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BULLETIN

To: All Old Republic National Title Agents and Offices

From: Underwriting Department

Re: Revisions to Chapter 709, Florida Statutes regarding Powers of Attorney

Date: September 28, 2011

The Florida Legislature enacted revisions to Chapter 709, *Florida Statutes*, regarding the execution, authority, and acceptance of Powers of Attorney ("POA"). These revisions are effective October 1, 2011, however, the revisions regarding whether or not a Florida POA is validly executed apply only to POAs that are created after October 1, 2011. While most of the revisions affect the acceptance of POAs by financial institutions, there are some changes that will affect the use and acceptance of POAs for real estate transactions. **This bulletin will cover only the changes that affect real estate transactions.**

Starting October 1, 2011, all Florida POAs must have two witnesses and a notary acknowledgement, regardless of the use of the POA or the homestead character of the property.

Under the new provision, a POA that is executed outside of the State of Florida is valid if it is executed in accordance with the laws of that state at the time of execution. This applies to all out of state POAs regardless of the date of execution. For example, if after October 1st you are presented with a POA from New York, we will now look to the laws of New York to determine if it is validly executed. You are entitled to require that the party asking you to rely upon a POA executed in another state provide to you an opinion of counsel licensed in the state of execution of the POA verifying compliance with that state's laws. The laws of the state of execution of the POA apply only to whether or not the POA is validly acknowledged. The POA must still grant specific power and authority to the agent to sell and convey or encumber the real property of the principal.

Even if the out of state POA is validly executed under the laws of that state, the provisions of §689.111, F.S. requiring two witnesses to the POA for the conveyance or encumbrance of homestead property still applies. Furthermore, the requirement of §695.03, F.S. for any document concerning real property to have a notary acknowledgment in order to be recorded still applies.

* * This Bulletin should become a permanent part of your records to assist in your compliance with the requirements contained herein. * *

Please **provide a copy of this Bulletin to your staff** so they can read it and become aware of its contents.

REMEMBER: All ORT Alerts, Bulletins, Notices and our Newsletter can be found on our web site, www.ortfi.com. Our Alerts and Bulletins are issued via fax and email, but you should check our web site frequently to make sure you have copies of everything issued.

Please call your Underwriting Department if you have any questions.

The execution of Military Powers of Attorney are still governed by Federal Law and have not been amended by the changes to Chapter 709.

The revised statute now allows for the acceptance of a photocopy or electronic copy of the POA. However, the clerk will not record a document without an original signature.

When there are two or more co-agents, each co-agent may now act independently unless the POA provides otherwise. Previously when you had co-agents, all were required to sign the documents. Now you only need one unless the POA provides otherwise.

The statute has stricter requirements for gifting under a POA. Authority to gift must be specifically granted in the POA and must also be separately approved by the principal by signing their name or initialing next to that provision. There are additional limitations on the authority to gift under the new act, even where the agent is provided that authority.

There is a new provision for Powers of Attorney when a divorce is involved. An agent's authority under a POA terminates automatically upon the filing of an action for dissolution of the agent's marriage to the principal unless the POA provides otherwise. So now, when the agent and principal are married, the POA Affidavit must include a statement that the parties have not filed for dissolution, legal separation or annulment.

Since a POA can be revoked by the principal, terminated or suspended upon the death or incapacity of the principal (for a non-durable power of attorney), you will still need to obtain an affidavit from the attorney-in-fact regarding these matters (form is attached).

These changes may require a review of the laws of another state or an opinion of counsel, so it is important for all agents to obtain and review Powers of Attorney early in the transaction.

AFFIDAVIT OF ATTORNEY-IN-FACT

STATE OF FLORIDA)
COUNTY OF _____)

BEFORE ME, the undersigned authority, personally appeared _____,
(Name of Attorney-in-Fact)
hereinafter referred to as "Affiant," who, being duly sworn, deposes and says that:

1. Affiant is the attorney-in-fact named in that certain Power of Attorney executed by _____,
(Name of Principal)
hereinafter referred to as "Principal" on _____. (copy attached)
(Date)
2. The above named Principal is the owner of property legally described as:
3. To the best of Affiant's knowledge, after diligent search and inquiry as of the date of this Affidavit:
 - a. The Principal is not deceased, is not incompetent and is of sound mind, has not been adjudicated incompetent or incapacitated, and has not revoked, partially or completely, terminated, or suspended the Power of Attorney; and
 - b. A petition to determine the incapacity of or to appoint a guardian for the Principal is not pending.
4. At no time has the Affiant been married to the Principal or, if Affiant and Principal have been married at any time since the effective date of the Power of Attorney, no action for divorce, annulment or legal separation has been filed during the effectiveness of said Power of Attorney.
5. Affiant agrees not to exercise any powers granted by the 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, incompetence, or adjudication of incapacity of the Principal.
6. This affidavit is given as an inducement to Old Republic National Title Insurance Company and any of its agents or insureds, to issue and accept Old Republic National Title Insurance Company's policies of title insurance based on instruments signed by Affiant [on behalf of Principal].
7. Affiant further states that (s)he is familiar with the nature of this oath, and with the penalties by law for falsely swearing to statements made in an instrument of this nature; that under the penalties of perjury, the above statements are true and correct.

FURTHER, AFFIANT SAITH NOT.

Affiant

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 20____, by _____
_____, who is/are personally known to me or who has/have produced
_____ as identification, and who signed this instrument willingly.

Notary Public
My Commission Expires:

(SEAL)