



Power of Attorney

Planning for your
future financial and
legal decisions

A Power of Attorney is one of the four important ways to plan ahead:



Will



Power of
Attorney



Enduring
Guardianship



Advance Care
Directive



NSW Trustee
& Guardian

NSW Trustee & Guardian can

prepare a Power of Attorney

to ensure your financial affairs

are professionally managed.



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Key terms used in this guide

Assets

Things you own such as bank accounts, property, shares and investments.

Attorney

A person over 18 or organisation you appoint under a Power of Attorney to make financial and legal decisions on your behalf.

Beneficiaries

People, charities or organisations that will receive or benefit from your assets when you die.

Capacity

A person's ability to understand facts and make choices, weigh up information, understand consequences and communicate them.

Estate

All of your assets.

Revoke

To cancel something, or take back.

About NSW Trustee & Guardian

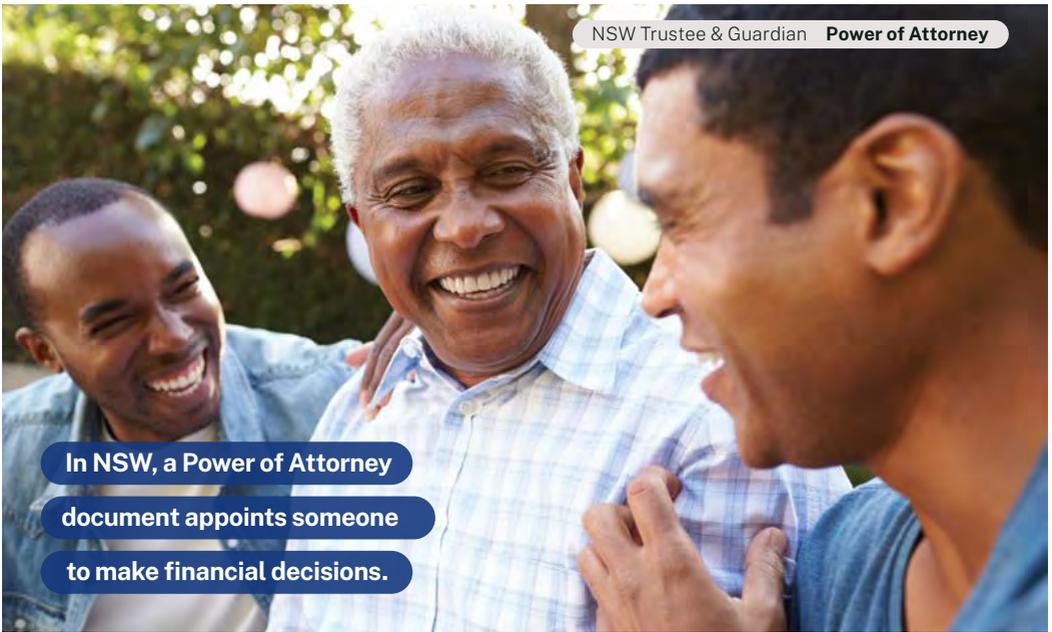
NSW Trustee & Guardian protects, promotes and supports the rights, dignity, choices and wishes of the people of NSW, including some of the state's most vulnerable people.

We do this by providing a range of services including Will-making, trustee, financial management and guardianship services.

We offer independent and impartial attorney services and have the expertise of solicitors, accountants, trust managers, tax and investment specialists.

We can also help you plan ahead by preparing a Power of Attorney for you.





In NSW, a Power of Attorney

document appoints someone

to make financial decisions.

What is a Power of Attorney

A Power of Attorney is a legal document that gives a person, or trustee organisation, legal authority to act for you to manage assets and make financial decisions.

You can use a Power of Attorney for almost any financial purpose including:

- signing legally binding documents
- operating bank accounts
- paying bills
- buying and selling real estate
- managing investments
- collecting rent.

The term ‘attorney’ in this sense does not necessarily mean a lawyer

or solicitor. The attorney may be a family member, close friend or trustee organisation like NSW Trustee & Guardian.

In NSW, an attorney can only make financial decisions. You can appoint an Enduring Guardian to make health and lifestyle decisions for you. This is done by making an Enduring Guardianship appointment.

There are two types of Power of Attorney:

- General – can only be used if you have capacity.
- Enduring – can continue to operate if you lose capacity.

A Power of Attorney only operates while you are alive. When you die the executor named in your Will takes over the responsibility of administering your estate.

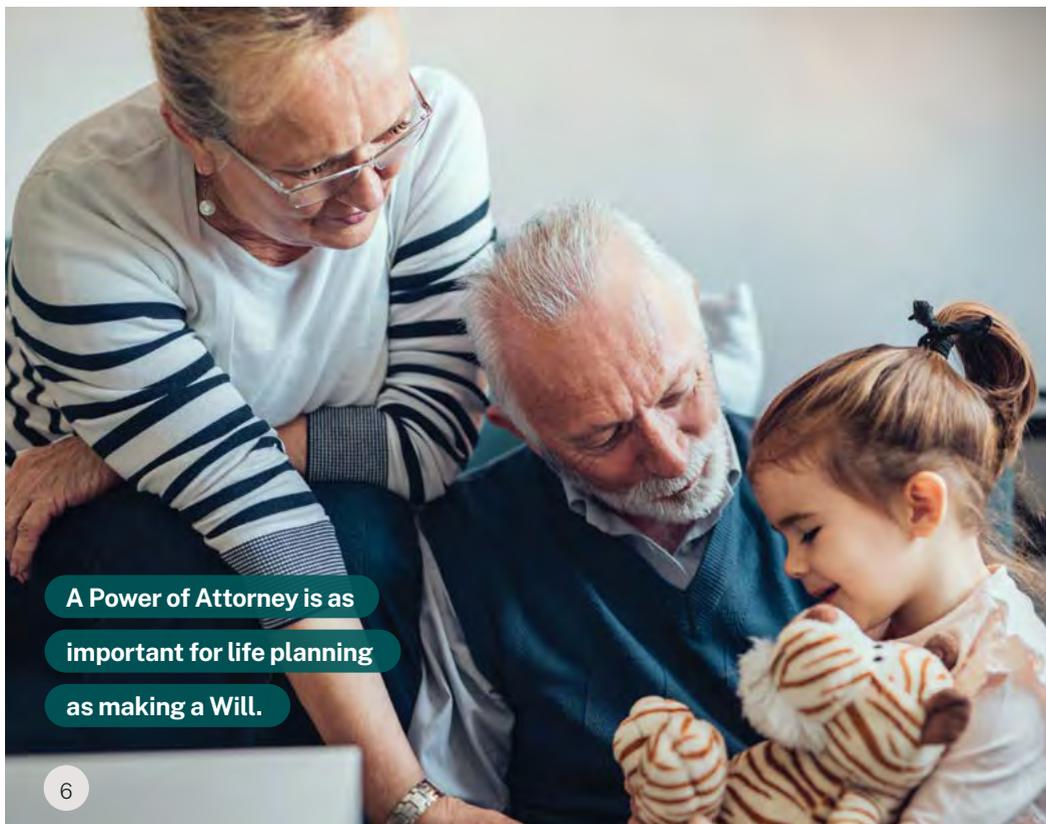
Reasons to make a Power of Attorney

There are a range of reasons why you might need a Power of Attorney. It can be useful if you are travelling overseas and need your finances and bills managed while you're away. Or you may want to be free of the demands of day-to-day financial paperwork.

It is also a good idea to have a Power of Attorney in place in case something happens to you and this leads to a temporary or permanent loss of

capacity. This could happen at any time in your life because of illness, injury or disability. If you do not have a Power of Attorney in place, a court or tribunal may need to appoint someone to manage your finances. The opportunity to appoint someone of your choice will be lost.

A Power of Attorney is as important for life planning as making a Will. Many people prepare a Will but do not give the same consideration to appointing an attorney until it is too late.



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Choosing an attorney

It is important to think carefully about who you appoint as your attorney as they are in a position of trust and responsibility. Your attorney must be over 18 years old and have the time and ability to take on the role. It's important you discuss your intentions with the person you plan to appoint as they need to agree to take on the role.

Your attorney should always act in your best interests. They must:

- have financial skills and the ability to deal with issues such as taxation
- respect your views and wishes and take into account your existing relationships, values and culture
- respect your right to confidentiality
- act according to any limits or conditions placed on their authority
- keep accurate records of all dealings and transactions
- keep their finances and money separate from yours.

Your attorney must not do anything which would mean that their interests conflict with yours. For example, give themselves or others a gift using your money, unless this is included when you make your Power of Attorney.

Even if you know someone well, they may find the role too daunting or may feel that they cannot carry it out as objectively as they should.

Consider that a friend or relative who is older may not be appropriate to appoint as your attorney as they may not survive you.

Once you place control of your affairs into the hands of a private attorney, they have no legal obligation to report to any other person about the management of your affairs. This can leave you vulnerable to mismanagement.



JIM'S STORY

Jim appointed his son Steven as his attorney under a Power of Attorney. When Jim moved into a nursing home, Steven sold his father's house and used the proceeds to pay off his own mortgage. Steven's actions were only discovered after Jim died and there was little left in his estate. The other beneficiaries were left to try to recover the money that was taken by Steven.



A Power of Attorney can only be witnessed by a solicitor, registrar of NSW Local Court, or people who have completed an approved course under the *Power of Attorney Act 2003*.

Creating a Power of Attorney

In NSW there is a standard form for making a Power of Attorney. You can specify the types of decisions that your attorney is able to make. Your attorney agrees to their appointment by signing the acceptance section of the form.

You must be 18 years or over and have sufficient capacity to understand the nature and effect of the appointment.

This means at the time of making your Power of Attorney you understand:

- what sort of decisions your attorney will be able to make for you
- when and how your attorney will have the authority to exercise their power
- the effects your attorney's actions could have on you
- what options are open to you to cancel or change your attorney appointment in the future.

Witnessing

At the end of all Enduring Power of Attorney forms there is a standard witness certificate.

The certificate states that the witness has explained the effect of the Power of Attorney directly to you before it was signed and that they are satisfied that you appeared to understand the effect of the Power of Attorney.

This is done to safeguard against people being taken advantage of or forced into an arrangement they don't want to be in.

This certificate can only be completed by a:

- solicitor or barrister
- Registrar of a NSW Local Court
- an accredited employee of NSW Trustee & Guardian who has completed an approved course
- a private trustee company or licenced conveyancer who has completed an approved course.

Registration

There is no requirement for your Power of Attorney to be registered. However, if your attorney needs to deal with any real estate you own in NSW, then the Power of Attorney document must be registered with NSW Land Registry Services. There is a fee charged by NSW Land Registry Services for registering your Power of Attorney.

Revocation

You can revoke a Power of Attorney at any time providing you have capacity.

You need to put your revocation in writing and ensure you inform your attorney that you are bringing their appointment to an end. If you don't do this, your attorney can legally continue to make decisions on your behalf. If you have provided copies of your Power of Attorney to anyone else, like your bank or accountant, you should ensure they have a copy of the revocation and a copy of the new Power of Attorney, if there is one. If your revoked Power of Attorney has been registered it is advisable to register the revocation.

After revoking your Power of Attorney you should destroy the original and any copies you may have.

Concerns about an attorney

If your attorney exceeds their authority, legal action can be taken to protect your interests. Your attorney may be liable to pay compensation to you if you suffer loss as a consequence. Legal action can be expensive and stressful and this is just one of the reasons it is important to ensure you appoint an attorney that you can trust to do the right thing.

We can act as your attorney in
a short or long-term arrangement
and will tailor the level of assistance
to suit your needs.



Our services

Document preparation

When you book an appointment with us, you will be invited to talk through your wishes where our staff can provide you tailored advice. Your document will be professionally prepared, ensuring that all areas covering legal capacity are addressed. Our accredited staff will witness your Power of Attorney for you.

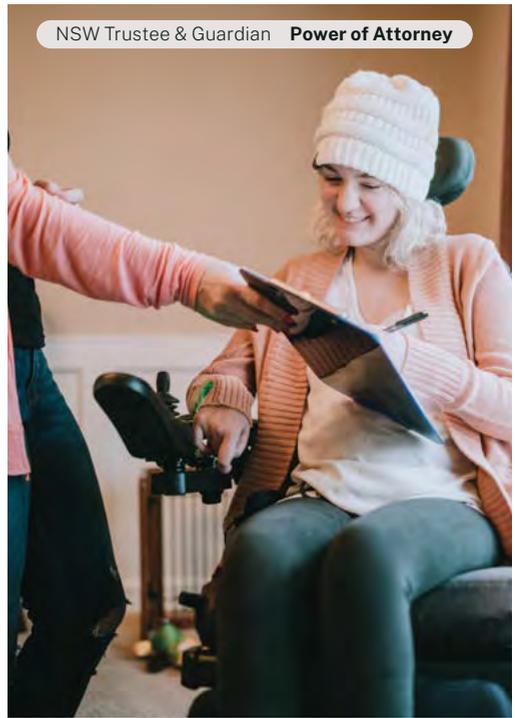
When we prepare your Power of Attorney you can choose us as your independent attorney or someone else of your choice.

Acting as your attorney

Many people choose to appoint NSW Trustee & Guardian as their attorney because we are independent and impartial.

We have an in-house team of expert solicitors, accountants, trust managers, and tax and investment specialists who will ensure your assets and financial needs are professionally managed.

We can act as your attorney in a short- or long-term arrangement and will tailor the level of assistance to suit your needs.



Safe storage

It is important to store your Power of Attorney in a safe place and provide your attorney with a copy. You should also provide a copy to others who may need to know its contents, such as your solicitor or accountant.

Our Will Safe services provides secure storage for your Will, Power of Attorney and Enduring Guardianship documents. Electronic copies are made for added security and documents are easy to retrieve when required.

If you appoint NSW Trustee & Guardian as your attorney under a Power of Attorney or executor of your Will, including first-named substitute, document storage is free of charge.

Inclusive services

We are committed to providing inclusive services for all of our customers. Everyone is different; so please let us know the type of adjustment you require, whether you are meeting with us or accessing our publications.

Requesting an adjustment can include:

- wheelchair access
- hearing amplification or relocating to a quieter area
- access to an interpreter
- documents in large print or electronic formats.

Some reasonable adjustments may require additional time to organise. If you are unsure please contact us in advance of your appointment.



Fees

Our fees are available on our website. Making or updating your Will, Power of Attorney and Enduring Guardianship documents are offered at no charge for customers who are eligible for:

- Full Centrelink Age Pension
- Disability Support Pension (DSP) or the Department of Veteran's Affairs Pension (DVA) who would otherwise be eligible for the full Centrelink Age Pension.

Scan to visit our fees
www.tag.nsw.gov.au/fees



What other estate planning documents should I consider?



Will

A Will helps to ensure your assets will be distributed according to your wishes when you die. If you don't have a valid Will, the law sets out which of your family members are entitled to your assets. This may not be what you want to happen. For example, the law does not include gifts to friends or charities and there is no provision made for pets.



Enduring Guardianship

An Enduring Guardian is a person you choose to make decisions about your health and lifestyle in the event you cannot make these decisions for yourself. This could be because of injury, illness or disability. Decisions might be about where you live, who you live with, medical treatment and health care, and daily issues like diet and dress.



Advance Care Directives

An advance care directive is a way of recording your wishes or instructions for any future medical intervention and treatment by doctors and health care workers. It can only be used if you have lost capacity, or are unable to communicate.

This is a service we do not offer. For more information visit [NSW Health](https://www.health.nsw.gov.au).

Why choose us?



Quality

All of our documents are prepared by professional Wills and Estate Planning consultants.



Full service

You have the option of appointing us as your independent executor or attorney.



Safe storage

Store your documents securely in our Will Safe and access it anytime.



Easy access

We take appointments at over 100 locations across NSW. Video conference appointments are also available.



Transparent pricing

Our current fees are always listed on our website: tag.nsw.gov.au/fees
Fees are waived for customers who receive a full Centrelink age pension.

Get started now



Call us on **1300 10 20 30**



Find out more: tag.nsw.gov.au

Plan Ahead with NSW Trustee & Guardian

A valid Will, Power of Attorney and Enduring Guardianship documents give you peace of mind that your wishes will be respected, and both you and your loved ones are taken care of.

Plan for your future legal, financial and health decisions today with NSW Trustee & Guardian.

Contact us



1300 10 20 30



www.tag.nsw.gov.au

Our locations

- Bathurst
- Broken Hill
- Lismore
- Newcastle
- Parramatta
- Port Macquarie
- Sydney CBD
- Wagga Wagga
- Wollongong

Services

- Will Making
- Will Safe Storage
- Power of Attorney
- Enduring Guardianship
- Trust Administration
- Estate Administration
- Financial Management



**NSW Trustee
& Guardian**