



SHINE BRIGHT

HOW TO WORK WITH CLIENTS WHO ARE USING A POWER OF ATTORNEY

In extenuating circumstances, buyers and sellers may need a Power of Attorney (POA), to act on their behalf in a real estate transaction. It's critical for agents to understand how to process a transaction when the buyer or seller can't physically be present at a closing.

QUESTION - WHAT IS THE PURPOSE OF A POA?

It's a legal document that grants authority for someone to act as an agent (or attorney-in-fact) on behalf of someone else who is incapacitated, or unable to be present to sign legal documents (i.e. a military deployment or business trip overseas). In a home purchase or sale, a POA represents the buyer or seller at closing to sign transactional paperwork that transfers ownership from one party to another.

QUESTION - WHAT SHOULD YOU KEEP IN MIND WITH WORKING WITH A POA?

When working with clients who intend to use a POA in a transaction, you should have the principal provide a copy of the POA form to the title company immediately for review and approval; it is possible that it could take a few weeks to review the documentation and do the legwork to confirm its validity.

As a closing agent, it is our role to ensure that the POA form complies with state laws and the title underwriter's guidelines. Each lender also has its own policies and criteria for using a POA. Therefore it's important that you provide the POA as early in the process as possible to remedy any issues that might arise and ensure a smooth closing.

QUESTION - HOW DO YOU WORK WITH A CLIENT USING A POA?

Anytime a POA is presented, you should ask whether or not the principal is incapacitated. Understanding the reason why a POA is being used will help determine whether additional evidence is needed to evaluate the legal competence of the principal and the ability to a reliable representative at closing. The principal's physician will typically provide a signed letter to confirm incapacitation, and you'll need that documentation (dated within six months) to successfully approve the POA form.

In a majority of cases, the principal (or buyer) should sign deed documents in person if they're available, rather than having someone else do so. If a seller, for example, is leaving town prior to closing, you should make arrangements for them to sign the deed prior to closing day.

Don't forget that a POA must be recorded in each state's Registry of Deeds. If you have a POA that is expired, or if the scope of the powers does not include the transfer of real estate ownership, call your Title Resources contact for assistance.

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