

# Mortgage Lending Power of Attorney Policy

# Mortgage Lending Power of Attorney Policy

Mortgage Lending Division

Version 1.4 – 07/25/16



## OVERVIEW

**Purpose** The purpose of this policy is to establish the Carrington Mortgage Services, LLC (CMS) requirements regarding how and when Powers of Attorney may be used on behalf of borrowers that are attempting to secure a loan through the CMS Mortgage Lending Division (MLD).

**Definitions** For the purpose of this policy, the following types of Powers of Attorney are defined below.

- **Military Durable Power of Attorney:** A Military Durable Power of Attorney remains or becomes effective if a United States Servicemember becomes incompetent. Incompetent means that the servicemember is unable to manage his/her affairs. A durable Power of Attorney must contain exact language that specifies the servicemember's intent for how and when the agent may act on his/her behalf if the servicemember becomes incapacitated. Without such language, the Power of Attorney will not be valid if the servicemember becomes incapacitated.
- **General Power of Attorney:** This type of Power of Attorney allows the agent to carry on business or other matters for the principal. This type of Power of Attorney usually has very broad powers.
- **Special Power of Attorney:** A Special Power of Attorney provides limits to the power of attorney. The agent is to carry out only certain matters for the principal.

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## Revision Summary

Date	Version	Description of Change
07/25/16	1.4	<ul style="list-style-type: none"><li>Revised General Requirements section which establishes that Legal should not be approving exceptions to a credit policy.</li><li>Revised General Requirements to add approval requirements for exceptions.</li><li>Added additional clarification for FHA requirements</li><li>Revised VA requirements for obtaining VA Alive and Well Certification</li></ul>
11/16/15	1.3	Revised FHA requirements for using a POA to close loans.
12/29/14	1.2	Updated all sections.
11/25/13	1.1	Added requirement in Overview that POA must be prepared by a licensed legal professional.
08/22/12 (05/07/13)	1.0	New document. Re-branded document with new logo (05/07/13).

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## Power of Attorney

### Overview

Powers of Attorney may be used within the mortgage lending process as defined in this policy.

CMS will only accept a General or a Specific Power of Attorney. The general requirements for Powers of Attorney that apply to all loan types are listed below. Additional requirements of a Power of Attorney vary based on the type of loan. The Power of Attorney requirements by loan type are provided below. If the Power of Attorney document presented does not meet the requirements outlined in this policy it may not be used unless there is an exception approved by the Underwriting Manager.

Powers of Attorney usage will be tracked on a monthly basis by CMS Management using company reports to monitor frequency of use by individual Loan Officers, Branches, and Brokers.

### General Requirements

The following are required for Powers of Attorney on all loan types:

- **Any exceptions must be approved by the Underwriting Manager or Chief Credit Officer**

**Note:** The Legal department will provide support to the Underwriting Manager or Chief Credit Officer to assist with exception requests, as needed.

- Must comply with all state requirements.
- The Power of Attorney must be prepared by a currently licensed title company or a currently licensed legal professional.
- Power of Attorney forms cannot be prepared and/or altered by any Carrington Associate.
- The Power of Attorney must be current (cannot have expired) through the funding date of the transaction and must be executed and notarized prior to the note date but no more than 12 months prior to the date documents are executed by the Power of Attorney.
- The borrower must provide a handwritten letter of explanation regarding the reason for the use of the Power of Attorney and the relationship between the parties. The party granted Power of Attorney must be a spouse, domestic partner, or relative of the borrower and cannot be an interested party to the transaction.
- The form of the Power of Attorney must be reviewed by the Underwriting Manager to ensure that it is acceptable in the specific state where the property is located. The Underwriting Manager will defer to the CMS Legal Department for further review, if required.
- All signatures on the Power of Attorney must be notarized and the Power of Attorney must be reviewed by a CMS Underwriter. Signatures on the Power of Attorney must match signatures in the file to the CMS Underwriter's satisfaction.
- A Power of Attorney is not allowed for single borrower transactions unless CMS has previous transactions with the borrower and can compare signatures from the previous transactions. Deployed military personnel are exempt from this requirement.

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## Power of Attorney (continued)

### General Requirements (continued)

- The Power of Attorney must be acceptable to the title company and the title policy must not make any exceptions based upon the use of the Power of Attorney.
- If a specific investor has been identified on the file, the Power of Attorney must meet the investor's Power of Attorney guidelines and be acceptable to the investor.

Refer to the Power of Attorney Procedures [<link>](#) for additional information.

### Conventional Loans

In addition to the general requirements, the following are required for Powers of Attorney on Conventional loans:

- The application, Borrowers Authorization, 4506-T, Social Security Number (SSN) verification, and Purchase Agreement (if applicable) must be signed by all parties of the loan. A Power of Attorney is not allowed to sign any of the above listed documents. The following exception is permitted:
  - **Borrower is incapacitated**—Provide evidence that the signer has authority to purchase the property and obligate the borrower and provide a copy of the Durable Power of Attorney specifically designed to survive incapacity and avoid the need for court proceedings. The Power of Attorney must be a Special Power of Attorney for Real Estate that is specific to CMS' loan and indicates the property address unless it is a Military Durable Power of Attorney, which does not have to indicate the specific property.
- The transaction must be a purchase or rate/term refinance only. Cash-out refinances and bridge loans are only allowed with a Military Durable Power of Attorney.
- Property must be an owner-occupied principle residence or second home. There are no exceptions for investment properties.

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## Power of Attorney (continued)

### FHA Loans

In addition to the general requirements, Powers of Attorney that meet the following criteria are acceptable on Federal Housing Authority (FHA) loans:

- The application, Borrowers Authorization, 4506-T, SSN verification, FHA Documents, and Purchase Agreement (if applicable) must be signed by all parties of the loan. A Power of Attorney is not allowed to sign any of the above listed documents. The following exceptions are permitted:
  - **Borrower is on active military duty and deployed overseas**—Power of Attorney may be used for the application and application disclosures if the borrower is on active military duty and deployed overseas or on an unaccompanied tour when CMS 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. The lender should obtain the servicemember's signature on the 1003, Borrowers Authorization, 4506-T, SSN verification, and FHA Documents via mail or fax.
  - **Borrower is incapacitated**—Provide evidence that the signer has authority to purchase the property and obligate the borrower when the borrower is incapacitated and unable to sign the mortgage application and the incapacitated individual will occupy the Property to be insured or the Property is being underwritten as an eligible investment property. Acceptable evidence includes a copy of the Durable Power of Attorney specifically designed to survive incapacity and avoid the need for court proceedings.
- The Power of Attorney must be a Special Power of Attorney for Real Estate that is specific to CMS' loan and indicates the property address unless it is a Military Durable Power of Attorney, which does not have to indicate the specific property.
- Purchase or rate and term refinance only. Military Durable Power of Attorney permitted for cash-out transactions. Cash-out transactions may not close with any Power of Attorney other than a Military Durable Power of Attorney.
- There must be more than one borrower on the loan and at least one borrower must be present at closing.

### Using a POA at Closing for FHA Loans

Borrowers may designate an attorney-in-fact to use a Power of Attorney to sign documents on their behalf at closing. 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 Power of Attorney:

- CMS, 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 of their Affiliates; or
- Any real estate agent or person affiliated with such real estate agent.

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## Power of Attorney (continued)

### Using a POA at Closing for FHA Loans (continued)

#### Exception:

Closing documents may be signed by an attorney-in-fact who is connected to the transaction if the Power of Attorney 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:

- 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.

### USDA Loans

In addition to the general requirements, Powers of Attorney that meet the following criteria may be utilized for loan closing documents on United States Department of Agriculture (USDA) loans:

- Allow for enforcement of the mortgage note in the jurisdiction.
- The application, Borrowers Authorization, 4506-T, SSN verification, USDA Documents, and Purchase Agreement (if applicable) must be signed by all parties of the loan. A Power of Attorney is not allowed to sign any of the above listed documents. The following exceptions are permitted:
  - **Borrower is on active military duty and deployed overseas**—Power of Attorney may be used for the application and application disclosures if the borrower is on active military duty and deployed overseas or on an unaccompanied tour. The lender should obtain the servicemember's signature on the 1003, Borrowers Authorization, 4506-T, SSN verification, and USDA Documents via mail or fax. Military personnel must provide their signature on the loan application by mail or fax.
  - **Borrower is incapacitated**—Provide evidence that the signer has authority to purchase the property and obligate the borrower and provide a copy of the Durable Power of Attorney specifically designed to survive incapacity and avoid the need for court proceedings.
- The Power of Attorney must be a Special Power of Attorney for Real Estate that is specific to CMS' loan and indicates the property address unless it is a Military Durable Power of Attorney, which does not have to indicate the specific property.
- Purchase or rate and term refinance only. Military Durable Power of Attorney permitted for cash-out transactions. Cash-out transactions may not close with any Power of Attorney other than a Military Durable Power of Attorney.
- There must be more than one borrower on the loan and at least one borrower must be present at closing.

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## Power of Attorney (continued)

### VA Loans

In addition to the general requirements, Powers of Attorney that meet the following criteria are acceptable on Department of Veterans Affairs (VA) loans:

- VA permits the following Powers of Attorney for active-duty military personnel stationed overseas and other veterans who cannot be present at closing:
  - **General Powers of Attorney** – The Veteran must initial the 1003 application and sign the purchase agreement.
  - **Specific Powers of Attorney** – The Veteran does not need to sign the 1003 application, purchase agreement, or any other application documents. The specific Power of Attorney must include all of the following information:
    - **Entitlement** – Must state the veteran intends to use all or a specified amount of entitlement.
    - **Loan Purpose** – Must state veteran intends to purchase, construct, or refinance.
    - **Property** – Must list address and legal description, if available.
    - **Sales Price** – Must state the purchase price for the property.
    - **Loan Terms** – Must state loan type and term.
    - **Occupancy** – Veteran must state he or she intends to meet VA occupancy requirements.
- On the day of **closing** for **all VA loans that close** with either a general or specific Power of Attorney, verify that the veteran is alive and well. The alive and well verification may be in the form of:
  - [CMS VA Alive and Well Certification](#)
  - An email, fax, or letter from the veteran.
  - An email, fax, or letter from veteran's commanding officer, if the veteran cannot be reached due to deployment.
  - A lender certification of conversation with the commanding officer or rear detachment personnel, if the veteran or commanding officer cannot provide written verification. The following information must be included in the lender certification:
    - Name and rank/title of personnel that provided verification
    - Date of conversation
    - Method of communication, including phone number, if applicable



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## Power of Attorney (continued)

### VA Loans (continued)

- There must be more than one borrower on the loan and at least one borrower must be present at closing
- Title policy may not include any exceptions related to the Power of Attorney.

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**End of Policy**