

TitleTalk

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MSC Title



Dear Agents and valued customers,

A Power of Attorney is a legal document that gives someone the authority to act on another person's behalf. When a Power of Attorney is used in matters of title, steps should always be taken to ensure the document is valid and complies with Florida law. In this month's newsletter, we provide a checklist to help make sense of the requirements when it comes to Power of Attorney.

Sincerely,
Laura Bowers, Managing Director



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Power of Attorney in Florida Real Estate Transactions

A Power of Attorney is a legal document that delegates or gives certain authority from one person (**the Principal**) to another person (**the Agent**) to act on the maker's behalf. The power of attorney may give broad and sweeping powers or it may be limited to a certain specific act. A Power of Attorney is a very powerful document and should NOT be used as a convenience, but only in extreme circumstances. You should ALWAYS inquire why a Power of Attorney is being used. If the principal is deceased, a Power of Attorney automatically terminates and cannot be used. Caution should be taken to confirm the principal is alive by either meeting with the person or speaking with them on the phone. Powers of Attorney are highly subject to fraud and should be scrutinized in every instance. If a Power of Attorney is provided to you, please send over to the MSC Title team to ensure the underwriters will approve the use of the form for closing.

Power of Attorney Checklist

1. The Power of Attorney must be executed with the same formalities as the instrument to be executed.
 - a. Power of Attorney used in a transfer of an interest in real property by deed, easement, lease, etc. must have two witnesses. There are a few exceptions to this rule with the recent changes to the statute. If it's an out of state durable power of attorney and that state does not require witnesses to be a valid power of attorney, it may be used with an attorney opinion letter from an attorney practicing in the state of origin. However, when dealing with homestead property, two witnesses and a notary are still required on the POA no matter where the POA was executed. The letter must be very specific and contain certain facts so reach out to your MSC Title representative for further clarification on this.
 - b. A Power of Attorney used for a mortgage, assignment, modification, etc. would not require witnesses.



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- c. A Durable Power of Attorney must always have two witnesses. There are exceptions, see 1a. above.
 - d. A property Military Power of Attorney, executed under the United States Code, by a principal on active duty is exempt from the requirement of two witnesses.
2. The Power of Attorney must meet the requirements to be properly recorded.
 3. The **ORIGINAL** Power of Attorney must be recorded in the county the property is located.
 4. The Power of Attorney **must be specific** as to the act being performed by the agent.
 - a. The power to sell is not the power to convey.
 - b. The power to sell and convey is not the power to execute a mortgage, lease, easement, etc.
 - c. The power to “do everything I could do if present” is too vague for real property transactions.
 - d. A “check the box” Power of Attorney is not sufficient for real property transactions.



Powers of the Agent

1. The agent may only perform those specific acts given by the principal.
2. The agent cannot further delegate or transfer their duties as attorney in fact to another person.
3. The agent may not practice law unless also a licensed member of the Florida Bar.
4. The agent cannot sign an affidavit as to the personal knowledge of the principal.
5. The agent cannot create a Last Will & Testament, codicil, or revoke a Last Will & Testament.
6. A Guardian, Personal Representative, or Conservator may not delegate their duties by a Power of Attorney.
7. An agent may not use the Power of Attorney to self-deal, such as conveying to themselves.
8. A Trustee of a trust may not delegate their duties as trustee by a Power of Attorney unless the trust instrument and the Power of Attorney provide for delegation.

IMPORTANT: We must always confirm before using the Power of Attorney that the principal has not died, revoked the Power of Attorney, or filed a petition for Guardianship. If any of these occur, the Power of Attorney will be deemed invalid.

IMPORTANT: A Power of Attorney used in a Florida real property transaction must comply with Florida laws. If the Power of Attorney was incorrectly prepared or prepared under the laws of another state and does not comply with Florida statutes, it may not be used. If the principal has since become incapacitated, Guardianship must be opened in Florida.

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