

Customer Information Bulletin

BULLETIN No. 181
12 MARCH 2008

TRANSFER BY ATTORNEY UNDER EPA OR BY ADMINISTRATOR UNDER BOARD ORDER TO SELF OR FAMILY MEMBER

The following practice operates with immediate effect, subject to examination of the original lodged documentation:

1. Transfer of a Donors Property to a Single Enduring Attorney

A transfer of the Donor's property by an Attorney appointed under an Enduring Power of Attorney to him/herself or to a member of the Attorney's family is prohibited because it is in breach of the fiduciary duties of the Attorney.

However, the transfer may be registerable if the Attorney provides a statutory declaration advising of the following:

- The reason for the transfer, eg request or wishes of Donor;
- Demonstrates that the transfer is in the best interests of the Donor;
- Evidence of payment of the consideration to the account of the Donor;
- There is evidence that the Attorney or the family member has paid full market value for the property; and
- Annexes a sworn valuation of the property made by an independent valuer.

If the transfer from the Attorney to himself has been made under either an Order of the Board or of a Court then this may be registered subject to a copy of the extracted order being lodged with the transfer.

2. Transfer of the Donors property to one of two Enduring Attorney's

Where two or more Attorneys have been appointed by a Donor, a transfer of the Donor's property to one Attorney appointed under an Enduring Power of Attorney may be registerable if both Attorneys agree and provided that the Attorneys provide a statutory declaration advising of the following:

- The reason for the transfer, eg request or wishes of Donor;
- Demonstrates that the transfer is in the best interests of the Donor;
- Evidence of payment of the consideration to the account of the Donor;
- There is evidence that the Attorney has paid full market value for the property; and
- Annexes a sworn valuation of the property made by an independent valuer.

3. Gift of Donors Property

Where the Attorney seeks to transfer the Donor's property to himself or herself or to a member of the Attorney's family via a gift then, this is not registerable as it is a breach of the fiduciary duties of the Attorney. However, if the Attorney can provide an order made by the Board or other court order giving effect to the gift then the transfer may be registered.

4. Transfer of Donors Property to Appointed Administrator

A transfer of the Donor's property to the Administrator appointed by the Guardianship and Administration Board to him/herself or to a member of the Administrator's family is prohibited because it is a breach of the fiduciary duties of the Administrator. However, the transfer may be registered if the Administrator provides either:

- an Order from the Board authorising that particular transfer; or
- the powers conferred by the order authorise a transfer and the Administrator provides a statutory declaration advising of the following:
 - The reason for the transfer, eg request or wishes of Donor;
 - Demonstrates that the transfer is in the best interests of the Donor;
 - Evidence of payment of the consideration to the account of the Donor;
 - There is evidence that the Administrator or the family member has paid full market value for the property; and
 - Annexes a sworn valuation of the property made by an independent valuer.
 - That the incapacity still existed, the incapable person was still alive and the appointment had not been revoked, at the time of signing the instrument. (Chapter 1.12.3 of the Land Titles Registration Practice Manual).

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