**WFG Oregon Underwriting Bulletin**

**WFG National Title Insurance Company**

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**Date:** December 18, 2014

**To:** WFG Oregon Title and Escrow Employees

**Re: POWERS OF ATTORNEY**

**Bulletin #:** WFG-Oregon-2014-4-RJH

There recently have been numerous inquiries regarding the circumstances under which WFG is willing to allow the use of powers of attorney (“POA”) in sale and financing transactions. The purpose of the Bulletin is to provide an overview of Oregon law regarding POAs and set forth WFG’s guidelines regarding the use of POAs.

**Powers of Attorney Generally**

The Oregon statutes dealing with POAs are set forth in ORS 127.002-127.045 and ORS 93.670.

* *What is a POA?*

A POA is a written instrument that gives one person (the “attorney-in-fact”) the right to act in the place of another (the “principal”) for either all purposes (a “general POA”) or only for specified purposes (a “special POA”). Oregon recognizes both general and special POAs.

* *Who may execute a POA or Act as an Attorney-in-Fact Under a POA?*

In general, any person who is competent to contract may execute or act as an attorney-in-fact under a POA. Two or more persons, either jointly or severally, may be appointed as attorneys-in-fact. An entity may give a POA and become bound by the act of its agent, provided that the agent is appointed as provided in the entity’s governing documents. If authorized by its governing documents, an entity may also act as an attorney-in-fact.

Fiduciaries (trustees, conservators, guardians, executors, personal representatives, etc.) may not execute POAs or otherwise delegate their authorities and responsibilities unless the document that establishes such authority and responsibility (trust agreement, court order, will, etc.) provides for such delegation of authority.

* *What capacity is required to execute a POA?*

The capacity required to execute a POA is the same as that to execute a conveyance. If at the time of the execution of the POA the principal has mental capacity sufficient to comprehend what it is that the principal is doing, the power of attorney is valid. This test focuses on the principal’s ability to understand the general nature of the POA rather than the principal’s competency to perform the acts included in the POA.

* *What Relationship Exists Between the Principal and the Attorney-in-Fact?*

An attorney-in-fact is in a fiduciary relationship with the principal, requiring the duties of care and loyalty by the attorney-in-fact to the principal. Unless otherwise provided in the POA document, the attorney-in-fact must use the principal’s property for the benefit of the principal.

* *How Long does a POA Remain Effective?*

A POA becomes effective when it is executed (unless a “springing” POA is intended, which is beyond the scope of this Bulletin), and the powers of the attorney-in-fact are not affected by the passage of time. Therefore, in Oregon a person may not refuse to recognize the authority of an attorney-in-fact under a POA based solely on the length of time since the POA was executed.

A POA then remainsin effect until revoked (i) by the death of the principal so long as the death is known to the person acting pursuant to the POA, (ii) when a revocation of the POA is recorded in the office where it was originally recorded (if it was, in fact, originally recorded), or (iii) when the POA specifies it is to terminate.

* *What if the Principal Becomes Incompetent?*

Under Oregon law a POA is “durable”, that is, it survives the incompetency of the principal unless the POA itself contains words stating otherwise. Thus, every power of attorney given in Oregon is durable by statute unless the POA document itself provides otherwise.

* *Who Holds Title to the Property?*

Attorneys-in-fact do not hold title to real property. Title remains in the principal. Therefore, any conveyance of property pursuant to a POA should designate the principal as the grantor and should be signed by the attorney-in-fact reciting on whose behalf he or she is acting. The correct form of signature block on a document executed by an attorney-in-fact pursuant to a POA would be as follows:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

John Smith by Mary Johnson, attorney-in-fact

* *Must a POA be Recorded?*

When a POA is used to transfer interests in real property, it is necessary to record the original or a certified copy of the POA in the real property records of the county in which the real property is located.

Having the POA recorded is critical since doing so considerably reduces the Company’s risk that the POA has been revoked by a physical act and that the attorney-in-fact has no continuing power to act. This is because, by statute in Oregon, once recorded, a POA cannot be revoked unless an instrument containing such revocation is also recorded in the same office. In addition, if a POA is used in connection with a deed or other document to be recorded, recording the POA provides record evidence that the attorney-in-fact had authority to sign the document in question.

**Guidelines for Insuring Transactions Involving the Use of a POA**

Insuring a transaction based upon acts executed pursuant to powers contained in a POA presents additional, extra-hazardous risks to the Company. Those risks include, among others, the risk that (i) the POA was forged, (ii) the principal was under a legal disability at the time of execution, (iii) the POA was revoked or amended prior to its exercise, (iv) the principal died prior to the exercise of the POA, (v) the principal was declared a disabled person and was under guardianship, and/or (vi) the act being performed by the attorney-in-fact is outside the scope of the authority granted in the POA.

***Because of these risks and the fact that POAs are a significant source of settlement fraud, any use of a POA in a transaction requires advance underwriting approval.*** To request such approval, you must provide to your underwriter (i) a completed, dated and executed Power of Attorney Approval Form in the form attached as Exhibit A (the “Approval Form”), and (ii) a copy of the POA. The Approval Form can be found in Ramquest as “OR POA Approval Form”.

The underwriter will then consider the following issues in evaluating the act to be executed pursuant to the POA:

* Why is the POA being used? The use of a POA will only be approved in cases of absolute necessity or unforeseen hardship. Mere convenience to the parties is not an acceptable basis for using a POA.
* Why is the principal unable to attend closing and/or execute the transaction documents?
* Is there any indication that the POA has been revoked, replaced by a subsequently-granted POA, or expired by its terms?
* How long ago was the POA executed? Are there any indications that the principal may not have been competent at the time of execution?
* Are there any concerns as to the bona fide nature of the transaction or the good faith of the parties?
* Is the attorney-in-fact directly or indirectly benefitting from the transaction?
* Are transaction proceeds being paid to the principal or to the attorney-in-fact?
* Are there any indications that the POA may be a forged instrument?
* Is the power sought to be exercised by the attorney-in-fact specifically authorized in the POA? Is there any ambiguity? POAs are strictly construed, and courts hold that the POA document grants only those powers that are clearly specified in it. For that reason, it is necessary to carefully determine the exact extent of the powers granted by the principal to the attorney-in-fact, even if the POA purports to be a "general" POA. For example, courts have held that the power to sell is not a power to convey, the power to transfer is not a power to mortgage, and the power to sell and convey is not authority to exchange.
* Has escrow been able to independently confirm in a direct telephone or in-person conversation with the principal (at a phone number obtained from someone other than the attorney-in-fact) that the POA has not been revoked and that the principal wants to complete the transaction using the attorney-in-fact?

Upon completion of review, the underwriter will either approve or deny the request for POA approval, execute and date the Approval Form, and return it to escrow for uploading into Filescan.

If you have any questions regarding this Bulletin, please contact your local WFG underwriting personnel.

***THIS BULLETIN IS A CONFIDENTIAL COMMUNICATION BETWEEN WFG AND THE ADDRESSEE AND IS INTENDED ONLY FOR WFG’S INTERNAL USE. WFG DOES NOT AUTHORIZE THE DISCLOSURE OF THIS COMMUNICATION TO ANY THIRD PARTY IN ANY MANNER WITHOUT WFG’S PRIOR WRITTEN CONSENT.***

**Exhibit A**

**POWER OF ATTORNEY APPROVAL FORM**

* **Submit to Underwriter with copy of POA**

WFG File No.:

Est. Closing Date:

Do you have original POA? [ ]  Yes [ ]  No

If not, where is it and by when can it be provided?

***WHY IS A POWER OF ATTORNEY BEING USED?***

**- FOR GEOGRAPHIC REASONS?** [ ]  Yes [ ]  No

If yes, location of principal:

Phone # at which principal can be reached:

Fax # or email address at which principal can be reached:

Have you personally contacted principal as to continuing validity of POA and attorney-in-fact authority? [ ]  Yes [ ]  No

Details of Conversation (when, at what #, and what was said):

**-FOR MEDICAL REASONS?** [ ]  Yes [ ]  No

You must attach a letter from Physician, or other health care provider, as to nature and extent of illness.

**-OTHER REASONS?**

Details**:**

***TO WHOM ARE PROCEEDS BEING PAID?***

Are proceeds being paid to principal? [ ]  Yes [ ]  No

If "no", to whom being paid and why?

Have you personally contacted principal and obtained consent to proceeds being so paid? [ ]  Yes [ ]  No

Details of Conversation (when, at what #, and what was said):

***ANY OTHER ITEMS OF CONCERN OR HELPFUL INFORMATION?***

(i.e. suspected fraud, forgery, elder abuse, self-dealing by attorney-in-fact, etc.)

SUBMITTED BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DATE: \_\_\_\_\_\_\_\_\_\_\_

APPROVED/DENIED (circle one) BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DATE: \_\_\_\_\_\_\_\_\_\_\_