**POWER OF ATTORNEY IN NIGERIA**

Power of Attorney in Nigeria is a legal document that allows an individual to delegate their authority to another person who can make decisions and carry out instructions on their behalf. The individual granting the power is known as the “Principal”, while the person receiving the power is known as the “Attorney”. Similarly, the person who donates the power is called the ‘Donor’ (Principal) while the person to whom the power is donated is called the ‘Donee’ (Attorney).

**FEATURES OF POWER OF ATTORNEY**

1. A Power of Attorney (POA) is an instrument of delegation, not an instrument of alienation. It cannot be used to transfer an interest in land.  
   *See:* **Ude v. Nwara[[1]](#footnote-1)**
2. A POA is typically executed in the form of a **Deed Poll**—that is, an instrument signed only by the donor.  
   *Note:* It is advisable for the Donee to also sign the POA if consideration was given or if the POA was issued in fulfillment of an obligation.
3. A POA must be given **in writing**; it cannot be created orally, such as via a phone call.  
   *See:* **Raine v. Odibo[[2]](#footnote-2)**.
4. Although a POA generally need not be executed as a deed, it must be by deed if the donee is authorized to perform acts that themselves require a deed (e.g., selling land, creating a legal mortgage, or granting a lease for more than three years).  
   *See:* **Abina v. Farhat[[3]](#footnote-3)**

For a donee to transfer property by deed, the POA appointing him must itself be executed as a deed.

1. As long as the donee acts **within the scope** of the authority granted by the POA, he incurs no personal liability; any resulting liability rests on the donor.  
   *See:* **Ude v. Nwara[[4]](#footnote-4)**.
2. The donor of a POA retains the right to exercise the powers conferred on the donee. Such actions by the donor imply a **revocation** of the POA.  
   *See:* **Chime v. Chime[[5]](#footnote-5)**.
3. The donee of a POA cannot sue in his own name; any legal action must be instituted in the name of the donor.  
   *See:* **Ude v. Nwara[[6]](#footnote-6)**.
4. A POA does **not transfer an interest in land** and is **not an instrument of alienation**; therefore, it does **not require the Governor’s consent** under the Land Use Act.  
   *See:* **Ude v. Nwara[[7]](#footnote-7)**.
5. Where a POA concerns **family property**, it must be executed by the **head of the family** (either solely or jointly with the concurrence of the principal members of the family). Failure to comply renders the POA **void**.  
   *See:* **Ajamogun v. Oshunrinde[[8]](#footnote-8)**

**CIRCUMSTANCES REQUIRING A POWER OF ATTORNEY**

The following are reasons and instances where a Power of Attorney is required:

1. Where the donor is physically unavailable.

2. Where an expert’s skills are required. E.g., an estate surveyor or a solicitor.

4. Where Donee is to execute other instruments [[9]](#footnote-9).

5. Where a mortgage is by sub-demise.

6. To institute a case on Donee's behalf except, the defense in criminal cases[[10]](#footnote-10).

7. To collect rents and proceeds of sale from tenants/buyers.

8. A Power of Attorney can be used for buying and selling land on behalf of the donor

9. Where the donor suffers from Ill-health or physical disability (except mental disability). The donor must have capacity in law.

**TYPES OF POWER OF ATTORNEY**

There are 2 types of Power of Attorney; It could be General or Specific

1. General: Here, it is broadly worded to authorize the donee to act on all matters relating to the subject matter. Example*:* “To do anything that the donor may lawfully do.”
2. Specific: Here, it is limited to particular and clearly defined acts that the donee is authorized to perform.

**STAMPING**

Concerning stamping, a Power of Attorney attracts a fixed stamp duty. Generally, it attracts a fixed stamp duty of N50.00. However, In Lagos, it is N3.00. See for example, the Schedule to the Stamp Duties Law, Cap 181, Laws of Lagos State 1994.

Stamping precedes registration and both are essential where the power of attorney is to confer interest in land or landed property.

**REGISTRATION**

Whether or not a power of attorney is registrable depends on whether it qualifies as a registrable instrument under the Land Instrument Registration Law applicable to the State where it is created**. See Uzoechi v. Alinor[[11]](#footnote-11).**

A POA is a registrable instrument under the Land Instruments Registration Law of various state. For example, in Lagos and Abuja, it is a registrable instrument. **See S.56 of LRL of Lagos State.**

It is essential to take note ofthe implication of the decision in **Benjamin V Kalio[[12]](#footnote-12)**. The position of the law that non-registration of an instrument renders it inadmissible in evidence like any other deed (**Ojugbele v Olasoji**) has changed by virtue of the Supreme Court decision in **Benjamin v Kalio[[13]](#footnote-13)**. Thus, non-registration does not ipso facto affect the admissibility of the document.

**REVOCATION OF POWER OF ATTORNEY**

A power of attorney may be revoked in three ways:

**i). Express Revocation:**  
This occurs when the revocation of the Power of Attorney is clearly communicated, typically in writing. The form that the revocation must take depends on how the original Power of Attorney was created.

* If the POA was executed by deed, the revocation must also be effected by deed.
* If the POA was granted orally, it may be revoked orally.

Where there is an express revocation, the attorney’s authority continues until he receives notice of the revocation.  
Accordingly, until such notice is communicated to him, any actions taken by the attorney under the authority of the Power of Attorney remain valid, and he incurs no liability to the donor or to third parties.

**ii). Implied Revocation:**  
 It occurs where the donor, after granting a Power of Attorney to a donee, subsequently deals with the subject matter in a manner that makes it impossible for the donee to exercise the authority conferred under the POA.  
The mere grant of a Power of Attorney does not extinguish the donor’s right to perform the same acts authorized under the POA or otherwise deal with their property as they wish.  
For example, if a landowner grants a Power of Attorney authorizing an agent to sell a piece of land but later sells the land himself before the agent acts, it is implied that the Power of Attorney has been revoked.

**iii). Revocation by Operation of Law:**  
Revocation by operation of law occurs when certain events, as provided by law, automatically terminate a Power of Attorney. If the donor (or principal) dies, becomes insane, bankrupt, or suffers any other form of legal incapacity while the Power of Attorney is still in effect, the Power of Attorney is thereby revoked without the need for any further act.

**CONCLUSION**

In conclusion, a power of attorney can be a useful tool for individuals who need to delegate their authority to another person, whether it is for a short period of time or an extended time period. However, it is important to understand the consequences of granting a power of attorney and to carefully consider who to grant it to. By following the proper steps and executing the document correctly, a power of attorney can provide peace of mind and help ensure that the principal's affairs are handled in accordance with their wishes.

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1. (1993) 2 NWLR (Pt.278) p. 638 - 664 [↑](#footnote-ref-1)
2. (2012) LPELR-14261 (CA) Page 74. 74 [↑](#footnote-ref-2)
3. (1938) 14 NLR 17 [↑](#footnote-ref-3)
4. Ibid [↑](#footnote-ref-4)
5. (2001) 3 NWLR (PT 701) 527 AT 549 [↑](#footnote-ref-5)
6. ibid [↑](#footnote-ref-6)
7. ibid [↑](#footnote-ref-7)
8. (1990) 4 NWLR pt 144, pg 407 [↑](#footnote-ref-8)
9. Section 46 (1) of Conveyancing Act; Section 141(1) of Property and Conveyancing Law. [↑](#footnote-ref-9)
10. ibid [↑](#footnote-ref-10)
11. (2002) 2 NWLR (PT 753) 217 AT 274 [↑](#footnote-ref-11)
12. (2018) 15 NWLR (Pt. 1641) 38 [↑](#footnote-ref-12)
13. ibid [↑](#footnote-ref-13)