



CHICAGO TITLE INSURANCE COMPANY

TOPIC: Powers of Attorney

TITLE SEARCH & CLOSING RULES:

1. One person (the “attorney-in-fact”) may act as agent for or on behalf of another person (the “principal”) to convey or mortgage the principal’s real estate, a satisfactory Power of Attorney. The Power of Attorney must meet several requirements:
 - a. It must be recorded, so it must be adequately signed and notarized.
 - b. It must specifically authorize the particular conveyance (if a specific Power of Attorney) or have general language authorizing acts that include conveying or mortgage *real estate*. On a Statutory Short Form Power of attorney, the line for Real Estate Transactions must be checked.
 - c. It must be currently in effect. Some do not start until the principal becomes incompetent, for which Chapter 32 gives a procedure to obtain affidavits from the attorney-in-fact. Some outside verification is strongly suggested, such as an affidavit from the principal’s doctor or from other direct relatives who are not involved in the transaction and may, in fact, lose title because of the closing. Consult your title company’s underwriting counsel.
 - d. If the principal is incompetent, the power of attorney must have language that either 1) this power of attorney is executed pursuant to the provisions of Article 2 of Chapter 32A; or 2) “this power of attorney shall not be affected by my subsequent incapacity or mental incompetence”.
 - e. The principal must still be living. Any agency, including a power of attorney, ends upon the death of the principal.
 - f. If the conveyance in the chain of title pursuant to a power of attorney is or may have been a “gift”, the power of attorney must specifically authorize gifts *or* the gift must have been to a charitable institution in a situation where the grantor had a personal history of making such gifts while competent. N.C.G.S. 32A-14.1.
 - g. N.C.G.S 32A-40(a) provides that, absent actual knowledge to the contrary, a person who in good faith relies on a power of attorney that is duly signed, acknowledged, and otherwise appears regular, and that purports to confer a power of attorney, shall be protected to the full extent of the powers that reasonably appear to be granted to the attorney-in-fact in that writing. N.C.G.S. 32A-40(b) provides that a person may request an affidavit from the attorney-in-fact and rely on the same as proof of the validity of the power of attorney. (*See attached Affidavit of Attorney-in-Fact form*).
 - h. The attorney-in-fact cannot convey principal’s property to the attorney-in-fact based on case law and fiduciary law against self-dealing unless the power of attorney specifically authorizes conveyances (even gifts, if that is the case) to the named attorney-in-fact. A general power of attorney, or even one authorizing gifts generally, is not sufficient.

Form for notary acknowledgment of power of attorney (G.S. 32A):

[state and county in which acknowledged]

On this _____ day of _____, _____, personally appeared before me, the said named [name(s) of principal(s).] to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

Date: _____
(Official Seal)

Official Signature of Notary
[Notary's printed or typed name], Notary Public
My commission expires: _____

Or, "Safe Harbor" form set forth in G.S. 10B-41(a) form can be used:

[state and county in which acknowledged]

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: [name(s) of principal(s).]

Date: _____
(Official Seal)

Official Signature of Notary
[Notary's printed or typed name], Notary Public
My commission expires: _____

- 2. Any conveyance *pursuant to* a power of attorney may be notarized using the "Safe Harbor" form of G.S. 10B-41(a) set forth above, or using the statutory form notary from G.S. 47-43, as follows:

[state and county in which oath taken]

I, [notary's printed or typed name], a Notary Public of [county of notary's commission] County, North Carolina, do hereby certify that [name of attorney-in-fact], attorney-in-fact for [names of parties who executed the instrument through attorney-in-fact], personally appeared before me this day, and being by me duly sworn, says that he/she executed the foregoing and annexed instrument for and in behalf of [names of parties who executed the instrument through attorney-in-fact], and that his/her authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of [name of official in whose office power of attorney is recorded, and the

county and state of recordation], on the [day of month, month, and year of recordation], and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney; that the said [name of attorney-in-fact] acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said [names of parties who executed the instrument through attorney-in-fact].

Witness my hand and official seal this the ____ day of _____, 20__.

Official Signature of Notary
[Notary's printed or typed name], Notary Public
My commission expires: _____

(Official Seal)

3. An entity – a corporation through its board of directors, a partnership by resolution signed by the partners required under their partnership agreement, for example – can appoint an attorney in fact to act on their behalf with regard to a certain matter or certain types of matters. Depending on whether the transaction is in the ordinary course of business (such as a developer selling lots) or an extraordinary transaction (mortgaging substantially all of the entity’s assets), the power of attorney should comply with the same types of formalities as would be required if the entity were actually doing the transaction itself rather than through an attorney-in-fact. Most personal trusts (as opposed to Business Trusts) appoint a trusted family friend or representative. These duties are not delegable unless the trust itself specifically provides for delegation of the type needed to complete the transaction to be insured.

Any conveyance by a corporate attorney in fact executing under power of attorney may be notarized using the “Safe Harbor” form of G.S. 10B-41(a) set forth above, or using the following form:

[state and county in which acknowledged]

I, _____, do hereby certify that _____
_____ (officer of attorney in fact) personally came before me this day
and acknowledged that she is _____ President of _____
(corporate attorney in fact), a corporation, and being authorized to do so, executed
the foregoing on behalf of the corporation, as attorney-in-fact for _____
_____ (principal, who signed power of attorney, and being by me duly sworn,
says that she executed the foregoing and annexed instrument for and in behalf of _
_____ (attorney in fact), as attorney-in-fact for _____
_____ (principal, who signed power of attorney), and that the authority of _____

_____ (corporate attorney in fact) to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds of _____ County, North Carolina, on the _____ day of _____, 2000, and that this instrument was executed under and by virtue of the authority given by said instrument granting it power of attorney; that the said _____ (attorney in fact), by and through its officers above-stated, acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said _____ (principal, who signed power of attorney).

WITNESS my hand and official seal, this day of, (year)

(Official Seal) _____
Official Signature of Notary
[Notary's printed or typed name], Notary Public
My commission expires: _____

4. In contrast to the powers of entities to delegate powers, the individual power of attorney of a person who is also an officer of a corporation, trustee of a trust or in some other type of fiduciary capacity does not authorize that attorney in fact to act for the individual principal in their fiduciary capacity. That authority must come directly from the entity's corporation, trust agreement or other organizational instrument. (A clear example would be: A vice president of Chicago Title Insurance Company cannot give a power of attorney to their spouse or parent to act as their attorney-in-fact on Chicago Title official corporate matters!)
5. Revocation of a power of attorney must be by recorded instrument, signed by the principal. However, if the attorney has any indication that the power of attorney may have been intended to be rescinded or may be in question, the attorney should further investigate or refuse to rely upon the power of attorney. In any event, if the principal is competent, the attorney should verify the transaction directly with the principal.
6. NOTE: Many lenders will not authorize closings to be done under power-of-attorney. These transactions are too susceptible to fraud and are frequently contested, either by the principal or by other potential heirs, devisees or creditors of the principal. Therefore, they should be used *only where absolutely necessary and the attorney is comfortable with the reason for doing the transaction this way!*

TITLE INSURANCE REQUIREMENTS, EXCEPTIONS AND COVERAGE:

Title insurers rely upon the certifying attorney to assure that all of the above requirements for a transaction under power of attorney have been met.

FORMS:

Alive and Well Certificate

Affidavit of Attorney in Fact

Limited Power of Attorney to sell real estate

Limited Power of Attorney to mortgage real estate

Limited Power of Attorney to purchase and mortgage real estate

LEGAL DISCUSSION: (Nancy Short Ferguson updated by M. Scott Mansfield)

A. Recordation and authority to convey real estate. Power of attorney must be recorded in the county of the property being conveyed (G.S. 47-28) and must grant authority to convey real estate. Chapter 32A provides an optional form for this purpose, though it is not exclusive. For instruments executed by an attorney-in-fact, a certification form of notary is provided in G.S. 47-43. However, such instruments may also be notarized using the “Safe Harbor” form of N.C.G.S. 10B-41(a).

B. Principal-agent relationship. The principal must be alive at the time of the conveyance. The agency relationship terminates upon the death of the principal. If the principal is incompetent, the power of attorney must contain the requisite survival language, -- it must be a “durable” power of attorney. Since the principal (the person giving the power of attorney) must be alive and well at the time of closing, this should be checked by the closing attorney at the time of closing. (*See attached Alive and Well Certification form.*)

C. Conveyances from attorney-in-fact to him/herself individually. The attorney-in-fact does not ordinarily have the authority to convey property to himself. No presumption of authority carries forward with this self-dealing transaction. Consider that heirs or devisees, as well as potential or actual creditors (including funeral service, doctor, hospital, Social Services, Medicaid, N.C. Department of Revenue, and IRS) might have an interest in setting aside a transaction that might infringe on their ability to receive assets or payments through the estate when the principal dies. In appropriate circumstances, conveyances of the “interest” (an expectancy) and indemnities regarding creditors may enable the conveyance to be insurable. However, in the event the person dies and these people inherit, the title passes immediately at death. Though estoppel may be argued, these “deeds” are outside the chain of title of the property. They should be either filed as waivers of right to inherit in the estate file, or reconfirmed and rerecorded after the death of the decedent when the conveying beneficiaries of the estate have title to convey. *See* the Conner Act, G.S. 47-20 *et seq.*, and Schuman v. Roger Baker & Associates, 70 N.C.App. 313, 319 S.E.2d 308 (1984), regarding failure of priority of deeds outside the chain of title.

D. Corporate powers of attorney. Corporate powers of attorney are not recommended for other than ordinary course of business transactions, as questions have been raised whether corporate officers have the authority to delegate their official fiduciary responsibilities.

E. Gifts by attorneys in fact. Without express authority in the power of attorney, the attorney-in-fact has no power to make a gift of property, real or personal. *See* Whitford v. Gaskill, 119 N.C.App. 790, 460 S.E.2d 346 (1995), reversed and remanded ___ N.C. ___, 480 S.E.2d 690, 9 NCLW 1374, 2/17/97 (1997). *Compare* Honeycutt v. Farmers & Merchants Bank, NCLW 7-07-0986 N.C.G.S. 32A-14.1(a), effective October 1, 1995, expands this power. Under N.C.G.S. 32A, they can be authorized by the power of attorney specifically, but they should be approached judiciously and in strict compliance with the statute and the power of attorney itself.

ALIVE AND WELL CERTIFICATION
(Regarding Action by Attorney-in-Fact pursuant to Power of Attorney)

NORTH CAROLINA
_____ COUNTY

This is to affirm that on this date, the undersigned is/are alive and competent to transact business and that the undersigned was/were alive, well and competent on the date and time of closing that certain sale of the below described property:

This is also to approve and reaffirm such sale and conveyance by my/our attorney in fact, _____, pursuant to Power of Attorney dated _____, and recorded in Book _____, Page _____, _____ County Registry, such sale having been made according to the terms of that certain Offer to Purchase and Contract accepted on _____, 20____, and the Settlement Statement provided on the date of closing.

This the _____ day of _____, 20_____.

SELLER (SEAL)

SELLER (SEAL)

State of _____
County of _____

Signed and sworn to (or affirmed) before me this day by _____
_____ [insert name(s) of principal(s)].

Date: _____

_____, Notary Public
Notary's Printed or Typed Name

(Official/Notarial Seal)

My commission expires: _____

AFFIDAVIT OF ATTORNEY-IN-FACT
(Pursuant to N.C.G.S. 32A-40)

STATE OF _____
COUNTY OF _____

The undersigned does hereby state and affirm the following:

- (1) The undersigned is the person named as Attorney-in-Fact in the Power of Attorney executed by _____ ("Principal") on _____ [date] (the "Power of Attorney").
- (2) the Power of Attorney is currently exercisable by the undersigned.
- (3) The undersigned has no actual knowledge of any of the following:
 - a. The Principal is deceased.
 - b. The Power of Attorney has been revoked or terminated, partially or otherwise.
 - c. The Principal lacked the understanding and capacity to make and communicate decisions regarding his estate and person at the time the Power of Attorney was executed.
 - d. The Power of Attorney was not properly executed and is not a legal, valid power of attorney.
- (4) The undersigned agrees not to exercise any powers granted under the Power of Attorney if the undersigned becomes aware that the Principal is deceased or has revoked such powers.

This is the _____ day of _____, 20____.

Printed or Typed Name: _____
Attorney-in-Fact for: _____

State of _____
County of _____

Signed and sworn to (or affirmed) before me this day by _____ [insert name(s) of principal(s)], and I certify that each of the aforesaid person(s) personally appeared before me this day acknowledging to me that he or she signed the foregoing document.

Date: _____

_____, Notary Public
Notary's Printed or Typed Name

(Official/Notarial Seal)

My commission expires: _____

LIMITED POWER OF ATTORNEY
TO SELL REAL ESTATE

Mail/Box to: _____

Prepared by: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS that I/We, the undersigned _____
_____, hereby nominate and appoint _____
my/our Attorney-in-Fact for the limited purposes below described, to act in my/our name, place and stead to the
same extent I/we could so act if present, to do and perform the following:

To execute and deliver all documents and otherwise do all things necessary and proper to comply with the
provisions of that certain Offer to Purchase and Contract by and between the undersigned and
_____ (herein the "Purchasers"),
and effectuate the sale of that certain real property known as:

(herein the "Property"); including, but not limited to, execution and delivery of a Deed and Owner's Affidavit
and/or Lien Waiver related thereto.

My/Our Attorney-in-Fact shall not be required to file any report or regular accounting with any court regarding
transactions made pursuant hereto, but shall be required to provide itemizations of such transactions to me/us at
such reasonable times as to assure our informed consent to all aspects of such transaction.

All third parties, including the Purchasers, the closing attorney, the title company, and their successors and/or
assigns, shall be forever held harmless from any liability for any breach of this Limited Power of Attorney by my/our
Attorney-in-Fact and such third parties shall be entitled to rely upon the authority granted herein and the actions
taken by my/our said Attorney-in-Fact pursuant hereto.

This Limited Power of Attorney shall survive my/our incompetence or incapacity, pursuant to Chapter 32A of the North Carolina General Statutes; but this Limited Power of Attorney shall, in any event, expire if the above contemplated transaction is not closed by the _____ day of _____, 20____.

IN WITNESS WHEREOF, the undersigned has/have hereunto set his/their hands and seals and executed this Limited Power of Attorney, this the _____ day of _____, 20____.

_____(SEAL)
Printed/typed name: _____

_____(SEAL)
Printed/typed name: _____

State of _____
County of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: _____ [insert name(s) of principal(s)].

Date: _____

_____, Notary Public
Notary's Printed or Typed Name

(Official/Notarial Seal)

My commission expires: _____

State of _____
County of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: _____ [insert name(s) of principal(s)].

Date: _____

_____, Notary Public
Notary's Printed or Typed Name

(Official/Notarial Seal)

My commission expires: _____

LIMITED POWER OF ATTORNEY
TO MORTGAGE REAL ESTATE

Mail/Box to: _____

Prepared by: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS that I/We, the undersigned _____
_____, hereby nominate and appoint _____
my/our Attorney-in-Fact for the limited purposes below described, to act in my/our name, place and stead to the
same extent I/we could so act if present, to do and perform the following:

To execute and deliver all documents and otherwise do all things necessary and proper to complete the
financing of a loan from _____
(herein the "Mortgagee") secured by a Deed(s) of Trust encumbering property known as:

(herein the "Property"), including, but not limited to, execution and delivery of Promissory Note(s) and
execution, delivery and recordation of Deed(s) of Trust related thereto. **[OPTIONAL: ENTER DETAILS
OF LOAN(S), MAX. AMOUNT, INTEREST RATE, ETC.]**

My/Our Attorney-in-Fact shall not be required to file any report or regular accounting with any court regarding
transactions made pursuant hereto, but shall be required to provide itemizations of such transactions to me/us at
such reasonable times as to assure our informed consent to all aspects of such transaction.

All third parties, including the Mortgagee, the closing attorney, the title company, and their successors and/or
assigns, shall be forever held harmless from any liability for any breach of this Limited Power of Attorney by my/our
Attorney-in-Fact and such third parties shall be entitled to rely upon the authority granted herein and the actions
taken by my/our said Attorney-in-Fact pursuant hereto.

This Limited Power of Attorney shall survive my/our incompetence or incapacity, pursuant to Chapter 32A of the North Carolina General Statutes; but this Limited Power of Attorney shall, in any event, expire if the above contemplated transaction is not closed by the _____ day of _____, 20____.

IN WITNESS WHEREOF, the undersigned has/have hereunto set his/their hands and seals and executed this Limited Power of Attorney, this the _____ day of _____, 20____.

_____(SEAL)
Printed/typed name: _____

_____(SEAL)
Printed/typed name: _____

State of _____
County of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: _____ [insert name(s) of principal(s)].

Date: _____

_____, Notary Public
Notary's Printed or Typed Name

(Official/Notarial Seal)

My commission expires: _____

State of _____
County of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: _____ [insert name(s) of principal(s)].

Date: _____

_____, Notary Public
Notary's Printed or Typed Name

(Official/Notarial Seal)

My commission expires: _____

LIMITED POWER OF ATTORNEY
TO PURCHASE / MORTGAGE REAL ESTATE

Mail/Box to: _____

Prepared by: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS that I/We, the undersigned _____
_____, hereby nominate and appoint _____
my/our Attorney-in-Fact for the limited purposes below described, to act in my/our name, place and stead to the
same extent I/we could so act if present, to do and perform the following:

To execute and deliver all documents and otherwise do all things necessary and proper to comply with the
provisions of that certain Offer to Purchase and Contract by and between the undersigned and
_____ (herein the "Sellers")
and close the transaction with regard to the purchase/mortgage of that certain real property known as:

(herein the "Property"); and to execute and deliver all documents and otherwise do all things necessary and
proper to complete financing of said purchase with a loan from
_____ (herein the
"Mortgagee") including, but not limited to, execution and delivery of Promissory Note(s) and execution,
delivery and recordation of Deed(s) of Trust related thereto. **[OPTIONAL: ENTER DETAILS OF
LOAN(S), MAX. AMOUNT, INTEREST RATE, ETC.]**

My/Our Attorney-in-Fact shall not be required to file any report or regular accounting with any court regarding transactions made pursuant hereto, but shall be required to provide itemizations of such transactions to me/us at such reasonable times as to assure our informed consent to all aspects of such transaction.

All third parties, including the Sellers, the Mortgagee, the closing attorney, the title company, and their successors and/or assigns, shall be forever held harmless from any liability for any breach of this Limited Power of Attorney by my/our Attorney-in-Fact and such third parties shall be entitled to rely upon the authority granted herein and the actions taken by my/our said Attorney-in-Fact pursuant hereto.

This Limited Power of Attorney shall survive my/our incompetence or incapacity, pursuant to Chapter 32A of the North Carolina General Statutes; but this Limited Power of Attorney shall, in any event, expire if the above contemplated transaction is not closed by the _____ day of _____, 20____.

IN WITNESS WHEREOF, the undersigned has/have hereunto set his/their hands and seals and executed this Limited Power of Attorney, this the _____ day of _____, 20____.

Printed/typed name: _____ (SEAL)

Printed/typed name: _____ (SEAL)

State of _____
County of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: _____ [insert name(s) of principal(s)].

Date: _____

Notary's Printed or Typed Name, Notary Public

(Official/Notarial Seal)

My commission expires: _____

State of _____
County of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: _____ [insert name(s) of principal(s)].

Date: _____

Notary's Printed or Typed Name, Notary Public

(Official/Notarial Seal)

My commission expires: _____