

Powers of Attorney

By Margaret McCullough

What is a power of attorney?

When you sign a power of attorney in favour of a third party, you are granting that third party the authority to assist you on your instruction. If the power of attorney is a general power of attorney, the third party can act in respect of your general affairs.

If the power of attorney is a special power of attorney, the third party's authority is limited to the specific authority which is granted to him/her. For example, I give X the authority to sell my car. Such power of attorney relates only to the sale of the car. In our SA law, a power of attorney falls away if the party granting power of attorney loses mental capacity. The basis for this is due to the fact that you become vulnerable and open to abuse once you lose mental capacity. In such an instance, curatorship is the only alternative.

What formalities apply to a power of attorney?

There are no specified formalities. When a power of attorney is prepared, the person granting the power of attorney signs the document and usually does so before two witnesses. Certain institutions set their own parameters regarding a power of attorney for example, they may require the power of attorney to reflect the full names, identity number, address and phone number of the witnesses.

Does a general power of attorney cover my banking?

Generally, the banks require their own mandate forms to be signed to give a third party signing powers on your bank account. It is therefore important when signing a general power of attorney, to ensure that you also provide the third party with signing powers on your bank account, if that is your intention. The banks generally require you and the third party to attend at the bank together to put signing powers in place on the bank account.

Can I give power of attorney to more than one person?

Yes, you may give power of attorney to more than one person, either in the alternative or jointly. When granting power of attorney to more than one person, it is generally more practical to give the authority in the alternative. For example, I give power of attorney to my son X and/or my son Y.

Does a power of attorney authorise the third party to make decisions regarding my health?

Our SA law has not developed to a stage where you can grant a power of attorney to a third



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party to make decisions regarding your health. However, practically speaking, usually the parties to whom a power of attorney is granted, are the parties who are contacted for permission to proceed with medical matters where the person giving power of attorney is unable to give permission (for example, due to severe illness).

Why should I give a third party power of attorney?

Every person's circumstances differ. However, if one travels extensively, or as one ages, there may be merit in granting a power of attorney to a third party. If the need then arises, the necessary authority is already in place for the third party to assist you.

Who should I give power of attorney?

When you give a person power of attorney, it is important to choose someone you trust implicitly. Very often, a spouse will give their spouse power of attorney and/or one or more of their children. In some instances, you may choose to give a professional your power of attorney. There are practical considerations when granting a power of attorney - for example, where does the third party live to whom you wish to give power of attorney. Distance can in some instances make it impractical for a third party to assist you, particularly with regards to bank signing powers.

If the third party who holds my power of attorney acts on my behalf without my authority, am I bound by his/her actions?

If the third party to whom you have granted power of attorney acts without your authority and the person with whom they interact on your behalf believes in good faith that the third party is acting on your instruction, you will be bound by the third party's actions. It is for this reason that you must ensure that the third party you choose to grant power of attorney to is entirely trustworthy.

Can I revoke/cancel a power of attorney?

Yes, it is usually advisable to retrieve and destroy the originally signed power of attorney. It is also important to notify any parties interacting with the third party who has held your power of attorney that such power of attorney has been revoked, to ensure you cannot be held liable for further actions taken by the third party in terms of the revoked/cancelled power of attorney.

For advice and for assistance with regards to powers of attorney, contact Marc Sharratt and/or Margaret McCullough at our Howick office on 033 8459701.



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