POA-01 Powers of Attorney

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The information provided in this guide is not intended to amount to legal advice. Professional assistance may be required to determine the most appropriate action to protect your legal rights. Please read our Terms of Use on the Land Titles Registration policy and procedure guidelines webpage. Landgate accepts no responsibility where parties print this guide and seek to rely on information that is out of date.

Power of Attorney documents with the exception of Enduring Powers of Attorney are subject to the Verification of Identity Practice issued jointly by the Western Australian Registrar of Titles and Commissioner of Titles. Please refer to the VOI webpage.

1 Overview

Powers of attorney, once recorded under the Transfer of Land Act 1893 (TLA), remain in force until revoked, the person granting the power dies or until the purpose or time for which they were created has passed.

The powers given to the donee(s) of a power of attorney must be stated specifically and not left to general words in the power. It is an invariable rule that by such general words the donor must be held to confer on the donee(s) only such other powers, not specifically mentioned, as are absolutely necessary for the effective doing of the act for which the power was primarily given.

Where more than one (1) donee has been appointed they must state the capacity in which they act (e.g. Jointly or Jointly and Severally).

A power of attorney document can be in the form of the nineteenth schedule of the TLA by way of the TLA (P1) Power of Attorney form, created in a Deed or in the form of third schedule of the Guardian Administration Act.

2 Noting and Filing

A power of attorney may be presented for noting and filing either:

- in schedule form (Nineteenth Schedule to the TLA, Power of Attorney Form), see POA-02 Powers of Attorney - types of; or

- in recital form as a deed, provided that some powers under the TLA are given, see POA-02 Powers of Attorney - types of.
A Power of Attorney document under the TLA is subject to the Verification of Identity Practice issued jointly by the Western Australian Registrar of Titles and Commissioner of Titles. Please refer to the [VOL webpage](#).

When a power of attorney is lodged it is retained by Landgate. If a power is required to deal with other matters in addition to land, consideration might be given to the preparation of separate powers. One could be in schedule form, with variations or additions as required and could be lodged for filing and noting by Landgate.

The other, in customary form, could contain the other powers required and be retained by the parties for general use. Alternatively, two signed copies of the power of attorney document should be lodged, one of which will be retained as part of the Landgate records, and the other identified as the 'Client Original' will be returned to the lodging party once recorded.

An original power of attorney, a properly attested duplicate power of attorney or a copy of a power of attorney certified by the Australian Securities & Investments Commission may be lodged on payment of the prescribed fee.

If a Power of Attorney has a limited life between the donor and the donee, then it can only be lodged during the currency of that life, e.g. a power limited to a defined period of absence from the State of the donor can only be lodged before or during that period.

The design of the computerised power of attorney register does not limit the number of donors in any one document for a TLA Power of Attorney. It is recommended that preparing parties show restraint in the number of donors appointed, and impose the same requirement on the number of attorneys in one document.

2.1 Older than 3 months (Non-Revocation)

Where a power of attorney is dated more than three months before the date on which it is presented for recording then proof must be supplied, to the satisfaction of the Registrar, that the power has not been revoked.

Such proof is normally supplied in the form of a statutory declaration, commonly referred to as a ‘Non-Revocation’ statutory declaration, made by all donee(s) of the power of attorney, including any substitute donee(s). In that declaration the donee(s) should:

- identify the declarant as the donee(s)
- identify the power of attorney by reference to the donor and the date of execution
- state that the donor is still alive
- state that the power of attorney has not been revoked

and

- state when and how the donee(s) last saw or communicated with the donor.

Alternately, a statutory declaration made by the donor(s) of the power of attorney. In that declaration the donor(s) should:
- identify the declarant as the donor(s)
- identify the power of attorney by reference to the donee(s) and the date of execution
- state that the donee(s) is / are still alive
- state that the power of attorney has not been revoked, and
- state when and how the donor last saw or communicated with the donee(s).

1.1 Appointment of Substitute Attorney’s and Sub-Attorney’s

The Guardianship and Administration Act 1990 (GA Act) provides for the appointment of primary attorney/s and substitute attorney/s, please refer to [POA-03 Powers of Attorney - enduring](#) for more information.

The Transfer of Land Act 1893 (WA) (T LA) and the Property Law Act 1969 (WA) (PL Act) does not include provisions to appoint ‘substitute attorney’s’. A general Power of Attorney created in a Deed format may include provisions that the primary attorney may appoint sub-attorney/s, however the appointment of sub-attorney/s by the primary attorney should be created in a separate Deed making reference to the primary appointment or first Power of Attorney document.

The powers given to the sub-attorney cannot exceed the primary appointment or first Power of Attorney document. The sub-attorney/s can be granted all or limited powers from the primary appointment.

3 Production for Sighting

There are occasions where a power of attorney need only be produced for sighting and not lodged. Where the attorney is signing as transferee (Purchaser) of a transfer of land on behalf of the donor, and the power of attorney has not previously noted and filed, production for sighting is all that is required. The power of attorney will be noted and filed if requested but it is not strictly necessary. However, it is important that the power of attorney when presented conforms with the standards required for registration. The power of attorney must be:
- properly executed and witnessed
- dated within the three-month period previously mentioned
- comply with VOI requirements (where applicable), and
- contain the power necessary to perform the act for which it is produced.

4 Limited Powers of Attorney

Powers of attorney may be deposited where the scope or extent of the attorney’s power to act on behalf of the donor is limited. Any limitation should be clearly stated in the space provided or within the Deed.

Where a power of attorney is given to the donee(s) to act during the donor’s absence from the State, before any dealing executed by the attorney may be registered, a statutory declaration is
required to the effect that the donor is outside the State.

A power of attorney may also be limited to the performance of a single act, e.g. the sale or purchase of a specified piece of land or the mortgage thereof. The land should be clearly identified by the legal land description, being Lot on Plan and Volume/Folio.

A power of attorney can be given for a limited period of time, e.g. for twelve months from the date of signing.

5 Limit of Attorney’s Power - Conflict of Interest

Unless expressly authorised by the power of attorney the donee(s) of a power may not transfer land of the donor to himself or herself, nor may he or she discharge in the donor’s name a mortgage given to the donor by himself or herself, nor may he or she make a gift of land in the donor’s name (see TFR-07 Transfers by an Attorney).

6 Variations in Donor/Donee Names

There are instances where a Donor or Donee(s) name stated in a Power of Attorney doesn’t match that as shown on the certificate of title or Original Power of Attorney document. This may be due to a change of company name, change by marriage/divorce or simply that the full true and correct legal name was not stated in the relevant document.

In these instances, a statutory declaration and possible supporting evidence is required to accompany the transaction being lodged. The content of the statutory declaration needs to be substantially in the format as required for a Change of Name Application and reference the enduring/power of attorney by number and date of execution.

There is currently no application/document to amend the name of a Donor or Donee.

Note: The Donor / Donee must be a legal entity. Therefore, where a Company is the Donor or Donee, the Company's legal name must be used. The use of a trading name is not acceptable.

7 Comparing the different Power of Attorney Documents

When considering creating a Power of Attorney of Enduring Power of Attorney, consideration should be made as to which one best suites the needs of the Appointer/Donor.

<table>
<thead>
<tr>
<th>TLA / Deed Style Power of Attorney</th>
<th>Enduring Power of Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited to property transactions and property related documents</td>
<td>No limitations</td>
</tr>
<tr>
<td>Can be made by a person or corporation</td>
<td>Can only be made by a person</td>
</tr>
<tr>
<td>Unlimited Donors</td>
<td>Limited to one (1) Donor</td>
</tr>
<tr>
<td>Unlimited Attorneys</td>
<td>Limited to two (2) primary Attorneys and two (2) substitute Attorneys</td>
</tr>
<tr>
<td>Can be limited in time</td>
<td>Cannot be limited in time</td>
</tr>
</tbody>
</table>
- Can be limited to a specific transaction
- Cannot be limited to a specific transaction or duty
- Can be limited to a specific property
- Cannot be limited to a specific property
- Can contain additional powers to appoint sub-attorneys and include Trustee powers under the Trustee’s Act
- Is for personal use only and cannot be used in any other capacity, such as a Director or Trustee

8 Also see

- POA-02 Powers of Attorney - types of
- POA-03 Powers of Attorney - enduring
- POA-04 Powers of Attorney - revocation
- POA-05 Declarations of Trust (Section 55 of the TLA)
- Verification of identity