Title Insurance for Lenders: Before, During and After Closing

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Background

• What is insured?

  ▪ A loan policy of title insurance insures against 14 covered risks, but essentially provides a lender 3 basic coverages:
    1. The person giving you a mortgage owns the underlying real estate
    2. The person who owns the real estate has the authority to give you a mortgage
    3. Your mortgage is first priority (unless you’re getting insurance for a lower priority)
Background

• What are exceptions?
  - Exceptions are items not covered by title insurance
  - Shift risk of loss back to the bank
  - If an item is “excepted” on the marked-up title commitment, it will appear on the final policy and the owner’s title and bank’s mortgage will be subject to the exception (example, a utility easement to PPL)
Background

• What are endorsements?
  ▪ Endorsements serve one of three purposes:
    1. Removes exceptions (e.g. END 300)
    2. Provides for additional coverage not otherwise provided in the policy (e.g. END 1010)
    3. Modifies a prior policy (e.g. END 500 or assignment and date down endorsement)
Before Closing

• There are 3 things that should be done before closing:
  1. Determine what endorsements the bank will require
  2. Review the title commitment
  3. Ask for copies of the exceptions and review them
“Standard” Endorsements

• A lender will often request 4 “standard” endorsements
  ▪ 100 – no violation of existing restrictions
  ▪ 300 – survey exception (removes “standard endorsements 3 and 4)
  ▪ 710 – variable rate
  ▪ 910 – environmental protection lien
Standard Endorsements

• END 101/103 – Apparent violation of existing (contemplated) construction.
  ▪ Insures against loss or damage as a result of a violation of existing (or proposed) improvements requiring the removal of the improvements
  ▪ Cost – 10% of base rate for 101, and $5 for each $1,000 of coverage up to $500,000, $2.50 for each $1,000 up to $1,000,000, and $1.25 for each $1,000 thereafter
Standard Endorsements

• 100/102 – No apparent violation of existing (contemplated) construction
  ▪ Insures that the restrictions and covenants in the chain of title have not been (or will not be) violated and that a future violation thereof will not cause a forfeiture or revision of title
  ▪ Cost - $50 for END 100, 10% of base rate for END 102
Standard Endorsements

• END 300 – Survey Exception
  ▪ Removes the standard survey exception and insures against loss by reason of encroachments whether by building on the mortgaged premises encroaching upon adjacent premises or vice versa.
  ▪ Cost - $50.00
Standard Endorsements

• END 710 – Variable Rate
  ▪ Insures priority of the lien of mortgage which by its terms can be renegotiated as to its rate.
  ▪ Cost - $50.00
Standard Endorsements

• END 910 – Environmental Protection Lien
  ▪ Insures the priority of the lien of mortgage over those environmental protection liens recorded in the land records.
  ▪ Cost - $100.00
Other Common Endorsements

• END 500 – Mortgage Modification Endorsement
  ▪ Insures against loss arising from the invalidity of a lien of the insured mortgage resulting from modification to the insured mortgage
  ▪ Cost - Charge for this endorsement is a percentage of the non-sale rate depending on the age of the original policy
Other Common Endorsements

- END 810/820 – Condominium/Planned Community
  - Provides multiple forms of coverage with respect to the Condominium/Planned Community Regime and Documentation.
  - Cost - $50.00
Other Common Endorsements

• END 1010-Revolving Line of Credit/Open-End Mortgage
  - Provides limited insurance securing the priority of mandatory loan advances made pursuant to a mortgage that qualifies as an “Open-End Mortgage” under Pennsylvania law
  - Cost – 10% of the base rate
Other Common Endorsements

• END 1015 - Open-End Mortgage/Construction
  ▪ Provides limited insurance securing the priority of advances made to pay all or part of the costs of completing any erection, construction, alteration or repair of any part of the mortgage premises made pursuant to a mortgage that qualifies as an “Open-End Mortgage” under Pennsylvania law.
  ▪ Cost – 10% of the base rate
Reviewing the Title Commitment

• When reviewing the title commitment you should be looking for the following:
  ▪ The bank’s mortgage as insured and the amount of the loan
  ▪ Status of taxes
  ▪ Exceptions to title
Reviewing the Title Commitment

- There are 6 standard title insurance exceptions
  1. Defects, liens, encumbrances, adverse claims or other matters appearing in public records after the effective date but arising prior to the effective date;
  2. Rights or claims by parties in possession or under the terms of any unrecorded lease or agreement(s) of sale
  3. Easements, or claims of easements, not in public records
  4. Any variation in location of lines or dimension or other matters which an accurate survey would disclose
  5. Possible additional tax assessments, not yet due and payable
  6. Accuracy of area content not insured
Reviewing the Title Commitment

• 1 is generally removed based on the seller (in the case of a purchase) or owner (in the case of refinance) affidavit
• 2 is generally removed based on the seller (in the case of a purchase) or owner (in the case of refinance) affidavit
• 3 and 4 are removed by END 300
• 5 is excepted
• 6 is excepted unless the title company receives and ALTA survey
Reviewing Title Commitment

• After the 6 standard exceptions, the remaining endorsements will either be:
  ▪ Removed;
  ▪ Exception; or
  ▪ Covered by an endorsement
Reviewing the Title Commitment

• You should request copies of the exceptions after the standard exceptions and review them
• Remember, title agencies sometime make mistakes
• Negotiate which exceptions will remain and which will be covered by an endorsement
At Closing

- At closing, the bank should receive either a marked-up title commitment or final policy
- Looking for the following on the marked-up commitment:
  1. Marked-up title commitment should include the jacket
  2. Effective date should be changed to the date of closing
  3. Requirements should be removed
  4. Exceptions should be as negotiated pre-closing
The Title Commitment at Closing
Schedule A

Commitment No.: 13-001033-3631

1. Effective Date: August 10, 2013 at 4:38 PM
2. Policy (or Policies) to be Issued:
   a. - n/a -
      Proposed Insured: [redacted] LLC
      Amount: $ 0.00
   b. ALTA Loan Policy (8-17-06)
      Proposed Insured: Jonestown Bank & Trust Co., its successors and/or assigns, as their interests may appear
      Amount: $ 825,000.00
   c. Proposed Insured:
      Amount: $ [redacted]

3. The estate or interest in the land described or referred to in this Commitment is Fee Simple
4. Title to the estate or interest in the land is at the Effective Date vested in [redacted] LLC

and was acquired by
deed from Reeha L.L.C. dated July 8, 2008 and recorded July 8, 2008 in the Office of the Recorder of Deeds in
and for Lancaster County, Pennsylvania, in Document No. 5718037.

5. The land referred to in this Commitment is described as follows:
   SEE EXHIBIT A ATTACHED HERETO

Issuing Agent: Lititz Pike Abstracting Co., Inc
Agent ID No.: 4063536
Address: 930 Red Rose Court, Suite 300
City, State, Zip: Lancaster, PA 17601
Telephone:

By: Craig Russell
Authorized Counter-signature
(The Schedule A valid only when Schedule B is attached)

The effective date should be updated to the date of closing
Endorsements should be listed next to the policy
Source of title
All requirements should be marked as removed or received

The following are the requirements to be completed:

1. The instrument executing the estate or interest to be insured must be approved, executed, delivered and filed for record.
2. For the agreed amounts for the interest in the land and/or the mortgage to be insured.
3. Pay all premiums, fees and charges for the policy.
4. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a claim on the land, and we may make additional requirements or exceptions regarding the interest or use.
5. Original photo identification for all parties to the transaction must be provided.
6. Proof to be furnished that as to each grantor/mortgagor who is an individual, if presently married, that he/she is either: (a) separated from their spouse for a party to any pending divorce proceeding in any jurisdiction, otherwise, the non-record spouse must join in the deed or mortgage contemplated herein.
7. Proof that there are no outstanding support obligations as of the date of recording of the instrument to be insured.
8. If any improvements have been made in the past six months, all unitary claims of mechanics and materialmen will be accepted as follows: Any lien or right to a lien, for services, labor or material furnished, incurred by law and not shown by the Public Records.
9. Town, County, and Special Tax and Water and Sewer Funds for the prior three years. (Please to be produced and filed with the Company.) If certification of payment or amount due is obtained from the taxing and municipal authorities in lieu of such receipt, proof must be provided that the taxing and municipal authorities have not taken collection of any unpaid amounts due to a collection agency or law firm. An agreement of the taxing or municipal authorities have taken collection to a collection agency or law firm, then additional certification of payment or amount due to be obtained from each collection agency or law firm.
10. Real Estate Tax and Municipal Claims (If paid, receipts are to be produced and filed with the Company.)
11. The Company may require other requirements or exceptions upon review of the documents creating the estate or interest to be insured or otherwise ascertaining details of the transaction.
12. The instruments creating the estate or interest to be insured are:

Mortgage from [Name of Mortgagor], LLC, a Pennsylvania limited liability company to [Name of Mortgagee]

In the original amount of $[Amount]

Endorsements: [List of endorsements]

The transaction is a purchase, a deed will be listed along with the mortgage.
Commitment for Title Insurance

Schedule BII

Commitment No.: 13-001003-3631

EXCEPTIONS

The policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.

2. Rights or claims of parties in possession or under the terms of any unrecorded lease or agreement(s) of sale.

3. Easements, or claims of easements, not shown by the Public Records.

4. Any variation in location of lines or dimensions or other matters which an accurate survey would disclose.

5. Possible additional tax assessments, not yet due and payable.

6. Accuracy of area content not insured.

7. Title to that part of the premises lying in the bed and right of way of all roads, driveways and alleyways is subject to public and private rights therein.

8. Legal operation and effect of the setback lines, plan notes, easements, conditions and encumbrances as shown on Subdivision Plan Book J-133, Page 68. (Note 4: Public sewers proposed for Lota 2-4, Lot 1 now served by public sewer.)

9. Covenants, restrictions and reservations as set forth in Record Book F, Volume 41, Page 175.


12. Rights granted to Pennsylvania Power & Light Company as set forth in Record Book A, Volume 60, Page 84; Record Book C, Volume 65, Page 438; Record Book F, Volume 84, Page 84; Record Book H, Volume 81, Page 47 and Record Book D, Volume 82, Page 160.


Removal by seller's affidavit

Excepted from coverage
Schedule BII

• This is the list of items that are not covered by title insurance (priority of the mortgage is subject to these exceptions).
• On a marked-up commitment, exceptions should either be marked as ‘remove’, ‘except’ or covered by an endorsement.
Schedule BII

- On this example, exceptions 1 and 2 are removed by the seller’s affidavit
- Exceptions 3 and 4 are covered by END 300
- Exceptions 5, 6 and 7 are excepted
- Exceptions 8, 10 and 11 are covered by END 100
- Exception 9 is covered by END 101
- Exceptions 11-13 are excepted
Post-Closing

- Make sure final policy is received and that old mortgages were satisfied
- Compare final policy to marked-up title commitment
- If an exception is excepted, it will appear on the final policy
- If an exception is removed it will not appear on the file policy
- Exceptions covered by endorsements will appear but should be referenced in the actual endorsement, which should appear after Schedule B