

CHAPTER 81

POWERS OF ATTORNEY

POWERS OF ATTORNEY RULES, 1996

S.I. 49/1996

(SECTION 11)

Commencement 4th July, 1996]

1. These rules may be cited as the Powers of Attorney Rules, 1996. Citation.

2. (1) Where an instrument creating a power of attorney is required to be deposited in the Registry, there shall be furnished to the Registrar in respect of that power of attorney either the instrument creating the power of attorney or a copy by means of which its contents may be proved under paragraph (2). Instruments executed by attorney.

(2) The contents of an instrument creating a power of attorney may be proved by means of a copy which —

- (a) is a reproduction of the original made with a photographic or other device for reproducing documents in facsimile; and
- (b) contains the following certificate signed by the donor of the power or by a notary public, that is to say —
 - (i) a certificate at the end to the effect that the copy is a true and complete copy of the original; and
 - (ii) if the original consists of two or more pages, a certificate at the end of each page of the copy to the effect that it is a true and complete copy of the corresponding page of the original.

(3) A copy of any instrument deposited in the Registry may be obtained on payment of a fee of \$2.00 dollars.

3. (1) In respect of the deposit of any power of attorney, other than an enduring power, there shall be charged a fee of \$4.00 dollars. Fees.

(2) In respect of every enduring power there shall be charged a fee of \$6.00 dollars.

Form of
enduring power
of attorney.
Schedule.

4. (1) Subject to paragraphs (2) and (3) of this rule and to paragraph 5 of rule 5 an enduring power shall be in the form set out in the Schedule and may include such additions (including paragraph numbers) or restrictions as the donor may decide.

(2) In completing the form of enduring power —

(a) there shall be excluded (either by omission or deletion) —

(i) where the donor appoints only one donee, everything between the square brackets in Part B; and

(ii) one of any pair of alternatives; and

(b) there may also be so excluded —

(i) the words “subject to the following restrictions and conditions” appearing in Part B, if those words do not apply;

(ii) the attestation details for a second witness in Parts B and C if a second witness is not required; and

(iii) any marginal notes which correspond with any words excluded under the provisions of this paragraph and the two notes numbered 1 and 2 which appear immediately under the heading to Part C.

(3) The form of execution by the donor or by a donee may be adapted to provide —

(a) for a case where the donor or a donee signs by means of a mark; and

(b) for the case (deal with in rule 5) where the enduring power is executed at the direction of the donor or of a donee;

and the form of execution by a donee may be adapted to provide for execution by a trust corporation.

(4) Subject to paragraphs (1), (2) and (3) of this rule and to paragraph 5 of rule 5 an enduring power which seeks to exclude any provision contained in these Rules is not a valid enduring power.

5. (1) An enduring power in the form set out in the Schedule shall be executed by both the donor and the donee, although not necessarily at the same time, in the presence of a witness, but not necessarily the same witness, who shall sign the form and give his full name and address.

Execution of an enduring power of attorney. Schedule.

(2) The donor and a donee shall not witness the signature of each other nor one donee the signature of another.

(3) Where an enduring power is executed at the direction of the donor —

- (a) it shall be signed in the presence of two witnesses who shall each sign the form and give their full names and addresses;
- (b) a statement that the enduring power has been executed at the direction of the donor shall be inserted in Part B of the form set out in the Schedule; and
- (c) it shall not be signed by either a donee or any of the witnesses to the signature of either the donor or a donee.

Part B of Schedule.

(4) Where an enduring power is executed at the direction of a donee —

- (a) paragraph (3)(a) applies;
- (b) a statement that the enduring power has been executed at the direction of the donee shall be inserted in Part C of the form set out in the Schedule; and
- (c) it shall not be signed by either the donor, a donee or any of the witnesses to the signature of either the donor or donee.

Part C of Schedule.

(5) Where more than one donee is appointed and they are to act jointly and severally, then at least one of the donees so appointed shall execute the instrument for it to take effect as an enduring power and only those donees who have executed the instrument shall have the functions of a donee under an enduring power in the event of the donor's mental incapacity or when the power has been deposited in the Registry, whichever first occurs.

SCHEDULE (Rules 4 and 5)**ENDURING POWER OF ATTORNEY****Part A: About using this form**

1. You may choose one donee or more than one. If you choose one donee then you must delete everything between the square brackets on the first page of the form. If you choose more than one, you must decide whether they are able to act:

Jointly (that is, they must all act together and cannot act separately) or

Jointly and severally (that is, they can all act together but they can also act separately if they wish).

On the first page of the form, show what you have decided by crossing out one of the alternatives.

2. If you give your donee(s) general power in relation to all your property and affairs, it means that they will be able to deal with your money or property and may be able to sell your house.

3. If you don't want your donees to have such wide powers, you can include any restriction you like. For example you can include a restriction that your donee(s) must not act on your behalf until they have reason to believe that you are becoming mentally incapable; or a restriction as to what your donee(s) may do. Any restrictions you choose must be written or typed where indicated in the appropriate place on the form.

4. If you are a trustee (and please remember that co-ownership may involve trusteeship), you should seek legal advice if you want your donee(s) to act as a trustee on your behalf.

5. Unless you put in a restriction preventing it your donee(s) will be able to use any of your money or property to make any provision which you yourself might be expected to make for their own needs or the needs of other people. Your donee(s) will also be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.

6. Your donee(s) can recover the out-of-pocket expenses of acting as your donee(s). If your donee(s) are professional people, for example counsel and attorneys or accountants, they may be able to charge for their professional services as well. You may wish to provide expressly for remuneration of your donee(s) (although if they are trustees they may not be allowed to accept it).

7. If your donee(s) have reason to believe that you have become or are becoming mentally incapable of managing your affairs, your donee(s) will have to deposit this power before acting under it.

8. Note to Donor

Some of these explanatory notes may not apply to the form you are using if it has already been adapted to suit your particular requirements.

Part B: To be completed by the “donor” (the person appointing the donee(s))

Don’t sign this form unless you understand what it means

Please read the notes in the margin which follow and which are part of the form itself.

I,
of

Donor’s name and address.

born on
appoint

Donors date of birth.

of

See note 1 on the front of this form. If you are appointing only one donee you should cross out everything between the square brackets. If appointing more than two donees, please give the additional name(s) on an attached sheet.

[and
of

Cross out the one which does not apply (see note 1 on the front of this form).

Jointly
Jointly and severally]
to be my donees for the purpose of the Powers of Attorney Act, 1992 with general authority to act on my behalf with authority to do the following on my behalf:

Cross out the one which does not apply (see note 2 on the front of this form). Add any additional powers.

If you don’t want the donee(s) to have general power, you must give details here of what authority you are giving the donee(s).

Cross out the one which does not apply.

in relation to
all my property and affairs:
the following property and affairs:

Please read the notes in the margin which follow and which are part of the form itself.

If there are restrictions or conditions, insert them here; If not, cross out these words if you wish (see note 3 on the front of this form).

If this form is being signed at your direction:

* the person signing must not be a donee or witness (to Parts B or C).

*you must add a statement that this form has been signed at your direction.

* a second witness is necessary (please see below).

Your signature (or mark).

Date

Someone must witness your signature.

Signature of witness.

Your donee(s) cannot be your witness. It is not advisable for your husband or wife to be your witness.

A second witness is only necessary if this form is not being signed by you personally but at your direction (for example, if a physical disability prevents you from signing).

Signature of second witness

*** subject to the following restrictions and conditions:**

I intend that this power shall continue even if I become mentally incapable.

I have read or have had read to me the notes in Part A which are part of, and explain, this form.

Signed, sealed and delivered by me

.....
on

In the presence of

Full name of witness

Address of witness
.....
.....

in the presence of

Full name of witness
.....
.....

Address of witness.....
.....
.....

Part C: To be completed by the donee(s)

Note: 1. This form may be adapted to provide for execution by a corporation.

2. If there is more than one donee additional sheets in the form as shown below must be added to this Part C.

Please read the notes in the margin which follow and which are part of the form itself.

I understand the necessity to deposit this form in the Registry under the Powers of Attorney Act, 1992.

Don't sign this form before the donor has signed Part B or if, in your opinion, the donor was already mentally incapable at the time of signing Part B.

If this form is being signed at your direction:

I also understand my limited power to use the donor's property to direct/benefit persons other than the donor.

* the person signing must not be a donee or any witness (to Parts B or C).

I am not a minor.

you must add a statement that this form has been signed at your direction.

* a second witness is necessary (please see below).

Signature (or mark) of donee

Signed, sealed and delivered by me

Date

on

Signature of witness

in the presence of

The donee must sign the form and his signature must be witnessed. The donor may not be the witness and one attorney may not witness the signature of the other.

Full name of witness

Address of witness

A second witness is only necessary if this form is not being signed by you personally but at your direction (for example, if physical disability prevents you from signing).

in the presence of

Full name of witness

Address of witness