

Powers of Attorney

Power of Attorney is a formal instrument by which one person empowers another to represent him or act in his stead for certain purposes. By Section 149 of the Registration of Titles Act the registered owner of land under the operation of the Act or of any lease, mortgage or charge may appoint any person to act for him in transferring the same or dealing therewith by signing a Power of Attorney in the form or to the effect contained in the Sixteenth Schedule of the Act. A power of attorney may be granted prior to the grantor becoming the owner of land or other interest under the operation of the Act. [Section 150]

A principal and agent relationship is created whereby the owner is the principal and the attorney the agent. For the Office of Titles purpose the power must be strictly construed especially where specific powers are given followed by general powers.

Only powers of attorney that contemplate dealing with registered land are deposited in the Office of Titles. In order to be deposited at the Office of Titles the power of attorney must make reference to the ability to deal with land brought under the operation of the Registration of Titles Act or the power to do so must be clear from the general language.

General Powers of Attorney

The grant of a general power of attorney, without valuable consideration, does not in any way affect the right of the registered owner to transfer or otherwise deal with his land provided the general power specifically authorises the donee of the power to deal with land under the operation of the Registration of Titles Act. Depending on the construction of the powers of attorney, the donee may deal with any land, lease, mortgage or charge of the donor.

Specific Powers of Attorney

A specific power of attorney is one that limits the power to specific land, lease, mortgage or charge of which the donor is the registered owner.

An irrevocable power of attorney may be deposited. A notation must be made in the Power of Attorney Index that the power is irrevocable so that special revocation requirements are not overlooked.

A power of attorney which has a time limit may also be accepted. Particulars of the limitation on the power are to be noted in the Power of Attorney Index.

Effect of Powers of Attorney

Sections 48, 49 and 50 of The Conveyancing Act apply to powers of attorneys deposited with the Registrar of Titles.

If the powers of attorney, given for valuable consideration, are expressed to be irrevocable, then in favour of a purchaser, it shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power or by death, marriage, lunacy, unsoundness of mind or bankruptcy. Any act done by the donee in pursuance of the powers contained in the instrument shall be valid as if done by the donor. Neither the donee of the power nor the purchaser shall at any time be prejudiced by the notice of anything done by the donor of the power.

Any person making or doing any payment or act in good faith in pursuance of a power of attorney shall not be liable in respect of that act by reason that without notice, before the payment or act the donor of the power died or becomes a lunatic, of unsound mind or bankrupt or revoked the power.

General Requirements

1. The power of attorney must be the original or attested copy thereof (usually when recorded at the Island Records Office). The original or attested copy of the power of attorney may be deposited with a duplicate or a copy. After examination the Registrar will file the duplicate copy and return the original.

2. The name, full address and occupation of the donor and donee must be stated.
3. The normal execution requirements must be complied with. The donor's signature must be witnessed in accordance with section 152 of the Registration of Titles Act and by an individual who is not a party to the power of attorney. If the grantor is a corporation the power must be executed under Seal.
4. An attorney can be a corporation.
5. Stamp Duty is payable on the Power of Attorney.
6. Persons may appoint attorneys jointly and severally and several parties may join in the one power appointing an attorney for their joint and several purposes.

Examination of Documents Presented for Registration.

When a document executed under a power of attorney is presented for registration, the registration number of the power under which it is executed must be furnished. The donee should actually sign in the principal's name as well as his own in the following manner: Signed on behalf of [name of donor] by [name of donee] under power of attorney [document number].

It will be necessary to ensure that the execution of the particular dealing is authorised by the power of attorney. This can be deduced from the summary in the power of attorney index or checking the instrument itself. For example, power to mortgage

should be clearly stated. The power deposited is the authority and registration of any instrument can be refused unless provision for it is clearly contained in the power.

A search must be conducted at all times 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.

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

Revocation of Power of Attorney

1. The original power of attorney need not be produced.
2. Stamp Duty is payable on the instrument.
3. The Registrar should cause a note to be entered on the original duplicate power of attorney as deposited in the Office of Titles. Thereafter the only dealing executed by virtue of the power of attorney which is capable of being registered is one executed prior to the revocation of the power of attorney.

Fee

Fee No. 11 and 12.