

# 8 FACTS ABOUT POWER OF ATTORNEY

---

## **1. If a new loan is being obtained**

a) Borrower's/buyer's lender should be contacted to see if they will allow the use of a Power of Attorney to execute their loan documents, and determine the type of Power of Attorney i.e. general, specific, etc., they may require.

b) Make sure that the principal's and attorney-in-fact's names are consistent with loan documents and escrow instructions, as well as how the principal holds record title.

## **2. If a sale is involved:**

Make sure that the principal's name is consistent with the way he/she holds the record title and that the attorney in fact executes the conveyance document consistent with his/her name shown on the Power of Attorney.

## **3. A Power of Attorney must be notarized and recorded in the Office of the County Recorder in which the subject property is located.**

## **4. Although there are no statutes of limitation governing the term of Power of Attorney, the Power of Attorney itself may impose a deadline for its use.**

Note 1: All Power of Attorneys expire on the date of death of the principal.

Note 2: Please consult your legal or estate planning professional when contemplating use of a California durable statutory Power of Attorney.

Note 3: A Power of Attorney that is already of record or is more than 12 months old, may cause a title company to call for a recordable "Affidavit confirming authority under Power of Attorney" (California Probate Code Section 4305) to be recorded at the close of sale or loan transaction.

## **5. Depending on whether the transaction involves a sale or refinance the key words that a title company or lender may look for in the section that specifies the attorney-in-fact's powers are: to convey", Mortgage", encumber", execute, acknowledge and deliver documents. If title is held in a trust, it is unlikely that a power of attorney will be accepted.**

## **6. The person signing for the principal is called an "attorney-in-fact".**

## **7. Be sure the attorney-in-fact executes the document consistent with the requirements of a county recorder.**

## **8. A title company will not insure an attorney-in fact conveying the principal's property to himself/ herself or making a gift of the principal's property to anyone.**