

# Guide for making beneficiary nominations under a power of attorney

This guide has been prepared for individual investors in the **Guaranteed Annuity**, **Guaranteed Income Plan**, **Guaranteed Annuity (Liquid Lifetime)**, **Guaranteed Income Plan (Liquid Lifetime)** and **CarePlus** (each referred to as a 'Policy').

The information contained in this Guide is intended for attorneys who wish to make a nomination on behalf of an investor. It sets out our understanding of the powers of attorney laws as at the date of this document and is general information only.

The legislation and its interpretation could change in the future. It is your responsibility (as the attorney) to ensure that you have the authority to make a nomination under the relevant state or territory law.

**We strongly recommend that you obtain independent legal advice regarding your legal obligations and the extent of your authority under the power of attorney.**

Under the Policy, an investor can nominate anyone to be their beneficiary and the nomination can be changed by you at any time<sup>1</sup>. Please note that if superannuation money is being used to invest, a beneficiary must be a dependant.

In some cases, Challenger may accept a nomination of a beneficiary (or beneficiaries) made by an attorney, acting under a power of attorney, on an investor's behalf.

## **For an attorney seeking to nominate a beneficiary under a power of attorney:**

As an attorney under a power of attorney, you have certain obligations when using the power. For example, you have obligations to act in the interests of the person who gave you the power (in this case the investor under the Policy), to not allow any personal interest to conflict with your duty to the person and not to act for your own benefit or the benefit of another person (unless you are authorised under the power of attorney).

**Before nominating a beneficiary in the Policy on behalf of an investor, there are a few questions that you should ask:**

## **Does the investor have mental capacity?**

If they do, it is strongly recommended that they complete the nomination of beneficiary themselves, instead of the attorney acting under a POA. This minimises the risk that the nomination will be invalid.

A beneficiary nomination may be made at any time, not just when the policy is established. Please contact 13 35 66 for a nomination of beneficiary form to be sent to an adviser or the investor to complete themselves.

## **Is the power an enduring or general power of attorney?**

If the investor has lost mental capacity and you would like to make a nomination on their behalf, you must ensure that you are acting under an **Enduring Power of Attorney**. This is because a General Power of Attorney does not allow you to continue to act after the person giving you the power has lost mental capacity.

It must be clearly stated in the document whether a power of attorney is enduring. Sometimes it is in the heading 'Enduring Power of Attorney', or a box that is ticked, or some specific words such as *'I give this power of attorney with the intention that it will continue to be effective if I lack the capacity through loss of mental capacity after its execution'*.

## **Do I have the authority to make the nomination?**

Nominating yourself or another person as beneficiary to receive death benefits under the Policy may be considered as conferring a benefit on you and the other person. It may also be considered a conflict transaction (where there is a conflict between your interests and the interests of the person on whose behalf you are acting).

Although you may feel like you are acting in the best interests of the life insured by nominating the beneficiaries, we are bound by the law and can only accept nominations that comply with the requirements of the law in the relevant state or territory where the power of attorney was made.

<sup>1</sup>. Excludes where a reversionary life insured or reversionary partner was nominated. This election cannot be changed (although you can cancel it).

**A beneficiary nomination made under power of attorney will only be valid if an attorney nominating themselves and/or another person as a beneficiary has the authority under the power of attorney to give themselves or the other person that benefit.**

The table below sets out the wording Challenger requires to accept a nomination of a beneficiary under a power of attorney. Note that these acceptance requirements are also subject to no other restrictions being set out in the power of attorney document.

Laws relating to powers of attorney are complex and are different in each state and territory. They also change over time.

In some states and territories, specific wording may need to be included in the POA document that expressly authorises the attorney to give themselves or another person a benefit or enter into a conflicted transaction.

In other states and territories, specific wording is not required. As long as there is no express restriction in the POA, you may be able to grant yourself or another person a benefit or enter into a conflict transaction.

#### **When the power of attorney was made**

#### **Specific wording required in the power of attorney**

This is the wording expressly required in the power of attorney document provided to Challenger, which clearly authorises the attorney to make the nomination.

**If this wording (or wording of a substantially similar nature) is not included in the power of attorney document, Challenger will reject the nomination and consider the entire nomination invalid.**

#### **NSW**

Before 16 February 2004	My attorney is authorised to execute an assurance or other document, or to do any other act, whereby a benefit is conferred on my attorney.
From 16 February 2004	<p><b>Wording to benefit attorney:</b> I authorise my attorney to confer benefits on the attorney to meet the attorney's reasonable living and medical expenses as provided by section 12 (2) of the Powers of Attorney Act 2003.</p> <p><b>Wording to benefit third party:</b> I authorise my attorney to confer benefits on [insert name(s) and address(es) of each third party] to meet their reasonable living and medical expenses as provided by section 13 (2) of the Powers of Attorney Act 2003.</p> <p>In the standard form POA, these boxes will need to be ticked or the wording otherwise included in the POA.</p>

#### **VIC**

Before 30 August 2015	I authorise my attorney/s to do on anything my behalf that can lawfully be done by an attorney.
From 30 August 2015	I authorise my attorney/s to enter into conflict transactions.

#### **QLD**

From 1974 onwards	I authorise my attorney/s to enter into conflict transactions.
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## When the power of attorney was made

## Specific wording required in the power of attorney

### WA

From 1990	I authorise my attorney/s to do on anything my behalf that can lawfully be done by an attorney.
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### SA

From 1984	I authorise my attorney/s to do on anything my behalf that can lawfully be done by an attorney.
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### ACT

Before 30 May 2007	I authorise my attorney/s to enter into conflict transactions.
From 30 May 2007	I authorise my attorney/s to sign any documents on my behalf even if those documents result in a benefit to my attorney.

### TAS

Before 1 February 2014	I authorise my attorney/s to do on anything my behalf that can lawfully be done by an attorney.
From 1 February 2014	I authorise my attorney/s to sign any documents on my behalf even if those documents result in a benefit to my attorney. OR I authorise my attorney/s to enter into conflict transactions.

### NT

From 1980	I authorise my attorney/s to do on anything my behalf that can lawfully be done by an attorney.
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## What happens if the POA does not include the right wording?

If any part of a beneficiary nomination is invalid because the power of attorney did not contain the required authority at the time the nomination was made, the **entire** beneficiary nomination will be considered **invalid** and the whole death benefit will automatically be payable to the life insured's estate.

For example, if an attorney nominated Person A and Person B as beneficiaries but the power of attorney document only expressly permitted a benefit to be provided to Person A, the whole nomination to Person A and Person B would be invalid and the whole death benefit would be paid to the life insured's estate.

Importantly, if the investor has mental capacity, they can make the nomination themselves at any time while they own a Policy.

## What else might Challenger require to confirm the nomination?

Laws relating to powers of attorney are complex and can change over time. Depending on the nature of the power of attorney, we may need to confirm the validity of a beneficiary nomination at the time of a claim and before a benefit is paid under the Policy.

In this situation, we may request additional documentation from an attorney or an executor (e.g. the life insured's Will or a statutory declaration) to assist in our review of a beneficiary nomination.