



What if my attorney takes advantage of my power of attorney?

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The powers granted to an attorney under a Power of Attorney may be significant. This creates the risk that some attorneys may abuse their appointment for personal gain. It is, therefore, important to be aware of the ways in which an attorney may take advantage of their position, as well as steps you can take to mitigate the risks of this occurring.

This blog explores the ways in which you may prevent an attorney from taking advantage of your Power of Attorney and the options available to you if you suspect that they are taking advantage of their position.

What is a Power of Attorney?

A Power of Attorney is a document where the 'principal' (ie. the creator of the power) appoints another person, an 'attorney', to make decisions on their behalf in certain circumstances and in relation to certain matters.

A common type of Power of Attorney is an Enduring Power of Attorney. With this type of Power of Attorney, the principal authorises the attorney to act on the principal's behalf even if the principal has lost decision-making 'capacity'. This means that your attorney will be able to make decisions for you if you are no longer able to make those decisions for yourself; for example, if you are in a coma or suffer from dementia.

A principal of an Enduring Power of Attorney is able to set when the Power of Attorney is to commence. Commonly, the attorney's powers can commence as soon as the document is executed or otherwise when the principal ceases to have decision-making capacity.

The principal can also specify whether the enduring Power of Attorney is to apply to financial or personal decisions or both.

Another type of Power of Attorney is an Appointment of Medical Treatment Decision Maker. This document allows you to appoint a 'medical treatment decision maker' to make decisions for your medical treatment if you no longer have decision-making capacity and are unable to make those decisions yourself.

Duties of an attorney

Attorneys owe duties to their principals under an enduring Power of Attorney.

Under the *Power of Attorney Act 2014* (Vic), an attorney must:

1. act honestly, diligently and in good faith;
2. exercise reasonable skill and care;
3. not use the position for profit;
4. avoid acting where there is or may be a conflict of interest unless the attorney is authorised to do so by the principal or the Victorian Civil and Administrative Tribunal ('VCAT');
5. not disclose confidential information gained as the attorney under the power unless authorised to do so; and
6. keep accurate records and accounts.

How might someone abuse the role of attorney in a Power of Attorney?

Because an attorney is granted the power to make decisions, financial and/or personal, on your behalf, it is possible that they may instead use this power to make decisions that benefit themselves rather than your interests.

Abuses of Powers of Attorneys are widespread, especially in circumstances where the principal has lost capacity as they are unable to oversee the use of the power.

For example, an attorney may have powers over your finances and assets and transfer land that belonged to you into their own name or take money from your bank accounts for their own use.

What to do if you suspect someone is abusing their attorney role

If you have appointed an attorney to act on your behalf while you still have decision-making capacity, and you suspect that your attorney is abusing their appointment, you may immediately revoke the Power of Attorney. Importantly, you must still have capacity at the time of revocation.

You may also, for example, freeze your bank accounts or contact your financial institutions to alert them to your concerns.

If your attorney abuses your Power of Attorney after you have ceased to have decision-making capacity, you will no longer be able to revoke your Power of Attorney. Instead, it may be up to your family members to apply to VCAT to have your attorney's powers revoked (ie. cancelled).

You (if you have decision-making capacity) or your family members or the legal personal representative of your estate if the abuse or loss comes to light after your death, may also apply to VCAT or the Supreme Court of Victoria to seek compensation for loss suffered by reason of the attorney's misconduct.

Tips to prevent abuse of your Power of Attorney

There are different options available to you to prevent the abuse of your Power of Attorney by your attorney.

Choose someone whom you trust

It is important to appoint an attorney whom you believe has your best interests at heart, particularly in circumstances when you cease to have decision-making capacity.

Limit your attorney's power within your Power of Attorney

You may restrict your attorney from making certain decisions or from undertaking certain acts which you do not believe will ever need to be carried out in your name. For instance, you may restrict your attorney's power to the sale of your real property (like the family home) rather than giving them power over all of your finances.

Appoint more than one attorney to act jointly

It is possible to appoint more than one attorney. They may be appointed jointly, meaning they need to make decisions together in order for those decisions to have effect. Otherwise, you may appoint attorneys jointly and severally, meaning they can make decisions together or independently.

Appointing joint attorneys provides an opportunity for each attorney to supervise or scrutinise the acts of the other.

If you appoint more than one attorney, however, you should ensure they are prepared to cooperate and communicate with each other to best protect your interests.

Provide others with an overview of your finances

You may, for example, provide someone you trust who is not your attorney access to view (not manage) your bank accounts. This way, if an attorney is taking advantage of their appointment, this trusted person may be able to intervene on your behalf and potentially apply to VCAT to have the Power of Attorney cancelled.

Regularly review your Power of Attorney

After you have executed a Power of Attorney, it is important to regularly review the document and the appointments you have made. This is because circumstances and relationships may change, and the attorney or attorneys you have appointed may no longer be appropriate.

We recommend that you review your Power of Attorney every two to three years.

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.