



BOYARKINA LAWYERS

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DO YOU HAVE POWER OF ATTORNEY SUITABLE FOR YOU?

IMPORTANT INFORMATION FOR YOU

We regularly meet people who do not have Power of Attorney, as they never thought of it or believe they do not need it now and they will do it at some better time in future. Or they fear to make it because they do not really understand what Power of Attorney is about.

We also often receive enquiries from children of elderly people if Power of Attorney can be made for their parent who has mental capacity issues or is very frail. In most of these cases it may unfortunately be too late to make Power of Attorney (see number 15 below of this Guide).

We address below some important questions people ask us about:

1. ***“What is Power of Attorney?”*** It is a legal document by which you give a person (your attorney) the *right to manage your personal affairs, if and when you cannot do it yourself* because you are very busy, away or overseas, or you are not able because of injury, illness or disability.

Your attorney must act *on your behalf, for your benefit and in your best interests* while managing your financial, property and legal affairs. He/she could be operating your bank accounts and paying your bills and expenses under Power of Attorney.

2. ***“What my attorney can do?”*** Power of Attorney gives your attorney the authority to do on your behalf anything that *you may lawfully authorise* the attorney to do. However, you can place in accordance with the law some limitations or conditions or grant specific benefits in your Power of Attorney.

It is proper and advisable that your attorney consults with you as far and as much as possible before acting on your behalf.

An attorney must always act in good faith, honestly, reasonably, properly, and in your best interests (and avoid any conflict between your and attorney’s interests). There are civil and serious criminal penalties on an attorney for acting dishonestly or improperly.

3. **“Who can I appoint as attorney?”** It can be your spouse, adult child, other relative, close person, or a professional person.

It is important that you know well and trust the person you are appointing, and they are familiar with your affairs and able to act as attorneys. They must be over 18 years old and must have mental capacity and not be bankrupt.

4. **“Can I appoint more than one attorney?”** You can appoint two or more persons as attorneys to act *jointly* (always making their decisions together), or *jointly and severally* (they can either make decisions together, or each of them separately from the other), or just *severally* (each of them makes decisions separately from the other).
5. **“What about a substitute attorney?”** You can appoint your *substitute* attorney or attorneys. They will only have authority to act as your attorney(s) if the primary attorney(s) die, resign, become bankrupt, or become otherwise incapacitated (including losing mental capacity) so they are not able to act as your attorney.
6. **“Can I appoint attorney without asking them?”** Not really. Your attorneys must agree in writing to be your attorneys by signing their acceptances.
7. **“I am afraid an attorney will mix my and his/her monies.”** Your attorney must keep his/her own money and property separate from your money and property, and should keep reasonable records about your money and property (in relation to acts done under your Power of Attorney).

If your attorney does not follow your directions or does not act in your best interests, you should consider revoking (cancelling) Power of Attorney.

There are civil and serious criminal penalties on an attorney for acting dishonestly or improperly. Also, you should appoint an attorney a person who you trust.

8. **“Can my attorney make a Will on my behalf or amend my last Will?”** Absolutely not. It is important you have a good proper Will reflecting your *current* circumstances and wishes.

Please refer to our Guide “Do You Have a Good Will?”, published on our website. Please contact us if you wish to make or amend your Will.

9. **“What is enduring Power of Attorney?”** It means that it will continue to be in effect in the event you lose mental capacity.

If Power of Attorney is not enduring, it will stop if and when you lose mental capacity. People of mature age are generally recommended to have an enduring power of attorney.

10. **“When does a Power of Attorney stop?”** It operates while you are alive and will stop when you pass away or if you become bankrupt.

You can revoke (terminate) Power of Attorney *formally* and *in writing* and make another Power of Attorney appointing other person(s) as an attorney, while you have a mental capacity.

11. ***“Can I have two powers of attorney?”*** It is possible, but generally not advisable (especially if they have similar subject-matter).

If you already have a Power of Attorney and wish to make a new or another one, please contact us. Having two Powers of Attorney at the same time may have legal consequences for you.

12. ***“What if I marry or start new relationships?”*** Your Power of Attorney will not stop. If your attorney is not your spouse/partner, you may wish to consider if to revoke it.
13. ***“I already have a power of attorney I made overseas under the law of other country. Is it okay to use it in NSW and Australia?”*** In most cases the answer will be NO. You will most likely need a Power of Attorney made under the NSW (or other Australian state) law. Please contact us for advice.

14. ***“So, do I really need a Power of Attorney?”*** It is recommended that a person of mature age before they become very old and frail makes a Power of Attorney. **Remember you can only make Power of Attorney while you have mental capacity.**

Younger age person who has a busy lifestyle, work or business, or who is a frequent traveller or regularly lives overseas, or whose affairs are not simple are also recommended to have Power of Attorney suitable for their needs.

15. ***“What happens if I lose mental capacity and do not have Power of Attorney?”***

If a time comes when you no longer have sufficient mental capacity or otherwise incapable, your family will need to go to the tribunal or Court to have a financial management order made for you. This will cost you and your family monies in legal fees and time and may be stressful. And a person appointed for you may not necessarily be a person who you would have appointed yourself.

16. ***“I heard there is another document often made in addition to Power of Attorney. What is it?”*** In NSW it is usually called Appointment of Enduring Guardian. Such document deals with medical treatment, accommodation and other lifestyle decisions. In NSW, Power or Attorney does not deal with such decisions. ***Please read our Guide “Do You Have Appointment of Enduring Guardian?”***, published on our website and contact us if you wish such document to be prepared.

WE CAN ASSIST YOU WITH POWER OF ATTORNEY

Having a proper Power of Attorney prepared by an experienced lawyer is recommended. *Do not use Do It Yourself kits or internet resources for your Power of Attorney.* It is not a simple form to

be filled in; it can have far reaching legal consequences for you if not prepared by an experienced lawyer.

We, at Boyarkina Lawyers will be happy to assist you with any aspect of powers of attorney.

We can also assist with an appointment of enduring guardian, your estate planning and prepare a Will suitable for you, your assets and circumstances. Wills and estate planning is a complex area of law with many unknowns and pitfalls which are not obvious to ordinary people.

We adopt a personal individual and detailed approach to you and your proposed documents. We uphold our values of integrity, care, honesty, ethics, experience and clients' trust in what we do.

Natalya Boyarkina helped many clients over the past 15 years and look forward to hearing from you. Why not pick up the phone and call 0431 925 047 for a private chat, or email Natalya on natalya@boyarkinalawyers.com.au

If you know persons who will be interested in the above information, please feel free to send this Guide to them.

If you wish to receive our guides and newsletters in future, please feel free to provide your email address to us.

BOYARKINA LAWYERS



Natalya Boyarkina has been in practice as a Commercial, Property, Leases, Conveyancing and Wills & Estates lawyer in Sydney for over 15 years. After completing nine years with a Sydney CBD law firm Natalya started her own practice with office in Bondi Junction.

Natalya is a solicitor admitted to practise in the Supreme Court of NSW and the High Court of Australia.

Natalya holds Master of Law and Legal Practice and Master of International Trade Law degrees from University of Technology, Sydney and Bachelor of Laws with Honours majoring in International Law.

This Guide is for general information and reference purposes of clients and contacts of Boyarkina Lawyers and members of public interested in the subject matter. It is not a comprehensive exhaustive or complete information in relation to powers of attorney or any other matter brought up in this Guide.

The information in this Guide is relevant to powers of attorney under the NSW law for use in NSW and in some cases in other states of Australia (not overseas).

Information above does not constitute legal advice and should not be relied on as if it were a legal advice. A person should obtain professional legal advice specific to their circumstances before taking any action based on the above information.

Reasonable care is taken that information in this Guide is current at the time it was prepared (January 2024).

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