



FEDERAL STANDARD ABSTRACT

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WHAT TO LOOK FOR IN A POWER OF ATTORNEY

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1. Does the donor's name match the name on the deed?
2. How many donees are there? Do they have proper ID?
3. Can the donees act separately or must they act together? (look for initials)
4. Has the donor initialed the right letters within the parenthesis? Does she have a middle initial on the deed? (Selling requires at least A, Mortgaging A, D, K and N; if it's a coop transaction, then also C)
5. Is the power limited? (if it's not, it doesn't matter) If it is, can it be used for this transaction?
6. Is it dated above the signature?
7. Is it signed? Can you corroborate the signature with another sample, be it ID or a previously recorded instrument?
8. Is it properly acknowledged? Correct language, filled-in, commission up to date, dated and legible stamp?
9. Is there a successor donee? If so, has the primary donee renounced her appointment in writing? (and acknowledged, since it will be recorded)
10. Does it expire?
11. Is it self-serving? Is the donee going to use it to remove the donor from title? Is the donee using it to obtain a personal loan and mortgage the donor's property as collateral?
12. Is there a reason why the donor cannot attend?
13. Are the parties related? Are they husband and wife? If so, has there been notice that they may be going through a divorce? If donor and donee have separate counsel, do they both agree on the validity of the power?
14. Was the donor declared incompetent? If so, was a guardian appointed? If not, was the power executed prior to the declaration of incompetency? (note that the declaration can be retroactive in effect)
15. Is the donor still alive? Has the power been revoked?

Fiduciary Duties

Fiduciary duties, such as that of a trustee, executor, president, managing member or managing partner, cannot be assigned by power of attorney. This does not mean that a corporation or an LLC cannot give a power of attorney. A corporation or LLC may grant powers in the same way as individuals. What is forbidden is for, say, a president to allow someone else to act as president. It is not forbidden for a president to execute a power of attorney for the corporation. In the former case the president would be assigning her fiduciary duties. In the latter case, she would be exercising the fiduciary duties (the wisdom of her action might be a concern to people that appointed her, but not a defect in title). The same rules apply to all fiduciary duties. The only exception are those instances where the instrument creating the fiduciary responsibility explicitly allows for its assignment by power of attorney. For example, a trust instrument can explicitly state that the trustee can assign his fiduciary duties, including the power of sale.