

Power of Attorney: What It Can - and Can't - Do For You

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A power of attorney is one of the most useful documents you can sign — and one of the most misunderstood. It lets someone else act on your behalf: signing documents, running your bank account, selling a property, or representing you at a meeting you can't attend. But it isn't a substitute for a will, and it isn't the safety net most people assume it is once serious illness or incapacity enters the picture. Here's what a power of attorney actually does, where its limits lie, and how to use one safely.

General vs. Special Power of Attorney

A general power of attorney gives your agent broad authority to act across most of your affairs — banking, contracts, property, and day-to-day administration. A special (or limited) power of attorney is narrower and purpose-built: authorising someone to sign the transfer documents on a single property sale, represent you at one meeting, or collect a specific payment, and nothing more. As a rule, the power you grant should match the task at hand — a special power of attorney for a single transaction carries far less risk than handing over general authority you may not need.

What Makes One Valid

South African law doesn't prescribe a fixed form for a power of attorney, but two things are non-negotiable: you must have the mental capacity to understand what you're authorising, and you must give that authority voluntarily. In practice, a power of attorney should be in writing, clearly identify you and your agent, spell out exactly what's being authorised, and be signed in the presence of two competent witnesses who don't stand to benefit from it. If you're unable to sign yourself, an attorney can certify a mark or thumbprint made in their presence instead.

When You Need a Notarial Power of Attorney

Most powers of attorney don't need to be notarised. Two situations usually call for one: a property transaction, where a general power of attorney is often registered at the Deeds Office in advance so it's ready when needed, and any use of the document outside South Africa, where foreign authorities typically require notarial execution or authentication — through an apostille under the Hague Convention, or via a South African embassy — before they'll accept it. If you know a document will be used abroad, it's far simpler and cheaper to have it properly authenticated before you leave the country than to arrange it from overseas.

What It Can't Do

This is the part most families discover too late: a power of attorney is only valid for as long as you have the mental capacity to understand what you authorised. The moment that capacity is lost — through dementia, a stroke, or a serious injury — the power of attorney automatically and permanently lapses, no matter how recently it was signed or how well it was drafted. South African law does not recognise an "enduring" power of attorney that survives incapacity, unlike some other countries. If a family member needs to manage your affairs after that point, they must apply for a curatorship or a statutory administration order instead — a materially more expensive and time-consuming process than simply relying on a document you've already signed. A power of attorney should be thought of as a tool for while you have capacity but aren't available or able to act personally — not a solution for what happens once capacity is gone.

Choose Your Agent Carefully

Because a general power of attorney grants such wide authority, it's also one of the more common tools used in financial abuse of the elderly and vulnerable. Give this power only to someone you trust completely, keep the scope as narrow as the task allows, and consider requiring your agent to account to you or another family member for what they do under it. Banks and investment platforms will also frequently insist on their own power of attorney or mandate forms for account operations, rather than accepting a generic document — worth checking with each institution before you assume a signed power of attorney will be enough.

Keeping It Current

A power of attorney can be revoked at any time, provided you still have the capacity to do so — but revocation only works if it's communicated clearly, in writing, to your agent and to anyone relying on the document, such as your bank. Review your powers of attorney whenever your circumstances change materially: a new marriage,

a business sale, or simply the passage of a few years is a good prompt to check that the document, and the person you've named, still reflect what you'd want today.

A power of attorney, a valid will, and a plan for what happens if capacity is ever lost work best as a set, not in isolation. If you'd like your existing power of attorney reviewed, or don't have one in place yet, contact a fiduciary practitioner from FISA who can help you put the right document — and the right safeguards — in place.

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