



The NC Connection

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Underwriting Title Insurance Policies for Foreclosure Properties:

Providing Comfort to Purchasers and Lenders

By Anna Parris Walker

These troubled economic times can offer remarkable opportunities to real estate investors including the possibility of purchasing foreclosure properties at deep discounts. Foreclosure purchases become possible when a lender sells real property that was put up as collateral for a loan in an effort to satisfy that loan. Some investors shy away from purchasing foreclosure properties for fear of being bombarded by title problems. But purchasers and their new lenders can find comfort in title insurance coverage with relatively few requirements and exceptions. This article explains how title insurance policies on foreclosure properties are underwritten for purchasers and lenders.

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Only two key requirements are included in the title commitment for a purchaser or new lender: payment of taxes and completion of foreclosure proceedings according to state statute (e.g. N.C. Gen. Stat. Chapter 45). Foreclosure proceedings cancel the existing deed of trust and enable the purchaser to acquire title to the property as it existed at the time the deed of trust was recorded.

“ Only two key requirements are included in the title commitment...”

The title policy provides coverage but may take exception to matters of priority or the invalidity of the foreclosure action. These include certain judgments, federal tax liens, bankruptcy, rights or claims of parties in possession under unrecorded leases, and purchase money security interests in fixtures, if applicable.

Because foreclosure proceedings restore title back to its status at the time the deed of trust was recorded, the policy will not except to a judgment or non-federal tax lien filed between the time of the recordation of the deed of trust and the

completion of the foreclosure proceedings. However, the policy will except to a judgment entered during that period if it arose from a lien with priority over the deed of trust, as in the case of mechanic's liens. If the judgment or lien arose before the deed of trust was recorded or after the foreclosure was completed, then the title policy will take exception to it.

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Where federal tax liens are involved, the policy will except to the lien if the Internal Revenue Service (IRS) filed the lien *more* than 30 days before the foreclosure sale and *did not* receive notice of the sale. If the IRS filed the lien *less* than 30 days before the sale, or if the IRS *did* receive notice of the sale, then the IRS has a redemption period of 120 days after the sale to satisfy or lose its lien. In this case, the policy will except to the IRS's right of redemption unless the IRS waives its right in writing.

“ ...title insurance can provide investors and lenders with the comfort they need...”

In situations where the property owner seeks to avoid foreclosure and deeds the property to the lender by “deed in lieu of foreclosure,” the lender can obtain title insurance coverage. The title commitment will require cancellation of the deed of trust, an estoppel affidavit or explicit language in the deed, evidence of the fair market value of the property, and a payoff statement from the lender. If these requirements are not met, then the title policy will except to any loss or damage that occurs if the transfer is later deemed fraudulent.

With minimal requirements and few exceptions, title insurance can provide investors and lenders with the comfort they need to purchase and finance foreclosure property. Through our network of experienced and capable attorneys, the Commercial Services Division of Investors

Title can assist with obtaining title searches and title insurance products for commercial or acreage properties in foreclosure or bankruptcy. Title commitments are available for a minimal administrative fee that is waived if title insurance is purchased through Investors Title. Please contact us for

more information at tmason@invtitle.com.



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NC FUN FACTS

Babe Ruth hit his first professional home run in Fayetteville on March 7, 1914.

FALL GATHERING

Come share experiences and learn from others' experiences in such areas as:

- Tax Credit Financing
- Mortgage Modifications and Workouts
- Title Issues in Commercial Deals
- Reinsurance

**Food, fun, fellowship,
and UNC v. Ga. Southern in football.**

When: October 9th-10th

Where: Sheraton Europa, Chapel Hill

Reservations may be made with the hotel now.
Online sign up for seminar coming soon.

Know Your Policy Options and Inform Your Client

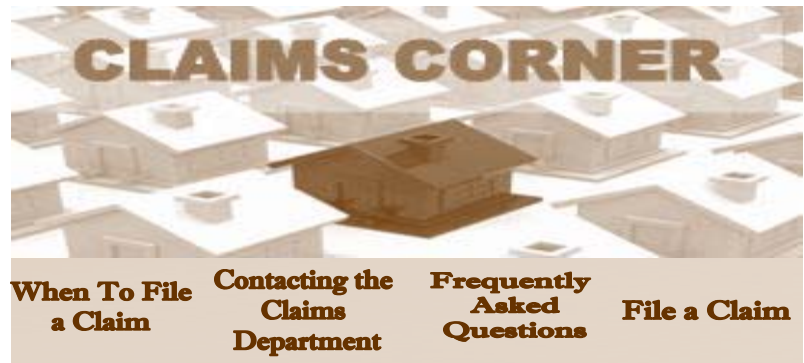
By Stephen B. Brown, Sr.
VP, Title Attorney

From time to time, the Claims Department, in the course of investigating filed claims, encounters an insured lender or owner who is disgruntled with the attorney who closed their

transaction and obtained their title insurance policy for reasons that are clearly and easily avoidable if an attorney follows two basic rules:

- (1) Know the coverage provided by the available policies and endorsements so that the owner and lender receive the best protection available from their title policies; and
- (2) If the title company agrees to insure over an identified risk the owner and lender should be informed in writing so that they may decide if they are willing to complete the transaction in light of the insured risk.

Failure to follow these basic rules may result in a claim against the attorney by or loss of future business from the disgruntled client in the event they suffer losses not covered by the title insurance policy.



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Know the Coverage.

Many knowledgeable, experienced attorneys have never taken the time to research the various types of policies and endorsements available for owners and lenders. This space does not allow for a discussion of each of the policies and endorsements available for residential and commercial transactions; however, coverage and levels of protection (as well as cost) may vary depending on the type of policy and the available endorsements selected by the closing attorney. An attorney can best serve the client's interest if they are aware of the range of policy coverage provided and the endorsements available (particularly in commercial transactions). This will allow the attorney to discuss the client's coverage needs and best assist the client in determining the appropriate policies and endorsements to order.

“ ...coverage and levels of protection (and cost) may vary... ”

Occasionally, in the course of discussing a claim with an insured owner or lender where there is not coverage for the particular type of claim or there is a limitation on the covered losses, the insured (or their attorney!) inquires regarding whether there was coverage available for the claim or losses which the closing attorney could have procured for the insured. It is never a comfortable moment for the claims administrator to have to answer that question if in fact such coverage was available and not procured. Needless to say if the answer is that there was coverage, the insured is left very unhappy. In at least one case an attorney was sued in South Carolina for, among other things, failing to procure the proper coverage for their client.

Investors Title is willing to provide educational assistance for commercial attorneys or firms that wish to learn more about the different endorsements and coverage available. If you are interested in this assistance please contact Tonya Mason at 704-940-3542 or tmason@invtitle.com.

Do Not Assume the Risk.

Title insurance companies are risk management companies. Title companies agree to assume certain identified risks as part of their normal business activities. Because they take these calculated risks, from time to time some of them actually turn into claims. When that occurs, the title insurance company will undertake to repair the claim or, if it cannot be repaired, will pay the losses specified *in the title insurance contract*. Certain losses or damages that may be suffered by an insured owner or lender are not covered by the title insurance contract, particularly when the claim is repaired. Consequential damages incurred by the insured (loss of rent or business, interest on mortgages, lost opportunity costs) are generally not covered by title insurance when a successful repair is undertaken by the title company.

“ ...the prudent attorney will disclose the potential title issue to the client in writing...”

Attorneys who identify potential title risks during their title search or transactional process often contact the title company or companies to see if the identified risk can be insured. In such cases a title company may agree to assume the risk and insure over the title issue based upon its underwriting practices. This does not necessarily mean, however, that the attorney's client is also willing to assume the risk, including, but not limited to, the delays and

consequential damages which may result from a successful title repair. In such instances, the prudent attorney will disclose the potential title issue to the client in writing, assist the client in assessing the potential risks if the title issue triggers a repair or payment under the policy, and explain the differences between marketable title and insured title, if applicable. The client can then make an informed decision to accept or reject the risk, or to account for it in the transaction terms before closing. That decision can then be confirmed in writing, protecting the attorney if and when the insured risk ripens into an actual title claim. An attorney who fails to follow these practices may unwittingly assume the risk of responsibility for any damages or losses not covered by the title insurance policy. The prudent attorney will leave the issue of risk assumption to the title company and the adequately informed client!

ALTA ENDORSEMENT 19-06

Background

When the property insured in the policy is comprised of two (2) or more parcels, a Contiguity endorsement may be requested to show that all parcels are described as a single parcel and no gaps, strips, or gores separate the contiguous boundary lines. ALTA addressed these concerns by formulating the ALTA 19-06 endorsement. The ALTA 19-06 endorsement gives coverage to the insured that two (2) or more parcels are contiguous to each other along defined boundary lines. In addition, the ALTA 19-06 endorsement provides insurance against loss or damage the insured may sustain due to any gaps, strips, or gores separating any of the contiguous boundary lines as described in the ALTA 19-06 endorsement.

Requirements

The ALTA 19 –06 endorsement may be used with either a Loan Policy or an Owner’s Policy for commercial or residential transactions. When issued, the contiguous boundary lines must be specifically described within the body of the endorsement (*i.e.* direction – North, South, East, West; parcel name; and/or

metes and bounds description). In order to obtain the ALTA 19-06 endorsement, a title insurance company may require receipt of a survey in order to confirm the contiguity between the parcels and to adequately describe the contiguous boundary lines.

The following requirement is typical:

“Upon receipt and satisfactory review of a current survey showing contiguous boundary lines between parcels to be insured, the ALTA 19-06 – Contiguity-Multiple Parcels Endorsement will be attached to the ^ [loan/owner’s] policy.”

ALTA ENDORSEMENT FORM 19-06 (Contiguity - Multiple Parcels) (6/17/06)

This endorsement is made a part of the Policy to which it is attached.

The Company insures against loss or damage sustained by the Insured by reason of:

1. the failure [of the _____ boundary line of Parcel A] of the Land to be contiguous to [the _____ boundary line of Parcel B] [for more than two parcels, continue as follows: “; of [the _____ boundary line of Parcel B] of the Land to be contiguous to [the _____ boundary line of Parcel C] and so on until all contiguous parcels described in the policy have been accounted for]; or
2. the presence of any gaps, strips, or gores separating any of the contiguous boundary lines described above.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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