

# onguard

A regular newsletter for guardians in NSW

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## Contents

Powers of Attorney

Where there's a Will

Financial Management

Tips for working with  
Financial Managers

Useful Contacts



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## Money Matters

In this edition of *Onguard* we look at some of the financial and legal issues that may arise for you as a guardian. You may be appointed as a financial manager as well as a guardian, or you may be dealing with a private financial manager or the NSW Trustee and Guardian (NSWTG) regarding financial decisions for the person under guardianship.

### Powers of Attorney

A **General Power of Attorney** is a legal document signed by a person (principal) appointing someone else (attorney) as their agent with authority to carry out those transactions to do with their business, property or financial affairs that the person has asked them to carry out, for example operate bank accounts, buy, sell or lease property or shares. It ceases to have effect when the person loses the capacity to make decisions for themselves.

An **Enduring Power of Attorney** is a power of attorney that continues to be effective even after the person loses mental capacity. An enduring power of attorney can be made on the same form as an ordinary power of attorney with some additional requirements regarding signatories.

Powers of attorney should be registered at the Sydney office of the Department of Lands. A power of attorney can only be used to make financial decisions; it cannot be used to make medical or lifestyle decisions. Powers of attorney cease when the person dies, replaced by the executor of the will. For more information on powers of attorney contact the Land and Property Information Division of NSW Department of Lands, NSW Trustee and Guardian or a solicitor.

### Where there's a Will.....

Guardians or financial managers do not have the authority to make a will for someone, as it is not legal for a person who has lost capacity to make a will.

*Guide to Wills and Estates* (2009) by Rosemary Long is a practical guide to the creation of wills, changing, revoking, or challenging a will, rights of creditors and beneficiaries to a will, probate and intestacy, and legal fees, and is published by the Legal Information Access Centre (LIAC).

LIAC has produced a series of guides on a variety of legal topics. These are available at all NSW public libraries and at [www.legalanswers.sl.nsw.gov.au](http://www.legalanswers.sl.nsw.gov.au)



## NSW Trustee and Guardian

On 1 July 2009, the Office of the Protective Commissioner and the Public Trustee merged to form NSW Trustee and Guardian (NSWTG). NSWTG trustee services include will making, estate administration, corporate and individual trusts and powers of attorney. NSWTG has a network of 18 branches throughout Sydney and regional NSW. Where a NSWTG branch is not accessible, the Registrar of the Local Court is an Agent.

NSWTG is also responsible for financial management services for people who are not able to manage their own finances because of disability. NSWTG directs and authorises private financial managers who have been appointed by the Supreme Court or the Guardianship Tribunal. Where NSWTG is directly managing the client's financial affairs, the Client Service Officers (CSOs) consult with clients about their plans and needs for the future. NSWTG's Disability Advisers and panel of Authorised Visitors can be requested to assess the needs of the person, including access to services and entitlements, accommodation, care needs, aids & equipment in the context of the client's financial resources. If you think the person under your guardianship could benefit from this service, discuss it with the client's CSO.

**Complaints and Reviews** If you have a complaint about NSWTG, speak with or write to your CSO or Private Management Branch representative and/or their Supervisor. If the complaint is unresolved, put it in writing to the Manager Quality Service and Community Relations. Decisions made by the NSWTG can be internally reviewed by writing to the Manager, Quality Service and Community Relations requesting a Review of Decision, within 28 days of being informed of the decision. It is helpful to outline why you think the decision is not in the client's best interests. The review will be done by a senior person not involved in the initial decision. That person will write to you within 21 days explaining the result of their review. If you are not satisfied you can ask the Administrative Decisions Tribunal to review the decision. This must be within 28 days from the date the internal review was completed.



### Tips for working with Financial Managers

- make sure you check with the financial manager whether the client can afford the service/ accommodation etc before you make a decision
- recognise that the financial manager is also a decision maker and must be consulted and in agreement with your decision if there is a cost involved
- work out what to do if you can't agree
- guardians with an accommodation function can consent to nursing home placement but the financial manager needs to complete the resident's agreement as this is a legal contract.

### Need more information?

NSWTG – Wills & powers of attorney  
1300 364 103

NSWTG – Financial management 1300 360 466  
Centrelink's Financial Information Service 132300  
ASIC's financial tips & checks [www.fido.gov.au](http://www.fido.gov.au)  
NSW Department of Lands 02 9228 6713  
Private Guardian Support Unit 02 8688 6060



Above: The PGSU team are here to help you!

The Private Guardian Support Unit (PGSU) is a free and confidential information and support service for private guardians in NSW. PGSU is a branch of the Public Guardian and is part of the Department of Justice and Attorney General and is not part of the Guardianship Tribunal or NSW Trustee & Guardian. The PGSU publishes 'Onguard' and 'Now You're the Guardian'.

This document has been prepared by the PGSU for only general information purposes.

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This information can be provided in alternative formats such as braille, audiotape, large print or computer disk. Please contact the PGSU for assistance.

