POWERS OF ATTORNEY

INTRODUCTION

The purpose of this article is to provide some insight into the use and purpose of Powers of Attorney (PA). With regards to immovable property, there are two types of Powers of Attorney commonly used. The first is a General Power of Attorney (GPA) and the second is a Special Power of Attorney (SPA).

THE USE OF THE POWER OF ATTORNEY IN IMMOVABLE PROPERTY TRANSACTIONS

The seller's circumstances should be assessed to determine whether a GPA or an SPA is required. An example where the use of an SPA would be appropriate would be where the parties intend on emigrating and one spouse will depart from South Africa prior to sale or registration of the immovable property or where one of the sellers is generally unavailable.

In such cases sellers can be advised to have a SPA/GPA drafted which would enable a trusted party in South Africa or one of the remaining co-owner/s to sign the necessary sale and transfer documents.

The reason for this requirement is that when transfer documents are to be signed outside of South Africa the deeds registry has various requirements such as that the documents need to be signed at an SA embassy or a foreign notary in which case an authentication process may be required using an Apostille certificate. The aforementioned are often impractical, time consuming and expensive, thus the alternative of a special power of attorney proves advantageous.

GENERAL

In order to be valid, a PA must clearly describe the grantor and the grantee and must further clearly describe the extent of the powers granted. The PA must further be signed by the grantor and two witnesses.

For the purposes of use of a PA in the deeds registry however, the PA must also comply with the requirements of the Deeds Registries Act. In this regard the PA must properly and comprehensively describe the grantor, the grantee and the immovable property in question. There are also requirements specific to a GPA or SPA which must be complied with.

The PA must further contain a "preparation certificate" where a qualified conveyancer signs the PA and accepts responsibility for the correctness of the contents thereof. It is for this reason when drafting a GPA or SPA that a conveyancer be consulted in order to ensure the PA is correctly drafted so as to avoid same being rejected by the deeds registry and being unusable.

VALIDITY OF POWERS OF ATTORNEY

A PA is only valid for so long as the grantor has the power to revoke same. In other words if the grantor is incapable of revoking the PA due to being, for example, unconscious or mentally incapable, that PA may no longer be used.

Under such circumstances the grantee would be obliged to wait until the grantor is rendered capable or the grantee would have to approach a court for the appointment of a *curator bonis* to look after the affairs of the grantor.

Grantees should further bear in mind that a PA is not a tool to be used to achieve something that the grantor does not wish to be done. The grantee must act in accordance with the grantor's instructions and according to his wishes.

GENERAL POWER OF ATTORNEY

A GPA as the name implies is general in nature and when used in the standard format confers various general powers by the grantor on the grantee whereby the grantee is authorized to perform a variety of acts on behalf of the grantor.

A GPA does not need to be registered in the deeds registry when used for general purposes. When the GPA is used for the transfer of immovable property however, the Registrar of Deeds will require the GPA to be lodged and registered in the deeds registry before or simultaneously with the transfer of the property sold.

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Once registered, the GPA will be allocated a GPA number which can be used for future reference- i.e. when using the same GPA for future property transactions in the same deeds registry. If the GPA is to be used in another deeds registry a Regulation 65 copy must be obtained and registered.

Caution must be exercised when using a GPA due to the wide powers conferred by the grantor to the grantee.

SPECIAL POWER OF ATTORNEY

This is the most common and prudent PA used for conveyancing purposes. An SPA grants limited powers to the grantee for a specific purpose. An example would be an SPA which authorizes the grantee to market for sale a particular property, to accept a purchase price (a minimum purchase price must be stipulated) and to sign all conveyancing documentation to effect the transfer of the property sold.

AN EXAMPLE:

SPECIAL POWER OF ATTORNEY

I, the undersigned,

> **NAME**
> **Identity number**
> **Marital Status**

do hereby nominate constitute and appoint

> **NAME**
> **Identity number**

In respect of the following property:

> **ERF 23 MELROSE TOWNSHIP, REGISTRATION DIVISION IR, PROVINCE OF GAUTENG**
> **MEASURING 1000 (ONE THOUSAND SQUARE METRES)**
> **HELD BY DEED OF TRANSFER T12345/2010**

1. To market the Property for sale;
2. To nominate an Estate Agency and grant an appropriate mandate (including a sole mandate) to sell the Property on our behalf;
3. To effect payment of a reasonable commission to the nominated Estate Agents from the proceeds of the purchase price.
4. To sign an agreement of sale and accept a purchase price for the Property of not less than R 700 000.00 (Seven Hundred Thousand Rand).
5. To nominate an account into which the proceeds of sale shall be paid;
6. To sign all conveyancing and additional documents necessary to effect the registration of transfer of the Property in the relevant Deeds Registry into the name of a prospective purchaser;
7. To do all such things as deemed necessary to effect the sale and registration of the Property;
8. And generally to actualise the aforementioned purpose and to do whatever is necessary for that purpose as what I would do if I were personally present and if handled personally by me - and I ratify, permit and confirm hereby and promise to ratify, allow and to confirm everything which my Attorney and Agent is lawfully entitled to do by virtue of this my Power of Attorney.

Signed at JOHANNESBURG this 23RD day of JULY 2014, in the presence of the undersigned witnesses

AS WITNESSES

1 _____   _____
                                                  NAME
2 _____

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