

Power of Attorney

The role of the Power of Attorney in estate planning

Introduction

It is often imagined that a Will or a Trust are sufficient in estate planning. Most estate planners are mostly interested in how to bequeath their assets to the next generation but forget that they are still alive and may at one point be incapacitated to the point that they lack capacity or that they are very far that they cannot manage their own affairs. Law contemplates that one can be in a position where there are unable to deal with their own estate or just incapacitated to be able to carry on or deal with their own assets. Picture a situation where you are alive but cannot deal with your own assets and so your assets are wasting away just because you have no person authorized to deal with them on your behalf. This is the scenario we shall be dealing with in regard to estate planning.

What is estate planning?

This a grant of legal rights and powers by a person known a "Principal" to a recipient known as the "Agent". The grant of the powers from the Principal to the Agent means that the Agent shall henceforth step into the shoes of the Principal, and act legally for the Principal but only for the powers granted to him through the Power of Attorney.

What are the qualifications of an Agent?

Many people confuse a Power of Attorney to be a document granting powers to an advocate or a legal professional to act on behalf of the owner of the estate. This position is not true. The work of an advocate in this may be limited to helping with the actual creation of the Power of Attorney, but it is also true that they can be granted the Power of Attorney when the Principal deems it fit to do so.

Any natural person having the capacity to contract may execute a Power of Attorney.

What are the requirements for the Power of Attorney?"

To be valid, a Power of Attorney must meet some legal threshold:

- It must bear the date of execution
- It must be signed the Principal or by a person of majority age in the presence and under the directions of the Principal
- It needs to be legalised and acknowledged before a notary public if it is to be used outside Kenya.
- It must be signed by the Agent
- Two witnesses must attest to the execution.

Where can Power of Attorney be used in Kenya?

A Power of Attorney can be used under various circumstances as listed below:

- Litigation
- Signing documents
- Land transactions,
- Dealing with intellectual property
- Bank related transactions
- Estate management

Do I need a Power of Attorney?

Power of Attorney is necessary in many ways and for different reasons for people of different status in society. Below are some of the people that may need a Power of Attorney:

1. Patients

We all prefer a healthy life. We refrain from discussing about ill-health even with our families. But what happens when you walk into the hospital and the doctor announces the bad news? That is the time for you to begin planning the future. Planning the future includes planning your estate for any possible eventualities. Patients who in the foreseeable future may be incapacitated are one the groups of persons that consider power of attorney which will grant to their appointed against the power to deal with their assets in a particular way while they are still alive, even though incapacitated.

2. Students in colleges and universities

A Power of Attorney can be important to a student when planning their estate. In matters of health, in case they fell ill can inform the need to have a Power of Attorney to ensure that the family knows how they wish to be taken care of.

3. Parents

Due to travel for education or even medication decisions in life must continue being made. Responsibilities continue increasing and in case of any eventualities, you do better if you have planned. New parents must not assume this important calling because even while travelling, anything could happen but even better if we have taken care of that through a Power of Attorney.

4. Persons with Businesses

Because life is unpredictable, you will at one time be healthy and the next moment you are indisposed. If you are a business person, you need to let your business to keep on running even while other things take a toll on you. Absence from the work place for a while may be sufficient to bring a whole business empire down. Do not let your business get there. Find a power of attorney for your business so that decisions and transactions can still be undertaken on your behalf even though you are incapacitated.