

# Insights

## February Hoosier Banker: Compliance Connection with Partner Lori Jean

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***Question 1: We have customers who winter in Florida and Arizona. We also have customers who live across the state line in Illinois and Michigan. Can we honor a power of attorney (POA) that was signed in another state, or does the POA paperwork have to be signed in Indiana?***

Answer: Yes, you can honor an out of-state POA if it meets the requirements to be a valid POA in the state where it was created or under Indiana law. Indiana Code §30-5-3-2(4) provides: "A power of attorney is valid if the power of attorney was valid at the time the power of attorney was executed under any of the following:

- (1) This article.
- (2) IC 30-2-11 (repealed).
- (3) Common law.
- (4) The law of another state or foreign country.
- (5) The requirements for a military power of attorney under 10 U.S.C. 1044b."

Each state's POA statute specifies the requirements for a valid POA.<sup>1</sup> Some states, like Illinois, not only specify the requirements, but also provide that a POA is valid, if it is in the statutorily prescribed form or is substantially similar to that form.<sup>2</sup> Thus if the POA meets the other state's requirements (including through use of a prescribed form) or meets Indiana's requirements, it is valid in Indiana. Your next step is to review the POA to verify that it grants the necessary powers to the agent (also called the attorney in fact) to permit the agent to conduct banking transaction, sign for a loan, grant a mortgage, or do whatever else the agent is seeking to do.<sup>3</sup> The meaning and effect of the POA are determined by the law of the jurisdiction indicated in the POA. If no jurisdiction is specified, then you look to the law of the jurisdiction in which the POA was executed.<sup>4</sup> If you rely on a POA — either in-state or out-of-state — in good faith, you are immune from liability.<sup>5</sup> If you are presented with a copy of a POA or have concerns about it (e.g., "Is it still valid because of how long ago it was executed?" "Is the principal still alive?"), you can request an affidavit from the agent addressing such issues.<sup>6</sup> Your reliance on this affidavit will protect you from liability for having relied on the POA.<sup>7</sup>

***Question 2: Does the out-of-state POA have to be filed in Indiana?***

Answer: The same recording rules apply to out-of-state POAs as apply to Indiana POAs. In general, an agent may act under a POA without recording it with the county recorder.<sup>8</sup> The exception is that, if the document itself must

be recorded (e.g., deeds, mortgages, liens), then the POA must also be recorded before the agent can sign the document on behalf of the principal.<sup>9</sup>

<sup>1</sup> See, e.g., A.R.S. § 14-5501 (2014); Fla. Stat. § 709.2106 (2013); 755 Ill. Comp. Stat. 45/3-3 (2015); Ind. Code § 30-5-4-1 (2008); and Mich. Comp. Laws § 700.5501 (2012). <sup>2</sup> See 755 Ill. Comp. Stat. 45/3-3 (2015). <sup>3</sup> See Ind. Code § 30-5-5-1 (2002). <sup>4</sup> See Ind. Code § 30-5-3-6 (2009). <sup>5</sup> See Ind. Code § 30-5-8-7(a) (2005). <sup>6</sup> See Ind. Code § 30-5-8-7(b) (2005). <sup>7</sup> See Ind. Code § 30-5-8-7(c) (2005). <sup>8</sup> See Ind. Code § 30-5-3-3(a) (1991). <sup>9</sup> See Ind. Code § 30-5-3-3(b) (1991).

*This information is provided for general education purposes and is not intended to be legal advice. Please consult legal counsel for specific guidance as to how this information applies to your institution's circumstances or situation.*