

Power of Attorney Policy

Power of Attorney Policy

Mortgage Lending Division

Version 2.3 – 01/24/22



DOCUMENT 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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Document Overview (continued)

Revision Summary

Date	Version	Description of Change
01/24/22	2.3	Revised General Requirements to allow Production Support Managers to approve POAs in addition to Underwriting Managers.
09/30/21	2.2	Revised Non-Borrowing Spouse (all products) to clarify Underwriter responsibilities.
03/10/20	2.1	Updated Carrington Advantage Program Loans section with Limited Power of Attorney requirements to clarify POA is not permitted for Prime Advantage and Texas Home Equity transactions.
04/03/19	2.0	Changes throughout to clarify General and Agency requirements.
11/20/18	1.9	Added Conventional –FHLMC POA requirements.
07/16/18	1.8	Added CMS to CMS No Cash Out Refinance Transactions section with POA requirements for CMS to CMS Streamline and Rate Term transaction.
04/22/18	1.7	Updated Non-Prime Loans section with Limited Power of Attorney requirements.
02/01/18	1.6	Added Non-Prime Loans section with requirement that POA is not permitted.
04/17/17	1.5	Reviewed by the Director, Lending Compliance; VP, Credit; EVP, Strategy & Initiatives; SVP, Mortgage Lending Counsel; Director, Legal & Compliance Counsel; and President, Carrington Mortgage Services. No changes required.
07/25/16	1.4	<ul style="list-style-type: none">• Revised General Requirements section which establishes that Legal should not be approving exceptions to a credit policy.• Revised General Requirements to add approval requirements for exceptions.• Added additional clarification for FHA requirements• Revised VA requirements for obtaining VA Alive and Well Certification
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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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 Supervisor, Underwriting Manager, Director of National Underwriting, or Chief Credit Officer.

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 Supervisor, Underwriting Manager, Director of National Underwriting, 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. Specific Powers of Attorney 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 or Production Support Manager to ensure that it is acceptable in the specific state where the property is located. The Underwriting Manager or Production Support Manager will defer to the CMS Legal Department for further review, if required.

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Power of Attorney (continued)

General Requirements (continued)

- 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.
- 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](#) for additional information.

Non-Borrowing Spouse (all products)

The underwriter must review and approve the Non-Borrowing Spouse Power of Attorney to ensure that the following requirements are met for all loan types:

- Power of Attorney must be specific in nature
- Title Company approval is required
- Title Policy must not reflect exceptions as a result of the Power of Attorney

CMS to CMS No Cash Out Refinance Transactions

For all CMS to CMS no cash out refinance (Portfolio Streamlines and Rate Term) transactions, any power of attorney, whether specific or general, must comply with State law, and allow for legal enforcement of the mortgage note in the jurisdiction.

The specific or general power of attorney must be acceptable to Title, without any exceptions.

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Conventional Loans – FNMA and FHLMC

In addition to the general requirements, the following are required for Powers of Attorney on Fannie Mae and Freddie Mac 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 loan file must contain documentation evidencing the borrower was of sound mind when the Durable Power of Attorney was executed, but was incapacitated when the initial loan application was signed. If it cannot be demonstrated that the borrower was of sound mind when the Durable Power of Attorney was executed, then a court-ordered conservatorship is required with court approval for the subject transaction.
- The transaction must be a purchase or rate/term refinance only. Cash-out refinance transactions may not utilize a power of attorney.
- Property must be an owner-occupied principal residence or second home. There are no exceptions for investment properties.

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Conventional Loans – Additional FHLMC Requirements

In addition to the Conventional Loans requirements above, Freddie Mac has specific requirements that 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 (POA) in the following circumstances:

- In a hardship or emergency situation; and
- When CMS determines that applicable law requires use of a POA

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. If a POA is used, the Mortgage must be covered by a title insurance policy in accordance with general FHLMC title insurance requirements. If CMS has determined use of a POA is required by applicable law, CMS must include a written statement that explains the circumstances in the Mortgage file and deliver the statement to the Document Custodian with the Note.

If a POA is used, the original POA must be attached to and delivered with the Note to the Document Custodian, unless it is recorded with the Security Instrument. If the original POA is sent for recordation with the Security Instrument, a copy of the POA must be delivered with the Note. When the POA is returned from the recording office, either the original or a copy with recording information must be delivered to the Document Custodian and filed with the Note.

Carrington Advantage Program Loans

CMS does not permit a Power of Attorney (POA) for Carrington Prime Advantage loan transactions.

CMS will permit a Limited Power of Attorney (POA) for Carrington Flexible Advantage / Flexible Advantage Plus and Investor Advantage loan transactions when the following requirements are met:

- POA is specific to the transaction
- Recorded with the Mortgage/Deed of Trust
- Contains an expiration date
- Used only to execute the final loan documents
- Borrower who executed the POA signed the initial 1003
- No interested party to the transaction (such as property seller, broker, loan officer, realtor, etc.) may act as Power of Attorney
- Not permitted on cash-out transactions
- Not permitted on Texas Home Equity transactions

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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, 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 unless the borrower is incapacitated.
- 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 or General Durable Power of Attorney designed to survive incapacity, 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 Origination for FHA Loans

A Power of Attorney (POA) may not be used unless CMS verifies and documents that all of the following requirements have been satisfied:

- For military personnel, a POA may only be used for one of the applications (initial or final), but not both:
 - when the service member is on overseas duty 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.
- For incapacitated Borrowers, a POA may only be used where:
 - a Borrower is incapacitated and unable to sign the mortgage application;
 - the incapacitated individual will occupy the Property to be insured;
 - the attorney-in-fact has specific authority to encumber the Property and to obligate the Borrower with a Durable POA specifically designed to survive incapacity and avoid the need for court proceedings; and
 - the loan file contains documentation evidencing the borrower was of sound mind when the Durable Power of Attorney was executed, but was incapacitated when the initial loan application was signed. If it cannot be demonstrated that the borrower was of sound mind when the Durable Power of Attorney was executed, then a court-ordered conservatorship is required with court approval for the subject transaction.

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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.

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.

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- 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:
- Any specific or general power of attorney must comply with state law, and 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 additional requirements must be satisfied in circumstances involving military personnel or incapacitated borrowers:
 - For military personnel, a POA may only be used for one of the applications (initial or final), but not both:
 - when the service member is on overseas duty 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.
 - For incapacitated Borrowers, a POA may only be used where:
 - a Borrower is incapacitated and unable to sign the mortgage application;
 - the incapacitated individual will occupy the Property to be insured;
 - 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; and
 - the loan file contains documentation evidencing the borrower was of sound mind when the Durable Power of Attorney was executed, but was incapacitated when the initial loan application was signed. If it cannot be demonstrated that the borrower was of sound mind when the Durable Power of Attorney was executed, then a court-ordered conservatorship is required with court approval for the subject transaction.
 - 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 or General Durable Power of Attorney designed to survive incapacity, which does not have to indicate the specific property.
 - 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.
- For incapacitated Borrowers, a POA may only be used where:
 - a Borrower is incapacitated and unable to sign the mortgage application;
 - the Veteran using entitlement must occupy the Property to be guaranteed;
 - 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; and
 - the loan file contains documentation evidencing the borrower was of sound mind when the Durable Power of Attorney was executed, but was incapacitated when the initial loan application was signed. If it cannot be demonstrated that the borrower was of sound mind when the Durable Power of Attorney was executed, then a court-ordered conservatorship is required with court approval for the subject transaction.

Note: If the Veteran is also rated incompetent by the Department of Veterans Affairs, Prior Approval is required from the VA for the subject transaction. If the Veteran is incapacitated, but the VA has not rated the Veteran financially incompetent with a VA-assigned Fiduciary, then Prior Approval is not required.

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VA Loans, continued

- 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
- 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.

End of Policy