

AUSTRALIAN CAPITAL TERRITORY.

No. 17 of 1956.

AN ORDINANCE

Relating to Powers of Attorney.

I THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1955*.

Dated this twenty-first day of December, 1956.

W. J. SLIM
Governor-General.

By His Excellency's Command,

NEIL O'SULLIVAN
for and on behalf of the Minister of
State for the Interior.

POWERS OF ATTORNEY ORDINANCE 1956.*

1. This Ordinance may be cited as the *Powers of Attorney Ordinance 1956*.^{Short title.}*

2.—(1.) In this Ordinance, unless the contrary intention appears—^{Interpretation.}

“attorney” includes sub-attorney;

“bankruptcy” includes an act or proceeding in law having, under a law in force in the Territory, effects or results similar to the effect or result of bankruptcy and, in relation to a body corporate, includes the winding up of the body under a law in force in the Territory;

“donee”, in relation to a power of attorney, means the person who is appointed to be the attorney of another person by virtue of the power of attorney;

“donor”, in relation to a power of attorney, means the person, who, by the power of attorney, appoints another person to be his attorney;

“power of attorney” includes an authorized substitution of attorney and an authorized delegation to, or appointment of, sub-attorney;

“the Registrar” means the Registrar of Titles appointed under the *Real Property Ordinance 1925-1956*, and includes an Acting Registrar and a Deputy Registrar so appointed.

(2.) This Ordinance does not enable a donee under a power of attorney to appoint irrevocably a substitute, delegate or sub-attorney unless expressly authorized to do so.

* Notified in the *Commonwealth Gazette* on 24th December, 1956. *
6482/55.—PRICE 5D.

Application of Ordinance.

3. This Ordinance extends to all powers of attorney, including powers of attorney authorizing, whether expressly or in general terms, the execution of instruments under the *Real Property Ordinance* 1925-1956, or under the *Real Property Act, 1900*, of the State of New South Wales, in its application in the Territory.

Execution under power of attorney.

4.—(1.) Where the donee under a power of attorney is entitled to execute an assurance or instrument or do any other thing by authority of the donor of the power of attorney, the donee may execute such an assurance or instrument or do such a thing in his own name, with his own signature, and, if sealing is required, under his own seal.

(2.) An assurance or instrument so executed and any thing so done is as effectual in law—

- (a) where it has been executed or done under seal—as if it had been executed or done in the name, with the signature and under the seal of the donor of the power of attorney; and
- (b) where it has not been executed or done under seal—as if it had been executed or done in the name and with the signature of the donor of the power of attorney.

(3.) This section applies to a power of attorney created by instruments executed either before or after the commencement of this Ordinance.

Power of attorney to continue in force until death or revocation.

5.—(1.) Subject to any provision to the contrary in the instrument creating a power of attorney, the power of attorney operates and continues in force, so far as an act or thing done or suffered under it in good faith is concerned, until notice of the death of the donor of the power of attorney, or notice of some other revocation of the power of attorney, is received by the donee under the power of attorney.

(2.) An act or thing within the scope of a power of attorney done or suffered by the donee under the power of attorney in good faith after the death of the donor of the power of attorney or after the power of attorney has been otherwise revoked, but before notice of the death of the donor or of the other revocation of the power of attorney is received by the donee, is in every respect as effectual in law as if the donor had not died or the power of attorney had not been otherwise revoked.

(3.) Where at the time at which, or at any time after, the donee under a power of attorney does or suffers any act or thing under the power of attorney, the donee makes a statutory declaration stating—

- (a) that he is the attorney named in the power of attorney by virtue of which he has done or suffered the act or thing; and

- (b) that, at the time when he did or suffered the act or thing, he had not received notice of the revocation of the power of attorney by the death, lunacy, unsoundness of mind, bankruptcy, act of the donor of the power of attorney or otherwise,

the statutory declaration is, in favour of a person dealing with the donee in good faith, for valuable consideration and without notice of the death of the donor or of any other revocation of the power of attorney, conclusive that the power of attorney had not been revoked at the time when the act or thing was so done or suffered.

(4.) Where a donee under a power of attorney is a body corporate—

- (a) the statutory declaration may be made by an officer of the body corporate appointed for the purpose by the board of directors, council or other governing body of the body corporate either generally or in a particular instance; and

- (b) if the statutory declaration contains, in addition to the matters specified in the last preceding sub-section, a statement that the declarant is an officer of the body corporate appointed for the purpose of making the declaration, the statutory declaration is, in favour of a person dealing with the donee in good faith, for valuable consideration and without notice that the declarant is not an officer of the body corporate duly appointed for the purpose of making the declaration, conclusive that the declarant is such an officer.

(5.) Where an instrument that is made, or purports to be made, after the commencement of this Ordinance in exercise of a power of attorney contains a statement by the donee that, at the time the instrument is made, the donee has not received notice of the revocation of the power of attorney, that statement is, in favour of all persons dealing with the donee in good faith, for valuable consideration and without notice of the death of the donor of the power of attorney or of any other revocation of the power of attorney, conclusive that the power of attorney had not been revoked at that time.

(6.) An instrument may contain the statement referred to in the last preceding sub-section in the body of the instrument or in a memorandum endorsed on the instrument, being a memorandum that, at the time the instrument is made—

- (a) is signed by the donee under the power of attorney in the presence of a witness;
- (b) is attested by that witness; and
- (c) states the date on which, and the place at which, the memorandum is so signed and attested.

(7.) A person shall not execute, in pursuance of a power of attorney, an instrument that contains a statement that that person has not received notice of the revocation of the power of attorney when, in fact, the person knows that the power of attorney has been revoked.

Penalty: Imprisonment for four years.

(8.) A person shall not, in a memorandum endorsed on an instrument executed by him in pursuance of a power of attorney, make a statement which he knows to be untrue.

Penalty: Imprisonment for four years.

(9.) This section applies in relation to powers of attorney—

(a) executed in or out of the Territory; or

(b) executed before or after the commencement of this Ordinance.

(10.) In this section, “revocation”, in relation to a power of attorney, means the determination of the power of attorney otherwise than by the expiration of a fixed period of time.

Irrevocable
power of
attorney
for value.

6.—(1.) Where a power of attorney is given for valuable consideration and is, in the instrument creating the power of attorney, expressed to be irrevocable, then, in favour of a person dealing with the donee under the power of attorney for valuable consideration—

(a) the power of attorney shall not at any time be revoked by anything done by the donor of the power of attorney without the concurrence of the donee and shall be deemed not to be revoked by the death, lunacy, unsoundness of mind or bankruptcy of the donor;

(b) an act done by the donee at any time in pursuance of the power of attorney is as effectual in law as if anything done by the donor without the concurrence of the donee had not been done and as if the death, lunacy, unsoundness of mind or bankruptcy of the donor had not happened; and

(c) the donee or the person shall not at any time be prejudicially affected by notice of the death, lunacy, unsoundness of mind or bankruptcy of the donor or of anything done by the donor without the concurrence of the donee.

(2.) This section applies—

(a) to a power of attorney (whether executed in or out of the Territory) created by an instrument which is executed after the commencement of this Ordinance; and

- (b) to a power of attorney, the donee of which is the Australian National University or the Council of the Canberra University College, created by an instrument executed, whether in or out of the Territory, after the twenty-ninth day of February, One thousand nine hundred and fifty-six, and before the date of commencement of this Ordinance.

7.—(1.) Where a power of attorney is, in the instrument creating the power of attorney, expressed to be irrevocable for a fixed period specified in the instrument, being a period not exceeding two years from the date of the instrument, then, in favour of a person dealing with the donee under the power of attorney for valuable consideration—

Power of attorney irrevocable for fixed period.

- (a) the power of attorney shall be deemed not to be revoked by the death, lunacy, unsoundness of mind or bankruptcy of the donor of the power of attorney, or by anything done by the donor without the concurrence of the donee, before the expiration of the fixed period;
- (b) an act done before the expiration of the fixed period in pursuance of the power of attorney is as effectual in law as if the death, lunacy, unsoundness of mind or bankruptcy of the donor had not happened and as if anything done by the donor without the concurrence of the donee had not been done; and
- (c) the donee or the person shall not at any time be prejudicially affected by notice, either before or after the expiration of the fixed period, of the death, lunacy, unsoundness of mind or bankruptcy of the donor during the fixed period or of anything done by the donor during the fixed period without the concurrence of the donee.

(2.) This section applies to a power of attorney created by an instrument, whether executed in or out of the Territory, whether given for valuable consideration or not and whether executed before or after the commencement of this Ordinance.

8. Where an act or thing within the scope of a power of attorney to which either of the last two preceding sections applies is done or suffered by the donee under the power of attorney after the power of attorney is revoked by the donor with the concurrence of the donee but within the period, if any, fixed by the power of attorney, that act or thing is, in favour of a person dealing with the donee in good faith, for valuable consideration and without notice of that revocation, as effectual in law as if the power of attorney had not been so revoked.

Protection of purchaser under irrevocable power of attorney.

9.—(1.) There shall be kept, at the office of the Registrar, a register to be known as the Register of Powers of Attorney, which shall contain a copy of every instrument registered under this Ordinance.

(2.) Subject to the next succeeding sub-section, a person may, upon payment of a fee of One pound, register an instrument, whether executed before or after the commencement of this Ordinance, creating a power of attorney or revoking a power of attorney—

(a) by producing the instrument to the Registrar and depositing with the Registrar a copy of the instrument verified as a true copy by the statutory declaration of a credible person who has compared the copy with the original instrument of which it purports to be a true copy; or

(b) if the person is unable to produce the instrument to the Registrar by reason of the fact that the power of attorney has been registered by, or filed or deposited with, an officer of a State or Territory of the Commonwealth under a law of that State or Territory—by depositing with the Registrar a copy of the instrument certified as a true copy by the officer having the custody of the instrument, or a copy of the instrument which is, by virtue of the law of the State or Territory under which the instrument was so registered, filed or deposited, evidence of the contents of the instrument in the State or Territory.

(3.) The Registrar may refuse to accept for registration a copy of an instrument which, in his opinion—

(a) is not legibly printed or written;

(b) is not on paper of a size and standard approved by him; or

(c) will not, if bound in the Register of Powers of Attorney, be easily readable.

(4.) Upon registering an instrument under this Ordinance, the Registrar shall endorse on the copy of the instrument deposited with him a memorandum of the registration of the instrument and of the date and time of registration and—

(a) shall, if the original instrument has been produced to him, endorse such a memorandum on the instrument; or

(b) shall, if a copy of the instrument has been deposited with him under paragraph (b) of sub-section (2.) of this section and the person depositing the copy so requests and produces to the Registrar a further copy of the instrument duly verified to be a copy, endorse such a memorandum on the further copy.

(5.) The Registrar shall keep an index of instruments registered, or deemed to be registered, under this Ordinance.

10. Where—

- (a) a power of attorney (not being a power of attorney that has been revoked in accordance with section one hundred and thirty-one of the *Real Property Ordinance 1925-1951*) has been registered under section one hundred and thirty of that Ordinance; or
- (b) a power of attorney, or a copy of a power of attorney, has, before the commencement of this Ordinance, been filed or deposited at the office of the Registrar,

Certain powers of attorney deemed to be registered.

the power of attorney shall be deemed to be registered under this Ordinance.

11.—(1.) Where an instrument creating a power of attorney is executed after the commencement of this Ordinance, a conveyance or deed, not being a lease or agreement for a lease for a term not exceeding three years, executed by the donee in pursuance of the power of attorney is not of any force or validity until the instrument creating the power of attorney is registered.

Effect of registration of powers of attorney.

(2.) Upon the registration of an instrument creating a power of attorney, a conveyance or deed to which the last preceding sub-section applies takes effect as if the instrument had been registered before the conveyance or deed was executed.

12. A person may, on payment of a fee of Five shillings, search in the index and register kept by the Registrar under this Ordinance.

Searches.