



**CERTIFICATE OF IDENTIFICATION**

Name.....

I HEREBY CERTIFY that the above named .....appeared before me on the.....day of.....20.....and being identified by\* ..... (or being known to me) acknowledged the above signature or mark to be his/theirs and that he/they had freely and voluntarily executed this instrument and understood its contents.

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Signature and designation of the person certifying

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\*NOTE: Please ensure that the appropriate insertions and/or deletions are made so that the method of identification is clear.

**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. Lands Registry accepts no responsibility where parties print this guide and seek to rely on information that is out of date.**

## **BACKGROUND**

The Registered Land Act (RLA) 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.

A power of attorney is an authority in writing given by one or more persons or company 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. 1113 (5) of the RLA) either expressly by the principal or on the happening of an event or occurrence, one such event is the incapacity or death of the principal(s). If an attorney dies, the power of attorney is revoked to the extent it gives power to that attorney.

## **REGISTRATION PROCEDURE**

Sections 113 of the RLA provides for the registration of powers of attorney. An instrument or document executed by an attorney may only be registered if the power of attorney is registered in the registry.

Once registered subsequent registration of instruments or documents executed by an attorney under a power of attorney may be presented for registration. The power of attorney can also be submitted to Land Registry for registration when accompanied by documents that are relying on the power of attorney.

FORM 20 is mandatory as the Act states that a power of attorney shall be in the prescribed form. The form recognise that restrictions may be placed on an attorney's powers under a power of attorney.

The registration of a power of attorney does not in any way affect the right of the owner to transfer or otherwise deal with his land (unless so restricted) as nothing is endorsed on any register of title.

The power of attorney must be an original which will be retained by the Land Registry office. The provisions include a requirement for the Registrar to keep a file of powers of attorney known as the 'Powers Attorney Register'. The provisions also prescribe how the Registrar registers a power of attorney. The provisions do not discern between 'general' and 'specific powers of attorney.

## **LODGEMENT**

The original or a properly certified copy of the power of attorney (international only) must be submitted to the Land Registry. The original power of attorney bearing the stamp is retained in the registry after registration and the copy of the deposited original power of attorney or certified copy is returned to the lodger

## **CAPACITY OF PRINCIPAL**

The principal must have legal capacity to delegate to an attorney and must not be under any duress, disability, lacking mental capacity or younger than 18 years of age. A minor, therefore, cannot delegate powers to an attorney.

### **Corporation**

A corporation may appoint a person or another corporation to act as its attorney.

## **GENERAL REQUIREMENTS**

In order to be registrable at the Land Registry Office, all powers of attorney must refer to the ability to deal with real property. 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 relate to land. If there is no power for an attorney to deal with land or an interest in land under the RLA, the power of attorney cannot be registered in the Power of Attorney Register.

1. The normal execution requirements must be complied with.
2. A power of attorney may specify a position or an office instead of an individual.
3. An attorney can be a corporation;
4. An irrevocable power of attorney may be registered section 113 (5). The particulars noted on the reference index must indicate that the power is irrevocable so that special revocation requirements will not be overlooked.
5. An attorney under a power of attorney cannot grant a further power of attorney unless the original power specifically authorizes it.
6. The full address including postal code for the attorney is required.
7. A power of attorney, which has a time and/or amount limit, may be accepted. Particulars of the limitation on the power are to be noted on the reference index. A timelimited power of attorney can be expired when the time has elapsed upon written request.

## **STAMP DUTY**

Powers of attorney executed under the RLA must be assessed for duty payment at rate of **CI\$50.00**.

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

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. A search of the power of attorney register 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.

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

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

A corporation that has subsequently changed its name or amalgamated should submit a new power of attorney in the name of the new corporate name.

Any document signed under power of attorney is still required to comply with execution requirements under sections 106 & 107.

#### **ERROR IN POWER OF ATTORNEY**

If an attorney executes an instrument or document and a difference in the name of the principal or the attorney is detected (eg a typographical error), a declaration of identity may be required.

#### **JOINT AND SEVERAL ATTORNEYS**

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

#### **JOINT AND SEVERAL PRINCIPALS**

In a power of attorney 2 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.

Where two or more principals jointly and severally (or jointly and/or severally) appoint an attorney or multiple attorneys jointly and severally (or jointly and/or severally) to act, then the attorney may act for any or all of the principals.

#### **INTERNATIONAL POWERS OF ATTORNEY**

Section 113 of the RLA comprise current Cayman Islands 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 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 prepared and executed according to the laws of another country may be registered in the registry but the form prescribed must be completed and it must comply with the execution and witness requirements for an instrument executed in Cayman Islands (sections 106 & 107).

#### **REVOCAION OF A POWER OF ATTORNEY**

The Registered Land Act prescribes a form for the purposes of revocation (FORM 21).

A revocation is used to discharge a power of attorney that is registered with the Land Registry Office. The revocation of a power of attorney is recorded in the reference index.

Generally speaking, a power of attorney is revoked upon the

- (a) death or
- (b) loss of capacity of the principal.

The exception is where the power of attorney is stated to be irrevocable under section 113 (5).

**Death** - 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. However, 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 also sets out acceptable evidence of death.

**Loss of capacity** - A power of attorney may also be considered to be revoked by a bankruptcy order or an order for guardianship under the Mental Health Act. Where revocation is due to the bankruptcy of the principal or attorney, a copy of the bankruptcy order 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.

The above evidence should be deposited with a Form 21 –Revocation of Power of Attorney when lodged for registration in the land registry.

The attorney must consent to the revocation of an irrevocable power of attorney under section 113 (5).

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.

If more than one power of attorney is being revoked, separate revocations are required for each power of attorney. Separate lodgement fees are payable for revocation of each power of attorney.

### **GENERAL INFORMATION**

A power of attorney is an important and powerful document. You should get legal advice before signing it. It is important that you trust the person you are appointing as attorney to make decisions on your behalf.

A power of attorney cannot be used where the landowner is suffering under a disability such as dementia or other mental health conditions. You should apply for a guardian under the Mental Health Act if you want to make decisions for a landowner for health or lifestyle.

The power of attorney is for use in the Cayman Islands only. If you need a power of attorney for overseas, you may need a power of attorney under their laws.

An attorney must always act in your best interest. If your attorney does not follow your directions, or does not act in your best interest, you should consider revoking the power of attorney. If you revoke the power of attorney you should inform the attorney of the revocation, preferably in writing. The attorney should stop acting on your behalf immediately once they have knowledge of the revocation.