

# Part 16 – Request to Register Power of Attorney or Revocation of Power of Attorney

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# Part 16 – Request to Register Power of Attorney or Revocation of Power of Attorney

## General Law

[16-0000]

The *Powers of Attorney Act 1998* was proclaimed to commence on 1 June 1998. This Act consolidated the law about general powers of attorney and enduring powers of attorney and also provides for advance health directives.

By Chapter 9 Part 5 (ss. 181 and 182) of the Powers of Attorney Act, Part 9 (Powers of Attorney) of the *Property Law Act 1974* was repealed. However, s. 163 of the Powers of Attorney Act clarifies that every power of attorney made under the Property Law Act prior to 1 June 1998 is a power of attorney under the Powers of Attorney Act.

Any power of attorney executed prior to 1 June 1998 and pursuant to the Property Law Act must comply with the provisions of the Property Law Act to be registered in the Power of Attorney Register.

A power of attorney is an authority in writing given by one or more persons or corporations (the ‘principal’ or ‘donor’) to another or others (the ‘attorney’ or ‘donee’) to act in his/her/its/their name and on his/her/its/their behalf in dealings with third parties. The power of attorney may or may not be restricted in some way.

A power of attorney may subsequently be revoked (except in circumstances where it is made irrevocable in accordance with s. 10 of the Powers of Attorney Act) either expressly by the principal or on the happening of an event or occurrence. In the case of ‘general’ powers of attorney, one such event is the incapacity of the principal(s). ‘Enduring’ powers of attorney are not revoked by the incapacity of the principal (s. 32(2) of the Powers of Attorney Act). However, powers of attorney, other than irrevocable powers of attorney, are revoked on the death of the principal(s) (ss. 19 and 51 of the Powers of Attorney Act).

If an attorney dies, the power of attorney is revoked to the extent it gives power to that attorney (ss. 24 and 58 of the Powers of Attorney Act). Section 59A of the Powers of Attorney Act commenced from 21 April 2000 and provides that where joint attorneys have been appointed, the power for one or more of the attorney’s may be revoked provided that at least one attorney remains.

However, this provision only applies to enduring powers of attorney. If only one of joint attorneys remains after the death or disqualification of another/others he/she may exercise the powers. If two or more joint attorneys remain, they must exercise the powers jointly.

Prior to 21 April 2000, s. 68 of the Powers of Attorney Act provided for the revocation of one or more joint attorneys. This provision applied to any power of attorney, provided that the revocation instrument has been executed during the period from 1 June 1998 to and including 20 April 2000. If only one of joint attorneys remains after the death or disqualification of another/others he/she may exercise the powers. If two or more joint attorneys remain, they must exercise the powers jointly.

Sections 132 and 133 of the *Land Title Act 1994* provide for the registration of powers of attorney, and for the subsequent registration of instruments or documents executed by an attorney under a power of attorney. The provisions recognise that restrictions may be placed on an attorney’s powers under a power of attorney.

The provisions include a requirement for the Registrar to keep a register of powers of attorney known as the ‘Power of Attorney Register’. The provisions also prescribe how the Registrar registers a power of attorney. The provisions do not discern between ‘general’ and ‘enduring’ powers of attorney.

Section 134 of the Land Title Act details the effect of registering powers of attorney and revocations. Section 135 of the Land Title Act provides for registration of a revocation of any registered power of attorney.

Section 383 of the *Land Act 1994* provides that a power of attorney registered under the Land Title Act is also taken to be a power of attorney registered for that Act.

## General Rules Relating to Powers of Attorney

[16-0010]

An attorney for a financial matter may only enter into a conflict transaction if the principal or a court of competent jurisdiction has authorised the transaction, conflict transactions of that type or conflict transactions generally (s. 73(1) of the *Powers of Attorney Act 1998*). A conflict transaction is defined as a transaction in which there may be conflict, or which results in conflict, between—

- (a) the duty of an attorney towards the principal; and
- (b) either—
  - (i) the interests of the attorney, or a relation, business associate or close friend of the attorney; or
  - (ii) another duty of the attorney.

The principal (if they still have capacity) or the Supreme Court (and the Queensland Civil and Administrative Tribunal for an enduring power of attorney) can retrospectively authorise an unauthorised conflict transaction for a financial matter (ss. 73(2) and 118(3) of the Powers of Attorney Act).

Attorneys also cannot act on behalf of the principal in dealings with themselves in their personal capacities unless expressly authorised by and with informed consent of the principal (*Tobin v Broadbent* (1947) 75 CLR 378).

An instrument or document executed by an attorney may only be registered if the power of attorney is registered in the registry (s. 132 of the *Land Title Act 1994*).

Powers of attorney should have the powers clearly expressed. General words do not confer a general power, but confer such additional authority necessary to carry out any specified powers expressly conferred by the power of attorney.

It is possible for the principal to ratify acts done by an attorney, even retrospectively. A ratification clause which provides for a principal to ratify and confirm acts done by an attorney does not extend the authority given by the power of attorney and cannot be relied on to justify a transaction not otherwise expressly authorised.

An attorney may be appointed retrospectively. For example, an instrument that has been signed by an attorney on behalf of a principal may be dated prior to the power of attorney. However, the power of attorney document would need to include a ratification clause authorising the attorney’s actions. For the purposes of registering instruments or documents in the registry, the ratification may be specific as to the instrument or document or general, for example, to sell any land owned by the principal in the State. The dealing number of the power of attorney would

need to be inserted in the instrument or document following registration of the power of attorney.

Generally, attorneys are not authorised to make gifts or donations. Authority to make a gift or donation may be provided in addition to any other powers. However, unless there is a contrary intention expressed in an enduring power of attorney, an attorney for financial matters may make a gift or donation if the gift or donation is:

- of the nature the principal made when the principal had capacity; or
- of the nature the principal might reasonably be expected to make; and
- the value of the gift or donation is not more than what is reasonable having regard to all the circumstances and in particular, the principal's financial circumstances.

The attorney or a charity with which the attorney has a connection is not precluded from receiving a gift or donation mentioned above.

A trustee may appoint the only other co-trustee of a trust to act as their attorney if:

- the co-trustee is a statutory corporation under the *Trustee Companies Act 1968*. That is, there must be at least two trustees acting, unless one is a trustee company; or
- there is specific authority in the trust document allowing the trustees to appoint the only other co-trustee as their attorney.

A trustee cannot appoint the only other co-trustee of a trust to act as their attorney if relying on s. 56 of the *Trusts Act 1973*.

An attorney may only delegate administrative actions, powers or duties to another person if there is express authority in the power of attorney. If authorised by the power of attorney, an attorney can, by a substitutionary power of attorney, appoint substitutes to act in his/her stead for part or all of the duties (see [16-0160]).

## Capacity of Principal

[16-0020]

The principal must have legal capacity to delegate to an attorney and must not be under any duress, disability, lacking mental capacity or younger than 18 years of age. A minor, therefore, cannot delegate powers to an attorney.

Prior to 1 March 1975 a person under the age of 21 years had not attained the age of majority and could not execute documents on their own behalf. After 1 March 1975, a person of the age of 18 years is considered to have attained majority (*Age of Majority Act 1974* repealed by the *Statute Law Revision (No 2) Act 1995*). These provisions are now contained in Part 6 of the *Law Reform Act 1995*. Any power of attorney executed after 1 March 1975 by a person 18 years or older (in the absence of any evidence that the person was not otherwise legally incapable) is legal and capable of registration.

If an enduring power of attorney is only to begin on the incapacitation of the principal, and the principal has lost capacity and is unable to conduct their financial affairs, a letter from a registered medical practitioner (on the practitioner's letterhead) stating that the principal has lost capacity and is unable to conduct their financial affairs must be deposited with the Form 16 – Request to Register Power of Attorney when initially lodged.

If the principal has capacity at the time of lodgement of the power of attorney and subsequently loses capacity, evidence, as stated above, should be deposited with all dealings executed under the power of attorney.

[16-0030] deleted

## Prisoners

[16-0040]

Persons serving a prison sentence of three or more years, or subject to an indefinite sentence within the meaning of part 10 of the *Penalties and Sentences Act 1992*, or detained pursuant to Part 3 of the *Criminal Law Amendment Act 1945* have no control over their affairs (such control being vested in the Public Trustee of Queensland) and cannot therefore execute a lawful power of attorney without the consent in writing of the public trustee.

A letter from the lodging solicitor advising the term of the sentence should be deposited with the Form 16 – Request to Register Power of Attorney. If the term is longer than three years, a statutory declaration from the Public Trustee stating that it has no objection to the attorney acting for the principal must be deposited. Alternatively, the Public Trustee may consent to the power of attorney. This consent may be given in a Form 18 – General Consent.

## Dual Capacity Powers

[16-0050]

A principal, acting in two or more capacities, can appoint an attorney in respect of those various capacities in the one power of attorney. For example:

In a Form 1 (under the *Powers of Attorney Act 1998*) and at Item 1 in a Form 16 – Request to Register Power of Attorney (under the *Land Title Act 1994*) it would be stated as follows:

‘John Doe (both in his personal capacity and as director of ABC Pty Ltd)’; or

‘John Doe (both in his personal capacity and as trustee for the John Doe Family Trust)’;  
or

‘John Doe Pty Ltd (both in its personal capacity and as trustee for the John Doe Family Trust)’.

Refer to [16-2030] for the specific requirements that apply to a Form 16 – Request to Register Power of Attorney lodged to record a principal in the principal’s capacity as trustee.

### Request to record principal in less than all of the capacities in the power of attorney

Where:

- a power of attorney is granted by the principal in two or more capacities (e.g. in personal capacity and as trustee); and
- Item 1 of the Form 16 – Request to Register Power of Attorney lodged to register the power of attorney requests that the principal be recorded in less than all the capacities in the power of attorney (e.g. personal capacity only);

a letter must be deposited to confirm that the intention is to record the principal in less than all the capacities in the power of attorney. If a letter is not deposited a requisition will be issued to confirm that the intention is to only record the principal in the capacities stated in Item 1 of the Form 16 – Request to Register Power of Attorney.

For example:

- A Form 16 – Request to Register Power of Attorney is lodged to register a power of attorney by which John Doe (both in his personal capacity and as trustee for the John Doe Family Trust) appoints Peter Smith as his attorney
- Item 1 of the Form 16 – Request to Register Power of Attorney only records John Doe in his personal capacity (i.e. “John Doe”)
- A letter must be deposited to confirm that the intention is to only record John Doe in his personal capacity (and not also in his capacity as trustee of the John Doe Family Trust)

Please note that for the principal to execute an instrument or document under the power of attorney in another capacity that is not recorded (e.g. for John Doe to execute as trustee of the John Doe Family Trust), a further Form 16 – Request to Register Power of Attorney requesting that the principal be recorded in that other capacity would need to be lodged for registration along with the payment of the prescribed fee.

## Trustee

### Power under s. 56 of the *Trusts Act 1973*

[16-0060]

Section 56 of the *Trusts Act* authorises a trustee who is absent from the State or is about to leave the State or become physically incapable, to appoint an attorney who is a Queensland resident. This can only apply to trustees who are natural persons, and not to corporate trustees.

This section applies even if the trust deed is silent on the point. The attorney has the same powers as the original trustee except for the power of delegation.

A power of attorney granted under s. 56 of the *Trusts Act* does not come into operation until the donor is actually out of the State or is physically incapable and is revoked upon his/her return or recovery.

Any instrument or document executed under this type of power of attorney requires a statutory declaration by the attorney stating that:

- the donor has left the State or is incapable; and
- that he/she has not returned or recovered; and
- that pursuant to s. 56(7) of the *Trusts Act* the power has come into operation.

A trustee cannot appoint the only other co-trustee of a trust to act as their attorney if relying on this section of the *Trusts Act*.

### Statutory Trustee Company

[16-0070]

Notwithstanding s. 56 of the *Trusts Act 1973* or the provisions of any particular trust deed, the Public Trustee and trustee companies under the *Trustee Companies Act 1968*, may appoint attorneys to transact on behalf of the particular trustee company in respect of trusts administered by it.

## Corporation

[16-0080]

A corporation may appoint a person or another corporation to act as its attorney.

A power of attorney by or to a corporation must include the corporation’s ACN, ARBN or ABN (see part 50 – Corporations and Companies).

A power of attorney given by corporations and executed in a way permitted by law does not require a witness.

The power of attorney need not be registered in the registry for execution of an instrument or document by the attorney to bind the company, however, it must be registered in the registry to enable instruments or documents dealing with land to be registered.

Section 52 of the *Corporations Act 2001* (Cth) allows a director of a company to appoint an attorney to execute a dealing for the principal in his/her capacity as director of that company.

### **Receiver/Manager**

[16-0090]

A receiver/manager of a company can execute instruments or documents on behalf of the company either with or without the company seal.

Section 420(2)(q) of the *Corporations Act 2001* (Cth) authorises a receiver/manager to appoint an agent to do business that he/she cannot do in person. Evidence of appointment of the receiver/manager by way of a current Australian Securities and Investments Commission (ASIC) certified copy of the appointment must be deposited with the power of attorney.

An attorney appointed by the company prior to the appointment of a receiver/manager may continue to execute instruments or documents on behalf of the company in relation to charged assets **only** with the consent of the receiver/manager. This consent may be given in a Form 18 – General Consent.

See part 50 – Corporations and Companies for further details on receiver/managers.

### **Liquidator**

[16-0100]

A liquidator executes instruments or documents in the name of the company and uses the company's common seal when necessary. Section 477(2)(k) of the *Corporations Act 2001* (Cth) authorises a liquidator to appoint an agent to do business that the liquidator is unable to do in person. Usual evidence of appointment by way of Australian Securities and Investments Commission (ASIC) certified copy of the appointment must be deposited with the power of attorney.

An attorney appointed by the company prior to the appointment of the liquidator may continue to execute instruments or documents on behalf of the company **only** with the consent of the liquidator. This consent may be given in a Form 18 – General Consent.

See part 50 – Corporations and Companies for further details on company liquidators.

### **Effect of Winding Up on Receiver**

[16-0110]

Under the *Corporations Act 2001* (Cth), a receiver of property of a corporation that is being wound up may, with the written approval of the corporation's liquidator or the approval of the court, carry on the corporation's business, either generally or as otherwise specified in the approval, and do whatever is necessarily incidental to carrying on the business under this provision (s. 420C of the *Corporations Act* (Cth)). The approval may be given in a Form 18 – General Consent.

Where this approval is not granted, the receiver's authority as agent of the company terminates. This does not, however, terminate the receiver's power to control and deal with property over which the receiver is appointed.



The receiver's authority as agent is limited to exercising the rights of the security holder as agent of the security holder and to deal with the property which is the subject of the charge. If necessary, the receiver may use the name of the company in the exercise of such rights.

### Power of Attorney Granted by Way of Security – Irrevocable Powers

[16-0120]

Where a power is expressed to be irrevocable, it must be in terms of s. 10 of the *Powers of Attorney Act 1998*. If the power is not in those terms, it may be requisitioned to have any reference to 'irrevocable' contained in the document removed.

Under s. 10 of the *Powers of Attorney Act*, an irrevocable power of attorney clause in a security, granted to secure a proprietary interest in a donor's asset together with the performance of an obligation owed to the donee (attorney), confers an authority to the security holder or donee. This continues regardless of the commencement of a winding up of a company or the death of the principal (donor).

### Joint and Several Attorneys

[16-0130]

Where a power of attorney has appointed two or more attorneys to act jointly, then both or all of the attorneys must act on behalf of the principal. Where two or more attorneys have been appointed jointly and severally (or 'jointly and/or severally'), then any one of the attorneys may act on behalf of the principal.

For a Queensland enduring power of attorney made on or after 30 November 2020 a principal may not appoint more than 4 joint attorneys for a matter (s. 43(3) of the *Powers of Attorney Act 1998*).

If a power of attorney appoints more than one attorney and fails to disclose whether the attorneys are to act jointly or severally, it is presumed that the attorneys are to act jointly and the power will be examined and registered accordingly.

### Successive Power of Attorney

[16-0140]

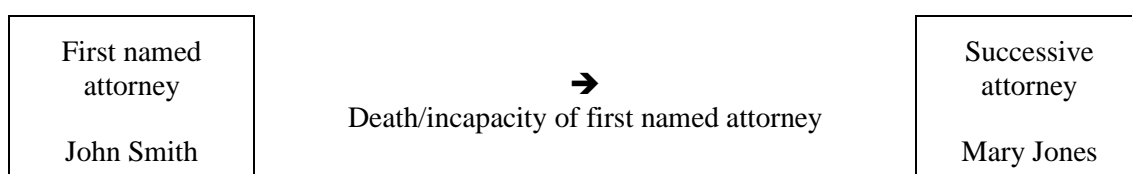
A successive power of attorney is a power of attorney that:

- defines two or more attorneys that will be appointed successively (i.e. creates a chain of succession so that when the power of one attorney ends the power of the next attorney begins); and
- defines when the power of one attorney will end and the power of the following attorney in the chain of succession will begin (e.g. death, incapacity or another prescribed event).

Examples:

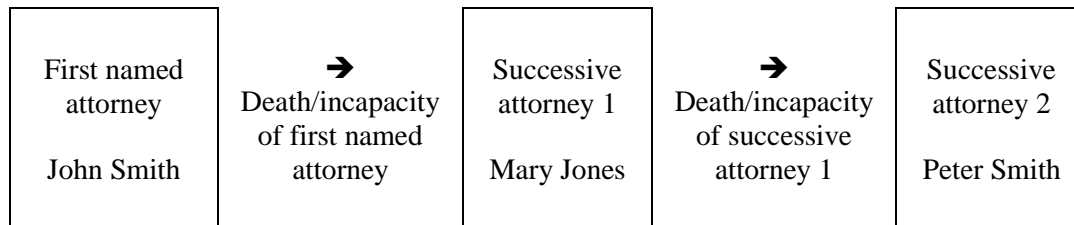
- Example 1 – A power of attorney appoints John Smith as attorney and provides that on the death or incapacity of John Smith then Mary Jones is appointed as attorney.

Chain of succession:



- Example 2 – A power of attorney appoints John Smith, Mary Jones and Peter Smith successively in the order named (**Note:** if more than one attorney is appointed ‘successively’ and the power does not specify ‘in the order named’, the Registrar will assume that they are appointed ‘successively in the order named’).

Chain of succession:



A successive power of attorney is only effective as it relates to the attorney that currently has power in accordance with the terms of the power of attorney. For example, while the first named attorney still has power, the power of attorney is only effective as it relates to the first named attorney and any Form 16 lodged to record the power of attorney must only include the first named attorney in Item 2.

In addition to the general practice requirements, the following specific practice requirements apply to a Form 16 lodged to record a successive power of attorney:

- Item 2 – must only include the name of the attorney that currently has power\*; and
- if the attorney listed in Item 2 is a successive attorney – evidence must be deposited with the Form 16 to demonstrate that the power of all of the previous attorneys in the chain of succession has ended (e.g. evidence of death, incapacity or another prescribed event).

\* Unless the intention is to record the power of attorney for an attorney that previously executed a Titles Registry form under the power of attorney when they had power and subsequent to the execution their power ended. In this situation, a suitable explanation must be provided with the Form 16 and evidence must be deposited to show that the execution occurred prior to the attorney losing power.

Please note the following:

- a Form 16 to record the power of attorney for a successive attorney must still be lodged even if a previous Form 16 has been lodged to record the power of attorney for a previous attorney in the chain of succession; and
- there is no requirement to lodge a Form 16 to record the power of attorney for any of the previous attorneys in the chain of succession if they have not been previously recorded (i.e. only the Form 16 to record the power of attorney for the successive attorney and evidence to demonstrate that the power of all previous attorneys in the chain of succession has ended is required).

## Alternative Attorney

[16-0145]

Section 43(2)(d) of the *Powers of Attorney Act 1998* states that an alternative attorney may be appointed by a principal for a matter or all matters, so that a power is given to a particular attorney to act only in the circumstance stated in the enduring document.

Although the Powers of Attorney Act does not make specific reference to an alternative attorney in a general power of attorney, ss. 8 and 9 allow for a principal to specify a time or circumstance in which a power is exercisable.

An alternative attorney may act only temporarily unlike a successive attorney who is appointed permanently in the circumstances stated in the power of attorney, for example the prior attorney is unwilling or unable to act.

For an attorney to be an alternative attorney it must be identified that the appointment is a temporary appointment whilst the first named attorney is unable to act. Once the first named attorney can resume duty as the attorney for the principal, the powers of the alternative attorney cease.

A statutory declaration must be deposited with any dealing executed by an alternative attorney stating why the first named attorney is unable to act.

Item 2 of the Form 16 – Request to Register Power of Attorney must show the first named attorney and the alternative attorney, and must state that the appointment is as an alternative attorney.

[16-0150] moved to [16-0175]

## Substitutionary Power of Attorney

[16-0160]

The general rule is that an attorney cannot delegate his/her powers or duties to another, in part or in whole, without the express authority of the principal. Therefore, if authorised by the power of attorney, the attorney can, by a substitutionary power of attorney, appoint a substitute to act in his/her stead, for part or all of the duties delegated to him/her by the power of attorney. In this case, the power of attorney granted by an attorney that nominates and appoints another person to be the attorney's substitute for specified purposes is registrable.

To record the substitutionary power of attorney, the Registrar requires the lodgement of a Form 16 – Request to Register the appointment of a substitute attorney together with the substitutionary power of attorney document.

Item 1 of the Form 16 – Request should show the principal in the capacity of attorney under the head power of attorney dealing number. Item 3 of the Form 16 – Request should state the clause in the head power of attorney document that authorises the appointment of the substitute attorney.

Refer to [61-3050] for the practice requirements when a substitute attorney is executing an instrument or document.

The *Powers of Attorney Act 1998* does not provide for the attorney to have power to appoint a substitute attorney under an enduring power of attorney.

## Supplementary Power of Attorney

[16-0170]

A principal can, by a power of attorney, appoint a person to be his/her attorney, and at a later date and by a separate power of attorney, appoint another person to act in addition to, or jointly with, the first attorney.

This is called a 'supplementary power of attorney' and the Power of Attorney Register is cross referenced with details of the supplementary power. An attorney, if authorised by the power, can also appoint supplementary attorneys to carry out part of the original duties as attorney for the principal.

Where an attorney with conferred power has appointed a substitute, it should always be first ascertained whether the authority is to appoint an additional (or supplementary) attorney to:

- (a) act ‘under the attorney’ in a supplementary capacity; or
- (b) make a substitutionary appointment ‘in the attorney’s stead’.

In the former case (a), the original attorney is to be regarded as still continuing in office, notwithstanding his/her appointment of a supplementary attorney. On the death of the original attorney or on his/her ceasing to hold office, the supplementary attorney will also terminate.

In the latter case (b), however, the appointment by the original attorney would prevent him/her acting in the position again. In effect, it creates his/her own retirement in favour of the substitute.

[16-0175] deleted

## **Power of Attorney Affecting State Tenure and Water Allocations** [16-0180]

All powers of attorney registered in the Power of Attorney Register can be applied to dealings with either freehold land, State tenures or water allocations.

## **Interstate or International Power of Attorney** [16-0190]

Interstate (including Australian territories) or international powers of attorney (including enduring powers of attorney) prepared and executed according to the laws of another state, territory or country may be registered in the power of attorney register under the *Land Title Act 1994*. However, the power of attorney must be valid under the laws of the relevant state, territory or country.

Refer to [16-2137] for specific practice requirements for interstate or international powers of attorney.

## **Queensland Powers of Attorney made outside Queensland** [16-0191]

A person who is interstate or overseas can make a power of attorney under the *Powers of Attorney Act 1998* using a Form 1 (General Power of Attorney), Form 2 (Enduring Power of Attorney – Short Form) or Form 3 (Enduring Power of Attorney – Long Form).

However, the requirements under the Powers of Attorney Act and *Land Title Act 1994* must be complied with including applicable witnessing requirements (e.g. an eligible witness must hold a prescribed qualification such as a Queensland justice of the peace, an Australian lawyer or a notary public).

Refer to [16-2138] for specific practice requirements for Queensland powers of attorney made outside Queensland.

## **Certified Copy of Power of Attorney under the *Powers of Attorney Act 1998*** [16-0195]

### **General Powers of Attorney** [16-0196]

Section 14 of the *Powers of Attorney Act 1998* provides that a general power of attorney may be proved by a copy of the power of attorney certified under the section (a “*section 14 certified copy*”) but does not prevent a general power of attorney being proved in another way.

The Titles Registry will accept a copy of a general power of attorney as a *section 14 certified copy* if it meets the following requirements:

- 1 Each page of the copy must be on a single-sided A4 sheet of paper (for scanning purposes).
- 2 Each page, other than the last page, must be certified to the effect that the copy is a true and complete copy of the corresponding page of the original.
- 3 The last page must be certified to the effect that the copy is a true and complete copy of the original.
- 4 The certification must be by one of the following persons –
  - (a) the principal;
  - (b) a justice of the peace;
  - (c) a commissioner for declarations;
  - (d) a notary public;
  - (e) a lawyer (lawyer means an Australian lawyer within the meaning of the *Legal Profession Act 2007*—see the *Acts Interpretation Act 1954*, schedule 1);
  - (f) a trustee company under the *Trustee Companies Act 1968*;
  - (g) a stockbroker.
- 5 The certification must contain sufficient information to clearly identify the certifier and the position/qualification that makes them eligible to certify the copy (e.g. the Principal must legibly print their full name and “Principal”, a Justice of the Peace (Qualified) must legibly print their full name or registration number and a lawyer must legibly print their full name and qualification).

Section 14(5) of the Powers of Attorney Act provides that if a copy of a power of attorney has been certified under section 14, the original power of attorney may also be proved by a copy, certified under section 14, of the certified copy (a *section 14 certified copy* of a *section 14 certified copy*).

## Enduring Powers of Attorney

[16-0198]

### Certifications on or after 30 November 2020

Section 45 of the *Powers of Attorney Act 1998* (as amended by the *Guardianship and Administration and Other Legislation Amendment Act 2019*) provides that an enduring power of attorney may be proved by a copy of the power of attorney certified under the section (a “*section 45 certified copy*”) but does not prevent an enduring power of attorney being proved in another way.

The Titles Registry will accept a copy of an enduring power of attorney as a *section 45 certified copy* if it meets the following requirements:

- 1 Each page of the copy must be on a single-sided A4 sheet of paper (for scanning purposes).
- 2 The certifier must have:

- (a) either:
  - (i) certified each page of the copy; or
  - (ii) signed or initialled each page of the copy; and
- (b) signed an appropriate certification clause on the face of the copy that:
  - (i) contains words to the effect that the document is a true and complete copy of the original;
  - (ii) contains sufficient information to clearly identify the certifier and the position/qualification that makes them eligible to certify the copy (e.g. the Principal must legibly print their full name and “Principal”, a Justice of the Peace (Qualified) must legibly print their full name or registration number and a lawyer must legibly print their full name and qualification); and
  - (iii) is capable of being clearly and legibly reproduced when scanned into an image by the Titles Registry.

Example Certification Clauses:

This is to certify that this document is a true and complete copy of the original document.

Date  
Signed  
Full name  
Position/Qualification

This is to certify that this [number of pages] page document (each page of which I have signed) is a true copy of the original [number of pages] page document that I have sighted.

Date  
Signed  
Full name  
Position/Qualification

3 The certifier must be one of the following persons –

- (a) the principal;
- (b) a justice of the peace;
- (c) a commissioner for declarations;
- (d) a notary public;
- (e) a lawyer (lawyer means an Australian lawyer within the meaning of the *Legal Profession Act 2007*—see the *Acts Interpretation Act 1954*, schedule 1);
- (f) a trustee company under the *Trustee Companies Act 1968*;
- (g) a stockbroker.

Section 45(4) of the Powers of Attorney Act provides that if a copy of a power of attorney has been certified under section 45, the original power of attorney may also be proved by a

copy, certified under section 45, of the certified copy (a *section 45 certified copy* of a *section 45 certified copy*). Each *section 45 certified copy* must comply with the section 45 requirements that applied on the date the certification was carried out.

#### **Certifications prior to 30 November 2020**

Any certified copy of an enduring power of attorney made prior to 30 November 2020 must comply with the requirements of the former section 45 of the *Powers of Attorney Act 1998* which are the same as those detailed above for the certification of a copy of a general power of attorney under section 14 of the *Powers of Attorney Act 1998*.

Section 45(4) of the Powers of Attorney Act provides that if a copy of a power of attorney has been certified under section 45, the original power of attorney may also be proved by a copy, certified under section 45, of the certified copy (a *section 45 certified copy* of a *section 45 certified copy*). Each *section 45 certified copy* must comply with the section 45 requirements that applied on the date the certification was carried out.

## **Restrictions in Power of Attorney**

[16-0200]

A principal may limit the powers given to an attorney by specifically defining the functions the attorney may perform. For example, attorneys who do not have the power to purchase land cannot sign transfers as transferee.

An enduring power of attorney under Chapter 3 of the *Powers of Attorney Act 1998* must be in or substantially comply with Form 2 or 3 under the Powers of Attorney Act.

## **Revocation of Power of Attorney**

[16-0210]

A power of attorney, other than an enduring power of attorney, may be revoked in accordance with the provisions of Chapter 2 Part 3 of the *Powers of Attorney Act 1998*.

An enduring power of attorney may be revoked in accordance with Chapter 3 Part 5 of the Powers of Attorney Act.

A Form 16 – Request to Register Revocation of Power of Attorney, with the necessary amendment to Item 3, is appropriate to register the revocation of a power of attorney, but is not the revocation itself.

A revocation cannot be registered in the registry if the power of attorney is not registered in the registry.

A principal that has complied with s. 16 or s. 46 of the Powers of Attorney Act may register a revocation of a registered power of attorney. The revocation of power of attorney in the appropriate form as approved in keeping with s. 161 of the Powers of Attorney Act together with a Form 16 – Request to Register Revocation of Power of Attorney (Form 16 under the *Land Title Act 1994*) must be lodged in the registry.

A Form 5 – Revocation of General Power of Attorney (approved in keeping with the Powers of Attorney Act) is appropriate to revoke any general power of attorney. A Form 6 – Revocation of an Enduring Power of Attorney (approved in keeping with the Powers of Attorney Act) is appropriate to revoke an enduring power of attorney. A registered enduring power of attorney may only be revoked in Form 6. See also [16-0260] in relation to enduring powers of attorney.

The revocation of a general power of attorney may be in the form of a deed made by the principal. The deed of revocation is deposited with the Form 16 – Request to Register Revocation of Power of Attorney (under the Land Title Act).

If a revocation of a power of attorney is executed in another state or country and the laws of that state or country provide specific requirements for the execution of a revocation, the execution must be undertaken in accordance with those laws.

The date of revocation of a power of attorney is recorded in the Power of Attorney Register to notify interested parties of the time the attorney's power ended. Any substitutionary power of attorney is also revoked from that time.

For the purpose of registration in the registry a power of attorney that revokes a previously registered power of attorney **and** appoints one or more attorneys, is taken to be two instruments and requires lodgement of two Forms 16 under the Land Title Act.

If more than one power of attorney is being revoked, separate revocations are required for each power of attorney. Separate lodgement fees are payable for revocation of each power of attorney.

### **Revocation of Joint and Several Principals**

[16-0220]

Where two or more principals severally appoint an attorney, it is possible for only one principal to revoke his/her power of attorney.

### **Revocation of Joint and Several Attorneys**

[16-0230]

Where two or more attorneys have been appointed jointly or jointly and/or severally the power given to one or more of them may be revoked separately.

### **Revocation of Substituted Attorney**

[16-0240]

The principal of an original power of attorney can revoke the power of attorney so far as it relates to a substituted attorney. Revocation of the original power of attorney is sufficient for the revocation of the substitutionary power of attorney.

### **Revocation of a Power of Attorney Granted by a Corporation**

[16-0250]

If a corporation has given a power of attorney to any person and an official manager is subsequently appointed, the power of attorney will cease to operate from the date that the official manager is appointed, unless the official manager directs that the power of attorney is to continue in force (see also [16-0090]).

### **Revocation by Operation of Law**

[16-0260]

Generally speaking, a power of attorney is revoked upon the (a) death or (b) loss of capacity of the principal. The exceptions are:

- (a) where the power of attorney is stated to be irrevocable pursuant to s. 10 of the *Powers of Attorney Act 1998*; and
- (b) enduring powers of attorney pursuant to Chapter 3 Part 5 of the Powers of Attorney Act, although an enduring power of attorney **is** revoked by the death of the principal.

An enduring power of attorney is revoked in the circumstances set out in Chapter 3 Part 5 of the Powers of Attorney Act or s. 135 of the *Land Title Act 1994*. In the case of revocation pursuant to an order of the court, a copy of the court order is required to be lodged. Where revocation is due to the bankruptcy of the principal or attorney, a copy of the extract from the National Personal Insolvency Index is required to be lodged. Where revocation is due to the winding up, dissolution or appointment of a receiver or administrator to a corporate attorney, a copy of the appointment of liquidator, receiver or administrator is required to be lodged. Where the



revocation results from the death of either a joint tenant principal or a sole principal, an office copy of the certificate of death is required to be lodged.

The above evidence should be deposited with a Form 16 – Request to Register Revocation of Power of Attorney when lodged for registration in the titles registry. See [60-1030] for information about depositing supporting documentation.

[16-0270] deleted

## Legislation

[16-1000]

### <sup>2,3</sup>Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, an interest or dealing may be registered in a way mentioned in the Land Title Act, subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act:

- (a) as if a reference to the freehold land register is a reference to the water allocations register; and
- (b) as if a reference to freehold land or land is a reference to a water allocation; and
- (c) as if a reference to a lot is a reference to a water allocation; and
- (d) with any other necessary changes.

### *Land Act 1994*

Section 383 of the Land Act provides that a donee under a power of attorney registered in the powers of attorney register under the *Land Title Act 1994* may deal with any interest in land under the Land Act as authorised by the principal (donor) pursuant to the relevant power of attorney and the Land Act.

Section 383(3) of the Land Act prohibits a trustee of trust land from authorising another person under a power of attorney to deal with an interest in trust land that may be dealt with by the trustee. Trust land in this part would refer to reserves, deeds of grant in trust and similar land held for community purposes.

### Reference to the registrar of titles in the *Land Title Act 1994* and *Land Act 1994* and reference to the registrar of water allocations in the *Water Act 2000*

Refer to [0-8100] and [0-8200] and [0-8300].

# Practice

**NOTE!** From this point on and for simplicity, ‘donees’ will only be referred to as ‘attorneys’ and ‘donors’ will only be referred to as ‘principals’.

## Registration of Power of Attorney

### General Registration Requirements

[16-2000]

The *Powers of Attorney Act 1998* was proclaimed on 1 June 1998. This Act consolidated the law about general powers of attorney and enduring powers of attorney and also provides for advance health directives.

The Powers of Attorney Act does not prevent a person from executing and registering what is referred to as a common law form of **general** power of attorney. However, for these powers of attorney to be registered they must be executed under the provisions of s. 161 and s. 162 of the *Land Title Act 1994*.

The table below shows the forms that have been approved under the Powers of Attorney Act for use when making or revoking powers of attorney and may assist in determining how any of the forms may be registered.

Form	Purpose	Register – Land Title Act	Register – Property Law Act
1	General Power of Attorney	Yes	Yes
2	Enduring Powers of Attorney – Short Form (same attorney(s) for financial and personal matters)	Yes, if financial matters included	Yes
3	Enduring Powers of Attorney – Long Form (different attorneys for financial and personal matters)	Yes, if financial matters included	Yes
4	Advance Health Directive	No	Yes
5	Revocation of General Power of Attorney	If p/a registered	Yes
6	Revocation of Enduring Power of Attorney	If p/a registered	Yes
7	Interpreter’s/Translator’s Statement	Only with power	Only with power
8	Additional page (for use with an Enduring Power of Attorney or Advance Health Directive)	Only with power	Only with power
9	Enduring power of attorney explanatory guide	No guide only	No guide only

All powers of attorney lodged for registration under the Land Title Act are registered in the Power of Attorney Register in the Automated Titles System.

A power of attorney may confer on the attorney(s) authority of a general nature or it may authorise only specific actions and these may not relate to land. If there is no power for an attorney to deal with land or an interest in land under the Land Title Act, the power of attorney cannot be registered in the Power of Attorney Register.

However, it may be registered in the registry under the *Property Law Act 1974* (see [16-2135]).

If a printed power of attorney form specifically sets out the powers of the attorney and has additional powers typed in, the additional powers will be read in addition to the printed powers. For example:

If the following clause is added to a pre-printed power of attorney:

‘I hereby specifically declare that my attorney can execute transfer documentation for the sale of my property’

then the implication is **not**:

‘I hereby specifically declare that my attorney can **only** execute transfer documentation for the sale of my property’.

Any power of attorney that authorises an attorney to deal with an interest in land may be registered in the Power of Attorney Register.

A power of attorney registered in the Power of Attorney Register may be quoted as authority for execution of an instrument or document to be registered under the Land Title Act or the *Land Act 1994*.

Form 16 is not a power of attorney in itself but the vehicle by which registration of a power of attorney or revocation of power attorney is requested. A completed Form 16 must accompany any power of attorney, including a power of attorney contained in a lease, mortgage or agreement, or a revocation of a power of attorney to be registered in the Power of Attorney Register.

Form 16 – Request to Register must be signed by the person making the request, for example the principal or attorney, or the solicitor for the principal or attorney. A witness to the signature is not required.

## Duty

[16-2010]

There is no duty notation required on a power of attorney executed after 1 November 1989. Powers of attorney executed prior to 1 November 1989 should be referred to the Office of State revenue for duty payment.

## Lodgement

[16-2015]

Section 133 of the *Land Title Act 1994* provides for either of the following to be deposited with a Form 16 – Request to Register Power of Attorney:

- The original power of attorney; or
- a copy of the power of attorney certified under s. 14 (general) or s. 45 (enduring) of the *Powers of Attorney Act 1998*.

A copy is retained in the registry after registration and the deposited original power of attorney or certified copy is returned to the lodger.

For the requirements of certifying a power of attorney under s. 14 or s. 45 of the Powers of Attorney Act see [16-0195].

## Power of Attorney under s. 56 of the *Trusts Act 1973*

[16-2020]

The power given should include a reference to s. 56 of the Trusts Act, if applicable, and to the ‘estate’ being administered as is appropriate to the specific case.

This section does not apply to corporate trustees.

A power of attorney under this section cannot be exercised until the principal (trustee) is out of the State or is incapable by reason of physical infirmity. It can no longer be exercised once the principal (trustee) returns to the State or recovers.

It is a requirement under s. 56(7) of the Trusts Act that the attorney lodge a statutory declaration with any document executed under the power of attorney to the effect that the principal has left the State or is physically incapable and that under s. 56(5) of the Trusts Act, the power of attorney has come into operation. For example, a statutory declaration in the following form is acceptable:

‘QUEENSLAND  
TO WIT

I, BILL JONES of 22 Klume Street, Red Hill in the State of Queensland do solemnly and sincerely declare as follows:

- 1 KEITH JONES of 22 Klume Street, Red Hill aforesaid did execute power of attorney Dealing No F567861 to me prior to departing from the State of Queensland in or about April 1985.
- 2 I am the donee mentioned and referred to in the said power of attorney and reside in Queensland.
- 3 The said Keith Jones has not returned to Queensland at the time of making this declaration.
- 4 I further declare that pursuant to s. 56(5) of the *Trusts Act 1973* the aforementioned power of attorney has come into operation.

AND I MAKE this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867* as amended.

SIGNED AND DECLARED by	)	
the KEITH JONES at Brisbane	)	<i>K Jones</i>
in the State of Queensland this 3rd	)	
day of July 1985, before me:	)	

*T. Tallis*

.....

THOMAS TALLIS

A Justice of the Peace’

### **Power to Appoint an Attorney under the *Trusts Act 1973* or under a trust instrument [16-2030]**

Trustees (including corporate trustees) can appoint an attorney:

- for certain purposes under the *Trusts Act 1973* if there is no restriction contained within the Trusts Act or the trust instrument appointing the trustee; and/or
- under a power provided by the trust instrument (e.g. a trust deed or will) appointing the trustee (s. 4(4) of the Trusts Act).

In addition to the other general practice requirements, the following specific practice requirements apply to a Form 16 – Request to Register Power of Attorney lodged to record the principal in the principal’s capacity as trustee:

- Item 1 – must specifically state that the trustee ‘as trustee/personal representative of [name of trust/deceased]’ is granting the power;

- Item 3 – must state the paragraph/clause in the trust instrument (e.g. trust deed or will) or the section of the *Trusts Act 1973* authorising the appointment of the attorney; and
- a copy of the original trust instrument must be deposited with the power of attorney (see [51-2043] about the deposit of a trust document and [60-1030] for information about depositing supporting documentation).

### Joint and Several Principals or Attorneys

[16-2040]

In a general power of attorney 2 or more principals may jointly appoint an attorney, in which case the attorney can only act for both or all of the principals jointly. A power given jointly by two or more people is revoked upon the death or loss of legal capacity of any one of the principals. In cases where powers of attorney fail to disclose how the multiple principals hold their interests, they will be assumed to be and will be registered as granting the power jointly.

Where two or more principals jointly and severally (or jointly and/or severally) appoint an attorney or multiple attorneys jointly and severally (or jointly and/or severally) to act, then the attorney may act for any or all of the principals. It is possible to register the power from only one principal to one attorney.

For an enduring power of attorney, the *Powers of Attorney Act 1998* and the Queensland enduring power of attorney forms (Form 2 and Form 3) do not make provision for multiple principals to jointly and/or severally appoint an attorney.

### Registration of Power of Attorney Clause in Mortgage or Other Instrument or Document

[16-2050]

By a specific clause in most leases, mortgages, etc, it is usual for the lessee or mortgagor to appoint the lessor or mortgagee as their attorney. While these appointments are usually granted in the event of default under the terms and conditions, this is not always the case.

Exercise of these powers is confined to the land referred to in the lease or mortgage, unless otherwise specified in the instrument or document.

Where the power of attorney clause is only able to be invoked upon default of some kind, evidence of such default must be deposited at the time of lodgement of the power of attorney.

For example, the following clause is effective to grant an immediate power of attorney under s. 132 of the *Land Title Act 1994*:

‘... and to secure payment to you of any amounts outstanding whether debt, interest or costs, I charge all my property, both real and personal, present and future, with the amount of my indebtedness until discharged, such indebtedness to include all matters referred to in Clause [number] hereof and I hereby appoint as my duly constituted attorney your manager for the State in which the said debt was payable...’.

A power of attorney clause in a mortgage that has been discharged may only be registered if the mortgagor has not been discharged from personal covenants under the mortgage. A power of attorney clause of this nature and one in an unregistered short term lease, an instrument or document that has not been registered in the registry or certain deeds and agreements is capable of registration as a power of attorney.

In order to register a power of attorney clause, the following documentation must be produced with the registry Form 16 – Request to Register Power of Attorney:

- (a) a copy of the registered instrument or document obtained from the Titles Registry (which need not be a certified copy); or

- (b) an unregistered, executed copy of the registered instrument or document (e.g. an unregistered duplicate or triplicate); or
- (c) an original executed deed or agreement (e.g. a mortgage debenture containing a power of attorney clause).

In all cases the documentation produced will be returned to the lodger after registration (s. 133(3) of the Land Title Act).

If default is a pre-requisite of the power of attorney, evidence of default (i.e. a declaration as to default having occurred and service of notices on the defaulting proprietor(s)) and a copy of the notice(s) must be deposited. In these instances the date of default is the date of the power of attorney. If default is not a pre-requisite, the date of the document that contains the power of attorney clause or event specified is the date of the power of attorney.

### **Error in Power of Attorney**

[16-2060]

If an attorney executes an instrument or document and a minor difference in the name of the principal or the attorney is detected (e.g. a typographical error), a declaration of identity is required.

## **Types of Power of Attorney**

### **Form 1 under s. 11 of the *Powers of Attorney Act 1998***

[16-2063]

A Form 1 – General Power of attorney (non-enduring) (under the Powers of Attorney Act) operates to confer on attorneys (acting jointly or severally if more than one), authority to do anything that an Attorney can lawfully do on behalf of a principal or it may contain terms or information about exercising the power (s. 8 of the Powers of Attorney Act). A general power of attorney must be in the approved form (s. 11 of the Powers of Attorney Act), however, strict compliance with the form is not necessary and substantial compliance is sufficient (s. 49 of the *Acts Interpretation Act 1954*).

These are capable of being registered in the Power of Attorney Register provided they do not specifically exclude the attorney from dealing with land owned by the principal.

A general power of attorney is capable of being registered as a deed under the *Property Law Act 1974*.

### **Forms 2 and 3 under s. 44 of the *Powers of Attorney Act 1998***

[16-2066]

A Form 2 (short form) or Form 3 (long form) – Enduring Power of Attorney (under the Powers of Attorney Act) operates to confer on the attorney authority to do, on behalf of the principal, anything that the principal may lawfully authorise an attorney to do. However, enduring powers of attorney can only be registered in the Power of Attorney Register if they contain powers in relation to financial matters and do not exclude dealings with both interests in land or water allocations owned by the principal.

These powers of attorney continue to operate and have full force and effect even if the principal becomes incapable. However, the attorney's authority ceases on the death of the principal.

Forms 2 and 3 – Enduring Powers of Attorney, may give a general authority, a specific authority or a general and specific authority with restrictions or conditions, without affecting its enduring status. An enduring power of attorney must be in the approved form. If a power of attorney is not in substantial compliance with Form 2 or 3, it will be ineffective as an **enduring** power of attorney in Queensland (see [16-0190]).

Section 44(3)(b) of the Powers of Attorney Act states that an enduring document must—

- (a) be signed—
  - (i) by the principal; or
  - (ii) if the principal instructs—for the principal and in the principal’s presence, by an eligible signer; and
- (b) be signed and dated by an eligible witness.

Section 44(4) states that if an enduring document is signed by the principal, it must include a certificate signed by the witness. This section sets out that the eligible witness is required to sign and date an enduring power of attorney in both the Statement of Understanding and the Certificate of Witness clauses.

An enduring power of attorney is capable of being registered as a deed under the *Property Law Act 1974*.

[16-2070] to [16-2090] deleted

### **Form 13 or Form 14 under the *Property Law Act 1974***

[16-2100]

A Form 13 – (General Power of Attorney) or Form 14 – (Enduring Power of Attorney) under the Property Law Act may be registered in the Power of Attorney Register if executed prior to 1 June 1998.

[16-2110] and [16-2120] deleted

### **Power of Attorney under Common Law**

[16-2130]

No form is prescribed for a common law power of attorney. However, every power of attorney, to be registered in the registry, must be presented for lodgement with a Form 16 – Request to Register Power of Attorney.

### **Registration under the *Property Law Act 1974***

[16-2135]

**Note:** At present, this service is only available at the Brisbane Office. For registration of a power of attorney as a deed under Part 18 Division 3 of the Property Law Act, the original and a photocopy (printed one-side on international A4 sized white paper) that has been certified as required by s. 242 of the Property Law Act and has provision for endorsements as required by s. 244 of the Property Law Act must be provided. Section 242 of the Property Law Act requires the certification to be made by a credible person and the oath to be taken before a witness as prescribed by schedule 1 of the *Land Title Act 1994*.

The certification of the copy by a credible person should be made on the last page and in the following format:

‘I (*insert full name*), of (*insert full address*) in the State of (*insert State*), (*insert profession*), certify that this (*insert number*) and the preceding pages is a true copy of the original power of attorney given by (*insert full name of principal*) dated (*insert date of power*).

Sworn by (*insert full name*) at )  
 (*insert place*) in the State of )  
 (*insert State*) on this (*insert date*) )  
 before me: (*signature of deponent*)

(signature of witness)

(print full name of witness)

(insert qualification of witness)

Provision for endorsement by the Registrar or delegate on the original power of attorney and the certified photocopy in keeping with s. 244 of the Property Law Act should be on last page of both the original and the certified copy and in the following formats:

#### **Certified copy**

‘Received in the registry as No. (leave space to insert number) Book (leave space to insert book number) at the time and date recorded on the document.

(leave space for signature of Registrar)

Registrar of Titles and Registrar of Water Allocations, Queensland’

#### **Original**

‘Received in the registry as No. (leave space to insert number) Book (leave space to insert book number) at (leave space to insert time) am/pm on (leave space to insert date).

(leave space for signature of Registrar)

Registrar of Titles and Registrar of Water Allocations, Queensland’

**Note:** The above receipts (which comprise registration under the Property Law Act) may only be given by the Registrar personally or by a delegate.

#### **Interstate or international power of attorney**

[16-2137]

Interstate (including Australian territories) and international powers of attorney (including enduring powers of attorney) prepared and executed according to the laws of another state, territory or country may be registered in the power of attorney register under the *Land Title Act 1994*. However, the power of attorney must be valid under the laws of the relevant state, territory or country.

A power of attorney prepared and executed according to the laws of another state, territory or country (the “applicable jurisdiction” of the power of attorney) must be accompanied by evidence of compliance with the laws of the applicable jurisdiction of the power of attorney in the form of either:

- (a) a notation, memorial or other evidence to show that the power has been recorded in:
  - (i) the applicable jurisdiction; or
  - (ii) another Australian jurisdiction (i.e. New South Wales, Victoria, South Australia, Western Australia, Tasmania, Australian Capital Territory or Northern Territory); or
- (b) a statement in writing by a solicitor or the attorney confirming that the power of attorney complies with the laws of the applicable jurisdiction, including any execution and witnessing requirements.



A power of attorney that has been witnessed outside Australia must be accompanied by evidence of genuine and legitimate execution by the principal in the form of:

- (a) a notation, memorial or other evidence to show that the power has been recorded in another Australian jurisdiction (i.e. New South Wales, Victoria, South Australia, Western Australia, Tasmania, Australian Capital Territory or Northern Territory); or
- (b) a statement in writing by a solicitor stating that the solicitor has made enquiries and has no reason to believe that the power of attorney has not been genuinely and legitimately executed by the principal; or
- (c) if the execution has been witnessed by a witness that also holds a qualification as a legal practitioner – a statement in writing by the witness stating that the witness has made enquiries and has no reason to believe that the power of attorney has not been genuinely and legitimately executed by the principal; or
- (d) a witness certification completed by the witness in accordance with [61-2500].

For Australian and foreign corporations, refer to [16-2150], [16-2160] and Part 50 – Corporations and Companies (in particular [50-0140] (foreign corporations) and [50-2000]) for information about execution and practice requirements.

If a power of attorney or any supporting documentation is written in a foreign language, a suitable English translation must be deposited (see [60-1020]).

### **Queensland Powers of Attorney made outside Queensland**

[16-2138]

A person who is interstate or overseas can make a power of attorney under the *Powers of Attorney Act 1998* using a Form 1 (General Power of Attorney), Form 2 (Enduring Power of Attorney – Short Form) or Form 3 (Enduring Power of Attorney – Long Form).

However, the requirements under the Powers of Attorney Act and *Land Title Act 1994* must be complied with including applicable witnessing requirements (e.g. for an enduring power of attorney an eligible witness must hold a prescribed qualification such as a Queensland justice of the peace, an Australian lawyer or a notary public).

A Queensland power of attorney that has been witnessed outside Australia must be accompanied by evidence of genuine and legitimate execution by the principal in the form of:

- (a) a notation, memorial or other evidence to show that the power has been recorded in another Australian jurisdiction (i.e. New South Wales, Victoria, South Australia, Western Australia, Tasmania, Australian Capital Territory or Northern Territory); or
- (b) a statement in writing by a solicitor stating that the solicitor has made enquiries and has no reason to believe that the power of attorney has not been genuinely and legitimately executed by the principal; or
- (c) if the execution has been witnessed by a witness that also holds a qualification as a legal practitioner – a statement in writing by the witness stating that the witness has made enquiries and has no reason to believe that the power of attorney has not been genuinely and legitimately executed by the principal; or
- (d) a witness certification completed by the witness in accordance with [61-2500].

For Australian and foreign corporations, refer to [16-2150], [16-2160] and Part 50 – Corporations and Companies (in particular [50-0140] (foreign corporations) and [50-2000]) for information about execution and practice requirements.

## Execution of Power of Attorney

### Individual

[16-2140]

Execution of powers of attorney is governed by s. 45 of the *Property Law Act 1974* for individuals and s. 46 of the *Property Law Act* for corporations.

**Note:** A principal may place his/her mark on the power of attorney where, for example, the principal does not have the physical strength to make the signature. A marksman clause is required (see Part 61 – Witnessing and Execution of Instrument or Documents, esp. [61-3040]).

In the case of physical incapacity, it is possible also for another person (apart from the principal) to execute the power at the direction of the principal. For example, where a principal is unable to physically sign the power of attorney, the following execution would be acceptable:

**‘SIGNED SEALED AND DELIVERED** by **LEE ROBERT ERNEST** at the direction of **PHYLLIS MURIEL** and in the presence of **PHYLLIS MURIEL** on the grounds that **PHYLLIS MURIEL** was unable to execute this document personally by reason of infirmity and physical incapacity, **LEE ROBERT ERNEST** having read the contents of this document to **PHYLLIS MURIEL** who appeared to understand the same and the nature and effect thereof.

*L R Ernest*

.....

Lee Robert Ernest

*P Smith*

.....

Paul Smith

(A Justice of the Peace)'

### Corporation

[16-2150]

A power of attorney given by a corporation may be executed either with or without the common seal provided the execution is in a way permitted by law.

If a corporation subsequently changes its name, a Request to Update power of attorney is required to be lodged (see [16-2190]).

It is possible for two or more corporations or a corporation and a natural person to appoint a common attorney in one instrument.

Where several corporations appoint a common attorney and registration is required in respect of less than all the principals, the Form 16 – Request to Register must specify which of the powers requires registration.

### Attestation

[16-2160]

Every power of attorney lodged in the registry must be witnessed in accordance with:

- (a) ss. 161 and 162 of the *Land Title Act 1994*, or
- (b) the requirements for execution of powers of attorney of the state or country to which the form relates.

The exception to this is in the case of a corporation and these powers of attorney are sufficiently attested if executed in a way permitted by law.

## **Execution of Instrument by Attorney**

[16-2170]

See part 61, esp. [61-3050].

## **Revocation of Power of Attorney**

[16-2180]

Any dealing executed under a power of attorney after registration of the revocation of the power cannot be registered (see s. 134(4) of the *Land Title Act 1994*). The Registrar may register a dealing executed under the power of attorney where the execution was before the time of registration of the revocation, even if the dealing was lodged after registration of the revocation. It is crucial that the time of execution of the dealing for which registration is sought precedes the time of registration of the revocation. The time of lodgement of the dealing and the time of lodgement of the revocation are immaterial.

## **Update of a Registered Power of Attorney**

[16-2190]

A registered power of attorney may require updating following a change of name of a principal and/or an attorney, or following a change to the description of the property identified in the power of attorney. Updating the power of attorney will facilitate prompt registration of later transactions signed under the power of attorney. See part 14, esp. [14-2800].

# **Forms**

## **General Guide to Completion of Forms**

[16-4000]

For general requirements for completion of forms see part 59 – Forms.

**REQUEST TO REGISTER POWER OF ATTORNEY/  
REVOCATION OF POWER OF ATTORNEY**

Dealing Number



**OFFICE USE ONLY**

**Privacy Statement**

Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

**Lodger** (Name, address, E-mail & phone number)  
LINCON & LEE  
SOLICITORS  
48 TURBOT STREET  
BRISBANE QLD 4000  
mail@linconlee.com.au  
(07) 3227 4562

**Lodger Code**  
725

**1. Principal (Donor)** Given names  
IVOR DENIS  
SALLY ENID

Surname/Company name and number  
DREAME  
DREAME

\*and as Trustee/Responsible Entity for  
\* jointly and/or severally  
\*delete if not applicable

**2. Attorney (Donee)** Given names  
RICHARD LEO

Surname/Company name and number  
MURRAY

\*jointly and/or severally  
\*delete if not applicable

**3. Request**

It is requested that you register:

\*Power of Attorney produced with this request

\*Power of Attorney Clause no. .... in Dealing no. ....

\*Power of Attorney Clause no. .... in Document dated ..... produced with this request

\*Power of Attorney Pursuant to Section ..... (name of legislation)

\*the attached Revocation of Power of Attorney Dealing no. ....

\*delete if not applicable

**4. Execution**

9/10/2007  
**Execution Date**

*R B Lee*  
ROBERT BRUCE LEE  
.....  
**Applicant's or Solicitor's Signature**

Note: A Solicitor is required to print full name if signing on behalf of the Applicant

## Guide to Completion of Form 16

### Item 1

[16-4010]

Insert the full name of the principal (donor) and either:

‘as Trustee/Responsible Entity for ...’; or if more than one

‘jointly’; or

‘severally; or

‘jointly and severally’

which ever is applicable.

### Item 2

[16-4020]

Insert the full name of the attorney (donee) and if more than one, either:

‘jointly’; or

‘severally; or

‘jointly and severally’; or

as a majority; or

any two jointly.

which ever is applicable.

### Item 3

[16-4030]

Delete the statement that is not applicable. If the power of attorney is only partially revoked, then set out the details in this panel.

### Item 4

[16-4040]

Execute as required. No witness is required to the execution of the Form 16.

[16-6000] deleted

## Case Law

### *Tobin v Broadbent* (1947) 75 CLR 378

[16-7000]

However widely a power of attorney is expressed, it should not be construed as authorising the attorney to deal with the property of the principal for the attorney’s own benefit, unless it is expressed that the attorney is specifically authorised to do so.

## Fees

[16-8000]

Fees payable to the Titles Registry are subject to an annual review. Refer to the Titles Fee Calculator available online or see [60-8000].

## Cross References and Further Reading

[16-9000]

Part 50 – Corporations and Companies

Part 51 – Trusts

Part 60 – Miscellaneous

Part 61 – Witnessing and Execution of Instruments or Documents

*Halsbury's Laws of Australia*, Volume 1, Title 15, Agency

### Notes in text

[16-9100]

Note<sup>1</sup> – This numbered section, paragraph or statement does not apply to water allocations.

Note<sup>2</sup> – This numbered section, paragraph or statement does not apply to State land.

Note<sup>3</sup> – This numbered section, paragraph or statement does not apply to freehold land.