



**BERMUDA
1944 : 35**

POWERS OF ATTORNEY ACT 1944

ARRANGEMENT OF SECTIONS

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[15 October 1944]

[preamble and words of enactment omitted]

Interpretation of "person"

- 1 *[omitted]*

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Execution of instruments under power of attorney

2 (1) Subsections (2) and (3) shall have effect and shall be deemed always to have had effect with respect to the execution or doing of any assurance, instrument or thing under a power of attorney.

(2) A person who is the donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and under his own seal (where sealing is required) by the authority of the donor of the power; and every assurance, instrument and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor therefor.

(3) Where any such person as aforesaid is a body corporate, subsection (2) shall be construed as if the reference to the mode (permitted by subsection (2)) of executing or doing any assurance, instrument or thing by the donee of the power of attorney included a reference to the authorized mode of executing or doing any assurance, instrument or thing by the body corporate, including the affixing of the seal of the body corporate (where sealing is required) and attestation.

Payment without notice of death

3 (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 subject to disability or bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy, or revocation was not at the time of the payment or act known to the person making the payment or doing the act.

(2) An affidavit sworn by an attorney before a Justice of the Peace or a Commissioner for Oaths to the effect that he has not received any notice or information of the revocation of such power of attorney by death or otherwise shall, if made immediately before or within three months after such payment or act as aforesaid, be taken to be conclusive proof of such non-revocation at the time when such payment or act was made or done.

(3) Where the donee of the power of attorney is a body corporate the officer appointed to act for the body corporate in the execution of the power may swear the affidavit in like manner as if that officer had been the donee of the power.

(4) This section shall apply in respect of payments and acts made and done before or after 15 October 1944

Power of Attorney during legal incapacity

Application of sections 4 to 11

4 Sections 4 to 11 (inclusive) apply notwithstanding any agreement or waiver to the contrary.

Meaning of "legal incapacity"

5 For the purposes of sections 4 to 11 (inclusive) "legal incapacity" means, in relation to any person, mental infirmity of such a nature as would, but for this Act, invalidate or terminate a power of attorney and "legal capacity" shall be construed accordingly.

Validity of express provision that power of attorney exercisable while donor is without capacity

6 A provision in a power of attorney expressly stating that it may be exercised during any subsequent legal incapacity of the donor is valid and effectual, subject to such conditions and restrictions, if any, as are contained therein and are not inconsistent with this Act.

Witness not to be the attorney or his spouse

7 A power of attorney that contains a provision referred to in section 6 shall be executed in the presence of a witness who is not the attorney or the attorney's spouse.

Revocation

8 A power of attorney that contains a provision referred to in section 6 may be revoked by the donor at any time while he has legal capacity.

Effect of the exercise by the Court of its powers under Part IV of Mental Health Act 1968

9 A power of attorney that contains a provision referred to in section 6 becomes invalid and of no effect, notwithstanding such provision, on the exercise by the Court of any of its powers under Part IV of the Mental Health Act 1968 [*title 11 item 36*].

Passing of accounts

10 (1) Where a power of attorney contains a provision referred to in section 6 and the donor is subsequently without legal capacity, if it appears to any person having an interest in the real or personal property of the donor in the event of the death intestate of the donor that it is desirable in the best interests of the donor or his property to apply to the Supreme Court for an order to render his accounts for transactions involving the exercise of the power during the incapacity of the donor, that person or any other person permitted by the Court may, during

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such incapacity, do so and the Court may order the attorney to render such accounts or such part thereof as is provided in the order.

(2) Where an order is made under subsection (1), the attorney shall file his accounts in the Registry and the proceedings and practice upon the rendering of the accounts shall be the same and of the like effect as the rendering of estate representatives' accounts to the Court under the Administration of Estates Act 1974 [*title 26 item 12*].

(3) The Attorney-General may apply under subsection (1) in the same manner as a person interested in the property of the donor.

Substitution of attorney

11 (1) Where a power of attorney contains a provision referred to in section 6 and the donor of the power subsequently is without legal capacity, if it appears to any person having an interest in the real or personal property of the donor in the event of the death intestate of the donor that it is desirable in the best interests of the donor or his property to apply to the Supreme Court for an order substituting another person for the attorney named in the power of attorney, that person or any other person permitted by the Court may, during such incapacity, do so and the Court may make the order or such other order as it considers proper.

(2) The substitution of another person for an attorney under subsection (1) shall have the like effect as the substitution of another person for a trustee under the Trustee Act 1975 [*title 26 item 51*].

(3) The Attorney-General may apply under subsection (1) in the same manner as a person interested in the property of the donor.

(4) The attorney may apply under subsection (1) in the same manner as a person interested in the property of the donor, on giving notice to all persons having an interest in the property of the donor and the Court may make such order as it sees fit in the circumstances of the case.

[Amended by
1986 : 23]