

Policy: Will / Power of Attorney / Enduring Guardianship Revocation

Purpose

The purpose of this Policy is to provide guidance about how a customer of NSW Trustee & Guardian can revoke or give notice that they have revoked, a Will, Power of Attorney (POA) or Appointment of Enduring Guardian (EG).

Policy statement

Notification of revocation

- If a NSW Trustee & Guardian customer has revoked a Will, POA or EG held by NSW Trustee & Guardian, NSW Trustee & Guardian should be notified in writing of the revocation and be provided with details of the revocation so those details can be recorded.
- NSW Trustee & Guardian may require evidence to verify the customer's identity.
- If requested, staff will assist a customer to revoke a Will, POA or EG made with NSW Trustee & Guardian. Otherwise, NSW Trustee & Guardian recommends the customer seek legal advice from a solicitor to ensure the formal requirements for revocation are met.
- The customer is responsible to give any required written notice in respect of the revocation. For example, to give written notice to the attorney(s) appointed under a POA or to the guardian(s) appointed under an EG that the document has been revoked.
- Where NSW Trustee & Guardian holds more than one document for a customer (for example: A Will, POA and EG), NSW Trustee & Guardian staff must establish whether only one particular document is being revoked, or multiple documents.

Forms of notification of revocation

NSW Trustee & Guardian will accept the following forms of notification of the revocation of a Will, Power of Attorney or Appointment of Enduring Guardian:

- A letter from a solicitor, public trustee or trustee company acting on behalf of the NSW Trustee & Guardian customer giving notice that a Will, Power of Attorney or Enduring Guardian has been revoked.
- A copy of a subsequent Will or codicil made by the NSW Trustee & Guardian customer, which has the effect of revoking the Will held by NSW Trustee & Guardian or all earlier Wills.
- A completed and executed NSW Trustee & Guardian Will, Power of Attorney or Enduring Guardian revocation form.
- In the case of a Will, evidence that the Will has been revoked in accordance with another method specified in the [Succession Act 2006](#).
- In the case of a POA, a letter signed by the NSW Trustee & Guardian customer giving notice that the POA has been revoked.
- In the case of an EG, a completed and executed revocation form as required by [Schedule 1](#) of the [Guardianship Regulation 2016](#).

For POAs and EGs, the customer must be informed that notice of the revocation must be given to the attorney(s) and/or guardians named in the document(s) being revoked. This can be done by posting the document to the attorney/guardian by registered post.

If a POA or EG previously prepared by NSW Trustee & Guardian is to be replaced by a new POA or EG due to error, the original document still needs to be formally revoked as set out above.

Return of Documents to customer

Where all Wills, POAs and EGs held by NSW Trustee & Guardian for a customer have been revoked, NSW Trustee & Guardian will return all original document(s) to the customer/former customer. NSW Trustee & Guardian will retain scanned copies of the revoked document(s) and will record that the customer has revoked the document(s).

Methods of revocation

Revocation of Wills

The best way to revoke a Will is to make a new Will which is drafted on the basis that it revokes all earlier Wills and testamentary documents, [section 11\(1\)\(c\)](#) of the [Succession Act 2006](#) (NSW).

If a new Will is not being made, the best way to revoke a Will is to make a document which expresses in writing the intention to revoke all earlier Wills and testamentary documents. It must be signed by the testator (or by some other person in the presence of the testator and at his or her direction) and the signature must be witnessed by 2 other persons present at the same time and who attest and sign the document in presence of the testator. Refer to [section 6](#) of the [Succession Act 2006](#) (NSW).

It is important that the revocation document is stored safely. It is recommended that the customer store the original revocation document safely with the original of the revoked Will and that they inform people with whom they have a close relationship (including, but not limited to, the executor of any new Will) that the Will has been revoked and where the documents can be found. If the customer holds the original Will and copies of the Will, to avoid any confusion that might occur after death, the customer should store the original revocation document with the original of the revoked Will, write the word "Revoked" on the face of the original revoked Will and destroy the copies of the revoked Will.

There are other available methods of revocation set out [section 11](#) of the [Succession Act 2006](#) (NSW).

Marriage revokes a Will, however there are exceptions to be aware of. Refer to [section 12](#) of the [Succession Act 2006](#) (NSW).

Divorce and annulment of marriage revokes gifts to, or appointments of, the former spouse in the Will, however there are exceptions to be aware of. Refer to [section 13](#) of the [Succession Act 2006](#) (NSW).

Revocation of a POA

Making a new POA does not automatically revoke a previous one. A previous POA must be revoked separately.

The best way to revoke a POA is to inform the appointed attorney(s) in writing that the power of attorney is revoked which ends their appointment as attorney. It is recommended that written notice of the revocation be sent by registered post to the attorney(s) with a requirement that they sign upon collection, so there is evidence of receipt.

Whilst there is no standard form of revocation, and no requirement to register the revocation of a POA, if the POA had been registered at NSW Land Registry Services, it is advisable to also register the revocation with them. The new attorney (or the principal if they have capacity) would attend to the registration of the revocation).

All persons or organisations who have relied on the POA or have a copy of it (for example, financial institutions) should be notified that the POA has been revoked.

If the attorney(s) holds the original and/or any copies of the revoked POA, it is recommended that the customer request the attorney(s) return the original and any copies of the revoked POA to the customer.

It is important to avoid any confusion that might occur as to whether the POA is still effective and therefore the customer should write the word "Revoked" on the face of the original revoked POA and destroy any copies.

A power of attorney may also be revoked by order of the NSW Civil and Administrative Tribunal or the Supreme Court of NSW.

Revoking an Enduring Guardian

Making a new EG does not automatically revoke a previous one. A previous EG must be revoked separately.

An EG must be revoked in writing in the form prescribed in [Schedule 1, Guardianship Regulations 2016](#) (NSW).

The prescribed revocation form must be signed by the appointor (that is, the person who made the EG) in the presence of an eligible witness. If the appointor is unable to sign the revocation form themselves, they can instruct someone to sign it for them, but the person signing must sign it in the appointor's presence and in the presence of the eligible witness.

An eligible witness includes an Australian legal practitioner, a Registrar of the NSW Local Court, a foreign lawyer within the meaning of the [Legal Profession Uniform Law](#) (NSW) and certain NSW Trustee & Guardian staff members.

The eligible witness must certify that the appointor executed the instrument voluntarily in the presence of the witness (or that the person signing on the appointor's behalf was voluntarily instructed by the appointor to sign) and appeared to understand the effect of the instrument.

The appointor must give written notice to the guardian(s) that their appointment has been revoked. It is recommended the revocation be sent to the guardian via registered post with a requirement that they sign upon collection so there is evidence of receipt.

If the guardian(s) holds the original and/or any copies of the revoked EG, it is recommended that the customer request the guardian(s) return the original and any copies of the revoked EG to them.

It is important to avoid any confusion that might occur as to whether the EG is still in place and therefore the appointor should write the word "Revoked" on the face of the original revoked EG and destroy any copies.

An EG may also be revoked by order of NSW Civil and Administrative Tribunal or the Supreme Court of NSW.

Scope

This applies to Wills & Estate Planning and Legal Estate Planning Staff – Estate Planning & Administration

Legislative context

[Succession Act 2006](#)

[Powers of Attorney Act 2003](#)

[Guardianship Act 1987](#)

And where applicable, the related Regulations.

Definitions

Customer means a person who has made a Will, power of attorney or enduring guardian.

Document information

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