



UNDERWRITING alert

UNDERWRITING POLICIES AND ITEMS OF INTEREST TO FIRST AMERICAN AGENTS, EXAMINERS AND CLOSERS

To: Michigan Agents and Branch Offices **Alert No. 2010-29**

From: Underwriting Department

Date: October 22, 2010

Subject: REO Sales Risk Assessment

The purpose of this Underwriting Alert is to provide updated guidance on insuring sales of REO properties. It supplements prior Underwriting Alerts that address specific concerns and provide guidelines to assure compliance with Michigan law governing mortgage foreclosures in Michigan.

Please note that this Alert does not apply to arm's length sales of foreclosure properties either by third party purchasers (persons who are not the foreclosing lender, servicer, guarantor or an affiliate or subsidiary) at regularly conducted foreclosure sales, or by bona fide purchasers from foreclosing lenders, servicers, guarantors or affiliates or subsidiaries. In both of those situations standard underwriting practices apply, including confirmation that neither the prior owner/mortgagor, nor anyone claiming through him or her, is in possession of the property.

Media attention and reports of investigations and moratoria on foreclosures, evictions and sales of REO property have resulted in a rapidly changing view on how the risks involved in insuring title to these properties can be underwritten. The developing facts and continuing discussions with our agents and customers have resulted in adjustments to our underwriting approach.

In evaluating any sale of REO property by a lender, servicer, guarantor, affiliate or subsidiary, the following procedure must be followed:

1. Examine the foreclosure process according to customary underwriting standards. This should include review of the case file in a judicial foreclosure to verify service of process, compliance with any conditions precedent to a default judgment (such as production of a "Non-Military Affidavit" under the Service Member's Civil Relief Act), satisfaction of requirements regarding notice of sale (including publication), the filing of a report of sale and the issuance of the



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certificate of title and/or referee's deed. [In a non-judicial foreclosure sale, this should include any certifications of compliance, Non-Military Affidavit, etc.]

2. In addition, an REO Sale Risk Assessment Questionnaire (form attached) must be completed for each transaction. All questions must be answered with a "Yes" or "No." The REO Sale Risk Assessment Questionnaire must be dated and signed by the title officer, examiner or approved examining attorney reviewing the title and maintained in your title file. If all questions have a "No" answer, you are authorized to issue a commitment or policy on behalf of the Company, subject to any other risk limitations that may be applicable, such as your authority limits or concerns related to other title matters. If any question has a "Yes" answer, you must obtain specific written approval from the State Underwriting Department in order to issue. Please retain a copy of the approval bearing the signature of the State Underwriter in your file.

We hope that this Alert provides more clarity for you and will streamline your process. We will keep you apprised of further changes in our underwriting requirements in these regards, should any become necessary. Thank you for your patience and cooperation in this challenging time.

As always, if you have any questions or concerns, direct offices should contact a manager or milegal@firstam.com and agents should contact a First American underwriter at underwriting.grandrapids.mi@firstam.com or (800) 399-3003.

REO Sale Risk Assessment Questionnaire

Order No. _____

Property Address: _____

[legally described as set forth in the preliminary report or commitment for title insurance issued under the Order Number referenced above (the "Property")]

Name of Foreclosing Lender: _____

Name of Servicer: _____

Name of Seller (if different from Lender): _____

Name of Purchaser: _____

New Owner's Policy Amount: _____

New Loan Policy Amount (if applicable): _____

If the answers to **all** of the questions below are "No," you are authorized, subject to any other risk limitations that may be applicable, such as your authority limits or concerns related to other title matters, to issue the policy or policies described above. You must, however, sign and date this Questionnaire and maintain it in your file.

- | | | |
|---|-----|----|
| 1. To the extent of your customary review of foreclosure related documentation, were there any defects in the process leading to the foreclosure judgment or sale by which title was acquired by lender/seller? | Yes | No |
| 2. Has the lender/seller disclosed any defects in the foreclosure process related to the Property? | Yes | No |
| 3. Are there any other reasons to believe there might be defects in the foreclosure process related to the Property caused by Lender, Lender's counsel, loan servicer, or others? | Yes | No |
| 4. Is there any affiliation between the seller and purchaser in the present transaction? | Yes | No |
| 5. Does the purchase price (New Owner's Policy Amount) exceed the amount due to the lender under the obligation secured by the mortgage that was foreclosed? | Yes | No |
| 6. Is the Property occupied? | Yes | No |
| 7. Has litigation alleging defects in the foreclosure process related to the Property been commenced or threatened? | Yes | No |

Signature

Name of signer: _____

Title: _____

Date: _____

If the answer to **any** question above is “Yes,” you must contact your State Underwriting Department for written approval (see below).

Signature of State Underwriter required below if form contains any “Yes” answers

Approved: Yes No

Basis for Approval (Must be completed by State Underwriter):

Date:
First American Title Insurance Company

By: _____
Title: _____