

Guide to Execution of Documents by Companies

LAND TITLES OFFICE

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INTRODUCTION

This guide sets out the requirements of the Recorder of Titles (the Recorder) regarding the attestation and execution of documents by companies unless otherwise approved or advised.

This guide replaces previous circulars or materials contained in practice manuals and reflects current requirements and practice on this topic.

The powers of the Recorder pursuant to the *Land Titles Act 1980* (Tas) and *Land Titles Regulations 2012* (Tas) remain reserved.

I. LEGISLATION IN THIS GUIDE

Land Titles Act 1980 (Tas)

Land Titles Regulations 2012 (Tas)

Corporations Act 2001 (Cth)

Powers of Attorney Act 2000 (Tas)

2. LEGISLATIVE REQUIREMENTS

Division 1 of Part 4 of the *Land Titles Regulations 2012* and section 48 of the *Land Titles Act 1980* set out the requirements for correct attestation and execution of dealings and instruments generally.

Without limitation to the Recorder's powers and the requirements of the *Land Titles Act 1980* and the *Land Titles Regulations 2012*, execution and attestation by or on behalf of a company of dealings and instruments lodged for registration must also comply with the execution requirements of the *Corporations Act 2001*.

Pursuant to the *Corporations Act 2001*, execution of documents by a company may generally be achieved:

1. Without affixing the common seal (section 127(1)) if the document is signed by:

- 2 directors; or
- a director and a company secretary of the company; or
- for a proprietary company that has a sole director – that director, if
 - the director is also the sole company secretary; or
 - the company does not have a company secretary.

2. Affixing the common seal (section 127(2)) and being witnessed by:

- 2 directors; or
- a director and a company secretary of the company; or
- for a proprietary company that has a sole director– that director, if
 - the director is also the sole company secretary; or
 - the company does not have a company secretary.

3. By an authorised individual (section 126):

- who has the power to make, vary, ratify or discharge a contract;
- acting with the company's express or implied authority;
- with or without using the common seal.

4. By a corporate power of attorney*

- A company is entitled to make a power of attorney providing authority to the donee to act in accordance with its terms.

*The power of attorney must comply with the laws of Tasmania and be registered in Tasmania to have legal effect pursuant to the *Powers of Attorney Act 2000*, subject to Part 6 of the *Powers of Attorney Act 2000* regarding foreign powers of attorney. Its scope must relevantly grant authority and power for the intended instrument or dealing lodged.

3. EXECUTION REQUIREMENTS OF THE RECORDER OF TITLES

Unless otherwise approved or advised from time to time, the general requirements of the Recorder in relation to instruments and dealings executed by a company pursuant to the provisions of the *Corporations Act 2001* and lodged for registration are set out below.

The name and signature of the executing party **and** their capacity (e.g. director, attorney, sole director and sole secretary etc.) must appear on every dealing or instrument.

Execution under Section 127 of the *Corporations Act 2001*

An instrument or dealing executed in accordance with section 127 of the *Corporations Act 2001* must be attested and executed in conformity with one of the relevant examples set forth below.

The Recorder is entitled to rely on the assumptions in section 129 of the *Corporations Act 2001* if an instrument or dealing appears to have been executed in accordance with section 127. The Recorder will generally not require a company search to be provided.

3.1 Example Execution Clauses – *Corporations Act 2001*

Section 127 (1) (a) and (b) example – (without common seal) 2 directors or 1 director and a company secretary

Executed by XYZ Pty Ltd A.CN.....

Pursuant to section 127(1) of the *Corporations Act 2001* (Cth)

By:

.....

Name of Director

.....

Signature of Director

.....

Name of Director/Secretary

.....

Signature of Director/Secretary

(strike out which is inapplicable)

(strike out which is inapplicable)

In relation to the second signature, strike out either the word 'Director' or the word 'Secretary'. If this is left as 'Director/Secretary', the instrument or dealing will be requisitioned as this does not demonstrate valid execution pursuant to section 127. Note – even if a director is also a secretary, it is not acceptable for the same person to sign in both capacities – the signatures of two separate people holding those roles are required.

Section 127 (1) (c) (i) example – (without common seal) sole director and sole secretary

Executed by XYZ Pty Ltd A.C.N.....

Pursuant to section 127(1) of the *Corporations Act 2001* (Cth)

by its sole director and sole secretary

.....

Name of Sole Director and Sole Secretary

.....

Signature of Sole Director and Sole Secretary

Section 127 (1) (c) (ii) example – (without common seal) sole director where company does not have a company secretary

Executed by XYZ Pty Ltd A.C.N.....

Pursuant to section 127(1) of the *Corporations Act 2001* (Cth)

by its sole director – the company does not have a company secretary

.....

Name of Sole Director

.....

Signature of Sole Director

It is the Recorder's policy that if a Sole Director executes under s127(1)(c)(ii) the execution clause **must** state that the company does not have a company secretary. Any purported execution under that sub-section which does not include such a statement will not be accepted.

Section 127 (2) (a) and (b) example – (with common seal) 2 directors or 1 director and a company secretary

The Common Seal of XYZ Pty Ltd A.C.N.....

Pursuant to section 127(2) of the *Corporations Act 2001* (Cth)

was affixed in the presence of:

.....

Name of Director

.....

Signature of Director

.....

Name of Director/Secretary

.....

Signature of Director/Secretary

(strike out which is inapplicable)

(strike out which is inapplicable)

In relation to the second signature, strike out either the word 'Director' or the word 'Secretary'. If this is left as 'Director/Secretary', the instrument or dealing will be requisitioned as this does not demonstrate valid execution

pursuant to section 127. Note – even if a director is also a secretary, it is not acceptable for the same person to sign in both capacities – the signatures of two separate people holding those roles are required.

Section 127 (2)(c)(i) example (with common seal) sole director and sole secretary

The Common Seal of XYZ Pty Ltd A.C.N.....

Pursuant to section 127(2) of the *Corporations Act 2001*

was affixed in the presence of its sole director and

sole secretary:

.....

Name of Sole Director and Sole Secretary

.....

Signature of Sole Director and Sole Secretary

Section 127 (2) (c) (ii) example – (with common seal) sole director where company does not have a company secretary

The Common Seal of XYZ Pty Ltd A.C.N.....

Pursuant to section 127(2) of the *Corporations Act 2001*

was affixed in the presence of its sole director – the company does not have a company secretary

.....

Name of Sole Director

.....

Signature of Sole Director

It is the Recorder's policy that if a Sole Director executes under s127(2)(c)(ii) the execution clause **must** state that the company does not have a company secretary. Any purported execution under that sub-section which does not include such a statement will not be accepted.

Execution under Section 126 of the Corporations Act 2001

Section 126 of the *Corporations Act 2001* allows a company to act through an individual to make, vary, ratify or discharge a contract or execute a document (including a deed). Such powers and functions may be exercised by an individual acting as agent on behalf of a company with the company's express or implied authority. The agent may also exercise the company's power of execution without using a common seal.

The changes brought in by the *Corporations Amendment (Meetings and Documents) Act 2022* now extend the assumptions in section 129 of the *Corporations Act 2001* to documents executed under section 126.

Any document lodged with the Recorder executed under section 126 of the *Corporations Act 2001* must contain a declaration that:

- (a) the person is acting as the company's authorised agent under section 126; and
- (b) the person has not received notice of the revocation of their authority to sign on behalf of the company.

The Recorder further requires that any document executed under section 126 must be accompanied by a certified copy of the document authorizing the agent to execute on behalf of the company.

The attestation clause for a document executed pursuant to section 126 should be in conformity with the following:

Section 126 example (without common seal) execution by agent

Executed by XYZ Pty Ltd A.C.N.....
Pursuant to section 126 of the *Corporations Act 2001*
by its duly authorised agent
on DD/MM/YYYY and who declares that he/she/they
has received no notice of the revocation of their authority:

.....
Name of Agent

.....
Signature of Agent

In the presence of:

Witness Signature:
Witness Name:
Witness Address:

Section 126 example (with common seal) execution by agent

The Common Seal of XYZ Pty Ltd A.C.N.....
Pursuant to s126 of the *Corporations Act 2001*
was affixed in the presence of its duly authorised agent
on DD/MM/YYYY and who declares that he/she/they
has received no notice of the revocation of their authority:

.....
Name of Agent

.....
Signature of Agent

In the presence of:

Witness Signature:

Witness Name:

Witness Address:

4. CORPORATE POWERS OF ATTORNEY

A company can make a power of attorney appointing the persons nominated to undertake functions on behalf of the company. Depending on the content, this may be power to act generally or for a particular purpose such as to complete sales and execute all such documents of and incidental thereto.

To have legal effect, the power of attorney must be registered in Tasmania and in compliance with the *Powers of Attorney Act 2000 (Tas)*.

A copy of the power of attorney does not need to be attached to the instrument or dealing if:

- it is clearly identified on the dealing or instrument;
- is a power of attorney that is registered in Tasmania;
- notice of revocation has not been received by the Recorder; and
- the attorney declares on the instrument or dealing that they have received no notice of revocation.

If execution of an instrument under a foreign (non-Tasmanian) power of attorney is proposed, that power of attorney:

1. Is taken to be registered in Tasmania if it is registered in another State or Territory under a law that corresponds to the *Powers of Attorney Act 2000* as provided by section 42 of the Act; or
2. May be registered in Tasmania pursuant to section 43 of the *Powers of Attorney Act 2000*; and
3. Whether it is either intended to be used and relied upon or registered separately in Tasmania, must be supported by evidence of registration in another State or Territory pursuant to either section 44 (by a legal practitioner) or section 45 of the *Powers of Attorney Act 2000* (certification by an authority exercising similar functions to the Recorder).

A form of certification under section 44 for legal practitioners has been developed for use by the Land Titles Office and is available on the Land Titles Office website.

Instruments or dealings executed pursuant to a power of attorney must also include a declaration as to having not received notice of revocation as provided by Regulation 25 of the *Land Titles Regulations 2012*.

Regulation 25 should be read in its entirety. It generally provides the Recorder may register the instrument, application or dealing if:

- (a) the form of attestation on the instrument or dealing states that the witnesses to the seal have not received notice of revocation of the power (examples set out below); or
- (b) the declaration as to non-revocation is not endorsed on the instrument or dealing, but at least one witness to the seal provides a declaration to that effect in an approved form (examples set out below).

It is noted that Regulation 25 includes a penalty provision for making a false or misleading declaration.

Regulation 25 specifically refers to witnesses 'to the seal'. It does not refer to the common situation where a company is signing without the seal pursuant to section 127 (1) of the *Corporations Act 2001* and therefore where an Attorney is similarly signing in such capacity on the company's behalf.

As a matter of practice, the Recorder will not require the seal to be affixed given the inconsistency in practice this would create, provided the instrument or dealing is otherwise validly signed.

4.1 Example Declaration by Witness – Powers of Attorney

Execution of an instrument or dealing pursuant to power of attorney should be made in conformity with the examples shown below. The declaration as to having received no notice of revocation is expected to be addressed in the usual course of execution under power of attorney.

In the event of this declaration not being on the instrument or dealing, this can be provided separately.

The approved form of declaration is as set out below and can be provided in letter form signed by the attorney:

Declaration by Attorney as to Non-Revocation – Regulation 25 *Land Titles Regulations 2012*

I.....(name of attorney) being the/a duly authorised Attorney pursuant to Power of Attorney PA.....registered in Tasmania (or in State or Territory and identification number) on DD/MM/YYYY on behalf of XYZ Pty Ltd have signed a.....(insert nature on the document) on behalf of the company pursuant to that power, hereby declare that I have not received notice of the revocation of the Power of Attorney at the date of signing that instrument.

Signed:

Date:

4.2 Example Execution Clauses – Powers of Attorney

Execution under corporate power of attorney example (with common seal)

The Common Seal of XYZ Pty Ltd A.C.N.....

Pursuant to section 127(2) of the *Corporations Act 2001*

was affixed in the presence of its duly appointed Attorney/s pursuant to Power of Attorney PA..... registered in Tasmania

(or in State or Territory and identification number)

on DD/MM/YYYY and who declares/each declare that he/she/they

have received no notice of the revocation thereof:

.....

Name of Attorney

.....

Signature of Attorney

(include extra signing provisions as necessary)

In the presence of:

Witness Signature:

Witness Name:

Witness Address:

Execution under corporate power of attorney example (without common seal)

Executed by XYZ Pty Ltd A.C.N.....

Pursuant to section 127(1) of the *Corporations Act 2001*

by its duly appointed Attorney/s pursuant to Power of Attorney PA..... registered in Tasmania

(or in State or Territory and identification number)

on DD/MM/YYYY and who declares/each declare that he/she/they

have received no notice of the revocation thereof:

.....

Name of Attorney

.....

Signature of Attorney

(include extra signing provisions as necessary)

In the presence of:

Witness Signature:

Witness Name:

Witness Address:

Include extra signing provisions as necessary for the number of Attorneys. Consider if the appointment is joint or several. Consider what the instrument says, powers it grants and the duration of that power.

5. ELECTRONIC EXECUTION NOT ACCEPTED

Amendments brought in by the *Corporations Amendment (Meetings and Documents) Act 2022* mean that a person can sign an electronic form of a document by an electronic means that satisfies various requirements. The changes further allow corporate executions under sections 126 and 127 to be made in physical form, digitally, or by a mixture of both.

The Recorder's current position is that, notwithstanding the changes to the *Corporations Act 2001* which allows this practice, the Recorder will not accept documents executed electronically and is not required to do so by the provisions of the *Land Titles Act 1980* or the *Land Titles Regulations 2012*.

Ample notice and consultation will be undertaken before any change of this policy is undertaken.

DISCLAIMER

This publication may be of assistance to you and has been prepared to provide practical guidance and assistance as to the currently approved practices of the Land Titles Office. The State of Tasmania and its employees do not guarantee that it is without flaw of any kind or is wholly appropriate for your particular purposes.

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The State of Tasmania and the Land Titles Office take no responsibility for any transaction undertaken in any reliance on the information in this guide. Seek professional advice in relation to the correct execution of documents.