



**THE
OVERSEAS
CAREGIVER**

with confidence and heart

GUIDE TO POWER OF ATTORNEY & GUARDIANSHIP

A FREE RESOURCE FROM
THE OVERSEAS CAREGIVER

POA for Overseas Caregivers

Power of Attorney for South African Caregivers Abroad

Why you should set this up even if Mom and Dad are fit and fabulous today.

When you're caring across continents, clarity beats crisis. The best time to put documents in place is while your parents are healthy and fully able to decide for themselves. Waiting until something happens can close doors that are open right now — and make everything slower, costlier, and far more stressful for everyone.

Why act now (even if everything's fine)?

- Power of Attorney (POA) in South Africa ends if capacity is lost. Once a parent can't understand or consent, a standard POA lapses. At that point, you usually need a court/official appointment to help manage affairs.
- No "enduring/lasting" POA in SA (yet). Unlike the UK/Australia, SA law does not currently recognise an "enduring" POA that continues after incapacity. Families must use curatorship (High Court) or an administrator (via the Master under the Mental Health Care Act) if capacity is lost.
- Living wills/advance directives help doctors and families. While not set out in a dedicated statute, SA medical ethics guidance supports respecting a competent person's written treatment wishes, and clinicians often rely on them

What each document actually does (and doesn't)

1) Power of Attorney (Financial/Practical)

- Purpose: Lets your parent (the "principal") authorise a trusted person (the "agent") to act now for specific tasks (special POA) or more broadly (general POA): e.g., deal with bank queries, utilities, property admin.
- Limit: Stops working the moment your parent loses capacity.
- Execution basics: Common practice is to sign before two witnesses (not beneficiaries) or sign before a Commissioner of Oaths/ Notary/ Magistrate. If signed outside SA for use in SA, it generally needs notarial authentication (and often an apostille).

2) Living Will / Advance Directive (Health decisions)

- Purpose: Your parent records their preferences (e.g., life-sustaining treatment, resuscitation, feeding) and may name a preferred decision-maker to guide clinicians if they cannot speak.
- Status: Not expressly legislated, but HPCSA/SAMA guidance supports honouring patient wishes; doctors may seek court guidance in grey areas.

3) If capacity is lost later (what actually happens)

- Curator bonis (High Court): Court-appointed person manages finances when someone can't. Follows Rule 57 procedure.
- Administrator (Master of the High Court): For certain mental health/intellectual disability cases, sections 59–65 of the Mental Health Care Act allow a more administrative appointment.

Special notes for children living in Australia

- Signing outside SA for use in SA: Your signature on a SA power of attorney (or your parent's, if they're visiting you) will generally need notarial witnessing and often an apostille in Australia before SA bodies accept it. Check the receiving bank/transfer attorney's exact requirements first.
- Apostille/legalisation basics: Australia and South Africa are parties to the Hague Apostille Convention; DFAT issues apostilles in Australia, and DIRCO/High Court handles SA documents

Caretaking decisions to settle before a crisis

1. Who speaks to doctors first? Name one point person (plus a backup) in the advance directive to avoid family gridlock.
2. Where will care happen? Preferences for home care, step-down, frail care — and who coordinates.
3. Money logistics: Which bills/insurances must be paid? Which accounts need third-party mandates or a special POA (e.g., for property transfer paperwork)?
4. Living will choices: Interventions they do or don't want (ventilation, feeding tubes, resuscitation).
5. Last Will & Testament updates: Confirm beneficiaries, executor, and where the original will is kept (Master of the High Court will need it).

Quick Start: 7-step checklist you can finish this week

1. Family chat (60–90 min): Values, fears, "who decides," where documents will live.
2. Draft the right POA(s):
 - Special POA for immediate, specific tasks (e.g., selling a car, managing a deed transfer).
 - General POA for broader admin while they have capacity. (Remember: not valid after incapacity.)
3. Create/refresh a Living Will / Advance Directive: Use clear, plain language; name a preferred health decision-maker and a backup. Share with GP and key family.
4. Update the Will: Check executor, beneficiaries, and signatures/witnesses comply with the Wills Act requirements. Store the original safely; keep certified copies.
5. Collect key documents: IDs, medical aid, policy numbers, titles, bank list, medication, GP/specialist contacts.
6. Bank & insurer permissions: Ask each institution what they recognise (some have internal mandate forms in addition to a POA).
7. Share the "Where Is Everything?" file: Save digital copies in a secure cloud folder; give access to your nominated person.

Red-flag moments to act immediately

- Early signs of memory decline, a new diagnosis, or fast-moving treatment decisions.
- Big transactions coming up (property, vehicles, investments).
- One parent usually "does everything" for the other.



Gentle legal note

[This article is general information for cross-border caregivers and not legal advice.](#)

Laws and institutional practices change. Please consult a South African attorney or notary to tailor documents to your parents' situation and to confirm authentication/apostille steps if any document is signed in Australia or the country you live in.



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Guardianship for your Parent(s)

When parents can no longer make important decisions for themselves — due to illness, dementia, or loss of capacity — families may need legal authority to step in. In South Africa (and many other countries), this is called guardianship (or sometimes curatorship/administratorship).

What Guardianship Means

Guardianship gives a legally appointed person (often an adult child) the right and responsibility to make decisions for a parent who is no longer able to:

- Manage finances (banking, bills, property)
- Make medical or care decisions
- Enter into contracts or legal agreements

It is different from a Power of Attorney:

- Power of Attorney: Only valid while the parent has mental capacity.
- Guardianship: Comes into effect when a parent loses capacity and a court/authority formally appoints someone to act on their behalf.

What Guardianship Entails (Responsibilities)

If appointed as guardian/curator, you may be responsible for:

- **Financial management:** Paying bills, managing accounts, ensuring fair use of funds for your parent's care.
- **Healthcare decisions:** Approving treatments, coordinating with doctors, ensuring your parent's wishes (if documented in a living will) are respected.
- **Living arrangements:** Deciding whether your parent remains at home with carers or moves into a care facility.
- **Legal duties:** Keeping records of all decisions and, in some cases, reporting to the Master of the High Court (in South Africa) or a court-appointed body.

How Guardianship Is Granted (South African context)

- If your parent has lost capacity, a simple Power of Attorney is no longer valid.
- Family members must apply for either:
 - Curatorship (High Court application) – where a curator is appointed to manage a person's affairs.
 - Administrator (through the Master's Office) – available in some cases under the Mental Health Care Act, often less costly and faster.
- Medical assessments are usually required to prove loss of capacity.

Pros and Cons of Guardianship

Pros

- Provides clear legal authority.
- Protects vulnerable parents from exploitation.
- Enables you to act swiftly in emergencies.

Cons

- Can be time-consuming and expensive (especially High Court applications).
- May feel overwhelming emotionally (“parent becomes dependent on the child”).
- Brings legal duties — you must act in your parent's best interests at all times.

Gentle Advice for Caregivers Abroad

- **Start conversations early:** If your parents are still capable, set up Wills, Powers of Attorney, and Living Wills now.
- **Know the next step:** If capacity is lost, be prepared that guardianship/curatorship may be necessary.
- **Get legal help:** Work with a South African attorney who understands elder law and cross-border families.

Caregiver's Takeaway

- Guardianship isn't just about paperwork — it's about love and responsibility. It gives you the authority to protect your parent's wellbeing and dignity when they cannot do so themselves. But it's best viewed as a last-resort measure after preparing all other documents in advance.

If your parent is no longer able to make decisions due to dementia, illness, or loss of capacity, a simple Power of Attorney will no longer be valid. At that stage, you may need to apply for guardianship/curatorship/administratorship so you can legally step in.

Step 1: Confirm Loss of Capacity

- A doctor or specialist must confirm that your parent cannot manage their own affairs.
- This medical evidence is essential before any legal application can proceed.

Step 2: Decide Which Route Applies

- In South Africa, there are generally two main routes:
- Curatorship (via the High Court)
- A family member applies to the High Court to have a curator bonis appointed.
- This person manages finances and legal affairs on behalf of the parent.
- It requires legal representation, affidavits, and medical reports.
- It can be costly and take several months.
- Administrator (via the Master of the High Court)
- If incapacity is due to a mental health condition or intellectual disability, the Mental Health Care Act (sections 59–65) allows appointment of an administrator.
- This is less complex than High Court curatorship.
- Still requires medical proof, but is generally faster and less expensive.

Step 3: Engage a Lawyer (Strongly Recommended)

- A South African attorney can:
- Guide you on which process (curatorship or administrator) applies.
- Draft the necessary affidavits and gather medical reports.
- File the application with the relevant court or Master's Office.
- For families abroad, a lawyer also ensures documents signed overseas are notarised and apostilled if needed.

Step 4: Application Process

- Submit the application with supporting medical reports and affidavits.
- The court (or Master) reviews the evidence.
- If successful, you are formally appointed as guardian/curator/administrator.
- You will receive legal documentation proving your authority.

Step 5: Understand Your Duties

- Once appointed, you have legal responsibilities:
- Act in your parent's best interest.
- Keep accurate records of financial transactions.
- Report back to the Master or Court if required.
- Avoid mixing your finances with your parent's.

Gentle Advice for Overseas Caregivers

- Start planning early: Put Power of Attorney in place while your parent still has capacity.
- If capacity is already lost: Guardianship/curatorship may be the only option.
- Stay organised: Keep copies of all records, receipts, and decisions.
- Remember: Guardianship is a legal safeguard, not a failure — it protects your parent's dignity and wellbeing.

Takeaway: Getting guardianship is a legal process that takes time, paperwork, and professional help — but it ensures you have the authority to make the best possible decisions for your parent when they cannot.



READY TO FEEL EVEN MORE CONFIDENT?

You've Already Started

By knowing this information on Power of Attorney you've taken the first step toward caring for your parents with confidence and heart. The journey doesn't have to feel overwhelming — with the right tools and guidance, it can feel lighter and more manageable.

If you're ready for more support, practical templates, and step-by-step lessons, get your copy of
The Overseas Caregiver's Guide
to help you.



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