Capacity, authority and identity notes

Notes on capacity

The following resources are available to assist you to test a clients capacity:

* Guide issued by the NSW Law Society ‘When a client’s mental capacity is in doubt’. Available from the NSW Law Society or google the title for a link to the pdf.
* LPLC testamentary capacity checklist available here:

<https://lplc.com.au/resources/checklists/testamentary-capacity>

* LIV capacity guidelines and toolkit.

Available from the LIV or google the title for a link to the pdf.

You may also need to consider alternatives such as:

* seeking instructions from any trustee / guardian / administrator / attorney where one has been appointed
* seeking an order from VCAT to appoint a guardian/administrator
* seeking a court order.

For a case about the need to test capacity see [*Ryan v Dalton* [2017] NSWSC 1007](https://www.caselaw.nsw.gov.au/decision/597e6c40e4b058596cba8dff).

Notes on authority

You must take reasonable steps to establish the authority to instruct you such as ensuring:

* the registered proprietor(s) instructs you to act
* where instructed by an attorney you need to sight the original power and check it is valid including:
  + dated
  + properly completed and signed by the donor, witnesses and attorney(s)
  + in the correct form. New form of enduring power of attorney commenced 1 April 2004 and replaced by another new form commencing 1 September 2015
* for a corporate client you need evidence of the authority of any individual you are instructed by and who is acting as an authorised representative of the company. For example, proof of directorship, copy minutes and resolutions appointing an authorised officer.

If you have any suspicions about the authority of an attorney to instruct, you need to contact the donor or for a company contact the director(s).

The client(s) must sign a [client authorisation form](http://www.arnecc.gov.au/publications/client_authorisation) when using [PEXA](https://www.pexa.com.au/).

Refer to the LIV verification of authority and right to deal checklist.

Notes on verification of identity

You must take reasonable steps to verify the client’s identity.

Refer to the LPLC VOI materials on our website and the:

* [Model participation rules](http://www.arnecc.gov.au/publications/model_participation_rules)
* [Model Participation Rules Guidance Note 2](http://www.arnecc.gov.au/publications/mpr_guidance_notes)
* LIV VOI checklist