

**POLUNSKY BEITEL GREEN**  
ATTORNEYS AT LAW

To: Clients and Friends of the Firm

From: Polunsky Beitel Green, LLP

Date: April 3, 2020

We wanted to let you know that on March 31, 2020, Fannie Mae updated Lender Letter ([LL-2020-03](#)) to include new requirements and flexibility in the use of Powers of Attorney (“POA”) in purchase and limited cash-out refinance transactions. Fannie Mae originally issued the Lender Letter on March 23, 2020 to address industry questions and concerns due to COVID-19 (coronavirus). We recommend you review the entire Lender Letter as in addition to the new policies affecting POAs, it contains several new underwriting requirements, expands the permissible use of remote online notarization and addresses title policy concerns, among other issues.

However, in this memo we want to highlight some of the most noteworthy modifications in the Lender Letter to Fannie Mae’s requirements for use of a POA found in [Section B8-5-05](#) of the Selling Guide. Unless otherwise noted, these provisions are effective immediately and will remain in place for all loans with application dates on or before May 17, 2020.

**New Requirement: Discussion of loan terms with borrowers for purchases closing under a POA.**

The most notable change for lenders concerns the use of a POA to close a purchase transaction. For purchases with a note date on or after April 7, 2020, Fannie will now require an employee of the lender or settlement agent to explain the terms of the loan to all borrowers after delivery of the Closing Disclosure or Closing Statement and prior to closing.<sup>1</sup> This discussion must take place in person, telephonically, or using a video conference system. Each borrower must acknowledge the discussion and that the borrower understands the terms of the loan. This acknowledgment may either be in writing or orally if the lender records the telephone or video discussion.

In our opinion, this written acknowledgment can include either a document signed by each borrower or an e-mail from each borrower stating that the borrower:

- has received the CD/settlement statement;

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<sup>1</sup> However, if the individual acting as the agent is a person “connected to the transaction”, Fannie will still require that a recorded internet session between the agent and principal be conducted. See Selling Guide B8-5-05 for specific requirements.

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- has thereafter discussed the terms of the loan with an employee of the lender or settlement agent; and
- understands the terms of the loan.

It is important to note that the Lender Letter appears to require this discussion to be conducted with all borrowers, not merely the borrower using a POA. However, as this requirement only applies to borrowers, it appears the discussion is not required where only a non-borrower will be utilizing a POA (e.g., a non-borrowing spouse).

**New Flexibility: Fannie has suspended requirement that at least one borrower execute the note and security instrument.**

Although the Selling Guide currently contains a limited exception to this requirement if certain requirements are met, the Lender Letter uniformly suspends this requirement.

**New Flexibility: Certain individuals “connected to the transaction” may now act as agent on a purchase.**

The Selling Guide currently allows for certain individuals “connected to the transaction” (e.g., a title company employee) to act as the agent in limited cash-out refinances if certain requirements are met (see B8-5-05 for those requirements, which includes a recorded internet session between the agent and the principal to confirm the principal’s identity and intent to enter into the transaction). The Lender Letter now allows for these persons to act as agents on purchase transactions as well, provided those same requirements are met. If the borrower wishes to appoint an individual connected to the transaction as his/her agent, we recommend you review the Selling Guide requirements before proceeding. Do note that an employee of the lender is always prohibited from acting as the agent for the borrower, unless they are the borrower’s relative.

**New Flexibility: Expanded use of remote online notarization.**

Fannie Mae will now allow a POA to be remotely notarized in all jurisdictions, provided that the POA does not need to be recorded and the requirements of Selling Guide Section [A2-5.1-03](#) (as modified by the Lender Letter) are met. If the POA is required to be recorded, it may be remotely notarized only in the jurisdictions listed in the table on page 6 of the Lender Letter.

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**Restatement of Policy: Fannie will still require the POA to include the address of the mortgaged property.**

The Selling Guide currently requires the POA to “reference” the address of the property, “unless required by applicable law”. The Lender Letter requires that all POAs “include” the address of the property and states this is an additional requirement. It is unclear to us what the difference between the two requirements is, but we recommend lenders continue to ensure that all POAs include the legal description and address of the property.

**No Change: The Lender Letter does not waive Fannie’s prohibition on using a POA to close a cash-out refinance.**

The Selling Guide prohibits the use of a POA to close a cash-out refinance. Nothing in the Lender Letter suspends or alters this prohibition. Therefore, at this time Fannie Mae still does not allow a POA to be used to close a cash-out refinance.

**Additional updates to the Lender Letter are likely**

Fannie Mae has stated that it intends to release information to its customers as quickly as possible and will update and republish the Lender Letter as new guidance becomes available. We will keep you updated should any new guidance affecting POAs be released.

For your convenience, we have attached a copy of the Lender Letter as well as Section B8-5-05 of the Selling Guide. If you need assistance in the preparation of Modification Agreements for home equity loans or other transactions or have questions regarding the contents of this alert, please let us know.

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<sup>2</sup> Doug Foster is a non-lawyer and is not admitted to practice law in any state.