

Your Borrower has a Power of Attorney and wants to have their Agent sign for them at Closing, NOW WHAT?

It is common in our world for a borrower to want to close on their loan ASAP, and sometimes we find out they will be out of town and need to use an Attorney-in-Fact to sign for them. We may find this out weeks before closing or on the day of closing. In either of these scenarios the first thing you should do is to contact your Title Agent and inform them that a Power of Attorney will be used for this closing.

The Uniform Power of Attorney Act within the Code of Virginia now preferably refers to an Attorney-in-Fact as an “Agent”. You will hear the terms used interchangeably in practice but for the purpose of this article, we will refer to the Attorney-in-Fact as the Agent.

Upon receiving notification of the use of an Agent, your Title Agent will review the Power of Attorney (“POA”) document and validate that it was properly executed by the Grantor, it grants the authority to act that is required for the transaction in question, and it has been signed in front of a notary. Since the powers of attorney are terminated on the death of the Grantor, the Title Agent may have additional requirements when some time has passed since the execution of the POA, usually in the form of an affidavit, executed by the Agent, confirming that the Grantor is still alive and well.

Once approval of the POA has been given by the Title Agent you can proceed to closing and the Agent may sign all required documents for the Grantor. The Power of Attorney MUST then be recorded in the Circuit Court Clerk’s Office BEFORE any Deed or Deed of Trust executed by the Agent goes on record. If the POA is not recorded prior to documents signed by the Agent the documents will not effectively convey title. When this happens, the Title Agent will require the POA be recorded, then your documents re-recorded, before they will insure the transaction and provide you with your final title policy.

Informing your Title Agent prior to closing of the use of a POA will ensure that all additional documents are prepared and available at the closing table, the documents are recorded in the proper order, and there is no delay in issuing your final title policy. Next time you find out your borrower will be using a POA make sure your next move is to inform your Title Agent!