

## Awareness Series 6: Know your power of Attorney

(A CSR initiative)

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### I. Understanding Power of Attorney (POA)- FAQs

It authorises a person to act on one's behalf as if acting itself. It follows that the power of attorney must set out the nature and extent of authority in clear and simple terms i.e what exactly you want the other person to do or to act on behalf.

#### A. Who can execute POA:

- Any individual who can engage in a contract may execute a valid power of attorney. **Exception:** Married women, even if they are minors, can execute a valid power of attorney.
- A business must adhere to its “Articles of Association” and common seal while issuing a valid power of attorney.
- To ensure that the instrument/deed of power of attorney is valid, the individual granting authority to the designated person must be competent i.e. not of any unsound mind

#### B. Can POA be dangerous document

NO, it depends on what is written in the documents

1. **DO Anything:** The general POA gives the agent the authority to act on behalf of the principal on all matters permitted under law. The agent may be authorised to sell property, appear in court in any dispute, sign cheques, lease property, buy stocks, appoint caretakers for assets, etc., on behalf of the principal. **Such as:**

- **Managing finances:** Pay bills, deposit cheques, operate bank accounts, invest funds, etc.
- **Handling property:** Buy, sell, lease, or manage real estate.
- **Making legal decisions:** File lawsuits, represent you in court, execute contracts, etc.
- **Taking care of personal affairs:** Sign documents, file taxes, make travel arrangements, etc.

2. **Allowed to act only in specified matters and NOTHING else:** The specific POA grants the agent the authority to deal with a specific subject or matter on behalf of the principal. For example, the specific POA may state that the agent is only allowed to collect rents from a property. In such a case, the agent cannot sell the property or extend the property's rental duration. An agent who has been granted a specific POA cannot overstep and make decisions relating to general matters of law

3. **Not able to make medical legal or financial decisions then DPOA:** A legal document that gives one person (such as a spouse, relative, friend, or lawyer) the authority to make medical, legal, or financial decisions for another person. A durable power of attorney may go into effect right away or when the person who grants it is no longer able to make decisions for themselves, depending on how it is written. In most cases, a durable power of attorney remains in effect until the person who grants it dies or cancels it. It does not need to be renewed over time. Also called DPA.

**C. What are the legal requirements to establish POA (though it may differ slightly from state to state in India):**

1. **Written document:** The POA must be prepared in writing.
2. **Signature of the Principal:** The Principal must sign the POA in the presence of two witnesses.
3. **Presence of witnesses:** Two witnesses must be present when the Principal signs the POA. They should attest to the signing and provide their full name, address, and occupation.

4. **Registration:** The POA must be registered with the concerned District Judge within whose jurisdiction the matter falls.

#### **D. Can gift deed be done solely on POA:**

A gift deed of property cannot be done solely on the basis of a power of attorney. The power of attorney is revocable and does not complete the gift itself. The gift deed must be executed by the owner of the property to complete the transfer of property. Once the gift deed is executed, it is subject to the provisions of the Registration Act.

#### **E. Is it Safe to Buy Property Through General Power of Attorney (GPA)**

No General Power of Attorney can not be used to transfer property titles when making a purchase or sale. A sale deed must be executed to transfer real estate ownership officially, and the purchaser will be responsible for paying stamp duty and registration fees. It is invalid to use GPA in transfer of property as per 2011 ruling of SC

#### **F. What to do if you bought a property through GPA**

**Buying property through a GPA can be risky as it doesn't transfer actual ownership. Your steps should be:**

- Ensure a registered GPA: Verify the General Power of Attorney is registered within the legal timeframe.
- Get the property registered in your name: Ask the original owner to execute a sale deed and get it registered.
- Consult a lawyer.

#### **G. Why you should avoid purchasing a property through GPA**

**Here are some reasons to avoid buying property through a General Power of Attorney:**

- Limited ownership rights: You don't become the legal owner until a sale deed is registered.
- Revocation risk: The original owner can revoke the GPA anytime, rendering the purchase invalid.

- Dispute potential: Legal disputes with the original owner or agent can arise.

Even though you paid cash for the property and signed a contract of sale, without a registered sale deed, you do not legally own the property. You cannot sell the property without the sale deed. Not only do banks not like to fund GPA initiatives, but they actively discourage anyone from doing so.

## **H. What are the types of Transfer Deeds**

### **1. Sale deed**

Whenever the sale of movable or immovable property is made, it is compulsory to be documented in the form of a sale deed. The sale deed discloses details of buyer, seller, property and fact of legal transfer of interest.

### **2. Gift deed**

If a person transfers his property to any person without any consideration wilfully, the gift deed is prepared to signifying the happening and particulars of the gift.

### **3. Warranty deed**

A warranty deed is documented guarantee from a seller to a buyer that the seller has the right to sell the property and that the property is free of debt or other liens.

### **4. Special warranty deed**

Being a little differentiated from a warranty deed, a special warranty deed guarantees against problems and claims during the ownership of the seller and the whole history of claims as to property.

### **5. Quitclaim deed**

This deed is prepared between persons acquainted with each other as like family members. This deed is to transfer the interest and claims in the property without any monetary exchange.

### **6. Bargain and sale deed**

This deed resembles to quitclaim deed other than the requirement of monetary exchange. However, this deed does not guarantee the buyer that the seller owns the property free and clear.

## **7. Grant deed**

A grant deed transfers the interest in property in exchange for a fixed price. The said deed guarantees that the seller is the owner of the property and can legally sell it free of debt but does not provide a guarantee against defects of title.

**To transfer a property several conditions, need to be satisfied. First, whether ancestral or self-owned, the property has the right to be transmitted to its heirs.**

### **I. When can you revoke / recall / cancel/ withdraw your POA:**

- 1. Revocation by the Principal:** The Principal can revoke the POA at any time by sending a written notice to the Attorney holder. This revocation should be communicated clearly and in writing to ensure that all parties are aware of the termination. So this could be:
  - On his/her own will by express revocation of authority.
  - When the purpose of the POA has come to an end.
  - When the agent becomes insolvent or of unsound mind.
- 2. Breach of Contract:** The principal can revoke a POA when there is gross mismanagement on the agent's part, the agent breaches the contract terms, or acts beyond his/her scope of powers. In such cases, even an irrevocable POA can be revoked by issuing a revocation notice. If required, the principal can also approach the court of appropriate jurisdiction to revoke such irrevocable POA.
- 3. Death or incapacitation of the Principal:** If the Principal dies or becomes mentally incapacitated, the POA automatically terminates. In such cases, the Attorney holder authority ceases to be valid upon the Principal's death or incapacitation.

4. **Fulfilment of the purpose:** If the POA was created for a specific purpose, such as representing the Principal in a particular legal matter, it terminates upon completing that purpose.
5. **Expiration of the POA:** If the POA includes an expiration date, it terminates upon reaching that date unless it is renewed or extended by the Principal.

**The validity of a Power of Attorney depends on the type specified in the document. A general PoA is typically valid until revoked by the grantor or upon the grantor's death or incapacitation. A durable PoA remains effective even if the grantor becomes incapacitated and continues until the grantor's death or explicit revocation.**

#### **J. How can you revoke / recall / cancel/ withdraw your POA:**

- The principal must draft a deed/notice of revocation of the PoA. The deed must mention the reason for which the POA is being revoked, the effective date of the revocation and the consequences of such an action.
- Such a deed/notice of revocation must be duly served upon the agent for proceeding with the revocation procedure.
- The deed/notice of revocation should be published in a local or national newspaper so as to inform persons with whom the agent is interacting on behalf of the principal about the revocation.
- The same authority which registered the POA will have to register the cancellation deed of the POA.
- A copy of the cancellation deed of the POA should be sent to the agent to inform him/her of such registration of revocation.
- The paper publication should be of the registered cancellation deed of the POA to inform the public in general that the agent's power has been revoked.
- The copies of the cancellation deed of the POA can also be sent to persons with whom the agent has been interacting on behalf of the

principal so that they cease any business or dealings with the agent.

#### **K. How can you revoke / recall / cancel/ withdraw your POA**

The legal system can address this issue under civil or criminal law, depending on the severity and nature of the misconduct. Potential charges can include fraud, theft, embezzlement, or elder abuse, depending on the specifics of the case

#### **II. Other Vitals:**

1. The Powers-of-Attorney Act, 1882 ('POA Act') applies
2. 'agent' is defined in Indian Contract Act as a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the 'principal'. so the executor of POA is Principal and POA holder is the agent.

#### **III. Cases of misuse of Power of attorney**

##### **1. Suraj Lamp and Industries Pvt Ltd vs. State of Haryana**

The case of Suraj Lamp & Industries Pvt. Ltd. vs State of Haryana revolves around the issue of property transfers through sale agreements, general power of attorney or wills instead of formal deeds of conveyance. Such practices are often used to evade legal obligations such as stamp duty and registration fees. The Court, here, interpreted various sections of the Transfer of Property Act (hereinafter "TPA"), particularly Section 54. The Bench postulated that the TPA under Section 54 considers "registration" to be an indispensable factor for enacting a sale and that a "sale agreement", by itself, was insufficient to create a charge or interest over immovable property. It also asserted that a GPA was merely an instrument for creating an agency – consequently excluding the transfer of title or interest over immovable property; it deemed SA/GPA/will transactions to be "grossly violative of public policy" insofar as they assisted in the avoidance of certain preconditions involved in transfer particularly the registration of property after paying due stamp duties and registration

charges. These transfers were also assailed for facilitating the investment of “black” (or unaccounted) money, thereby promoting income tax evasion. Nevertheless, the Court acknowledged the viability of “genuine” GPA contracts and the creation of charges under “part performance”, subject to Section 53-A of the TPA.

## **2. Mangaben Maganlal Modi vs Jitendrabhai Bhikhabhai Patel on 2 August, 2021**

It is the case of the original plaintiffs that the **power of attorney** i.e. the defendant No.1 **misused the power** and proceeded to execute the sale deed in favour of the defendants Nos.3 to 9 making the defendant No.2 as the confirming party. According to the plaintiffs, the **power attorney** was not supposed to transfer the suit land in any manner and the **power** was given only to manage the suit property.

## **3. Alagappan vs The State Rep. By on 18 December, 2023**

It is the case of the prosecution that the defacto complainant, Gautami Tadimalla had stated in her complaint that the 1st accused, C. Alagappan had cheated her to an extent of Rs.55,00,000/- which amount had been given by her to him in March 2019 to purchase agricultural landed property at Ayngunam Village, Kilpennathur Taluk, Tiruvannamalai District. She had appointed the 1<sup>st</sup> accused C Alagappan as her **power of attorney** by a registered **power of attorney** Document No.1235 of 2015 to effect sale of another property. It had been further stated by her that the 1<sup>st</sup> accused had **misused** the general **power of attorney** and had purchased the property at Tiruvannamalai District in the joint names of the 2nd accused / his wife and defacto complainant.

## **4. Shubha Laxmi Grah Nirman Sah. Sanstha vs Suresh @ Gopal on 15 February, 2018**

Narendra Singh Punia respondent No.2 **misused the power of attorney** dated 13/10/1986 Ex.D / 34 and entered into further agreements of sale with his family members respondent No. 3, respondent No.4 and respondent No.5 who are his wife and two sons. Narendra Singh Punia - respondent No.2 thereafter

filed suits for specific performance of contract against respondent No.1, received notices on behalf of respondent No.1 and thereafter opted not to appear in the Civil Suits and the Civil Suits

### **5. *Ghanshyam v. Yogendra Rathi***

On June 6, 2023, the Supreme Court of India delivered a landmark judgment in the case of on the scope and validity of power of attorney (POA) documents. The Court held that a POA or a Will cannot be recognized as title documents or documents conferring any right in any immovable property.

Further, the non-execution of any document by the power of attorney holder consequent to the POA also renders the said POA useless. This means that even if a power of attorney authorizes the POA holder to sell or transfer immovable property, the POA holder cannot do so without the **principal's express consent and execution** of the necessary documents.

This judgment is significant because it clarifies the legal status of power of attorney documents and their role in the transfer of immovable property. It also puts an end to the common practice of people buying and selling immovable property on the basis of POA documents alone.

#### **REMEMBER**

**“Choose your friends with caution; plan your future with purpose, and frame your life with faith”.**

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