



Land Registration Act 2002
Scope of this guide

This guide gives advice on the evidence Land Registry needs when an attorney has executed documents lodged for registration. It is aimed at solicitors, licensed conveyancers and other legal advisers and you should interpret references to 'you' accordingly. Land Registry staff will also refer to it.

Powers of attorney and registered land

Update – This edition of the guide replaces the September 2007 edition. As a result of the Land Registration (Amendment) Rules 2008, sections 3, 5 and 6, Appendix B and Appendix C have been amended to incorporate statements of truth.

Contact details

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Powers of attorney and registered land

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1 Abbreviations used

‘EPAA 1985’ means the Enduring Powers of Attorney Act 1985;
‘LPA 2007’ means the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007;
‘LRR 2003’ means the Land Registration Rules 2003;
‘MCA 2005’ means the Mental Capacity Act 2005;
‘PAA 1971’ means the Powers of Attorney Act 1971;
‘TA 1925’ means the Trustee Act 1925;
‘TDA 1999’ means the Trustee Delegation Act 1999;
‘TLATA 1996’ means the Trusts of Land and Appointment of Trustees Act 1996.

2 Introduction

When we are registering a document signed by an attorney, we need to be sure that the document binds the individual or company on whose behalf it was signed. We do this by checking that the power of attorney:

- was validly executed as a deed
- was still in force at the date of the document
- authorised the attorney to take the action in question, and
- was, where necessary, made under the correct statutory provision.

There are cases where, even though the power does not meet these requirements, the person who relied on the document can assume that the power was correctly made or that it was still in force at the time it was used. In those cases we may need confirmatory evidence from that person.

When an individual executes a deed, it must be clear that the document is signed as a deed and the signature must be made in the presence of a witness who attests the signature. Practice Guide 8 – *Execution of deeds* deals in detail with execution of deeds by different types of legal person. Copies are available from any Land Registry office – see section 9 *Enquiries and comments*.

This guide does not cover the more complex issues involved when a power of attorney is granted under the law of another jurisdiction. In such a case we may require an opinion as to the matters specified above from a lawyer qualified in that jurisdiction.

3 Types of power of attorney

3.1 General powers under s.10 of the PAA 1971

The PAA 1971 provides a short form of general power of attorney that can be used by a sole beneficial owner of land. It operates to give the attorney authority to do anything that the donor can lawfully do by an attorney. However, powers in that form dated before 1 March 2000 are never suitable for dealing with land of which the donor is a joint proprietor. And those dated after 29 February 2000 may only be used by a joint proprietor if the donor has a beneficial interest in the land. The death, bankruptcy or mental incapacity of the donor will automatically revoke the power. The donor may also revoke it at any time.

3.2 Other general and special powers

A person wishing to appoint an attorney does not have to use the form set out in the PAA 1971. The only strict requirement is that the donor must execute the power as a deed. The donor may use any form of wording, giving the attorney either general authority to act or limited powers, for example in connection with a particular transaction or dealings with specified property. A power that does not follow any of the statutory forms may be used on behalf of a donor who is a joint proprietor only if:

- it is dated after 29 February 2000
- the donor has a beneficial interest in the land, and
- there is no indication in the power that the donor did not intend the attorney to exercise trustee functions.

Unless it is a security power the donor may revoke such a power and the death, bankruptcy or mental incapacity of the donor will automatically revoke it.

3.3 Security powers

A security power is a power of attorney that is expressed to be irrevocable and is given to secure:

- a proprietary interest of the attorney, or
- the performance of an obligation owed to the attorney.

While the donee has the interest, or until the obligation is discharged, the donor can only revoke the power with the attorney's consent and the death, bankruptcy or mental incapacity of the donor does not revoke it.

3.4 Enduring powers

An enduring power of attorney is one made by an individual under the EPAA 1985. This Act has been repealed¹ and provisions governing enduring powers are now contained in Schedule 4, MCA 2005. New enduring powers of attorney cannot be created after 30 September 2007 although those created before 1 October 2007 will continue to have effect². An enduring power must be in the form prescribed by the Enduring Powers of Attorney (Prescribed Forms) Regulations 1986, 1987, 1990 or 2005 or the Enduring Powers of Attorney (Welsh Language Prescribed Form) Regulations 2000 as appropriate, depending on when the power was executed and in which language. The power must be executed in the prescribed manner by the donor and the attorney and incorporate at the time of execution the prescribed explanatory information. A power of attorney that gives the attorney a right to appoint a substitute or successor cannot be an enduring power³.

An enduring power is not revoked by the donor's mental incapacity. If the attorney has reason to believe that the donor lacks or is beginning to lack capacity they must apply to register the power with the Public Guardian who, in some circumstances, can only register the power in accordance with the direction of the Court of Protection. After the power is registered it may only be revoked by the donor with the confirmation of the Court of Protection, or by the death of the donor, the bankruptcy of the donor or donee, or by the Court of Protection. Enduring powers dated after 29 February 2000 and earlier powers used in transactions dated after 28 February 2000 made by one of joint proprietors may only be used if:

- the donor has a beneficial interest in the land (see section 5 *Joint proprietors – evidence that the donor of a power had a beneficial interest*), and
- there is no indication in the power that the donor did not intend the attorney to exercise trustee functions.

Or

For enduring powers dated before 1 March 2000 if:

- the power is registered with the Court of Protection following an application made to the court before 1 March 2001.

Or

- an application made to the court for registration of the power before 1 March 2001 has not been finally refused.

An attorney under an enduring power can make gifts and confer benefits on behalf of the donor only in very limited circumstances – see Schedule 4, paragraphs 3(2) and 3(3), MCA 2005. Land Registry will usually refuse to register a transfer involving a gift or benefit that is executed under an enduring power unless the court has authorised the transfer under Schedule 4, paragraph 16(2)(e), MCA 2005.

¹ S.66(1)(b), MCA 2005.

² S.66(3), MCA 2005.

³ Schedule 4, paragraph 2(6), MCA 2005.

3.5 Trustee Act powers

S.25, TA 1925 allows a trustee to grant a power of attorney delegating their functions as a trustee to the attorney.

S.25 provides a short form of power by which a single donor can delegate trustee functions under a single trust to a single donee. Trustees can use other forms. The short form would not, for example, be appropriate where the donor wishes to delegate functions under several trusts to one attorney or wishes to limit the range of functions to be delegated.

A TA 1925 power can be granted only for a period of up to 12 months. The period starts on the date of the power unless it specifies a different date.

A TA 1925 power can always be used, while in force, to execute dispositions of land on behalf of a donor who is a joint proprietor, whether or not the donor has a beneficial interest in the land. It is possible to grant such a power to an attorney who is also the only other trustee under the trust. However, where there are only two trustees, it will always be sensible to appoint a third party. This is because, as explained in section 4 *Joint proprietors – receipts for capital money*, a trustee who is also acting as attorney for the only other co-trustee will not be able to give valid receipts for capital money.

3.6 Power given by all the trustees to a beneficiary under s.9, TLATA 1996

All the trustees of a trust of land can together appoint a beneficiary or the beneficiaries to exercise their functions in relation to the land. But the attorney cannot give a receipt for capital money, so the trustees would, in any event, need to join in any disposition of the land where such a receipt was required. This type of power is, therefore, likely to be encountered rarely in the context of dispositions of registered land. It could only be used effectively when no capital money is passing, for example on the grant of a rack rent lease. Where this form of power is used for a registered disposition, the registrar may require under r.63, LRR 2003 evidence that the person(s) dealing with the attorney:

- acted in good faith, and
- had no knowledge at the time of completion of the transaction that the attorney was not a person to whom the functions of the trustees in relation to the land to which the application relates could be delegated under s.9, TLATA.

On the rare occasions when the registrar requires this evidence, it must be supplied in form 3 (see Appendix C), being either a statutory declaration or statement of truth by the person dealing with the attorney or a certificate given by the person's conveyancer. If the registrar also requires evidence of non-revocation (see section 6 *Powers more than 12 months old – evidence of non-revocation*) form 2 must be used.

3.7 Lasting powers

Lasting powers of attorney have replaced enduring powers as the principal way of choosing a decision-maker to act in the event of loss of capacity. In addition to property and affairs, donors will be able to appoint an attorney to make decisions about their personal welfare for a time when they lack capacity to make such decisions themselves.

Lasting powers relating to decisions about property and financial affairs can be used both before and after the donor loses capacity, according to his or her wishes. A lasting power must in all circumstances be registered with the Office of the Public Guardian before it can be used. Notice must first be served by the person applying for registration of the power. When acting under a lasting power, attorneys must apply the principles under the MCA 2005 Code of Practice and, where appropriate, must act in the best interests of the person lacking capacity when making a particular decision.

The donor of a lasting power relating to property and affairs must be a person aged 18 or over and have capacity to execute a lasting power. The donee must be a person aged 18 or over who is not bankrupt or a trust corporation. Joint attorneys may be appointed to act jointly, jointly and severally, or jointly in respect of some matters and jointly and severally in respect of others. A lasting power may nominate a replacement donee to act in certain circumstances that terminate the original donee's appointment (s.10(8), MCA 2005), but a donee cannot appoint a replacement donee (s.10(8)(a)).

If a lasting power has been registered but no lasting power was, in fact, created, a transaction between the donee and another person is, in favour of that person, as valid as if the power had existed, unless at the time of the transaction that other person knew that a lasting power was not created or was aware of circumstances that would have terminated the donee's authority to act had a lasting power been created (s.14(3), MCA 2005).

There is a conclusive presumption in favour of a purchaser whose interest depends on whether that transaction was valid by virtue of that section that the transaction was valid if either:

- the transaction was completed within 12 months of registration of the power, or
- the purchaser makes a statutory declaration, before or within three months after the completion of the purchase, that he or she had no reason at the time of the transaction to doubt that the donee had authority to dispose of the property that was the subject of the transaction (s.14(4), MCA 2005). For land registration purposes under r.62, LRR 2003, a statutory declaration or a statement of truth to this effect may be in form 2 of Schedule 3 to LRR 2003 (see Appendix B).

Full details regarding the requirements for preparation and registration of lasting powers of attorney are given in the LPA 2007.

4 Joint proprietors – receipts for capital money

For dispositions dated after 29 February 2000, s.7, TDA 1999 provides that a receipt for capital money will overreach beneficial interests only if an attorney acts with at least one other person. This means that a receipt clause in a disposition by joint proprietors is not acceptable if it is signed only by one person both as proprietor and as attorney for the other proprietor(s). Nor is it acceptable for one person to sign as attorney for all the proprietors.

If such a document is lodged we will return it for execution by the donor of the power. The donor of a lasting or enduring power of attorney will not be able to execute a document if he or she lacks capacity. (In these circumstances the document may, of course, be executed by another attorney if one has been appointed jointly and severally.)

If the document is not re-executed it will be necessary to protect any beneficial interests that may still subsist. We will therefore enter on the register a restriction on dispositions by a sole proprietor in Form A of Schedule 4, LRR 2003.

5 Joint proprietors – evidence that the donor of a power had a beneficial interest

All joint proprietors hold the registered legal estate as trustees. A general, enduring or lasting power of attorney dated after 29 February 2000 may be used in relation to trust property if, at the time it is used, the donor of the power owns a beneficial interest in that property unless contrary intention is shown in the power (s.1(1), TDA 1999).

A written statement by the attorney given within three months of the date of the document confirming that the donor had a beneficial interest in the property is, in favour of a purchaser, conclusive evidence that the power could be used (s.2(2), TDA 1999).

The most convenient place for the attorney to make this written statement will be in the disposition itself. The attorney may:

- include a statement on the following lines in the additional provisions panel of a TR1 or other prescribed form, or in the body of a lease or charge:

(Name of attorney) confirms that (donor of the power) has a beneficial interest in the property at the date of this (transfer, charge etc.).

Or

- adapt the attestation clause as follows:

Signed as a deed by *(name of donor of the power)*, who has a beneficial interest in the property at the date of this *(transfer, charge etc.)*, acting by *(his/her) attorney (name of attorney)* in the presence of.

Or

- expand the words of signature as follows:

John Smith by his attorney Jane Brown who confirms that the donor has a beneficial interest in the property at the date hereof.

The written statement can also be made separately as long as it is dated within three months of the date of the document.

If an applicant for registration cannot produce such a statement we will consider other evidence that the donor had a beneficial interest at the relevant time. A statutory declaration or statement of truth to that effect by a responsible person with full knowledge of the facts may be acceptable in some cases. But if the applicant does not produce sufficient evidence of the donor's beneficial entitlement the document will need to be executed by the donor of the power.

6 Powers more than 12 months old – evidence of non-revocation

A purchaser from a person who has dealt with an attorney is entitled to assume that the power of attorney has not been revoked if the transaction in question took place within 12 months of the date when the power came into question.

Although under r.62, LRR 2003 Land Registry may require evidence of non-revocation if the power of attorney is more than 12 months old, under normal circumstances such evidence will **NOT** be required.

On the rare occasions when the registrar requires evidence of non-revocation, this must be in form 2 (see Appendix B), being either:

- a statutory declaration or statement of truth made by the person(s) dealing with the attorney, for example a purchaser from the attorney, or
- a certificate by that person's conveyancer.

As TA 1925 powers of attorney can only operate for 12 months, we will never need evidence of non-revocation for these powers.

7 Evidence of the power

Land Registry will need to see **one** of the following.

- Form 1 (see Appendix A).
- The original.
- A sufficient copy of any power of attorney that you are relying on to establish that a document lodged with your application is validly executed.

We will retain the evidence lodged in our files. If, therefore, you need to keep the original you should lodge a copy with your application. S.3, PAA 1971 prescribes a strict method of proving the contents of a power of attorney.

To follow this procedure a solicitor, notary public or stockbroker must certify:

- at the end of a photocopy of the power that it is a true and complete copy of the original, and
- on each page of the photocopy, if the power includes more than one page, that the page is a true and complete copy of the corresponding page of the original.

In practice, we will usually accept a photocopy that is certified, by a conveyancer, to be a true copy of the original power. However, in any case of doubt, we would ask you to produce either the original or the more formal certified copy mentioned above.

NB: We cannot accept a faxed copy of the power of attorney, but a faxed copy of form 1 is acceptable if the certificate is on the conveyancer's headed notepaper.

8 Checklists

We hope that the checklists set out below will help you, in the cases that they cover, to lodge the correct documents and evidence with your applications. Unless you can answer 'yes' to all the questions that apply, the donor of the power will need to execute the document personally before we can register it.

8.1 Power given by a sole proprietor (not a trustee)

- Are you able to lodge a form 1 or the original or a certified copy of the power?
- Is the power validly executed as a deed?
- Is the power wide enough to cover what the attorney has done?

8.2 Power given by one of joint proprietors dated after 29 February 2000

- Are you able to lodge a form 1 or the original or a certified copy of the power?
- Is the power validly executed as a deed?
- Is the power made under the TA 1925? (See s.25, TA 1925.)

Or

- Did the donor of the power have a beneficial interest in the property, there being no intention, expressed in the power, of excluding functions that the donor held as a trustee? (See sections 3.1, 3.2, 3.4 and 5).
- Is the power wide enough to cover what the attorney has done?
- Has at least one other proprietor of the land (or a third party as attorney on that proprietor's behalf) also given any necessary receipt for capital money? (See section 4 *Joint proprietors – receipts for capital money*.)

8.3 Power given to beneficiaries by all the joint proprietors of the land

- Are you able to lodge a form 1 or the original or a certified copy of the power?
- Is the power validly executed as a deed?
- Is the power made under the TLATA 1996? (See section 3.6 *Power given by all the trustees to a beneficiary under s.9, TLATA 1996*.)
- Is the power wide enough to cover what the attorney has done?
- If the transaction involved the payment of capital money, did the trustees join in to give a receipt?

9 Enquiries and comments

If you have a particular concern that is not covered by this guide, please contact Land Registry in advance of the transaction – see the *Contact details* panel on the front cover of this guide. If the transaction is particularly complex, it may be better if you make your enquiry in writing at the Land Registry office that will process your application.

If you have any comments or suggestions about our guides, please send them to:

Registration Change Group
Land Registry
Lincoln's Inn Fields
London
WC2A 3PH
(DX1098 London/Chancery Lane)

You can obtain further copies of this and of all our guides free of charge from any Land Registry office or you can download them in English or Welsh from our website.

10 Appendix A

Form 1 – Certificate as to execution of power of attorney (rule 61)

Date of power of attorney

Donor of power of attorney

Donee of power of attorney

I/We of

certify that:

- the power of attorney (“the power”) is in existence [and is made and, where required, has been registered under (*state statutory provision under which the power is made if applicable*)],
- the power is dated (*insert date*),
- I/we are satisfied that the power is validly executed as a deed and authorises the attorney to execute the document on behalf of the donor of that power, and
- I/we hold [the instrument creating the power] *or* [a copy of the power by means of which its contents may be proved under section 3 of the Powers of Attorney Act 1971] *or* [a document which under section 4 of the Evidence and Powers of Attorney Act 1940, paragraph 16 of Part 2 of Schedule 1, or paragraph 15(3) of Part 5 of Schedule 4 to the Mental Capacity Act 2005 is sufficient evidence of the contents of the power].

Signature of
conveyancer

Date

11 Appendix B

Form 2 – Statutory declaration/certificate/statement of truth as to non-revocation for powers more than 12 months old at the date of the disposition for which they are used (rule 62)

Date of power of attorney _____

Donor of power of attorney _____

I _____ of _____

do [solemnly and sincerely declare] *or* [certify] *or* [state] that at the time of completion of the _____

_____ to me/my client I/my client had no knowledge –

- of a revocation of the power, or
- of the death or bankruptcy of the donor or, if the donor is a corporate body, its winding up or dissolution, or
- of any incapacity of the donor where the power is not a valid lasting or enduring power of attorney, or

Where the power is in the form prescribed for a lasting power of attorney –

- that a lasting power of attorney was not created, or
- of circumstances which, if the lasting power of attorney had been created, would have terminated the attorney's authority to act as an attorney, or

Where the power is in the form prescribed for an enduring power of attorney –

- that the power was not in fact a valid enduring power, or
- of an order or direction of the Court of Protection which revoked the power, or
- of the bankruptcy of the attorney, or

Where the power was given under section 9 of the Trusts of Land and Appointment of Trustees Act 1996 –

- of an appointment of another trustee of the land in question, or
- of any other event which would have the effect of revoking the power, or
- of any lack of good faith on the part of the person(s) who dealt with the attorney, or
- that the attorney was not a person to whom the functions of the trustees could be delegated under section 9 of the Trusts of Land and Appointment of Trustees Act 1996, or

Where the power is expressed to be given by way of security–

- that the power was not in fact given by way of security, or
- of any revocation of the power with the consent of the attorney, or
- of any other event which would have had the effect of revoking the power.

Where a certificate is given –

Signature of conveyancer _____

Date _____

Print name _____

Firm name or employer (if any) _____

Capacity (e.g. acting for...) _____

or _____

Where a Statutory Declaration is made –

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signature of
Declarant(s)

Date

DECLARED at _____ before me, a person entitled to administer oaths.

Name

Address

Qualification

Signature

Where a statement of truth is made–

I believe that the facts and matters contained in this statement are true.

Signature of

Date

Print name

Firm name or employer
(if any) of any conveyancer signing

Capacity (e.g. acting for...)

or

WARNING

1. If you dishonestly make a statement which you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

2. Failure to complete the form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

3. Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using form EX1, under rule 136 of the Land Registration Rules 2003.

12 Appendix C

Form 3 – Statutory declaration/certificate/statement of truth in support of power delegating trustees’ functions to a beneficiary (rule 63)

Date of power of attorney _____

Donor of power of attorney _____

I _____ of _____

do [solemnly and sincerely declare] *or* [certify] *or* [state] that at the time of completion of the _____

_____ to me/my client I/my client had no knowledge –

- of any lack of good faith on the part of the person(s) who dealt with the attorney, *or*
- that the attorney was not a person to whom the functions of the trustees could be delegated under section 9 of the Trusts of Land and Appointment of Trustees Act 1996.

Where a certificate is given –

Signature of conveyancer _____

Date _____

Print name _____

Firm name or employer (if any) _____

Capacity (e.g. acting for...); _____ or _____

Where a Statutory Declaration is made –

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Signature of Declarant _____

Date _____

DECLARED at _____ before me, a person entitled to administer oaths.

Name _____

Address _____

Qualification _____

Signature _____

or _____

Where a statement of truth is made—

I believe that the facts and matters contained in this statement are true.

Signature of _____

Date _____

Print name _____

Firm name or employer
(if any) of any conveyancer signing _____

Capacity of any conveyancer
signing (e.g. acting for...) _____

WARNING

1. If you dishonestly make a statement which you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.
2. Failure to complete the form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.
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Land Registry advisory policy

We offer advice to our customers through our publications and enquiry services and through the day-to-day handling of applications.

We provide factual information including official copies of registers, title plans and documents, searches and details of our forms and fees.

We provide procedural advice to explain how the land registration system works and how to make applications correctly. This includes:

- advice in advance of an application, where this is requested
- where an application is defective, advice as to the nature of the problem and what options, if any, are available to put it right
- an approval service for estate layout plans and certain other land registration documents.

There are limits to the advice that we will provide. We will not provide legal advice.

This means that:

- we will not approve the evidence to be produced in support of a registration application before we receive the application
- apart from procedural advice, we will not advise on what action to take
- we will not recommend a professional adviser but can explain how to find one.

We provide advice only about real cases, not about theoretical circumstances. We will not express a view on questions where the law is complex or unclear except where the question arises on a live registration application.

In providing this factual information and procedural advice we will:

- be impartial
- recognise that others may be affected by what we say
- avoid any conflict of interest.

Information in this guide

The information in this publication is for the purpose of providing general guidance about Land Registry's procedures and policies. It is intended only as a guide and does not cover every situation that may arise. It also does not limit Land Registry's ability to use its discretion when appropriate to do so, within the land registration legislation.

Remember

Please note that Land Registry may be unable to process applications that are incomplete or defective and your application will risk losing its priority if we have to return it to you – see Practice Guide 49 – *Return and rejection of applications for registration* for more information.

Peter Collis
Chief Land Registrar

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The Forms Unit, Land Registry (under the delegated
authority from the Controller of HMSO), Lincoln's Inn
Fields, London WC2A 3PH

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