

Be Very Careful With Powers of Attorney in Costa Rica

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Powers of Attorney are a very important tool in Costa Rica and are used daily by individuals and corporations to take care of business, perform contracts and obtain various permits and authorizations from any public institution. However, Powers of Attorney can be also be a main 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 act that way on their behalf, indicating that they can sue their proxy in a civil court -where things will take years and might end up with nothing- The main regulations about powers of attorney can be found on the current Civil Code of Costa Rica.

The word “Mandato” is the accurate Spanish word for a Power of Attorney, and it can be translated into English as “mandate”. 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 his or her behalf. It is a special type of contract between individuals over the age of eighteen years. Company structures like S.A.s 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 so they are required to be registered at the National Registry. 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 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.

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**
- **By using an Apostille, depending on the country of origin.**

In 2011, Costa Rica became part of the The Hague Convention from 1961, by ratifying law #8923. Under the Convention, foreigners living in a country that is part of The Hague Convention 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 named 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.

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. Start 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 some way crooked notaries help other individuals to 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. Powers of attorney can be cancelled, revoked, and even lose effect. The Grantor of a Power of Attorney can revoke it anytime. 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.

It is very important to double check what Powers of Attorney have been granted

About the Author: Allan Garro was incorporated as a lawyer and public notary in 1996. He specializes in Litigation, Corporate and Real Estate Law. He has also acted as external legal consultant to Congress. He has been the author of more than 100 published English Language articles and can be reached at [\[email protected\]](#)