

POWER OF ATTORNEY

A BASIC UNDERSTANDING



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A Power of Attorney (“POA”) is a document that allows for a Principal to hand over authority to an Agent to act on behalf of the Principal. Another name for the Agent is “Attorney-in-Fact”. The authority that a Principal gives to an Agent may be limited or unlimited according to the language in the POA. As with all documents that have legal importance, you should always consult an attorney as to its effect and form.

When a POA is used in a real estate transaction, title companies require that a POA satisfy the following requirements as part of sound underwriting principles:

PROPERTY SPECIFIC

The POA must be property specific. This means that the POA is explicitly applicable to the purchase or sale of a specific real property identified by a legal description. The most common form of this is to include the legal description in the POA and call out the purpose of the POA as being for the purchase or sale of that specific legal description. Title companies will have their preferred form of POA available that covers this requirement.

TIME OF EXECUTION

The POA should not be more than 6 months old, preferably less than a month old. This is because the older the POA, the greater the chance it has been revoked. A POA may be revoked at any time by the Principal and this revocation is not evidenced by any recording or filing that the title company can discover. So a title company, to protect itself and the transaction, often requires that the POA be executed near in time to the closing of the real estate transaction. If there are extenuating circumstances that prevent a new POA with title company requirements from being executed, such as the disability or incapacity of the Principal due to some medical reason, contact First Integrity Title for available “work-arounds”.

AGENT CERTIFICATION

Due to the danger of revocation, a title company may require that the agent execute an agent certification at the time of closing, attesting to the fact that the POA has not been revoked.

DURABLE LANGUAGE

The POA must have “Durable” language. Durable language will be in a form substantially similar to: “This power of attorney shall not be affected by my disability, incapacity, or incompetence.” What this language means is that the Agent’s authority under the POA will survive any disability, or incapacity, or incompetence of the Principal.

Lastly, a POA cannot be used if the Principal has passed away. POA’s do not survive the death of the Principal. In cases where the Principal is deceased a personal representative of the deceased’s estate may be needed to convey real property. You should consult a trust and estates attorney in these cases.