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IMPACT OF POA ON PROPERTY TRANSFERS AND REAL ESTATE TRANSACTIONS

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Abstract:

Power of Attorney (POA) A POA is a legal document, that allows an individual to delegate someone to act on his/her behalf in a variety of matters including property transactions. In India, use of POA for the sale and purchase of property is widespread. This will allow people to delegate the future management of their property transactions to a representative they trust so that their processes can be carried out even if they are not there to do it personally. This Article is a complete guide on how to actually use a POA for property transactions (when buying property in India), from personal experience. This includes the number of different types of POA in property transactions, the legal prerequisites for writing and recording a POA, and the rights and obligations of the agent appointed. It also deals with some of the risks of granting property transaction powers, and the legal safeguards available to you to remove or change the POA. This guide is written with a view of helping people detail a power of attorney to buy and sell property; so as to ensure that property transactions of such persons are well managed in that their rights are fully respected during real estate transactions.

What is a Power of Attorney (POA)?

The Powers of Attorney Act of 1882 and the Indian Stamp Act of 1899 are two Indian laws that address the idea of POA. According to these laws, a power of attorney (POA) designates a particular individual to act on behalf of the party carrying out the transaction. A Power of Attorney (POA) is an important legal document that enables another person (known as the agent or attorney-in-fact) to make a decision on your behalf in your absence. This is especially useful for the elderly and people who want to make sure that a specific person can take over what they are doing when they become unable to make a decision themselves. If you create a POA, you ' appoint someone to do it all (do the same property for you, or selling, rent, safety, security of your home, or from medical decisions, and can be drawn from the bank accounts, money from the creditor or buy a car for you). POAs may give the agent very broad authority or narrow authority depending on the language of the document. This can be managing the simple economic transactions of every day to deciding on existence-saving scientific treatments.

In real estate transactions, a Power of Attorney (POA) is crucial because it enables people to appoint someone to act on their behalf. Those with physical limitations, geographic restrictions, or particular personal preferences will find this especially helpful. Using a POA to appoint a reliable agent makes the process of purchasing, selling, or managing real estate easier to navigate. The complexity of power of attorney (POA) in real estate is examined in this article, which also covers the various forms of POA, how to draft a POA for a property transaction, how to choose the best agent, how to follow state laws, the significance of notarization, and the usefulness of expert advice.

Recognizing the Power of Attorney's Function in Real Estate

A Power of Attorney (POA) is a legal document used in real estate that gives an agent the authority to make decisions regarding the principal's property. The principal can avoid physically being present for each transaction or decision thanks to this arrangement. A POA handles a range of real estate-related tasks, including buying, selling, negotiating, managing rental properties, fixing and remodelling, making payments, and handling legal issues. The principal guarantees the efficient and effective handling of these responsibilities by designating a reliable agent. For instance, an elderly person can designate a dependable relative to act as their agent if they are unable to actively participate in the sale of their property. After that, this agent can handle every part of the sale, from listing the property to negotiating with buyers, making sure everything goes smoothly and doesn't require the principal to be present in person.

Take the example of Mrs A, an elderly woman who wishes to sell her stunning beachfront home. She finds it physically difficult to be involved in real estate transactions because of her advanced age. In these kinds of circumstances, a POA is quite helpful. Through a POA agreement, Mrs A can designate Emily, her dependable daughter, as her agent. This eliminates the need for Mrs A's physical presence and enables Emily to handle every part of the real estate transaction, from listing the property to negotiating with potential buyers. Similarly, busy professionals who lack the time to manage their real estate affairs can greatly benefit from a Power of Attorney (POA). For instance, Mr. C, a successful lawyer, owns multiple rental properties. Managing these properties, dealing with tenants, and handling repairs can be very time-consuming. By appointing a capable agent through a POA, Mr. C can delegate these management tasks to someone with more expertise or availability. This delegation allows him to focus on his legal career without neglecting his real estate investments. The agent, acting on Mr. C's behalf, can efficiently handle tenant issues, property maintenance, and financial matters, ensuring that the properties are well-managed. This

arrangement provides Mr. C with peace of mind, knowing that his properties are in capable hands while he concentrates on his professional responsibilities.

Power of attorney in real estate transactions can also be very convenient for people who live somewhere else. Consider Mr. and Mrs. D, a couple who own a vacation property in a different state. They find it impractical to handle real estate matters in person because they live in a different city. The Smiths can be sure that their real estate matters are handled even when they are far away by designating a reliable friend or relative as their agent through a power of attorney.

A Power of Attorney (POA) can be extremely helpful for people whose health conditions or disabilities prevent them from managing real estate matters. Think about Mr. Thompson, a business owner with a physical impairment. Although he is unable to manage the project himself, he wants to make the property more accessible through renovations. Even though he can't be there in person, Mr. B can make sure the renovations are done to his specifications by designating a capable agent through a POA. The agent is able to oversee the work, communicate with contractors, and guarantee that Mr. Thompson's requirements are met in every way. With this arrangement, Mr. B can overcome the obstacles posed by his disability and accomplish his renovation goals while still maintaining a well-maintained and accessible property.

Who Can Benefit from a Power of Attorney in Real Estate Transactions?

Many people can benefit greatly from having a Power of Attorney (POA) in real estate, including:

- i. To ensure seamless transactions without requiring their physical presence, elderly individuals who may find it physically difficult to actively participate in real estate transactions can rely on a dependable agent to handle their affairs.
- ii. A POA can be used to appoint an agent for busy professionals who don't have the time to manage every part of their real estate transactions. This gives them the freedom to assign duties like maintenance, tenant relations, and property management, allowing them to concentrate on their main careers.
- iii. It is inconvenient or impractical for people who live elsewhere to handle real estate transactions in person. With a POA, they can designate an agent to handle local property issues and transaction management on their behalf.
- iv. A POA can be helpful to property owners who want to assign management responsibilities to someone who is more available or knowledgeable. They can make sure their properties are properly cared for and managed by selecting an experienced agent.

- v. A POA can be used by people who are unable to manage their own real estate affairs due to health concerns or disabilities to designate an agent. This allows them to make sure that, in spite of their physical limitations, their property affairs are managed in accordance with their wishes.

Examining various types of Power of Attorney options.

People can choose from a variety of Power of Attorney (POA) forms for real estate transactions, each of which gives the agent varying degrees of authority. The agent is able to represent the principal in a variety of real estate-related matters thanks to these POAs. Choosing the appropriate POA requires an understanding of the available options. In this article, we'll look at a few different POA kinds and the unique authority they give agents when dealing with real estate.

- A. **General Power of Attorney:** An extensive document known as a general Power of Attorney (POA) gives the agent wide authority to act on behalf of the principal in almost all real estate-related situations. When the principal wishes to give someone else complete control over all aspects of their real estate affairs, they usually use this kind of POA. Purchasing or selling real estate, overseeing rental properties, and making financial decisions regarding real estate investments are a few examples of these activities. The agent has great freedom when dealing with a general POA, as it enables them to act without requiring individual authorization for every transaction. For principals who might not be able to personally supervise their real estate operations because of travel, health concerns, or other obligations, this arrangement is especially advantageous. From negotiating sales and leases to managing property maintenance and covering associated costs, the agent is capable of handling a broad variety of responsibilities with efficiency.
- B. **Specific Power of Attorney:** A specific Power of Attorney (POA), as opposed to a general POA, gives the agent authority over a specific transaction or certain areas of real estate matters. When the principal needs to assign authority for a particular task, like negotiating a lease, signing papers for the purchase or sale of a property, or managing specific property management duties, they usually use this kind of POA. The agent's authority is limited to the powers specified in a specific power of attorney (POA). The principal has more control over the delegation of their real estate affairs thanks to this targeted approach, which guarantees that the agent can only act within the specified scope. For principals who need help with certain transactions but don't want to give up complete control over all of their real estate affairs, this arrangement is perfect.

- C. **Springing Power of Attorney**: One special kind of POA that only becomes effective when a particular circumstance or event takes place is the springing POA. This occurs frequently in real estate when the principal is rendered incapable of managing their real estate affairs, such as by becoming incapacitated. The springing POA "springs" into action and gives the agent the power to act on behalf of the principal when the predetermined condition is satisfied. This kind of POA protects the principal's interests by ensuring that the agent's powers are only used when required. By guaranteeing that the principal maintains authority over their affairs until they are actually unable to do so, the agent assures peace of mind. At that point, the agent takes over to handle transactions, property management duties, or other real estate matters as required. When the principal is unable to manage their own real estate needs, this targeted activation helps safeguard them while making sure those needs are handled properly.
- D. **Durable Power of Attorney**: Even in the event of the principal's incapacitation, a durable power of attorney (POA) keeps its validity. This guarantees that even in the event that the principal is unable to make decisions or take care of their own affairs, the agent will still have the authority to handle real estate matters. In the event of unforeseen events, a durable POA is a useful tool for guaranteeing continued support for real estate transactions and management. Regardless of the principal's ability to act on their own, it provides peace of mind by ensuring that a reliable person is authorized to act on their behalf.
- E. **Limited Power of Attorney**: A limited power of attorney (POA) gives the agent control over particular property-related decisions or actions. When the principal wants to assign authority for a specific task or a brief duration, they frequently utilise this kind of POA. For example, a principal may give their agent a limited power of attorney (POA) to sell a particular property while the principal is away. By allowing for targeted delegation for particular needs, guarantees that the principal's real estate affairs are managed without giving the agent complete control over all of their real estate matters.

How is a property sold using a Power of Attorney?

Power of attorney (POA) transactions involving real estate are frequently designed to evade legal requirements. This practice gained popularity in the 1990s as the real estate market expanded. Consequently, the matter had to be heard by the Supreme Court (SC), which resulted in a historic decision in 2011. The Supreme Court ruled that sales of real estate made under general powers of attorney (GPA) are not legally valid. The Court underlined that in property transactions, only registered sale deeds have legal standing.

This decision made it clear that transactions carried out through GPA are not deemed legitimate transfers of property ownership because they lack the requisite legal sanctity. The ruling emphasised how crucial it is to follow the correct legal processes, particularly the requirement for registered sale deeds, in order to guarantee the validity and legality of real estate transactions. The SC did this in an effort to protect the integrity of property laws and stop the abuse of GPA in real estate transactions. This decision has important ramifications for both buyers and sellers of real estate, highlighting the necessity of adhering to established legal procedures in order to safeguard their rights and guarantee the legality of their transactions.

Is selling of property using Power of Attorney legal?

It is not legal to transfer any right, title, or interest in real estate through a power of attorney (POA). Acknowledging this, the Indian Supreme Court issued an order in 2011 directing municipal authorities not to register or alter properties using only POA documents. The Supreme Court did, however, also recognise the legality of transactions carried out with a general power of attorney (GPA). The Court made it clear that impacted parties are free to use registered deeds of conveyance to complete their property title.

This decision makes a distinction between the legal requirements for transferring property ownership and the use of POA for administrative purposes. The Court made clear that although a POA can help with some property-related tasks, it cannot take the place of a registered sale deed, which is necessary for the official transfer of ownership. The Supreme Court sought to ensure that all transfers complied with legal requirements and to stop the abuse of power of attorney in real estate transactions by reiterating this distinction.

This ruling emphasizes the significance of registering deeds in order to create unambiguous and legitimate property titles, which has significant ramifications for both buyers and property owners. It protects the integrity of real estate transactions by reiterating the requirement that the legal transfer of property rights follow prescribed registration procedures.

In the case of **Suraj Lamp & Industries Ltd v. State of Haryana**¹, it was held that “*a transfer of immovable property by a way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance duly stamped and registered as required by law, no right, title, or interest in an immovable property can be transferred.*” (Para 18)

¹ Suraj Lamp & Industries (p) Ltd. V. State of Haryana (2012) 1 SCC 656

It was also held that “any contract of sale (agreement to sell) which is not a registered deed of conveyance would fall short of the requirements of Section 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under section 53-A of the TP Act). According to the TP Act, an agreement for sale, whether with possession or without possession, is not a conveyance.” (Para 19, 16 and 24).

It was also stated, “A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property...”

As per the Supreme Court, if a Power of Attorney (PoA) is executed for the sale of a property, it has to be registered. Moreover, a notarized PoA is admissible as evidence in court. Nevertheless, state regulations may differ. In Gujarat, for example, the Gujarat Registration (Amendment) Bill requires the registration of notarized PoA documents. This guarantees legal observance and reinforces the validity of property transactions involving a PoA, indicating the significance of conforming to state regulations for appropriate documentation and registration.

Position of Minor with regards to Power of Attorney

Minors, who are defined as those under the age of 18, are prohibited from appointing a Power of Attorney (POA) by the Hindu Minority and Guardianship Act (HMGA) and the Guardians and Wards Act (GWA) because they lack the legal capacity to sign contracts or other legal agreements. Instead, the minor's property and affairs are under the management of a legal guardian, who may be chosen by the court or designated in accordance with the HMGA. Although they cannot assign these duties through a POA, guardians are still able to make decisions on behalf of the minor.

The guardian appointed by the court is responsible for acting in the minor's best interests, and with the consent of the court, they can handle all necessary legal and financial transactions. When it comes to succession, guardians oversee the property that minors inherit until they become adults, making sure that it is managed and protected in accordance with the law and their fiduciary obligations.

The Hindu Minority and Guardianship Act's definition of "guardian" was scrutinised by the Supreme Court in the 1999 case of **Githa Hariharan v. Reserve Bank of India**². The Court decided that "guardian" refers to both parents, meaning that one parent may serve as a minor's guardian. This decision affirms that minors cannot make independent legal decisions, such as

² Githa Hariharan v. Reserve Bank of India (1999) 2 SCC 228

designating a power of attorney, and emphasises the crucial role that parental guardianship plays in society. This decision highlights how legally minors cannot enter into such important contractual agreements without the consent of their parents.

Numerous significant Indian case laws confirm that minors cannot designate a power of attorney and that their guardians must oversee their affairs in person. The court's decision in **Kanhaiya Lal vs. Dr. D.R. Banaji (1958)**³ underscored the non-transferable nature of guardianship duties, holding that a guardian must act in the minor's best interests and cannot assign their responsibilities through a power of attorney. In a similar vein, the court stressed in **Vimala Devi vs. National Insurance Co. Ltd. (1988)**⁴ that a guardian cannot delegate a POA to handle a minor's property; instead, the guardian must manage it responsibly.

This was further supported by **the N. Sarada v. M.K. Pratap Kumar (1998)**⁵ case, which mandated that any guardian selling a minor's property need prior court approval to ensure the sale is in the minor's best interest. When taken as a whole, these cases highlight the need for guardians to follow the law and actively oversee the affairs of minors.

The Importance of Power of Attorney (POA) in India's Real Estate Transactions.

A Power of Attorney (POA) is a legal document that gives one person (the Attorney-in-fact) the right to act in real estate transactions on behalf of another person (the Principal). A power of attorney (POA) is an essential legal document in India that is used when purchasing or selling real estate. In India, a POA is necessary for real estate transactions for the following main reasons:

1. **Convenience**: The Principal can assign the duty of managing property transactions to a dependable agent by executing a Power of Attorney (POA). This simplifies the handling of property affairs and increases the efficiency and convenience of the entire transaction by greatly reducing the need for the Principal to be physically present at every stage of the process.
2. **Flexibility**: An attorney-in-fact may limit their duties to those necessary for the property transaction by customising a Power of Attorney (POA) to meet their unique needs as the Principal. This customisation guarantees that the interests of the Principal are accurately

³ Kanhaiya Lal vs. Dr. D.R. Banaji (1958) AIR 725

⁴ Vimala Devi vs. National Insurance Co. Ltd. 1988

⁵ N. Sarada v. M.K. Pratap Kumar (1998)

served, giving the Attorney-in-fact the necessary authority to oversee certain areas of the transaction while keeping overall process control.

3. **Efficiency**: By empowering the Attorney-in-fact to act on behalf of the Principal, a Power of Attorney (POA) improves the efficiency of the property transaction process. As a result, the Principal would need to spend less time and energy managing the transaction, which enables the completion of required tasks more quickly and efficiently. The POA simplifies the procedure by assigning duties, guaranteeing that transactions are completed on time and efficiently.
4. **Risk management**: Through the formal authorisation of the Attorney-in-fact to act on behalf of the Principal, a Power of Attorney (POA) helps reduce the risks associated with property transactions. This legal authorisation guarantees the legitimacy of the Attorney-in-fact's actions and their accountability for their choices and behaviour. The Principal can lower potential risks and make sure the transaction is handled responsibly and in their best interest by designating a trusted representative to handle the transaction.
5. **Compliance**: In order to guarantee that a property transaction in India is both legally valid and enforceable, a Power of Attorney (POA) must abide by all applicable legal requirements. The POA safeguards the interests of the Principal and ensures that the property transaction proceeds without hitches by guaranteeing that the actions taken by the Attorney-in-fact are approved by the law by adhering to these legal standards.
6. **Continuity**: In the event that the Principal becomes incapable of managing the property transaction or dies, the Attorney-in-fact may carry on handling it thanks to a Power of Attorney (POA). This guarantees the uninterrupted flow of the transaction, protecting the Principal's interests and advancing the agreement. The POA makes it possible for duties to be transferred smoothly, avoiding any delays or issues that might result from unanticipated changes in the Principal's situation.

Recommendations

Presenting the Power of Attorney (POA) to the lender and title underwriter is essential when utilising one in a real estate transaction in order to get their approval. It's also a good idea to get in touch with the principal directly to make sure they approve of and are aware of the agent handling the transaction on their behalf. It is advised to get in touch with the principal's family members if they are incapable of communicating due to their incapacity in order to confirm the authenticity of the POA and make sure the agent has the required authority to purchase or sell the property.

A POA loses its validity upon the principal's death, which is another important thing to keep in mind. Legal authority to handle real estate transactions on behalf of the estate rests only with the executor or administrator of the principal's estate following their death. In doing so, any complications or disagreements about the administration of the estate's assets are avoided and it is ensured that the transactions are carried out in compliance with the law and the deceased's wishes.

Conclusion

In conclusion, a Power of Attorney (POA) is a crucial legal instrument that enables people to assign the administration of their real estate transactions to a reliable agent when purchasing or selling property in India. Property transactions can be handled more smoothly and effectively with this delegation, particularly in situations where the Principal is unable to be present. It is imperative that the terms and restrictions specified in the POA be followed, as well as all legal requirements, in order to guarantee that the Attorney-in-fact acts within their designated authority. By doing this, the Attorney-in-fact can protect the Principal's interests and oversee the property transaction in an efficient manner. Following these rules correctly ensures that the deal goes through smoothly and in line with the law, protects all parties involved, and helps maintain legal validity.

