

2009 CLE – Complex Closing Stories

III. ALTA Coverages

Story – Lender loans money pursuant to a promissory note to a homeowner and secures the debt with a deed of trust on the real property. Lender obtains a 2006 ALTA Loan Policy in the amount of the loan. Lender begins a power of sale foreclosure proceeding after homeowner defaults on the note. At the sale, lender is the successful high bidder. After upset period has run, lender assigns its bid to a related entity, REO Sales, LLC. Lender does not assign the note or deed of trust to REO Sales. Substitute trustee conveys the property to REO Sales, which begins the process of selling the property. Prior to the property being sold, REO Sales receives notice of a foreclosure proceeding against the property for a deed of trust which was recorded prior to Lender’s deed of trust and did not appear as an exception on the Lender’s loan policy.

Issues – Does the assignment of a bid continue the loan policy for the assignee? What types of changes to the Insured are covered? Other new ALTA coverages of interest.

Discussion –

A. Insureds under the 2006 ALTA Policies -

1. **Differences between 1992 Policy and 2006 Policy** – The definition of “Insured” was expanded under the 2006 policy. Significant differences include:
 - i. Successors to the named Insured by operation of law (such as by devise), dissolution, merger, consolidation, conversion...
 - ii. A grantee of the Insured under a deed delivered without payment of actual valuable consideration to a wholly-owned entity (Loan and Owner’s) or if the grantee is a trustee or beneficiary of a trust created by the Insured for estate planning purposes (Owner’s only);
 - iii. The person or Entity who has “control” of the “transferable record,” if the Indebtedness is evidenced by a “transferable record,” as these terms are defined by applicable electronic transaction law (Loan only).

These changes were designed to eliminate the need for certain future grantees to obtain an additional policy or endorsement to existing policy and to acknowledge rights to the policy. For example, the successors to an Insured following a conversion of an entity (i.e., a partnership dissolution) are now deemed to be Insureds. This has obviated the need for a Fairway endorsement.

In addition, when individuals convey property into their wholly-owned LLC, the LLC is an Insured.

2. **Lender issues at Foreclosure** – An Insured lender receives certain continuation of insurance coverages under Condition 2 of the 2006 Loan Policy and Condition and Stipulation 2 of the 1992 Loan Policy. The 2006 ALTA Policy states :

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an interest in the Land... (similar language appears in the 1992 Loan Policy)

Essentially, this keeps the policy in place if the Insured lender purchases the property at foreclosure. It does not offer any coverage for problems or issues with the foreclosure proceeding.

Interesting issues have arisen because the language in Condition 2, the definition of an Insured under the policy, and the lender's desire to take title in a different entity (usually related) than the named lender on the policy. Usually, lenders want title placed in their REO entity. This helps them avoid liability issues and, theoretically, helps streamline the sales process. Some title companies' claims offices are now taking a closer look at standing issues. The question is whether or not the facts of the transaction support the REO entity being recognized as an Insured under the continuation of insurance provisions.

The definition of an Insured under the 2006 Loan Policy includes the following:

The owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the indebtedness for its own account or as a trustee or other fiduciary... (Condition 1(e)(i)(A))

This makes it clear that if the lender assigns the note and deed of trust, then the assignee is an Insured and will be entitled to the continuation of insurance coverages, if they purchase at foreclosure.

The more difficult situation is the one presented the facts of our story above. In this case, the note and deed of trust were not assigned to REO Sales. Rather the lender bid at foreclosure and then assigned that bid to REO Sales. When REO Sales receives

notice of the second foreclosure based upon a prior deed of trust, can they successfully make a claim under the original loan policy? There is slightly different language on this issue in the 1992 and 2006 Loan Policies.

The 1992 Loan Policy contains language that allows the policy to continue in the favor of

a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds. (Condition and Stipulation 2 (a)(ii))

The argument can be made that the high bid at a foreclosure sale is an interest in the property and that as an assignee of that bid, REO Sales is an acceptable transferee under this provision. REO Sales must be the parent or wholly-owned subsidiary (more likely) of the lender. If the assignee is an unrelated third party, then the coverage would not continue.

The 2006 Loan Policy focuses on the Insured in the continuation of insurance provision. As result, the definition of Insured must be reviewed to determine if REO Sales as assignee of the bid is an Insured under the policy. Since the note and deed of trust were not assigned to REO Sales, they do not meet the definition under Condition 1 (e)(i)(A) (set forth above). Condition 1(e)(i)(E) includes

a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title (1) if the stocks, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured...

This language gives similar coverage to the provisions (Condition and Stipulation 2 (a)(ii))of the 1992 Policy discussed above. The main difference being that the 2006 policy refers to a transfer by “deed,” rather than a “transferee of the estate or interest.” An assignment of bid is clearly not a deed, but an argument can be made that the result is the same. If tested in court, title companies may have problems demonstrating the harm to the insurer between a deed and an assignment of bid in this situation. The 2006 policy was designed to give additional coverages, rather than remove any

coverages given by the 1992 policy. Each title company will need to decide whether to raise a standing defense in these situations.

B. Reverse Mortgages - Story – Elderly couple retires from NY to the NC coast. Put a lot of their money into beach house, but economic crisis leaves them strapped for cash. Couple hears about reverse mortgages on talk radio and decides to do one. They contact attorney to handle closing. While preparing for closing, attorney receives a call from couples' son who is concerned that they are making a mistake.

Issues – How should attorney advise clients about the reverse mortgage? How much title insurance coverage should the lender purchase? Where can attorney get information?

Discussion –

1. **What is a Reverse Mortgage?** – Officially called a Home Equity Conversion Mortgage (“HECM”) under The Housing and Community Development Act of 1987, a reverse mortgage is a home loan which the borrowers are not required to repay until the survivor of them dies, sells, or is non-resident on the land for some specified period (12 consecutive months for health reasons). The idea is to convert equity of cash strapped elderly homeowners whose repayment capabilities may be limited. Reverse mortgages can provide a line-of-credit, a lump sum (rare), or, in what is called a tenure loan, a fixed monthly payment for the remainder of the borrowers lives. The loans are non-recourse and to be repaid from the proceeds of the sale of the home. They have neither a fixed maturity date nor a fixed mortgage amount. The loan proceeds are secured by first and second mortgages/deeds of trust on the property. One deed of trust is to the lender. The other is to the HUD.

The Housing and Community Development Act established a federal mortgage insurance program to insure reverse mortgages. The insurance gives the lenders the security that they will recover the amounts advanced under the loan. Initially, the number of reverse mortgages that could be insured under the program was limited to 2,500. That amount has since been expanded to 25,000.

North Carolina authorized reverse mortgages under NCGS §§ 53-255, et seq. The NC statutes require that lenders be specifically approved by the Banking Commissioner to make reverse mortgage loans (NCGS §.53-268). In addition, only approved lenders, and not brokers, are authorized to counsel the applicants prior to making the loan (NCGS § 53-269). A list of authorized lenders can be found at the NC Commissioner of Banks website (<http://www.nccob.org/NCCOB/Mortgage/ReverseMortgage/>).

For tenure loans, the disbursement of the proceeds to the borrowers is done on a monthly basis. Interest is usually at a variable rate, always deferred, and generally compounded and capitalized. Reverse mortgage loans utilize notes, mortgages (or deeds of trust) and loan agreements, the execution and recordation of which are comparable to conventional loans. Part of the post-closing appreciation of value is occasionally deemed additional interest by use of a rider to the other documentation.

2. **Qualifying** - In order to qualify for a reverse mortgage, HUD guidelines require that the borrowers be at least 62 years of age. The eligible real properties are one unit dwellings, including condominium units. The borrowers need to hold title to their homes free and clear or with liens not exceeding the principal limit. In addition, the borrowers are required counseling before the loan is processed. The counseling is provided by HUD-approved counselors and focuses on the different types of reverse mortgages available, the suitability of the reverse mortgage for the borrowers, and alternatives to reverse mortgages.
3. **Repayment** - Repayment is triggered when the surviving borrower dies, sells, or is non-resident on the land for some specified period (12 consecutive months for health reasons). The property is usually sold by the borrower or the borrower's estate to pay off the loan. There is no reason the loan could not be paid by another source of funds, such as a refinance. The reverse mortgage is a non-recourse loan, so recovery from the borrower, or their estate, is limited to the value of the home. When the value of the home is insufficient, then the lender may file a claim with HUD for the balance. The claim is limited by the "Maximum Claim Amount" (Described below).
4. **Title Insurance** - Lenders and HUD will require title insurance be purchased at the time of closing. The standard ALTA 2006 Loan Policy can be endorsed to insure a reverse mortgage. The ALTA 14.3-06 Endorsement Form was designed to be issued when insuring reverse mortgages. The endorsement is based upon the ALTA 14-06 Endorsement Form (Future Advance – Priority) with a few differences. First, section 2(d) insures against loss resulting from the failure of the mortgagors to be at least 62 years of age at Date of Policy. Second, "Interest" as used in the endorsement is defined to include lawful additional interest based on the net appreciated value. This covers reverse mortgages that provide for shared appreciation interest. Finally, the endorsement does not specifically state that the Amount of Insurance includes advances, as the ALTA 14-06 does. Such advances will be covered as the 2006 Loan Policy expressly includes post Date of Policy principal advances in the definition of Indebtedness.

The amount of coverage required for a reverse mortgage is a frequent question, because the loan documents do not include a fixed mortgage amount and the time of repayment is based upon uncertain matter, such as length of life. The general rule with most title insurance is to purchase a sufficient amount to cover any potential loss or damage. Pursuant to the HUD Guidelines, the amount a borrower may receive from a reverse mortgage is determined by calculating the “Principal Limit”. The Principal Limit is based upon the age of the youngest borrower, the expected interest rate and the “Maximum Claim Amount”. The Maximum Claim Amount is the lesser of the appraised value of the property or the maximum mortgage amount for a one-family residence that HUD will insure in an area under Section 203(b)(2) of the National Housing Act. It is also the cap of the amount that HUD will pay a lender for an outstanding balance on repayment of the loan following the sale of the secured property. As a result, it represents the maximum potential loss that a lender and HUD could suffer as a result of a title matter. The amount of title insurance coverage should match the Maximum Claim Amount. The lender should have the Maximum Claim Amount to provide the closing attorney for establishing the amount of title insurance coverage. Most title companies require the lender to specifically state the amount of coverage needed.

Resources –

HUD Website – <http://www.hud.gov/offices/hsg/sfh/hecm/hecmhome.cfm>

HUD Lender’s Handbook –
<http://www.hud.gov/offices/adm/hudclips/handbooks/hsg/4235.1/index.cfm>

AARP Website – <http://www.aarp.org/money/revmort/>

NC Commissioner of Banks -
<http://www.nccob.org/NCCOB/Mortgage/ReverseMortgage/>

Other Website – www.reverse.org

C. ALTA Endorsements - ALTA adopted several new endorsements on October 16, 2008. The following is a summary of these new endorsements and some prior ALTA endorsements of interest:

ALTA Endorsement – Form 3-06 (Zoning – Unimproved Land) (Adopted 06/17/06)

This endorsement is designed to inform the insured under an owner's or loan policy of the zoning classification under which the land falls and to insure the insured against

loss or damage that may be sustained by reason of inaccuracies in the information supplied or a final judicial determination invalidating the zoning ordinance establishing such classification and resulting in the prohibition of such uses. For issuance of this endorsement, the attorney would need to provide satisfactory verification (1) of the current zoning classification of the land; (2) that the land has been so zoned for at least two months; and (3) of the specific Permitted Use for which the land is currently or intended to be used, cited exactly as set forth in the applicable zoning ordinance or regulation.

ALTA Endorsement – Form 3.1-06 (Zoning – Completed Structure) (Adopted 06/17/06)

This endorsement expands the coverage given in Form 3 to insure the insured further against loss or damage that may be sustained by reason of a final judgment requiring the removal or alteration of existing structures on the land, on the grounds that they are violation of the zoning restrictions imposed on the use of the land relating to the site or floor area, set back lines, height of the building or number of parking spaces. For issuance of this endorsement, the attorney would need to provide verification (1) of the current zoning classification of the land; (2) that the land has been so zoned for at least two months; (3) of the specific Permitted Use for which the land is currently or intended to be used, cited exactly as set forth in the applicable zoning ordinance or regulation; and (4) that the land is in compliance with all applicable zoning regulations, including parking requirements.

ALTA Endorsement – Form 14.3-06 (Future Advance – Reverse Mortgage) (Adopted 06/17/06)

This endorsement provides coverage to a lender on a reverse mortgage transaction pursuant to the HUD Home Equity Conversion Mortgage Program requirements and the North Carolina Reverse Mortgage Act, Article 21 of Chapter 53 of the North Carolina General Statutes. For issuance of this endorsement, the attorney must verify that the borrowers are at least 62 years of age, that the deed(s) of trust (one to the lender, one to HUD) comply with North Carolina's future advance statute (NCGS 45-68 *et seq.* or NCGS 45-81 *et seq.*), that the deed of trust to be insured contains provisions identifying that it as a Reverse Mortgage in compliance with the Act as well as the maximum amount to be secured.

ALTA Endorsement – Form 15-06 (Nonimputation – Full Equity Transfer) (Adopted 06/17/06)

This endorsement provides coverage of the title-holding entity against loss due to knowledge imputed to title-holding entity solely by operation of law due to knowledge or action of named outgoing partners, members, shareholders, officers or directors on transfer of the entire equity ownership to new incoming partners, shareholders or members. For issuance of this endorsement, the title insurer would need (1) verification that the full equity interest in the proposed insured owner

(entity) is to be transferred to the incoming equity purchaser for full value without knowledge by the said purchaser of any defect, lien, encumbrance, adverse claim or other matter affecting title to the land, not disclosed to Company prior to closing; and (2) a satisfactory Non-Imputation Affidavit and Indemnity by (and satisfactory assurances regarding) all outgoing equity holders that they know of no defect, lien, encumbrance, adverse claim or other matter affecting title to the land, not disclosed to Company prior to closing, which would be imputed to proposed insured owner.

ALTA Endorsement – Form 15.1-06 (Nonimputation – Additional Insured)
(Adopted 06/17/06)

This endorsement provides coverage of incoming purchasing partner, member, or shareholder purchasing an interest in the title-holding entity from the entity, for their purchased percentage interest only against loss due to knowledge imputed to the title-holding entity solely by operation of law due to knowledge or action of named shareholders, partners, members, shareholders, officers or directors. Since the policy itself insures the title-holding entity, they must consent to this coverage being for the benefit of an individual partner, member or shareholder, rather than the title-holding entity. For issuance of this endorsement, the title insurer would need (1) verification that the equity interest in the proposed insured owner (entity) is to be transferred to the proposed additional insured incoming equity purchaser for full value without knowledge by said purchaser of any defect, lien, encumbrance, adverse claim or other matter affecting title to the land, not disclosed to Company prior to closing; and (2) a satisfactory Non-Imputation Affidavit and Indemnity by (and satisfactory assurances regarding) all outgoing equity holders (and any remaining general partners if a partnership) that they know of no defect, lien, encumbrance, adverse claim or other matter affecting title to the land, not disclosed to Company prior to closing, which would be imputed to proposed insured(s).

ALTA Endorsement – Form 15.2-06 (Nonimputation – Partial Equity Transfer)
(Adopted 06/17/06)

This endorsement provides coverage of incoming purchasing partner, member, or shareholder, purchasing an interest in the title-holding entity from outgoing partners, members or shareholder, against loss due to knowledge imputed to such entity solely by operation of law due to knowledge or action of named outgoing partners, members, shareholders, officers or directors. For issuance of this endorsement, the title insurer would need: (1) verification that the equity interest in the owning entity is to be transferred to the proposed insured incoming equity purchaser for full value without knowledge by said purchaser of any defect, lien, encumbrance, adverse claim or other matter affecting title to the land, not disclosed to Company prior to closing; (2) a satisfactory Non-Imputation Affidavit and Indemnity by (and satisfactory assurances regarding) all outgoing equity holders (and any remaining general partners if a partnership) that they know of no defect, lien, encumbrance, adverse claim or other matter affecting title to the land, not disclosed to Company prior to closing, which would be imputed to the owning entity; and (3) agreement of the owning entity

and proposed insured as to coordination of benefits between ownership policy and policy regarding equity interest to be issued hereunder.

ALTA Endorsement – Form 16-06 (Mezzanine Financing) (Adopted 06/17/06)

This endorsement provides for direct claim of mezzanine lender on owner's policy in property not serving as security interest, but owned by borrower under mezzanine financing arrangement. For issuance of this endorsement, the title insurer would need verification of (1) agreement of insured to assign policy protections to lender by execution of endorsement and to delivery of original owner's policy with endorsement to lender, and (2) a satisfactory Non-Imputation Affidavit and Indemnity by (and satisfactory assurances regarding) equity holders of owner-insured (including general partners if a partnership) that they know of no defect, lien, encumbrance, adverse claim or other matter affecting title to the land, not disclosed to Company prior to closing, which would be imputed to the insured or proposed insured lender.

ALTA Endorsement – Form 17-06 (Access and Entry) (Adopted 06/17/06)

This endorsement provides coverage against loss due to lack of access to named open, public street, including curb cuts. For issuance of this endorsement, the title insurer would need verification satisfactory to the insurer and a current survey reflecting: (1) The name of the public street which provides access to the land; (2) that the street is in fact a physically open public street, maintained by a public authority (city or state); (3) that the land abuts thereon; (4) that access is not prohibited or limited in any way, either legally (such as controlled access) or physically (i.e. no physical impediment to vehicular or pedestrian access) and (5) insured has right to use existing curb cuts or entries, if any, along that portion of the street abutting the land.

ALTA Endorsement – Form 17.1-06 (Indirect Access and Entry) (Adopted 06/17/06)

This endorsement provides coverage against loss due to lack of access over a private easement or right-of-way to named open, public street, including curb cuts. For issuance of this endorsement, the title insurer would need verification satisfactory to the insurer and a current survey reflecting: (1) The name or identification of the private access easement ("easement") to be insured and name of the public street ("street") to which such easement provides access; (2) that the easement is created by duly recorded instrument; (3) title to the easement is certified such that same can be identified as an insured parcel under Schedule A of the policy, and exception taken to any relevant matters related thereto including the terms and conditions of the creating instrument; (4) that the street is in fact a physically open public street, maintained by a public authority (city or state); (5) that the land abuts the easement and the easement abuts the street; (6) that access over the easement onto the street is not prohibited or limited in any way, either legally (such as controlled access) or physically (i.e. no physical impediment to vehicular or pedestrian access) and (7) insured has the right to use existing curb cuts or entries, if any, along the easement or street.

ALTA Endorsement – Form 17.2-06 (Utility Access) (Adopted 10/16/08)

This endorsement provides coverage against loss to an insured lender or owner in the event the land does not have access to specified utilities which must be checked on the form, including water service, electrical power service, telephone service, storm water drainage or other service (filled in by the drafter), due to a gap in easement or a termination by the grantor. For issuance of this endorsement, the title insurer would need verification from the attorney or utility provider of such utility service being currently available to service the Land, either over, under or upon public rights-of-way directly adjacent to the land, or over, under or upon an easement (not terminable by the grantor thereof or by his heirs, personal representatives, successors or assigns) for the benefit of said Land that connects to public rights-of-way. This would typically be from review of a current survey, verification from a third party that the reflected public utilities are direct, public and in place, and title certification of private easements by the certifying attorney.

ALTA Endorsement – Form 21-06 (Creditors' Rights) (6/17/06, Revised 1/1/08)

This endorsement provides insurance against certain losses due to a fraudulent transfer or a preference under federal bankruptcy, state insolvency or similar creditors' rights laws, which risks are otherwise Exclusions from Coverage under the ALTA Owner's Policy (6-17-06) and/or the ALTA Loan Policy (6-17-06). Issuance of this endorsement requires prior approval by the appropriate official(s) of the title insurer, depending on the nature of the transaction. In order to obtain that authorization, the following must be provided to Company: A description of the nature of the transaction, which needs to include, but not be limited to (a) the structure of the transaction (antecedent debt, upstream or downstream financing, sale-leaseback, leverage buyout, etc.); (b) names and affiliations of parties to or connected with the transaction; (c) the consideration to be paid, including the source of funds (if

any); (d) the intended use of proceeds of any loan to be insured; (e) any facts which bear upon the financial status of the borrower or seller; and (f) any additional information which may materially affect the nature of the risk to be insured. Upon receipt of this information, our commitment is subject to additional requirements and exceptions arising from a review of said disclosure.

ALTA Endorsement – Form 23-06 (Co-Insurance - Single Policy)(Revised 10/16/08)

This endorsement is attached to a single policy for an insured owner or lender, issued by the Issuing Co-Insurer, in which more than one insurer (the “Co-Insurers”) have liability for the property/transaction insured, -- each in the amounts and proportions of insurance specified in the endorsement. The endorsement evidences that the Co-Insurers executing the endorsement adopt the Covered Risks, Exclusions, Conditions, Schedules and Endorsements of the policy issued by the Issuing Co-Insurer and, unlike traditional co-insurance, only the single policy of the Issuing Co-Insurer is actually issued; Co-Insurers do not issue separate identical policies.

ALTA Endorsement – Form 24-06 (Doing Business)(Adopted 10/16/08)

This endorsement provides assurances against loss by an insured lender in the event the Insured Mortgage is invalid or unenforceable solely because the lender did not qualify to do business in the state in which the Land is located. It is preferable that the lender comply, as applicable, with the North Carolina Mortgage Lending Act by filing with the commissioner of Banks, with the filing requirements of the North Carolina Secretary of State, or with any other state or federal applicable banking or regulatory requirements. However, that is not a requirement of issuance of the endorsement since it will not invalidate the lien or render it unenforceable.

ALTA Endorsement – Form 25-06 (Same As Survey)(Adopted 10/16/08)

This endorsement provides assurances against loss or damage to an insured lender or owner if the Land described in the policy is not identical to that property shown on a designated survey. (This is substantially similar to the former CLTA Endorsement 116.1.) The survey must be provided to the title insurer and the land shown thereon must conform to the description and title certifications upon which the title insurer is issuing the policy.

ALTA Endorsement – Form 25.1-06 (Same as Portion of Survey)(Adopted 10/16/08)

This endorsement is similar to the Form 25 and has similar requirement for issuance. However, this endorsement form limits its coverage a specified lot, parcel or tract shown on the referenced survey, and *not all* of the property on the survey.

Thus, the endorsement would be applicable when only an identifiable and separately labeled portion of property shown on the survey is actually being insured under the policy.

ALTA Endorsement – Form 26-06 (Subdivision)(Adopted 10/16/08)

This endorsement provides assurances against loss or damage to an insured lender or owner if the Land fails to comprise a lawfully created parcel according to the applicable subdivision statutes or ordinances. For issuance of this endorsement, the title insurer must be provided with either a satisfactory survey setting forth compliance with all applicable subdivision laws, ordinances, resolutions, regulations and rules, or (ii) certification from an attorney or surveyor that the insured land is in compliance with all applicable subdivision laws, ordinances, resolutions, regulations and rules. The appeal period must have expired for any recent changes, or special approval from underwriting counsel would be required.

ALTA Endorsement – Form 27-06 (Usury)(Adopted 10/16/08)

This endorsement provides assurances against loss or damage to an insured lender in the event the deed of trust is found unenforceable or invalid as a result of violation of the usury laws of the state in which the Land is located. For North Carolina property, this policy can be issued so long as the borrower(s) is(are) partnership, corporation or limited liability company, but not individuals. However, coverage must be limited to North Carolina usury laws and is not provided for loss or damage as may be caused as a result of provisions for the charging of or payment of late charges as provided in Section 24-10.1 North Carolina statutes.

ALTA Endorsement – Form 28-06 (Easement – Damage or Enforced Removal)(Adopted 10/16/08)

This endorsement provides assurances against loss or damage to an insured lender or owner for damage to or enforced removal or alteration of an existing building located on the Land solely as a result of the exercise of the right of use or maintenance of a specified easement, identified by exception number designation in Schedule B – Exceptions of the policy. Typically, provision of this coverage will require prior approval by the title insurer based upon review of a current survey of the Land showing the improvements, a copy of the recorded easement document and information about the use of the improvements (current and intended) in conjunction with any other relevant surrounding facts.

**Exhibit A
ENDORSEMENT**

Attached to Policy No.

Issued by

CHICAGO TITLE INSURANCE COMPANY

1. The insurance for Advances added by Sections 2 and 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions in the Policy, except Exclusion 3(d), the provisions of the Conditions and the Exceptions contained in Schedule B.
 - a. "Agreement," as used in this endorsement, shall mean the note or loan agreement secured by the Insured Mortgage or the Insured Mortgage.
 - b. "Advances," as used in this endorsement, shall mean only those advances of principal indebtedness made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.
2. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Advance over any lien or encumbrance on the Title.
 - c. The invalidity or unenforceability or loss of priority of the lien of the Insured Mortgage as security for the Indebtedness and Advances resulting from (i) re-Advances and repayments of Indebtedness, (ii) lack of outstanding Indebtedness before an Advance, (iii) failure to comply with the requirements of state law to secure Advances, (iv) failure of the Insured Mortgage to state the term for Advances, or (v) failure of the Insured Mortgage to state the maximum amount secured by the Insured Mortgage.
 - d. The failure of the mortgagors to be at least 62 years of age at Date of Policy.
3. The Company also insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the principal portion of the Indebtedness.
 - b. Loss of priority of the lien of the Insured Mortgage as security for the Indebtedness, including any unpaid interest that was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which loss of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.

“Changes in the rate of interest,” as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage at Date of Policy.

“Interest,” as used in this endorsement, shall include lawful additional interest based on net appreciated value.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from:
 - a. Advances made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor.
 - b. The loss of priority of the lien of the Insured Mortgage, as security for Advances, to the lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy.
 - c. The loss of priority of the lien of the Insured Mortgage as security for any Advance, to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Insured that a federal tax lien was filed against the mortgagor, or (ii) the expiration of more than forty-five days after notice of a federal tax lien filed against the mortgagor.
 - d. The loss of priority of the lien of the Insured Mortgage as security for Advances to any federal or state environmental protection lien.
 - e. Usury, or any consumer credit protection or truth-in-lending law.
 - [f. The loss of priority of the lien of the Insured Mortgage as security for any Advance to a mechanic’s or materialmen’s lien.]

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.

[Witness clause optional]

CHICAGO TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

**ALTA Endorsement 14.3-06 (Future Advance - Reverse Mortgage)
Adopted 6/17/06**