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Understanding Title Requirements

What is Title Insurance?

Title Insurance is a form of indemnity insurance which insures against financial loss from defects in title to real property and from the invalidity or enforceability of mortgage loans.

A title commitment (preliminary title report) and 24-month chain of title/deed history is required for every loan.

The title to the subject property must be good and merchantable, and free and clear of all liens and encumbrances

Title Insurance Requirements

The Title Policy must be written on the 2006 ALTA Standard form or the ALTA Short form. All Title Commitments must include:

- Mortgage and Lien searches
- Judgement search
- Bankruptcy search
- 24-month tax payment history
- Covenants, Conditions & Restrictions (CC&Rs), if applicable
- Easements
- Encroachments
- Endorsements



Title Insurance Requirements, cont.

Date of Commitment

- The commitment/effective date must not be older than 120 days at the time of closing
 - For the state of TEXAS it cannot be older than 90 days

Proposed Insured

- Broker
 - Trust Lending, LLC, ISAOA
- PAA
 - Lender listed on the 1009 application including ISAOA
 - Title company may not include ISAOA in the state of Texas

Title Coverage Amount

- Minimum amount of title coverage required is the Maximum Claim Amount (MCA)
 - The MCA is the lesser of the appraised value, purchase price or HECM lending limit

Legal Description

- The legal description must match the most recent recorded Deed and the appraisal report
- Any discrepancy in the legal description from the title to the appraisal must be resolved



Vesting, HECM

Trust Lending must review the title vesting to ensure it conforms to our guidelines

- A mortgagor is not required to be a borrower; however, any borrower is required to be on title to the property which serves as the security/collateral for the HECM, and is therefore, by definition, also a mortgagor
- Mortgagor shall hold title to the entire property which is the security/collateral for the mortgage. If there are multiple mortgagor, all must collectively hold title to the entire property
- If one or more mortgagors hold a life estate in the property, for purposes of this section only, the term “mortgagor” shall include each holder of a future interest in the property (remainder or reversion) who has executed the mortgage

A death certificate is required when a deceased person is being removed from title. This includes any person named in a Trust. An Affidavit of Death may also be required based on state requirements as determined by the title company. The title company or settlement agent must state in writing that the deceased party can be removed from title at closing without Probate being completed.



Vesting, HECM cont.

- If Non-Borrowing Spouses and Non-Borrowing Owners of the property will continue to hold title to the property which serves as the security/collateral for the HECM, such Non-Borrowing Spouses and Non-Borrowing Owners must sign the mortgage as mortgagor, evidencing their commitment of the property as security for the mortgage
 - All Non-Borrowing Spouses and Non-Borrowing Owners shall sign a certification that:
 - Consents to their spouse or other borrowing owner obtaining the HECM
 - Acknowledges the terms and conditions of the mortgage
 - Acknowledges that the property will serve as collateral for the HECM as evidenced by the mortgage liens
 - **NOTE:** The Ownership Interest Certification must be executed by any Non-Borrowing Owners of the subject property who are being removed from title including any Eligible or Ineligible Non-Borrowing Spouse

In the state of MINNESOTA, only the HECM borrower(s) may have a vested ownership interest in the subject property after loan closing. Property held in Trust is permitted provide that the Trust meets FHA guidelines
In the state of TEXAS loans cannot close with an Eligible Non-Borrowing Spouse



Vesting, Platinum

Trust lending must review the title vesting to ensure it conforms to our guidelines

- Only an eligible reverse mortgage borrower or eligible Trust may hold a vested interest in the subject property at the time of closing.
- No other person(s) may have a vested interest in the subject property after loan closing
- A new Deed must be executed prior to or at the time of loan closing that removes all other vested owner(s)
- Any borrower is required to be on title to the property which serves as collateral for the reverse mortgage, and all borrower(s) must collectively hold title to the entire property which is security/collateral for the mortgage

A death certificate is required when a deceased person is being removed from title. This includes any person named in a Trust. An Affidavit of Death may also be required based on state requirements as determined by the title company. The title company or settlement agent must state in writing that the deceased party can be removed from title at closing without Probate being completed.



Trusts

- Title may be held in an approved Revocable or Irrevocable inter-vivos Trust (aka a Living Trust)
- A complete copy of the Trust Agreement with all addendums and amendments must be included in the file
 - Certificate of Trust may be used in the state of California permitting it provides all information to validate that the Trust meets underwriting guidelines and allows legal counsel to provide an Attorney Opinion Letter
- Trusts must meet FHA guidelines for HECM loans
- Living Trusts must meet inter-vivos eligibility requirements
- Testamentary Trusts are not permitted

NOTE: Properties in the state of TEXAS are not allowed to close in a Trust

Title Company Review

The Trust must be reviewed and approved by the title company issuing title insurance on the loan. If the title company does not complete a Trust review, then they need to provide a written statement stating the same

Attorney Review, Revocable and Irrevocable Trusts

The Trust documents must be reviewed and approved by Trust Lending Review Attorney

An Attorney Opinion Letter must be provided to Trust Lending prior to the closing documents being drawn

If the Closing Attorney chooses to review the Trust in addition to the Trust lending approved attorney, a Trust Review Fee may not be charged to the borrower at closing. Only when a Trust Review is completed by an independent 3rd party Trust Lending approved attorney that has no other involvement in the transaction can a Trust Review Fee be charged to the borrower. Also, for any Trust Review Fee that can be charged to the borrower, it must have been disclosed to the borrower(s) in accordance with RESPA requirements



Life Estates

A Life Estate is a legal arrangement to transfer property automatically upon a person's death. The holder of a Life Estate is called a Life Tenant and is given ownership in the property for his or her lifetime. Upon the death of the life tenant, ownership in the property transfers to one or more other individuals called Remainder Men(s)

- A Remainderman must be an individual or multiple individuals
- LLCs or other entities are permitted as Remaindermen (HECM only)
- Trust Lending will consider a Trust as a Remainderman on a case by-case basis with approval by the Underwriting Manager (HECM only)

Closing in a Life Estate is permitted, however, to encumber fee simple interest in the property the Life Estate must meet HECM guidelines/requirements for HECM loans

NOTE: Remaindermen (holders of a future interest) do not have rights to loan proceeds of other mortgagor

NOTE: The state of TEXAS does not permit closing in a Life Estate



Schedule B Requirements

Underwriters will review the Schedule B for any issues such as but not limited to:

- Undisclosed Liens
- Delinquent Property Taxes
- Easements
- Restrictions (reviewed by Underwriter on a case-by-case basis to confirm acceptability)
- Encroachments

Undisclosed Liens

- All liens on title must be paid off or subordinated (HECM)
- All outstanding liens, judgements or other debts appearing on title or public record must be satisfied/released or omitted (Platinum)
- Documentation supporting an omission of a lien is required
- Any UCC filing or exception in title for a Solar Lease or a Power Purchase Agreement must be terminated
 - Final title policy may not have exceptions for leased equipment or Power Purchase Agreement

Property Taxes

- Tax Search/Certificate/Bill must be current, indicate correct name/address, Tax ID#/SBL (Section, Block, Lot)/Legal Description and indicate all tax data
- All taxes coming due within 60 days of closing must be paid in full
 - If taxes are due within 60 days but no bill has been issued an amount is still required to be collected at closing. Amount will be determined by the coordinator/processor and/or closer



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Schedule B Requirements, cont.

Property Taxes, cont.

- If taxes are deferred or delinquent:
 - All taxes must be brought current at closing
 - If property taxes are delinquent the borrower(s) must provide a detailed letter of explanation to explain why the taxes have not been paid
 - The borrower(s) must also document the extenuating circumstances that lead to the taxes becoming delinquent
 - Based on the final results of the Financial Assessment a Fully or Partially Funded Life Expectancy Set Aside (LESA) or a Fully Funded Tax and Insurance Set Aside (TISA) may be required

The Underwriter must consider the impact of all Easements, Restrictions or Encroachments on the market value of the subject property



Easements

An Easement grants rights to access or use the real property of another person without possessing it. Customary Easements in general will not cause the property to be uninsurable

The following Easements under the title company's General Waiver Guidelines will not cause the property to be uninsurable by FHA for HECM loans and ineligible for Platinum loans:

- Customary Easements for public utilities, party walls, driveways and other purposes
- Easements for public utilities along one or more of the property lines and extending not more than 100 feet from and for drainage or irrigation ditches along the rear 10 feet of the property—provided the exercise of the rights there does not interfere with any of the buildings or improvements located on the subject property
- Easements for underground conduits which are in place and do not extend under any buildings on the subject property
- Mutual Easements for joint driveways constructed partly on the subject property and partly on the adjoining property that have been recorded with the local governing authority. These are considered access Easements

Encroachments

Property Encroachment occurs when one property's home or other property owned by the homeowners, such as a pool or a driveway, extends from the one property onto another. As a general rule, a property with an Encroachment is ineligible for FHA insurance (HECM loans) or just ineligible (Platinum loans).

The appraiser should identify Encroachments (either from the subject property onto an adjacent property or from an adjacent property onto the subject property) such as:

- Right of Way
- Utility Easement
- Dwelling
- Garage
- Physical structure or improvement
- Setback requirements



Encroachments, cont.

An Encroachment may be acceptable if the adjoining landowner or the local governing authority provide a perpetual Encroachment easement filed in the County Clerk and Recorder's Office

The following Encroachments under the General Waiver guidelines may be allowed and would not cause the property to be uninsurable by FHA (HECM loans) or ineligible (Platinum loans):

- Encroachments on the subject property by improvements on adjoining property where such Encroachments do not exceed one (1) foot—provided such Encroachments do not touch any buildings or interfere with the use of any improvements on the subject property
- Encroachments on adjoining property by eaves and overhanging projections attached to improvements on the subject property where such Encroachments do not exceed one (1) foot
- Encroachments on adjoining property by hedges, wooden or wire fences belonging to the subject property
- Encroachments on adjoining property by driveways belonging to subject property where such Encroachments do not exceed one (1) foot – provided there exists a clearance of at least eight (8) feet between the buildings on the subject property and the property line affected by the Encroachment
- Encroachments by garages or improvements other than those which are attached to or a portion of the main dwelling structure over Easements for public utilities –provided such Encroachment does not interfere with the use of the Easement or the exercise of the rights of repair and maintenance



Endorsements

The following endorsements are required for all Final Title policies:

- Restrictions, encroachments, Minerals (Alta 9, CLTA 100 or T-19).
Exceptions by management on a case-by-case basis. The Residential Mortgage Endorsement and deletion of all survey exceptions are required when an Alta 9 exception is made
- Reverse Mortgage (Alta 14.3-06, CLTA 111.14.3 or T-43)
- Location (street address) (Alta 22 or CLTA 116). Not required in FL, NY, PA or TX
- Environmental Protection Endorsement (Alta 8.1, CLTA 110.9 or T-36)
- Survey endorsement – required if the title company will not remove all survey exceptions
- New Jersey – No Survey, Survey Endorsement
- Texas T-30 Endorsement

Endorsements as Applicable

The following endorsements are required for all Final Title policies IF APPLICABLE:

- NY properties ONLY -- Standard NY Endorsement and Waiver of Arbitration
- Arkansas properties ONLY – Arbitration Deletion Endorsement and Closing Protection Coverage Endorsement
- PUD (Planned Unit Development) (Alta 5, CLTA 115.2 or T-17)
- Condominium (Alta 4 or CLTA 115.1)
- Manufactured Home (Alta 7, 7.1, 7.2 or CLTA 116.5) (HECM only)
- Leasehold – Leasehold Lender's endorsement or equivalent