



The honour and privilege of being power of attorney

By Terry Owen



You will need a power of attorney at some point in later life to conduct affairs on your behalf. It's an important juncture in your life – and the life of the person you decide to appoint. It's an honour and privilege for that person to be empowered with such vital tasks.

Power of attorney.

Three little words that carry all the gravitas in the world.

These words are bandied about a lot among the audience of this blog, and with good reason.

It sounds quite scary too, but it's not, and it's all to do with the wellbeing of you, our reader, and maybe our resident.

What is power of attorney? It is a written document where one person known as a principal appoints and authorises another, known as an agent, to conduct affairs on his or her behalf.

Let's face it, having to deal with financial issues can be stressful at the best of times, but having this load taken off you and put into the hands of a reliable and trustworthy person is really good for your health and peace of mind.

Let's say you've become too frail to handle financial issues, or you're going to be away visiting family. You know there are documents that need to be attended to while you're away. This is where your agent steps in and performs those duties that you would have to handle.

Important part of later life

Now, you wouldn't leave drawing up a will until you're at death's door, would you? That would be irresponsible. Neither should appointing an agent who could play an important part of your later life. Aside from handling estate issues, it could be a simple task as drawing money. Simple yes, but to you it could become a major hurdle.

You obviously must find someone you can trust implicitly. This is normally a family member who you've known and loved for many years. However, you may not have a family that you can turn to, so the next obvious choice is a lifelong friendship with someone who you would trust with your life. Okay, not there either.

While you do not necessarily have to have your document ratified by an attorney, it may be that you need your arrangement scrutinised and your attorney is your best choice. Your attorney can also be appointed your agent. This, however, is not always a good route as he or she may not have your best interests at heart, especially when it comes to healthcare issues.

I am not casting any doubt here on the competency of lawyers. On the contrary, they are the best people to step in to sort out any issues where you may have been scammed or something nefarious has been brought into play. Everyone is aware of the vulnerability of your population group and will seek to take advantage of this. There are some downright nasty people around and let's hope they get nabbed before causing any damage.

Walking a minefield

Right. Let's assume that you have found your agent and are truly happy with your arrangement. Before you rush off, waving your arms with glee, you must stop and think about a situation which could arise and throw things into chaos. Your agent could end up being deceased before you, could decide to emigrate, or (God forbid) could be involved in an accident. What then? It's like walking a minefield, rather akin to telling your daughter's naughty six-year-old that he or she can never, ever play video games ever again. As an aside, do you know that you could be sued for causing emotional distress for the child – well, in the USA anyway?

The point is in life anything can happen. There are a myriad of curved balls whizzing about that could be heading anyone's way at any time, so it's best to be as prepared as possible.

The best thing is to have someone waiting in the wings, and you'll have to go through the whole vetting process in your head again. Will this person be trustworthy enough to handle matters of import? Generally, you will know of someone or you will go the attorney route. It is vital that whoever you choose knows everything that you would like to happen, especially in the case of a medical emergency.

Do you have a living will? You should. In case you don't, it will be vital for your agent that he or she knows your medical history, the medications you are on and what your wishes are regarding the possibility of becoming comatose, the necessity of surgery and a host of other variables that suddenly present in situations like this.

Family feuds

Talk about minefields. There is also the possibility of family feuds when you appoint someone as your power of attorney and there is jealousy when someone feels it's unfair that they weren't chosen. What? Don't you trust me, is that it? Oh boy. I've known of situations like this and it's so unfair on you, the principal. Best you stand firm and nip this in the bud quickly. Or get someone whom you trust who is firm and fastidious, having your best interest at heart, who will play psychologist and chief board member simultaneously. In other words, someone who will not take any nonsense.

The whole point about appointing a power of attorney is that it relieves you of stress, not adds to the weight in your head!

It's important to note here, and this is something not many are aware of, that under South African law you cannot sign a power of attorney if you become mentally incapacitated, or if you have already appointed someone as an agent, that agreement ceases at this point. This is why it is important to have a will drawn up when you are fully competent and lodged with an attorney. In this instance, being of sound mind is vital. Don't put off doing your will! Aside from that, your Living Will is as important as in, for instance, you don't your life extended by being hooked up to machines without any hope of recovery. That will obviously be emphasised in your Living Will.

If, however, wills are non-existent, relatives of the principal can apply to the High Court to be appointed curator or administrator of your affairs. It is a lengthy and firmly complex process, but it is possible. A relative could be granted curator or administrator (a much easier process incidentally) and will be involved in the submission of annual reports, among other duties.

If power of attorney is signed over in this instance, the curator has absolute power to handle the affairs of the incapacitated person indefinitely and as that person sees fit. This may not always be in accordance with what the family would want, and things can get very messy.

To avoid this, and aside from the instructions in your will (which can and sometimes do get debated in court – hence the necessity of being of sound mind when drawing up the will) you could place all the property of the principal into a trust prior to incapacitation. This can be complex though and has tax implications that you need to discuss with trust specialists.

Making the process much simpler

There are recommendations that the law be amended to make the power of attorney process much simpler, but this is still at draft stage. It is vital, though, that the family work alongside experienced financial administrators who can be of great help in complex times.

It is important to note that if you are involved in a medical emergency but is still of sound mind, the normal rules of power of attorney remain. That is why it is important that your agent is fully aware of your medical needs and status.

So, the two areas that the agent would be active in are financial and healthcare. Both are equally important to the removal of your stress. The power of attorney (agent) will make medical decisions based on your wishes in times of emergencies and even though such decisions may be in the living will, those documents cannot cover every circumstance at these times. This is why your living will should be as comprehensive as possible as the agent can never go against what is stated in such a will.

If, as an agent, you are overwhelmed by the whole scenario, go online and find people that can help you. There are many that are experienced in these matters and can guide you along the way.

If the principal dies, the durable power of authority automatically expires. The agent no longer legally represents the principal and must relinquish all powers of authority. Upon the principal's death, the executor of his estate handles the personal and financial matters according to the principal's last will and testament. Remember this: you will know if you have chosen the right person to be your power of attorney, or your agent. It should be an honour and a privilege, and this will always reflect in the person's attitude and demeanour.