

WFG Underwriting Bulletin



To: All Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: April 28, 2020
Bulletin No.: NB 2020-08
Subject: Limited Powers of Attorney Insurability for Loan Closing

On March 31, 2020, in response to the COVID -19 pandemic, Fannie Mae and Freddie Mac temporarily adjusted their standards for the use of Limited Powers of Attorney (LPOA) for closing single family loans with an application date on or before May 17, 2020.

One of the major changes, for this time limited set of loans, was in permitting persons “connected to the transaction” including a title insurer or title agency insuring the transaction to serve as the attorney-in-fact on refinance transactions, purchase transactions and, for Fannie Mae only – on limited cash out refinances.

Note, the Fannie Mae guidance specifically precludes employees of the lender from acting as attorney-in-fact.

This change created the possibility of a borrower naming a title company as its attorney-in fact, (with safeguards to address the obvious conflicts of interest); with the power of attorney then being used to execute all of the final loan and disclosure documents.

Concerns with the LPOA Model

While WFG will insure transactions closed utilizing a Limited Power of Attorney in accord with that guidance and the standards below, there are a number of issues surrounding the use of LPOAs that our agents should carefully consider. Among them:

1. The use of an LPOA doesn't appreciably reduce the risk of your customers being exposed to COVID-19. Powers of attorney used for real estate transactions must be recorded, so must be notarized. In many states, a power of attorney also requires one or more witnesses. So, in those states, use of an LPOA may actually increase the number of people to whom your customer is exposed.
2. In many states with an active Remote Online Notarization (RON) Law you can use RON to execute the LPOA – but then you could also use RON to execute the actual loan documents, so little is gained by the extra step. Some states place further restrictions or extra safeguards on the use of RON to execute a POA.

3. We urge our agents to carefully review their E&O, Crime and Fidelity Bond and Cyber Security coverages. The liabilities assumed as a fiduciary under a power of attorney may not be within the scope of your normal business as a title agent or escrow or settlement agent. So, you may not have insurance coverage should someone claim an LPOA was used improperly or fraudulently.
4. Once you have confirmed insurance coverages, consider whether the LPOA should appoint the title agent entity rather than individual officers/employees – both to limit personal liability and assure insurance coverages. The entity will, of course, need to prepare resolutions or other documents authorizing certain named employees to sign on behalf of the entity.
5. The agent will be responsible for assuring that technology selected for the interactive video session meets Gramm Leach Bliley Act (GLB) and Health Insurance Portability and Accountability Act of 1996 (HIPAA) security standards; and the agent will be responsible for the long-term retention of the recorded internet session. That can be a significant ongoing cost and burden.
6. An LPOA can't be used for execution of fact-affidavits (the attorney-in-fact doesn't have the requisite personal knowledge), so a different execution method will be required for certain documents.
7. The use of an LPOA model requires building processes and infrastructure for an approval that is only temporary and which may or may not be extended.
8. Years ago, when the LPOA model was tried for non-pandemic reasons, it was generally perceived as adding time, expense and liability to the closing and not being well liked by consumers.

Fannie/Freddie Requirements

Even though a title insurance policy does not insure that a given loan will be saleable in the secondary market, or that an agent's closing process will comply with secondary market requirements, your lender customers have certain expectations. Thus, you will want to be familiar with the details of these TEMPORARY adjustments to the Fannie Mae and Freddie Mac Selling Guides, which ONLY apply to loans having an application date on or before May 17, 2020.

[Freddie Mac Bulletin 2020-8](#)

[Fannie Mae Lender Letter LL-2020-03](#)

Other lenders, warehouse lenders and secondary market participants may have different requirements – and the rules on this are subject to change.

Underwriting Guidelines for LPOA Transactions

WFG will issue its Closing Protection Letters in connection with and insure a transaction completed using a Limited Power of Attorney provided the following conditions are met:

1. The LPOA must:
 - a. Include the address of the mortgaged property

- b. Describe the transaction to be consummated; and if a loan, state a maximum loan amount.
 - c. Identify the lender(s)
 - d. Have a set expiration date
 - e. Authorize the attorney-in-fact to execute the required loan documents ONLY if the principal has, in a recorded, interactive session conducted via the Internet, specifically authorized the execution of the transaction documents; and
 - f. Terminate, expressly or as a matter of law, upon the death or incapacity of the principal (no durable powers of attorney).
2. The LPOA must be valid and executed in accord with the law of the state in which the property is located, as well as in the state whose law governs the LPOA (if different) – including any witness requirements.
3. All LPOAs must be notarized and in recordable form.
 - a. If wet-signed and notarized, the original LPOA must be returned to the attorney-in-fact prior to the closing.
4. If an LPOA is to be executed using a Remote Online Notarization (“RON”):
 - a. The property must be in a state in which WFG has approved RON transactions.
 - b. The lender must approve the use of RON to execute the LPOA and the use of the LPOA process.
 - c. The requirements of Bulletin [NB 2020-04](#) (as updated) must be expressly followed.
 - d. The execution must use one of the approved RON Service Providers listed in Bulletin [NB 2020-05](#); and
 - e. The property must be located in a county that accepts a RON E-recording or in a state which permits “papering out” of electronic documents.
 - f. RON notarization can be used for any affidavits certifying facts and usual Borrower/Seller affidavits.
5. The attorney-in-fact or agent is either (a) a division or subsidiary of Williston Financial Group (for transactions being closed by a WFG direct operation); (b) an authorized agent of WFG; or (c) an employee of one of the foregoing. If the power of attorney names someone else, normal power of attorney rules apply, and any known conflicts of interest should be discussed with your WFG underwriter.
6. The lender has authorized the use of an LPOA (and RON, if applicable) in connection with the transaction, and the loan closing instructions are consistent with the contemplated use of the LPOA.
7. At the time of closing, the attorney-in-fact will set up a recorded interactive video session over the internet with the principal during which:

- a. The principal's identity is verified either through the agent's personal knowledge of the signatory, or through a software platform that includes Knowledge Based Authentication and Credential Analysis.
- b. The principal is asked to verbally confirm:
 - i. Their name and address
 - ii. The transaction they contemplate completing
 - iii. That they have received and reviewed the loan closing package
 - iv. That they have had an opportunity to discuss (or have in fact discussed) any questions about the loan package with their loan officer, attorney and/or financial advisor; and
 - v. They agree with the terms and conditions of the loan documents as prepared.
- c. The principal should be asked to pull up and again review each of the following documents (as applicable), verbally acknowledge that the documents correctly reflects their agreement, and specifically direct the attorney-in-fact to execute the document on their behalf.
 - i. The Settlement Statement
 - ii. The Closing Disclosure
 - iii. The Promissory Note(s)
 - iv. The Mortgage(s) or Deed of Trust(s)
 - v. Any Deed(s)
 - vi. Any rescission notice(s)
 - vii. Any waivers of Owner's Title Insurance Coverage
 - viii. Other documents as required by the lender or other parties

The attorney-in-fact should execute each instrument when authorized, and later have a notary complete any required acknowledgements in the physical presence of the attorney-in-fact.
- d. Unless the lender directs otherwise, the remaining documents in the package (other than affidavits certifying facts) may be authorized in general terms: "You may sign all the rest of the documents in my loan package."
- e. The making of an affidavit certifying facts requires personal knowledge of the party signing. Unless the affidavit is to be recorded for title clearing purposes, consider restructuring routine borrower and seller affidavits as sworn statements under penalty of perjury given to induce your agency and WFG to insure title, instead of as affidavits. Have these e-signed during the interactive session or "wet-signed" and returned by delivery service. Contact your WFG underwriter to discuss handling of any affidavits certifying facts that must be recorded.

8. If using RON to execute the LPOA, the preferred course is to have the parties execute and notarize the LPOA first (using a notary who is not the attorney-in-fact), and then continue the same RON session to authorize execution of the remaining documents as set forth above. When using RON for an LPOA transaction, you must meet all of the requirements above, AND the RON requirements set forth in Bulletin [NB 2020-04](#) (as updated) using one of the approved RON Service Providers listed in Bulletin [NB 2020-05](#).
9. The closing office must retain a copy of the recording of the entire interactive video session. Note that under the Fannie/Freddie guidance, the Lender is required to be able to produce a copy of the recording at any time during the life of the loan. Who is to be responsible for this, and related charges, should be negotiated with the lender up front.

SPECIAL RULE FOR TEXAS

For Texas Section 50(a)(6) Home Equity Loans (“HEL”), lenders may only use a power of attorney to execute the note or security instrument if the power of attorney was signed at one of the locations at which a Texas Section 50(a)(6) HEL must be closed -- the office of the lender making the HEL, an attorney’s office, or the office of a title company -- and in conformity with other applicable requirements.

If a HEL must be signed in the office of a lender, attorney or title company, it would ostensibly be a rare occurrence that an LPOA would be needed. See [Texas Bulletin 34](#) and suggested [POA form](#).

If you have questions, call your WFG Underwriter.

NOTE: This Bulletin is for the sole purpose of establishing underwriting positions and policies reflecting WFG National Title Insurance Company’s best business judgment. The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company’s Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.