

7. Powers of Attorney

Changed Date September 15, 2004, Change 4
This section has been changed to create subsection lettering.

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 power of attorney which is valid and legally adequate. The veteran's attorney-in-fact may use this power of attorney to apply for a Certificate of Eligibility and initiate processing of a loan on behalf of the veteran.

To complete the loan transaction using an attorney-in-fact, ensure that the general or specific power of attorney 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. This requirement can be satisfied by either

- the veteran's signature on both the sales contract and the URLA, as long as the veteran's intention to obtain a VA loan on the particular property is expressed somewhere in those documents, or
- a specific power of attorney or other document(s) signed by the veteran, which encompasses the following elements:
 - - 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 refinancing.
 - - 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).

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**b. Requirements
(continued)**

In addition, at the time of loan closing, the lender must

- verify that the veteran is alive, and, if on active military duty, not missing in action, and
- make the following certification:

“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 subsequent to the date the note and security instruments were executed on the veteran’s behalf by the attorney-in-fact.”

**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 still in the military.

If the lender has difficulty obtaining verification that a service person in a combat area is alive and not in MIA status, the lender may request that VA obtain the necessary information on its behalf.

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. Prior
Approval
Loans**

VA will issue a Certificate of Commitment only if the veteran has executed a valid and legally adequate power of attorney 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 power of attorney cases contains the condition indicated under “Conditional Commitments” in section 4 of chapter 5.

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**e. Hardship
Exceptions**

VA may relax the requirements in 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 VA for a determination.
