

What You Should Know About Powers Of Attorney

Will attendance at closing be difficult or impossible because of your circumstances? Are you considering giving someone a power of attorney to act on your behalf? There are some things you should know before you make this decision.

What is a power of attorney?

A power of attorney is the authorization by one person, called the principal or grantor to another, called the attorney-in-fact or agent to act on his or her behalf. When you make someone your attorney-in-fact, that person may act for you in any matter not prohibited by the power of attorney. His or her actions may legally bind you to others. A person dealing with your attorney-in-fact is entitled to presume that the power of attorney is valid unless they have actual knowledge that you have revoked it or have died (see WHEN DOES A POWER OF ATTORNEY EXPIRE? below).

How do I know if the power of attorney that I have given will be acceptable for my closing?

Powers of attorney take many different forms. It is important that you make sure that the power of attorney you wish to rely on will be adequate.

For starters, although oral powers of attorney are recognized in some circumstances, expect the person relying on your power of attorney to ask that it be in writing.

The State of Maine has some very specific requirements for powers of attorney. The failure to meet the requirements set out by law may make the power of attorney that you intend to use invalid. Powers of attorney signed in other states do not need to meet these requirements so long as they are valid in the state in which they were signed. If you intend to rely on a power of attorney signed in another state, you may be asked to provide proof that it was properly executed in that state, typically by way of an opinion letter of an attorney who practices law in that state. The State of Maine does recognize military powers of attorney so long as they are still valid.

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Your lender or the loan program that you intend to use may also place limitations on the use of a power of attorney or prohibit its use entirely.

Be sure to have the original signed copy of the power of attorney available for closing. Most closing agents will not rely on a photocopy, especially if your attorney-in-fact will sign documents on your behalf that must be recorded. Finally, don't forget to notify your lender and/or the closing agent if you intend to use a power of attorney as soon as you know that you will need to. If the closing agent is not preparing the document, provide a copy of the power of attorney you intend to use to them as soon as possible before closing.

When does a power of attorney expire?

The power of attorney that you give may expire in one of many manners. Some powers of attorney are drafted with language that causes them to expire upon a specific date or event. Many powers of attorney created for real estate transactions expire once the property is purchased or sold. A power of attorney will also expire if you die or if you revoke it. However, a person dealing with your attorney-in-fact may presume that the power of attorney is still valid unless they have actual knowledge that one of these events has occurred.

Are there any alternatives to the use of a power of attorney?

If you are unable to attend closing you may consider having the closing documents sent to you for your signature as an alternative to a power of attorney. Doing so will save you the cost of the preparation of the document and its recording, if necessary. Be aware, however, that signing your closing documents in this manner may have several drawbacks. The cost savings of not using a power of attorney may be offset by the additional expense for the express mailing of documents and for the services of a closing agent in your location. Additionally, without a representative at closing who can sign documents on your behalf, last minute changes and adjustments may delay closing and possibly result in additional costs. If you are considering having documents sent to you, you should discuss the particulars with your closing agent.

Discussing your power of attorney with an attorney.

The information here is not intended to serve as a substitute for sound legal advice. You may wish to consult an attorney to discuss whether a power of attorney is appropriate in your circumstances and, if so, what form best meets your needs.

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