

Title Chat

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Homestead, Part 5,

Power of Attorney Created before Incapacity

Last month's *Chat* discussed what could happen when someone who has to sign the deed of conveyance was incapacitated and had not executed a power of attorney before becoming incapacitated. That *Chat* started out by stating—

Continuing on with our closing that never ends because someone on the seller's side will not sign, let us "chat" about what happens when just before the closing you are told that the titleholder or his or her spouse is incapacitated and is unable to sign the deed.

You ask, "How is the person incapacitated?"

You could be told:

- (a) The person suffered a stroke over the weekend, is in a coma and cannot physically sign the deed, or
- (b) The person suffered a stroke some time ago, has lost the use of the hand that he or she would have used to sign papers and therefore cannot physically sign his or her name to the deed, or
- (c) The person suffers from some sort of mental condition and is unaware of what is happening."

What if that person had signed a power of attorney before becoming incapacitated?

You may find that, if the Power of Attorney had been properly prepared and executed, had not been revoked before the grantor became incapacitated, and that the grantor is still alive and has not been made the subject of a competency proceedings, the person who was granted the power may be able to execute the deed of conveyance on behalf of the grantor of the power.

As an additional point of information, if the person is on active military duty and before becoming incapacitated had executed a properly created power of attorney in accordance with federal law (10 USC Section 1044 a and b), the grantee of the power should be able to sign for the grantor.

Of course the document would have to be reviewed by different parties to the closing including the closing agent and its underwriter and if found satisfactorily, it would have to be recorded. If you are interested in reading about the requirements for the creation of a power of attorney--in Florida you may want to review F.S. § 689.111 regarding conveyance of homestead property by power of attorney, and F.S. § 709.08 regarding Durable Powers of Attorney. In Texas you may want to review Texas Probate Code § 481 to 492.

In our *Chat* next month we will end our discussion on issues in executing conveyances of homestead property with a discussion of how pre-nuptial and ante-nuptial agreements executed before our hypothetical closing may affect the execution of the deed of conveyance.

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