



## Powers of Attorney

A Power of Attorney is a form often necessary to be used in a real estate transaction if a signor cannot be present. It may be put in place because the buyer or seller are unable to attend closing or the party may be unable to sign as themselves any longer due to mental decline, dementia, illness or injury.

The Principal is the person who grants the Power of Attorney. The Agent is the person assigned to sign on behalf of that person. The Power of Attorney should have a clear description of what powers are being granted, the date it becomes effective and when it is revoked (expired). The Principal should be able to revoke the Power of Attorney at any time while competent.

The durable Power of Attorney remains effective even if the Principal becomes incapacitated, although they must be alive. The limited Power of Attorney will have limitations or conditions to the Agent's authority.

If a Power of Attorney will be utilized within a real estate transaction, it is important for it to be supplied to the title company for review and approval. Why? Title companies review Powers of Attorney to verify if the party has the power to transfer real estate assets, if the agent has financial power to determine where the funds go for that asset, if the signatures appear to match the Principal's in the chain of title and if there is an expiration of powers.

If the buyer is utilizing a Power of Attorney, the lender will also require review, so it's best to never supply one at the last minute before closing. Lenders will need time to send the Power of Attorney to their underwriting department for review and approval. After all, they are looking for the same items a title company would be reviewing.

### **When would a Power of Attorney possibly cause an issue at closing?**

- 1. If the Principal is deceased. The Power of Attorney is no longer effective.**
- 2. If the Principal signed it after a diagnosis of dementia/mental inability to sign or understand a legal document or severe medical duress causing mental instability. At this point, they are unable to grant this type of Power and a title company may require further documentation (medical documentation).**
- 3. If the Power of Attorney appears to be forged.**
- 4. If the Power of Attorney does not designate the proper authority necessary to the agent (example: using a Medical Power of Attorney to try to sell real estate assets).**
- 5. If the Power of Attorney is brought at the "last minute" to closing (the Lender will need time for underwriting and title to update documents).**
- 6. If the Agent does not know the funds will still be sent to the Principal's bank account after closing and are unable to supply it.**

Powers of Attorney can be a high risk item for a title company if fraud is involved. While it may be inconvenient, there is a reason a review is required in order to protect the parties of a real estate transaction, and their assets, with whom the title company will be closing and insuring.