

# Policy: Powers of Attorney – Method of Appointment and Accredited Witnesses

## Purpose

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To provide policy and directions for:

- NSW Trustee & Guardian staff witnessing the execution of an enduring Power of Attorney.
- The type of Powers of Attorney in which NSW Trustee & Guardian will act

A “prescribed witness”, who certifies that the effect of the Power Attorney has been explained and understood, before it was signed by the principal, must witness an enduring Power of Attorney.

It is not sufficient for the witness to simply explain the nature of a power of attorney in general terms. The prescribed witness must also be satisfied that the principal appeared to understand the effect of the Power of Attorney and the way that it could be used in respect of their particular circumstances.

Under the *Powers of Attorney Act 2003*, a prescribed witness includes “an employee of the NSW Trustee & Guardian who has successfully completed a course of study approved by the Minister” and Solicitors. Only accredited staff may witness powers of attorney and only in the course of their employment.

Accredited staff are only to witness powers of attorney that have been prepared by NSW Trustee & Guardian.

Compliance with this policy will minimise the risks to which NSW Trustee & Guardian is exposed when executing Powers of Attorney. These include:

- NSW Trustee & Guardian as joint/several Attorney may be bound by the actions of the other Attorney/s. The consequence of this appointment is the cost of possible administrative difficulties, delays and possible litigation.
- NSW Trustee & Guardian as substitute attorney under this policy encounter an increased incidence of the first appointed attorney(s) mismanaging or fraudulently misappropriating the principal's funds. NSW Trustee & Guardian must minimise any possible adverse actions alleging responsibility for such loss by ensuring that the Power of Attorney appointment is fully explained, particularly as to the absence of any oversight over the first appointed attorney(s).

A Power of Attorney witnessed by an unqualified witness will not be enduring. The consequence of this may be customer dissatisfaction, exposure to litigation, loss of professional reputation and the possibility of an application being made on behalf of the customer to the Guardianship Division of NCAT for appointment of a financial manager.

## Policy statement

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NSW Trustee & Guardian will make Powers of Attorney for customers whether they wish to appoint NSW Trustee & Guardian or another individual(s).

The following conditions apply:

- 1 If appointed, NSW Trustee & Guardian must be solely appointed.
- 2 NSW Trustee & Guardian will not act jointly in Powers of Attorney with another attorney, i.e. jointly or jointly and/or severally.
- 3 If NSW Trustee & Guardian is appointed as substitute attorney, then the Power of Attorney only operates if the first appointed attorney(s) 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.
- 4 NSW Trustee & Guardian will not prepare Powers of Attorney appointing another professional such as a solicitor, accountant, financial planner or other trustee company.
- 5 **NSW Trustee & Guardian customers** – NSW Trustee & Guardian will visit a customer out of the branch if the customer is physically incapable of attending a branch or Planning Ahead Day venue.  
A NSW Trustee & Guardian Customer means a person who has appointed NSW Trustee & Guardian in respect of a Will or Power of Attorney, as first named or first substitute.
- 6 **Non-NSW Trustee & Guardian customers** must attend the branch or Planning Ahead Day venue. NSW Trustee & Guardian will not visit out of the branch.  
A Non-NSW Trustee & Guardian Customer means a person who has not appointed NSW Trustee & Guardian in respect of a Will or Power of Attorney as first named or first substitute.
- 7 NSW Trustee & Guardian will arrange and pay for a translator if required.
- 8 NSW Trustee & Guardian staff will only witness Powers of Attorney that have been prepared by NSW Trustee & Guardian.

## Acceptance of appointment as attorney

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The Principal is to be advised that the Power of Attorney is not operational until the selected commencement date and the first named attorney(s) has accepted their appointment, by signing the document.

The Principal may elect to have the first named attorney(s) accept at this time, if they attend. If this is not done, it should be stressed to the Principal that the first appointed attorney(s) might accept the appointment at any future time without any further direction from the Principal.

## Document retention

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Whilst the Power of Attorney document belongs to the Principal, they may elect to have NSW Trustee & Guardian retain it in safe custody.

If the Principal elects to retain the Power of Attorney, they must acknowledge receipt on the Acknowledgement of Advice Form. NSW Trustee & Guardian will retain a copy of the original document and hand the original to the Principal. The Principal is to be advised of its importance and of the need for the first named attorney(s) to accept the appointment before the document is used.

After acceptance by the first named attorney(s), the Principal can return the document to NSW Trustee & Guardian for safekeeping.

## Document holding

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If the Principal has appointed NSW Trustee & Guardian as their executor or attorney (including first named substitute), document storage is free of charge. If NSW Trustee & Guardian is not appointed and the Principal wishes to take up NSW Trustee & Guardian's Will Safe option, refer to [Will Safe Information](#) on our website.

## Accredited Witness

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Only NSW Trustee & Guardian accredited staff may witness these Powers of Attorney. Accredited witnesses are:

- a) NSW Trustee & Guardian Solicitors who have been admitted as a Solicitor of the Supreme Court of New South Wales and hold a current Practising Certificate; and
- b) NSW Trustee & Guardian employees who have successfully completed the Power of Attorney course of study approved by the Minister for prescribed witnesses but only when doing so in the course of their employment with NSW Trustee & Guardian i.e. no "private" Powers of Attorney are to be witnessed.

## Scope

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Wills & Estate Planning Staff

## Legislative context

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[Powers of Attorney Act 2003](#)

## Definitions

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**Principal** means Power of Attorney customer

**Accredited staff** means NSW Trustee & Guardian Legal Officers (who hold a current Practising Certificate) and NSW Trustee & Guardian employees who have successfully completed the Power of Attorney course of study approved by the Minister for prescribed witnesses but only when doing so in the course of their employment

**Course of their employment** means accredited staff who are attending as part of their authorised duties whilst at work, in accordance with this Policy

**NSW Trustee & Guardian Customer** means a person who has appointed NSW Trustee & Guardian in respect of a will or power of attorney as first named or first substitute

**Non-NSW Trustee & Guardian Customer** means a person who has not appointed NSW Trustee & Guardian in respect of a will or power of attorney as first named or first substitute

## +Document information

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<b>Title:</b>	Powers of Attorney – Method of Appointment and Accredited Witnesses Policy
<b>Owner:</b>	Senior Manager Wills & Estate Planning
<b>Approver:</b>	Acting Director Estate Planning & Administration
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