

# When is a Power of Attorney Needed and What does it do?

*Just any old Power of Attorney is not sufficient to buy, sell or convey title to real property. A Power of Attorney for healthcare decisions, for example, is meaningless when it comes to real estate matters as it does not grant authority to deal with the assets of the other party.*

## Types of Power of Attorney:

- **Limited/Specific Power of Attorney - Preferred**

Grants only those powers specifically outlined to the transaction at hand and no other authority is given. For this reason, the Power of Attorney must specifically define the property, whether or not this property is to be sold or encumbered, and the authorities given. When the transaction requires reliance upon a power of attorney, it is vital that the document be submitted as soon as possible to the title company so that it may be reviewed. (Should not be older than 1 year.)

- **A General Power of Attorney**

Allows the Attorney in Fact to act on behalf of the Principal for all phases of all of their business up to and including the sale or purchase of real estate. It will cover any property owned by the Principal. (Should not be older than 1 year.)

- **A Durable Power of Attorney**

Is often given for healthcare decisions to be made in case of coma or other physical and mental incapacity. It survives the incapacity of the Principal if it contains the proper language.

## Some terminology you should be familiar with includes:

- **Principal:** The person who grants authority to another party to act on his/her behalf.
- **Attorney in fact:** The person given the authority by the Principal to act as his/her agent.

## Other pertinent facts:

- A Power of Attorney cannot be used to act on behalf of a trustee of a trust.
- Since title insurance requires that the Power of Attorney be recorded, the document must be notarized.
- Any documents regarding the sale or purchase of a home that will be signed out of the country must be signed at an American Consulate.
- No Power of Attorney survives the death of the Principal.
- The statutory form provided in California's Probate Code Section 4401 is the best one to use, provided that the appropriate and necessary boxes are checked and that the form is not modified.
- As with all complex legal matters, legal counsel should be obtained before making decisions or for complete review of such matters.