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Practice Direction Duties Act:

FORM 1 TRANSFER SIGNED UNDER A POWER OF ATTORNEY

A practice direction, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a practice direction, the change in the law overrides the practice direction—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this direction is about

1. This practice direction clarifies whether a Form 1 Transfer signed by an attorney on behalf of the transferor under the authority of a power of attorney will be accepted for the assessment of transfer duty.
2. A general power of attorney, as described in s.8 of the *Powers of Attorney Act 1998* (Powers of Attorney Act), authorises a person (an attorney) to act according to the powers given to them by another (the principal).
3. Section 132 of the *Land Title Act 1994* (Land Title Act) provides that an instrument relating to real property executed under the authority of a power of attorney may only be registered on the title if the power of attorney has been registered.
4. The power of attorney register is held by the Registrar of Titles.¹
5. Section 134(3) of the Land Title Act allows the Registrar of Titles to register an instrument without being satisfied that the power of attorney has not been revoked.

Direction and explanation

6. A Form 1 Transfer executed by an attorney under a power of attorney given by the transferor should, in most cases, be accepted for assessment of transfer duty unless there is some significant reason to doubt the existence of the relevant power of attorney.

¹ Section 133 of the Land Title Act

7. Section 14 of the Powers of Attorney Act provides that a power of attorney may be proved by a copy that has been certified as a true and complete copy by one of the following persons:
- (a) the principal
 - (b) a justice
 - (c) a commissioner for declarations
 - (d) a notary public
 - (e) a lawyer (including a barrister or solicitor)
 - (f) a trustee company under the *Trustee Companies Act 1968*
 - (g) a stockbroker.

Date of effect

8. This practice direction takes effect from 8 April 2024.

Simon McKee
 Commissioner of State Revenue
 Date of issue: 3 April 2024

References

Practice Direction	Issued	Dates of effect	
		From	To
DA016.1.1	3 April 2024	8 April 2024	Current
Supersedes Public Ruling DA016.2.1	24 February 2009	24 February 2009	7 April 2024