

## LAW MATTERS

SPONSORED COLUMN

## POWER OF ATTORNEY



CAROL MCDONALD

IN THESE difficult times of COVID-19, you might need to prepare for a situation where a loved one or business partner is unable to attend to their own affairs, possibly because they are in quarantine, or have been hospitalised, or are maintaining strict social distancing. A power of attorney could be the tool that you need. This article is intended to provide some guidelines regarding powers of attorney, and when they can and cannot be used.

#### **When is a power of attorney necessary?**

In order to transact on behalf of another person, you must have the necessary authority. A power of attorney is required to carry out any act that is aimed at altering, terminating, or otherwise affecting the legal rights of the person that is signing the power of attorney.

#### **What types of power of attorney are there?**

The authority given by a power of attorney may be general or special. A general power of attorney gives wide ranging powers. A special power of attorney is more limited, and usually confers the power to carry out a single transaction.

A general power of attorney is adequate authority for attending to most of the affairs of another person. However, care should be taken when drafting a general power of attorney to ensure that the power granted is adequate for the purpose for which it is intended. A general power of attorney may not be used for dealing with immovable property unless it contains express authority to do so. Details of the property and the specifics of the transaction must be set out in the power of attorney. If the power of attorney is to be used to register a transaction in the deeds registry, it must be prepared by a conveyancer and must comply with the requirements of the Deeds Registries Act, 1937.

#### **Can a power of attorney be revoked?**

The power may be revoked at any time. Once revoked, the person authorised to act has no further capacity to act on behalf of the person that signed the power ("the grantor"). However, any act concluded whilst the power subsisted will remain binding on the grantor.

#### **Can I use a power of attorney for a person who is of unsound mind?**

For a legal transaction to be valid, the parties must be able to understand the nature, purpose and consequences of their actions. Where these requirements are not met, the law attaches no consequences whatever to the transaction.

Since a power of attorney is a document designed to have a legal effect, a person who has no legal capacity cannot authorise another person to conclude juristic acts on their behalf. The power of attorney is only valid if the grantor understands the nature, purpose and consequences of granting the power at the time of signing.

It remains valid only for as long as the grantor is still capable of appreciating the concept and consequences of granting authority to another person. The moment the grantor becomes mentally incapacitated and is no longer capable of managing their own affairs, the power of attorney lapses. The power of attorney also lapses immediately on the death of the grantor. Determining whether a person can manage their own affairs is a question that must be determined by the courts. The courts may appoint a curator to a person who is mentally ill or mentally deficient or cannot manage their own affairs.

#### **How to draft a power of attorney?**

Care should be taken when drafting a general or special power of attorney to ensure that the power granted accurately reflects the intention of the person signing it, and that it is neither too far reaching, nor inadequate to achieve the desired results.

---

*MCDONALD is a partner at Cox Yeats Attorneys where she practises in the Property Law Team, specialising in property development, notarial practice and general commercial property transactions. She can be contacted on 031 536 8515 or via email : [cmcdonald@coxyeats.co.za](mailto:cmcdonald@coxyeats.co.za)*

**COX | YEATS**  
attorneys