

MEMORANDUM

To: Registry Districts of the Land Court
From: Christina T. Geaney, Chief Title Examiner
Re: Form of Acknowledgments and Powers of Attorney
Date: February 4, 2021

This Memorandum addresses the requirements concerning notary acknowledgments, and the Massachusetts forms of acknowledgment required by state law, as those requirements pertain to certain documents presented for registration, including powers of attorney.

I. Discussion of state law and Land Court guidelines concerning acknowledgment of registered land documents

Land Court Guideline No. 1. “Acknowledgment Requirements” provides a list of documents that must be acknowledged before a notary public to be registered. Among other documents enumerated, like deeds, easements, and mortgages, this list includes assignments, discharges, and powers of attorney. *See, e.g.*, G.L. c. 183, §§ 29, 32, 54, 54B, 54C; and c. 185, § 110.

General Laws c. 185, § 110, entitled “Powers of attorney; acknowledgment and filing of letters of attorney,” requires powers of attorney used for the purpose of conveying registered land to be acknowledged and presented for registration:

Any person may, by attorney, procure land to be registered and convey or otherwise deal with registered land, but the letters of attorney shall be acknowledged and filed with the recorder or the assistant recorder of the proper registry district and registered. Any instrument revoking such letter shall be acknowledged and registered in like manner.

Further, pursuant to G.L. c. 183, § 32, which is also recited in Land Court Guideline No. 1, “[t]he law relative to the acknowledgment and recording of deeds shall apply to letters of attorney for the conveyance of real estate.” Deeds, of course, must be properly acknowledged, observing the Massachusetts legal requirements for notarial acts, to be accepted for registration. G.L. c. 183, § 29 (“No deed shall be recorded unless a certificate of its acknowledgment or of the proof of its due execution, made as hereinafter provided, is endorsed upon or annexed to it, and such certificate shall be recorded at length with the deed to which it relates . . .”).

General Laws c. 222,¹ sets forth the legal requirements and formalities for notarial acts in the Commonwealth. Section 15(b), entitled “Notaries Public-Procedures; Forms” provides that “[a] notary public shall take the acknowledgment of the signature or mark of persons acknowledging for themselves or in any representative capacity by using substantially the following form,” which form

¹ Effective January 4, 2017, Governor Baker signed into law Chapter 289 of the Acts of 2016, entitled “An Act Regulating Notaries Public to Protect Consumers and the Validity and Effectiveness of Recorded Instruments,” with an effective date of January 4, 2017. Said Act has been codified as G.L. c. 222, entitled “Justices of the Peace, Notaries Public and Commissioners.”

includes satisfactory evidence of identification, as well as that the person signed it “voluntarily for its stated purpose.” This section includes examples of the form for indicating signatures affixed in various representative capacities, such as under a power of attorney. Neither the statute nor the Registered Land Guidelines enumerate any exception to the use of this form language for acknowledgments taken outside of the Commonwealth when that document is to be registered in the Commonwealth.²

Accordingly, acknowledged documents used in connection with the conveyance of registered land in Massachusetts – whether notarized within the Commonwealth of Massachusetts or another state – must use a form of acknowledgment that conforms substantially with the statutory form language set forth in c. 222 § 15(b), which includes an acknowledgment that the document was signed voluntarily for its stated purpose.

II. Guidance with regard to powers of attorney used in connection with registered land

With respect to power of attorney documents (including limited power of attorney documents) offered for registration, if the power of attorney is being used in connection with a conveyance of registered land in Massachusetts, including a foreclosure deed, the foregoing statutes and the Registered Land Guidelines apply, whether the power of attorney was notarized within the Commonwealth of Massachusetts or in another state. See G.L. c. 183, § 32 & § 29. In such instances, the power of attorney document must use a form of acknowledgment that conforms substantially with the statutory form language set forth in c. 222, § 15(b), which includes satisfactory evidence of identification, as well as an acknowledgment that the document was signed voluntarily for its stated purpose. The requirement for an acknowledgment that the power of attorney document was signed voluntarily applies when the power of attorney is being used in connection with the execution of a document which itself requires an acknowledgment. This contrasts with the situation where a power of attorney presented for registration is used in connection with the registration of a document that does not itself require an acknowledgment, such as an affidavit, including a so-called “Eaton Affidavit.” If the affidavit executed under power of attorney does not require an acknowledgment, the power of attorney does not require a certificate of acknowledgment in the Massachusetts statutory form.

Considering this distinction, staff members of the Registry Districts of the Land Court must be mindful when reviewing documents presented for registration in connection with the conveyance of real estate, such as a foreclosure. An approval by a Land Court Title Examiner of an affidavit

² Limited exceptions to the use of the statutory form of acknowledgment set forth in G.L. c. 222, § 15, are provided in subsections (h)-(i); however, at this time, none of the exceptions apply to documents addressed by this Memorandum. Subsection (h) provides that a notary public is not required to use the forms in this section “if another form of acknowledgment, jurat, signature witnessing or copy certification is: (i) required or allowed by any court rule or court form or by any court rule or directive, including, with respect to documents presented for filing with the land court and its land registration districts, the rules, forms, directives and guidelines of the land court; or (ii) required by any general or special law” A further exception is supplied by subsection (i), which provides that a notary public is not required to use the forms in this section, where “a document contains an alternative form from another state,” but only “if the document is to be filed or recorded in or governed by the laws of the other state.”

executed under a power of attorney, such as a so-called “*Eaton Affidavit*,” does not approve the power of attorney as legally sufficient for all purposes. Registry District staff must independently review the power of attorney to ensure it meets all state law requirements, including the statutory form language requirements set forth in c. 222, § 15(b), if such power of attorney is used in connection with the conveyance of real estate, like a foreclosure deed.