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**TO: North Carolina Chicago Title Approved Attorneys**

**FROM: Chicago Title, North Carolina State Office**

**DATE: May 6, 2020**

**RE: COVID-19, North Carolina Closing Attorneys as Attorneys-in-Fact / Agent under**

**Limited Powers of Attorney**

As we all continue to adapt to new possibilities for social distancing but to keep assisting clients and others in the real estate industry with closing transactions, one mechanism some have considered is the use of limited powers of attorney.

For independent North Carolina closing attorneys approve by Chicago Title considering serving as attorney-in-fact / agent for a client for a real estate transaction, Fannie Mae and Freddie Mac have had existing requirements in their Selling Guides, which have been somewhat relaxed in recent COVID-19 emergency related. The applicable provisions of the guides, lender letters and recent bulletins are provided below, with links to the entire document. But the highlights are below (though they differ somewhat):

* The attorney-in-fact for the borrower must *not* be an agent or affiliate of the property seller, so should *not* serve as attorney-in-fact for the property seller as well.
* The names of the principals must match the borrower.
* The date of the power of attorney must be such that it is effective on the date of execution of the closing documents by the attorney-in-fact.
* The power of attorney must include the address of the mortgaged property.
* Lender pre-approval of use of the power of attorney is required and verification that use of the power of attorney is not in violation of written closing instructions.
* The power of attorney must be signed, notarized and recorded as part of the transaction if used to sign any of the recordable closing documents, such as the deed of trust.
* Restrictions apply as to other “persons connected to the transaction” who can serve as attorney-in-fact, such as lender employees, real estate brokers and title agents. But closing attorneys, having a fiduciary relationship with the borrower, have not been prohibited under existing rules.
* Pre-closing acknowledgment or videoconference recording may be required with the borrower to verify the terms of power of attorney and of loan were discussed and approved.
* The power of attorney should be specific to the transaction, with a limited effective time period, should not be durable and/or must not be exercised for the closing if the principal is incompetent or legally incapacitated. (Obviously it will be ineffective if the principal is deceased.)

Resources for Selling Guides as well as FAQ’s and COVID-19 related guidelines can be found at the following websites:

Fannie Mae COVID-19 Frequently Asked Questions – Selling Guide, Updated Apr. 14, 2020:

<https://singlefamily.fanniemae.com/media/22326/display>

Fannie Mae Selling Guide, B8-5-05, Requirements for Use of a Power of Attorney (06/05/2019)

<https://selling-guide.fanniemae.com/Selling-Guide/Origination-thru-Closing/Subpart-B8-Closing-Legal-Documents/Chapter-B8-5-Special-Purpose-Legal-Documents/1736889191/B8-5-05-Requirements-for-Use-of-a-Power-of-Attorney-06-05-2019.htm>

FANNIE MAE LENDER LETTER (LL-2020-03) Updated March 31, 2020

<https://singlefamily.fanniemae.com/media/22316/display>

FREDDIE MAC, Selling Guidance related to COVID-19, Issued 03/31/2020, updated May 5, 2020

<https://guide.freddiemac.com/app/guide/content/a_id/1003772>

<https://selling-guide.fanniemae.com/COVID-19/COVID-19-FAQs-Notarization-Power-of-Attorney/1881461481/COVID-19-FAQs-Notarization-Power-of-Attorney-05-05-2020.htm>

FREDDIE MAC COVID-19 Selling-related Frequently Asked Questions (FAQs)

<https://sf.freddiemac.com/faqs/covid-19-selling-faqs#title-closing-and-notarization>

FREDDIE MAC SELLING GUIDE, § 6301.4

<https://guide.freddiemac.com/app/guide/content/a_id/1000799>

Additional information is available on the American Land Title Association (“ALTA”) website at: <https://www.alta.org/business-tools/coronavirus.cfm>

So if you are planning on serving as an attorney-in-fact / agent for a closing transaction, please contact us, as the following requirement would apply in addition to our standard North Carolina commitment requirement for closings under power of attorney:

**If the closing attorney representing the buyer/borrower will be serving as attorney-in-fact/agent for the buyer/borrower in the transaction to be insured, in addition to the Company's requirement regarding closings under powers of attorney (above), closing attorney:**

**(1)  must have written approval from the Proposed Insured lender to serve as attorney-in-fact/agent; and**

**(2) cannot also serve as attorney-in-fact/agent for a seller, if a purchase is part of the transaction.**

If the transaction we are being asked to insure does not conform to these guidelines, or if you have questions or require further assistance, please contact Chicago Title counsel for assistance.

We will continue to monitor these issues closely and will issue supplemental bulletins as needed as this national and state emergency develops