



## UNDERWRITING BULLETIN

**To:** Florida Agents and WFG employees

**From:** Underwriting Department

**Date:** September 30, 2011

**Bulletin No:** FL-09302011-01

**Name:** Florida Power of Attorney Act

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The Florida Power of Attorney Act (the “Act”) takes effect October 1, 2011. The Act revises Florida’s power of attorney law in Ch. 709, part II, F.S., consisting of ss. 709.2101-709.2402, F.S., titled “Powers of Attorney.”

The Act does not invalidate powers of attorney existing on October 1, 2011 but, except for formalities of execution, the Act applies to all durable and non-durable powers of attorney executed by an individual whenever executed.

### **Formal Requirements: Power of Attorney Executed in Florida**

An existing durable or non-durable power of attorney validly executed in accordance with Florida law remains valid. This includes so-called “springing” durable powers which, except for military powers, are invalid if executed after the effective date of the Act.

Every durable and non-durable power of attorney executed in Florida after the effective date of the Act must be signed by the principal and by two subscribing witnesses and be acknowledged by the principal before a notary public. These requirements are applicable to both a power to convey and a power to mortgage real estate.

### **Formal Requirements: Power of Attorney Executed in Another State**

The Act changes current law. Under the Act, even though a power of attorney executed outside Florida does not comply with the execution requirements in Florida, the power of attorney is now valid in Florida if, when the power was executed, it complied with the laws of the foreign state. Thus a power of attorney properly executed in another state prior to or after October 1, 2011 will be valid in Florida.

## **Acceptance or Rejection of Power of Attorney**

The Act requires a third party to accept a power of attorney. However, the third person is not required to accept a power of attorney if she has knowledge that the agent's authority has been suspended or terminated; or believes, in good faith that the power is not valid or the agent does not have authority; or, if there has been a failure to respond with a timely request for an affidavit, opinion of counsel, or English translation.

The Act protects a third party that in good faith accepts a power that appears to be validly executed. A party does not act in good faith if the person has notice that the power or the purported agent's authority is void, invalid or, terminated.

## **Agent's Affidavit**

The Act imposes a requirement that a third person must accept or reject a power of attorney within a reasonable time. However, as under existing law, the Act provides for the execution by the agent of an affidavit affirming that the principal is not deceased and that that power has not been revoked or terminated. The Act contains a form of affidavit which is attached as Exhibit A. Note the reference to the principal's place of domicile.

## **Non-Florida Power of Attorney**

The Act provides that a third person requested to accept a non-Florida power of attorney which is valid in Florida solely because of the Act may in good faith request and rely upon an opinion of counsel as to any matter of law concerning the power of attorney, including the due execution and validity of the power of attorney. In addition, if the power contains, in whole or in part, language other than English, a third party may request an English translation. The principal bears the cost of the opinion.

**An agent presented with a non-Florida power of attorney should contact a member of the WFG Agency Department.**

## **Authority of Agent**

The Act does not change current law that an agent may only exercise the authority specifically granted to the agent in the power of attorney and any authority reasonably necessary to effectuate the express authority granted in the power of attorney. General provisions in a power of attorney like a provision granting agent authority to do all acts, which do not identify the specific authority granted are not sufficient to grant authority to the agent. So-called "check-the-box" provisions contained in some state statutes are not effective for conveyance of real estate in FL.

## **After Acquired Property**

Under the Act an agent may exercise authority granted in a power of attorney with respect to property owned by the principal when the power of attorney is executed and property that is later acquired by the principal.

## **Co- Agents and Successor Agents**

The Act provides that the power of attorney may name multiple and successor agents. Under the Act, unless the instrument otherwise provides, a co-agent may act independently of the other co-agent(s). Under prior law two agents must act unanimously, or if more than two, by a majority.

## **Military Powers of Attorney**

A military power of attorney is valid if executed in accordance with federal law, as amended. A deployment-contingent power of attorney may be signed in advance, and is effective upon deployment of the principal. *See*, s. 709.2109(6).

NOTE: This Bulletin is intended for use by title issuing offices, title insurance agents and approved attorneys of WFG National Title Insurance Company and any reliance by any other person or entity is unauthorized. This bulletin is intended solely for the purpose of underwriting policies of WFG National Title Insurance Company.

# Attorney Affidavit

## Pursuant to Section 709.2119(1) (b) (2) F.S.

BEFORE ME, the undersigned authority, personally appeared (attorney in fact) \_\_\_\_\_, (hereinafter "Affiant"), who swore or affirmed that:

1. Affiant is attorney in fact named in the Durable Power of Attorney executed by (Name of Principal) ("Principal") on \_\_\_\_\_.
2. This Power of Attorney is currently exercisable by Affiant. The principal is domiciled in (insert name of State, territory, or foreign country).
3. To the best of the Affiant's knowledge after diligent search and inquiry:
  - a. The Principal is not deceased;
  - b. Affiant's authority has not been suspended by initiation of proceedings to determine incapacity or to appoint a guardian or guardian advocate; and
  - c. There has been no revocation, or partial or complete termination, of the power of attorney or of Affiant's authority.
4. Affiant is acting within the scope of authority granted in the power of attorney.
5. Affiant is the successor to ( insert name of predecessor agent), who has resigned, died, become incapacitated, is no longer qualified to serve, has declined to serve as an agent, or is otherwise unable to act, if applicable.
6. Affiant agrees not to exercise any powers granted by the Durable Power of Attorney if Affiant attains knowledge that it has been revoked, partially or completely terminated, suspended, or is no longer valid because of the death or adjudication of incapacity of the Principal.
7. Affiant is aware that Grantee/Lender and WFG National Title Insurance Company are relying upon this Affidavit to issue title insurance policies without exception to the matter(s) noted above. Affiant does hereby indemnify WFG National Title Insurance Company against any loss or damage occasioned as of reliance upon this Affidavit (including attorneys' fees and costs) caused as a result of any inaccuracies contained in this Affidavit.
8. Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements made in an Affidavit of this nature. Affiant further certifies that he/she has read this Affidavit and completely understands its contents.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me, a Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_.

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(Signature of Notary Public)

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(Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_