

Power of Attorney

Underwriting, Revised October 2018 (Reviewed February 2019)

Overview

Follow these guidelines when a Power of Attorney (POA) executes documents for a reverse mortgage.

IMPORTANT: The use of a POA is NOT allowable on purchase transactions.

All Power of Attorney documents must meet state requirements. The title company must confirm and approve the use of the POA for the loan transactions. The POA must also be Durable, meaning it is valid even after the incapacity of the borrower, and it must be permanent. No “temporary” POAs are allowable “Springing” POAs (POAs that go into effect after the incapacity of the borrower) are allowable if the borrower is already incompetent, and the POA meets all other requirements.

Note: Springing POAs are valid only after the incapacity of the borrower, and temporary POAs are valid only for the length of time specified in the Power of Attorney document.

Texas Durable Power of Attorney

All requirements outlined in the POA document must be met. For example, if the POA requires two doctor’s letters to determine competency, or a letter from a specific doctor, these must be in the file. In addition, the POA document must specifically grant the Power of Attorney the authority to encumber the property with a mortgage.

Borrowers and non-borrowing spouses who sign documents at closing must meet the following requirements. In all cases:

- If the POA must sign the security instrument, record the ORIGINAL POA as a Prior to Funding condition.
- If the individual acting as POA signs any application documents, the POA must be valid BEFORE the execution of the application documents.

Note: See HUD Mortgagee Letter 2004-25, 2004-48, and 4235.1 Rev-1, Chapters 4-6, 4-7, and 6-7.

Process

Borrower is Mentally Competent and Physically Capable of Signing

When the borrower is mentally competent and physically capable of signing, he or she must:

- Execute all application and closing documents.
- Attend the counseling session and execute the counseling certificate.

IMPORTANT: Use of a POA is NOT allowable for these cases, unless the borrower meets the Blind Borrower Signature Requirements.

Note: Borrowers who cannot sign their full names can execute the documents with a mark, provided a witness and notary are present per state requirements. This includes persons who can sign their names, but have difficulty signing large volumes of closing documents. See [Signing with a Mark](#) for more information.

Borrower is Mentally Competent but Physically Incapable of Signing

When the borrower is competent, but is physically incapacitated with a condition that makes signing difficult, such as arthritis or paralysis, he or she must meet the HUD face-to-face requirement at application, counseling, or closing, OR be seen by their doctor during the time frame of the loan. The doctor must include this certification in the doctor’s letter.

In addition, we require:

- A doctor's letter that confirms the borrower's physical incapacity, and certifies that he or she is mentally competent, but unable to sign.
- The POA's signature on ALL application and closing documents.

Example: If the borrower's name is John A. Smith and the POA, guardian or conservator is Jane Doe, she signs the borrower signature line as "John A. Smith by Jane Doe as attorney in fact," (or as "Guardian," or "Conservator.")

- The borrower's name on the top of the counseling certificate, with the POA's signature on behalf of the borrower.

Note: We highly recommend that the POA be present during the counseling session.

- A notarized copy of the fully-executed Durable POA.
- Confirmation from the title company that the POA is acceptable to insure.
- An Alive and Well Affidavit, even if the closing is taking place at the borrower's home or the borrower is present at closing.

Borrower is Mentally Incompetent

When the borrower is mentally incompetent with a condition such as dementia or Alzheimer's, he or she must meet the HUD face-to-face requirement at application, counseling or closing.

In addition, we require:

- A doctor's letter certifying that the borrower is no longer capable of handling his or her own financial affairs. This letter must include the date the borrower became incapable of handling financial affairs. The date on the doctor's letter must be AFTER the date the borrower executed the POA. If the borrower signed the POA SHORTLY before the application date, the letter should verify that the borrower was capable of handling financial affairs on the POA date. The definition of "shortly" depends on the individual borrower's situation, but generally means within less than 12 months of the application date.
- Additional documentation when property is vested in a Trust Agreement, as outlined in the Trust Agreement.

Example: The trust requires a specific doctor to verify competency.

- The POA's signature on ALL application and closing documents.

Example: If the borrower's name is John A. Smith and the POA, guardian or conservator is Jane Doe, she signs the borrower signature line as "John A. Smith by Jane Doe as attorney in fact," (or as "Guardian," or "Conservator.")

- The person acting as POA to attend the counseling session on behalf of the borrower.

Note: The borrower's name appears at the top of the counseling certificate. However, the POA must attend the session and execute the certificate.

- A notarized copy of the fully executed Durable POA document.
- Confirmation from the title company that they reviewed the POA document, and determined it was acceptable to insure.

- An Alive and Well Affidavit, even if the closing is taking place at the borrower's home or the borrower is present at closing.

POA used on Closing Documents ONLY

When the POA signs at closing but NOT at application because of the borrower's mental incapacitation or physical disability during the loan process, we require that the borrower's situation meets ONE of the following set of guidelines:

- [Borrower is Physically Incapacitated](#)

Or,

- [Borrower is Mentally Incompetent](#)

In addition, we require a letter of explanation from the borrower or an independent third party indicating why they are now using a POA.

Note: All borrowers who are mentally competent and physically capable of signing MUST sign the closing package.

Required Documentation for POA

We require the following documents for POA loans:

- Photo Identification
- Clear [Limited Denial of Participation](#) (LDP)
- Clear [System for Award Management](#) (SAM)

POA Used to Change Vesting

A POA can ONLY be used to change vesting when the appointed Power of Attorney is not transferring title from the borrower's name into his or her own name. This type of transfer is called "self-serving," and is a conflict of interest, with the POA benefiting from his or her authority over another person.

We do not allow self-serving transactions. If the title change would benefit the POA, the POA must first obtain a court order authorizing the transfer to remove the borrower from the title.