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**Power of Attorney Requirements  
Operations Policy**

**Effective Date: November 10, 2017**

**Last Revised: August 15, 2019**

**Impacted Channels: Operations**

**Impacted Roles: Loan Officer, Processor, Underwriter, Closer**

**1.1 Purpose**

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The purpose is to outline EMM’s Policy regarding Power of Attorney Requirements. EMM follows the GSE requirements. Below outlines what FHA, VA, Fannie and Freddie require.

**1.2 Use of Power of Attorney**

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The use of a Power of Attorney (POA) is typically restricted to:

- Incapacitated borrowers who are unable to sign documents either because lacking the physical ability, legally incapable or is disabled.
- Military Personnel deployed or stationed elsewhere and unable to sign documents or attend closing.
- “Hardship” circumstances involving the borrower’s unavoidable inability to attend closing.
- Jointly owned second homes or investment properties where the borrowers reside in different states, cannot attend closing together, and the documents must be signed and dated the same day.

**1.3 FHA Financing**

Requirements for Initial Loan Application:

HUD has requirements for using a POA with an FHA loan. The initial mortgage loan application may not be executed by using a POA, except in circumstances as indicated in the table below and detailed in HUD handbook.

Situation	Policy Description
Military Personnel	<ul style="list-style-type: none"> <li>○ POA may be used for military personnel on overseas duty or on an unaccompanied tour.</li> <li>○ Lender should obtain the absent borrower’s signature on the application by mail or via fax.</li> </ul>
Incapacitated Borrowers	<ul style="list-style-type: none"> <li>○ POA may be used for incapacitated borrowers who are unable to sign the mortgage application.</li> <li>○ Lender must provide evidence the signer has authority to purchase the property and to obligate the borrower.</li> <li>○ Acceptable evidence includes a durable POA specifically designed to survive incapacity and avoid the need for court proceedings.</li> <li>○ The incapacitated individual must occupy the property to be insured, except on eligible investment properties, as detailed in Hud guide.</li> </ul>

Requirements for Closing Documents:

As discussed in HUD guides, a POA may be used for closing documents, in addition to:

- Page four of the Addendum to the Uniform Residential Loan Application (URLA), and
- Final URLA, if signed at closing.

Lenders must submit copies of the initial URLA and Addendum, if all borrowers did not sign the final documents.

Ultimately, it is our responsibility to ensure clear title is conveyed in the event of foreclosure. For additional information please refer to the HUD guide.

**1.4 VA Financing**

As indicated in the VA Handbook, VA will allow a veteran to use an attorney-in-fact to execute any documents necessary to obtain a VA guaranteed loan. The veteran must execute a valid and legally adequate general or specific power of attorney, and the veteran’s attorney-in-fact may use this POA to:

- Apply for a Certificate of Eligibility, and
- Initiate processing of a loan on behalf of the veteran.

VA requires the veteran’s written consent to the specifics of the transaction. This can be satisfied by either:

- The veteran’s signature on both the sales contract and the URLA, as long as the veteran’s intention to obtain a VA loan on the particular property is expressed elsewhere in those documents, or
- A specific POA or other document(s) signed by the veteran, which encompasses the following elements:

Element	Description
Entitlement	A clear intention to use all or a specified amount of entitlement
Purpose	A clear intention to obtain a loan for purchase, construction, repair, alteration, improvement, or refinancing.
Property Identification	Identification of the specific property
Price and Terms	The sales price, if applicable, and other relevant terms of the transaction.
Occupancy	The veteran’s intention to use the property as a home to be occupied by the veteran (or other applicable VA occupancy requirement)

In addition, at the time of loan closing, the Lender must:

- Verify the veteran is alive, and, if on active military duty is not missing in action, and
- Make the following certification:

“I hereby certify that written evidence in the form of correspondence from the veteran or, if on active military duty, statement of his or her commanding officer or designee, indicating that the veteran was alive and, if the veteran is on active military duty, not missing in action status on \_\_\_\_\_ (date), was examined by the undersigned and that said date is subsequent to the date the note and security instruments were executed on the veteran’s behalf by the attorney-in-fact.”

### 1.5 USDA Financing

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A POA is eligible with any USDA/Rural Housing transaction and must follow the same requirements as detailed within the FHA product section.

### 1.6 Fannie Mae Financing

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As described in the Fannie Mae Selling Guide, an Attorney-in-fact or Agent can sign the Security instrument and/or Note and other applicable closing documents on the borrower’s (or other title-holder’s) behalf when certain conditions are met.

Except as provided below, an Attorney-in-fact or Agent under a Power of Attorney may sign the applicable documents as long as the below conditions are met:

- The original POA is required in jurisdictions where a POA used for a signature on a security instrument must be recorded with the security instrument. The title company must ensure recordation has not been affected.
- The name(s) on the POA must match the name(s) of the person on the affected loan document, and
- The POA must be dated such that it was valid at the time the affected loan document was executed.
- The POA must be notarized and, unless otherwise required by applicable law, must reference the address of the subject property.

### **Exceptions to Fannie Mae POA Requirements:**

The Initial 1003 loan application may not be executed pursuant to a POA unless:

- The borrower or other affected person is on military service with the United States Armed forces serving outside the United States or deployed aboard a United States vessel, as long as the POA:
  - Expressly states an intention to secure a loan on a specific property, or
  - Complies with the requirements under the VA Lenders Handbook relating to powers of attorney for VA-insured mortgage loans, or
- The borrower is disabled or incompetent and the use of a durable POA, executed in accordance with applicable law, is authorized.

### **Fannie Mae Allowable Attorneys-in-Fact or Agents Under a POA:**

Except as other required by applicable law, or unless they are the borrower's relative\*, none of the following persons connected to the transaction shall sign the security instrument or note as the Attorney-in-fact or Agent under a POA:

- The Lender
- Any affiliate of the Lender
- Any employee of the Lender or any other affiliate of the Lender
- The loan originator
- Any employee of the employer of the loan originator
- The title insurance company (including, but not limited to, the title agency closing the loan), or any employee of either such title insurance company or any such affiliate, or
- Any real estate agent with a financial interest in the transaction or any person affiliated with such real estate agent.

\*The borrower's relative is any person related by blood or marriage, or a person who is a fiancé, fiancée, or domestic partner of the borrower. Documentation to verify the relationship is required.

### **Fannie Mae Restrictions on the Use of a POA:**

Except as required by applicable law, a POA may not be utilized to sign a security instrument or Note if either (or both) of the following applies:

- No other borrower executes such loan document in person in the presence of a notary public. **Exceptions:** A power of attorney may be utilized to sign such loan document for each borrower:
  - as permitted in connection with a refinance transaction conducted in a recorded, interactive session on the Internet as described above in Allowable Attorneys-in-Fact or Agents Under a Power of Attorney; or
  - as long as the attorney-in-fact or agent under the power of attorney is either the borrower's attorney-at-law or the borrower's relative.
- The transaction is a cash-out refinance.

### **Fannie Mae – Use of Durable POA:**

Durable powers of attorney are permitted only in cases of physical and mental disability as provided by applicable state law, provided the signature thereto does not give rise to questions regarding mental competency at the time of the signing.

No loan requiring the use of a POA under these circumstances may be approved without a written determination relative to competency of the attorney in fact as provided under state and federal law.

### **1.7 Freddie Mac Financing**

As described in Freddie Mac Seller Guide, Freddie Mac will permit the Note, the Security Instrument and other closing documents to be executed by a person acting as attorney-in-fact pursuant to authority granted by a Borrower under a Power of Attorney (POA) in the following circumstances:

- In a hardship or emergency; and
- When the Lender determines that applicable law requires use of a POA.

If the Note was executed by a person acting as attorney-in-fact,

- A copy of the POA must be attached to the Note, and
- The original POA must be recorded with the Security Instrument.

### **Freddie Mac Allowable Attorneys-in-Fact or Agents Under a POA:**

The person acting as attorney-in-fact should have a familial, personal or fiduciary relationship with the Borrower, and should not be employed by or affiliated with any party in the loan transaction other than the Borrower.

### **Freddie Mac POA Title Requirements:**

If a POA is used, the Mortgage must be covered by a title insurance policy in accordance with Freddie Mac Seller Guide:

- A paid-up Mortgage title insurance policy meeting Freddie Mac's title insurance requirement detailed in Freddie Mac Seller Guide.
- An Attorney's title opinion or certificate of title is not acceptable for transactions utilizing a POA, per Freddie Mac Seller Guide.

**1.8 Military Power of Attorney**

This class of POAs is an exception to the requirement for a specific POA and from general state law requirements as to form and is applicable in situations where the borrower or spouse may be deployed or in active military duty.

A Military POA is any general or special POA that is notarized in accordance with the Federal Military Power of Attorney Act, 10 USC 1044 (a) & (b) or other applicable State or Federal law.

The POA may, but is not required, to contain a statement that sets forth the following:

A Military Power of Attorney:

1. Is exempt from any requirement of form, substance or formality or recording that is provided for powers of attorney under the laws of a State, and
2. Shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the state concerned.

**1.9 Power of Attorney Signature Requirements**

When a POA is utilized, the borrower and agent name(s) to be typed on all documents and signed using one of the acceptable signature options provided below.

Based upon the selected signature option:

- o The name(s) must be typed below the signature line exactly as shown in the selected option, and
- o The signature(s) must be signed (not printed) above the signature line exactly as shown in the selected option.

<p><b>Chris Jones by Jane Smith, AIF (or POA)</b> Chris Jones, by Jane Smith as his Attorney-in-Fact (or POA)</p>
<p><b>Chris Jones by his attorney in fact Jane Smith</b> Chris Jones, by his Attorney-in-Fact Jane Smith</p>
<p><b>Chris Jones by Jane Smith*</b> Chris Jones, by Jane Smith as his Attorney-in-fact (or POA)</p>

**Revision History**

REVISED DATE	REVISION	AUTHOR
11/21/2017	Removal of POA requirements from Title Policy	Christine Olson
8/15/2019	Reviewed, no changes	Dina Thompson
10/1/2020	Legal name change	Janet Schumacher