

Power of Attorney in Real Estate



There are situations when a title owner is unable to participate in the listing and sale of his or her property. Infirmity, incapacity, overseas service and death are the frequently encountered circumstances. In lieu of an owner, you will likely deal with an executor, court appointed guardian, or one who holds a power of attorney or other special power. Understanding the terminology and legalities is essential.

A real estate power of attorney (POA) is a legal document. A power of attorney is a document by which an owner (principal) appoints another person (agent) to act for the owner. It is used when the owner is living but unable to act for himself. A power of attorney should be in writing. The person who gives the other person the authority to act is the principal. Other names for the principal include a donor or creator. The person who gets the authority to act on behalf of the principal is the agent. Do not confuse the use of the word "agent" with real estate agent. The agent named in the power of attorney is usually a relative, loved one or someone who holds a position of trust with the principal. A POA in Florida does not need to be recorded in Florida to be a legal document.

Why use a real estate power of attorney?

A general power of attorney serves different purposes. Often a spouse, relative, or friend uses a POA to handle many different types of financial transactions for a senior. This includes depositing checks in a bank or making withdraws from the bank. A power of attorney can be immediately effective or can become effective upon certain conditions.

A real estate power of attorney is for the buying and selling of real property. In Florida, many people from other parts of the country or parts of the world want to relocate to Florida. Some want a Florida vacation home. A real estate power of attorney is a legal way that that someone can help with the purchase of the real estate until the principal is ready to relocate or spend time in Florida.

*Parties should be aware that having the POA signed, notarized and returned might require scheduling considerations. If stateside, it is often a simple task to walk into a local bank branch office, local law firm or local car dealership and request that a document be notarized; however, when the principal is abroad, locating a notary public may take additional effort and time. Notary functions can be performed at US Embassies and by military personal assigned overseas. Sometimes scheduling is required and may take time. All parties involved in the closing, including lenders should be made aware of any potential hardships the principal party may encounter in locating a notary public before a closing date is set.

When is it proper to use a real estate power of attorney?

There are different stages involved in buying and selling real property. Typically, the buyer is the one who seeks to use an agent through a POA. However, a seller who needs or wants to move quickly may also want someone to handle the sale of his/her Florida real estate. At each stage of the real estate process, there needs to be signatures on contracts and legal documents. The buyers and sellers can sign these agreements on their own.

Mailing documents may be an option. Powers of attorneys are necessary when time is of the essence. It is recommended that a Florida real estate lawyer review each document first.

Common legal real estate documents

If a seller wants to sell his/her property, they will normally enter into a contract with a broker. An out of state buyer may want to hire an agent to help locate Florida real property.

The sales agreement

The first document that is typically signed by both the buyer and seller in a real estate purchase/sale is the sales agreement. This agreement sets forth the purchase price, mortgage contingency requirements, deposit requirements, inspection obligations, and many other matters. The agreement can be signed through a real estate power of attorney.

Title closing documents

Normally, the buyer and seller both appear at the real estate closing. The buyers and sellers then sign the settlement sheet, the mortgage papers, and regulation notices, and other documents.

Practical real estate power of attorney issues

If a real estate power of attorney is going to be used to sign any real estate documents, then it's best to communicate that desire or need as soon as possible to the title company or attorney so there can be a review of any objections.

What should the real estate real estate power of attorney include?

The real estate POA should:

- Identify the property involved – the one that is subject to the sale or purchase. This includes address of the property.

- Name the parties to the real estate power of attorney – the principal, the agent, and any alternative agents.
 - If the buyer is the principal, the agent should be given the right to sign all buyer specific forms and documents, and settlement statements, mortgage agreements, notes, and deeds of trust.
 - If the seller is the principal, the agent should have the authority to sign the deed and any other documents that relate to the sale of the property such as the settlement sheet.
 - The real estate power of attorney should identify that the authority applies to specific situations such as the closing. More specific powers are generally better than broad powers.
 - A real estate power of attorney should generally have an end date. After the termination date, the real estate power of attorney is not effective.
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How to execute the POA

- The principal should have a Florida real estate lawyer draft and/or review the real estate power before it is signed by the principal. Principals should understand that the agent will be given powers to decide key issues that will bind the principal.
- Generally, the signature must also include a notary acknowledgement of the date of the principal's signature and the place of the signature.
- If the principal is out of the country, then the principal will likely need to sign the real estate power of attorney at a US consulate or embassy. Military personnel can sign the POA before a military officer.