

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By Chapter 9 Part 5 (ss 181 and 182) of the Act, Part 9 (Powers of Attorney) of the *Property Law Act 1974* (PLA) was repealed.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

Any power of attorney executed prior to 1 June 1998 and pursuant to the PLA must comply with the provisions of the PLA 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 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 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 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 Act). Section 59A of the 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 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* (LTA) provide for the registration of powers of attorney, and for the subsequent registration of instruments 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 LTA details the effect of registering powers of attorney and revocations. Section 135 of the LTA provides for registration of a revocation of any registered power of attorney.

General Rules Relating to Powers of Attorney

[16-0010]

Attorneys cannot put themselves in a position where their own interests conflict with the interests of the principal or their duties as an attorney, unless there is a specific provision permitting them to do so in the power of attorney (s 73(1) of the 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 executed by an attorney may only be registered if the power of attorney is registered in the registry (s 132 of the LTA).

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 can not 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 in the registry, the ratification may be specific as to the instrument 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 following registration of the power of attorney.

Generally, attorneys are not authorised to make gifts. Authority to make a gift 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 if the gift is:

- to a relation or close friend of the principal; and
- of a seasonal nature or because of a special event (including, for example, a birth or marriage); or
- a donation of the nature that the principal made when the principal had capacity or that the principal might reasonably be expected to make;

and the gift’s value 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 mentioned above.

A trustee cannot appoint the only other co-trustee of a trust to act as their attorney unless the co-trustee is a statutory corporation under the *Trustee Companies Act 1968*. That is, there must be a minimum of two trustees acting, unless one is a trustee company.

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 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.

Joint and Several Principals

[16-0030]

Two 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 to act, then the attorney may act as attorney for any or all of the principals. It is possible in this instance to register the power from only one of the principals to the attorney.

Prisoners

[16-0040]

Persons serving a prison sentence of three or more years 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.

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 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)’.

The trust document must be deposited in the registry for any power executed by a person in his/her/its capacity as trustee. (For deposit of trust document see part 51, esp ¶[51-2043].)

Trustee

Power under s 56 of the *Trusts Act 1973*

[16-0060]

Section 56 of the *Trusts Act 1973* 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 1973* 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 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 1973* the power has come into operation.

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).

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

An attorney may not sign on behalf of a director in an execution by a corporation unless there is specific authority contained in the director’s power of attorney.

Receiver/Manager

[16-0090]

A receiver/manager of a company can execute instruments 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 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 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 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 2001* (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

[16-0120]

Under s 10 of the *Powers of Attorney Act 1998*, an irrevocable power of attorney clause in a security granted to secure a proprietary interest in the donee of the power (attorney), or the

performance of an obligation owed to the donee (attorney), confers an authority on the security holder or receiver which continues regardless of the commencement of a winding up in Queensland.

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.

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 registered accordingly.

Double Power of Attorney

[16-0140]

A power of attorney which appoints one person as attorney and, in the event of that attorney’s death or some other happening, appoints another as attorney, is effective, as it relates to the first named attorney only, and is registered as such. Should the first named attorney die, or should the prescribed event occur (eg the attorney becomes incapable) before the power of attorney is revoked, the power of attorney has to be presented again, with evidence of the death of the first named attorney or the happening of the prescribed event, to have the second attorney registered.

Similarly, if a power of attorney appoints two or more persons as attorneys and specifies that they are appointed ‘successively in the order named’, the first named attorney only is registered as the attorney. If a principal in a power of attorney nominates more than one attorney ‘successively’ and does not specify ‘in the order named’, the Registrar will assume that they are appointed ‘successively in the order named’. Should the first named attorney die or become incapable, the power of attorney must be lodged again to register the appointment of the next named attorney. Evidence of the death or as to the incapacity of the prior named attorney(s) must be deposited with the Request to register the subsequent attorney.

As part of the registration process, when registering a power of attorney to a succeeding attorney, reference to evidence of death or incapacity having been deposited with the latest instrument is to be recorded against any previous registered power.

Power of Attorney Clause in Lease, Mortgage or Other Instrument

[16-0150]

By a specific clause in most leases, bills of mortgage, 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. See ¶[16-2050] for further details.

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.

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.

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]

Sections 132 to 134 of the *Land Title Act 1994* comprise current Queensland law relating to powers of attorney and their registration in the registry.

Nothing in those sections suggests that a power of attorney that is prepared and executed according to the laws of another State or country cannot be registered in the registry, as registration of a power of attorney does not transfer interests, but simply records that a person other than the owner or proprietor is entitled to deal with an interest (subject to any limitations in the power).

Powers of attorney (including an enduring power of attorney) prepared and executed according to the laws of another State or country may be registered in the registry under the *Land Title Act 1994*.

Form 16 – Requests to Register interstate and international enduring powers of attorney must include a statement in writing, by either the lodging solicitor or the attorney, confirming that the

instrument lodged conforms with the law (or the form, if one is prescribed) of the state or country to which the form relates.

All other powers of attorney executed interstate or internationally require a statement that it has been executed in accordance with the law of the jurisdiction to which the form relates, if the witness does not comply with the requirements for an instrument executed in Queensland (eg a Justice of the Peace etc).

However, the above requirements will not apply if the instrument lodged has a notation, memorial or other evidence that indicates the instrument has been recorded in another jurisdiction.

Certified Copy of Power of Attorney

[16-0195]

Sections 14 and 45 of the *Powers of Attorney Act 1998* provides that a general power of attorney or an enduring power of attorney may be proved to be a copy by certification under the relevant section and does not prevent a power of attorney being proved in another way.

The Registrar of Titles will extend the practice of certification to other powers of attorney (eg a common law form of power of attorney) provided it is certified in the same manner. The Registrar of Titles will deal with a properly certified copy of a power of attorney as if it were the original instrument.

A copy of a power of attorney certified under the provisions of s 14 or s 45 of the *Powers of Attorney Act 1998* is to be proved in the following manner:

- 1 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.
- 2 The last page must be certified to the effect that the copy is a true and complete copy of the original.
- 3 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 (see ss 33A and 36 of the *Acts Interpretation Act 1954*);
 - (f) a trustee company under the *Trustee Companies Act 1968*;
 - (g) a stockbroker.

A copy of a certified copy of a power of attorney may also be certified as a copy under the provisions of s 14 or s 45 of the *Powers of Attorney Act 1998*.

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 1998*.

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 1998*.

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 1998* 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 1998* 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 1998*) 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 1998*) 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 1994*).

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 1994*.

Joint and Several Principals

[16-0220]

If more than one power of attorney is being revoked, separate revocations are required for each power of attorney, unless the principal/s and attorney/s are common to both powers. Separate lodgement fees are payable for revocation of each power of attorney.

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

Joint and Several Attorneys

[16-0230]

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

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.

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) insanity 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 1998*, 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 1998* 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.

Irrevocable Powers

[16-0270]

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, then it will be requisitioned to have any reference to ‘irrevocable’ contained in the document removed.

Particular attention should be paid to powers of attorney contained in retirement village leases to ensure that where the sole or surviving tenant dies, the power of attorney is granted in accordance with s 10.

Where the power of attorney is given as security under s 10 for a specific time period, then it is automatically revoked by the passing of the stated period of time, unless it is revoked by the principal with the consent of the donee (attorney) prior to the expiry of the specified period.

Legislation

[16-1000]

Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of ss 150(1) and 151 of the *Water Act 2000*, subject to the exceptions provided in ss 150(2), 151(1) and (5) of the *Water Act 2000*, the *Land Title Act 1994* applies to the registration of an interest or dealings for a water allocation on the water allocations register.

Under s 151(3) of the *Water Act 2000* an interest or dealing mentioned in s 150 may be registered in a way mentioned in the *Land Title Act 1994* and the Registrar of Water Allocations may exercise a power or perform an obligation of the Registrar of Titles under the *Land Title Act 1994*:

- (a) as if a reference to the Registrar of Titles were a reference to the Registrar appointed under Chapter 2 Part 4 Division 6 of the *Water Act 2000*; and
- (b) as if a reference to the freehold land register were a reference to the water allocations register; and
- (c) as if a reference to freehold land or land were a reference to a water allocation; and
- (d) as if a reference to a lot were a reference to a water allocation; and
- (e) as if a reference to an indefeasible title were a reference to a title; and
- (f) with any other necessary changes.

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 1998* does not prevent anyone from executing and registering what is referred to as a common law form of **general** power of attorney. However, for these to be validly executed, they must also be sealed to be registered under the *Land Title Act 1994*.

Seven forms have been approved under the *Powers of Attorney Act 1998* for use when making or revoking powers of attorney. The following table may assist to determine how any of the forms may be registered.

Form	Pages	Purposes	Register – LTA	Register – PLA
1	3	General Power of Attorney	Yes	Yes
2	17	Enduring Powers of Attorney – Short Form (same attorney(s) for financial and personal matters)	Yes, if financial matters included	Yes
3	23	Enduring Powers of Attorney – Long Form (different attorneys for financial and personal matters)	Yes, if financial matters included	Yes
4	22	Advance Health Directive	No	Yes
5	2	Revocation of General Power of Attorney	If p/a registered	Yes
6	4	Revocation of Enduring Power of Attorney	If p/a registered	Yes
7	1	Interpreter’s/Translator’s Statement	Only with power	Only with power

All powers of attorney lodged for registration under the *Land Title Act 1994* 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 1994*, the power of attorney can not 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 to be registered under the *Land Title Act 1994* or the *Land Act 1994*.

A Form 16 – Request to Register Power of Attorney is used to request registration of a power of attorney in the Power of Attorney Register.

Form 16 is not a power of attorney in itself and is the vehicle by which registration of a power of attorney is requested. A Form 16 must accompany any power of attorney to be registered.

The Form 16 is **part** of the lodgement for any one of the following forms of power of attorney:

- Form 1 – General Power of Attorney (under s 11 of the *Powers of Attorney Act 1998*);
- Form 2 – Enduring Power of Attorney (short form under s 44(1) of the *Powers of Attorney Act 1998*);
- Form 3 – Enduring Power of Attorney (long form under s 44(1) of the *Powers of Attorney Act 1998*);
- Form 13 – General Power of Attorney (under s 170 of the *Property Law Act 1974*) (if executed prior to 1 June 1998);
- Form 14 – Enduring Power of Attorney (under s 175A of the *Property Law Act 1974*) (if executed prior to 1 June 1998);
- the power of attorney clause contained in a lease or a mortgage etc accompanied by a declaration as to default and service of any notice (as applicable);
- Form 5 – Revocation of a General Power of Attorney (under s 17 of the *Powers of Attorney Act 1998*); and
- Form 6 – Revocation of an Enduring Power of Attorney (under s 49 of the *Powers of Attorney Act 1998*).

Duty

[16-2010]

There is no duty payable 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]

The original or a properly certified copy of the power of attorney is to be deposited with the Form 16 – Request to Register Power of Attorney on lodgement. A copy of the instrument is

Power Under a Trust Deed to Appoint an Attorney

[16-2030]

Trustees (including corporate trustees) may appoint an attorney if authorised to do so by the trust deed appointing the trustee. Note that s 4(4) of the *Trusts Act 1973* provides that powers given in a trust deed are in addition to those given under the *Trusts Act 1973*.

Whenever a person or company in his/her/its own capacity as trustee appoints an attorney, the original trust instrument must be deposited with the power of attorney when it is lodged.

A power of attorney under s 132 of the *Land Title Act 1994* may be used to appoint an attorney under a trust deed.

A Form 16 – Request to Register Power of Attorney should state the paragraph/clause in the trust deed or relevant section of the *Trusts Act 1973* that gives the power to appoint an attorney.

Joint and Several Attorneys

[16-2040]

In the case where two or more principals jointly and severally appoint two or more attorneys to act jointly and severally, then any one or all of the attorneys can act as attorney for any or all of the principals. Say, for example, A and B jointly and severally appoint C and D as attorneys to act jointly and severally. Any combination is capable of registration, that is:

- C as attorney for A;
- C as attorney for B;
- C as attorney for A and B;
- D as attorney for A;
- D as attorney for B;
- D as attorney for A and B;
- C and D as attorneys for A;
- C and D as attorneys for B; and
- C and D as attorneys for A and B.

Registration of Power of Attorney Clause in Mortgage or Other Instrument

[16-2050]

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 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 obtained from the Land Registry (which need not be a certified copy); or
- (b) a registered executed copy of the instrument (eg a registered duplicate or triplicate); or
- (c) an unregistered, executed copy of the registered instrument (eg an unregistered duplicate or triplicate); or
- (d) an original executed deed or agreement (eg 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 1994*).

If default is a pre-requisite of the power of attorney, evidence of default (ie a declaration as to default having occurred and service of notices on the defaulting proprietor(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 a document and a minor difference in the name of the principal or the attorney is detected (eg a typographical error), a declaration of identity is required. The Power of Attorney Register is noted accordingly and no further declaration of identity will be required with subsequent dealings (see also ¶[16-2190]).

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 1998*) 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 1998*). A general power of attorney must be in the approved form (s 11 of the *Powers of Attorney Act 1998*), 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(1) 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 1998*) 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 land or an interest in land 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]).

A 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 1974* 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 s 132 of the *Land Title Act 1994*

[16-2130]

The provisions of the *Land Title Act 1994* dealing with powers of attorney are in ss 132 to 137. These powers of attorney may be used to give a general authority for all dealings with land (ie unrestricted), or they may be restricted to specified activities.

A Form 16 – Request to Register Power of Attorney is used to register any executed power of attorney (including those under the *Property Law Act 1974*). The Request attracts lodgement fees.

Powers of attorney given by corporations and executed in a way permitted by law do not require a witness.

No form is prescribed by the *Land Title Act 1994* or any regulation for powers of attorney under s 132 of the *Land Title Act 1994*. However, every power of attorney, to be registered in the registry, must be deposited with a Form 16 – Request to Register Power of Attorney.

Every power of attorney must contain:

- (a) one or more ‘principal/s’;
- (b) one or more ‘attorney/s’; and
- (c) the powers given to the attorney/s.

If there is more than one principal and/or attorney, the power of attorney should also identify whether:

- (a) the principals are delegating; and/or
- (b) the attorneys are being authorised:
 - (i) jointly;
 - (ii) severally; or
 - (iii) jointly and severally.

The Form 16 – Request to Register may be signed by either the principal or attorney or the principal’s/attorney’s solicitor (no witness required).

The power of attorney is recorded in accordance with the powers recited.

For a power of attorney under this section to be registered as unrestricted, it must contain the following powers:

- power to sell land;
- power to purchase land;
- power to lease land;
- power to mortgage land; and
- power to appoint substitutes.

When the power of attorney is for only four of the above, it is to be recorded in the Register as:

‘No Power to [description of power not included], otherwise unrestricted’.

Where the power of attorney gives less than four of the above, it is to be recorded in the register as:

‘Power to [list of powers included] Only’.

If a printed form of power of attorney is used, the powers can be varied by an addition of further clauses after the printed part of the form.

Registration under the *Property Law Act 1974*

[16-2135]

Note: At present, this service is only available at the Brisbane Office. This situation and the processes involved may be changed in the future if sufficient demand for the service becomes apparent.

For registration of a power of attorney as a deed under Part 18 Division 3 of the *Property Law Act 1974*, 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 1974* and has provision for endorsements as required by s 244 of the *Property Law Act 1974* must be provided. Section 242 of the *Property Law Act 1974* 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 1974* 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 1974*) may only be given by the Registrar personally or by a delegate.

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 1974* 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 60 – Miscellaneous, esp ¶[60-0900]).

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) s 161 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 60, esp ¶[60-0900].

Revocation of Power of Attorney

[16-2180]

The Registrar will not register any instrument executed by an attorney after the lodgement of a revocation. Immediately a revocation of power of attorney is received by the Registrar, any dealings lodged and executed in pursuance of such power cannot be registered if the execution

took place after registration of the revocation (see s 134(4) of the *Land Title Act* 1994). The Registrar may register an instrument that is executed pursuant to the power of attorney where the execution was before the time of registration of the revocation, even if the lodgement of the instrument was made after the registration of the revocation. It is crucial that the time of execution of the instrument for which registration is sought precedes the time of registration of the revocation. The timing of lodgement of the instrument is 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.

A power of attorney may be updated by the registration of an instrument to record the change. Form 14 – General Request is appropriate for the purpose. Copies of supporting evidence certified by the issuing agency, must be deposited with the request. If an update is required for more than one registered power of attorney, all may be included in one request. Evidence that has already been deposited in the registry may be referred to in item 5 in the following manner ‘Certificate of change of name [or other evidence] deposited with dealing number [number]’.

Note: *Changed* names of attorneys resulting from incorrectly prepared documentation cannot be corrected. A new Power of Attorney must be lodged. The incorrect power of attorney should be revoked.

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, esp ¶[59-2000].

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

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 and the Land Act 1994 and is used to maintain the publicly searchable registers in the land registry. For more information about privacy 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

R B Lee
ROBERT BRUCE LEE

9/10/2007

Execution Date

.....
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’

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 wide 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 such that the attorney is specifically authorised to do so.

Fees

[16-8000]

Fees payable to the registry are subject to an annual review. See the current *Land Title Regulation* 2005 – Schedule 2, item numbers 2(h) and 2(m).

Cross References and Further Reading

[16-9000]

Part 50 – Corporations and Companies

Part 51 – Trusts

Part 60 – Miscellaneous

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