

## CERTIFICATES OF NON-REVOCATION OF POWERS OF ATTORNEY

From time to time, villages may be presented with documents that have been signed by a resident's attorney on behalf of the resident. Such documents may include, for example, agreements for occupation licences, loan agreements or termination notices.

Every document signed by an attorney **must be** accompanied by a certificate of non revocation of power of attorney, in the correct form, to ensure that the document has been validly signed and can be relied on by the village.

### **What is a power of attorney?**

A power of attorney is a formal document that a donor signs to appoint another person to act on his or her behalf.

There are two types of powers of attorney.

1. **"Ordinary" powers of attorney** - an "ordinary" power of attorney may only be used while the donor is mentally capable.
2. **Enduring powers of attorney ("EPA")** - There are two types of EPAs; one for property (for example decisions about the donor's property and financial affairs) and one for personal care and welfare (for example, decisions about the donor's care).

The donor can choose whether an EPA for property comes into effect straight away or only when the donor becomes mentally incapable. An EPA for personal care and welfare can only come into effect once the donor becomes mentally incapable.

It is standard practice for many villages to require residents to provide EPAs when the resident enters the village. The reason for this is that if the resident's health deteriorates to such an extent that they cannot make decisions for themselves, the operator should know who to deal with.

### **Certificates of non-revocation**

Every time an attorney signs a document on behalf of a resident, a certificate of non revocation must be attached to the document.

Under the law that governs powers of attorneys, a person dealing with an attorney may only rely on a certificate of non-revocation as **conclusive proof** of the non-revocation of the power of attorney, if the certificate is in the correct form.

If no certificate of non-revocation is attached, or if the certificate is attached but is not in the correct form, the village cannot rely on that certificate as proof that the attorney is still entitled to act on behalf of the donor. This could cause problems later on if, for example, the village acted on an attorney's written instructions (for example, to pay out a termination amount) and it was later found out that the donor had previously revoked the attorney's authority to act. *(Article continued)*

There are different forms of certificates of non-revocation for "ordinary" powers of attorney and for EPAs. Settlement Services still receive certificates of non-revocation that are not in the required form. In these situations Settlement Services will ask residents' solicitors to obtain a new certificate of non-revocation in the correct form.

If you are uncertain as to whether you can rely on a certificate of non-revocation, a copy can be sent to Settlement Services for confirmation.

by **Rose Clements Solicitor Burke Melrose**

*The information in this article is necessary general. Please contact Burke Melrose if you have specific questions.*

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## villageinfo<sup>net</sup>

### Did you know?

Once Settlement Services receives an application, documents are generally dispatched within five working days!

Settlements Officers create a database record for each intending resident as soon as an application is received, then issue documents without any further instruction from you. When we are in the process of setting up the database record and drafting documents the status tab on the residents screen in VillageInfoNet will generally read "*received agreement*" or "*drafting documents*". If you are unable to locate a resident record on VillageInfoNet, we may not have received your application – please check with us.

Once documents have been sent to the intending resident's solicitor the status tab will generally read "*waiting for response from solicitor*".

When we receive documents back from a resident's solicitor and all documentation is in order the status tab will generally read "*documents received*" - we will enter the start and finish date of the cooling off period and you will also receive a notification email (if you have registered for this service) advising of the start and finish date of the cooling off period. ***This is your confirmation that Settlement Services have received documents back from an intending resident's solicitor correctly executed by the resident and the solicitors certificate is in order.***

Documents will then be sent to the village or head office for signing by the authorised signatories and the status bar will generally read "*information to come from the village*" or "*docs sent to village for signing*".

Once documents have been executed by the village and received by Settlement Services, the agreement is unconditional and the cooling off period has expired, the status bar will generally read "*ready to settle*".

VillageInfoNet offers valuable, easy to locate, information at your fingertips to assist in saving you time by needing to phone or email Settlement Services or intending resident's solicitors to check on the progress of a settlement. If at any time you require assistance in locating resident information please do not hesitate to contact your settlements officer or Jo Robertson on 09 356 2641.

Remember that no question is too trivial!

## SETTLEMENT SERVICES NEWS



***We congratulate Naomi and Dan on their recent engagement and upcoming nuptials and wish them both well for their future together.***

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***It is with sadness that we acknowledge the recent sudden passing of Selina's father. Our sincere condolences go to Selina and her family.***

## YOUR SETTLEMENTS TEAM



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