

REAL ESTATE LAW

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USING A POWER OF ATTORNEY



A well respected Winter Park attorney, Frank Pohl practices in the area of real estate law. His column covers a wide range of topics that can help you better understand and avoid potential legal issues related to buying, selling, and owning a home.

If you have questions or topics pertaining to the legal aspects of residential real estate that you would like to see addressed in this column, send them to Frank c/o:

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This Article is not a substitute for hiring an independent attorney to prepare and review your real estate contract.

Occasionally clients tell me that they cannot be present for a real estate closing, and ask if they can sign their documents in advance. Depending on the circumstances, particularly if the individual is the Seller, the closing agent may be able to accommodate this request and have the documents signed prior to the actual closing date. However, there are other situations where this cannot be done. In some of these situations, a duly prepared and executed real estate Power of Attorney can be used, whereby a second person is authorized to sign on behalf of the individual who cannot be present. In this column, I address the use of Powers of Attorney solely as they relate to the sale, mortgaging, and leasing of real property.

A Power of Attorney is a written instrument in which one person, known as the "Principal," delegates his authority to another person, known as the "Attorney-in-fact," to act as an agent of the Principal to sign documents on behalf of the Principal. This Attorney-in fact may execute only those documents that the Principal has authorized his agent to sign on his behalf. Powers of Attorney, or "POAs", are recognized by chapter 709 of the Florida Statutes, which prescribes the types of POAs and the rules under which they can be used. POAs can be general or specific in nature.

A general Power of Attorney often includes language reciting the authority of the agent to "sell and convey any and all real property owned by me in the State of Florida." This is generally recognized as sufficient authority for the Attorney-in-fact to sign a Purchase and Sale Agreement for property owned by the Principal at the time the POA was executed, and also to execute a deed and other documents necessary to transfer the property. The language in a POA must be sufficient to describe the acts which the Attorney-in-fact may undertake on the Principal's behalf. If, in the above example, the POA only recites the authority to sell all real property owned by me, under Florida law this authority is not sufficient for the Attorney-in-fact to execute the deed to convey the real property. Additionally, in the above example, the authority to "sell and convey any and all real property owned by me in the State of Florida" does not include real property that may be subsequently acquired by the Principal. If the Principal intends to include subsequently acquired property, the POA must include this authority.

A Specific Power of Attorney is more detailed. It identifies the real property that is subject of the transaction, the documents that are to be signed on behalf of the Principal, and typically defines the duration of the POA. An example is a POA in which the Attorney-in-fact is authorized to execute a Mortgage, Promissory Note and other related documents for a loan from ABC Bank that does not exceed a specified amount, and which recites that the documents must be signed by no later than a certain date, after which the POA can no longer be used. Ideally, unless the Principal wants to provide blanket authority to his agent, the parameters of the authority should be limited to the particular transaction.

There are also execution formalities for a Power of Attorney. The general rule is that the POA must be executed with the same formalities as the document that is to be signed by the Attorney-in-fact. For example, a deed requires two

