

by Allan Garro

Be Careful with Powers of Attorney in Costa Rica

Powers of Attorney are a very important tool in Costa Rica and are used on a daily basis by expats and corporations to take care of business, perform contracts, or obtain various permits and authorizations from any public institution, among other examples. However, they are also a major cause of fraud.

Some cases surrounding stealing by means of a Power of Attorney are hard to fight since judges tend to consider that by giving a Power of Attorney the plaintiff voluntarily gave permission to someone to steal from them. The main regulations regarding powers of attorney can be found on the current Civil Code of Costa Rica, from article 1251 thru 1294.

The word Mandato is the accurate Spanish word for a Power of Attorney, and it can be translated into English as “mandate.” Actually, mandate in English means *a contract by which one engages gratuitously to perform services for another*. Mandato is also referred to as Poder, or a power.

Whichever word is used, it is basically a legal act where a principal, or Grantor, authorizes an agent or attorney-in-fact to give, grant, do, or perform different actions on their behalf. It is a special type of contract between individuals over the age of eighteen years. Company structures like SAs or LLCs can also give a Power of Attorney to people within and outside the organizational structure where the powers defined could be substituted or delegated to others.

There are at least five types of powers of attorney that can be granted in Costa Rica. The three most common can be classified as special, judicial or general.

- Special means they expire upon use or are meant to be used for a very specific matter.
- Judicial powers are only given to lawyers in order to establish and fight legal actions in court.
- General means they can be used more than once. In order to become legal they are required to be registered at the National Registry.

Foreigners outside the country can grant a Power of Attorney to an individual in Costa Rica in three ways:

- By having a Costa Rican Notary fly into their country, which is the most expensive,
- By visiting the nearest Costa Rican Consulate or,
- By using an Apostille, depending on the country of origin.

In 2011 Costa Rica became part of The Hague Convention from 1961, by ratifying law #8923. Under the Convention, foreigners living in a country that is part of The Hague Convention (the USA is part of it while Canada is not) can grant a Special or Judicial Power of Attorney by preparing it in their country, having the signature notarized, then sent to the Secretary of State (or equivalent department) to place a special stamp called an Apostille. This procedure makes it valid in other countries who are also signers of the Hague Convention.

However, granting Powers of Attorney under The Hague Convention is not possible when it comes to general Powers of Attorney or Special Power of Attorney meant to be used in front of any Registry in the country, such as National Registry, Trademark Registry, or Civil Registry. In these cases it is necessary to either appear in front of a Costa Rican notary public or visit the nearest Costa Rican Consulate.

The main thing to consider is under what article of the Civil Code a Power of Attorney is created. The next is the list of articles that assign rights:

Unlimited and Universal Power of Attorney, Article 1253. Called here a Poder Generalísimo. This one is the most powerful. The contents of the article can be translated into English as follows: *By virtue of an unlimited and universal power of attorney for all the business and affairs of an individual, the attorney-in-fact is authorized to sell, mortgage, and otherwise transfer or create liens and encumbrances on any kind of property whatsoever; to accept or refuse inheritances, act in court, make any agreement and do and perform any legal acts which the principal might do and perform, except those*

which, under the law, must be done and performed by the principal in person, and those acts for which the law expressly requires a very special power of attorney.

Unlimited and Universal Power of Attorney for a specific business, Article 1254. Assigns power of the same type of the one given under article 1253, but for a specific business or negotiation. For example, it gives a full and unlimited Power of Attorney over only one of the properties owned by the Grantor.

General Power of Attorney, Article 1255. This is limited to conducting business affairs only. It can be used for managing purposes, including: a. Signing agreements necessary for the use or conservation of different goods and property, b. Defending possession of goods and property in Court, c. Renting personal property (not real estate), d. Starting credit collections.

Special Power of Attorney, Article 1256. This is a Power of Attorney which is limited to specific matters. For example, sending an employee to sign forms in order to obtain different authorizations from a public institution, or to sell a car or specific real estate property. Creating fake Special Powers of Attorney has been one way crooked notaries help other crooks steal property in Costa Rica.

Judicial Power of Attorney, Article 1289. Assigns a power to an attorney in order to represent a party on a legal dispute in Court.

As explained above, article 1253 is the one that needs to be granted most carefully and given only to a person that can be trusted completely. The Grantor has the right to put some limitations on this kind of power, like establishing it is valid for anything except selling assets. If someone steals a property using a valid unlimited and universal Power of Attorney, probably no court of law will convict the thief.

Expats owning a corporation should carefully check on who has the Power of Attorney for their corporation and what type of power it is. It is not necessary to be on the board of directors in order to acquire a Power of Attorney from a corporation. And, a Power of Attorney can be granted without the acceptance of the attorney-in-fact.

In a recent case a couple from the USA negotiated the sale of a business here in Costa Rica. They signed a purchase agreement stating a down payment was given immediately with the balance payable in two years. It was agreed that the Buyers could start operating the business in order to not affect clients and the business's general position in the market; title always being held by the Sellers. Later the Buyers convinced the Sellers they needed a Power

of Attorney to run the business and the Sellers granted the Buyers an unlimited and universal Power of Attorney based on article 1253. Subsequently, when the Sellers did not receive final payment, they discovered that they Buyers had used the Power of Attorney to transfer the title and permits of the business to others.

Powers of attorney can be cancelled, revoked, and even lose effect. The Grantor of a Power of Attorney can revoke it anytime he or she wants. In the case where the Grantor dies all powers of attorney granted in personal name lose effect. However, powers of attorney given to a person by a corporation through a general assembly of stockholders can only be revoked by a new general assembly meeting of the stockholders. The same is required when the attorney-in-fact wants to resign. It is very important to double check what Powers of Attorney have been granted and what kind of faculties are included in order to avoid greater problems in the future.

Allan Garro N. / Attorney at Law / www.garrolaw.com

Curious about what other legal matters the Hague Convention addresses? Go to https://en.wikipedia.org/wiki/Hague_Convention for more information.



Advertise your business to
10,000 readers
for as little as **\$99.00** per issue!

Contact Kenji at
service@arcn.net or by phone at
4052-4052 for information.

