

## Power of Attorney

The use of a POA for execution of the closing package is subject to approval from FLCBank. The request for approval with a copy of the POA in question should be uploaded to the **CD/Closing Documentation** doc type folder. The copy provided for approval is not required to be fully executed. The fully executed copy will be required prior to funding.

### Fannie Mae Requirements

POA's are acceptable subject to approval from the underwriter and closing management with advance review.

- The POA must be executed prior to or on the date the Note is executed and be notarized (if executed outside the U.S., it must be notarized at a U.S. Embassy or a military installation).
- The POA is to be specific to the transaction, referencing the address of the subject property.
- Power of Attorneys are not allowed on TEXAS 50(a)(6) loans (no exceptions).
- Power of Attorneys are not allowed on Cash Out Refinance Transactions (no exceptions).
- A POA cannot be used when a loan is closing in a Revocable Living Trust (no exceptions).
- If no other borrower executes the loan documents in person in the presence of a notary public, the named POA must be a relative, or a person who is a fiancé, fiancée, or in a legally recognized mutual relationship with the borrower. Note: Fannie Mae defines a relative to be the borrower's spouse, child, or other dependent, or by any other individual who is related to the borrower by blood, marriage, adoption or legal guardianship. A signed statement from the borrower(s) clarifying the relationship will be required.
- None of the following individuals can serve as the borrower(s)' Power of Attorney:
  - The Broker, the lender, an affiliated or employee of the lender or the loan originator;
  - The title insurance company/title agent, any affiliate, or any employee;
  - The real estate agent of the transaction or any person affiliated to the real estate agent.
  - Property seller or any person related to the property seller, including a relative or affiliate.
- The Power of Attorney is limited to execute loan documents at closing on behalf of the borrower (no initial loan documents or disclosures can be signed using a POA) except when the borrower is on active military service with the United States Armed Forces serving outside of the United States or Deployed aboard a United States vessel. In this case, the use of a power of attorney may be used to execute both the original and the final loan application (URLA) provided the power of attorney:
  - Complies with the requirements set forth by the Veterans' Affairs of the lenders' handbook related to POA, these requirements can be found in our VA guidelines.

Additional Requirements:

- The Borrower's name must be printed below the signature line. The signature must read, "Principal's Name by Agent's Signature as Agent."
- The Power of Attorney must be recorded with the security instrument.
- The title policy must not make any exceptions to the use of the POA.

**Note: A military POA may be utilized in a non-VA transaction. The POA requirements will mirror those required by VA**

### Freddie Mac Requirements

POA's are acceptable subject to approval from the underwriter and closing management with advance review. The POA must be executed prior to or on the date the Note and be notarized (if executed outside the U.S., it must be notarized at a U.S. Embassy or a military installation).

- The Power of Attorney may be used in order to execute loan documents at closing on behalf of the borrower only when there is an emergency event (i.e. medical emergency, natural disaster, military deployment, or other hardship) preventing the Borrower from executing the requisite documents in person, or when applicable law requires the lender to accept use of a POA. If the acceptance of a POA is required by law, the lender must include a written statement that explains the circumstances along with the POA.
- Under no circumstances may a POA be used merely for the convenience of the parties. Evidence of the emergency qualifying the use of a POA must be provided whenever a POA is used
- A written statement that explains the hardship circumstances in the use of the POA must be provided.
- The POA is to be specific to the transaction, referencing the address of the subject property.
- Power of Attorneys are not allowed on TEXAS 50(a)(6) loans (no exceptions).
- Powers of Attorneys are not allowed on Cash Out Refinance Transactions (no exceptions).
- A POA cannot be used when a loan is closing in a Revocable Living Trust (no exceptions).
- Title policy must not contain any exceptions based on use of the POA.
- The person acting as attorney-in-fact must: 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; or be an individual employed or engaged contractually by the title agency issuing the title insurance 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.
- None of the following individuals can sign/serve as the borrower(s)' Power of Attorney:
  - The Broker, the lender, an affiliated or employee of the lender or the broker
  - The real estate agent of the transaction or any person affiliated to the real estate agent
  - The seller of the property in a purchase transaction
  - A party with a direct or indirect financial interest in the transaction, or
  - An employee of the originating lender cannot be the attorney-in-fact under a POA.
- The POA must be notarized in all instances.

Note: A statement signed by the borrower(s) clarifying the relationship with the attorney-in-fact is required (i.e. familial, fiduciary relationship, employed by the title insurer, etc.). [Freddie Mac's](#) "familial relationship" is defined as related person: the borrower's spouse, child, or dependent; an individual related to the borrower by blood, marriage or adoption; a guardian of the borrower; a person for whom the borrower is a guardian; the borrower's fiancé or fiancée; the borrower's domestic partner.

#### Additional Requirements:

- The Borrower's name must be printed below the signature line. The signature must read, "Principal's Name by Agent's Signature as Agent."
- The Power of Attorney must be recorded with the security instrument.

**Note: A military POA may be utilized in a non-VA transaction. The POA requirements will mirror those required by VA**

### FHA and USDA Requirements

A Power of Attorney (POA) may not be used to sign loan application forms and disclosures unless the Mortgagee verifies and documents the permissible use of a POA meets the following requirements have been satisfied:

- For military personnel, a POA may only be used:
  - 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 Borrowers, a POA may only be used where:
  - A Borrower is incapacitated and unable to sign the loan application,
  - The incapacitated individual will occupy the Property to be insured; 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.

Note: The Originator/Lender is not permitted to have the Borrowers sign documents in blank, incomplete documents, or blank sheets of paper.

Guidance on use of POA on closing documents:

- The POA must be executed prior to or on the date the Note is executed and be notarized (if executed outside the U.S., it must be notarized at a U.S. Embassy or a military installation).
- The POA is to be specific to the transaction, referencing the address of the subject property.
- Power of Attorneys are not allowed on Cash Out Refinance Transactions (no exceptions).
- A POA cannot be used when a loan is closing in a Revocable Living Trust (no exceptions).
- If no other borrower executes the loan documents in person in the presence of a notary public, the named POA must be a family member as defined by FHA. A signed statement from the borrower(s) clarifying the relationship will be required.
- None of the following individuals can serve as the borrower(s)' Power of Attorney:
  - The Broker, the lender, an affiliated or employee of the lender or the loan originator;
  - The title insurance company/title agent, any affiliate, or any employee;
  - The real estate agent of the transaction or any person affiliated to the real estate agent.
  - Property seller or any person related to the property seller, including a relative or affiliate.
- The Power of Attorney is limited to execute loan documents at closing on behalf of the borrower (no initial loan documents or disclosures can be signed using a POA) except when the borrower is on active military service with the United States Armed Forces serving outside of the United States or Deployed aboard a United States vessel. In this case, the use of a power of attorney may be used to execute both the original and the final loan application (URLA) provided the power of attorney:
  - Complies with the requirements set forth by the Veterans' Affairs of the lenders' handbook related to POA, these requirements can be found in our VA guidelines.
- The Borrower's name must be printed below the signature line. The signature must read, "Principal's Name by Agent's Signature as Agent."
- The Power of Attorney must be recorded with the security instrument.
- The title policy must not make any exceptions to the use of the POA.

**Note: A military POA may be utilized in a non-VA transaction. The POA requirements will mirror those required by VA**

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### VA Requirements

- The Veteran's attorney-in-fact (as specified in the POA) must use the 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 Service members' (ADSM) period of deployment, not to exceed 1 year.
- 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.
- **General POA:** Requires the veteran's signature on both the sales contract and the loan application (URLA), as long as the veteran's intention to obtain a VA loan on the particular property is expressed somewhere in those documents, **or**
- **Specific Power of Attorney:** A specific power of attorney or other documents signed by the veteran, which encompasses the following components:
  - Entitlement: A clear intention to use all or a specified amount of entitlement.
  - Purpose: A clear intention to obtain a loan for purchase construction, repairs, 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 loan 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)).
- The veteran's signature on the power of attorney must be attested to by a commanding officer if active duty, or notarized if the veteran is now a civilian. Note that digital signatures can be accepted as an original signature or wet signature as defined by the Electronic Signatures in Global and National Commerce Act, commonly referred to as the E-sign Act.
- A POA cannot be used when a loan is closing in a Revocable Living Trust (no exceptions).
- At the time of loan closing, the lender must:
  - Verify the veteran is alive and, if on active military duty, not missing in action (MIA), and
  - Make the following certification:

"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 subsequent to the date the note and security instruments were executed on the veteran's behalf by the attorney-in-fact."

### Jumbo Requirements

- Blue Jumbo products follow the Fannie Mae requirements.
- Preferred Jumbo products follow the Fannie Mae requirements with an exception that at least one borrower on the transaction must be present at the loan closing.