Australian Banking Association

Industry Guideline

Responding to requests from a power of attorney or court-appointed administrator

Purpose of the industry guideline[1]

This industry guideline:

- Explains how financial powers of attorney and court-appointed administrator arrangements apply to banks' relationships with their customers, and
- Outlines a framework that banks can use to consistently manage requests from attorneys and administrators.

This guideline reflects good industry practice and the ABA encourages members to use this guideline to set internal processes, procedures, and policies.

While powers of attorney arrangements are an important tool for protecting a customer's future financial circumstances, some attorneys may misuse this power, either inadvertently or deliberately. Banks have an important role to play in establishing that attorneys are properly authorised to undertake transactions on behalf of their principal.

The ABA has prepared consumer fact sheets about financial abuse and setting up powers of attorney that banks can share with their customers. These can be accessed at www.ausbanking.org.au.

Background – powers of attorney

A power of attorney is a legal document that gives someone (called an 'attorney'[2]) the power to act on behalf of, and in the interests of, the person who grants that power (the 'principal'[3]) during the principal's lifetime. It authorises the attorney to make decisions relating to the legal and financial affairs of the principal, subject to any conditions or limitations in the document.

The principal can give an attorney authority to make most legal and financial decisions or can limit the types of decisions the attorney can make. Examples of decisions that an attorney can be authorised to undertake include:

- accessing the principal's bank accounts to pay for everyday expenses and make loan repayments (financial transactions)
- making investment decisions such as selling property (real property transactions)
- paying taxes.

Each Australian state and territory has its own laws about powers of attorney. In all states and territories there are two types of powers of attorney: general and enduring. A third type has been introduced in Victoria: a supportive attorney.

The level of access an attorney has over a bank customer's account can vary because a power of attorney can be tailored to certain types of decisions or transactions.

ABA member banks also have obligations under the Banking Code of Practice to take extra care with customers who are experiencing vulnerability[4]. If an enduring power of attorney is in effect it indicates

[1] This industry guideline does not have legal force or prescribe binding obligations on individual banks. While the ABA's industry guidelines are voluntary, this industry guideline has been developed with input from, and agreed to by, member banks. The ABA encourages member banks to follow this industry guideline and incorporate it into their internal processes, procedures and policies.
[2] In some jurisdictions, this person is called a donee. In NT the person is called "decision-maker".
[3] In some jurisdictions, this person is called a donor. In NT, the person is called "the adult".
[4] Banking Code of Practice, 1 March 2020, Chapter 14

to the bank the customer may be vulnerable and bank staff need to be aware of this and discharge their obligations carefully.

What is a general power of attorney?

A **general power of attorney** for financial decisions operates for a specified period of time or for a particular purpose. This is useful if a customer wants to put in place a temporary formal arrangement for a specific purpose, or an arrangement for a defined period of time (for example, if they plan to be away from home for an extended period and need someone to manage their financial affairs).

From the bank's perspective, bank staff need to be able to assess the conditions of the general power of attorney to allow (only) transactions within the specified period and consistent with the specific purpose. Bank staff need to know how to discuss with an attorney any requests for transactions which are outside the scope of the specified time period or the purpose of the power of attorney. It is important to note that a general power of attorney only remains effective for as long as the principal remains alive and retains mental capacity.

What is an enduring power of attorney?

In most states and territories, an **enduring power of attorney** commences at the time chosen by the principal which can be before, after or upon the principal loosing mental capacity[5][6]. An enduring power of attorney remains valid when the customer is no longer capable of making their own decisions. This means the attorney can manage the customer's financial and legal affairs if the customer loses their capacity to do so.

Before a bank can accept requests from an attorney appointed under an enduring power of attorney, the bank needs to be satisfied that the EPOA is in effect. This may require medical evidence of loss of decision-making capacity of its customer. Following which, the bank then needs to consider the conditions included in the document to establish what can, and can't be done, under the enduring power of attorney and ensure the customer is serviced in accordance with these conditions.

All powers of attorney (including enduring powers of attorney) terminate automatically upon the death of the principal.

What is a supportive power of attorney (Victoria only)?

Victoria has introduced a **supportive power of attorney** that authorises the supportive attorney to collect information, communicate information on behalf of the customer, or do anything that is reasonably necessary to implement a decision (other than a decision about significant financial transactions).

Unlike a general or an enduring power of attorney, the supportive attorney cannot make decisions on the customer's behalf. The customer continues to make their own decisions. For this reason, the attorney can only act for the customer while the customer has decision-making capacity.

An attorney's role, authority, and responsibilities

Who appoints an attorney and where do they get their authority from?

State and Territory legislation allows a competent adult (aged at least 18 years) to appoint someone to make decisions for them. To appoint an attorney, an adult must have sufficient capacity to make the appointment.

[5] In Western Australia, a declaration by the State Administrative Tribunal that the person is unable to make the decision must be obtained if the power starts when the person is not able to make the decision themselves. A bank is not required to request medical evidence.
[6] Note, in the Northern Territory the Advanced Personal Plan (APP) has replaced the enduring power of attorney which only comes into effect when the principal has impaired decision-making capacity.

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Generally, a person has decision-making capacity if they can understand the nature and consequences of a decision once it is explained and can communicate their decision in some way. In the context of making a financial enduring power of attorney, the person must understand things like:

- what sort of decisions the attorney will have authority to make
- when, and for how long, they have authority to exercise that power
- the effects the attorney's power could have on the principal and the things that are important to them
- how to cancel (revoke) or change the arrangement in the future.

An adult making a power of attorney is not required to take a test to determine their capacity. The law assumes that an adult has capacity once they turn 18. However, in some states and territories, a witness is required to verify that the principal understands the document they are signing and the powers they are giving to their chosen attorney(s).

The attorney's powers and responsibilities arise from the following state and territory legislation and the common law:

Jurisdiction	Legislative instrument
Australian Capital Territory	*Powers of Attorney Act 2006*
New South Wales	*Powers of Attorney Act 2003*
Northern Territory	*Advanced Personal Planning Act 2013*
Queensland	*Powers of Attorney Act 1998*
South Australia	*Powers of Attorney and Agency Act 1984*
Tasmania	*Powers of Attorney Act 2000*
Victoria	*Powers of Attorney Act 2014*
Western Australia	*Guardianship and Administration Act 1990*

How do banks assess whether the power has started?

The enduring power of attorney document must be looked at closely to ascertain when it comes into effect. If the document expressly states that it comes into effect immediately[7], the bank must check the information included in the document, including the identity of the principal and attorney(s), any conditions outlined in the document, how the attorneys are appointed to act (i.e. jointly or severally or by majority), and that the document has been executed and witnessed appropriately.

If the document states that it comes into effect when the principal loses their decision-making capacity, a bank may require evidence such as a medical report from a medical practitioner to confirm the principal has lost their decision-making capacity before the bank can act on any requests from the attorney[8].

It is not the role of bank staff to determine a customer's capacity. However, it is the role of bank staff to require the attorney to demonstrate that the principal has lost capacity by presenting sufficient evidence to the bank (such as a certified copy of a medical report).

Note: If there are any doubts about a principal's capacity the bank should seek further information. This may include provision of additional medical evidence of loss of decision-making capacity. Any ongoing doubts about a customer's capacity may need to be resolved by a court or the relevant state or territory administrative tribunal.

If there are concerns that the customer is being financially abused the bank should contact the relevant adult safeguarding agency in that state or territory for advice (such as an Office of the Public Advocate or Office of the Public Guardian and/or the relevant state or territory administrative tribunal).This may

[7] In NSW an enduring power of attorney cannot operate immediately; it cannot operate until, at least, the attorney accepts the appointment.
[8] In Western Australia, a declaration by the State Administrative Tribunal that the person is unable to make the decision must be obtained if the power does not start until the person does not have decision-making capacity.

be particularly important if the attorney is attempting to make large transactions from the principal's account(s).

In these situations banks may put in place restrictions on the account for a period of time until the matter is resolved, allowing for payments in line with the customer's established payments that are clearly for the benefit of the customer, for example, bills, insurance, medical, nursing home payments.

Importantly, even when a customer has a power of attorney arrangement in place, they are entitled to know how their affairs are being managed, and that the power of attorney is operating according to their instructions. If there are any doubts, the bank should try to speak to the customer in the first instance. Although a challenging area for banks, it is important that the industry complies with all legal obligations in this area.

Who can be an attorney?

An attorney does not have to be a lawyer. It can be anyone the customer trusts to make decisions on their behalf, like a family member or friend. An adult can appoint more than one attorney. For example, they might appoint one person who knows what they would want, such as a friend or a relative, and one person who can make good financial decisions, such as an accountant. Involving more than one person can also make it less likely that one of the attorneys will misuse their power.

If a customer appoints more than one attorney under a general or an enduring power of attorney, they need to decide whether the attorneys can make decisions:

- **jointly**, which means they must all agree to any decisions and every document must be signed by all of them
- **jointly and severally**, which means that any one of them can make a decision and sign documents together or without the others; or
- **consecutively**, which means that one (or more) act initially but a substitute/s is/are appointed if the initially appointed attorney vacates that office.

If a customer appoints more than one attorney jointly and the attorneys subsequently cannot agree, the attorneys may need to apply to a court to resolve disagreements.[9] In Victoria, the customer may appoint more than one supportive attorneys to act separately and the customer may specify the matters for which the supportive attorney is to act.

What does a power of attorney document (instrument) contain?

Although the legal requirements vary between states and territories, a typical power of attorney will contain the following details:

- the represented person's (principal) details
- the attorney's (or attorneys') details
- in the case of a general or an enduring power of attorney, whether the principal wants the attorney(s) to act solely, jointly, or jointly and severally
- an alternative attorney's (or attorneys') details, in case the nominated attorney(s) dies, loses capacity or becomes unavailable
- in the case of a general power of attorney, the duration of the appointment
- the extent of authority – sometimes referred to as 'conditions or restrictions' (e.g. the principal may specify that the attorney(s) can make only some, or all financial decisions)
- the principal's authorisation – a declaration by the principal that they are providing power to the attorney(s)

[9] A principal can also appoint an alternative attorney(s), so that if the first person(s) is unable to carry out the role, there is someone else who can step in. This will be detailed in the power of attorney (document), or the power of attorney may contain a dispute resolution provision.

- a declaration of when the power of attorney is to start[10]
- the principal's signature, in the case of enduring power of attorney,
- and an authorised witness's signature
- in the case of enduring power of attorney, a declaration from the attorney(s) that they accept the power subject to the relevant laws[11].

Note: Once a power of attorney is created, either the principal (or their attorney) will need to provide certified copies of the authority to their bank if they want to rely on the powers conferred.

A power of attorney will remain in force until:

- it is revoked by the principal under the relevant state legislation (the principal is required to notify the attorney in writing and should advise the bank in writing)
- it is revoked by the attorney
- it is automatically revoked by the principle's death, bankruptcy, insolvency, marriage/ divorce in some jurisdictions, or other events in accordance with the relevant legislation
- it is terminated if the customer loses capacity (if it is a general power of attorney)
- the purpose or time for which it was created has been fulfilled or passed
- it is suspended while a financial management order is in place.

Note: It is difficult for the bank, without a central register, to know when a document has been revoked.

What are an attorney's responsibilities?

An attorney must:

- act in the principal's interests, except as otherwise specified in the power of attorney
- keep accurate records of interactions and transactions
- avoid situations where there is a conflict of interest
- keep the principal's property and money separate from their own.

Note, the role of the attorney is subject to the terms of the power of attorney. For instance, the power of attorney may allow the attorney to act even though it involves a conflict of interest and duty, or a mixing of the principal's funds with the attorney's funds. This is not uncommon where the attorney is the principal's spouse.

An attorney must not exceed the authority given under the power of attorney. If the attorney(s) exceeds their authority, they may be liable for any damages suffered by the principal. Similarly, if the attorney breaches their obligations, a Court or a Tribunal (depending on the State or the Territory) may make an order for the attorney to compensate the principal (or the principal's estate) for loss caused by the attorney's breach.

What decisions can an attorney make?

The decisions an attorney can make are defined and limited by the type of power of attorney and the conditions outlined in the document. Banks will need to check the specific conditions outlined in the document.

Under a **general power of attorney** decisions may be limited to specific defined transactions or for all general transactions for that customer for a set period of time.

[10] Except in the Northern Territory where powers can only start if the customer has lost capacity
[11] In Victoria, the acceptance of the role by the attorney must also be witnessed.

An **enduring power of attorney** allows the attorney to make legal and financial decisions on the principal's behalf, that may include managing their banking, paying their bills, or selling property.

When appointing a power of attorney, it is up to the principal to make sure their attorney(s) has the right powers to look after their affairs as they require them to do.

In Victoria, where a principal appoints a **supportive attorney**, the attorney does not make decisions but supports the principal in making decisions for himself/herself. Banks need processes to verify the customer is in fact making their own decisions in these circumstances.

What can an attorney do on behalf of a bank customer?

This depends on the power provided to the attorney and the limitations placed on their power i.e. the conditions outlined in the document and in some cases whether it is registered effectively. Generally, an attorney has many of the same powers as the customer (principal) they are acting for.

From a bank's perspective, this means the attorney can usually transact as if they are the represented customer. This may include the power to open and close bank accounts, perform and stop financial transactions or payments, or make changes to the customer's banking products and services. Some attorneys have the power to make financial transactions, but not the power to make property transactions (i.e. sell property).

These limitations are important for customers to consider and for banks to note when relying on the instrument. Importantly, the attorney does not become the owner of the account – this must remain the account holder (principal).

In Victoria, a supportive attorney may do anything 'reasonably necessary' to give effect to a supported decision other than supported decisions regarding significant financial transactions, such as selling a house, making or continuing an investment of more than $10,000 in total, in interest bearing accounts.

Access to information

Depending on the powers provided, an attorney may have the right to all the information or documentation that the principal is entitled to.

Background – administration and guardianship

If someone is unable to make financial, legal, personal and in some cases health decisions due to cognitive impairment and does not have a valid enduring power of attorney (a general power of attorney will not be valid if the principal does not have mental capacity), it may be necessary for an application to be made to a court or tribunal to appoint an administrator or guardian to make decisions for them.

Administration and guardianship means a person is legally appointed by a court or tribunal, to make decisions for an adult who, because of a disability is not capable of making decisions for themselves. This may be due to the person having a condition such as dementia, intellectual disability, mental illness, an acquired brain injury or other cognitive challenges. These conditions are referred to as 'cognitive disabilities'.

An administrator or guardian's decisions have the same legal force as if the person they are acting for had made the decision themselves.

What is administration?

Administration (or financial management) is a legal process by which a court or tribunal authorises an adult to make financial decisions on behalf of another person who is unable to make the decision for themselves due to a disability. This is known as an administration or financial management order.

A court or tribunal authorises an administrator to make certain financial decisions, such as purchasing or selling property or assets, paying debts, and investing money. An administration or financial management order suspends or invalidates a power of attorney or enduring power of attorney instrument. This varies by jurisdiction.

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What is guardianship?

Guardianship is a legal process by which a court or tribunal authorises an adult to make personal, medical and lifestyle decisions on behalf of another person who is unable to make the decision for themselves due to a disability. A court or tribunal authorises a guardian to make decisions about a person's work, living arrangements or medical care and treatment.

In Queensland, South Australia, Tasmania, Victoria, New South Wales and Western Australia, a guardian cannot make financial decisions for the person they represent.

Unlike the Australian states, in the Australian Capital Territory and the Northern Territory[12], a guardian can also apply to make financial decisions for the person they represent.

An administrator's role, authority, and responsibilities

Who appoints an administrator and where do they get their authority from?

A State or Territory court or tribunal will appoint an administrator. An administrator derives their authority from the relevant state-based Act:

Jurisdiction	Legislative instrument
Australian Capital Territory	*Guardianship and Management of Property Act 1991*
New South Wales	*Guardianship Act 1987*
Northern Territory	*Guardianship of Adults Act 2016*
Queensland	*Guardianship and Administration Act 2000*
South Australia	*Guardianship and Administration Act 1993*
Tasmania	*Guardianship and Administration Act 1995*
Victoria	*Guardianship and Administration Act 2019*
Western Australia	*Guardianship and Administration Act 1990*

An administrator's authority will be detailed in their 'administration order'. Typically, a court or tribunal will appoint an administrator for a set period.[13] After this time, the court or tribunal will review and may renew the order.

What does an administration order contain?

The administration order outlines the details of the administrator's authority, including:

- the represented person's details
- the duration of the appointment
- the extent of the authority (e.g. the administrator may make some, or all financial decisions)
- the number of administrators and the nature of the appointment; that is, whether the administrators will make decisions together or separately.

Who can be an administrator?

A court or tribunal can appoint an:

- individual, such as a relative, friend, solicitor, or accountant
- organisation, such as a public trustee, or a private trustee company.

[12] In the NT, the Adult Guardian can be appointed to be the manager of the finances and estate as per section 16 of the Adult Guardianship Act (this can be on the one order).
[13] The term will differ in each State or Territory. For example, in Queensland the term is usually five years. In Victoria, the maximum term is three years. Banks should ensure the administration order is current.

A court or tribunal must appoint an administrator who can competently manage the represented person's affairs, and who will act in their interests.

What are the administrator's responsibilities?

An administrator must make decisions that:

- protect the represented person from abuse, exploitation, and neglect
- are in the represented person's interests
- take into account the represented person's wishes
- encourage the represented person to make their own decisions, where possible

What decisions can an administrator make?

Subject to the conditions of the administration order, an administrator can make financial decisions for the represented person, such as managing their banking transactions, paying their bills or selling property. The administrator must act in the person's interests, for example, by ensuring that the person lives within their means.

What can an administrator do on behalf of a bank customer?

Unless the authority specifies otherwise, an administrator 'steps into the shoes' of the account holder they are representing. The administrator is treated in a similar way as the account holder and is generally accorded the same powers. They can open and close accounts, perform and stop financial transactions or payments, and make changes to banking products and services.

Just as with a power of attorney, an administrator does not become the owner of the account – ownership must remain with the account holder (represented person).

Access to information

Administrators have the same right to information that the represented person has when making decisions. To make sure they are provided with the necessary information to make a sound decision, administrators can show copies of the court or tribunal order to the bank as evidence of their authority.

Industry guidance for banks

Recognising the authority of an attorney or an administrator

Banks have a contractual obligation to act in accordance with their customer's mandate. If a customer has set up a power of attorney, or a court has appointed an administrator to represent a customer's interests, then these authorities are considered to be in line with the customer's mandate. It is important to recognise and respond to requests from these authorised representatives as if they were made from the customer themselves.

Before an attorney or administrator can access information about a customer's account or credit facility, banks should ask for written proof of their status, such as certified copies of the power of attorney or the administration order.

Once the power of attorney or administration order is verified, the appointment or authority should be recorded on the customer's account or credit facility. Importantly, banks should also ensure they are responding to the right authority according to the powers specified.

Where an enduring power of attorney arrangement is in place that specifies the document takes effect when the principal has lost decision-making capacity (or the document authorises some change when that capacity is lost) the attorney must provide evidence that the principle has lost their decision making capacity such as a medical report from the customer's medical practitioner. In some circumstances a bank may require additional medical evidence of loss of decision-making capacity.

Banks should verify the enduring power of attorney document allows for the attorney to operate when the principal loses capacity. A bank should check the information included in the document and be satisfied sufficient documentation has been provided that establish the principal is unable to make a decision, or in Western Australia, a declaration by the State Administrative Tribunal has been provided.

Recording the authority

Accurate and comprehensive record keeping makes it easier for bank staff to access information about a power of attorney when performing a transaction for the principal and their attorney and will assist the bank in the resolution of disputes if required.

When recording the authority, the following steps should be key priorities:

- Check the appointment appears to comply with any form, content and execution requirements under the relevant State or Territory law.
- Ensure the bank has been provided with a certified copy of the appointment.
- Note the type of authority (general power of attorney, enduring power of attorney, supportive power of attorney, administrator or guardianship order, supportive administration, or guardianship orders) to determine the extent of the authority and how to respond to it.
- Determine whether the attorney or administrator can act solely, jointly, or jointly and severally.
- Look for any limitations on the power granted to the attorney or administrator, such as whether:
  - there are any pre-conditions to the exercise of the power
  - the power is only valid for a specific time
  - the instrument or order expires on a review date
  - there are any instructions on how the power is to be exercised
  - the power is limited to specific accounts or types of transactions
  - whether the power is limited to specific actions or decisions.
- In the case of a supportive attorney or supportive administrator, consider whether there are any concerns that the attorney is making the decision, rather than just giving effect to the customer's decision.
- Record the correct type of attorney or administrator on each customer account for which they have authority to sign. For example, make sure that the type of power of attorney is recorded on the customer's account(s) and there is a way for bank staff to easily identify accounts and customer profiles to which a power of attorney is related.
- Record the extent, duration and limitations to the attorney or administrator's power (time period, authorities, conditions or restrictions, and specified instructions) when adding them as a signatory to the customer's account. For example, note whether an attorney is authorised to make financial transactions only, and not property transactions. Allowing an attorney to exceed their authority may have legal implications for both the attorney and potentially the bank if it has done so knowingly.[14]
- Maintain an up-to-date record of any disputes in relation to the account, the steps taken to resolve the dispute and the resolution. This will help the bank monitor the account and identify any potential misuse of a power of attorney.
- Ensure the account remains in the name of the account holder for legal or tax reasons. Banks should make it clear that funds in the account are legally owned by the account holder and

[14] An attorney or administrator must not exceed the authority given to them under their specific instrument or order. If they do so, they may be liable for any damages suffered by the customer for whom they are acting. Likewise, if a bank knowingly allows an authority to exceed their power, they are breaching the customer's mandate and could be liable for claims.

reported as such (i.e. banks should not replace, or make attestations to the effect of replacing, the account holder's ownership).[15]

- Continue to act according to the conditions or restrictions detailed in the instrument when responding to requests from the attorney or administrator, until the authority expires, is revoked, or is replaced with a new authority. If an expiry date is set as a limitation, consider implementing a system that will indicate when this occurs.

Note: It is up to the customer, or the person authorised to represent them, to update the bank if the authority is revoked or replaced. It is also up to the customer or court to ensure the authority covers the powers that are appropriate for the customer.

Sometimes a bank may not be able to process a request if the authority has not been set up to allow particular types of transactions. For example, an attorney may be expected to deal with the sale of a customer's property, but the authority was set up to limit the attorney's powers to financial transactions only. In these circumstances, the bank needs to operate within the limits of the power and explain to the attorney why it must do so. A revised authority may need to be arranged.

Note: Depending on a bank's systems and identification requirements, when a new signatory is added to an account the signing instructions might need to be updated.

It would be useful for banks to establish a centralised database where powers of attorney that relate to their customers are recorded and that is accessible to the necessary staff. This strategy will assist with recognising valid powers of attorney and allow banks to monitor accounts that are subject to such arrangements.

Banks could also consider monitoring of these accounts for unusual and suspicious transactions which could be indicative of financial abuse.

Dealing with inconsistent laws

The laws in each jurisdiction and the processes for appointing attorneys and administrators are broadly similar; however, there are some important differences that banks should be aware of.

For example, the laws in States and Territories may have different names for different powers, and different formats, execution processes and registration requirements (e.g. the instrument may or may not need to be registered with the appropriate State or Territory agency to take effect). In Victoria, customers also have the option of appointing a supportive power of attorney and the Victorian Civil and Administrative Tribunal can appoint a supportive administrator under which, the supportive attorney or supportive administrator cannot make decisions on behalf of the customers.

A customer who relies on an attorney to manage their banking may be able to have the same power of attorney even though the banking may occur in different jurisdictions'. This is correct if the reciprocal recognition provisions in the relevant legislation allow it. Likewise, in all but unusual circumstances, an administrator who needs to deal with a bank in different jurisdictions can rely on one authority.[16]

It may take a while for banks to process and verify authorities because of the differences in how each State and Territory requires authorities to be presented and executed, and because administration and power of attorney appointments need to be tailored to each customer's unique circumstances.[17] It is important for banks to balance the need for consistency and efficiency with legal and compliance requirements.

Banks should consider informing customers how long it will take to verify authorities and any likely consequences of this. Delays in processing requests, may expose customers to financial abuse, or result in bills not being paid on time, if at all.

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[15] Banks should not add attorneys or administrators to the account's title or amend the account to say 'trustee for', 'behalf of' or any other such words. These references raise uncertainty around the ownership of the funds in the account and may potentially result in the funds being reported as belonging to the attorney or administrator, which has legal or tax implications.

[16] This is partly because most banks are national organisations with national systems, and because the laws are broadly consistent when it comes to the actual powers of attorneys and administrators.

[17] Delays also happen because the laws change from time to time, with flow-on effects on transition times. This often results in overlapping requirements at any one time, so keeping internal policies, processes and systems up to date is challenging.

The ABA has prepared consumer fact sheets about financial abuse and setting up powers of attorney that banks can share with their customers. These can be accessed at www.ausbanking.org.au.

Dealing with a request from an attorney or administrator to set up or amend an account, or release funds from an account or facility

Most requests from an attorney (other than a supportive attorney) or administrator (other than a supportive administrator) should be treated in the same way as requests from the account holder (principal or represented person). For example, banks should process a request from the attorney or administrator (provided they have the authority) to open an account or facility for the account holder; to make changes to existing accounts or facilities, such as changing direct debits, redirecting funds, stopping transactions or transferring between accounts. Similarly, if an attorney or administrator with the authority to do so asks for funds to be released, banks should process the request.

In Victoria, banks should only respond to requests made by **supportive powers of attorneys** if the attorney is acting on a decision made by the customer. The attorney cannot make decisions on behalf of the customer. Banks may wish to obtain their own legal advice about the extent to which they can assume that an attorney is complying with this restriction.

Dealing with joint bank accounts where one account holder has an authority in place

When one account holder has an authority in place, how attorney or administrator requests are managed depends in part on the way the joint account was initially set up:

- if the terms and conditions of the account holder's contract specify that both joint account holders have the authority to make transactions independently, banks should treat an attorney or administrator as they would the account holder
- if the joint account requires joint signatures for transactions or payments to occur, banks should require the attorney or administrator and the other joint account holder to authorise the process.[18]

Dealing with a 'stop' request by an authority

An attorney or administrator may order a stop be put on transactions to protect funds in an account. The administrator may also do this when investigating claims of financial abuse.

For joint accounts where account holders can act independently of each other, banks do not need the permission of the other account holder to stop transactions. Banks deem it the requesting account holder's (or attorney or administrator's) responsibility to inform the other account holder of a stop order.

This means the attorney or administrator could put a stop on an account without the other account holder's permission.

When there are joint account holders and the authority of both is required for transactions to proceed, banks should put a stop on the account pending further instructions from the attorney or administrator, and/or after they consider the circumstances. It is rare for banks to receive a stop request on a joint account where an attorney or administrator has been appointed. Sometimes, bank staff may not know what to do because the authority is new or there is a complication around the operation of the customer's accounts or facilities. In these circumstances, bank staff should refer the matter to their supervisor or branch manager.

Banks should recognise that each request and customer situation will be unique, and different account holders may want different things. Therefore, banks should ask the attorney or administrator to provide the context for a stop request by explaining the background, their authority, and the reasons for the request.

[18] With joint accounts, the other account holder may not be permitted to transact on the account without the attorney, guardian or administrator's permission and vice versa. Depending on how a bank meets its internal customer identification processes, and the joint account's arrangements, a bank may decide to set up a new joint account authority.

In Victoria, banks should only act on stop requests made by **supportive powers of attorneys** if the attorney is acting on a decision made by the customer. Banks may wish to obtain their own legal advice about the extent to which they can assume that an attorney is complying with this restriction.

Dealing with a dispute between account holders

If there is a dispute between joint account holders (or between attorneys and/or administrators and account holders), banks may require both account holders to authorise changes if the account allows both to operate separately.

Banks may also put a stop order ('hold' or 'freeze') on the account until the case is resolved. In some situations, banks may allow for limited payments in line with the customer's established payment pattern if clearly for the benefit of the customer, for example, insurance, medical, nursing home payments. This would be arranged on a case by case basis to ensure there is no detriment to the customer.

Summary

It is important that:

- bank staff are aware of the attorney or administrator's authority and are trained how to respond to customers and other parties who present these requests
- banks have clear and well-documented policies, procedures, processes and systems in place across their businesses (e.g. from frontline employees and staff in legal and compliance areas) for dealing with attorney or administrator requests, and these are consistent for customers and other parties who rely on them, to reduce unnecessary delays.
- the policies and procedures should ensure:
  - it is easy to identify accounts and customer profiles to which a power of attorney is related
  - that diligent records are kept including recording of incidents and disputes, and
  - the responses or solutions a bank may employ to resolve issues includes clear escalation pathways that incorporates referrals to public guardians where available.

The following is a summary of key points from this industry guideline:

For all accounts

- Check that the power of attorney or administration orders are acceptable by verifying the attorney(s) or administrator(s) are in accordance with accepted identification procedures.
- Ask attorneys and administrators to present a certified copy of the document or order that identifies them as the authority. Banks should retain copies of all documents.
- Clearly note the authority's powers, limitations, and instructions on the customer's account(s).
- Do not replace the customer's authority over their account(s) with an attestation or any other indicator that suggests the customer is no longer the legal owner of their account.
- Treat the attorney or administrator as if they were the account holder (i.e. in line with the authority's powers, limitations, and instructions). Banks must comply with requests from the authority when operating the customer's accounts or facilities.
- If there are any doubts about the attorney or administrator's authority, bank staff should speak to their supervisor, branch manager or specialised customer support team.
- If there are ongoing doubts about a customer's capacity, the bank should refer the matter to the relevant state or territory administrative tribunal.
- If there are concerns that the customer is being financially abused the bank should contact the relevant adult safeguarding agency in that state or territory for advice (such as an Office of the

Public Advocate or Office of the Public Guardian and/or the relevant state or territory administrative tribunal).

For joint accounts

- Record the new authority operating on the account and comply with the authority in accordance with internal customer identification procedures and the way the account terms and conditions were set up.
- If there is uncertainty or a dispute between account holders, a bank should put a stop order on the account (if necessary) until it has carefully considered the circumstances and pending further instructions from the attorney, administrator, or account holder.

Where to go for more information

- The Australian Guardianship and Administration Council website at www.agac.org.au/links has links to State and Territory agencies with information on power of attorney documents and other guardianship issues.
- The Australian Guardianship and Administration Council has also produced a helpful guide for customers about making an enduring power for financial decisions: *You Decide Who Decides*
- Elder Abuse Action Australia (**EAAA**) knowledge hub Compass: https://www.compass.info/ has information and resources available for older Australian and the broader community.

Relevant industry guidance:

- *Protecting vulnerable customers from potential financial abuse*
- ABA consumer fact sheet: *Setting up a power of attorney to help manage your banking needs*
- *Safe and Savvy: A guide to help older people avoid abuse, scams and fraud*

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