

Memo

To: All Registry Districts
From: Edmund A. Williams, Chief Title Examiner
Date: November 18, 2008
Subject: Power of Attorney

1. Discharges Executed Under Power of Attorney

G. L. c. 183, § 54B which allows any officer, member, partner or agent of a mortgagee to execute an assignment, discharge, subordination, etc. without an accompanying authority document does not include execution of a document under a power of attorney. Any instrument executed under a power of attorney, with the exception of foreclosure documents as set forth below, must be based on a registered or recorded power of attorney. No affidavit need be registered by the attorney in fact. If the document also designates the attorney in fact as agent of the record holder, the document may be accepted without a previously recorded or registered power of attorney.

2. Foreclosures

A. Pursuant to G. L. c. 183, § 54B, a power of attorney registered for the purpose of foreclosing a mortgage, executed by the holder of a mortgage, does not need an authorization document for the person executing same. Documents executed by the attorney in fact do not need an authorization document if they are part of the foreclosure recording sequence, which ends with the foreclosure deed and affidavit.

If, however, a bank is the purchaser at a foreclosure sale, and a new power of attorney is executed for a subsequent deed out, that power of attorney will require the usual authorization documentation.

Any power of attorney or other document registered as part of the foreclosure, without an authorization document, may be used to establish authority in a subsequent transaction if needed.

- B. In conjunction with a foreclosure, an attorney in fact may appoint another person or entity to make entry on its behalf whether or not the original power of attorney contains a substitution clause or the express right to execute additional powers of attorney. The sale, however, must be conducted by the attorney in fact under the first power of attorney unless it specifically authorizes said attorney in fact to execute additional powers of attorney or to substitute another person or entity to conduct the sale.