

The power of the Power of Attorney and mental health

Issued by [Milpark Education](#)

6 Apr 2021

The general perception is that a power of attorney provides for a person to be appointed to sign documentation on your behalf or to manage your affairs when you are unable to do so yourself. Many therefore sign a power of attorney, where they are concerned that they will be unable to make decisions in future, due to failing mental health. Power of Attorneys are also widely used to manage affairs of persons with failing mental health. The important question here is whether the Power of attorney has power beyond mental illness?

While the Power of Attorney is a very useful tool, the “power” of the Power of Attorney is often misinterpreted. The aim of the power of attorney is to lend assistance to persons unable to tend to their financial wellbeing in person, such as physically incapacitated persons or elderly persons having difficulty in moving around.



In South Africa a power of attorney is only valid for as long as the person granting the power, is mentally able to grant these powers or mentally able to make decisions themselves. This means that as soon as a person becomes mentally incapacitated, the power of attorney will lapse.

The power of attorney therefore has no power beyond mental illness. Any contract or action taken, in terms of the power of attorney, on behalf of a person with mental illness is void or invalid.

Who should then manage the affairs of the mentally ill?

A curator/administrator should be appointed to manage the affairs of a person with a mental illness. There is not always a need to have the appointment done in terms of a court order, one can bring an application, in certain instances, to the Master of the High Court to appoint an Administrator, in terms of the Mental Health Care Act 17 of 2002.

The process

The application documentation must be submitted to the Master of the High Court. All relevant supporting documentation, including an application letter, should accompany the application. The letter should contain detail on the following: the mental health related medical certificates or reports, grounds for application, confirming that the applicant had seen the mentally ill person within 7 days of the application, details regarding the estimate property value and annual income of mentally ill person, contact details of a person that could provide further information relating to the mental health status of that person and proof that a copy of the application was provided to the mentally ill person.

On submission of these documents, the Master may appoint an Administrator or an interim Administrator, pending an investigation. The type of appointment will be dependent on the value of the estate and annual income of the mentally ill person. Should an investigation be required, the investigation report should be done by a qualified person, preferably an attorney, social worker, or advocate. Where an investigation is required, an additional 60 days are granted for the submission of the report after which the appointment can be made. It is important to note that an interim administrator will be appointed pending the investigation and that the mentally ill person estate will be liable for the investigation fees.

The appointment of an Administrator is a low-cost exercise compared to appointing a Curator in terms of a court order. The turnaround time is also much faster with a minimum of 14 days from date of application to date of appointment. During the 14 days, the Master will send a notice to the mentally ill person informing such person of intention to appoint an administrator and will attach the application. This person will then have an opportunity to object the application. Where no objections are received the Master will proceed with the appointment.

More information on the application and documentation required to appoint a Curator/Administrator can be found on the website of the Master of the High Court: www.justice.gov.za/master/cur-tut.html

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