

Prisoner's Power of Attorney Kit



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About this Power of Attorney kit

Use this kit if you are in prison and need a Power of Attorney.

In this kit is:

- a factsheet for prisoners about Powers of Attorney
- a blank general Power of Attorney form to complete
- a blank Notice of Revocation to use if you need it.

You must carefully read everything in this kit. You should put your name in the legal visits book or see a private lawyer if you have any questions.

You should also listen to our podcast about power of attorney available through your prison tablet.

General Power of Attorney

Factsheet for prisoners

Do you need someone to manage your money and make legal decisions for you?

What is a Power of Attorney?

A Power of Attorney (POA) is a legal document that gives a person that you choose the power to manage your money, assets and legal issues. That person is called your attorney.

There are 2 different types of POA.

- A general POA which gives a person the power to manage your money and the things you own. For example, you could use a POA to give your parents control over your money and assets while you are in prison.
- An enduring POA which continues to operate if you lose the capacity to make decisions. An example of this might be if you suffered a brain injury.

In this fact sheet we look at a General POA.

How do I make a General POA?

You can write a POA with the help of a lawyer or by yourself. You need to fill out a form called General Power of Attorney. In this form you will say who has the power to make decisions and what they can make decisions about. You can also say when this power ends.

Your attorney must be over 18 years old and cannot be bankrupt or insolvent.

A POA is for financial decisions only. It does not let someone make health or lifestyle decisions for you.

The POA must be witnessed by a person over 18. You should keep a copy of the POA and give the original to the person you have given the power to.

If your attorney is signing certain documents affecting real estate then the POA must be registered at NSW Land Registry Services.

What are the risks?

There are risks when you make a General POA. The person you chose may make decisions that you are unhappy with. They could use the power to take

your money or assets for themselves, even if this is against your wishes.

There are things you can do to try and lower the risks:

- Choose someone who you trust.
- Be clear about what the person can and can't do with your money. For example, if you want your grandparent to have access to your bank account but not be able to withdraw more than a certain amount in a set time, you can say that.
- Be clear about when the POA starts and finishes. You can give the date when you will be released as the date the POA finishes. This will mean that the person cannot access your money when you leave prison.
- You can appoint more than one attorney. If you appoint more than one attorney, it may be useful to appoint people who can work together and in your best interest.
- If you want to give someone the power to control your money while you are in prison, you could check with your bank and find out if there is an authority form that you could fill out instead of giving POA to someone.
- See a private lawyer or the police as soon as possible if your attorney does not keep to their responsibilities.
- You must start your case in court within 6 years of being aware of your attorney not keeping to their responsibilities.

How do I end a POA?

An existing POA must be revoked separately because a new one will not automatically revoke a previous POA. You can end a POA any time. To do this, you must tell your attorney and anyone who is relying on the POA such as a bank. You can do this verbally, but you should do this in writing and keep a copy as a record. You can use the attached Revocation Form. You must sign the form and ask them to return the POA and any copies of it or destroy it in front of you.

General Power of Attorney Form

Complete this form by writing your responses on the lines. Clauses with options are to be completed by placing a tick in the appropriate box and ruling through the choices that do not apply.

These margin notes are not part of the prescribed form and can be removed.

Please refer to the Powers of Attorney factsheet that accompanies this form for more information.

You must read the Power of Attorney factsheet for prisoners sent with this form before filling this in. You should listen to our Power of Attorney podcast for prisoners.

Fill in this form by writing your responses on the lines. Complete each part by placing a tick in the appropriate box. Draw a line through options that do not apply.

You may set whatever conditions and limitations on your attorney that you choose. An attorney must always act in your best interests. If your attorney does not follow your directions or does not act in your best interests, you should cancel (revoke) the Power of Attorney.

You or someone on your behalf should tell the attorney about the cancellation (revocation), preferably in writing. The attorney must then immediately stop acting as your attorney. If anyone else, such as a bank, knows about the Power of Attorney, that person or organisation should also be told about the revocation.

The **Important Information** set out at the end of this form includes notes to help in completing this form and more fully explains the role and responsibilities of an attorney.

- Principal** – The person who chooses (appoints) the attorney is called the principal. In this case, you are the principal.
- Attorney** – The person you choose to make your financial decisions is known as the attorney. You can appoint more than one attorney.
- Appoint** – A legal word which means 'to choose'. In this case, you appoint your attorney.
- Revoke** – A legal word which means 'to cancel'. You can 'revoke' this document if/when you don't want the attorney to make substitute decisions for you anymore.



General Power of Attorney

1. Appointment of attorney by the principal

I,

.....

.....

[insert your full name and address],

appoint

.....

.....

.....

[insert full name and address of attorney],

and also appoint

.....

.....

.....

[insert full name and address of each additional attorney – add more spaces if necessary],

to be my attorney/s.

My attorneys are appointed: [Tick one option only]

- Jointly [*Your attorneys must all act together*]. I want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.
- Jointly [*Your attorneys must all act together*]. I do not want the appointment to be terminated if one of the attorneys dies, resigns or otherwise vacates office.
- Jointly and individually [*Your attorneys may act individually or can act with the other attorneys if they choose*].

If no option is selected or the option chosen is unclear or inconsistent, I intend my attorneys to act jointly and individually.

You can appoint more than one attorney. If you appoint more than one attorney, it may be useful to appoint people who can work together and in your best interests.

Tick the option that applies and rule a line through any that don't apply.

Please initial the bottom of this page.

General Power of Attorney

'Vacates office' means stop acting as your attorney.

You can choose more than one substitute attorney.

Nomination of substitute attorney *(optional)*

If your attorney vacates office, you have the option to nominate someone else to take their place.

If my attorney vacates office, I appoint:

.....

.....

.....

.....

.....

.....

.....

[insert full name and address of substitute attorney/s],

to be my substitute attorney/s.

My substitute attorney/s are to be appointed:

Jointly [*Your attorneys must all act together*].

Or

Jointly and individually as attorneys. [*Your attorneys may act individually or can act with the other attorneys if they choose*].

Only complete this section if more than one substitute attorney is appointed. Tick the option that applies and rule a line through any that don't apply.

Please initial the bottom of this page.



General Power of Attorney

2. Powers

My attorney may exercise the authority conferred by Part 2 of the Powers of Attorney Act 2003 to do anything on my behalf I may lawfully authorise an attorney to do.

Additional powers (optional)

You may choose to allow your attorney to use your money and assets to pay for those things listed. Tick options which you wish to apply and rule a line through any that don't apply. You can give (confer) benefits to as many people as you wish.

- I authorise my attorney to give reasonable gifts as provided by section 11(2) of the *Powers of Attorney Act 2003*.
- I authorise my attorney to confer benefits on the attorney to meet their reasonable living and medical expenses as provided by section 12(2) to the *Powers of Attorney Act 2003*.
- I authorise my attorney to confer benefits on the following persons to meet their reasonable living and medical expenses as provided by section 13(2) of the *Powers of Attorney Act 2003*. [insert full name and address of each person below]

.....
.....
and (delete if not required)
.....
.....

You can limit the attorney's power to only carry out certain tasks. For example, you can specify that the attorney may only act to sell your house, or that the attorney may only act to deal with your car. You can also place any conditions on how those tasks are to be carried out. For example, you can require that the attorney submit accounts to a nominated accountant every year for audit. If you do not want to have any conditions or limitations placed on your attorney, write "NIL".

3. Conditions and limitations

I put the following conditions and/or limitations on the authority of my attorney:

.....
.....
.....
.....
.....
.....

[insert any conditions and limitations – add more pages if necessary]

Please initial the bottom of this page.

General Power of Attorney

You may choose when this Power of Attorney is to commence operation. Tick the box that corresponds to when you want this Power of Attorney to operate.

4. Commencement

This Power of Attorney operates: [Tick one option only]

- Immediately;
- On and from /..... /..... up to and including /..... /.....
(specify dates)
- Whilst I am in gaol;
- Other

If no option is selected or the options chosen are unclear or inconsistent, I intend that the Power of Attorney will operate/start immediately.

You must sign and your signature must be witnessed.

Signature:

Date: /..... /.....

The witness must be someone over the age of 18 and who is not an attorney under this Power of Attorney.

Signature of witness

Full name and address of witness

.....

.....

.....

Please make your attorney aware of their obligations by showing this clause 6 to them. You and your attorneys should also read the **Important Information** section at the end of this document. Please see a lawyer should the attorney fail to follow their responsibilities. The Police or the Supreme Court of NSW may also need to be involved.

6. Attorney responsibilities

Your attorney must do the following:

- a) Keep your money and property separate from the attorney's money and property.
- b) Keep reasonable accounts and records of your money and property.
- c) Not benefit from being an attorney, unless expressly authorised by you.
- d) Always act in your best interests.
- e) Always act honestly in all matters concerning your legal and financial affairs.

Failure to do so may incur civil and/or criminal penalties.

Please initial the bottom of this page.



General Power of Attorney

Important information

- A Power of Attorney is an important and powerful legal document. You should get legal advice before you sign it.
- It is important that you trust the person you are appointing as attorney to make financial decisions on your behalf. Your attorney must be over 18 years old and must not be bankrupt or insolvent. If your financial affairs are complicated, you should appoint an attorney who has the skills to deal with complex financial arrangements.
- Clause 2 of the Power of Attorney contains powers which will permit your attorney to use your money and assets for the attorney or anyone else as provided. You should only tick boxes in Clause 2 if you want your attorney to have that power.
- This Power of Attorney is for use in New South Wales only. If you need a Power of Attorney for interstate or overseas, you may need to make a Power of Attorney under their laws. The laws of some other States and Territories in Australia may give effect to this Power of Attorney. However, you should not assume this will be the case. You should confirm whether the laws of the State or Territory concerned will in fact recognise this Power of Attorney.
- Your attorney must keep their own money and property separate from your money and property, unless you are joint owners, or operate joint bank accounts. Your attorney should keep reasonable accounts and records about your money and property. The costs of providing and maintaining these records by the attorney may be recoverable from you.
- If your attorney is signing certain documents that affect real estate, the Power of Attorney must be registered at NSW Land Registry Services. You will need to see a private solicitor to do this.
- An attorney must always act in your best interests. If your attorney does not follow your directions or does not act in your best interest, you should consider revoking the Power of Attorney. If you revoke the Power of Attorney you should notify the attorney, preferably in writing, that they are no longer your attorney. The attorney must stop acting immediately once they have knowledge of the revocation.
- This Power of Attorney does not automatically revoke earlier powers of attorney made by you. If you have made an earlier Power of Attorney that you do not want to continue, you must revoke the earlier Power of Attorney. It is advisable that you notify the attorney, preferably in writing, of the revocation, if you have not already done so. You should also give notice of the revocation to anyone who is aware of the earlier Power of Attorney, such as a bank.

Joint attorneys

If you appoint more than one attorney, you should indicate whether the attorneys are to act jointly, or jointly and individually (this means together or individually).

Attorneys who are appointed jointly are only able to act and make decisions together.

Attorneys who are appointed jointly and severally are able to act and make decisions independently of each other. However, you can specify that a simple majority (if you appoint 3 or more attorneys) must agree before they can act.

Substitute attorneys

If you appoint a substitute attorney, the substitute attorney will only have authority to act as your attorney if the first appointed attorney dies, resigns or otherwise vacates their position.

You can specify for whom the substitute is to act. For example, if you appoint A and B as attorneys and X and Y as substitutes, you can specify that X takes A's place if A vacates office.

Attorney vacates office

When the attorney is not available, this is legally called 'vacancy'. Section 5 of the *Powers of Attorney Act 2003* states that there is a vacancy of attorney if the attorney dies, resigns, becomes bankrupt, loses mental capacity or the authority to act is revoked.

If you have appointed a substitute attorney, and the first appointed attorney dies, resigns or otherwise vacates their position, you should attach written evidence about this to your Power of Attorney document. This will help to make it clear to a third party (like a bank) that the substitute attorney is able to act for you.

Further information

Legal Aid NSW cannot write a Power of Attorney for you. If you have any questions, put your name in the legal visits book or see a private lawyer.

Revocation of Power of Attorney Form

I,

(Name of principal)

hereby revoke the Power of Attorney Dated: /..... /.....

(Insert the date of the Power of Attorney)

appointing

(Insert the name(s) of the attorney(s))

Registration number of the Power of Attorney is:.....

Signature of principal:

Date: /..... /.....

Signature of witness:

Name of witness:

Address of witness:

.....

.....

Notes

1. Use this form if you want to cancel your Power of Attorney. 'Revocation' is a legal word which means 'to cancel'.
2. You must give a copy of this revocation to your attorney to notify them that the Power of Attorney has been revoked.
3. Any adult may witness the principal's signature. The witness does not have to be a justice of the peace, solicitor or other 'prescribed witness'.
4. There is no requirement to register this revocation at NSW Land Registry Services, but if the Power of Attorney being revoked has been registered it is advisable to do so. You will need to see a private solicitor to do this.

Further information

Legal Aid NSW cannot write a Power of Attorney for you. If you have any questions about Power of Attorney you can call put your name in the legal visits book or see a private lawyer.



