VA Lenders Handbook (VA Pamphlet 26-7), Chapter 9, Topic 8 — Power of Attorney (POA)

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8. Power of Attorney (POA) Change Date July 30, 2019 • This chapter has been revised in its entirety. a. Policy VA will allow a Veteran to use an attorney-in-fact to execute any documents necessary to obtain a VA-guaranteed loan. This enables active duty servicepersons stationed overseas, and other Veterans who cannot be present to execute loan documents, to obtain VA loans. b. Requirements The Veteran must execute a general or specific POA which is valid and legally adequate. The Veteran's attorney-in-fact (as specified in the POA) must use this POA to apply for a Certificate of Eligibility (COE) and initiate processing of a loan on behalf of the Veteran. A military POA is considered a general POA and is only valid during the Active Duty Servicemembers' (ADSM) period of deployment, not to exceed 1 year. To complete the loan transaction using an attorney-in-fact, ensure that the general or specific POA complies with state law to the extent that: • the mortgage can be legally enforced in that jurisdiction, and • clear title can be conveyed in the event of foreclosure. To complete the loan transaction using an attorney-in-fact, VA also requires the Veteran's written consent to the specifics of the transaction either through a general POA or a specific POA. General POA - 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. Continued on next page VA Pamphlet 26-7, Revised Chapter 9: Legal Instruments, Liens, Escrows, and Related Issues 9-15 8. Power of Attorney (POA), continued b. Requirements, continued Specific POA. A specific power of attorney or other document(s) signed by the Veteran, which encompasses the elements below. • 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 refinance. • Property Identification: Identification of the specific property. • Price and Terms: The sales price, if applicable, and other relevant terms of the transaction. • Occupancy: The Veteran's intention to use the property as a home to be occupied by the Veteran (or other applicable VA occupancy requirement or spouse and/or guardian for dependent child(ren)). c. Veteran's Status as Alive and not MIA The lender must always verify that the Veteran is alive at the time of loan closing, whether or not the Veteran is an ADSM in the military. If on active military duty, the Veteran must not be missing in action (MIA). The lender must make the following certification at the time of loan closing: "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 on or subsequent (not prior) to the date the note and security instruments were executed on the Veteran's behalf by the attorney-in-fact." VA may deny guaranty on a loan if the lender failed to properly verify the Veteran's status and the Veteran was deceased (or MIA) at the time the loan was closed. d. Digital Signature Digital signatures can be accepted as

an original signature or wet signature as defined by the Electronic Signatures in Global and National Commerce Act, commonly referred to as the E-sign Act. Continued on next page VA Pamphlet 26-7, Revised Chapter 9: Legal Instruments, Liens, Escrows, and Related Issues 9-16 8. Power of Attorney (POA), continued e. Prior Approval Loans VA will issue a Certificate of Commitment only if the Veteran has executed a valid and legally adequate POA and consented to the specific transaction (as described under the "Requirement" heading). If VA has information that the Veteran is MIA or deceased, VA will not issue a commitment. The Certificate of Commitment issued in POA cases contains the condition indicated under "Conditional Commitments" in Topic 5.04e of Chapter 5 in the Lender's Handbook. f. Hardship Exceptions VA may consider 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. Submit the facts of the case to the VA RLC where the property is located for a determination. VA Pamphlet 26-7, Revised Chapter 9: Legal Instruments, Liens, Escrows, and Related Issues 9-17

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