

Chapter 21 Power of Attorney & Guardianship Policy

Policy Name	Power of Attorney & Guardianship Policy
Version	10-25-2022
Committee Review: CPG	10-25-2022
Last Reviewed	10-25-2022

21.1 **Purpose**

It is the published and enacted Policy that in a hardship or emergency situation, and not merely as a matter of convenience, Union Home Mortgage Corp. (UHM) may permit, in its sole discretion, the use of a person acting as Attorney-in-Fact pursuant to authority granted by a borrower under a written Power of Attorney (POA). The person acting as Attorney-in-Fact/Agent should have a familial, personal, or fiduciary relationship with the borrower.

The Power of Attorney may be utilized at closing for execution of the loan documents in accordance with Investor guidelines, programs, and restrictions and in compliance with applicable state and/or federal laws.

During the pendency of the COVID-19 pandemic, UHM may amend some requirements herein pursuant to published and/or enacted Temporary Flexibilities for POA(s).

21.2 **Types of POA Documents Acceptable to Union Home Mortgage**

a. Durable Power of Attorney

- Must survive the disability or incapacity of the principal.
- Must contain language stating that the authority given remains in effect if the principal/grantor becomes incapacitated.

Military Power of Attorney

- Must survive the disability or incapacity of the principal.

Specific, Special, or Limited Power of Attorney

A specific, special or limited Power of Attorney is required on Conventional DU loans and Jumbo loans. See immediate next.

- FNMA Selling Guide B8-5-05 requires that: "POA must reference the address of the subject property."

Allowing Attorneys-in-Fact or Agents Under Power of Attorney

Except as otherwise 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 power of attorney:

For FNMA,

- Affiliate of lender*
- Loan originator*
- Affiliate of the loan originator*
- Employee of the title insurance company*
- Affiliate of the title insurance company or its employee (including, but not limited to, the title agency closing the loan)*
- *See Additional Conditions below for these 5 categories. If complied with, then permissible.
- Lender (or employee of lender)
- Property seller, or any person related to the property seller, including a relative or affiliate
- Any real estate agent with a financial interest in the transaction (or any person affiliated with such real estate agent)
- These 3 categories are never permissible.

Additional Conditions

The following are the additional conditions that must be met to qualify for a permitted exception in the table above.

- 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 authorizes 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
- 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 a 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.

As used herein, the borrower's relative includes any person defined as a relative in FNMA's Guide, or a person who is a fiancé, fiancée, or legally recognized mutual relationship with the borrower.

- For FHLMC, the person using the POA to sign on behalf of the Borrower is called an "attorney-in-fact." The 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 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 Seller and assignees of the Seller) for such policy issuing agent
- 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.

Restrictions on the Use of a Power of Attorney

Except as required by applicable law, a power of attorney may not be utilized to sign a security instrument or note for these loan transactions:

- A FNMA cash-out refinance is not allowable.
- **A FHLMC cash-out refinance is allowable if, after the terms of the Mortgage have been finalized and prior to closing, an employee of the originating lender or settlement agent must explain and discuss the terms of the Mortgage and use of the POA with the Borrower to confirm that the Borrower understands them. However, if the Borrower is in a Period of Military Service as defined in Section 8503.1 and is unavailable for the discussion or the Borrower is incapacitated such that he or she cannot participate in a discussion, then this requirement is waived as to that Borrower.**
 - **At a minimum, the discussion must include:**
 - **Review of the rate, term and principal balance of the Mortgage,**
 - **The address of the Mortgaged Premises,**
 - **The fact that the attorney-in-fact uses the Borrower's POA to sign documents on behalf of the Borrower, and**
 - **The scheduled or estimated closing date**

This discussion must take place in person, telephonically or using a video conference system. It may take place just before closing and does not require the presence of the attorney-in-fact. It must be memorialized by a Borrower acknowledgment that may be in:

- Writing
- An e-mail exchange with the Borrower at an e-mail address provided by the Borrower, or
- A recording or a transcript of the telephone or video discussion with the Borrower

The acknowledgement must be retained in the Mortgage file and made available to Freddie Mac upon request.

Additional Requirements

If a power of attorney is used because the lender determines such use is required by applicable law, the lender must include in the mortgage loan file a written statement that explains the circumstances. Such statement must be provided to the document custodian with the power of attorney.

21.3 General Power of Attorney

A general Power of Attorney is only acceptable on Conventional LP loans, USDA loans, FHA loans, and VA loans. A General Power of Attorney must:

- Contain powers to enter in real-estate transactions with specific ability to mortgage, pledge, hypothecate, encumber and execute loan documents;
- Survive the disability or incapacity of the principal; and
- Contain language stating that the authority given remains in effect if the principal/grantor becomes incapacitated.

Additionally, the VA Program requires:

VA Pamphlet 26-7 Chapter 9 Topic 7 (B and E) requires that “To complete the loan transaction using an attorney-in-fact, VA also requires the veteran’s written consent to the specifics of the transaction. This requirement can be satisfied by either:

- 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, or
- A specific power of attorney or other document(s) signed by the veteran, which encompasses the following elements:
 - 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; and
 - Occupancy—The veteran’s intention to use the property as a home to be occupied by the veteran (or other applicable VA occupancy requirement).

VA may relax the requirements in an exceptional case if serious hardship may result due to the time or other pertinent factors involved in obtaining the veteran’s consent to the specific transaction.

21.4 General Requirements

The following specifications must be met:

- Indicate clearly that the mortgagor is appointing an attorney in fact;
- Prepared by a licensed attorney, title company and/or be in recordable format;
- Precisely identify who is being appointed;
- The appointed attorney in fact must be the same person signing the note and/or security instrument on behalf of the Principal;
- The Principal's name must exactly match the name on the note and/or security instrument. A name change may be required to be processed in Encompass;
- Be signed and dated by the borrower;
- Be witnessed, if the State requires a witness or witnesses;
- Be notarized (if executed outside the U.S. see Power of Attorney Executed Abroad section);
- Be effective prior to the date of the closing and remain in effect for a minimum of thirty (30) days following the consummation date to provide for post-closing issues, if any;
- Contain a recorder's stamp if previously recorded;
- A separate, executed POA must exist for each borrower not present at closing. An Attorney in Fact may not sign on behalf of multiple borrowers. UHM may consider a Joint POA wherein the 2nd Principal will not be vested in title, is not a credit qualifying borrower and is solely signing the Security Instrument to release his/her spousal/marital/dower/homestead/community property interests in the property.
- The POA should include, if formatting permits, UHM as the Lender, UHM loan number, loan amount and loan program type (ex. Conventional or FHA).
- The POA must include language that the AIF is granted the authority and power(s) on behalf of the Principal to enter into transactions for the purchase and/or mortgage of real property, and to execute Notes, Mortgages/Deeds of Trust, and any and all ancillary closing documents that may be required by UHM, the title company, settlement agent and/or an Investor.

21.5 Loan Application Requirements

Initial loan applications must be signed by the borrower unless:

- The borrower 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 power of attorney expressly states an intention to secure a loan on a specific property, or complies with the requirements under the VA Lender's Handbook relating to the powers of attorney for VA-insured mortgage loans; or
- Such use is required of lender by applicable law; or
- **FNMA Only:** The attorney-in-fact agent signs the security instrument in their personal capacity with regard to their individual ownership interest in the mortgaged property; or
- FHLMC is the Investor.

Note: If a Power of Attorney is used because UHM determines that such use is required by

applicable law, UHM must include in the mortgage file, a written statement that explains the circumstances and will also independently verify and obtain supporting documentation. Such statement is generally to be provided to the document custodian with the Power of Attorney.

21.6 Title Company Approval

If the loan documents are scheduled to be signed by an attorney in fact, the executed and notarized Power of Attorney must be pre-approved in writing by the title company issuing the title policy with express affirmation that the POA is in recordable format. This writing from the title company should be saved in the Encompass Conversation Log. The title company must ensure the lien priority without exception to the POA.

21.7 UHM Underwriter and Compliance Approval

The executed and notarized POA must be reviewed and approved by the UHM Underwriter prior to the preparation of the UHM closing documents. Any questions by the UHM Underwriter should be directed to his/her respective U/W Team Lead. Thereafter, if questions, concerns and/or issues remain outstanding and unresolved, a Ticket should be sent to UHM's Power Help Desk.

21.8 Program Requirements

a. Ineligible Transactions

Powers of Attorneys are not acceptable for the following types of transactions:

- Jumbo Cash-out Refinance transactions
- FNMA Conventional Cash-out Refinance transactions
- Inter-vivos Revocable Trust loans

VA Program Requirements

Union Home Mortgage Corp. will allow a veteran to use an attorney in fact to execute any document necessary to obtain a VA-guaranteed loan. All Union Home Mortgage Corp. general requirements must be met in addition to:

- Obtaining the veteran's written consent to the specifics of the transaction (see VA Lender Handbook for specifics);
- At the time of closing, the lender must verify that 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."

Signature Requirements

Documents executed by the attorney in fact must be signed according to the following:

Acceptable Signature Format
*** <u>Jane Mac by John Mac, as her Attorney-in-Fact</u> Jane Mac by John Mac, as her Attorney-in-Fact
<u>John Mac as AIF for Jane Mac pursuant to POA dated XX-XX-</u> <u>XXXX</u> Jane Mac by John Mac, as her Attorney-in-Fact
<u>Jane Mac by John Mac AIF</u> Jane Mac by John Mac, as her Attorney-in-Fact
<u>Jane Mac by John Mac POA</u> Jane Mac by John Mac, as her Attorney-in-Fact
<u>John Mac, Attorney-in-Fact for Jane Mac</u> Jane Mac by John Mac, as her Attorney-in-Fact

To promote consistency and uniformity, UHM requires that the signature line be typed exactly as above. The preferred method of signature is the 1st example above identified by the 5 underlined red stars.

Power of Attorney Executed Abroad

A POA may be executed and notarized in an Embassy, Consulate, or on a Military Base. All requirements set forth by the State Department for overseas Citizens Services and the Uniform Code of Military Justice must be met.

Delivery Requirements

A certified true copy of the POA must be returned by the settlement agent with the original closing package. The original recorded POA must be provided to UHM's Post-Closing Dept. not later than forty- five (45) days following disbursement of UHM's loan proceeds.