
CHAPTER 81**POWERS OF ATTORNEY****ARRANGEMENT OF SECTIONS**

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CHAPTER 81

POWERS OF ATTORNEY

An Act to make provision with respect to powers of attorney and to enable powers of attorney to be created which will survive any subsequent mental incapacity of the donor. *12 of 1992*

*[Assent 19th May, 1992]
[Commencement 2nd April, 1996]*

1. This Act may be cited as the Powers of Attorney Act, 1992. Short title.
2. In this Act — Interpretation.
 - “enduring power” means a power of attorney created under section 4;
 - “Minister” means the Minister responsible for Legal Affairs;
 - “mental disorder” has the meaning assigned to that expression by section 2 of the Mental Health Act; Ch. 230.
 - “mental incapacity”, or “mentally incapable” means in relation to any person, that the person is incapable by reason of mental disorder of managing and administering his property and affairs;
 - “purchaser” has the meaning assigned to that expression by section 2 of the Conveyancing and Law of Property Act; Ch. 138.
 - “Registrar” means the Registrar or Deputy Registrar of the Supreme Court;
 - “Registry” means the Supreme Court Registry.
3. (1) An instrument creating a power of attorney shall be signed and sealed by, or by direction and in the presence of, the donor of the power. Execution of power of attorney.

(2) Where an instrument creating a power of attorney is signed and sealed by a person by direction and in the presence of the donor of the power, two other persons shall be present as witnesses and shall attest the instrument.

(3) This section applies without prejudice to any requirement in, or have effect under, any other Act as to the witnessing of instruments creating powers of attorney and does not affect any written law relating to the execution of instruments by bodies corporate.

Enduring power of attorney.

4. (1) The authority of a donee given by an instrument creating a power of attorney that —

- (a) provides that the authority is to continue notwithstanding any mental incapacity of the donor; and
- (b) is signed by the donor and a witness to the signature of the donor, other than the donee or the spouse of the donee,

is not terminated by reason only of the subsequent mental incapacity of the donor that would but for this Act terminate the authority.

(2) A power of attorney described in subsection (1) may stipulate that it takes effect on the occurrence of a specified event or contingency including, but not limited to, the subsequent mental incapacity of the donor.

Execution under power of attorney.

5. The donee of a power of attorney may, if he thinks fit —

- (a) execute any instrument with his own signature and, where sealing is required, with his own seal; and
- (b) do any other thing in his own name,

by the authority of the donor of the power; and any instrument executed or thing done by a donee under such power of attorney in that manner shall be as effective as if executed or done by the donor of the power.

Deposit of instrument in the Registry.

6. (1) Subject to subsection (2) an instrument creating a power of attorney the execution of which is verified by an affidavit or a declaration may with the affidavit or declaration be deposited in the registry.

(2) An instrument creating an enduring power shall be deposited in the registry and no enduring power shall be valid unless it has been deposited in the Registry under this section.

(3) A file of the instruments deposited under this section shall be kept in the Registry and any person may search that file and inspect any instrument deposited.

(4) A person may obtain a copy of any instrument deposited in the Registry upon payment of the prescribed fee and that copy may be stamped or marked as an office copy by the Registrar.

(5) A copy of any instrument stamped by the Registrar under subsection (4) shall without further proof be sufficient evidence of the contents of that instrument and of the deposit thereof.

7. Where an instrument deposited in the registry is revoked the Registrar of the court, on being satisfied by affidavit or declaration that the instrument has been revoked, shall endorse on the instrument, a certificate stating that it has been revoked and the date thereof and the instrument shall be deemed to have been duly revoked as from the date of the certificate.

Revocation of an instrument deposited under section 6.

8. (1) If a power of attorney, given for valuable consideration is in the instrument creating the power expressed to be irrevocable, in favour of a purchaser —

Effect of power of attorney, for value made absolutely irrevocable.

- (a) the power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, mental incapacity or bankruptcy of the donor of the power;
- (b) any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, mental incapacity or bankruptcy of the donor of the power, had not been done or happened; and

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- (c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of any thing done by the donor of the power, without the concurrence of the donee of the power, or of the death, marriage, mental incapacity or bankruptcy of the donor of the power.

(2) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Effect of power of attorney for value or not, made irrevocable for fixed time.

9. (1) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser —

- (a) the power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, mental incapacity or bankruptcy of the donor of the power;
- (b) any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be valid as if anything done by the donor or the power with the concurrence of the donee of the power, or the death, marriage, mental incapacity or bankruptcy of the donor of the power, had not been done or happened; and
- (c) neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, mental incapacity or bankruptcy of the donor of the power within that fixed time.

(2) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

10. (1) Any person making any payment or doing any act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become mentally incapable, or bankrupt, or had revoked the power, if the fact of death, mental incapacity, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the same.

Payment by donee under power without notice of death.

(2) This section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3) This section applies only to payments and acts made and done after the commencement of this Act.

11. The Rules Committee constituted under section 75 of the Supreme Court Act may make rules for any of the following purposes —

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- (a) for fixing the fees to be taken in the registry in respect of the powers of attorney deposited in the registry and other matters provided for by section 6 of this Act;
- (b) for prescribing the form and execution of an instrument creating an enduring power;
- (c) for securing that no document is used to create an enduring power which does not incorporate such information explaining the general effect of creating or accepting the power;
- (d) for securing that a document used to create an enduring power include statements to the following effect —
 - (i) by the donor, that he intends the power to continue in spite of any supervening mental incapacity of his;
 - (ii) by the donor, that he read or had read to him the information explaining the effect of creating the power.
- (e) generally for carrying out the objects of this Act.