

Do I need a Power of Attorney?

Yes. We believe it is an essential part of the estate planning exercise.

A Power of attorney gives someone the power to act on your behalf in relation to your financial affairs.

The power can take effect immediately, or at a later time e.g. in the event that you suffer some subsequent mental or physical incapacity.

The power can be given to one or more persons. They can have the power to act jointly (ie together) or severally (individually).

The power can be given subject to certain limitations and conditions, or it can be given unconditionally.

In NSW, if the power of attorney is to apply in the event of incapacity, then the power of attorney will need to be witnessed by a solicitor. The lawyer will also need to sign a certificate to the effect that he has explained the meaning and effect of the document to the principal. This form of power of attorney is known as an Enduring Power of Attorney.

In NSW, the attorney must also sign the power of attorney by way of acceptance. This need not take place in the presence of a lawyer.

Should I discuss the power of attorney with the proposed attorney before I sign it?

Yes. You should make sure you have discussed the proposed power of attorney with the proposed attorney *before* you execute the document.

It is critical that the proposed attorney is aware of their appointment, has a copy of the document (or is aware of its location and contents if the need arises to act pursuant to it), and accepts the appointment.

We would be happy to meet with your nominee and provide them with advice on their role and their responsibilities.

How do I revoke a power of attorney?

There may be times when you have made a power of attorney in the past but now wish to withdraw the powers given to the attorney.

The attorney for instance may have moved overseas permanently and as such it is not practical for them to retain the power of attorney.

Perhaps there has been a dispute with the attorney and you wish to revoke a current power of attorney and appoint someone else instead for that role.

The process of withdrawing the power of attorney is called a “revocation” of the power of attorney.

A special form needs to be signed and served on the attorney by the principal. It is critical that the attorney is formally notified of the revocation and the date the revocation takes effect.

In some cases it may also be necessary to register the revocation.

Please contact us if this is required.

What if I have been appointed as someone's attorney under power of attorney?

This is a very important role and carries with it legal powers and responsibilities.

You should consider whether or not you wish to take on such a role after obtaining legal advice on the particular circumstances surrounding the appointment.

Can I renounce my appointment as an Attorney?

If you have been appointed as an attorney, and you wish to terminate the appointment, then you have the right to withdraw at any time from that position.

In order to do so you would need to formally notify the principal of your decision. No reasons need be given. We would strongly recommend that you notify the principal in writing.

If you wish to do so then please contact us and we can advise you more fully on the procedures required.

For further information, contact:

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