



Using a Power of Attorney in Real Estate Transactions

A Power of Attorney designation is frequently used today in sale, purchase or refinance real estate transactions, and there is a growing concern of their abuse by agents, insurers, underwriters and the legal community. Many title claims and litigation would not exist if it weren't for the casual approach taken by some in the use of a Power of Attorney whether for necessity or convenience. These legal documents are commonly being presented by those trying to commit real estate or mortgage fraud thus increasing the concern in our industry.

What is a Power of Attorney? It is a legal document by which a person (grantor) authorizes another individual (grantee or Attorney-in-Fact) to make legal decisions. A Power of Attorney may be used in the event of illness, disability, or situation when the grantor cannot be present to sign necessary legal forms.

Here are some tips to troubleshoot use of a Power of Attorney:

- Ask the question of why is a Power of Attorney being used. It's legal purpose is not merely for convenience.
- Make the Power of Attorney transaction specific, and attach the legal description of the property prior to signing. Involve both the lender and title company as soon as you learn that a Power of Attorney may be necessary to close. Underwriters have specific requirements for their approval.
- Note that most underwriters limit approval of a Power of Attorney to those authorized within the last 12 months.
- The original notarized document must be provided for closing. In some cases, a Certified copy may be used if it was recorded in another county.
- Personal Representatives, Trustees, and Guardians cannot delegate legal powers with a Power of Attorney. REO transactions are an exception to this rule as foreclosed properties may be vested in trusts, and agreements were made years ago within the industry on their conveyance.
- Whenever possible, avoid using a Power of Attorney by forwarding closing documents to the client via fax, mail, overnight delivery or email for signatures. Military installations and foreign embassies have the ability to notarize legal documents.
- Remember that a Power of Attorney is invalid when the grantor is deceased. State probate rules apply upon their death.
- State law and specific verbiage on the Power of Attorney will determine whether the authorization remains in effect should the grantor be mentally incapacitated, commonly referred to as a Durable Power of Attorney.
- Real estate brokers, loan officers, and title agents should never agree to act as an Attorney-in-Fact for a buyer or seller. Errors and Omission Insurance may be negated when used on behalf of the client.