

15. Deeds: Execution and Acknowledgment of Deed under Power of Attorney

(May 1, 2000)

Although, as indicated below, there is some leeway in the way a deed in such an instance can be signed, there is little flexibility as to how the granting clause should be drafted.

When a sealed instrument is executed by an agent or attorney, for the principal, the strict technical rule of the Common Law, which has never been relaxed in England or in this Commonwealth, requires that it be executed in the name of the principal in order to make it his deed" *Abbey v. Chase*, 6 Cush. 54. As stated in Crocker's Notes on Common Forms, Little Brown & Company (Seventh Edition, 1955), § 351, where A.B. is the principal, a deed beginning "I, C.D.," or "I, C.D. as attorney for A.B." is an improper form as to the granting clause, and will be ineffective as the deed of the principal. The deed should be drafted by reciting in the granting clause the principal's name only, as though there was no power of attorney.

As far as the execution of the instrument, the signature should be as noted below. We'll assume that Mary Doe is the principal and that John Doe is her attorney in fact under a power of attorney:

/s/ Mary Doe
by John Doe her Attorney in Fact
under Power of Attorney,
recorded with (Registry of Deeds)
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In this instance John will actually sign Mary's name. Although the above form is the preferred one, the signature "John Doe for Mary Doe" would seem to be satisfactory. See *Mussey v. Scott*, 7 Cush. 215.

The acknowledgment, like the deed, should be that of the principal (albeit through the act of the agent), as follows:

Then personally appeared the aforementioned John Doe and
acknowledged the foregoing instrument to be the free act and deed
of Mary Doe.