

POWERS OF ATTORNEY

EXECUTION OF THE POWER OF ATTORNEY

All Powers of Attorney for use at Land Titles must have attached an Affidavit of Execution where the witness to the signature of the donor is not a barrister, solicitor, or notary public. Where the witness is a barrister, solicitor, or notary public, their name, position, and address must be clearly set out beneath their signature. See ENDURING POWERS OF ATTORNEY for their specific execution requirements.

EXECUTION OF LAND TITLES DOCUMENTS BY THE ATTORNEY

When executing a document on behalf of the donor, all information must be provided by the attorney in the third person. This ensures the information provided is about the donor and not the attorney. This is of particular importance where the information provided is *Homesteads Act* evidence. See **Schedule III** and **IV** for examples of acceptable execution.

LIMITED POWERS OF ATTORNEY

Where a Power of Attorney is given for the use in a specific real property transaction, the Power of Attorney should contain the legal description of the affected lands. Where the Power of Attorney contains the civic address and not the legal description, at the time of execution of the relevant document (Transfer, Mortgage, etc.) the attorney should add a clause to that document specifically identifying the lands affected by the document as being the same as the civic address set forth in the Power of Attorney. A sample of this statement is provided in **Schedules III and IV**.

LIMITED VS. GENERAL POWERS OF ATTORNEY

Powers of Attorney will be strictly construed by Land Titles, and where authority is given in a Power of Attorney to do specific acts, notwithstanding the presence of words which seem to grant a general power of attorney, the use in Land Titles of Power of Attorney will be restricted to the particular powers set forth in the document.

Land Titles recognises that an absolute general power of attorney is conferred by the use of the following words, “to do on behalf of the donor anything that he/she can lawfully do by an attorney”.

POWERS OF ATTORNEY (Continued)

TRANSFERS TO THE ATTORNEY

Unless specifically authorized by the Power of Attorney, the attorney named in a Power of Attorney may not use the power of attorney to transfer the donor's land to him or herself or otherwise benefit him or herself (for example the execution of a Discharge of Mortgage on behalf of the donor where the affected lands are owned by the attorney).

ENDURING POWERS OF ATTORNEY

As a general rule, where the Power of Attorney provides that it is to continue despite the mental incompetence of the donor and was executed subsequent to April 7, 1997, the witness to the signature of the donor must be one of the parties provided for in section 11(1) of *The Powers of Attorney Act* (an individual registered, or qualified to be registered under section 3 of *The Marriage Act* to solemnise marriages, a judge of a superior court of the province, a justice of the peace, magistrate or provincial judge, a duly qualified medical practitioner, a notary public appointed for the province, a lawyer entitled to practice in the province, a member of the R.C.M.P., or a peace officer with a municipal police force).

FOREIGN ENDURING POWERS OF ATTORNEY

The Powers of Attorney Act states that an Enduring Power of Attorney (one that contains the clause that it is to continue despite mental incompetence of the donor) executed outside of Manitoba and not otherwise acceptable for registration in Manitoba, will be acceptable for registration in Manitoba if it is valid according to the laws of that other jurisdiction.

Prior to accepting an otherwise invalid Foreign Enduring Power of Attorney, Land Titles will require proof of this foreign jurisdiction validity. This proof should come in the form of a letter from a lawyer entitled to practice in that foreign jurisdiction attesting to the validity of the Power of Attorney. This letter must be signed by the lawyer personally, and must contain enough information to identify the Power of Attorney in question (i.e. the name of the donor, the name of the attorney, the date of execution, and the location of execution).

Land Titles will also accept evidence from a Manitoba lawyer as to the validity of a foreign enduring Power of Attorney. Where the Manitoba lawyer is prepared to give this evidence Land Titles will accept it provided that the Manitoba lawyer states:

1. He or she is familiar with the applicable laws of the foreign jurisdiction; and
2. The Power of Attorney document is valid according to the laws of that jurisdiction.

POWERS OF ATTORNEY (Continued)

SPRINGING POWERS OF ATTORNEY

Where a Power of Attorney contains a clause that the power is only to come into force upon the occurrence of a specified contingency (i.e. mental incompetence) Land Titles must be satisfied that the specified condition has occurred. Land Titles will not rely on the mere execution of a document by the attorney in a Springing Power of Attorney as proof that the power he or she is relying on has become effective.

If the Springing Power of Attorney sets forth the manner for determining if the specified event has occurred, Land Titles will require this evidence. For example if the Power comes into force upon mental incompetence and the Power of Attorney states that the declaration of one doctor will be sufficient Land Titles will require a Notarial copy of the declaration. Pursuant to s. 6(4) of *The Powers of Attorney Act* if the specified condition is mental incompetence, and the Power of Attorney does not specify the manner for determining when this has occurred, the declaration of two duly qualified medical practitioners is required.

POWERS OF ATTORNEY AND *THE HOMESTEADS ACT*

Where a Power of Attorney contains the power to execute *Homesteads Act* consents and releases, the prescribed form under the *Homesteads Act*, form 9, ACKNOWLEDGMENT BY SPOUSE OR COMMON-LAW PARTNER FOR POWER OF ATTORNEY, must be executed and attached to the Power of Attorney. This form is **attached as Schedule V**. In the event that the Form 9 is not attached to the Power of Attorney, Land Titles will not accept for registration documents containing consents or releases executed by the attorney on behalf of the donor. This said, if the Power of Attorney is otherwise properly drawn, Land Titles would accept the Power of Attorney for other purposes.

Please note that a spouse may not act as attorney for his or her spouse or common law partner for the purpose of a disposition of Homestead property, even where the property is in the name of both parties (i.e. the spouses/common law partners are joint tenants) (ss. 24 and 4(d) *The Homesteads Act*).

HOMESTEADS ACT SPECIAL AUTHORITY CLAUSE

Many modern Power of Attorney documents contain a specific clause allowing specified alternate attorneys to act where the primary attorney, the spouse or common-law partner of the donor, cannot act due to the operation of *The Homesteads Act*. A typical clause will allow these alternate attorneys to execute *Homesteads Act* releases and consents.

This change is good, however experience has now shown that such clauses are lacking in one of essential element. Specifically, these clauses do not provide for the execution of a disposition of jointly held homestead property. In short, where the property is the homestead of the parties, and where a transfer or a mortgage of that property needs to be signed, the primary attorney is prohibited from signing because they are the spouse or

POWERS OF ATTORNEY (Continued)

common-law partner of the donor, and the special alternate attorneys cannot sign because they are limited to executing consents and releases. See **Schedule XVI** for a sample of a special alternate clause that Land Titles would accept.

POWERS OF ATTORNEY GIVEN BY TRUSTEES

The trustee of an estate (executor or administrator) may delegate to another person by Power of Attorney all or any of the powers vested in him/her as trustee (s. 36(1) *The Trustee Act*). This is subject to two restrictions: 1. The trustee must be intending to remain out of the province for a period exceeding one month (Land Titles will ask for evidence on this point, including evidence that at the time of the exercise of the power by the attorney the donor was out of the province; and 2. The person appointed may not be the only other co-trustee.

GIFTS AND TRANSFERS FOR NOMINAL CONSIDERATION(\$1.00)

Unless the Power of Attorney document contains a specific grant or authorization, the attorney *cannot* use the Power of Attorney to gift property belonging to the donor. This prohibition against gifting has been interpreted by Land Titles to apply to transfers of property for nominal consideration. Accordingly, Land Titles will not accept a conveyance by an attorney where the consideration is \$1.00 or some similar amount.