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Power of Attorney and Mandate in Mexico

Conferral of a power of attorney or a mandate in Mexico is accomplished in a legal transaction that needs to be carried out carefully and knowledgeably.

This posting is intended to provide a simple explanation of the scope of authority and powers that an attorney-in-fact or agent would have depending on the kind of power of attorney conferred.

It will further include how to revoke the powers of attorney that are conferred.

What is representation?

Representation refers to the powers and authority of an individual to act, to bind or make commitments, and decisions in the name or on behalf of another [1].

What is a power of attorney?

A power of attorney is the conferral of powers and authority by a person, known as the "grantor" (or the represented party), to a person known as the "attorney-in-fact" (or legal representative), in order that the latter may act in behalf of the former, said conferral being executed unilaterally, i.e., the attorney-in-fact does not appear at the granting of the power of attorney, if not notified subsequently. Once the attorney-in-fact accepts the power of attorney, such becomes a mandate or a commission.

What is a mandate?

The mandate is a contract which has as its purpose performance obligations consistent in the execution of legal acts.

What is the difference between a Power of Attorney and a Mandate?

Power of Attorney	Mandate
It is a unilateral declaration of intent.	It is a contract.
It has as its purpose performance obligations, consistent in the performance of legal acts that affect the patrimony of the Grantor, and therefore is representative.	It can be either representative or without representation.

What kinds of mandates exist?

There are four (4):

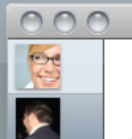
a) Representative: When the mandate or commission granted includes a power of attorney, the agent (attorney-in-fact or legal representative) directly represents the principal (grantor or represented party) and the acts/transactions executed by the agent shall directly affect the patrimony of the principal, being that such agent acts in the name and on behalf of said principal.

b) Without representation: When the agent and the principal have a business unfamiliar to a third party, and the agent acts in his own behalf. Like when, for example, let us say that a person wants to acquire a real property and the seller wants to sell such real property at a higher than market price, the buyer (principal) will then execute a contract with another person (agent) in order for the latter to conduct the purchase transactions/negotiations or may even purchase the real property in his own name and subsequently re-convey same to principal.[2]

c) General: When there is no limitation whatsoever. Among the general powers of attorney, there are the following:

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1. (General) Power of Attorney for Litigation and Collections. This type of power of attorney authorizes the attorney-in-fact to act as a legal representative in judicial and extra-judicial (out-of-court) proceedings.

2. (General) Power of Attorney for Acts of Administration. This type of power of attorney authorizes the attorney-in-fact to carry out duties that imply administrative acts/transactions (and not acts of disposition), such as accepting payments, agreeing to the payoff (settlement) of a mortgage or other record/registry, accepting the payment for the respective debt obligation, leasing out of property over a period for up to five (5) years, accepting advance rental payments over a period for up to two (2) years, loaning money secured by a mortgage lien, and accepting donations, inheritance (estate) and legacies.[3]

3. (General) Power of Attorney for Acts of Ownership. To donate, sell and, in general, transfer (convey title to) or otherwise dispose of property (in particular real property, valuable furniture, and jewelry), as well as rights (in particular in rem rights), pledge, mortgage or encumber rights and property in any other way (in particular real property), lease out property over a period for more than five (5) years, accept advance rental payments over a period of more than two (2) years, make reference to (to express remission for legal purposes), refuse/decline inheritances, pay off (settle) mortgages, its record/registry and extinguish in rem rights, post bond/guarantee and accept borrowed money (short money); to agree to the terms of (reach settlements) and accept (be bound by) the obligations in arbitration, and to comply with the lawsuit (civil action) concerning real property, etc.[4]

d) Special. This power of attorney is limited to a specific legal act/transaction. The limitations should be expressly included in the mandate.

Is there any formality for granting powers of attorney or mandates?

Article 1715 of the Civil Code of the State of Yucatan stipulates that the mandate should be granted before a Notary Public through a public notarial instrument:

I.- When same is "General".

II.- When the interest of the business for which the power of attorney or mandate is conferred exceeds the limit authorized to public notaries by the Law on Notarial Practice.

III.- Whereby when, the agent needs to execute, in the name of the principal, any act which, pursuant to the law, must be recorded in a public notarial instrument, like for example, when granted to a person in order to appear at the execution of a real property deed of sale.

What power of attorney is needed for signing checks or promissory notes?

There is a representative power of attorney regarding currency exchange matters, which confers powers and authority in order to issue and sign negotiable instruments (check and promissory note, among others).

This power of attorney is regulated by Article 9 of the General Law on Negotiable Instruments and Credit Operations, and is conferred by means of a power of attorney registered in the Registry of Commerce (general power of attorney) or by a simple written declaration directed to the third party who should have contracted the representative (special power of attorney).

Can the powers of attorney be revoked?

The mandate may be revoked whenever the principal so desires. Now then, irrevocable powers of attorney exist, but only in the following cases:

1. When conferred as a condition set in a bilateral contract. In other words, when it is presumed in the mandate that there is a pre-existence of another contract in which it is agreed to confer a mandate/commission to a specific person, namely, the condition is that a mandate be granted.[5]

2. When it is a means to comply with an obligation already contracted, for example, the person who already paid full price for real property, but for some reason cannot have the title deed formally recorded in their name immediately.[6]

How else can powers of attorney be terminated?

Pursuant to the provisions of Article 1752 of the Civil Code of the State of Yucatan, the mandate terminates:

I.- Due to revocation.

II.- Due to resignation of agent.

III.- Due to the death of the principal or the agent.

IV.- Due to the incompetence of one or the other.

V.- Due to expiration of the term or completion of the business for which it was granted.

Whether the principal revokes or terminates the mandate, it should demand the return of the instrument or writing evidencing the mandate and all documents with respect to the business or businesses entrusted

to the agent.

Can powers of attorney be granted abroad and still be valid in Mexico?

Yes. Those countries that signed the Hague Treaty of 1965 use the Apostille, which is a document affixed to the power of attorney and which certifies the authenticity of the signature, the capacity in which the person signing the document has acted and, when applicable, the identity of the seal the document bears of the person before whom the power of attorney was signed, for example, a notary in the United States.

In those countries that did not sign the Hague Treaty of 1965, can powers of attorney be granted which will be valid in Mexico?

Yes. Once granted, the powers of attorney will be authenticated or certified by the Mexican Embassy or Consulates. It will likewise be valid to execute the powers of attorney with an Ambassador or Consul, by virtue of these officers having the authority to attest to documents, that is, they can validly act in the capacity of a Notary Public.

I am a foreigner and do not speak Spanish, can I execute a power of attorney in Mexico?

Yes, as long as someone appears with you at the execution of a real property deed of sale where the power of attorney is executed and conferred, in order for the latter to translate what the Notary Public drafted in the document of record.

FINAL COMMENTS

Having read the foregoing, you dear reader will notice that the conferral of a power of attorney or a mandate is not something that should be taken lightly.

It is important that every time a power of attorney is to be executed and conferred, you do the following:

1. Keep a certified copy of the power of attorney in case you should need it, since the attorney-in-fact or agent keeps the original.
2. If you do not speak Spanish, request to be given a translation of the power of attorney prior to the signing date. In case the translation cannot be done in sufficient time, request that someone verbally interpret same at the time of signing.
3. Ask the Notary about the scope of the power of attorney, that is, what powers and authority are being granted to the attorney-in-fact or agent
4. Get accurate information and advice/counsel before executing a power of attorney, being that as we mentioned previously, the agent in a representative power of attorney, can affect your patrimonial (estate, assets, etc.) situation.

We always offer our **Yucatan Compass** clients a translation of the power of attorney to be executed/granted prior to its signing, in order for any questions or doubts be dealt with before creating and/or entering into any document whatsoever.

Contact us for professional and impartial assistance and advise/counsel.

[1] Representación, Poder y Mandato. Pérez Fernández del Castillo, Bernardo. Ninth Edition. Porrúa Publishing House. México 1996.

[2] Ibid.

[3] Ibid.

[4] Ibid

[5] Compendio de Derecho Civil. Contracts. Rojina Villegas, Rafael. Thirty-first edition. Porrúa Publishing House. México 2006.

[6] Representación, Poder y Mandato. Pérez Fernández del Castillo, Bernardo. Ninth Edition. Porrúa Publishing House. México 1996

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