

NORTHERN TERRITORY OF AUSTRALIA
POWERS OF ATTORNEY REGULATIONS

As in force at 13 September 1995

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 13 September 1995

POWERS OF ATTORNEY REGULATIONS

Regulations under the *Powers of Attorney Act*

Part I Preliminary

1 Citation

These Regulations may be cited as the *Powers of Attorney Regulations*.

2 Definitions

In these Regulations, unless the contrary intention appears:

register means the Register of Powers of Attorney established under regulation 3.

registered power means a power created in an instrument that has been registered under section 7 of the Act and in accordance with these Regulations.

the Act means the *Powers of Attorney Act 1980*.

3 Establishment of Register

(1) The Registrar-General shall keep and maintain a Register of Powers of Attorney.

(2) The register shall include particulars of:

(a) the name of the donor; and

(b) the lodgement number and date of the instrument creating the power,

and where applicable:

(c) the date of the revocation of a power by the operation of section 16 of the Act;

- (d) the date of the revocation of a power by the operation of section 17 of the Act;
- (e) a protection order under the *Aged and Infirm Persons' Property Act*;
- (f) an order of the Supreme Court revoking or varying the terms of an instrument creating a power under section 19(3) of the Act.

Part II Procedure, &c.

Division 1 Procedure

5 Procedure for registration

- (1) Where a party to an instrument creating a power of attorney desires to register it, he shall deposit with the Registrar-General a duplicate or attested copy of the instrument accompanied by the relevant prescribed fee.
- (1A) A power of attorney:
 - (a) may be in accordance with Form 1 in Schedule 2; and
 - (b) subject to subregulation (1B), shall only be registered if:
 - (i) the original was printed, typed or completed in ink;
 - (ii) both the original and duplicate or attested copy bear the signatures of all parties and their witnesses, if any, made in ink, except that the signature of the donor of the power is not required where the power is exercised by direction;
 - (iii) a specimen signature of the donee of the power is contained in the original, except where he or she is specified by reference to a named position;
 - (iv) the original shows the imprint of the Commissioner of Taxes as being stamped;
 - (v) it contains the donor of the power's full name and an address (which may be a postal address) for the service of notices; and
 - (vi) the names of the witnesses, if any, and their contact addresses or telephone numbers, are typed or stamped below their signatures; and

(vii) where the original purports to have been signed by a body corporate, it is authenticated by or on behalf of the corporation in a manner permitted by law.

(1B) Notwithstanding subregulation (1A), where an instrument:

(a) either:

(i) expressly evidences an intention on the part of the donor of the power that the power shall continue in effect notwithstanding any subsequent legal incapacity of the donor, but is not an enduring power within the meaning of the Act because it is not endorsed or has not annexed to it a statement of acceptance in or to the effect of Schedule 1 to the Act by the donee of the power; or

(ii) creates a power otherwise than in accordance with subregulation (1A)(b);

(b) is certified by a legal practitioner to have been created in another State or Territory of the Commonwealth and to comply with the requirements for registration of such an instrument under the law of that State or Territory of the Commonwealth; and

(c) shows the imprint of the Commissioner of Taxes as being stamped,

the Registrar-General may register the instrument as a power (but not an enduring power), notwithstanding that the instrument has not been completed in accordance with subregulation (1A)(b) and an instrument so registered shall be a power (but not an enduring power) for the purposes of the Act and these Regulations.

(2) The Registrar-General shall, on receiving a duplicate or attested copy referred to in subregulation (1):

(a) compare it with the original instrument;

(b) on being satisfied that it is a true duplicate or attested copy, file it in his office; and

(c) note thereon the date and hour of its deposit,

and shall, whenever registering a dealing under the power of attorney in relation to a dealing with land under the *Real Property Act*, enter on the original certificate as to title of the land a note of the deposit of such duplicate or copy.

- (2A) Where the Registrar, in pursuance of subregulation (1B), registers an instrument referred to in subregulation (1B)(a)(i), the Registrar shall annexe to the document as registered a note to the effect that the document is, in the Territory, a power, but not an enduring power.
- (3) An instrument revoking a power of attorney shall be in accordance with Form 2 in Schedule 2 and a duplicate or attested copy may be registered, and shall be dealt with by the Registrar-General, in the same manner as a duplicate or attested copy of an instrument creating a power.

5A Recording and use of common form provisions

- (1) A person may lodge with the Registrar-General, and the Registrar-General may retain, a memorandum in accordance with Form 3 in Schedule 2 containing one or more provisions which are intended for incorporation by reference in instruments subsequently lodged for registration under the Act.
- (2) The Registrar-General may himself prepare such a memorandum and retain it.
- (3) A memorandum retained by the Registrar-General under subsection (1) or (2) shall be deemed to be registered.
- (4) An instrument under the Act may provide that a provision in a memorandum retained under subsection (1) or (2) is incorporated in the instrument, or is incorporated in it subject to specified modifications.
- (5) Where a provision is incorporated in an instrument by virtue of subsection (4), the party by or on behalf of whom the incorporation is effected shall, before the instrument is executed, provide the other party or parties with a copy of the provision or, as the case may be, of the provision and the modifications thereof.

Penalty: \$1,000.

- (6) A failure to comply with subsection (5) in respect of an instrument does not affect the validity or effect of the instrument.

Division 2 Revocation, &c., of general and enduring powers

6 Application of Division 2

This Division applies to and in relation to revocation and protection in respect of registered general powers and registered enduring powers.

7 Supreme Court order

Where:

- (a) the Supreme Court makes an order on an application under section 15 of the Act; or
- (b) a protection order is made under the *Aged and Infirm Persons' Property Act*,

the applicant for the order shall, within 14 days of its making, serve a copy of the order on the Registrar-General.

8 Notice of death

(1) Where a registered power is revoked by:

- (a) the death of the donor of the power – the donee; or
- (b) the death of the donee of the power – the donor,

shall, within 14 days of his becoming aware of it, serve notice of the death on the Registrar-General, by:

- (c) lodging for registration a notice in accordance with Form 5;
- (d) lodging the relevant prescribed fee, if any; and
- (e) providing an original or attested certificate of death for sighting by the Registrar-General or lodgment.

(2) Where the donor or donee of a registered power dies, and the executor, administrator or trustee, as the case may be, of his estate becomes aware of the power, the executor, administrator or trustee shall make due inquiry of the other party to the power, and if that party has not complied with subregulation (1), the executor, administrator or trustee shall, within 14 days of becoming aware of it, serve notice of the death on the Registrar-General, by:

- (a) lodging for registration a notice in accordance with Form 5;
- (b) lodging the relevant prescribed fee, if any; and
- (c) providing an original or attested certificate of death for sighting by the Registrar-General or lodgment.

9 Notice of retirement

The donee of a registered power shall, within 14 days after his retirement, serve notice of his retirement on the Registrar-General.

10 Notice of bankruptcy

Where the donor or donee of a registered power becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, he shall, within 14 days, serve notice of his bankruptcy or insolvency on the Registrar-General.

11 Notice of revocation by donor to be lodged

The donor of a registered power shall, within 14 days of his revocation of the power, serve notice of the revocation on the Registrar-General.

Division 3 Revocation of power to secure proprietary interest

12 Application of Division 3

This Division applies to and in relation to the revocation of registered powers given to secure a proprietary interest of the donee.

13 Notice of revocation

For the purposes of a revocation under section 19(2)(a) of the Act, of a registered power granted to secure a proprietary interest of the donee of the power, the donor and donee shall, within 14 days of the revocation of the power, serve notice of the revocation on the Registrar-General.

14 Notice of order of Supreme Court

For the purposes of a revocation or variation under section 19(2)(c) or (3) of the Act of a registered power granted to secure a proprietary interest of the donee, the applicant shall, within 14 days of the making of an order pursuant to his application by the Supreme Court, serve a copy of the order on the Registrar-General.

Schedule 2

regulation 5

FORM 1

NORTHERN TERRITORY OF AUSTRALIA

P A No.

LODGED AT THE REGISTRAR-GENERAL'S OFFICE Commissioner of Taxes Use Only

ON AT

BY CORRECTION TO

FEE RECEIPT

POWERS OF ATTORNEY

The donor appoints the donee as his or her attorney and authorises him or her to execute all or any instruments that may be necessary for giving effect to any dealing with any property of the donor, including any land, estate or interest of which the donor is or may become the registered proprietor, with such specific additional powers as are set out or referred to on the back of this document.

(NOTES 1 & 2)

DONOR OF POWER

Name:

(Note 3)

Address:

DONEE OF POWER
(ATTORNEY)

Name:

Address:

.....

(NOTES
4 & 5)

Signed by the donor/ person acting at direction
of donor* on (Date)

In the presence of

.....

and

.....

SPECIMEN SIGNATURE (Note 6)
 OF DONEE

Registered on..... At

*delete whichever is not applicable

ITEM(S) DELIVERED – POSTED
 IN ACCORDANCE WITH DELIVERY INSTRUCTIONS

| Item | Agent/RGO Box No. | *Postage Number | Initials | |
|------|-------------------|-----------------|----------|------------------------------------|
| 1. | | | | LIS UPDATED Examiner to initial |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| | | | | |

*Fill out Postage Numbers if Items are Returned by Certified Mail

SPECIFIC POWERS

(NOTE 7)

1. To comply with provisions contained in a Memorandum of Common Provisions recorded in the Register as No.....

2. Additional Powers:

SCHEDULE OF NOTES

1. This form may be lodged in duplicate. The original must be printed, typed or completed in ink and contain the signatures of all parties and their witnesses, if any, in ink, as shall any duplicate.

The original must show the imprint of the Commissioner for Taxes as being stamped (Stamp Duty).

2. If there is insufficient space in any panel use the space above or an annexure sheet (Form 4).

3. Insert the donor of the power's full name and an address, which may be a postal address, for the service of notices.

4. An ordinary power of attorney does not require the signature of a witness (section 6).

An enduring power of attorney requires the signature of one witness who is not the donee of the power or a near relative of the donee (section 14).

An ordinary power of attorney by direction requires the signature of 2 witnesses who are not the donee of the power (section 6(4)).

After witnessing the signing of the document, a witness shall legibly write, type or stamp his or her name and a contact address or telephone number below his or her signature.

5. The signature of the donor of the power is not required where the power is exercised by direction.

6. The original shall contain a specimen signature of the donee, except if the donee is specified by reference to a named position.

Where the original purports to have been signed by a body corporate, it shall be authenticated by or on behalf of the corporation in a manner permitted by law.

7. A power of attorney may incorporate any common provision contained in a Memorandum of Common Provisions retained by the Registrar, by reference to the provision in a way sufficient to clearly identify it – e.g. by reference to the number of the memorandum. If not all the provisions of that memorandum are to apply, the numbers of the provisions that are to apply should be specified.

The Memorandum of Common Provisions are a guide only and may be added to or deleted.

FORM 2

regulation 5(3)

NORTHERN TERRITORY OF AUSTRALIA

R P No.

LODGED AT THE REGISTRAR-GENERAL'S OFFICE

Commissioner of Taxes Use only
(where revoked by deed)

ON AT

BY CORRECTION TO

FEE RECEIPT

REVOCATION OF
POWERS OF ATTORNEY

(NOTE 1)

POWERS OF ATTORNEY
BEING REVOKED

Number:

(NOTE 2)

DONOR OF POWER

Name only:

(NOTE 3)

DONEE OF
POWER(ATTORNEY)

Name only:

(NOTE 3)

Signed by the donor/ person acting at
direction of donor * on (Date) (NOTES
4 & 5)

Registered on

At

*delete whichever is not applicable

**ITEM(S) DELIVERED – POSTED
IN ACCORDANCE WITH DELIVERY INSTRUCTIONS**

| Item | Agent/RGO Box No. | *Postage Number | Initials | |
|------|-------------------|-----------------|----------|------------------------------------|
| 1. | | | | LIS UPDATED Examiner to initial |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| | | | | |

*Fill out Postage Numbers if Items are Returned by Certified Mail

SCHEDULE OF NOTES

1. This form may be lodged as an original only and must be printed, typed or completed in ink or biro. All signatures must be in ink or biro.

A revocation by way of deed must bear the imprint of the Commissioner of Taxes (Stamp Duty).

2. Number assigned by the Registrar to the powers.

3. Insert full name. Address is not required.

4. A power may be revoked by direction of the donor.

5. If the document is to be signed by a corporate body it is to be authenticated by or on behalf of that corporate body in any manner permitted by law.

FORM 3

regulation 5A



NORTHERN TERRITORY OF AUSTRALIA

C P No.

LODGED AT THE REGISTRAR-GENERAL'S OFFICE

ON AT

BY CORRECTION TO

FEE RECEIPT

DUPLICATE TO.....

MEMORANDUM
OF COMMON PROVISIONS

This memorandum contains provisions which are intended for inclusion in powers of attorney to be subsequently lodged for registration by:

| | |
|--|--------|
| | Note 1 |
|--|--------|

PROVISION(S)

Note 2

1.

Registered on

At

**ITEM(S) DELIVERED – POSTED
IN ACCORDANCE WITH DELIVERY INSTRUCTIONS**

| Item | Agent/RGO Box No. | *Postage Number | Initials | |
|------|-------------------|-----------------|----------|------------------------------------|
| 1. | | | | LIS UPDATED Examiner to initial |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| | | | | |

*Fill out Postage Numbers if Items are Returned by Certified Mail

SCHEDULE OF NOTES

SCHEDULE OF NOTES

1. Insert name of the person or organization (e.g. N.T. Housing Commision) for indexing purposes.
2. The provisions are to be numbered consecutively from number 1. The provisions may be continued above or on an annexure sheet (Form 4).
3. Further sheets may be added but each page should be numbered consecutively.

FORM 4



NORTHERN TERRITORY OF AUSTRALIA

A

HEADING
(NOTE 3)

SCHEDULE OF NOTES

1. If there is insufficient space to accommodate the required information in a panel on the parent instrument insert the words 'See Annexure' and enter all the information on the annexure sheet under the appropriate heading.
2. If the instrument is lodged in duplicate (or triplicate) an annexure sheet must be attached to each. The annexure attached to the original must be typed or completed in ink or biro, that attached to the duplicate (or triplicate) may be a copy of the original.
3. Multiple annexures may appear on the same annexure sheet, but each must be correctly headed.

FORM 5

regulation 8

NORTHERN TERRITORY OF AUSTRALIA

R P No.

LODGED AT THE REGISTRAR-GENERAL'S OFFICE

ON AT

BY CORRECTION TO

FEE RECEIPT

NOTICE OF REVOCATION OF POWER OF ATTORNEY BY DEATH

POWER OF ATTORNEY TO BE REGISTERED AS REVOKED Number: (NOTE 3)

DONOR OF POWER Name only: (NOTE 4)

DONEE OF POWER Name only: (NOTE 4)

THE power of attorney specified above was revoked by the death of the donor / donee* on (date of death)

Signed by the donor/ donee* on (Date)

Registered on At

Certificate of Death lodged/ sighted by

*delete whichever is not applicable

SCHEDULE OF NOTES

- 1. This form may be lodged in duplicate. The original must be printed, typed or completed in ink and contain the signature of the donor or the donee, as shall any duplicate.
2. If there is insufficient space in any panel use the space above or an annexure sheet (Form 4).
3. Number assigned by the Registrar to the powers that are to be revoked.
4. Insert full names. An address is not required.
5. If the document is to be signed by a corporate body it is to be authenticated by or on behalf of that corporate body in any manner permitted by law.

ENDNOTES
1 KEY

Key to abbreviations

| | |
|------------------------------|-------------------------------------|
| amd = amended | od = order |
| app = appendix | om = omitted |
| bl = by-law | pt = Part |
| ch = Chapter | r = regulation/rule |
| cl = clause | rem = remainder |
| div = Division | renum = renumbered |
| exp = expires/expired | rep = repealed |
| f = forms | s = section |
| Gaz = Gazette | sch = Schedule |
| hdg = heading | sdiv = Subdivision |
| ins = inserted | SL = Subordinate Legislation |
| lt = long title | sub = substituted |
| nc = not commenced | |

2 LIST OF LEGISLATION***Powers of Attorney Regulations (SL No. 66, 1982)***

| | |
|-----------|--|
| Notified | 23 December 1982 |
| Commenced | 28 January 1983 (s 2 <i>Powers of Attorney Act 1980</i> (Act No. 25, 1980) and Gaz S5, 28 January 1983, p 1) |

Amendment of the Powers of Attorney Regulations (SL No. 18, 1990)

| | |
|-----------|--------------|
| Notified | 11 July 1990 |
| Commenced | 11 July 1990 |

Amendments of Powers of Attorney Regulations (SL No. 22, 1991)

| | |
|-----------|---|
| Notified | 31 May 1991 |
| Commenced | 31 May 1991 (r 1 and <i>Statute Law Revision (Registration of Instruments) Act 1991</i> (Act No. 12, 1991)) |

Amendments of Powers of Attorney Regulations (SL No. 65, 1991)

| | |
|-----------|--|
| Notified | 11 December 1991 |
| Commenced | 1 January 1992 (r 1, s 2 <i>Registration Amendment Act 1991</i> (Act No. 54, 1991) and Gaz G49, 11 December 1991, p 4) |

Amendments of Powers of Attorney Regulations (SL No. 31, 1995)

| | |
|-----------|-------------------|
| Notified | 13 September 1995 |
| Commenced | 13 September 1995 |

3 LIST OF AMENDMENTS

| | |
|------|--|
| r 3 | amd No. 22, 1991, r 3; No. 31, 1995, r 2 |
| r 4 | rep No. 65, 1991, r 2 |
| r 5 | sub No. 22, 1991, r 4 amd No. 31, 1995, r 3 |
| r 5A | ins No. 22, 1991, r 4 |
| r 7 | amd No. 31, 1995, r 4 |
| r 8 | amd No. 31, 1995, r 5 |

ENDNOTES

r 14 amd No. 31, 1995, r 6
sch 1 amd No. 18, 1990
 sub No. 22, 1991, r 5
 rep No. 65, 1991, r 3
sch 2 ins No. 22, 1991, r 5
 amd No. 31, 1995, r 7