

Power of Attorney Job Aid

Overview

A power of attorney (POA) is a legal document giving one person (referred to as the “agent”) the power to legally bind another person. Loans with documentation executed by an agent on behalf of the borrower under a POA are eligible provided the applicable first lien requirements below are met.

1 st Lien Type	Requirement																						
Fannie Mae	<p>When title to mortgaged property is held by a trustee under an inter vivos revocable trust, loan documentation may not be executed using a POA granted by such trustee unless,</p> <ul style="list-style-type: none"> The related trust instrument expressly authorizes the trustee to use a POA to delegate powers to an agent, or The agent under the POA is the borrower creating such inter vivos revocable trust. <p>General Exception to Power of Attorney Requirements If a lender determines that it is required by applicable law to accept a POA presented by a borrower, none of the following requirements for, or limitations on, the use of a POA apply. In such cases, the lender must include a written statement in the loan file that explains that determination. Such written statement must be provided to the document custodian with the POA.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr style="background-color: #92d050;"> <th colspan="2" style="text-align: left; padding: 2px;">Eligibility Requirements for Using a Power of Attorney</th> </tr> </thead> <tbody> <tr> <td style="width: 25%; padding: 2px;">Eligible Transactions</td> <td style="padding: 2px;"> <ul style="list-style-type: none"> Purchase Rate and Term Refinance </td> </tr> <tr> <td style="padding: 2px;">Documentation Requirements</td> <td style="padding: 2px;"> An agent under a POA may sign the note and/or security instrument on behalf of a borrower if all of the following requirements are met: <ul style="list-style-type: none"> A copy of the POA is provided, The name(s) on the POA match the name(s) of the person on the relevant loan document, The POA is dated such that it was valid at the time the relevant loan document was executed, The POA must be wet signed, The POA is notarized, The POA must reference the address of the subject property. </td> </tr> <tr> <td style="padding: 2px;">Additional Requirements</td> <td style="padding: 2px;"> <ul style="list-style-type: none"> In jurisdictions where a POA used for a signature on a security instrument must be recorded with the security instrument, the lender must ensure that recordation has been effected. 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<p>Fannie Mae (cont.)</p>		<p>*A borrower’s relative includes any person defined as a relative by Fannie Mae, or a person who is a fiancé, fiancée, or in a legally recognized mutual relationship with the borrower (however denominated under applicable local law).</p>
	<p>Additional Conditions for Permitted Exception</p>	<p>The following are the additional conditions that must be met to qualify for a permitted exception in the table above:</p> <ul style="list-style-type: none"> • The POA expressly states an intention to secure a loan not to exceed a stated amount from a named lender on a specific property. • The POA expressly authorized the agent to execute the required loan documents on behalf of the borrower. • In a recorded, interactive session conducted via the internet, and to the satisfaction of the agent, the borrower must: <ul style="list-style-type: none"> ○ Confirm their identity; ○ After reviewing the required loan documents, reaffirm their agreement to the terms and conditions of the note and security instrument evidencing the transaction; and ○ Reaffirm their agreement to the execution of the loan documents by the agent. • At Fannie Mae’s request the lender must produce a recording and other documentary media memorializing the entirety of the interactive session. Such request may be at any time during the term of the related loan. The lender must comply within commercially reasonable time following such request and without additional expense to Fannie Mae. • If the agent is an employee of the title insurer or is an employee of the policy-issuing agent of the title insurer, then unless unavailable under applicable law, such title insurer must issue a closing protection letter (or similar contractual protection) for the transaction for the policy-issuing agent.
	<p>Signature Requirements</p>	<p>An attorney-in-fact may sign the security instrument, as long as the lender obtains a copy of the applicable power of attorney. In jurisdictions where a power of attorney used for a signature on a security instrument must be recorded with the security instrument, the lender must ensure that recordation has been effected.</p>
	<p>Required Custodial Documents</p>	<p>A copy of the applicable power of attorney, if an attorney-in-fact signed the mortgage note (or any other acceptable alternative for the mortgage note) on a borrower’s behalf. If applicable law requires an original power of attorney for enforcement or foreclosures purposes, the document custodian must hold the original rather than a copy. If applicable law requires recordation of the power of attorney, it must be recorded. The name(s) on the power of attorney must match the name(s) on the note and must be dated such that it was valid at the time the note was executed. The power of attorney must be notarized. If a power of attorney is used because the lender determines such use is require by applicable law, the lender must include a written statement that explains the circumstances.</p>
<p>Freddie Mac</p>	<p><u>For mortgages with application received dates prior to June 30, 2021, the following requirements apply:</u></p> <p>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 in the following circumstances:</p> <ul style="list-style-type: none"> • In a hardship or emergency situation; and • When a lender determines that applicable law requires use of a POA <p>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 to the loan transaction other than the borrower. Each POA must be notarized and the mortgage must be covered by a title insurance policy.</p> <p>If the use of a POA is required by law, the lender must include a written statement that explains the circumstances in the mortgage file and deliver a copy of the statement to the document custodian with the POA.</p>	

<p>Freddie Mac (cont.)</p>	<p>Refer to the POA delivery requirements outlined below, which apply to all mortgages with documents executed using a POA regardless of the application received date or note date.</p> <p><u>For mortgages with application received dates on or after June 30, 2021:</u></p> <p>A POA may only be used when:</p> <ul style="list-style-type: none"> • There is an event such as a medical emergency, natural disaster, military deployment or other hardship preventing the borrower from executing the requisite documents in person, by electronic signature or through other alternative electronic means; or • Applicable law requires the lender to accept use of a POA. <p>A POA may not be used merely for the convenience of the parties. The POA must comply with the laws of the applicable jurisdiction, and the borrower must have had the capacity to grant the POA at the time it was made. A notation, description or other information about the reason why a POA was used must be included in the mortgage file whenever a POA is used. If the acceptance of a POA is required by law, the lender must include a written statement that explains the circumstances in the mortgage file.</p> <p>The person using the POA to sign on behalf of the borrower is called an attorney-in-fact. The attorney-in-fact must:</p> <ul style="list-style-type: none"> • Have a familial or fiduciary relationship with the borrower; • Be an individual employed by the title insurer underwriting the title insurance product insuring the mortgage; • Be an individual employed or engaged contractually by the title agency issuing the title insurance product for the mortgage and closing the transaction, but only if the title insurer has issued a closing protection letter relating to the transaction (or has similar contractual indemnity to the lender and assignees of the lender) for such policy issuing agent. <p>Neither the seller of the property in a purchase transaction nor an employee of the originating lender is eligible to be an attorney-in-fact under a POA.</p> <p>A POA may be used to execute any of the initial loan documents and closing documents in connection with a purchase and rate and term refinance.</p> <p>The POA must be notarized; however, it may be remotely notarized where permitted by applicable law. The mortgage must be covered by a title insurance product in accordance with Freddie Mac.</p> <p>POA delivery requirements for all mortgages with documents executed using a POA (applies to all loans regardless of the application received date or note date)</p> <p>If the Note, Security Instrument and other closing documents were executed under a paper POA, the lender must comply with the following delivery requirements, regardless of the mortgage application received date or note date:</p> <ul style="list-style-type: none"> • The lender must deliver one of the following with the Note: <ul style="list-style-type: none"> ○ The original POA (signed in ink by the borrower); or ○ A copy of the POA; or ○ A copy of the POA showing the recordation information <p>Note: if applicable law requires an original POA (signed in ink by the borrower) for enforcement or foreclosure purposes, the lender must deliver an original POA (signed in ink by the borrower) to the document custodian.</p> • If the POA is recorded, whether or not it is required, and the copy of the POA with recordation information is not delivered to the document custodian along with the note, the lender must deliver the copy of the POA with recordation information received from the recording office to the document custodian within 30 days of receipt. <p>Signature Requirements</p> <ul style="list-style-type: none"> • The POA must be wet signed.
<p>FHA</p>	<p>All borrowers must sign and date the initial and final loan application. All borrowers must sign and date page two of the initial application, and sign and date the complete final loan application. The application may not be signed by any party who will not be on the note.</p> <p>A power of attorney may not be used to sign the initial and final loan application unless the</p>

<p>FHA (cont.)</p>	<p>lender verifies and documents that all of the following requirements have been satisfied:</p> <ul style="list-style-type: none"> • For military personnel, a POA may only be used: <ul style="list-style-type: none"> ○ When the service member is on overseas duty or on an unaccompanied tour; ○ When the lender is unable to obtain the absent borrower’s signature on the application by mail or via fax; and ○ Where the attorney-in-fact has specific authority to encumber the property and to obligate the borrower. Acceptable evidence includes a durable POA specifically designed to survive incapacity and avoid the need for court proceedings. • For incapacitated borrower, a POA may only be used where: <ul style="list-style-type: none"> ○ A borrower is incapacitated and unable to sign the mortgage application; ○ The incapacitated individual will occupy the property to be insured, or the property is being underwritten as an eligible investment property; and ○ The attorney-in-fact has specific authority to encumber the property and to obligate the borrower. Acceptable evidence includes a durable POA specifically designed to survive incapacity and avoid the need for court proceedings. <p>Use of Power of Attorney at Closing</p> <p>A borrower may designate an attorney-in-fact to use a Power of Attorney to sign documents on their behalf at closing, including page 4 of the final HUD-92900-A and final 1003.</p> <p>Unless required by applicable state law, or as stated in the exception below, or they are the borrower’s family member, none of the following persons connected to the transaction may sign the security instrument or note as the attorney-in-fact under a POA:</p> <ul style="list-style-type: none"> • Lender, or any employee of affiliate; • Loan originator, or employer or employee; • Title insurance company providing the title insurance policy, the title agent closing the mortgage, or any other their affiliates; or • Any real estate agent or any person affiliated with such real estate agent. <p>Exception</p> <p>Closing documents may be signed by an attorney-in-fact who is connected to the transaction if the POA expressly authorizes the attorney-in-fact to execute the required documents on behalf of a borrower, only if the borrower, to the satisfaction of the attorney-in-fact in a recorded interactive session conducted via the internet has:</p> <ul style="list-style-type: none"> • Confirmed their identity; and • Reaffirmed, after an opportunity to review the required mortgage documents, their agreement to the terms and conditions of the required mortgage documents evidencing such transaction and to the execution of such required mortgage by such attorney-in-fact. <p>Signature Requirements</p> <ul style="list-style-type: none"> • The POA must be wet signed.
<p>VA</p>	<p>VA will allow a Veteran to use an attorney-in-fact to execute any documents necessary to obtain a VA-guaranteed loan. This enables active duty servicepersons stationed overseas, and other Veterans who cannot be present to execute loan documents, to obtain VA loans.</p> <p>The Veteran must execute a general or specific POA which is valid and legally adequate. The Veteran’s attorney-in-fact (as specified in the POA) must use this POA to apply for a Certificate of Eligibility (COE) and initiate processing of a loan on behalf of the Veteran. A military POA is considered a general POA and is only valid during the Active Duty Servicemembers’ period of deployment, not to exceed 1 year.</p> <p>To complete the loan transaction using an attorney-in-fact, ensure that the general or specific POA complies with state law to the extent that:</p> <ul style="list-style-type: none"> • The mortgage can be legally enforced in that jurisdiction, and • Clear title can be conveyed in the event of foreclosure. <p>To complete the loan transaction using an attorney-in-fact, VA also requires the Veteran’s written consent to the specifics of the transaction either through a general POA or a specific POA.</p>

VA (cont.)

General POA – The Veteran’s signature on both the sales contract and the Uniform Residential Loan Application, as long as the Veteran’s intention to obtain a VA loan on the particular property is expressed somewhere in those documents.

Specific POA – A specific power of attorney or other document(s) signed by the Veteran, which encompasses the elements below:

- 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 refinance.
- 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 or spouse and/or guardian for dependent child(ren)).

Veteran’s Status as Alive and not MIA

The lender must always verify that the Veteran is alive at the time of loan closing, whether or not the Veteran is an Active Duty Servicemember in the military. If on active military duty, the Veteran must not be missing in action (MIA).

The lender must make the following certification at the time of loan closing:

“The undersigned lender certifies that written evidence in the form of correspondence from the Veteran or, if on active military duty, statement of his or her commanding officer (including statement of person authorized to act for said officer), affirmatively 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 the said date is on or subsequent (not prior) to the date the note and security instruments were executed on the Veteran’s behalf by the attorney-in-fact.”

VA may deny guaranty on a loan if the lender failed to properly verify the Veteran’s status and the Veteran was deceased (or MIA) at the time the loan was closed.

Prior Approval Loans

VA will issue a Certificate of Commitment only if the Veteran has executed a valid and legally adequate POA and consented to the specific transaction. If VA has information that the Veteran is MIA or deceased, VA will not issue a commitment. The Certificate of Commitment issued in POA cases contains the condition indicated under “Conditional Commitments” in Topic 5.04e of Chapter 5 in the Lender’s Handbook.

Signature Requirements

- The POA must be wet signed.