

POWER OF ATTORNEY INFORMATION BROCHURE

Clark | Rideaux
SOLICITORS

86 Gipps Street
Bega NSW 2550

(02) 6491 6900
admin@clarkrideaux.com.au

www.clarkrideaux.com.au

What is a Power of Attorney?

A Power of Attorney is a legal document that allows you (the Principal) to appoint one or more persons (your attorney) to act for you in legal, financial, and property matters while you are alive.

Types include:

- **General Power of Attorney:** Valid only while you have mental capacity.
- **Limited Power of Attorney:** Limited by time or to a specific act.
- **Enduring Power of Attorney:** Remains effective after you lose mental capacity (e.g., due to dementia, stroke, or brain injury) and continues until death or valid revocation.

Note: A Power of Attorney cannot be used for medical or lifestyle decisions. For these, you must appoint an Enduring Guardian in a separate legal document.

Why Might You Need an Enduring Power of Attorney?

If you own assets and lose mental capacity, someone will need to be appointed to look after your affairs. Without an Enduring Power of Attorney, a family member or other person may need to apply to the Supreme Court or NSW Civil and Administrative Tribunal, which can be costly and time-consuming.

Even if you retain capacity, you may need someone to access your bank accounts or conduct transactions for you if you are overseas, hospitalised, or otherwise unable to attend to matters personally.

Capacity Requirements

You must have mental capacity when signing the document. This means you must understand:

- The nature and effect of the appointment.
 - The range of decisions your attorney can make.
 - That your attorney can make decisions without consulting you.
-

Witnessing and Execution Requirements

- For an **Enduring Power of Attorney** in NSW, your signature must be witnessed by a prescribed witness (such as a solicitor, barrister, or registrar of a court).

- The witness must explain the effect of the document to you before you sign.
 - Improper witnessing can invalidate the document.
-

Choosing Your Attorney

Key Considerations:

- **Trust:** Appoint someone you trust to act in your best interests.
- **Skills:** If your affairs are complex, consider someone with financial or legal skills.
- **Risks:** Be aware of the potential for financial abuse or mismanagement. Consider safeguards such as appointing more than one attorney or requiring regular reporting.
- **Professional Attorneys:** You may appoint a professional (e.g., solicitor or accountant) if appropriate.

Discussing Your Appointment:

It is advisable to discuss your intentions with the proposed attorney and, where appropriate, with family members to avoid misunderstandings or disputes.

Appointing Multiple Attorneys

You may appoint more than one attorney:

- **Jointly:** All attorneys must agree on every decision.
- **Severally:** Any attorney can act independently.
- **Jointly and Severally:** Attorneys can act together or independently.

Practical Considerations:

- If attorneys are appointed jointly and one cannot act, the appointment may be affected.
 - You can appoint alternate attorneys to step in if your first choice is unable or unwilling to act.
 - Consider how disagreements between attorneys will be resolved and whether you wish to set out specific dispute resolution mechanisms (e.g., mediation, majority decision-making).
-

Scope and Limitations of Attorney Powers

Attorneys can generally make decisions about your finances and property, including:

- Operating bank accounts
- Paying bills
- Managing investments
- Selling or buying property

Limitations:

- Attorneys cannot make medical or lifestyle decisions.
- You may set specific conditions or restrictions (e.g., limiting authority to certain transactions or requiring consultation with another person).
- Attorneys may be restricted from making large gifts, changing superannuation arrangements, or dealing with digital assets unless expressly authorised.

Digital Assets:

Consider expressly authorising your attorney to manage digital assets (e.g., online banking, email, social media, cryptocurrency).

Superannuation:

Attorneys generally cannot make binding death benefit nominations for superannuation unless the trust deed allows it and you expressly authorise this power.

Gifts and Benefits:

You may authorise your attorney to make reasonable gifts (e.g., for birthdays or charitable donations) or to meet reasonable living and medical expenses for themselves or others, but this should be specified in the document.

Duties and Responsibilities of Attorneys

Attorneys must:

- Act in your best interests.
- Keep your assets separate from their own.
- Not confer benefits on themselves or others unless expressly authorised.
- Keep accurate records and accounts of dealings with your assets.
- Avoid conflicts of interest and not profit from their position.
- Act honestly at all times.

Fees and Compensation:

Attorneys are generally not entitled to payment unless you expressly authorise it in the

document. They may be reimbursed for reasonable expenses incurred in carrying out their duties.

Consequences of Breach:

Failure to comply may result in civil or criminal penalties, and the attorney may be liable to compensate you for any losses caused.

Commencement of Power of Attorney

You may choose for your Power of Attorney to:

- Operate immediately, or
- Only come into effect if you lose mental capacity.

Considerations:

- Immediate commencement allows your attorney to act if you are physically incapacitated or unavailable.
 - If you restrict commencement to loss of capacity, your attorney may need to prove incapacity, which can cause delays.
 - Some institutions may not accept a Power of Attorney with restrictive conditions without extensive evidence.
-

Revocation

- You can revoke your Power of Attorney at any time while you have capacity.
 - Notify your attorney and any relevant third parties (e.g., banks, land registries) in writing, and retrieve all copies of the document.
 - If the original was registered, register the revocation as well.
-

Interaction with Wills and Estate Planning

- Attorneys cannot make or alter your will.
- It is helpful for your attorney to know the contents of your will, especially if specific assets are bequeathed, to avoid unintended consequences.
- Review your Power of Attorney, will, and other estate planning documents together to ensure consistency and avoid conflicts between attorneys and executors.

Recognition in Other Jurisdictions

- Powers of Attorney made in NSW may not be recognised in other states or overseas.
 - If you have assets outside NSW, seek legal advice about recognition or the need for separate documents in those jurisdictions.
-

Registration

- Registration is required if your attorney needs to deal with real estate.
 - Registration creates a public record, accessible to anyone searching for it, and involves a fee.
-

Risks and Safeguards

- There is a risk of financial abuse or mismanagement by an attorney.
- Safeguards include appointing more than one attorney, setting reporting requirements, involving professionals, requiring dual signatures for significant transactions, or regular audits.
- If you suspect abuse, contact the NSW Trustee and Guardian or seek legal advice immediately.

CLARK RIDEAUX SOLICITORS



86 Gipps Street
Bega NSW 2550

(02) 6491 6900
admin@clarkrideaux.com.au

www.clarkrideaux.com.au

Liability limited by a scheme approved under Professional Standards Legislation

Clark Rideaux Solicitors is a trading name of Clark Rideaux Pty Ltd (ACN 105 114 814)

This document was prepared by Clark Rideaux Solicitors. It contains information of a general nature only and is not intended to be used as specific advice.