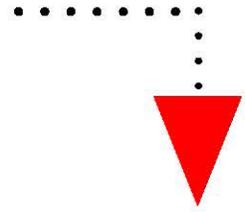


**February 2, 2018**  
**New Hampshire Housing**  
***Important Policy Notice***



## Delivery of Legal Documents

*Oh no! Legal Documents are being rejected and denied by our document custodian!*

Due to the increase of issues with legal documents over the past few months and further after speaking to our document custodian and legal counsel, we created the attached Policy.

The Policy outlines New Hampshire Housing's requirements for legal documents. It provides some of the common errors and options for correction that meet applicable guidelines and comply with NH Law.

We apologize for any inconvenience this may cause but hope that recognizing these errors sooner rather than later will help diminish them altogether.

We want to make every effort to help you understand, ahead of time, what the errors are and how to correct them in hopes that we can make the purchase process smooth and suspense free.

If you have any questions please feel free to contact:

Donell King  
603-310-9246  
dking@nhhfa.org



**Thank you for your continued support we appreciate your business!**

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**New Hampshire Housing Finance Authority  
Homeownership Division  
Legal Document Compliance Policy**

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## SECTION I INTRODUCTION

The following policy presents an overview of the process Participating Lenders<sup>1</sup> shall follow when delivering Legal Documents to New Hampshire Housing under an existing Mortgage Loan Purchase Agreement (MLPA) between New Hampshire Housing and the Participating Lender. This policy constitutes a “Program Guideline” under the MLPA, which means Participating Lenders and the loans they submit to New Hampshire Housing must comply with this policy.

This Policy, and New Hampshire Housing’s actions hereunder, must consider requirements of: i) New Hampshire Housing; ii) New Hampshire law; iii) mortgage insurers/guarantors; iv) secondary markets; and v) document custodians.

The Legal Document shall comply with this policy, the Program Guidelines and all other requirements of the mortgage insurer or the secondary market program. In addition to this Policy, all loans are subject to the MLPA.

New Hampshire Housing maintains the final right to make decisions about what Legal Documents comply with this Policy.

This policy consists of nine sections:

- I. Introduction;
- II. Definitions;
- III. Requirements;
- IV. Pre-purchase review of the loan;
- V. Purchase of the loan;
- VI. Post-purchase review of the loan;
- VII. Omissions and revisions;
- VIII. General; and
- IX. Amendments.

## SECTION II DEFINITIONS

The following words or terms, when the first letter is capitalized, apply to this Policy.

**Deed:** Legal document that conveys ownership of the subject property.

**Error:** Any Legal Document that does not comply with this Policy, including noncompliance with the MLPA, the Program Guidelines, New Hampshire law or the requirements established by the mortgage insurer/guarantor and the secondary market/document custodian.

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<sup>1</sup> New Hampshire Housing shall also follow this policy for loans it processes under the Participating Originator channel.

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**Legal Documents:** The term includes the note, mortgage, assignment of mortgage and loan title insurance policy and any other such documents required by New Hampshire Housing.

**Policy:** This Legal Document Compliance Policy.

**Purchase:** The transaction by which New Hampshire Housing compensates the Participating Lender for selling and assigning a Mortgage Loan to New Hampshire Housing pursuant to this Agreement, in conformity with the Program Guidelines

### **SECTION III REQUIREMENTS**

#### **3.01 Identical Information**

In addition to the specific requirements stated below, all Legal Documents shall have the identical transactional information. This means the note, endorsement/allonge, mortgage and assignment of mortgage shall be identical in terms of all required information, including name of the borrower(s), mortgage property address, loan amount, interest rate, property description and other such required information. A loan that does not have identical information does not meet New Hampshire Housing's requirements.

There is one exception: When a property owner is not a borrower. In such case, that nonborrower owner would:

- Not be on the note;
- Must be a signatory on the mortgage with a notation on the mortgage that the person is a nonborrower and waives their homestead rights; and
- Must be on the title policy when the section identifies the owners as compared to any section that identifies the borrower(s).

#### **3.02 Promissory Note and Endorsement/Allonge**

The note shall conform to all requirements of the mortgage program under which the loan is being made. Specifically, the note shall include:

1. Borrower(s) name(s);
2. Mortgaged property address;
3. Date;
4. Due date;
5. Loan amount;
6. P&I amount;
7. Lender;
8. First payment due date;
9. Maturity date;
10. Interest rate;
11. Late charge rate;

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12. Original signature(s) of borrower(s); and
13. Printed name(s) of borrower(s) adjacent to the signature.

The note shall be endorsed/assigned to New Hampshire Housing (either on the note or using an allonge attached to the note), and that document shall include:

1. Lender's name;
2. Original signature of authorized signer for lender;
3. Printed name and title of signer; and
4. Proper endorsement language.

The following is the required language for the endorsement:

*“Payable without recourse to the order of the New Hampshire Housing Finance Authority.”*

### **3.03 Mortgage**

The mortgage shall conform to all requirements of the mortgage program under which the loan is being made. Specifically, the mortgage shall include:

1. Date of mortgage;
2. Lender's information (name and address);
3. Borrowers - all names shown on the deed, including marital status, and an annotation about any nonborrower owner;
4. Loan amount;
5. Maturity date;
6. Language that the Exhibit A is attached;
7. Property address that matches the note;
8. Riders – noted and attached;
9. Signatures and notarization (including any nonborrower owner);
10. Exhibit A (property description); and
11. Waiver of Homestead<sup>2</sup>.

The mortgage shall be recorded at the registry of deeds where the mortgaged property is located.

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<sup>2</sup> Every person is entitled to \$120,000.00 worth of his or her homestead. RSA 480:1. No deed shall convey or encumber the homestead right, except a mortgage made at the time of purchase to secure payment of the purchase money. RSA 480:5-a. In short, in the case of a purchase money mortgage, homestead of the title holders and their spouses *does not have priority* over the interest of the purchase money mortgage. NH Title Standards, 6-2.

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### **3.04 Assignment of Mortgage**

The assignment of mortgage shall include:

1. Lender's (assignor) name;
2. Assignee's name;
3. Mortgaged property address;
4. Mortgagor's name as shown on mortgage;
5. Mortgage loan amount;
6. Mortgage date; and
7. Mortgage book and page;
8. Execution and notarization.

### **3.05 Loan Title Policy**

The loan title policy shall include:

1. Effective date and time that matches the date and time of the mortgage recording;
2. Schedule A #1 (name of insured/it's successors or assigns as their interests may appear);
3. Schedule A #4 (mortgage recording information);
4. Any mortgage riders;
5. Property description;
6. Full policy jacket;
7. The identical policy number throughout the policy; and
8. Deletion of standard exceptions 1, 2 and 3.

## **SECTION IV PRE-PURCHASE REVIEW OF THE LOAN**

The Participating Lender shall close and deliver loans pursuant to New Hampshire Housing's Loan Delivery and Purchase Policy. Before purchasing a loan, New Hampshire Housing shall review all Legal Documents (except the title policy that shall be reviewed post purchase) to ensure the Legal Documents comply with this Policy. If the Legal Documents comply with this Policy, then New Hampshire Housing shall Purchase the loan, provided the loan complies with the MLPA. If the Legal Documents do not comply with this Policy (an Error), then New Hampshire Housing shall not Purchase the loan until the Error has been corrected consistent with this Policy.

## **SECTION V PURCHASE OF THE LOAN**

Once the loan has been cleared for Purchase, the Participating Lender shall record the assignment of mortgage. The mortgage assignment shall: i) be the same mortgage assignment cleared by New Hampshire Housing before Purchase; and ii) have the correct book and page for the recorded mortgage.

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**SECTION VI  
POST-PURCHASE REVIEW OF THE LOAN**

The Participating Lender shall deliver the original recorded mortgage, the original recorded mortgage assignment and the final loan title insurance policy to New Hampshire Housing within 60 days of the loan Purchase date. Upon receipt and before submitting the Legal Documents to document custodian, New Hampshire Housing shall again review the Legal Documents to ensure they comply with this Policy.

**SECTION VII  
OMISSIONS AND REVISIONS**

Legal Documents that do not comply with this Policy must be corrected consistent with this Policy, which includes consistent with the requirements of the loan program under which the loan was made.

When an Error is discovered in the Legal Documents, New Hampshire Housing shall note the error on lender online. The lender shall correct the Error consistent with the following paragraphs.

**7.01 Promissory Note**

If the note includes an Error, the lender shall obtain and provide New Hampshire Housing with a new note and/or a new note endorsement/allonge. These documents must have new original signatures and be delivered to New Hampshire Housing. (New Hampshire Housing will not accept a note that has initialed cross outs or additions.)

**7.02 Mortgage**

If a mortgage includes an Error, the Lender shall correct that Error consistent with the following table:

<b>ERROR TYPE</b>	<b>REQUIRED MINIMUM CORRECTION</b>	<b>CORRECTION TYPE (DETAILED BELOW in 7.02(a))</b>
Notary stamp incomplete/missing	Scriveners' affidavit with legal opinion	1
Notary acknowledgement incomplete	Scriveners' affidavit with legal opinion	1
Mortgage fails to state that the legal description is attached	Scriveners' affidavit with legal opinion	1
Mortgage rider incomplete/not attached	Corrective mortgage	2
Legal description error	Corrective mortgage	2
Missing pages	Corrective mortgage	2

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Maturity date incorrect/missing	Corrective mortgage	2
Mortgage in MERS	Discharge and new mortgage	3
Names on mortgage do not match the deed	Corrective mortgage and/or new deed	*
Mortgage includes a nonborrower owner without proper annotation that the person is a nonborrower owner	Corrective mortgage that states name of nonborrower owner	2

*\*Depending on error type, Participating Lender may either obtain a corrective mortgage or a new deed, provided once corrected the mortgage and deed match.*

### **7.02(a) Corrective Requirements**

#### (1) Scrivener's affidavit with legal opinion

For this category, the Participating Lender shall correct the Error and provide New Hampshire Housing with: i) a scrivener's affidavit; and ii) a legal opinion.

A scrivener's affidavit shall include the following:

1. Book and page of mortgage being corrected;
2. Borrower(s) name;
3. Property address;
4. Statement of the Error and how the Error is being corrected; and
5. Proper signature and notarization.

A legal opinion shall:

1. Be prepared and signed by a licensed New Hampshire attorney;
2. Be provided on the attorney's letterhead;
3. Be addressed to New Hampshire Housing its successors and or assigns;
4. Include a detailed reference to the scrivener's affidavit;
5. Include an attached copy of the scrivener's affidavit;
6. State the Error;
7. Opine that the corrective action: i) corrects the Errors; ii) the mortgage, as originally recorded and as corrected, creates a valid mortgage; and iii) the correction does not in any way affect the validity, enforceability or recording priority of the mortgage as originally recorded; and
8. Include the legal citations/authorities relied on in providing the legal opinion.

#### (2) Corrective Mortgage

For this category, the Participating Lender shall provide a corrective mortgage, either by: i) correcting the original recorded mortgage; or ii) obtaining a new mortgage document that will replace the original mortgage.

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If the Participating Lender uses option i) above (correcting the original mortgage), the corrective mortgage shall have a cover page that includes:

1. Reference to the original mortgage, including borrower's name(s) and recording information for original mortgage;
2. Statement that the new corrective mortgage corrects the original mortgage but preserves the recording priority of the original mortgage;
3. Statement of what was corrected; and
4. Borrower's signature and notarization.

If the Participating Lender uses option ii) above (new mortgage document), the corrective mortgage shall include:

1. Reference to the original mortgage, including borrower's name(s) and recording information for original mortgage;
2. Statement that the new corrective mortgage corrects the original mortgage but preserves the recording priority of the original mortgage;
3. Statement of what was corrected; and
4. Proper signature and notarization.

Following the recording of the corrective mortgage, the Participating Lender shall provide New Hampshire Housing with an assignment that references the original mortgage and the corrective mortgage; and an endorsement to the loan title policy that references both mortgages.

### (3) Discharge and New Mortgage

For this category, the Participating Lender shall discharge the incorrect mortgage and provide New Hampshire Housing with a copy of the recorded discharge. A new mortgage will need to be executed, notarized and recorded.

### **7.03 Assignment of Mortgage**

If the assignment of mortgage has an Error, the Participating Lender shall provide New Hampshire Housing with a new assignment.

If the assignment of mortgage with the Error was recorded, the lender shall provide a corrective assignment that will include:

1. The word "Corrective";
2. Recording information of the original assignment;
3. Statement of what was corrected;
4. Statement that the new corrective assignment replaces the original assignment;
5. Proper signature and notarization; and
6. Book and page reference for original mortgage.

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The corrective assignment shall be executed by the Participating Lender and recorded. The Participating Lender shall also provide New Hampshire Housing with an endorsement to the loan title policy that references the corrected assignment.

### **SECTION VIII GENERAL**

1. This policy applies to all loans sold to New Hampshire Housing, including: Home *Flex*, Home *Flex Plus*, Home *Preferred*, and Home *Preferred No MI*.
2. All Errors will be noted on Lender Online. Participating Lenders shall review the status of their loans on Lender Online periodically to ensure corrections are resolved in a timely manner. The legal documents are delivered to the document custodian. If the document custodian is unable to accept a document(s) the loan will be subject to repurchase by the Participating Lender.
3. This policy does not include all possible Errors. If a loan includes an Error not covered by this policy, the Participating Lender shall contact New Hampshire Housing to determine what corrective action is required by New Hampshire Housing and/or the document custodian, all corrections to be in accordance with New Hampshire law.
4. New Hampshire Housing may require Participating Lenders to provide a legal opinion about what corrective action suffices or is required.

### **SECTION IX AMENDMENTS**

New Hampshire Housing may amend this Policy by providing the Participating Lenders with written notice of the change and the effective date of such change. The amended Policy shall then be posted on New Hampshire Housing's website.