

## BACKGROUND

The Powers of Attorney Act provides for a donor (1) to grant an enduring power of attorney.

There are two types of enduring powers of attorney:

- a) one that takes effect as of the execution date, and
- b) one that only comes into effect in the event that the contingency upon which it is based occurs (e.g., that the grantor becomes mentally incapacitated). (2) A power of attorney based upon a contingency is not registrable at the Land Titles Office until the contingency has occurred.(3)

## REGISTRATION PROCEDURE

1. The instrument must be originally executed; both the donor and the witness must sign in the presence of each other. (4) The Land Titles Office has developed a new affidavit to accommodate these requirements.(FORM P1) The following persons may not witness the signing of an enduring power of attorney:
  - a) the designated attorney or their spouse, or
  - b) the spouse of the donor, or
  - c) the person or spouse of the person signing on behalf of a donor who is incapable of signing the power of attorney. (5)
2. The instrument must contain a statement indicating that the powers granted are to continue notwithstanding any mental incapacity or infirmity that may occur after execution of the power of attorney, or that it is to take effect on the mental incapacity or infirmity of the donor.
3. The name and address of the attorney must be provided on a special power of attorney.
4. The power of attorney must make reference to real property.
5. Enduring powers of attorney that do not have a specific legal description or are based on a contingency that has been met must be accompanied by documents relying on the power of attorney and as a result will be registered as part of the accompanied document. In this case, a notarially certified copy of the original must be submitted to attach to the document.

An enduring power of attorney that contains a legal description is registrable. It must be the original or a notarially certified copy of the original that is authorized by a court order or fiat.

We will continue to accept an enduring power of attorney executed before or after December 1, 1997 if it complies with statutory requirements of the Powers of Attorney Act of that time (prior to Personal Directives Act). In these cases, the power of attorney must incorporate both a [certificate of legal advice](#) and [explanatory notes](#), and have an affidavit of execution pursuant to section 155 of the Land Titles Act.

## **GRANTOR'S INABILITY TO EXECUTE POWER OF ATTORNEY**

If the grantor is incapable of signing the power of attorney, it may be signed on his behalf. The signing must occur at the direction of the donor and in the presence of the donor and witness. (6) The Land Titles Office has developed a new affidavit to accommodate these requirements. (FORM P2) The following persons may not sign an enduring power of attorney on behalf of the donor:

- a) the designated attorney, or
- b) the spouse of the designated attorney. (7)

## **FOREIGN ENDURING POWERS OF ATTORNEY**

There is provision to accept enduring powers of attorney that are from outside Alberta. (8) It must be a valid power of attorney in the place it was executed, and must state that it is to survive mental incapacity or infirmity. (It must meet the normal registration requirements for a power of attorney; i.e., attestation, reference to real property, etc.)

If the enduring power of attorney originates in Canada, a letter from the solicitor stating that the power of attorney meets the above criteria is acceptable for registration. If the power of attorney is from outside Canada the Land Titles Office will require a written legal opinion from a solicitor practising in that jurisdiction. The opinion should be in English.

## **ENDURING POWER OF ATTORNEY BASED ON A CONTINGENCY**

If a power of attorney is to come into effect only upon a specified contingency being met, i.e., mental incapacity or infirmity or a specific future date, it is not registrable at the Land Titles Office until the contingency has occurred. This type of power of attorney may name a person or persons on whose written declaration the specified contingency is conclusively deemed to have occurred, for the purpose of bringing this into effect. An original or notarized copy of a letter is acceptable as evidence that the contingency has been met.

If the enduring power of attorney does not name a person, or if the person named dies prior to the contingency coming into effect or is unable to determine whether the contingency has occurred, a declaration from 2 medical practitioners stating that the specified contingency has occurred, will suffice to bring the enduring power of attorney into effect. (9) An original or notarized copy of a letter, signed by the doctors, is acceptable as evidence that the contingency has been met.

A power of attorney based upon a contingency of mental incapacity should have IRREVOCABLE selected. (10)

## **STATUTE AND CASE REFERENCES**

Statute references are to the Powers of Attorney Act, S.A. 2000, c. P-20 as amended, unless otherwise indicated.

1. s. 1(d)
2. s. 2(1)
3. s. 54, Land Titles Act, R.S.A. 2000, c. L-4
4. s. 2(1)(b)(i)(A) and (b)(ii)
5. s. 2(4)(a)-(e)
6. s. 2(1)(b)(i)(B)
7. s. 2(3)
8. s. 2(5)(a)(b)
9. s. 5(4)
10. s. 11