INVESTMENT REPORT

May 2019 • ISSUE 315

BRENTHURST
THE HOME OF WEALTH

THE POWER
OF INDEPENDENT ADVICE

IN THIS ISSUE

"Power of attorney is a valuable tool to allow people to make important life decisions when they're overseas or become too frail to sign documents."

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WHEN YOUR POWER OF ATTORNEY IS NO LONGER VALID…

By Suzean Haumann, Certified Financial Planner® and Malissa Anthony, Wills and Estate Legal and Compliance

Power of attorney is one of those phrases that you hear quite often, and there are some very real implications on an individual if they sign it over. Understanding what power of attorney is, and how it can affect you after certain life events, is important. This is especially the case when someone suffers a mental condition and becomes mentally incapacitated.

Power of attorney is essentially a notice that gives a third party the permission to act on your behalf and make decisions for you. This can be for specific matters ('special power of attorney') or for all matters ('general power of attorney'), and is a valuable tool to allow people to make important life decisions when they are overseas or become too frail to physically sign documents.

In South Africa, we have seen an increase in power of attorney being signed over from people emigrating from the country. Emigration is not always a clean process and often times someone leaves the country before all of their financial matters are completely finalised. In this instance they would sign over authority to someone still in South Africa to expedite the process. Practically it is far easier to sign a document in South Africa than to send it to Australia, sign it and return it.

The most common instance where power of attorney is signed over is with the elderly. Especially when that person is too frail to physically sign documents. It is normally a very stressful time, and power of attorney can relieve some of the stress.
It is also considered where someone does not have the mental capability to conduct their own affairs.

It may come as a surprise though that it is not possible under South African law to sign over power of attorney if someone becomes mentally incapacitated. When a person becomes unable to conduct their affairs due to a mental impairment, power of attorney ceases and at this point professional assistance needs to be brought in. If someone acts on an invalid power of attorney, it can be considered fraud.

So what can be done then when someone is mentally unable to deal with their own affairs if power of attorney is not an option? Well, there are two options: the relatives of that person can apply to either the High Court to be appointed as the curator or as the administrator of the incapacitated person's affairs.

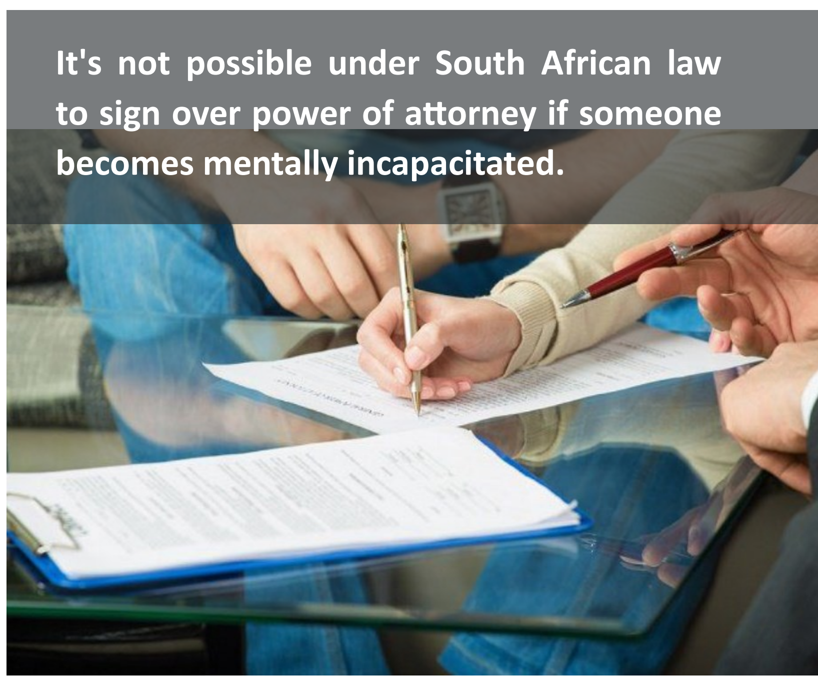
Curatorship is quite a lengthy process and involves the signing of affidavits by the family of the incapacitated person as well as the legal appointment of a representative, usually an advocate. The application must include medical evidence confirming that the person is in fact mentally incapacitated. Once the process is concluded and approved, the Master of the High Court will issue letters of curatorship granting authority to the curator. The curator is required to fulfil a number of obligations, including the submission of annual reports in a specific format to the master. It is for this reason that curators tend to be admitted attorneys.

Administration is not as strenuous as obtaining curatorship and although a cost is involved, it is cheaper to obtain and also follows a legal process. Initially the master will grant temporary administration rights to the administrator; after the investigation by the master is concluded and they deem that the person does in fact need an administrator, they will confirm the rights to the administrator.

A very important consideration is that when power of attorney is signed over for someone who is mentally incapacitated, the power conferred is absolute. This means that the person who in effect becomes the curator has full power under the law to conduct the affairs of the incapacitated person indefinitely and as they deem fit. There is often times where the family of the incapacitated person do not fully comprehend that all authority is transferred to the curator or administrator.

To help get around this situation, it is possible to move all the property of the individual into a trust prior to them becoming mentally incapacitated, however trusts can become prohibitively complex and lead to unexpected tax consequences. Trusts should only be executed by trust specialists, as they will be able to set up the trust in the best way possible for the situation.

It's not possible under South African law to sign over power of attorney if someone becomes mentally incapacitated.



There have been recommendations to change the law and make the power of attorney process simpler, however at this point, the bill that was drafted has not yet been published for comment. Hopefully the delays can be overcome, but right now we are still in this complex environment.

In situations where someone becomes mentally incapacitated it is important that the family members of that person partner with someone that has the experience and ability to assist them.

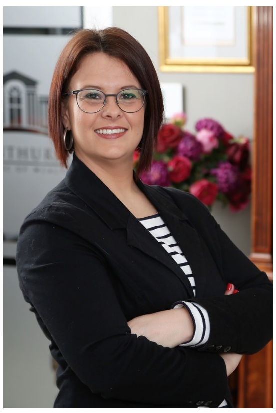
Brenthurst Wealth can help take the burden off the family by guiding them through the power of attorney process.

Brenthurst is a licenced financial service provider with a qualified legal and fiduciary department well versed in the requirements of setting up power of attorney, as well as applying to the Master of the High Court for curatorship and administration of estates of people who are mentally incapacitated.

This content was prepared in collaboration with Brenthurst Wealth's wills, estates, legal and compliance officer Malissa Anthony.

If you need assistance with your financial plan contact the experienced advisors of Brenthurst. www.bwm.co.za

SUZEAN HAUMANN, CFP® AND FOREIGN EXCHANGE CONSULTANT



SUZEAN is a CERTIFIED FINANCIAL PLANNER® and a registered member of the professional body, the Financial Planning Institute of South Africa.

She has experience in various aspects of financial planning and focuses on investment and retirement planning as well offshore investment, being qualified as a Foreign Exchange Consultant for the company.

Suzean is based in Cape Town and is mainly working from the Tygervalley branch and is fully qualified to give advice on all investment matters.

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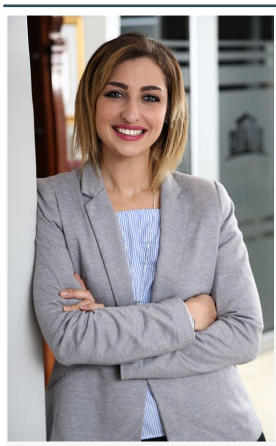
LEGAL & FIDUCIARY

Brenthurst offers its clients assistance with the drawing up and safekeeping of wills, estate planning and the winding up of deceased estates.

MALISSA ANTHONY FPSA® (B COM, LL B)



WILLS, ESTATES, LEGAL ADVISOR AND COMPLIANCE
MALISSA joined the Brenthurst Team in July 2014, and heads up our Fiduciary Services Department within the Cape Town region.

She is responsible for the drafting of wills, administration of deceased estates, estate planning, and all matters that relate to legal and compliance. She is a qualified attorney having been admitted in the High Court of Cape Town.

Malissa has a BCom Law degree obtained from the University of Johannesburg (UJ), an LLB degree obtained from the University of South Africa (UNISA), and a further certificate in Estate Planning obtained through Milpark. In addition to the above, Malissa is also an accredited member of the Fiduciary Institute of South Africa (FISA) and holds the professional designation as a Fiduciary Practitioner of South Africa®.

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INVESTMENT SEMINARS
INVESTING WITHOUT BORDERS

THE SPEAKERS:

- ▶ **Mike Schüssler,** Keynote Speaker and Economist
- ▶ **Glyn Owen,** Investment Director at Momentum Global Investment (London)
- ▶ **Magnus Heystek,** Investment Strategist and Director Brenthurst Wealth

STELLENBOSCH SEMINAR

Date: Monday, 10 June 2019 I **Time**: 16:00 to 18:15/18:30
Venue: Lanzerac Hotel

CAPE TOWN SEMINAR I CENTURY CITY

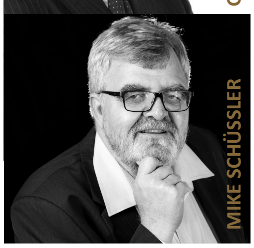
Date: Tuesday, 11 June 2019 I **Time:** 16:00 to 18:15/18:30
Venue: Marriott Crystal Towers Hotel, Century Boulevard , Century City,

PRETORIA SEMINAR

Date: Thursday, 13 June 2019 I **Time:** 16:00 to 18:15/18:30
Venue: CSIR Conference Centre

CLICK HERE TO REGISTER ONINE: http://www.bwm.co.za/seminars/

It is with pleasure that we extend this personal invitation to each and every client of BRENTHURST to attend our upcoming investment seminar at NO CHARGE. Members of the public will be required to pay R200 pp.
Please note presentation will be mostly in Afrikaans. However, Glyn Owen will be presenting in English!
Info: pr@brenthurstwealth.co.za + 27 (0)11 799 8100



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BRENTHURST RANKED BEST BOUTIQUE WEALTH MANAGER IN SA 2017 & RUNNER-UP 2018 INTELLIDEX WEALTH MANAGER AND PRIVATE BANKS AWARD