



Ask Your Underwriter

■ *Linda M. Hernandez, Florida State Underwriter*

Question:

Does a Military Power of Attorney need witnesses, etc.?

Answer:

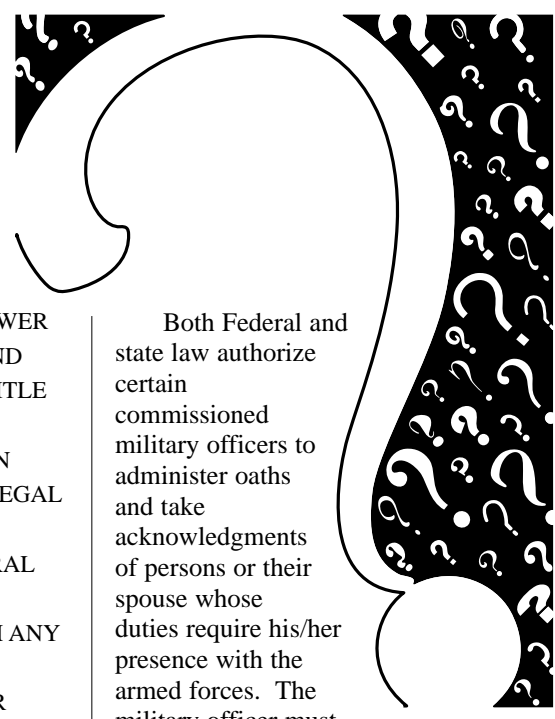
A Military Power of Attorney does not require witnesses and may be acceptable to convey or mortgage real property if prepared in accordance with 10 U.S.C., Section 1044b.

This section of the Code states that a Military POA is exempt from any requirements of form, substance, formality, or recording provided for powers of attorney under the laws of a state.

Notwithstanding the above, Old Republic National Title requires that a Military Power of Attorney contain the same clear authority required for non-military powers of attorney, such as the specific authority “to sell, convey, mortgage.” Further, we require the recording of all POAs relied upon in connection with real property, whether they are Military or non-military POAs.

10 U.S.C., Section 1044 also provides that in order to receive special recognition as a Military Power of Attorney, it must contain the following statement:

“THIS IS A MILITARY POWER OF ATTORNEY PREPARED AND EXECUTED PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 1044b BY A PERSON AUTHORIZED TO RECEIVE LEGAL ASSISTANCE FROM THE MILITARY SERVICES. FEDERAL LAW EXEMPTS A MILITARY POWER OF ATTORNEY FROM ANY REQUIREMENT OF FORM, SUBSTANCE, FORMALITY OR RECORDING THAT IS PRESCRIBED FOR POWERS OF ATTORNEY BY THE LAWS OF ANY STATE, COMMONWEALTH, TERRITORY, DISTRICT OR POSSESSION OF THE UNITED STATES. FEDERAL LAW SPECIFIES THAT A MILITARY POWER OF ATTORNEY SHALL BE GIVEN THE SAME LEGAL EFFECT AS A POWER OF ATTORNEY PREPARED AND EXECUTED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION WHERE IT IS PRESENTED.”



Both Federal and state law authorize certain commissioned military officers to administer oaths and take acknowledgments of persons or their spouse whose duties require his/her presence with the armed forces. The military officer must have the rank of second lieutenant or higher and must complete a certificate in substantially the form provided by Florida Statutes.

They are not required to show the county, state, territory or country (venue) where the acknowledgment is given because they are not bound by geographical boundaries as are, for example, state notaries, nor are they required to use a seal.

RESPA Reform Update *continued from page 1—*

HUD ENFORCEMENT

Also at the RESPRO Conference, Ivy Jackson, Acting Director RESPA and Interstate Land Sales Division, HUD, spoke on recent RESPA enforcement. HUD has added 10 compliance officers in the last few months and has continued their contract with Technical Analysis Center, located in Virginia to perform interviews and collect data for investigations. Specifically, HUD has been looking into the following RESPA violations:

- Sham AfBAs of all types: 20 are currently being investigated
 - Title agencies providing advertising, mailings and virtual tours to Realtors
 - Section 9 violations regarding required use of an affiliated title agency - there are 40 such cases
 - Affiliated Business Arrangements where returns are based on referrals and not ownership interest
 - Title agencies that do not perform any of the CORE title services
- In a case specific to Florida, a builder agreed to pay the closing costs of the buyer, yet charged the buyer a percentage of the sales price for the closing costs. The builder, however, was provided a “Butler Rebate” by the title agency which was not passed on to the buyer. The outcome of this investigation was not disclosed.