



**NEBRASKA TITLE COMPANY**  
*SERVICE BEYOND EXPECTATION*

# **TRUSTS, POWERS OF ATTORNEY & TITLE COMMITMENTS**



**PRESENTED BY:**

**JENNIFER STRAND, ESQ.**  
President



Offices in Omaha, Lincoln, Papillion, Plattsmouth, Auburn, Beatrice, Crete, Fairbury, David City, Grand Island, Kearney, Nebraska City, & Scottsbluff



Over 115 employees to handle transactions across the State of Nebraska and also in Iowa. As well as Sister companies in KS, OK, TX, MN, WI, & MO

# ABOUT US



Residential and Commercial Title and Escrow Departments



Construction disbursement services and leading provider of 1031 exchange services



Records Research Division for UCC lien searches, SOS filings, and service of process acceptance



# POWER OF ATTORNEY



THE PURPOSE OF A POWER OF ATTORNEY IS TO ALLOW A PERSON (THE “PRINCIPAL”) TO APPOINT SOMEONE (“AGENT” OR “ATTORNEY-IN-FACT”) TO TAKE VARIOUS LEGAL ACTIONS ON BEHALF OF THE PRINCIPAL.

# TYPES OF POAs

## GENERAL AUTHORITY

- Not limited as to time or for a specific task

## SPECIFIC AUTHORITY

- Permits the Agent to conduct only the transaction set forth in the POA



# COMMON ISSUES FOR POAs

## AUTHORITY FOR REAL ESTATE TRANSACTIONS

Specific authority for the current transaction or general authority for all real estate transactions is acceptable.

- If the POA was executed after January 1, 2013, it is sufficient if it states that the attorney-in-fact has all of the powers of the principal or by a general reference to “real property power”.
- If the POA was executed before 2013 it must specifically grant the attorney-in-fact the power to sell and convey real property.





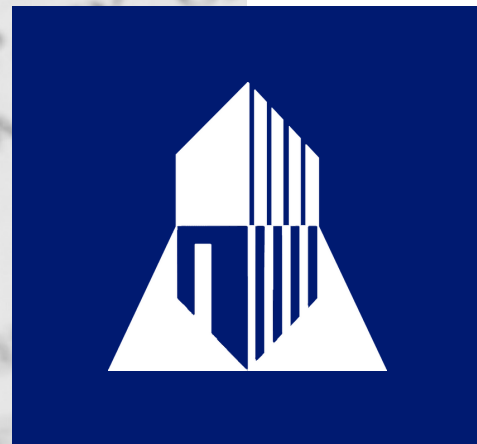


# COMMON ISSUES FOR POAs

UNDERWRITING GUIDELINES  
GENERALLY PROVIDE THAT A POA  
SHOULD NOT BE MORE THAN 10  
YEARS OLD.

However, Nebraska law specifically prohibits  
rejection of a POA based solely on the date of  
execution.

OUT OF STATE POAs ARE  
INTERPRETED UNDER THE LAW OF  
THE STATE WHERE IT WAS EXECUTED.



# COMMON ISSUES FOR POAs

## AGENT'S CERTIFICATION

Under Nebraska law “A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation . . . an agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney.”

Neb. Rev. Stat. § 30-4019(4)(a)





**AGENT'S CERTIFICATION AS TO THE VALIDITY OF  
POWER OF ATTORNEY AND AGENT'S AUTHORITY**

The undersigned certifies under penalty of perjury that \_\_\_\_\_, granted me authority as an Agent or Successor Agent in a Power of Attorney dated \_\_\_\_\_.

The undersigned further certifies that to my knowledge:

- (1) The Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated.
- (2) If the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred.
- (3) If I was named as a successor agent, the prior agent is no longer able or willing to serve.
- (4) The attached copy of the Power of Attorney by which I was appointed Agent is a true and correct copy of the original.
- (5) The authority as an Agent or Successor Agent in the Power of Attorney referenced herein includes the following:  
The power to acquire or sell property, for cash or on credit, at public or private sale.  
☐ Yes ☐ No (check one)  
The power to borrow money, with or without security, and mortgage or pledge trust property.  
☐ Yes ☐ No (check one)  
Other relevant statements, if any, are as follows: \_\_\_\_\_
- (6) \_\_\_\_\_.

pertaining to the following real estate:

The West 70 feet of Lots Eleven (11) and Twelve (12), Block Twenty-Eight (28), Normal, Lincoln, Lancaster County, Nebraska

The undersigned makes this Affidavit to induce Nebraska Title Company to issue a Title Insurance Commitment and Policy of Title Insurance. The issuance of such Commitment and/or Policy is based in part upon the promises and representations made by the Affiant. Affiant will be responsible for and agrees to hold Nebraska Title Company, its underwriters, and all affiliates and assigns harmless for all expenses, losses, attorney fees, and court costs incurred by it for any loss sustained due to its reliance upon the representations made in this Affidavit.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

STATE OF Nebraska  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

File No. 6110595

Please return recorded documents to:  
Nebraska Title Company  
5601 South 59th Street, Suite C  
Lincoln, NE 68516



# COMMON ISSUES FOR POAs

TITLE COMPANY MUST SEE THE ORIGINAL POA.

A copy made from the original may be attached to an Agent's Certification and recorded but we must see the original.

A POA is no longer effective after the Principal has died.



# COMMON ISSUES FOR POAs



## DURABILITY

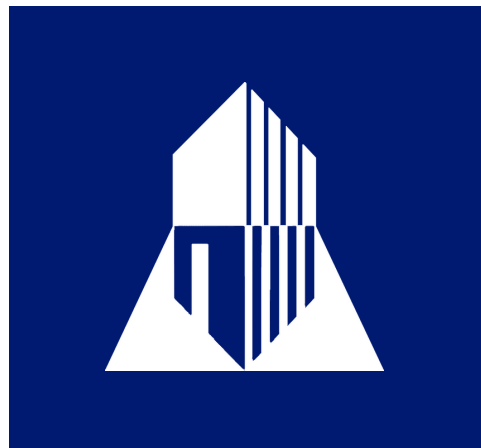
- POAs executed after January 1, 2013 are durable unless POA specifically provides that it is terminated by the incapacity of the Principal. A POA is effective upon execution unless it provides that it becomes effective upon a contingency, such as incapacity of the principal.
- Prior to 2013: POA must specifically contain language that it shall not be affected by subsequent disability or incapacity of the principal or that the POA shall become effective upon the disability or incapacity of the principal.



# COMMON ISSUES FOR POAs

## CONFLICTS OF INTEREST

- A transaction where the attorney-in-fact, his/her spouse or children benefit from the transaction unless specifically authorized by the POA.
- Same if buyer is an entity where agent has an interest in the transaction.



# POAs FOR TRUSTEES



UNDER THE NEBRASKA TITLE STANDARDS THERE ARE TWO SITUATIONS WHERE WE CAN ACCEPT A POA FOR A TRUSTEE OR OTHER FIDUCIARY

- Where there is statutory exception that allow certain delegations of power; or
- Where the Trust instrument specifically permits the appointment of an attorney-in-fact.

# POAs FOR FIDUCIARIES

## NEBRASKA STATUTORY EXCEPTIONS:

As to a parent or guardian: Neb. Rev. Stat. §30-2604.

As to conservators: Neb. Rev. Stat. §30-2653(23).

As to personal representatives: Neb. Rev. Stat. §30-2476(21).





# POAs FOR TRUSTEES

POAs FOR TRUSTEES MUST SPECIFICALLY GRANT THE AGENT THE ABILITY TO ACT ON BEHALF OF THE PRINCIPAL AS TRUSTEE, NOT MERELY AS AN INDIVIDUAL.

Trust documents must specifically authorize the Trustee to delegate Trustee duties to an attorney-in-fact.





# INDICIA OF FRAUD

- The agent does not appear to be related to the principal
- All communication has been by email and mail
- The sales price appears to be very low
- Unusual disposition of the sales proceeds (always to the seller, not the agent)
- Pressure to close quickly
- FSBO
- Property was not owner occupied prior to the sale







# TRUSTS

## WHAT IS A TRUST?

A trust is created when a person (settlor) gives property to another person (trustee) to hold for the benefit of a third person (beneficiary).

A TRUST IS A LEGAL WAY TO HOLD AND PROTECT YOUR ASSETS FOR THE FUTURE.

The Trust Agreement sets out who the beneficiaries are, who the trustees are and how the trust will be administered.

# TYPES OF TRUSTS

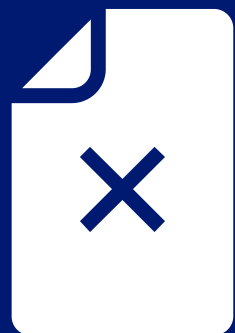


## BLIND TRUST



## REVOCABLE TRUST

A revocable trust may be altered or cancelled by the Settlor.



## IRREVOCABLE TRUST

May not be altered or cancelled by the Settlor.



# TRUSTS



TRUST PROPERTY IS TITLED IN THE NAME OF THE TRUSTEE,  
NOT THE TRUST

- “Ruby Diamond as Trustee of the Ruby Diamond Trust”
- “Ruby Diamond, Trustee” (Blind Trust)

NOT

- "The Ruby Diamond Trust"



## TRUST AGREEMENT

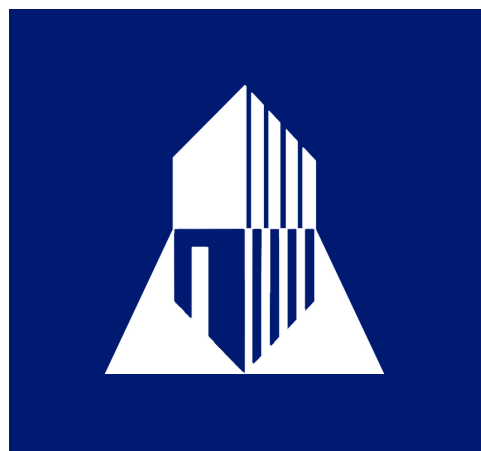
We do not need to review the Trust Agreement



## CERTIFICATION OF TRUST

We may rely on a Certification of Trust (Neb Rev Stat 30-38,102 et seq.) signed by the Trustee(s)

# TRUSTS



## CERTIFICATION OF TRUST

This document is furnished to Nebraska Title Company by the undersigned Trustee pursuant to Sections 30-38,102 and 30-38,105 of the Uniform Trust Code of Nebraska (the "Code"), and concerns the \_\_\_\_\_ (the "Trust").

- (1) The Trust is in existence on the date of this Certification of Trust, and the trust instrument was executed on \_\_\_\_\_.
- (2) The settlor/grantor of the Trust is \_\_\_\_\_.
- The identity and address of the currently acting trustee of the Trust is \_\_\_\_\_
- \_\_\_\_\_.
- (3) The powers of the trustee include all those stated in sections 30-3880 and 30-8881 of the Code, and there is no provision of the Trust diminishing such powers, except:
- \_\_\_\_\_.
- (if none, state "None")
- (4) ☐ The Trust is revocable by \_\_\_\_\_.
- OR
- ☐ The Trust is irrevocable.
- (5) ☐ The undersigned trustee is the sole trustee of the Trust.
- OR
- ☐ The Trust instrument requires \_\_\_\_\_ co-trustees to sign or otherwise authenticate documents in order to exercise powers of the trustee.
- (6) ☐ The Trust's Social Security Number is \_\_\_\_\_.
- OR
- ☐ The Trust's Tax Identification Number is \_\_\_\_\_.
- (7) The state under which the Trust was established is \_\_\_\_\_.
- (8) The form of taking title to the assets of the Trust is \_\_\_\_\_
- \_\_\_\_\_.
- (9) The Trust has not been revoked, modified, or amended in any manner that would cause the representations contained in this Certification of Trust to be incorrect. The signature below is that of the sole trustee.

Dated \_\_\_\_\_, 2021.

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, Trustee

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, Trustee.

\_\_\_\_\_  
Notary Public

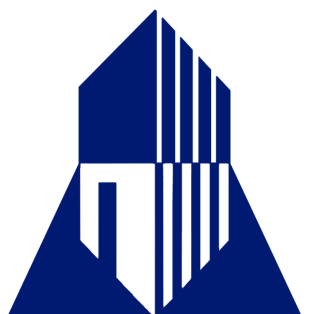


# CONNECT WITH US!

FACEBOOK

LINKEDIN

INSTAGRAM







QUESTIONS?

# THANK YOU!



**JENNIFER STRAND, ESQ.**

President

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