

## BACKGROUND

The Land Titles Act authorizes an owner of land to grant a power of attorney whereby a person is appointed to act on behalf of the owner with respect to dealings with his land. (1) The term "owner" is broadly defined in the Act as "a person entitled to any freehold or other estate or interest in land, at law or in equity, in possession, in futurity or expectancy". (2) Although a form is prescribed, (FORM 20), it is not mandatory as the Act states that a power of attorney may be in the prescribed form, or as near to it as circumstances permit, or in any form that has been in use where the land is mentioned and referred to in general terms. (3)

There are two types of powers of attorney - general and special. A power of attorney, which specifies land, is treated as a special power of attorney and has the effect of suspending the owner's right to deal with the land.

Powers of attorney are governed by the law of agency. A principal and agent relationship is created whereby the owner is the principal and the attorney is the agent. For Land Titles Office purposes, "the power must be strictly construed and where specific powers are given followed by general powers the latter will be construed as relating to the specific powers and be confined to them". (4)

## REGISTRATION PROCEDURE

### A. GENERAL POWER OF ATTORNEY

1. The registration of a general power of attorney does not in any way affect the right of the owner to transfer or otherwise deal with his land. (5) As the land is not specially mentioned, (6) a memorandum is not entered against a certificate of title.

2. A general power of attorney that is submitted by the general public can either be an original which will be copied and certified by the Land Titles Analyst with the original returned to the registrant, or a notarially certified copy of the original.

When a general power of attorney is submitted by a law firm, it must be a notarially certified copy of the original; Land Titles will no longer accept the original power of attorney since it may be required for other purposes by the lawyer/client.

3. The general power of attorney can only be submitted to Land Titles for registration when accompanied by documents that are relying on the power of attorney.

4. A notarized copy of the general power of attorney must be included each time a document that is relying on it is submitted for registration and will be attached to the document that is to be registered.

5. A general power of attorney where the donor is a registered Corporation pursuant to section 27 of the Land Titles Act, is acceptable for registration and will be recorded in a reference index.

## **B. SPECIAL POWER OF ATTORNEY**

1. A special power of attorney is one that specifically refers to land and is therefore endorsed against the appropriate titles. When registered, the right of the owner to deal with the land is suspended as to the powers granted until the special power of attorney is revoked. (7)

2. The special power of attorney must be an original which will be retained by the Land Titles office since it is to be registered on the title. A notarially certified copy of the original is unacceptable unless authorized by a court order or fiat.

3. If a special power of attorney is submitted in connection with a specific transaction, it is given a separate registration number and charged the fee in [Tariff item 11\(6\)](#). If the certificate of title is being cancelled concurrently by subsequent documents, the power of attorney must be attached to the document being registered to eliminate the need to register it first under a separate DRR and then to drop it during the title cancellation process. A separate Tariff item will not be charged for the power of attorney in this specific case.

4. If the power of attorney pertains to a specific instrument, that instrument registration number is added in the POWS screen on ALTA. If the power of attorney is restricted as to the power granted, or includes a time limitation, this information is included in the endorsement by adding the term "RESTRICTED" in the particulars.

## **C. GENERAL REQUIREMENTS**

In order to be registrable at the Land Titles Office, all powers of attorney must make reference to the ability to deal with real property.

1. The normal execution requirements must be complied with. The owner's signature must be witnessed by an individual who is not a party to the power of attorney (8) and the witness must complete an affidavit of execution. If the grantor is a corporation, the power must be either executed under seal and countersigned by at least one officer or director of the corporation or executed by at least one officer or director of the corporation who has his signature attested to and completes a corporate signing authority affidavit pursuant to section 161 of the Land Titles Act. (9)

2. A power of attorney may specify a position or an office instead of an individual. (10) An attorney can be a corporation; if the attorney is a corporation it should meet the requirements of section 27 of the Land Titles Act.
3. An irrevocable power of attorney may be registered. The particulars noted on the reference index or on a title must indicate that the power is irrevocable so that special revocation requirements will not be overlooked.
4. An attorney under a power of attorney cannot grant a further power of attorney unless the original power specifically authorizes it. Nor can a trustee, receiver, executor, administrator, committee or liquidator appoint an attorney without express authority to do so. (11)
5. A power of attorney, which has a time and/or amount limit, may be accepted. Particulars of the limitation on the power are noted on the reference index. A time-limited power of attorney can be expired when the time has elapsed upon written request (use document type DISO on ALTA). [Tariff item 11\(5\)](#) is charged.
6. If a general power of attorney, which does not contain a revocation of powers, previously granted is presented for registration and another power of attorney is already registered, it is rejected with a request for advice as to whether the registrant wishes to revoke the previous power. If the power is resubmitted, it should be registered in the usual manner. A special power of attorney, which does not contain a revocation of a previously granted special power of attorney, is not to be registered.
7. The full address including postal code for the attorney is required for a special power of attorney.

#### **D. REVOCATION OF A POWER OF ATTORNEY**

1. Although the Land Titles Act prescribes a form for the purposes of revocation ([FORM 21](#)), any document, which contains the required information, is acceptable.
2. A witness and affidavit of execution are required. (12)
3. The registration number of a revocation is used to discharge a power of attorney that is endorsed against a certificate of title. The revocation of a general power of attorney requested by a registered Corporation pursuant to section 27 of the Land Titles Act, is recorded in the reference index.
4. If a power of attorney is presented with a clause stating all previous powers of attorney are revoked, it is registered twice. Once as a power of attorney, as it is tied to name searches and second as a revocation. (13)

5. A revocation of an unregistered power of attorney may be registered. This registration is recorded in the reference index. If specific legal descriptions are provided, a memorandum is entered on title with the particulars detailing when and to whom the power of attorney was granted and when it was revoked. Use REVN on ALTA.

6. Death generally revokes a power of attorney. (14) A transmission application or a statutory declaration of the personal representative of the deceased or other person with knowledge of the circumstances, establishing that the grantor of the power of attorney is deceased, may be accepted as a revocation of the power of attorney. A copy of a death certificate or other evidence establishing death must be attached to the declaration. The procedure on Deceased Joint Tenants [TEN-1](#) sets out acceptable evidence of death.

7. A power of attorney is considered to be revoked by a bankruptcy receiving order, an assignment in bankruptcy, an order under the Dependent Adults Act, R.S.A. 2000, c. D-11 or a certificate for a mentally incompetent person pursuant to the Public Trustee Act, R.S.A. 2000, c. P-44. (15)

8. The attorney must consent to the revocation of an irrevocable power of attorney. (16)

#### **E. EXAMINATION OF DOCUMENTS EXECUTED BY AN ATTORNEY**

1. When a document signed by an attorney is submitted for registration, it is necessary to ensure that the execution of the document is authorized by the power of attorney. If this can be determined with certainty from the summary of the power noted on the reference index or title, it is not necessary to check the registered power of attorney.

2. A search of the reference index must be made to ensure that the power of attorney has not been revoked. A document signed by an attorney under a power of attorney is acceptable for registration after the power of attorney has been revoked, provided that the document is dated and executed prior to the date of revocation. (17)

3. The attorney should specify the registration number of the power of attorney being relied upon below his signature on the document he is executing.

4. When a power of attorney specifies a position or an office instead of an individual, there must be evidence in the document, preferably the affidavit of execution, verifying that the person executing the document holds the position specified in the power.

5. An attorney may not transfer to himself or to an agent acting on his behalf unless the power of attorney specifies that he may. (18)

6. An attorney may sign a dower affidavit (19) but not a dower consent, which requires an acknowledgment. Where an attorney executes a disposition for a joint tenant or tenants in common, his execution is deemed to be consent under section 25(2) of the Dower Act.

7. A power of attorney granted by a corporation that has subsequently changed its name or amalgamated is sufficient authority for execution of documents under the new corporate name.

8. Execution requirements must be complied with (i.e., a witness and an affidavit of execution for an individual attorney or a corporate seal or section 161 affidavits for a corporate attorney is required). (20)

## **F. IRREVOCABLE POWERS OF ATTORNEY GRANTED IN MORTGAGES OR ENCUMBRANCES**

1. An irrevocable power of attorney, which is to take effect when certain conditions, including default, occur, may be contained in a registered mortgage or encumbrance. A document executed by an attorney pursuant to such a power of attorney may not be accepted for registration unless the following requirements are met:

- a) the mortgagor must be a corporation,
- b) the corporation that granted the mortgage must be the current owner of the land, and
- c) a certificate relating to the power of attorney and executed by the mortgagee or encumbrancee must be registered. (21)

2. The certificate must contain provisions which:

- a) set out the provisions from the mortgage or encumbrance that grant the power of attorney,
- b) certify that the power of attorney is in effect by virtue of the conditions having occurred,
- c) where the mortgagee or encumbrancee is not the attorney, certify who has been appointed to act as attorney pursuant to the power of attorney,
- d) describe the land in respect of which the power of attorney is to be exercised, and
- e) certify that at least 15 days notice has been given to the corporate mortgagor of the intention of the attorney to file the certificate.

A certificate executed by a corporate mortgagee or encumbrancee must be under seal, or accompanied by the corporate signing authority affidavit and properly attested.

The certificate is registered using the special power of attorney screens. Particulars should state:

"CERTIFICATE UNDER S. 115(5) LAND TITLES ACT".

3. When a certificate described above is registered, the right of the registered owner of the land to deal with the land for the purposes specified in the power of attorney is suspended until the certificate is withdrawn.
4. A withdrawal of certificate executed by the mortgagee or encumbrancee may be registered. Attestation requirements must be complied with. (22)

### STATUTE AND CASE REFERENCES

Statute references are to the Land Titles Act, R.S.A. 2000, c. L-4, unless otherwise indicated.

1. s. 115(1)
2. s. 1(r)
3. s. 115(1)
4. V. DiCatri, *Thom's Canadian Torrens System*, 2nd ed., at p. 685
5. s. 115(3)
6. s. 115(1)
7. s. 115(3)
8. s. 157; *Hebb v. Registrar of Titles*, [1983] 3 W.W.R. 48 (N.W.T.S.C.): a power of attorney is not registrable if the appointed attorney is the witness. The witness must not be a party to the transaction to which the instrument relates or a person having an immediate estate, interest or benefit (proprietary or otherwise).
9. see procedures on Attestation [AFF-1](#), [AFF-2](#) and [COR-1](#)
10. V. DiCatri, *Thom's Canadian Torrens System*, *supra*, uses *In Re The Land Titles Act; Royal Trust Company's Case* [1921] 3 W.W.R. 246 (Sask. Master of Titles) as authority to state at page 688: "The question of whether or not a power of attorney providing for the appointment of officials for the time being of a corporation to execute documents is registrable was answered in the affirmative by the master of titles subject to the rights of the registrar to require proof to his satisfaction that the persons executing instruments under the power of attorney are in fact officials named there."
11. V. DiCatri, *Thom's Canadian Torrens System*, *supra*, at p. 689 uses *Combes's Case* (1613) 9 Co Rep 75, 77 ER 843 as authority to state the following: "The general rule, apart from statute and in the absence of express authority to delegate, is that whenever a power reposes a personal trust and confidence in the donee of the power to exercise his own judgment and discretion he cannot refer the power to the execution of another for *delegatus non potest delegare*. (TRANSLATION: A delegate cannot delegate)
12. see procedures on Attestation [AFF-1](#), [AFF-2](#) and [COR-1](#)
13. Milligan, M.T. in *Re The Land Titles Act*, [1918] 3 W.W.R. 139, (Sask. Master of Titles) permitted the registration of a power of attorney which also revoked the last power of attorney registered. In that case, he directed that the document be given two registration numbers – one for the registration of the revocation and one for the registration of the power of attorney. This differs from the Alberta practice where only one registration number is given the document even though it is serving two functions.

14. A power of attorney can survive the death of the grantor if the power is coupled with an interest of the attorney in the land (e.g., the attorney may be the beneficial owner pursuant to an unregistered transfer from the grantor of the power: F.M.B. Reynolds and B.J. Davenport, *Bowstead on Agency*, 14th ed, p. 420 ff.).
15. *Bowstead on Agency, supra*
16. *Ferris v. Nowitskey* (1951) 3 W.W.R. (N.S.) 49 (Alta. S.C.), at pp. 68-69: an irrevocable power of attorney was defined as an authority coupled with an interest which may be revoked by the grantor with the consent of the grantee. Decision affirmed on appeal 3 W.W.R. (N.S.) 702 (Alta. C.A.)
17. s. 115(4)
18. *Elford v. Elford* [1922] 3 W.W.R. 339 (S.C.C.); *In Re Land Registry Act and Shaw* [1915] 8 W.W.R. 1270 (B.C.C.A.); V. DiCatri, *Thom's Canadian Torrens System supra*, states at p. 686: "... a registrar is not to be considered a mere machine for effecting registration; he can rightly refuse registration of a transfer when it is apparent from the documents presented to him that the transfer was made by an attorney for sale to himself."
19. s. 4(7) Dower Act, R.S.A. 2000, c. D-15
20. see procedures on Attestation [AFF-1](#), [AFF-2](#) and [COR-1](#)
21. s. 115(5)
22. see procedures on Attestation [AFF-1](#), [AFF-2](#) and [COR-1](#)