



## **PENNSYLVANIA**

### **UNDERWRITING GUIDELINES – POWERS OF ATTORNEY**

This Underwriting Guideline is for use only by policy-issuing agents of WFG National Title Insurance Company (“WFG”) regarding issuance of WFG’s policies of title insurance. This Guideline reflects underwriting, risk, and business decisions of WFG and is not legal advice. WFG does not represent any party to a transaction, and parties should seek legal advice from their own legal counsel.

This Guideline is intended to answer the most common questions faced by WFG’s agents when issuing policies of title insurance, but the facts and circumstances of a specific transaction may lead to a different result. If you have any questions regarding applying this Guideline or your specific transaction, please do not hesitate to contact Underwriting.

#### **Sample Schedule B-I Requirement**

Powers of Attorney (POA): If any party to the settlement intends to use a POA at settlement, a copy of such POA must be submitted for review and approval in advance of settlement. The original POA must be provided for recording.

#### **Steps for Reviewing a POA**

1. Confirm the POA is legally valid under applicable law.
2. Confirm the POA is currently in effect.
  - a. The POA is not expired; and
  - b. Any preconditions have been met; and
  - c. If the Principal became incapacitated after signing the POA, the POA is durable; and
  - d. The Principal is still alive; and
  - e. A Guardian has **not** been appointed for the Principal.
3. Confirm the POA gives the Agent authority to conduct the current transaction.
4. Require the Agent to sign a POA Affidavit at closing.
5. Obtain the original POA for recording (or recording information if POA has been previously recorded in the County). Confirm the Original matches any copy you had previously reviewed.

You must also obtain approval from any Lenders involved in the transaction to use the POA. However, Lender approval does not take the place of your own review, these Guidelines, or other WFG directives.

## **Guidelines**

Although Powers of Attorney (POA) are regularly used for legitimate reasons, relying on a POA also increases policy risk. Both Owner's and Loan Policies insure against the risk of a document being executed under an invalid or expired POA.<sup>1</sup> Relying on a POA means you may have limited opportunity to observe the Principal, which implicates other Covered Risks such as undue influence, duress, incompetency, incapacity, or impersonation.<sup>2</sup> A POA can also be used for fraud, which is another Covered Risk.<sup>3</sup> For example, a POA used in a recent, uninsured transaction is a red flag that will require investigation and underwriting of the prior POA.

Before relying on a POA, you must be mindful of the transaction and whether using this POA by these parties for this transaction makes sense. If a POA has not been signed yet, ask if there is a practical reason why the Principal cannot sign the Deed or Mortgage. If the Principal is available to sign a POA, they should be available to sign the Deed or Mortgage and related closing documents.

If the POA has already been signed, ask why a POA is being used for this transaction, and consider whether the reason makes sense to you. Ask if you can verify the transaction with the Principal by phone or e-mail. The exact steps to take will vary based on the circumstances, such as whether the parties are represented by attorneys, and the POA document itself.

In all cases, you must ***thoroughly read the POA*** and make sure the Agent is authorized to engage in the transaction on behalf of the Principal. An Agent does not have any default powers, all powers must come from the POA document itself. The Principal can ***limit the powers*** granted to the Agent, and ***limit when the POA is effective***, so do not assume all POAs are the same. All POAs must be in writing and comply with the below legal requirements.

**\*If you are presented with a POA for someone acting in a representative or fiduciary capacity (e.g., a Trustee, an Administrator, an Executor, a Guardian, etc.), or on behalf of a business entity (e.g., a corporation, LLC, partnership, business trust, etc.), you must contact Underwriting for guidance. In most circumstances, other documents will be used to verify signing authority for these fiduciaries and entities.\***

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<sup>1</sup> Covered Risks 2(a)(ii), (v) of the 2021 Owner's Policy and Loan Policies.

<sup>2</sup> Covered Risk 2(a)(i).

<sup>3</sup> Covered Risk 2(a)(i).

## **1. The POA Must Be Legally Valid**

### **a. Pennsylvania law**

For POAs that were executed in Pennsylvania, or specifically say they are following Pennsylvania law, the following apply:

All POAs executed ***after January 1, 2015*** must contain the following:

1. A statutory Notice signed by the Principal – see Appendix A;
2. A grant of authority to the Agent (i.e. body);
3. Dated and notarized signature or mark of the Principal;
4. Signatures of two (2) witnesses who are:
  - a. At least 18 years old
  - b. **Not** the Agent
  - c. **Not** a person who signed for the Principal
  - d. **Not** the Notary or Attorney taking acknowledgment<sup>4</sup>; and
5. A statutory acknowledgment signed by the Agent – see Appendix B.

All POAs executed ***between April 12, 2000 and January 1, 2015*** must contain the following:

1. A slightly different Notice signed by the Principal – see Appendix D;
2. A grant of authority to the Agent (i.e. body);
3. Dated signature or mark of the Principal;
4. If the POA is signed by mark, then it must also be signed by two (2) witnesses who are:
  - a. At least 18 years old
  - b. **Not** the person who signed on behalf of the Principal; and
5. A slightly different Acknowledgment signed by the Agent – see Appendix E

**Note:** The older the POA is, the more likely something has happened which could change the Principal/Agent relationship (e.g. death or incapacity of the Principal, revocation of the POA, etc.). Additional verification should be taken to confirm an older POA is still valid. If you are presented with a POA executed ***before April 12, 2000***, please contact Underwriting.

### **b. POAs from other States**

WFG will accept POAs that comply with the laws of that State in effect at the time it was executed, because they are valid under Pennsylvania law:

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<sup>4</sup> If a Pennsylvania attorney takes the acknowledgment of the POA under 42 Pa.C.S. § 327(a) and 57 Pa.C.S. § 316(2.1), they cannot also act as one of the required witnesses. 20 Pa.C.S. § 5601(b)(3)(ii).

A power of attorney executed in or under the laws of another state or jurisdiction shall be valid in this Commonwealth if, when the power of attorney was executed, the execution complied with:

(1) the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, the law of the jurisdiction in which the power of attorney was executed...<sup>5</sup>

You must be satisfied that the POA complies with the law of the other State if you also regularly handle transactions in that other State. If you are not sure, please contact Underwriting.

### **c. Military POAs**

WFG will accept POAs for Principals on active military duty that comply with the federal laws regarding military POAs, because they are valid under Pennsylvania and federal law:

A power of attorney executed in or under the laws of another state or jurisdiction shall be valid in this Commonwealth if, when the power of attorney was executed, the execution complied with:

...

(2) the requirements for a military power of attorney under 10 U.S.C. § 1044(b) (relating to legal assistance).<sup>6</sup>

Military POAs must contain:

1. The Principal's signature;
2. Acknowledgment before a military officer having the powers of a notary public under federal or state law<sup>7</sup>; and
3. A grant of authority to the agent (i.e. body).

Military POAs are exempt from State-law requirements regarding format (e.g., the Notice to Principal), but are given the same legal effect as POAs under State law.<sup>8</sup> You must still read the POA to confirm it authorizes the Agent to engage in the insured transaction on behalf of the Principal.

You must also confirm the Principal's active military status by: (a) a search of the Defense Manpower Data Center's (DMDC) Military Verification service, using the Principal's SSN, (b) a telegram or other certification from the commanding officer of the

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<sup>5</sup> 20 Pa.C.S. § 5611.

<sup>6</sup> 20 Pa.C.S. § 5611.

<sup>7</sup> 10 U.S.C. § 1044a.

<sup>8</sup> 10 U.S.C. § 1044b(a).

Principal, or (c) if neither of those options is available, an Affidavit from someone with personal knowledge.

Most military POAs will contain a Preamble referencing 10 U.S.C. 1044b, which is the federal statute authorizing such POAs.

#### **d. International POAs**

If you are presented with a POA that was executed in outside the United States, or expressly states it is governed by the laws of a foreign jurisdiction, please contact Underwriting.

## **2. The POA Must Be Currently in Effect**

You must read the terms of the POA to determine if it is subject to time limitations or other conditions. While an old POA does not necessarily expire, it can expire by its terms, or through a change in circumstances. The older the POA, the more likely something has occurred to invalidate the POA (e.g., death of the Principal, revocation, etc.).

A *non-exhaustive* list of situations to look out for includes:

1. If the Principal dies, the POA is automatically terminated. A POA cannot continue after death, regardless of what the POA says.
2. A Principal may voluntarily revoke a POA at any time for any reason.
3. A POA may not take effect immediately, and may only become effective after a certain time or after a certain event happens. This is called a “springing” POA.
4. A POA may expire after a certain length of time or after a certain date stated in the POA.
5. If the Principal becomes incapacitated, the POA is automatically terminated unless the POA is durable. POAs are presumed durable unless provided otherwise in the POA.<sup>9</sup>
6. If a Guardian is appointed for the Principal, the Guardian or a Court can revoke the POA. In this situation, WFG will require that the Guardian affirmatively consents in writing to the continuation of the POA, and proof that the Court which appointed the Guardian did not revoke the POA.
7. If the Principal and Agent were married, a divorce filed by either automatically revokes the POA.
8. A Court can revoke a POA.
9. If the Agent dies or becomes incapacitated, and there is no successor Agent named in the POA. POAs are not assignable by the Agent, and do not pass to the Agent’s heirs or successors.
10. A POA may only be for one specific transaction in the past, and may not grant general authority for the current transaction.

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<sup>9</sup> 20 Pa.C.S. § 5601.1.

If you are presented with a pre-existing POA, you should find a reliable way to communicate directly with the Principal. It is important to inquire with **both** the Agent and Principal regarding the use and status of the POA. Just asking the right questions can uncover issues because Principals and Agents often are not attorneys and are acting without legal counsel. Even a well-meaning Agent might not know that a POA automatically terminates at death of the Principal, for example. You should also compare the Principal's signature on the POA with their signature(s) on prior recorded document(s).

If the Principal has become **incapacitated** since signing the POA, you must determine the date of incapacity. If the Principal was incapacitated at the time the POA was signed, then it is invalid even if the POA itself is durable. If the POA was signed very recently, and you are being told the Principal is currently incapacitated, it is more likely the Principal was incapacitated at the time the POA was signed. Sufficient proof will vary under the circumstances and may include certification from a treating physician and/or affidavits from those with personal knowledge. If you run into issues when trying to determine whether the POA was valid when signed, please contact Underwriting.

### **3. The POA Must Grant Proper Authority to the Agent**

You must always **read the entire POA** to determine the Agent has actual authority to engage in the current transaction, whether a sale or a mortgage. A POA can be limited to a specific transaction, or it can grant the Agent general powers over all of the Principal's property. You must make sure the POA was not limited to a past transaction. The POA may use phrases which are defined by statute, such as "power to engage in real property transactions" and "power to borrow money".<sup>10</sup> More likely, the POA will define the powers granted to the Agent. Some powers require a specific grant of authority, and are not allowed using general language like "I grant my Agent all powers authorized by law."<sup>11</sup>

The terms of the POA always control over the statutory defaults. Thus, if the POA says the Agent has the "power to engage in real property transactions" but also says the Agent cannot mortgage the Property or sell the "Principal's primary residence", the POA would control over the statutory language. It is always important to read and understand the entire POA. If you have any questions, please contact Underwriting.

If properly authorized by the terms of the POA, the Agent should ***sign the Deed or Mortgage*** using: "[Principal's Name] by [Agent's Name], their Agent, under Power-of-Attorney dated [Date]...

...to be recorded contemporaneously with this [Deed/Mortgage]".

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<sup>10</sup> 20 Pa.C.S. §§ 5602, 5603.

<sup>11</sup> 20 Pa.C.S. § 5601.4

(or) ...recorded in the Office of the Recorder of Deeds of [County], on [Date] at/in [Recording Information]”.

***The Agent must sign their own name.*** Signing any other name is considered forgery.

***Self-Dealing, Gifts, and Trusts*** – if a POA is being used to (a) transfer the Principal’s Property to the Agent (or a related party) for any amount, (b) transfer the Principal’s Property to any party for less than fair market value, or (c) amend, revoke, or terminate the Principal’s Trust, you must obtain advance Underwriting approval.

#### **4. The Agent Must Sign an Affidavit**

All Agents must sign an Affidavit under 20 Pa.C.S. § 5606 at closing. This Affidavit proves that the POA remains in effect and can be relied upon by third parties. Of course, if either (a) the Affidavit reveals the POA has terminated, or (b) you are aware of circumstances which would contradict the Affidavit, you cannot rely on the POA or Affidavit. It is important to read the Affidavit provided by the Agent. A sample Affidavit is attached as Appendix - C.

#### **5. The Original POA Must Be Recorded**

An original POA must be submitted for recording, and must be recorded prior to the Deed or Mortgage which was signed using the POA.<sup>12</sup>

If the POA has already been recorded in the County where the Property is located, you can refer to the recording information in the insured Deed or Mortgage.

If the original POA has been recorded in another County (or another State), then a certified copy of that recording must be recorded in the County where the Property is located.

In either scenario, you must still confirm the pre-recorded POA remains valid and in effect per above.

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<sup>12</sup> 20 Pa.C.S. § 5602(c).

**APPENDIX – A**

**NOTICE TO PRINCIPAL – 20 Pa.C.S. § 5601(c)**

**POAs Executed after January 1, 2015**

NOTICE

The purpose of this power of attorney is to give the person you designate (your "agent") broad powers to handle your property, which may include powers to sell or otherwise dispose of any real or personal property without advance notice to you or approval by you.

This power of attorney does not impose a duty on your agent to exercise granted powers, but, when powers are exercised, your agent must use due care to act for your benefit and in accordance with this power of attorney.

Your agent may exercise the powers given here throughout your lifetime, even after you become incapacitated, unless you expressly limit the duration of these powers or you revoke these powers or a court acting on your behalf terminates your agent's authority.

Your agent must act in accordance with your reasonable expectations to the extent actually known by your agent and, otherwise, in your best interest, act in good faith and act only within the scope of authority granted by you in the power of attorney.

The law permits you, if you choose, to grant broad authority to an agent under power of attorney, including the ability to give away all of your property while you are alive or to substantially change how your property is distributed at your death. Before signing this document, you should seek the advice of an attorney at law to make sure you understand it.

A court can take away the powers of your agent if it finds your agent is not acting properly.

The powers and duties of an agent under a power of attorney are explained more fully in 20 Pa.C.S. Ch. 56.

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.



**APPENDIX – B**

**ACKNOWLEDGMENT BY AGENT – 20 Pa.C.S. § 5601(d)**

**POAs Executed after January 1, 2015**

I, \_\_\_\_\_, have read the attached power of attorney and am the person identified as the agent for the principal. I hereby acknowledge that when I act as agent:

I shall act in accordance with the principal's reasonable expectations to the extent actually known by me and, otherwise, in the principal's best interest, act in good faith and act only within the scope of authority granted to me by the principal in the power of attorney.

**APPENDIX – C**

**AGENT’S AFFIDAVIT – 20 Pa.C.S § 5606**

**AFFIDAVIT OF NON-TERMINATION OF POWER OF ATTORNEY**

Pursuant to 20 Pa. C.S. § 5606

Premises:

File No.

Commitment / Policy No.

COMMONWEALTH OF PENNSYLVANIA :

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

AND NOW, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_, before me a Notary Public, the undersigned officer, personally appeared the undersigned individual (“Agent”), known to me (or satisfactorily proven) to be the person whose name is subscribed to this Affidavit, who, being duly sworn according to law and intending to be legally bound, deposes and says:

1. I, \_\_\_\_\_, am the attorney-in-fact for \_\_\_\_\_ (“Principal”) with the rights, powers and authority granted to me by instrument dated \_\_\_\_\_ (“Power of Attorney”), a copy of which is attached to this Affidavit, and that I am acting in good faith in reliance upon said Power of Attorney.
2. As of the date of the execution of this Affidavit, I have no actual knowledge that the aforementioned Power of Attorney has been revoked, changed, altered, amended, or terminated by any method including the death, disability, or incapacity, or the filing of an action in divorce of the Principal. Further, if applicable, the specified future time or contingency set forth in the Power of Attorney has occurred.
3. This Affidavit is made pursuant to the provisions of the statute cited above.
4. I am making this affidavit with the full knowledge that it will be relied upon by \_\_\_\_\_ and WFG National Title Insurance Company in connection with the closing of a real estate transaction and the issuance of title insurance in connection therewith.

[Signature on following page.]

[Affidavit of Non-Termination of Power of Attorney]

\_\_\_\_ (Agent)  
**Name:**

Signed and sworn to (or affirmed) before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Stamp:

My commission expires:

**APPENDIX – D**

**NOTICE TO PRINCIPAL**

**POAs Executed between April 12, 2000 and December 31, 2014**

The purpose of this power of attorney is to give the person you designate (your "agent") broad powers to handle your property, which may include powers to sell or otherwise dispose of any real or personal property without advance notice to you or approval by you.

This power of attorney does not impose a duty on your agent to exercise granted powers, but, when powers are exercised, your agent must use due care to act for your benefit and in accordance with this power of attorney.

Your agent may exercise the powers given here throughout your lifetime, even after you become incapacitated, unless you expressly limit the duration of these powers or you revoke these powers or a court acting on your behalf terminates your agent's authority.

Your agent must keep your funds separate from your agent's funds.

A court can take away the powers of your agent if it finds your agent is not acting properly.

The powers and duties of an agent under a power of attorney are explained more fully in 20 Pa.C.S. Ch. 56.

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

## **APPENDIX – E**

### **ACKNOWLEDGMENT BY AGENT**

#### **POAs Executed between April 12, 2000 and December 31, 2014**

I, \_\_\_\_\_, have read the attached power of attorney and am the person identified as agent for principal. I hereby acknowledge that in the absence of a specific provision to the contrary in the power of attorney or in 20 Pa. C.S. when I act as agent:

- I shall exercise the powers for the benefit of the principal.
- I shall keep the assets of the principal separate from my assets.
- I shall exercise reasonable caution and prudence.
- I shall keep a full and accurate record of all actions, receipts, and distributions on behalf of the principal.

# PA UNDERWRITING GUIDELINES – POWERS OF ATTORNEY

## Revision History

Version	Significant Changes	Date
1.0	Initial publication	6-9-25