

POWERS OF ATTORNEY

Completing and Vetting



April 18, 2018

SHAYNE
LAW GROUP

What is a POA and why do you need it?

- A power of attorney is a document which authorizes you to act on some else's behalf.
- It permits others to rely on the fact that you were authorized to bind your grantor.
- As a Broker you need one, *most of the time*, to indicate to Customs that you have the authority to Transact Customs Business on the importer's behalf.
- Customs needs that POA to be valid so that if there is a problem they can go after the importer.
- A surety company needs that POA to be valid so they can try to recover any monies they pay out on behalf of the importer.

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2

When is a POA Required (or NOT)?

REQUIRED	NOT Required
Filing a Formal Entry	Filing an Informal Entry *
Drawback Claim	7512 In Transit Entry
	321 Manifest Clearance
	FTZ Transfer
	Carnet

❖ Even if a POA is not required, you still need authority to act. The authority can be in letter or email format.

❖ You still have an obligation to maintain proof of authority.

* Filing an informal entry (for goods valued at less than \$2,500. CBP INFO Center 11/17/2017).

What is Required on a POA?

- **LEGAL Name of Importer**
- Address of Importer
- Type of Business Entity
- **State of Incorporation**
- **EIN/TIN/SSN/Importer Number**
- Name of Person Signing the POA
- Title of Signer establishing authority
- Signature
- Date of Signature
- **Legible Information**
- **Required essential terms**

Essential POA Terms

- ACKNOWLEDGMENT OF TERMS & CONDITIONS
- AUTHORITY TO VET
- POA AS A SUBSTITUTE W-9
- DESIGNATION OF EXPORT FORWARDING AGENT
- AUTHORITY TO APPOINT BROKERS
- WAIVER OF DIRECT BILLING
- AUTHORITY TO RELEASE INFORMATION
- LOST AND REPLACED POWERS OF ATTORNEY
- FOREIGN IMP - AGENT FOR SERVICE OF PROCESS

Missing Terms on Your POA

1. Send the Importer notice of the change
 - Provide the new terms
 - Have them sign it as if it were a new POA
2. Get a New POA
3. Live within the limitations

Required Information on POA

- LEGAL Name of Importer
- Address of Importer
- Type of Business Entity
- State of Incorporation
- EIN/TIN/SSN/Importer Number

Know All Ye By These Presents: That

[PDF Fillable Form](#)

IMPORTER	Full Legal Name	MODEL IMPORTER, INC.			, Grantor
	Trade Name (if any)	Trade Name			
	Having a Principal Place of Business or Residing at	1313 Mockingbird Lane Suite 1			
	City	State	Postal Code	Country	
	Doing Business As a/an				
	Under the Laws of the State of				
	Having An EIN, TIN, SSN, or Importer #				

Required Information on POA

- Name of Person Signing the POA
- Title establishing that they have authority
- Signature
- Date POA is signed

IN FURTHERANCE THEREOF
I/WE HAVE SET OUR HAND

MODEL IMPORTER, INC.

(Full Name of Grantor)

x

(Signature)

(Date)

(Printed Name of SIGNER)

(Title or Capacity)

Our Terms and Conditions of Service
Are available online at
www.xyz.com/terms

(Signer Email Address)

(Signer Phone)

(Company Website URL)

(Company Phone)

- Best Practices
 - Phone Numbers
 - Email Address
 - Link to Terms and Conditions

Bill's Good Practice Suggestions Additional POA Information

Older POAs collect only the minimum required information. While sufficient for legal purposes, is often insufficient for business and verification purposes in the 21st century.

Newer POAs collect additional basic information which the signer will know off the top of their head.

- **Company's Phone Number** (To compare to White Pages)
- **Company's Website address** (To get product info and confirm email domain)
- **Signer's Email address** (Basic contact and see if consistent with Company domain)
- **Signer's Cell Phone number** (Alternate Contact and 2 stage authentication for online systems if you want to send them online import questionnaires.)

If they don't provide the extra information, you are no worse off.

How Does Customs Validate POAs?

- **Failure to Exercise Proper Supervision and Control:**

up to \$30,000.

Plus

- **Failure to Validate, Maintain Records of Validation, and/or Provide evidence of verification:**

up to \$10,000 per violation.

Customs does NOT tell you how to Vet a POA

On March 8, 2018 Customs posted

“...SOME ways the broker can validate a Power of Attorney”

To the greatest extent possible, have POAs completed in person so the grantor's personal identification (**driver's license, passport, etc.**) can be reviewed.

Check applicable Web sites to verify the POA grantor's business and registration with State authorities.

If the principal uses a trade or fictitious name in doing business, confirm that the name appears on the POA.

Verify that the importer's name, importer number and **Employer Identification Number** (also known as the Federal Tax Identification Number) **on the POA match what is in ACE.**

Check whether the POA grantor is named as a sanctioned or restricted person or entity by the U.S. Government.

Customs Review (CURRENT)

- Customs will specify the POAs they want to review.
- What procedures you have for vetting your POAs.
- Whether the POAs are complete.
- Whether the POAs grant you authorization for what you are doing.

Customs Review (UPCOMING)

- Produce the POA
- **Produce evidence of your verification method**
19 USC 1641(i)(2)(A) & (B)
- **Produce evidence of your completed verification**
19 USC 1641(i)(2)(C)
- **Penalty of up to \$10,000 PER POA for not having vetted the POA and maintaining and producing the evidence**
19 USC 1641(i)(3)
- **Penalty for acting contrary to authority in POA – up to \$30,000**
19 USC 1641(b)(4), 19 CFR 111.28, 19 CFR 111.91
- **Penalty for Failure to Exercise Responsible Supervision and Control – up to \$30,000**
19 USC 1641(b)(4), 19 CFR 111.28, 19 CFR 111.91

Create your own verification rules

- Customs has not, at this time, mandated any specific method of verification.
- The good news is – you get to create your own.
- The bad news is – you have to design your own system.
- Consistency in your practice is essential.
- A check list helps to maintain consistency.
- Use of an electronic system helps to both enforce consistency as well as maintain proof of verification.
- **Unless you follow your own rules and do it consistently, you are at risk for both Customs penalties and civil suits.**

Bill's Suggested **Verification Procedures**

1. Verification Procedures should be in writing.
2. The verification rules should include:
 - A. How you intend to verify the POA
 - B. How you intend to verify the Importer
 - C. How you intend to verify the authority of the Signer
 - D. What documentation you require
 - E. Under what circumstances you will reject the POA.
 - F. Where and how you are going to maintain proof of verification.
3. Create a New Client Check List.
4. Employees responsible for obtaining POAs should acknowledge receipt of the Verification Procedures.

Failure to follow your own **Verification Procedures**

- If you do not follow your own rules, why should Customs have any faith in your following their rules?
- Invariably, it will be the one POA or Importer that you handle outside of your own rules that will result in a problem.
- You can create consistency through use of a check list or with use of software.
- Either way, what is most important is consistency in practice.

Bill's List of Common POA Problems

- No POA
- Missing POA Terms
- Incomplete POA
- Information on POA not legible
- Signer is not an officer
- POA Not verified
- Foreign POA
- **Forwarder Routed POA**

Bill's Suggested Verification Steps

Required **Optional** **Recommended**

- Is POA Complete?
- Is the information legible?
- Is it signed by an officer?
- Do you have a Photo ID for the POA Signer?**
- Is the corporation active? (Check State Records)
- Is the EIN Correct? (Check ACE Bond Query)
- Check Phone book to confirm phone number and address
- Visit Customer Virtually through Google
- Consolidated Record Search
- Witness or Notary Option
- Call the POA Signer

Incomplete POA

- Filling in missing information pursuant to a written correspondence from the person signing the POA is generally acceptable.

Manufactures Hanover Trust Co. v. Eisenstadt 315 N.Y.S. 2nd (1970)

- Orally conveyed information or instructions should never be relied upon.
- Instructions, even if in writing, received from third parties, such as Forwarders, should never be relied upon.
- Otherwise send it back to Importer and have them complete it.

Legibility

- Has to be readable.
- Consider using PDF form with Fields so they can be filled in electronically rather than by hand.

Who can Sign?

When a Power of Attorney is required for a resident corporation, it shall be executed by A PERSON DULY AUTHORIZED TO DO SO.

§ 141.38 Resident corporations

Customs recognizes the following corporate titles as being authorized: **President, Vice President, Treasurer, or Secretary.**

§ 141.38 Resident corporations

Unfortunately, today, we come across a much larger variety of titles, not all of which are clearly authorized to sign a POA.

Generally Accepted Titles

Corp	LLC	PS	Limited PS	Assoc	Sole Prop	Indiv
President (CEO) (COO)	Managing Member	Partner	General Partner	President	President	
VP	Member	Managing Partner	Managing Partner	VP	Owner	
Secretary	President		Partner	Secretary		
Treasurer (CFO)	Vice President		President	Treasurer		
Director	Director			Director		
Manager				Manager		
Owner	Owner			Owner		

Alternate Proof of Authority to Sign

For Non-Resident Corporations we always evidence authority to sign a POA through the **Certificate of Authority**.

NON-RESIDENT BUSINESSES	I, (person other than SIGNER) _____, am the _____ (title) of the Grantor, certify that:
	A. Said Power of Attorney now in my possession or custody was duly signed and attested to, and on behalf of, said corporation by authority of its governing body as the same appears in a resolution of the Board of Directors.
	B. The resolution is in accordance with the articles of incorporation and bylaws of said corporation and was executed in accordance with the laws of the State and County of Incorporation.
	C. The resolution was passed at a regular meeting held on the _____ day of _____ 20____.
D. A copy of the Articles of Incorporation or Organization and the referenced Resolution are attached hereto.	
	IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said corporation,
	At _____ (City) _____ (State) _____ (Country)
	On this _____ day of _____ 20____
(Corporate Seal)	Signature _____

For a Resident Corporation – when it is not clear that the person has the authority to bind the importer, you will need something beyond their title to establish authority.

Proof can be provided:

- In the form of the same Certificate of Authority used for a Non-Resident Corporation or a
- Corporate Resolution.

FYI –Customs Requires proof of authorization in the form of a Corporate Resolution from ALL officers signing Statute of Limitation Waivers.

Photo ID

- It is rare that you can have the POA signed in front of you, therefore obtaining a copy of signer’s ID is the next best thing. (Driver’s License or Passport)
- It will NOT confirm that the person has the authority to act on behalf of the client (title), but it will at least confirm that the signature is theirs.
- **Best way to obtain a copy of the Photo ID is to take a picture of it with a cell phone.** Better quality and no delays or excuses about not having a scanner.
- If the Signer will not give you a photo ID, maybe additional proof of their ID or authority should be obtained.
- THIS IS WHERE THE WITNESS COMES IN HANDY.
- While the Boss may not want to provide their ID, they will likely have their assistant or secretary act as a Witness.
- If they won’t do either then, perhaps, you need a Secretary’s Certification.
- **Obtaining proof of Identity is one of those areas where Forwarders can be UNCOOPERATIVE.**



State Corporate Record Search

- Check the State Corporate Records and save a printout. Different states provide different information. NJ, for example, doesn't even tell you if the company is Active.
- The same name can be used to incorporate in different states. Check the state of incorporation and how recently it was incorporated.
- If the business is suspended, contact the importer – reactivation is normally fast and easy.

State of Incorporation

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

IMPORTER ID INPUT RECORD 19 CFR 24.5

1. TYPE OF ACTION (Mark all applicable)

- | | |
|--|---|
| <input type="checkbox"/> Notification of importer's number | <input type="checkbox"/> Change of address* |
| <input type="checkbox"/> Change of name* | <input type="checkbox"/> Check here if you also want your address updated in the Fines, Penalties, and Forfeitures Office |

*NOTE--If a continuous bond is on file, a rider must accompany this change document.

2. IMPORTER NUMBER (Fill in one format):--

2A. I.R.S. Number	2B. Social Security Number
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2C. Check here if requesting a CBP-assigned number and indicate reason(s). (Check all that apply.) I have no IRS No. I have no Social Security No. I have not applied for either number. I am not a U.S. resident

2D. CBP-Assigned Number

3. Importer Name

4. DIV/AKA/DBA <input type="checkbox"/> DIV <input type="checkbox"/> AKA <input type="checkbox"/> DBA	5. DIV/AKA/DBA Name
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6. Type

- Corporation Partnership Sole Proprietorship Individual U.S. Government State/Local Governments Foreign Governments

**In the U.S., you can have over 50 corporations with exactly the same name.
Customs ACE record does not track the State of Incorporation.**

ACE Query

- Compare Tax ID # with that on POA.
- Compare Name with that on the POA.
- A change in address requires further inquiry, but is not fatal.
- IF 5106 record has been revoked, it requires further inquiry but is not fatal.

ACE 5106 data is NOT IRS verified.

If you want to confirm that the Tax-ID number actually belongs to the Importer :

1. Get a copy of the W-4 EIN assignment or some other IRS document with the EIN.
2. Use an Accounts Payable Verification such as TINCHECK.com
3. Use software that includes this verification such as Trade-ID.

Phone Book Search

Check public phone listing through websites such as WHITEPAGES.com to see if:

- Corporate phone number matches what is on the POA and
- Address matches what is on POA
- Address matches what is in ACE.
- ❖ The fact that the addresses do not match is NOT fatal, but may require an explanation

Visit the Client - Virtually

- Just as it is unlikely that the POA will be signed in front of you, it is unlikely that you will have visited the client's home or office.
- Confirming that their address is valid and is consistent with the type of business is important.
- Sureties have been experiencing problems with entities that are importing items subject to AD/CVD but who have addresses that are inconsistent with their business, e.g., steel being "delivered" to a personal residence.
- "GOOGLE" MAPS is an effective way of virtually visiting the importer especially if you use street view.



Consolidated Export List

The presence of a company or a person on the Consolidated Export list does NOT impact the validity of their POA.

It is, however goods practice, because, especially in this day and age of changing Trade restrictions, it can point to practical, if not legal dangers, **like the ability to get paid.**

export.gov

Helping U.S. Companies Export

Search the Consolidated Screening List

Search the screening lists at one time by filling in the search boxes below.

Keyword

Search for words in the name, alternative names (aliases), title of the entity, and additional remarks regarding the entity.

Name

Search for an entity's name or one of its alternative names.

Fuzzy Name

When set to off, the spelling of the Name you search for must be correct to get results. When set to on, the spelling for the Name you search for may be slightly off. Check the score for each result to determine how close a match it is to the entity's name or its alternative names. A score of 100 is an exact match. Results are returned with the highest scores first.

www.export.gov/csl-search

To Witness or Not

- **Witnesses are not required but are so easy to get, so why not have someone else verify who the signer is?**
- A witness is merely a person, other than the signer, who is willing to affirm that the signer is who they say they are. **IT IS NOT THE SAME AS A NOTARY. It can be anyone.**
- *A Notary is a person specifically licensed to be an independent Witness.*
- *Domestically, notarization is easy to obtain. Internationally, Notaries are more difficult to obtain. Today, you can have signatures notarized both domestically and internationally online 24/7 by using services such as NOTARYCAM.com.*
- **If you are uncomfortable with the information you get, request the POA be notarized.**

Witness

ALL IMPORTERS: Domestic and Foreign	City _____ State _____ Country _____	AFFIRMED AND SUBSCRIBED Before Me this _____ day of _____ 20 _____
		Personally Appeared _____ (name) Residing at _____ (Address on ID)
	WITNESS I, _____ (Print Name) <small>state, under penalty of perjury, that I witnessed the person identified by the Government Identification detailed herein affix their signature to this Power of Attorney</small>	City _____ State _____ Zip _____ Country _____ Document Type _____ Issued by _____ Document Number _____ Date Issued _____
	_____ (Signature) _____ (Residing at Street Address) _____ (City, State, Country)	Identified by (Government Issued Photo ID, i.e. Driver's License/Passport) Who Certifies by initialing that: _____ A. I am the individual who executed the foregoing instrument. _____ B. I hold the identified position (Title or Capacity) with Grantor. _____ C. I have full authority to execute this instrument on behalf of the Grantor. _____ D. I have attached true and accurate copies of each of the following documents: Doc 1 Doc 2 Doc 3

Vetting Foreign POA

- Obtain a Corporate Certification of Authority.
- As with a domestic business, try to obtain a Government Issued Photo ID such as a the signer's passport. Providing your passport is not uncommon in other countries.
- Confirm their email address.
- If the importer has a website confirm that the email address is the same as the website domain.
- Obtaining a copy of the business registration or charter, *even if in a foreign language, is a good practice.* Ask the client for it. If they can't provide it, they are often available through a variety of public and private website.
- If you are uncomfortable with any information, request that the POA be notarized.

Outport Broker POA

- Copy of the Original POA from the Broker
- POA from Importer signed by Broker as Atty-in-fact
- Check Underlying POA to make sure that it has the provision which allows them to issue you the new POA.
- Ask Broker – in email – to confirm that they have vetted the Client.
- ❖ **IF THEY DO NOT confirm** – then you should vet the client yourself.

Forwarder Routed POA

Always a Problem

- × Highest risk of Identity Theft.
- × Highest risk of incomplete POA.
- × Highest risk of POA being provided at the last minute giving little time to properly vet.
- × Least cooperation with respect to obtaining any verification help.
- ❖ Until the regulations universally apply penalties to ALL brokers who fail to properly verify a POA, there will always be a forwarder who does not want to do anything beyond forwarding a document, BECAUSE THE OTHER BROKER DOES NOT REQUIRE IT.

POA and Terms and Conditions As One

Required – NO
BUT offers best protection

Traditionally, the POA was a stand alone document.

- × Clients could claim that they never received the Terms.
- × Terms on the back of invoices only protected you after several transactions.
- ✓ Sending POA and Terms and Conditions at the same time provides best protection.
- ✓ Sending the POA and Terms and Conditions as a single document provides the best evidence of receipt.
- ✓ Importer does NOT need to return the terms and conditions ONLY the POA.

Terms and Conditions

Accepting your Terms and Conditions is for your own protection.

- POA should contain the phrase
Grantor acknowledges receipt of Grantee's Terms and Conditions of Service of governing all transactions between the Parties.
- If you do not provide a copy of your Terms and Conditions with your POA include the following text:
Our Terms and Conditions are available online at (link).
- Email and all correspondence should contain the phrase:
Your work undertaken subject to our terms and conditions which are available upon written request or on line at (link).

Questions

- If your POA is missing essential terms and would like a new one.
- If you want a POA that can be filled in electronically.
- If you want help in creating a verification check list.
- If you want to try electronic verification free for 6 months.
- If you have other questions.

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