
Delegation of power of attorney and identification of related legal works

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Abstract: In the notarial tradition, there is a common document called power of attorney, according to which the power of attorney is delegated to a new lawyer and brings to mind an institution similar to power of attorney or power of attorney, but in an in-depth study, the difference between power of attorney and power of attorney. It is obvious that after delegating the powers of the delegating lawyer, the said authority disappears and the powers are completely transferred to the new lawyer; However, in the power of attorney of the previous lawyer, he is still the deputy of his client, despite his former authority, he temporarily transfers his position to a new lawyer, which, of course, is not explicit in the expressions of these two. It should be considered that the words were forged with a purpose and no word was forged and created by an unreasonable author and a philosophy was born for it. The desired difference can be easily discovered and achieved.

Keywords: Delegation, Advocacy, Lawyer, Legal Effects.

INTRODUCTION

The necessity of speeding up transactions, especially car and sometimes real estate transactions, and preparing the groundwork for preparing official documents and the lack of mechanized and fast electronic facilities in government departments, including registries, municipalities and finance offices, has led to the preparation of a document called power of attorney. To have less restrictions and to bring with it the speed of transfer, it will convince the relevant citizens, while the concern and conflict between the duties in collecting claims has led to many inquiries and basically erased the issue. (Moghaddam, 1386: 37).

Due to the existing restrictions and effects such as invalidation of power of attorney documents, people sometimes try to transfer property and the costs and procedures of transfer overcome the limitations, take the risk of invalidation of documents and prepare power of attorney, for example, that the lawyer himself. A power of attorney is the holder of an official document. By preparing a power of attorney, he delegates all his powers derived from the power of attorney of such and such number to a person in the notary public office.

In this process, the delegate is the official successor of the delegate, acquires all the legal powers of this person and is his legal deputy, and my delegate has no authority after that. And we consider it as a will, and this is the basis of the letter of delegation and the basis of the lexical discussion of this institution, and in order to establish the reality of the delegation, the issues of contract transfer and then the delegation itself are examined.

Paragraph one:

The question raised in our paragraph is that the delegation of power of attorney can be considered a kind of contract transfer and the answer is as follows:

1. Sometimes in the legal relationship, the delegate can be considered as a deputy because he acts as a representative and successor of the delegate and in fact he is the representative and successor of the delegate, so from his point of view, the theory of deputy is considered (Hali, 1418: 6/87).
2. Some people believe that there is an objective relationship between the subject and the legal act in the transfer of the contract, but it is not objective in the delegation of the intended relationship, so the subject of the contract transfer is not considered acceptable in their opinion. (Mirshakari, 1397: 187)
3. In Iranian law, the subject matter has not been met with success in the legal profession and has been accepted in legal matters such as rent according to Article 489 of the Civil Code, so that in all cases it can be relied upon and considered general in terms of transmission and acceptance. It is not reliable.
4. In order to transfer the contract, the existence of intention and consent of the parties is necessary, and without this transfer element, the purpose can not be achieved because it is a kind of contract, so a certain

person is the addressee, the existence of basic elements and conditions of transaction is necessary. No, because this institution emphasizes doing.

5. Another obvious difference between these two institutions is that in the transfer of a third party contract replaces one of the parties and the purpose is to transfer all duties to a third party and the main person is excluded from the legal relationship, but in the delegation of power both rights and Assignments are transferred to a third party, but the transfer of rights is more pronounced.

Clause 2 - Terms of delegation:

Institutional delegation is subject to the general rules of contracts and the basic conditions for the validity of transactions must be observed in it. The condition for the validity of the delegation is that without this condition, the subject of the delegation is basically eliminated (Desouki, 1230: 3/132). The reason for this necessity is the permission of the power of attorney contract and the delegate in the delegation does not have an independent right to have the right to transfer, but he is already a representative and authorized before another and must be delegated so that the conceivable right is considered to be a transfer (Rafie, B. To: 11/342).

According to this view and the result of the text of Article 672 of the Civil Code, a lawyer can not give power of attorney to another person unless he has the right of power of attorney. Authority should be considered conceivable for him. (Sistani, 1414: 342)

It seems that the legal effect of the lack of power of attorney and then the power of attorney to another should be examined because in this case the action of the attorney is considered prying and if damage is done to the original, the sentence of Article 673 of the Civil Code will be transmitted in this case. For the damages caused by each of the two lawyers who are responsible, they are considered responsible and by accepting responsibility in the proposed spines, the scope and scope of the delegation has been determined.

It is worth mentioning that in the author's opinion, the responsibility of the first lawyer is towards the contracted client because there is a contractual legal relationship between the parties that determines the terms between the two, but the responsibility of the second lawyer is coercive and non-contractual.

The power of attorney and delegation is subject to the permission of the client and if this permission is granted, it can be transferred, otherwise the existence of the right is considered invalid and the crystallization of the legal effect of such authority is more visible in the situation between obtaining permission or not. This time interval is a legal action because in case of the existence of the transaction permit has a transfer effect, otherwise the legal action will be ineffective (Zainuddin Ibn Ali, 1378: 4/76).

Clause 3 - Effects of delegation compared to contract transfer:

Despite the delegation of power of attorney, there is no doubt that the position of the main client remains and all matters arising from the action of the main client (Tusi, 1351: 1/34). As a result, the jurists in this clause specify the existence of the right of dismissal of the client in the right of the delegated lawyer (Novi, Bita: 3/147). It seems that in all cases the power of attorney does not correspond to the power of attorney and the legal relationship can be imagined by removing the first lawyer, but it is better to divide the matter into several cases.

First case:

Sometimes, with the election of the second lawyer, the power of attorney of the first lawyer remains, and this relationship is sometimes longitudinal and transverse, because Representation or fulfillment remains one of the reasons for termination of the contract because he did not choose a lawyer for himself. He appointed a lawyer for his client. The cross relationship does not correspond to the theory of contract transfer because the first lawyer is not removed from the legal relationship. Deleted. B- The longitudinal relationship in this item is the second lawyer is the lawyer of the first lawyer and not the lawyer of the main client as a result of dismissal or the possibility of his position remaining among the powers of the lawyer and with the dismissal of the first lawyer is also considered dismissal. It does not, but the legal relationship of the basis is different from what is described in paragraph a of this brief.

Second case:

In this case, the first lawyer is removed from the legal relationship by choosing a second lawyer and transfers all his rights to the new lawyer. Then:

1. The lawyer is not considered to have a lasting legal relationship.
2. The second lawyer is responsible for all the powers and duties of the first lawyer and is recognized as the party of rights and duties and the first lawyer has no duties.
3. The legal status of the principal client has not changed and his powers and duties remain unless he has imposed restrictions such as revocation of the right of dismissal.
4. The transfer of the contract does not dissolve the principle of the power of attorney contract and it is the establishment of a new establishment in the contract that creates rights and obligations.

5. Obligations or special rights between two lawyers are not directly related to the main client, but the client is only limited to the rights and duties that he has concluded with the first lawyer in that area. Determining whether the matter was delegated or delegated is subject to the realization of the common intention of the parties, and in the event of a dispute, this intention must be discovered and verified in an investigative manner and using the judicial emirate.

CONCLUSION

Carefully in what was mentioned, the main purpose of delegating power of attorney is to lose the authority of the first lawyer and transfer all rights and duties to the second lawyer, and the main reason for accepting this new institution is to remove the obligation by observing long formalities and sometimes costly Which is observed. This institution has become widespread to a large extent in the custom of transactions and has opened a suitable legal position and problem solving among the public. Of course, there is no doubt that there are risks of the client's death and possible insanity and stupidity in this legal institution; Therefore, risks do not bring good luck to all members of society. However, in this context, they often limit the power and authority of the previous lawyer and, despite the fact that the document is official and the respect they have for these documents in society, they consider themselves the undisputed owner of the property or property that is the subject of the transaction. In delegating this authority, it has not manifested and crystallized with such intensity that people do not feel complete security, so it seems that delegation has more acceptance and acceptance than delegation.

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