

Military Power of Attorney (POA)



Q: One of the parties of my closing is using a Power of Attorney (POA) and said it was a 'Military POA.' What does this mean, and how does it differ from a normal POA?

A: A Military POA is a special form of POA that eligible members of the armed services and some others can use. What makes it special is that the form is exempt from all the various state-to-state idiosyncrasies with which a normal POA must comply in order to be used for a real estate transaction.

The Military POA was created and is governed pursuant to Title 10, United States Code, Sections 1044, 1044a and 1044b. The statute is part of the section of Federal laws which sets out the benefits and rights of members of all the services of the Armed Forces. In order for a Military POA to qualify for the special treatment as discussed throughout this piece, it must comply with the following requirements:

- 1) The principal must be either:
 - On active duty in the armed forces;
 - A person eligible to receive legal assistance pursuant to §1044, which generally means an immediate family member of the active duty personnel; or
 - A Civilian and military contractor who is currently stationed outside of the United States.
- 2) The POA must be notarized in accordance with §1044a, which states the notary must be either:
 - A judge advocate;
 - A civilian attorney serving the armed forces as a legal assistant;
 - An adjutant;
 - An assistant adjutant;
 - A personnel adjutant;
 - Any member of the armed services who the particular service says can be a notary; or
 - Additional members of the military and Department of Defense whom the Secretary of the Department of Defense designates can be a notary when outside the United States.

- 3) The POA should have a statement (but not required to in order to be eligible for special treatment) that it is a Military POA executed pursuant to Title 10 U.S.C §1044b. This is typically a boxed paragraph at the top of the first page of the POA.

The special treatment given to the Military POA makes it 'exempt from any requirement of form, substance, formality, or recording that is provided for Powers of Attorney under the laws of a State' ('State' also includes Washington D.C., Puerto Rico and any U.S. possession), and the Military POA shall be 'given the same legal effect as a Power of Attorney prepared and executed in accordance with the laws of the State concerned.'

This means that if your state has certain requirements regarding how the form should look, what language is necessary in order to conduct a real estate transaction, the number of witnesses, reference to a set of statutes or registration before it can be effective, etc.; those state requirements do not apply. That said, the Military POA still needs to grant the power to the agent to act for the specific purpose the Military POA is being used. For example, if the agent is executing a deed on behalf of a seller, there needs to be generalized language stating that the agent can sell or convey the real property of the principal; or if the agent is executing a mortgage and related loan documents, the Military POA should generically state the agent has the authority to borrow money and pledge assets of the principal.

There is no magic power-granting language set out in the statutes, therefore, if you have any questions as to whether a particular Military POA is adequate for your transaction, do not hesitate to contact your Guardian Title representative.

The idea behind the Military POA is to make it easier for our active-duty defenders to conduct their civilian affairs and concentrate on their duties. Guardian Title supports our troops and salutes the sacrifices that they make for our country. We are more than happy and willing to assist them and their families in any way that we can.

Please contact your Guardian Title representative with any questions regarding this information or any other title related topics.

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