



## **GUIDELINES ON POWERS OF ATTORNEY IN REAL ESTATE TRANSACTIONS**

With the prevalence of real estate fraud in the marketplace, it is important that real estate lawyers implement practices and procedures in their firms to recognize and fight fraud. In recent years, powers of attorney have been used in real estate transactions to perpetrate fraud. Forged powers of attorney have been used to fraudulently mortgage properties or transfer title out of the true registered owner's name. An example of such a situation is contained in the recent case of *Reviczky v. Meleknia*, 2007 CanLII 56494 (ON S.C.).

These *Guidelines* have been prepared to assist lawyers to avoid becoming the tool or dupe of unscrupulous persons when dealing with real estate transactions involving powers of attorney. These *Guidelines* are not intended to replace a lawyer's professional judgment or to establish a rigid approach to the practice of law or the conduct of a real estate transaction. Subject to those provisions of the *Guidelines* that incorporate legal, by-law or *Rules of Professional Conduct* requirements, a lawyer should consider the circumstances of the individual transaction and choose and recommend to the client the practice and procedure that best suits the transaction. In appropriate circumstances, the lawyer may deviate from the *Guidelines*. Whether a lawyer has provided quality service will depend upon the circumstances of each individual transaction.

1. To the extent that lawyers are able, they should avoid the use of Powers of Attorney. The use of Powers of Attorney should be the exception and not the rule.
2. When a Power of Attorney is required for a transaction and there is no pre-existing Power of Attorney, the lawyer should:
  - prepare the Power of Attorney himself or herself,
  - meet with the donor to review and sign the Power of Attorney, and
  - establish in a diligent manner that the donor is the person he or she claims to be.
3. Where a Power of Attorney is required for a transaction, lawyers for all parties should:
  - review the Power of Attorney to ensure that it was drawn and executed in accordance with the governing legislation, and
  - note any restrictions on the powers granted.
4. If the transaction is title insured, the lawyer should ensure that the title insurer will permit the use of the Power of Attorney. If the transaction includes a charge/mortgage or other encumbrance, the lawyer for the borrower should ensure well before closing that the lender will accept documents signed under the authority of a Power of Attorney.

5. Prior to submitting a document for registration signed under the authority of a Power of Attorney, lawyers should:
  - review the contents of the document with the donee,
  - obtain the donee's written approval of the contents of the document,
  - obtain the donee's written authority to register the document, and
  - establish in a diligent manner that the donee is the person he or she claims to be.
6. Lawyers should use their best efforts to register the Power of Attorney on title and to provide a copy of the registered Power of Attorney to the other side well in advance of the closing date.
7. Lawyers must also comply with the client identification and verification requirements of the Law Society of Upper Canada, By-Law 7.1.
8. Absent notice of fraud or other suspicious circumstances, lawyers may rely on Powers of Attorney that have been drawn and executed in accordance with the governing legislation.
9. Absent adverse knowledge, lawyers may rely on the law statements made by another lawyer in any document executed under the authority of a Power of Attorney.
10. Before accepting a retainer or during a retainer, if a lawyer has suspicions or doubts about whether the lawyer would be assisting the client in dishonesty, fraud, crime or illegal conduct, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer, and should make a record of the results of these inquiries. If a lawyer reasonably suspects that he or she would be assisting the client in dishonesty, fraud, crime or illegal conduct, the lawyer must immediately cease to engage in activities that would assist the client in such conduct and, depending on the circumstances, may have to withdraw completely from representing the client.

### **Other Resources**

1. [Appendix 1](#) – File Form - Tips when registering documents signed under the authority of a Power of Attorney when the lawyer has not prepared the Power of Attorney.
2. [Appendix 2](#) – File Form - Tips when receiving documents signed under the authority of a Power of Attorney.
3. [Ontario Regulation 19/99, Land Registration Reform Act](#)
4. [Ministry of Government and Consumer Services, Bulletin 2009-01](#)
5. Article entitled "[Powers of Attorney and Solicitors' Liability: The Case Law](#)", **LAWPRO Practice Pro Magazine, Volume 7, Issue 2 - Summer 2008, pages 9-11**

6. [Revizky v. Meleknia, 2007 CanLII 56494 \(ON S.C.\)](#)
7. [Substitute Decision Act, 1992](#)
8. [Powers of Attorney Act](#)