



RM
RallyMark

RallyMark Legal

Advocates and Legal Consultants

Add: 4th Floor, Premier Building, 9 Shahnajaf Road, Lucknow- 226001,India

E-mails: rupendraporwal@rallymarklegal.com,
porwal_acs@yahoo.com

Website: www.rallymarklegal.com

Written by
Rupendra K Porwal
Managing Partner
B.A., B.Com, FCS, LL.M.(Uni. of Manchester, UK)
Mobile: +91- 80520 45000
Phone: 0522-3075100

1. DEFINITION OF POWER OF ATTORNEY:

- A. Section 2(21) of Indian Stamp Act, 1899 defines that Power of Attorney includes any instrument empowering a specified person to act for and in the name of the person executing it. Power of Attorney is a formal instrument by which one person empowers another to represent him, or act instead of him for certain specified purposes.
- B. Power of Attorney means, the formal authority conferred through deed by one person on another to act as his attorney or agent or legal representative. The powers conferred are set out in the deed may be limited to one transaction or general and unlimited. Even in the later case, authority to exercise important or unusual powers, such as to sell land should be conferred expressly.
- C. A Power of Attorney is usually a special instrument in the form of a separate deed, but it may also form part of a deed containing other matters. For example, a deed of dissolution of partnership often contains delegation of powers from the retiring to the continuing partner, to enable the later to wind up the business and collect the stocks pledged with the bank etc.
- D. The donor of the Power of Attorney is called the principal or constituent; the donee is called the attorney.

2. IMPORTANT ELEMENTS OF POWER OF ATTORNEY:

- A. No particular form of Power of Attorney has been prescribed and all that is necessary that it should indicate with sufficient clarity about the powers given to a specific person to act for and in the name of the person executing it.
- B. Power of Attorney after giving specific powers to the attorney usually end with these general words:

“Generally to do all such other lawful acts and things as my attorney shall think advisable for the purposes aforesaid as fully and effectually in all respects as could do myself”.

It is necessary to point out that these general words do not extend or widen the authority of the power of attorney to do other acts besides those which he is specifically authorized to perform.

- C. Special Power of Attorney should define the object and/or the period for acting by the attorney, so Power of Attorney becomes ineffective on achieving the objective and/or after expiry of stipulated period. It is advisable to mention period in General Power of Attorney as well. The reference of the period in the Power of Attorney will guide other party to know the validity period of Power of Attorney; else other party shall have to assume or attorney has to convince to other party that Power of Attorney has not been revoked/superseded. A donor going/staying abroad should state that Power of Attorney shall be operative during the period of his absence from India.
- D. It is always prudent that the execution of the Power of Attorney should be attested by two witnesses.
- E. Stamp- For the Power of Attorney to be valid and effective, it must be properly stamped as per the stamp duty applicable in the respective state.

If a Power of Attorney is executed outside India but relates to any property situated or to any matter of thing done or to be done in India and is received in India it must be stamped within three months of its arrival in this country.

3. FORMATS OF POWER OF ATTORNEY:

A. GENERAL POWER OF ATTORNEY

KNOW ALL MEN by these presents that I, -----S/o----- resident of -----, do hereby constitute, nominate, and appoint Mr.----- S/o-----resident of -----as my lawful and true attorney (hereinafter referred to as "Attorney");

WHEREAS I, vide sale deed Dated-----,(registered in vol.-----addl vol. ----- at Sub Registrar Office-----) bought a residential plot admeasuring ----- sq. yards located at-----from its rightful owners Mr.----- S/o-----resident of -----, and since then I am in possession of the said plot (hereinafter referred to as "Plot") and I hold complete rights, titles and interests in the said Plot.

AND WHEREAS I am not keeping good health and hence unable to complete various formalities which are required to be done for various transactions and therefore desirous to appoint and nominate my Attorney to do, execute and perform all such deeds including the following acts deeds and things in my name and on my behalf as if the said acts, deeds and things are being done by me, in my presence and under my signatures.

1. To administer control, manage, supervise, look after, and let out the said Plot.
2. To represent in the office of the municipal authorities, and other government and semi-government organizations/ departments and offices, with respect to the above mentioned Plot.
3. To sell, mortgage, lease, hypothecate or otherwise deal with the said Plot and to make , sign and execute and enter into any lease deed(s), agreements, supplementary agreements, sale deeds, and such other document(s) and/or deeds, declarations as may be required in respect of the said Plot with the purchaser, and/or to present the said sale deed(s) and/or documents before the sub-registrar, municipal and other government authorities.
4. To represent before the registration authority for execution, presentation and registration of the sale deed(s) and/or any other document(s) requiring registration and to have them registered and to admit receipts of total consideration and/or the payments specified therein and to admit registration and to receive back the said document(s).
5. To execute all deeds, documents and declarations for mutating the name of the purchaser(s) of the said Plot in the records of the municipal and other authorities concerned in that behalf.

6. And to do all such acts, deeds or things as are or may be required or connected with the aforesaid said Plot. The above powers conferred on the Attorney herein are only enumerative and not exhaustive and the Attorney shall be empowered to do all such further acts, deeds and things which may be required for managing, maintaining, sale, lease, transfer, mortgage of the said Plot at the sole and absolute discretion of the attorneys.

AND I, hereby ratify and confirm all and whatsoever the said Attorney shall lawfully do, or cause to be done by virtue of the powers given by this deed.

IN WITNESS WHEREFORE I have signed and executed this power of Attorney on this _____ day of _____, 20--, at -----, in the presence of the following witnesses.

.....
(Executor)

Witnesses:

1. -----

2. -----

B. SPECIAL POWER OF ATTORNEY

Know all these presents, I, _____, S/o _____, resident of _____, one of the subscribers to the Memorandum and Articles of Association of the Proposed Company, '_____ ("Proposed Company") appoint and authorize Mr. _____, Advocate, Partner of ABC Partners, Advocates and Solicitors, having address at _____, as my Attorneys and authorize him severally to do all or any of the following:

1. To file the Memorandum and Articles of Association of the Proposed Company, Forms 1, 32, 18 and any other documents as may be necessary for the incorporation of the Proposed Company, with the requisite fee, and to make corrections, changes alteration in the above documents or any other documents as may be filed in the above matter.
2. To represent me before the Registrar of companies, (place) and (place) in all the matters connected with the incorporation of the Proposed Company and to collect the Certificate of Incorporation of the Proposed Company or any other document, letter, record, notice etc. and to give acknowledgement for the same.
3. All actions of my Attorneys under this power of attorney shall be binding on me and shall be deemed to have been taken by me.

Date.....

.....
(Executor)

Accepted

.....
(Attorney)

Witnesses

1. _____

2. _____