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NSW Trustee  
& Guardian



# Plan ahead for your future legal, health and financial decisions

It's easier than you think. Just three simple steps:

- Prepare a Will
- Make a Power of Attorney
- Appoint an Enduring Guardian

# A Will, Power of Attorney and Enduring Guardianship are all legal documents for planning ahead. They provide for your future legal, health and financial decisions.

## Why are planning ahead documents important?

When you have planning ahead documents in place you can rest assured that you and your loved ones will be looked after if circumstances change through your life. Your rights and wishes can be respected if they are properly documented.

If you do not have planning ahead documents prepared when they are required, a court or tribunal may need to appoint someone to make decisions for you. The opportunity to choose who you would like to act on your behalf will be lost. It is definitely better to plan ahead.

## STEP 1

### Prepare a Will

A Will is a legal document that sets out who you want to receive your assets when you die. By making a Will you help to ensure your assets will be distributed according to your wishes when you die. Even if you think you don't have much it is still recommended that you make a Will.

Do it yourself Will Kits are not advisable as a Will must conform to strict legal requirements. Anyone who is not legally qualified risks making a mistake or creating uncertainty. Unclear wording is common in homemade Wills. Questions on validity and wording have to be decided by the Supreme Court and can result in large costs and delays.

Already have a Will? Think about whether it is time to update it so it accurately reflects your current circumstances. Situations where you may want to update your Will include:

- ✓ marriage
- ✓ buying a house
- ✓ separation or divorce
- ✓ the birth of children or grandchildren into your family
- ✓ retirement
- ✓ a beneficiary, or executor named in the Will has died

### A Will is a legal document that sets out who you want to receive your assets when you die

#### What is an executor?

An executor of a Will carries out the wishes of a person after they die. The role of the executor is to manage the estate within the terms of the Will, manage the administration tasks and protect the assets of the estate. The executor must comply with various laws and rules that govern the administration of deceased estates. They may need to resolve conflict between your beneficiaries in carrying out your wishes.

Being an executor can be a demanding role and should be fulfilled by someone you can trust – or you might consider a solicitor, an accountant or NSW Trustee & Guardian if you do not want to burden family or friends at a time of grief.

## Who needs to plan ahead?

Anybody over the age of 18, with capacity, should consider planning ahead. Capacity means a person's ability to understand and appreciate the significance of the decisions they are making. If a person does not have capacity the decision they are making may not be legally recognised.

If you have a loved one that you think should consider making one or all of these documents, let them know about the [planningaheadtools.com.au](https://planningaheadtools.com.au) website. It is a good way to start the conversation.

## Where can I start the process of planning ahead?

Planning ahead documents should be prepared with a legal professional like a solicitor or NSW Trustee & Guardian.

### STEP 2

## Make a Power of Attorney

A Power of Attorney is a legal document appointing a person or trustee organisation of your choice to manage your financial and legal affairs while you are alive. This person or organisation is then known as your attorney. An attorney cannot make decisions about your lifestyle, medical treatment or welfare. A Power of Attorney ceases when you die.

### When can an attorney manage my affairs?

You may choose to make a Power of Attorney because you are travelling overseas and want to give your attorney access to your bank accounts to pay your bills or manage your finances while you are away. Alternatively, it is beneficial to have a Power of Attorney if you become unwell and are no longer able to manage your financial affairs. It does not mean that you will lose control over your financial affairs. It simply gives your attorney formal authority according to your instructions. Your Power of Attorney can be cancelled (revoked) at any time provided you have the mental capacity to do so.

**A Power of Attorney is a legal document appointing a person or trustee organisation of your choice to manage your financial and legal affairs while you are alive**

### What is the difference between an ordinary Power of Attorney and Enduring Power of Attorney?

An ordinary Power of Attorney no longer has effect if a person loses capacity. An Enduring Power of Attorney continues to be in effect after you lose the capacity to manage your own affairs. You can make either but you should consider an Enduring Power of Attorney in case of future incapacity or as you age. Once you lose capacity the opportunity to appoint someone you choose is lost. If you're no longer able to manage your financial affairs and you don't have an Enduring Power of Attorney then an application to a court or tribunal may be required to appoint a financial manager of your affairs.



## STEP 3

### Appoint an Enduring Guardian

An Enduring Guardian can make health and lifestyle decisions for you if you lose the capacity to make your own decisions at some time in the future. It is important to have both an Enduring Guardian and a Power of Attorney. Your attorney **cannot** make decisions about where you should live, what treatment you should have or what services you should receive. Your Enduring Guardian can make these decisions. The appointment of your Enduring Guardian takes effect only if you lose the capacity to make your own health and lifestyle decisions.

An Enduring Guardian makes decisions about:

- ✓ accommodation
- ✓ health care
- ✓ medical/dental consent
- ✓ services e.g. meals on wheels

When deciding who to appoint as your Enduring Guardian you should consider who would best understand your values and wishes, and who would have the skills to make good decisions for you.

**An Enduring Guardian can make health and lifestyle decisions for you if you lose the capacity to make your own decisions at some time in the future**

#### **You might also like to consider Advance Care Planning**

Advance Care Planning is a process that helps you to plan for future medical care. This process involves thinking about your values, beliefs and your wishes in relation to the type of medical and health care you would like to have if you cannot make your own decisions. An important part of the planning process is to discuss your wishes with people who are close to you, as well as talking to your doctor.

#### **What is an Advance Care Directive?**

As part of the Advance Care Planning process, you may decide to write an Advance Care Directive. An Advance Care Directive records your specific wishes about treatment that you would like to have in the event of life-threatening illness or injury, and any treatments you would refuse. Advance Care Directives are something you generally write yourself in consultation with your doctor and family. If done correctly they are legally binding.

# Planning ahead checklist

This checklist will help you think about what to consider before planning ahead and what you may need to bring to an appointment to make the documents.

## Your Will

- Details of your assets e.g. property, bank accounts, superannuation and investments
- Beneficiaries – who will receive your assets? Provide their names and addresses
- Specific gifts you wish to make e.g. do you want to leave personal items or sums of money to particular people or organisations? You can consider leaving a gift to a charity or organisation for the ongoing care of your pet.
- Name(s) of those you wish to appoint as guardian for your children
- Executor – name of organisation or individual who will carry out the wishes in your Will
- Details of your funeral arrangements
- Bring identification to your appointment

## Powers of Attorney

- Attorney – name of the person or trustee organisation you want to make property and financial decisions for you. This should be a person or trustee organisation you trust, who understands your wishes, has skills in managing finances, has no conflict of interest and will act in your best interests
- Decide if you want your attorney to be able to make decisions if you lose capacity i.e. do you want to make an Enduring Power of Attorney?
- Arrange to sign your Power of Attorney before a specially qualified witness and have your attorney accept the appointment
- Bring your tax file number and identification to your appointment (100 points)

## Enduring Guardianship

- Choose the person(s) you want to make health and lifestyle decisions for you
- Decide on the decision making areas your guardian will have authority over
- Consider any specific directions you would like to give your guardian
- Arrange for you and your intended guardian to sign the enduring guardianship appointment form before a specially qualified witness
- Bring identification to your appointment

## Advance Care Planning and Directives

- Discuss your future health and medical care wishes with your family and doctor
- Ask your doctor to document your Advance Care Plan in your medical records
- Write down any specific health care directives you may have that relate to treatment

## Storage of your planning ahead documents

- Decide where to safely store all of your planning ahead documents

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## To get started on your planning ahead documents contact:

### NSW Trustee & Guardian

1300 364 103  
tag.nsw.gov.au

### The Law Society of New South Wales to find a solicitor

02 9926 0300 (Sydney) or 1800 422 713 (outside Sydney)  
lawsociety.com.au

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For further information about planning ahead documents visit [planningaheadtools.com.au](http://planningaheadtools.com.au) or [facebook.com/planningaheadtools](https://facebook.com/planningaheadtools)

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# Where should I store my planning ahead documents?

It is a good idea to have a secure place to store planning ahead documents. Many Australians store their Will in a filing cabinet or drawer at home where it is at risk of being lost, damaged or stolen. NSW Trustee & Guardian Will Safe provides secure storage for your planning ahead documents.

## To get started on your planning ahead documents contact:

### NSW Trustee & Guardian

1300 364 103  
tag.nsw.gov.au

### The Law Society of New South Wales to find a solicitor

02 9926 0300 (Sydney) or  
1800 422 713 (outside Sydney)  
lawsociety.com.au

For further information about planning ahead documents visit [planningaheadtools.com.au](http://planningaheadtools.com.au)  
or [facebook.com/planningaheadtools](https://www.facebook.com/planningaheadtools)

If you need an interpreter, please call the Translating and Interpreting Service (TIS National) on **131 450**  
and ask them to telephone the Planning Ahead Tools information line on **1300 887 529**.

NSW Trustee & Guardian

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Will, Power of Attorney  
& Enduring Guardianship



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Contact NSW Trustee & Guardian today for an appointment:  
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