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MEMORANDUM

TO: CLIENTS

FROM: NEWMAN & LAWLER, PLLC

DATE: AUGUST 29, 2017

SUBJECT: DURABLE POWER OF ATTORNEY

The Texas Legislature passed bills relating to durable powers of attorney (POA) which amend the Texas Estates Code. The bills were signed into law by Governor Abbott and become effective on September 1, 2017. **The changes made by the bills impose specific timing requirements for rejecting a durable POA which, if not followed, will result in the durable POA being deemed accepted by the lender for use with a mortgage loan.**

Summary of new POA timing requirements

A lender presented with, and asked to accept a durable POA by the agent named within the POA ***has 10 business days to accept or reject the POA***, unless the time period is extended as follows:

Agent Certification

A lender may request the agent's certification regarding the validity of, and the agent's authority under, the durable POA not later than the 10th business day. Once the lender has received the agent's certification, the lender must either accept or reject the durable POA not later than the 7th business day after receipt of the certification.

English Translation

A durable POA that is written wholly or partly in a language other than English may be extended if not later than the 5th business day after the date the durable POA is presented for acceptance the lender requests an English translation. The durable POA is not considered presented for acceptance until the date the lender receives the translation.

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Opinion of Counsel

The lender being presented with the durable POA may also request an opinion of counsel from the agent regarding any matter of law concerning the durable POA, as long as the lender provides the agent with a written reason for the request. Once the lender has received the opinion of counsel, the lender must accept or reject the durable POA not later than the 7th business day after receipt of the opinion.

Agreement of the Parties

The principal or agent presenting a durable POA for acceptance and the lender may agree to extend the time period provided.

Important items of note:

-A durable POA is considered **accepted** on the first day the lender agrees to act at the agent's direction under the POA or if the person receiving the durable POA **does not reject** the durable POA or take one or more of the above steps within the 10-business day timeframe.

-The new Section 751.206 of the Estates Code lists specific grounds under which a durable POA may be rejected. If one of those statutory grounds does not exist, then the lender **may not reject the durable POA. Any rejection must be provided by the lender in writing**, before the date the lender is required to accept or reject the durable POA, and must state the specific grounds for rejection.

-In computing business days for accepting or rejecting a durable POA, exclude the first day and include the last day, and if the last day is a Saturday, Sunday, or legal holiday, extend the period to include the next day that is not a Saturday, Sunday, or legal holiday.

This communication is merely a summary of certain important new requirements effective September 1, 2017, but is not a comprehensive analysis of all the provisions.

WE ENCOURAGE ALL OF OUR CLIENTS TO READ AND BECOME FAMILIAR WITH EACH OF THESE IMPORTANT NEW LAWS TO DETERMINE COMPLIANCE REQUIREMENTS CONTAINED THEREIN WHICH MAY BE APPLICABLE TO THEM. PLEASE CONTACT US IF YOU NEED ANY ASSISTANCE OR FOR FURTHER INFORMATION.

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