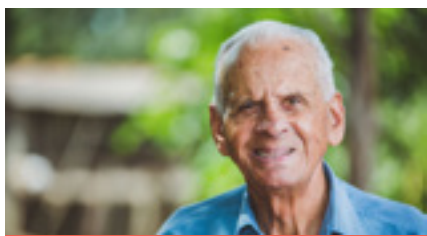
**Being an attorney**



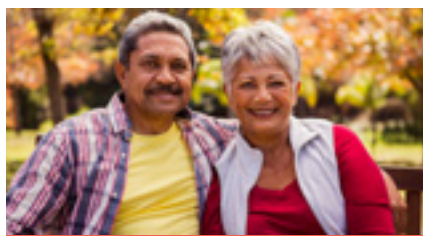
**Choosing an attorney**



**LGBTQIA+ issues**



**Your rights**



**Helpful terms to know**



**Frequently asked questions**



Made for all Australians regardless of nationality, culture or language, Compass is an inclusive website navigating elder abuse.



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