



CHICAGO TITLE
INSURANCE COMPANY



TITLE TALK By: Katie Button

Power of Attorney in NH



Call or email
anytime with
questions!

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Check out our website for
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A Power of Attorney (POA) is a document executed by an individual, the Principal, which grants authority to another person, the Agent, to act on the Principals behalf. A POA can be a very useful tool but it also creates additional risks and opportunity for fraud. For these reasons, a general rule is to only use a POA if absolutely necessary and make every attempt to have the conveyancing documents (deed, mortgage, etc) signed by the individual directly, limiting the use of the POA to ancillary off record closing documents only. There will be instances a POA must be used due to incompetence of the Principal or an owner in the Military, which then requires the POA be recorded. In either situation, the POA needs to be reviewed to make sure it complies with all applicable laws.

The first step in reviewing a POA is determine what state law controls. A POA is controlled by the laws of the state it was signed/notarized in unless it specifically recites it is governed by the laws of a different state. Once the governing State is identified, proceed with the review as described below.

New Hampshire POA

NH has had changes to our POA statute over the years so first determine when it was executed.

After January 1, 2018

A NH general durable power of attorney executed on or after January 1, 2018, is acceptable if it contains:

- a. An original signature and acknowledgment of the principal pursuant to NH RSA 564-E:105
- b. A sufficient delegation of authority for the agent to perform the acts necessary to complete the transaction, either by a specific grant of authority or by incorporation of general authority through use of the statutory descriptive terms.
- c. Notices to the principal and agent which substantially comply with the notice to principal and agent provisions set forth in NH RSA 564-E:105(a)(2) and NH RSA 564-E:113(a). If the POA is a Limited POA, applying only to a specific transaction/property, the notices to principal and agent are not required.

A post-1/1/2018 General POA form can be found [here](#) and a Limited POA form [here](#).

Between January 1, 2004 – December 31, 2017

A NH general durable power of attorney executed between 1/1/2004 and 12/31/2017 is acceptable if it contains:

- a. An original signature and acknowledgment of the principal.
- b. A sufficient delegation of authority for the agent to perform the acts necessary to complete the transaction by a specific grant of authority, such as “convey, mortgage, sell real property”.
- c. Notices to the principal and agent conforming to RSA 506:6, VI and VII. These notices are not required for a Limited POA, which applies only to a specific transaction/property. These notices can be found [here](#).

Prior to December 31, 2003

A NH general durable power of attorney executed prior to December 31, 2003, is acceptable if it contains:

- a. An original signature and acknowledgment of the principal.
- b. A sufficient delegation of authority for the agent to perform the acts necessary to complete the transaction by a specific grant of authority, such as “convey, mortgage, sell real property”.



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Foreign POA – signed or governed by a state other than NH

Prior to using a POA executed or governed by a State other than NH, the POA has to be reviewed to make sure it complies with the laws of the governing State. Send the POA to our office and we will have it reviewed by State Counsel for that governing State.

If you encounter a POA executed outside of the United States, stop and contact our office.

Military Powers of Attorney

You may rely upon a Military Power of Attorney even though it does not comply with New Hampshire Law. A Military Power of Attorney is a general or special power of attorney that is notarized in accordance with 10 U.S.C. § 1044a or other applicable state or federal law. Pursuant to 10 U.S.C. § 1044b, a Military Power of Attorney is exempt from any requirement of form, substance, formality, or recording that is provided for powers of attorney under state laws and shall be given the same legal effect as a power of attorney prepared and executed in accordance with state laws.

Practice Pointers

- Always record a POA used to sign a deed, easement, agreement, mortgage or private mortgage discharge.
- If you find a deed in your chain of title signed by a POA that is not recorded, contact our office for approval.
- Carefully check your Lender Closing Instructions/Requirements regarding use of a POA and obtain prior approval if required.
- If a POA is used to convey property to the Agent or make any gifts or transfers for no consideration, stop and contact our office for approval.
- A POA terminates as soon as the Principal dies. It is common practice and recommended for the Agent sign a separate affidavit for your file confirming the POA was not revoked and the Principal is alive.
- We DO NOT require a recorded POA for institutional mortgage assignments or discharges.
- A recorded POA is required if used to sign a foreclosure deed.
- Signature lines on documents should appear as follows and the Agent signs their own name, inserting the actual names in place of Agent/Principal:

{Agent}, as Power of Attorney for {Principal}

Acknowledgment clause should appear as follows, inserting the actual names in place of Agent/Principal:

State of New Hampshire
County of Hillsborough

On this ____ day of _____, 2021, before me, the undersigned officer, personally appeared {Agent}, in his capacity as Power of Attorney for {Principal}, known to me (or satisfactorily proven) to be the person who executed the foregoing instrument for the purpose contained therein, on behalf of {Principal}.

Notary Public/Justice of the Peace
My Commission expires:

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Check out our prior editions of Title Talk by copying this link to our website: <https://nationalagency.fnf.com/nh/Title-Talk>