ASSEMBLY 2026

WHERE STARS ALIGN

CONFERENCE MANUAL

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Accreditation

The Florida Bar

Florida Department of Financial Services

OLD REPUBLIC TITLE

Reference Number 2601412N

Provider Number 663182

Title: Assembly 2026

Level: Intermediate

Approval Period: 05/14/2026 - 11/30/2027

CLE credits

General	13.0
Ethics	0.5
Technology	0.5

Certification Credits

Wills, Trusts and Estates	13.0
Real Estate	13.0

Course Detail

Course ID Number	137256
Course Name	**COMING UP FOR AIR: A DEEP DIVE INTO THE WORLD OF TITLE INSURANCE CLAIMS LITIGATION (WEBINAR)**
Course Description	THE WORLD OF TITLE INSURANCE CLAIMS IS VARIED AND DIVERSE. THE TYPES OF ISSUES FACED BY THE INDUSTRY AND HOW THEY ARE ADDRESSED WILL BE DISCUSSED. INSIGHT AND GUIDANCE WILL BE PROVIDED ON PROCESSES THAT COULD BE INCORPORATED INTO THE CLOSING PROCESS TO PREVENT CLAIMS. THE AGENT WILL GAIN A BETTER UNDERSTANDING OF THE CLAIMS PROCESS AND HOW TO AVOID ISSUES THAT MAY HOLD UP THE CLOSING PROCESS.
Provider	395 - OLD REPUBLIC NATIONALTITLE COMPANY
Course Type	(•) Continuing Education ( ) Pre-licensing
Study Method	Classroom
Course Level	Intermediate

Course Authorities

Course Authority	CA Description	Requested Hours	Approved Hours
CE9908	CE 9908 - Ethics (Agents)	1	1
	TOTAL	1	1

Course Status

Status Approved Date 02/18/2026

Course Detail

Course ID Number	137257
Course Name	**FLORIDAS RECORDING ACT & ETHICAL SCENARIOS IN TECHNOLOGY (WEBINAR)**
Course Description	PART I: PROVIDES AN EXAMINATION OF THE THREE DIFFERENT TYPES OF RECORDING ACTS USED IN VARIOUS STATES AND THE EFFECTS ON LIEN PRIORITY AS SET FORTH IN 695.01 AND 695.11 F.S. PART II: DELVES INTO MODERN TECHNOLOGICAL OPPORTUNITIES IN TODAYS TITLE WORLD AND THE ETHICAL QUANDARIES REGULARLY ENCOUNTERED BY THE TITLE AGENT AND EXPLORING THE ETHICAL CONSIDERATIONS GOVERNING THE APPROPRIATE COURSE OF CONDUCT.
Provider	395 - OLD REPUBLIC NATIONALTITLE COMPANY
Course Type	(•) Continuing Education ( ) Pre-licensing
Study Method	Classroom
Course Level	Intermediate

Course Authorities

Course Authority	CA Description	Requested Hours	Approved Hours
CE9908	CE 9908 - Ethics (Agents)	1	1
	TOTAL	1	1

Course Status

Status	Approved	Date	02/18/2026

Course Detail

Course ID Number	137258
Course Name	**AS THE CLAIMS TURN: DEMYSTIFYING THE CLAIMS PROCESS (WEBINAR)**
Course Description	A BRIEF REVIEW OF THE STATUS OF CLAIMS FOR CALENDAR YEAR 2025 FOCUSING ON VOLUME, LOSSES AND TRENDS, TO BE FOLLOWED BY A GENERAL OVERVIEW OF THE CLAIMS PROCESS WITH THE GOAL OF EDUCATING PARTICIPANTS ON THE RELEVANT POLICY PROVISIONS THAT ARE APPLIED AT THE VARIOUS STAGES OF THE CLAIMS PROCESS AND THE ETHICAL STANDARDS THAT ARE APPLIED IN THEIR APPLICATION.
Provider	395 - OLD REPUBLIC NATIONALTITLE COMPANY
Course Type	(•) Continuing Education ( ) Pre-licensing
Study Method	Classroom
Course Level	Intermediate

Course Authorities

Course Authority	CA Description	Requested Hours	Approved Hours
CE9908	CE 9908 - Ethics (Agents)	1	1
	TOTAL	1	1

Course Status

Status Approved Date 02/18/2026

Course Detail

Course ID Number	137259
Course Name	**A DEAL DISPUTED: SCAMS, LOSS & RECOVERY (WEBINAR)**
Course Description	THIS PRESENTATION WILL PROVIDE INFORMATION ON THE CURRENT REAL ESTATE SCAMS IMPACTING FLORIDA REAL ESTATE TRANSACTIONS, INCLUDING THE LATEST FRAUDS INVOLVING ARTIFICIAL INTELLIGENCE AND OTHER MODERN TECHNOLOGIES. PARTICIPANTS WILL CONSIDER THE ETHICAL REQUIREMENTS OF SAKE-GUARDING CLIENT FUNDS AND PROTECTING CLIENT DATA, HOW TO AVOID FALLING VICTIM TO SUCH SCAMS, AND IF THEY DO, HOW RECOVERY AND RECOUPMENT EFFORTS CAN SUCCEED.
Provider	395 - OLD REPUBLIC NATIONALTITLE COMPANY
Course Type	(•) Continuing Education ( ) Pre-licensing
Study Method	Classroom
Course Level	Intermediate

Course Authorities

Course Authority	CA Description	Requested Hours	Approved Hours
CE9908	CE 9908 - Ethics (Agents)	1	1
	TOTAL	1	1

Course Status

Status Approved Date 02/18/2026

Course Detail

Course ID Number	137260
Course Name	**ONE CONTRACT, TWO PERSPECTIVES: AVOIDING FR/BAR TRAPS, NAVIGATING DISPUTES & INTERPLEADER (WEBINAR)**
Course Description	PARTICIPANT WILL BE MADE AWARE OF THE RECENT CHANGES TO THE FR/BAR CONTRACT. LEARN ABOUT PITFALLS IN THE CONTRACT THAT CAN BE AVOIDED AND THE MECHANICS OF ETHICALLY ADDRESSING DISPUTES AMONG THE PARTIES.
Provider	395 - OLD REPUBLIC NATIONALTITLE COMPANY
Course Type	(•) Continuing Education ( ) Pre-licensing
Study Method	Classroom
Course Level	Intermediate

Course Authorities

Course Authority	CA Description	Requested Hours	Approved Hours
CE9908	CE 9908 - Ethics (Agents)	1	1
	TOTAL	1	1

Course Status

Status Approved Date 02/19/2026

Course Detail

Course ID Number	137262
Course Name	**TRUSTS: SIMPLIFYING THE APPROACH TO CLOSING (WEBINAR)**
Course Description	THIS COURSE WILL INSTRUCT THE AGENT ON HOW TO CORRECTLY AND ETHICALLY HANDLE A TITLE TRANSACTION WHERE A TRUST IS BEING USE. UPON COMPLETION, THE AGENT WILL BE ABLE TO RECOGNIZE ANY POTENTIAL PITFALLS ASSOCIATED WITH USING A TRUST AND IMPOSE THE APPROPRIATE REQUIREMENTS IN CONNECTION WITH CLEARING TITLE WITH AN AIM TOWARDS REDUCING POST-CLOSING PROBLEMS AND LOSSES.
Provider	395 - OLD REPUBLIC NATIONALTITLE COMPANY
Course Type	(•) Continuing Education ( ) Pre-licensing
Study Method	Classroom
Course Level	Intermediate

Course Authorities

Course Authority	CA Description	Requested Hours	Approved Hours
CE9908	CE 9908 - Ethics (Agents)	1	1
	TOTAL	1	1

Course Status

Status Approved Date 02/19/2026

Course Detail

Course ID Number	137265
Course Name	**MORTGAGE MODIFICATIONS (WEBINAR)**
Course Description	THE COURSE PROVIDES AN IN-DEPTH REVIEW OF MORTGAGE MODIFICATIONS, TITLE INSURING REQUIREMENTS AND THE ETHICAL CONSIDERATIONS INVOLVED IN DECIDING HOW TO RATE POLICY PREMIUMS. THROUGH EXAMINING FACT-BASED EXAMPLES PARTICIPANTS WILL LEARN TO PROPERLY DISCERN WHETHER THE MODIFICATION IS A NOVATION, IF THE MODIFICATION AFFECTS PRIORITY AND WHETHER SUBSTITUTION LOAN RATES APPLY.
Provider	395 - OLD REPUBLIC NATIONALTITLE COMPANY
Course Type	(•) Continuing Education ( ) Pre-licensing
Study Method	Classroom
Course Level	Intermediate

Course Authorities

Course Authority	CA Description	Requested Hours	Approved Hours
CE9908	CE 9908 - Ethics (Agents)	1	1
	TOTAL	1	1

Course Status

Status Approved Date 02/18/2026

Course Detail

Course ID Number	137267
Course Name	**ENGAGING WITH ENDORSEMENTS (WEBINAR)**
Course Description	THE PARTICIPANT WILL GAIN THE KNOWLEDGE NECESSARY TO ASSIST IN CHOOSING COMPREHENSIVE ENDORSEMENT COVERAGE FOR TITLE POLICIES, AS WELL AS BECOMING AWARE OF THE POTENTIAL ETHICAL CONCERNS THAT MAY ARISE WHEN REVIEWING TITLE IN CONNECTION WITH ISSUING ONE OR MORE OF THESE ENDORSEMENTS AND/OR AFFIRMATIVE COVERAGES.
Provider	395 - OLD REPUBLIC NATIONALTITLE COMPANY
Course Type	(•) Continuing Education ( ) Pre-licensing
Study Method	Classroom
Course Level	Intermediate

Course Authorities

Course Authority	CA Description	Requested Hours	Approved Hours
CE9908	CE 9908 - Ethics (Agents)	1	1
	TOTAL	1	1

Course Status

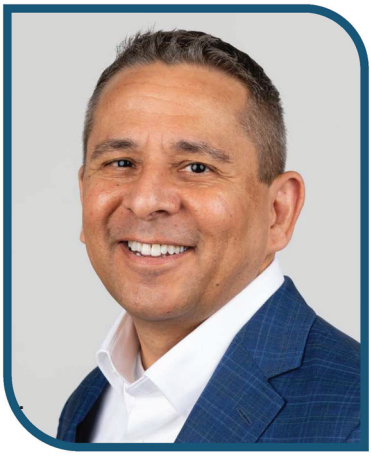
Status Approved Date 02/18/2026

Speakers

Assembly Speakers

OLD REPUBLIC TITLE

INDUSTRY SPEAKERS



CHRIS SMART for more than 20 years, has tried real estate, title insurance, and consumer finance cases on behalf of national title insurance companies, mortgage lenders, and real estate owners, developers, and investors. He has handled high-profile litigation involving title insurance coverage, closing protection letter claims, title agent defalcations, and insurance bad faith claims. He has also tried lender liability, consumer protection, loan servicing, and mortgage foreclosure cases and defended real property developers. Chris' trials have involved litigation over the sale of real property, the authority to sell real property, a buyer's status as a bona fide purchaser for value, condominium developments, restrictive covenants, easements, and Florida's Marketable Record Title Act.

Recently, Chris led a team in a two-week jury trial defending against the plaintiffs' claims for damages and punitive damages based on a negligence cause of action against a title insurer, which resulted in a favorable settlement for the client prior to closing arguments. As a complement to his substantial trial experience, Chris also has a comprehensive understanding of the real estate industry and title to real property, and serves as an expert witness on Florida's real estate industry practices and customs. He is the current chair of the Real Property, Probate, and Trust Law Section of the Florida Bar's Title Insurance and Title Insurance Industry Liaison Committee and the former longtime chair and continuing active member of the Title Issues and Standards Committee. He also works with the section to promote legislation necessary for and helpful to Florida's real estate industry.

Chris is the 2023 recipient of the John Arthur Jones Annual Service Award, awarded by the Real Property, Probate, and Trust Law Section for his dedicated and outstanding service to the section. He is also an active member of the Florida Bar's Civil Rules Committee, a former member of the Code and Rules of Evidence Committee, and a fellow of the American College of Real Estate Lawyers.



DOUGLAS POLLOCK President and founder of IDSnetwork, Inc., has more than 40 years of experience in conducting investigations into white-collar crimes, including: cyber-crimes, employee theft, title agent and attorney defalcations, real estate and mortgage fraud, Ponzi schemes and advanced fee schemes.

Mr. Pollock received a Bachelor of Science degree in Criminology from Florida State University in 1973 and has been actively involved in the investigation of white-collar crimes throughout the United States and Latin America. The Association of Certified Fraud Examiners awarded Mr. Pollock the designation of Certified Fraud Examiner in 1996.

Mr. Pollock was formerly a contract instructor for the US Treasury Department, Federal Law Enforcement Training Center, Financial Fraud Institute and the Miami Dade Metropolitan Police Academy for more than twelve years and has provided both professional consulting services and expert witness testimony on behalf of several state and federal agencies.

Since 2014, Mr. Pollock has focused his investigations in the areas of cyber-crimes including business email compromise schemes, seller imposter fraud and wire fraud.



JACQUELINE PEREZ is a partner with KHL Law in its Tampa office. She obtained her B.S. degree from a college in Savannah that is now part of Georgia Southern University, and her J.D. degree from Stetson University College of Law.

Ms. Perez has been in private practice with a focus on real property litigation for over 17 years. She is a true “dirt lawyer,” and her favorite cases involve MRTA, boundary disputes, and forgery. She regularly presents at the Florida Land Title Association’s Round Table.



DR. JESSICA LAUTZ is the Deputy Chief Economist and Vice President of Research at the National Association of REALTORS®. She has been with NAR since 2007. The core of her research focuses on analyzing trends for both NAR members and housing consumers. She is in demand as a speaker and by major media outlets to provide commentary on the real estate market. She has testified before Congress on behalf of NAR.

She also volunteers at Nottingham Trent University as an industry fellow mentoring real estate graduate students, is a committee chair at the National Association of Business Economics, bakes cakes for underserved youth with Cake4Kids, and sits on the board of the Food Recovery Network. Dr. Lautz has been recognized by Housing Wire’s Women of Influence and RISMedia’s Newsmaker award.

Jessica received her Doctorate of Real Estate from Nottingham Trent University in the United Kingdom. She also holds a Master’s in Public Policy from American University and undergraduate degrees in Political Science and Law and Justice from Central Washington University.



KRISTEN KING JAIVEN ESQ. is an attorney at Nishad Khan P.L. and focuses her practice on the representation of small businesses, including real estate brokerages and other related business ventures. Kristen has experience in DBPR investigations, Board of Realtor complaints, and brokerage compliance matters. She also assists with corporate operations and implementing robust marketing plans for various types of business ventures.

Kristen currently represents the 4th Appellate District on the Florida Realtor Attorney Joint Committee and serves as Co-Chair of the Real Property, Probate, and Trust Law Section's (RPPTL) Residential Real Estate and Industry Liaison Committee.

Kristen holds a J.D. from St. Thomas University School of Law with a Certificate in Environmental Justice and has an L.L.M. in Environmental Law from Vermont Law School with a Certificate in Food and Agriculture Law.



MARIO RUIZ is a Board-Certified Business Litigation lawyer with more than three decades of trial and appellate experience. His trial practice includes a variety of business disputes, title claims, real property litigation, banking, construction and other civil matters.

Mario earned his law degree cum laude from the University of Miami School of Law, where he was an editor of the Inter-American Law Review. He earned his bachelor's degree from Florida International University. After law school, he clerked for the Honorable David M. Gersten at Florida's Third District Court of Appeal.



PATTI MOSER is the Owner/Broker of Horizon Realty of Alachua, Inc. since 1980 and Owner/Manager of Alachua Title Services, LLC since 2000. She is an alumna of the University of Florida.

Patti has been involved in many leadership roles with the Gainesville-Alachua County Association of Realtors including past President and Stellar MLS Director, as well as the Professional Standards Chair and Mediator. Patti has Chaired the Realtor-Attorney Joint Committee, is a long-time member of the Florida Realtors/Florida BAR (FR/BAR) subcommittee, a Key Contact, and an Instructor for Professional Standards and the FR/BAR Contract. Patti has served as a Federal Political Coordinator with the National Association of Realtors since 2012.

She has held roles in the title industry as well, including FLTA Government Affairs Committee Chair, FLTA Board of Directors, ALTA Congressional Liaison, ALTA Congressional Liaison Committee, TIPAC Committee, and ALTA Title Action Network Committee.

Patti enjoys spending time on her farm with her husband Jeff, working outdoors in her orchard and vegetable garden, playing with their two grandchildren as well as cheering on the Green Bay Packers and the Florida Gators.



STUART I. GROSSMAN is a founding partner of Levine Kellogg Lehman Schneider + Grossman LLP. Mr. Grossman is Chairman of the firm's real estate practice group and has been since the firm's inception. For more than 25 years, Mr. Grossman has focused his practice on real estate and real estate litigation, representing buyers, sellers, lenders, developers, and institutions in all aspects of commercial and residential real estate transactions, from initial acquisition through development. Mr. Grossman has represented some of the country's largest title insurers as an outside claim counsel on complex mortgage fraud cases, as well as helping to resolve various title claims in federal and state court actions throughout the state of Florida. Mr. Grossman has also represented several high-profile clients in eight-figure acquisitions, including a large Palm Beach County developer in well over 50 real estate transactions totaling more than $250 million.

Mr. Grossman obtained his B.A. degree from Muhlenberg College and his J.D. degree from the University of Miami. Mr. Grossman has been listed in The Best Lawyers in America, Super Lawyers, and in the South Florida Legal Guide's "Top Lawyers." Mr. Grossman was recently named "Lawyer of the Year" in the 2026 Edition of the Best Lawyers in the areas of Litigation/Real Estate.



TOM CRONKRIGHT is the Executive Chairman of CertifID, a technology platform designed to safeguard electronic payments from fraud. He co-founded the company in response to a wire fraud he experienced and the rising instances of real estate wire fraud.

He also serves as the CEO of Sun Title, a leading title agency in Michigan. Tom is a licensed attorney, real estate broker, title insurance producer and nationally recognized expert on cybersecurity and wire fraud.

OLD REPUBLIC TITLE

INTERNAL SPEAKERS



AMBER ELIZABETH ASHTON joined Old Republic Title's Underwriting and Education Teams in May 2019. Amber spent the first thirteen years of her career working in private practice for law firms as a real estate litigator. Amber's practice primarily involved resolving title issues, complex and high-risk foreclosure actions, eminent domain litigation, quiet title litigation, and business litigation in state and federal court.

Amber also has extensive experience litigating against homeowners' associations and local governmental entities regarding lien rights to property post-foreclosure.

Amber served as the Special Magistrate for the City of St. Pete Beach, Florida from 2015 through 2019, for all code enforcement matters, as well as administrative appeals.

Amber received her Bachelor of Arts, double majoring in English and Art History, from Vanderbilt University. She obtained her Juris Doctor, cum laude, from Stetson University College of Law. Amber is licensed to practice law in Florida and is a member of the Executive Council of the Real Property, Probate & Trust Law Section of The Florida Bar.

She is admitted in the U.S. District Court for the Middle District of Florida and the U.S. District Court for the Southern District of Florida. Amber holds the highest ranking an individual attorney can receive (AV-Preeminent), as designated by the Martindale-Hubbell Law Directory.



CALEB HINTON is a Senior Underwriting Counsel based in Orlando. Caleb obtained his Bachelor of Science in Criminology and his Juris Doctor from Florida State University. In 2023, Caleb became a Board-Certified Real Estate attorney through the Florida Bar.

Prior to joining Old Republic, Caleb's real estate practice focused primarily on commercial leasing and commercial land transactions including acquisitions, development, and sales.



CHEZARE PALACIOS is Claims Counsel for Old Republic. He earned his Bachelor of Science Degree in Civil Engineering from Florida Atlantic University in 2012 and his Juris Doctor with Honors from the University of Florida Levin College of Law in 2016. Prior to joining Old Republic, Chezare was in private practice as a litigation attorney in the areas of title curative, property and contract disputes. He also served as in-house Claims Counsel for a national title insurance underwriter. He is licensed to practice in the states of Florida and New York.



COLLEEN COFFIELD SACHS is Florida Senior State Counsel for Old Republic Title. She received a B.A. in both Political Science and English and a J.D. from the University of Mississippi. Before becoming an underwriter, Colleen was in private practice. After practicing for several years in New Orleans, Louisiana, Colleen returned to her home state of Florida, where her practice emphasized real estate, land use, and development law.

Colleen is an active member of the Florida Bar Real Property, Probate & Trust Law Section. She is a former chair of the Florida Bar Continuing Education Committee, current Chair of the Real Property, Probate & Trust Law Section Disaster and Emergency Readiness and Preparedness Committee, and a current member of the Florida Realtor-Attorney Joint Committee, where she co-chairs the contract subcommittee. She is a frequent speaker on real property topics, including land use, leasing, commercial real estate, and real estate financing.



GEORGE PEREZ currently serves as VP, Senior Claims Counsel for Old Republic's Southeast Claims Group of the Corporate Legal Department.He graduated from the University of Central Florida and Brooklyn Law School and has almost 20 years of in-house claims experience.

Prior to his in-house career, Mr. Perez was in private practice where he was involved in transactional real estate for both residential and commercial properties as well as representing institutional lenders. He was also a real estate and title insurance litigator representing several title insurance underwriters. During his years of private practice, Mr. Perez was also involved in estate planning/probate and trust administration as well as business law. He has taught in Valencia College's ABA accredited paralegal studies program in addition to being a regular speaker at various company conferences and seminars. He is a member of the Florida Bar.



JAMES RUSSICK is Vice President, Southeast Regional Counsel, for Old Republic National Title Insurance Company. Jim has been a title insurance underwriter for over 40 years, and has also been deeply involved with legislative and regulatory matters impacting real property and title insurance in Florida for decades. Jim is Board Certified by the Florida Bar in Real Estate and serves on multiple substantive committees of the Executive Council for the Real Property, Probate, and Trust Law Section.

Jim has served on the Title Insurance Forms Committee of the American Land Title Association since 2003 and chairs the Existing Forms and the Commitment Subcommittees.

Jim is a Past President of the Florida Land Title Association and a Fellow in both the American College of Real Estate Attorneys and The American College of Mortgage Attorneys. He is a retired United States Air Force Reserve Judge Advocate.



JOHN BROWN is a Florida Bar board-certified lawyer in real property and a member of both the Florida and Kentucky Bars. He earned his Juris Doctorate from Salmon P. Chase College of Law at Northern Kentucky University. Prior to becoming an underwriter, Mr. Brown represented national retailers in purchase contract negotiations, leasing, site evaluation, engineering, permitting, land use, environmental evaluation and compliance, survey review, title and closing.

He has represented private and public companies negotiating the terms of operational and construction financing. He has represented governmental entities through closing on multiple land parcel exchanges and during the issuance of municipal bonds for utility financing.

His practice also included structuring and consummating 1031 exchanges, joint development projects, cellular tower site evaluation and closings, hotel project development and closings and a variety of commercial due diligence efforts. Mr. Brown is a member of the Real Property Probate and Trust Section of the Florida Bar, CREW Tampa Bay and a board member of the Gulf Coast Builders Exchange.



JOHN B. "JAY" ST. LAWRENCE is Regulatory Compliance Counsel. He earned degrees in journalism and law at the University of Florida and was admitted to the Florida Bar in 1995. Prior to coming to The Fund and Old Republic, Jay practiced bankruptcy and real estate law.

He is a member of the Florida Bar's Real Property, Probate & Trust Law Section and has been admitted to all Florida Federal District Courts. He joined the Fund in 2004 as claims counsel and now works with the Legal Education Department, where he has created and taught programs on topics including FinCEN, RESPA, cyber security, private lending after Dodd-Frank and Homestead.

In addition to his duties as Regulatory Compliance Counsel, Jay co-teaches the New Agent Training and Commercial Training courses and edits the Title Notes chapter on bankruptcy.



KARA SCOTT an attorney in Old Republic Title's Legal Education Department, presents on a variety of topics in addition to co-teaching New Agent Training, Paraprofessional Training and Commercial Training. Additionally, Kara travels throughout Florida speaking on various real estate law topics to realtor associations, bar associations, real estate councils and others.

Prior to joining the Legal Education Department in 2023, Kara was a Senior Associate in a Sarasota law firm, with a practice focused on residential and commercial real estate transactions, business law, land use and estate administration.

Kara is a graduate of Rhode Island College and New England School of Law and practiced law in Rhode Island for 24 years before moving to Florida in 2019. Kara is a member of FLTA's Education Committee, the Florida Bar's RPPTL section and its Title Issues & Standards Committee.



LINDA MONACO received her B.S. in Industrial Distribution from Texas A&M University and her J.D., magna cum laude, from Quinnipiac University. She is admitted to practice law in Florida and the United States District Court for Connecticut and is retired from the Connecticut Bar. Ms. Monaco is a Florida Board-Certified Real Estate Lawyer and a Florida licensed real estate instructor.

Ms. Monaco has written and presented numerous seminars and webinars. Ms. Monaco has presented several times at Fund Assembly and Fund Affiliate Assembly on topics such as Best Practices, FIRPTA, Ethics, Sovereignty Lands, Liens, Property Assessed Clean Energy Funding (PACE), and Probate and Trust. She has served as master of ceremonies at the Fund Affiliate Assembly multiple times. She also presented Basics of FIRPTA to the National Association of Realtors ® as well as a short program on Property Assessed Clean Energy Loans (PACE Loans) to FLTA and RPPTL.



MARCIE ANTHONY joined Old Republic in May 2014 as Assistant Vice President and Claims Counsel. In October 2017, Marcie became Vice President and Southeast Region Claims Counsel and Manager. In addition to these duties, in July 2021, Marcie became Manager for the Tampa Corporate Legal Office. In June 2025, Marcie was promoted to First Vice President, Senior Claims Counsel and Regional Claims Manager and now serves as the manager of the newly merged claims team.

Prior to her time with Old Republic, Marcie worked as Claims Counsel for another national underwriter from 2011 to 2014. Before her work with national underwriters, Marcie worked in private practice.

Marcie is a member of the Real Property Probate & Trust Law section of the Florida Bar and the Florida Land Title Association. Marcie serves on the Florida Land Title Association's Claims Education Committee and as Master of Ceremonies for the FLTA's Claims Roundtable. Since 2010, Marcie has been a member of the Pinellas County Chapter of the Florida Association for Women Lawyers, serving as its President in 2015 and 2016. Marcie is a 2013 recipient of the Florida Association for Women Lawyers' "Leaders in the Law" award.

Marcie earned her Juris Doctor from Stetson University College of Law and her Bachelor's Degree from Allegheny College, magna cum laude.



MEGAN RANDALL SOLOMON joined the Company in 2017. Prior to joining the Underwriting team, she was Senior Claims Counsel. In 2025, Megan became a Board-Certified Real Estate attorney through The Florida Bar.

She earned her law degree from Nova Southeastern University in 2009 after having received a bachelor's degree with honors in Criminal Justice with a minor in Interpersonal Communications from the University of Central Florida in 2006.

Prior to working with the Company, she practiced as an attorney focusing on real estate, bankruptcy, title disputes, code enforcement matters, and lien foreclosures in federal and state actions throughout the state of Florida. She was also involved with achieving title claims resolutions and curative measures for lending institutions.



PATRICIA "TRISH" LADAN currently serves as Assistant Vice President, Florida State Counsel for Old Republic National Title Insurance Company. She is responsible for providing underwriting support and counsel to agents, customers and Company personnel, related to the issuance of title insurance commitments and policies across Florida. As an attorney with more than 20 years of experience in real estate law and title insurance underwriting, Trish is well versed in transactional and litigation matters, having represented lenders, developers, community associations, title insurers and insureds.

Trish formerly served as Texas State Counsel for another title insurer, prior to rejoining Old Republic Title. Before working for Old Republic in 2017, she was Senior Underwriting Counsel, Florida Associate State Counsel for another national title insurer, located in Winter Park, Florida.

She has also served as Managing Attorney for a real estate law firm in Winter Springs, Florida, with responsibility for its Florida Mortgage Foreclosure Department. Early in her career, Trish worked for the Texas General Law Office, in Austin, Texas and several real estate law firms.

Trish is a member of the Real Property Probate & Trust Law section of the Florida Bar, the Real Estate, Probate and Trust Law section of the Texas Bar, the Florida Land Title Association ("FLTA") and the Texas Land Title Association ("TLTA"). She currently chairs the Governmental Affairs Committee and serves on the Forms Committee for FLTA and the Legislative Committee for TLTA. Trish earned her Juris Doctor from Quinnipiac University School of Law and her Bachelor of Arts Degree in government from The University of Texas at Austin. She is a member of the Florida and Texas Bars.



SCOTT JACKSON earned his M.L.S. degree from the Florida State University and his J.D. degree from the University of Miami in 2002.
Scott immediately began working in the title industry, first with American Pioneer Title Insurance Company handling both underwriting and claims, before moving to Attorneys' Title Insurance Fund in 2004, now Old Republic Title.

Scott is an active member of the Real Property, Probate & Trust Law Section of The Florida Bar and frequently represents Old Republic at PRIA regional meetings.



SHANNON WIDMAN earned her B.S. degree in Political Science at Syracuse University and J.D. Degree from University of Miami School of Law.

As Legislative Counsel for Old Republic Title, Shannon is responsible for leading ad vocacy efforts on behalf of the company and its agents nationwide, with special focus on the state of Florida.

Shannon takes an active role in the industry's leading associations, including the Florida Land Title Association (FLTA), the American Land Title Association (ALTA), and the Real Property, Probate and Trust Law (RPPTL) Section of The Florida Bar where she currently serves on the Executive Council and as Co-Vice Chair of the Title Insurance Industry Liaison Committee.

Prior to corporate work, Shannon was in private practice for 24 years, specializing in real estate transactions, commercial loan transactions and real estate development on Florida's Emerald Coast and 30A corridor.



TED CONNER is Senior Vice President, Old Republic National Title Insurance Company and Deputy General Counsel of Old Republic National Title Holding Company. Ted's responsibilities include managing Old Republic Title's Regulatory Department in the Corporate Legal Division.

Ted earned a B.S. degree in business administration with a major in real estate from the University of Florida and a J.D. degree from the University of Florida College of Law. He is also a Florida board certified real estate lawyer.

Ted has authored chapters in Florida Real Property Title Examination and Insurance and Florida Real Property Sales Transactions (Fla.CLE). Ted serves on the NAIC Liaison Committee of the American Land Title Association. He is also serving as vice-chair of the governing board of Port Tampa Bay.

Coming Up for Air
Deep Dive Into Title Insurance Litigation

Marcie Anthony

FVP, Senior Claims Counsel and Regional Claims Manager,
Old Republic Title

Stuart I. Grossman Esq.

Founding Partner, Levine Kellogg Lehman Schneider +
Grossman LLP

George Perez

VP, Senior Claims Counsel, Old Republic Title

Jacqueline Perez Esq.

Partner, KHL Law

Mario Ruiz

Attorney, Lerman, Whitebook & Ruiz, P.A.

NO MATERIAL PROVIDED FOR THIS SESSION

Florida's Recording Act and Competing Priorities (Deeds and Liens)

Patricia "Trish" Ladan
AVP, Florida State Counsel, Old Republic Title

OLD REPUBLIC TITLE

Florida's Recording Act & Competing Priorities (Deeds & Liens)

Patricia "Trish" Ladan,
Florida State Counsel



1

NOTICE: GENERAL OVERVIEW

2

THREE TYPES OF NOTICE:

Actual	Implied	Constructive
• Party has actual knowledge of the facts in question.	• Party had a duty to make **inquiry** regarding facts in question and the means to do so.	• Similar to implied notice, but arises by operation of law under recording statute.

3

CONSTRUCTIVE NOTICE: Relevant Florida Statutes

§695.01, F.S. Conveyances and liens to be recorded.	• *No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for valuable consideration and without notice, unless the same be recorded according to law; . . .*
§695.11, F.S. Instruments deemed to be recorded at time of filing.	• Determines when a document is deemed to be recorded, which is at the time the consecutive official register numbers required under §28.222 have been affixed.
§28.222, F.S. Clerk to be county recorder.	• The clerk of the circuit court shall be the recorder of all instruments that are required or authorized to be recorded, which shall be recorded in the "Official Records" as one general series.

4

CONSTRUCTIVE NOTICE: Relevant Florida Caselaw

- *Van Eepoel Real Estate Co. v. Sarasota Milk Co.*, 129 So. 892 (Fla. 1930)
- *Sapp v. Warner*, 141 So. 124 (Fla. 1932)
- *Argent Mortgage Co., LLC v. Wachovia Bank, N.A.*, 52 So.3d 796 (Fla. 5th DCA 2010)
- *Mayfield v. First City Bank*, 95 So.3d 398 (Fla. 1st DCA 2012)
- *Regions Bank v. Deluca*, 97 So. 3d 879 (Fla. 2d DCA 2012)

5

Van Eepoel Real Estate Co. v. Sarasota Milk Co., 129 So. 892 (Fla. 1930)

- **Brief Facts:**
  - Lien priority dispute between mortgagee and mechanic's lien claimant.
  - Landowner executed mortgage on 11/25/1925, recorded on 4/21/1926
  - Mechanic's lienor, in privity with owner, commenced work on 4/12/1926, completed work on 4/16/1926 and recorded COL on 7/7/1926
- **Issue:** Whether a Purchase Money Mortgage ("PMM") recorded 5 months after its execution and delivery **and** after work commenced, was completed by a mechanic's lienor, but prior to a mechanic's lien recorded, without notice of the PMM has priority.
- **Holding:** Florida Supreme Court held in favor of mechanic's lienor based upon the established rule that [*s]ubsequent purchasers or creditors for value and without notice of a prior unrecorded deed or mortgage to a third person are not affected thereby.*

6

Sapp v. Warner, 141 So. 124 (Fla. 1932)

- **Brief Facts:**
  - In guardianship proceedings for minor, minor's duly appointed guardian sold & conveyed minor's real property to third party, with court order confirming the sale.
  - Property was purchased for $20,000 split into two unrecorded (lost or misplaced) PMMs.
  - Land was subsequently subdivided into lots and blocks, which were sold to numerous (about 200) defendants whom challenged foreclosure of unrecorded mortgages.
- **Issue:** Whether a party is charged with constructive notice of an interest in land based upon matters appearing in the public records, where a deed stemming from guardianship proceedings created a duty of inquiry into those guardianship proceedings to determine whether it had been duly authorized, which would have also reflected the existence of the unrecorded mortgage(s).
- **Holding:** The Florida Supreme Court held that *implied actual notice was warranted by the fact that the persons having constructive notice of the record of the guardian's deed must in any event have looked to the proceedings which were necessary to support it, and accordingly must be charged with implied actual notice of what an inquiry suggested to a prudent man by those proceedings would have disclosed*.

7

Argent Mortgage Co., LLC v. Wachovia Bank, N.A., 52 So.3d 796 (Fla. 5th DCA 2010)

- **Brief Facts:**
  - On 8/31/2004, Borrowers executed mortgage in favor of Olympus Mortgage, recorded on **1/5/2005**, and subsequently assigned to Wachovia Bank;
  - On 12/10/2004, Borrowers executed mortgage in favor of Argent Mortgage, recorded on **1/31/2005**;
  - Both mortgages went into default and both lenders filed foreclosure action, which were consolidated and dispute over priority ensued.
  - Trial court held in favor of Wachovia and declared Florida to be a race-notice jurisdiction.
- **Issue:** Whether amendment to §695.11, F.S. made Florida into a race-notice jurisdiction, or it remained a pure notice jurisdiction with regard to determining lien priority.
- **Holding:** 5th DCA held that Florida remains notice jurisdiction and therefore, Argent had priority over the Wachovia Bank mortgage because it was a subsequent mortgagee for value without notice of Wachovia's mortgage.

8

Mayfield v. First City Bank, 95 So.3d 398 (Fla. 1st DCA 2012)

- **Brief Facts:**
  - In October, 2009, the Mayfields obtained title to Lot 2 via WD, together with PMM (WD and PMM recored on 11/2/2009);
  - In 2006, unbeknownst to the Mayfields, title to Lot 2 had been conveyed by their same grantor to another party ("W&A"), that also obtained PPM (hereinafter collectively referred to as the "First Deed & Mortgage");
  - On July 6, 2006, the Clerk recorded the First Deed & Mortgage;
  - Clerk realized an error made in the recording process and voided the First Deed & Mortgage from the official records about **73 minutes** after recoding it, intending to re-record, but failed to do so and mistakenly recorded similar instruments regarding another parcel of property.
  - In 2010, W&A mortgagee filed a foreclosure action, naming the Mayfields and their lender as defendants;
  - Mayfields filed a MSJ and claimed to be BFPs without notice.
- **Issue:** Whether the First Deed & Mortgage provided constructive notice, when it was only recorded and could only be found of record for 73 minutes on July 3, 2006.
- **Holding**: Unambiguous language of §695.11, F.S. controls such that constructive notice attached at time the First Deed & Mortgage were recorded on July 6, 2006. No requirement to remain recorded, rather, just need to *be recorded according to law*, which occurred.

9

Regions Bank v. Deluca, 97 So.3d 879 (Fla. 2d DCA 2012)

- **Brief Facts**:
  - From June '03 – June '05, Owners A owned the "Olde Cypress Property."
  - '03 Owners A gave 1st & 2nd mortgages, in favor of AmSouth, which later merged into Regions Bank;
  - '05 Owners A obtained a new mortgage from Regions to purchase the "Bayfront Gardens Property" with the Olde Cypress Property included as collateral.
  - Mortgage was recorded and indexed, but only included the legal description for the Bayfront Gardens Property. Page 2 of mortgage omitted the legal descriptions for either property and did not reference or incorporate Exhibit A by reference. Exhibit A was located at page 12 of the mortgage, just prior to the attached Riders. It included the legal descriptions for both parcels.
  - On June 28, 2005, Owners A sold the Olde Cypress Property to the Delucas, whom obtained and recorded a PMM, in favor of JP Morgan.
  - '09 Regions Bank filed a foreclosure action of both properties and named Delucas and JP Morgan as partial defendants, whom filed affirmative defense asserting that they were BFPs w/out notice.

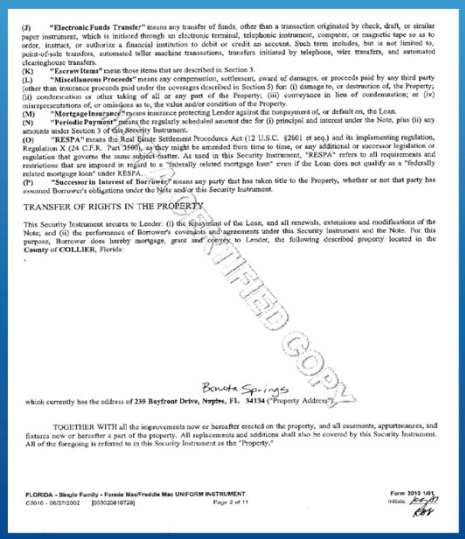
10

Regions Bank v. Deluca, 97 So.3d 879 (Fla. 2d DCA 2012)

- **Issue**: Whether a recorded defective instrument, outside of the chain of title, can still impart constructive notice to subsequent purchasers and lenders?
- **Holding:** The Delucas and JP Morgan held to have constructive notice that the lien of the Regions Bank mortgage encumbered both properties, including the Olde Cypress Property, reversing circuit court ruling.

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Regions Bank v. Deluca, 97 So.3d 879 (Fla. 2d DCA 2012)



(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(K) "Escrow Items" mean those items that are described in Section 3.
(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

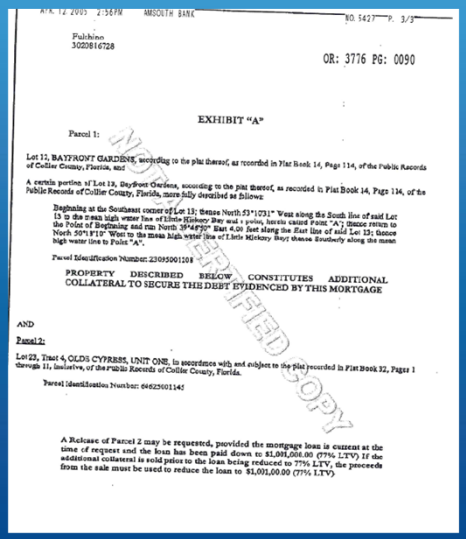
This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, the following described property located in the County of COLLIER, Florida:

Bonita Springs

which currently has the address of 239 Bayfront Drive, Naples, FL 34134 ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

FLORIDA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3010 1/01
Page 2 of 11
Initials:



APR. 12 2005 2:56PM AMSOUTH BANK NO. 5427 P. 3/3

Fulbhino
3002816728

OR: 3776 PG: 0090

EXHIBIT "A"

Parcel 1:

Lot 12, BAYFRONT GARDENS, according to the plat thereof, as recorded in Plat Book 14, Page 134, of the Public Records of Collier County, Florida, and

A certain portion of Lot 13, Bayfront Gardens, according to the plat thereof, as recorded in Plat Book 14, Page 134, of the Public Records of Collier County, Florida, more fully described as follows:

Beginning at the Southeast corner of Lot 13; thence North 53°10'31" West along the South line of said Lot 13 to the mean high water line of Little Hickory Bay and a point, herein called Point "A"; thence return to the Point of Beginning and run North 36°49'29" East 4.00 feet along the East line of said Lot 13; thence North 50°19'19" West to the mean high water line of Little Hickory Bay; thence Southerly along the mean high water line to Point "A".

Parcel Identification Number: 23095001208

PROPERTY DESCRIBED BELOW CONSTITUTES ADDITIONAL COLLATERAL TO SECURE THE DEBT EVIDENCED BY THIS MORTGAGE

AND

Parcel 2:

Lot 23, Tract 4, OLDS CYPRESS, UNIT ONE, in accordance with and subject to the plat recorded in Plat Book 32, Pages 1 through 11, inclusive, of the Public Records of Collier County, Florida.

Parcel Identification Number: 66625001145

A Release of Parcel 2 may be requested, provided the mortgage loan is current at the time of request and the loan has been paid down to $1,001,004.00 (77% LTV). If the additional collateral is sold prior to the loan being reduced to 77% LTV, the proceeds from the sale must be used to reduce the loan to $1,001,00.00 (77% LTV).

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TYPES OF RECORDING ACT JURISDICTIONS

Pure Race
- Race to record.
- First in time, first in right.

Pure Notice
- Analysis hinges on notice, actual or constructive, not just timing of recording.
- Subsequent BFP for value without notice will prevail.

Race-Notice Hybrid
- Subsequent BFP without notice **AND** who records first will prevail.

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BASIC FLORIDA LIEN PRIORITY IN PURE NOTICE ACT JURISDICTION

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CONSTRUCTIVE NOTICE
Application in Condo Context

- Condo Act, Ch. 718, F.S.
- Recorded Condo Declaration - §718.104, F.S. & §695.01, F.S. – simply by its recordation, a condo unit owner is charged with constructive notice of the contents of the Condo Declaration, including, without limitation, use restrictions, assessments obligations, easements, amendment procedures, leasing limitations.
- NOTE: Constructive notice and lien priority are not always parallel. For example, NOC & COL



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SOME STATUTORY LIENS TO CONSIDER RE: LIEN PRIORITY

Construction Claim of Lien	Condo Claim of Lien	Super-Priority Lien
• Attach at time of recordation (§713.07, F.S.) **UNLESS** a Notice of Commencement ("NOC") is recorded.	• Relates back to recording of Condo Declaration with carve out for first mortgages of record. *See* §718.116(5)(a), F.S.	• **Examples**: Tax Liens have super-priority over other liens, including previously recorded mortgages. *See* §197.122, F.S. • PACE Financing Liens §§ 163.08 – 163.087 F.S.



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EXAMPLE 1: HOW FLORIDA'S PURE NOTICE RECORDING ACT CAN IMPACT PRIORITY

- Seller conveys real property to Buyer A on Monday, April 1, 2025;
- Buyer A does not record the deed;
- Seller fraudulently conveys the same real property to Buyer B on Wednesday, April 3, 2025;
- Buyer B immediately records the deed and had no knowledge of Buyer A.

- **Which Buyer has priority?**



EXAMPLE 1: HOW FLORIDA'S PURE NOTICE RECORDING ACT CAN IMPACT PRIORITY

- **ANSWER: Buyer B has priority if they qualify as a BFP because Buyer B:**
  - **Paid valuable consideration;**
  - **Lacked notice (actual, implied and constructive);**
  - **Recorded first.**



EXAMPLE 2: HOW FLORIDA'S PURE NOTICE RECORDING ACT CAN IMPACT PRIORITY

- 4/1/2025 – Nick Jagger signs a $100,000 mortgage to ABC Mortgage, Inc.
- 4/10/2025 – Nick Jagger signs a $75,000 mortgage to XYZ Mortgage, Inc.
- 4/11/2025 – ABC Mortgage, Inc. records the $100,000 mortgage, dated 4/1/2025
- 4/15/2025 – XYZ Mortgage, Inc., records the $75,000 mortgage, dated 4/10/2025

- **Which recorded mortgage has priority?**

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EXAMPLE 2: HOW FLORIDA'S PURE NOTICE RECORDING ACT CAN IMPACT PRIORITY

- 4/1/2025 – Nick Jagger signs a $100,000 mortgage to ABC Mortgage, Inc.
- 4/10/2025 – Nick Jagger signs a $75,000 mortgage to XYZ Mortgage, Inc.
- 4/11/2025 – ABC Mortgage, Inc. records the $100,000 mortgage, dated 4/1/2025
- 4/15/2025 – XYZ Mortgage, Inc., records the $75,000 mortgage, dated 4/10/2025

- **ANSWER: XYZ Mortgage, Inc. has priority because Florida's recording act is a pure "Notice" jurisdiction.**

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Q & A

- Patricia “Trish” Ladan, Florida State Counsel
- Email: pladan@oldrepublictitle.com
- Phone numbers:
  -Toll Free: 1-800-342-5957
  -Cell: 512-230-1211



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The 2025 Florida Statutes

695.01 Conveyances and liens to be recorded.—

(1) No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.

(2) Grantees by quitclaim, heretofore or hereafter made, shall be deemed and held to be bona fide purchasers without notice within the meaning of the recording acts.

(3) A lien by a governmental entity or quasi-governmental entity that attaches to real property for an improvement, service, fine, or penalty, other than a lien for taxes, non-ad valorem or special assessments, or utilities, is valid and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration only if the lien is recorded in the official records of the county in which the property is located. The recorded notice of lien must contain the name of the owner of record, a description or address of the property, and the tax or parcel identification number applicable to the property as of the date of recording.

History.—ss. 4, 9, Nov. 15, 1828; RS 1972; GS 2480; RGS 3822; CGL 5698; s. 10, ch. 20954, 1941; s. 8, ch. 85-63; s. 2, ch. 2013-241.

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The 2025 Florida Statutes

695.11 Instruments deemed to be recorded from time of filing.—All instruments which are authorized or required to be recorded in the office of the clerk of the circuit court of any county in the State of Florida, and which are to be recorded in the "Official Records" as provided for under s. 28.222, and which are filed for recording on or after the effective date of this act, shall be deemed to have been officially accepted by the said officer, and officially recorded, at the time she or he affixed thereon the consecutive official register numbers required under s. 28.222, and at such time shall be notice to all persons. The sequence of such official numbers shall determine the priority of recordation. An instrument bearing the lower number in the then-current series of numbers shall have priority over any instrument bearing a higher number in the same series.

History.—s. 1, ch. 3592, 1885; RS 1977; GS 2488; RGS 3830; CGL 5708; s. 1, ch. 17217, 1935; s. 1, ch. 67-442; s. 766, ch. 97-102.

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The 2025 Florida Statutes

28.222 Clerk to be county recorder.—

(1) The clerk of the circuit court shall be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk.

(2) The clerk of the circuit court shall record all instruments in one general series called "Official Records." He or she shall keep a register in which he or she shall enter at the time of filing the filing number of each instrument filed for record, the date and hour of filing, the kind of instrument, and the names of the parties to the instrument. The clerk shall maintain a general alphabetical index, direct and inverse, of all instruments filed for record. The register of Official Records must be available at each office where official records may be filed.

(3) The clerk of the circuit court shall record the following kinds of instruments presented to him or her for recording, upon payment of the service charges prescribed by law:

(a) Deeds, leases, bills of sale, agreements, mortgages, notices or claims of lien, notices of levy, tax warrants, tax executions, and other instruments relating to the ownership, transfer, or encumbrance of or claims against real or personal property or any interest in it; extensions, assignments, releases, cancellations, or satisfactions of mortgages and liens; and powers of attorney relating to any of the instruments.

(b) Notices of lis pendens, including notices of an action pending in a United States court having jurisdiction in this state.

(c) Judgments, including certified copies of judgments, entered by any court of this state or by a United States court having jurisdiction in this state and assignments, releases, and satisfactions of the judgments.

(d) That portion of a certificate of discharge, separation, or service which indicates the character of discharge, separation, or service of any citizen of this state with respect to the military, air, or naval forces of the United States. Each certificate shall be recorded without cost to the veteran, but the clerk shall receive from the board of county commissioners or other governing body of the county the service charge prescribed by law for the recording.

(e) Notices of liens for taxes payable to the United States and other liens in favor of the United States, and certificates discharging, partially discharging, or releasing the liens, in accordance with the laws of the United States.

(f) Certified copies of petitions, with schedules omitted, commencing proceedings under the [1]Bankruptcy Act of the United States, decrees of adjudication in the proceedings, and orders approving the bonds of trustees appointed in the proceedings.

(g) Certified copies of death certificates authorized for issuance by the Department of Health which exclude the information that is confidential under s. 382.008, and certified copies of death certificates issued by another state whether or not they exclude the information described as confidential in s. 382.008.

(h) Copies of any instruments originally created and executed using an electronic signature, as defined in s. 695.27, and certified to be a true and correct paper printout by a notary public in accordance with chapter 117, if the county recorder is not prepared to accept electronic documents for recording electronically.

(i) Any other instruments required or authorized by law to be recorded.

(4) The county recorder shall remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

(5) Any reference in these statutes to the filing of instruments affecting title to real or personal property with the clerk of the circuit court shall mean recording of the instruments.

(6) The clerk of the circuit court may maintain a separate book for maps, plats, and drawings recorded pursuant to chapters 177, 253, and 337.

(7)(a) All instruments recorded in the Official Records [2] must remain open to the public, under the supervision of the clerk, for the purpose of inspection thereof and of making copies therefrom.

(b) The clerk is not required to perform any service in connection with such inspection or making of copies without payment of service charges as provided in s. 28.24.

(c) The clerk, in his or her capacity as county recorder, must retain the service charge payments under s. 28.24, except that those service charge payments that relate to court records or functions and meet the description of court-related functions in s. 28.35(3)(a) must be distributed for those court-related functions.

History.—ss. 2, 4, ch. 71-4; s. 24, ch. 81-259; s. 2, ch. 84-114; s. 2, ch. 92-25; s. 1, ch. 93-42; s. 100, ch. 94-119; s. 11, ch. 94-348; s. 1324, ch. 95-147; s. 2, ch. 95-214; s. 83, ch. 97-237; s. 3, ch. 99-259; s. 2, ch. 2013-109; s. 18, ch. 2019-71; s. 1, ch. 2021-116; s. 1, ch. 2021-215.

[1] **Note.**—Replaced by the 1978 Bankruptcy Code.

[2] **Note.**—As amended by s. 1, ch. 2021-116. The amendment by s. 1, ch. 2021-215, uses the word “are” instead of the words “must remain.”

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Van Eepoel Real Estate Co. v. Sarasota Milk Co.

Supreme Court of Florida, Division A

August 1, 1930; Petition for rehearing denied September 3, 1930

[NO DOCKET NUMBER]

Reporter
100 Fla. 438 *; 129 So. 892 **; 1930 Fla. LEXIS 1015 ***

THE VAN EEPOEL REAL ESTATE COMPANY, a Corporation, *Appellant,* V. THE SARASOTA MILK COMPANY, a Corporation, et al., *Appellees*

Prior History: [*1]** An Appeal from the Circuit Court for Sarasota County; Hon. Paul C. Albritton, Judge.

Affirmed on rehearing.

Case Summary

Procedural Posture
The Circuit Court for Sarasota County (Florida) entered judgment for appellee mechanic's lienholder (mechanic), holding that a mechanic's lien was superior to appellant mortgagee's purchase money mortgage in certain real estate. The trial court's decree was originally reversed by the Florida Supreme Court, but the state supreme court reconsidered the case on a petition for rehearing.

Overview
The mechanic commenced and completed his work after the execution of the purchase money mortgage (mortgage) but before its recordation, without knowledge or notice of the existence of the mortgage. The mortgagee was the first in time to record. Further, the mortgagee had no notice, either actual or constructive, of the mechanic's claim when the mortgage was recorded. The court found that (1) it was the duty of a purchase money mortgagee to promptly record his mortgage to preserve his priority over the rights of innocent purchasers or creditors subsequently arising; (2) where a purchase money mortgagee elects to withhold his mortgage from record and to permit others to innocently deal with the property in ignorance of his unrecorded mortgage, the same rules of estoppel are applicable to him as to any other mortgagee; and (3) the mortgagee permitted the mechanic to change his position by performing his work in ignorance of the mortgage. Thus, the mechanic was entitled to a first lien upon the property under the state's recording statutes.

Outcome
The former judgment of reversal was vacated, and the decree appealed from was affirmed.

LexisNexis® Headnotes

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

Real Property Law > Deeds > General Overview

Real Property Law > Priorities & Recording > General Overview

HN1 **Elements, Bona Fide Purchasers**

No conveyance, transfer or mortgage or real property, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law. 1927 Fla. Laws ch. 5698.

Governments > Courts > Clerks of Court

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

Real Property Law > ... > Liens > Nonmortgage Liens > Mechanics' Liens

HN2 **Courts, Clerks of Court**

As against the owner of the property, real or personal, upon which a lien is claimed, the lien hereinbefore provided for shall be acquired by any person, in privity with such owner, by the performance of the labor or the furnishing of the materials. Any purchaser or creditor

whose title, interest, lien or claim in or to the property shall be created, or shall arise, while the construction or repair of such property as aforesaid is in process, shall be deemed and held to be a purchaser or creditor with notice. As against the purchasers and creditors of such owner without notice, such lien shall be acquired upon real estate only from the time of the recordation in the office of the clerk of the circuit court of the county where the real estate lies of a notice of such lien. 1927 Fla. Laws ch. 5380.

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

Real Property Law > Financing > Mortgages & Other Security Instruments > Mortgagor's Interests

Real Property Law > ... > Liens > Nonmortgage Liens > Mechanics' Liens

HN3 **Elements, Bona Fide Purchasers**

1927 Fla. Laws ch. 5380 provides that as against purchasers and creditors of the owner without notice a mechanic's lien upon real estate shall be acquired only from the time of the record in the clerk's office of a notice of such lien.

Real Property Law > ... > Liens > Nonmortgage Liens > General Overview

Real Property Law > Deeds > General Overview

Real Property Law > Financing > Secondary Financing > Lien Priorities

HN4 **Liens, Nonmortgage Liens**

In a contest between persons having only equitable interests, however, priority of time is the ground of preference last resorted to. If one has on different grounds a better equity than the other, priority of time is usually subordinated to other equitable considerations.

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

Real Property Law > Financing > Secondary Financing > Lien Priorities

HN5 **Elements, Bona Fide Purchasers**

Subsequent purchasers or creditors for value and without notice of a prior unrecorded deed or mortgage to a third person are not affected thereby.

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

Real Property Law > Priorities & Recording > Recording Acts

HN6 **Elements, Bona Fide Purchasers**

When one purchases for value and without notice of a prior unrecorded deed the rights acquired under the junior deed are superior to those held under the senior deed, even though the senior deed be recorded prior to the record of the junior deed.

Civil Procedure > Judgments > Enforcement & Execution > Writs of Execution

Contracts Law > Personal Property > Bona Fide Purchasers

Real Property Law > ... > Liens > Nonmortgage Liens > General Overview

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

HN7 **Enforcement & Execution, Writs of Execution**

If at the time a lien is acquired by a judgment creditor he has no notice actual or constructive of equities of third persons in real estate the title to which stands in the name of the judgment debtor as the apparent absolute owner, the purchaser at the execution sale, whether such purchaser be the judgment creditor or another, takes a good title and is protected as a bona fide purchaser, even though the creditor or purchaser had notice of such equities at the time of the sale.

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

HN8 **Elements, Bona Fide Purchasers**

A creditor who obtains judgment or sues out an attachment after the record of a valid mortgage is not entitled to protection under the statute as an innocent purchaser, although the debt upon which the judgment or attachment is based was contracted after the execution of the mortgage and before its record.

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

HN9 **Elements, Bona Fide Purchasers**

The registry statute does not operate to convey title or to create a lien upon property; but records made under such statute may operate as an estoppel where persons without actual knowledge and without circumstances to put them upon inquiry reasonably may have taken substantial steps relying upon the record; and those who by their conduct or neglect in permitting the record to mislead others must bear any consequent loss rather than the one who in good faith may have acted with reference to the record as being in accord with actual facts.

Real Property Law > Deeds > General Overview

HN10 **Real Property Law, Deeds**

A mortgagee must act with diligence, and avoidable delays are at his peril.

Real Property Law > Financing > Mortgages & Other Security Instruments > General Overview

Real Property Law > Deeds > General Overview

HN11 **Financing, Mortgages & Other Security Instruments**

There being no fraud or duress, a notary's certificate of acknowledgment in the form prescribed by law, when the notary has acted within his jurisdiction, is conclusive of the facts and acts recited, and can not be questioned collaterally. Even where fraud is alleged proof thereof must be of the clearest, strongest and most convincing character.

Counsel: *Jackson, Dupree & Cone,* for Appellant; *Early & Arnest,* for Appellees.

Judges: STRUM, J., TERRELL, C. J., AND BROWN AND BUFORD, J. J., concur; ELLIS, J., dissents.

Opinion by: STRUM

Opinion

[*440] **[**893]** STRUM, J. -- This is a contest for priority between a mortgagee and a mechanic's lien-claimant asserting liens upon the same land.

The mortgage was executed by the owner of the property November 25, 1925. It was recorded April 21, 1926.

The mechanic's lien-claimant dealt directly with and was therefore in privity with the owner. The mechanic's work was commenced on April 12, 1926, and completed on **[*441]** April 16, 1926. Notice of the mechanic's lien was filed in the office of the clerk of the circuit court on July 7, 1926.

The following statutes are pertinent to the controversy:

HN1 "No conveyance, transfer or mortgage or real property, * * * shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law * * * ."

Sec. 5698, C.G.L. **[***2]** 1927.

The statute just above quoted is usually referred to as the recording statute.

[894]** The following statutes are found in the Chapter relating to the acquisition and enforcement of mechanic's liens:

"Liens prior in dignity to all others accruing thereafter shall exist in favor of the following persons, upon the following described real estate, under the circumstances hereinafter mentioned, to-wit:"

Then follows provisions affording liens to persons performing labor upon or furnishing materials in the construction or repair of buildings. Secs. 5349, 5350, 5353, C.G.L. 1927.

HN2 "As against the owner * * * of the property, real or

personal, upon which a lien is claimed, * * * the lien hereinbefore provided for shall be acquired by any person, in privity with such owner, by the performance of the labor or the furnishing of the materials. Any purchaser or creditor whose title, interest, lien or claim in or to the property shall be created, or **[*442]** shall arise, while the construction or repair of such property as aforesaid is in process, shall be deemed and held to be a purchaser or creditor with notice.

"As against the purchasers and creditors of such owner **[***3]** without notice, such lien shall be acquired upon real estate only from the time of the recordation in the office of the clerk of the circuit court of the county where the real estate lies of a notice of such lien. * * *." Sec. 5380, C.G.L. 1927.

The chancellor held that the mechanic's lien was superior. That decree was originally reversed by this court. Upon further consideration it appears that the chancellor's ruling was correct, and should be affirmed.

The lien of the mortgagee was not created, nor did it arise, during the progress of the mechanic's work, so as to charge the mortgagee with notice on that account.

The mechanic commenced and completed his work after the execution of the mortgage but before its recordation, without knowledge or notice of the existence of the mortgage. Neither does it appear that the mortgage had notice, either actual or constructive, of the mechanic's claim when the mortgage was recorded.

The mortgage came into existence and was a valid lien as between the mortgagor and the mortgagee upon its execution and delivery on November 25, 1925, several months prior to the time the mechanic commenced work. It was of no effect, however, as "against **[***4]** creditors or subsequent purchasers" for value and without notice, until recorded, which recording occurred on April 21, 1926. Meanwhile, and while there was no mortgage of record, the mechanic commenced and completed his work, thereby acquiring a statutory lien upon the property as against the owner. Thus the mortgagee and the mechanic each held valid and effective liens upon the property so far **[*443]** as the interest of the mortgagor-owner was concerned, the lien of the mortgagor dating from November 25, 1925, the date of the delivery of the mortgage, and the statutory lien of the mechanic dating from April 12, 1926, the date of the commencement of the work, so that, as against the owner, the lien of the mortgage was first in point of time. On April 16, 1926, when the mechanic's work was completed, neither the mortgagee nor the mechanic held a lien good as against the other, since neither had recorded his lien in the public records, and neither had actual notice of the other's lien. Up until April 21, 1926, when the mortgage was recorded, and which was five days after the completion of the mechanic's work, the liens of the mortgagee and of the mechanic, as between themselves **[***5]** as creditors' were merely *in posse.* On that date, however, the mortgage was recorded, and thereby became first in time of recording as against the mechanic's lien, notice of which was not recorded until July 7, 1926.

HN3 Sec. 5380, C.G.L. 1927, provides that "as against purchasers and creditors of the owner without notice" a mechanic's lien upon real estate shall be "acquired" only from the time of the record in the clerk's office of a notice of such lien. The mechanic acquired a lien as against the owner from the commencement of the work, but at the time the notice of such lien was *recorded* the mortgage had been executed, delivered and previously recorded, and was fully effectual both as against the mortgagor and against creditors and purchasers. In the absence, therefore, of an estoppel operating against the mortgagee under the circumstances stated, the mortgage would constitute a prior lien, being first in time of execution and of recording. See Guaranty Trust Co. v. Thompson, 113 So. R. 117; Annotation, Ann. Cas. 1912A 193. ***HN4*** In a contest between persons having only equitable interests, however, priority of time **[*444]** is the ground of preference last resorted to. **[***6]** If one has on different grounds a better equity than the other, priority of time is usually subordinated to other equitable considerations. Myers v. Van Buskirk, 119 So. R. 123.

HN5 Subsequent purchasers or creditors for value and without notice of a prior unrecorded deed or mortgage to a third person are not affected thereby. *Stewart v. Mathews, 19 Fla. 752*, *Feinberg v. Stearsns, 56 Fla. 279*, 48 So. R. 36; *West Coast Lbr. Co. v. Griffin, 56 Fla. 878*, 48 So. R. 36; *Hopkins v. O'Brien, 57 Fla. 444*, 49 So. R. 936; Myers v. Van Buskirk, 119 So. R. 123; Rambo v. Dickenson, 110 So. R. 352; *Edwards v. Thom, 25 Fla. 222*, 5 So. R. 707; *Lusk v. Reel, 36 Fla. 418*, 18 So. R. 581; *Doyle v. Wade, 23 Fla. 90,* **[**895]** 1 So. R. 516. See also *Spellman v. Beeman, 70 Fla. 575*, 70 So. R. 589. ***HN6*** When one purchases for value and without notice of a prior unrecorded deed the rights acquired under the junior deed are superior to those held under the senior deed, even though the senior deed be recorded prior to the record of the junior deed. The senior grantee having failed to record his deed, thereby permitting the junior grantee to purchase

without notice of the senior deed, is estopped to claim priority **[***7]** over such junior grantee under those circumstances. Accordingly, it is generally held in states having recording statutes similar to ours, that if A conveys lands to B, a *bona fide* purchaser for value, who does not go into possession and who failed to record his deed until after A conveys the same land to C, a second *bona fide* purchaser for value without notice of B's interest, and B then records his deed before C records his, the title of C shall nevertheless prevail as between C and B, because it is the fault of B that he did not immediately record his deed, thereby permitting C to deal with the property and part with his consideration without knowledge of B's interest. So B is estopped and the equities are with c. *Fallas v. Pierce, 30 Wis. 443, 458*; Randall v. Hamilton, 119 So. E.R. 595, *32 A.L.R. 342*; see also Ann. Cas. 1912 A, 194; Ann. Cas. 1916 B, 632.

In *Mansfield v. Johnson, 51 Fla. 239*, 40 So. R. 196, it was held: ***HN7*** "If at the time a lien is acquired by a judgment creditor he has no notice actual or constructive of equities of third persons in real estate the title to which stands in the name of the judgment debtor as the apparent absolute owner, the **[***8]** purchaser at the execution sale, whether such purchaser be the judgment creditor or another, takes a good title and is protected as a *bona fide* purchaser, even though the creditor or purchaser had notice of such equities at the time of the sale." In that case the true owner of a part interest was held estopped to assert his title as against the judgment creditor because of his failure to record the evidence of his title. See also *Doyle v. Wade, 23 Fla. 90*, 1 So. R. 516.

Miller v. Berry, 78 Fla. 98, 82 So. R. 764, is not in conflict with *Mansfield v. Johnson, supra*, since in Miller v. Berry it affirmatively appeared that the judgment creditor, contrary to the situation in Mansfield v. Johnson, did not extend credit or acquire his rights on the strength of the record showing title to be in the judgment debtor, so that in Miller v. Berry the true owner was held not estopped to assert his title against the judgment creditor. In *Rogers v. Munnerlyn, 36 Fla. 591*, 18 So. R. 699, it was held that ***HN8*** a creditor who obtains judgment or sues out an attachment after the record of a valid mortgage is not entitled to protection under the statute as an innocent purchaser, although tho debt **[***9]** upon which the judgment or attachment is based was contracted after the execution of the mortgage and before its record. In that case, however, it appears that the creditor in question was a creditor at large, and therefore not within the protection of the recording statute (see *Southern Bank & Trust Co. v. Mathers, 90 Fla. 542*, 106 So. R. 402), until his attachment was levied, thereby affording **[*446]** him a lien, which levy occurred *after* the record of the mortgage therein held to be superior to the attachment lien. The right of priority of the attaching creditor was held to date from the levy of his attachment, prior to which time he was merely a creditor at large.

The following principle, enunciated in *Hunter v. State Bank, 65 Fla. 202*, 61 So. R. 497, is applicable to the case now before us: ***HN9*** "The registry statute does not operate to convey title or to create a lien upon property; but records made under such statute may operate as an estoppel where persons without actual knowledge and without circumstances to put them upon inquiry reasonably may have taken substantial steps relying upon the record; and those who by their conduct or neglect in permitting the record to **[***10]** mislead others must bear any consequent loss rather than the one who in good faith may have acted with reference to the record as being in accord with actual facts."

The mechanic here is in the status of the junior grantee in the illustrations hereinabove mentioned. When the mortgage was recorded, the mechanic was not a creditor at large of the owner, as ws the creditor in *Rogers v. Munnerlyn, supra.* By performing the work in privity with the owner this mechanic acquired a specific lien, good as against the owner, and therefore was within the class of creditors contemplated by the recording statute. His status as a creditor was the same as that of a mortgagee holding an unrecorded mortgage. Te mechanic dealt with the property and acquired his lien as against the owner prior to the recording of the mortgage, and without notice of the existence of the mortgage. The mechanic's lien, like the title of the junior grantee above mentioned, was good as against the owner, but subject to postponement in favor of the rights of subsequent innocent purchasers or creditors, against which rights he could protect his lien by recording notice thereof or by some other effective form of notice. **[***11]** Like **[*447]** the junior grantee above, the mechanic by failing to promptly record notice of his lien, incurred the hazard of having his rights postponed in favor of an innocent purchaser or creditor who may have subsequently dealt with the property without notice of the mechanic's rights. See Peoples Bank v. Virginia Bridge Co., 113 So. R. 680, 685. **[**896]** But as to one who had previously dealt with the property and who had already changed his position with reference thereto but who had failed to record notice of his interest, as was the case with the senior grantee in

the above illustrations, thereby permitting the mechanic, like the junior grantee, to acquire an interest without notice of the senior interest, the principles of estoppel must be considered in settling the priorities of these two conflicting interests.

If after the mechanic had completed his work but before he had filed notice of his lien, an innocent purchaser had acquired a valid conveyance of the property, such latter purchaser would prevail over the mechanic's lien because the mechanic, by failing to record his notice of lien, assumes the hazard of the intervening rights of those who deal with the property **[***12]** in ignorance of the mechanic's unrecorded claim. It being the duty of the mechanic to record his notice of lien if he would protect his priority, having failed to do so he would be postponed to the rights of one who was mislead into purchasing the property in reliance upon the record as the mechanic elected to leave it. Such a case is *Axtel v. Smedley, 59 Fla. 430*, 52 So. R. 710. See also *Smith v. Gaudy, 43 Fla. 142*, So. R. 683. In the Axtel case, the materialman, dealing directly with the owner, completed the furnishing of his materials, but recorded no notice of his lien for nearly three months. Meanwhile, Axtel, an innocent purchaser, purchased and received a conveyance of the premises, which he recorded. Axtel dealt with the property and changed his position in **[*448]** reliance upon the record as the materialman elected to leave it, and having thus acquired his title, he prevailed over the materialman. In the case now before us, however, the mortgagee has not changed his position to his prejudice in ignorance of the mechanic's claim and through the fault of the mechanic. The mortgagee acted in acquiring its mortgage lien long prior to the origin of the mechanic's claim **[***13]** and elected to place of record no notice thereof to those who might subsequently deal with the property, thus permitting the mechanic to thereafter change his position by performing his work in ignorance of the mortgage, and under such circumstances, so far as the record disclosed, as would afford the mechanic a first lien upon the property under the statutes. Even if it could be said that the mechanic was remiss in not recording his notice of lien, that fact did not mislead the mortgagee to his prejudice. It merely subjected the mechanic to the risk of being subordinated to the rights of those dealing with the property without notice of the mechanic's claim. On the other hand, the failure of the mortgagee to record is prior mortgage *did* permit the mechanic to deal with the property without the knowledge of the mortgage or of circumstances to put the mechanic on injury.

When the mechanic thus changed his position with reference to the property there was nothing of record to indicate that his lien could be subordinate to a prior mortgage, nor did he have actual knowledge of the mortgage. When the mechanic performed his work, he acquired a valid lien as against the owner. The **[***14]** mortgagee, by failing to record its mortgage, permitted the record of the title to indicate a situation not in accordance with the facts. By withholding its mortgage from record and permitting the mechanic to bestow his labor upon the property in reliance upon the title as it appeared upon the record, the mortgage, like **[*449]** the grantee in the senior unrecorded conveyance hereinabove referred to, and like the true owner of the property in *Mansfield v. Johnson, supra*, is estopped to claim priority over the mechanic's lien, the conflicting priorities being occasioned solely by the voluntary omission of the mortgagee to record its mortgage. *Elizabethport Cordage Co. v. Whitlock, 37 Fla. 190*, 20 So. R. 255; *Root v. Bryant, 57 Calif. 48*; 40 C.J. 300; 41 C.J. 570; 21 C.J. 1166, 1172. Under an early statute, the courts of Minnesota took a contrary view, on the theory that mechanics' liens were not within the protection of their recording statute. *Oliver v. Peterson, 25 N.W.R. 629*; *Miller v. Stoddard, 52 N.W.R. 895*; *Noremberg v. Johnson, 52 N.W.R. 1069*. See also *Gately v. Gately, 169 N.Y.S. 280*.

Of course, some time may necessarily elapse between the execution and filing **[***15]** of a mortgage. See *Karst v. Gane, 32 N.E.R. 1073*. But ***HN10*** a mortgagee must act with diligence, and avoidable delays are at his peril. Here the elapsed time between the execution and filing of the mortgage is nearly five months, which is unreasonable.

The view herein adopted does not give any retroactive effect to the act or recording the notice of the mechanic's lien. See *Axtel v. Smedley, supra.* It is not held that the notice of lien recorded on July 7, 1926, relates back to the commencement of the work, nor would it have any effect upon intervening rights of purchasers or creditors without notice acquired after the completion of the work and before the record of the notice. The mortgage here in question is admittedly prior in time of both delivery and recording, but the mortgagee by its omission to record its mortgage has estopped itself to assert priority over a junior creditor, entitled to the protection of the recording statutes, who has changed his position and dealt with the property in reliance upon the title as it existed of record by the **[*450]** voluntary omission of the mortgagee to record its mortgage. Under the circumstances, it would be inequitable to afford **[***16]** the unrecorded mortgage

priority over the mechanic, even though the mechanic, **[**897]** prior to recording his notice, would have no standing or priority as a lienor as against other creditors not affected by an estoppel.

If the mechanic had recorded no notice of his lien within three months from the completion of the work (See Sec. 5380, Comp. Gen. Laws, 1927), a different question might be presented. That aspect of the matter is not now considered.

The situation here presented differs essentially from that in *Parker v. Gamble, 96 Fla. 343*, 118 So. R. 21, involving priorities between a mortgage and a materialman's lien upon an estate by the entireties. Under the controlling statute in that case no lien whatever accrues or comes into existence for any purpose, against the owner of other persons, until the filing of the required notice of lien. Unlike the situation now before us, when an estate by entireties is involved materialmen have no status as lienors for any purpose, even as against the owners, until the requisite notice is filed, and consequently have no standing whatever in determining priorities. Until the notice is filed they are merely creditors at large and not **[***17]** entitled to the protection of the recording statutes. Moreover, it does not appear in Parker v. Gamble that the mortgage was executed and delivered before work commenced, but withheld from the record until after the materials were furnished, as is the case here.

The mortgage here involved is a purchase money mortgage. The views herein expressed, affording the mechanic's lien priority, do not conflict with the general rule that a purchase money mortgage, made simultaneously with the conveyance to the mortgagor, takes precedence over any **[*451]** lien arising through the mortgagor, though the latter be prior in point of time. See Jones on Liens (3rd Ed.), Sec. 1458; 19 R.C.L. 416; also *Strong v. Van Duersen, 23 N.J. Eq. 369*; *Middletown Savings Bank v. Fellowes, 42 Conn.36*; *Thorpe Bros. v. Durbom, 45 Iowa 192*; *McIntosh v. Thurston, 25 N.J. Eq. 242*; *National Bank v. Sprague, 20 N.J. Eq. 13*; *Ettridge v. Bassett, 136 Mass. 314*; *Guy v. Garriere, 5 Calif. 511*; Warren Mtge. Co. v. Winters, 146 Pac. R. 1012; Ann. Cas. 1916 C. 956.

Examination of the cases just cited discloses that the rule last above stated, holding the purchase money mortgage superior to the mechanic's lien, is **[***18]** applied in cases where the mechanic's lien is acquired for work done at the instance of the purchaser, and without the acquiescence of the vendor, *prior* to the execution of the mortgage. Thus, when A, the owner, enters into an executory contract to convey to B, and during the pendency of the contract and before a conveyance is executed, work is done upon the premises by a mechanic under a contract with B, the vendee, and without the knowledge or acquiescence of A for which work the mechanic acquires a perfected lien, after which A executes a conveyance to B and simultaneously takes back a purchase money mortgage, the mortgage is superior to the mechanic's lien, because B takes the title charged with the incumbrance of the purchase money mortgage. A's vendor's lien is merged into the purchase money mortgage, being merely an exchange of one form of security for another, and as the mechanic's lien could attach only to B's interest, which acquired subject to the mortgage, and which is subordinate to A's vendor's lien and consequently to a purchase money mortgage substituted for that lien, the mortgage is superior to the mechanic's lien. This rule is consistent with our own holding **[***19]** as to the superiority of a purchase money mortgage over the dower interest of a **[*452]** wife of the grantee-mortgagor (*McMahon v. Russell, 17 Fla. 698*; *Taylor v. Mathews, 53 Fla. 776*, 44 So. R. 146,), and over the lien of judgments against the grantee-mortgagor existing at the time of the conveyance to him (see *Cheeves v. First National Bank, 79 Fla. 34*, 83 So. R. 870), and over a claim of homestead exemption to the property conveyed. *Porter v. Teate, 17 Fla. 813*. See also Jones on Mortgages (4th Ed.) 464, (6th Ed) 468. Where the vendor has knowledge of the work being done by the mechanic, and acquiesces therein, the rule may be otherwise. See Jones on Liens (3rd Ed.), Sec. 1487; *Bohn Mfg. Co. v. Kountze, 46 N.W.R. 1123*; 12 L.R.A. 33.

But the situation here presented differs essentially from any of those just above mentioned. Here the conveyance and purchase money mortgage had both been executed, and that transaction was at an end, before the mechanic commenced his work. No mechanic's lien existed when the mortgage was executed and delivered. Thereafter however, and while the mortgage was withheld from record by the mortgagee, the mechanic's lien arose by virtue of work **[***20]** done for the new owner, the mortgagor, *after* the execution and delivery of the purchase money mortgage. It is as much the duty of a purchase money mortgagee, as of any other mortgagee, to promptly record his mortgage if he would preserve his priority over the rights of innocent purchasers or creditors subsequently arising, and where a purchase money mortgagee elects to withhold his mortgage from record

and to permit others to innocently deal with the property in ignorance of his unrecorded mortgage, the same rules of estoppel are applicable to him as to any other mortgagee. Western Tire Co. v. Campbell, 169 S. W.R. 253; Ann. Cas. 1916C, 943, 953; 41 C.J. 528, 571.

As opinion prepared for filing herein on re-hearing, in which the former order of reversal is adhered to is postulated **[*453]** upon the theory that although the mortgage was signed **[**898]** by Sarasota Milk Company, the mortgagor, on November 25, 1925, the seal of said mortgagor was not affixed thereto until after this mechanic's work was commenced, and probably not until April 21, 1926, the date upon which the mortgage was recorded, so that the mortgage did not actually come into existence until after the **[***21]** mechanic's work was commenced.

That premise is grounded upon the testimony of mr. Van Eopoel, an officer of the *mortgagee,* not of the mortgagor, who testified in substance that on November 25, 1925, the mortgage in question was left with an attorney to be recorded as soon as the sale was completed and closed, because the mortgagor, the Sarasota Milk Company, had not yet received its seal "and they were to put this seal on the instrument, and then have it recorded, and it was some little time before they got their seal." The witness further testified, immediately thereafter, that he "did not know when they put the seal on there of Sarasota Milk Company, * * * just when they put their seal on there I do not know." Therefore, a finding that the seal was not placed upon the mortgage until April 21, 1926, would rest upon nothing more substantial than conjecture. There is nothing in that testimony to establish the affixing of the seal at any definite time. From November 25, 1925, to April 21, 1926, practically five months, would be an unreasonably long period of time to wait for a corporate seal which ordinarily can be procured within from one week to ten days.

On the other hand, **[***22]** the mortgage itself, which is in evidence, recites "that it was executed (not merely signed) this 25th day of November, 1925, by the Sarasota Milk Company," the mortgagor. Execution of the mortgage was acknowledged by the President of the mortgagor before **[*454]** a notary public, who is also a member of the Bar of this Court, on "this 25th day of November, A.D. 1925." The notary's certificate recites that W.K. Kuhns, President of the mortgagor, on the 25th day of November, 1925, acknowledged that the "executed" said instrument as the free act and deed of the mortgagor, and "that the seal, affixed to said instrument is its corporate seal and that he executed said instrument *'and affixed the corporate seal'* (Italics supplied) by authorization of the directors of said corporation." All of that is certified by the notary to have been acknowledged before him as done on November 25, 1925.

The testimony of Mr. Van Eeppel above referred to, though no doubt given in the best of faith, is not enough to overcome the force of the notary's official certificate that the mortgagor on November 25, 1925, acknowledged the execution of the instrument and that was them affixed thereto. ***HN11*** There **[***23]** being no fraud or duress, a notary's certificate of acknowledgment in the form prescribed by law, when the notary has acted within his jurisdiction, is conclusive of the facts and acts recited, and can not be questioned collaterally. Even where fraud is alleged -- and none is alleged in this case -- proof thereof must be of the clearest, strongest and most convincing character. *Bank of Jennings v. Jennings, 71 Fla. 145*, 71 So. R. 31; *Hutchinson v. Stone, 79 Fla. 157*, 84 So. R.151; *Green v. First National Bank, 85 Fla. 51*, 95 So. R. 231; *Hall v. Foreman, 94 Fla. 682*, 114 So. R. 560.

Moreover, there being no palpable violation of a constitutional or statutory command which would constitute a fundamental error in the decree appealed from (see F.E.C. Ry. v. Eno. 128 So. R. 622), the case should be determined here upon the theory presented by the pleadings and upon which it was decided below. New issues of fact **[*455]** should not be made here. The bill alleges that the notes secured by the mortgagee "were dated November 25, 1925," and that the mortgagor, Sarasota Milk Company, "on the date aforesaid, also 'executed and delivered' to the Tampa Stock Farms Company" the mortgage **[***24]** in question. That allegation appears in paragraph 3 of the bill, and it is admitted as true by the answer of Armstrong Cork & Insulation Company, the mechanic hereinabove referred to. the briefs and arguments are also based upon that theory.

Even if Mr. Van Eepoel is correct in his statement that the seal was not actually affixed to the mortgage on November 25, 1925, it is clear that the parties to the judgment intended that the act of affixing the seal, when performed, should relate back to November 25, 1925, the date of the mortgage. If those be the true facts then the parties to the mortgage are charged with the consequences of voluntarily conducting the mortgage transaction in that manner. The consideration for the mortgage certainly passed on November 25, 1925, and

the security was *then* determined upon and executed as of that date. An equitable mortgage unquestionably existed between the parties. The parties fixed their rights of that date. The situation is unlike one wherein a creditor subsequently, and in a new and separate transaction, takes security for a pre-existing debt, acting upon the faith of the record title as he finds it as of the date the security is **[***25]** taken. In that event, it may be, though it is not so decided, that such a creditor might prevail over an intervening latent lien, not of record.

Upon further consideration on rehearing, the court recedes from its opinion heretofore expressed herein (120 So. R. 841). The former judgment of reversal is vacated, and the decree appealed from is hereby affirmed.

TERRELL, C. J., AND BROWN AND BUFORD, J. J., concur.

ELLIS, J., dissents.

Dissent by: ELLIS

Dissent

[899]** **[*456]** ELLIS, J. (on rehearing, dissenting):

The question presented is one of priority of liens. The facts are as follows:

On November 25, 1925, the Tampa Stock Farms Dairy Company, a corporation, owned the west fifty feet of Lots 2, 4, 6 and 8 of Block 23 in the city of Sarasota. The corporation had completed a building on the west fifty feet of Lot 2 and installed machinery for the purpose of operating a "milk plant" on the property. It engaged in the business of pasteurizing, bottling and distributing milk in Sarasota. It was engaged in the same business in Tampa. In Sarasota the business was conducted in the name of Sarasota Milk Company.

The corporation, that is to say the Tampa Stock Farms Dairy Company, **[***26]** had been operating the Sarasota "plant" about a month when it entered into negotiations with W. B. Kuhns to sell the property. These negotiations resulted in a sale of the property on the above state date. Kuhns intending to operate a milk business in the name of The Sarasota Milk Company. It is not clear when the corporation was organized nor when it became authorized to transact business as a corporation. On that date, however, it had not acquired a seal. Part of the purchase price of the lot was paid and the remainder, $ 2u,000, was evidenced by two promissory notes in the sum of $ 10,500 each, one **[*457]** payable on or before one year after date and the other on or before two years after date. These notes were secured by a mortgage on the property. No copies of the notes are attached to the bill but they appear in the evidence. They were signed as follows: "The Sarasota Milk Co. By W. B. Kuhns Treas." The mortgage was signed on the same day as follows: "The Sarasota Milk Company By W. B. Kuhns, Pres." The corporate seal of the mortgagor company was not attached to the mortgage when it was executed nor does it appear that it adopted a seal for the purpose, but the mortgage **[***27]** was left in the hands of attorneys for the Tampa Stock Farms Dairy Company, mortgagee, to be completed by having the Sarasota Milk Company attach its seal so soon as it should be obtained and then immediately to be recorded. The mortgage was recorded on April 21, 1926.

The Tampa Stock Farms Dairy Company and The Van Eepoel Real Estate Company are corporations but they are officered by the same individuals and have practically the same stockholders. Mr. August Van Eepoel is secretary and treasurer and "actively in charge of both corporations. In order to separate the real estate business from the dairy business the Tampa Stock Farms Dairy Company transferred to the Van Eopoel Real Estate Company all the former's real estate, including the Sarasota Milk Company's notes and mortgage. This assignment occurred some time in June, 1926. The assignment is undated and the certificate of acknowledgment does not state the day of the month when it was made, nor does it appear that the assignment was recorded although the bill alleges in general terms that it was and the special master reported that it was filed on June 28, 1928.

In January, 1926, the Sarasota Milk owner of the property, **[***28]** W. B. Kuhns, treasurer and president of **[*458]** the company, procured certain work to be done upon the house by Armstrong Cork and Insulation Company by way of furnishing and installing "Cork Board Insulation", in one ice cream hardening room and ante room. The contract was completed and last work performed on April 16, 1926. The Sarasota Company paid for the materials and work all that was due for it except the sum of $ 957.75 and the Armstrong Company caused a notice of lien to be filed and recorded against the property on July 7, 1926.

In January, 1927, The Van Eeppoel Real Estate

Company begun its suit to foreclose the mortgage held by it, the first note having become due in November, 1926, and was not paid. The Armstrong Cork and Insulation Company was made a party defendant.

The ch ancellor held that the lien of the Armstrong Cork and Insulation Company was prior to that of the mortgage held by the complainant. From that decree the complainant appealed and this court reversed the decree in an opinion handed down March 20, 1929. A petition for a rehearing was granted and the cause orally argued during the last week in January, 1930.

The lien acquired by the Armstrong **[***29]** Cork and Insulation Company was acquired under the provisions of Sections 3495, 3496, 3499 and 3517, Rev. Gen. Stats. Notice of the perfected lien was filed within three months after the performance of the labor and entire furnishing of material. See Section 3517, Rev. Gen. Stats., *supra.*

Work under the contract was begun by the Armstrong Cork and Insulation Company on April 12, 1926. Material was shipped under the contract March 1, 1926, and the contract was completed on April 16, 1926. It cannot be said with any degree of certainty that on the last mentioned date the execution of the mortgage had been completed by attaching to it the seal impression of the Sarasota Milk Company. **[*459]** The sealing of an instrument of that character by a corporation is necessary to its validity. See Secs. 5660, 5665, Comp. Gen. Laws, 1927. Nor was it entitled to record until it was thus duly executed. See Sec. 5699, Comp. Gen. Laws, 1927.

The case may be determined on this point because if no mortgage came into existence until after the work upon the building was completed by the Armstrong Company but before **[**900]** the notice of its lien was filed there would be no question **[***30]** of the superiority of the mortgage lien in the absence of any fraud perpetrated upon the Armstrong Company by mortgagor and mortgagee.

While the deeds of corporations may not be required to be witnessed by subscribing witnesses, our "statute recognizes the doctrine universally obtaining, that corporations in such matters speak and set through their corporate seal." See *International Kaolin Co. v. Vause, 55 Fla. 641*, 46 So. R. 3.

Although there is no statute in this State which requires mortgages of real estate to be under seal of the mortgagor the general rule as to the mode of execution and the formalities required in the case of absolute conveyances of land are applicable to mortgages. A radical defect in the execution of a mortgage, not a trifling informality but the lack of some essential, may prevent it from being recorded or deprive it of all effect as against subsequent encumbrancers without notice, but will not destroy its validity as between the parties. *Dyson v. Simmons, 48 Md. 207*; *Beatty v. Clark, 20 Cal. 11*.

A mortgage executed without a seal, in the states where it is required is not a legal mortgage. All mortgages by corporations should be executed under the **[***31]** official seal of the corporations, which is customarily an impression upon the paper. See 1 Jones on Mortgages (8 Ed.) Sec. 100.

[*460] In equity it amounts to a compact for a mortgage and as such creates no lien as against purchasers from the mortgagor or as against his creditors without notice. *SeeErwin v. Shuey, 8 Ohio St. 509*; *Gabel Lumber Co. v. West, 95 Nebr. 394, 145 N.W.R. 849*; 41 C.J. 417.

An instrument which as shown by its own terms is designed by the parties as a security for the payment of money may be enforced as an equitable mortgage though wanting in the formal execution of it as a legal mortgage. See *Margarum v. J.S. Christie Orange Co., 37 Fla. 165*, 19 So. R. 637.

In that case, however, the mortgage was executed under the seal of the corporation. It was deficient, if at all, only in the matter of witnesses. At common law attestation of a deed or mortgage was not necessary to its validity and is therefore only necessary when required by statute. *Walker v. Heege, 78 Fla. 667*, 83 So. R. 605.

It is essential that the seal of a corporation shall be affixed to its written contracts which are required by law to be under seal. See *Grand Lodge K. of P. **[***32]** v. State Bank, 79 Fla. 471*, 84 So. R. 528.

If the instrument which was signed in the name of the Sarasota Milk Company to the Tampa Stock Farms Dairy Company before the seal of the Sarasota Milk Company was impressed upon it could be regarded or treated as an equitable mortgage and enforced as between the parties in equity it may have been entitled to record as a contract concerning real property upon proof of execution. See Sec. 5699-5779, Comp. Gen. Laws, 1927.

The informal execution of the instrument may have been a sufficient writing to satisfy the statute of frauds. See *Walters v. Miller, 70 Fla. 432*, 70 So. R. 629; *Tucker v. Gray, 82 Fla. 351*, 90 So. R. 158; *Kalil v. Nat. Bank of Gainesville, 81 Fla. 543*, 88 So. R. 383.

[*461] In the latter case delivery of the deed was the essential requisite to its validity as a conveyance of land, although it was deemed sufficient as an instrument in writing signed by the party to be charged.

In West Virginia and other states it is held that such an instrument though not effectual as a deed or mortgage at law may be treated as an equitable mortgage and entitled to record under the statute and is valid against subsequent purchasers **[***33]** and creditors when recorded. *Atkinson v. Miller, 34 W. Va. 115*, 11 So. E.R. 1007, 9 L.R.A. 554 n; *Gest v. Packwood, 39 Fed. R. 525*.

No question of that kind, however, exists in this case as there was no record or attempted record of the mortgage until it was completed as a legal mortgage. According to the testimony of Mr. Van Eepoel it was agreed to be kept off the record until the instrument was perfected as a legal mortgage by impressing upon the paper the seal of the corporation.

I these circumstances was the lien of the Armstrong Company superior or inferior to that of the unrecorded instrument called a mortgage held by the Van Eepoel Real Estate Company?

The Armstrong Company, when it furnished the material and performed the labor had no notice, actual or constructive, of the existence of the mortgage. The lien was perfected, the Armstrong Company was a creditor of the Sarasota Company with a lien against its property, before the so-called mortgage or the assignment of it to the Van Eepoel Company was recorded. The mortgage was not in existence as a legal mortgage; it was unrecorded when the Armstrong Company became a creditor and lienor of the Sarasota Company.

[*34]** A subsequent purchaser or creditor having a lien by way of judgment, mortgage or otherwise and without notice of a prior unrecorded legal mortgage or conveyance would be **[*462]** protected against such unrecorded conveyance or mortgage. See *Feinberg v. Stearns, 56 Fla. 279*, 47 So. R. 797; *Carolina Portland Cement Co. v. Roper, 68 Fla. 299*, 67 So. R. 115; *Rogers v. Munnerlyn, 36 Fla. 591*, 18 So. R. 669; *First Nat. Bank of St. Augustine v. Kirby, 43 Fla. 376*, (text **[**901]** 387) 32 So. R. 881; *Hopkins v. O'Brien, 57 Fla. 444*, 49 So. R. 936; *Myers v. Van Buskirk, 96 Fla. 704*, 119 So. R. 123.

In *Spellman v. Beeman, 70 Fla. 575*, 70 So. R. 589, where the subject matter dealt with was personal property the court held that the record of the chattel mortgage is a substitute for the possession of the property by the mortgage; that a subsequent mortgagee is on the same footing as a subsequent purchaser with regard to unrecorded mortgages under our statute and the prior unrecorded mortgage being void as to the subsequent mortgage continues to be void as to such mortgage which the subsequent record of the prior mortgage does not restore to priority over the second although recorded **[***35]** before the latter is recorded. The Court said: "The statute conclusively presumes that the effect of keeping the mortgage off the record and the failure of the mortgagee to take possession of the property, is to deceive and mislead the creditors and subsequent purchasers without notice and for a valuable consideration and declares such mortgage to be invalid as against such creditors and subsequent purchasers".

Section 3495 R.G.S. 1920 (Sec. 5349 C.G.L. 1927) provides for liens in favor of material men and laborers prior in dignity to all others accruing thereafter. Section 3517 Rev. Gen. Stats. 1920 (Sec. 5380 Comp. Gen. Laws 1927) in the second paragraph dealing with the acquisition of liens as to real estate and as against purchasers and creditors provides as follows:

[*463] "As against purchasers and creditors of such owner without notice, such lien shall be acquired upon real estate only from the time of the record in the office of the clerk of the circuit court of the county where the real estate lies of a notice of such lien. Such notice shall contain a statement of the amount claimed, a description of the property upon which the lien is claimed, and a notice of **[***36]** the intention to hold a lien for the said amount, and shall be verified by the oath of the lienor or his agent. It shall be filed only after the labor has been entirely performed and the materials entirely furnished.

"No such notice of a perfected lien shall be effectual against creditors or purchasers of the owner without notice unless it be filed within three months after the entire performance of the labor or the entire furnishing of the material".

But the recording of the lien has no retroactive effect upon a purchaser and by a parity of reasoning upon a

lien creditor who acquires his legal mortgage or judgment after the mechanic or materialman has completed his contract but before the record of his lien. See *Axtell v. Smedley & Rogers Hdw. Co., 59 Fla. 430*, 52 So. R. 710.

The recording law however, Section 3822 Rev. Gen. Stats. 1920 (Sec. 5698 Comp. Gen. Laws 1927) provides that no conveyance, transfer or mortgage of real property or of any interest therein nor any lease for a term of years or longer shall be good or effectual in law against creditors or subsequent purchasers for a valuable consideration and without notice unless the same be recorded according to law.

[*37]** That section places creditors with liens and subsequent purchasers upon the same footing in so far as prior unrecorded conveyances or liens are concerned. *Stockton **[*464]** v. Nat. Bank of Jacksonville, 45 Fla. 590*, 34 So. R. 897; Carolina Portland Cement Co. v. Roper, *Supra; Southern Bank & Trust Company v. Mathers, 90 Fla. 542*, 106 So. R. 402; *Sirkin v. Schulper, 90 Fla. 68*, 105 So. R. 151; *Hopkins v. O'Brien, supra.*

If as to such creditors and subsequent purchasers no mortgage on real estate is good or effectual in law or equity until recorded, then as to creditors and subsequent purchasers therefore the mortgage does not become a lien until recorded. But the materialman and laborer who under a contract with the owner furnishes material and performs labor upon a building is not only a creditor of the owner of the land but acquires a lien upon the land as against such owner. It follows that a mortgage executed before the acquisition of the materialman's lien but recorded after the acquisition of the lien and before the completion of the contract, or recorded after the completion of the contract and after record of notice of lien, becomes a subsequently acquired **[***38]** lien.

In the case of *People's Bank of Jacksonville v. Arbuckle, 82 Fla. 479*, 90 So. R. 458, this Court said that: "The recording of the mortgage affords notice thereof to all concerned, and gives it priority over all liens accruing thereafter". A "mortgagee must ascertain at his peril what liens have been acquired prior to the *recording* of the mortgage by persons who have begun to furnish labor or material for construction or repairs on the property."

In the Arbuckle case where there was a question of the priority of a mortgage lien over laborer's and materialmen's liens the mortgage was executed November 4, 1919, and recorded twenty-five days thereafter on November 29, 1919. One of the lienors, Jones Lumber Company, began furnishing building material to the mortgagor owner on November 14, 1919, and continued to March 16, 1920. **[*465]** There were other lienors who furnished materials and labor covering a period of several months from October, 1919, to March 15, 1920. None of them under special continuing contracts. In this connection the Court, speaking through Mr. Justice WHITFIELD, said "Where labor or material is supplied under a contract or a running open account **[***39]** that is designed to continue until the completion of the construction or repairs, the lien once acquired **[**902]** may continue until satisfied, even though other liens may be acquired after the beginning and before the completion of the contemplated transactions under the continuing contract or open account where the continuity of the contract or open account is not terminated". The furnishing of material after the *record* of the mortgage, said the learned justice, "makes the mortgage have priority".

There is no distinction in principle between the reason of the statutes relating to the recording of real estate mortgages and the statutes relating to the recording of chattel mortgages. The purpose being to prevent the misleading and deception of creditors of the owner of the property or subsequent purchasers from them. It requires no great imagination to perceive the doorway to fraud which might be opened if such was not the law.

I was definitely held in *Palm Beach Bank and Trust Company v. Lainhart et al., 84 Fla. 662*, 95 So. R. 122, that liens of laborers and materialmen are acquired individually and separately by each and attach from the moment the labor is performed **[***40]** and the material furnished, and if such labor is performed or materials are supplied upon a continuing contract to supply the same for the building the lien attaches or is acquired from the moment the first material is furnished or labor supplied under the contract and covers all material furnished or labor supplied thereunder.

[*466] Mr. Phillips, in his work on mechanics' liens, says: "A mechanic's lien is superior to all liens acquired after the work commenced, and to all prior liens of which the mechanic had no notice actual or constructive." Phillips on Mechanics' Liens, (3rd Ed.) p. 398.

It is said in 40 C.J. 300 that in a majority of jurisdictions it is held that in order for a mortgage to have priority over a mechanic's lien it must be recorded before the mechanic's lien accrues and the mere fact that it was

executed before that time will not give it priority if it is not recorded until afterward, unless according to some, but not all, authorities, claimant had actual notice of the mortgage. When a mortgage is not recorded within the time prescribed by statute it is postponed to mechanics' liens which accrued after its execution but before it was recorded although **[***41]** such liens were not perfected until after the mortgage was recorded. See O'Neill v. Lyric Amusement Co. et al., (Ark.) 178 So. W.R. 406; Small v. Foley, 8 Colo. A. 435, 47 Pac. R. 64; *Thielman v. Carr et al., 75 Ill. 385*; *City of Ortonville v. Geer et al., 93 Minn. 501, 101 N.W.R. 963*.

The question presented in this case is involved in no little difficulty, which is produced by the seeming conflict in judicial opinion. The conflict, however, is more apparent than real and grows out of the many different statutes dealing with the acquisition of materialmen and laborers' liens and the recording statutes. Pervading the law upon these subjects is the underlying principle that while the purchaser or mortgagee of real estate in good faith and for value shall be protected in his acquired rights, that protection shall not be extended to the exclusion of the rights of others who through the procrastination or lack of diligence of the first have been mislead to the latter's detriment. It is the principle of equitable estoppel.

[*467] Under the common law a mortgage upon real estate to constitute a line was not required to be recorded. O'Neill v. Lyric Amusements Co., *supra;* **[***42]** 23 R.C.L. 170.

The rule *"prior in tempore portior est in jure"* obtained at common law, but to obviate frauds arising from secret conveyances statutes were enacted in the several states requiring the registration of conveyances in order to render them valid as against subsequent bona fide purchasers. The history of the development of such statutes and their varying effect in different jurisdictions is both interesting and instructive. A full not on the subject may be found in Ann. Cas. 1912 A. p. 194.

Through them all, however, the purpose runs clear not only to preserve a record of title to lands but to protect intending purchasers and incumbrancers against the evil of secret grants. *Patterson v. DeLa Ronde, 8 Wall. 292, 19 L. Ed. 415*; *Antony v. Butler, 13 Pet. 423, 10 L. Ed. 229*; 23 R.C.L. 171.

The recording statutes of the different jurisdictions, while of the general tenor, vary in their particular provisions in each jurisdiction as to what class of persons can object to a mortgage as a superior claim on the ground of want of record. In some states the protection is accorded to subsequent purchasers of bona fide and for value. In this State, the protection is accorded **[***43]** to subsequent lien creditors as well as subsequent purchasers. The statutes of some states provide that the mortgage does not become a lien until recorded. In this State its is a lien from the date of its execution but invalids as to subsequent purchasers and subsequent lien creditors without notice until recorded. The lien laws of some states provide that the lien of a materialman or laborer does not become effective until notice of it is recorded. In this State it is effective from the moment the material is furnished or labor supplied **[*468]** against the owner and subsequent lien creditors who acquire their liens during the progress of the work or the furnishing of materials and is good for the entire value of the material and labor thereafter supplied under the contract.

The purpose fo all such lien statutes was expressed by the *Supreme Court of Massachusetts in Wall v. Robinson, 115 Mass. 429*, "The statues are designed to give to the mechanic who by his labor and skill enhances the value of an estate the security of a lien **[**903]** upon the estate to the extent he has thus added to its value."

The purpose of the recording statute of this State is to protect such **[***44]** creditors of the owner of an estate from the fraud which may follow upon the failure to record an existing mortgage upon the estate.

The materialman or laborer, when engaged to construct or repair buildings upon the land of the record owner, goes to the county record and accepts as truth what that record proclaims. If it shows that the employer is the owner of the land and no prior liens exist against it he proceeds, if he has no actual knowledge of prior liens, with the furnishing of materials and labor in the confidence of the statute that from the moment he furnishes material and labor he has lien upon the property for the material furnished and the labor performed under the contract. The filing and record of the notice of lien merely tolls the statute, which requires enforcement of the lien in a certain time, and protects the lienor against subsequent liens.

As the Tampa Stock Farms Dairy Company acquired no legal mortgage upon the properties of the Sarasota Milk Company until the mortgage was executed by impressing upon the written instrument the seal of the mortgagor corporation, it cannot be said to have acquired a lien prior to the acquisition of the

materialman's lien **[***45]** against such properties **[*469]** by the Armstrong Cork and Insulation Company. Not until the final act of executing the mortgage deed by impressing the corporation mortgagor's seal upon the document did the Tampa Stock Farms Dairy Company have a legal mortgage lien upon the property. Between the date of writing the instrument intended to be a legal mortgage and the date of the final act (attaching the seal) which made the written instrument a legal mortgage of the corporation, the Armstrong Cork and Insulation Company acquired its lien as materialman and laborer upon the properties and by completing the contract perfected its lien.

Now, if the Tampa Stock Farms and Dairy Company obtained its mortgage lien by a duly and properly executed instrument after the Armstrong Cork and Insulation Company had perfected its lien by completing its contract then the Tampa Stock Farms Dairy Company was a subsequent lien creditor to the Armstrong Cork and Insulation Company which had a lien by reason of the work done and material furnished in repairing the property. But the latter's lien was not effective against a subsequent lien creditor in good faith and without notice of the statutory **[***46]** mechanic's and laborer's lien unless the materialman or laborer had filed notice of his perfected liens as required by statute before the subsequent lien creditor of the owner of the property acquired his lien good faith and without notice. See Sec. 5380, Par. 2, Comp. Gen. LAws, 1927.

Now, the Armstrong Cork and Insulation Company completed its contract with the Sarasota Milk Company on April 16, 1926. notice of the perfected lien was filed on July 7, 1926. The Sarasota Milk Company completed the execution of its mortgage to the Tampa Farms Dairy Company by impressing its seal upon what up to that time was a mere simple agreement in writing and the then legal **[*470]** mortgage was recorded on April 21, 1926, five days after the perfected lien of the Armstrong Cork and Insulation Company and two months and a half before notice of the Armstrong Company's lien was filed.

There is nothing in the evidence to show that the Tampa Stock Farms Dairy Company knew of the existence of the Armstrong Cork and Insulation Company's lien nor that the latter company knew of the former as a secured or unsecured creditor of the Sarasota Milk Company. That the Tampa Stock Farms Company delayed **[***47]** taking the mortgage lien from the Sarasota Milk Company until the latter could secure its seal did not affect the good faith of the transaction. The Tampa Company only jeopardized its own interest thereby, because other lien creditors or purchasers from the Sarasota Milk Company without notice could have obtained superior claims to that of the Tampa Company and when the Tampa Company finally acquired its mortgage lien it would be as to such other purchaser or previously acquired lien holders a subsequent lien creditor.

If the Tampa Stock Farms Dairy Company became such a lien creditor without actual or constructive notice of the Armstrong Cork Company's perfected lien, it follows that the latter's lien would be inferior to the mortgage lien of the Tampa Stock Farms Dairy Company.

The evidence leads strongly to the inference that the Tampa Stock Farms Dairy Company obtained its legal mortgage from the Sarasota Milk Company after the Armstrong Cork Company had perfected its lien by completing its contract, that is to say, after April 16, 1926.

As to the Armstrong Cork Company, therefore, the Tampa Stock Farms Dairy Company became a subsequent lien creditor of the Sarasota Milk **[***48]** Company and not affected by the Armstrong Cork Company's lien, because **[*471]** notice of that lien was not filed until two months and a half afterwards.

In this view of the case I think the Court should adhere to the former decision in this case reversing the decree of the chancellor.

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Distinguished by Chatlos v. McPherson, Fla., May 29, 1957

105 Fla. 245
Supreme Court of Florida.

SAPP et al.
v.
WARNER et al.

April 19, 1932.

Synopsis
En Banc.

Suit by Annie Lester Patterson Warner and others against William E. Sapp and others. From an adverse decree, defendants appeal.

Affirmed.

BROWN, J., dissenting.

West Headnotes (9)

[1] **Notice** Nature in general

"Notice" may be "actual" or "constructive," and actual notice may be "express" or "implied."

29 Cases that cite this headnote

[2] **Records** Actual or constructive notice in general

Record is constructive notice to creditors and subsequent purchasers not only of its own contents, but such other facts as would have been learned, if record had been examined and inquiries suggested thereby duly prosecuted.

13 Cases that cite this headnote

[3] **Guardian and Ward** Rights and liabilities of purchasers

Recording of guardian's deed imputed notice of indispensable proceedings preliminary to execution of such deed.

4 Cases that cite this headnote

[4] **Real Property Conveyances** Constructive Notice, and Facts Putting on Inquiry

If in investigating title purchaser with common prudence must have been apprised of another right, notice of that right is presumed as matter of implied actual notice.

27 Cases that cite this headnote

[5] **Notice** Constructive Notice

Means of knowledge with duty of using them are in equity equivalent to knowledge itself.

11 Cases that cite this headnote

[6] **Real Property Conveyances** Lien or incumbrance and extent thereof

Execution of new mortgages restating previous one did not change equitable effect of implied actual notice of previous unrecorded mortgage, since new mortgages did not merge, release, or discharge prior mortgage.

20 Cases that cite this headnote

[7] **Guardian and Ward** Rights and liabilities of purchasers

That guardian's warranty deed did not show orders or proceedings of county judge on which it was based did not prevent it from being constructive notice of such orders and proceedings.

1 Case that cites this headnote

[8] **Guardian and Ward** Rights and liabilities of purchasers

Proper record of guardian's deed, with concomitant necessity imposed on those relying thereon to look to records to determine whether it had been duly authorized, held to warrant

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finding of implied actual notice of existence of unrecorded mortgage.

10 Cases that cite this headnote

[9] **Appeal and Error** Inferences and Conclusions Drawn from Evidence

Chancellor's inference of fact must be affirmed, in absence of clear showing that it was unwarranted under evidence and agreed stipulation of fact.

5 Cases that cite this headnote

***248** ****124** Appeal from Circuit Court, Dade County; Ira A. Hutchison, judge.

Attorneys and Law Firms

Redfearn & Ferrell, Semple & Hirschman, and T. J. Dowdell, and of Miami, for appellants.

Shackleford Ivy Farrior & Shannon, of Tampa, and Evans & Mershon and O. B. Simmons, Jr., all of Miami, for appellees.

Opinion

DAVIS, J.

From a final decree foreclosing an unrecorded purchase-money mortgage, the defendants below, William E. Sapp and Mrs. William E. Sapp, his wife, Commercial Bank & Trust Company, a Florida corporation, and Lindsey Hopkins, have entered their appeal on behalf of themselves, and all of their similarly situated codefendants, assigning as error the entry of said final decree for the complainants. The decree appealed from was arrived at on the basis of the record before the chancellor as it appeared on the final hearing, considered in connection with a special stipulation of facts which had been agreed to by all the parties, so as to directly present the one controlling point of law necessary to be determined in order to fix the equities.

The case is apparently one of first impression in this court, and in view of the number of defendants who will be affected by the ultimate decision, the question of law involved appears to be of considerable importance. ****125** Oral argument was had before Division B, where the controversy over the question was ably presented by both sides. In addition to this, the court has had the benefit of elaborate briefs convincingly prepared and filed by several of different counsel for appellants; it appearing that the parties interested on the appellants' side of the question amount ***249** to nearly two hundred in number, due to the peculiar circumstances under which this case arose.

Notwithstanding the voluminous record, the facts are not controverted, and there is but one outstanding question of law presented for decision, upon the determination of which will depend the reversal or affirmance of the decree appealed from: 'Is a person who claims under a duly recorded deed from the guardian of a minor, whose authority to make the deed is dependent upon proceedings had before the County Judge, charged with notice of the terms and conditions upon which the guardian was authorized by the County Judge to sell the minor's land, when it appears that while the grantees from the grantee of the guardian are otherwise bona fide purchasers for value without notice, the records of the County Judge, nevertheless, show that the lands involved in a foreclosure suit brought to enforce an unrecorded purchase money mortgage given to the guardian and another, by his original grantee, were lands sold by such guardian under authority of the Court, upon terms of part cash and balance to be secured by a purchase money mortgage on the land sold, it appearing that all of the defendants claim their interests under the recorded deed from the guardian, executed under and in pursuance of the County Judge's proceedings, but who were without any notice or knowledge of the unrecorded purchase money mortgage, except such as would be charged to them by virtue of what could have been ascertained by inquiry based upon the proceedings taken by the guardian before the County Judge?'

The lower court decided the question in the affirmative, and decreed that the foreclosure should proceed under complainants' unrecorded purchase-money mortgage, notwithstanding the claims of the defendants that they should be considered as bona fide purchasers for value, without notice, from the guardian's original grantee under the recorded ***250** warranty deed which the guardian had executed at the time of the guardian's sale.

The facts, stated chronologically, are as follows:

The complainant Mrs. Warner was the daughter of the complainant Mrs. Markley. Mrs. Warner (formerly Annie Lester Patterson), on June 23, 1911, and at the time of the making of the guardian's sale hereinafter mentioned, was a minor; James M. Jackson, Jr., was the legally constituted

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guardian of her estate, under order of the county judge of Dade county.

The minor was originally seized and possessed of the fee-simple title to the lands involved in this suit, subject to the estate by dower of her mother, Mrs. Markley.

On June 23, 1911, the county judge of Dade county entered an order based upon a petition filed by James M. Jackson, Jr., guardian, authorizing the guardian to sell the minor's interest in the real estate involved in this suit and other lands, at private sale, for cash or upon terms. On September 6, 1932, James M. Jackson, Jr., filed his report of sale in the office of county judge of Dade county, showing that the real estate involved in this suit had been sold to George E. Merrick for the sum of $20,000 upon the following terms: $2,000 cash and $18,000 in five years, together with interest at the rate of 8 per cent. per annum, payable semiannually on all deferred payments, and that the said deferred payments were to be secured by a purchase-money mortgage on said property.

The report further shows that the property had been sold at private sale to the highest and best bidder ‘on reasonable terms' to George E. Merrick for the sum of $20,000, ‘two-thirds of which the said Annie Lester Patterson, a minor, is entitled to receive, and will receive, and the other one-third of said $20,000 being paid to Jessie B. Markley, formerly Jessie B. Patterson, widow of Samuel L. Patterson, and mother of Annie Lester ***251** Patterson, a minor,’ on certain terms and conditions as to deferred payments which contemplated and embraced the total purchase price as being subject thereto.

On Suptember 5, 1923, based upon he report of sale aforesaid, the county judge entered an order confirming the said sale and directing the guardian to execute and deliver a deed to George E. Merrick, conveying all of the right, title, and interest of the minor in and to said property, and authorizing and empowering him ‘to take back a purchase money mortgage constituting a first lien against the property for all deferred payments.’

On August 16, 1923, a deed was executed by Jessie B. Markley, joined by her husband, and James M. Jackson, Jr., guardian of Annie Lester Patterson, a minor, conveying the property to George E. Merrick. This deed was dated August 16, 1923, but it was not filed for record until September 7, 1923, the day after the county judge entered the order confirming the sale.

On August 4, 1923, George E. Merrick executed two promissory notes, bearing the date and evidencing the deferred portion of the purchase price for the land. One of the notes was for $12,000, payable to the order of James M. Jackson, Jr., as guardian of Annie ****126** Lester Patterson, and the other of the notes was for $6,000, payable to the order of Jessie B. Markley. The notes, according to their terms, were to become due on or before five years after said date.

To secure these notes, George E. Merrick executed and delivered a purchase-money mortgage upon the land he had purchased at the guardian's sale. This mortgage was executed to James M. Jackson, Jr., as guardian of Annie Lester Patterson, a minor, and to Jessie B. Markley, individually, because of her own individual interest in the same property, and was on the same date as the notes which were secured thereby. This mortgage was never ***252** recorded because it was lost or misplaced and was not found until after the bill was filed in this cause and shortly before the final hearing.

In 1926, Merrick and wife executed and delivered two mortgages, dated August 4, 1923, acknowledged September 30, 1926, one of which was executed to James M. Jackson, Jr., as guardian of Annie Lester Patterson, for the purpose of securing the note of $12,000 executed to the guardian, as aforesaid, and the other of which was executed to Jessie B. Markley for the purpose of securing the note for $6,000, payable to Mrs. Markley, as aforesaid. Each of said mortgages showed that it was a purchase-money mortgage upon the land and was given in lieu of the former mortgate of like import, tenor, and date, which had been lost prior to record. These last-mentioned mortgages were filed for record on March 4, 1927, and were recorded.

The parcel of land involved in this suit, when conveyed to Merrick, was an entire parcel, but after the purchase thereof by Merrick he caused the same to be subdivided into lots and blocks which were later sold from time to time to the numerous defendants who later appeared to resist the foreclosure here involved.

On November 1, 1924, after the record of the deed from Jackson, as guardian, and Mrs. Markley to Merrick, but before the execution and record of the two evidentiary mortgages above mentioned, Merrick executed to the appellant A. J. Orme, as trustee, a mortgage upon all of said lands and other lands, securing an indebtedness of $300,000, and after the record of the deed from Jackson, as guardian, and Mrs. Markley to Merrick, but before the filing for record of the two evidentiary mortgages above mentioned, Merrick executed deeds to certain of the defendants described in the bill, purporting to convey specified lots in the subdivision of the

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property conveyed by the guardian and Mrs. Markley to him. These deeds appear ***253** to have been recorded after the deed from the guardian and Mrs. Markley to Merrick, but *before* the recording of the two evidentiary mortgages above mentioned.

Merrick later executed a deed conveying to Coral Gables Corporation all of the land, except such lots as had theretofore been conveyed by him to certain of the defendants described in the bill. This deed was also executed after the recording of the deed from the guardian and Markley to Merrick, but before the filing for record of the two evidentiary mortgages.

After Coral Gables Corporation received the deed above mentioned, it executed to certain of the defendants described in the bill, deeds conveying certain of the lots in the subdivision. All of these deeds likewise were executed after the recording of the deed from Jackson, as guardian, and Mrs. Markley to Merrick, and some of them were executed before the filing for record of the two evidentiary mortgages.

Certain of the defendants described in the bill received deeds from Coral Gables Corporation conveying specified lots in the subdivision, which deeds were executed and recorded after the filing for record of the two evidentiary mortgages above mentioned.

The bill for foreclosure was filed October 27, 1928. It sought the foreclosure of the original unrecorded and lost mortgage deed dated August 4, 1923, executed by Merrick to James M. Jackson, Jr., as guardian of Annie Lester Patterson, a minor, and Jessie B. Markley, for default in the payment of principal and interest of the secured debt. The two later mortgages executed and delivered subsequent to the execution and delivery of the original unrecorded mortgage deed appear to have been referred to in this foreclosure bill for the sole purpose of establishing the terms and provisions of the original mortgages, which at the time of the filing of the bill was not at hand, because ***254** of it having been misplaced under to circumstances hereinbefore stated.

The effect of the decree of foreclosure is to hold that the many defendants who had acquired their titles to their individual lands through the chain of title containing the recorded deed from Jackson, the guardian, and Mrs. Markley, were not bona fide purchasers for value without notice in so far as the two unrecorded purchase-money mortgages from Merrick to the guardian, and Mrs. Markley were concerned, and that by reason thereof the complainants were both entitled to enforce their mortgages by foreclosure proceedings brought and maintained not only by the minor, who had subsequently attained her majority, but by Mrs. Markley, who had taken a separate mortgage for her part of the single unpaid purchase price.

[1] It was undoubtedly the purpose of section 5698, C. G. L. section 3822 R. G. S.,[1] to ****127** require all mortgages on real estate to be recorded in a separate mortgage book kept in the office of the clerk of the circuit court (see section 4858, C. G. L., section 3077, R. G. S.) in order for same to be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration, *and without notice*. Such has been the construction consistently put upon the statute by this court. Carolina Portland Cement Co. v. Roper, 68 Fla. 299, 67 So. 115; People's Bank of Jacksonville v. Arbuckle, 82 Fla. 479, 90 So. 458; Rambo v. Dickenson, 92 Fla. 758, 110 So. 352.

But the statute also expressly recognizes that 'notice' of an unrecorded instrument may take creditors or subsequent ***255** purchasers out of the class entitled to rely on the record, or absence of a record, of a particular mortgage sought to be foreclosed as against those who claim to be subsequent purchasers for a valuable consideration without notice of property covered by an unrecorded mortgage.

Notice is of two kinds, actual and constructive. 'Constructive notice' has been defined as notice imputed to a person not having actual notice; for example, such as would be imputed under the recording statutes to persons dealing with property subject to those statutes. 'Actual notice' is also said to be of two kinds: (1) Express, which includes what might be called direct information; and (2) implied, which is said to include notice inferred from the fact that the person had means of knowledge, which it was his duty to use and which he did not use, or, as it is sometimes called, 'implied actual notice.' Cooper v. Flesner, 24 Okl. 47, 103 P. 1016, 23 L. R. A. (N. S.) 1180, 20 Ann. Cas. 29; Simmons Creek Coal Co. v. Doran, 142 U. S. 417, 12 S. Ct. 239, 35 L. Ed. 1063; Hoy v. Bramhall, 19 N. J. Eq. 563, 97 Am. Dec. 687; Acer v. Westcott, 46 N. Y. 384, 7 Am. Rep. 355. Constructive notice is a legal inference, while implied actual notice is an inference of fact, but the same facts may sometimes be such as to prove both constructive and implied actual notice. Knapp v. Bailey, 79 Me. 195, 9 A. 122, 1 Am. St. Rep. 295.

The principle applied in cases of alleged implied actual notice is that a person has no right to shut his eyes or ears to avoid information, and then say that he has no notice; that it will not suffice the law to remain willfully ignorant of a thing readily

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ascertainable by whatever party puts him on inquiry, when the means of knowledge is at hand. McQuiddy v. Ware, 20 Wall. 14, 22 L. Ed. 311; Woodruff v. Williams, 35 Colo. 28, 85 P. 90, 5 L. R. A. (N. S.) 986; Vann v. Marbury, 100 Ala. 438, 14 So. 273, 23 L. R. A. 325, 46 Am. St. Rep. 70; ***256** Webb v. John Hancock Mutual Life Ins. Co., 162 Ind. 616, 69 N. E. 1006, 66 L. R. A. 632.

[2] **[3]** In the case at bar the appellees contend that since the deed dated August 16, 1923, executed by Jessie B. Markley and James M. Jackson, Jr., as guardian of Annie Lester Patterson, a minor, conveying the property to George E. Merrick, was itself duly recorded under the recording statutes, that the record of this deed constitutes notice to creditors and subsequent purchasers not only as to the existence vel non and contents of that deed, but also as to all such other facts as they would have learned from that record, had it been examined, including the proceedings before the county judge which culminated in the execution of said guardian's deed, the validity of which deed could only have been determined by an investigation of the proceedings had before the county judge, upon which the legality of the deed to convey the minor's title necessarily depended. Charles v. Roxana Petroleum Corp. (C. C. A.) 282 F. 983.

These guardianship proceedings, so it is asserted, show every fact with respect to the unrecorded purchase-money mortgage of the complainants, and defendants, being deemed to have implied actual knowledge thereof, through the inquiry suggested by the guardian's deed into the county judge's proceedings, are to be deemed charged in this case with knowledge of what was shown by the proceedings had before the county judge, since the guardian's deed, without reference to such proceedings to support its validity, would not have been effectual as proof of title in any one claiming under it. McIntrye v. Parker, 77 Fla. 690, 82 So. 253; Davis v. Shuler, 14 Fla. 438; McGehee v. Wilkins, 31 Fla. 83, 12 So. 228.

In several jurisdictions the rule is that purchasers and creditors are charged only by construction with notice of the facts *actually exhibited* by the record made under the ***257** recording statutes, and not with such facts outside of the record itself, as might have been ascertained by inquiries which an examination of the record would have induced a prudent man to make. Neas v. Whitener-London Realty Co., 119 Ark. 301, 178 S. W. 390, L. R. A. 1916A, 525, Ann. Cas. 1917B, 780; Gilchrist v. Gough, 63 Ind. 576, 30 Am. Rep. 250; Taylor v. Harrison, 47 Tex. 454, 26 Am. Rep. 304.

But the rule supported by the best authority is that the record is constructive notice to creditors and subsequent purchasers not only of its own existence and contents, but ****128** of such other facts as those concerned with it would have learned from the record, if it had been examined, and inquiries suggested by it, duly prosecuted, would have disclosed. Nolen v. Henry, 190 Ala. 540, 67 So. 500, Ann. Cas. 1917B, 792; Wetzier v. Nichols, 53 Wash. 285, 101 P. 867, 132 Am. St. Rep. 1075; Gaines v. Saunders, 50 Ark. 322, 7 S. W. 301; Simmons Creek Coal Co. v. Doran, 142 U. S. 417, 12 S. Ct. 239, 35 L. Ed. 1063; H. B. Claflin Co. v. King, 56 Fla. 767, 48 So. 37; Gulf Coast Canning Co. v. Foster (Miss.) 17 So. 683; Martin v. Neblett, 86 Tenn. 383, 7 S. W. 123.

[4] **[5]** If, in the investigation of a title, a purchaser, with common prudence, must have been apprised of another right, notice of that right is presumed as a matter of implied actual notice. Reeder v. Barr, 4 Ohio, 446, 22 Am. Dec. 762; Singer v. Scheible, 109 Ind. 575, 10 N. E. 616; American Inv. Co. v. Brewer, 74 Okl. 271, 181 P. 294; Cambridge Valley Bank v. Delano, 48 N. Y. 326; Blake v. Blake, 260 Ill. 70, 102 N. E. 1007. Means of knowledge, with the duty of using them, are in equity equivalent to knowledge itself. Cordova v. Hood, 17 Wall. 1, 21 L. Ed. 587. See, also, Taylor v. American Nat. Bank, 63 Fla. 631, 57 So. 678, Ann. Cas. 1914A, 309; ***258** Hunter v. State Bank of Florida, 65 Fla. 202, 61 So. 497; McRae v. McMinn, 17 Fla. 876; Figh v. Taber, 203 Ala. 253, 82 So. 495.

In the case at bar, even if the order of the county judge, dated September 6, 1923, cannot be construed to be constructive notice of any matter, contract, lien, or relationship recited therein over which the county judge had no jurisdiction, as argued by appellants, it does not necessarily follow that appellants can base their claims of title to the land in question upon the assumed validity of the guardian's deed to Merrick, and at the same time repudiate and deny notice of matters which would have been discovered by a prudent man put on inquiry, especially when those matters must unquestionably have been brought to their attention if they had examined the proceedings of the county judge which constituted the guardian's authority for the making of such a deed.

This is true because neither the proceedings before the county judge, nor the guardian's deed standing alone, was sufficient

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to convey the minor's title. Both together constituted one inseparable and indivisible unit forming a single link in the title chain, because in an action of ejectment the guardian's deed alone would not have been admissible in evidence. McGehee v. Wilkins, 31 Fla. 83, 12 So. 228, and cases cited.

So recording of the guardian's deed imputed notice of the indispensable proceedings preliminary to the execution of that deed, which had been taken before the county judge to give that deed validity, and under the authorities we have heretofore cited, those who would rely upon such deed as evidence of the right they assert, must do so charged with implied actual notice of all facts appearing in the proceedings had before the county judge, and of all facts that a prudent man examining those proceedings would have learned upon reasonable inquiry from the facts disclosed there.

***259** And in this case it appears that an examination of the records of the proceedings before the county judge would have brought knowledge of both the mortgages sought to be foreclosed to the appellants, since a single consideration of $20,000 as the purchase price to be paid for the land was referred to in the guardian's report to the county judge, and from that report it is plainly deducible that the unpaid balance of $18,000 was to be extended over a period of five years, payable in deferred payments to both of the interested owners, and not to the guardian alone.

[6] Nor did the execution of the two new mortgages on September 20, 1926, change the equitable effect of the implied actual notice to appellees of the previous unrecorded mortgage. The subsequent mortgages appeared on their face to be but mere restatements of the previous one for the purpose of having the same placed on record. The execution of the two new mortgages on the same property, to cover the same debt that was secured by the misplaced and unrecorded mortgage, did not operate to merge, release, or discharge the prior mortgage, unless so intended by the parties and unless so made by them for the purpose of having them operate as a payment or satisfaction, so as to cancel the former security and substitute the latter. In such situation, the original mortgage cannot be deemed to have been discharged by the execution of the subsequent ones, in the absence of a clear showing of an intention by the parties to that effect. Such intention is affirmatively refuted in the case at bar. See 2 Jones on Mortgages (8th Ed.) 666, § 1187; 41 C. J. 806 et seq. Neither was any such merger, estoppel, payment, satisfaction, or discharge of the unrecorded mortgage by the subsequent ones pleaded by defendants. See Loomis v. Dubois, 82 Fla. 293, 89 So. 804.

[7] But it is argued also that the execution by the guardian of a warranty deed to Merrick, without mentioning any ***260** recitals whatsoever therein to show the orders or other proceedings of the county judge upon which it was based, constitutes no constructive notice of said orders and proceedings, although such warranty deed was properly recorded, because such a deed without recitals is 'not free from criticism.' 12 R. C. L. 1142, par. 36.

The answer to this proposition is that while such recitals are appropriate, and good form dictates that they should have been ****129** incorporated to render the deed 'free from criticism,' the absence of them cannot change the legal status of the instrument as being a guardian's deed whose essential validity can only be sustained when shown to be predicated upon valid preliminary proceedings before the county judge, necessary to have authorized the guardian to have legally made such a deed. The deed appears to have been executed by a guardian describing himself as such, so the absence of recitals in that deed describing the proceedings by which it was authorized is immaterial, since, as we have pointed out, the validity of that deed could only have been determined by examining the records in the office of the county judge, and if such examination had been made, the fact of the probable and likely existence of the two outstanding unrecorded mortgages must necessarily have been noticed.

[8] **[9]** The proposition we decide is not that the record of the guardian's deed constituted constructive notice per se of the entire proceedings before the county judge upon which that deed was based, but that the proper record of such deed, with the concomitant necessity imposed upon those relying on it to look to the records of the county judge to determine whether it had been duly authorized, warranted a finding by the court of implied actual notice of the existence of the two unrecorded mortgages under the facts of this case, as shown by the evidence and the stipulation. The chancellor held that as a matter of law there ***261** was such implied actual knowledge, which is an inference of fact drawn by the court as a matter of law, and not by the law itself, and in the absence of any clear showing that this inference of fact was unwarranted under the evidence and the stipulation, we must affirm the chancellor's finding on that score.

'Constructive notice,' as we have heretofore pointed out, is an inference the law itself draws, and which cannot be refuted

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when the facts giving rise to it are made to appear. 'Implied actual notice,' on the other hand, is an inference of fact which may be drawn by the court as a matter of law, when warranted by the circumstances of a particular case calling for its application in order to do equity.

As has been stated by the Court of Civil Appeals of Texas, in the case of Loomis v. Cobb, 159 S. W. 305, 307: 'It is a familiar and thoroughly well-settled principle of realty law that a purchaser has constructive notice of every matter connected with or affecting his estate which appears by recital, reference, or otherwise, upon the face of any deed which forms an essential link in the chain of instruments through which he deraigns his title. The rationale of the rule is that any description, recital of fact, or reference to other documents puts the purchaser upon inquiry, and he is bound to follow up this inquiry, step by step, from one discovery to another and from one instrument to another, until the whole series of title deeds is exhausted and a complete knowledge of all the matters referred to and affecting the estate is obtained. Being thus put upon inquiry, the purchaser is presumed to have prosecuted it until its final result and with ultimate success. * * * The rule of notice thus imputed is based upon the legal presumption that information has been communicated to or acquired by a party. The presumption is not conclusive but rebuttable. * * * It may be stated as a general proposition that in all instances of constructive notice belonging ***262** to this class, where it arises from information of some extraneous facts, not of themselves tending to show an actual notice of the conflicting right, but sufficient to put a prudent man upon an inquiry, the constructive notice is not absolute; the legal presumption arising under the circumstances is only prima facie; it may be overcome by evidence, and the resulting notice may thereby be destroyed. Whenever, therefore, a party has merely received information, or has knowledge of such facts sufficient to put him on an inquiry, and this constitutes the sole foundation for inferring a constructive notice, he is allowed to rebut the prima facie presumption thence arising by evidence; and if he shows by convincing evidence that he did make the inquiry, and did prosecute it with all the care and diligence required of a reasonably prudent man, and that he failed to discover the existence of, or to obtain knowledge of, any conflicting claim, interest, or right, then the presumption of knowledge which had arisen against him will be completely overcome; the information of facts and circumstances which he had received will not amount to a constructive notice. What will amount to a due inquiry must largely depend upon the circumstances of each case. If, on the other hand, he fail to make any inquiry or to prosecute one with due diligence to the end, the presumption remains operative, and the conclusion of a notice is absolute.'

In this case the inference of implied actual notice was warranted by the fact that the persons having constructive notice of the record of the guardian's deed must in any event have looked to the proceedings which were necessary to support it, and accordingly must be charged with implied actual notice of what an inquiry suggested to a prudent man by those proceedings would have disclosed. There is nothing in the stipulation which inhibited the court from finding such implied actual notice as a matter ***263** of law from the facts before him in this case, since there was no showing that the inquiry suggested by the guardian's proceedings was made, and the ****130** facts not discovered after the exercise of due diligence.

It follows from what has been said that the interests asserted by the answers of the appellants were subordinate in equity to the right of foreclosure asserted by the appellees, and that the chancellor properly so held when he entered his decree of foreclosure, which should be and is hereby affirmed.

Affirmed.

BUFORD, C. J., and WHITFIELD, and ELLIS, JJ., concur.

BROWN, J., dissents.

TERRELL, J., not participating.

All Citations

105 Fla. 245, 141 So. 124

Footnotes

1 'No conveyance, transfer or mortgage of real property, or of any interest therein, nor any lease for a term of one year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers

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for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney ney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing be good or effectual in law or in equity purchaser.'

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ARGENT MORTGAGE COMPANY, LLC

v.

WACHOVIA BANK N.A., etc.

No. 5D09-4014.

District Court of Appeal of Florida, Fifth District.

Dec 30, 2010.

52 So. 3d 796

2010 Fla. App. LEXIS 20132

2010 WL 5391527

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Griffin, Palmer, Perry.

Cited by 11 opinions | Published

GRIFFIN, J.

Argent Mortgage Company, LLC ["Argent"] appeals the trial court's entry of judgment in favor of Wachovia Bank National Association, as Trustee Under Pooling and Servicing Agreement Dated as of November 1, 2004, Asset Backed Pass-Through Certificates Series 2004-WWF1 ["Wachovia"]. Argent argues that the tri [*798] al court erred by finding that the mortgage now owned by Wachovia has priority over Argent's mortgage. We reverse.

On August 31, 2004, Gene M. Burkes and Ann Burkes ["the Burkes"] as borrower/mortgagor and Olympus Mortgage Company as lender/mortgagee executed a mortgage ["the Olympus Mortgage"] on real property as security for a $90,000.00 loan. The Olympus Mortgage was recorded on January 5, 2005. Subsequently, the Olympus Mortgage was assigned to Wa-chovia. As a result of default, Wachovia filed a complaint to foreclose the Olympus Mortgage and to enforce lost loan documents. Wachovia joined Argent as a defendant, alleging that Argent might claim some interest in or lien upon the subject property by virtue of a recorded mortgage.

On December 10, 2004, the Burkes as borrower/mortgagor and Argent as lender/mortgagee executed a mortgage ["the Argent Mortgage"] as security for a $65,000.00 loan on the same real property that is the subject of the Olympus Mortgage. The Argent

Mortgage was recorded on January 31, 2005. Subsequently, Wells Fargo Bank became the owner of the Argent Mortgage. An action to foreclose the Argent Mortgage was initiated as a result of default.[1]

Argent filed a motion for summary judgment in its favor, requesting that the trial court determine that the Argent Mortgage has priority over the Olympus Mortgage. Likewise, Wachovia filed a motion for summary judgment in its favor, requesting that the trial court determine that the Olympus Mortgage has priority over the Argent Mortgage. After conducting a hearing, the trial court entered an order on the competing motions for summary judgment as to priority. In the order, the trial court made findings on facts not in dispute, including the dates of execution and recordation of the two mortgages and Argent's lack of actual or constructive notice of the Olympus Mortgage at the time of execution of the Argent Mortgage. Ultimately, the trial court deemed "the Florida statutes on recordation," namely sections 695.01 and 695.11, Florida Statutes, "to be of the race-notice variety," found that the Olympus Mortgage should have priority over the Argent Mortgage, and entered a partial final judgment in favor of Wachovia.

On appeal, Argent argues that the trial court erred by finding in favor of Wacho-via on the issue of mortgage priority because the trial court erred in concluding that sections 695.01 and 695.11, Florida Statutes when read together, create a "race-notice" scheme. Argent asserts that section 695.01, Florida Statutes, alone determines which mortgage has priority, that section 695.01 is, and, for over a century, has been recognized to be a "notice" statute, not a "race-notice" statute and that, under section 695.01, the Argent Mortgage has priority over the Olympus Mortgage.

Wachovia acknowledges that section 695.01, Florida Statutes, is a "notice" type of recording statute. However, Wachovia contends that amendments made to section 695.11, Florida Statutes, have converted Florida into a "race-notice" state.

As an initial matter, it bears explaining that recording statutes are classified into three categories: race, notice, and race-notice. *See* Grant S. Nelson, William B. Stoebuck, and Dale A. Whitman, *Contemporary Property* 1004 (West Group 2d ed. 2002). These can generally be described as follows:

• Under a *race* recording statute, a subsequent mortgagee of real property will prevail against a prior mortgagee of [*799] the said real property if the subsequent mortgage is recorded before the prior mortgage.

• Under a *notice* recording statute, a subsequent mortgagee of real property for value and without notice (actual and constructive) of a prior mortgage of the said real property will prevail against the prior mortgagee.

• Under a *race-notice* recording statute, a subsequent mortgagee of real property for value and without notice (actual and constructive) of a prior mortgage of the said real property will

prevail against the prior mortgagee if the subsequent mortgage is recorded before the pri- or mortgage.

Importantly, under either a notice or a race-notice recording statute, the subsequent mortgagee cannot be without constructive notice if the prior mortgage has been recorded as of the time of execution of the subsequent mortgage. *See id.* at 1004-07.

Application of each type of recording statute to the undisputed facts here yields the following results:

• Wachovia prevails under a race recording statute because the Olympus Mortgage was recorded before the Argent Mortgage;

• Argent prevails under a notice recording statute because it is a subsequent mortgagee for value and did not have notice of the Olympus Mortgage at the time of execution of the Argent Mortgage; and

• Wachovia prevails under a race-notice recording statute because, although Argent is a subsequent mortgagee for value and did not have notice of the Olympus Mortgage at the time of execution of the Argent Mortgage, the Olympus Mortgage was recorded before the Argent Mortgage.

Commentators appear uniformly to categorize section 695.01 as a "notice" type of recording statute. *See* 2-26 Ralph E. Boyer, *Florida Real Estate Transactions* § 26.02 (Matthew Bender & Co., Inc. 2010) ("Florida has a notice type recording statute [see § 695.01, Fla. Stat.] the primary function of which is to protect subsequent purchasers (which for purposes of this discussion includes mortgagees and creditors who are within the statute's protection) against claims arising from prior unrecorded instruments .... " (citations omitted)).

Florida courts over time have described and applied Florida's recording statute in a manner that is consistent with a "notice" type of recording statute. *See Lesnoff v. Becker,* 101 Fla. 716, 135 So. 146, 147 (1931) (" 'Under our recording statutes, subsequent purchasers, acquiring title without notice of a prior unrecorded deed, mortgage, or transfer of real property, or any interest therein, will be protected against such unrecorded instrument, unless the party claiming thereunder can show that such subsequent purchaser acquired the title with actual notice of such unrecorded conveyance or mortgage; and the burden of showing such notice is upon the party claiming under such unrecorded instrument, the presumption in such case being that such subsequent purchaser acquired his title in good faith and without notice of the prior unrecorded conveyance.' " *(quoting Rambo v. Dickenson,* 92 Fla. 758, 110 So. 352, 353 (1926))); *Morris v. Osteen,* 948 So.2d 821, 826 (Fla. 5th DCA 2007) ("Generally, competing interests in land have priority in the order in which they are created;" "[t]he important caveat to this rule is that those acquiring rights later will have priority if they took without 'notice of the first created rights.' " (citation omitted)); *F.J. Holmes Equip., Inc. v. Babcock Bldg. Supply, Inc.,* 553 So.2d 748, 750 (Fla. 5th DCA 1989) ("The first rule is that competing interests in land have priority in order of their creation in point of time;" "[t]his rule is sub [*800] ject to the important exception created by the recording statute that notice of the first created rights must be

available to those later acquiring rights in the same land;" and "[t]his normally means that unrecorded rights, titles or lien interests, such as the equitable rights of the beneficiaries of resulting trusts, constructive trusts and equitable liens, are generally held to be inferior to rights subsequently acquired without actual notice of the earlier created but unrecorded rights" (footnotes omitted)). Florida's approach to the problem was succinctly described by the Florida Supreme Court in *Van Eepoel Real Estate Co. v. Sarasota Milk Co.,* 100 Fla. 438, 129 So. 892, 895 (1930):

> [I]t is generally held, in states having recording statutes similar to ours, that if A conveys lands to B, a bona fide purchaser for value, who does not go into possession and who failed to record his deed until after A conveys the same land to C, a second bona fide purchaser for value without notice of B's interest, and B then records his deed before C records his, the title of C shall nevertheless prevail as between C and B, because it is the fault of B that he did not immediately record his deed, thereby permitting C to deal with the property and part with his consideration without knowledge of B's interest. So B is es-topped and the equities are with C.

Section 695.01, notwithstanding, the trial court accepted Wachovia's argument that a 1967 amendment to a different statute, section 695.11, Florida Statutes, entitled, "Instruments deemed *to be* recorded from time of filing" converted Florida from a "notice" to a "race-notice" jurisdiction. The earliest version of section 695.11 dates back to 1885. Examination of the language of the 1906, 1920, and 1935 iterations of section 695.11, make clear that this statute was intended to provide a mechanism for determining the time at which an instrument was deemed to be recorded. Nothing in the case law suggests that section 695.11 modifies section 695.01.[2]

As a result of the 1967 amendment, section 695.11 now includes the following language: "The sequence of such official numbers *shall determine the priority of recordation.* An instrument bearing the lower number in the then-current series of numbers *shall have priority over any instrument* bearing a higher number in the same series." (Emphasis added). Wachovia contends that the inclusion of this language converted Florida from a "notice" state to a "race notice" state. We disagree. The amendment to section 695.11 is designed to refine the test for determining the time at which an instrument is deemed to be recorded, not to alter the recording requirement found in section 695.01.[3]

Section 695.11 also applies to indexing errors. To the extent that an instrument bears an official register number but [*801] has been indexed incorrectly, it is nevertheless deemed to be recorded. *See Anderson v. N. Fla. Prod. Credit Ass'n,* 642 So.2d 88, 89 (Fla. 1st DCA 1994) ("[A]n instrument is deemed to be 'officially recorded' when the instrument is accepted by the court clerk and is given 'official register numbers.' ... While indexing is required, priority is not contingent upon such, and the cases cited to us by appellants do not alter the plain language of th[e] statute which provides that '[t]he sequence of such official numbers shall determine the priority of recordation.' "); *see also Orix Fin. Servs., Inc. v. MacLeod,* 977 So.2d 658, 658 (Fla. 1st DCA 2008).

Wachovia relies on an earlier opinion of this Court, *Rice v. Greene,* 941 So.2d 1230 (Fla. 5th DCA 2006), in support of its contention that Florida has a race-notice type of recording

statute. In *Rice,* this Court quoted section 695.01 and found:

> In other words, "an unrecorded deed is not good or effectual in law or equity against creditors or subsequent purchasers for valuable consideration who are without notice of the transaction." *Fryer v. Morgan,* 714 So.2d 542, 545 (Fla. 3d DCA 1998). Therefore, *because Mr. Greene had no notice* of the earlier warranty deed between Mr. Rice and Mrs. Schwartz *and paid valuable consideration* for the property, *Mr. Greene's recording of his warranty deed before Mr. Rice gives Mr. Greene priority to the property.*

Id. at 1282 (emphasis added). According to Wachovia, this language proves that priority in recording is key. Notably, however, *Rice* does not mention section 695.11 and recording was not an issue. The subsequent purchaser in *Rice* (Mr. Greene) had priority to the property under a notice type of recording statute because he paid value for the property and did not have notice (actual or constructive) of the earlier warranty deed at the time of the conveyance. The fact that Mr. Greene's deed was recorded before Mr. Rice's does not affect the outcome under a notice type of recording statute. Although a portion of the sentence in *Rice,* on which Wachovia relies, mentions recording, in that case, it was superfluous.

We conclude that Florida is, and remains, a "notice" jurisdiction, and notice controls the issue of priority. Since Argent is a subsequent mortgagee for value and did not have notice of the Olympus Mortgage at the time of execution of the Argent Mortgage, the Argent Mortgage has priority over the Olympus Mortgage. As such, the trial court erred by entering partial summary final judgment in favor of Wachovia on the issue of priority.

REVERSED and REMANDED.

PALMER, J., and PERRY, B., JR., Associate Judge, concur.

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1 The trial court entered an order consolidating the two foreclosure actions.

2 Contrary to Wachovia's contention, when read together, sections 695.01 and 695.11 do not appear to be similar to the wording of New Jersey's race-notice recording statute on which the trial court relied in its decision.

3 Case law confirms that the purpose of section 695.11 is to determine the time at which an instrument is deemed to be recorded and to serve as notice. *See Broward County v. Recupero,* 949 So.2d 274, 276 (Fla. 4th DCA 2007) ("Florida Statutes section 695.11 provides that instruments are deemed to be recorded from the time of filing."); *Winn-Dixie Stores, Inc. v. Dolgencorp, Inc.,* 964 So.2d 261, 266-67 (Fla. 4th DCA 2007) ("Section 695.11, Florida Statutes (2006) states that an instrument, like a lease, which is 'authorized or required to be recorded' by the clerk 'shall be notice to all persons' once it is 'officially recorded' pursuant to the statute."); *In re Forfeiture of $91,357.12,* 595 So.2d 998, 999 (Fla. 4th DCA 1992) ("Section 695.11, Florida Statutes, specifically provides that the effective time of recording is the point at which the document is *officially* accepted and *offi-* [*801] *dally* recorded." (emphasis in original)); *Paterson v. Brafman,* 530 So.2d 499, 500 (Fla. 3d DCA 1988) ("Our reversal is founded upon the basic, irrefutable principle that those who subsequently deal with real property are placed on constructive notice of the relevant contents of a properly recorded instrument ...." *(citing* section 695.11, Florida Statutes)). Section 695.11 has an important purpose to determine the priority between judgment liens. *See Lamchick, Glucksman & Johnston, P.A. v. City Nat'l Bank of Fla.,* 659 So.2d 1118, 1119 (Fla. 3d DCA 1995); *Dollar Sav. & Trust Co. v. Soltesiz,* 636 So.2d 63, 66 (Fla. 2d DCA 1994); *Martinez* v. *Reyes,* 405 So.2d 468, 469 (Fla. 3d DCA 1981). Because a certified copy of a judgment must be recorded in order to

create a lien on real property, a judgment that is recorded earlier in time, namely one that bears a lower official register number, will win priority.

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Mayfield v. First City Bank of Fla.

Court of Appeal of Florida, First District

August 2, 2012, Opinion Filed

CASE NO. 1D11-3681

Reporter
95 So. 3d 398 *; 2012 Fla. App. LEXIS 12563 **; 37 Fla. L. Weekly D 1848; 2012 WL 3115140

MICHAEL D. MAYFIELD, BONNIE J. MAYFIELD, AND BRANCH BANKING AND TRUST COMPANY, Appellants, v. FIRST CITY BANK OF FLORIDA, Appellee.

Procedural Posture
Appellants, a bank and borrowers, appealed the grant of summary judgment by the Circuit Court for Walton County (Fla.) in favor of appellee bank regarding its action for foreclosure.

Subsequent History: Released for Publication September 19,2012.

Rehearing denied by *Mayfield v. First City Bank of Fla., 2012 Fla. App. LEXIS 15733 (Fla. Dist. Ct. App. 1st Dist., Aug. 31, 2012)*

Review denied by *Mayfield v. First City Bank of Fla., 2013 Fla. LEXIS 1028 (Fla., May 21, 2013)*

Prior History: **[**1]** An appeal from the Circuit Court for Walton County. Howard LaPorte, Judge.

Overview

Appellants sought reversal of a summary final judgment of foreclosure and argued that their title and mortgage to the property in question prevaild over that of the appellee. Unbeknownst to appellants, title to the disputed property had been conveyed and a prior mortgage executed on the property. The appellate court found that the unambiguous language of *§ 695.11, Fla. Stat.*, controlled such that constructive notice attached at the time the deed and the appellee's mortgage were recorded. Although the appellants suggested that these documents had to remain in the official records to impart constructive notice, the appellate court found no such requirement in *§ 695.11*. *Section 695.01* required that, to be good and effectual against bona fide purchasers, a document had to be recorded according to law. The deed and the mortgage were recorded according to law.

Core Terms

recorded, mortgage, constructive notice, deed, official record, notice, documents, numbers, recording statute, purchasers, register

Case Summary

Outcome
The judgment was affirmed.

LexisNexis® Headnotes

Real Property Law > Priorities & Recording > Recording Acts

HN1[] **Priorities & Recording, Recording Acts**

Section 695.01, Fla. Stat., provides, in part: (1) No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a term of one year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law. *Section 695.01* is a "notice" recording statute, the primary purpose of which is to protect subsequent purchasers (including mortgagees and creditors) against claims arising from prior unrecorded instruments. In order to prevail under *§ 695.01*, the bona fide purchaser must be without notice.

Real Property Law > Priorities & Recording > Recording Acts

HN2[] **Priorities & Recording, Recording Acts**

The Florida Supreme Court has defined constructive notice as notice imputed to a person not having actual notice; for example, such as would be imputed under the recording statutes to persons dealing with property subject to those statutes. An examination of Florida case law reveals that courts have generally concluded that, when a party complies with the recording statute, constructive notice attaches and will not be destroyed by errors committed by the clerk.

Real Property Law > Priorities & Recording > Recording Acts

HN3[] **Priorities & Recording, Recording Acts**

Constructive notice of the subject-matter of the instrument takes place from the date it is placed with the recording officer to be recorded, and that the efficacy of such notice will not be destroyed if errors are made in the recording.

Real Property Law > Priorities & Recording > Recording Acts

HN4[] **Priorities & Recording, Recording Acts**

See *§ 695.11, Fla. Stat.*

Real Property Law > Priorities & Recording > Recording Acts

HN5[] **Priorities & Recording, Recording Acts**

Under *§ 695.11, Fla. Stat.*, an instrument was deemed officially recorded when accepted by the clerk and given official register numbers.

Real Property Law > Priorities & Recording > Recording Acts

HN6[] **Priorities & Recording, Recording Acts**

Section 695.11, Fla. Stat. (1995) provides that official recordation occurs at such time as the office of the clerk of the circuit court affixes to an

instrument the official register numbers required by law and at such time shall be notice to all persons.

Counsel: T.A. Borowski, Jr., J. Scott Duncan, and Darryl Steve Traylor, Jr., of Borowski & Duncan, P.A., Pensacola, for Appellants.

Richard T. Petitt and Adam M. Wolfe of Petitt Wolfe Craine Worrell Porter LLC, Tampa; Edward P. Fleming and R. Todd Harris of McDonald, Fleming, Moorhead, Pensacola; Matthew C. Hoffman, Pensacola; Todd M. LaDoucer, Pensacola; Larry A. Wright and William H. Green, DeFuniak Springs; Wade Wallace, Miramar Beach; and Michael Wm. Mead, Ft. Walton, for Appellee.

Judges: ROBERTS, J. WETHERELL and ROWE, JJ., CONCUR.

Opinion by: ROBERTS

Opinion

[*399] ROBERTS, J.,

This appeal is a case of first impression resulting from unique circumstances involving electronic public records. Appellants Michael and Bonnie Mayfield (the Mayfields) and appellant Branch Banking and Trust Company (BB&T) seek reversal of a summary final judgment of foreclosure and argue that their title and mortgage to the property in question prevails over that of the appellee, First City Bank of Florida (First City). Although the appellants are in an unfortunate position that they did not create, we affirm because the trial court did not err in its construction of Chapter **[**2]** 695.

In October 2009, the Mayfields purchased real property (hereinafter Lot 2) in Walton County and received a warranty deed on Lot 2 from Blue water Real Estate Investments, LLC (Blue water). Simultaneously, the Mayfields granted a mortgage **[*400]** on Lot 2 to Old National Bank that was subsequently acquired by BB&T. The Mayfields' deed and mortgage were filed with the clerk of Walton County who recorded both documents in the official records on November 2, 2009.

Unbeknownst to the appellants, title to Lot 2 had been conveyed and a prior mortgage executed on the property. In 2006, Blue water conveyed Lot 2 to Wright & Associates of Northwest Florida (W&A). W&A simultaneously granted a mortgage on Lot 2 to First City. The W&A deed and First City mortgage were filed with the clerk of Walton County for recording. After receiving the documents for recording, the clerk opened a recording transaction in the computer and affixed an official register book and page number on the hard copies of the W&A deed and First City mortgage so as to record the documents in the official records on July 6, 2006. Shortly after entering the documents in the computer, the clerk independently realized that she had **[**3]** made an error in the recording process and voided the W&A deed and First City mortgage from the official records. The clerk intended to re-record the aforesaid documents after correcting the error, but failed to do so and mistakenly recorded similar instruments concerning another parcel of property instead. Thereafter, the hard copies of the W&A deed and First City mortgage bearing the official register book and page numbers were returned to the parties. However, in the Walton County electronic official records, the corresponding book and page numbers showed that the documents were voided. Once a document is voided, it no longer appears in the official records or the index to the official records and cannot be found by a person conducting a search of the official records. Thus, except for a brief period of approximately 73

minutes on July 6, 2006, the W&A deed and First City mortgage did not appear in the official records of Walton County. Furthermore, only during this window of time could a member of the general public have discovered the W&A deed and First City mortgage.

In 2010, First City filed for foreclosure on Lot 2 due to a loan payment default by W&A. The Mayfields and Old **[**4]** National[1] were named as defendants. The Mayfields moved for summary judgment based on their contention that they were bona fide purchasers without notice, and, therefore, their interests prevailed over that of First City. First City also moved for summary judgment arguing that it fully complied with the recording statute, and, as a result, the Mayfields and BB&T were placed on constructive notice of the First City mortgage. In granting a summary final judgment of foreclosure in favor of First City, the trial court found that, although the W&A deed and First City mortgage were voided from the public records, they were recorded in accordance with *section 695.11, Florida Statutes* (2011). The trial court further found that, because the documents were recorded, they provided constructive notice such that the Mayfields and BB&T were not entitled to the protection of *section 695.01, Florida Statutes* (2011).

On appeal, the parties dispute whether constructive notice could attach when the W&A deed and First City mortgage appeared in the official records for 73 minutes before being completely eradicated **[**5]** due to the clerk's error. The appellants rely on *section 695.01* and argue that it imposes a requirement that an instrument **[*401]** presently "be" in the public records in order to impart constructive notice.

HN1[↑] *Section 695.01* provides, in part:

> (1) No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law. . . .

Section 695.01 is a "notice" recording statute, the primary purpose of which is to protect subsequent purchasers (including mortgagees and creditors) against claims arising from prior unrecorded instruments. *See Argent Mortgage Co., LLC v. Wachovia Bank, N.A., 52 So. 3d 796, 799 (Fla. 5th DCA 2010)*. In order to prevail under *section 695.01*, the bona fide purchaser must be without notice, in this case, constructive notice.

In *Sapp v. Warner*, ***HN2***[↑] the Supreme Court defined constructive notice as "notice imputed to a person not having actual notice; for example, such as would be imputed under the recording statutes to persons dealing with property **[**6]** subject to those statutes." *105 Fla. 245, 141 So. 124, 127 (Fla. 1932)*. An examination of Florida case law reveals that courts have generally concluded that, when a party complies with the recording statute, constructive notice attaches and will not be destroyed by errors committed by the clerk.

For example, in *First National Bank of Brooksville v. Evans*, the appellant/mortgagee complied with the recording statute by filing a chattel mortgage for record, but the same was not recorded until later due to an omission by the clerk. *100 Fla. 740, 130 So. 18, 20 (Fla. 1930)*. The mortgage lien was recorded by the clerk on the day an attachment lien on the same property was levied. *Id.* In determining whether the lien of the chattel mortgage was entitled to priority over the attachment lien, the Supreme Court held:

> It was not the fault of the mortgagee, the appellant here, that the mortgage was not actually spread upon the record until the day the attachment was levied. Appellant had complied with the recording act in so far as it was within its power, when it filed the chattel

[1] As the subsequent purchaser of the note and mortgage, BB&T intervened in the foreclosure action.

> mortgage for record, and its lien cannot be affected by the omission of the clerk to record the mortgage as soon as it was filed. . . . Indeed, **[**7]** to hold that creditors and purchasers did not have constructive notice until the instrument was actually recorded would be to nullify our statute which reads as follows:
> 'All instruments relating to real and personal property which are authorized or required to be recorded shall be deemed to be recorded from the time the same are filed with the officer whose duty it is to record the same.' Section 5708(3830), Compiled General Laws of Florida 1927.

Id.

Similarly, in *Federal Land Bank of Columbia v. Dekle*, the Supreme Court held that, in states with statutes like section 3830, Revised General Statutes of Florida 1920, (section 5708, Compiled General Laws of Florida 1927), it was "generally held that ***HN3***[↑] constructive notice of the subject-matter of the instrument takes place from the date it is placed with the recording officer to be recorded, and that the efficacy of such notice will not be destroyed if errors are made in the recording." *148 So. 756, 758, 108 Fla. 555 (Fla. 1933)*.[2]

[*402] The current version of *section 695.11*, provides:

> ***HN4***[↑] All instruments which are authorized or required to be recorded in the office of the clerk of the circuit court of any county in the State of Florida, and which are to be recorded in the "Official Records" as provided for under s. 28.222, and which are filed for recording on or after the effective date of this act, shall be deemed to have been officially accepted by the said officer, and officially recorded, at the time she or he affixed thereon the consecutive official register numbers required under s. 28.222, and at such time shall be notice to all persons. The sequence of such official numbers shall determine the priority of recordation. An instrument bearing the lower number in the then-current series of numbers shall have priority over any instrument bearing a higher number in the same series.

Under this current version, the courts have continued to find that constructive notice attaches upon compliance with the recording statute. For example, in *Anderson v. North Florida Production Credit Association*, Anderson purchased property in Franklin County in 1985 **[**9]** and secured a mortgage on said property. *642 So. 2d 88, 89 (Fla. 1st DCA 1994)*. Unknown to Anderson at the time, a prior mortgage had been executed on the property in favor of North Florida Production Credit Association (North Florida). *Id*. The prior mortgage was recorded in 1983 and was improperly indexed by the clerk. Id. The circuit court found in favor of North Florida, concluding that indexing was not an essential element of recording and priority of competing claims was determined by *section 695.11*. Id. This Court affirmed, finding that,***HN5***[↑] under *section 695.11*, an instrument was deemed officially recorded when accepted by the clerk and given official register numbers. *Id*. This Court found that priority was not contingent upon indexing and the plain language of *section 695.11* provided the sequence of official numbers determined the priority of recordation. *Id*.

In *Orix Financial Services, Inc. v. Macleod*, Orix recorded a judgment lien on real property in Dixie County that was later acquired by the MacLeods.*977 So. 2d 658 (Fla. 1st DCA 2008)*. Orix sought to foreclose on its judgment lien, and the trial court entered summary judgment in favor of the MacLeods. *Id*. This Court reversed, **[**10]** stating:

> We adhere to the reasoning of the *Anderson*

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[2] In 1935, the Legislature amended section 3830, Revised General Statutes of Florida 1920, by adding the final clause, "and as so recorded and transcribed upon the record shall be notice to all persons." Thereafter, notice was imparted **[**8]** after documents are recorded and not after documents are filed for recording.

> court. In *Anderson*, this court viewed the dictates of *section 695.11, Florida Statutes*, as unambiguous. *See also Fed. Land Bank of Columbia v. Dekle, 108 Fla. 555, 148 So. 756 (1933)*. The statute ***HN6***[↑] provides that official recordation occurs at such time as the office of the clerk of the circuit court affixes to an instrument the official register numbers required by law "and at such time shall be notice to all persons." *§ 695.11, Fla. Stat.* (1995).

Id.

In light of the foregoing line of cases, we find the unambiguous language of *section 695.11* controls such that constructive notice attached at the time the W&A deed and First City mortgage were recorded on July 6, 2006. Although the appellants suggest that these documents had to remain in the official records to impart constructive notice, we find no such requirement in *section 695.11*. *Section 695.01* requires that, to be good and effectual against bona fide purchasers, a document **[*403]** must "be recorded according to law." The W&A deed and First City mortgage were recorded according to law.

We recognize the harshness of the result in the instant case where the appellants are innocent parties. Nonetheless, **[**11]** the appellants' remedy, if any, may lie against the clerk, who can make no claim of sovereign immunity. *See e.g., Orix, 977 So. 2d at 658*; *First Am. Title Ins. Co. of St. Lucie County, Inc. v. Dixon, 603 So. 2d 562 (Fla. 4th DCA 1992)*.

WETHERELL and ROWE, JJ., CONCUR.

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REGIONS BANK v. DELUCA (2012)

REGIONS BANK, Successor by Merger with AmSouth Bank, Appellant, v. Albert and Adrienne DELUCA; and JPMorgan Chase Bank, National Association, as Purchaser of the Loans and Other Assets of Washington Mutual Bank, formerly known as Washington Mutual Bank, F.A., Appellees.

No. 2D11–3828.

Decided: August 22, 2012

Cary A. Lubetsky of Krinzman, Huss & Lubetsky, LLP, Miami, and José D. Vega of Bradley Arant Boult Cummings, LLP, Birmingham, Alabama, for Appellant. Benjamin B. Brown, Andrew G. Tretter, and Kevin R. Lottes of Quarles & Brady, LLP, Naples, for Appellees.

Regions Bank, successor by merger with AmSouth Bank, appeals a final summary judgment determining that because of certain irregularities in the formatting of the legal description of the subject real property in its mortgage, Albert Deluca; Adrienne Deluca; and JPMorgan Chase Bank, National Association, were bona fide purchasers for value and without notice of Regions Bank's prior recorded mortgage. Because the irregularities in the formatting of the legal description were capable of being corrected from other parts of the same instrument, the Delucas and JPMorgan had constructive notice of the mortgage held by Regions Bank. Accordingly, we reverse the final summary judgment.[1]

I. THE FACTUAL BACKGROUND

From June 2003 through June 2005, Ralph A. Fulchino and Katheryn Y. Fulchino owned real property in Naples referred to as "the Olde Cypress property." In 2003, the Fulchinos gave AmSouth Bank a first mortgage and a second mortgage on the Olde Cypress property.

In 2005, the Fulchinos applied for a new mortgage loan from AmSouth to purchase real property in Bonita Springs referred to as "the Bayfront Gardens property." On April 12, 2005, in connection with their

purchase of the Bayfront Gardens property, the Fulchinos borrowed $1,690,000 from AmSouth and gave AmSouth a mortgage. The new mortgage was prepared on a standard Fannie Mae/Freddie Mac mortgage form document intended for use in Florida. The entire instrument consists of nineteen pages. The first eleven pages consist of the basic mortgage document. The loan number appears on the Zfirst page of the mortgage. The twelfth page is labeled "EXHIBIT 'A' "; it contains legal descriptions of the Bayfront Gardens property and the Olde Cypress property. Exhibit "A" is followed by three riders: (1) a two-page "Planned Unit Development Rider," (2) a two-page "Adjustable Rate Rider," and (3) a three-page "1–4 Family Rider."

There is a blank space approximately three inches high on page two of the form. The drafter or drafters of the form provided this space for the scrivener of the mortgage to insert the legal description of the mortgaged property. Notably, this space remains blank on the mortgage. In other words, the scrivener did not insert the legal description of either the Bayfront Gardens property or the Olde Cypress property in the space provided for that purpose. In addition, the scrivener failed to insert words to the effect of "See attached EXHIBIT 'A' for legal description." Immediately after the blank space the scrivener completed the portion of the form provided for the insertion of the address of the mortgaged property as follows: "which currently has the address of 239 Bayfront Drive, Bonita Springs, FL 34134 ('Property Address')." This is the address for the Bayfront Gardens property, not the Olde Cypress property.

The single page Exhibit "A" to the mortgage bears some examination. In the upper left hand corner of Exhibit "A" appears the name of the mortgagor, "Fulchino," and a ten-digit number that corresponds to the loan number referenced on the first page of the mortgage instrument. The designation "Parcel 1" appears below "Exhibit 'A,' " followed by the legal description and parcel identification number for the Bayfront Gardens property. Below that legal description and parcel identification number appears a legend centered and in capital letters that reads: "PROPERTY DESCRIBED BELOW CONSTITUTES ADDITIONAL COLLATERAL TO SECURE THE DEBT EVIDENCED BY THIS MORTGAGE." The words "AND Parcel 2 " appear below this legend. The legal description and the parcel identification number for the Olde Cypress property follow. Finally, Exhibit "A" concludes with a release clause for the mortgage applicable to Parcel 2, the Olde Cypress property.

The Fulchinos executed the mortgage as "Borrower" on April 12, 2005. The mortgage was recorded on April 15, 2005, in Official Record Book 3776, pages 79 through 97, of the Public Records of Collier County, Florida. At this point, the bread fell butter side down. The clerk's office properly indexed the mortgage under the names of the Fulchinos in the grantor/grantee index. But the abstract of the legal description of the property subject to the mortgage in the clerk's index included only the Bayfront Gardens property, not the Olde Cypress property.

On June 28, 2005, approximately two and one-half months after the AmSouth third mortgage was executed and recorded, the Fulchinos sold the Olde Cypress property to the Delucas for $1,200,000. In

connection with their purchase of the Olde Cypress property, the Delucas obtained a loan for $900,000 from JPMorgan's predecessor in interest.[2] This subsequent mortgage, now held by JPMorgan, was dated June 28, 2005, and recorded July 22, 2005, in Official Record Book 3850, page 3953, of the Public Records of Collier County, Florida.

Unfortunately, the title search conducted in connection with the Delucas' purchase of the Olde Cypress property from the Fulchinos did not disclose the existence of the AmSouth third mortgage. AmSouth's first and second mortgages on the Olde Cypress property were satisfied from the closing proceeds. However, because of its omission from the title search, the AmSouth third mortgage was neither satisfied nor released as to the Olde Cypress property at the closing between the Fulchinos and the Delucas. The closing statement prepared in connection with the transaction reflects that the Fulchinos received net proceeds from the closing of $517,380.28. There is no evidence in the record that either the Delucas or JPMorgan's predecessor in interest had actual notice that AmSouth claimed to hold a third mortgage on the Olde Cypress property.

At some point after the Fulchinos sold the Olde Cypress property to the Delucas, AmSouth Bank was merged into Regions Bank. In the remainder of this opinion, we will refer to the AmSouth third mortgage that was not satisfied or released at the closing between the Fulchinos and the Delucas as "the Regions Bank mortgage."

Mr. Fulchino died in December 2008. Thereafter, the Regions Bank mortgage went into default. In October 2009, Regions Bank filed an action to foreclose its mortgage on both the Bayfront Gardens property and the Olde Cypress property. Because the Delucas and JPMorgan had interests in the Olde Cypress property as owners and mortgagee, respectively, Regions Bank named them as defendants in its foreclosure action. The Delucas and JPMorgan filed an answer and affirmative defenses. They alleged as one of their affirmative defenses that they "were bona fide purchasers without notice of any interest Regions [Bank] or its predecessor may have had in [the Olde Cypress property]."

II. THE SUMMARY JUDGMENT MOTION AND THE CIRCUIT COURT'S RULING

Later, the Delucas and JPMorgan moved for summary judgment regarding Regions Bank's foreclosure of the Olde Cypress property. In support of their motion, the Delucas and JPMorgan argued "that they were bona fide purchasers of [the Olde Cypress property] without any notice of the [Regions Bank] Mortgage's alleged encumbrance, and hence, Regions [Bank] cannot foreclose the Mortgage against [the Olde Cypress property]."

At the hearing on the motion, the circuit court announced its oral ruling as follows:

[T]he Delucas were bona fide purchasers for value of [the Olde Cypress] property and . there was not sufficient notice. As was stated, the only portion of the mortgage body referred to a[n] address, and that

address was not the one that was encumbered.

It is the law, from the Court's memory, that if an address is stated and you can relate that to the legally-described property, that's what is effective. And the Court . feels that the—the only address was the one that was not encumbered by the Delucas.

In the final summary judgment, the circuit court ruled that the Delucas and JPMorgan were bona fide purchasers for value and without notice of the Regions Bank mortgage, and it dismissed Regions Bank's foreclosure action with prejudice as to the Olde Cypress property. This appeal followed.

III. THE STANDARD OF REVIEW

The pertinent facts here are essentially undisputed. The parties agree that the applicable standard of review for the final summary judgment is de novo. See Volusia Cnty. v. Aberdeen at Ormond Beach, L.P., 760 So.2d 126, 130 (Fla.2000).

IV. THE PARTIES' ARGUMENTS

Florida's recording statute, section 695.01, Florida Statutes (2004), provides, in pertinent part, as follows:

(1) No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law.

"The act of recording an instrument in accordance with this statute constitutes constructive notice of a prior encumbrance on the property which is the subject of the instrument." Lafitte v. Gigliotti Pipeline, Inc., 624 So.2d 844, 845 (Fla. 2d DCA 1993) (citing Bank of S. Palm Beaches v. Stockton, Whatley, Davin & Co., 473 So.2d 1358, 1360 (Fla. 4th DCA 1985), abrogated on other grounds by Suntrust Bank v. Riverside Nat'l Bank of Fla., 792 So.2d 1222 (Fla. 4th DCA 2001)). "Constructive notice is a legal inference, and it is imputed to creditors and subsequent purchasers by virtue of any document filed in the grantor/grantee index—the official records." Dunn v. Stack, 418 So.2d 345, 349 (Fla. 1st DCA 1982), quashed on other grounds, 444 So.2d 935 (Fla.1984).

The Delucas and JPMorgan acquired their interests in the Olde Cypress property after the Regions Bank mortgage was executed and recorded. Thus, with regard to the Regions Bank mortgage, the Delucas and JPMorgan are subsequent purchasers for value. Section 695.01 is a "notice" type of recording statute. Argent Mortg. Co. v. Wachovia Bank N.A., 52 So.3d 796, 801 (Fla. 5th DCA 2010). Therefore, the Regions Bank mortgage has priority over the interests of the Delucas and JPMorgan in the Olde Cypress property unless the Delucas and JPMorgan were without notice of the Regions Bank mortgage when they acquired their interests in the property. Id. at 799, 801.

For the purpose of applying the recording statute, notice may take different forms:

There are three types of notice by which a party may be held to have had knowledge of a particular fact: actual notice, implied notice (or implied actual notice), and constructive notice. "Actual notice" stems from actual knowledge of the fact in question. "Implied notice" is [the] factual inference of such knowledge, inferred from the availability of a means of acquiring such knowledge when the party charged therewith had the duty of inquiry. "Constructive notice" is the inference of such knowledge by operation of law, as under a recording statute.

McCausland v. Davis, 204 So.2d 334, 335–36 (Fla. 2d DCA 1967). There is no issue here about actual notice. Instead, Regions Bank argues that the Delucas and JPMorgan had constructive notice of its mortgage on the Olde Cypress property when they acquired their interests in the property.[3] Regions Bank asserts that the description of the Olde Cypress property on Exhibit "A" was sufficient to give constructive notice that the mortgage encumbered the Olde Cypress property as well as the Bayfront Gardens property.

The Delucas and JPMorgan make two arguments in support of their claim that they were not on constructive notice that the Regions Bank mortgage encumbered the Olde Cypress property. First, Exhibit "A," which contained the legal description and parcel identification number for the Olde Cypress property, was not properly identified and incorporated into the mortgage. Second, the language of the Fannie Mae/Freddie Mac form mortgage defines the term "Property" in such a manner that only one property—the Bayfront Gardens property—is encumbered by the mortgage.

V. DISCUSSION

The lien of a mortgage only covers the property that is described in the mortgage. § 697.02, Fla. Stat. (2004); Sunshine Meadows Condo. Ass'n v. Bank One, Dayton, N.A., 599 So.2d 1004, 1007 (Fla. 4th DCA 1992). It follows that the recording of a mortgage with no description of the property or a description that would have to be reformed to be effective does not constitute constructive notice and defeats the effect and purpose of recordation. See Neves v. Flannery, 149 So. 618, 620 (Fla.1933) (quoting 41 C.J. at 564–65); Air Flow Heating & Air Conditioning, Inc. v. Baker, 326 So.2d 449, 451 (Fla. 4th DCA 1976). However, in considering the sufficiency of a legal description in a mortgage, one must examine the entire instrument:

[I]f it is apparent from the face of the record that there is a mistake or misdescription, which is capable of being corrected from other parts of the same instrument, or other details of the same description, it operates as a constructive notice.

Neves, 149 So. at 620 (quoting 41 C.J. at 564–65). Based on this principle, the Florida courts have repeatedly held descriptions of property in mortgages sufficient despite minor mistakes and irregularities

where the description of the property intended to be encumbered could be determined from a review of the entire instrument. See, e.g., Fed. Land Bank of Columbia v. Dekle, 148 So. 756, 757 (Fla.1933) (holding description of lands by government surveys and subdivisions sufficient despite reference to lands as being in Calhoun County when they were in fact in Jackson County); Neves, 149 So. at 620–21 (holding description of land by reference to lots, block number, and name of recorded plat sufficient despite erroneous statement that the land was located in "the SE 1/4 of the SE 1/4" instead of in "the S.W. 1/4 of the S.W. 1/4" of the appropriate section); Merrell v. Ridgely, 57 So. 352, 353 (Fla.1912) (holding description of land by lot and block number of named subdivision sufficient despite reference to an incorrect plat book for the subdivision); Fid. Bank of Fla. v. Nguyen, 44 So.3d 1238, 1239 (Fla. 5th DCA 2010) (holding description of land by lot and block number of a subdivision identified by name and the designation of the correct plat book sufficient despite reference to an incorrect page number of the plat book), review denied, 57 So.3d 846 (Fla.2011). With these basic principles in mind, we turn to an examination of the arguments made by the Delucas and JPMorgan on the issue of constructive notice.

The first argument made by the Delucas and JPMorgan is that the Regions Bank mortgage did not provide constructive notice concerning the Olde Cypress property because Exhibit "A" was not properly identified and incorporated into the mortgage. We disagree with this argument for two reasons.

First, the recording of the Regions Bank mortgage provided constructive notice not only of the existence of the instrument but also of its contents. See Hull v. Md. Cas. Co., 79 So.2d 517, 519 (Fla.1954); Crenshaw v. Holzberg, 503 So.2d 1275, 1277 (Fla. 2d DCA 1987). Exhibit "A" constituted the twelfth page of a nineteen-page document. Accordingly, Exhibit "A" was a part of the entire mortgage and was not extraneous to it. Anyone who examined the mortgage would necessarily read Exhibit "A." This exhibit, contained within the four corners of the mortgage, carried a legend in capital letters placed in the center of the page and reciting that the Olde Cypress property was "additional collateral for the debt evidenced by this mortgage." (Emphasis added.) These facts are sufficient to identify Exhibit "A" as part of the mortgage and to incorporate the exhibit into the mortgage.

Second, Exhibit "A" was linked to the rest of the mortgage instrument through its content, not just its placement within the four corners of the document. The name of the mortgagor, "Fulchino," appeared in the upper left hand corner of the exhibit along with a ten-digit number corresponding to the loan number on the first page of the mortgage. In addition to providing a legal description for the Olde Cypress property, Exhibit "A" had a legal description for the Bayfront Gardens property that was identified by street address on page two of the mortgage. Furthermore, Exhibit "A" contained a release clause applicable to the Olde Cypress property for "the mortgage loan." These items unmistakably linked Exhibit "A" to the remainder of the instrument.

From an examination of the Regions Bank mortgage, it would be immediately apparent to anyone with minimal knowledge of real estate practice that the scrivener of the instrument neglected to insert an

appropriate reference to Exhibit "A" in the blank space provided on page two of the document. This was clearly a mistake. However, the mistake is capable of being corrected by the placement of Exhibit "A" within the four corners of the mortgage, the particular language used in Exhibit "A," and the internal links between Exhibit "A" and the remainder of the instrument. Under these circumstances, the Regions Bank mortgage operated as constructive notice for the Olde Cypress property. See Neves, 149 So. at 620.

The second argument made by the Delucas and JPMorgan is that the language of the Fannie Mae/Freddie Mac form mortgage defines the term "Property" in such a manner as to exclude the Olde Cypress property from the lien of the Regions Bank mortgage. This argument is based on a close reading of multiple provisions of the mortgage. To make this argument, one must actually read the mortgage. One cannot reasonably read pages one through eleven and pages thirteen through nineteen of the mortgage while ignoring Exhibit "A" on page twelve. Anyone reading page twelve would necessarily read the legend placed in the center of the page announcing in capital letters that the Olde Cypress property "constitutes additional collateral to secure the debt evidenced by this mortgage." However closely one may parse the terms of the Fannie Mae/Freddie Mac form mortgage, this language is sufficient to provide constructive notice that the Olde Cypress property—as well as the Bayfront Gardens property—is subject to the lien of the Regions Bank mortgage.

VI. CONCLUSION

The dispute between the parties in this case arises from an unfortunate chain of events. Insofar as the record reveals, the Delucas and JPMorgan relied in good faith on a title search that did not disclose the existence of the Regions Bank mortgage. Nevertheless, the undisputed facts and the applicable law establish that the Delucas and JPMorgan had constructive notice that the lien of the Regions Bank mortgage encumbered the Olde Cypress property. The circuit court erred in ruling to the contrary. Accordingly, we reverse the final summary judgment and remand for further proceedings.

Reversed and remanded.

FOOTNOTES

1. The final summary judgment did not affect the other parties in the circuit court action, and those parties did not join in or oppose this appeal. In the interest of simplicity, we have omitted the names of the other parties from the caption of this case.

2. In the balance of this opinion, a reference to "JPMorgan" should be understood to refer either to that party or to its predecessor in interest, as the context may require.

3. Regions Bank also argues that the Delucas and JPMorgan had implied actual notice of its mortgage on the Olde Cypress property. Based on our disposition of the case, we need not reach the issue of

implied actual notice.

WALLACE, Judge.

VILLANTI and LaROSE, JJ., Concur.

Was this helpful? Yes No



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REGIONS BANK v. DELUCA (2012)

Docket No: No. 2D11–3828.

Decided: August 22, 2012

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Ethical Scenarios in Technology

Linda Monaco

Senior Legal Education Attorney, Old Republic Title

OLD REPUBLIC TITLE

Ethical Scenarios in Technology

Presented by Linda Monaco, B.C.S.

Legal Education Department, Old Republic Title

Agenda

- AI (Artificial Intelligence) capabilities at this time
- Why AI ethics matter for lawyers
- Common AI-driven ethical dilemmas
- Florida Bar Rules implicated
- Florida Bar Ethics Opinion 24-1 (Jan. 2024) (hereinafter FL Bar Op. 24-1)
- Practical guidance and takeaways

Definitions

- AI (Artificial Intelligence)
- Generative AI (for this program AI)
  - Deep Learning models which
  - Generates probable outputs (after programming)
- Self-learning AI
  - Stores information for its learning process for use with other users

What are the Capacities of AI

- What can AI do
  - Analyze documents
  - Draft documents
  - Automate workflow
  - Safe time which in turn saves $$$$
- What does AI not have
  - Morals
  - Clear understanding of what if right and wrong

Why AI Ethics Matter

- AI tools increase efficiency but raise ethical risks
- Lawyers remain fully responsible for AI-assisted work
- Florida Bar has issued explicit guidance on generative AI
  - FL Bar Op. 24-1



Scenario 1: Billing & AI Efficiency

- Lawyer drafts motion using ChatGPT in minutes
- Traditional drafting would take several hours
- Ethical question: How much time may be billed?

- Hint: Think about an associate who works very fast

Florida Rules: Billing with AI

- Rule 4-1.5 – Fees must be reasonable
- No billing for time not actually spent
- AI efficiency does not justify inflated billing
- FL Bar Op. 24-1



Scenario 2: AI Hallucinations

- AI generates non-existent cases or incorrect law
  - This is the no morals point
- Lawyer relies on output without verification
  - Would you do this with an associate?
- Court filing contains false citations

Florida Rules: Competence & Supervision

- Rule 4-1.1 – Duty of competence
- Lawyers must understand AI limitations
- Rules 4-5.1 & 4-5.3 – Supervision duties
- FL Bar Op. 24-1: Lawyer must verify AI output



Scenario 3: Confidentiality & AI

- Lawyer uploads client documents into public AI platform
- Sensitive client information is disclosed
- AI vendor may store or reuse data

Confidentiality

- 16 CFR Sec. 313 – definitions
- 16 CFR Sec. 314 – safeguarding customer information
- Sec. 501, F.S. – Florida rules for NPI
- Rule 4-1.6 – Duty to protect client information
  - Reasonable efforts to prevent
  - Inadvertent or
  - Unauthorized disclosure
- FL Bar Op. 24-1



Scenario 4: Client Awareness of AI Use

- Client assumes lawyer personally drafts all work
- AI is heavily used without disclosure
- Question: Is disclosure required?

Florida Rules: Client Communication

- Rule 4-1.4 – Duty to communicate
  - "[M]eans by which the client's objectives are to be accomplished;" RR FL Bar Rule 4-1.4(a)(2)
- FL Bar Op. 24-1
  - AI is a third-party program
  - If it is "generative" it is self-learning"
    - As such client information may be stored within the program for future use
  - Client needs to be informed



Scenario 5: AI Chatbots & Intake

- Firm uses AI chatbot on website
- Bot answers legal questions
- Bot answers legal questions

Florida Rules: Advertising & AI

- Subchapter 4-7 – Lawyer advertising rules
- No misleading communications
- AI chatbots require disclaimers
- RR FL Bar, Rule 4-7.13
- FL Bar Op. 24-1



Scenario 6: Candor to the Court

- AI generates persuasive but misleading arguments
- Lawyer files without full review
- False statements reach the court

Florida Rules: Candor

- Rule 4-3.3 (a) – Candor toward the tribunal
  - Not knowingly make a false statement to the tribunal of
    - Fact
    - Material fact (or omit)
    - Other legal authority not supporting attorney's case
- Rule 4-4.1 – Truthfulness to others
  - Not knowingly make false statements
- AI use does not excuse errors

Scenario 7: Cloud Storage of Client Files

- A lawyer wishes to store sensitive client files in a cloud service without first verifying encryption or access controls
- Duty to safeguard data in digital storage
- Rule 4-1.6 (Confidentiality)
- Rule 4-1.1 (Competence in technology)
- Florida Bar Ethics Opinion 12-3 (2013)(Cloud computing): Must research provider security, ensure access and maintain confidentiality in cloud computing

Scenario 7.5: Disposal of ‘Smart’ Copiers

- Scenario: Law firm leases ‘smart’ copier; at lease end, elects to return the copier
- Duty to sanitize prior to disposal
- 16 CFR Sec. 682 – must take reasonable efforts to protect
- Florida Bar Ethics Opinion 10-2 (2010): Inventory devices and sanitize before disposal



Rule 7 & 7.5: Confidentiality & NPI

- The Bar has long advised taking precautions before using cloud services or third-party tech to store client data—this is directly relevant to AI tools that process or store client info
- **Florida Bar Ethics Opinion 06-2**
  - Addresses reasonable steps to safeguard confidentiality in electronic communications



Key Takeaways for Florida Lawyers

- AI is a tool, not a decision-maker
  - AI did not pass the Bar
  - Supervise as you would a new associate or paralegal
- Lawyers remain ethically accountable
- Always verify all AI output
- Protect confidentiality
- Bill reasonably
- Transparently - client consent
- Disclaimers



The Economics Behind the Real Estate Market

Dr. Jessica Lautz
Deputy Chief Economist and VP of Research, National Association of REALTORS®

NO MATERIAL PROVIDED FOR THIS SESSION

Quiz on Recent Real Property Cases

Kara Scott
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Regulatory Compliance Counsel, Old Republic Title

Quiz on Recent Real Property Cases

2026

Kara Scott, Legal Education Attorney
John B. "Jay" St. Lawrence, Regulatory Compliance Counsel

Irreparable Harm to a (House) Party

1. True or False

   A MUNICIPAL ORDINANCE REQUIRING PERMITS FOR HOUSE PARTIES SO LARGE IN SCALE THAT THEY IMPACT SAFETY, TRAFFIC, PARKING OR THE RIGHT TO NEIGHBOR'S DECENT QUALITY OF LIFE VIOLATES FIRST AMENDMENT AND DUE PROCESS RIGHTS

Hochstein v. City of Miami Beach

2024 WL 4966598 (S.D. Fla. 2024)



Miami Beach ordinance required permits for large gatherings on Palm, Hibiscus, and Star islands during Art Basel week festivities where commercial vendors employed or safety, traffic, or "character of the neighborhood" potentially impacted

Celebrity cosmetic surgeon negotiated permit limiting party to 850 people after request for 1,500 rejected; then sued seeking preliminary injunction on an emergency basis, claiming, *inter alia*, violation of due process and 1st Amendment rights

U.S. District Court for the S.D. of FL found no showing of a likelihood of success on the merits and that plaintiff would suffer no irreparable harm, which could be compensated by money damages

Mortgage Myths or True Facts?

2. True or False

A MORTGAGE ON HOMESTEAD PROPERTY MUST BE WITNESSED BY TWO SUBSCRIBING INDIVIDUALS

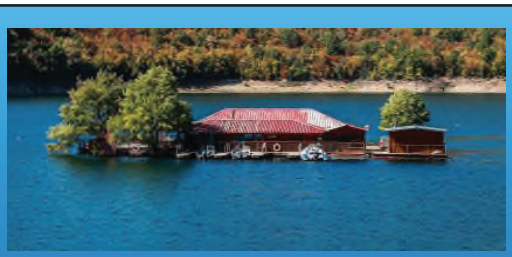
13110 Investments, LLC. V. Dumervile

413 So.3d 906 (Fla. 4th DCA 2025)



- **Lender brought action against borrowers, a married couple, to foreclose mortgage on their homestead property**
- **Circuit Court judge held mortgage was deficient and invalid because notary signed as sole witness and mortgage lacked two subscribing witnesses**
- **DCA held that, after the 1968 revision of Article X, Section 4 of the Florida Constitution, Florida law no longer requires two witnesses on mortgages**

Flooding the Zone



3. True or False

IN AN AREA PRONE TO FLOODING, *JOHNSON V. DAVIS* DOES NOT REQUIRE SELLERS TO FULLY DISCLOSE THE SPECIFIC FLOOD HISTORY OF THE PROPERTY BEING SOLD

Smith v. Lynch

403 So.3d 433 (Fla. 2d DCA 2024)

- Buyers of St. Pete home inquired when flood insurance tripled shortly after purchase due to "severe repetitive loss"
- Sellers' Disclosure described "slight" water damage to carpets; water in garage
- Sellers had filed $31,000 insurance claim and were aware of 5 floods at the subject property in prior years
- Trial court granted SJ to Sellers relying on *Nelson v. Wiggs,* 699 So.2d 258 (Fla. 3d DCA 1997) holding a seller has no affirmative duty to disclose that a property lies in a flood-prone neighborhood, as this is readily ascertainable from the environment and public records
- On appeal, 2nd DCA held *Johnson v. Davis*, 480 So. 2d 625 (Fla. 1985) requires disclosing a home's extensive flood history and $31,000 insurance claim as "facts materially affecting the property

Who is domiciled?

4. True or False

A CHINESE CITIZEN WHO IS DOMICILED IN FLORIDA IS PROHIBITED FROM PURCHASING OR OWNING CERTAIN REAL PROPERTY IN FLORIDA

Shen v. Commissioner, Florida Department of Agriculture and Consumer Services, et al, 158 F.4th 1227 (11th Cir. 2025)

A Chinese citizen who lives and owns property in Florida, with the intent to stay in Florida and not return to China, is domiciled in Florida and thus is not subject to the Florida law that prohibits a domiciliary of China from owning certain Florida real property

Under Florida law, a person's domicile is the place the person has presence plus an intent to make the place one's home permanently or for an indefinite period

The above is true even if the person does not have permanent immigration status

Lis Pendens

5. True or False

WHERE A CIVIL COMPLAINT ALLEGES DAMAGES TO PLAINTIFF'S PROPERTY WERE CAUSED DURING CONSTRUCTION OF DEFENDANT'S HOME, A LIS PENDENS MAY BE PROPERLY RECORDED

Trujilo v. Garcia

50 Fla. L. Weekly D16 (Fla. 3d DCA 2024)

Trial court dissolved L.P., finding that in the absence of a claim of lien or ownership, there was insufficient nexus between defendant's property and the lis pendens.

3d DCA agreed, finding lawsuit was only for damages and could not affect title; therefore no nexus; dissolution of L.P. was not an abuse of discretion

ADA claim?

6. True or False

AN AMERICANS WITH DISABILITIES ACT (ADA) CLAIM CAN BE BROUGHT AGAINST A LANDLORD OF A RESIDENTIAL PROPERTY.

Marc v. Hartwig *2025 WL 3136222* (S.D. Fla. Nov. 10, 2025)



Tenant with alleged permanent disability brought action against landlord, who allegedly failed to remedy a lack of electricity and water in his residence, asserting, among other things, discrimination in violation of the ADA



Court held the ADA provides a cause of action for disability discrimination in public accommodations only



Private residential facilities are not public accommodations within the purview of Title III of the ADA

You call that an "effective date?"

7. True or False

PARTIES' DISAGREEMENT AS TO WHETHER THE "EFFECTIVE DATE" WAS WHEN SELLER INITIALED KEY PAGES OR WHEN SELLER SIGNED FULL CONTRACT SUFFICIENT TO PRECLUDE SUMMARY JUDGMENT.

CNJ Realty Associates, LLC vs. Yankiv

50 Fla. L. Weekly D117 (Fla. 2d DCA 2025)

FR/Bar contract contingent on buyers obtaining financing w/in 20 days of effective date

Loan fell through; Buyer sent release and cancellation believing it fell within the time allowed to recover their deposit. Buyer also believed they had earlier waived the financing contingency by notice they would pay cash

Seller argued for an earlier effective date based on having initialed some pages before later signing the full contract. Did not sign or initial dispute resolution page.

Trial court awarded Buyers their deposit via summary judgment

2d DCA reversed, finding that the Seller initialing some pages before signing others and correspondence from the Buyer showed a genuine dispute of material fact regarding the effective date

Easements

8. True or False

THE MARKETABLE RECORD TITLE ACT CAN ELIMINATE A LONG-HELD AND CONTINUOUSLY USED LICENSE TO ACCESS ADJOINING PROPERTY

Perrin v. Department of Transportation

421 So. 3d 755 (Fla. 1st DCA 2025)

- Perrin owns land adjacent to property owned by FDOT - root of title was FDOT 1958 vesting deed
- Perrin claimed FDOT's property is encumbered by an easement in favor of lot owners in their subdivision, platted in 1912
- But a recorded 1917 instrument stated the subdivision's common property was dedicated to "Company's stockholders" and the lot owners' rights were at the pleasure of the Company's stockholders
- Court held Perrin's use was pursuant to a license or trespass, not easement, and therefore could not be preserved by MRTA



Patently Absurd?

9. True or False

OWNERS OF LAND SUBJECT TO A PATENT DEED OFFER OF PUBLIC DEDICATION MAY REVOKE THE OFFER 20 YEARS AFTER LOCAL GOVERNMENT BUILDS A BOARDWALK ON THE LAND, SO LONG AS THE OFFER HAS NOT BEEN "PUBLICLY ACCEPTED"

CBHIV LLC v. Walton County,

CBHIV LLC v. Walton County, 405 So.3d 536 (Fla. 1st DCA 2025)

Owners of properties traversed by a beach-access boardwalk built in 1996 sued Walton County to terminate what they deemed permissive use. Boardwalk was constructed along an area reserved as a right of way in a 1955 U.S. Patent Deed.

Trial court found that the ROA amounted to a common law public dedication giving the County the right to use the property, and that County was entitled to a laches defense based on the long-term use of the land. The trial court also found the County had a right to a prescriptive easement

On appeal, the 1st DCA reversed as to the prescriptive easement but otherwise affirmed, holding that common law dedication requires offer and acceptance, that building of the boardwalk some 20 years prior constituted gov't acceptance of the dedication, and that the County was also entitled to a laches defense

Easements 2

10. True or False

AN EASEMENT CANNOT DEPRIVE THE SERVIENT PROPERTY OWNER OF THE REASONABLE USE OF ITS LAND

AK Land Title, LLC v. Hurd, *50 Fla. L. Weekly D1780 (Fla. 1st DCA 2025)*



- Vacant lot burdened by an easement for "beach privileges" by virtue of a recorded restrictive covenant
- AK Land Title purchased the land and sought to construct a residence on the property
- Circuit Court permanently enjoined AK from interfering with beach privileges and from building ANY house on the lot
- 1st DCA held the injunction against building a house unreasonably deprived AK of the use of its property

Mobile Home Harm?

11. True or False

HOA BOARD NEED NOT PROVE IRREPARABLE HARM IN ORDER TO ENJOIN A STRUCTURE DISALLOWED IN THE COMMUNITY'S DECLARATION

Fowler v. Burnham

Fowler v. Burnham 50 Fla. L. Weekly D427 (Fla. 1st DCA 2025)

Local Maintenance association voted to amend Dec to permit mobile homes. Board member Burnham immediately placed a mobile home on his lot. Board withdrew amendment after community pushback. Burnham had mortgaged the property and refused to remove the mobile home. Board seeks injunction for immediate removal

Trial court finds the mobile home is a violation of the Dec, but holds no permanent injunction can be granted without a showing of irreparable harm

1st DCA reverses, finding that once a clear violation of a covenant has been established, there is no burden of proof on the plaintiff to establish irreparable harm.

This neighborhood's gone to the birds

12. True or False

EVEN WHERE THE INJURED PARTY IN A NUISANCE CASE SUFFERS NO PHYSICAL DAMAGES, HE/SHE CAN RECOVER DAMAGES FOR PERSONAL DISCOMFORT, INCONVENIENCE & ANNOYANCE.

Shaw v. Calles, *50 Fla. L. Weekly D1099a (Fla. 3d DCA 2025)*

- Shaw owned property when Calles moved in next door with more than 100 exotic birds
- Shaw filed suit for nuisance – was granted injunctive relief but denied money damages, and appealed
- 3d DCA held Shaw was entitled to injunction and damages for personal discomfort, inconvenience & annoyance as a result of the nuisance



Do the facts care about your fee-fees?

13. True or False

PLAINTIFF IN AN INTERPLEADER ESCROW DISPUTE IS ENTITLED TO FEES EVEN ABSENT FACTS DEMONSTRATING AN ACTUAL DISPUTE OVER THE ESCROWED FUNDS

***The Firm Law Group Inc. v. Cordero*, et al.**, No. 3D25-0292
(Fla. 3d DCA, Jan. 21, 2026)

- **Buyers failed to obtain financing w/in 30 day period provided in Contract**
- **Gave timely written notice to the Seller seeking refund of deposit**
- **Contract provided Escrow Agent could interplead funds upon competing demands or "good faith doubt"**
- **Escrow Agent filed interpleader; submitted affidavit of dispute by its own corporate representative, but no affidavit from Seller or evidence of communication of competing demands**
- **Trial court granted Buyer's summary judgment and denied Escrow Agent fees**
- **3d DCA affirmed**

Takings

14. True or False

TRUST BENEFICIARIES HAVE STANDING TO BRING A TAKINGS CASE WHEN PROPERTY IS TITLED IN A TRUST

Scarpaci v. United States, *178 Fed.Cl. 536 (2025)*



- US Army Corps of Engineers constructed a beach berm to control beach erosion on the south side of Coney Island in New York – also added 3 million cubic yards of sand in the area
- Within 2 years the north side of Coney Island started experiencing accretion and deposits of additional sand, caused by the Coney Island project
- On the issue of standing: court held that where title is vested in a trust only the trustee had standing to bring a takings claim, not the beneficiaries

Homestead Waiver Wavered?

15. True or False

HUSBAND'S POA DEED ON BEHALF OF WIFE QUIT-CLAIMING PROPERTY TO HUSBAND AND ANOTHER IS INSUFFICIENT TO WAIVE WIFE'S HOMESTEAD WITHOUT EXPLICIT LANGUAGE TO THAT EFFECT

Rogers v. Guardianship Program of Dade County

James E. Rogers v. Guardianship Program of Dade County, Inc.,
50 Fla. L. Weekly D616
(Fla. 3d DCA 2025)



H & W owned property as TBE. In 2021, husband Stephen executes QCD to himself for life; remainder to James by POA given by wife Sharyn. Stephen dies in 2022. Guardian program sues on behalf of Sharyn based on her homestead rights as a spouse

At trial James argues he paid for the remainder interest and contributed $230,000 to the property while living with and assisting Sharyn and Stephen

Trial court grants SJ to Guardianship program, finding lack of specific homestead waiver language means QCD fails.

On appeal, 3d DCA affirms based on the clear and undisputed requirement of language waiving homestead rights in the deed.

To BNB or not to BNB …

16. True or False

AN ORDINANCE PROHIBITING SHORT TERM RENTALS IN CERTAIN DISTRICTS VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FLORIDA CONSTITUTION.

Nichols v. City of Miami Beach, 2025 WL 2787674 (S.D. Fla. 2025)

- Property owner challenged city ordinances prohibiting short-term rentals in single-family districts
- Claimed the ordinances violated equal protection clause of the FL Constitution
- Court held the city ordinances satisfied the "rational basis" test



Thank You!
for attending

SELECTED RECENT REAL PROPERTY CASES

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1. ***Hochstein v. City of Miami Beach,* 2024 WL 4966598 (S.D. Fla. 2024)**

   Temporary injunction against limitation on party size not warranted because City's ability to mitigate chaos and the strain on the City's resources outweighed Plaintiff's interest in throwing lavish parties.

2. ***13110 Investments, LLC v. Dumervile,* 413 So.3d 906 (Fla. 4th DCA 2025)**

   1968 revision of Article X, Sec. 4 of Florida Constitution eliminated requirement for two witnesses on mortgage.

3. ***Smith v. Lynch,* 403 So. 3d 433 (Fla. 2d DCA 2024)**

   Johnson v. Davis requires sellers to fully disclose specific flood history of property being sold, even in a "flood-prone" area.

4. ***Shen v. Commissioner, Florida Department of Agriculture and Consumer Services, et al.,* 158 F.4th 1227 (11th Cir. 2025)**

   A Chinese citizen who lives and owns property in Florida, with the intent to stay in Florida and not return to China, is domiciled in Florida and thus is not subject to the Florida law that prohibits a domiciliary of China from owning certain Florida real property.

5. ***Trujillo v. Garcia,* 50 Fla. L. Weekly D16 (Fla. 3rd DCA 2024)**

   Where there is no nexus between litigation and Plaintiff's property, dissolution of a Lis Pendens is proper.

6. ***Marc v. Hartwig,* 2025 WL 3136222 (S.D. Fla. Nov. 10, 2025)**

   The Americans with Disability Act provides a cause of action for disability discrimination in public accommodations only, which does not include private residential facilities

7. ***CNJ Realty Associates, LLC v. Gennadiy Yankiv and Elvira Yankiv,* 50 Fla. L. Weekly D117 (Fla. 2nd DCA)**

A Seller initialing some pages before signing others and correspondence from the Buyer shows a genuine dispute of material fact regarding the effective date in a FR/Bar contract.

8. ***Perrin v. Department of Transportation,* 421 So. 3d 755 (Fla. 2025)**

   Use of property pursuant to a license or trespass rather than an easement, could not be preserved by MRTA.

9. ***CBHIV LLC v. Walton County,* 405 So.3d 536 (Fla. 1st DCA 2025)**

   Common law dedication requires offer and acceptance, and government building a boardwalk constitutes government acceptance of the dedication.

10. ***AK Land Title, LLC v. Hurd,* 50 Fla. L. Weekly D1780 (Fla. 1st DCA 2025)**

    An easement burdening land for public "beach privileges" does not support an injunction against building "any" house on the property.

11. ***Fowler v. Burnham* 50 Fla. L. Weekly D427 (Fla. 1st DCA 2025)**

    Once a clear violation of a covenant has been established, there is no burden of proof on the plaintiff to establish irreparable harm.

12. ***Shaw v. Calles*, 50 Fla. L. Weekly D1099a (Fla. 3rd DCA 2025)**

    Neighbor complaining about resident maintaining 100 exotic birds in the home next door entitled to injunction and damages for personal discomfort, inconvenience & annoyance as a result of the nuisance.

13. ***The Firm Law Group Inc. v. Cordero, et al.,* No. 3D25-0292 (Fla. 3d DCA Jan. 21, 2026)**

    Escrow agent was not entitled to fees for filing interpleader where there was no evidence of actual competing demands.

14. ***Scarpaci v. United States,* 178 Fed.Cl. 536 (2025)**

    Only the trustee has standing to bring a takings claim when title is vested in a trust. The trust beneficiaries do not have standing.

15. ***James E. Rogers v. Guardianship Program of Dade County, Inc.,* 50 Fla. L. Weekly D616 (Fla. 3rd DCA 2025)**

    Husband's QCD to himself for life; remainder to another via POA given by wife insufficient to waive wife's homestead rights in the property.

16. ***Nichols v. City of Miami Beach,* 2025 WL 2787674 (S.D. Fla. 2025)**

City ordinance prohibiting short-term rentals in single-family districts not violative of the equal protection clause of the FL Constitution; passed “rational basis” test.

As the Claims Turn: 2025 & The Demystifying of the Claims Process

Marcie Anthony

FVP, Senior Claims Counsel and Regional Claims Manager, Old Republic Title

Chezare Palacios

Claims Counsel, Old Republic Title

George Perez

VP, Senior Claims Counsel, Old Republic Title

ALTA OWNER'S POLICY OF TITLE INSURANCE
issued by
BLANK TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Condition 17.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, **[**Blank Title Insurance Company**]**, a **[**Blank**]** corporation (the "Company"), insures as of the Date of Policy and, to the extent stated in Covered Risks 9 and 10, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Title being vested other than as stated in Schedule A.

2. Any defect in or lien or encumbrance on the Title. Covered Risk 2 includes, but is not limited to, insurance against loss from:
- a. a defect in the Title caused by:
  - i. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
  - ii. the failure of a person or Entity to have authorized a transfer or conveyance;
  - iii. a document affecting the Title not properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;
  - iv. a failure to perform those acts necessary to create a document by electronic means authorized by law;
  - v. a document executed under a falsified, expired, or otherwise invalid power of attorney;
  - vi. a document not properly filed, recorded, or indexed in the Public Records, including the failure to have performed those acts by electronic means authorized by law;
  - vii. a defective judicial or administrative proceeding; or
  - viii. the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.
- b. the lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
- c. the effect on the Title of an encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment (including an encroachment of an improvement across the boundary lines of the Land), but only if the encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment would have been disclosed by an accurate and complete land title survey of the Land.

3. Unmarketable Title.

4. No right of access to and from the Land.

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5. A violation or enforcement of a law, ordinance, permit, or governmental regulation (including those relating to building and zoning), but only to the extent of the violation or enforcement described by the enforcing governmental authority in an Enforcement Notice that identifies a restriction, regulation, or prohibition relating to:
   a. the occupancy, use, or enjoyment of the Land;
   b. the character, dimensions, or location of an improvement on the Land;
   c. the subdivision of the Land; or
   d. environmental remediation or protection on the Land.

6. An enforcement of a governmental forfeiture, police, regulatory, or national security power, but only to the extent of the enforcement described by the enforcing governmental authority in an Enforcement Notice.

7. An exercise of the power of eminent domain, but only to the extent:
   a. of the exercise described in an Enforcement Notice; or
   b. the taking occurred and is binding on a purchaser for value without Knowledge.

8. An enforcement of a PACA-PSA Trust, but only to the extent of the enforcement described in an Enforcement Notice.

9. The Title being vested other than as stated in Schedule A, the Title being defective, or the effect of a court order providing an alternative remedy:
   a. resulting from the avoidance, in whole or in part, of any transfer of all or any part of the Title to the Land or any interest in the Land occurring prior to the transaction vesting the Title because that prior transfer constituted a:
      i. fraudulent conveyance, fraudulent transfer, or preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law; or
      ii. voidable transfer under the Uniform Voidable Transactions Act; or
   b. because the instrument vesting the Title constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law by reason of the failure:
      i. to timely record the instrument vesting the Title in the Public Records after execution and delivery of the instrument to the Insured; or
      ii. of the recording of the instrument vesting the Title in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to the Date of Policy and prior to the recording of the deed or other instrument vesting the Title in the Public Records.

DEFENSE OF COVERED CLAIMS

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

[Witness clause**]**

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AMERICAN LAND TITLE ASSOCIATION

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

By: _____
[Authorized Signatory]

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EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. a. any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricts, regulates, prohibits, or relates to:
   i. the occupancy, use, or enjoyment of the Land;
   ii. the character, dimensions, or location of any improvement on the Land;
   iii. the subdivision of land; or
   iv. environmental remediation or protection.
   b. any governmental forfeiture, police, regulatory, or national security power.
   c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.
   Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.

2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.

3. Any defect, lien, encumbrance, adverse claim, or other matter:
   a. created, suffered, assumed, or agreed to by the Insured Claimant;
   b. not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   c. resulting in no loss or damage to the Insured Claimant;
   d. attaching or created subsequent to the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 9 or 10); or
   e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser had been given for the Title at the Date of Policy.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction vesting the Title as shown in Schedule A is a:
   a. fraudulent conveyance or fraudulent transfer;
   b. voidable transfer under the Uniform Voidable Transactions Act; or
   c. preferential transfer:
      i. to the extent the instrument of transfer vesting the Title as shown in Schedule A is not a transfer made as a contemporaneous exchange for new value; or
      ii. for any other reason not stated in Covered Risk 9.b.

5. Any claim of a PACA-PSA Trust. Exclusion 5 does not modify or limit the coverage provided under Covered Risk 8.

6. Any lien on the Title for real estate taxes or assessments imposed or collected by a governmental authority that becomes due and payable after the Date of Policy. Exclusion 6 does not modify or limit the coverage provided under Covered Risk 2.b.

7. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

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[Transaction Identification Data, for which the Company assumes no liability as set forth in Condition 9.d.:
Issuing Agent:
Issuing Office:
Issuing Office's ALTA® Registry ID:
Issuing Office File Number:
Property Address:**]**

SCHEDULE A

Name and Address of Title Insurance Company:
Policy Number:
Amount of Insurance: $ **[**Premium: $ **]**
Date of Policy: **[**at a.m./p.m.**]**

1. The Insured is:

2. The estate or interest in the Land insured by this policy is:

3. The Title is vested in:

4. The Land is described as follows:

[5. This policy incorporates by reference the endorsements designated below, adopted by the **[**American Land Title Association**][_____]** as of the Date of Policy:**]**

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SCHEDULE B

Policy Number:

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

(Insert Schedule B exceptions here)

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CONDITIONS

1. DEFINITION OF TERMS

In this policy, the following terms have the meanings given to them below. Any defined term includes both the singular and the plural, as the context requires:

a. "Affiliate": An Entity:
   i. that is wholly owned by the Insured;
   ii. that wholly owns the Insured; or
   iii. if that Entity and the Insured are both wholly owned by the same person or entity.

b. "Amount of Insurance": The Amount of Insurance stated in Schedule A, as may be increased by Condition 8.d. or decreased by Condition 10 or 11; or increased or decreased by endorsements to this policy.

c. "Date of Policy": The Date of Policy stated in Schedule A.

d. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.

e. "Enforcement Notice": A document recorded in the Public Records that describes any part of the Land and:
   i. is issued by a governmental agency that identifies a violation or enforcement of a law, ordinance, permit, or governmental regulation;
   ii. is issued by a holder of the power of eminent domain or a governmental agency that identifies the exercise of a governmental power; or
   iii. asserts a right to enforce a PACA-PSA Trust.

f. "Entity": A corporation, partnership, trust, limited liability company, or other entity authorized by law to own title to real property in the State where the Land is located.

g. "Insured":
   i. (a). The Insured named in Item 1 of Schedule A;
      (b). the successor to the Title of an Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
      (c). the successor to the Title of an Insured resulting from dissolution, merger, consolidation, distribution, or reorganization;
      (d). the successor to the Title of an Insured resulting from its conversion to another kind of Entity; or
      (e). the grantee of an Insured under a deed or other instrument transferring the Title, if the grantee is:
         (1). an Affiliate;
         (2). a trustee or beneficiary of a trust created by a written instrument established for estate planning purposes by an Insured;
         (3). a spouse who receives the Title because of a dissolution of marriage;
         (4). a transferee by a transfer effective on the death of an Insured as authorized by law; or
         (5). another Insured named in Item 1 of Schedule A.
   ii. The Company reserves all rights and defenses as to any successor or grantee that the Company would have had against any predecessor Insured.

h. "Insured Claimant": An Insured claiming loss or damage arising under this policy.

i. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.

j. "Land": The land described in Item 4 of Schedule A and improvements located on that land at the Date of Policy that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

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k. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.
l. "PACA-PSA Trust": A trust under the federal Perishable Agricultural Commodities Act or the federal Packers and Stockyards Act or a similar State or federal law.
m. "Public Records": The recording or filing system established under State statutes in effect at the Date of Policy under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term "Public Records" does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.
n. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.
o. "Title": The estate or interest in the Land identified in Item 2 of Schedule A.
p. "Unmarketable Title": The Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or a lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF COVERAGE

This policy continues as of the Date of Policy in favor of an Insured, so long as the Insured:
a. retains an estate or interest in the Land;
b. owns an obligation secured by a purchase money Mortgage given by a purchaser from the Insured; or
c. has liability for warranties given by the Insured in any transfer or conveyance of the Insured's Title.

Except as provided in Condition 2, this policy terminates and ceases to have any further force or effect after the Insured conveys the Title. This policy does not continue in force or effect in favor of any person or entity that is not the Insured and acquires the Title or an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured must notify the Company promptly in writing if the Insured has Knowledge of:
a. any litigation or other matter for which the Company may be liable under this policy; or
b. any rejection of the Title as Unmarketable Title.

If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under this policy is reduced to the extent of the prejudice.

4. PROOF OF LOSS

The Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy that constitutes the basis of loss or damage and must state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

a. Upon written request by the Insured and subject to the options contained in Condition 7, the Company, at its own cost and without unreasonable delay, will provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company has the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those covered causes of action. The Company is not liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of any cause of action that alleges matters not insured against by this policy.
b. The Company has the right, in addition to the options contained in Condition 7, at its own cost, to institute and prosecute any action or proceeding or to do any other act that, in its opinion, may be

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necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it is liable to the Insured. The Company's exercise of these rights is not an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under Condition 5.b., it must do so diligently.

c. When the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court having jurisdiction. The Company reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

a. When this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured will secure to the Company the right to prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose.

When requested by the Company, the Insured, at the Company's expense, must give the Company all reasonable aid in:

i. securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and

ii. any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter, as insured.

If the Company is prejudiced by any failure of the Insured to furnish the required cooperation, the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation, regarding the matter requiring such cooperation.

b. The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos, whether bearing a date before or after the Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant must grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all the records in the custody or control of a third party that reasonably pertain to the loss or damage. No information designated in writing as confidential by the Insured Claimant provided to the Company pursuant to Condition 6 will be later disclosed to others unless, in the reasonable judgment of the Company, disclosure is necessary in the administration of the claim or required by law. Any failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in Condition 6.b., unless prohibited by law, terminates any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company has the following additional options:

a. *To Pay or Tender Payment of the Amount of Insurance*

To pay or tender payment of the Amount of Insurance under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option provided for in Condition 7.a., the Company's liability and obligations to the Insured under this policy terminate, including any obligation to defend, prosecute, or continue any litigation.

b. *To Pay or Otherwise Settle with Parties other than the Insured or with the Insured Claimant*

i. To pay or otherwise settle with parties other than the Insured for or in the name of the Insured Claimant. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

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ii. To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either option provided for in Condition 7.b., the Company's liability and obligations to the Insured under this policy for the claimed loss or damage terminate, including any obligation to defend, prosecute, or continue any litigation.

8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy. The Company is not liable for any claim alleging negligence or negligent misrepresentation arising from or in connection with this policy or the determination of the insurability of the Title.

a. The extent of liability of the Company for loss or damage under this policy does not exceed the lesser of:
   i. the Amount of Insurance; or
   ii. the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy.
b. Except as provided in Condition 8.c. or 8.d., the fair market value of the Title in Condition 8.a.ii. is calculated using the date the Insured discovers the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy.
c. If, at the Date of Policy, the Title to all of the Land is void by reason of a matter insured against by this policy, then the Insured Claimant may, by written notice given to the Company, elect to use the Date of Policy as the date for calculating the fair market value of the Title in Condition 8.a.ii.
d. If the Company pursues its rights under Condition 5.b. and is unsuccessful in establishing the Title, as insured:
   i. the Amount of Insurance will be increased by 15%; and
   ii. the Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b. or, if it applies, 8.c., to use either the date the settlement, action, proceeding, or other act described in Condition 5.b. is concluded or the date the notice of claim required by Condition 3 is received by the Company as the date for calculating the fair market value of the Title in Condition 8.a.ii.
e. In addition to the extent of liability for loss or damage under Conditions 8.a. and 8.d., the Company will also pay the costs, attorneys' fees, and expenses incurred in accordance with Conditions 5 and 7.

9. LIMITATION OF LIABILITY

a. The Company fully performs its obligations and is not liable for any loss or damage caused to the Insured if the Company accomplishes any of the following in a reasonable manner:
   i. removes the alleged defect, lien, encumbrance, adverse claim, or other matter;
   ii. cures the lack of a right of access to and from the Land; or
   iii. cures the claim of Unmarketable Title,

   all as insured. The Company may do so by any method, including litigation and the completion of any appeals.
b. The Company is not liable for loss or damage arising out of any litigation, including litigation by the Company or with the Company's consent, until a State or federal court having jurisdiction makes a final, non-appealable determination adverse to the Title.
c. The Company is not liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.
d. The Company is not liable for the content of the Transaction Identification Data, if any.

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10. REDUCTION OR TERMINATION OF INSURANCE
All payments under this policy, except payments made for costs, attorneys' fees, and expenses, reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE
The Amount of Insurance will be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after the Date of Policy and which is a charge or lien on the Title, and the amount so paid will be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS
When liability and the extent of loss or damage are determined in accordance with the Conditions, the Company will pay the loss or damage within 30 days.

13. COMPANY'S RECOVERY AND SUBROGATION RIGHTS UPON SETTLEMENT AND PAYMENT

a. If the Company settles and pays a claim under this policy, it is subrogated and entitled to the rights and remedies of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person, entity, or property to the fullest extent permitted by law, but limited to the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant must execute documents to transfer these rights and remedies to the Company. The Insured Claimant permits the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.
b. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company defers the exercise of its subrogation right until after the Insured Claimant fully recovers its loss.
c. The Company's subrogation right includes the Insured's rights to indemnity, guaranty, warranty, insurance policy, or bond, despite any provision in those instruments that addresses recovery or subrogation rights.

14. POLICY ENTIRE CONTRACT

a. This policy together with all endorsements, if any, issued by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy will be construed as a whole. This policy and any endorsement to this policy may be evidenced by electronic means authorized by law.
b. Any amendment of this policy must be by a written endorsement issued by the Company. To the extent any term or provision of an endorsement is inconsistent with any term or provision of this policy, the term or provision of the endorsement controls. Unless the endorsement expressly states, it does not:
    i. modify any prior endorsement,
    ii. extend the Date of Policy,
    iii. insure against loss or damage exceeding the Amount of Insurance, or
    iv. increase the Amount of Insurance.

15. SEVERABILITY
In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, this policy will be deemed not to include that provision or the part held to be invalid, but all other provisions will remain in full force and effect.

16. CHOICE OF LAW AND CHOICE OF FORUM

a. *Choice of Law*
The Company has underwritten the risks covered by this policy and determined the premium charged in reliance upon the State law affecting interests in real property and the State law applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the State where the Land is located.

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The State law of the State where the Land is located, or to the extent it controls, federal law, will determine the validity of claims against the Title and the interpretation and enforcement of the terms of this policy, without regard to conflicts of law principles to determine the applicable law.

b. *Choice of Forum*
Any litigation or other proceeding brought by the Insured against the Company must be filed only in a State or federal court having jurisdiction.

17. NOTICES
Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at: _____*(fill in)*_____.

18. CLASS ACTION
ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS POLICY, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS POLICY, ANY BREACH OF A POLICY PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS POLICY, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING.

[19. ARBITRATION

a. All claims and disputes arising out of or relating to this policy, including any service or other matter in connection with issuing this policy, any breach of a policy provision, or any other claim or dispute arising out of or relating to the transaction giving rise to this policy, may be resolved by arbitration. If the Amount of Insurance is $2,000,000 or less, any claim or dispute may be submitted to binding arbitration at the election of either the Company or the Insured. If the Amount of Insurance is greater than $2,000,000, any claim or dispute may be submitted to binding arbitration only when agreed to by both the Company and the Insured. Arbitration must be conducted pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("ALTA Rules"). The ALTA Rules are available online at www.alta.org/arbitration. The ALTA Rules incorporate, as appropriate to a particular dispute, the Consumer Arbitration Rules and Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"). The AAA Rules are available online at www.adr.org.

b. ALL CLAIMS AND DISPUTES MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING IN ANY ARBITRATION GOVERNED BY CONDITION 19. The arbitrator does not have authority to conduct any class action arbitration, private attorney general arbitration, or arbitration involving joint or consolidated claims under any circumstance**.**

c. *If there is a final judicial determination that a request for particular relief cannot be arbitrated in accordance with this Condition 19, then only that request for particular relief may be brought in court. All other requests for relief remain subject to this Condition 19.*

d. **[**The Company will pay all AAA filing, administration, and arbitrator fees of the consumer when the arbitration seeks relief of $100,000 or less. Other fees**][**Fees**]** will be allocated in accordance with the applicable AAA Rules. The results of arbitration will be binding upon the parties. The arbitrator may consider, but is not bound by, rulings in prior arbitrations involving different parties. The arbitrator is bound by rulings in prior arbitrations involving the same parties to the extent required by law. The arbitrator must issue a written decision sufficient to explain the findings and conclusions on which the award is based. Judgment upon the award rendered by the arbitrator may be entered in any State or federal court having jurisdiction.**]**

*NOTE: Bracketed **[ ]** material optional*

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Title Teasers 2026

Amber Ashton
VP, Florida State Counsel, Old Republic Title

Caleb Hinton
Senior Underwriting Counsel, Old Republic Title

Scott Jackson
Underwriting Counsel, Old Republic Title

OLD REPUBLIC TITLE

Title Teasers 2026

Moderator: Caleb Hinton, Sr. Underwriting Counsel

Panel of Experts:

Amber Ashton, Florida State Counsel

Scott Jackson, Underwriting Counsel

1

Question 1: Policies & Endorsements

In 2023, Big Developer purchased vacant land in Seminole County and obtained an owner's policy issued through another underwriter. They are now developing the land and refinancing with a new construction loan. As part of the development, they want to increase the owner's title insurance coverage to insure the value of the planned completed improvements. Your office is writing the loan policy on Old Republic and Big Developer has requested an endorsement increasing the amount of their current owner's policy.

For the purpose of providing Big Developer with additional title insurance coverage, what can be done to increase the amount of their owner's policy?

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Question 1: Policies & Endorsements

A. Endorse Big Developer's current owner's policy using a Form E endorsement up to the new level of coverage and the effective date of the new loan policy.

B. Issue Big Developer a new owner's policy for the current amount and increase the amount to match draws taken under the loan policy up to the new level of coverage.

C. Issue a stacked owner's policy to Big Developer and match the effective date of the loan policy.

Question 2: Tax Deeds

In December 2018, Sunny Scofflaw purchased two properties in Broward County, one located on Main Street and the other located on 4th Avenue. Unfortunately, Sunny fell behind on payment of the real estate taxes for the 4th Avenue property leading to a tax deed sale in 2022. At the time of the tax deed sale, there were several certified money judgments against Sunny, a mortgage on the 4th Avenue property, and code enforcement liens against the Main Street property. All parties were properly noticed in the tax deed sale. The proceeds from the tax sale were just enough to cover the delinquent taxes due with the balance used to partially pay the mortgage holder. The purchaser of the tax deed now seeks to sell the property.

For the purpose of issuing a title insurance policy, which of the following backchain issues must be cleared in the present transaction?

Question 2: Tax Deeds

A. The certified judgments, the balance of the mortgage, and the code enforcement liens.

B. The code enforcement liens.

C. The balance of the mortgage.

Question 3: Divorce

After a century of marriage, Gomez and Morticia Addams filed for divorce. They jointly own Swamp Acre as tenants by the entireties. In their marital settlement agreement (MSA), it is agreed that Morticia will take title to Swamp Acre as her separate property free from any interest of Gomez and makes no requirement for Gomez to execute a deed. The recorded final judgment of dissolution of marriage ratifies and incorporates the MSA by reference, but the MSA is not recorded. Morticia is now looking to sell Swamp Acre and engages you to handle the closing.

For the purposes of insuring title to Swamp Acre, what must be recorded at closing?

Question 3: Divorce

A. A deed from Morticia.

B. A deed from Morticia and Gomez.

C. A deed from Morticia provided the MSA is also recorded.

Question 4: Execution of Mortgages

Goldie found the house of her dreams in Miami, FL. She has engaged a mortgage broker and locked in a rate for her first home purchase and mortgage. Trusty Title Agent will be issuing a title policy to Goldie and her lender at closing. Prior to closing, Trusty shows Goldie the proposed deed reflecting her marital status as “a single woman.” Goldie reveals that she is in a “registered domestic partnership” however her partner, Kurt, is currently incarcerated. Also, Goldie informs Trusty that her dad Ed will be providing a portion of the down payment funds via a “gift letter” but will not be on title with Goldie.

For the purposes of insuring the priority of the mortgage, who should execute the mortgage?

Question 4: Execution of Mortgages

A. Goldie alone.

B. Goldie and her registered domestic partner, Kurt.

C. Goldie, Kurt, and her father, Ed.

Question 5: Enhanced Life Estate

Paul, a single man, wanted to make sure that when he died, his homestead property would go to his minor stepchildren, Ginny and Austin. In 2022, he had a deed recorded which created a life estate with the remainder interests to Ginny and Austin. The deed contained the enhanced powers to sell and convey, but did not expressly state "without joinder of the remaindermen." Last year, Paul had a disagreement with his stepdaughter Ginny and wanted to remove her. Paul then executed and recorded a new deed from himself, as life tenant, to himself in fee simple. Recently Paul passed away and Ginny and Austin's mother, Georgia, wants to sell the property. The proposed sales price is $1.5 million, and the property is free and clear of any mortgages.

For the purposes of insuring title, who do we need to obtain deeds from to insure Georgia's buyer?

Question 5: Enhanced Life Estate

A. Ginny and Austin, by Georgia their natural guardian.

B. Ginny and Austin, by Georgia their plenary guardian.

C. Ginny and Austin, by Georgia, individually and as their plenary guardian.

Question 6: Bankruptcy

In 2012, Rosings, Inc. conveyed Pemberly to Wickham, Darcy and Bingley, as tenants in common. A purchase money mortgage was executed by all parties in favor of Netherfield Savings. In 2013, Wickham filed for Chapter 7 bankruptcy in Michigan and inadvertently failed to schedule his ownership in Pemberly or the mortgage owed to Netherfield. Darcy and Bingley were included as creditors due to unsecured loans they provided Wickham unrelated to Pemberly. The bankruptcy judge signed the discharge order in 2020, and the case was closed. The following year a satisfaction of mortgage was recorded by Netherfield. In 2025, Wickham executed a quit claim deed in favor of Darcy and Bingley. The deed was recorded paying minimum documentary stamps and contained a recitation that it was given as consideration for debts forgiven in the amount of $400k. Today, Darcy and Bingley are selling Pemberly to Charlotte.

For the purposes of issuing an owner title policy, what must be done about Wickham's failure to schedule Pemberly in the bankruptcy?

Question 6: Bankruptcy

A. No further action is necessary as the mortgage was paid off and Darcy and Bingley hold title.

B. The deed should be re-recorded with documentary stamps paid.

C. Reopen the bankruptcy to address the failure to schedule Pemberly in the Chapter 7 bankruptcy.

Question 7: LLCs & Probate

In 2020, Yellowstone LLC, a Florida limited liability company, purchased agriculture lands in Dixie County for the purpose of cattle grazing. The manager and sole member is John Dutton who resides in Wyoming. In November 2025, John Dutton died, and two of his adult children, Beth and Kayce were appointed co-personal representatives of the estate. During the course of the probate, Beth and Kayce confirm there was no operating agreement for the LLC. As co-personal representatives, Beth and Kayce have entered into a contract to sell the property and have brought the deal to your office. The probate attorney for John Dutton's ancillary estate obtained an order authorizing the sale of the property out of the LLC.

For the purpose of issuing an owner's title policy, who are we required to obtain deeds from?

Question 7: LLCs & Probate

A. Deeds from all the heirs of John Dutton as the LLC dissolved upon the death of the sole member.

B. Deeds from the co-personal representatives with a recital of being done for the purpose of winding up.

C. Deeds from all the heirs of John Dutton and from the co-personal representatives with a recital of being done for the purpose of winding up.

Question 8: Payoff Statement

It is 4:30pm on the Friday before Memorial Day weekend and Busy Bo is preparing to send a mortgage payoff by wire transfer to a seller's mortgage company. In the title file, Bo sees two sets of the lender's wiring instructions, one more recent than the other. He glanced at them both and saw they reflected the same amount due through the same date. To send the wire out before his bank's 5 pm cutoff time, Bo uses the most recent statement to complete his bank's online wire order, hits send and moves on to the next file. Weeks later, the buyer calls Bo concerned about why he is receiving default letters from the Seller's mortgage company. Bo calls the number on the payoff and gets a disconnected number message.

What should Bo have done differently?

Question 8: Payoff Statement

A. Bo should not have wired funds and instead sent a check.

B. Bo should have verified the payoff by calling the number on the most recent payoff statement.

C. Bo should have independently verified the payoff and wiring transfer instructions.

Question 9: Trustees and Judgments

In 2019, Christopher purchased homestead property in Duval County titled in the name of the Christopher Revocable Trust. In late 2025, Christopher passed away without a spouse or minor child. The successor trustee is Tony, who does not have a beneficial interest in the homestead, but he will receive other property under the trust agreement. Pursuant to the trust, upon Christopher's death, a life estate was granted Christopher's girlfriend Adriana with the remainder to his residuary estate. The successor trustee, Tony, is now seeking to refinance the former homestead property. The title commitment returns certified judgments against Tony individually.

For the purposes of insuring title, what must be done about the judgments against Tony?

Question 9: Trustees and Judgments

A. The judgment liens do not attach.

B. The judgment liens against Tony must be cleared.

C. Tony can assign his beneficial interest in trust to his beneficiaries, and the judgment liens will not attach.

Question 10: Rating

In 2023, Family Home Builder takes out a line of credit for $1 million with Back Yard Bank. At closing, premium was paid for the loan policy on the face value of the line of credit, $1 million. An initial draw of $700k was disbursed to Family Home Builder to buy land and develop spec homes. No further draws were taken and as the houses were built and sold, the line of credit was paid down to zero. Today, Family Home Builder is seeking to purchase additional land with a new draw of $800k. Back Yard Bank wants to endorse their loan policy to insure the mortgage modification and spreader agreement and include the cost of the endorsement in their loan documents.

For the purpose of insuring the mortgage modification and spreader, what should the premium be based upon?

Question 10: Rating

A. $1 million.

B. $800k draw.

C. $500k.

Question 11: Survey

The seller has engaged you to handle the sale of his vacant platted lot. Pursuant to the AS-IS cash contract, seller delivers his existing "Boundary Survey" from 1977. Buyer's counsel requires the standard survey exception to be deleted at closing and prefers a new survey be done or that the older survey be re-certified and updated. Despite the age of the survey, your review confirms the older survey was properly signed and sealed by the surveyor and contains an adequate and accurate legal description which matches the legal description in the title commitment. Seller maintains that the property has not changed since purchase, and he will sign 'whatever' to close the deal on time.

For insuring purposes, what could be done to rely upon the prior survey in order to delete the standard survey exception?

Question 11: Survey

A. No further action necessary, the standard survey exception can be deleted based upon your review of the survey.

B. The standard survey exception can be deleted with a satisfactory owner's affidavit of no changes.

C. The standard survey exception can be deleted provided surveyor updates the survey by conducting field work and re-certifies the survey.



Question 12: Divorce & Judgments

In 2008, Barney and Betty Rubble purchased Bedrock Ranch as tenants by the entireties and resided there as their homestead. In 2016, the marriage was on the rocks and the couple divorced. The marital settlement agreement (MSA) provided Betty would continue to reside in the property as her homestead and further required Barney to execute a deed relinquishing any interest within 30 days of the final judgment of divorce. The final judgment did not contain any other provisions regarding the property. Shortly after the divorce was final, Barney rented an apartment in the city and defaulted on several credit cards that were joint with Betty. The resulting judgments total value is $500k and are joint and several liability. Betty has a contract to sell Bedrock for $750k and your title commitment reflects four certified judgments recorded against Barney and Betty, jointly and severally.

For insuring purposes, what must be done about the judgments?



Question 12: Divorce & Judgments

A. The judgments must be paid in full.

B. The judgments do not attach as the parties are divorced.

C. The judgments must be partially released.

Question 13: Title Endorsements

Felonious Gru is purchasing a luxury waterfront mansion in Miami, Florida. Big Bad Bank closing instructions require that the following endorsements be issued with the lender's title policy: ALTA 9 (restrictions, encroachments, minerals), ALTA 17 (access), and ALTA 22 (location). Lucy Wilde, as closing agent, is working to comply with the lender's wishes, but she can't find all the endorsements in her closing software. The lender insists that these endorsements are common, they get them "all the time" and that they must be provided with the final loan policy.

For insuring purposes, which of the lender's requested endorsements is Lucy able to issue at closing?

Question 13: Title Endorsements

A. ALTA 9-06 (with Florida modifications).

B. All three endorsements, Lucy can download the form off the internet.

C. ALTA 9-06 (with Florida modifications) and the ALTA 22 (location), access is covered under the policy.

Question 14: Probate & Bankruptcy

In 2024, Sally Homeowner died owning a homestead property. In her will, she devised the property to her two adult children Morty and Mary via the residuary clause. The will further states that in the event a child predeceases Sally, their share shall descend per stirpes. At the time of Sallys' death, Mary was in her second year of a Chapter 13 Bankruptcy Plan which includes several certified judgments against her recorded in the county where the property is located. Since Mary's kids are grown and out of the house, Mary wished for Morty to receive the property to raise his family. An Order Determining Homestead was entered by the probate court naming Morty as the sole beneficiary. Morty now has a contract to sell the property.

For insuring purposes, who should execute deeds to insure the sale?

Question 14: Probate & Bankruptcy

A. Morty.

B. Morty and Mary.

C. Morty and the adult children of Mary.

Question 15: Minors

In 2021, Lisa acquired title of a vacant lot out of her Grandpa Jones Estate. The vacant property is now being sold to a bona fide purchaser for $10,000.00. On the day of closing, Lisa appears at your office for closing. When asked for identification, Lisa happily pulls out her brand-new Florida driver's permit. As it turns out, Lisa is only 15 years old. Upon learning that Lisa is still a minor, Carl Closing Attorney is concerned that the deed conveying to Lisa was void due to her age and would be treated as a failure of title. Lisa's parents are both alive and accompanied her to closing.

For insuring purposes, what is required to close the transaction today?

Question 15: Minors

A. A guardianship for Lisa should be established.

B. Lisa's parents can execute the deed.

C. Lisa can execute the deed.

Question 16: Construction & Condominiums

Vertical Developer broke ground on a 100-unit condominium in 2022. Last year they started conveying units including unit three to Honest Homeowner. At that time, there were several open notices of commencement, but no claims of lien. At closing, Vertical signed a standard no-lien affidavit and a special warranty deed to Honest Homeowner. Recently, Honest realized that he does not like living in an association and has decided to sell his unit in a cash transaction. The title commitment reveals a claim of lien (COL) filed February 11, 2026, by Power People, Inc. which includes the underlying legal description of the condominium. The COL demands a remaining balance of $100,000.00. The closing agent initially reached out to Power People for a partial release, which they refused to provide.

For insuring purposes, what must be done about the claim of lien?

Question 16: Construction & Condominiums

A. Hold an escrow for the pro rata share with a written disclosure to the Buyer that any further assessment after closing will not be covered under the owner's policy.

B. Rely upon a sufficient funds affidavit from the association with an indemnification from the seller.

C. Both A and B are correct.



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Question 17: Corporations

Multi-Layers, Inc., a Nevada corporation, is selling one of their commercial properties in Broward County, Florida. To avoid any delays in closing, their Nevada counsel delivers a fully executed special warranty deed to be held in escrow with a cover letter declaring the deed complies with Nevada law. The day before closing you pull your file and upon review see that the deed is signed by a Vice-President of the corporation, with two witnesses and acknowledged by a notary public. There is no corporate seal with the signature, nor an accompanying corporate resolution. A quick check of Sunbiz confirms the person who signed is listed as a Vice-President.

For insuring purposes, can the deed be relied upon to issue a title policy to the buyer?



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Question 17: Corporations

A. The deed can be relied upon as it came from Nevada counsel confirming compliance with Nevada law.

B. The deed can be relied upon because it is signed by the Vice-President, with two witnesses and properly acknowledged.

C. The deed can be relied only upon obtaining a corporate resolution to be recorded with the deed.

Question 18: General Sovereignty Lands

Sam Seller is selling his homestead property in Gainesville, Florida, which includes a man-made lake at the southernmost part. Tired of fighting the mosquitoes when the lake runs low, Sam executes a contract with Betty Buyer which includes a contingency for financing. When the lender reviews the commitment, they object to the pre-printed general sovereignty lands exception (GSL). Betty, not to be outdone, requests it be removed from her owner's policy as well. Your review of the underlying section lands on the LABINS map confirms that the property appears to be high and dry at statehood, but there are multiple smaller bodies of water noted in this section.

For insuring purposes, may the general sovereignty lands exception (GSL) be deleted form the final policies?

Question 18: General Sovereignty Lands

A. The GSL may be deleted from both policies and replaced with a narrower exception.

B. The GSL can be deleted from the owner's policy only after obtaining a surveyor's affidavit that the smaller bodies of water on LABINS do not affect the property.

C. The GSL can be deleted from both policies with no further exceptions.



Question 19: More Submerged Lands

Mary Monroe has requested a title commitment for her client, Betty, who is purchasing property in the Florida Keys on the Atlantic Ocean side. Based on the prior deed, Mary's title request, included the legal description for the platted property as well as a metes and bounds legal description for submerged land which includes a dock along the eastern boundary of the platted property. The title commitment came back with a requirement for a deed from the Trustees of the Internal Improvement Fund of the State of Florida (TIIF) as to the submerged land parcel. When Mary asked the seller about the submerged lands, the seller exclaimed they own the submerged lands and had been using the dock for their yacht throughout their 35 years of home ownership.

For insuring purposes, what must be done to insure the submerged lands parcel along with the platted lot?



Question 19: More Submerged Lands

A. File an action for adverse possession.

B. Rely on Seller's vesting deed to act as a root deed under MRTA to extinguish the interest of the State.

C. Obtain a deed from TIIF for the submerged lands.

Question 20: Limited Liability Companies

Parent Company LLC ("Parent") is a multi-member Florida LLC. On Sunbiz, Parent lists one manager as Layer One LLC ("Layer"). The sole member of Layer is Bobby and there is no operating agreement. In July 2025, Bobby died leaving one heir, Terry. No probate was ever opened for Bobby. As the sole heir, Terry assumes that he now owns Layer One LLC and can transact on its behalf. In December 2025, Terry contacts your office because Parent Company LLC entered into a contract to purchase property, and Terry wants to complete the purchase with Layer One being the manager of Parent Company.

For insuring purposes, what is required to insure the purchase by Parent Company LLC?

Question 20: Limited Liability Companies

A. Probate of Layer One LLC's sole membership interest.

B. Member consent from Parent Company LLC authorizing Terry to sign for Parent.

C. A new LLC must be formed and listed on Sunbiz as manager.





A Deal Disrupted: Scams, Loss, and Recovery

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CERTIFID

State of Wire Fraud

2026

Fraud trends and insights for the real estate industry



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I. Cybercrime: the threat at large



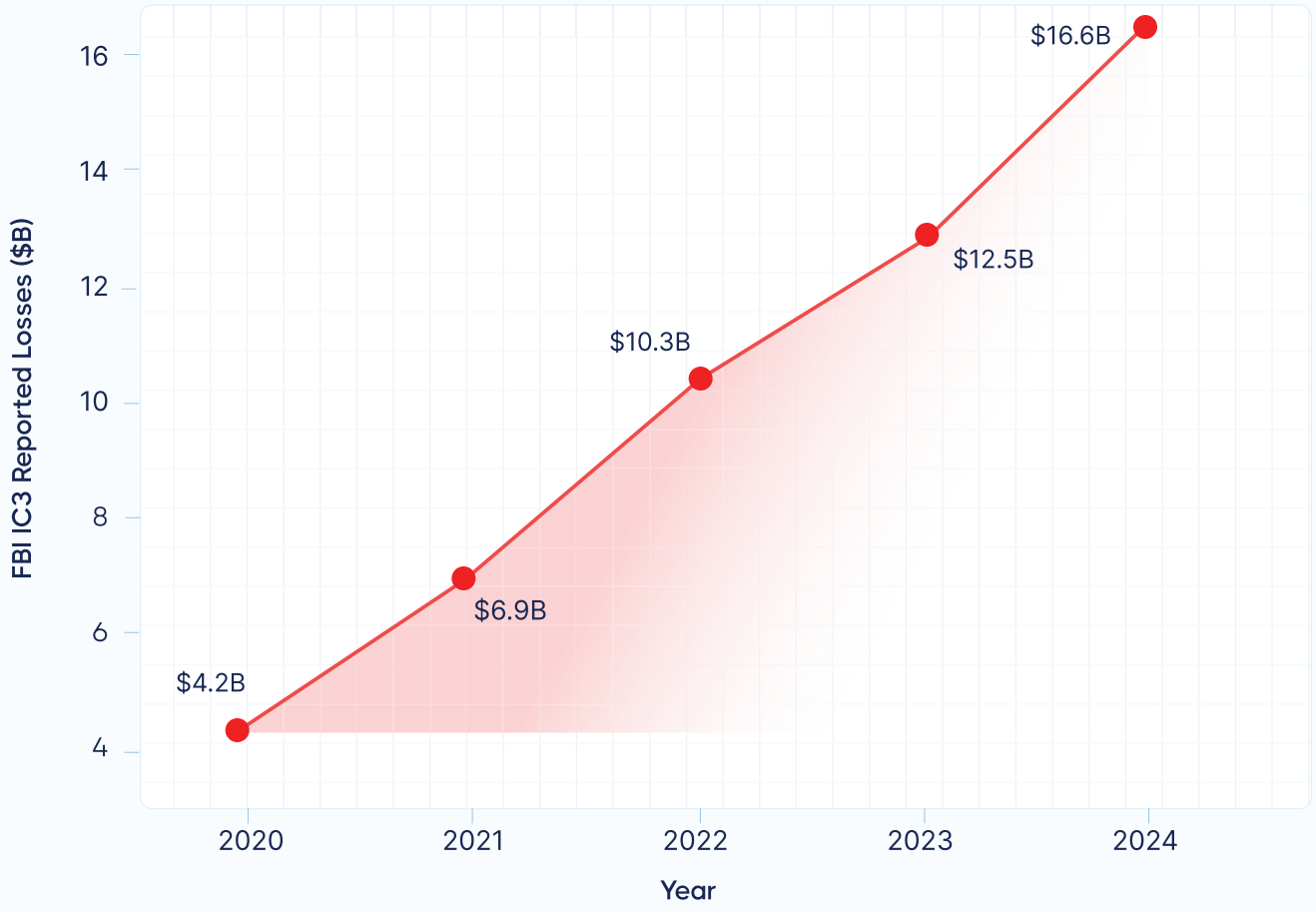
I. Cybercrime: the threat at large

Over the past five years, cybercrime has grown from a distant threat to an epidemic. Last year, the FBI reported Americans lost $16.6 billion to cybercriminals, a staggering 33% increase from the prior year. To put that in perspective, losses have more than tripled since 2020, when the FBI reported $4.2 billion in cybercrime losses.

Business email compromise (BEC) still remains one of the most common and devastating attack vectors, accounting for $2.77 billion in losses across more than 21,000 reported incidents in 2024.

What makes BEC attacks particularly dangerous is exploited trust. When criminals successfully impersonate the people and organizations that victims have every reason to believe, the outcomes are devastating.

Cybercrime losses over time (2020-2024)



Real estate: a prime target in 2026

For an industry like real estate, where processes and transactions rely deeply on trust (and email), cybercrime is an existential threat.

The U.S. real estate industry is facing a growing threat of wire fraud attacks. The sector offers criminals a near-perfect combination of vulnerabilities that make attacks both lucrative and relatively easy to execute. High transaction values and stakes, multiple communicating parties, publicly available information and fragmented security practices all contribute to this risk profile.

- **High-value transactions:** The median U.S. home price in 2025 exceeds $400,000, and commercial transactions can reach into the millions.
- **Time pressure:** Closings operate on tight deadlines, creating urgency that criminals exploit.
- **Multiple parties:** Buyers, sellers, agents, lenders, title companies, and attorneys all communicate, creating numerous impersonation opportunities.
- **Public information:** Property records, listings, and transaction details are often publicly accessible, giving criminals the intelligence they need.
- **Fragmented security:** Unlike banking or other highly regulated sectors, real estate lacks unified cybersecurity standards, with practices varying widely by state and company.

AI is accelerating the threat

Generative AI is compounding wire fraud threats, and has fundamentally changed the fraud landscape. Criminals now have access to tools that can craft convincing emails, clone voices, and even generate deepfake videos, all at scale and at minimal cost. Last year, fraud analysts estimated 40% of business email compromise phishing emails were AI-generated.

The attacks individuals see today are not the poorly written scam emails of the past; they are grammatically perfect, contextually relevant, and increasingly difficult to distinguish from legitimate communications.

1,760% Year-over-year increase in BEC attacks since generative AI tools became widely available

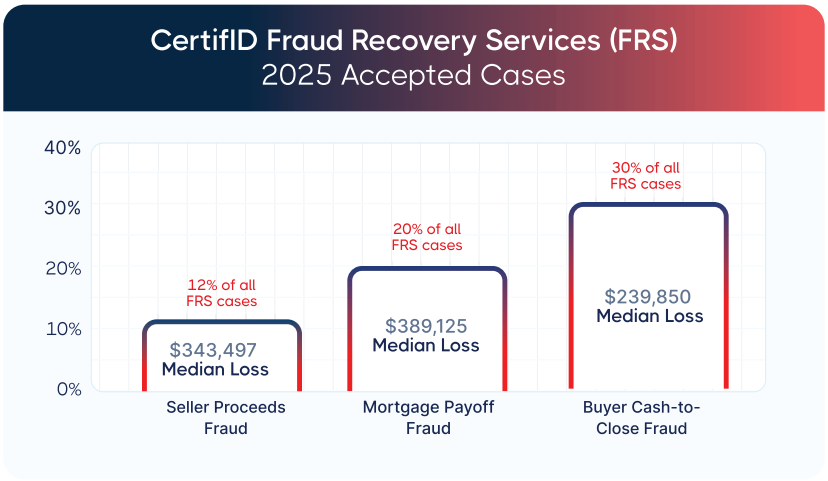
For title professionals on the front lines, they see the change clearly. In our survey of 153 title and escrow professionals, **72.6%** report that fraud attempts are becoming more sophisticated, **60.1%** say fraud attempts are increasing in frequency, and **57.5%** encounter suspicious activity quarterly or more frequently.

60.1% Title professionals who say attempted wire fraud has increased over the past year

The reality is that criminals are getting better, and the industry must keep pace.

Understanding fraud types and their impact

However, not all wire fraud is created equal. CertifID's Fraud Recovery Services data last year revealed three primary categories, each with distinct characteristics and loss profiles that are contributing to the overarching real estate wire fraud problem.



Remaining cases were other forms of payment or unclassified.

Buyer cash-to-close fraud was the most common fraud type in 2025, representing 30% of cases with a median loss of $239,850. This fraud type often preys on first-time homebuyers who are unfamiliar with the process and eager to complete their purchase.

How it happens: Criminals impersonate title companies or real estate agents and send fraudulent wire instructions, instructing buyers to act fast or risk losing their home purchase.

Mortgage payoff fraud was the most damaging category last year, representing 20% of all FRS cases with a median loss of $389,125.

How it happens: In these scams, criminals intercept or forge payoff statements and redirect mortgage payoff funds to fraudulent accounts. The large dollar amounts and the complexity of verifying payoff instructions make this an attractive target for sophisticated criminal operations.

Seller net proceeds theft accounted for 12% of cases with a median loss of $343,497.

How it occurs: Criminals impersonate sellers and redirect the proceeds of a home sale to their own accounts. These scams exploit the emotional and logistical chaos of moving, when sellers are distracted and communications are frequent.

Victim story: Mortgage payoff fraud

"Like hitting a Mack truck."

Sarah Dombrowski has worked in title for 27 years. In March 2022, she opened her own company, Unique Title and Escrow. She thought she was protected: she had fraud prevention tools in place. Then came the phone call.

On August 7th, 2024, an employee told her a mortgage payoff wire hadn't arrived. $311,785 was missing.

"I felt like I was dying," Sarah recalls. "My chest was tight, my heart was racing. It's like hitting a Mack truck at 60 miles per hour."

Her first concern was her clients. Then came the terrifying realization: her business, her livelihood, her team—everything was in jeopardy. She barely slept for weeks. Insurance companies and attorneys offered no guidance.

The product she had trusted? They told her to call her bank.

CertifID FRS eventually helped return most of the stolen funds, but the experience left a permanent mark. Sarah now operates differently with verified processes in place for every wire.

"I can close my eyes at night knowing I will not experience wire fraud again," she says. "I don't want to be in cybersecurity. I want to focus on title."

Hear Sarah in her own words.

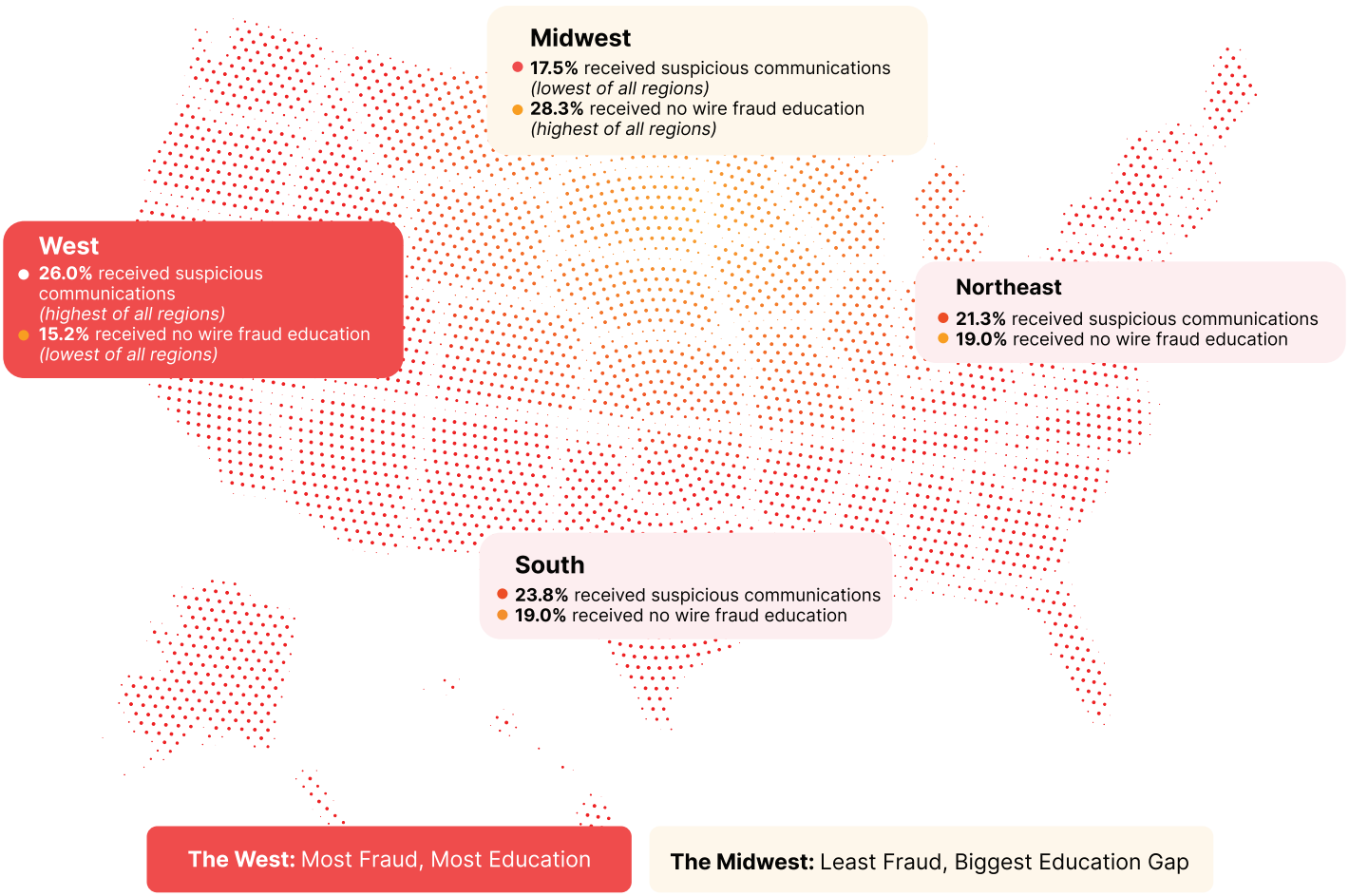
It's important to note that these numbers reflected cases that were reported to us directly. As stated earlier, many cases go unreported due to fear or shame. Understanding these patterns—and that human context—can help businesses identify where they are most vulnerable and where prevention and education efforts should focus.

Geographic risk patterns

Analysis of CertifID platform data also reveals some interesting geographic variation in fraud risk. Florida and Nevada emerged as two of the highest-risk states in 2025, with elevated rates of high-risk transaction markers.*

Consumer survey data shows similar patterns. The Western region reports the highest rate of suspicious communications at 26% of respondents, while the Midwest reports the lowest at 17.5%. Notably, the West also has the lowest rate of consumers receiving no wire fraud education at 15.2%, suggesting that higher threat exposure may be driving greater awareness efforts in those markets.

Fraud Risk & Education Levels Across the U.S.



*These patterns may reflect differences in transaction volumes, property values, regulatory environments, or the concentration of criminal targeting efforts.

II. Consumers are aware and demanding protection



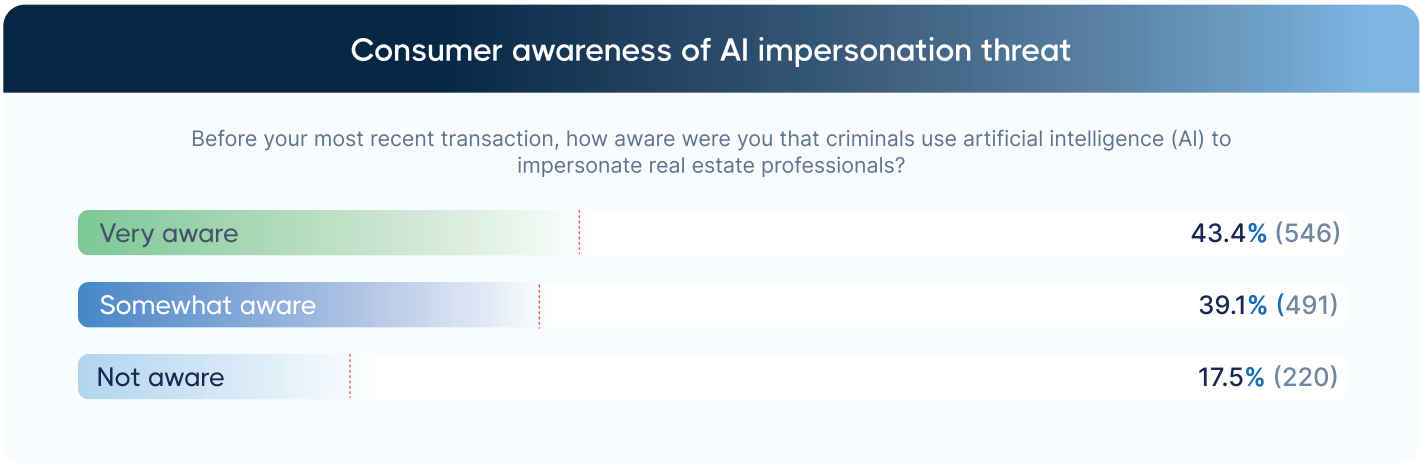
II. Consumers are aware and demanding protection

The days of consumer ignorance about wire fraud are over. Our survey of 1,260 recent home buyers and sellers reveals that awareness has reached a tipping point, and expectations have shifted accordingly. Consumers are no longer asking what wire fraud is. They are asking how you are protecting them from it, and they are making decisions based on the answers they receive.

Awareness has reached critical mass

82% of consumers are aware that AI can be used to impersonate trusted parties during real estate transactions

This datapoint represents a dramatic shift in public consciousness. Consumers understand that the threat is real, technologically advanced, and personally relevant. In addition, more than 1 in 5 consumers (22%) reported receiving suspicious or fraudulent communications during their recent closing process, and 81.8% have either personally experienced fraud or know someone who has. Wire fraud has entered the mainstream consciousness in a way that demands a response from the industry.



Source: CertifID Consumer Survey. October 2025. n=1,260

For businesses still wondering whether to invest in fraud protection, the math is simple: **the vast majority of clients will pay for it, and many will pay more than businesses typically charge.**

Awareness varies by demographics

Despite some overarching trends in awareness, education is still not standard across the real estate industry. These variations should inform how businesses approach different client segments. The data reveals important demographic patterns that have practical implications for client communication and education strategies.

Age matters: Consumers aged 30-39 show the highest AI threat awareness at 88%, while those 60 and older have significantly lower awareness at 66%, a 22-point gap. If you often work with older consumers, they may need more proactive education and reassurance.

Experience matters: Counterintuitively, experienced buyers are more likely to receive suspicious communications (27.5%) than first-timers (16.9%), yet they receive less early education (26.5% vs 33.6%). The industry may be under-serving repeat clients who assume familiarity equals safety.

Region matters: The Midwest has the highest rate of consumers receiving no wire fraud education at 28.3%, while the Northeast leads in early agent education at 34.6%. Regional differences in practice create uneven consumer protection.

The anxiety is real and it is damaging

What is made most clear from the data is that today's consumers rely on real estate professionals for clear guidance through the transaction. Real estate transactions are already among the most stressful experiences in American life. Wire fraud fear is making them worse, creating anxiety that affects client experience and transaction efficiency. This anxiety is not irrational, but a logical response to a genuine threat that consumers increasingly understand.

Consumer anxiety during transactions



61%

felt funds could be at risk during transaction



46%

delayed sending funds due to security concerns

Source: CertifID Consumer Survey. October 2025. n=1,260 (315 per region)

Consider what these numbers mean in practice. Nearly half of all consumers are so worried about fraud that they hesitate to complete their wire transfer. They second-guess legitimate instructions. They call to verify and often get voicemail. They lie awake at night wondering if they just sent their life savings to a criminal. This anxiety creates friction in every transaction and damages the client experience even when nothing goes wrong.

This anxiety also reveals a critical insight. **Consumers do not just want protection. They want to know how they are being protected.**

Proactive communication about security measures can eliminate this anxiety entirely. When clients understand that wire instructions are being verified through a secure platform, that identities are being confirmed, and that insurance backs every transaction, the stress evaporates. Security becomes a selling point, not just a backend process.

Consumers will pay for protection

According to our survey, **85% of consumers are willing to pay extra for wire fraud protection.** This is not reluctant acceptance, but an active demand that represents a clear market opportunity for businesses willing to meet it. Even more telling: the willingness spans income levels and demographics, indicating broad-based recognition that security has value.

Consumer willingness to pay for protection

How much more would you be willing to pay as a one-time security or processing fee to work with a real estate business that prioritizes protecting your money from wire fraud?



Source: CertifID Consumer Survey. October 2025. n=1,260

The numbers tell a clear story. 71% would pay $51 or more, and 43% would pay $101 or more. Only 14% said they would not pay anything additional.

For businesses still wondering whether to invest in fraud protection, the math is simple: **the vast majority of clients will pay for it, and many will pay more than businesses typically charge.**

Consumer voice: The anxiety of uncertainty

"I felt like a ghost."

Jason and his wife went to wire their down payment on a Tuesday. Something felt off; the instructions were missing information. They reached out to their loan officer, title company, and real estate agent to confirm. No one responded.

They sent the wire anyway, figuring someone would flag it if something was wrong. They emailed to confirm receipt. Still nothing. Friday morning, Jason finally got the loan officer on the phone. He said he hadn't sent the instructions, but no alarm bells went off. He promised to check with his team.

Hours later, pushing harder, the truth finally landed: they were victims of wire fraud.

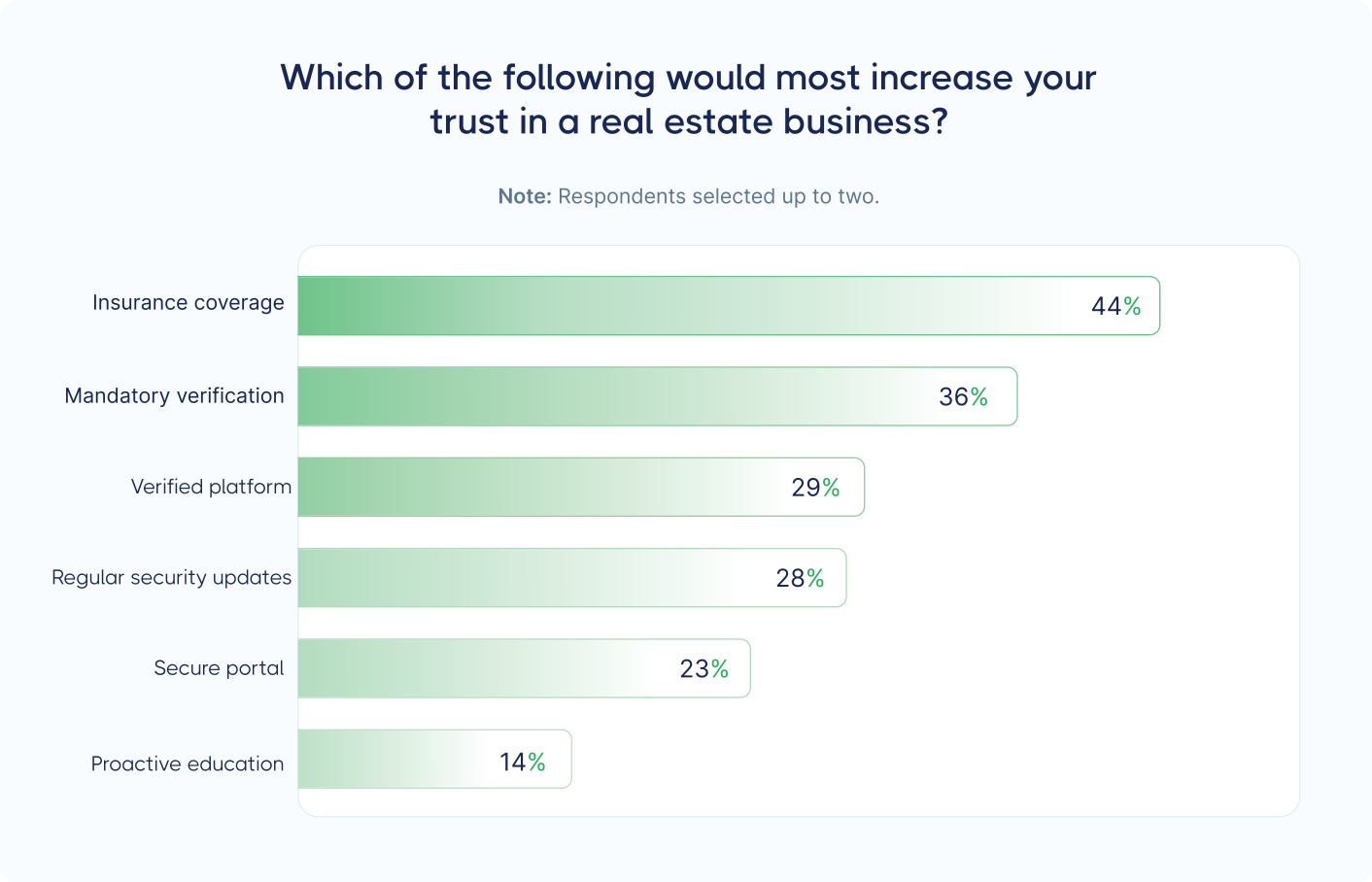
"That's when everything drops out of you," Jason says. "You turn into a ghost."

The days of silence, the missed calls, the unanswered emails—all while their money was gone. This is what the anxiety of wire fraud looks like when no one is watching.

Hear Jason in his own words:

What builds trust: accountability + education

When we asked consumers what would increase their trust in a real estate business, the results were unambiguous. Accountability measures ranked far above educational efforts, indicating that consumers want tangible protection with real consequences, not just information about risks.



Source: CertifID Consumer Survey. October 2025. n=1,260

Consumers prioritize accountability over education. They want to know that if something goes wrong, they are covered. Insurance and guarantees, not just awareness, are what drive trust. This does not mean education is worthless, but it does mean that education alone is not enough. Consumers want tangible protection with real accountability attached.

The real estate firms that are most equipped for the fraud risks ahead apply a layered approach to the security: regular education (to both clients and their internal teams) and software and insurance to limit their exposure and risk.

III. Recovery is possible, but not a business strategy



III. Recovery is possible, but not a business strategy

When wire fraud occurs, recovery is possible. CertifID's Fraud Recovery Services (FRS) has proven this hundreds of times, helping victims navigate the complex process of reclaiming stolen funds. But recovery should never be the plan. **The risk is simply too high, and the consequences extend far beyond the immediate financial loss.**

Recovery works, when it works

FRS has helped hundreds of victims navigate the aftermath of wire fraud. The results demonstrate that recovery is achievable when victims act quickly and have the right support. Speed matters enormously in these situations, as funds that have not yet been moved through multiple accounts or converted to cryptocurrency can often be frozen and returned.

CertifID Fraud Recovery Services Results (Total through March 2026)

773
victims supported

69%
recovery rate

$118.4M
stolen funds recovered

These numbers represent real families who got their money back, real closings that were saved, and real futures that were restored.

The FBI's Recovery Asset Team (RAT) has achieved similar results at scale, successfully freezing 66% of fraudulent wire transfers they pursue. When fraud is reported within 24 hours, recovery rates are significantly higher because the funds have not yet disappeared into the criminal financial system.

Recovery success story:
Seller proceeds fraud

A Florida title company wired $648,815 to what appeared to be the seller's attorney—same name, same firm address, same official letterhead. Only the routing numbers were different. By the time the listing agent called to say the seller hadn't received funds, nearly an hour had passed.

The company acted fast: initiating a recall and filing an FBI IC3 report the same day. But the receiving bank warned recovery could take 90+ days with no guarantees.

After being referred through their insurer, they engaged CertifID Fraud Recovery Services on December 4. The FRS team escalated through its U.S. Secret Service partnership, reached the receiving bank directly, and guided the company through issuing a Letter of Indemnity (a step many victims miss).

Two weeks later, on December 18, nearly 100% of the funds were returned.

The owner, working from home with a two-month-old, described screaming with relief when she saw the confirmation. What could have been a business-ending loss became proof that expert guidance changes outcomes.

Time to recovery:
14 days

Amount recovered:
$648,795 (99.99%)

But recovery should not be your plan

A 69% recovery rate sounds encouraging until you consider what it means for the other 31%. For those families, the outcome is devastating: lost down payments, derailed retirements, shattered dreams of homeownership. And even when recovery succeeds, it comes at tremendous cost in time, stress, resources, and uncertainty that affects everyone involved.

- **Time:** Recovery efforts can take weeks or months, during which funds are frozen and transactions are in limbo.
- **Stress:** Victims describe the experience as traumatic, even when funds are eventually recovered.
- **Resources:** Recovery requires significant effort from your team, diverting attention from other clients.
- **Uncertainty:** Until funds are recovered, no one knows the outcome, creating prolonged anxiety for everyone involved.

The reputational damage is permanent

Even when funds are recovered, the damage to your business may be irreversible. Trust, once broken, is extraordinarily difficult to rebuild, and the data shows that most consumers will not give you the chance to try.

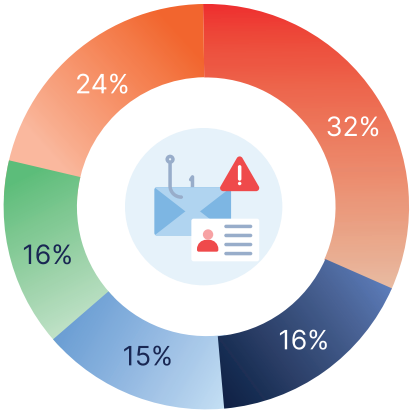
56% of consumers say they would be unlikely to work with a company again after a fraud incident—even if all their funds were recovered

More than half of your clients would walk away forever, even in the best-case recovery scenario. Consider also the 32% who are "very unlikely" to return are not just dissatisfied. They are likely telling everyone they know about their experience. In an industry built on referrals and reputation, a single fraud incident can cascade into years of lost business. Recovery fixes the immediate financial loss, but it does not fix the trust that has been broken.

Would you work with the company again after a fraud incident?

If a fraud incident occurred with a company - even if your funds were recovered - how likely would you be to work with them again?

- Very unlikely
- Somewhat unlikely
- Very likely
- Somewhat likely
- Neither likely nor unlikely



Awareness alone is not enough

The data also reveals a troubling gap between awareness and action. Many consumers recognize suspicious activity but do not know how to respond effectively, leaving them vulnerable even when they sense something is wrong.

33% of consumers who received suspicious communications either ignored them or took no action at all

These are not uninformed people. They knew something was wrong. But without clear protocols and automated protection, they froze. They did not know who to call, what to do, or how to verify whether the communication was legitimate.

This is why **automated protection matters more than awareness.** You cannot rely on consumers, or even trained employees, to catch every sophisticated fraud attempt. When AI can generate perfect impersonation emails and clone voices convincingly, human judgment alone is not sufficient. Technology must be the first line of defense.

The only answer: prevention

Recovery is a safety net. Prevention is the strategy. When you prevent fraud from occurring in the first place, you protect both the funds and your reputation. You eliminate the anxiety your clients feel. You avoid the operational chaos of a recovery effort. You never have to explain to a client why their life savings ended up in a criminal's account. Prevention is not just better than recovery; it is the only approach that fully protects your business and your clients.

IV. The value of protection



IV. The value of protection

Wire fraud is preventable. The technology exists, it is proven, and it works at scale. Businesses that implement comprehensive protection measures see dramatic reductions in successful fraud attempts, and the data from 2025 demonstrates just how effective these tools can be.

In 2025, CertifID completed and verified over 1.46 million wire transfers, further demonstrating the value of systematic fraud prevention.



$283M

Approximate value of financial loss prevented in 2025 by CertifID



1,018

Blocked transactions in 2025 by CertifID

Each of those 1,018 blocked attempts represents a family that did not lose their down payment, a seller who received their proceeds, and a business that did not have to explain a catastrophic failure to their client. The $283 million in protected funds represents life savings, retirement accounts, and the financial futures of American families that remained secure because technology caught what humans might have missed.

How prevention works

Prevention works because it removes the human vulnerability that fraudsters exploit. As a core principle, that means **verify everything through a secure channel that criminals cannot compromise**. When verification happens through secure platforms rather than email or phone calls that can be intercepted or spoofed, the attack surface shrinks dramatically.

So what does a "secure platform" mean in 2026? Effective wire fraud prevention includes several integrated components that work together to create comprehensive protection.

- **Identity verification:** Confirming that the person requesting or receiving funds is who they claim to be, using methods that cannot be easily spoofed.
- **Account ownership verification:** Confirming that bank accounts belong to the verified parties, not criminals using similar names.
- **Secure communication channels:** Transmitting wire instructions through encrypted platforms, not email that can be intercepted or spoofed.
- **Risk scoring:** Analyzing transactions for indicators of fraud and flagging high-risk situations for additional review.
- **Insurance backing:** Providing financial protection if fraud does occur despite prevention measures.

The industry recognizes the threat

Title professionals today understand the stakes. They encounter fraud attempts regularly and have watched the sophistication of these attacks increase dramatically in recent years. Their perspective from the front lines confirms what the data shows: prevention is not optional.

57%
encounter suspicious activity on a quarterly basis or more



73%
say fraud attempts are becoming more sophisticated



60%
report that fraud attempts are increasing in frequency

They see the threat every day. They know that manual verification processes cannot keep pace with AI-powered attacks. And they know that prevention is the only sustainable answer to a threat that continues to evolve.

V. Wire fraud prevention is now a must-have



V. Wire fraud prevention is now a must-have

The convergence of escalating threats, consumer awareness, and proven protection technology has fundamentally changed the methodology for real estate businesses. Wire fraud prevention has crossed from "nice-to-have" to "must-have," and the businesses that recognize this shift will thrive while those that do not will face increasingly serious consequences.

The landscape has shifted

Consider the factors that now make prevention essential. Each factor alone would be significant. Together, they represent a fundamental change in the operating environment for real estate businesses.



1. **The threat is escalating.** AI-powered fraud is up 1,760% year-over-year. Criminals are more sophisticated than ever, and they are specifically targeting real estate because of its vulnerabilities.
2. **Consumers are aware.** 82% know about AI impersonation threats. They are asking questions about security before they sign with you, and they are comparing your answer to what competitors offer.
3. **Consumers are demanding protection.** 85% will pay for it. 68% say guaranteed fraud protection would strongly influence their choice of provider. This is not a niche concern but a mainstream expectation.
4. **The reputational stakes are existential.** 56% will not come back after a fraud incident, even with full recovery. One incident can damage your business for years through lost referrals and damaged reputation.
5. **Have a recovery plan.** Prevention is the strategy, but recovery is the safety net. Know who to call and what to do if the worst happens. Speed matters, and having a plan in place before you need it can make the difference between recovery and permanent loss.

Businesses that do not offer wire fraud prevention will lose clients to competitors who do. Businesses that experience fraud without protection will face reputational damage that takes years to recover from, if they recover at all.

The path forward: an implementation checklist

Every real estate business should take these steps to protect their clients, their reputation, and their future. Implementation does not need to be complicated, but it does need to be comprehensive.

Wire Fraud Prevention Implementation Checklist

Turn prevention into a competitive advantage.

- [ ] **Implement verification technology**
  Automate secure payment verification processes.
- [ ] **Communicate proactively with clients**
  Set clear expectations around payment instructions.
- [ ] **Train your team regularly**
  Keep awareness high as threats evolve.
- [ ] **Have a recovery plan ready**
  Respond fast if an incident occurs.

1. **Implement verification technology.** Do not rely on email or phone calls to confirm wire instructions. Use a secure platform that verifies identities and account ownership through methods that criminals cannot easily compromise. The technology exists and is readily available.
2. **Communicate proactively.** Tell your clients how you are protecting them. Explain your security measures at the first meeting, not the day before closing. Remember that 61% of consumers feel anxious about their funds during transactions. Proactive communication eliminates that anxiety and builds trust.
3. **Offer insurance and guarantees.** Consumers trust accountability. It is their number one factor for building trust. Back your processes with coverage that protects them if something goes wrong, demonstrating that you stand behind your security measures.
4. **Train your team.** Technology is the first line of defense, but humans need to know the protocols. Regular training keeps everyone alert to evolving threats and ensures consistent execution of security procedures across your organization.
5. **Have a recovery plan.** Prevention is the strategy, but recovery is the safety net. Know who to call and what to do if the worst happens. Speed matters, and having a plan in place before you need it can make the difference between recovery and permanent loss.

The real estate industry handles trillions of dollars annually. It is time to protect it like the critical infrastructure it is.

About the study

Consumer survey

The consumer data in this report is from an October 2025 online survey of 1,260 individuals in the U.S. who had purchased or sold a property within the prior three years. The survey was administered through the Attest professional survey platform with stratified sampling across four U.S. regions (Midwest, Northeast, South, and West). All respondents were verified to have completed a real estate transaction within the qualifying period.

Title professional survey

The title professional data is from a separate survey of 153 title and escrow professionals conducted in late 2025 through Typeform. Respondents represented a cross-section of the industry including independent title agents, title company employees, and escrow officers from various regions and company sizes.

Proprietary data

The proprietary data in this report is based on all CertifID services and software usage in 2025. Findings on fraud recoveries come from cases reported to CertifID Fraud Recovery Services. Findings on fraud prevention come from transactions processed by the CertifID platform. All data has been anonymized and aggregated to protect client confidentiality.

External sources

External data sources include the FBI Internet Crime Complaint Center (IC3) 2024 Annual Report, American Land Title Association (ALTA) surveys, and industry research as cited in the Sources section. All external data was current as of the publication date of this report.

Sources

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8. CertifID. Title Professional Survey. Typeform, 2025. n=153.

9. CertifID. Proprietary Platform Data, January-December 2025.

10. CertifID. Fraud Recovery Services Case Data, 2025.

About CERTIFID

CertifID is a leader in fraud protection for the real estate industry. The company safeguards billions of dollars every month with advanced software, digital payments, direct insurance, and proven recovery services. Trusted by title companies, law firms, lenders, realtors, and home buyers and sellers, CertifID provides further peace of mind with up to $5M in coverage on every wire transfer it protects. The company's comprehensive approach combines prevention technology, insurance backing, and recovery services to address every aspect of the wire fraud threat.



If you or someone you know falls victim to real estate fraud, **please call us immediately at (616) 202-6612.**

CERTIFID

To download a copy of the
State of Wire Fraud 2026 report, go to: certifid.com/sowf



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Mobile: (407) 595-3022

Account Takeovers, ACH Fraud, and Wire Transfers: The Growing Threat Behind the Screen

Account takeover (ATO) fraud and unauthorized ACH and wire transfers continue to rise at an alarming pace. What we are seeing across recent investigations is not just isolated incidents, but organized, repeatable playbooks executed by sophisticated threat actors targeting individuals, businesses, and financial institutions alike.

Once attackers gain access to a victim's online banking environment, the clock starts ticking — and funds can disappear rapidly through a series of carefully structured transactions designed to obscure the money trail.

How the Fraud Typically Unfolds

In many recent cases, threat actors first infiltrate an online banking account through credential compromise, malware, phishing, or device compromise. After gaining access, they initiate outbound ACH transfers or wires to accounts under their control.

But the fraud doesn't stop there.

Instead, funds are quickly moved again — often within minutes or hours — through second- and third-hop accounts. This layered movement serves one purpose: **to complicate recovery and frustrate tracing efforts.**

A notable trend investigators are seeing is transaction structuring:

1. Individual transfers often kept **under $50,000**
2. High transaction volume (20, 30, 40 — sometimes 80–90 transfers)
3. Rapid dispersal across multiple financial institutions

This fragmentation allows fraudsters to avoid triggering automated bank controls while simultaneously accelerating fund laundering.

The Critical Linchpin: Multi-Factor Authentication (MFA)

Despite the sophistication of these schemes, one common denominator continues to emerge: **compromise of multi-factor authentication (MFA).**

Threat actors are obtaining MFA codes through two primary methods:

1. Phone Takeovers (SIM Swaps or Device Compromise)

Attackers hijack a victim's phone number via SIM swap or mobile-account compromise. Once successful, MFA codes intended to protect the account are delivered directly to the fraudster.

2. Social Engineering the Victim

Equally common — and often more effective — is direct manipulation of the account holder.

Fraudsters spoof bank phone numbers and impersonate financial-institution personnel, convincing victims that suspicious activity is occurring. In the urgency of the moment, victims are persuaded to verbally provide MFA codes, unknowingly granting full account access.

This remains one of the most damaging and preventable entry points.

Practical Steps to Protect Yourself

While the tactics continue to evolve, several defensive measures remain highly effective:

1. Monitor Accounts Closely

Frequent review of banking activity can help identify unauthorized transactions early — when recovery chances are highest.

2. Never Share MFA Codes

Banks will **not** ask for MFA codes over the phone. Treat any request for an authentication code as a red flag.

3. Be Skeptical of Incoming Bank Calls

Fraudsters can spoof legitimate bank phone numbers. If you receive a call claiming to be from your bank:

Hang up

Locate the official customer-service number from your debit card or bank website

Call back directly

This simple step can stop many attacks in their tracks.

4. Strengthen Mobile-Carrier Security

Adding PINs and port-out protections to mobile accounts can reduce SIM-swap risk.

What to Do if You Suspect Fraud

Speed is critical. If suspicious activity is detected:

Immediately contact your bank

Document the activity

Report the incident to the FBI's IC3 (Internet Crime Complaint Center)

Engage experienced investigators early to assist with tracing and recovery

---

Final Thoughts

Account takeover fraud is no longer a niche cybercrime — it is a mainstream financial threat impacting individuals and organizations daily. The combination of social engineering, MFA compromise, and rapid multi-hop fund movement has created a challenging recovery environment.

However, awareness, vigilance, and rapid response remain powerful defenses.

If something feels off with your account, trust that instinct. Acting quickly can mean the difference between recovery and permanent loss.

Fraud groups figured out long ago how to operate at scale. What many people still underestimate is just how structured these operations have become. While they may not always be labeled as traditional "organized crime," their methodologies often fit that definition perfectly.

These groups operate with defined roles, infrastructure, and repeatable processes with phishing teams, account access specialists, money mule coordinators, cryptocurrency off-ramps, and laundering networks that move funds across jurisdictions within minutes. It's not random. It's a business model.

Understanding fraud as an organized operational ecosystem rather than isolated incidents is key to combating it effectively. Prevention, investigation, and recovery strategies must evolve to address the scale, coordination, and sophistication these groups now bring to the table.

Thanks to Stephen Dougherty, USSS (Retired) for his assistance in preparing this handout.

Doug Pollock, CFE
March 12, 2026

Four Policy Buckets Every Title Agency Should Implement in 2026

Wire fraud and impersonation scams continue to target real estate transactions. These four policy buckets provide a framework that managers can use to guide team awareness, internal procedures, and fraud prevention strategies.

I. Securing Communications

Many fraud attempts begin with compromised email accounts or intercepted communications. Title agencies should implement strong communication security policies.

Recommended policies:

- ☐ Use email security platforms such as Mimecast, Barracuda Email Security Gateway, or Microsoft Defender for Office 365.
- ☐ Review email filter reports weekly and share examples of blocked phishing attempts with staff.
- ☐ Require Multi-Factor Authentication (MFA) for email, title production systems, and banking tools.
- ☐ Require re-authentication at least every 12 hours.
- ☐ Provide employees with a one-click phishing reporting tool.
- ☐ Require secondary verification before any wiring instruction changes.

These steps help prevent business email compromise and manipulation of wire instructions.

II. Identity Verification

Identity verification is critical to preventing impersonation fraud in real estate transactions.

Recommended policies:

- ☐ Verify seller identity at order entry for purchase transactions.
- ☐ Reconfirm seller identity and bank credentials before closing.
- ☐ Reverify identity if parties, contact information, or bank instructions change.
- ☐ Apply enhanced verification for higher-risk transactions such as vacant land or non-owner-occupied sellers.
- ☐ For refinance transactions, verify borrower identity at order entry and reconfirm identity and bank information before distributing proceeds.

Proper verification procedures help prevent impersonation fraud and unauthorized changes to wire instructions.

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III. Education & Security Awareness

Technology alone cannot prevent fraud. Staff must be trained to recognize common fraud attempts and suspicious activity.

Recommended policies:

- [ ] Provide ongoing staff training on phishing, smishing, and vishing scams.
- [ ] Run internal simulated phishing campaigns to test employee awareness.
- [ ] Share real phishing examples received by the organization during weekly team meetings.
- [ ] Educate staff about malware threats, including keystroke logging and screen capture attacks.
- [ ] Educate referral partners and clients about the secure wire and funding process.

Regular education helps teams recognize threats early and respond appropriately.

IV. Incident Response Plan

Even with strong preventative measures, organizations must be prepared to respond quickly if fraud occurs. Every title agency should maintain an incident response plan aligned with ALTA guidance.

Recommended policies:

- [ ] Define procedures for responding to wire fraud, business email compromise, and cyber incidents.
- [ ] Assign internal ownership for incident response responsibilities.
- [ ] Identify external parties that must be notified, including banks, underwriters, and law enforcement.
- [ ] Ensure employees understand escalation procedures before an incident occurs.

An incident should never be the moment an organization decides how to respond.

Questions? Contact us.

More resources available at www.certifid.com.

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One Contract, Two Perspectives: A Practical Look at Avoiding FR/BAR Traps and Navigating Disputes & Interpleader

Kristen King Jaiven, Esq.
Attorney, Nishad Khan P.L.

Patti Moser
Owner / Broker / Manager, Horizon Realty of Alachua, Inc. and
Alachua Title Services, LLC

Colleen Coffield Sachs
Florida Senior State Counsel, Old Republic Title

One Contract, Two Perspectives

A Practical Look at Avoiding FR/BAR Traps and Navigating Disputes & Interpleader

Panel Presentation

Presenters:

Kristen King Jaiven, Esq.
Nishad Khan, P.L.

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Owner / Manager, Alachua Title Services, LLC

Colleen Coffield Sachs, Esq.
Senior State Counsel
Old Republic Title

Presentation Materials

The following contains selected statutory, regulatory, and contract documents referenced during the panel discussion. The materials are intended for educational purposes and practical guidance in identifying risk areas, understanding differing professional perspectives, and navigating disputes, escrow issues, and interpleader scenarios.

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"AS IS" Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

FloridaRealtors®

PARTIES: _____ ("Seller"), and _____ ("Buyer"), agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase and any riders and addenda ("Contract"):

1. PROPERTY DESCRIPTION:

(a) Street address, city, zip: _____

(b) Located in: _____ County, Florida. Property Tax ID #: _____

(c) Real Property: The legal description is _____

_____

_____

together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or by other terms of this Contract.

(d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), thermostat(s), doorbell(s), television wall mount(s) and television mounting hardware, security gate and other access devices, mailbox keys, and storm shutters/storm protection items and hardware ("Personal Property").

Other Personal Property items included in this purchase are: _____

_____

Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

(e) The following items are excluded from the purchase: _____

_____

SAMPLE

PURCHASE PRICE AND CLOSING

2. PURCHASE PRICE (U.S. currency): ..... **$** _____

(a) Initial deposit to be held in escrow in the amount of **(checks subject to Collection)** ..... $ _____
The initial deposit made payable and delivered to "Escrow Agent" named below
(CHECK ONE): (i) ☐ accompanies offer or (ii) ☐ is to be made within _____ (if left blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (ii) SHALL BE DEEMED SELECTED.
Escrow Agent Name: _____
Address: _____ Phone: _____
Email: _____ Fax: _____

(b) Additional deposit to be delivered to Escrow Agent within _____ (if left blank, then 10) days after Effective Date ..... $ _____
(All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

(c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 ..... _____

(d) Other: _____ ..... $ _____

(e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire transfer or other Collected funds (See STANDARD S) ..... $ _____

3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

(a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before _____, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the counter-offer is delivered.

(b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initialed and delivered this offer or final counter-offer ("Effective Date").

4. CLOSING; CLOSING DATE: The closing of this transaction shall occur when all funds required for closing are received by Closing Agent and Collected pursuant to STANDARD S and all closing documents required to be furnished by each party pursuant to this Contract are delivered ("Closing"). Unless modified by other provisions of

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this Contract, the Closing shall occur on _____ ("Closing Date"), at the time established by the Closing Agent.

5. EXTENSION OF CLOSING DATE:

(a) In the event Closing funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), if Paragraph 8(b) is checked, Loan Approval has been obtained, and lender's underwriting is complete, then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 7 days.

(b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be extended as provided in STANDARD G.

6. OCCUPANCY AND POSSESSION:

(a) Unless Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall have accepted the Property in its existing condition as of time of taking occupancy, see Rider T PRE-CLOSING OCCUPANCY BY BUYER.

(b) ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is subject to a lease(s) or any occupancy agreements (including seasonal and short-term vacation rentals) after Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D, except that tenant Estoppel Letters shall not be required on seasonal or short-term vacation rentals. If Property is intended to be occupied by Seller after Closing, see Rider U POST-CLOSING OCCUPANCY BY SELLER.

7. ASSIGNABILITY: (CHECK ONE): Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☐ may assign but not be released from liability under this Contract; or ☐ may not assign this Contract. IF NO BOX IS CHECKED, THEN BUYER MAY NOT ASSIGN THIS CONTRACT.

FINANCING

8. FINANCING:

☐ (a) This is a cash transaction with no financing contingency.

☐ (b) This Contract is contingent upon, within _____ (if left blank, then 30) days after Effective Date ("Loan Approval Period"): (1) Buyer obtaining approval of a ☐ conventional ☐ FHA ☐ VA or ☐ other _____ (describe) mortgage loan for purchase of the Property for a **(CHECK ONE):** ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed _____ % (if left blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of _____(if left blank, then 30) years ("Financing"); and (2) Buyer's mortgage broker or lender having received an appraisal or alternative valuation of the Property satisfactory to lender, if either is required by lender, which is sufficient to meet the terms required for lender to provide Financing for Buyer and proceed to Closing ("Appraisal").

(i) Buyer shall make application for Financing within _____ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing and Appraisal terms of Paragraph 8(b)(1) and (2), above, ("Loan Approval") within the Loan Approval Period and, thereafter, to close this Contract. Loan Approval which requires Buyer to sell other real property shall not be considered Loan Approval unless Rider V is attached.

Buyer's failure to use good faith and diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited to, timely furnishing all documents and information required by Buyer's mortgage broker and lender and paying for Appraisal and other fees and charges in connection with Buyer's application for Financing.

(ii) Buyer shall, upon written request, keep Seller and Broker fully informed about the status of Buyer's mortgage loan application, loan processing, appraisal, and Loan Approval, including any Property related conditions of Loan Approval. Buyer authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose such status

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and progress and release preliminary and finally executed closing disclosures and settlement statements, as appropriate and allowed, to Seller and Broker.

(iii) If within the Loan Approval Period, Buyer obtains Loan Approval, Buyer shall notify Seller of same in writing prior to expiration of the Loan Approval Period; or, if Buyer is unable to obtain Loan Approval within Loan Approval Period but Buyer is satisfied with Buyer's ability to obtain Loan Approval and proceed to Closing, Buyer shall deliver written notice to Seller confirming same, prior to the expiration of the Loan Approval Period.

(iv) If Buyer is unable to obtain Loan Approval within the Loan Approval Period, or cannot timely meet the terms of Loan Approval, all after the exercise of good faith and diligent effort, Buyer may terminate this Contract by delivering written notice of termination to Seller prior to expiration of the Loan Approval Period; whereupon, provided Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(v) If Buyer fails to timely deliver any written notice provided for in Paragraph 8(b)(iii) or (iv), above, to Seller prior to expiration of the Loan Approval Period, then Buyer shall proceed forward with this Contract as though Paragraph 8(a), above, had been checked as of the Effective Date; provided, however, Seller may elect to terminate this Contract by delivering written notice of termination to Buyer within 3 days after expiration of the Loan Approval Period and, provided Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(vi) If Buyer has timely provided either written notice provided for in Paragraph 8b(iii), above, and Buyer thereafter fails to close this Contract, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; or (2) Property related conditions of the Loan Approval (specifically excluding the Appraisal valuation) have not been met unless such conditions are waived by other provisions of this Contract; in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

* ☐ (c) Assumption of existing mortgage (see Rider D for terms).

* ☐ (d) Purchase money note and mortgage to Seller (see Rider C for terms).

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CLOSING COSTS, FEES AND CHARGES

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

(a) **COSTS TO BE PAID BY SELLER:**

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- * Charges for FIRPTA withholding and reporting
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Seller's Closing Services
- Other: _____

If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11, a sum equal to 125% of estimated costs to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount(s) shall be returned to Seller.

(b) **COSTS TO BE PAID BY BUYER:**

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- * Other: _____
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9(c)(iii) is checked)
- Buyer's Closing Services

* (c) **TITLE EVIDENCE AND INSURANCE:** At least _____ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance, or other evidence of title covering the Real Property, Seller shall furnish a copy to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium and title search (collectively, "Owner's Policy and Charges") shall be paid as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search"

means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 153, 159 or 170, F.S., in favor of any governmental body, authority or agency.

"Closing Services" shall have the meaning ascribed to that term in Section 627.7711(1)(a), F.S.; each party shall bear their own Closing Services fees payable to Closing Agent or such other provider(s) as each party may select.

(CHECK ONE):

* ☐ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges. Buyer shall pay premiums for any lender's title policy and endorsements; or

* ☐ (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and premiums for any lender's title policy and endorsements; or

* ☐ (iii) [**MIAMI-DADE/BROWARD REGIONAL PROVISION**]**:** Buyer shall designate Closing Agent and pay for premiums for owner's title policy, any lender's title policy and endorsements, and any post-Closing continuation. Seller shall pay actual costs for: (A) a title search or continuation of title evidence acceptable to Buyer's title insurance underwriter, not to exceed $_____ (if left blank, then $200.00); (B) tax search; and (C) municipal lien search.

(d) **SURVEY:** At least 5 days prior to Closing Date, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

(e) * * **HOME WARRANTY:** At Closing, ☐ Buyer ☐ Seller ☐ N/A shall pay for a home warranty plan issued by _____ at a cost not to exceed $_____. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

(f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments **(CHECK ONE):**

* ☐ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.

* ☐ (b) Seller shall pay, in full, prior to or at the time of Closing, any assessment(s) allowed by the public body to be prepaid. For any assessment(s) which the public body does not allow prepayment, OPTION (a) shall be deemed selected for such assessment(s).

IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.

This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., or special assessment(s) imposed by a special district pursuant to Chapter 189, F.S., which lien(s) or assessment(s) shall be prorated pursuant to STANDARD K.

DISCLOSURES

10. DISCLOSURES:

(a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

(b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed or otherwise disposed of pursuant to Section 553.79, F.S. If Seller identifies permits which have not been closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.

(c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.

(d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area"

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or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer * may terminate this Contract by delivering written notice to Seller within _____ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property.

(e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.

(f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.

(g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**

(h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

(i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.

(j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

11. PROPERTY MAINTENANCE: Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement"). See Paragraph 9(a) for escrow procedures, if applicable.

12. PROPERTY INSPECTION; RIGHT TO CANCEL:

(a) ***PROPERTY INSPECTIONS AND RIGHT TO CANCEL: Buyer shall have _____ (if left blank, then 15) days after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.***

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(b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.

(c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed permits, and shall promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve such permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations, consents, or other documents necessary for Buyer to conduct inspections and have estimates of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money.

(d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

ESCROW AGENT AND BROKER

13. ESCROW AGENT: Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to Collection, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become Collected shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

14. PROFESSIONAL ADVICE; BROKER LIABILITY: Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor.

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Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

DEFAULT AND DISPUTE RESOLUTION

15. DEFAULT:

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract.

(b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

16. DISPUTE RESOLUTION: Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

(a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

(b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

17. ATTORNEY'S FEES; COSTS: The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

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STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

18. STANDARDS:

A. TITLE:

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

B. SURVEY: If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

C. INGRESS AND EGRESS: Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

D. LEASE INFORMATION: Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits paid by tenant(s) or occupant(s)("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s) the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations thereunder.

E. LIENS: Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

F. TIME: Time is of the essence in this Contract. Calendar days, based on where the Property is located, shall be used in computing time periods. Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, national legal public holiday (as defined in 5 U.S.C. Sec. 6103(a)), or a day on which a national legal public holiday is observed because it fell on a Saturday or Sunday, shall extend to the next calendar day which is not a Saturday, Sunday, national legal public holiday, or a day on which a national legal public holiday is observed.

G. FORCE MAJEURE: Buyer or Seller shall not be required to exercise or perform any right or obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the right or obligation, or the availability of services, insurance, or required approvals essential to Closing, is disrupted, delayed,

SAMPLE

caused or prevented by a Force Majeure event. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fires, or other acts of God, unusual transportation delays, wars, insurrections, civil unrest, or acts of terrorism, governmental actions and mandates, government shut downs, epidemics, or pandemics, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. The Force Majeure event will be deemed to have begun on the first day the effect of the Force Majeure prevents performance, non-performance, or the availability of services, insurance or required approvals essential to Closing. All time periods affected by the Force Majeure event, including Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure event no longer prevents performance under this Contract; provided, however, if such Force Majeure event continues to prevent performance under this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

H. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:

(i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **FinCEN REAL ESTATE REPORTING OBLIGATION**. Section 1031.320 of Chapter 31 of the Code of Federal Regulations ("CFR") requires that certain residential real estate transactions without institutional lender financing, where at least one buyer/transferee is a legal entity, limited liability company, corporation, partnership, trust, trustee or other non-natural person, must be reported to the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") beginning March 1, 2026 (a "FinCEN Report"). If this transaction requires completion of a FinCEN Report, then Seller and Buyer shall, no later than the day prior to Closing, provide Closing Agent with all information and documentation necessary to enable Closing Agent to complete the FinCEN Report. Such information and documentation includes, without limitation, full legal names, dates of birth, residential street addresses, and the IRS taxpayer identification number of the beneficial owners of the parties, as further defined and described in the CFR. Each party agrees to promptly provide and consents to Closing Agent's collection and report of said information to FinCEN. Buyer shall pay all costs and fees charged by Closing Agent to prepare and file the FinCEN Report**.**

(iv) **PROCEDURE:** The deed shall be recorded upon Collection of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to Collection of all closing funds,** disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

J. ESCROW CLOSING PROCEDURE: If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

K. PRORATIONS; CREDITS: The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD pursuant to Chapter 190, F.S., and assessments

SAMPLE

imposed by special district(s) pursuant to Chapter 189, F.S.), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH: Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

M. RISK OF LOSS: If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5% or receive a refund of the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

N. 1031 EXCHANGE: If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION: Neither this Contract nor any notice of it shall be recorded in any public or official records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may only be made by mail, facsimile transmission, personal delivery or email. A facsimile or electronic copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

P. INTEGRATION; MODIFICATION: This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

Q. WAIVER: Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

S. COLLECTION or COLLECTED: "Collection" or "Collected" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been Collected in Closing Agent's accounts.

T. RESERVED.

SAMPLE

U. APPLICABLE LAW AND VENUE: This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

V. FIRPTA TAX WITHHOLDING: If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding.

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum required, if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional Collected funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

W. RESERVED

X. BUYER WAIVER OF CLAIMS: ***To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming*** **by, through, under or against the Buyer.** ***This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.***

SAMPLE

ADDENDA AND ADDITIONAL TERMS

* **19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this Contract (**Check if applicable**):

- ☐ A. Condominium Rider
- ☐ B. Homeowners' Assn.
- ☐ C. Seller Financing
- ☐ D. Mortgage Assumption
- ☐ E. FHA/VA Financing
- ☐ F. Appraisal Contingency
- ☐ G. Short Sale
- ☐ H. Homeowners'/Flood Ins
- ☐ I. RESERVED
- ☐ J. Interest-Bearing Acct.
- ☐ K. RESERVED
- ☐ L. RESERVED
- ☐ M. Defective Drywall
- ☐ N. Coastal Construction Control Line
- ☐ O. Insulation Disclosure
- ☐ P. Lead Paint Disclosure (Pre-1978)
- ☐ Q. Housing for Older Persons
- ☐ R. Rezoning
- ☐ S. Lease Purchase/ Lease Option
- ☐ T. Pre-Closing Occupancy
- ☐ U. Post-Closing Occupancy
- ☐ V. Sale of Buyer's Property
- ☐ W. Back-up Contract
- ☐ X. Kick-out Clause
- ☐ Y. Seller's Attorney Approval
- ☐ Z. Buyer's Attorney Approval
- ☐ AA. Licensee Property Interest
- ☐ BB. Binding Arbitration
- ☐ CC. Miami-Dade County Special Taxing District Disclosure
- ☐ DD. Seasonal/Vacation Rentals
- ☐ EE. Qualifying Improvements Disclosure
- ☐ FF. Credit Related to Buyers Broker Compensation
- ☐ GG. Sellers Agreement with Respect to Buyers Broker Compensation
- ☐ Other:_____ _____

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20. ADDITIONAL TERMS: _____

_____

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_____

COUNTER-OFFER

☐ Seller counters Buyer's offer.

SAMPLE

[The remainder of this page is intentionally left blank.

This Contract continues with Line 610 on Page 13 of 13.]

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THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.

Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.

AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

ATTENTION: SELLER AND BUYER

CONVEYANCES TO FOREIGN BUYERS: Part III of Chapter 692, Sections 692.201 - 692.205, Florida Statutes, 2023 (the "Act"), in part, limits and regulates the sale, purchase and ownership of certain Florida properties by certain buyers who are associated with a "foreign country of concern", namely: the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic. **It is a crime to buy or knowingly sell property in violation of the Act.**

At time of purchase, Buyer must provide a signed Affidavit which complies with the requirements of the Act. Seller and Buyer are advised to seek legal counsel regarding their respective obligations and liabilities under the Act.

SAMPLE

Buyer: _____ Date: _____

Buyer: _____ Date: _____

Seller: _____ Date: _____

Seller: _____ Date: _____

Buyer's address for purposes of notice	Seller's address for purposes of notice
_____	_____
_____	_____
_____	_____

BROKER: Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any offer of compensation made by Seller or Listing Broker to Cooperating Brokers.

_____	_____
Cooperating Sales Associate, if any	**Listing Sales Associate**
_____	_____
Cooperating Broker, if any	**Listing Broker**

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Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

FloridaRealtors®

PARTIES: _____ ("Seller"), and _____ ("Buyer"), agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this Residential Contract For Sale And Purchase and any riders and addenda ("Contract"):

1. PROPERTY DESCRIPTION:

(a) Street address, city, zip: _____

(b) Located in: _____ County, Florida. Property Tax ID #: _____

(c) Real Property: The legal description is _____

_____

_____

together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or by other terms of this Contract.

(d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), thermostat(s), doorbell(s), television wall mount(s) and television mounting hardware, security gate and other access devices, mailbox keys, and storm shutters/storm protection items and hardware ("Personal Property").

Other Personal Property items included in this purchase are: _____

_____

Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.

(e) The following items are excluded from the purchase: _____

_____

SAMPLE

PURCHASE PRICE AND CLOSING

2. PURCHASE PRICE (U.S. currency): ..... **$** _____

(a) Initial deposit to be held in escrow in the amount of **(checks subject to Collection)** ..... $ _____
The initial deposit made payable and delivered to "Escrow Agent" named below
(CHECK ONE): (i) ☐ accompanies offer or (ii) ☐ is to be made within _____ (if left blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (ii) SHALL BE DEEMED SELECTED.
Escrow Agent Name: _____
Address: _____ Phone: _____
Email: _____ Fax: _____

(b) Additional deposit to be delivered to Escrow Agent within _____ (if left blank, then 10) days after Effective Date ..... $ _____
(All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

(c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8 ..... _____

(d) Other: _____ ..... $ _____

(e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire transfer or other Collected funds (See STANDARD S) ..... $ _____

3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:

(a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before _____, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the counter-offer is delivered.

(b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initialed and delivered this offer or final counter-offer ("Effective Date").

4. CLOSING; CLOSING DATE: The closing of this transaction shall occur when all funds required for closing are received by Closing Agent and Collected pursuant to STANDARD S and all closing documents required to be furnished by each party pursuant to this Contract are delivered ("Closing"). Unless modified by other provisions of

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this Contract, the Closing shall occur on _____ ("Closing Date"), at the time established by the Closing Agent.

5. EXTENSION OF CLOSING DATE:

(a) In the event Closing funds from Buyer's lender(s) are not available on Closing Date due to Consumer Financial Protection Bureau Closing Disclosure delivery requirements ("CFPB Requirements"), if Paragraph 8(b) is checked, Loan Approval has been obtained, and lender's underwriting is complete, then Closing Date shall be extended for such period necessary to satisfy CFPB Requirements, provided such period shall not exceed 7 days.

(b) If an event constituting "Force Majeure" causes services essential for Closing to be unavailable, including the unavailability of utilities or issuance of hazard, wind, flood or homeowners' insurance, Closing Date shall be extended as provided in STANDARD G.

6. OCCUPANCY AND POSSESSION:

(a) Unless Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall have accepted the Property in its existing condition as of time of taking occupancy (see Rider T PRE-CLOSING OCCUPANCY BY BUYER), except with respect to any items identified by Buyer pursuant to Paragraph 12, prior to taking occupancy, which require repair, replacement, treatment or remedy.

(b) ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING**. If Property is subject to a lease(s) or any occupancy agreements (including seasonal and short-term vacation rentals) after Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D, except that tenant Estoppel Letters shall not be required on seasonal or short-term vacation rentals. If Property is intended to be occupied by Seller after Closing, see Rider U POST-CLOSING OCCUPANCY BY SELLER.

7. ASSIGNABILITY: (CHECK ONE): Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☐ may assign but not be released from liability under this Contract; or ☐ may not assign this Contract. IF NO BOX IS CHECKED, THEN BUYER MAY NOT ASSIGN THIS CONTRACT.

FINANCING

8. FINANCING:

☐ (a) This is a cash transaction with no financing contingency.

☐ (b) This Contract is contingent upon, within _____ (if left blank, then 30) days after Effective Date ("Loan Approval Period"): (1) Buyer obtaining approval of a ☐ conventional ☐ FHA ☐ VA or ☐ other _____ (describe) mortgage loan for purchase of the Property for a **(CHECK ONE):** ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed _____ % (if left blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of _____(if left blank, then 30) years ("Financing"); and (2) Buyer's mortgage broker or lender having received an appraisal or alternative valuation of the Property satisfactory to lender, if either is required by lender, which is sufficient to meet the terms required for lender to provide Financing for Buyer and proceed to Closing ("Appraisal") .

(i) Buyer shall make application for Financing within _____ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain approval of a loan meeting the Financing and Appraisal terms of Paragraph 8(b)(1) and (2), above, ("Loan Approval") within the Loan Approval Period and, thereafter, to close this Contract. Loan Approval which requires Buyer to sell other real property shall not be considered Loan Approval unless Rider V is attached.

Buyer's failure to use good faith and diligent effort to obtain Loan Approval during the Loan Approval Period shall be considered a default under the terms of this Contract. For purposes of this provision, "diligent effort" includes, but is not limited to, timely furnishing all documents and information required by Buyer's mortgage broker and lender and paying for Appraisal and other fees and charges in connection with Buyer's application for Financing.

(ii) Buyer shall, upon written request, keep Seller and Broker fully informed about the status of Buyer's mortgage loan application, loan processing, appraisal, and Loan Approval, including any Property related conditions

SAMPLE

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of Loan Approval. Buyer authorizes Buyer's mortgage broker, lender, and Closing Agent to disclose such status and progress and release preliminary and finally executed closing disclosures and settlement statements, as appropriate and allowed, to Seller and Broker.

(iii) If within the Loan Approval Period, Buyer obtains Loan Approval, Buyer shall notify Seller of same in writing prior to expiration of the Loan Approval Period; or, if Buyer is unable to obtain Loan Approval within the Loan Approval Period but Buyer is satisfied with Buyer's ability to obtain Loan Approval and proceed to Closing, Buyer shall deliver written notice to Seller confirming same, prior to the expiration of the Loan Approval Period.

(iv) If Buyer is unable to obtain Loan Approval within the Loan Approval Period, or cannot timely meet the terms of Loan Approval, all after the exercise of good faith and diligent effort, Buyer may terminate this Contract by delivering written notice of termination to Seller prior to expiration of the Loan Approval Period; whereupon, provided Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(v) If Buyer fails to timely deliver any written notice provided for in Paragraph 8(b)(iii) or (iv), above, to Seller prior to expiration of the Loan Approval Period, then Buyer shall proceed forward with this Contract as though Paragraph 8(a), above, had been checked as of the Effective Date; provided, however, Seller may elect to terminate this Contract by delivering written notice of termination to Buyer within 3 days after expiration of the Loan Approval Period and, provided Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract.

(vi) If Buyer has timely provided either written notice provided for in Paragraph 8(b)(iii), above, and Buyer thereafter fails to close this Contract, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default or inability to satisfy other contingencies of this Contract; or (2) Property related conditions of the Loan Approval (specifically excluding the Appraisal valuation) have not been met unless such conditions are waived by other provisions of this Contract; in which event(s) the Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

* ☐ (c) Assumption of existing mortgage (see Rider D for terms).

* ☐ (d) Purchase money note and mortgage to Seller (see Rider C for terms).

CLOSING COSTS, FEES AND CHARGES

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:

(a) **COSTS TO BE PAID BY SELLER:**

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges (if Paragraph 9(c)(i) is checked)
- Title search charges (if Paragraph 9(c)(iii) is checked)
- Municipal lien search (if Paragraph 9(c)(i) or (iii) is checked)
- HOA/Condominium Association estoppel fees
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Seller's Closing Services

* • Charges for FIRPTA withholding and reporting
- Other: _____

Seller shall pay the following amounts/percentages of the Purchase Price for the following costs and expenses:

(i) up to $ _____ or _____ % (1.5% if left blank) for General Repair Items ("General Repair Limit"); and

(ii) up to $ _____ or _____ % (1.5% if left blank) for WDO treatment and repairs ("WDO Repair Limit"); and

(iii) up to $ _____ or _____ % (1.5% if left blank) for costs associated with closing out open or expired building permits and obtaining required building permits for any existing improvement for which a permit was not obtained ("Permit Limit").

If, prior to Closing, Seller is unable to meet the Maintenance Requirement as required by Paragraph 11 or the repairs, replacements, treatments or permitting as required by Paragraph 12, then sums equal to 125% of estimated costs to complete the applicable item(s) (but not in excess of applicable General Repair, WDO Repair, and Permit Limits set forth above, if any) shall be escrowed at Closing. If actual costs of Maintenance Requirement or required repairs, replacements, treatment or permitting exceed applicable escrowed amounts, Seller shall pay such actual costs (but not in excess of applicable General Repair, WDO Repair, and Permit Limits set forth above). Any unused portion of escrowed amount(s) shall be returned to Seller.

[The remainder of this page is intentionally left blank.
This Contract continues with Paragraph 9(b) on Page 4 of 14.]

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(b) **COSTS TO BE PAID BY BUYER:**

- Taxes and recording fees on notes and mortgages
- Recording fees for deed and financing statements
- Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked)
- Survey (and elevation certification, if required)
- Lender's title policy and endorsements
- HOA/Condominium Association application/transfer fees
- Municipal lien search (if Paragraph 9(c)(ii) is checked)
- Other: _____
- Loan expenses
- Appraisal fees
- Buyer's Inspections
- Buyer's attorneys' fees
- All property related insurance
- Owner's Policy Premium (if Paragraph 9(c)(iii) is checked)
- Buyer's Closing Services

(c) **TITLE EVIDENCE AND INSURANCE:** At least _____ (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance, or other evidence of title covering the Real Property, Seller shall furnish a copy to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium and title search (collectively, "Owner's Policy and Charges") shall be paid as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 153, 159 or 170, F.S., in favor of any governmental body, authority or agency.

"Closing Services" shall have the meaning ascribed to that term in Section 627.7711(1)(a), F.S.; each party shall bear their own Closing Services fees payable to Closing Agent or such other provider(s) as each party may select.

(**CHECK ONE**):

☐ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges. Buyer shall pay premiums for any lender's title policy and endorsements; or

☐ (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and premiums for any lender's title policy and endorsements; or

☐ (iii) [**MIAMI-DADE/BROWARD REGIONAL PROVISION**]: Buyer shall designate Closing Agent and pay for premiums for owner's title policy, any lender's title policy and endorsements, and any post-Closing continuation. Seller shall pay actual costs for: (A) a title search or continuation of title evidence acceptable to Buyer's title insurance underwriter, not to exceed $_____ (if left blank, then $200.00); (B) tax search; and (C) municipal lien search.

(d) **SURVEY:** At least 5 days prior to Closing Date, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

(e) **HOME WARRANTY:** At Closing, ☐ Buyer ☐ Seller ☐ N/A shall pay for a home warranty plan issued by _____ at a cost not to exceed $_____. A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

(f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments **(CHECK ONE):**

☐ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.

☐ (b) Seller shall pay, in full, prior to or at the time of Closing, any assessment(s) allowed by the public body to be prepaid. For any assessment(s) which the public body does not allow prepayment, OPTION (a) shall be deemed selected for such assessment(s).

IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.

This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., or special assessment(s) imposed by a special district pursuant to Chapter 189, F.S., which lien(s) or assessment(s) shall be prorated pursuant to STANDARD K.

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DISCLOSURES

10. DISCLOSURES:

(a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

(b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed or otherwise disposed of pursuant to Section 553.79, F.S. If Seller identifies permits which have not been closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.

(c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional. See Rider I MOLD INSPECTION.

(d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer * may terminate this Contract by delivering written notice to Seller within _____ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property.

(e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.

(f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.

(g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE: BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.**

(h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

(i) **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"):** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.

(j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation.

PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

11. PROPERTY MAINTENANCE: Except for ordinary wear and tear and Casualty Loss, and those repairs, replacements or treatments required to be made by this Contract, Seller shall maintain the Property, including, but

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not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("Maintenance Requirement"). See Paragraph 9(a) for escrow procedures, if applicable.

12. PROPERTY INSPECTION AND REPAIR:

(a) **INSPECTION PERIOD:** Buyer shall have _____ (if left blank, then 15) days after Effective Date ("Inspection Period"), within which Buyer may, at Buyer's expense, conduct "General", "WDO", and "Permit" Inspections as described below. If Buyer fails to timely deliver to Seller a written notice or report required by (b), (c), or (d) below, then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported. If this Contract does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its completion.

(b) **GENERAL PROPERTY INSPECTION AND REPAIR:**

(i) **General Inspection:** Those items specified in Paragraph 12(b) (ii) below, which Seller is obligated to repair or replace ("General Repair Items") may be inspected ("General Inspection") by a person who specializes in and holds an occupational license (if required by law) to conduct home inspections or who holds a Florida license to repair and maintain the items inspected ("Professional Inspector"). Buyer shall, within the Inspection Period, inform Seller of any General Repair Items that are not in the condition required by (b)(ii) below by delivering to Seller a written notice and upon written request by Seller a copy of the portion of Professional Inspector's written report dealing with such items.

(ii) **Property Condition:** The following items shall be free of leaks, water damage or structural damage: ceiling, roof (including fascia and soffits), exterior and interior walls, doors, windows, and foundation. The above items together with pool, pool equipment, non-leased major appliances, heating, cooling, mechanical, electrical, security, sprinkler, septic, and plumbing systems and machinery, seawalls, dockage, watercraft lift(s) and related equipment, are, and shall be maintained until Closing, in "Working Condition" (defined below). Torn screens (including pool and patio screens), fogged windows, and missing roof tiles or shingles shall be repaired or replaced by Seller prior to Closing. Seller is not required to repair or replace "Cosmetic Conditions" (defined below), unless the Cosmetic Conditions resulted from a defect in an item Seller is obligated to repair or replace. "Working Condition" means operating in the manner in which the item was designed to operate. "Cosmetic Conditions" means aesthetic imperfections that do not affect Working Condition of the item, including, but not limited to: pitted marcite; tears, worn spots and discoloration of floor coverings, wallpapers, or window treatments; nail holes, scrapes, scratches, dents, chips or caulking in ceilings, walls, flooring, tile, fixtures, or mirrors; and minor cracks in walls, floor tiles, windows, driveways, sidewalks, pool decks, and garage and patio floors. Cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual leaks, leakage or structural damage.

(iii) **General Property Repairs:** Seller is only obligated to make such general repairs as are necessary to bring items into the condition specified in Paragraph 12(b) (ii) above. Seller shall within 10 days after receipt of Buyer's written notice or General Inspection report, either have the reported repairs to General Repair Items completed at Seller's expense, or have repairs estimated by an appropriately licensed person and a copy delivered to Buyer, or have a second inspection made by a Professional Inspector and provide a copy of such report and estimates of repairs to Buyer. If Buyer's and Seller's inspection reports differ and the parties cannot resolve the differences, Buyer and Seller together shall choose, and equally split the cost of, a third Professional Inspector, whose written report shall be binding on the parties.

If cost to repair General Repair Items equals or is less than the General Repair Limit, Seller shall have repairs made in accordance with Paragraph 12(f). If cost to repair General Repair Items exceeds the General Repair Limit, then within 5 days after a party's receipt of the last estimate: (A) Seller may elect to pay the excess by delivering written notice to Buyer, or (B) Buyer may deliver written notice to Seller designating which repairs of General Repair Items Seller shall make (at a total cost to Seller not exceeding the General Repair Limit) and agreeing to accept the balance of General Repair Items in their "as is" condition, subject to Seller's continuing Maintenance Requirement. If neither party delivers such written notice to the other, then either party may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(c) **WOOD DESTROYING ORGANISM ("WDO") INSPECTION AND REPAIR:**

(i) **WDO Inspection:** The Property may be inspected by a Florida-licensed pest control business ("WDO Inspector") to determine the existence of past or present WDO infestation and damage caused by infestation ("WDO Inspection"). Buyer shall, within the Inspection Period, deliver a copy of the WDO Inspector's written report to Seller if any evidence of WDO infestation or damage is found. "Wood Destroying Organism" ("WDO") means arthropod or plant life, including termites, powder-post beetles, oldhouse borers and wood-decaying fungi, that damages or infests seasoned wood in a structure, excluding fences.

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(ii) **WDO Repairs:** If Seller previously treated the Property for the type of WDO found by Buyer's WDO Inspection, Seller does not have to retreat the Property if there is no visible live infestation, and Seller, at Seller's cost, transfers to Buyer at Closing a current full treatment warranty for the type of WDO found. Seller shall within 10 days after receipt of Buyer's WDO Inspector's report, have reported WDO damage estimated by an appropriately licensed person, necessary corrective treatment, if any, estimated by a WDO Inspector, and a copy delivered to Buyer. Seller shall have treatments and repairs made in accordance with Paragraph 12(f) below up to the WDO Repair Limit. If cost to treat and repair the WDO infestations and damage to Property exceeds the WDO Repair Limit, then within 5 days after receipt of Seller's estimate, Buyer may deliver written notice to Seller agreeing to pay the excess, or designating which WDO repairs Seller shall make (at a total cost to Seller not exceeding the WDO Repair Limit), and accepting the balance of the Property in its "as is" condition with regard to WDO infestation and damage, subject to Seller's continuing Maintenance Requirement. If Buyer does not deliver such written notice to Seller, then either party may terminate this Contract by written notice to the other, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(d) **INSPECTION AND CLOSE-OUT OF BUILDING PERMITS:**

(i) **Permit Inspection:** Buyer may have an inspection and examination of records and documents made to determine whether there exist any open or expired building permits or unpermitted improvements to the Property ("Permit Inspection"). Buyer shall, within the Inspection Period, deliver written notice to Seller of the existence of any open or expired building permits or unpermitted improvements to the Property. If Buyer's inspection of the Property identifies permits which have not been properly closed or improvements which were not permitted, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open permits or unpermitted improvements.

(ii) **Close-Out of Building Permits:** Seller shall, within 10 days after receipt of Buyer's Permit Inspection notice, have an estimate of costs to remedy Permit Inspection items prepared by an appropriately licensed person and a copy delivered to Buyer. No later than 5 days prior to Closing Date, Seller shall, up to the Permit Limit, have open and expired building permits identified by Buyer or known to Seller closed by the applicable governmental entity, and obtain and close any required building permits for improvements to the Property. Prior to Closing Date, Seller will provide Buyer with any written documentation that all open and expired building permits identified by Buyer or known to Seller have been closed out and that Seller has obtained and closed required building permits for improvements to the Property. If final permit inspections cannot be performed due to delays by the governmental entity, Closing Date shall be extended for up to 10 days to complete such final inspections, failing which, either party may terminate this Contract, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

If cost to close open or expired building permits or to remedy any permit violation of any governmental entity exceeds Permit Limit, then within 5 days after a party's receipt of estimates of cost to remedy: (A) Seller may elect to pay the excess by delivering written notice to Buyer; or (B) Buyer may deliver written notice to Seller accepting the Property in its "as is" condition with regard to building permit status and agreeing to receive credit from Seller at Closing in the amount of Permit Limit. If neither party delivers such written notice to the other, then either party may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(e) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the Maintenance Requirement, has made repairs and replacements required by this Contract, and has met all other contractual obligations.

(f) **REPAIR STANDARDS; ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** All repairs and replacements shall be completed in a good and workmanlike manner by an appropriately licensed person, in accordance with all requirements of law, and shall consist of materials or items of quality, value, capacity and performance comparable to, or better than, that existing as of the Effective Date. Except as provided in Paragraph 12(c)(ii), at Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

ESCROW AGENT AND BROKER

13. ESCROW AGENT: Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to Collection, disburse them in accordance with terms and conditions of this

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Contract. Failure of funds to become Collected shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

In any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

14. PROFESSIONAL ADVICE; BROKER LIABILITY: Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

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DEFAULT AND DISPUTE RESOLUTION

15. DEFAULT:

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract.

(b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

16. DISPUTE RESOLUTION: Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

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(a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

(b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

17. ATTORNEY'S FEES; COSTS: The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

18. STANDARDS:

A. TITLE:

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, unless waived by Paragraph 12 (a), there exists at Closing no violation of the foregoing and none prevent use of the Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

B. SURVEY: If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a

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prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

C. INGRESS AND EGRESS: Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

D. LEASE INFORMATION: Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits paid by tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s) the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any, differ materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s) fail or refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations thereunder.

E. LIENS: Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

F. TIME: Time is of the essence in this Contract. Calendar days, based on where the Property is located, shall be used in computing time periods. Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, national legal public holiday (as defined in 5 U.S.C. Sec. 6103(a)), or a day on which a national legal public holiday is observed because it fell on a Saturday or Sunday, shall extend to the next calendar day which is not a Saturday, Sunday, national legal public holiday, or a day on which a national legal public holiday is observed.

G. FORCE MAJEURE: Buyer or Seller shall not be required to exercise or perform any right or obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the right or obligation, or the availability of services, insurance, or required approvals essential to Closing, is disrupted, delayed, caused or prevented by a Force Majeure event. "Force Majeure" means: hurricanes, floods, extreme weather, earthquakes, fires, or other acts of God, unusual transportation delays, wars, insurrections, civil unrest, or acts of terrorism, governmental actions and mandates, government shut downs, epidemics, or pandemics, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. The Force Majeure event will be deemed to have begun on the first day the effect of the Force Majeure prevents performance, non-performance, or the availability of services, insurance or required approvals essential to Closing. All time periods affected by the Force Majeure event, including Closing Date, will be extended a reasonable time up to 7 days after the Force Majeure event no longer prevents performance under this Contract; provided, however, if such Force Majeure event continues to prevent performance under this Contract more than 30 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

H. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:

(i) **LOCATION:** Closing will be conducted by the attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title insurance and will take place in the county where the Real Property is located at the office of the Closing Agent, or at such other location agreed to by the parties. If there is no title insurance, Seller will designate Closing Agent. Closing may be conducted by mail, overnight courier, or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall, at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid

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receipts for all work done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation certification, and documents required by Buyer's lender.

(iii) **FinCEN REAL ESTATE REPORTING OBLIGATION**. Section 1031.320 of Chapter 31 of the Code of Federal Regulations ("CFR") requires that certain residential real estate transactions without institutional lender financing, where at least one buyer/transferee is a legal entity, limited liability company, corporation, partnership, trust, trustee or other non-natural person, must be reported to the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") beginning March 1, 2026 (a "FinCEN Report"). If this transaction requires completion of a FinCEN Report, then Seller and Buyer shall, no later than the day prior to Closing, provide Closing Agent with all information and documentation necessary to enable Closing Agent to complete the FinCEN Report. Such information and documentation includes, without limitation, full legal names, dates of birth, residential street addresses, and the IRS taxpayer identification number of the beneficial owners of the parties, as further defined and described in the CFR. Each party agrees to promptly provide and consents to Closing Agent's collection and report of said information to FinCEN. Buyer shall pay all costs and fees charged by Closing Agent to prepare and file the FinCEN Report**.**

(iv) **PROCEDURE:** The deed shall be recorded upon Collection of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to Collection of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to Seller.

J. ESCROW CLOSING PROCEDURE: If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

K. PRORATIONS; CREDITS: The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD pursuant to Chapter 190, F.S., and assessments imposed by special district(s) pursuant to Chapter 189, F.S.), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. In all cases, due allowance shall be made for the maximum allowable discounts and applicable homestead and other exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH: Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

M. RISK OF LOSS: If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to complete restoration (not to exceed 1.5% of Purchase Price) will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of

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Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

N. 1031 EXCHANGE: If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION: Neither this Contract nor any notice of it shall be recorded in any public or official records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may only be made by mail, facsimile transmission, personal delivery or email. A facsimile or electronic copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

P. INTEGRATION; MODIFICATION: This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

Q. WAIVER: Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

S. COLLECTION or COLLECTED: "Collection**"** or **"**Collected**"** means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been Collected in Closing Agent's accounts.

T. RESERVED.

U. APPLICABLE LAW AND VENUE: This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

V. FIRPTA TAX WITHHOLDING: If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code ("Code") requires the buyer of the real property to withhold up to 15% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding.

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller is a foreign person and has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum required, if any, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold the applicable percentage of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

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(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional Collected funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.
(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

ADDENDA AND ADDITIONAL TERMS

* **19. ADDENDA:** The following additional terms are included in the attached addenda or riders and incorporated into this Contract (**Check if applicable**):

- ☐ A. Condominium Rider
- ☐ B. Homeowners' Assn.
- ☐ C. Seller Financing
- ☐ D. Mortgage Assumption
- ☐ E. FHA/VA Financing
- ☐ F. Appraisal Contingency
- ☐ G. Short Sale
- ☐ H. Homeowners'/Flood Ins
- ☐ I. Mold Inspection
- ☐ J. Interest-Bearing Acct.
- ☐ K. "As Is"
- ☐ L. Right to Inspect/ Cancel
- ☐ M. Defective Drywall
- ☐ N. Coastal Construction Control Line
- ☐ O. Insulation Disclosure
- ☐ P. Lead Paint Disclosure (Pre-1978)
- ☐ Q. Housing for Older Persons
- ☐ R. Rezoning
- ☐ S. Lease Purchase/ Lease Option
- ☐ T. Pre-Closing Occupancy
- ☐ U. Post-Closing Occupancy
- ☐ V. Sale of Buyer's Property
- ☐ W. Back-up Contract
- ☐ X. Kick-out Clause
- ☐ Y. Seller's Attorney Approval
- ☐ Z. Buyer's Attorney Approval
- ☐ AA. Licensee Property Interest
- ☐ BB. Binding Arbitration
- ☐ CC. Miami-Dade County Special Taxing District Disclosure
- ☐ DD. Seasonal/Vacation Rentals
- ☐ EE. Qualifying Improvements Disclosure
- ☐ FF. Credit Related to Buyers Broker Compensation
- ☐ GG. Sellers Agreement with Respect to Buyers Broker Compensation
- ☐ Other:_____

*

20. ADDITIONAL TERMS:_____

COUNTER-OFFER

* ☐ Seller counters Buyer's offer.

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THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.

Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.

AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

ATTENTION: SELLER AND BUYER

CONVEYANCES TO FOREIGN BUYERS: Part III of Chapter 692, Sections 692.201 - 692.205, Florida Statutes, 2023 (the "Act"), in part, limits and regulates the sale, purchase and ownership of certain Florida properties by certain buyers who are associated with a "foreign country of concern", namely: the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic. **It is a crime to buy or knowingly sell property in violation of the Act.**

At time of purchase, Buyer must provide a signed affidavit which complies with the requirements of the Act. Seller and Buyer are advised to seek legal counsel regarding their respective obligations and liabilities under the Act.

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* Buyer: _____ Date: _____

* Buyer: _____ Date: _____

* Seller: _____ Date: _____

* Seller: _____ Date: _____

Buyer's address for purposes of notice	Seller's address for purposes of notice
* _____	_____
* _____	_____
* _____	_____

BROKER: Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the escrowed funds. This Contract shall not modify any offer of compensation made by Seller or Listing Broker to Cooperating Brokers.

* _____	_____
Cooperating Sales Associate, if any	**Listing Sales Associate**
* _____	_____
Cooperating Broker, if any	**Listing Broker**

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SAMPLE

Comprehensive Rider to the
Residential Contract For Sale And Purchase

If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____(SELLER) and _____(BUYER) concerning the Property described as _____
_____

Buyer's Initials _____ _____ ***Seller's Initials*** _____ _____

FF. CREDIT RELATED TO BUYER'S BROKER COMPENSATION

Buyer has entered into a separate brokerage agreement, as may be amended (a "Buyer Broker Agreement", which is NOT incorporated herein by this reference) with _____ (insert name of brokerage, "Buyer Broker").

At Closing, Seller agrees to credit Buyer the sum(s) described below, which for disclosure purposes only the parties agree is related to **Buyer's obligation under the Buyer Broker Agreement to pay all or a portion of Buyer Broker's compensation** (check one):

☐ _____% of the Purchase Price

☐ $_____

☐ _____% of the Purchase Price PLUS $_____

In the event the credit described above exceeds the amount allowed by Buyer's lender for such contributions, then, to the extent permitted by Buyer's lender, (check one; if no box is checked, then *the balance of the credit will be paid by Seller directly to Buyer Broker*) ☐ the balance of the credit will be paid by Seller directly to Buyer Broker, or ☐ the credit will be reduced to the maximum amount allowed by Buyer's lender.

In the event the credit described above exceeds the limit allowed by the Buyer Broker Agreement, then the credit will be adjusted to the amount allowed under the Buyer Broker Agreement, as may be amended.

This Rider FF shall not modify the Buyer Broker Agreement or any other compensation agreement made between Seller, Buyer, Seller Broker and/or Buyer Broker. Nothing in this Rider FF requires the Buyer or Buyer Broker to provide a copy of the Buyer Broker Agreement to the Seller or Seller Broker.

Broker commissions are not set by law and are fully negotiable.

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Form Simplicity

SAMPLE

Comprehensive Rider to the
Residential Contract For Sale And Purchase

If initialed by all parties, the clauses below will be incorporated into the Florida Realtors®/Florida Bar Residential Contract For Sale And Purchase between _____(SELLER) and _____(BUYER) concerning the Property described as _____
_____

Buyer's Initials_____ _____ ***Seller's Initials***_____ _____

GG. SELLER'S AGREEMENT WITH RESPECT TO BUYER'S BROKER COMPENSATION

This Contract is contingent upon (check one) ☐ Seller's Broker and Buyer's Broker or ☐ Seller and Buyer's Broker executing a compensation agreement with terms acceptable to Buyer ("Compensation Agreement") within ____ days (if left blank, then *three (3) days*) after the Effective Date ("Time Period"). If the Compensation Agreement described herein is not executed and delivered within the Time Period, then Buyer may, within three (3) days thereafter deliver written notice to Seller, terminating this Contract in which event the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract. If Buyer fails to timely deliver said written notice to Seller, this contingency shall have no further force or effect.

Broker commissions are not set by law and are fully negotiable.

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Serial#: **083265-800177-5245316**

Form Simplicity

Select Year: 2025 Go

The 2025 Florida Statutes

Title XXXII
REGULATION OF PROFESSIONS AND OCCUPATIONS

Chapter 475
REAL ESTATE BROKERS, SALES ASSOCIATES, SCHOOLS, AND APPRAISERS

View Entire Chapter

475.25 Discipline.—

(1) The commission may deny an application for licensure, registration, or permit, or renewal thereof; may place a licensee, registrant, or permittee on probation; may suspend a license, registration, or permit for a period not exceeding 10 years; may revoke a license, registration, or permit; may impose an administrative fine not to exceed $5,000 for each count or separate offense; and may issue a reprimand, and any or all of the foregoing, if it finds that the licensee, registrant, permittee, or applicant:

(a) Has violated any provision of s. 455.227(1) or s. 475.42. However, licensees under this part are exempt from the provisions of s. 455.227(1)(i).

(b) Has been guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest dealing by trick, scheme, or device, culpable negligence, or breach of trust in any business transaction in this state or any other state, nation, or territory; has violated a duty imposed upon her or him by law or by the terms of a listing contract, written, oral, express, or implied, in a real estate transaction; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in any such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to the guilt of the licensee that the victim or intended victim of the misconduct has sustained no damage or loss; that the damage or loss has been settled and paid after discovery of the misconduct; or that such victim or intended victim was a customer or a person in confidential relation with the licensee or was an identified member of the general public.

(c) Has advertised property or services in a manner which is fraudulent, false, deceptive, or misleading in form or content. The commission may adopt rules defining methods of advertising that violate this paragraph.

(d)1. Has failed to account or deliver to any person, including a licensee under this chapter, at the time which has been agreed upon or is required by law or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery, any personal property such as money, fund, deposit, check, draft, abstract of title, mortgage, conveyance, lease, or other document or thing of value, including a share of a real estate commission if a civil judgment relating to the practice of the licensee's profession has been obtained against the licensee and said judgment has not been satisfied in accordance with the terms of the judgment within a reasonable time, or any secret or illegal profit, or any divisible share or portion thereof, which has come into the licensee's hands and which is not the licensee's property or which the licensee is not in law or equity entitled to retain under the circumstances. However, if the licensee, in good faith, entertains doubt as to what person is entitled to the accounting and delivery of the escrowed property, or if conflicting demands have been made upon the licensee for the escrowed property, which property she or he still maintains in her or his

escrow or trust account, the licensee shall promptly notify the commission of such doubts or conflicting demands and shall promptly:

a. Request that the commission issue an escrow disbursement order determining who is entitled to the escrowed property;

b. With the consent of all parties, submit the matter to arbitration;

c. By interpleader or otherwise, seek adjudication of the matter by a court; or

d. With the written consent of all parties, submit the matter to mediation. The department may conduct mediation or may contract with public or private entities for mediation services. However, the mediation process must be successfully completed within 90 days following the last demand or the licensee shall promptly employ one of the other escape procedures contained in this section. Payment for mediation will be as agreed to in writing by the parties. The department may adopt rules to implement this section.

If the licensee promptly employs one of the escape procedures contained herein and abides by the order or judgment resulting therefrom, no administrative complaint may be filed against the licensee for failure to account for, deliver, or maintain the escrowed property. Under certain circumstances, which the commission shall set forth by rule, a licensee may disburse property from the licensee's escrow account without notifying the commission or employing one of the procedures listed in sub-subparagraphs a.-d. If the buyer of a residential condominium unit delivers to a licensee written notice of the buyer's intent to cancel the contract for sale and purchase, as authorized by s. 718.503, or if the buyer of real property in good faith fails to satisfy the terms in the financing clause of a contract for sale and purchase, the licensee may return the escrowed property to the purchaser without notifying the commission or initiating any of the procedures listed in sub-subparagraphs a.-d.

2. Has failed to deposit money in an escrow account when the licensee is the purchaser of real estate under a contract where the contract requires the purchaser to place deposit money in an escrow account to be applied to the purchase price if the sale is consummated.

(e) Has violated any of the provisions of this chapter or any lawful order or rule made or issued under the provisions of this chapter or chapter 455.

(f) Has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the activities of a licensed broker or sales associate, or involves moral turpitude or fraudulent or dishonest dealing. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the state shall be admissible as prima facie evidence of such guilt.

(g) Has had a broker's or sales associate's license revoked, suspended, or otherwise acted against, or has had an application for such licensure denied, by the real estate licensing agency of another state, territory, or country.

(h) Has shared a commission with, or paid a fee or other compensation to, a person not properly licensed as a broker, broker associate, or sales associate under the laws of this state, for the referral of real estate business, clients, prospects, or customers, or for any one or more of the services set forth in s. 475.01(1)(a). For the purposes of this section, it is immaterial that the person to whom such payment or compensation is given made the referral or performed the service from within this state or elsewhere; however, a licensed broker of this state may pay a referral fee or share a real estate brokerage commission with a broker licensed or registered under the laws of a foreign state so long as the foreign broker does not violate any law of this state.

(i) Has become temporarily incapacitated from acting as a broker or sales associate with safety to investors or

those in a fiduciary relation with her or him because of drunkenness, use of drugs, or temporary mental derangement; but suspension of a license in such a case shall be only for the period of such incapacity.

(j) Has rendered an opinion that the title to any property sold is good or merchantable, except when correctly based upon a current opinion of a licensed attorney at law, or has failed to advise a prospective purchaser to consult her or his attorney on the merchantability of the title or to obtain title insurance.

(k) Has failed, if a broker, to immediately place, upon receipt, any money, fund, deposit, check, or draft entrusted to her or him by any person dealing with her or him as a broker in escrow with a title company, banking institution, credit union, or savings and loan association located and doing business in this state, or to deposit such funds in a trust or escrow account maintained by her or him with some bank, credit union, or savings and loan association located and doing business in this state, wherein the funds shall be kept until disbursement thereof is properly authorized; or has failed, if a sales associate, to immediately place with her or his registered employer any money, fund, deposit, check, or draft entrusted to her or him by any person dealing with her or him as agent of the registered employer. The commission shall establish rules to provide for records to be maintained by the broker and the manner in which such deposits shall be made. A broker may place and maintain up to $5,000 of personal or brokerage funds in the broker's property management escrow account and up to $1,000 of personal or brokerage funds in the broker's sales escrow account. A broker shall be provided a reasonable amount of time to correct escrow errors if there is no shortage of funds and such errors pose no significant threat to economically harm the public. It is the intent of the Legislature that, in the event of legal proceedings concerning a broker's escrow account, the disbursement of escrowed funds not be delayed due to any dispute over the personal or brokerage funds that may be present in the escrow account.

(l) Has made or filed a report or record which the licensee knows to be false, has willfully failed to file a report or record required by state or federal law, has willfully impeded or obstructed such filing, or has induced another person to impede or obstruct such filing; but such reports or records shall include only those which are signed in the capacity of a licensed broker or sales associate.

(m) Has obtained a license by means of fraud, misrepresentation, or concealment.

(n) Is confined in any county jail, postadjudication; is confined in any state or federal prison or mental institution; is under home confinement ordered in lieu of institutional confinement; or, through mental disease or deterioration, can no longer safely be entrusted to competently deal with the public.

(o) Has been found guilty, for a second time, of any misconduct that warrants her or his suspension or has been found guilty of a course of conduct or practices which show that she or he is so incompetent, negligent, dishonest, or untruthful that the money, property, transactions, and rights of investors, or those with whom she or he may sustain a confidential relation, may not safely be entrusted to her or him.

(p) Has failed to inform the commission in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, any felony.

(q) Has violated any provision of s. 475.2755 or s. 475.278, including the duties owed under those sections.

(r) Has failed in any written listing agreement to include a definite expiration date, description of the property, price and terms, fee or commission, and a proper signature of the principal(s); and has failed to give the principal(s) a legible, signed, true and correct copy of the listing agreement within 24 hours of obtaining the written listing agreement. The written listing agreement shall contain no provision requiring the person signing the listing to notify the broker of the intention to cancel the listing after such definite expiration date.

(s) Has had a registration suspended, revoked, or otherwise acted against in any jurisdiction. The record of the disciplinary action certified or authenticated in such form as to be admissible in evidence under the laws of

the state shall be admissible as prima facie evidence of such disciplinary action.

(t) Has violated any standard of professional practice adopted by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of a real estate appraisal, as approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, as defined in s. 475.611. This paragraph does not apply to a real estate broker or sales associate who, in the ordinary course of business, performs a comparative market analysis, gives a broker price opinion, or gives an opinion of value of real estate. However, in no event may this comparative market analysis, broker price opinion, or opinion of value of real estate be referred to as an appraisal, as defined in s. 475.611.

(u) Has failed, if a broker, to direct, control, or manage a broker associate or sales associate employed by such broker. A rebuttable presumption exists that a broker associate or sales associate is employed by a broker if the records of the department establish that the broker associate or sales associate is registered with that broker. A record of licensure which is certified or authenticated in such form as to be admissible in evidence under the laws of the state is admissible as prima facie evidence of such registration.

(v) Has failed, if a broker, to review the brokerage's trust accounting procedures in order to ensure compliance with this chapter.

(2) A license may be revoked or canceled if it was issued through the mistake or inadvertence of the commission. Such revocation or cancellation shall not prejudice any subsequent application for licensure filed by the person against whom such action was taken.

(3) The department shall reissue the license of a licensee against whom disciplinary action was taken upon certification by the commission that the licensee has complied with all of the terms and conditions of the final order imposing discipline.

(4) The commission may adopt rules allowing the director of the Division of Real Estate to grant to a licensee placed on probation additional time within which to complete the terms of probation, but the rules must allow the licensee to appeal any denial to the commission.

(5) An administrative complaint against a broker, broker associate, or sales associate shall be filed within 5 years after the time of the act giving rise to the complaint or within 5 years after the time the act is discovered or should have been discovered with the exercise of due diligence.

(6) The department or commission shall promptly notify a licensee's broker or employer, as defined in this part, in writing, when a formal complaint is filed against the licensee alleging violations of this chapter or chapter 455. The department shall not issue a notification to the broker or employer until 10 days after a finding of probable cause has been found to exist by the probable cause panel or by the department, or until the licensee waives his or her privilege of confidentiality under s. 455.225, whichever occurs first.

(7) The commission shall promptly report to the proper prosecuting authority any criminal violation of any statute relating to the practice of a real estate profession regulated by the commission.

History.—s. 26, ch. 12223, 1927; CGL 4087; s. 3, ch. 24090, 1947; s. 11, ch. 25035, 1949; s. 10, ch. 26484, 1951; s. 5, ch. 29983, 1955; s. 1, ch. 61-108; ss. 1, 2, ch. 70-421; s. 3, ch. 75-112; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 1, ch. 78-117; s. 9, ch. 78-366; ss. 19, 42, 43, ch. 79-239; ss. 2, 3, ch. 81-318; ss. 21, 38, ch. 82-1; ss. 21, 45, ch. 82-179; s. 61, ch. 83-329; ss. 13, 28, 30, ch. 88-20; s. 2, ch. 89-76; s. 15, ch. 90-228; s. 15, ch. 90-341; s. 18, ch. 90-345; s. 5, ch. 91-89; s. 5, ch. 91-289; s. 4, ch. 91-429; s. 147, ch. 92-149; ss. 10, 141, ch. 94-119; s. 3, ch. 94-337; s. 2, ch. 97-42; s. 373, ch. 97-103; s. 2, ch. 98-116; s. 123, ch. 98-166; s. 6, ch. 98-250; s. 4, ch. 99-384; s. 183, ch. 2000-160; s. 1, ch. 2000-198; s. 1, ch. 2001-274; s. 34, ch. 2003-164; s. 4, ch. 2006-210; s. 56, ch. 2009-195; s. 47, ch. 2010-106; s. 10, ch. 2012-61.

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61J2-10.032 Notice Requirements.

(1)(a) A real estate broker, upon receiving conflicting demands for any trust funds being maintained in the broker's escrow account, must provide written notification to the Commission within 15 business days of the last party's demand and the broker must institute one of the settlement procedures as set forth in Section 475.25(1)(d)1., F.S., within 30 business days after the last demand.

(b) A broker, who has a good faith doubt as to whom is entitled to any trust funds held in the broker's escrow account, must provide written notification to the Commission within 15 business days after having such doubt and must institute one of the settlement procedures as set forth in Section 475.25(1)(d)1., F.S., within 30 business days after having such doubt. The determination of good faith doubt is based upon the facts of each case brought before the Commission.

(c) If one of the parties to a failed real estate sales transaction does not respond to the broker's inquiry as to whether that party is placing a demand on the trust funds or is willing to release them to the other party, the broker may send a certified Notice, return receipt requested to the address of record or email address of record shown with the DBPR to the non-responding party. This Notice shall include the information that a demand has been placed by the other party; that a response must be received by the seventh business day following dispatch of the Notice, as defined below; and show the contacting broker's mailing address, phone number, and email address. A failure to respond to the Notice within seven business days will be construed as authorization for the broker to release the funds to the other party.

(2)(a) If the broker has instituted a settlement procedure other than a request for an Escrow Disbursement Order, the broker shall provide written notification to the Commission within 30 business days of the receipt of the last demand or good faith doubt of the procedure instituted to resolve the matter.

(b) If the broker has requested an Escrow Disbursement Order and the broker is notified in writing that no Escrow Disbursement Order will be issued, then the broker shall institute another settlement procedure and so notify the Commission within 30 business days after the broker's receipt of such notification.

(c) If the broker has requested an Escrow Disbursement Order and the dispute is subsequently settled or goes to court before the Order is issued, the broker shall notify the Commission within 10 business days of such event.

(3) When a broker provides written Notice of the existence of conflicting demands for escrowed funds, the effective date of that Notice is deemed to be the date of the last dispached Notice. As used in this Rule, the term "Notice" means a notice to a non-responding party regarding a demand for release of escrow funds pursuant to paragraph (1)(c), above. As used in this Rule, the term "date of the last dispached Notice" shall mean the date the certified letter or emailed Notice is postmarked or the email send confirmation is dated.

(4) A request for an Escrow Disbursement Order as a settlement procedure is deemed instituted when the completed request form is mailed or otherwise dispatched to the Commission.

(5) Brokers who are entrusted with an earnest money deposit (EMD), pursuant to a residential sales contract utilized by the Department of Housing and Urban Development (HUD) in the sale of property owned by HUD, shall comply with the EMD requirements of the specific HUD contract, and are not required to follow the notice or settlement procedures of Section 475.25(1)(d)1., F.S., and subsection (1) of this rule.

(6) This rule shall be reviewed, and if necessary, repealed, modified, or renewed through the rulemaking process five years from the effective date.

Rulemaking Authority 475.05, 475.25 FS. Law Implemented 83.49(3)(d), 475.25 FS. History–New 10-13-85, Formerly 21V-10.32, Amended 2-18-92, 12-8-92, 6-28-93, Formerly 21V-10.032, Amended 11-16-93, 6-6-94, 8-6-96, 11-10-97, 1-17-02, 12-8-20, 5-21-24.

Title Talk:
Legislative and Regulatory Update

Ted Conner
Sr. Vice President, Deputy General Counsel, Old Republic Title

James Russick
VP, Southeast Regional Counsel, Old Republic Title

Shannon Widman
FVP, Legislative Counsel, Old Republic Title

NO MATERIAL PROVIDED FOR THIS SESSION

Easements Made Easy

Chris Smart
Shareholder Carlton Fields

Old Republic Title Annual Assembly

Easements Made Easy (2026)

Presenter: Chris Smart

Outline

I. Introduction

II. What are easements?

- a. Definitions
- b. Estates
  - i. Dominant
    1. Appurtenant
    2. In gross
  - ii. Servient
- c. Types
  - i. Affirmative
    1. Non-exclusive
    2. Exclusive
  - ii. Negative
    1. Air and light

2. Conservation

iii. Profits / Licenses

III. How are different types of easements created?

a. Express grant

i. Dedication

ii. Reservation

b. Implication

i. Plats

ii. Common law

iii. Statutory way

IV. How are easements terminated?

a. Merger

b. Abandonment

c. Replating

d. Frustration of purpose

e. Removal of necessity

f. Marketable record title act

g. Tax deed sale

h. Foreclosure sale

V. How to evaluate an easement

VI. How (not) to list an easement as an exception

Bureau of Land Management 015330 4—1043

File No. 14065

OFFICIAL RECORDS BOOK 71 PAGE 421

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Regional Office at Washington, District of Columbia, is now deposited in the Bureau of Land Management, whereby it appears that full payment has been made by Robert A. Pickett, pursuant to the provisions of the Act of Congress approved June 1, 1938 (52 Stat. 609), entitled "An Act to provide for the purchase of public lands for home and other sites," and the Acts supplemental thereto, for the following described land:

Tallahassee Meridian, Florida.

T. 2 S., R. 17 W.,

sec. 30, lot 33.

The area described contains 3.54 acres, according to the Official Plat of the Survey of the said Land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT unto the said Robert A. Pickett and to his heirs the Tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature thereunto belonging, unto the said Robert A. Pickett and to his heirs and assigns forever; excepting and reserving, however, to the United States all coal, oil, gas, and other mineral deposits in the land so patented, together with the right to prospect for, mine and remove the same, according to the provisions of said Act of June 1, 1938.



FILED

1962 JUL 2 PM 1:27

BRUCE COLLINS
CLERK CIRCUIT COURT
DADE COUNTY, FLORIDA

U. S. GOVERNMENT PRINTING OFFICE 16—67945-1

Bureau of Land Management 015338—1044
(October 1949)

OFFICIAL RECORDS
BOOK 71 PAGE 422

This patent is issued subject to an easement for a roadway not exceeding thirty-three feet in width, to be constructed on the west side of said lot.

Excepting and reserving, also, to the United States, pursuant to the provisions of the Act of August 1, 1946 (60 Stat. 755), all uranium, thorium or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same.

[SEAL]

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the TENTH day of MAY in the year of our Lord one thousand nine hundred and FIFTY-ONE and of the Independence of the United States the one hundred and SEVENTY-FIFTH.

For the Director, Bureau of Land Management.

By Jas. F. Horner
Chief, Patents Section.

Patent No. 1131980

U. S. GOVERNMENT PRINTING OFFICE 16—82956-1

BAY COUNTY, FLORIDA
Filed for record 11 2 1962 at
11 o'clock A.M. and recorded, Book and
Page indicated above.
Byron Cotton, Clerk
Circuit Court
By

A CERTIFIED TRUE COPY
BILL KINSAUL CLERK
OF THE CIRCUIT COURT.
By
Deputy Clerk

2

DEED RECORD
BOOK 1107
PAGE 210

DEED 1107 PAGE 210

EASEMENT DEED

THIS INDENTURE, Made this 31st day of August, A. D. 1955, by and between INDIAN TRAIL RANCH, INC., a Florida corporation, grantor, and MISSION COMPANY, INC., a Florida corporation, grantee,

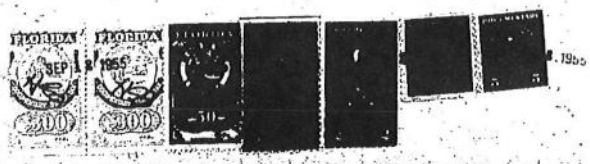
W I T N E S S E T H:

That for and in consideration of the sum of Ten ($10.00) Dollars, in hand paid by said grantee, the receipt whereof is hereby acknowledged, and other good and valuable considerations, the said grantor does hereby give and grant to the grantee an easement over the following described property:

Grantor gives and grants to Grantee, its heirs and assigns, an easement over a road known as Seminole which extends north from State Road 80 through Sections 36, 25, 24 and 13, Township 43 South, Range 40 East, Palm Beach County, Florida, at which point said road turns westerly and becomes knows as the Osceola Road, which thence runs westerly on the Section line between Sections 11 and 14, 10 and 15, 9 and 16 to a bridge construction of which will be commenced within several weeks from the date of this deed. At such time as said bridge is constructed, Grantor also gives and grants unto Grantee its heirs and assigns an easement over said bridge with full right and authority to use the above road and bridge. The Grantor also gives the Grantee an easement over the north and south section lines and also on the quarter section line of 17, Township 43 South, Range 40 East not to exceed 50 feet in width over to the east right-of-way line of the Central and Southern Florida Flood Control L-8 for the purposes of drainage and water control. The Grantee will provide a crossing for each of these drainage ditches, following completion of construction of these drainage ditches.

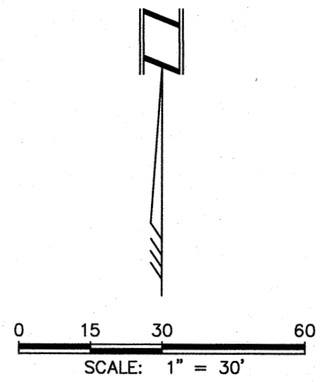
In accepting the above deed, the Grantee agrees to pay one fourteenth (1/14th) of the future maintenance of said road and bridge, and in addition agrees to pay Sixty-five Hundred ($6500.00) Dollars in cash to be applied on the cost of construction of said bridge, and above-described Osceola Road.

The above easement is to be perpetual unless terminated by mutual consent of the parties hereto, their heirs, successors or assigns.



MAP SHOWING SURVEY OF

[redacted]



NOTES:
1. THIS IS A BOUNDARY SURVEY.
2. BEARINGS BASED ON THE SOUTH LINE OF LOT 26, BEING SOUTH 70°53'00" WEST, AS PER PLAT.
3. NO BUILDING RESTRICTION LINES AS PER PLAT.

THIS SURVEY WAS MADE FOR THE BENEFIT OF [redacted]

THE PROPERTY DESCRIBED HEREON LIES IN COASTAL FLOODPLAIN ZONE "AE"(EL 6) AS WELL AS CAN BE DETERMINED FROM THE FLOOD INSURANCE RATE MAP NUMBER 12106C0085J, REVISED DECEMBER 7, 2018 FOR ST. JOHNS COUNTY, FLORIDA.

"NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER."

[redacted]

CHECKED BY: ____	FILE: [redacted]	DRAWN BY: [redacted]	[redacted]	DATE: [redacted]	SHEET 1 OF 1

[redacted]	Owner's Policy of Title Insurance
	ISSUED BY [redacted]
Schedule B	POLICY NUMBER [redacted]

Owners Policy No.: [redacted]
Loan Policy No.: [redacted]
Agent File No.: [redacted]

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) that arise by reason of:

1. Any minerals or mineral rights leased, granted or retained by current or prior owners.

2. Taxes and assessments for the year 2022 and subsequent years, which are not yet due and payable.

3. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of [redacted] but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

4. Declaration of Covenants, Conditions, Restrictions and Easements, recorded in [redacted], but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

5. Terms and conditions of the easement(s) as set forth in Warranty Deed recorded in [redacted]

6. Riparian and/or littoral rights are not insured.

7. The right, title or interest, if any, of the public to use as a public beach or recreation area any part of the Land lying between the water abutting the Land and the most inland of any of the following: (a) the natural line of vegetation; (b) the most extreme high water mark; (c) the bulkhead line, or (d) any other line which has been or which hereafter may be legally established as relating to such public use.

8. Rights of the United States Government to that part of the Land, if any, being artificially filled in land in what was formerly navigable waters arising by reason of the United States Government control over navigable waters in the interest of navigation and commerce.

9. Any adverse ownership claim by the State of Florida by right of sovereignty to any part of the Land that is, as of the Date of Policy or was at any time previously, under water (submerged).

10. Any rights, easements, interests or claims that may exist by reason of, or be reflected by, the following facts shown on the survey dated [redacted].
    1. Fence encroachment over Northerly property line and into 10 foot Easement for Pedestrian Ingress and Egress on Southerly side.
    2. Exception for any matters relating to the bulkhead and wood deck located on, or adjacent to, the property.

FILE# 85-23560
BAY COUNTY, FLORIDA

This Instrument prepared by
Paul W. Groom, P. O. Box 190,
Port St. Joe, Florida

(3)

** OFFICIAL RECORDS **
BK 1031 PG 62

CERTIFIED A TRUE COPY
3-26-25
CRYSTAL SCONIERS
CLERK OF THE CIRCUIT
COURT & COMPTROLLER
WALTON COUNTY, FLORIDA
BY: DEPUTY CLERK

Special Warranty Deed

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OFFICIAL RECORDS

THIS INDENTURE, made this 21st *day of* May *, A. D. 19* 85 *,*
between St. Joe Paper Company *, a Florida*
Corporation with its principal office in Jacksonville, Duval County, Florida, party of the first part, and
Milton Dean
of the County of Bay *, in the State of* Florida *, and whose address is*
Route 6, P. O. Box 606 B-3, Panama City, Florida 32407 *, party of the second part.*

WITNESSETH: That the said party of the first part for and in consideration of the sum of $10.00
(Ten) *Dollars, and other valuable considerations to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said party of the second part,* his *heirs, and assigns forever, the following described land, lying and being in the County of* Walton and Bay *, and state of* Florida *, to-wit:*

A strip of land 60 feet wide and having the following described center line: Commence at the intersection of the South line of the Northeast Quarter of Section 26, Township 3 South, Range 18 West, Walton County, Florida, with the Northeasterly right of way line of U. S. 98 (100 foot right of way); thence North 37° 25' 19" West along said Northeasterly right of way line for 38.19 feet to the Point of Beginning. Thence South 89° 11' 10" East for 1400.70 feet to the P.C. of a curve concave to the North and having a radius of 250.00 feet; thence Easterly along said curve for an arc distance of 170.81 feet, said arc having a chord of 167.50 feet bearing North 71° 14' 28" East to the P.C. of a curve concave to the South and having a radius of 250.00 feet; thence Easterly along said curve for an arc distance of 173.69 feet, said arc having a chord of 170.22 feet bearing North 71° 34' 18" East; thence South 88° 31' 30" East parallel with and 30.00 feet North of the Northerly line of a 100 foot wide Gulf Power Company easement for 6917.76 feet; thence South 88° 24' 42" East parallel with said easement for 459.21 feet; thence North 74° 13' 47" East parallel with said easement for 536.60 feet; thence South 71° 03' 22" East parallel with said easement for 536.69 feet; thence South 88° 24' 42" East parallel with said easement for 187.45 feet; thence South 01° 00' 30" West parallel with the West line of the Southeast Quarter of Section 30, Township 2 South, Range 17 West, Bay County, Florida, for 298.00 feet to terminate at the North line of Government Lot 4, said Section 30. The above 60 foot wide strip of land contains 14.712 acres, more or less.

0.287 acre, more or less of the above description is within said Gulf Power Company easement and is not included in this deed.

0225

Documentary Tax Pd. $ 32.40
Intangible Tax Pd. $
Harold Bazzel, Clerk, Bay County
By: D. C.

SUBJECT, however, to all taxes and assessments levied or assessed against the same subsequent to May 21, *19*85*; and SUBJECT also to:*

The following understandings and agreements to and with Party of First Part in the granting of this deed:

1) Party of the First Part retains the right forever, without payment of any kind, of access across, on, or through the above described property for purposes of access to their property for itself and its agents.
2.) Party of Second Part agrees to allow owners of property to the South of this right of way to have access to their property through and on this right of way by paying a proportionate part of the purchase cost of the right of way and the development cost of the described property as a road.

AND the said party of the first part does hereby specially warrant the title to said land, and will defend the same against the lawful claims of all persons claiming the same by, through, or under the party of the first part, but not otherwise.

IN WITNESS WHEREOF, the party of the first part has caused these presents to be executed in its corporate name by its President, *attested by its* Secretary *and its corporate seal to be hereunto affixed, the day and year first above written.*

Signed, Sealed and Delivered in the Presence of:

Susan L. Hatch

L. M. Russell

By W. L. Thornton
Its President

Attest
Its Secretary

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OFFICIAL RECORDS

** OFFICIAL RECORDS **
BK 1031 PG 63

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OFFICIAL RECORDS

STATE OF FLORIDA,

COUNTY OF DUVAL

Before me personally appeared W. L. Thornton *and* Ronald A. Anderson, *to me well known and known to me to be the* President *and* Secretary, *respectively, of the* St. Joe Paper Company, *the corporation named in the foregoing instrument and known to me to be the persons who as such officers of said corporation executed the same, and then and there they did acknowledge before me that said instrument is the free act and deed of said corporation; that it was executed by them as such officers for the purpose therein expressed; and that the seal thereunto affixed is the corporate seal by them in like capacity affixed, all under authority in them duly vested.*

WITNESS my hand and official seal in the above named County and State, this the 17th *day of* May, *A. D., 19* 85.

Margaret B Martin
Notary Public, State of Florida at large

(SEAL)

My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires Nov. 8, 1985

FLORIDA FORM

SPECIAL WARRANTY DEED

FROM CORPORATION

TO

Date

ABSTRACT OF DESCRIPTION

347 PAGE 57

OFFICIAL RECORDS

RCD: JUN 12 1985 @ 2:58 PM
CLERK

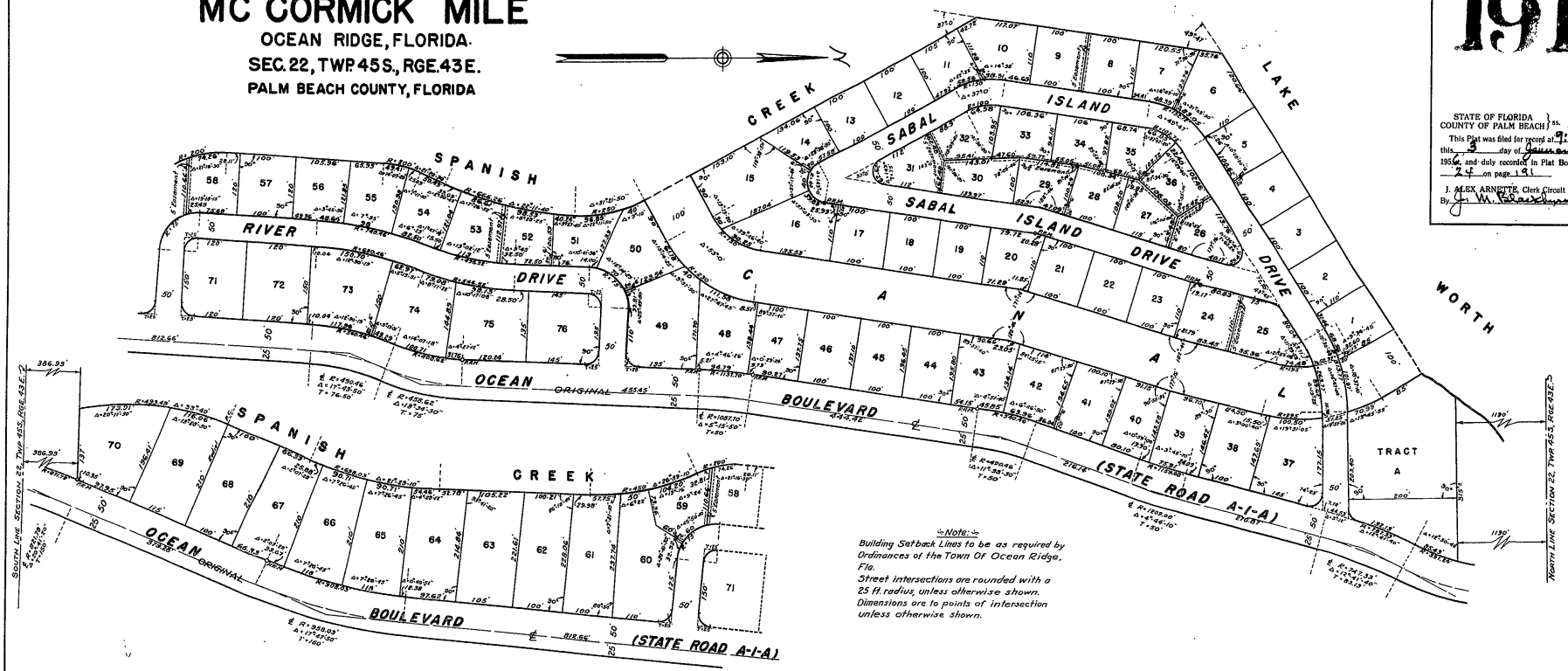
PLAT OF
MC CORMICK MILE
OCEAN RIDGE, FLORIDA.
SEC. 22, TWP. 45 S., RGE. 43 E.
PALM BEACH COUNTY, FLORIDA

191

STATE OF FLORIDA } ss.
COUNTY OF PALM BEACH }

This Plat was filed for record at 9:50 A.M. this 3 day of January A.D. 1956 and duly recorded in Plat Book No. 24 on page 191

J. ALEX ARNETTE, Clerk Circuit Court
By: Jas. W. Boardman D. C.



Note:
Building Setback Lines to be as required by Ordinances of the Town Of Ocean Ridge, Fla.
Street intersections are rounded with a 25 ft. radius, unless otherwise shown.
Dimensions are to points of intersection unless otherwise shown.

STATE OF FLORIDA, SS
COUNTY OF PALM BEACH

KNOW ALL MEN BY THESE PRESENTS, that OCEAN RIDGE DEVELOPMENT COMPANY, a Corporation organized under the laws of the State of Florida, and duly authorized to transact business in the State of Florida, the Owner in fee simple of the tract of land lying and being in Palm Beach County, Florida, shown on the attached plat as MC CORMICK MILE and more particularly described as follows, to wit:

Parcel No. 1 – All that part of the South 1400 feet of the North 2590 feet of Section 22, Township 45 South, Range 43 East lying west of the center line of Ocean Boulevard (State Road A-1-A) and lying east of the waters of Lake Worth and east of the center line of Spanish Creek (So called).

Parcel No. 2 – All that part of Section 22, Township 45 South, Range 43 East lying west of the center line of Ocean Boulevard (State Road A-1-A) and east of the center line of Spanish Creek (So called), except the north 2590 feet thereof, and except the south 386.93 feet thereof; this parcel has a northerly and southerly dimension of 2250 feet, more or less; the dimension of 2590 feet is measured at right angles to the north line of Section 22; and the dimension 386.93 feet is measured at right angles to the south line of Section 22.

has caused the same to be surveyed and platted as shown hereon and does hereby dedicate to the perpetual use of the public as public highways the streets as shown hereon

IN WITNESS WHEREOF, the said Corporation has caused these presents to be signed by its President and attested by its Secretary, and its corporate seal to be affixed hereto by and with the authority of its Board of Directors, this 27th day of December, A.D. 1955.

Attest: Ford R. Carter, Secretary

OCEAN RIDGE DEVELOPMENT COMPANY.
By: Wilbur B. Zinke, President

STATE OF FLORIDA SS
COUNTY OF PALM BEACH

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, WILLIAM K. ZINKE and FORD R. CARTER, President and Secretary, respectively, of OCEAN RIDGE DEVELOPMENT COMPANY, a Corporation, to me well known and known to me to be the individuals described in, and who executed the foregoing dedication, and they acknowledged before me that they executed the same as such officers of said Corporation, by and with the authority of the Board of Directors of said Corporation for the purposes therein expressed, and that their act and deed was the act and deed of said Corporation.

WITNESS my hand and official seal at West Palm Beach, County of Palm Beach, and State of Florida, this 27th day of December, A.D. 1955.

Joe R. Kerr, Notary Public

My Commission expires: Feb. 1, 1958

STATE OF FLORIDA SS
COUNTY OF PALM BEACH

I HEREBY CERTIFY that the plat shown hereon is a true and correct representation of a survey, made under my direction, of the hereon described property, and that said survey is accurate to the best of my knowledge and belief, and that permanent reference monuments (P.R.M.) have been placed as required by law.

N. P. Fitzgerald
Registered Land Surveyor
Florida Certificate No. 152

Subscribed and Sworn to before me this 27th day of December, A.D. 1955

Madge Yeomans, Notary Public

My Commission expires: March 24, 1959.

Approved: Dec. 27, A.D. 1955
Town Of Ocean Ridge.
Mayor.

Approved: 29 Dec., A.D. 1955.
Chas. Gordin Jr., Vice Chairman
Herbert L. Brosch, County Engineer

BROCKWAY, WEBER & BROCKWAY
ENGINEERS
WEST PALM BEACH, FLORIDA

MC CORMICK MILE

FIELD:		SCALE: 1" = 100'	Dwg. No. BF-1894
OFFICE: H.L.P.			
Ch. BY: C.A.L.		DATE: DEC. 1955	Job No. 55-077
BK.			

DEED RECORD
BOOK 1107
PAGE 210

DEED 1107 PAGE 210

EASEMENT DEED

THIS INDENTURE, Made this 31st day of August, A. D. 1955, by and between INDIAN TRAIL RANCH, INC., a Florida corporation, grantor, and MISSION COMPANY, INC., a Florida corporation, grantee,

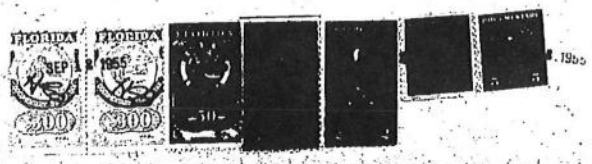
W I T N E S S E T H:

That for and in consideration of the sum of Ten ($10.00) Dollars, in hand paid by said grantee, the receipt whereof is hereby acknowledged, and other good and valuable considerations, the said grantor does hereby give and grant to the grantee an easement over the following described property:

Grantor gives and grants to Grantee, its heirs and assigns, an easement over a road known as Seminole which extends north from State Road 80 through Sections 36, 25, 24 and 13, Township 43 South, Range 40 East, Palm Beach County, Florida, at which point said road turns westerly and becomes knows as the Osceola Road, which thence runs westerly on the Section line between Sections 11 and 14, 10 and 15, 9 and 16 to a bridge construction of which will be commenced within several weeks from the date of this deed. At such time as said bridge is constructed, Grantor also gives and grants unto Grantee its heirs and assigns an easement over said bridge with full right and authority to use the above road and bridge. The Grantor also gives the Grantee an easement over the north and south section lines and also on the quarter section line of 17, Township 43 South, Range 40 East not to exceed 50 feet in width over to the east right-of-way line of the Central and Southern Florida Flood Control L-8 for the purposes of drainage and water control. The Grantee will provide a crossing for each of these drainage ditches, following completion of construction of these drainage ditches.

In accepting the above deed, the Grantee agrees to pay one fourteenth (1/14th) of the future maintenance of said road and bridge, and in addition agrees to pay Sixty-five Hundred ($6500.00) Dollars in cash to be applied on the cost of construction of said bridge, and above-described Osceola Road.

The above easement is to be perpetual unless terminated by mutual consent of the parties hereto, their heirs, successors or assigns.



DEED RECORD
BOOK 1107
PAGE 211

DEED 1107 PAGE 211

IN WITNESS WHEREOF, the said Grantor has caused these presents to be signed in its name by its President, and its corporate seal to be affixed, attested by its Secretary the day and year above written.

INDIAN TRAIL RANCH, INC.

By Henry S. Cole
President

(CORPORATE SEAL)

ATTEST:

Henry S. Cole
Secretary

Signed, Sealed and Delivered
in our presence:

D. G. Thorgeson

B. W. Bridges

STATE OF FLORIDA
COUNTY OF PALM BEACH:

I, the undersigned officer duly authorized to take and certify acknowledgments of deeds in said State and County, hereby certify that before me came Henry S. Cole and Henry S. Cole as President and Secretary respectively of INDIAN TRAIL RANCH, INC., a Florida corporation; that said persons so appearing before me are the individuals and the officers aforenamed of said corporation described in and who executed the foregoing deed; and that then and there said individuals as said officers acknowledged before me that the seal affixed to said deed is the corporate seal of said corporation, that their names officially are by them respectively subscribed thereto, that said deed was signed, sealed and delivered by said corporation in the presence of two subscribing witnesses pursuant to law, and that the same is the free act and deed of said corporation.

WITNESS my signature and official seal at West Palm Beach, County of Palm Beach and State of Florida, this 2 day of September, A.D. 1955.

Elaine Roth
Notary Public, State of Florida at Large.

My Commission Expires:
Notary Public, State of Florida at Large
My Commission expires June 6, 1956
Bonded by American Surety Co. of N. Y.

This instrument was filed for Record at 3 P.M. 12 day of Sept. 1955 and recorded in Book and Page noted above. Record verified. J. ALEX ARNETTE, Clerk Circuit Court, Palm Beach County, Fla. By Gertrude Hanna Deputy Clerk

STATE OF FLORIDA - PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the record in my office with redactions, if any as required by law.
THIS 9TH DAY OF January, 2024
JOSEPH ABRUZZO
CLERK OF THE CIRCUIT COURT & COMPTROLLER
By: Eva Jones
Deputy Clerk

Trusts - Simplifying the Approach to Closing

Rebecca Wood
Senior Underwriting Counsel, Old Republic Title

Trusts-Simplifying the Approach to Closing

Rebecca Wood, Senior Underwriting Counsel

Assembly 2026

I. Intro – Program Plan and Purpose

- A. Highlight types of trusts
- B. Focus on relevant statutes
- C. Focus on the simple path

II. Recognizing the Type of Trust/Default Insuring Requirements

- A. Introduction
- B. Types of Trusts
  1. Inter Vivos Revocable Trusts
     - a) Settlor, Trustee, Beneficiary, Power to Revoke
     - b) Becomes irrevocable on death of Settlor
     - c) Jointly settled may remain revocable until both spouses die
     - d) Incomplete gift
     - e) §689.073 does not make it a Land Trust
  2. Irrevocable Trusts
     - a) Settlor may or may not be Trustee
     - b) Settlor typically is not the Beneficiary
     - c) Completed gift
     - d) Re devise see §732.4017
  3. Land Trusts
     - a) Creature of Statute §689.071
     - b) Legal Fiction
     - c) Cannot have a good land trust without 689.073 powers in deed, but inclusion of the powers doesn't make a 736 trust a Land trust.

4. Qualified Plans - §689.072
    a) Pension Plan
    b) IRA
    c) 401k
    d) 503b
5. Charitable Trusts
    a) 736.0405
    b) 736.0110
    c) 736.0413
    d) 736.1201-1211
6. What is not a “Trust”
    a) Business Trusts
    b) §689.07

III. Homestead Considerations

A. Foundations

B. Revocable Trusts - Aronson v. Aronson, 81 So.3d 515 (Fla. 3d DCA 2012)

C. Irrevocable Trusts – not a devise per §732.4017(3), F.S.

D. Qualified Personal Residence Trusts (QPRT)

IV. Recap Friendly Statutes

A. Land Trusts – §689.071

B. Powers in Deed - §689.073

C. Qualified Plans - §689.072

D. Certifications of Trusts - §736.1017

E. Homestead in Irrev. Trust §732.4017

F. Waiver by Deed - §732.7025

V. Closing Process

A. Analyze the Deed

1. Names

a) Trustee name same as name of trust

b) Name of trust is an address or similar reference

c) Irrevocable is in the trust name

2. Powers

a) Contained in the deed

b) Found in the trust

3. Waivers

a) Homestead waiver by deed

b) Pre- or post-nuptial agreement

B. Request Certification of Trust with Excerpts

1. Confirm proper succession

a) Resignations

b) Acceptance

c) Proof of incapacity

2. Confirm proper power

a) A distribution is not a sale

b) After settlor’s death, powers may change

C. Power to sell isn’t power to sell on terms

D. Record Certification

1. with excerpts if no objection

2. without excerpts if confidentiality or expense triggered objection

VI. Quick Reference Tool

A. Explained

B. Demonstrated

VII. Conclusion

TRUSTS: SIMPLIFYING THE PATH TO CLOSING

This educational program is intended to provide Florida real estate attorneys, title agents, and closing professionals with a practical, statute-based framework for efficiently handling real estate transactions involving trust assets. Consistent with Old Republic Title's underwriting approach, the focus is on reliance upon recorded instruments and specific Florida statutes that permit arm's-length transactions to close without unnecessary inquiry into trust terms, while identifying limited circumstances that warrant consultation with Underwriting Counsel.

INTRODUCTION

Trusts appear frequently in Florida real estate practice and may take many forms, including revocable trusts, irrevocable trusts, land trusts, qualified plan trusts, charitable trusts, and business trusts. Their presence does not automatically complicate a closing. Florida's statutory framework is intentionally designed to preserve confidentiality of trust agreements while promoting marketability of title. When understood and applied correctly, these statutes allow most trust-related transactions to proceed efficiently to closing.

FRIENDLY STATUTES THAT SUPPORT EFFICIENT CLOSINGS

Chapter 736, Florida Statutes, governs most revocable and irrevocable trusts. A trust is revocable unless expressly stated otherwise. Chapter 736 trusts may utilize the powers set forth in section 689.073, Florida Statutes, without becoming land trusts. Typical revocable inter vivos grantor trusts are incomplete gifts and are treated as the alter ego of the settlor, which creates a rebuttable presumption of merger of title when the settlor and trustee are the same person.

Land trusts are governed by section 689.071, Florida Statutes. They are creatures of statute, and the inclusion of section 689.073 powers in the vesting deed is essential. In land trusts, merger of title is eliminated by statute.

Section 689.073, Florida Statutes ("Powers in the Deed"), is foundational. When a recorded instrument grants the trustee the statutory powers to sell, convey, encumber, or otherwise manage the property, there is no duty to inquire into the identity of beneficiaries, the adequacy of consideration, the authority granted by any unrecorded trust agreement, or the disposition of proceeds. The statute provides express third-party reliance, enabling bona fide purchasers for value to take title free and clear of beneficiary claims.

Section 689.072, Florida Statutes, governs qualified plans and provides that trustees or custodians of retirement plans may convey real property without joinder of the participant and without inquiry into plan documents, provided the deed is properly prepared.

Section 736.1017, Florida Statutes, authorizes reliance on Certifications of Trust. Title agents may rely on a properly executed certification and are not required to obtain or review the trust agreement. Agents are not required to prepare certifications themselves. Attorneys with attorney-client duties may have responsibilities beyond the basic insuring requirements.

RECOGNIZING THE TYPE OF TRUST FROM THE VESTING DEED

The analysis begins with the four corners of the vesting deed. In the case of an inter vivos revocable trust, if the trustee name matches the name of the trust there is a rebuttable presumption that the person named is the settlor and sole beneficiary until testamentary provisions are triggered. In such cases, merger of title is presumed, requiring individual joinder on deeds out of the trustee. If the property is homestead and the trustee is married, spousal joinder is also required. All deeds out of a natural person, even only in the capacity of trustee, must reflect either that the trustee is unmarried or the Land is not homestead.

Where section 689.073 powers appear in the deed, no inquiry is required so long as the acting trustee is acting within the limits of the stated powers. If the successor trustee is named in the vesting deed, for insuring purposes the closing file should be documented with confirmation that the originally vested trustee has resigned or become incapacitated. If the original trustee was the settlor and the settlor is deceased, another line of questioning is triggered. If a trustee who is not identified in the vesting deed is acting, a Certification of Trust must be recorded to support that trustees authority and a prudent practitioner may request excerpts from the trust agreement that support the credibility of the certification.

Irrevocable trusts settled as irrevocable from inception are completed gifts and do not trigger the same homestead issues as revocable trusts. These trusts are often used for special needs planning, asset protection, or tax planning. Section 732.4017, Florida Statutes, confirms that a lifetime transfer to an irrevocable trust is not a devise upon death. Depending on circumstances, individual or spousal joinder may be avoided through appropriate deed language confirming non-homestead status.

Land trusts are governed exclusively by statute; a land trust is arguably not properly created if the powers of the trustee do not appear in the deed. Because merger of title is eliminated by statute, individual joinder of the trustee and

spousal joinder are not required unless the Land is the trustee's homestead. A beneficiary of the trust may benefit from homestead tax exemption; if the exemption applies but the trustee who holds legal title is domiciled elsewhere non-homestead language may appear in the deed to eliminate those joinders. Certifications of trust are generally not required for land trust transactions, though proof of succession may be necessary under section 689.071(9).

Qualified plan trusts require strict compliance with section 689.072. When the deed properly identifies the custodian or trustee and the plan beneficiary, the trustee's authority to convey may be relied upon without further inquiry.

Charitable trusts are governed by Chapter 736. Often, they hold only a remainder interest. During the life tenant's lifetime, trust requirements may not be triggered. After the life tenant's death, reliance again centers on section 689.073 powers and certifications of trust.

WHAT MAY LOOK LIKE A TRUST, BUT IS NOT

Business trusts, such as Delaware Statutory Trusts, may hold title as entities where authorized by the law of their jurisdiction of formation. Florida common-law trusts formed under Chapter 609 are not legal entities capable of holding title.

A deed to an individual identified simply as "Trustee," without named beneficiaries or statutory powers, is governed by section 689.07, Florida Statutes, and vests title in the individual personally. In such cases, insuring requires only a deed from the individual, with spousal joinder if applicable.

HOMESTEAD CONSIDERATIONS

Transfer of homestead into a revocable trust does not eliminate homestead protections. The Florida Constitution's restraint on devise cannot be circumvented indirectly. The Aronson v. Aronson decision confirmed that invalid testamentary trust provisions result in property passing by intestacy. For underwriting purposes, Old Republic Title may permit reliance on an affidavit of heirs and deeds from heirs and the successor trustee in lieu of probate (the "Aronson workaround"). Note, however, that the county property appraiser's practices must be contemplated; the probate may be required to update parcel ownership and grant the new owner's homestead exemption.

Certain circumstances permit reliance solely on a trustee's deed, including where the Land is not the deceased settlor's homestead, where the settlor was not survived by a spouse or minor child, or where the surviving spouse receives the homestead in fee simple, and potentially where there is a valid spousal waiver of

the homestead restraint. In the case of a jointly settled trust, if the surviving settlor retains the power to revoke the trust, ORT may agree to forego the deed from heirs.

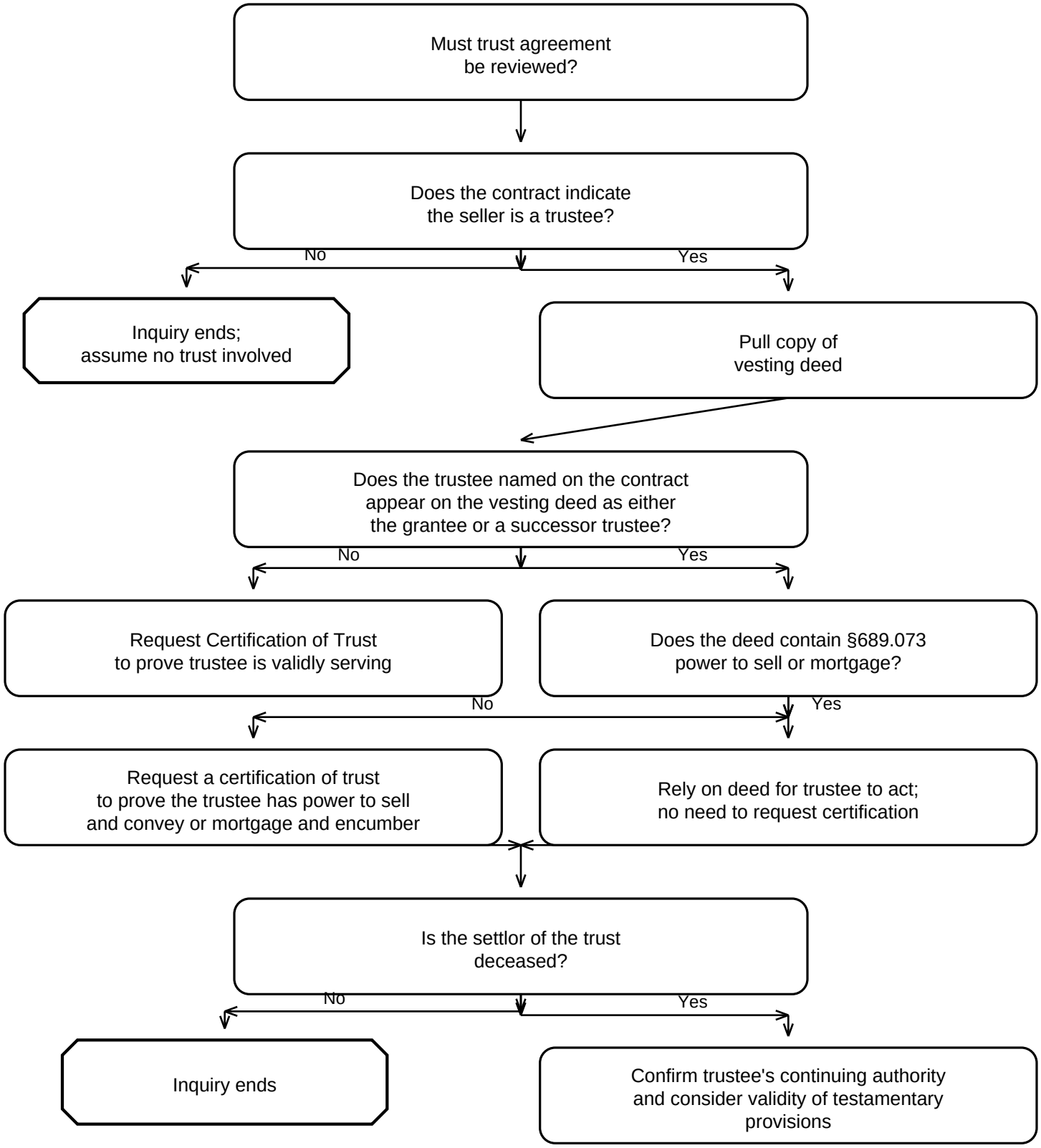
Irrevocable trusts and Qualified Personal Residence Trusts require separate analysis. Where a QPRT term has not expired and the settlor dies, intestacy and restraint on devise must be evaluated.

KEY TAKEAWAYS FOR CLOSING PROFESSIONALS

Florida’s statutory structure strongly supports reliance on recorded instruments and limits the need to request trust agreements. Trusts are designed in part to preserve confidentiality, and the statutes intentionally facilitate non-disclosure. Old Republic Title authorizes agents to rely on this statutory framework when insuring arm’s-length transactions, consulting Underwriting Counsel when facts fall outside these baseline requirements.

CONCLUSION

The guiding principle is simple: rely on friendly statutes and keep the path to closing as straight as possible. Trust-related transactions should be approached through statutory presumptions, disciplined deed analysis, and strategic use of Certifications of Trust, allowing most transactions to close efficiently while managing risk appropriately.


Must trust agreement be reviewed?
Does the contract indicate the seller is a trustee?
No
Yes
Inquiry ends; assume no trust involved
Pull copy of vesting deed
Does the trustee named on the contract appear on the vesting deed as either the grantee or a successor trustee?
No
Yes
Request Certification of Trust to prove trustee is validly serving
Does the deed contain §689.073 power to sell or mortgage?
No
Yes
Request a certification of trust to prove the trustee has power to sell and convey or mortgage and encumber
Rely on deed for trustee to act; no need to request certification
Is the settlor of the trust deceased?
No
Yes
Inquiry ends
Confirm trustee's continuing authority and consider validity of testamentary provisions

OLD REPUBLIC TITLE

Trusts: Simplifying the Approach to Closing

Rebecca Wood
Senior Underwriting Counsel

1

Plan and Purpose

2

Program plan

- Highlight types of trust practitioners might encounter
- Touch on homestead considerations
- Emphasize reliance on statutes
- Emphasize making things easy on issuing agents
- Mention some things where calling Underwriting helps most
- Work through some examples



3

Program Purpose

- Educate title agents on the rebuttable presumptions about trusts that can be made from the content of a deed
- Empower title agents to rely on helpful Florida statutes to minimize incidents of examining trust agreements
- Provide a tool for title agents to use when considering a deed before they accept receipt of or ask for a copy of a trust
- The focus is on the bare bones insuring requirements; attorneys providing legal counsel have duties beyond the scope



4

Setting the Foundation

5

Intervivos Trusts Generally

- Presume irrevocability
- 689.073 powers in deed does not convert one to a Land Trust
- Incomplete gifts
- Alter ego of settlor
- Merger of title is a presumption requiring individual joinder
- Homestead requires individual joinder

6

Land Trusts Generally

- Requires strict compliance with Sec. 689.071, F.S.
- Failure to include Sec. 689.073 powers in deed is problematic
- Merger of title is eliminated by statute
- Homestead requires individual joinder

Powers in Deed

- Sec. 689.071, F.S.
- Similar language
- Avoids duty to inquire
  - in arm's length transactions
  - When transaction fits within those powers
- Applies to Land Trusts and to Inter vivos Trusts

Qualified Plans

- Requires strict compliance with Sec. 689.072, F.S.
- Deed preparation must conform: (trustee name), as custodian or trustee of the (name of plan) for the benefit of (name of beneficiary)
- Deed is not required to reflect Trustee powers
- No need to inquire into terms of the plan
- Do need to confirm authority of the person signing for the entity if an entity is the named custodian or trustee.

Certifications of Trust

- Title agent may accept a certification of trust
- While prudent to request excerpt from the trust to support the certification, absence of excerpts I not fatal to insurability
- Agent cannot prepare the certification without inquiry into terms of trust
- Non-attorney title agents should consider limitations of authority to avoid UPL
- Best practice: rather than request a copy of the trust; request trust certification with excerpts.

Homestead Considerations

- Sec. 732.4017, F.S., applies to irrevocable trusts only; not a devise upon death of settlor
  - Does not apply to a trust that became irrevocable upon the death of the settlor
  - Does not apply to a QPRT

Homestead Considerations

- Sec. 732.7025, F.S., spousal waiver of restraint on devise of homestead
  - Does not affect restraint applicable when settlor survived by minor child
  - Does not affect requirement for spousal joinder during life
  - Does not affect creditor protections

Four Corners of Deed

Recognizing type
Presumptive requirements

13

Inter Vivos Revocable Trusts

- Estate planning
- Initially the settlor is typically the trustee and only beneficiary
- If created after 7/1/2007 – revocable unless states irrevocable
- Transfer to Revocable Trust = Incomplete gift

14

Prepared by and Return to:
Alan Attorney, Esq.
1 Brickel Ave
Palm Beach, FL 31418

CFN 20731348?5
OR BK 8765 PG 1776

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED, made this 1st day of February, 2026, by and between:

Grantor: **Tom Taylor, joined by his spouse Wilma Taylor**, whose post office address is: 1234 SW 2nd Street, Inglis FL, and

Grantee: **Tom Taylor, Trustee of the Tom Taylor Rev. Trust u/a/d December 27, 2025,** whose post office address is: 718 NE 9th Ave, Gainesville, FL

WITNESSETH:
That the Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, all that certain land situated in Alachua County, Florida, described as follows:

Lot 1, Block 10, Countryside, as per the plat recorded in Plat Book 8, page 2, Public Records of Alachua County, Florida.

When the trustee named as grantor ceases to serve, the successor trustee shall be Deborah Taylor. The trustee and every successor trustee has the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property.

By executing or joining this deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this deed to someone other than me.

TOGETHER WITH all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

15

Irrevocable Trusts

- Often created for person with special needs
- The settlor is typically not a beneficiary
- Transfer to Irrevocable Trust = completed gift
- Sec. 732.4017, F.S., specifically applies

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Prepared by and Return to:
Alan Attorney, Esq.
1 Brickel Ave
Palm Beach, FL 31418

CFN 2073134875
OR BK 8765 PG 1776

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED, made this **1st** day of **February**, **2026**, by and between:

Grantor: **Tom Taylor, joined by his spouse Wilma Taylor**, whose post office address is: 1234 SW 2nd Street, Inglis FL, and

Grantee: **Tom Taylor, Trustee of the Deborah Taylor Irrevocable Trust u/a/d June 20, 1966,** whose post office address is: 718 NE 9th Ave, Gainesville, FL

WITNESSETH:
That the Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, all that certain land situated in Alachua County, Florida, described as follows:

Lot 1, Block 10, Countryside, as per the plat recorded in Plat Book 8, page 2, Public Records of Alachua County, Florida.

When the trustee named as grantor ceases to serve, the successor trustee shall be US Bank, NA. The trustee and every successor trustee has the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property.

TOGETHER WITH all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.



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Land Trusts

- Creature of Statute – Sec. 689.071, F.S.
- A Land Trust results when title to Real Property vests in a Trustee by recorded instrument conferring power prescribed in Sec. 689.073(1)
- Trustees powers must be limited to those in the statute (on or after 6/28/2013)
- Absence of powers in the deed causes the statutory framework to fail.
- A beneficiary can have homestead
- Merger of title is eliminated by statute.



18

Prepared by and Return to:
Alan Attorney, Esq.
1 Brickel Ave
Palm Beach, FL 31418

CFN 2073134875
OR BK 8765 PG 1776

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED, made this **1st** day of **February**, 20**26**, by and between:

Grantor: **Zemarylis, LLC, a Florida limited liability company,** whose post office address is: 1234 SW 2nd Street, Inglis FL,
and

Grantee: **Tom Taylor, Trustee of the 718 NE 9th Ave Trust u/a/d February 1, 2026,** whose post office address is: 718 NE 9th Ave, Gainesville, FL

WITNESSETH:
That the Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, all that certain land situated in Alachua County, Florida, described as follows:

Lot 1, Block 10, Countryside, as per the plat recorded in Plat Book 8, page 2, Public Records of Alachua County, Florida.

The validly serving trustee has the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property.

TOGETHER WITH all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

19

Qualified Plans

- Sec. 689.072, F.S., enacted 7/1/2006
- Retroactive effect provided by Sec. 694.17, F.S.
- Tustee/Custodian has authority to:protect, conserve, sell, lease, encumber, manage, and dispose of real property.
- No joinder of the IRA or plan participant is required,
- No powers required to appear in deed
- Strict compliance with Section 689.072, F.S. is required to avoid further inquiry

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Prepared by and Return to:
Alan Attorney, Esq.
1 Brickel Ave
Palm Beach, FL 31418

CFN 2073134875
OR BK 8765 PG 1776

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED, made this **1st** day of **February,** 2026, by and between:

Grantor: **Zemarylis, LLC, a Florida limited liability company,**
whose post office address is: 1234 SW 2nd Street, Inglis FL,
and
Grantee: **J.P. Morgan Securities LLC, as trustee of the Acme Employee Pension Plan for the benefit of Sam Amos,** whose post office address is: 718 NE 9th Ave, Gainesville, FL

WITNESSETH:
That the Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, all that certain land situated in Alachua County, Florida, described as follows:

Lot 1, Block 10, Countryside, as per the plat recorded in Plat Book 8, page 2, Public Records of Alachua County, Florida.

The validly serving trustee has the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property.

TOGETHER WITH all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.



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Charitable Trusts

- Governed by Ch. 736, F.S.
- Often called “Charitable Remainder Trust”
- If Life Tenant has power to convey – no trust requirements



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Prepared by and Return to:
Alan Attorney, Esq.
1 Brickel Ave
Palm Beach, FL 31418

CFN 2073134875
OR BK 8765 PG 1776

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED, made this **1st** day of **February**, 20**26**, by and between:

Grantor: **Grace Miranda, unmarried,**
whose post office address is: 1234 SW 2nd Street, Inglis FL,
and

Grantee: **Grace Miranda, unmarried, for the term of her life with the power to sell and convey without joinder of the remainderman, including the right to retain the proceeds without liability for waste, and remainder to The Then lidly Serving Trustee of the Alachua County Humane Society Trust dated 1/4/1996,** whose post office address is: 718 NE 9th Ave, Gainesville, FL

WITNESSETH:
That the Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, all that certain land situated in Alachua County, Florida, described as follows:

Lot 1, Block 10, Countryside, as per the plat recorded in Plat Book 8, page 2, Public Records of Alachua County, Florida.

TOGETHER WITH all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining



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Is it actually a Trust?

- Business Trusts
- Deeds governed by Sec. 689.07, F.S.



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Business Trusts

Prepared by and Return to:
Alan Attorney, Esq.
1 Brickel Ave
Palm Beach, FL 31418

CFN 2073134875
OR BK 8765 PG 1776

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED, made this **1st** day of **February**, 20**26**, by and between:

Grantor: **Grace Miranda, unmarried**,
whose post office address is: 1234 SW 2nd Street, Inglis FL,
and
Grantee: **Alexander Pointe Apartments DST,** whose post office address is: 643 Wealth Road, Dover, DE 19901

WITNESSETH:
That the Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, all that certain land situated in Alachua County, Florida, described as follows:

Lot 1, Block 10, Countryside, as per the plat recorded in Plat Book 8, page 2, Public Records of Alachua County, Florida.

TOGETHER WITH all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

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689.07

Prepared by and Return to:
Alan Attorney, Esq.
1 Brickel Ave
Palm Beach, FL 31418

CFN 2073134875
OR BK 8765 PG 1776

GENERAL WARRANTY DEED

THIS GENERAL WARRANTY DEED, made this **1st** day of **February**, 20**26**, by and between:

Grantor: **John Smith, unmarried**,
whose post office address is: 1234 SW 2nd Street, Inglis FL,
and
Grantee: **Joshua Kalen, Trustee,** whose post office address is: 18 Wood Road, Alachua FL 32615

WITNESSETH:
That the Grantor, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, all that certain land situated in Alachua County, Florida, described as follows:

Lot 1, Block 10, Countryside, as per the plat recorded in Plat Book 8, page 2, Public Records of Alachua County, Florida.

TOGETHER WITH all tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

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Homestead Considerations

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Foundations

- Property is residential; settlor lived there at the time of death and buyer is planning to live there.
- The title examiner has been informed that the settlor died, survived by a spouse, but no minor child
- None of the deeds include 732.7025 waiver by deed language

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Revocable Trusts – Aronson

- Absent reason to believe settlor died, no requirement to ask
- Settlor's death triggers contemplation of constitutional restraint on devise
  - Is Land homestead? If no – all clear; If yes – ask more
  - Was settlor survived by minor child? If no – ask more; if yes - require deed from heirs in addition to deed from trustee
  - Was Settlor survived by spouse (only reach this question if not survived by minor child)? If no –all clear; if yes – ask more
  - Does the trust devise homestead to spouse in fee? If no – restraint violated; consider options; if yes - no violation of restraint; Trustee can deed out



Aronson workaround

- Aronson held that property fell out of trust and descended by intestacy requiring probate of settlor's estate
- ORT will insure without requiring probate on the condition that there is no doubt as to identity of heirs who all sign one deed, and the trustee also deeds out
- NOTE: Trustee deeding out because not doing probate
- NOTE: The identity of heirs can be established by affidavit
- NOTE: heirs all sign one deed describing them as "being all of the heirs of ___, deceased." by affidavit (in the absence of doubt)



Caveats to Aronson Workaround

- Affidavit of heirs is not required to be recorded
- Local property appraiser must be considered in every insuring solution

Aronson workaround does not apply if:

- **The decedent was the only settlor of the trust and was not survived by a spouse or a minor child.**
- **The decedent was the only settlor of the trust, was not survived by a minor child, and upon the settlor's death, the homestead is distributed to the surviving spouse in fee simple absolute.**
- **The decedent was the only settlor of the trust, was not survived by a minor child, and the surviving spouse executed a homestead waiver that has been judicially determined to be a valid homestead waiver (see caveat).**
- **The decedent was a settlor of a joint trust, was not survived by a minor child, and the surviving spouse is also a settlor who retains the power to revoke or amend the trust.**
- **Effective July 1, 2018, if the surviving spouse has waived homestead rights related to the restraint on devise, in compliance with Sec. 732.7025, F.S., and there is no minor child surviving the decedent.**

Defaulting to Aronson workaround explained

- **Consitutional restraint applies even to trust property**
- **Sec. 732.401, F.S. provides that homestead vests in intestate heirs at moment of death**
- **Generally even in probate identity of heirs is established by affidavit**
- **The decedent was the only settlor of the trust and was not survived by a spouse or a minor child.**
- **NOTE: names of intestate heirs must be searched; any liens cleared**
- **NOTE: only available in arm's length transactions**



Irrevocable Trusts – not a devise per §732.4017, F.S.

- Refers to trusts settled as irrevocable
- Does not include those that became irrevocable on death of settlor
- Does not include a QPRT
- Sec. 732.4017, F.S. establishes that the completed transfer during life is not a devise



Qualified Personal Residence Trust (QPRT)

- Irrevocable Trust but not a completed gift
- May rely on four corners of deed
- If vested trustee not acting within powers in deed inquiry required.
  - Did settlor die
  - Did settlor survive term
  - Consider homestead restraint on devise



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Recap



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Friendly Florida Statute Sections

- Land Trusts – §689.071
- Powers in the Deed – §689.073
- Qualified Plans - §689.072
- Certifications of Trusts - §736.1017
- Homestead in Trust - §732.4017
- Waiver by Deed - §732.7025

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Conclusion

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Rebuttable Presumptions

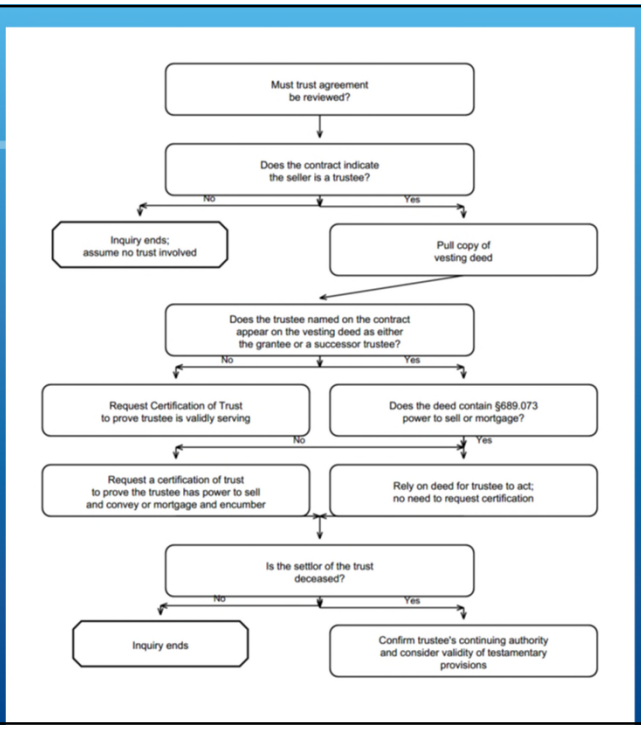
- If trustee name matches name of trust that person is the settlor
- Unless described as “irrevocable” can presume “revocable”
- Land Trusts not typically named for a person
- Revocable trusts are incomplete gifts
- Irrevocable trusts are completed gifts
- Merger of Title when trust is named for trustee
- No merger of title when trust is named for Land

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Takeaways

- Rely on four corners of deed
- Rely on friendly statutes
- Gift: quick reference tool
- Reminder Underwriting is here to help keep path to closing simple
- Examples

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Thank You!
for attending

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Mortgage Modifications - Ratings and Other Considerations

John Brown
Senior Underwriting Counsel, Old Republic Title

MORTGAGE MODIFICATIONS- RATINGS AND OTHER CONSIDERATIONS

Presented at Old Republic Title Assembly 2026

By John E. Brown, Esq
Senior Underwriting Counsel- Commercial
Florida Bar Board Certified Real Estate Attorney

I **Introduction**: What is covered? Determining the appropriate premium rating for title insurance transactions involve an analysis of the type of coverage requested, the amount of coverage required and the facts of each scenario. Coverage is issued in favor of an owner of the real property and a lender holding a mortgage lien on real property. The amount of owner's coverage can be based on the purchase price, fair market value ("full insurable value") or the future value of improvements being constructed on the property (once fully constructed). The amount of lender's coverage shall not be issued for an amount less than the full principal debt but can be issued for an amount up to 25% in excess of that to cover interest and foreclosure costs. Affirmative coverage is available when appropriate to supplement basic coverage and is typically related to the specifics of the property, the terms of the loan or the nature of the collateral.

A mortgage modification can be insured using a new or replacement policy, an ALTA 11 Mortgage Modification endorsement or by using a Blank/General endorsement.

Of some importance is the notion that determining the proper rate for a title policy in Florida requires a keen appreciation of the details of the title transaction and a healthy knowledge of the rating rules to reach the appropriate rate. Each determination is made on a case by case basis and the rules are there to guide the agent in charging an appropriate sum as compensation for the risk insured balanced with the interest of the insured.

II Mortgage Modifications- Types of Changes

What are the typical situations where mortgages are modified and the type of changes?

a. The most common situations are when:
   i. an existing loan between the same lender and borrower desire to change the terms, and
   ii. an existing loan is assignment/transferred to a new lender who amends and restates it for the same borrower or a new purchaser.
b. The most common term changes in mortgage modifications include:
   i. Change in interest rate: Increase or Decrease.
   ii. Add, release or change collateral.
   iii. Alter the duration of the loan: Extend Maturity Date.
   iv. Future advance FS 697.04.
   v. Change or add business terms: Reporting, LTD ratios.
   vi. Add or substitute parties: including Guarantors.
   vii. Rewrite mortgage.

III Rating Regulations:

The source of regulation pertaining to title insurance rates is found in Chapter 69O of the Florida Administrative Code. These rules or regulations specify the rate to be charged for a title insurance policy based on the type of policy, such as, owner's, leasehold or loan. The rate can also vary based on the conditions under which it is issued, such as a new, reissue or simultaneous policy. Further, the rates can include endorsements which provide additional affirmative coverage to the policies. The rates required by these regulations and the nature and type of affirmative coverage available in Florida are set by these rules. It should be noted that the endorsements providing affirmative coverage in Florida do not include all of the ALTA series forms available elsewhere and in some instances the forms available in Florida vary from their national ALTA counterparts.

a. Rule 69O-186.003(1)(b) and (2) F.A.C. Original Rate and Reissue Rates (Appendix A)

(1) Original Title Insurance Rates.

(b) For mortgage title insurance:

1.a. The premium for the original mortgage title insurance shall be:

	Per Thousand	Minimum Insurer Retention
From $0 to $100,000 of liability written	$5.75	30%
From $100,000 to $1 million, add	$5.00	30%
Over $1 million and up to $5 million, add	$2.50	35%
Over $5 million and up to $10 million, add	$2.25	40%
Over $10 million, add	$2.00	40%

b. The minimum premium for all conveyances except multiple conveyances shall be $100.

c. The minimum premium for multiple conveyances on the same property shall be $60.

2. A mortgage title insurance policy shall not be issued for an amount less than the full principal debt. A policy may, however, be issued for an amount up to 25 percent in excess of the principal debt to cover interest and foreclosure costs.

(2) Reissue Rates.

(a)1. The reissue premium charge for owner's, mortgage, and leasehold title insurance policies shall be:

	Per Thousand
Up to $100,000 of liability written	$3.30
Over $100,000 and up to $1 million, add	$3.00
Over $1 million and up to $10 million, add	$2.00
Over $10 million, add	$1.50

2. The minimum premium shall be $100.00.

(b) Provided a previous owner's policy was issued insuring the seller or the mortgagor in the current transaction and that both the reissuing agent and the reissuing underwriter retain for their respective files copies of the prior owner's policy, the reissue premium rates in paragraph (a) shall apply to:

1. Policies on real property which is unimproved except for roads, bridges, drainage facilities, and utilities if the current owner's title has been insured prior to the application for a new policy;

2. Policies issued with an effective date of less than 3 years after the effective date of the policy insuring the seller or mortgagor in the current transaction; or

3. Mortgage policies issued on refinancing of property insured by an original owner's policy which insured the title of the current mortgagor.

(c) Any amount of new insurance, in the aggregate, in excess of the amount under the previous policy shall be computed at the original owner's or leasehold rates, as provided in subsection (1).

b. **Rule 69O-186.003(4) F.A.C. Substitution Loan Rate (Appendix B)**

(4) Substitution Loan Rates. The following risk premium for substitution loans shall apply:

(a) When the same borrower and the same lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the original loan.

Age of Original Loan	Premium Rates
3 years or under	30% of original rates
From 3 to 4 years	40% of original rates
From 4 to 5 years	50% of original rates
From 5 to 10 years	60% of original rates
Over 10 years	100% of original rates
Minimum premium	$100.00

(b) At the time a substitution loan is made, the unpaid principal balance of the previous loan will be considered the amount of insurance in force on which the foregoing rates shall be calculated. To these rates shall be added the regular rates in the applicable schedules for any new insurance, that is, the difference between the unpaid principal balance of the original loan and the amount of the new loan.

(c) In the case of a substitution loan of $250,000 or more, when the same borrower and any lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the previous loan, the premium for such substitution loans shall be the rates as set forth in paragraphs (a) and (b).

c. **Rule 69O-186.005(13) F.A.C. Substitution Loan Rate Exemption Rule (Appendix C)**

(13) The Substitution Loan Rate provided in subsection (5) of Rule 69O-186.003, F.A.C., shall apply to any endorsement which insures a modification of a mortgage which was insured by an outstanding policy where the modification agreement effects any change in the terms, conditions, priority, or security, other than:

(a) An extension of the time for payment of the secured obligation;

(b) Any decrease in the interest rate of the insured mortgage, provided the “cap” on a variable rate mortgage is not greater than the original “cap” and/or the “cap” is not greater than the original fixed rate;

(c) Any increase in the interest rate of the insured mortgage, provided the endorsement contains an exception for the loss of priority occasioned by the increase;

(d) Changes in an amortization schedule to extend the term of the insured mortgage;

(e) A release of a portion of the secured property;

(f) A correction to either perfect the lien of the insured mortgage or comply with the terms of the lender's original commitment;

(g) Future advances made pursuant to Section 697.04, Florida Statutes; or

(h) Encumbrances of additional parcels under a revolving construction loan agreement contained in the original mortgage and contemplated by subsection 69O-186.003(10), F.A.C.

IV **Effect of Mortgage Modification on Rating Premium- Key Term Changes**

a. These changes **may** trigger premium:
    i. Change in Interest Rate.
    ii. Release/Change or Add new Collateral.
    iii. Change or Add new Borrower.
    iv. Release of Borrower or Guarantor.
    v. Future Advance.
    vi. Additional Business Terms (significant and/or material) Ones that impose a new significant burden on borrower (that may result in being less able to repay) or those that prejudice an intervening lienholder.
b. Exemption Rules: FAC 69O-186.005(13).

V **Review Examples of Rating Mortgage Modifications**

1. Substitution Loan: Change in Terms or Assignment-Million Dollar Plus
2. Substitution of Loan: lien spread to new land
3. Loan Modification with future advance and spreader
4. Mortgage Modification with Builder Lines of Credit- Spreader
5. Reissue Credit with sale and new loan
6. Simultaneous Issue with Non-Identical Property
7. Simultaneous Issue with refinance of existing property and new property.

1. Substitution Loan: Change in Terms or Assignment-Million Dollar Plus

Facts

On July 15, 2026, a substitution loan policy insuring a new mortgage will be issued in the amount of $1.12 Million. The mortgage securing the existing loan was previously insured by a First American loan policy with an effective date of February 1, 2023, and that loan has been paid down to $1.084 Million.

Analysis

When the same borrower and the same lender make a substitution loan on the same property and a new loan policy is being issued, a special rate may be charged if a loan policy was previously issued insuring the original mortgage. When the unpaid principal balance is $250K or more, the substitution loan rate can apply even if the lender changes as long as the borrower and property remain the same. The title insurer on the new policy does not have to be the same as with the original policy.

Rating

The substitution loan rate applies to the current unpaid principal balance, $1.084 Million. The $36K difference between the current balance and the new amount to be secured, $1.12 Million is rated at original rates. The 40% multiplier applies since the effective date of the original loan policy is more than three years but less than four years old.

SUBSTITUTION LOAN WORKSHEET
Old Republic National Title Insurance Company

Please sumit this form along with the policy to ensure proper processing

AGENT NUMBER: | **AGENT FILE REF:** Example 1 | **PAID WITH CHECK NO:**

ORT CS: DB*

LOAN INFORMATION

MMDDYYYY

New Loan Policy Number: | Effective Date of Original Policy: 2/01/2023

*New Effective Date 7/15/2026

Original Mortgagee Policy Number: | Unpaid Principal Balance of Loa $1,084,000.00
(Copy of original policy should be attached)

New Amount of Insurance: $1,120,000.00

Property Type: Non-Residential

I. PREMIUM CALCULATION FOR SUBSTITUTION LOAN RATE

Premium on the Unpaid Balance of Loan $ 5,285.00 (1)

Time percentage, based on age of the loan or age of the policy as last endorsed

40%

	3 years or under	30%		5 to 10 years	60%	Equals Premium	$ 2,114.00	(2)
X	3 to 4 years	40%		over 10 years	*	30%=Old Republic Share	$ 634.20	(2a)
	4 to 5 years	50%						

*Original Rates and premium splits apply

II. PREMIUM CALCULATION FOR AMOUNT IN EXCESS OF THE UNPAID PRINCIPAL BALANCE AT ORIGINAL RATE

Note: The starting tier will depend on where the Unpaid Principal Balance falls.

Rating Tier(s)	Amt. Of Insurance	Rate Per Thousand	Premium	%	Old Republic Share
Up to $100,000	$ -	$5.75	$ -	30%	$ -
Over $100,000 up to $1 million	$ -	$5.00	$ -	30%	$ -
Over $1 million up to $5 million	$ 36,000	$2.50	$ 90.00	35%	$ 31.50
Over $5 million up to $10 million	$ -	$2.25	$ -	40%	$ -
Over $10 million	$ -	$2.00	$ -	40%	$ -
		Totals	$ 90.00 (3)		$ 31.50 (3a)
		Totals: Premium (line 2 +3)	$ 2,204.00	(4) **(2a+3a)**	$ 665.70 (4a)

III. ALTA ENDORSEMENTS PER RULE 69O-186.005 (8)(a) & (b): Place an "X" for the applicable endorsement and complete premium calculation

9-06 issued with original MF6 or M21		Premium from line 4	$ -	X 10% min.	$ -	(5) x 30% =	$ - (5a)
9-06 NOT issued with original (MF6 or M21)		Premium from lines 1 + 3	$ -	X 10% min.	$ -	(6) x 30% =	$ - (6a)
9.3-06 issued with original (MF6 or M21)		Premium from line 4	$ -	X 10% min.	$ -	(7) x 30% =	$ - (7a)
9.3-06 NOT issued with original MF6 or M21		Premium from lines 1 + 3	$ -	X 10% min.	$ -	(8) x 30% =	$ - (8a)
NSE issued with original		Premium from line 4	$ -	X 10% min.	$ -	(9) x 30% =	$ - (9a)
NSE NOT issued with original		Premium from lines 1 + 3	$ -	X 10% min.	$ -	(10) x 30% =	$ - (10a)

IV. ALTA ENDORSEMENTS PER RULE 69O-186.005 (8) (c) thru (l): Place an "X" for the applicable endorsement, and complete premium calculation.
****A COPY MUST BE ATTACHED TO POLICY**

SAE	AIE	OE	CPE	FCE	BME
10-06 OR 10**	10.1 **	CLU**	CE**	SE**	

Property Type: Non-Residential

Non-Residential

No. of Endorsements issued 0 X (min. $25.00/max. $100.00) = $0.00 (11) X 30% = $0.00 (11a)

No. of Endorsements issued 0 X (min.) $100.00 = $ - (12) X 30% = $ - (12a)

V. ALTA ENDORSEMENTS PER RULE 69O-186.005 (6) and other Endorsements: Place an "X" for the applicable endorsements below.

4.1 - 06 or 4.1	7 - 06	14 - 06 or 14		
5.1 - 06	7.1	14.2 - 06 or 14.2		
6 - 06 or 6	7.2	14.3 - 06 or 14.3		
6.2 -06 or 6.2	8.1 - 06 or 8.1	RCE	O T H E R:	

No. of Endorsements Issued 0 x (minimum) $25.00 = $0.00 (13) X 30% $0.00 (13a)

VI. ALTA ENDORSEMENTS THAT DO NOT REQUIRE PREMIUM. Place an "X" for the applicable endorsements below.

13-06	13.1-06		
11-06 or 11	11.1	11.2	**(Premium applies to additional insurance)**

No. of Endorsements Issued 0 Rate at $0

TOTAL CALCULATIONS ON SUBSTITUTION LOAN:

Total of Premium (add lines 4 through 13) $ 2,204.00

Total of Old Republic Share (add lines 4a through 13a) $ 665.70

*Minimum Premium of $100

* Note: Applicable premium is to be remitted. Minimums are indicated where applicable. Overpayment of premium will be treated as excess insurer retention.

2. Substitution of Loan: lien spread to new land

Facts

In 2024, Borrower mortgaged Blackacre to a lender to secure a debt of $4 million and the lender has an Old Republic loan policy in that amount. The borrower and lender now desire to modify the mortgage to spread the lien to Whiteacre - another parcel already owned by the borrower - and to have the loan policy endorsed to insure the lien spread. The lender has allocated $500K as the extent of the mortgage lien to be secured by Whiteacre. The loan policy already has an attached ALTA 9-06 endorsement. That coverage will be advanced as to Blackacre and also provided as to the new collateral, Whiteacre.

Analysis

It appears that these facts might suggest applying the Substitution Loan Premium however the better practice is to base the new loan coverage on the lender's allocation of the secured debt to the new property and utilize Section III of the Mortgage Modification Endorsement Worksheet. This analysis more accurately compensates the title insurance underwriter for the additional risk associated with the new property.

Rating

The lender has allocated $500K to Whiteacre and the lien spread premium will be based on that amount. 10% of that total would also be due for the ALTA 9-06 coverage extended to the new collateral, Whiteacre.

Mortgage Modification Endorsement Worksheet

Agent Number | Agent's File Ref. **Example 2** | Paid with Check No.

Policy # | Original Amount of Insurance **$4,000,000.00**

ORT CS **DB***

I. MODIFICATION WHICH CHANGES THE TERMS, CONDITIONS, PRIORITY, OR SECURITY, OTHER THAN THE ONES PERMITTED UNDER RULE 69O-186.005(13)

MMDDYYYY

Unpaid Principal of Loan | *Original/Last Effective Date

Premium on Unpaid Principal of the Loan $ - | *New Effective Date

*Required for rating percentage

Times: Percentage, based on the age of the loan | X 0%

___ 3 years or under, 30% | 4 to 5 years, 50%

___ 3 to 4 years, 40% | 5 to 10 years, 60% | **Equals premium** $ - **(1)**

___ Over 10 years original rates and premiums splits apply | **X30% = Old Republic Share** $ - **(1a)**

II. MODIFICATION TO INSURE A FUTURE ADVANCE

Unpaid Principal Balance | + Future Advance | = $ - New Amt of Insurance

Rate Future Advance at appropriate tiers. The starting tier will depend on where the Unpaid Balance falls.
(If Revolving Line of Credit with Revolving Credit Endorsement, the starting tier will depend on where the original loan amount falls.)

Rating Tiers	Future Advance amt.	Rate per Thousand	Premium	%	Old Republic Share
Up to $100,000	$ -	$ 5.75	$ -	30%	$ -
Over $100,000 up to $1 million	$ -	$ 5.00	$ -	30%	$ -
Over $1 million up to $5 million	$ -	$ 2.50	$ -	35%	$ -
Over $5 million up to $10 million	$ -	$ 2.25	$ -	40%	$ -
Over $10 million	$ -	$ 2.00	$ -	40%	$ -
		Totals:	**$ -** **(2)**		**$ -** **(2a)**

III. MODIFICATION TO SPREAD THE LIEN TO ADDITIONAL PROPERTY

Amt. Allocated to additional property **$ 500,000** | +Amt. Allocated to original property **$ 3,500,000.00** | = $ 4,000,000 Unpaid Prin. Bal

Calculate rate for amount allocated to additional property at the appropriate tiers. The starting tier will depend on where the "Amount Allocated to Original Property" falls.

Rating Tiers	Amt. Allocated To Add'l Prop	Rate per Thousand	Premium	%	Old Republic Share
Up to $100,000	$ -	$ 5.75	$ -	30%	$ -
Over $100,000 up to $1 million	$ -	$ 5.00	$ -	30%	$ -
Over $1 million up to $5 million	$ 500,000	$ 2.50	$ 1,250.00	35%	$ 437.50
Over $5 million up to $10 million	$ -	$ 2.25	$ -	40%	$ -
Over $10 million	$ -	$ 2.00	$ -	40%	$ -
		Totals:	**$ 1,250.00** **(3)**		**$ 437.50** **(3a)**

IV. MODIFICATION THAT DOES NOT REQUIRE A PREMIUM ___ **$0.00**

TOTAL PREMIUM ON ENDORSEMENT [1+(> of 2 or 3)] and other Endorsements: $ 1,250.00 | **TOTAL OLD REPUBLIC SHARE [1a+(> of 2a or 3a)] $ 437.50**

___ 9-06 not issued with original	**OR**	**X** 9-06 issued with original	$ 125.00	X 30%	=	**$**	**37.50**
___ 9.3 - 06 not issued with original	**OR**	___ 9.3 - 06 issued with original	$ -	X 30%		**$**	**-**
___ NSE not issued with original	**OR**	___ NSE issued with original	$ -	X 30%	=	**$**	**-**

V. ALTA ENDORSEMENTS THAT DO NOT REQUIRE PREMIUM. Place an "X" for the applicable endorsements below.

___ 13-06 | ___ 13.1-06

___ 11-06 or 11 | ___ 11.1 | ___ 11.2 **(Premium applies to additional insurance)**

No. of Endorsements Issued 0 Rate at $0

VI. ALTA ENDORSEMENTS. Place an "X" for the applicable endorsements below.

___ 4.1 - 06 or 4.1	___ 7 - 06	___ 14 - 06 or 14
___ 5.1 - 06	___ 7.1	___ 14.2 - 06 or 14.2
___ 6 - 06 or 6	___ 7.2	___ 14.3 - 06 or 14.3
___ 6.2 - 06 or 6.2	___ 8.1 - 06 or 8.1	___ RCE ___ OTHER: ___

No. of Endorsements Issued 0 **x (minimum) $25.00 =** **$ -** **X 30% =** **$0.00**

TOTAL PREMIUM* **(min $100)** **$ 1,375.00** **TOTAL OLD REPUBLIC SHARE** **$ 475.00**

3. Loan Modification with future advance and spreader- Non Line of Credit

Facts

A Developer has an existing mortgage insured by an Old Republic loan policy which has a current principal balance of $900K. The effective date of the policy is August 12, 2024. The mortgage is being modified to add a Future Advance clause allowing the secured debt to be increased up to $2 Million.The new modification will show an advance of $300K taking the new insured amount up to $1.2 Million. A spreader provision is also being added to add a lot to the secured property. The original promissory note and the future advance note are being consolidated. The lender has allocated $200K as the amount secured by the lot being added. The loan policy has an ALTA 9-06 endorsement and that coverage will be advanced as to the original property as well as the new lot and the effective date of the policy will be advanced to June 6, 2026.

Analysis

When endorsing the existing policy to insure the new modification, the addition of the new Future Advance clause triggers a substitution loan premium based on the current unpaid principal balance and the age of the loan. The new money and new property are new risks that each carry with them their own premium rating. The extension of ALTA 9-06 coverage will also generate a premium. Of course, any standard exceptions deleted from the original loan policy must be evaluated as to the new property and re-evaluated as to the existing property.

Rating

Given that the effective date of the loan policy is less than 3 years old, the substitution loan premium multiplier is 30% and applies to the premium for $900K. The Future Advance premium is based on $300K and the lien spread premium based on the $200K allocated to the new property by the lender. Also note, since in this case the premium for the spreader is less than the premium for the future advance, only the greater amount should actually be charged — not both. 10% of the total premium due as determined above is also due for advancing the ALTA 9-06 coverage.

Mortgage Modification Endorsement Worksheet

Old Republic National Title

Agent Number | Agent's File Ref. **Example 3** | Paid with Check No.

Policy # | Original Amount of Insurance

ORT CS **DB***

I. MODIFICATION WHICH CHANGES THE TERMS, CONDITIONS, PRIORITY, OR SECURITY, OTHER THAN THE ONES PERMITTED UNDER RULE 69O-186.005(13)

MMDDYYYY

Unpaid Principal of Loan **$ 900,000** | *Original/Last Effective Date **8/12/2024**

Premium on Unpaid Principal of the Loan **$ 4,575.00** | *New Effective Date **6/06/2026**

*Required for rating percentage

Times: Percentage, based on the age of the loan | X 30%

X 3 years or under, 30% | 4 to 5 years, 50%

3 to 4 years, 40% | 5 to 10 years, 60% | **Equals premium** **$ 1,372.50** (1)

Over 10 years original rates and premiums splits apply | **X30% = Old Republic Share** **$ 411.75** (1a)

II. MODIFICATION TO INSURE A FUTURE ADVANCE

Unpaid Principal Balance **$ 900,000** + Future Advance **$ 300,000** = $ 1,200,000 New Amt of Insurance

Rate Future Advance at appropriate tiers. The starting tier will depend on where the Unpaid Balance falls.
(If Revolving Line of Credit with Revolving Credit Endorsement, the starting tier will depend on where the original loan amount falls.)

Rating Tiers	Future Advance amt.	Rate per Thousand	Premium	%	Old Republic Share
Up to $100,000	$ -	$ 5.75	$ -	30%	$ -
Over $100,000 up to $1 million	$ 100,000	$ 5.00	$ 500.00	30%	$ 150.00
Over $1 million up to $5 million	$ 200,000	$ 2.50	$ 500.00	35%	$ 175.00
Over $5 million up to $10 million	$ -	$ 2.25	$ -	40%	$ -
Over $10 million	$ -	$ 2.00	$ -	40%	$ -
		Totals:	**$ 1,000.00** (2)		**$ 325.00** (2a)

III. MODIFICATION TO SPREAD THE LIEN TO ADDITIONAL PROPERTY

Amt. Allocated to additional property **$ 200,000** +Amt. Allocated to original property **$ 1,000,000.00** = $ 1,200,000 Unpaid Prin. Bal

Calculate rate for amount allocated to additional property at the appropriate tiers. The starting tier will depend on where the "Amount Allocated to Original Property" falls.

Rating Tiers	Amt. Allocated To Add'l Prop	Rate per Thousand	Premium	%	Old Republic Share
Up to $100,000	$ -	$ 5.75	$ -	30%	$ -
Over $100,000 up to $1 million	$ -	$ 5.00	$ -	30%	$ -
Over $1 million up to $5 million	$ 200,000	$ 2.50	$ 500.00	35%	$ 175.00
Over $5 million up to $10 million	$ -	$ 2.25	$ -	40%	$ -
Over $10 million	$ -	$ 2.00	$ -	40%	$ -
		Totals:	**$ 500.00** (3)		**$ 175.00** (3a)

IV. MODIFICATION THAT DOES NOT REQUIRE A PREMIUM

$0.00

TOTAL PREMIUM ON ENDORSEMENT [1+(> of 2 or 3)] and other Endorsements: **$ 2,372.50** | **TOTAL OLD REPUBLIC SHARE [1a+(> of 2a or 3a)]** **$ 736.75**

9-06 not issued with original	**OR**	X	9-06 issued with original	$ 237.25	X 30%	=	**$ 71.18**
9.3 - 06 not issued with original	**OR**		9.3 - 06 issued with original	$ -	X 30%		**$ -**
NSE not issued with original	**OR**		NSE issued with original	$ -	X 30%	=	**$ -**

V. ALTA ENDORSEMENTS THAT DO NOT REQUIRE PREMIUM. Place an "X" for the applicable endorsements below.

13-06 | 13.1-06

11-06 or 11 | 11.1 | 11.2 **(Premium applies to additional insurance)**

No. of Endorsements Issued 0 Rate at $0

VI. ALTA ENDORSEMENTS. Place an "X" for the applicable endorsements below.

4.1 - 06 or 4.1	7 - 06	14 - 06 or 14	
5.1 - 06	7.1	14.2 - 06 or 14.2	
6 - 06 or 6	7.2	14.3 - 06 or 14.3	
6.2 - 06 or 6.2	8.1 - 06 or 8.1	RCE	OTHER:

No. of Endorsements Issued 0 **x (minimum) $25.00 =** **$ -** **X 30% =** **$0.00**

TOTAL PREMIUM* **(min $100)** **$ 2,609.75** **TOTAL OLD REPUBLIC SHARE** **$ 807.93**

4. Mortgage Modification with Builder Lines of Credit- Spreader

Facts

A home builder secures a revolving loan in the amount of $500,000 to buy lots, build houses and resell finished homes in 2022. The loan policy insuring the line of credit is issued in the amount of $500k along with a revolving credit endorsement. With the first advance, the builder draws down $400K to buy 8 lots at $50k each. He constructs homes on several of the lots and resells them and then pays down the line of credit to a current balance of $250K. With the second advance, the builder draws down $150k and acquires 3 new lots at $50k each. The lien of loan is spread to the new lots. The ALTA 9-06 endorsement coverage will be advanced.

Analysis

The revolving loan maximum amount is $500,000 and initially premium was paid on this amount. The first advance at the initial closing was $400,000. This second advance is $150,000. Thus, the total amount advanced over the life of the loan now exceeds maximum loan amount even though the loan was paid down to $250,000. This second draw will spread the loan to 3 new lots but the loan agreement contemplates this scenario. The current loan balance at the time of the second advance is $250k.

Rating

New original rate premium is due on the loan advance over the initial loan maximum amount. Rule 69O-186.003(8). New premium is due on the value of the new parcels over $500k. Premium is due at the tiered rate level starting at the original amount of the loan. Substitution Loan Rate is not due since loan contemplates spreader feature and
Rule 69O-186,005 (13) (h) contains an exemption for spreading the lien to parcels under a revolving construction loan.

Mortgage Modification Endorsement Worksheet

Old Republic National Title

Agent Number | Agent's File Ref. **Example 4** | Paid with Check No.

Policy # | Original Amount of Insurance **$500,000.00**

ORT CS **DB***

I. MODIFICATION WHICH CHANGES THE TERMS, CONDITIONS, PRIORITY, OR SECURITY, OTHER THAN THE ONES PERMITTED UNDER RULE 69O-186.005(13)

MMDDYYYY

Unpaid Principal of Loan | *Original/Last Effective Date

Premium on Unpaid Principal of the Loan $ - | *New Effective Date

*Required for rating percentage

Times: Percentage, based on the age of the loan | X 0%

___ 3 years or under, 30% ___ 4 to 5 years, 50%

___ 3 to 4 years, 40% ___ 5 to 10 years, 60% | **Equals premium** $ - **(1)**

___ Over 10 years original rates and premiums splits apply | **X30% = Old Republic Share** $ - **(1a)**

II. MODIFICATION TO INSURE A FUTURE ADVANCE

~~Unpaid Principal Balance~~ **(Total number of draws)** $ **400,000** | Future Advance $ **150,000** | $ 50,000 New Amt of Insurance

Rate Future Advance at appropriate tiers. The starting tier will depend on where the Unpaid Balance falls. **(Draw amount over the orginal loan amount)**

(If Revolving Line of Credit with Revolving Credit Endorsement, the starting tier will depend on where the original loan amount falls.)

Rating Tiers	Future Advance amt.	Rate per Thousand	Premium	%	Old Republic Share
Up to $100,000	$ -	$ 5.75	$ -	30%	$ -
Over $100,000 up to $1 million	$ 50,000	$ 5.00	$ 250.00	30%	$ 75.00
Over $1 million up to $5 million		$ 2.50	$ -	35%	$ -
Over $5 million up to $10 million	$ -	$ 2.25	$ -	40%	$ -
Over $10 million	$ -	$ 2.00	$ -	40%	$ -

***$400,000 is dispersed amount of the original construction loan of $500,000 so there is no charge on the first $100,000 of Future Advance)

Totals: $ **250.00** **(2)** | $ **75.00** **(2a)**

III. MODIFICATION TO SPREAD THE LIEN TO ADDITIONAL PROPERTY

Amt. Allocated to additional property | +Amt. Allocated to original property | = $ - Unpaid Prin. Bal

Calculate rate for amount allocated to additional property at the appropriate tiers. The starting tier will depend on where the "Amount Allocated to Original Property" falls.

Rating Tiers	Amt. Allocated To Add'l Prop	Rate per Thousand	Premium	%	Old Republic Share
Up to $100,000	$ -	$ 5.75	$ -	30%	$ -
Over $100,000 up to $1 million	$ -	$ 5.00	$ -	30%	$ -
Over $1 million up to $5 million	$ -	$ 2.50	$ -	35%	$ -
Over $5 million up to $10 million	$ -	$ 2.25	$ -	40%	$ -
Over $10 million	$ -	$ 2.00	$ -	40%	$ -

Totals: $ - **(3)** | $ - **(3a)**

IV. MODIFICATION THAT DOES NOT REQUIRE A PREMIUM $0.00

TOTAL PREMIUM ON ENDORSEMENT [1+(> of 2 or 3)] and other Endorsements: $ **250.00** | **TOTAL OLD REPUBLIC SHARE [1a+(> of 2a or 3a)]** $ **75.00**

___ 9-06 not issued with original	**OR**	**X** 9-06 issued with original	$ 25.00	X 30%	=	$	**7.50**
___ 9.3 - 06 not issued with original	**OR**	___ 9.3 - 06 issued with original	$ -	X 30%		$	**-**
___ NSE not issued with original	**OR**	___ NSE issued with original	$ -	X 30%	=	$	**-**

V. ALTA ENDORSEMENTS THAT DO NOT REQUIRE PREMIUM. Place an "X" for the applicable endorsements below.

___ 13-06 ___ 13.1-06

___ 11-06 or 11 ___ 11.1 ___ 11.2 **(Premium applies to additional insurance)**

No. of Endorsements Issued 0 Rate at $0

VI. ALTA ENDORSEMENTS. Place an "X" for the applicable endorsements below.

___ 4.1 - 06 or 4.1	___ 7 - 06	___ 14 - 06 or 14
___ 5.1 - 06	___ 7.1	___ 14.2 - 06 or 14.2
___ 6 - 06 or 6	___ 7.2	___ 14.3 - 06 or 14.3
___ 6.2 - 06 or 6.2	___ 8.1 - 06 or 8.1	___ RCE ___ OTHER:

No. of Endorsements Issued 0 **x (minimum) $25.00 =** $ - **X 30% =** **$0.00**

TOTAL PREMIUM* **(min $100)** $ **275.00** **TOTAL OLD REPUBLIC SHARE** $ **82.50**

5. Reissue Credit with sale and new loan

Facts

The Seller of unimproved property is insured under an Old Republic Owner's policy effective January 17, 2014, in the amount of $500K. The property is now being sold for $900K and the purchaser is executing a purchase mortgage in the amount of $650K. The new Loan policy will also include ALTA 9-06 and ALTA 8.1-06 endorsements.

Analysis

Reissue rates can apply as to a new Owner's policy in a sale given that the prior OP insures the seller and one of the following is also true, (a) the effective date of the seller's OP is less than 3 years old OR (b) the property is unimproved. Rule 69O-186.003(2)(b), F.A.C. Simultaneous Issue rate will apply to the new loan policy to the extent the amount of the new loan policy is equal to or less than the amount of the new owner's coverage issued with the same effective date and on the same property. Rule 69O-186.003(5), F.A.C.

Rating

The subject property is unimproved, so the age of the seller's OP is irrelevant in applying reissue rate to a portion of the premium for the new OP. Reissue rate would apply up to $500K, with the difference between $500K and $900K rated at original rates. Given that the amount of the new loan policy is less than the amount of the new OP, that policy is rated at a minimum of $25, plus endorsements.

POLICY/ENDORSEMENT CALCULATION WORKSHEET

Old Republic National Title Insurance Company

ORT CS: DB*	AGENT NUMBER:	AGENT'S FILE REFERENCE: Example 5	PD W/CK #:

		PREMIUM	%	PREMIUM DUE Old Republic
POLICY TYPE & NO.				
Amount of Insurance:	$ 900,000.00 (Min. Premium $100.00)	$ 3,530.00		$ 1,059.00
Prior Owner's Policy #:	Insurance Amount: $ 500,000.00			

* If Leasehold, check one: ___ *ALTA 13-06 or ___ *ALTA 13.1-06 ___ ALTA 39-06 NO CHARGE

___ ALTA 11-06 or 11 ___ ALTA 11.1 ___ ALTA 11.2 (Premium applies to additional insurance)

Property Type: Non-Residential

SECTION A: (Reissue Rate Calculations)
Calculate Reissue Rate & Old Republic Share at appropriate tiers up to lesser amount of prior or new policy and the excess at original rates in section B.

Reissue Rate Tiers:	Amount of Insurance	Rate per Thousand			
Up to $100,000	$ 100,000.00	$ 3.30	$ 330.00	30%	$ 99.00
Over $100,000 Up To $1 Million	$ 400,000.00	$ 3.00	$ 1,200.00	30%	$ 360.00
Over $1 Million Up To $10 Million	$ -	$ 2.00	$ -	30%	$ -
Over $10 Million	$ -	$ 1.50	$ -	30%	$ -
		Premium & Old Republic Share (total = 1)	$ 1,530.00	**1**	$ 459.00

SECTION B: (Original Rates) *If original policy, use Section B rates. If reissue, see Section A.*

Original Rate Tiers:	Amount of Insurance	Rate per Thousand			
Up to $100,000	$ -	$ 5.75	$ -	30%	$ -
Over $100,000 Up To $1 Million	$ 400,000.00	$ 5.00	$ 2,000.00	30%	$ 600.00
Over $1 Million Up To $5 Million	$ -	$ 2.50	$ -	35%	$ -
Over $5 Million Up To $10 Million	$ -	$ 2.25	$ -	40%	$ -
Over $10 Million	$ -	$ 2.00	$ -	40%	$ -
		Premium & Old Republic Share (total = 2)	$ 2,000.00	**2**	$ 600.00
		Total Premium (1 + 2 = 3)	$ 3,530.00	**3**	$ 1,059.00

SECTION C: (Simultaneous Issue) *Loan exceeds the Owner, calculate the premium for the amount of the Loan in excess of the Owner and add a minimum of $25.00. *

Simultaneous Policy # ___ Amount $ 650,000.00 $ 25.00

Add'l Simultaneous Policy# ___ Amount $ - $ -

Total Amt of Simu. Insur. $ 650,000.00 Minimum $25.00* **4** $ 7.50

Amount of Simu	Rate per $1000			Old Republic Prem
$ 650,000		$ 25.00	30%	$ 7.50
-	$5.75	-	30%	$ -
-	$5.00	-	30%	$ -
-	$2.50	-	35%	-
-	$2.25	-	40%	-
-	$2.00	-	40%	-
		$ 25.00		$ 7.50

Total Policy(ies) Premium (3 + 4 = 5) $ 3,555.00 **5** $ 1,066.50

I. ENDORSEMENTS PER RULE 69O-186.005(8) (a) and (b): x 30%

___	9.1-06 (OF6 or O21) Unimproved Land	$ -	**6**	$ -
___	9.2 - 06 (OF6 or O21) Improved Land	$ -	**7**	$ -
X	9 - 06 (MF6 or M21) Florida Endorsement	$ 355.50	**8**	$ 106.65
___	9 - 06 (MF6 or M21) Florida Endorsement (Additional Simultaneous Policy)	$ -	**9**	$ -
___	9.3 - 06 (MF6 or M21) Florida Endorsement	$ -	**10**	$ -
___	9.3 - 06 (MF6 or M21) Florida Endorsement (Additional Simultaneous Policy)	$ -	**11**	$ -
___	Navigational Servitude Endorsement (NSE) (on Owners Policy)	$ -	**12**	$ -
___	Navigational Servitude Endorsement (NSE)	$ -	**13**	$ -
___	Navigational Servitude Endorsement (NSE) (Additional Simultaneous Policy)	$ -	**14**	$ -

II. ENDORSEMENTS PER RULE 69O-186.005(8) (c) thru (l):

___	Shared Appreciation Endorsement (SAE)	___	Assignment of Mortgage Endorsement (10-06 or 10)**
___	Additional Interest Endorsement (AIE)	___	Assignment and Date Down (10.1)**
___	Option Endorsement (OE)	___	Construction Loan Update Endorsement (CLU)**
___	Change of Partners Endorsement (CPE)	___	Contiguity Endorsement (CE)**
___	Foreign Currency Endorsement (FCE)	___	Survey Endorsement (SE)**
___	Balloon Mortgage Endorsement (BME)		

**** A COPY MUST BE ATTACHED TO POLICY** x 30%

___	**1-4 Family Residential (minimum $25.00 / maximum $100.00)**	$ -	**15**	$ -
X	**Non-Residential or greater than 1-4 family residential (minimum $100.00)**	$ -	**16**	$ -

No. of Endorsements issued ___ **x (min. $100.00)**

III. ALTA Endorsements Per Rule 69O-186.005(6) and other Endorsements:

___ 4.1 - 06 or 4.1	___ 7 - 06	___ 14 - 06 or 14		
___ 5.1 - 06	___ 7.1	___ 14.2 - 06 or 14.2		
___ 6 - 06 or 6	___ 7.2	___ 14.3 - 06 or 14.3		
___ 6.2 - 06 or 6.2	X 8.1 - 06 or 8.1	___ RCE	___ O T H E R:	

x 30%

Number of Endorsements Issued : 1 **x (min. $25.00)** $ 25.00 **17** $ 7.50

TOTAL PREMIUM AND ORT SHARE FOR POLICY(IES) AND ENDORSEMENT(S): (5+6+7+8+9+10+11+12+13+14+15+16+17=18)	$ 3,935.50	**18**	$ 1,180.65

NOTE: Applicable premium is to be remitted. Minimums are indicated where applicable. Overpayment of premium will be treated as excess insurer retention.

6. Simultaneous Issue with Non-Identical Property

Facts

The insured purchaser is obtaining a $2.5 Million Owner's Policy on Parcel 1, now being acquired. The purchaser already owns Parcel 2, worth $1 Million. The insured lender is requiring that both Parcels 1 and 2 be pledged as security for the $2 Million purchase mortgage and has allocated $1.4 Million to Parcel 1 and $600K to Parcel 2 for rating purposes. The insured purchaser has no prior Owner's policy on Parcel 2. The policies will be issued with a uniform effective date.

Analysis

Because the loan policy has additional land in it that is not being insured via the Owner's Policy, under the simultaneous issue rule set forth in 69O-186.003(5)(a), F.A.C., the entire $2 Million loan policy may not be issued at the simultaneous rate.

Rating

The new Owner's Policy will be rated at original rates. In order to determine the extent of simultaneous issue available in rating the new Loan Policy, the allocated value under the mortgage for the 2 parcels should be determined and the allocated value of Parcel 1 under the $2 Million loan amount would be entitled to simultaneous issue rate, with the balance of the loan policy, allocated to Parcel 2, being charged at regular rates.

POLICY/ENDORSEMENT CALCULATION WORKSHEET

Old Republic National Title Insurance Company

ORT CS: DB* | **AGENT NUMBER:** | **AGENT'S FILE REFERENCE:** Example 6 | **PD W/CK #:**

		PREMIUM	%	PREMIUM DUE Old Republic
POLICY TYPE & NO.				
Amount of Insurance:	$ 2,500,000.00 (Min. Premium $100.00)	$ 8,825.00		$ 2,835.00
Prior Owner's Policy #:	Insurance Amount: $ -			

* If Leasehold, check one: ___ *ALTA 13-06 or ___ *ALTA 13.1-06 ___ ALTA 39-06 NO CHARGE

___ ALTA 11-06 or 11 ___ ALTA 11.1 ___ ALTA 11.2 (Premium applies to additional insurance)

Property Type: Non-Residential

SECTION A: (Reissue Rate Calculations)

Calculate Reissue Rate & Old Republic Share at appropriate tiers up to lesser amount of prior or new policy and the excess at original rates in section B.

Reissue Rate Tiers:	Amount of Insurance	Rate per Thousand			
Up to $100,000	$ -	$ 3.30	$ -	30%	$ -
Over $100,000 Up To $1 Million	$ -	$ 3.00	$ -	30%	$ -
Over $1 Million Up To $10 Million	$ -	$ 2.00	$ -	30%	$ -
Over $10 Million	$ -	$ 1.50	$ -	30%	$ -
		Premium & Old Republic Share (total = 1)	$ -	**1**	$ -

SECTION B: (Original Rates) *If original policy, use Section B rates. If reissue, see Section A.*

Original Rate Tiers:	Amount of Insurance	Rate per Thousand			
Up to $100,000	$ 100,000.00	$ 5.75	$ 575.00	30%	$ 172.50
Over $100,000 Up To $1 Million	$ 900,000.00	$ 5.00	$ 4,500.00	30%	$ 1,350.00
Over $1 Million Up To $5 Million	$ 1,500,000.00	$ 2.50	$ 3,750.00	35%	$ 1,312.50
Over $5 Million Up To $10 Million	$ -	$ 2.25	$ -	40%	$ -
Over $10 Million	$ -	$ 2.00	$ -	40%	$ -
		Premium & Old Republic Share (total = 2)	$ 8,825.00	**2**	$ 2,835.00
		Total Premium (1 + 2 = 3)	$ 8,825.00	**3**	$ 2,835.00

SECTION C: (Simultaneous Issue) *Loan exceeds the Owner, calculate the premium for the amount of the Loan in excess of the Owner and add a minimum of $25.00. *

Simultaneous Policy # | Amount $ 2,000,000.00 | $ 25.00 | | $ 7.50

Add'l Simultaneous Policy# | Amount $ - | $ 1,500.00 | | $ 525.00

Total Amt of Simu. Insur. $ 2,000,000.00 Minimum $25.00* | **4**

	Amount of Simu	Rate per $1000			Old Republic Prem
	$ 2,000,000		$ 25.00	30%	$ 7.50
	-	$5.75	-	30%	$ -
	-	$5.00	-	30%	$ -
***	600,000	$2.50	1,500.00	35%	525.00
	-	$2.25	-	40%	-
	-	$2.00	-	40%	-
***Additional collateral			$ 1,525.00		$ 532.50

	Total Policy(ies) Premium (3 + 4 = 5)	$ 10,350.00	**5**	$ 3,367.50

I. ENDORSEMENTS PER RULE 69O-186.005(8) (a) and (b): x 30%

___	9.1-06 (OF6 or O21) Unimproved Land	$ -	**6**	$ -
___	9.2 - 06 (OF6 or O21) Improved Land	$ -	**7**	$ -
___	9 - 06 (MF6 or M21) Florida Endorsement	$ -	**8**	$ -
___	9 - 06 (MF6 or M21) Florida Endorsement (Additional Simultaneous Policy)	$ -	**9**	$ -
___	9.3 - 06 (MF6 or M21) Florida Endorsement	$ -	**10**	$ -
___	9.3 - 06 (MF6 or M21) Florida Endorsement (Additional Simultaneous Policy)	$ -	**11**	$ -
___	Navigational Servitude Endorsement (NSE) (on Owners Policy)	$ -	**12**	$ -
___	Navigational Servitude Endorsement (NSE)	$ -	**13**	$ -
___	Navigational Servitude Endorsement (NSE) (Additional Simultaneous Policy)	$ -	**14**	$ -

II. ENDORSEMENTS PER RULE 69O-186.005(8) (c) thru (l):

___	Shared Appreciation Endorsement (SAE)	___	Assignment of Mortgage Endorsement (10-06 or 10)**
___	Additional Interest Endorsement (AIE)	___	Assignment and Date Down (10.1)**
___	Option Endorsement (OE)	___	Construction Loan Update Endorsement (CLU)**
___	Change of Partners Endorsement (CPE)	___	Contiguity Endorsement (CE)**
___	Foreign Currency Endorsement (FCE)	___	Survey Endorsement (SE)**
___	Balloon Mortgage Endorsement (BME)		

**** A COPY MUST BE ATTACHED TO POLICY** x 30%

___	**1-4 Family Residential (minimum $25.00 / maximum $100.00)**	$ -	**15**	$ -
X	**Non-Residential or greater than 1-4 family residential (minimum $100.00)**	$ -	**16**	$ -

No. of Endorsements issued ___ **x (min. $100.00)**

III. ALTA Endorsements Per Rule 69O-186.005(6) and other Endorsements:

___	4.1 - 06 or 4.1	___	7 - 06	___	14 - 06 or 14
___	5.1 - 06	___	7.1	___	14.2 - 06 or 14.2
___	6 - 06 or 6	___	7.2	___	14.3 - 06 or 14.3
___	6.2 - 06 or 6.2	___	8.1 - 06 or 8.1	___	RCE

___ O T H E R:

x 30%

	Number of Endorsements Issued : x (min. $25.00)	$ -	**17**	$ -
	TOTAL PREMIUM AND ORT SHARE FOR POLICY(IES) AND ENDORSEMENT(S): (5+6+7+8+9+10+11+12+13+14+15+16+17=18)	$ 10,350.00	**18**	$ 3,367.50

NOTE: Applicable premium is to be remitted. Minimums are indicated where applicable. Overpayment of premium will be treated as excess insurer retention.

7. Simultaneous Issue with refinance of existing property and new property

Facts

A Developer owns Parcel A which is insured for $700K. The Developer has contracted to purchase 2 additional Parcels B and C. The Developer intends to improve all 3 and is acquiring the financing to purchase Parcels B and C but agrees to pledge all 3 parcels for the loan. The Owner requests owner's coverage on Parcels B and C in the amount of $2,100,000.00 (purchase price of B and C). The lender requests a loan policy in the amount of $2,100,000.00 insuring the lien on Parcels A, B and C along with an ALTA 9-06 endorsement.

Analysis

Parcel A is already insured and the new owner's policy in current transaction insures only Parcels B and C. The Loan policy will insure the lien on all 3 parcels so the policies will not be identical. The usual Simultaneous Rate is available but only as to the allocated value of the parcels that are insured in both of the current policies in comparison to the value of the overall property. The insured must pay premium on the allocated value of Parcel A but is entitled to a reissue rate credit toward the current loan premium based on the amount of the prior owner's coverage.

Rating

The owner is entitled to a simultaneous rate at the allocated value of the overall loan that Parcels B and C. Parcel A is valued at $700K or 1/3 of the total amount of the new loan. The simultaneous rate is given on the new loan up to the sum of $1,400,000.00 and original premium is due on remaining $700,000.00. The reissue rate credit is given on the current loan as to Parcel A based on the allocated value of the owner's coverage to new loan and is charged at the tiered rate of $2.00.

POLICY/ENDORSEMENT CALCULATION WORKSHEET

Old Republic National Title Insurance Company

ORT CS: DB* | **AGENT NUMBER:** | **AGENT'S FILE REFERENCE:** Example 7 | **PD W/CK #:**

		PREMIUM	%	PREMIUM DUE Old Republic
POLICY TYPE & NO.				
Amount of Insurance:	$ 2,100,000.00 (Min. Premium $100.00)	$ 7,825.00		$ 2,485.00
Prior Owner's Policy #:	Insurance Amount: $ -			

* If Leasehold, check one: ___ *ALTA 13-06 or ___ *ALTA 13.1-06 ___ ALTA 39-06 NO CHARGE

___ ALTA 11-06 or 11 ___ ALTA 11.1 ___ ALTA 11.2 (Premium applies to additional insurance)

Property Type: Non-Residential

SECTION A: (Reissue Rate Calculations)

Calculate Reissue Rate & Old Republic Share at appropriate tiers up to lesser amount of prior or new policy and the excess at original rates in section B.

Reissue Rate Tiers:	Amount of Insurance	Rate per Thousand			
Up to $100,000	$ -	$ 3.30	$ -	30%	$ -
Over $100,000 Up To $1 Million	$ -	$ 3.00	$ -	30%	$ -
Over $1 Million Up To $10 Million	$ -	$ 2.00	$ -	30%	$ -
Over $10 Million	$ -	$ 1.50	$ -	30%	$ -
		Premium & Old Republic Share (total = 1)	$ -	**1**	$ -

SECTION B: (Original Rates) *If original policy, use Section B rates. If reissue, see Section A.*

Original Rate Tiers:	Amount of Insurance	Rate per Thousand			
Up to $100,000	$ 100,000.00	$ 5.75	$ 575.00	30%	$ 172.50
Over $100,000 Up To $1 Million	$ 900,000.00	$ 5.00	$ 4,500.00	30%	$ 1,350.00
Over $1 Million Up To $5 Million	$ 1,100,000.00	$ 2.50	$ 2,750.00	35%	$ 962.50
Over $5 Million Up To $10 Million	$ -	$ 2.25	$ -	40%	$ -
Over $10 Million	$ -	$ 2.00	$ -	40%	$ -
		Premium & Old Republic Share (total = 2)	$ 7,825.00	**2**	$ 2,485.00
		Total Premium (1 + 2 = 3)	$ 7,825.00	**3**	$ 2,485.00

SECTION C: (Simultaneous Issue) *Loan exceeds the Owner, calculate the premium for the amount of the Loan in excess of the Owner and add a minimum of $25.00. *

Simultaneous Policy #		Amount	$ 2,100,000.00	$ 25.00		$ 7.50	
Add'l Simultaneous Policy#		Amount	$ -	$ 1,400.00		$ 490.00	
Total Amt of Simu. Insur.	$ 1,400,000.00	Minimum $25.00*			**4**		

	Amount of Simu	Rate per $1000			Old Republic Prem
	$ 1,400,000		$ 25.00	30%	$ 7.50
	-	$5.75	-	30%	$ -
	-	$5.00	-	30%	$ -
***	700,000	$2.00	1,400.00	35%	490.00
	-	$2.25	-	40%	-
	-	$2.00	-	40%	-
			$ 1,425.00		$ 497.50

***Additional collateral at reissue rate of $2.00/thousand

Total Policy(ies) Premium (3 + 4 = 5)	$ 9,250.00	**5**	$ 2,982.50

I. ENDORSEMENTS PER RULE 69O-186.005(8) (a) and (b):

				x 30%	
	9.1-06 (OF6 or O21) Unimproved Land	$ -	**6**	$ -	
	9.2 - 06 (OF6 or O21) Improved Land	$ -	**7**	$ -	
X	9 - 06 (MF6 or M21) Florida Endorsement	$ 925.00	**8**	$ 277.50	
	9 - 06 (MF6 or M21) Florida Endorsement (Additional Simultaneous Policy)	$ -	**9**	$ -	
	9.3 - 06 (MF6 or M21) Florida Endorsement	$ -	**10**	$ -	
	9.3 - 06 (MF6 or M21) Florida Endorsement (Additional Simultaneous Policy)	$ -	**11**	$ -	
	Navigational Servitude Endorsement (NSE) (on Owners Policy)	$ -	**12**	$ -	
	Navigational Servitude Endorsement (NSE)	$ -	**13**	$ -	
	Navigational Servitude Endorsement (NSE) (Additional Simultaneous Policy)	$ -	**14**	$ -	

II. ENDORSEMENTS PER RULE 69O-186.005(8) (c) thru (l):

	Shared Appreciation Endorsement (SAE)		Assignment of Mortgage Endorsement (10-06 or 10)**
	Additional Interest Endorsement (AIE)		Assignment and Date Down (10.1)**
	Option Endorsement (OE)		Construction Loan Update Endorsement (CLU)**
	Change of Partners Endorsement (CPE)		Contiguity Endorsement (CE)**
	Foreign Currency Endorsement (FCE)		Survey Endorsement (SE)**
	Balloon Mortgage Endorsement (BME)		

**** A COPY MUST BE ATTACHED TO POLICY**

				x 30%	
	1-4 Family Residential (minimum $25.00 / maximum $100.00)	$ -	**15**	$ -	
X	**Non-Residential or greater than 1-4 family residential (minimum $100.00)**	$ -	**16**	$ -	

No. of Endorsements issued ___ **x (min. $100.00)**

III. ALTA Endorsements Per Rule 69O-186.005(6) and other Endorsements:

	4.1 - 06 or 4.1		7 - 06		14 - 06 or 14
	5.1 - 06		7.1		14.2 - 06 or 14.2
	6 - 06 or 6		7.2		14.3 - 06 or 14.3
	6.2 - 06 or 6.2		8.1 - 06 or 8.1		RCE

___ O T H E R:

				x 30%	
Number of Endorsements Issued :	**x (min. $25.00)**	$ -	**17**	$ -	

TOTAL PREMIUM AND ORT SHARE FOR POLICY(IES) AND ENDORSEMENT(S): (5+6+7+8+9+10+11+12+13+14+15+16+17=18)	$ 10,175.00	**18**	$ 3,260.00

NOTE: Applicable premium is to be remitted. Minimums are indicated where applicable. Overpayment of premium will be treated as excess insurer retention.

APPENDIX A

69O-186.003 Title Insurance Rates.

The following are risk rate premiums to be charged by title insurers in this state for the respective types of title insurance contracts. To compute any insurance premium on a fractional thousand of insurance (except as to minimum premiums), multiply such fractional thousand by the rate per thousand applicable, considering any fraction of $100.00 as a full $100.00.

(1) Original Title Insurance Rates.

(a) For owner and leasehold title insurance:

1.a. The Premium for the original owner's or for leasehold insurance shall be:

	Per Thousand	Minimum Insurer Retention
From $0 to $100,000 of liability written	$5.75	30%
From $100,000 to $1 million, add	$5.00	30%
Over $1 million to and up to $5 million, add	$2.50	35%
Over $5 million and up to $10 million, add	$2.25	40%
Over $10 million, add	$2.00	40%

b. The minimum premium for all conveyances except multiple conveyances shall be $100.

c. The minimum premium for multiple conveyances on the same property shall be $60.

2. In all cases the owner's policy shall be issued for the full insurable value of the premises.

(b) For mortgage title insurance:

1.a. The premium for the original mortgage title insurance shall be:

	Per Thousand	Minimum Insurer Retention
From $0 to $100,000 of liability written	$5.75	30%
From $100,000 to $1 million, add	$5.00	30%
Over $1 million and up to $5 million, add	$2.50	35%
Over $5 million and up to $10 million, add	$2.25	40%
Over $10 million, add	$2.00	40%

b. The minimum premium for all conveyances except multiple conveyances shall be $100.

c. The minimum premium for multiple conveyances on the same property shall be $60.

2. A mortgage title insurance policy shall not be issued for an amount less than the full principal debt. A policy may, however, be issued for an amount up to 25 percent in excess of the principal debt to cover interest and foreclosure costs.

(2) Reissue Rates.

(a)1. The reissue premium charge for owner's, mortgage, and leasehold title insurance policies shall be:

	Per Thousand
Up to $100,000 of liability written	$3.30
Over $100,000 and up to $1 million, add	$3.00
Over $1 million and up to $10 million, add	$2.00
Over $10 million, add	$1.50

2. The minimum premium shall be $100.00.

(b) Provided a previous owner's policy was issued insuring the seller or the mortgagor in the current transaction and that both the reissuing agent and the reissuing underwriter retain for their respective files copies of the prior owner's policy, the reissue premium rates in paragraph (a) shall apply to:

1. Policies on real property which is unimproved except for roads, bridges, drainage facilities, and utilities if the current owner's title has been insured prior to the application for a new policy;

2. Policies issued with an effective date of less than 3 years after the effective date of the policy insuring the seller or mortgagor in the current transaction; or

3. Mortgage policies issued on refinancing of property insured by an original owner's policy which insured the title of the current mortgagor.

(c) Any amount of new insurance, in the aggregate, in excess of the amount under the previous policy shall be computed at the original owner's or leasehold rates, as provided in subsection (1).

(3) New Home Purchase Discount.

(a) Provided the seller has not leased or occupied the premises, the original premium of a policy on the first sale of residential property with a one to four family improvement that is granted a certificate of occupancy shall be discounted by the amount of premium paid for any prior loan policies insuring the lien of a mortgage executed by the seller on the premises.

(b) In the case of prior loan policies insuring the lien of a mortgage on multiple units or parcels, the discount shall be prorated by dividing the amount of the premium paid for the prior loan policies by the total number of units or parcels without regard to varying unit or parcel value.

(c) The minimum new home purchase premium shall be $200. The new home purchase discount may not be combined with any other reduction from original premium rates provided for in this section.

(d) The insurer shall reserve for unearned premiums only on the excess amount of the policy over the amount of the actual or prorated amount of the prior loan policy.

(4) Substitution Loan Rates. The following risk premium for substitution loans shall apply:

(a) When the same borrower and the same lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the original loan.

Age of Original Loan	Premium Rates
3 years or under	30% of original rates
From 3 to 4 years	40% of original rates
From 4 to 5 years	50% of original rates
From 5 to 10 years	60% of original rates
Over 10 years	100% of original rates
Minimum premium	$100.00

(b) At the time a substitution loan is made, the unpaid principal balance of the previous loan will be considered the amount of insurance in force on which the foregoing rates shall be calculated. To these rates shall be added the regular rates in the applicable schedules for any new insurance, that is, the difference between the unpaid principal balance of the original loan and the amount of the new loan.

(c) In the case of a substitution loan of $250,000 or more, when the same borrower and any lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the previous loan, the premium for such substitution loans shall be the rates as set forth in paragraphs (a) and (b).

(5) Simultaneous Issue Rates. The risk premium for simultaneous issues shall be as follows:

(a) When an owner's and a mortgagee's policy or policies covering identical land are to be issued simultaneously the risk premiums applicable for the owner's policy shall be the regular owner's rate as provided for herein. The rate for the mortgage policy or policies so simultaneously issued will be a minimum $25.00 for an amount of insurance not in excess of the owner's policy. The risk premium on the amount of the mortgage policy or policies in excess of the owner's policy shall be figured at the regular original title insurance rates for mortgage policies.

(b) The title must be examined to a date which includes the filing for record of both the deed to the mortgagor and the mortgage itself. Both policies must bear identical dates and the owner's policy must show the mortgage as an exception under Schedule "B" thereof. It is not essential that the property be acquired simultaneously with the giving of the mortgage, but this rate, where applicable, has reference to the simultaneous issuance of an owner's and mortgagee's policy or policies.

(c) When an owner's and leasehold policy covering identical land are to be issued simultaneously, the risk premium applicable for the owner's policy shall be the regular owner's rate as provided for herein. The rate for the

leasehold policy will be 30% of the rate for the owner's policy with which it is being issued simultaneously up to the amount of said owner's policy. The risk premium on the amount of a leasehold policy in excess of the owner's policy will be figured at the regular rate for owner's policies in the applicable schedule.

(6) Contract Purchaser – Lessee Rates. If a contract purchaser, who has obtained a policy from an insurer insuring his contract and thereafter obtains a deed given in pursuance of the contract makes application for an owner's policy and surrenders the policy, insuring his contract; or a lessee who has obtained a leasehold policy of an insurer, insuring his lease and thereafter purchases the property, makes application for an owner's policy and surrenders such policy, the re-issue risk rate shall be:

Up to $100,000 of liability written	25% of the rates set forth in subsection (1)
Over $100,000 add	20% of the rates set forth in subsection (1)
Minimum premium shall be	$100.00

(7) Binders and Commitments. A binder of title insurance, or a commitment to insure a title or risk, imposes certain obligations and liabilities upon a title insurer and agents with consequent benefits for an insured. Since such binders and commitments are being increasingly utilized in transactions involving title insurance, it is deemed necessary that in accordance with Section 627.7831, F.S., a portion of the risk premium must be charged for such binder or commitment when it is issued, except for transactions involving residential properties. The risk premium charge for binders and commitments shall be credited to the risk premium due on the policy to be issued.

(8) Construction Loans Secured by Revolving Notes and Mortgages. When a mortgage policy is issued to insure a mortgage securing periodic advances of the loan proceeds to finance improvements on real property, an additional risk rate premium shall be charged for the value of each new parcel of real property added to the policy's coverage after its original issuance.

(9) Minimum Retention of Premium by Insurer.

(a) A title insurer shall receive and retain at least 30% of the risk premium for policies sold by agents in accordance with Minimum Insurance Retention Schedule, including risk premium for endorsements, and it shall not be decreased, directly or indirectly, by an insurer providing services to any agent for less than actual cost.

(b) Any retention of premium by an insurer in excess of 30% shall not be decreased, directly or indirectly, by providing services to an agent for less than actual cost.

(c) The required retention of funds must be remitted to the insurer by the agent at least monthly, and until remitted these funds are "collected funds" subject to the accountability provisions of Rule 69O-186.009, F.A.C.

(10) Effect of Amendments to Risk Premium. Any change in the risk premium due to an amendment to this rule shall not affect policies for which a binder or commitment to issue a policy has been issued prior to the effective date of the amendment.

(11) Unlawful Rebates or Abatement of Charges.

(a) No title insurer, title insurance agent or agency, including attorney agent, shall decrease the risk premium by an illegal rebate or abatement of charges for abstracting, examinations, or closing charges. At least actual cost must be charged for related title services in addition to the adopted risk premium.

(b) Charges for related title services (title search, examination, and closing) shall be shown separately on the closing statement, and shall, at a minimum, show title search charges, examination fees, and closing charges. The risk premium as defined by Section 627.7711(2), F.S., and as provided in Section 627.780(1), F.S., shall be shown separately on the closing statement.

(c) Any ongoing or standing offer of gifts, compensation or special services to the same person or customer on a continuing basis as an inducement to referring title insurance transactions is prohibited.

(12) Subsections (1) through (4) of this rule shall become effective July 1, 2002. The remainder of the rule shall become effective 20 days after adoption.

Rulemaking Authority 624.308(1), 626.9611, 627.782, 627.7825 FS. Law Implemented 624.307(1), 626.9541(1)(h)3.a., 627.777, 627.782, 627.7825, 627.783, 627.7831, 627.7841, 627.7845 FS. History–New 9-17-71, Amended 12-28-73, Repromulgated 12-24-74, Amended 4-12-82, 12-23-82, Formerly 4-21.03, Amended 6-25-86, 2-26-90, 7-26-90, 2-27-91, Formerly 4-21.003, Amended 2-13-95, 1-27-02, Formerly 4-186.003.

APPENDIX B

69O-186.003 Title Insurance Rates.

The following are risk rate premiums to be charged by title insurers in this state for the respective types of title insurance contracts. To compute any insurance premium on a fractional thousand of insurance (except as to minimum premiums), multiply such fractional thousand by the rate per thousand applicable, considering any fraction of $100.00 as a full $100.00.

(1) Original Title Insurance Rates.

(a) For owner and leasehold title insurance:

1.a. The Premium for the original owner's or for leasehold insurance shall be:

	Per Thousand	Minimum Insurer Retention
From $0 to $100,000 of liability written	$5.75	30%
From $100,000 to $1 million, add	$5.00	30%
Over $1 million to and up to $5 million, add	$2.50	35%
Over $5 million and up to $10 million, add	$2.25	40%
Over $10 million, add	$2.00	40%

b. The minimum premium for all conveyances except multiple conveyances shall be $100.

c. The minimum premium for multiple conveyances on the same property shall be $60.

2. In all cases the owner's policy shall be issued for the full insurable value of the premises.

(b) For mortgage title insurance:

1.a. The premium for the original mortgage title insurance shall be:

	Per Thousand	Minimum Insurer Retention
From $0 to $100,000 of liability written	$5.75	30%
From $100,000 to $1 million, add	$5.00	30%
Over $1 million and up to $5 million, add	$2.50	35%
Over $5 million and up to $10 million, add	$2.25	40%
Over $10 million, add	$2.00	40%

b. The minimum premium for all conveyances except multiple conveyances shall be $100.

c. The minimum premium for multiple conveyances on the same property shall be $60.

2. A mortgage title insurance policy shall not be issued for an amount less than the full principal debt. A policy may, however, be issued for an amount up to 25 percent in excess of the principal debt to cover interest and foreclosure costs.

(2) Reissue Rates.

(a)1. The reissue premium charge for owner's, mortgage, and leasehold title insurance policies shall be:

	Per Thousand
Up to $100,000 of liability written	$3.30
Over $100,000 and up to $1 million, add	$3.00
Over $1 million and up to $10 million, add	$2.00
Over $10 million, add	$1.50

2. The minimum premium shall be $100.00.

(b) Provided a previous owner's policy was issued insuring the seller or the mortgagor in the current transaction and that both the reissuing agent and the reissuing underwriter retain for their respective files copies of the prior owner's policy, the reissue premium rates in paragraph (a) shall apply to:

1. Policies on real property which is unimproved except for roads, bridges, drainage facilities, and utilities if the current owner's title has been insured prior to the application for a new policy;

2. Policies issued with an effective date of less than 3 years after the effective date of the policy insuring the seller or mortgagor in the current transaction; or

3. Mortgage policies issued on refinancing of property insured by an original owner's policy which insured the title of the current mortgagor.

(c) Any amount of new insurance, in the aggregate, in excess of the amount under the previous policy shall be computed at the original owner's or leasehold rates, as provided in subsection (1).

(3) New Home Purchase Discount.

(a) Provided the seller has not leased or occupied the premises, the original premium of a policy on the first sale of residential property with a one to four family improvement that is granted a certificate of occupancy shall be discounted by the amount of premium paid for any prior loan policies insuring the lien of a mortgage executed by the seller on the premises.

(b) In the case of prior loan policies insuring the lien of a mortgage on multiple units or parcels, the discount shall be prorated by dividing the amount of the premium paid for the prior loan policies by the total number of units or parcels without regard to varying unit or parcel value.

(c) The minimum new home purchase premium shall be $200. The new home purchase discount may not be combined with any other reduction from original premium rates provided for in this section.

(d) The insurer shall reserve for unearned premiums only on the excess amount of the policy over the amount of the actual or prorated amount of the prior loan policy.

(4) Substitution Loan Rates. The following risk premium for substitution loans shall apply:

(a) When the same borrower and the same lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the original loan.

Age of Original Loan	Premium Rates
3 years or under	30% of original rates
From 3 to 4 years	40% of original rates
From 4 to 5 years	50% of original rates
From 5 to 10 years	60% of original rates
Over 10 years	100% of original rates
Minimum premium	$100.00

(b) At the time a substitution loan is made, the unpaid principal balance of the previous loan will be considered the amount of insurance in force on which the foregoing rates shall be calculated. To these rates shall be added the regular rates in the applicable schedules for any new insurance, that is, the difference between the unpaid principal balance of the original loan and the amount of the new loan.

(c) In the case of a substitution loan of $250,000 or more, when the same borrower and any lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the previous loan, the premium for such substitution loans shall be the rates as set forth in paragraphs (a) and (b).

(5) Simultaneous Issue Rates. The risk premium for simultaneous issues shall be as follows:

(a) When an owner's and a mortgagee's policy or policies covering identical land are to be issued simultaneously the risk premiums applicable for the owner's policy shall be the regular owner's rate as provided for herein. The rate for the mortgage policy or policies so simultaneously issued will be a minimum $25.00 for an amount of insurance not in excess of the owner's policy. The risk premium on the amount of the mortgage policy or policies in excess of the owner's policy shall be figured at the regular original title insurance rates for mortgage policies.

(b) The title must be examined to a date which includes the filing for record of both the deed to the mortgagor and the mortgage itself. Both policies must bear identical dates and the owner's policy must show the mortgage as an exception under Schedule "B" thereof. It is not essential that the property be acquired simultaneously with the giving of the mortgage, but this rate, where applicable, has reference to the simultaneous issuance of an owner's and mortgagee's policy or policies.

(c) When an owner's and leasehold policy covering identical land are to be issued simultaneously, the risk premium applicable for the owner's policy shall be the regular owner's rate as provided for herein. The rate for the

leasehold policy will be 30% of the rate for the owner's policy with which it is being issued simultaneously up to the amount of said owner's policy. The risk premium on the amount of a leasehold policy in excess of the owner's policy will be figured at the regular rate for owner's policies in the applicable schedule.

(6) Contract Purchaser – Lessee Rates. If a contract purchaser, who has obtained a policy from an insurer insuring his contract and thereafter obtains a deed given in pursuance of the contract makes application for an owner's policy and surrenders the policy, insuring his contract; or a lessee who has obtained a leasehold policy of an insurer, insuring his lease and thereafter purchases the property, makes application for an owner's policy and surrenders such policy, the re-issue risk rate shall be:

Up to $100,000 of liability written	25% of the rates set forth in subsection (1)
Over $100,000 add	20% of the rates set forth in subsection (1)
Minimum premium shall be	$100.00

(7) Binders and Commitments. A binder of title insurance, or a commitment to insure a title or risk, imposes certain obligations and liabilities upon a title insurer and agents with consequent benefits for an insured. Since such binders and commitments are being increasingly utilized in transactions involving title insurance, it is deemed necessary that in accordance with Section 627.7831, F.S., a portion of the risk premium must be charged for such binder or commitment when it is issued, except for transactions involving residential properties. The risk premium charge for binders and commitments shall be credited to the risk premium due on the policy to be issued.

(8) Construction Loans Secured by Revolving Notes and Mortgages. When a mortgage policy is issued to insure a mortgage securing periodic advances of the loan proceeds to finance improvements on real property, an additional risk rate premium shall be charged for the value of each new parcel of real property added to the policy's coverage after its original issuance.

(9) Minimum Retention of Premium by Insurer.

(a) A title insurer shall receive and retain at least 30% of the risk premium for policies sold by agents in accordance with Minimum Insurance Retention Schedule, including risk premium for endorsements, and it shall not be decreased, directly or indirectly, by an insurer providing services to any agent for less than actual cost.

(b) Any retention of premium by an insurer in excess of 30% shall not be decreased, directly or indirectly, by providing services to an agent for less than actual cost.

(c) The required retention of funds must be remitted to the insurer by the agent at least monthly, and until remitted these funds are "collected funds" subject to the accountability provisions of Rule 69O-186.009, F.A.C.

(10) Effect of Amendments to Risk Premium. Any change in the risk premium due to an amendment to this rule shall not affect policies for which a binder or commitment to issue a policy has been issued prior to the effective date of the amendment.

(11) Unlawful Rebates or Abatement of Charges.

(a) No title insurer, title insurance agent or agency, including attorney agent, shall decrease the risk premium by an illegal rebate or abatement of charges for abstracting, examinations, or closing charges. At least actual cost must be charged for related title services in addition to the adopted risk premium.

(b) Charges for related title services (title search, examination, and closing) shall be shown separately on the closing statement, and shall, at a minimum, show title search charges, examination fees, and closing charges. The risk premium as defined by Section 627.7711(2), F.S., and as provided in Section 627.780(1), F.S., shall be shown separately on the closing statement.

(c) Any ongoing or standing offer of gifts, compensation or special services to the same person or customer on a continuing basis as an inducement to referring title insurance transactions is prohibited.

(12) Subsections (1) through (4) of this rule shall become effective July 1, 2002. The remainder of the rule shall become effective 20 days after adoption.

Rulemaking Authority 624.308(1), 626.9611, 627.782, 627.7825 FS. Law Implemented 624.307(1), 626.9541(1)(h)3.a., 627.777, 627.782, 627.7825, 627.783, 627.7831, 627.7841, 627.7845 FS. History–New 9-17-71, Amended 12-28-73, Repromulgated 12-24-74, Amended 4-12-82, 12-23-82, Formerly 4-21.03, Amended 6-25-86, 2-26-90, 7-26-90, 2-27-91, Formerly 4-21.003, Amended 2-13-95, 1-27-02, Formerly 4-186.003.

APENDIX C

69O-186.005 Premium Schedule Applicable to "Truth in Lending" and Other Endorsements.

(1) An additional risk exposure for title insurers has been created by the enactment into law of the Federal "Truth in Lending Act," incorporated in Title 15, United States Code Annotated, Section 1601 et seq., effective May 29, 1968.

(2) Such additional risk exposure is specifically though not exhaustively manifest in the additional risks and expenses incident to the issuance of the "Truth in Lending Endorsement" as reflected in and confined to "Endorsement Number Two of the American Land Title Association" because of the following factors:

(a) The title insurer must determine that a lien is being made for commercial purposes, other than agricultural purposes.

(b) The title insurer must determine that the borrower falls within the category of entities as set forth in Regulation "Z" promulgated by the Federal Reserve.

(c) The title insurer must determine that the home being purchased is or will be the residence of the borrower.

(d) The title insurer must determine that the mortgage being insured by the policy to which the endorsement is being attached is a first lien on the land.

(e) The title insurer must determine that proceeds of the mortgage are disbursed to the seller.

(f) The title insurer may be legally obligated to legally refute the allegations in a foreclosure action against the mortgagor that the matters shown above were not accurately determined.

(g) The penalty for failure to make such correct determination of the above factors may make the title insurer incur liability for the payment or settlement of claims thereon which would not otherwise be incurred in the absence of such Endorsement.

(3) The foregoing factors substantially increase the increment of risk, the expense, and the labor incident to the issuance of title insurance policies brought within the purview of the Truth in Lending Act by utilization of ALTA Endorsement Number Two. Such consequences have a significant potential effect on the fiscal stability of the respective title insurers and the business trust title insurer authorized to transact the business of title insurance in the State of Florida.

(4) Any potential adverse effect of such factors on the fiscal stability of said title insurers with consequent detriment to the title insuring public would be ameliorated or negated by the promulgation of a specific premium rate schedule applicable to such Truth in Lending Endorsement which would reasonably compensate the title insurers for such additional increments of risk.

(5) In recognition of the above findings and factors applicable to Truth in Lending Endorsement Number Two of the ALTA, the following premium schedule is hereby promulgated:

TEN PERCENT (10%) OF MORTGAGEE POLICY PROMULGATED RATE WITH A MINIMUM CHARGE OF TWENTY-FIVE DOLLARS ($25.00) AND A MAXIMUM CHARGE OF ONE HUNDRED DOLLARS ($100.00).

(6)(a) In recognition of the increased risk in issuing the following endorsements on a mortgage or owner's policy, as such endorsements have been approved by the Office, the minimum premium shall be $25.00 for each endorsement on any mortgage or owner's policy issued. The endorsements shall be itemized on the closing statement furnished to the insured.

1. ALTA 4/4.1 Condominium.
2. ALTA 5/5.1 Planned Unit Development.
3. ALTA 6 Renegotiable Rate.
4. ALTA 6.1 Variable Rate.
5. ALTA 6.2 Negative Amortization.
6. ALTA 7.0 Manufactured Housing.
7. ALTA 8.0/8.1 Environmental Protection Lien.
8. Revolving Credit Endorsement.

(b) The language of the Revolving Credit Endorsement shall conform to the following endorsement language:

1. Notwithstanding any terms or provisions in this policy to the contrary, the company hereby insures the insured that advances made subsequent to the Date of Policy, but within 20 years of the Date of Policy, pursuant to the terms of the mortgage described in Schedule A of this policy, shall be included within the coverage of this policy, even though the principal indebtedness may have been reduced from time to time preceding any such subsequent advances. The Company's liability under this policy shall be reduced hereafter by the filing for record by the mortgagor or his successors in title of a notice pursuant to Section 697.04(1), F.S., limiting the maximum principal amount that may be so secured to an amount not less than the amount actually advanced at the time of such filing.

2. The Company further assures the insured that such subsequent advances shall have the same priority over liens, encumbrances and other matters disclosed by the Public Records, as do advances secured by the insured mortgage as of the Date of Policy, except for the following matters, if any, arising subsequent to the Date of Policy:

a. Federal tax liens which may be recorded against the mortgagor(s) or their successor in title more than forty-five days prior to the making of any such subsequent advances.

b. Federal tax liens which may be recorded against the mortgagor(s) or their successor in title within forty-five days of making any such subsequent advances, the existence of which are actually known to the insured prior to the making of any such subsequent advances.

c. Ad valorem real estate taxes and assessments and other government liens which are on a parity with ad valorem real estate taxes pursuant to F.S.

d. Bankruptcies of the mortgagor(s) or their successors in title prior to the making of any such subsequent advances.

e. Defects, liens, encumbrances or other matters, the existence of which are actually known to the insured prior to the making of any such subsequent advances.

3. The total liability of the company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy and sums which the Company is obligated under the conditions and stipulations thereof to pay.

4. This endorsement is made a part of the policy. It is subject to all the terms of the policy and prior endorsements. Except as expressly stated on this endorsement, the terms, dates and amount of the policy and prior endorsements are not changed."

(7)(a) Both endorsements and affirmative type coverages and their applicable risk rate premium must be approved by the Office prior to their issuance in this state. Accordingly, endorsements and affirmative type coverages are categorized as follows:

1. Permitted endorsements and/or affirmative type coverages,

2. Prohibited endorsements and/or affirmative type coverages,

3. Endorsements and/or affirmative type coverages with no specific Office approval required when there is no increased risk resulting to the insurer.

(b)1. With the exception of those endorsements listed in subsection (6) of Rule 69O-186.005, F.A.C., above, no endorsement or affirmative type coverage shall be issued except as set forth in this section.

2. If there is a change in a current adopted endorsement and the change results in a further limitation of coverage, the endorsement may be submitted to the Office for approval without an amendment to these rules.

(c) With the exception of policy forms and those endorsements listed in subsection (6) of Rule 69O-186.005, F.A.C., above, all approvals of endorsements given prior to the effective date of this rule are withdrawn. This section shall have no effect on the validity of those endorsements issued prior to the effective date of these rule amendments.

(d) All issued endorsements shall be itemized on the closing statement furnished to the insured with costs for each endorsement shown.

(e) Specific endorsements may be issued by reference to a master list of approved endorsements and have the same validity as if issued individually on each transaction so long as the language in the endorsement specifically conforms without any additions or deletions to the endorsement language as set forth in this section. Any such master list of approved endorsements shall only be issued in conjunction with a mortgage (mortgagee) title insurance policy.

(8) The following permitted endorsements and endorsement language are approved:

(a) Florida Endorsement Form 9; (Restrictions, Easements, Minerals):

1. This endorsement shall not be issued unless there has been a release of the right of entry of the mineral reservation, nor shall it be issued over any adverse matter or defect in title unless such adverse matter or defect has been removed or determined to be legally unenforceable.

2. The language of the Florida Endorsement Form 9 shall conform to the following endorsement language:

"The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. Any incorrectness in the assurance that, at date of policy:

(a) There are no covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired.

(b) Unless expressly excepted in Schedule B:

(1) There are no present violations on the land of any enforceable covenants, conditions or restrictions nor do any existing improvements on the land violate building setback lines shown on a plat of subdivision recorded or filed in the public records.

(2) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land does not, in addition, (i) establish an easement on the land; (ii) provide a lien for liquidated damages; (iii) provide for a private charge or assessment; (iv) provide for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant.

(3) There is no encroachment of existing improvements located on the land onto adjoining land, nor any encroachment onto the land of existing improvements located on adjoining land.

(4) There is no encroachment of existing improvements located on the land onto that portion of the land subject to any easement excepted in Schedule B.

(5) There are no notices of violation of covenants, conditions, and restrictions relating to environmental protection recorded or filed in the public record.

2. Any future violation on the land of an existing covenant, condition or restriction occurring prior to the acquisition of title to the estate or interest in the land, provided the violation results in:

(a) Impairment or loss of the lien of the insured mortgage; or,

(b) Loss of title to the estate or interest in the land if the insured shall acquire title in satisfaction of the indebtedness secured by the insured mortgage.

3. Damage to existing improvements (excluding lawns, shrubbery or trees).

(a) Which are located on or encroach upon that portion of the land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved.

(b) Which results from the future exercise of any right to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.

4. Any final court order or judgment requiring the removal from any land adjoining the land of any encroachment excepted in Schedule B.

5. Any final court order or judgment denying the right to maintain any existing improvement on the land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat or subdivision recorded or filed in the public records.

Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in subparagraphs (1)(b)1. and 5., the phrase, "covenants, conditions, or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(b) Navigational Servitude – The language of the Navigational Servitude Endorsement (Florida) shall conform to the following endorsement language:

1. The Company hereby insures the insured against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs and attorney's fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of forced removal pursuant to a final judgment of a court of competent jurisdiction in favor of the United States Government requiring the removal of any improvements located on the land at date of policy resulting from the exercise of the rights of the United States Government with respect to control over navigable waters, or lands which formerly constituted navigable waters, for purposes of navigation and commerce.

2. This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(c) Shared Appreciation – The Shared Appreciation Endorsement (Florida) shall conform to the following endorsement language:

1. The Company hereby insures the Insured against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for a shared appreciation interest.

b. Loss of priority of the lien of the insured mortgage as security for (1) the unpaid principal balance of the loan; (2) the stated interest; and (3) the shared appreciation interest, which loss of priority is caused by the provisions in the insured mortgage for payment or allocation to the insured mortgagee of any shared appreciation interest.

c. "Stated Interest" as used in this endorsement shall mean only the per annum interest on the unpaid principal balance of the loan provided in the insured mortgage at date of Policy.

d. "Shared Appreciation Interest" as used in this endorsement shall mean only those amounts (calculated pursuant to the formula provided in the insured mortgage) payable or allocated to the insured mortgagee, out of the amount, if any, by which the land has appreciated in value as established pursuant to the provisions of the insured mortgage at date of Policy.

e. This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law, or (c) bankruptcy.

f. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any endorsements, nor does it increase the face amount thereof."

(d) Additional Interest – The language of the Additional Interest Endorsement (Florida) shall conform to the following endorsement language:

1. The Company hereby insures against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for additional interest subsequent to date of Policy.

b. Loss of priority of the lien of the insured mortgage as security for (1) the unpaid principal balance of the loan; (2) the stated interest; (3) the additional interest, which loss of priority is by the provisions in the insured mortgage for payment or allocation to the insured mortgagee of any additional interest.

2. "Stated Interest" as used in this endorsement shall mean only the fixed percent per annum interest on the unpaid principal balance of the loan provided in the insured mortgage at date of Policy.

3. "Additional Interest" as used in this endorsement, shall mean only those amounts calculated pursuant to the formula provided in the insured mortgage payable or allocated to the insured.

4. This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law, or (c) bankruptcy.

5. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(e) Option Endorsement – The language of the Option Endorsement (Florida) shall conform to the following endorsement language:

1. With respect to the option to purchase described in Schedule B, the option to purchase is hereby incorporated into Schedule A of the policy as an interest insured thereby, vested in the insured, and the Company insures against loss or damage sustained or incurred by the insured by reason of:

a. The unenforceability of the right to exercise the option to purchase except to the extent that such unenforceability or claim thereof is based on the failure of the insured to have fulfilled the terms and conditions of the option.

b. The priority over the option to purchase of any conveyance made of the fee simple estate in the land or of any liens or encumbrances created therein after the date of policy, excepting those liens or encumbrances created or consented to by the insured or created by statute in favor of or for the benefit of governmental bodies or public utilities (including without limitation real estate taxes, special assessments, demolition liens, drainage liens and water liens).

2. Nothing contained in this endorsement shall be construed as insuring the insured against loss or damage sustained or incurred by reason of:

a. Disaffirmance of the option under the provisions of the bankruptcy code or state insolvency law.

b. The effect of any condemnation proceeding including the failure of the optionee to receive all or part of an award entered in a condemnation proceeding unless failure to share in said award stems solely from a court order or judgment which constitutes a final determination and adjudges the option to be invalid.

c. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law.

3. Other than expenses necessary for a judicial determination or defense of the validity and priority of the option as described in subsections (1) and (2). above, loss under this endorsement does not include:

a. Expenses required to enforce the option and to obtain a transfer of title from the party or entity in whom title to any interest in the land is vested at the time of exercising the option; or

b. Expenses required to obtain valid conveyances or releases of any rights, interests or liens related to the land which appear of record or are known to the insured at the time of exercising the option.

4. The measure of the loss or damage sustained by the insured under this policy shall be:

a. The excess of the fair market value of the property at the time the insured attempts to exercise the option (or when a law suit contesting the validity of the option is filed, if filed prior to the attempted exercise of the option) above the price at which the insured could acquire the property by exercise of the option; and,

b. The unreimbursed portion of the consideration given by the insured to obtain the option.

5. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(f) Change of Partners – The Change of Partners (Fairways) Endorsement (Florida) shall conform to the following endorsement language:

"1. The Company agrees that in the event of an occurrence of loss insured against by this policy, the Company will not deny liability hereunder on the ground that a dissolution of the partnership has occurred or a new partnership has been formed by reason of one or more of the general partners transferring their interest to another person or entity; by reason of a withdrawal of one or more of the general partners from the partnership; or by reason of the addition of one or more persons or entities as partners.

2. Nothing contained herein shall be construed as extending the insurance hereunder as to matters attaching or created subsequent to the date hereof; or insuring the status of the insured after the transfer of the partnership interest, the withdrawal of partners, or the addition of new partners.

3. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(g) Contiguity Endorsement – The Contiguity Endorsement (Florida) shall conform to the following endorsement

language:

"1. The Company insures the Insured herein against loss or damage by virtue of any inaccuracy in the following statement, to wit: Parcel ___ of the legal description and Parcel ___ of the legal description are contiguous to each other along the ___ line of Parcel ___ and ___ line of Parcel ___, and, taken as a tract, constitute one Parcel of land.

2. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(h) Survey Endorsement – The language of the Survey Endorsement (Florida) shall conform to the following endorsement language:

"The Company hereby acknowledges the lands described in Schedule A are the same lands described in the survey prepared by _____ dated _____; however, the Company does not insure the accuracy or completeness of said survey."

(i) Construction Loan Up-date – The language of the Construction Loan Up-date Endorsement shall conform to the following endorsement language:

1. The liability of the Company is increased by $_____ to include disbursements made pursuant to requisition(s) _____ for a cumulative total to date of $_____.

2. The Company insures there have been no instruments filed among the Public Records of ___ County, affecting title to the lands described in Schedule A from _____ through _____, other than the following:

3. The Company insures each of the foregoing is subordinate to the lien of the mortgage insured except:

4. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(j) Foreign Currency Endorsement – The language of the Foreign Currency Endorsement shall conform to the following endorsement language:

1. The Company hereby insures against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for revaluation of the indebtedness secured thereby based upon changes in the conversion rate between U.S. dollars and the stated foreign currency.

b. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, which loss of priority is caused by such changes in the conversion rate.

2. The Company acknowledges that changes from time to time in the conversion rate between U.S. dollars and the stated foreign currency may decrease or increase the dollar amount of the indebtedness secured by the insured mortgage. The Company hereby agrees that, so long as any portion of the indebtedness secured by the insured mortgage shall remain outstanding, any such increase in the dollar amount of indebtedness shall not be deemed by the Company to constitute additional principal indebtedness created subsequent to date of policy within the meaning of paragraph 8 of the Conditions and Stipulations of the policy; provided, however, that the total liability of the Company under the policy at any time shall not exceed, in the aggregate, the face amount of the policy and the costs which the Company is obligated to pay under the terms and provisions of the policy.

3. "Changes in the conversion rate" as used in this endorsement, shall mean only those changes in the conversion rate calculated pursuant to the formula provided in the insured mortgage at date of policy.

4. This endorsement does not insure against loss or damage based upon (a) the failure to pay any mortgage recording tax or similar charge applicable to the mortgage described in Schedule A at date of policy or as a result of increases in the amount of indebtedness resulting from changes in the conversion rate of U.S. dollars and the stated foreign currency, (b) usury, (c) any consumer credit protection or truth-in-lending law, (d) bankruptcy, or (e) any invalidity or unenforceability or loss of priority of the mortgage as to any indebtedness in amounts in U.S. dollars in

excess of the amount stated in the policy.

5. This endorsement is made a part of the policy and is subject to all of the terms and conditions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph (3)(d), of the Exclusions from Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it increase the face amount thereof."

(k) Assignment of Mortgage – The language of the Assignment of Mortgage Endorsement shall conform to the following endorsement language:

"Endorsement number _____
Name of original insured:
Original effective date:
Original amount of insurance $_____
Agent's file reference: _____
The Company insures that the mortgage described in the above numbered and dated policy has been duly assigned to:

_____
Assignee

_____
Address
by an assignment dated the _____ day of _____, 19___, and recorded the _____ day of _____, 19___, in Official Records _____, Page ____, under Clerk's File Number _____, of the Public Records of ___ County, Florida.
This endorsement is to be attached to and form a part of the above numbered and dated policy issued by _____"

(l) Balloon Mortgage Endorsement – The language of the Balloon Mortgage Endorsement shall conform to the following endorsement language:

1. The Company insures the insured mortgagee against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for a conditional right to refinance and a change in the rate of interest as set forth in the Mortgage Rider.

b. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest thereon, which loss of priority is caused by the exercise of the conditional right to refinance and the extension of the loan term to the new maturity date set forth on the rider and a change in the rate of interest, provided that all the conditions set forth in paragraphs 2 and 5 of the Balloon Mortgage Rider have been met, and there are no other liens, defects, encumbrances, or other adverse matters affecting title recorded subsequent to the date of policy.

2. This endorsement does not insure against loss or damage based upon, (a) Usury or (b) any consumer credit protection or truth-in-lending law or (c) bankruptcy.

3. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(9) Recognizing that the endorsements listed in subsection 8 of this section and the affirmative language in a title policy imposes certain obligations and liabilities on a title insurer and agent and the issuance of endorsements and/or affirmative language in a title policy creates an additional risk and a considerable amount of work in addition to the initial search and examination of title required to write a basic policy, a minimum premium shall be charged and collected by an insurer or agent where coverage in the form of affirmative language and/or endorsements to a policy are required. Therefore, the risk rate premium for each of the endorsements listed in paragraph 8 of this section are as follows:

1-4 Family Unit Residential Risks	$25 minimum per endorsement
	$100 maximum per endorsement
Other Risks (commercial or greater than 1-4 family residential risk.)	$100 Minimum per endorsement

except that the risk rate premium for the following approved endorsements shall be at minimum the percentage of the total policy premium as indicated; however, on a simultaneously issued mortgage policy, the endorsement charge shall be based on the underlying owner, and loan policy premium:

(a) Florida Endorsement Form 9-10%.

(b) Navigational Servitude – 10%.

(10) Additional risk premium must be charged if additional insurance is purchased.

(11) All loan policies and endorsements are subject to the 125% rule as set forth in paragraph 69O-186.003(4)(b), F.A.C., except that a policy with a Shared Appreciation, or Additional Interest Endorsements may be issued for an amount up to 150% in excess of the principal debt.

(12) The applicable rate to be charged and collected for a loan policy after a mortgage balloons and is subsequently refinanced by the same lender, and borrower on the same land shall be the rates as described in paragraph (5) of Rule 69O-186.003, F.A.C., substitution loan rates.

(13) The Substitution Loan Rate provided in subsection 69O-186.003(5), F.A.C., shall apply to any endorsement which insures a modification of a mortgage which was insured by an outstanding policy where the modification agreement effects any change in the terms, conditions, priority, or security, other than:

(a) An extension of the time for payment of the secured obligation;

(b) Any decrease in the interest rate of the insured mortgage, provided the "cap" on a variable rate mortgage is not greater than the original "cap" and/or the "cap" is not greater than the original fixed rate;

(c) Any increase in the interest rate of the insured mortgage, provided the endorsement contains an exception for the loss of priority occasioned by the increase;

(d) Changes in an amortization schedule to extend the term of the insured mortgage;

(e) A release of a portion of the secured property;

(f) A correction to either perfect the lien of the insured mortgage or comply with the terms of the lender's original commitment;

(g) Future advances made pursuant to Section 697.04, F.S.; or

(h) Encumbrances of additional parcels under a revolving construction loan agreement contained in the original mortgage and contemplated by subsection 69O-186.003(10), F.A.C.

(14) The retention rate for an insurer shall be the same as set forth in subsection 69O-186.003(11), F.A.C.

(15)(a) The following are prohibited endorsements and affirmative coverages that shall not be issued in this state:

1. Doing Business Endorsement.

2. Non Imputation Endorsement (Imputation of knowledge).

3. Access.

4. Location.

5. Expanded Insured Endorsement.

6. Street Assessment Endorsement.

7. Zoning Endorsement.

8. Usury.

(b) The extension of special affirmative coverage by indirect means is prohibited.

(16) The following endorsements can be issued or affirmative language is permitted with no specific approval required from the Office:

(a) Endorsements correcting mistakes.

(b) Future Insurance (continuing liability under existing policies).

(c) Endorsements deleting exceptions which no longer affect title to the land.

(d) Endorsements insuring future advances.

(e) Changes in effective dates (loan policies only).

(f) Gap coverage endorsement.

(g) Insurance against the attempted enforcement of known claims for ascertainable sums of money in reliance on security commensurate with such risk.

(h) Deletion of General Exceptions.

(i) Endorsements modifying the standard owner's and mortgagee policy to convert to a leasehold policy previously approved by the Office.

(j) Tie-in Spreader (Intra Florida properties only).

Rulemaking Authority 624.308, 627.777, 627.782 FS. Law Implemented 624.307(1), 627.777, 627.782, 697.04(1) FS. History–New 9-17-71, Repromulgated 12-24-74, Formerly 4-21.05, Amended 6-25-86, 2-26-90, 2-27-91, Formerly 4-21.005, Amended 2-13-95, Formerly 4-186.005, Amended 11-3-05.

Engaging with Endorsements

Megan Randall Solomon
Underwriting Counsel, Old Republic Title

Endorsements - General

Under Rule 69O-186.005(7), endorsements and affirmative coverages are placed into three categories:

- permitted endorsements and/or affirmative coverages
- prohibited endorsements and/or affirmative coverages
  endorsements and/or affirmative type coverages that are allowed without specific department approval, where no increased risk results to the insurer by the issuance of such endorsement or affirmative type
- coverages

According to Rule 69O-186.005(7)(b), no other endorsements or affirmative coverages may be issued other than the endorsements listed in Rule 69O-186.005(6) and Rule 69O-186.005(8).

The permitted endorsements and the associated premiums are provided in Endorsement Premium Chart.

Rule Interpretations - Endorsements - General

Do copies of each type of endorsement issued need to be submitted to The Fund with the policy?

No. Endorsements other than endorsement Form E, Contiguity, Survey, Assignment of Mortgage, and Construction Loan Updates can be marked either on the Loan Policy Schedule A, the Policy Calculation Worksheet, or worksheets printed from E-Closing DT, DoubleTime, ATIDS and submitted to The Fund.

If the lender requires that copies of the preprinted endorsements be submitted with the commitment, does The Fund also need copies of the endorsements?

All preprinted endorsements to be issued with the policy should be listed on Schedule B of the commitment. Copies of the forms can be attached to the lender's copy of the commitment, but should be marked "pro forma" or "sample." *Do not send copies of the commitments or the proposed endorsements to The Fund.*

Rule Calculations - Endorsements - General

What is the premium for an ALTA 9-06 when more than one loan policy is being issued?

Refer to C. Simultaneous Issue Rate - Rule 69O-186.003(5).

How is the premium calculated for an ALTA 9-06 and ALTA 9.3-06 in the case of loan modifications?

Fund Members are advised to charge the minimum rate for all endorsements based upon a stated minimum. All other costs should be allocated as "closing services."

Refer to the chart below.

Mortgage Modification Type	ALTA 9-06 & ALTA 9.3-06	ALTA 9-06 & ALTA 9.3-06
Modification resulting in change to terms, conditions, priority, or security.	Mortgage Modification Endorsement Worksheet	Original rate or reissue rate applied to current unpaid principal balance
Modifications insuring a future advance.	Mortgage Modification Endorsement Worksheet	Original rate or reissue rate applied to total amount of insurance

Mortgage Modification Type	ALTA 9-06 & ALTA 9.3-06	ALTA 9-06 & ALTA 9.3-06
Modifications for a spreader agreement	Mortgage Modification Endorsement Worksheet	Original rate or reissue rate applied to total amount of insurance
Modifications not resulting in a change.	No charge	Original rate or reissue rate applied to current unpaid principal balance
Modification to Revolving Line of Credit, Construction Mortgage or Reverse Mortgage	Mortgage Modification Endorsement Worksheet, which requires substitution loan rate on entire policy amount	Original rate or reissue rate applied to entire policy amount

If an ALTA 9-06 or ALTA 9.3-06 was issued with the original policy and the premium for the extended coverage for the modification (and/or future advance and/or spreader agreement for a construction loan secured by a revolving note and mortgage) is paid, then it is not necessary to attach an additional ALTA 9-06 or ALTA 9.3-06 to the policy.

If an ALTA 9-06 or ALTA 9.3-06 was issued with the original policy and the premium for the extended coverage for the modification (and/or future advance and/or spreader agreement for a construction loan secured by a revolving note and mortgage) is **not paid**, then the endorsement should contain the following statement:

The coverage provided by the ALTA 9-06 or ALTA 9.3-06 endorsement attached to this policy is not extended to the mortgage modification (and/or future advance and/or spreader agreement) recorded in Official Records Book _____, Page _____, and insured by this endorsement.

How is the premium calculated for a Navigational Servitude Endorsement (NSE) in the case of mortgage modifications?

Refer to the chart below.

Mortgage Modification Type	NSE issued with original	NSE not issued with original
Modification resulting in change to terms, conditions, priority, or security.	Mortgage Modification Endorsement Worksheet	Original rate or reissue rate applied to current unpaid principal balance
Modifications insuring a future advance.	Mortgage Modification Endorsement Worksheet	Original rate or reissue rate applied to total amount of insurance
Modifications not resulting in a change.	Mortgage Modification Endorsement Worksheet	Original rate or reissue rate applied to total amount of insurance
Modifications not resulting in a change.	No charge	Original rate or reissue rate applied to current unpaid principal balance
Modification to Revolving Line of Credit, Construction Mortgage or Reverse Mortgage	No charge	Original rate or reissue rate applied to entire policy amount

If a Navigational Servitude Endorsement (NSE) was issued with the original policy and the premium for the extended NSE coverage for the modification (and/or future advance and/or spreader agreement for a

construction loan secured by a revolving note and mortgage) is paid, then it is not necessary to attach an additional NSE to the policy.

If an NSE was issued with the original policy and the premium for the extended NSE coverage for the modification (and/or future advance and/or spreader agreement for a construction loan secured by a revolving note and mortgage) is **not paid**, then the endorsement should contain the following statement:

Navigational Servitude Endorsement coverage is not extended to the mortgage modification (and/or future advance and/or spreader agreement) recorded in Official Records Book _____, Page _____, and insured by this endorsement.

Navigational Servitude Endorsement (NSE) forms are issued in a simultaneous transaction to an owner's policy and to the loan policy. What is the premium?

Example: OF6 $75,000.00; MF6 $75,000.00; NSE Owner's, NSE Loan.

The premium for the Navigational Servitude Endorsement to the owner's policy is a minimum of ten percent (10%) of the premium for the owner's policy. The premium for the Navigational Servitude Endorsement to the loan policy is a minimum of ten percent (10%) of the premium of the combined owner's and loan policies.

Policy	Amount of Insurance	Rate per Thousand	Premium
OF6	$75,000.00	$5.75 x 75 =	$431.25
MF6	$75,000.00		$25.00
Premium (OF6 + MF6)	$456.25	undefined	undefined
Calculate NSE (Owner's)	$431.25 x 10% =	$43.13	undefined
Calculate NSE (Loan)	$456.25 x 10% =	$45.63	undefined
Total NSE Premium	$43.13 + $45.63 =	$88.76	undefined
Total Premium	$456.25 + $88.76 =	$545.01	undefined

Note: Other than the situation in this example, the Navigational Servitude Endorsement is rated the same as the ALTA 9-06.

List of Endorsements

- **Condominium - Current Assessments (ALTA 4.1)** - The Condominium Endorsement (ALTA 4.1) is often given with owner's and loan policies when the insured property consists of a condominium unit. It provides the Insured with various affirmative coverages peculiar to condominiums, such as the valid creation of the condominium.
- **Planned Unit Development Endorsement (PUD) (ALTA 5.1-06)** - The PUD Endorsement (ALTA 5.1-06) is given most often with loan policies, and is used when the property is located in a residential development that is subject to recorded covenants, conditions, or restrictions.
- **Variable Rate Mortgage (ALTA 6.0)** - The Variable Rate Mortgage Endorsement (ALTA 6) assures the lender that their priority will be maintained even when certain changes are made in the interest rate.
- **Variable Rate Mortgage - Negative Amortization (ALTA 6.2)** - The Variable Rate Mortgage Endorsement (ALTA 6.2) assures the lender that the occurrence of negative amortization/deferral of interest will not impair their lien priority.
- **Manufactured Housing Unit Endorsement (ALTA 7-06)** - The Manufactured Housing Unit Endorsement (ALTA 7-06) insures that a specifically described mobile home constitutes part of the Insured property.
- **Manufactured Housing - Conversion - Loan (ALTA 7.1)** - The Manufactured Housing - Conversion - Loan Policy Endorsement (ALTA 7.1) is used only with loan policies and assures a lender that a specifically described mobile home located on the Land is covered by the terms of the policy, that the lien of the mortgage attaches to the mobile home, and the lien of the mortgage can be foreclosed against the land and the mobile home.
- **Manufactured Housing - Conversion - Owner's (ALTA 7.2)** - The Manufactured Housing - Conversion - Owner's Policy Endorsement (ALTA 7.2) is used only with owner's policies and insures that title to a specifically described mobile home constitutes part of the Insured property, is covered by the policy, and that there are no personal property liens against the mobile home.
- **Environmental Protection Lien (ALTA 8.1)** - The Environmental Protection Lien Endorsement (ALTA 8.1) provides for affirmative coverage against loss or damage by reason of a lack of priority of the Insured Mortgage over any environmental protection lien recorded at the Date of Policy.
- **Restrictions, Encroachments, Minerals Endorsement Loan Policy (ALTA 9-06)** - This endorsement (ALTA 9-06) is used only with loan policies. It provides the Insured with several commonly requested affirmative coverages, most of which concern violations of restrictions and encroachments.
- **Restrictions, Encroachments, Minerals, Owner's Policy - Unimproved Land Endorsement (ALTA 9.1-06)** - The ALTA 9.1-06 endorsement is used with owner's policies when the Land is unimproved land. It provides the Insured with several commonly requested affirmative coverages, such as those dealing with encroachments, easements, and mineral rights.
- **Restrictions, Encroachments, Minerals, Owner's Policy - Improved Land (ALTA 9.2-06)** - This endorsement (ALTA 9.2-06) is used with owner's policies when improvements are located on the Land. It provides the Insured with several commonly requested affirmative coverages, in particular those dealing with encroachments and restrictions.
- **Restrictions, Encroachments, Minerals, Endorsement Loan Policy (ALTA 9.3-06)** - This endorsement (ALTA 9.3-06) is used only with loan policies. Similar to the ALTA 9-06, it provides the Insured with several commonly requested affirmative coverages, most of which concern violations of restrictions and encroachments.
- **Assignment (ALTA 10)** - The Assignment of Mortgage Endorsement (ALTA 10) is used when the note and the mortgage are assigned by the holder to someone else. It is most used when an institutional mortgagee assigns a mortgage in the secondary market.
- **Assignment and Date Down (ALTA 10.1)** - The Assignment and Date Down Endorsement (ALTA 10.1) is used when the note and the mortgage are assigned by the holder to someone else and provides coverage over certain matters occurring after the date of the policy. The endorsement does not extend the date of the policy or endorsements that are part of the policy other than as stated in the ALTA 10.1 endorsement.
- **Mortgage Modification (ALTA 11)** - The Mortgage Modification Endorsement (ALTA 11) is issued only to insure modifications to mortgages previously insured by Old Republic with an ALTA loan policy in circumstances in which the modification does not cause loss of priority or require the payment of a substitution loan rate premium. This endorsement does not advance the Date of Policy.
- **Mortgage Modification with Subordination (ALTA 11.1)** - The Mortgage Modification with Subordination Endorsement (ALTA 11.1) is issued only to insure modifications to mortgages previously insured by Old Republic with an ALTA loan policy in circumstances in which the modification does not

cause loss of priority or require the payment of a substitution loan rate premium. This endorsement does not advance the Date of Policy and lists subordinate matters that a lender would expect to find in Schedule B, Part II of a loan policy.

- **Mortgage Modification with Additional Insurance (ALTA 11.2)** - The Mortgage Modification with Additional Amounts of Insurance Endorsement (ALTA 11.2) is available for loan policies only. It is used to insure modifications to mortgages previously insured by Old Republic with an ALTA loan policy in circumstances in which the lender modifies a mortgage to increase the indebtedness and requests additional insurance under an existing policy. This endorsement does not advance the Date of Policy and can only be used where the modification does not cause loss of priority or require the payment of a substitution loan rate premium.
- **Leasehold - Owner's Endorsement (ALTA 13-06)** - The Leasehold - Owner's Endorsement (ALTA 13-06) defines the coverages provided to a tenant under a policy insuring a leasehold interest. The form describes the coverages more completely than the Owner's - Leasehold policy form it replaces. The endorsement must be issued in conjunction with an owner's policy (OF21).
- **Leasehold - Loan Endorsement (ALTA 13.1-06)** - The Leasehold - Loan Endorsement (ALTA 13.1-06) defines the coverages provided to a lender under a policy insuring a leasehold interest. The form describes the coverages more completely than the Mortgagee - Leasehold policy it replaces. The endorsement must be issued in conjunction with a loan policy (MF21).
- **Future Advance - Priority Endorsement (ALTA 14)** - The Future Advance - Priority Endorsement (ALTA 14) insures the validity, priority, and/or enforceability of future advances other than advances pursuant to construction loans. The endorsement must be issued in conjunction with a loan policy (M21).
- **Future Advance - Letter of Credit Endorsement (ALTA 14.2)** - The Future Advance - Letter of Credit Endorsement (ALTA 14.2) insures the validity, priority and enforceability of future advances other than advances pursuant to construction loans in mortgages securing letters of credit, surety agreements, and reimbursement agreements. The endorsement must be issued in conjunction with a loan policy (M21).
- **Future Advance - Reverse Mortgage Endorsement (ALTA 14.3)** - The Future Advance Reverse Mortgage Endorsement (ALTA 14.3) assures the lender that changes in the rate of interest or the occurrence of negative amortization will not impair the lender's lien position. The endorsement also provides that future advances are also included within the coverage of the policy. The ALTA 14.3 and the Reverse Mortgage Endorsement (RME) may be used interchangeably with loan policies.
- **Additional Interest Endorsement (AIE)** - The Additional Interest Endorsement, is used with loan policies only, provides the Insured under a loan policy with affirmative coverage related to additional interest provisions in the mortgage.
- **Balloon Mortgage Endorsement (BME)** - The Balloon Mortgage Endorsement, is used with loan policies only, assures the lender that its mortgage will not be invalid or unenforceable because it contains a conditional right for the borrower to refinance. It also assures that the mortgage will not lose its priority if the borrower exercises the conditional right to refinance.
- **Change of Partners, Members or Shareholders Endorsement (CPE)** - The Change of Partners (Fairways) Endorsement is used in connection with owner's policies under which the Insured is a corporation, partnership, limited partnership, limited liability company or business trust. It provides that insurance coverage will continue even if new partners, members, shareholders, beneficiaries, or certificate holders are added or old partners, members, shareholders, or certificate holders withdraw.
- **Construction Loan Update Endorsement (CLU)** - The Construction Loan Endorsement is used to update a loan policy as construction loan disbursements are made.
- **Contiguity Endorsement (CE)** - The Contiguity Endorsement provides affirmative coverage that a parcel of land consisting of more than one legal description constitutes one contiguous parcel of land.
- **Foreign Currency Endorsement (FCE)** - The Foreign Currency Endorsement is used in connection with loan policies that contain provisions for the re-evaluation of the Indebtedness based upon changes in the conversion rate between U.S. dollars and a stated foreign currency.
- **Form E Endorsement (E)** - Endorsement Form E is used to correct or amend either a commitment or policy that has been issued (for example, to correct an error in the spelling of a name or in conjunction with a mortgage modification agreement). The exclusive method for changing the Date of Policy or effective date on a loan policy is through the use of the Form E endorsement.
- **Navigational Servitude Endorsement (NSE)** - The Navigational Servitude Endorsement provides affirmative coverage as to losses arising by reason of forced removal of improvements based upon the exercise of governmental rights with respect to control over navigable waters or lands that formerly constituted navigable waters.
- **Option Endorsement (OE)** - The Option Endorsement insures a person or entity who has the right to

- purchase the subject property under a recorded option.

Revolving Credit Endorsement (RCE) - The Revolving Credit Endorsement is used with loan policies in instances under which the principal fluctuates from time to time as the borrower draws against a line of
- credit.

Shared Appreciation Endorsement (SAE) - The Shared Appreciation Endorsement insures the lender against loss or damage by reason of the invalidity or unenforceability of the mortgage resulting from shared appreciation interest provisions contained therein. It also provides coverage as to loss or damage by reason of loss of priority of the lien of the Insured Mortgage as security for the unpaid principal balance, the stated interest, and the shared appreciation interest, which loss of priority results from provisions in the mortgage
- for payment of shared appreciation interest.

Survey Endorsement (SE) - The Survey Endorsement, given with either an owner's or a loan policy,
- assures that the lands described in Schedule A of the policy are same lands described in a specific survey.

Privacy Policy Notice (PPN) - In all instances where a notice is required, ORNTIC requires its agents to
- include a copy of the notice (shown in this section) as part of the issued commitment and policy.

Continuation Sheet (CS) - The Continuation Sheet provides additional space for continuing Schedule A or B in a commitment or policy to show such matters as a lengthy legal description of the property or
- additional exceptions.

Notice to Purchaser - Mortgagor (NPM) - The Notice to Purchaser - Mortgagor gives notice to the owner that a loan title policy is being issued without an owner's policy to protect the owner's title interests. It is
- required to be signed by the owner when no owner's policy is being issued with the loan policy being issued.

Policy Approval Checklist (PAC) - The checklist will help identify common problem areas in issuing policies and examining title. If you encounter such an issue in the examination of title, you must resolve the
- matter before issuing the policy.

Condominium Current Assessments (ALTA 4.1)

To fill out this form, refer to the *Example of Condominium Endorsement (ALTA 4.1)*.

Purpose

The ALTA 4.1 endorsement is often given with owner's and loan policies when the insured property consists of a condominium unit. It provides the Insured with various affirmative coverages particular to condominiums, such as the valid creation of the condominium.

Note: This endorsement may not be issued on an automatic basis.

How to Prepare the ALTA Condominium Endorsement (ALTA 4.1)

When applicable, type or print the following information (the numbered paragraphs correspond to the elements of coverage):

Endorsement No.: Type the endorsement number.
To Policy No.: Type the letters and numbers of the policy to which this is an endorsement.

1 - 2. If the recorded documentation was either approved by Underwriting counsel or by the issuing title agent, then elements of coverage numbers 1 and 2 present no problem.

3. If present violations of any restrictive covenants exist that cannot be reasonably ignored because of limitations or perhaps laches, then element of coverage number 3 must be deleted. Furthermore, an exception should appear under Schedule B of any policy for the violations.

4. This endorsement may be issued if there are no charges or assessments provided for in the condominium documents and Sec. 718.116, F.S., that are due and unpaid. Evidence should be obtained at or before closing that payment of any such charges or assessments are current.

5. As allowed by Florida's Condominium Act, element of coverage number 5 may be provided.

6. This element of coverage creates no underwriting problem. It may be provided.

7. If the current sale is the first sale of the unit, then element of coverage number 7 may be ignored. If a resale is involved, then the matter can be disregarded when the association's written consent has been obtained approving the transfer, and the consent has been recorded. Refer to TN 08.02.01.

When an element of coverage is to be deleted from this endorsement form, the following special language must be inserted under Schedule B of the policy to be issued: Element of coverage Number(s) ____ is/are hereby deleted from the Condominium Endorsement ALTA 4.1 in its/their entirety.

- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No:** Type the Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of $25 must be charged .

Related Documents

No Related Documents Found

Planned Unit Development Endorsement (PUD) (ALTA 5.1-06)

To fill out this form, refer to the *Example of Planned Unit Development Endorsement (PUD) (ALTA 5.1-06)* .

Purpose

The ALTA 5.1-06 endorsement is given most often with loan policies, and is used when the Land is located in a residential development that is subject to recorded covenants, conditions, or restrictions.

Note: This endorsement may not be issued on an automatic basis.

How to Prepare the ALTA Planned Unit Development (PUD) Endorsement (ALTA 5.1-06)

When applicable, type or print the following information (the numbered paragraphs correspond to the elements of coverage):

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.

1. A determination should be made that the restrictive covenants are not violated and do not contain a forfeiture or reversionary clause. Such determination will result from the examination of a current survey or a personal inspection of the Land and a reading of the recorded instrument.
2. Evidence must be obtained at or before closing that any charges or assessments in favor of any homeowner's association are current. (**Read the Homeowner's Association documents carefully.**)
3. Should any encroachments be revealed by a current survey, they should be shown as exceptions, subject, however, to considerations of age and the extent of the encroachment. The latter matter should be presented to Underwriting counsel.
4. Written evidence that the right of first refusal has been waived should be obtained at or before closing.

When an element of coverage is to be deleted from this endorsement form, type below element of coverage number 4 the following words: This endorsement is amended in that element(s) of coverage _____ is (are) deleted.

- **Name of Agent:** Type the name of the title agent (the attorney or firm).

- **Agent No:** Type the Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of $25 must be charged.

Related Documents

No Related Documents Found

Variable Rate Mortgage (ALTA 6.0)

To fill out this form, refer to the *Example of Variable Rate Mortgage Endorsement (ALTA 6)* .

Purpose

The ALTA 6 endorsement assures the lender that their priority will be maintained despite the fact that certain changes in the loan terms, may occur (for example, the interest rate).

Note: This endorsement may not be issued on an automatic basis.

Requirements for Issuance

The requirements for the issuance of the Variable Rate Mortgage Endorsement (ALTA 6) are as follows:

- The mortgage placed of record must give notice to third parties that it is a special type of mortgage securing a note that contains provisions for changes in the rate of interest.
- The note or the loan documents secured by the insured mortgage, which may or may not be made a part of the recorded mortgage, must at a minimum be specifically identified in the mortgage and must contain all of the provisions controlling the changes in the rate of interest.
- The Insured Mortgage may not provide for negative amortization.

How to Prepare the ALTA Variable Rate Mortgage Endorsement (ALTA 6)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type the Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of $25 must be charged.

Related Documents

No Related Documents Found

Variable Rate Mortgage Negative Amortization (ALTA 6.2)

To fill out this form, refer to the *Example of Variable Rate Mortgage Endorsement Negative Amortization (ALTA 6.2)*.

Purpose

The ALTA 6.2 endorsement assures the lender that their priority will be maintained despite the fact that certain changes in the interest rate occur. It also assures the lender that the occurrence of negative amortization/deferral of interest will not impair their lien priority.

Note: This endorsement may not be issued on an automatic basis.

Requirements for Issuance

The requirements for the issuance of the variable rate mortgage endorsement negative amortization (ALTA 6.2) are as follows:

- The mortgage placed of record must give notice to third parties that it is a special type of mortgage securing a note that contains provisions for changes in the rate of interest, including negative amortization.
- The note or the loan documents secured by the insured mortgage, which may or may not be made a part of the recorded mortgage, must at a minimum be specifically identified in the mortgage and must contain all of the provisions controlling the changes in the rate of interest, including negative amortization.

How to Prepare the ALTA Variable Rate Mortgage Endorsement Negative Amortization (ALTA 6.2)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent Type:** the name of the title agent (the attorney or firm).
- **Agent No.:** Type the Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of $25 must be charged.

Related Documents

No Related Documents Found

Manufactured Housing Unit Endorsement (ALTA 7-06)

To fill out this form, refer to the *Example of Manufactured Housing Unit Endorsement (ALTA 7-06)* .

Purpose

The ALTA 7-06 endorsement insures that a specifically described mobile home constitutes part of the insured Land.

Requirements for Issuance

Once the requirements of *TN 25.02.06* are met, this endorsement may be made a part of an owner's or loan policy when the property has been improved with a mobile home.

When the manufactured housing unit endorsement is issued, the Vehicle Identification Number (VIN) must be included in the legal description of the commitment and policy: Schedule A, Number 4 of the commitment; in Schedule A, Number 5 of the loan policy; and/or in Schedule A, Number 4 of the owner's policy.

How to Prepare the ALTA Manufactured Housing Unit Endorsement (ALTA 7-06)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type the Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of $25 must be charged.

Related Documents

No Related Documents Found

Manufactured Housing Conversion Loan (ALTA 7.1)

To fill out this form, refer to the *Example of Manufactured Housing - Conversion - Loan Policy Endorsement (ALTA 7.1)*.

Purpose

The ALTA 7.1 is used only with loan policies and assures a lender that unless excepted in Schedule B of the policy: 1) the owner of the land owns the mobile home, 2) the mobile home is on the land, 3) the mobile home is covered by the terms of the policy as real property, 4) there are no personal property liens against the mobile home, 5) the lien of the mortgage attaches to the mobile home, and 6) the lien of the mortgage can be foreclosed against the land and the mobile home.

Requirements for Issuance

Title to the mobile home must be retired or have already been retired to issue this endorsement. Once the requirements of *TN 25.02.06(a)* are met, this endorsement may be made a part of a loan policy when the property has been improved with a mobile home.

When the manufactured housing - conversion - loan endorsement is issued, the Vehicle Identification Number (VIN) must be included in the legal description of the commitment and policy: Schedule A, Number 5 of the commitment; and in Schedule A, Number 5 of the loan policy.

If the title to the mobile home is being retired as a part of the current transaction, a review the title certificate

and DMV records for liens or encumbrances is required and releases must be obtained in order to retire title.

How to Prepare the ALTA Manufactured Housing - Conversion - Loan Policy Endorsement (ALTA 7.1)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent Type:** the name of the title agent (the attorney or firm).
- **Agent No.:** Type the Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of $25 must be charged.

Related Documents

No Related Documents Found

Manufactured Housing Conversion Owner's (ALTA 7.2)

To fill out this form, refer to the *Example of Manufactured Housing - Conversion - Owner's Policy Endorsement (ALTA 7.2)*.

Purpose

The ALTA 7.2 is used only with owner's policies and insures that unless excepted in Schedule B of the policy: 1) the owner of the land owns the mobile home, 2) the mobile home is on the land, 3) the mobile home is covered by the terms of the policy as real property, and 4) there are no personal property liens against the mobile home.

Requirements for Issuance

Title to the mobile home must be retired or have already been retired to issue this endorsement. Once the requirements of *TN 25.02.06(a)* are met, this endorsement may be made a part of an owner's policy when the property has been improved with a mobile home.

When the manufactured housing - conversion - owner's policy endorsement is issued, the Vehicle Identification Number (VIN) must be included in the legal description of the commitment and policy: Schedule A, Number 5 of the commitment; and in Schedule A, Number 4 of the owner's policy.

If the title to the mobile home is being retired as a part of the current transaction, a review the title certificate and DMV records for liens or encumbrances is required and releases must be obtained in order to retire title.

How to Prepare the ALTA Manufactured Housing- Conversion - Owner's Policy Endorsement (ALTA 7.2)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.

- **Name of Agent Type:** the name of the title agent (the attorney or firm).
- **Agent No.:** Type the Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of $25 must be charged.

Related Documents

No Related Documents Found

Environmental Protection Lien (ALTA 8.1)

To fill out this form, refer to the *Example of Environmental Protection Lien Endorsement (ALTA 8.1)* .

Purpose

The ALTA 8.1 endorsement provides for affirmative coverage against loss or damage by reason of a lack of priority of the Insured Mortgage over any environmental protection lien that is recorded at the Date of Policy.

Requirements for Issuance

The ALTA 8.1 endorsement may be issued with a loan policy in Florida. It is only necessary to determine that there is no record notice of, 1) an environmental protection lien or, 2) an environmental protection lien for cleanup and removal. If the title examination reveals such a lien, it would be shown as an exception under Schedule B, and the endorsement cannot be issued. If the title examination does not reveal such a lien, then issue the endorsement. This endorsement is a requirement of the secondary mortgage market.

How to Prepare the ALTA Environmental Protection Lien Endorsement (ALTA 8.1)

When applicable, type or print the following information (paragraphs (a) and (b) below correspond to the elements of coverage in paragraphs 1(a) and 1(b) of the endorsement):

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.

1(a). Paragraph 1(a) of the endorsement reflects that there are no liens filed in the records of the clerk of the United States District Court for the district in which the Land is located.

A check of federal district court records is not necessary because federal law provides for the creation of a lien by such recording in a limited situation. Specifically, it is provided "if the state has not by law designated one office for the receipt of such notices of liens, the notice shall be filed in the office of the clerk of the United States District Court for the district in which the real property is located." 42 U.S.C., Sec. 9607(1)(3).

Existing Florida law does designate one office for the receipt of notice of liens for hazardous waste cleanup and that this office is the clerk of the circuit court for the county in which the property is located. See Sec. 28.22, F.S. As a result, no check of the federal district court records is necessary to issue the ALTA 8.1 endorsement in Florida.

1(b). The ALTA 8.1 endorsement at paragraph 1(b), contains space for the insertion of state statutes that may create a "super lien" to be given priority over earlier recorded interests. Since there are presently no such

statutes in Florida, type "NONE" on the endorsement. If Florida at some point in the future adopts legislation that would provide for a "super lien," then this information will be given to you for inclusion in the endorsement.

- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No:** Type the Agent number.

- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of $25 must be charged.

Related Documents

No Related Documents Found

Restrictions, Encroachments, Minerals Endorsement Loan Policy (ALTA 9-06)

To fill out this form, refer to the *Example of Restrictions, Encroachments, Minerals Endorsement Loan Policy (ALTA 9-06)*.

Purpose

The ALTA 9-06 endorsement is used only with loan policies. It provides the Insured with several commonly requested affirmative coverages, most of which concern violations of restrictions and encroachments. The coverage is identical to the previous Florida Form 9 (FF9) endorsement. The ALTA 9-06 may be used with the MF6/M21 loan policy pursuant to underwriting guidelines set forth below.

Note: This endorsement may not be issued on an automatic basis. Many determinations must be made by the title agent.

Requirements for Issuance

Numbered paragraphs in this section refer to elements of coverage:

1(a) Element of coverage 1(a) assures that there are no covenants, conditions, or restrictions under which the lien of the Insured Mortgage could be divested, subordinated, or extinguished, or its validity, priority, or enforcement impaired. This element of coverage may be given once the title agent determines that the assurance is correct. (Although not expressly stated in the endorsement, the reference to covenants, conditions, or restrictions should be considered those of Public Record or of which the examiner has actual knowledge.)

1(b) This element of coverage requires that certain matters be expressly excepted in Schedule B. All of the other elements of coverage of this endorsement, in effect, provide affirmative coverage as to such matters.

1(b)(1) The first portion of element of coverage 1(b)(1) concerns the absence of existing violations of any covenants, conditions, or restrictions. Any existing violations must be listed as exceptions in Schedule B. Normally, evidence that no violations exist will consist, at the very least, an affidavit from the owner. A survey might also be needed.

Of course, the exact nature of the proof required to establish the nonexistence of violations will depend upon the terms of the covenants, conditions, and restrictions and the particular facts and circumstances involved. Particular caution must be exercised when a violation could occur without physical evidence such as violation of a restriction against serving alcohol beverages on the premises.The second portion of

element of coverage number 1(b)(1) concerns the absence of violations of plat setback requirements. Exception must be made in Schedule B for any violations of plat setback requirements. Such violations should be revealed by the current survey.

1(b)(2) As to element of coverage 1(b)(2), the issuing title agent must examine any instruments listed in Schedule B that contain covenants, conditions, or restrictions, in order to determine whether any such instrument includes any of the items enumerated in subparagraphs (i) through (iv). That is, any instruments listed in Schedule B that contain covenants, conditions, or restrictions must be reviewed to determine whether they contain easements, liens for liquidated damages, private charges or assessments, or provide for options to purchase, rights of first refusal, or prior approval of a future purchaser or occupant. Any such item must be expressly excepted in Schedule B.

Example: If subdivision restrictions impose a maintenance assessment upon the lot owner, such assessment should be specifically listed as an exception in Schedule B.

Rather than expressly and in detail listing the items enumerated in this element of coverage, it is sufficient to use generic language, provided that it meets the lender's approval.

Example: In the paragraph of Schedule B that describes a Declaration of Condominium, the following language might be added: "Such Declaration of Condominium establishes and provides for easements, liens, charges, assessments, an option to purchase, a right of first refusal, and the prior approval of a future purchaser or occupant.

Please note that, by virtue of element of coverage number 1(a), the endorsement affirmatively insures that those provisions will not have the effect of divesting, subordinating, or extinguishing the Mortgage, or impairing its validity, priority, or enforceability.

1(b)(3) Element of coverage 1(b)(3) assures that, unless listed in Schedule B, there is no encroachment of existing improvements located on the Land onto adjoining land, nor any encroachment onto the Land of existing improvements located on adjoining land. Any such encroachments (which would be shown on the survey) must be listed as Schedule B exceptions.

Example: If there is a slight fence encroachment from the subject Land onto the neighboring land, a Schedule B exception would be inserted as follows: "Encroachment of wood fence along the southerly boundary of Land, as revealed by the survey prepared by XYZ Surveying Company dated May 2, 1991, bearing job number 1234.

Please note that element of coverage number 4 of this endorsement has the effect of providing affirmative coverage as to loss or damage sustained by reason of a final court order or judgment requiring the removal of an encroachment onto adjoining land.

1(b)(4) Element of coverage 1(b)(4) assures that, unless listed in Schedule B, there is no encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B. Appropriate Schedule B exceptions must be made for improvements located within easement areas. The survey must show all easements excepted in Schedule B, in order to determine whether any such encroachment exists.

If the Land is a condominium unit, the survey exception is often waived without obtaining a current survey. The requirements are set forth in *TN 08.05.06B*. The ALTA 9-06 may still be provided, unless there is evidence of encroachments occurring subsequent to the original survey that was attached to the Declaration of Condominium.

1(b)(5) Element of coverage 1(b)(5) assures that there are no notices of violations of covenants, conditions, and restrictions related to environmental protection recorded in the Public Records. If any such notices are recorded, this coverage cannot be given, and the notices must be listed as Schedule B exceptions.

2. Element of coverage number 2 insures against loss or damage sustained by reason of future violations of existing covenants, conditions, or restrictions, if the violation results in either the impairment or loss of the lien of the Insured Mortgage or loss of Title to the Land if the Insured acquires Title in satisfaction of the secured debt. This element of coverage may be provided if the issuing title agent has carefully reviewed the covenants, conditions, or restrictions, and determined that any future violation of any existing covenants, conditions, or restrictions will not affect the lien of the Insured Mortgage or cause a reversion of the Title.The vast majority of covenants, conditions, and restrictions will not have any such effect.

3. Element of coverage number 3 contains two parts, both of which provide coverage as to loss or damage sustained by reason of damage to existing improvements. The first part, contained in subparagraph 3(a), concerns improvements located within easement areas and damage resulting from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved. The second part, contained in subparagraph 3(b), concerns damage resulting from the future exercise of rights of entry for the extraction or development of minerals.

3(a) If there are no improvements located upon the portion of the Land that is subject to an easement, the first part of element of coverage number 3 poses no problem. In general, this coverage may still be provided where encroachments of improvements onto typical utility or drainage easements exist, so long as the improvement is removable (e.g., a fence or driveway) and it is relatively minor. Preferably, there should be at least ten percent (10%) equity cushion (e.g., mortgage amount of $90,000.00 and fair market value of $100,000.00). Facts falling outside these general guidelines should be discussed with Old Republic Titleunderwriting
counsel.

3(b) The second portion of element of coverage 3 may always be provided if Schedule B contains no exceptions for mineral interests and the legal description of the subject Land does not except any mineral interests. If mineral interests exist, this element of coverage may not be given unless: (i) the holders of the mineral interests have released rights of entry (by a duly executed and recorded instrument); or (ii) the mineral interests have been released by operation of law. Refer to *TN 27.01.02* and *TN 27.04.01C*.

4. Element of coverage number 4, which provides coverage as to loss or damage arising from a final judgment requiring the removal of any encroachment from the Land onto neighboring land, may always be provided when no encroachments onto adjoining Land are excepted in Schedule B.

If such encroachments do exist, the issuing title agent, possibly in consultation with Old Republic Title Underwriting Counsel, must assess the degree of risk of the entry of a court order or judgment requiring the removal of the encroachment and what impact that could have (i.e., loss or damage) on the insured lender. If there is any indication of a boundary dispute, this element of coverage may not be given.

Many such encroachments will be insignificant, and easily removable, such as a fence being a few inches over the property line or part of a concrete pad extending onto adjoining land. If the minor encroachments have existed for a long time without objection, the risk is diminished even further. If the court-ordered removal of the encroachment would affect the lender's security, or if the amount of the mortgage exceeds ninety percent (90%) of the fair market value of the Land, this element of coverage should not be given without first securing approval from Old Republic Title Underwriting Counsel. When the building itself encroaches onto
adjoining land, this coverage will not be available except in unusual circumstances.

5. Similar determinations must be made in connection with element of coverage number 5, when there are violations of covenants, conditions, or restrictions or platted setback requirements. This element of coverage provides insurance as to loss or damage arising from a final judgment denying the right to maintain any existing improvement because of a violation of covenants, conditions, or restrictions or platted setback lines.

When setback violations are an issue, the guidelines are as follows:

- The instrument that imposes the setback requirement must not contain a reverter clause.
- The structure or improvement that violates the setback requirement must be completed.
- The violation should not be more than ten percent (10%) of the total setback requirement. (For example, if the setback requirement is 25 feet, the maximum violation allowable would be 2.5 feet).
- There must be no proceeding pending, and so far as the title agent knows or can determine by inquiry, no current objection to the violation and no indication of any future proceeding in connection with the violation.

In element of coverage number 5, affirmative coverage is provided against loss or damage sustained by reason of "[a]ny final court order or judgment denying the right to maintain any existing improvement on the land because of any violation of... building setback lines shown on a [recorded] plat..." Coverage is not provided as to loss or damage resulting from violations of law, but is limited to violations of platted setback Requirements.

Exclusion from coverage number 1 (in the loan policy) expressly excludes from coverage "[a]ny law

ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to (i) the occupancy, use or enjoyment of the Land; (ii) the character, dimensions, or location of any improvement now or hereafter erected on the land.... or the effect of any violation of any such law, ordinance or governmental regulation." If, there is a violation of local law, we strongly recommend this be disclosed to the Insured, notwithstanding the lack of coverage in either the policy or the endorsement. No policy exception is required absent recorded notice of violation or intent to enforce.

If there are violations of covenants, conditions, or restrictions, or platted setback requirements falling outside the guidelines set forth above, this element of coverage may not be given without prior approval by Old Republic Title Underwriting Counsel.

Schedule B - Exceptions

In the event that any element of coverage provided within this endorsement is not given in a particular transaction, there must be an appropriate notation in the paragraph of Schedule B containing the exception.

Example: If a building encroaches 30 feet onto adjoining land, this would be listed as a Schedule B exception (per element of coverage 1(b)(3), and the following language would be added: "Element of coverage No. 4 of the ALTA 9.06 endorsement (Restrictions, Encroachments, Minerals) shall not apply with respect to the aforesaid encroachment.

Generally speaking, the ALTA 9-06 endorsement may not be issued unless a current survey has been obtained. Some lenders do not require current surveys in connection with certain types of loans.

The ALTA 9-06 may still be given in such situations, but must be modified by way of the following special language inserted under Schedule B:

The ALTA 9-06 endorsement (Restrictions, Encroachments, Minerals) is attached to this policy as Endorsement No._____ Element of coverage 1(b)(1) thereof is hereby modified to read as follows: 'There are no present violations on the Land of any enforceable covenants, conditions, or restrictions.' Elements of coverage 1(b)(3), 1(b)(4), 3, 4, and 5 are hereby deleted from the endorsement in their entirety. Of course, before giving the elements of coverage remaining in the endorsement after it has been so modified, the applicable instructions set forth above must be followed. Also, if the covenants, conditions, or restrictions are such that a survey would be necessary to determine whether there is an existing violation, the endorsement should not be given without obtaining and reviewing a current survey.

Issuance with Commitment

Lenders occasionally request that various endorsements be issued with the title insurance commitment, as well as with the final loan policy. Technically, it is improper to give the ALTA 9-06 endorsement (or any other endorsement) with a commitment, since there is not yet any "Indebtedness secured by the Insured Mortgage." Furthermore, the survey and other necessary documentation are rarely available at the time the commitment is issued.

One way to satisfy a lender in this situation is to indicate, under Part II of Schedule B of the commitment, the following:

- *The ALTA 9-06 endorsement shall be issued together with the ALTA loan policy to be based upon this commitment, provided that all underwriting requirements pertaining to the issuance thereof are satisfied.*
- If desired, a sample of the ALTA 9-06 endorsement may be attached as an exhibit to the commitment. Rather than using the intentionally broad "all underwriting requirements" language, the title agent may of course specifically delineate the requirements for the issuance of the ALTA 9-06 endorsement. Also, in the rare instance where the survey and other necessary documentation are available. at the time the commitment is issued, a "pro forma" ALTA 9-06 endorsement may be attached to the commitment, with appropriate corresponding Schedule B exceptions.

Checklist for ALTA 9.06 Endorsement

This checklist should help the title agent to determine whether the affirmative coverage provided by the ALTA 9-06 endorsement can be given.

Element of Coverage (1)

1(a) Are there any covenants, conditions, or restrictions under which the lien of the insured mortgage could be divested, subordinated, or extinguished, or its validity, priority, or enforcement impaired? If not, this element of coverage may be given.

1(b)(1) The following must be listed as Schedule B Exceptions: Any existing violations of covenants, conditions, or restrictions, or any violations of plat setback requirements.

1(b)(2) Examine instruments listed in Schedule B containing covenants, conditions, or restrictions, and note in Schedule B any easements, liens for liquidated damages, private charges or assessments, options to purchase, rights of first refusal, or prior approval of a future purchaser of occupant. Alternatively, generic language may be used (refer to the instructions).

1(b)(3) Note as Schedule B exceptions any encroachments of improvements from the Land onto adjoining land and any encroachments onto the subject Land of improvements located on adjoining land.

1(b)(4) Make Schedule B exceptions for improvements located within easement areas.

1(b)(5) Make Schedule B exceptions for notices of violations of covenants, conditions and restrictions related to environmental protection recorded in the Public Records.

Element of Coverage (2)

Review covenants, conditions, or restrictions to determine that any future violation will not affect the lien of the Insured Mortgage or cause a reversion of Title.

Element of Coverage (3)

3(a) Coverage may be given only where there are no improvements located upon the portion of the Land that are subject to an easement or where any such encroachments are removable and relatively minor.

3(b) Coverage may be given if: there are no mineral interests; when the holders of any mineral interests have released rights of entry (by a duly executed and recorded instrument); or the mineral interests are released by operation of law. Refer to *TN 27.01.02* and *TN 27.04.01C*.

Element of Coverage (4)

Coverage may be given when there are no encroachments onto adjoining land. If such encroachments exist, the title agent must assess the degree of risk of the entry of a court order or judgment requiring removal, and what effect that might have on the Insured Mortgage. Consult with Underwriting counsel if necessary.

Element of Coverage (5)

As to setback violations, coverage may be given when all of the following conditions are met:

Instrument imposing setback requirement contains no reverter clause;
The structure or improvement violating the setback requirement is completed;
The violation is not more than ten percent (10%) of the total setback requirement; and
There is no proceeding pending, and the title agent has no knowledge of current objections.

If there are violations of covenants, conditions, or restrictions that fall outside of the guidelines set forth above, the title agent should consult with Underwriting counsel.

How to Prepare the ALTA Restrictions, Encroachments, Minerals Endorsement - Loan Policy (ALTA 9-06)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type the Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of ten percent (10%) of the sum of the premium(s) of the underlying policy or policies must be charged.

Related Documents

No Related Documents Found

Restrictions, Encroachments, Minerals, Owner's Policy Unimproved Land Endorsement (ALTA 9.1-06)

To fill out this form, refer to the *Example of Restrictions, Encroachments, Minerals Owner's Policy (ALTA 9.1-06)*.

Purpose

The ALTA 9.1-06 endorsement is used with an owner's policy insuring unimproved land. It provides the Insured with several affirmative coverages, most of which concern violations of restrictions and encroachments. It provides some of the same coverages as the ALTA endorsement 9-06.

Note: This endorsement may not be issued on an automatic basis. Many determinations must be made by the title agent.

Requirements for Issuance

Numbered paragraphs in this section refer to elements of coverage:

1(a) Element of coverage 1(a) assures that there are no present violations of any enforceable covenants, conditions or restrictions unless the violation is set forth as an exception on Schedule B. Evidence that no violations exist will consist, at the very least, of an affidavit of the owner. A survey may also be needed if the covenants, conditions or restrictions include such matters as set-back restrictions. (Although not expressly stated in the endorsement, the reference to covenants, conditions, or restrictions should be considered those of Public Record or of which the examiner has actual knowledge.) Of course, the exact nature of the proof required to establish the nonexistence of violations will depend upon the terms of the covenants, conditions, and restrictions and the particular facts and circumstances involved. Particular caution must be exercised when a violation could occur without physical evidence such as a violation of a restriction against serving alcoholic beverages on the premises.

1(b) As to the element of coverage 1(b), the issuing title agent must examine any instruments listed in Schedule B that contain covenants, conditions, or restrictions, in order to determine whether any such instrument includes any of the items enumerated in subparagraphs (i) through (iii). That is, any instruments listed in Schedule B that contain covenants, conditions, or restrictions must be reviewed to determine whether they contain easements, provide for options to purchase, rights of first refusal, prior approval of a future purchaser or occupant, right of reentry or possibility of reverter or right of forfeiture.

Example: If subdivision restrictions impose an easement upon the lot, such easement should be specifically listed as an exception in Schedule B.

Rather than expressly and in detail listing the items enumerated in this element of coverage, it is sufficient to use generic language.

Example: In the paragraph of Schedule B that describes a Declaration of Condominium, the following language might be added:

Such Declaration of Condominium establishes and provides for easements, liens, charges, assessments, an option to purchase, a right of first refusal. prior approval of a future purchaser or occupant, right of reentry or possibility of reverter or right of forfeiture.
1(c) Element of coverage 1(c) assures that, unless listed in Schedule B, there is no encroachment onto the Land of existing improvements located on adjoining land. Any such encroachments (which should be shown on the survey) must be listed as Schedule B exceptions.

Example: If there is a slight fence encroachment onto the Land from the neighboring land, a Schedule B exception would be inserted as follows:

Encroachment of wood fence along the southerly boundary of the Land, as revealed by the survey prepared by XYZ Surveying Company dated May 2, 2002, bearing job number 1234.
1(d) Element of coverage 1(d) assures that there are no notices of violations of covenants, conditions, and restrictions related to environmental protection recorded in the Public Records. If any such notices are recorded, this coverage cannot be given, and the notices must be listed as Schedule B exceptions.

2. Element of coverage number 2 provides coverage as to loss or damage sustained by reason of damage to future improvements due to the exercise of rights of entry for the extraction or development of minerals. This element of coverage may always be provided if Schedule B contains no exceptions for mineral interests and the legal description of the Land does not except any mineral interests. If mineral interests exist, this element of coverage may not be given unless: (i) the holders of the mineral interests have released rights of entry (by a duly executed and recorded instrument); or (ii) the mineral interests have been released by operation of law. Refer to *TN 27.01.02* and *TN 27.04.01C*.

How to Prepare the ALTA 9.1-06 - Owner's Policy - Unimproved Land (ALTA 9.1-06)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type the Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of ten percent (10%) of the sum of the premium (s) of the underlying policy or policies must be charged.

Related Documents

No Related Documents Found

Restrictions, Encroachments, Minerals, Owner's Policy Improved Land (ALTA 9.2-06)

To fill out this form, refer to the *Example Restrictions, Encroachments, Minerals, Owner's Policy - Improved Land (ALTA 9.2-06)*.

Purpose

The ALTA 9.2-06 endorsement is used only with an owner's policy insuring improved land. It provides the Insured with several affirmative coverages, most of which concern violations of restrictions and encroachments. The ALTA 9.2-06 may be used with owner's policies insuring improved land pursuant to the underwriting guidelines set forth below.

Note: This endorsement may not be issued on an automatic basis. Many determinations must be made by the title agent.

Requirements for Issuance

Numbered paragraphs in this section refer to elements of coverage:

1. This element of coverage requires that certain matters be expressly excepted in Schedule B. All of the other elements of coverage of this endorsement, in effect, provide affirmative coverage as to such matters.

1. (a) The first portion of element of coverage 1(a) concerns the absence of existing violations of any covenants, conditions, or restrictions. Any existing violations must be listed as exceptions in Schedule B. Normally, evidence that no violations exist will consist, at the very least, of an affidavit of the owner. A survey might also be needed.

Of course the exact nature of the proof required to establish the nonexistence of violations will depend upon the terms of the covenants, conditions, and restrictions and the particular facts and circumstances involved. Particular caution must be exercised when a violation could occur without physical evidence such as a violation of a restriction against serving alcoholic beverages on the premises.

The second portion of element of coverage number 1(a) concerns the absence of violations of plat setback requirements. Exception must be made in Schedule B for any violations of plat setback requirements. Such violations should be revealed by the current survey.

1. (b) As to element of coverage 1(b), the issuing title agent must examine any instruments listed in Schedule B that contains covenants, conditions, or restrictions, in order to determine whether any such instrument includes any of the items enumerated in subparagraphs (i) through (iii). That is, any instruments listed in Schedule B that contain covenants, conditions, or restrictions must be reviewed to determine whether they contain easements, or provide for options to purchase, rights of first refusal, prior approval of a purchaser or occupant, right of reentry or possibility of reverter or right of forfeiture. Any such item must be expressly excepted in Schedule B.

Example: If subdivision restrictions impose an easement upon the lot, such easement should be specifically listed as an exception in Schedule B.

Rather than expressly and in detail listing the items enumerated in this element of coverage, it is sufficient to use generic language.

Example: In the paragraph of Schedule B that describes a declaration of condominium, the following language might be added: "Such Declaration of Condominium establishes and provides for easements, an option to purchase, a right of first refusal, the prior approval of a future purchaser or occupant and a right of reentry, possibility of reverter, or right of forfeiture

1. (c) Element of coverage 1(c) assures that, unless listed in Schedule B, there is no encroachment of existing improvements located on the Land and onto adjoining land, nor any encroachment onto the Land of existing improvements located on adjoining land. Any such encroachments (which should be shown on the survey) must be listed as Schedule B exceptions.

Example: If there is a slight fence encroachment onto the Land from the neighboring land, a Schedule B exception would be inserted as follows: "Encroachment of wood fence along the southerly boundary of the Land, as revealed by the survey prepared by XYZ Surveying Company dated May 2, 2002, bearing job number 1234.

Please note that element of coverage number 3 of this endorsement has the effect of providing affirmative coverage as to loss or damage sustained by reason of a final court order or judgment requiring the removal of an encroachment onto adjoining land.

1. (d) Element of coverage 1(d) assures that, unless listed in Schedule B, there is no encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B. Appropriate Schedule B exceptions must be made for improvements located within easement areas. The survey must show all easements excepted in Schedule B, in order to determine whether any such encroachments exist. Element of coverage number 2(a) of this endorsement provides affirmative coverage against damage to existing improvements due to an exercise of an easement excepted on Schedule B. If the Land is a condominium unit, the survey exception is often waived without obtaining a current survey. As set forth in *TN 08.05.06B*2. , title agents are authorized to determine in any reasonable manner, satisfactory to them, whether there has been any construction subsequent to the declaration of condominium on the condominium parcel or on adjoining land. Such determination may take the form of a statement from the condominium association or other knowledgeable party. The ALTA 9.2-06 may still be provided, unless there is evidence of encroachments occurring subsequent to the original survey that was attached to the declaration of condominium.

1. (e) Element of coverage 1(e) assures that there are no notices of violations of covenants, conditions, and restrictions related to environmental protection recorded in the Public Records. If any such notices are recorded, this coverage cannot be given, and the notices must be listed as Schedule B exceptions.

2. Element of coverage 2 contains two parts, both of which provide coverage as to loss or damage sustained by reason of damage to existing buildings. The first part, contained in subparagraph 2(a), concerns buildings located within easement areas and damage resulting from the exercise of the right to maintain the easement for the purpose for which is was granted or reserved. The second part, contained in subparagraph 2(b) concerns damage resulting from the future exercise of rights of entry for the extraction or development or minerals.

1. (a) If there are no buildings located upon the portion of the Land that is subject to an easement, the first part of element coverage number 2, poses no problem. If a building is located upon the portion of the Land that is subject to an easement, this coverage may not be given unless approved by Old Republic Title Underwriting Counsel.

1. (b) The second portion of element of coverage 2 may always be provided if Schedule B contains no exceptions for mineral interests and the legal description of the Land does not except any mineral interest.

If mineral interests exist, this element of coverage may not be given unless: (i) the holders of the mineral interest have released rights of entry (by a duly executed and recorded instrument); or (ii) the right of entry has been released by operation of law. Refer to *TN 27.01.02* and *TN 27.04.01C*.

1. Element of coverage 3, which provides coverage as to loss or damage arising from a final judgment requiring the removal from any land adjoining the Land of any encroachment, other than fences, landscaping or driveways, may always be provided where no encroachments onto adjoining land are excepted in Schedule B.

If such encroachments do exist, the issuing title agent, possibly in consultation with Underwriting counsel, must assess the degree of risk of the entry of a court order or judgment requiring the removal of the encroachment and what impact that could have (i.e., loss or damage). If there is any indication of a boundary dispute, this element of coverage may not be given.

1. Similar determinations must be made in connection with element of coverage 4, when there are violations of covenants, conditions or restrictions, or platted setback requirements. This element of coverage provides insurance as to loss or damage arising from a final judgment denying the right to maintain any existing improvement because of a violation of covenants, conditions, or restrictions, or platted setback lines. When setback violations are at issue, the guidelines are as follows:

1. The instrument that imposes the setback requirement must not contain a reverter clause.
2. The structure of improvement that violates the setback requirement must be completed.
3. The violation, should not be more than ten percent (10%) of the total setback requirement. (For example, if the setback requirement is 25 feet, the maximum violation allowable would be 2.5 feet); and
4. There must be no proceeding pending, and so far as the title agent knows or can determine by inquiry, no current objection to the violation and no indication of any future proceeding in connection with the violation.

5.

In element of coverage 4, affirmative coverage is provided against loss or damage sustained by reason of "[a]ny final court order or judgment of denying the right to maintain any existing improvement on the land because of any violation of.... building setback lines shown on a [recorded] plat...." Coverage is not provided as to loss or damage resulting from violations of zoning law, but is limited to violations of platted setback requirements.

Exclusion from coverage 1 (in the owner's policy jacket) expressly excludes from coverage [a]ny law, coverage, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character dimensions, or location of any improvement erected on the Land; (iii) the subdivision of land; or (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations.

If there is a violation of local law, we strongly recommend this be brought to the attention of the Insured, notwithstanding the lack of coverage in either the policy or the endorsement. No policy exception is required absent a recorded notice of violation or intent to enforce.

If there are violations of covenants, conditions, or restrictions, or platted setback requirements falling outside the guidelines set forth above, this element of coverage may not be given without prior approval by Old Republic Title Underwriting Counsel.

Schedule B - Exceptions

In the event that any element of coverage provided within the endorsement is not given in a particular transaction, there must be an appropriate notation in the paragraph of Schedule B containing the exception.

Example: If an out-building encroaches 30 feet onto adjoining land, this would be listed as Schedule B exception per element of coverage 1(c), and the following language would be added: Element of coverage No.3 of the ALTA 9.2-06 Restrictions, Encroachments, Minerals shall not apply with respect to the aforesaid encroachment.

Generally speaking, the ALTA 9.2-06 may not be issued unless a current survey has been obtained. If a survey is not provided the ALTA 9.2-06 may still be given in such situations, but must be modified by way of the following special language inserted under Schedule B:

The ALTA 9.2-06 endorsement (Restrictions, Encroachments, Minerals) is attached to this policy as Endorsement No._____, Element of coverage 1(a) thereof is hereby modified to read as follows:'There are no present violations on the Land of any enforceable covenants, conditions or restrictions.' Elements of coverage 1(c), (d), 2(a), 3, 4, are hereby deleted from the endorsement in their entirety.
Of course, before giving the elements of coverage remaining in the endorsement after it has been so modified, the applicable instructions stated above must be followed. Also, if the covenants, conditions, or restrictions are such that a survey would be necessary to determine whether there is an existing violation, the endorsement should not be given without obtaining and reviewing a current survey.

How to Prepare the ALTA Restrictions, Encroachments, Minerals Endorsement - Owner's Policy - Improved Land (ALTA 9.2-06)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type the Agent number.

- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of ten percent of the sum of the premium(s) of the underlying policy or policies must be charged.

Related Documents

TN 8.05.06 Waiver of Survey Exception and Coverage Under the ALTA 9-06, ALTA 9.2-06, and ALTA 9.3-06 Endorsements

Restrictions, Encroachments, Minerals, Endorsement Loan Policy (ALTA 9.3-06)

To fill out this form, refer to the *Example of Restrictions, Encroachments, Minerals Loan Policy (ALTA 9.3-06)*.

Purpose

The ALTA 9.3-06 endorsement is used only with the loan policy. It provides the Insured with several commonly requested affirmative coverages found in the ALTA 9-06, most of which concern violations of restrictions and encroachments. The Florida version of the ALTA 9.3-06 has been modified from the official ALTA 9.3-06 version. In Florida, the affirmative coverage in paragraph 4 of the ALTA 9.3-06 was limited to cover damages to improvements existing at Date of Policy. As a result of the Florida modifications, the ALTA 9.3-06 and the ALTA 9-06 may be used interchangeably with the MF6 loan policy with the same underwriting guidelines.

Note: This endorsement may not be issued on an automatic basis. Many determinations must be made by the title agent.

Requirements for Issuance

Numbered paragraphs in this section refer to elements of coverage:

1. (a) Element of coverage 1(a) assures that there are no covenants, conditions, or restrictions under which the lien of the Insured Mortgage could be divested, subordinated, or extinguished, or its validity, priority, or enforcement impaired.

This element of coverage may be given once the title agent determines that the assurance is correct. (Although not expressly stated in the endorsement, the reference to covenants, conditions, or restrictions should be considered those of Public Record or of which the examiner has actual knowledge.)

1. (b) This element of coverage requires that certain matters be expressly excepted in Schedule B. All of the other elements of coverage of this endorsement, in effect, provide affirmative coverage as to such matters.

1. (b)(i). The first portion of element of coverage 1(b)(i) concerns the absence of existing violations of any covenants, conditions, or restrictions. Any existing violations must be listed as exceptions in Schedule B. Normally, evidence that no violations exist will consist, at the very least, of an affidavit from the owner. A survey might also be needed.

Of course, the exact nature of the proof required to establish the nonexistence of violations will depend upon the terms of the covenants, conditions, and restrictions and the particular facts and circumstances involved. Particular caution must be exercised when a violation could occur without physical evidence such as a violation of a restriction against serving alcoholic beverages on the premises.

The second portion of element of coverage number 1(b)(i) concerns the absence of violations of plat setback requirements. Exception must be made in Schedule B for any violations of plat setback requirements. Such violations should be revealed by the current survey.

Under the ALTA 9.3-06, element of coverage number 1(b)(i), does not include covenants, conditions, or restrictions which relate to obligations to perform maintenance, repair, or remediation on the Land or which pertains to environmental protection, unless the violation is recorded in the Public Records and is not

excepted in Schedule B.

1. (b)(ii). As to element of coverage 1(b)(ii), the issuing title agent must examine any instruments listed in Schedule B that contains covenants, conditions, or restrictions, in order to determine whether any such instrument includes any of the items enumerated in subparagraphs (A) through (D). That is, any instruments listed in Schedule B that contain covenants, conditions, or restrictions must be reviewed to determine whether they contain items such as easements, liens for liquidated damages, private charges or assessments, or provide for options to purchase, rights of first refusal, or prior approval of a future purchaser or occupant. Any such item must be expressly excepted in Schedule B along with the exception for the declaration or for the covenants and conditions.

Example 1: If a subdivision's covenants, conditions and restrictions impose a maintenance assessment upon the lot owner, such an assessment must be specifically listed as an exception in Schedule B as follows: Such Covenants, Conditions and Restrictions establish and provide for a maintenance assessment upon the lot owner.

Example 2: If a declaration of condominium impose these items enumerated in subparagraphs (A) through (D), the following language must be added to Schedule B: Such Declaration of Condominium establishes and provides for easements, liens, charges, assessments, an option to purchase, a right of first refusal, and the prior approval of a future purchaser or occupant.

Please note that, by virtue of element of coverage number 1(a), the endorsement affirmatively insures that those provisions will not have the effect of divesting, subordinating, or extinguishing the Mortgage, or impairing its validity, priority, or enforceability.

1. (b)(iii). Element of coverage 1(b)(iii) assures that, unless listed in Schedule B, there is no encroachment of existing improvements located on the Land onto adjoining land, nor any encroachment onto the Land of existing improvements located on adjoining land. Any such encroachments (which should be shown on the survey) must be listed as Schedule B exceptions.

Example: If there is a slight fence encroachment from the Land onto the neighboring land, a Schedule B exception would be inserted as follows: Encroachment of wood fence along the southerly boundary of the Land, as revealed by the survey prepared by XYZ Surveying Company dated May 2, 1991, bearing job number 1234.

Please note that element of coverage 5 of this endorsement has the effect of providing affirmative coverage as to loss or damage sustained by reason of a final court order or judgment requiring the removal of an encroachment onto adjoining land.

1. (b)(iv). Element of coverage 1(b)(iv) assures that, unless listed in Schedule B, there is no encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B. Appropriate Schedule B exceptions must be for improvements located within easement areas. The survey must show all easements excepted in Schedule B, in order to determine whether any such encroachments exist.

If the Land is a condominium unit, the survey exception is often waived without obtaining a current survey. The requirements are set forth in *TN 8.05.06B*. The ALTA 9.3-06 may still be provided, unless there is evidence of encroachments occurring subsequent to the original survey that was attached to the Declaration of Condominium.

1. (b)(v). Element of coverage 1(b)(v), assures that there are no notices of violations of covenants, conditions, and restrictions related to environmental protection recorded in the Public Records. If any such notices are recorded, this coverage cannot be given, and the notices must be listed as Schedule B exceptions.

2. Element of coverage 2, insures against loss or damage sustained by reason of future violations of existing covenants, conditions, or restrictions, if the violation results in either the invalidity, loss of priority, or unenforceability of the lien of the Insured Mortgage or loss of Title to the Land if the Insured acquires Title in satisfaction of the secured debt. This element of coverage may be provided if the issuing title agent has carefully reviewed the covenants, conditions, or restrictions and determined that any future violation of any existing covenants, conditions, or restrictions will not affect the lien of the Insured Mortgage or cause a reversion of the Title. The vast majority of covenants, conditions, and restrictions will not have any such effect.

3. Element of coverage 3, provides coverage as to loss or damage sustained by reason of damage to

improvements existing at Date of Policy. The coverage concerns improvements located within easement areas and damage resulting from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved.

If there are no improvements located upon the portion of the Land that is subject to an easement, element of coverage 3, poses no problem. In general, this coverage may still be provided where encroachments of improvements onto typical utility or drainage easements exist, so long as the improvement is removable (e.g., a fence or driveway) and it is relatively minor. Preferably, there should be at least a ten (10%) percent equity cushion (e.g. Mortgage amount of $90,000.00 and fair market value of $100,000.00). Facts falling outside these general guidelines should be discussed with Old Republic Title Underwriting Counsel.

1. Element of coverage 4 was modified in Florida to cover damage to improvements existing at Date of Policy resulting from the future exercise of rights of entry for the extraction or development of minerals. Element of coverage 4, may always be provided if Schedule B contains no exceptions for mineral interests and the legal description of the Land does not except any mineral interests. If mineral interests exist, this element of coverage may not be given unless:

- the holders of the mineral interests have released rights of entry (by a duly executed and recorded instrument); or the mineral interests
- have been released by operation of law. See *TN 27.01.02* and *TN 27.04.01C*.

1. Element of coverage 5, which provides for coverage as to loss or damage arising from a final judgment requiring the removal of any encroachment from the Land onto neighboring land, may always be provided when no encroachments onto adjoining Land are excepted in Schedule B.

If such encroachments do exist, the issuing title agent, possibly in consultation with Old Republic Title Underwriting Counsel, must assess the degree of risk of the entry of a court order or judgment requiring the removal of the encroachment and what impact that could have (i.e., loss or damage) on the insured lender. If there is any indication of a boundary dispute, this element of coverage may not be given.

Many such encroachments will be insignificant, and easily removable, such as a fence being a few inches over the property line or part of a concrete pad extending onto adjoining land. If the minor encroachments have existed for a long time without objection, the risk is diminished even further. If the court ordered removal of the encroachment would affect the lender's security, or if the amount of the Mortgage exceeds ninety (90%) percent of the fair market value of the Land, this element of coverage should not be given without first securing approval from Old Republic Title Underwriting Counsel. When the building itself encroaches onto adjoining land, this coverage will not be available except in unusual circumstances.

1. Similar determinations must be made in connection with element of coverage 6, when there are violations of covenants, conditions, or restrictions or platted setback requirements. This element of coverage provides insurance as to loss or damage arising from a final judgment denying the right to maintain any existing improvements because of a violation of covenants, conditions, or restrictions or platted setback lines.

When setback violations are an issue, the guidelines are as follows:

- The instrument that imposes the setback requirement must not contain a reverter clause;
- The structure or improvement that violates the setback requirement must be completed;
- The violation should not be more than ten (10%) percent of the total setback requirement. (For example, if the setback requirement is 25 feet, the maximum violation allowable would be 2.5 feet); and
- There must be no proceeding pending, and so far as the title agent knows or can determine by inquiry, no current objection to the violation and no indication of any future proceedings in connection with the violation.

In element of coverage 6, affirmative coverage is provided against loss or damage sustained by reason of "[a]ny final court order or judgment denying the right to maintain any existing improvement on the Land because of any violation of...building setback lines shown on a [recorded] plat...." Coverage is not provided as to loss or damage resulting from violations of law, but is limited to violations of platted setback requirements. Under the ALTA 9.3-06 element of coverage 6, does not include covenants, conditions, or restrictions which relate to obligations to perform maintenance, repair, or remediation on the Land or which pertains to environmental protection, unless the violation is recorded in the Public Records and is not excepted in Schedule B.

Exclusion from coverage 1, in the loan policy expressly excludes from coverage "[a]ny law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulation, prohibiting, or relating to (i) the occupancy, use or enjoyment of the Land; (ii) the character, dimensions, or location of any improvement now or hereafter erected on the land... or the effect of any violation of any such law, ordinance or governmental regulation." If, there is a violation of local law, we strongly recommend this be disclosed to the Insured, notwithstanding the lack of coverage in either the policy or the endorsement. No policy exception is required absent a recorded notice of violation or intent to enforce.

If there are violations of covenants, conditions, or restrictions, or platted setback requirements falling outside the guidelines set forth above, element of coverage 6 may not be given without prior approval by Old Republic Title Underwriting Counsel.

Schedule B - Exceptions

In the event that any element of coverage provided within this endorsement is not given in a particular transaction, there must be an appropriate notation in the paragraph of Schedule B containing the exception.

Example: If a building encroaches 30 feet onto adjoining land, this would be listed as a Schedule B exception (per element of coverage 1 (b) (iii), and the following language would be added: Element of coverage No.1 (b) (iii) of the ALTA 9.3-06 Restrictions, Encroachments, Minerals shall not apply with respect to the aforesaid encroachment.

Generally speaking, the ALTA 9.3-06 endorsement may not be issued unless a current survey has been obtained. Some lenders do not require current surveys in connection with certain types of loans. The ALTA 9.3-06 may still be given in such situations, but must be modified by way of the following special language inserted under Schedule B:

The ALTA 9.3-06 Restrictions, Easements, Minerals-Loan Policy is attached to this policy as Endorsement No. Element of coverage 1 (b)(i) thereof is hereby modified to read as follows: There are no present violations on the Land of any enforceable covenants, conditions or restrictions. Elements of coverage 1(b)(i), 1 b(iii-iv) 3,4,5,and 6 are hereby deleted from the endorsement in their entirety. Of course, before giving the elements of coverage remaining in the endorsement after it has been so modified, the applicable instructions set forth above must be followed. Also, if the covenants, conditions, or restrictions are such that a survey would be necessary to determine whether there is an existing violation, the endorsement should not be given without obtaining and reviewing a current survey.

Issuance with Commitment

Lenders occasionally request that various endorsements be issued with the title insurance commitment, as well as with the final loan policy. Technically, it is improper to give the ALTA 9.3-06 (or any other endorsement) with a commitment, since there is not yet any "Indebtedness secured by the Insured Mortgage." Furthermore, the survey and other necessary documentation are rarely available at the time the commitment is issued.

One way to satisfy a lender in this situation, is to indicate, under Part II of Schedule B of the commitment, the following:

The ALTA 9.3-06 endorsement shall be issued together with the 2006 ALTA loan policy to be based upon this Commitment, provided that all underwriting requirements pertaining to the issuance thereof are satisfied.

If desired, a sample of the ALTA 9.3-06 may be attached as an exhibit to the commitment. Rather than using the intentionally broad "all underwriting requirements" language, the title agent may of course specifically delineate the requirements for the issuance of the ALTA 9.3-06. Also, in the rare instance where the survey and other necessary documentation are available at the time the commitment is issued, a "pro forma" ALTA 9.3-06 may be attached to the commitment, with appropriate corresponding Schedule B exceptions.

Note: See the Checklist for ALTA 9.06 Endorsement to determine whether the affirmative coverages provided by this endorsement can be given.

How to Prepare the ALTA Restrictions, Encroachments, Minerals Endorsement - Loan Policy - Improved Land (ALTA 9.3-06)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of ten percent of the sum of the premium (s) of the underlying policy or policies must be charged.

Related Documents

No Related Documents Found

Assignment (ALTA 10)

To fill out this form, refer to the *Example of Assignment Endorsement (ALTA 10)* .

Purpose

The ALTA 10 is used when the note and the mortgage are assigned by the holder to someone else. It is most often used when an institutional mortgagee assigns a Mortgage on the secondary market.

Requirements for Issuance

This endorsement is only effective if the note secured by the Insured Mortgage is "properly endorsed and delivered to the Insured at the Date of Endorsement." This endorsement does not change the Date of Policy, although title must be searched and examined through the date the assignment of mortgage is recorded. The purpose of this search and examination is to ascertain that the Mortgage has been validly assigned, with no intervening matters appearing that could affect the validity of the assignment (for example, an intervening code enforcement board lien with super priority). Intervening title matters not affecting the validity of the assignment need not be reflected on the endorsement. Additionally, a tax lien search as to the assignor(s) must be performed. Refer to "Tax Lien Search Needed when Insuring Mortgage Assignment," *Fund Concept* (Feb 1987) and *TN 30.02.08*. An assignment of mortgage may also be endorsed with a Form E Endorsement (E) if additional premium is charged and/or the Amount of Insurance is increased. The issuance of a Form E endorsement is necessary to change the Date of Policy of a policy, or effective date of an earlier ALTA form policy. For instructions on changing the Date of Policy, refer to instructions for preparing the *Form E Endorsement (E)*.

How to Prepare the ALTA Assignment Endorsement (ALTA 10)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **The Name of the Insured:**

1. Name of the insured at the date of endorsement: Type the name of the assignee. **2(a). Date of Assignment and Recording Information.** Type the date of the assignment, the date it was recorded, and the book number, page number, and county where recorded. The Title must be searched and examined through the recording date of the assignment. **2(b). Exceptions.** Using consecutively numbered paragraphs, type all intervening matters such as easements, restrictions, leases, encumbrances, defects, etc. If none, type "none."

after the colon.

- **Date of Endorsement:** Type the date through which title was searched.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

One-to-four family residential: A minimum of $25 and a maximum of $100 must be charged.
Commercial or greater than one-to-four family residential: A minimum of $100 must be charged.

Related Documents

No Related Documents Found

Assignment and Date Down (ALTA 10.1)

To fill out this form, refer to the *Example of Assignment and Date Down Endorsement (ALTA 10.1)*.

Purpose

The ALTA10.1 is used when the note and the mortgage are assigned by the holder to someone else. It is most often used when an institutional mortgagee assigns a Mortgage on the secondary market. This endorsement may be used in lieu of the ALTA 10 where the lender requires further disclosure and assurance relating to intervening matters.

Requirements for Issuance

The instructions and requirements for the issuance of the ALTA 10.1 are explained in this section and, to a certain extent, in *TN 22.01.02*. This endorsement does not change the Date of Policy, although title must be searched and examined through the date the assignment of mortgage is recorded. The purpose of this search and examination is to ascertain that the Mortgage has been validly assigned, with no intervening matters appearing that could affect the validity of the assignment (for example, an intervening code enforcement board lien with super priority). Intervening title matters not affecting the validity of the assignment need not be reflected on the endorsement. However, the specified intervening matters that may affect priority must be disclosed, otherwise assurance is provided that the matters do not exist. Information on taxes and assessments must also be updated and where either are found to be due and payable, they must be disclosed. Additionally, a tax lien search as to the assignor(s) must be performed. Refer to "Tax Lien Search Needed when Insuring Mortgage Assignment," *Fund Concept* (Feb 1987) and *TN 30.02.08*. An assignment of mortgage may also be endorsed with a *Form E Endorsement (E)* if additional premium is charged and/or the Amount of Insurance is increased. The endorsement is only effective if the note secured by the Insured Mortgage is "properly endorsed and delivered to the Insured at the Date of Endorsement." The issuance of a Form E endorsement is necessary to change the Date of Policy/Effective Date of a Mortgagee policy. For instructions on changing the Date of Policy/Effective Date, refer to instructions for preparing the *Form E Endorsement (E)*.

How to Prepare the ALTA Assignment and Date Down Endorsement (ALTA 10.1)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.

1. The Name of the Insured at the Date of Endorsement: Type the name of the assignee

2(a). Date of Assignment and Recording Information: Type the date of the assignment, the date it was recorded, and the book number, page number, and county where recorded. The Title must be searched and examined through the recording date of the assignment.

2(b). Exceptions (Taxes and Assessments): Type a description of all ad valorem tax and assessments that are presently due and payable.

2(c). Exceptions (Defects, Liens and Encumbrances): Type in all intervening defects, liens and encumbrances that may affect the priority of the mortgage. Do not add exceptions for the matters found in your search that have already been made in existing policy, endorsements issued prior to assignment or that do not affect the priority of the mortgage.

2(d). Exceptions (Federal Tax Liens/Bankruptcy): Type in all Federal Tax Liens found to be imposed against the borrower(s) as well as any evidence of ongoing bankruptcy proceedings found in the public records.

2(e). Exceptions (Modifications, Release, Satisfaction): Type in all modifications, partial or full releases, satisfactions or other recorded documentation demonstrating the lien of the mortgage has been affected by the actions of the mortgagee. It is not necessary to type in this information if it already appears in a prior existing endorsement.

- **Date of Endorsement:** Type the date through which title was searched.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

One-to-four family residential: A minimum of $25 and a maximum of $100 must be charged.
Commercial or greater than one-to-four family residential: A minimum of $100 must be charged

Related Documents

No Related Documents Found

Mortgage Modification (ALTA 11)

To fill out this form, refer to the *Example of Mortgage Modification Endorsement (ALTA 11)* .

Purpose

The ALTA 11 insures that a modification of a mortgage does not result in a loss of priority, invalidity, or unenforceability of the Insured Mortgage. This form may only be issued for a mortgage modification that does not trigger a loss of priority and does not require a premium under Florida Administrative Rule 69O-186.005 (13) F.A.C.

The ALTA 11 does not extend or bring forward the Date of Policy. It excludes creditors' rights issues which might arise from the modification.

Requirements for Issuance

Since the ALTA 11 does not extend the Date of Policy, a *Form E Endorsement (E)* should be used when the

agent is requested to advance the Date of Policy. For instructions on changing the Date of Policy, refer to instructions for preparing the *Form E Endorsement (E)*. Title must be searched and examined through the date of the mortgage modification to ascertain that there are no intervening matters appearing that could affect the validity or priority of the Mortgage.

A *Form E Endorsement (E)* or a new loan policy must be issued when a mortgage modification agreement requires a premium and would cause a loss of priority.

In order to issue an ALTA 11, title must be examined to confirm that the subject mortgage modification has been recorded and does not cause a loss of priority.

How to Prepare the ALTA Mortgage Modification Endorsement (ALTA 11)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.

1(a). Date of Mortgage Modification and Recording Information. Type the date of the mortgage modification, the date it was recorded, and the book number, page number, and county where recorded. Title must be searched and examined through the recording date of the mortgage modification.

1(b). Exceptions. When the mortgage modification causes a loss of priority, type all intervening matters that attain priority. If there are none, type "none." after the colon.

- **Date of Endorsement:** Type the date through which title was searched.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

There is no premium charged for an ALTA 11 Mortgage Modification endorsement itself. However, if the policy is being endorsed to include a future advance or to insure a modification that requires a premium, you must submit the *Form E Endorsement (E)* and a Mortgage Modification Endorsement Worksheet or a Policy Calculation Worksheet.

For more information, refer to *Rating and Submitting the Forms*.

Related Documents

- Mortgage Modification (ALTA 11) - Example
- Mortgage Modification (ALTA 11) - Fillable

Mortgage Modification with Subordination (ALTA 11.1)

To fill out this form, refer to the *Example of Mortgage Modification Endorsement (ALTA 11.1)* .

Purpose

The ALTA 11.1 insures that a modification of a mortgage does not result in a loss of priority, invalidity, or unenforceability of the Insured Mortgage. This form may only be issued for a mortgage modification that does not trigger a loss of priority and does not require a premium under Florida Administrative Rule

69O-186.005 (13) F.A.C. This endorsement differs from the ALTA 11 endorsement in that it contemplates that the insurer specifically list intervening matters that are subordinate to the mortgage and continue to be subordinate upon recordation of the modification.

The ALTA 11.1 does not extend or bring forward the Date of Policy. It excludes creditors' rights issues which might arise from the modification.

Requirements for Issuance

Title must be searched and examined through the date of the mortgage modification to ascertain that there are no intervening matters appearing that could affect the validity or priority of the Mortgage.

Since the ALTA 11.1 does not extend the Date of Policy, a *Form E Endorsement (E)* should be used when the agent is requested to advance the Date of Policy. For instructions on changing the Date of Policy, refer to instructions for preparing the *Form E Endorsement (E)*.

A *Form E Endorsement (E)* or a new loan policy must be issued when a mortgage modification agreement requires a premium and would cause a loss of priority.

In order to issue an ALTA 11.1 endorsement, the modification must be examined to determine that it does not cause a loss of priority. Also, title must be examined to confirm that the subject mortgage modification has been recorded and to determine what matters affect title and may take priority over the mortgage as modified.

How to Prepare the ALTA Mortgage Modification with Subordination Endorsement (ALTA 11.1)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.

1(a). Date of Mortgage Modification and Recording Information: Type the date of the mortgage modification, the date it was recorded, and the book number, page number, and county where recorded. Title must be searched and examined through the recording date of the mortgage modification.

1(b). Exceptions: When the mortgage modification causes a loss of priority, type all intervening matters that attain priority. If liens, interests or encumbrances, have been found that have a super priority, those must also be shown as well as any liens, interests or encumbrances to which the mortgagee has subordinated its rights to. If there are none, type "none." after the colon.

1(c). Subordinate Exceptions: Any intervening exceptions that are found that are not shown in the original policy or an existing endorsement that are considered subordinate should be typed here.

- **Date of Endorsement:** Type the date through which title was searched.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

There is no premium charged for an ALTA 11.1 Mortgage Modification endorsement itself. However, if the policy is being endorsed to include a future advance or to insure a modification that requires a premium, you must submit the *Form E Endorsement (E)* and a Mortgage Modification Endorsement Worksheet or a Policy Calculation Worksheet.

For more information, refer to *Rating and Submitting the Forms*.

Related Documents

- Mortgage Modification with Subordination (ALTA 11.1) - Example
- Mortgage Modification with Subordination (ALTA 11.1) - Fillable

Mortgage Modification with Additional Insurance (ALTA 11.2)

To fill out this form, refer to the *Example of Mortgage Modification Endorsement (ALTA 11.2)* .

Purpose

The ALTA 11.2 insures that a modification of a mortgage does not result in a loss of priority, invalidity, or unenforceability of the Insured Mortgage. This form may only be issued for a mortgage modification that does not trigger a loss of priority and does not require a premium under Florida Administrative Rule 69O-186.005 (13) F.A.C. This endorsement differs from the ALTA 11 endorsement in that it contemplates that the insurer specifically list intervening matters that are subordinate to the mortgage and continue to be subordinate upon recordation of the modification. The endorsement differs from the ALTA 11.1 endorsement in that it contemplates increasing coverage due to a future advance within a sufficient future advance clause appearing in the existing mortgage.

The ALTA 11.2 does **not** extend or bring forward the Date of Policy. It excludes creditors' rights issues which might arise from the modification.

Requirements for Issuance

Title must be searched and examined through the date of the mortgage modification to ascertain that there are no intervening matters appearing that could affect the validity or priority of the Mortgage.

Since the ALTA 11.2 does not extend the Date of Policy, a *Form E Endorsement (E)* should be used when the agent is requested to advance the Date of Policy. For instructions on changing the Date of Policy, refer to instructions for preparing the *Form E Endorsement (E)*.

If the mortgage modification agreement requires premium to be charged on the outstanding principal balance or would otherwise cause a loss of priority, *Form E Endorsement (E)* or a new loan policy must be issued. This includes where the existing mortgage contains no future advance clause or one that is insufficient support the advance.

In order to issue an ALTA 11.2, title must be examined to confirm that the subject mortgage modification has been recorded and does not cause a loss of priority.

How to Prepare the ALTA Mortgage Modification with Additional Amount of Insurance Endorsement (ALTA 11.2)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.

1(a). Identity of Parties, Date of Mortgage Modification and Recording Information: Type the names of the parties to the mortgage modification, the date of the mortgage modification, the date it was recorded, and the recording information which may be the instrument number for some counties or book number, page number, and county where recorded. Title must be searched and examined through the recording date of the mortgage modification.

1(b). Date of Endorsement: Type the date of the endorsement which will be the date it is issued on or after the date of recording of the modification.

2. The Amount of Insurance Increased: Type in the new insured amount. This should equal sum of the

amount the loan has been paid down to PLUS the new future advance.

3(b). Exceptions: When the mortgage modification causes a loss of priority, type all intervening matters that attain priority. If liens, interests or encumbrances, have been found that have a super priority, those must also be shown as well as any liens, interests or encumbrances to which the mortgagee has subordinated its rights to. If there are none, type "none." after the colon.

3(c). Subordinate Exceptions: Any intervening exceptions that are found that are not shown in the original policy or an existing endorsement that are considered subordinate should be typed here.

- **Date of Endorsement:** Type the date through which title was searched.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

The premium charged for an ALTA 11.2 Mortgage Modification endorsement is based upon original rates (unless a lower rate applies (for instance, reissue rates)) for the amount of the future advance. If the mortgage is being modified in a way that triggers priority concerns or otherwise triggers premium at substitution loan rates on the outstanding principal balance (this includes situations where there is no future advance clause or the clause is insufficient to contemplate the future advance proposed), the ALTA 11.2 should not be issued. Instead, a Form E should be issued. Instead, you must issue and submit the *Form E Endorsement (E)* and a Mortgage Modification Endorsement Worksheet or a Policy Calculation Worksheet.

For more information, refer to *Rating and Submitting the Forms*.

Related Documents

No Related Documents Found

Leasehold Owner's Endorsement (ALTA 13-06)

To fill out this form, refer to the *Example of Leasehold - Owner's Endorsement (ALTA 13-06)* .

Purpose

The ALTA 13-06 endorsement defines the coverages provided to a tenant under a policy insuring a leasehold interest. The endorsement must be issued in conjunction with an owner's policy (O21).

Requirements for Issuance

The requirements for issuance of the ALTA 13-06 are as follows:

Schedule A, paragraph 2 of the owner's policy (O21) must identify the estate or interest in the Land being insured as a leasehold estate. The requirements of *TN 19.03.05* regarding insuring a lease must be complied with

How to Prepare the ALTA Leasehold - Owner's Endorsement (ALTA 13-06)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.

- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

There is no additional premium for this endorsement.

Related Documents

No Related Documents Found

Leasehold Loan Endorsement (ALTA 13.1-06)

To fill out this form, refer to the *Example of Leasehold - Loan Endorsement (ALTA 13.1-06)* .

Purpose

The ALTA 13.1-06 endorsement defines the coverages provided to a lender under a policy insuring a leasehold interest. This endorsement must be issued in conjunction with a loan policy.

Requirements for Issuance

The requirements for issuance of the ALTA 13.1-06 endorsement are as follows:

Schedule A, paragraph 2 of the loan policy (MF21) must identify the estate or interest in the Land encumbered by the Insured Mortgage as a leasehold estate. Old Republic TitleAgents shall comply with all the requirements of *TN 19.03.05* regarding insuring a lease and of *TN 19.01.01* regarding insuring a Mortgage of a leasehold interest.

How to Prepare the ALTA Leasehold - Loan Endorsement (ALTA 13.1-06)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

There is no additional premium for this endorsement.

Related Documents

No Related Documents Found

Future Advance Priority Endorsement (ALTA 14)

To fill out this form, refer to the *Example of Future Advance - Priority Endorsement (ALTA 14)* .

Purpose

The ALTA 14 is not to be used for construction loan advances. This is because, the ALTA loan policy covers the priority of the Insured Mortgage and advances of construction loan proceeds over construction claims of liens (only up to the Amount of Insurance). See *Loan Policy (M21)* instructions for further explanation. To insure future advances in excess of the Amount of Insurance, it is necessary to increase the Amount of Insurance through the use of a *Form E Endorsement (E)*. The loan policy's coverage is limited to disbursements or future advances that are used to pay for improvements or work which was contracted for on or before the Date of Policy or when the construction is financed in whole or in part by the Insured Mortgage. The loan policy alone does not insure the validity, priority, and enforceability of the future advances for other purposes.

To insure validity, priority, and enforceability of future advances, other than those advances related to construction, the lender will request a ALTA Future Advance Endorsement (14, 14.2, or 14.3). These endorsements are similar to the Revolving Credit Endorsement and may be issued when the loan policy is issued.

WARNING: The ALTA 14 is designed to be issued when the original Amount of Insurance includes the maximum amount of advances under the loan, and the loan is not a construction loan. If the Amount of Insurance reflects a lesser amount, then a Schedule B exception must be added capping the amount of advances that can be insured by this endorsement at such lesser amount.

The ALTA 14 endorsement provides that future advances are included within the coverage of the ALTA loan policy (up to the Amount of Insurance in Schedule A). It is used with the ALTA loan policies in instances in which the principal fluctuates from time to time as the borrower draws on a line of credit (for example, a Revolving Note Mortgage). A revolving note mortgage is a form of mortgage securing future advances in which the outstanding principal Indebtedness may increase or decrease during the term of the mortgage but at no time will it exceed a stated maximum. This type of mortgage has been used in farm loans, financing inventory or operating costs, and to establish a line of credit for homeowners based on the equity in their home.

This endorsement insures the lender against:

3a. The invalidity or unenforceability of the Insured Mortgage as security for each advance;

3b. The lack of priority of the Insured Mortgage as security for each advance;

3c. The invalidity, unenforceability, or loss of priority of the Insured Mortgage as security which results from re-advances or repayments, lack of outstanding indebtedness before the Advance, or the failure of the Insured Mortgage to comply with state law regarding future advances;

4a. The invalidity or unenforceability of the Insured Mortgage resulting from any terms of the Agreement that provide for interest on interest, changes in the rate of interest, or the addition of unpaid interest to the Indebtedness; and

4b. Loss of priority of the Insured Mortgage as security caused by changes in the rate of interest, interest on interest, or the increase in the Indebtedness from additional unpaid interest.

The ALTA 14-06 endorsement excludes the following:

5a. Advances made after bankruptcy;

5b. Advances made subsequent to 20 years after the date of the Insured mortgage or after a notice has been recorded in the Public Records, limiting the maximum principal amount that may be secured to the extent the advance causes the outstanding principal balance to exceed the amount stated in the notice;

5c. Real property taxes and assessments;

5d. Federal tax lien filed more than 45 days before the advance;

5e. Federal or state environmental protection lien; and

5f. Usury or consumer protection law.

Note: The ALTA 14 endorsement should not be issued to insure a mortgage which insures a construction loan. This endorsement may not be issued on an automatic basis. Many determinations must be made by the title agent.

Requirements for Issuance

The requirements for issuance of the ALTA 14 endorsement are as follows:

Notice and Term. The Insured Mortgage must comply with the notice requirement of Sec. 697.04, F.S. The recorded mortgage must state that it secures not only the existing indebtedness, but also future advances. The mortgage must provide that advances are made within twenty years of the date of the mortgage.

Maximum Amount. The Insured Mortgage must also specify the maximum principal amount to be secured. The outstanding principal may decrease or increase from time to time as long as at any one particular time the principal does not exceed the maximum amount stated in the Mortgage or a notice limiting the maximum principal amount. Under Sec. 697.04, F.S., the mortgagor may limit the maximum principal amount by sending a notice to the mortgagee and filing of record such notice, thereby, lowering the ceiling on the future advance provision or line of credit in the mortgage.

Changes in interest. The mortgage placed of record must give notice to third parties that it is a special type of Mortgage securing a note that contains provisions for changes in the rate of interest. The note, which may or may not be made a part of the recorded Mortgage, must, at a minimum, be specifically identified in the Mortgage and must contain all of the provisions controlling the changes in the rate of interest.

Amount of Insurance/Premium Charged. There are two options available for determining the Amount of Insurance and the applicable premium for a future advance.

1. The Amount of Insurance in Schedule A of the ALTA loan policy would reflect the maximum amount that is secured by the Mortgage. The appropriate premium is charged based upon the maximum Amount of Insurance. Later, for each future advance, a *Form E Endorsement (E)*2. may be issued bringing the Date of Policy forward through the date of recording the future advance; or
3. The Amount of Insurance in Schedule A of the ALTA loan policy would reflect the amount of the initial obligation, which is less than the maximum amount secured by the Mortgage. The appropriate premium is charged based upon this lesser Amount of Insurance. Later, for each future advance, a *Form E Endorsement (E)*4. would be issued to increase the Amount of Insurance and the appropriate premium charged using the Rating Worksheet. If the Amount of Insurance reflects a lesser amount, then a Schedule B exception must be added capping the amount of advances that can be insured by this endorsement at such lesser amount.

The following exception must be added to Schedule B of the loan policy whenever this endorsement is issued:

Advances in excess of the amount of insurance stated in Schedule A are not insured by the ALTA 14 endorsement attached to this policy.

Such amounts can only be insured by express endorsement increasing the Amount of Insurance and by payment of the appropriate premium.

How to Prepare the ALTA Future Advance - Priority Endorsement (ALTA 14)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).

- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of $25.00 must be charged for the Future Advance - Priority endorsement. If the policy is later endorsed to include a future advance for an additional amount not included in the original Amount of Insurance for the ALTA loan policy and requires a premium to be charged, you must submit the *Form E Endorsement (E)* showing the change in the Amount of Insurance, along with a Mortgage Modification Endorsement Worksheet or a Policy Calculation Worksheet.

Related Documents

No Related Documents Found

Future Advance Letter of Credit Endorsement (ALTA 14.2)

To fill out this form, refer to the *Example of Future Advance - Letter of Credit (ALTA 14.2)*.

Purpose

The ALTA loan policy covers the priority of the Insured Mortgage and advances of construction loan proceeds (only up to the Amount of Insurance). To insure future advances in excess of the Amount of Insurance, it is necessary to increase the Amount of Insurance through the use of a *Form E Endorsement (E)*. The loan policy's coverage is limited to disbursements or future advances that are used to pay for improvements or work which was contracted for on or before the Date of Policy or when the construction is financed in whole or in part by the Insured Mortgage. The loan policy alone does not insure the validity, priority, and enforceability of future advances for other purposes.

To insure the validity, priority, and enforceability of future advances other than those advances related to construction, the lender will request a ALTA Future Advance Endorsement (14, 14.2, or 14.3). These endorsements are similar to the Revolving Credit Endorsement and may be issued when the loan policy is issued.

WARNING: The 14.2 is designed to be issued when the original Amount of Insurance includes the maximum amount of advances under the loan and the loan is not a construction loan. If the Amount of Insurance reflects a lesser amount, then a Schedule B exception must be added capping the amount of advances that can be insured by this endorsement at such lesser amount.

The ALTA 14.2 endorsement is used with the ALTA loan policy in instances under which the principal fluctuates from time to time as the borrower draws on a line of credit (for example, a Revolving Note Mortgage). The endorsement provides that future advances are included within the coverage of the policy (up to the Amount of Insurance in Schedule A). A revolving note mortgage is a form of mortgage securing future advances in which the principal Indebtedness may increase or decrease during the term of the mortgage but at no time will it exceed a stated maximum. This type of mortgage has been used in farm loans, some construction loans, financing inventory or operating costs, and to establish a line of credit for homeowners based on the equity in their home.

This endorsement (as shown in this section) insures the lender against the following:

3a. The invalidity or unenforceability of the Insured Mortgage as security for each Advance;

3b. The lack of priority of the Insured Mortgage as security for each advance; and

3c. The invalidity, unenforceability, or loss of priority of the Insured Mortgage as security which results

from re-advances or repayments, lack of outstanding Indebtedness before the Advance, or the failure of the insured mortgage to comply with state law regarding future advances.

Unlike the ALTA 14, the ALTA 14.2 provides no coverage for a change in the rate of interest.

The ALTA 14.2 endorsement excludes coverage for the following:

2a. Advances made subsequent to 20 years after the date of the Insured Mortgage.

4a. Real property taxes and assessments; and

4b. Federal or state environmental protection lien.

4c. limitations imposed by Bankruptcy.

Note: The ALTA 14.2 should not be issued to insure a mortgage which secures a construction loan. This endorsement may not be issued on an automatic basis. Many determinations must be made by the title agent.

Requirements for Issuance

The requirements for the issuance of an ALTA 14.2 endorsement are as follows:

Agreement. Verify that the Mortgage secures the repayment of advances as evidenced in a letter of credit, surety agreement, or reimbursement agreement.

Notice and Term. The Insured Mortgage must comply with the notice of requirements of Sec. 697.04, F.S. The recorded Mortgage must state that it secures not only the existing Indebtedness, but also future advances. The mortgage must provide that these Advances must be made within twenty years of the date of the Mortgage.

Maximum Amount. The Insured Mortgage must also specify the maximum principal amount to be secured. The outstanding principal may decrease or increase from time to time as long as at any particular time the principal does not exceed the maximum amount stated in the Mortgage or a notice limiting the maximum principal amount. Under Sec. 697.04, F.S., the mortgagor may limit the maximum principal amount by sending such a notice to the mortgagee and filing of record the notice thereby lowering the ceiling on the future advance provision or line of credit.

Amount of Insurance/Premium charged. There are two options available for determining the Amount of Insurance and the applicable premium for the future advance.

1. The Amount of Insurance in Schedule A of the ALTA loan policy would reflect the maximum amount that is secured by the Mortgage. The appropriate premium is charged based upon this maximum Amount of Insurance. Later, for each future advance, a *Form E Endorsement (E)*2. may be issued bringing the Date of Policy forward through the date of recording the future advance; or
3. The Amount of Insurance in Schedule A of the ALTA loan policy would reflect the amount of the initial obligation, which is less than the maximum amount secured by the Mortgage. The appropriate premium is charged based upon this lesser Amount of Insurance. Later, for each future advance, a *Form E Endorsement (E)*4. would be issued to increase the Amount of Insurance and the appropriate premium charged using the Rating Worksheet. If the Amount of Insurance reflects a lesser amount, then a Schedule B exception must be added capping the amount of advances that can be insured by this endorsement at such lesser amount.

The following exception must be added to Schedule B of the loan policy whenever this endorsement is issued:

Advances in excess of the amount of insurance stated in Schedule A are not insured by the ALTA 14.2 endorsement attached to this policy.

Such amounts can only be insured by express endorsement increasing the Amount of Insurance and by payment of the appropriate premium.

How to Prepare the ALTA Future Advance - Letter of Credit Endorsement (ALTA 14.2)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of $25.00 must be charged for the Future Advance - Letter of Credit Endorsement. If the policy is later endorsed to include a future advance for an additional amount not included in the original Amount of Insurance for the ALTA loan policy and requires a premium to be charged, you must submit the *Form E Endorsement (E)* showing the change in the Amount of Insurance, along with a Mortgage Modification Endorsement Worksheet or a Policy Calculation Worksheet.

Related Documents

No Related Documents Found

Future Advance Reverse Mortgage Endorsement (ALTA 14.3)

To fill out this form, refer to the *Example Future Advance Reverse Mortgage Endorsement (ALTA 14.3)* .

Purpose

The ALTA 14.3 endorsement is to be issued only with a Reverse Mortgage. The most common Reverse Mortgage is the HUD Home Equity Conversion Mortgage (HECM) in which there are two mortgages, one mortgage for the lender and a subordinate mortgage to HUD. The ALTA 14.3 and the Reverse Mortgage Endorsement (RME - dual use) may be used interchangeably with a loan policy insuring a Reverse Mortgage.

This endorsement (as shown in this section) insures the lender against:

3a. The invalidity or unenforceability of the Insured Mortgage as security for each advance;

3b. The lack of priority of the Insured Mortgage as security for each advance;

3c (i-v). The invalidity, unenforceability, or loss of priority of the Insured Mortgage as security which results from re-advances or repayments, lack of outstanding Indebtedness before the Advance, or the failure of the Insured Mortgage to state the term or maximum amount secured by the mortgage;

3d. the invalidity or unenforceability of the Insured Mortgage because a mortgagor was not at least 62 years of age at Date of Policy;

4a (i-iii). The invalidity or unenforceability of the Insured Mortgage resulting from any provisions of the agreement that provide for interest on interest, changes in the rate of interest or the addition of unpaid interest to the Indebtedness; and

4b (i-iii). Lack of priority of the Insured Mortgage as security which is caused by changes in the rate of interest, interest on interest, and the increase in the Indebtedness from additional unpaid interest.

Under this endorsement, interest includes "lawful interest based on appreciated value."

The ALTA 14.3 is designed to be issued only with Reverse Mortgages and when the original Amount of Insurance includes the maximum amount of advances under the loan. If the Amount of Insurance reflects a lesser amount, then a Schedule B exception must be added capping the amount of advances that can be insured by this endorsement at such lesser amount.

The ALTA 14.3 excludes the following:

5a. Advances made after bankruptcy;

4b. Advances made subsequent to 20 years after the date of the Insured Mortgage or after a notice has been recorded in the Public Records limiting the maximum principal amount that may be secured (to the extent the advance causes the outstanding principal balance to exceed the amount stated in the notice), if the Insured Mortgage does not qualify as a "home equity conversion mortgage" or second mortgage held by HUD under the National Housing Act;

5c. Real property taxes and assessments;

5d. Federal tax liens filed more than 45 days before the Advance;

5e. Federal or state environmental protection lien; and

5f. Usury or consumer protection laws.

This endorsement insures the lender that changes in the rate of interest or the occurrence of negative amortization will not impair the lender's lien position. This endorsement also provides that future advances are included within the coverage of the policy.

Note: The ALTA 14.3 should not be issued to insure a mortgage which secures a construction loan. This endorsement may not be issued on an automatic basis. Many determinations must be made by the title agent.

Requirements for Issuance

The requirements for issuance of Future Advance - Reverse Mortgage Endorsement are as follows:

- The Insured Mortgage must be a Reverse Mortgage that secures future advances.
- The Insured Mortgage placed of record must give notice to third parties that it secures a note that contains provisions for changes in the rate of interest.
- The note or loan agreement secured by the insured mortgage, which may or may not be made part of the recorded mortgage, must at a minimum contain all of the provisions controlling the changes in the rate of interest.
- To comply with the notice provisions of Sec 697.04 F.S., the mortgage must state that it secures, not only the existing indebtedness, but also future advances.
- The Mortgage must specify the maximum principal amount that may be secured by the mortgage, which is the Amount of Insurance. The appropriate premium must be charged based on this maximum Amount of Insurance.
- All mortgagors are at least 62 years of age at the date of execution and delivery of the reverse mortgage.

However, for Home Equity Conversion Mortgages (HECM), the Amount of Insurance will be the maximum claim amount and the following exception must be included in Schedule B of the policy:

Notwithstanding the face amount of the Mortgage insured herein, as instructed by HUD Directive 4235.1 REV-1, and closing instructions provided by [insert mortgagee name], the coverage provided under this policy is limited to the amount of money actually disbursed or accrued under the Mortgage insured herein and shall be no greater than [insert the policy Amount of Insurance].

How to Prepare the ALTA Future Advance - Reverse Mortgage Endorsement (ALTA 14.3)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.

- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of $25.00 must be charged for the Future Advance - Reverse Mortgage Endorsement. If the policy is later endorsed to include a future advance for an additional amount not included in the original Amount of Insurance for the ALTA loan policy and requires a premium to be charged, you must submit the *Form E Endorsement (E)* showing the change in the Amount of Insurance, along with a Mortgage Modification Endorsement Worksheet or a Policy Calculation Worksheet.

Related Documents

No Related Documents Found

Additional Interest Endorsement (AIE)

To fill out this form, refer to the *Example of Additional Interest Endorsement (AIE)* .

Purpose

The AIE is used with loan policies only and provides the Insured under a loan policy with affirmative coverage related to additional interest provisions in the Mortgage. Such provisions typically allow the lender to participate in revenues generated from the property (such as rents).

Note: This endorsement may not be issued without prior approval from Old Republic Title

Underwriting Counsel. **Requirements for Issuance**

The title agent will generally be required to furnish Old Republic Title Underwriting Counsel with copies of the Mortgage and any ancillary documents pertaining to the additional interest income.

How to Prepare the Additional Interest Endorsement (AIE)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

- Send a copy to Old Republic Title.
- Send the original to the Insured.
- Keep a copy for your files.

Premium

- **One-to-four family residential:** A minimum of $25 and a maximum of $100 must be charged.
- **Commercial or greater than one-to-four family residential:** A minimum of $100 must be charged.

Related Documents

No Related Documents Found

Balloon Mortgage Endorsement (BME)

To fill out this form, refer to the Example of Balloon Mortgage Endorsement (BME).

Purpose

The BME is used with loan policies only and assures the lender that its mortgage will not be invalid or unenforceable because it contains a conditional right for the borrower to refinance. It also assures that the mortgage will not lose its priority if the borrower exercises the conditional right to refinance.

Requirements for Issuance

The BME may be issued so long as the recorded Mortgage contains a mortgage rider providing for a conditional right to refinance at the maturity date of the loan (normally seven years).

Under these provisions, the borrower is permitted to either modify the mortgage and execute a new note or pay off the old loan and execute a new note and mortgage.

Note: This endorsement should not be routinely issued with all balloon mortgages. It applies only when a balloon mortgage provides the borrower with a conditional right to refinance.

How to Prepare the Balloon Mortgage Endorsement (BME)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

- Send a copy to Old Republic Title.
- Send the original to the Insured.
- Keep a copy for your files.

Premium

- **One-to-four family residential:** A minimum of $25 and a maximum of $100 must be charged.
- **Commercial or greater than one-to-four family residential:** A minimum of $100 must be charged.

Related Documents

No Related Documents Found

Change of Partners, Agents or Shareholders Endorsement (CPE)

To fill out this form, refer to the *Example of Change of Partners, Agents or Shareholders Endorsement*

(CPE).

Purpose

The CPE is used in connection with an owner's policy under which the Insured is a corporation, partnership, limited partnership, limited liability company, or business trust. It provides that insurance coverage will continue even if new partners, Agents, shareholders, beneficiaries, or certificate holders are added or old partners, Agents, shareholders, or certificate holders withdraw.

Requirements for Issuance

The issuance of this endorsement requires examination of the law of the state of the owner Entity's domicile together with the owner Entity's governing documents, including but not limited to, articles of incorporation, bylaws, partnership agreement, operating agreement, or trust, and confirmation that any change in Agent, shareholder, beneficiary or certificate holder will not result in dissolution or termination of that Entity.

How to Prepare the Change of Partners, Agents, or Shareholders Endorsement (CPE)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

- Send a copy to Old Republic Title.
- Send the original to the Insured.
- Keep a copy for your files.

Premium

- **One-to-four family residential:** A minimum of $25 and a maximum of $100 must be charged.
- **Commercial or greater than one-to-four family residential:** A minimum of $100 must be charged.

Related Documents

No Related Documents Found

Construction Loan Update Endorsement (CLU)

To fill out this form, refer to the *Example Construction Loan Update Endorsement (CLU)* .

Purpose

Use this endorsement to update a loan policy as construction loan disbursements are made.

Requirements for Issuance

The CLU endorsement may be issued following the guidelines as set forth in *TN 22.04.03*. Direct any questions as to whether a particular title matter is subordinate to the lien of the Insured Mortgage to Old Republic Title Underwriting Counsel.

This endorsement does not change the Date of Policy or effective date. To change the Date of Policy or

effective date, refer to instructions for preparing the *Form E Endorsement (E)*.

How to Prepare the Construction Loan Update Endorsement (CLU)

Numbered paragraphs in this section refer to the paragraph numbers on the construction loan endorsement. Type or print the following information:

- **Endorsement No.** Type the endorsement number.
- **To Policy No.** Type the letters and numbers of the policy to which this is an endorsement.

1. Type or print the following information:

- *Liability.* Type the increased amount of liability.
- *Requisition Number.* Type the requisition number of the disbursement. If the title agent does not know the requisition number, the lender should be asked for this information.
- *Cumulative Total.* Type the total amount of disbursements made by the lender, including the current disbursement.

1. Instruments Affecting Title.

- *County Name.* Type the name of the county in which the Land is located.
- *Effective Date.* Type the dates through which Title was last examined and insured which is the later of Date of Policy or the date of the most recent endorsement.
- *Instruments.* Type the additional instruments that have been filed, or type "None" if no additional instruments have been filed.
- *Exception.* Type Not Applicable under the sentence "the Company insures each of the foregoing is subordinate to the lien of the Mortgage insured except."

Type or print the following information:

- **Name of Agent** Type the name of the title agent (the attorney or firm).
- **Agent No.** Type Old Republic Title Agent number.
- **Agent's Signature** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

- Send a copy to Old Republic Title.
- Send the original to the Insured.
- Keep a copy for your files.

Premium

- **One-to-four family residential:** A minimum of $25 and a maximum of $100 must be charged.
- **Commercial or greater than one-to-four family residential:** A minimum of $100 must be charged.

Related Documents

No Related Documents Found

Contiguity Endorsement (CE)

To fill out this form, refer to the *Example of Contiguity Endorsement (CE)*.

Purpose

The CE provides affirmative coverage that a parcel of Land consisting of more than one legal description constitutes one contiguous parcel of Land.

Note: This endorsement may not be issued on an automatic basis.

Requirements for Issuance
You must obtain a survey (meeting the requirements of *TN 25.03.06*) and a certificate from the surveyor confirming that the parcels in question are in fact contiguous.

Depending upon the particular facts and circumstances, the language of this endorsement may require modification, as in the case of a three-parcel description without any gaps, gores, or hiatuses.

How to Prepare the Contiguity Endorsement (CE)
Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution
Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium
- **One-to-four family residential:** A minimum of $25 and a maximum of $100 must be charged.
- **Commercial or greater than one-to-four family residential:** A minimum of $100 must be charged.

Related Documents

No Related Documents Found

Foreign Currency Endorsement (FCE)

To fill out this form, refer to the *Example of Foreign Currency Endorsement (FCE)*.

Purpose

The FCE is used in connection with a loan policy insuring a Mortgage that contains provisions for the re-evaluation of the Indebtedness based upon changes in the conversion rate between U.S. dollars and a stated foreign currency.

Note: This endorsement may not be issued without prior approval from Old Republic Title

Underwriting Counsel. **Requirements for Issuance.**

The title agent will generally be asked to submit a copy of that portion of the Mortgage concerning the re-evaluation of the secured Indebtedness based upon changes in the conversion rate between U.S. dollars and the stated foreign currency.

How to Prepare the Foreign Currency Endorsement (FCE)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).

- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

- **One-to-four family residential:** A minimum of $25 and a maximum of $100 must be charged.
- **Commercial or greater than one-to-four family residential:** A minimum of $100 must be charged.

Related Documents

No Related Documents Found

Form E Endorsement (E)

To fill out this form, refer to the *Example of Form E Endorsement (E)*.

Purpose

Use this form to correct or amend either a commitment or policy that has been issued. For example, use it to correct an error in the spelling of a name or in conjunction with a mortgage modification agreement.

Requirements for Issuance

Important: If a mortgage modification agreement is being insured, submit this endorsement with a Mortgage Modification Endorsement Worksheet. For more information, refer to *Rating and Submitting the Forms*.

Note: If the standard printed exceptions are deleted on the owner's policy by endorsement, copies of the affidavits, releases or liens, and surveys should be maintained in your file. Refer to *TN 25.03.07*.

How to Change the Effective Date of the Policy

The Date of Policy or effective date may only be changed for loan policies. The exclusive method for making such a change is through the use of this endorsement.

Modifications and additions to the policy necessitated by the change in Date of Policy or effective date may be accomplished as follows:

The new Date of Policy (an ALTA loan policy) or effective date (an earlier version of the ALTA loan policy) must be specified by inserting either: The Date of Policy is hereby changed to_____." or "The effective Date of Policy is hereby changed to_____.

The Date of Policy or effective date should be a date on or after the recordation of the insured instrument(s) and through which Title has been examined, unless the insured lender requires that the Date of Policy or endorsement Date of Policy be the date of closing of the insured mortgage or insured mortgage modification.

When the Date of Policy or the effective date is changed, the title agent must re-evaluate the deletion or reassertion of the standard exceptions 2 through 5 (rights of parties in possession, unrecorded easements, survey matters, and construction liens) (Refer to *TN 25.03.07*) regardless of whether these standard exceptions were included in the existing loan policy. They must be either added as exceptions on the Form E endorsement or the title agent must obtain the necessary documentation to waive the standard exceptions as of the new Date of Policy or effective date. For example, the deletion of the survey exception requires a current survey. For requirements and alternatives to a current survey for deleting the standard survey exception, refer to *TN 25.03.06*. If the property has been improved since the date of an available survey, the survey exception can be reinstated until construction is complete. After construction is completed and a final

survey of all improvements is obtained, the survey exception may be deleted by endorsement.

The title agent must also determine that ad valorem taxes have been paid and insert an exception in the endorsement for the current year's taxes. If the Form 9 endorsement was initially given with the policy, the title agent must determine whether the affirmative coverage afforded in that endorsement may be continued as of the policy's new date. Refer to the separate instructions herein for the Form 9 endorsement.

Exceptions must be added for all matters that have been recorded subsequent to the Date of Policy or effective date of the loan policy, as reflected on the policy or its most recent endorsement. Title agents must carefully analyze whether an insured mortgage modification will cause a novation or loss of priority. For a discussion of mortgage modifications and novations, title agents should consult *TN 22.03.06* and *Insuring and Rating Mortgage Modifications*, *Fund Concept* (Aug 2011). Those exceptions that are subordinate to the lien of Insured Mortgage as modified may be shown as subordinate exceptions by inserting the following language immediately before the subordinate exceptions only, The company insures that the following matters are subordinate to the lien or charge of the Insured Mortgage upon said estate or interest.

A title agent issuing an endorsement to "date down" or advance the Date of Policy or effective date of a loan policy and insuring a future advance must require a written statement form the lender setting forth that the lender has no actual knowledge of any intervening matters whether recorded or off the record, that would cause a loss of priority, unenforceability, or invalidity of the future advance.

Refer to *Rating and Submitting the Forms* for guidance in rating the Form E endorsement. Title agents should consult with Old Republic Title Underwriting Counsel to address any concerns related to insuring and rating
mortgage modifications.

How to Prepare the Form E Endorsement

Type or print the following information:

- **Endorsement No.:** Type the endorsement number. This is not a serial number. If a policy has more than one
- endorsement, this number indicates which endorsement this is.
- **To Policy No.:** Type the serial letters and numbers of the commitment or policy.
  Name of Original Insured: Type the name of the original insured.
- **Original Effective Date:** Type the effective date of the commitment or policy (not the date of the
- endorsement).
  Original Amount of Insurance: Type the amount of the commitment or policy.
- **Current Amount of Insurance.:** Type the amount of the policy as of the date of the endorsement. This may reflect a modification or advance under a Mortgage.
- **Agent's File Reference:** Type your office, client, or case file number or name to which this endorsement relates.
  The policy is hereby amended as follows: Type the changes, including any additional Schedule B
- exceptions, in this space. If more than one item is being amended, list the amendments in consecutively numbered paragraphs.

Note: The effective date of a loan policy cannot be amended unless the Title is searched and examined through the effective date. The Date of Policy of an owner's policy cannot be amended.

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- **Name of Agent** Type the name of the title agent (the attorney or firm).
- **Date** Type the Date.
  Agent No. Type Old Republic Title Agent number.
- **Agent's Signature** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the insured. Keep a copy for your files.

Premium
A minimum of ten percent (10%) of the sum of the premium (s) of the underlying policy or policies must be charged.

Related Documents

No Related Documents Found

Option Endorsement (OE)

To fill out this form, refer to the *Example of Option Endorsement (OE)*.

Purpose

The OE insures a person or Entity who has the right to purchase the subject property under a recorded option. It can be issued with an owner's policy insuring the fee simple owner/grantor of the option or with an owner's policy insuring a lessee who has been granted an option to purchase the insured property. The option to purchase must be executed with the same formalities required for a deed. See Sec. 689.01, F.S. If a property owner is granting an option and only the interest of the optionee will be insured, refer to *TN 09.05.02*.

Note: This endorsement may not be issued without prior approval from Old Republic Title

Underwriting Counsel. **Requirements for Issuance**

The Amount of Insurance shown in Schedule A of an owner's policy to which the option endorsement is attached should be the fair market value of the subject property on the Date of Policy, rather than the option price or the consideration for the option.

Schedule A must also be modified to reflect the name of the optionee (in paragraph 1). For example, if John Smith is the fee simple owner, and Jane Doe is the optionee, paragraph 1 of Schedule A would be completed as follows:

John Smith (fee simple) Jane Doe (option to purchase)

The title agent must make a determination that the option to purchase is valid and enforceable.

How to Prepare the Option Endorsement (OE)

Type or print the following information:

Endorsement No.: Type the endorsement number.
To Policy No.: Type the letters and numbers of the policy to which this is an endorsement.
Name of Agent: Type the name of the title agent (the attorney or firm).
Agent No.: Type Old Republic Title Agent number.
Agent's Signature: The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

One-to-four family residential: A minimum of $25 and a maximum of $100 must be charged.
Commercial or greater than one-to-four family residential: A minimum of $100 must be charged.

No Related Documents Found

Revolving Credit Endorsement (RCE)

To fill out this form, refer to the *Example of Revolving Credit Endorsement (RCE)* .

Purpose

The RCE is used with loan policies (for example, a revolving note mortgage) in instances under which the principal fluctuates from time to time as the borrower draws on a line of credit. The endorsement provides that future advances are included within the coverage of the policy.

A revolving note mortgage is a form of mortgage securing future advances in which the outstanding principal Indebtedness may increase or decrease during the term of the mortgage but at no time will it exceed a stated maximum. This type of mortgage has been used in farm loans, some construction loans, financing inventory or operating costs, and to establish a line of credit for homeowners based on the equity in their home.

Requirements for issuance

Important: The Mortgage must comply with the notice requirements of Sec. 697.04,F.S., and all advances must be made within twenty years of the date of the Mortgage.

The first question raised by this form of mortgage instrument is whether the priority of the lien of the Mortgage is affected during the term of the Mortgage when there are increases and decreases in the Indebtedness.

To secure the continued priority of the lien of the Mortgage, notice in the recorded Mortgage must be given to third parties by compliance with Florida's future advance statute, Sec. 697.04, F.S. To comply, the Mortgage must state that it secures not only existing Indebtedness, but also future advances. These advances must be made within twenty years from the date of the Mortgage.

The Mortgage must also specify the maximum principal amount to be secured. The outstanding principal may decrease or increase from time to time as long as that at any one particular time it does not exceed the maximum amount stated in the mortgage or a notice limiting the maximum principal amount. Under Sec. 697.04, F.S., the mortgagor may limit the maximum principal amount by sending such a notice to the lender and filing of record the notice thereby lowering the ceiling on the future advance provision or line of credit.

Note: The amount of the policy would be the maximum amount that may be secured by the Mortgage at any one time.

This type of future advance mortgage could be handled as any other future advance mortgage under the requirements of *TN 22.04.06*. This would require an endorsement to be issued each time there is a future advance. Typically, when you have a line of credit, the lender does not want to be bothered with or have the expense of numerous title updates and endorsements to the policy.

How to Prepare the Revolving Credit Endorsement (RCE)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

A minimum of $25 must be charged.

Related Documents

No Related Documents Found

Shared Appreciation Endorsement (SAE)

To fill out this form, refer to the *Example of Shared Appreciation Endorsement (SAE)*.

Purpose

The SAE is used with loan policies only and insures the lender against loss or damage by reason of the invalidity or unenforceability of the mortgage resulting from shared appreciation interest provisions contained therein. Such provisions typically allow the lender to participate in any increased value of the property.

The endorsement also provides coverage as to loss or damage by reason of loss of priority of the lien of the Insured Mortgage as security for the unpaid principal balance, the stated interest, and the shared appreciation interest, which loss of priority results from provisions in the mortgage for payment of shared appreciation interest.

Note: This endorsement may not be issued without prior approval from Old Republic Title

Underwriting Counsel. **Requirements for Issuance**

The title agent will generally be required to furnish Old Republic Title Underwriting Counsel with copies of the Mortgage and any ancillary documents pertaining to the shared appreciation interest feature.

How to Prepare the Shared Appreciation Endorsement (SAE)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
- **Agent No.:** Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

- **One-to-four family residential:** A minimum of $25 and a maximum of $100 must be charged.
- **Commercial or greater than one-to-four family residential:** A minimum of $100 must be charged.

Related Documents

No Related Documents Found

Survey Endorsement (SE)

To fill out this form, refer to the *Example of Survey Endorsement (SE)*.

Purpose

The SE is given with either an owner's or a loan policy and assures that the lands described in Schedule A of the policy are the same lands described in a specific survey. This endorsement is normally requested only when there is a variation in the two descriptions (in which case the variation must be appropriately explained).

Requirements for Issuance

The survey endorsement may be given so long as a survey meeting the requirements of *TN 25.03.06* has been obtained, and the legal description in the survey is the same as the legal description in Schedule A of the policy. Any variations in the legal description, other than de minimis variations, should be discussed with Old Republic Title Underwriting Counsel. In general, issuance of the endorsement will be approved when the
discrepancies are minor. A surveyor's certificate may be required to establish that the descriptions in fact refer to the same property notwithstanding any variations.

How to Prepare the Survey Endorsement (SE)

Type or print the following information:

- **Endorsement No.:** Type the endorsement number.
- **To Policy No.:** Type the letters and numbers of the policy to which this is an endorsement.
- **Surveyor prepared by:** Type the name of the firm that did the survey.
- **Dated:** Type the date the survey was made.
- **Name of Agent:** Type the name of the title agent (the attorney or firm).
  Agent No.: Type Old Republic Title Agent number.
- **Agent's Signature:** The title agent signs on this line. The signature must be visible. Under the title agent's signature, type the signer's name.

Distribution

Send a copy to Old Republic Title. Send the original to the Insured. Keep a copy for your files.

Premium

- **One-to-four family residential:** A minimum of $25 and a maximum of $100 must be charged.
  Commercial or greater than one-to-four family residential: A minimum of $100 must be charged.

Related Documents

No Related Documents Found

Privacy Policy Notice (PPN)

View an example of Old Republic Title's Privacy Policy Notice.

The Gramm-Leach-Bliley Act preserves certain privacy rights of individuals who deal with financial service institutions. The Act requires a financial institution, which has been defined to include a title insurance agent or underwriter, to give notice to its customers relative to the position of the agent and underwriter regarding the disclosure of non-public personal information.

In all instances where a notice is required, ORNTIC requires its agents to include a copy of the notice (shown in this section) as part of the issued commitment and policy.

No Related Documents Found

Continuation Sheet (CS)

Refer to the *Example Continuation Sheet*.

The Continuation Sheet provides additional space for continuing Schedule A or B in a commitment or policy to show such matters as a lengthy legal description of the property or additional exceptions.

Purpose

The continuation sheet provides additional space for continuing Schedule A or B to show such matters as a lengthy description of the property or additional exceptions.

How to Prepare the Continuation Sheet

- **Schedule _____ Continued** Type the letter of the Schedule from which the information is continued (Schedule A or B).
- **Commitment or Policy No.:** Type the commitment or policy number from which information is continued.

Use the rest of the sheet to type the continued information.

Related Documents

No Related Documents Found

Notice to Purchaser Mortgagor (NPM)

To fill out this form, refer to the *Example of Notice to Purchaser - Mortgagor*.

The Notice to Purchaser - Mortgagor gives notice to the owner that a loan title policy is being issued without an owner's policy to protect the owner's title interests. It is required to be signed by the owner when no owner's policy is being issued with the loan policy being issued.

Reproduced below is Florida Administrative Rule 69O-186.002 regarding the Notice to Purchaser - Mortgagor, which is required to be signed by the owner when no owner's policy is being issued with the loan policy being issued.

Statutory Disclosure; Mortgagee Policyholders

Sec. 627.798, F.S., provides "the Commission shall by rule adopt a form to be used to provide notice to a purchaser - mortgagor that the purchaser - mortgagor is not protected by the title company of the mortgagee. History. - S. 15, Ch. 2000-370.

Approved Form

Any form of written notice given by the title insurers, business trust title insurers, agents, Agents, employees thereof, or by agents, employees, officials of lending or other institutions to the purchaser - mortgagor in substantially the following language shall be deemed in compliance with Sec. 627.798, F. S:

Notice to Purchaser - Mortgagor

Pursuant to Sec. 627.798, F.S., notice is hereby given by

_____ (Name of Title Insurer)

to the undersigned purchaser - mortgagor that a mortgagee title insurance policy is to be issued to your mortgagee lender, and that such policy does not provide title insurance protection to you as the owner of the real estate you are purchasing.

The undersigned has read the above notice and understands that such mortgagee title insurance policy to be issued to the mortgagee lender does not provide Title insurance protection to the undersigned as owner.

Dated this_____day of_____, 20_____.

_____ (Signature of Purchaser)

Specific Authority 624.308, F.S. Law Implemented 627.778 (1)(a), F.S. History - New 9-23-69; Repromulgated 12-24-74. Formerly 4.21.02, Amended 6-25-86, Formerly 4-21-002, amended 1-27-02.

Related Documents

No Related Documents Found

Policy Approval Checklist (PAC)

To fill out this form, refer to the *Example Policy Approval Checklist (PAC)*.

Purpose

The checklist will help identify common problem areas in issuing policies and examining title. If you encounter such an issue in the examination of title, you must resolve the matter before issuing the policy. Old Republic Title provides comprehensive seminars on these issues in addition to Title Notes, Old Republic Title Procedures Handbook.

Requirements

Type or print the following information:

- **Responsible Agent (not firm name):** Type the name of the title agent actually issuing this policy. This is identify the responsible title agent.
- **Agent Number:** Type Old Republic Title Agent number (the number that is normally placed on Schedul A of the policy).
- *Florida Bar Number Required.* Type the Florida Bar Number of the title agent actually issuing the policy.

Coverage Issued (Including Simultaneous Policy)

- **Type of Policy:** Put a check mark in the parentheses next to the type of policy being issued. A single form can be used for simultaneous owner and mortgagee policies.
- **Policy Number:** Type the policy number for each policy type being issued.
- **Amount of Policy or Policies:** Type the Amount of Insurance for each policy type being issued.

Note: Policies over $1,000,000 need additional approval when not based on a Old Republic Title- prepared commitment,
Schedules A & B.

- **Endorsements:** Put a check mark beside each type of endorsement (s) you have been requested to issue a part of the policy.

Title Information Obtained and Reviewed

This section is designed to ensure that you have determined what types of Title information you need in order to issue the policy. The title information, in whatever form or forms you obtain, must be complete and must cover from the earliest Public Records (or Marketable Record Title Act Search) to the effective date of the policy. The information must include both a property search and a name search. There is usually additional information you will need to obtain and examine in any transaction, including surveys, plats, court files, tax information, assessment letters, and estoppel letters.

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Title Information Reviewed: Put a check mark beside each of the Title information reviewed.
Other Information Obtained for Review: Put a check mark beside each type of other information reviewed.

Title Matters Considered? Check if Applicable

- **Encumbrances on Title Identified:** This list identifies most of the common encumbrances encountered affecting a title. From your examination of title, you will have determined which encumbrances apply to your Title. Refer to Old Republic Title *Title Notes* for detailed discussions of variousissues involving each of the encumbrances listed. Check each type of encumbrance identified.
- **Title Issues Resolved:** This list identifies the areas encountered in the Title examinationprocess which frequently give rise to clouds or defects in Title. You should take the time tobecome familiar with the various Title Notes referred to in abbreviated form under theseheadings. Put a check mark beside each type of Title issue resolved.

Documents Obtained to Insure? Check if Applicable

The last section of the checklist indicates the documents that you have identified as necessary in order to close the transaction, both to transfer the interest to be insured and to remove encumbrances or to clear title issues that you have identified.

- Put a check mark beside each document type obtained to insure.

Certification Statement and Distribution

- **Signature of Issuing Agent** The issuing title agent signs on this line to certify that the policy complies with underwriting guidelines.
- **Date:** Type the date.

Distribution

Keep a copy for your files.

Related Documents

No Related Documents Found

Insuring and Rating Mortgage Modifications



By Melissa S. Scaletta, Fund Sr. Underwriting Counsel

Fund underwriting counsels are frequently called upon to assist Fund Members in insuring mortgage modifications with emphasis on the issues of lien priority and rating. The analyses involved in evaluating these two issues are dissimilar. The lien priority issue is controlled by common law and Florida Statutes, while the rating issue is regulated by the Florida Administrative Code. This article evaluates several variations of mortgage modifications and the consequential impact of mortgage modifications on insuring lien priority and calculating title insurance premium for insuring. The form in which mortgage modifications are insured is also addressed.

Does the Mortgage Modification Result in a Novation?

Modifications that place additional burdens on the borrower, increase the likelihood of default, and/or prejudice the rights of third parties are likely to be viewed as novations with respect to the interests recorded

after the original mortgage but prior to the subject modificiation. Other factors considered by the courts in determining whether a novation has occurred are whether the parties and the property involved are identical. TN 22.03.06. Some of most frequently encountered changes in terms in recent insuring requests include future advances, extension or acceleration of maturity date, spreaders, change in interest rates including interest rate floors and ceilings, consent to lifting automatic stay in bankruptcy, waiver of defenses and counterclaims, prepayment penalties, changes in release prices, consolidation or cross collateralization, and changes in borrowers, mortgagors or guarantors.

Modifications Not Effecting Priority

For those changes in terms in which there is clearly no additional burden placed upon the borrower, the mortgage modification may be insured without requiring subordination by any intervening lien or interest holders. The majority of mortgage modifications do not provide for one simple change of term, but rather several changes. The modification and all additional collateral loan documents, whether or not recorded and including but not limited to, loan agreements, replacement notes, allonges to notes and forebearance agreements, must be carefully examined for any change in terms. Examples of changed terms that standing alone are not considered novation causing for insuring include future advances given pursuant to a valid future advance clause based upon section 697.04, F.S.; extensions of maturity date and decreases in interest rates. Also, the spreader of a lien to additional collateral is not viewed for insuring as causing a loss of priority with regard to the lien priority as secured by the original collateral.

Modifications Effecting Priority

All other changes in terms of an insured mortgage, not specifically discussed above as not effecting priority, must be carefully evaluated to determine whether the totality of the modifications may be prejudicial in terms of the ability of a debtor to pay other creditors as those obligations become due. Examples of changes in terms within the modification and loan documents that will be considered a novation for insuring include a future advance that is not pursuant to a valid future advance clause in the existing mortgage; a complete, partial, conditional or future right to acceleration of the loan; increase in interest rate, including changes in interest rate index; consent to lifting automatic stay in bankruptcy; waiver of defenses and counterclaims; prepayment and other penalties; change in release prices and consolidation or cross collateralization of loan. Changes in borrowers, mortgagors and/or guarantors may result in novation and should be addressed with Fund underwriting counsel for consideration based on the specific circumstances and terms of the original mortgage on case by case basis.

Will Insuring the Mortgage Modification Generate a Premium?

The authority for calculating title insurance premium is contained in Rules 69O-186.003 and 69O-186.005 (13), F.A.C. For purposes of premium calculation, insured mortgage modifications are categorized as either non premium generating, substitution loan rate, original rate, reissue rate endorsements or some combination thereof. The mortgage modification endorsement worksheet and a substitution loan rate worksheet must be utilized for rating computations in insuring mortgage modifications and substitution loans respectively.

Non Premium Generating Endorsements

Florida law permits the endorsement of a loan policy regardless of whether the mortgage has been modified. Frequently insured lenders request date down endorsements when mortgages have not been modified. These endorsements do not result in the charge of a premium and they are “free” endorsements. In these situations the Fund Member must inquire of whether there are any unrecorded instruments related to the modification that may cause a premium to be charged. Any unrecorded loan instruments must be fully evaluated to determine whether there are any unrecorded changes in loan terms that could result in loss or priority or the charge of a substitution loan rate for insuring.

There are several circumstances in which mortgage modifications with change in terms will not result in a premium charge. Rule 69O-186.005 (13), F.A.C. provides a list of terms that may change in a mortgage without causing the charge of substitution loan rate. These terms generally include: extension of maturity date; decrease in interest rate; increase in interest rate provided that exception is made for any loss of priority occasioned by the increase; change in amortization to extend the term of the mortgage; release of a portion of the security; correction of the lien to comply with the lender’s commitment; future advances pursuant to Sec. 697.04, F.S.; and certain spreaders. For insuring a mortgage modification in which the only terms changing are among the substitution loan rate rule exceptions listed above and the mortgage was previously insured on either Attorneys’ Title Insurance Fund, Inc. or Old Republic National Title Insurance Company, no premium is due provided that the Fund Member act accordingly in updating the search and examination of title and apply Fund underwriting guidelines in the deletion of the standard exceptions for the endorsement pursuant to TNs 25.03.06 and 25.03.07. In the alternative the endorsement may add the standard exceptions to the policy.

Substitution Loan Rates

Per Rule 69O-186.003 (4), F.A.C., substitution loan rates are calculated by applying a percentage of the full original rate to the outstanding balance of the insured mortgage. The percentage applied is based upon the effective date of the loan policy and endorsements thereto.

Substitution loan rates apply in insuring mortgage modifications with changes in term, conditions or priority, which are not specifically excluded from substitutions loan rates per Rule 69O- 186.005 (13), F.A.C. Substitution loan rates also apply to insuring a mortgage in which the same risk was previously insured by another underwriter . Although outside of the scope of this article, substitution loan rates apply equally to insuring a substitution loan previously insured by any underwriter. Rule 69O-186.003 (4)(c), F.A.C. limits the application of this discounted rate to substitution loans involving the same mortgagor, lender and collateral or to loans of $250,000 or more with the same mortgagor and collateral but any lender.

Original Rates and Reissue Rates

All new risks, which were not previously insured by any underwriter, are subject to original rates or reissue rates if a qualified owner's policy insuring the mortgagor as the owner of the same property is available. New risks associated with mortgage modifications include future advances and mortgage spreaders.

Should the Mortgage Modification be Insured with an Endorsement or a New policy?

The manner in which the mortgage modification is rated will dictate whether the mortgage modification will be insured with an Old Republic National Title Insurance Company endorsement to an existing Attorneys' Title Insurance Fund, Inc. policy or a new Old Republic National Title Insurance Policy.

Insuring With New Policy

When a mortgage modification generates substitution loan rates for insuring a risk previously insured by Attorneys' Title Insurance Fund, Inc., the modification will be insured with a new Old Republic National Title Insurance Company policy, rather than an endorsement. When the mortgage modification involves some new risk, such as a future advance or a mortgage spreader, generating original rates or reissue rates on the new risk but no substitution loan rate on the remaining loan balance previously insured by Attorneys Title Insurance Fund, Inc., the new risk only will be separately insured on a new Old Republic National Title Insurance Company policy. The new policy only insuring the incremental risk of the future advance or spreader is referred to as a "stacked" or "piggy back" policy. The following exception language shall appear in Schedule B of a new stacked or piggy back policy:

This policy is issued supplementary to policy no. XXX issued by Attorneys' Title Insurance Fund, Inc., in the amount of $999999, referred to as the "Fund Policy." Notwithstanding any provisions of this policy to the contrary, and as a condition for the issuance of this policy, it is agreed between the insured and Old Republic National Title Insurance Company that this policy is issued supplementary to the Fund Policy, and is not coinsurance or reinsurance or in replacement thereof.

Insuring With Endorsement

Non premium generating endorsements previously insured on Attorneys' Title Insurance Fund, Inc. are to be insured by Old Republic National Title Insurance Company endorsement. When insuring a recorded mortgage modification it is generally necessary bring the effective date of the policy forward through the date of recordation of the insured modification. With spreader modifications, sometimes the effective date is brought forward as to the spreader parcel only and the previous effective date is retained as to the original collateral. Bringing the effective date of a policy forward necessitates a complete update of the examination of title including underwriting the standard exceptions and Florida Form 9 affirmative coverage anew.

Conclusion

When requested to endorse existing loan policies and insure mortgage modifications, Fund Members must carefully evaluate all recorded and unrecorded loan documents together with proposed modified loan documents in order to identity all changes in terms. Fund Members requiring assistance in resolving issues of lien priority, premium rating and the recommended manner for insuring a modification should contact Fund underwriting counsel. Rating worksheets for insuring mortgage modifications and substitution loans are available on FundNet. Representatives of Fund Finance Customer Service are available to assist in preparing rating worksheets upon request.

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Mortgage Modifications: Keep it on the Record!



by Valerie Jahn Grandin, Fund Sr. Underwriting Counsel, with contributions from Patricia P. Jones, Fund Vice President, and Silvia Rojas, Fund Sr. Underwriting Counsel

The nature of the legal practice of attorney/title agents representing lenders has been dramatically altered in this time of economic turmoil. New acquisition or construction loans are but a distant memory. Instead these practitioners toil on loan workouts, forbearance agreements, amended and restated notes, and mortgage modifications.

The Fund has seen a growing number of transactions where the lender seeks to modify the terms of the underlying note or loan documents without modifying the recorded mortgage. The underwriting concern is that without proper recordation of the modifications lenders may be under the false impression that the coverage afforded under the original mortgagee policy has been endorsed to insure the priority of the

mortgage as modified off the record. Title agents issuing “date-down” endorsements may unknowingly be giving the insured lenders an expectation of title insurance coverage where none may actually exist.

“Date-downs” were common practice in the preeconomic meltdown era. However, the economic landscape has substantially changed and title agents can no longer assume that “date-down” endorsements are simple title endorsements. In addition to a record title update, the title agent should determine that there are no changes to the mortgage note, loan agreement, or other loan documents. Documentation of the lender’s representations to that effect should be obtained for the title agent’s protection as well as the underwriter’s. This article will address crucial title agent considerations in dating down a prior Fund (ATIF) or an Old Republic mortgagee policy through a current effective date.

Title Update Only. If the proposed endorsement is a “date-down,” the purpose of which is to simply is a “date-down,” the purpose of which is to simply provide the insured lender with a current status of title, and there have been no changes to the loan documents off the record, there is no underwriting concern. The endorsement is issued showing any new exceptions disclosed by the title search.

Depending on the nature of the intervening matter, it may be an additional Schedule B-I exception to the mortgage lien as insured or it may be subordinate to the mortgage lien and should be listed as a Schedule B-II, Subordinate Matter. (Of course, the standard exceptions, including the survey exception, must be waived de novo. See TN 22.03.06.)

Title Update Coupled With Off-the-Record Modifications to Loan Documents. When asked to issue a “date down” endorsement to a mortgagee policy, the title agent should always inquire whether there are off the record modifications to the loan documentation. If the lender indicates that there are changes but does not disclose the nature of those changes, the title agent should remind the insured lender that in the event of a claim, mattersnot disclosed to the title agent and not disclosed to the underwriter are excluded from coverage under title insurance policies, as illustrated below:

Exclusions from Coverage. The standard ALTA loan policy jacket carries a specific exclusion from coverage that would be triggered by undisclosed mortgage modification documents. The pertinent exclusion language is set forth in sections 3, (a) and (b):

3. Defects, liens, encumbrances, adverse claims or other matters

(a) created, suffered, assumed or agreed to by the Insured Claimant;

(b) not Known to the Company (Underwriter), not recorded in the public records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy.

Stated differently, underwriters who are not apprised of the existence or content of unrecorded documents and who issue date-down endorsements as requested by their insured lenders are likely to deny coverage in the event of a claim dealing with mortgage lien priority.

Insuring Requirements. The following scenarios illustrate the most common situations involving datedown endorsements that cover the time period during which off-the-record amendments or additions were made to the note and/or to any related loan documentation:

(a) The modifications with the priority-altering provisions are recorded. Provided there are no recorded intervening liens, continuing lien priority of the mortgage may be insured by date-down endorsement. If there are intervening liens, these would have to be released or subordinated by agreement. In either case, substitution loan premium rates apply.

(b) The priority-altering modifications remain off the record. The date-down endorsement may be provided, but because creditors can always attempt to assert priority as of the date of the unrecorded modification, the endorsement must contain the following language:

This policy does not insure the continuing priority of the lien of the insured mortgage with respect to unrecorded loan documents, if any, that modify the loan secured by the insured mortgage and executed prior to the effective date of this endorsement. In the event the title agent receives written assurance from the insured lender that there are no unrecorded modifications to any loan documents, the exception may be waived, based on the exclusions in the loan policy.

(c)The lender records a mortgage modification agreement evidencing a reduction in the interest rate and an extension of the maturity date. By themselves these modifications do not cause a loss of priority or trigger additional premium. However, off the record the lender extracts additional concessions from the borrower. In this case, the endorsement must carry the exception language above.

Example. National Bank, N.A. holds a note secured by a mortgage for $3 million on a commercial office building in Lemon County, and the lien of the mortgage is insured under a loan policy. The loan is coming due and the borrower desires to obtain an extension of the maturity date and a reduction in the interest rate. If these were the only two modifications being made, neither triggers a loss of priority or a substitution loan rate premium. However, off the record, the lender extracts certain significant concessions from the borrower in consideration for the modification agreement. In this example, the lender has required the borrower to pay into a newly created reserve account the additional sum of $5,000 monthly. Courts would likely view this modification as one that increases the likelihood of default by the borrower, thereby prejudicing the rights of intervening creditors—in other words, this modification becomes a novation, a new loan agreement with a new priority date. If the lender does not record this modification agreement but requests only a date-down endorsement, the title agent may issue the endorsement, but must add the above exception to the endorsement.

Conclusion. In short, it is simply not possible to eat one's cake and have it too. If continuing coverage for a priority-altering modification to a mortgage agreement is desired, the modifications must be recorded, and a premium is due, as mandated under the title insurance regulations. Alternatively, the exception disclaiming coverage for any off-the-record modifications must appear in the endorsement, and substitution loan rates would not be required.

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Mortgage Modifications – Insuring and Rating Revisited



By Clifford W. Rainey, Fund Sr. Underwriting Counsel

The topic of insuring mortgage modifications continues to generate many questions for Fund Members on a regular basis. Generally, the questions relate primarily to “how much do I charge for this?” and the related crucial question, “does what the borrower and lender are doing create a potential priority issue?” The Fund Member’s careful analysis of the transaction is necessary to determine how much premium to charge, as well as to determine the necessary steps, if any, to adequately deal with a potential loss of priority. This article is written to explore the methods of insuring mortgage modifications and discusses rating and priority issues.

Mortgage Modifications That Do Not Result in A Substitution Loan Rate Premium Charge

As noted in Ch. 9 of *The Fund Procedures Handbook,* “Rating and Submitting the Forms,” Rule 69O-186.005(13), F.A.C., provides guidance. This rule calls for a charge of substitution loan rates where

the modification agreement changes the terms, conditions, priority, or security other than modifications that:

1. extend the time for repayment;
2. decrease the interest rate, provided the cap on a variable rate mortgage is not more than the original cap or the cap is not more than the original fixed rate;
3. increase the interest rate, provided the endorsement contains an exception for the loss of priority resulting from the increase;
4. change the amortization schedule to extend the term;
5. release a portion of the property; or
6. make a correction to perfect the lien of the insured mortgage or to comply with the terms of the lender's original commitment.

There are two types of mortgage modification not described in Rule 69O-186.005(13), F.A.C., that require a premium but for which substitution loan rates are not applicable as to the outstanding principal balance. The modifications that do not trigger substitution loan rates are (1) future advances under a future advance clause that has not been exceeded and (2) construction loan revolving line of credit mortgages, sometimes referred to as "classic creeping construction mortgages."

In evaluating the loan documents for a mortgage modification, Fund Members must review not only the "to be recorded" modification, but must also review the other "off record" loan documents, such as loan agreements and promissory notes, and compare the proposed documentation to the original note, mortgage, and loan agreement, and any interim modifications thereto, to establish whether a material modification exists. Keeping in mind the list of modifications that do not trigger a premium, Fund Members should review the documents to determine if there exists a material modification to the mortgage that may be viewed as increasing a burden on the borrower or anyone with an inferior interest. If material modifications to the mortgage loan are observed, the need to consider a premium charge as well as a potential priority concern are triggered.

When asked to insure a mortgage modification that does not materially modify the existing mortgage and the title policy insuring the existing mortgage was insured by Old Republic, a Mortgage Modification Endorsement (ALTA 11-06) may be issued upon a proper title examination. No premium is associated with this endorsement. Fund Members should note that the ALTA 11-06 does not advance the effective date of the title policy. If a lender requires the effective date to advance, this is accomplished by issuing a Form E Endorsement (Form E). While the Form E, used for this purpose, would not trigger a premium, advancing the effective date does re-impose the standard exceptions that appear in commitments (real property taxes and assessments, rights of parties in possession, unrecorded easements, survey matters, and construction liens). If the lender wants these exceptions removed, it is necessary to undertake the ordinary steps to

eliminate these matters. TNs 25.03.06 and 25.03.07. Also see Ch. 7 of *The Fund Procedures Handbook,* "Preparing the Forms" for a discussion of the Mortgage Modification Endorsement and the Form E.

Fund Members may issue an Old Republic endorsement to endorse any Old Republic policy, whether the policy was issued through The Fund or otherwise. However, if the existing policy is not an Old Republic policy, an Old Republic endorsement may not be issued. This limitation impacts all other title insurer's policies, including those issued by Attorneys' Title Insurance Fund, Inc. If handling the modification of a mortgage that was insured by another title insurer, Fund Members may issue a new Old Republic policy to insure the mortgage as modified; however, substitution loan rates must be charged because Old Republic did not previously insure the mortgage.

An alternative available to Fund Members, when faced with modification of a mortgage insured by a title insurer other than Old Republic, is the Mortgage Priority Guarantee (FMG). The FMG is a form of a title guarantee that has limited coverage. The purpose of the FMG is to insure the continuing priority of the mortgage. The FMG is not an endorsement to the existing policy and is not intended to modify the coverages under the existing policy. The FMG may be offered only where the modification does not generate novation or priority concerns. The FMG can be issued for a premium of $125. See Ch. 7 of *The Fund Procedures Handbook,* "Preparing the Forms" for a detailed discussion of the FMG.

Mortgage Modifications That Result in a Substitution Loan Rate Premium Charge

As noted above, the Florida Administrative Code provides some guidance as to what modifications will not trigger a substitution loan rate. If a Fund Member encounters a modification that does not fit into one of the specified modifications, the Fund Member must determine whether the modification is material in nature or potentially imposes an additional burden on the borrower or persons who hold inferior interests. Modifications that would trigger novation and application of substitution loan rates include addition of a prepayment penalty, shortening the time for repayment, or addition or expansion of a future advance clause. A requirement for payment of consideration in order to obtain the modification may also trigger a substitution loan rate premium.

When a mortgage modification triggers potential novation and the application of substitution loan rates, the ALTA 11-06 and the FMG are not available alternatives. If the existing mortgage is insured by Old Republic, Fund Members may endorse the prior policy using the Form E and substitution loan rates should be charged on the outstanding principal balance. Otherwise, Fund Members should issue a new policy which may also be issued at the applicable substitution loan rate premium. Whether insuring the mortgage as modified by endorsement or by a new policy, Fund Members should, upon title examination, consider the need to add exceptions that do not appear in the existing policy or take steps to eliminate existing exceptions or make them subordinate due to priority concerns.

Future Advances

A future advance is a type of mortgage modification that requires a premium based upon the amount advanced. This premium is generally charged at original rates. A future advance does not trigger substitution loan rates on the outstanding principal balance so long as there exists an adequate future advance clause to accommodate the size of the advance. If the mortgage contains no clause that contemplates a future advance (either as a stated dollar amount or stated as a factor of the original principal amount), or the clause is inadequate to contemplate the size of the advance in the transaction to be insured, priority concerns are triggered. Substitution loan rates are charged on the outstanding principal balance of the loan before the future advance plus original rates on the amount of the future advance.

Even where there is an adequate future advance clause in the original mortgage, it is possible that the loan documents including the future advance also contain other material modifications to the mortgage. These additional modifications may consequently trigger substitution loan rates on the outstanding principal balance. In the case of a future advance in conjunction with an inadequate or non-existent future advance clause or other material modification, Fund Members should also address priority issues by obtaining subordination agreements or releases, as warranted.

Spreaders and “Classic Creeping Construction Mortgages” - When Are Substitution Loan Rates Applicable?

A spreader is a type of modification that spreads the lien of the mortgage to additional or new property that was not previously collateral for the loan. The new “spread” property would not have been insured under the existing lender’s policy because it was not part of the original collateral. Thus, in order for the new collateral real property to be insured, there is a need to endorse the policy to add the new property to the insured collateral property. With the exception of one specialized type of transaction, an endorsement insuring this type of modification triggers substitution loan rates on the outstanding principal balance. If an advance is made in conjunction with the spreader, original rates should be charged for the advance in addition to the substitution loan rate on the outstanding principal balance. However, if an owner’s policy is being issued to cover the spread property, a portion of the premium for the endorsement to the loan policy may instead be at the simultaneous issue rate.

In issuing the endorsement for a spreader, Fund Members should remember that title must be examined for both the spread property and the existing collateral that has not been or is not intended to be released as part of the insured transaction. Interim matters of record must be addressed or shown as an exception as do the title issues relating to the new property. The standard exceptions must be addressed for both the existing property and the spread property. TNs 25.03.06 and 25.03.07.

One spreader-type mortgage modification transaction does not require a charge of a substitution loan rate. This is the construction loan revolving line of credit, often referred to as a “classic creeping construction mortgage.” Rule 69O-186.005(13)(h), F.A.C. This is a mortgage set up as a line of credit in order for a developer or builder to acquire parcels, develop or build them, then resell and acquire new parcels on a continuing basis. The loan is often set up with a small amount of collateral with a line of credit with a much higher cap. The loan policy is issued with an insured amount as the line of credit cap and premium is paid based upon the credit cap and with a Revolving Credit Endorsement (RCE). The borrower has, in effect, paid a “pre-paid premium.” In this type of transaction, which becomes a series of transactions, Fund Members must keep a record of the spreaders done and the amount advanced related to the value of each parcel. Once the aggregate amount reaches the line of credit cap amount, Fund Members must begin collecting premium again.

Conclusion

In order to properly determine the correct pricing for an endorsement or new policy, Fund Members must undertake a careful examination and analysis of unrecorded loan documentation and the modification documentation to be recorded. This analysis often requires a comparison to the prior loan documentation and recorded mortgage to determine if the modification is material in nature and creates additional burdens on the borrower or inferior interests. Fund Members should contact underwriting counsel when assistance is needed in determining whether the modification triggers priority concerns and in determining whether an endorsement may be issued, what premium should be charged, or whether a new title insurance policy should be issued. Finance customer service representatives are available to assist in rating calculations and in the preparation of rating worksheets. Fund Members can fin

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Insuring Mortgage Modifications Using ALTA 11-06 and Form E Endorsements



By John E. Brown, Fund Sr. Underwriting Counsel, Commercial Services

Changing loan terms or modifying loan agreements is a common occurrence in today's financial reality. There is a constant struggle between the entrepreneur's desire to maintain flexibility over the use of their borrowed funds and a lender's need to adhere to the rigid regulations controlling their loan portfolios. To stay competitive, lenders regularly adjust the terms and conditions of their loan products to more closely match the needs of their customers. Finding the swiftest and most cost-effective way to make these changes is a goal of both lenders and borrowers. One of the most direct ways to make such changes to the loan terms is to modify the existing loan rather than replacing it. If the loan was collateralized with real property and a title policy was issued insuring the lender, endorsing the existing policy to insure the priority of the modified loan is usually the most effective solution.

The primary tools to endorse an existing loan policy to cover a mortgage modification are the Mortgage Modification Endorsement (ALTA 11-06) and the Form E Endorsement (Form E). Each carries certain advantages and limitations. This article explores the appropriate use of these forms when insuring a modification of an existing mortgage by endorsing the existing Old Republic loan policy.

Using the ALTA 11-06

The ALTA 11-06 is issued after a modification agreement is executed and recorded. The endorsement insures against loss or damage due to the invalidity or unenforceability of the lien of the insured mortgage as a result of the modification and against the lack of priority of the lien over defects or liens and encumbrances on title at the date of endorsement except as previously excepted or as expressly excluded. However, this endorsement does not advance the effective date of the original policy and excludes coverage for claims, fees, and costs by reason of the operation of federal bankruptcy, state insolvency, or similar creditor's rights laws based on theories of fraudulent or preferential transfers (except in two instances described on the form). Further, this endorsement may not be used if the terms of the modification result in a loss of priority or trigger the payment of the substitution loan rate as defined in Rule 69O-186.005(13), F.A.C. The ALTA 11-06 may be issued for no additional charge. See Ch. 9 of The Fund Procedures Handbook, "Rating and Submitting the Forms."

The ALTA 11-06 is suited to insure a mortgage modification reducing the interest rate, extending the maturity date, or releasing a portion of the secured property. However, the ALTA 11-06 may not be used if the modification increases the loan amount, increases the loan rate or maximum rate cap, changes the terms of the loan resulting in an increased burden on the borrower, or adds term(s) that may prejudice an intervening lien holder. Further, if the insured lender requires an endorsement that advances or "dates down" the effective date of the existing policy, this endorsement will not be suitable. The companion

ALTA forms that were created to address some of these limitations are the Mortgage Modification with Subordination (ALTA 11.1-06) and the Mortgage Modification with Additional Amount of Insurance (ALTA 11.2-06). These endorsements are not authorized for use in Florida.

Even with its limitations, the ALTA 11-06 offers quality coverage and protections for insuring the priority of a modification. To issue the ALTA 11-06, a title search must be performed and examined through the date of the mortgage modification to determine that there are no intervening matters appearing that could affect the validity or priority of the mortgage. The mortgage modification documentation must be examined to ascertain that no terms were added or modified in such a way that would result in a loss of priority. Provided the analysis of the search product and modification documentation successfully confirms no intervening matters or loss of priority, the completion of the form is relatively straightforward.

The basic information such as sequential endorsement number and policy number pertaining to the original policy as well as the recording information of the mortgage modification document are inserted. The inclusion of any intervening matters which the modification will take subject to is inserted in the first paragraph 2 of the form or completed with the word “None.” This is the appropriate place on the endorsement to include new acceptable exceptions to the policy such as when the property has become subject to a newly created easement to which the lender has joined and consented or has become occupied by an approved tenant. Finally, the endorsement is dated and signed. See Ch. 7 of The Fund Procedures Handbook, “Preparing the Forms.”

Using the Form E

In circumstances where the limitations on the use of the ALTA 11-06 are prohibitive, the Form E may be suitable. The Form E is more flexible and suited to many uses and is largely a blank form. It is commonly used for correcting errors in policies and for use in deleting or correcting exceptions. This endorsement can be used to insure a mortgage modification in lieu of an ALTA 11-06. The Form E is particularly useful when insuring a mortgage modification that increases the loan amount, adds terms that result in a loss of priority, or triggers a premium. The Form E may also be used to advance the effective date on a loan policy only.

The Form E is a very powerful tool for use in insuring mortgage modifications, but this flexibility may trigger some significant challenges for consideration. Most of these challenges are associated with advancing or “dating down” the loan policy effective date to a time through the date of recording the mortgage modification document. The primary concern is with the effect of the terms of the mortgage modification on the priority of the lien of the original mortgage and the possibility that the terms of the modification will constitute a novation which effectively creates a new agreement and mortgage lien that does not relate back to the initial mortgage.

The starting point in this analysis occurs when the title search is examined to determine if there are any intervening matters that may affect priority of the loan during this modification. If the updated search contains no new matters, there is much more leeway to modify the terms of the loan as the lender deems appropriate since the loss of priority is not a possibility. However, if the search reveals previous loan modifications, new encumbrances, judgments, tax warrants, notices of construction, or other liens filed against the property since the recording of the insured mortgage, Fund Members must carefully consider how each affects the property and its impact on the contemplated modifications. To assure the priority of the loan, Fund Members may consider paying off tax liens and other judgments as part of the closing process or addressing intervening matters by express subordinations.

The next step is to review the proposed terms of the modification documentation to determine if the changes in terms include the types that result in a loss of priority. This review includes any previous modifications and other off-record loan documents. Terms in the modification documents that place burdens on the borrower that did not originally exist, increase the likelihood of default, or prejudice the rights of intervening third parties may be deemed by a court as a novation resulting in the loss of priority. The significance of this analysis cannot be overemphasized since there is no simple litmus test that can be applied. The intent of the parties to enter into a new loan arrangement may be implied from the terms of the documents by a court even if the parties did not actually intend to effectuate a new loan. Thus, when using the Form E, intervening matters must be added as exceptions to Schedule B-I of the loan policy or eliminated if the terms of the modification are deemed a novation and result in a loss of priority.

The advancement of the effective date of the loan policy to a current date, if required in a current modification, triggers the need to again address the standard title exceptions, namely parties in possession, construction liens, and survey matters. If the lender will accept the standard exceptions, they can be re-imposed using the Form E. However, lenders generally do not accept the exceptions; thus, the same diligence undertaken at the original closing must be employed in order to eliminate these exceptions. A borrower’s affidavit may be used to establish the nature of the parties in possession and the lack of potential construction liens. A review of the survey used at the original loan closing is also necessary to determine if it remains accurate and reliable for the current transaction. If the property was improved since the original loan was made, an updated survey may be required to remove this exception. See the discussion in TN 25.03.06 for requirements and alternatives to a current survey for deleting the standard survey exception. Fund Members should consult Fund Underwriting Counsel if there is evidence of active construction or the presence of a recorded notice of commencement since this may require following the process described in TN 21.03.03 to establish the continuing priority of the loan.

The Form E is completed by inserting the sequential endorsement number and policy number in the space provided. The original effective date of the policy and insured amounts are listed in the spaces provided. The substantive changes to the policy are then described in detail as appropriate to alter the specific schedules and paragraphs of the original policy. These can include the change of the effective date, additions to the description of the insured mortgage, additional exceptions, or subordinate matters added to Schedules B-I and B-II.

Rating the Form E

Whether a premium is due for a Form E is dependent upon the change in terms to the mortgage, note, and other loan documents which may or may not be recorded. Modifications that increase the amount of coverage above the original policy coverage amount (or above the current balance of the loan if the loan has been paid down) trigger new premium for the added coverage. Modifications involving changes to the loan terms, priority, or security that fall outside of the exemptions described in Rule 69O-186.005(13), F.A.C., should generally be viewed as triggering payment of the substitution loan rate on the current outstanding balance of the loan even if no new money is extended. See “Insuring and Rating Mortgage Modifications,” 43 Fund Concept 76 (Aug. 2011) and TN 22.03.06.

Conclusion

The need to endorse existing loan policies to accommodate changes to mortgage loans will continue as lenders and borrowers maximize the use of their capital resources. The ALTA 11-06 and Form E are powerful tools for use in providing the lender with assurance that their loans hold their relative priority. Knowing the nature of the proposed financial changes, status of title, and physical condition of the property will aid in selecting the appropriate endorsement for efficiently and effectively insuring the continuing priority of the insured mortgage.
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Fla. Admin. Code Ann. R. 69O-186.005 - Premium Schedule Applicable to "Truth in Lending" and Other Endorsements

(1) An additional risk exposure for title insurers has been created by the enactment into law of the Federal "Truth in Lending Act," incorporated in Title 15, United States Code Annotated, Section 1601 et seq., effective May 29, 1968.

(2) Such additional risk exposure is specifically though not exhaustively manifest in the additional risks and expenses incident to the issuance of the "Truth in Lending Endorsement" as reflected in and confined to "Endorsement Number Two of the American Land Title Association" because of the following factors:

(a) The title insurer must determine that a lien is being made for commercial purposes, other than agricultural purposes.

(b) The title insurer must determine that the borrower falls within the category of entities as set forth in Regulation "Z" promulgated by the Federal Reserve.

(c) The title insurer must determine that the home being purchased is or will be the residence of the borrower.

(d) The title insurer must determine that the mortgage being insured by the policy to which the endorsement is being attached is a first lien on the land.

(e) The title insurer must determine that proceeds of the mortgage are disbursed to the seller.

(f) The title insurer may be legally obligated to legally refute the allegations in a foreclosure action against the mortgagor that the matters shown above were not accurately determined.

(g) The penalty for failure to make such correct determination of the above factors may make the title insurer incur liability for the payment or settlement of claims thereon which would not otherwise be incurred in the absence of such Endorsement.

(3) The foregoing factors substantially increase the increment of risk, the expense, and the labor incident to the issuance of title insurance policies brought within the purview of the Truth in Lending Act by utilization of ALTA Endorsement Number Two. Such consequences have a significant potential effect on the fiscal stability of the respective title insurers and the business trust title insurer authorized to transact the business of title insurance in the State of Florida.

(4) Any potential adverse effect of such factors on the fiscal stability of said title insurers with consequent detriment to the title insuring public would be ameliorated or negated by the promulgation of a specific premium rate schedule applicable to such Truth in Lending Endorsement which would reasonably compensate the title insurers for such additional increments of risk.

(5) In recognition of the above findings and factors applicable to Truth in Lending Endorsement Number Two of the ALTA, the following premium schedule is hereby promulgated:
TEN PERCENT (10%) OF MORTGAGEE POLICY PROMULGATED RATE WITH A MINIMUM CHARGE OF TWENTY-FIVE DOLLARS ($25.00) AND A MAXIMUM CHARGE OF ONE HUNDRED DOLLARS ($100.00).

(6)

(a) In recognition of the increased risk in issuing the following endorsements on a mortgage or owner's policy, as such endorsements have been approved by the

Office, the minimum premium shall be $25.00 for each endorsement on any mortgage or owner's policy issued. The endorsements shall be itemized on the closing statement furnished to the insured.

1. ALTA 4/4.1 Condominium.

2. ALTA 5/5.1 Planned Unit Development.

3. ALTA 6 Renegotiable Rate.

4. ALTA 6.1 Variable Rate.

5. ALTA 6.2 Negative Amortization.

6. ALTA 7.0 Manufactured Housing.

7. ALTA 8.0/8.1 Environmental Protection Lien.

8. Revolving Credit Endorsement.

(b) The language of the Revolving Credit Endorsement shall conform to the following endorsement language:

1. Notwithstanding any terms or provisions in this policy to the contrary, the company hereby insures the insured that advances made subsequent to the Date of Policy, but within 20 years of the Date of Policy, pursuant to the terms of the mortgage described in Schedule A of this policy, shall be included within the coverage of this policy, even though the principal indebtedness may have been reduced from time to time preceding any such subsequent advances. The Company's liability under this policy shall be reduced hereafter by the filing for record by the mortgagor or his successors in title of a notice pursuant to Section 697.04(1), F.S., limiting the maximum principal amount that may be so secured to an amount not less than the amount actually advanced at the time of such filing.

2. The Company further assures the insured that such subsequent advances shall have the same priority over liens, encumbrances and other matters disclosed by the Public Records, as do advances secured by the insured mortgage as of the Date of Policy, except for the following matters, if any, arising subsequent to the Date of Policy:

a. Federal tax liens which may be recorded against the mortgagor(s) or their successor in title more than forty-five days prior to the making of any such subsequent advances.

b. Federal tax liens which may be recorded against the mortgagor(s) or their successor in title within forty-five days of making any such

subsequent advances, the existence of which are actually known to the insured prior to the making of any such subsequent advances.

c. Ad valorem real estate taxes and assessments and other government liens which are on a parity with ad valorem real estate taxes pursuant to F.S.

d. Bankruptcies of the mortgagor(s) or their successors in title prior to the making of any such subsequent advances.

e. Defects, liens, encumbrances or other matters, the existence of which are actually known to the insured prior to the making of any such subsequent advances.

3. The total liability of the company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy and sums which the Company is obligated under the conditions and stipulations thereof to pay.

4. This endorsement is made a part of the policy. It is subject to all the terms of the policy and prior endorsements. Except as expressly stated on this endorsement, the terms, dates and amount of the policy and prior endorsements are not changed."

(7)

(a) Both endorsements and affirmative type coverages and their applicable risk rate premium must be approved by the Office prior to their issuance in this state. Accordingly, endorsements and affirmative type coverages are categorized as follows:

1. Permitted endorsements and/or affirmative type coverages,

2. Prohibited endorsements and/or affirmative type coverages,

3. Endorsements and/or affirmative type coverages with no specific Office approval required when there is no increased risk resulting to the insurer.

(b)

1. With the exception of those endorsements listed in subsection (6) of Rule 69O-186.005, F.A.C., above, no endorsement or affirmative type coverage shall be issued except as set forth in this section.

2. If there is a change in a current adopted endorsement and the change results in a further limitation of coverage, the endorsement may be submitted to the Office for approval without an amendment to these rules.

(c) With the exception of policy forms and those endorsements listed in subsection (6) of Rule 69O-186.005, F.A.C., above, all approvals of endorsements given prior to the effective date of this rule are withdrawn. This section shall have no effect on the validity of those endorsements issued prior to the effective date of these rule amendments.

(d) All issued endorsements shall be itemized on the closing statement furnished to the insured with costs for each endorsement shown.

(e) Specific endorsements may be issued by reference to a master list of approved endorsements and have the same validity as if issued individually on each transaction so long as the language in the endorsement specifically conforms without any additions or deletions to the endorsement language as set forth in this section. Any such master list of approved endorsements shall only be issued in conjunction with a mortgage (mortgagee) title insurance policy.

(8) The following permitted endorsements and endorsement language are approved:

(a) Florida Endorsement Form 9; (Restrictions, Easements, Minerals):

1. This endorsement shall not be issued unless there has been a release of the right of entry of the mineral reservation, nor shall it be issued over any adverse matter or defect in title unless such adverse matter or defect has been removed or determined to be legally unenforceable.

2. The language of the Florida Endorsement Form 9 shall conform to the following endorsement language:
"The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. Any incorrectness in the assurance that, at date of policy:

(a) There are no covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired.

(b) Unless expressly excepted in Schedule B:

(1) There are no present violations on the land of any enforceable covenants, conditions or restrictions nor do any existing improvements on the land violate building setback lines shown on a plat of subdivision recorded or filed in the public records.

(2) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land does not, in addition, (i) establish an easement on the land; (ii) provide a lien for liquidated damages; (iii) provide for a private charge or assessment; (iv) provide for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant.

(3) There is no encroachment of existing improvements located on the land onto adjoining land, nor any encroachment onto the land of existing improvements located on adjoining land.

(4) There is no encroachment of existing improvements located on the land onto that portion of the land subject to any easement excepted in Schedule B.

(5) There are no notices of violation of covenants, conditions, and restrictions relating to environmental protection recorded or filed in the public record.

2. Any future violation on the land of an existing covenant, condition or restriction occurring prior to the acquisition of title to the estate or interest in the land, provided the violation results in:

(a) Impairment or loss of the lien of the insured mortgage; or,

(b) Loss of title to the estate or interest in the land if the insured shall acquire title in satisfaction of the indebtedness secured by the insured mortgage.

3. Damage to existing improvements (excluding lawns, shrubbery or trees).

(a) Which are located on or encroach upon that portion of the land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved.

(b) Which results from the future exercise of any right to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.

4. Any final court order or judgment requiring the removal from any land adjoining the land of any encroachment excepted in Schedule B.

5. Any final court order or judgment denying the right to maintain any existing improvement on the land because of any violation of

covenants, conditions or restrictions or building setback lines shown on a plat or subdivision recorded or filed in the public records.
Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in subparagraphs (1)(b)1. and 5., the phrase, "covenants, conditions, or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(b) Navigational Servitude - The language of the Navigational Servitude Endorsement (Florida) shall conform to the following endorsement language:

1. The Company hereby insures the insured against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs and attorney's fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of forced removal pursuant to a final judgment of a court of competent jurisdiction in favor of the United States Government requiring the removal of any improvements located on the land at date of policy resulting from the exercise of the rights of the United States Government with respect to control over navigable waters, or lands which formerly constituted navigable waters, for purposes of navigation and commerce.

2. This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(c) Shared Appreciation - The Shared Appreciation Endorsement (Florida) shall conform to the following endorsement language:

1. The Company hereby insures the Insured against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for a shared appreciation interest.

b. Loss of priority of the lien of the insured mortgage as security for (1) the unpaid principal balance of the loan; (2) the stated interest; and (3) the shared appreciation interest, which loss of priority is caused by the provisions in the insured mortgage for payment or allocation to the insured mortgagee of any shared appreciation interest.

c. "Stated Interest" as used in this endorsement shall mean only the per annum interest on the unpaid principal balance of the loan provided in the insured mortgage at date of Policy.

d. "Shared Appreciation Interest" as used in this endorsement shall mean only those amounts (calculated pursuant to the formula provided in the insured mortgage) payable or allocated to the insured mortgagee, out of the amount, if any, by which the land has appreciated in value as established pursuant to the provisions of the insured mortgage at date of Policy.

e. This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law, or (c) bankruptcy.

f. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any endorsements, nor does it increase the face amount thereof."

(d) Additional Interest - The language of the Additional Interest Endorsement (Florida) shall conform to the following endorsement language:

1. The Company hereby insures against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for additional interest subsequent to date of Policy.

b. Loss of priority of the lien of the insured mortgage as security for (1) the unpaid principal balance of the loan; (2) the stated interest; (3) the

additional interest, which loss of priority is by the provisions in the insured mortgage for payment or allocation to the insured mortgagee of any additional interest.

2. "Stated Interest" as used in this endorsement shall mean only the fixed percent per annum interest on the unpaid principal balance of the loan provided in the insured mortgage at date of Policy.

3. "Additional Interest" as used in this endorsement, shall mean only those amounts calculated pursuant to the formula provided in the insured mortgage payable or allocated to the insured.

4. This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law, or (c) bankruptcy.

5. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(e) Option Endorsement - The language of the Option Endorsement (Florida) shall conform to the following endorsement language:

1. With respect to the option to purchase described in Schedule B, the option to purchase is hereby incorporated into Schedule A of the policy as an interest insured thereby, vested in the insured, and the Company insures against loss or damage sustained or incurred by the insured by reason of:

a. The unenforceability of the right to exercise the option to purchase except to the extent that such unenforceability or claim thereof is based on the failure of the insured to have fulfilled the terms and conditions of the option.

b. The priority over the option to purchase of any conveyance made of the fee simple estate in the land or of any liens or encumbrances created therein after the date of policy, excepting those liens or encumbrances created or consented to by the insured or created by statute in favor of or for the benefit of governmental bodies or public utilities (including without limitation real estate taxes, special assessments, demolition liens, drainage liens and water liens).

2. Nothing contained in this endorsement shall be construed as insuring the insured against loss or damage sustained or incurred by reason of:

a. Disaffirmance of the option under the provisions of the bankruptcy code or state insolvency law.

b. The effect of any condemnation proceeding including the failure of the optionee to receive all or part of an award entered in a condemnation proceeding unless failure to share in said award stems solely from a court order or judgment which constitutes a final determination and adjudges the option to be invalid.

c. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law.

3. Other than expenses necessary for a judicial determination or defense of the validity and priority of the option as described in subsections (1) and (2). above, loss under this endorsement does not include:

a. Expenses required to enforce the option and to obtain a transfer of title from the party or entity in whom title to any interest in the land is vested at the time of exercising the option; or

b. Expenses required to obtain valid conveyances or releases of any rights, interests or liens related to the land which appear of record or are known to the insured at the time of exercising the option.

4. The measure of the loss or damage sustained by the insured under this policy shall be:

a. The excess of the fair market value of the property at the time the insured attempts to exercise the option (or when a law suit contesting the validity of the option is filed, if filed prior to the attempted exercise of the option) above the price at which the insured could acquire the property by exercise of the option; and,

b. The unreimbursed portion of the consideration given by the insured to obtain the option.

5. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(f) Change of Partners - The Change of Partners (Fairways) Endorsement (Florida) shall conform to the following endorsement language:

"1. The Company agrees that in the event of an occurrence of loss insured against by this policy, the Company will not deny liability hereunder on the ground that a dissolution of the partnership has occurred or a new partnership has been formed by reason of one or more of the general partners transferring their interest to another person or entity; by reason of a withdrawal of one or more of the general partners from the partnership; or by reason of the addition of one or more persons or entities as partners.

2. Nothing contained herein shall be construed as extending the insurance hereunder as to matters attaching or created subsequent to the date hereof; or insuring the status of the insured after the transfer of the partnership interest, the withdrawal of partners, or the addition of new partners.

3. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(g) Contiguity Endorsement - The Contiguity Endorsement (Florida) shall conform to the following endorsement language:

"1. The Company insures the Insured herein against loss or damage by virtue of any inaccuracy in the following statement, to wit: Parcel ___ of the legal description and Parcel ___ of the legal description are contiguous to each other along the ___ line of Parcel ___ and ___ line of Parcel ___, and, taken as a tract, constitute one Parcel of land.

2. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(h) Survey Endorsement - The language of the Survey Endorsement (Florida) shall conform to the following endorsement language:

"The Company hereby acknowledges the lands described in Schedule A are the same lands described in the survey prepared by _____ dated _____; however, the Company does not insure the accuracy or completeness of said survey."

(i) Construction Loan Up-date - The language of the Construction Loan Up-date Endorsement shall conform to the following endorsement language:

1. The liability of the Company is increased by $_____ to include disbursements made pursuant to requisition(s) _____ for a cumulative total to date of $_____.

2. The Company insures there have been no instruments filed among the Public Records of ___ County, affecting title to the lands described in Schedule A from _____ through _____, other than the following:

3. The Company insures each of the foregoing is subordinate to the lien of the mortgage insured except:

4. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(j) Foreign Currency Endorsement - The language of the Foreign Currency Endorsement shall conform to the following endorsement language:

1. The Company hereby insures against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for revaluation of the indebtedness secured thereby based upon changes in the conversion rate between U.S. dollars and the stated foreign currency.

b. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, which loss of priority is caused by such changes in the conversion rate.

2. The Company acknowledges that changes from time to time in the conversion rate between U.S. dollars and the stated foreign currency may decrease or increase the dollar amount of the indebtedness secured by the insured mortgage. The Company hereby agrees that, so long as any portion of the indebtedness secured by the insured mortgage shall remain outstanding, any such increase in the dollar amount of indebtedness shall

not be deemed by the Company to constitute additional principal indebtedness created subsequent to date of policy within the meaning of paragraph 8 of the Conditions and Stipulations of the policy; provided, however, that the total liability of the Company under the policy at any time shall not exceed, in the aggregate, the face amount of the policy and the costs which the Company is obligated to pay under the terms and provisions of the policy.

3. "Changes in the conversion rate" as used in this endorsement, shall mean only those changes in the conversion rate calculated pursuant to the formula provided in the insured mortgage at date of policy.

4. This endorsement does not insure against loss or damage based upon (a) the failure to pay any mortgage recording tax or similar charge applicable to the mortgage described in Schedule A at date of policy or as a result of increases in the amount of indebtedness resulting from changes in the conversion rate of U.S. dollars and the stated foreign currency, (b) usury, (c) any consumer credit protection or truth-in-lending law, (d) bankruptcy, or (e) any invalidity or unenforceability or loss of priority of the mortgage as to any indebtedness in amounts in U.S. dollars in excess of the amount stated in the policy.

5. This endorsement is made a part of the policy and is subject to all of the terms and conditions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph (3)(d), of the Exclusions from Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it increase the face amount thereof."

(k) Assignment of Mortgage - The language of the Assignment of Mortgage Endorsement shall conform to the following endorsement language: "Endorsement number _____

Name of original insured:

Original effective date:

Original amount of insurance $_____

Agent's file reference: _____

The Company insures that the mortgage described in the above numbered and dated policy has been duly assigned to:

_____

Assignee

_____

Address

by an assignment dated the _____ day of _____, 19___, and recorded the _____ day of _____, 19___, in Official Records _____, Page ____, under Clerk's File Number _____, of the Public Records of ___ County, Florida.

This endorsement is to be attached to and form a part of the above numbered and dated policy issued by _____"

(l) Balloon Mortgage Endorsement - The language of the Balloon Mortgage Endorsement shall conform to the following endorsement language:

1. The Company insures the insured mortgagee against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for a conditional right to refinance and a change in the rate of interest as set forth in the Mortgage Rider.

b. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest thereon, which loss of priority is caused by the exercise of the conditional right to refinance and the extension of the loan term to the new maturity date set forth on the rider and a change in the rate of interest, provided that all the conditions set forth in paragraphs 2 and 5 of the Balloon Mortgage Rider have been met, and there are no other liens, defects, encumbrances, or other adverse matters affecting title recorded subsequent to the date of policy.

2. This endorsement does not insure against loss or damage based upon, (a) Usury or (b) any consumer credit protection or truth-in-lending law or (c) bankruptcy.

3. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the

effective date of the policy and any prior endorsements, nor does it increase the face amount thereof."

(9) Recognizing that the endorsements listed in subsection 8 of this section and the affirmative language in a title policy imposes certain obligations and liabilities on a title insurer and agent and the issuance of endorsements and/or affirmative language in a title policy creates an additional risk and a considerable amount of work in addition to the initial search and examination of title required to write a basic policy, a minimum premium shall be charged and collected by an insurer or agent where coverage in the form of affirmative language and/or endorsements to a policy are required. Therefore, the risk rate premium for each of the endorsements listed in paragraph 8 of this section are as follows:

1-4 Family Unit Residential Risks	$25 minimum per endorsement
	$100 maximum per endorsement
Other Risks (commercial or greater than 1-4 family residential risk.)	$100 Minimum per endorsement

except that the risk rate premium for the following approved endorsements shall be at minimum the percentage of the total policy premium as indicated; however, on a simultaneously issued mortgage policy, the endorsement charge shall be based on the underlying owner, and loan policy premium:

(a) Florida Endorsement Form 9-10%.

(b) Navigational Servitude - 10%.

(10) Additional risk premium must be charged if additional insurance is purchased.

(11) All loan policies and endorsements are subject to the 125% rule as set forth in paragraph 69O-186.003(4)(b), F.A.C., except that a policy with a Shared Appreciation, or Additional Interest Endorsements may be issued for an amount up to 150% in excess of the principal debt.

(12) The applicable rate to be charged and collected for a loan policy after a mortgage balloons and is subsequently refinanced by the same lender, and borrower on the

same land shall be the rates as described in paragraph (5) of Rule 69O-186.003, F.A.C., substitution loan rates.

(13) The Substitution Loan Rate provided in subsection 69O-186.003(5), F.A.C., shall apply to any endorsement which insures a modification of a mortgage which was insured by an outstanding policy where the modification agreement effects any change in the terms, conditions, priority, or security, other than:

(a) An extension of the time for payment of the secured obligation;

(b) Any decrease in the interest rate of the insured mortgage, provided the "cap" on a variable rate mortgage is not greater than the original "cap" and/or the "cap" is not greater than the original fixed rate;

(c) Any increase in the interest rate of the insured mortgage, provided the endorsement contains an exception for the loss of priority occasioned by the increase;

(d) Changes in an amortization schedule to extend the term of the insured mortgage;

(e) A release of a portion of the secured property;

(f) A correction to either perfect the lien of the insured mortgage or comply with the terms of the lender's original commitment;

(g) Future advances made pursuant to Section 697.04, F.S.; or

(h) Encumbrances of additional parcels under a revolving construction loan agreement contained in the original mortgage and contemplated by subsection 69O-186.003(10), F.A.C.

(14) The retention rate for an insurer shall be the same as set forth in subsection 69O-186.003(11), F.A.C.

(15)

(a) The following are prohibited endorsements and affirmative coverages that shall not be issued in this state:

1. Doing Business Endorsement.

2. Non Imputation Endorsement (Imputation of knowledge).

3. Access.

4. Location.

5. Expanded Insured Endorsement.

6. Street Assessment Endorsement.

7. Zoning Endorsement.

8. Usury.

(b) The extension of special affirmative coverage by indirect means is prohibited.

(16) The following endorsements can be issued or affirmative language is permitted with no specific approval required from the Office:

(a) Endorsements correcting mistakes.

(b) Future Insurance (continuing liability under existing policies).

(c) Endorsements deleting exceptions which no longer affect title to the land.

(d) Endorsements insuring future advances.

(e) Changes in effective dates (loan policies only).

(f) Gap coverage endorsement.

(g) Insurance against the attempted enforcement of known claims for ascertainable sums of money in reliance on security commensurate with such risk.

(h) Deletion of General Exceptions.

(i) Endorsements modifying the standard owner's and mortgagee policy to convert to a leasehold policy previously approved by the Office.

(j) Tie-in Spreader (Intra Florida properties only).

Notes

Fla. Admin. Code Ann. R. 69O-186.005
Rulemaking Authority 624.308, 627.777, 627.782 FS. Law Implemented 624.307(1), 627.777, 627.782, 697.04(1) FS.

New 9-17-71, Repromulgated 12-24-74, Formerly 4-21.05, Amended 6-25-86, 2-26-90, 2-27-91, Formerly 4-21.005, Amended 2-13-95, Formerly 4-186.005, Amended 11-3-05.
New 9-17-71, Repromulgated 12-24-74, Formerly 4-21.05, Amended 6-25-86, 2-26-90, 2-27-91, Formerly 4-21.005, Amended 2-13-95, Formerly 4-186.005, Amended 11-3-05.

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ALTA 4.1 CONDOMINIUM – CURRENT ASSESSMENTS ENDORSEMENT
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To Policy No.

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

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the State in which the unit and its common elements are located.
2. The failure of the documents required by the State condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in Section 3, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction:
   a. relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or
   b. pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at the Date of Policy and is not excepted in Schedule B.
4. Any charges or assessments provided for in the State condominium statutes and condominium documents due and unpaid at the Date of Policy.
5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements that exist at the Date of Policy because of any present encroachments.
7. The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements that was exercised or could have been exercised at the Date of Policy.

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.

Date:

_____ _____

Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**

Agent's Signature **By** **Carolyn Monroe**

President

ALTA ENDORSEMENT 5.1-06 PLANNED UNIT DEVELOPMENT
(With Florida Modifications)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. _____ To Policy No. _____

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

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.

2. Any charges or assessments in favor of any association of homeowners, that are provided for in any document referred to in Schedule B, due and unpaid at Date of Policy.

3. The enforced removal of any structure existing at Date of Policy on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.

4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of Policy.

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.

_____ _____

Name of Agent Agent No.

_____

Agent's Signature

Old Republic National Title Insurance Company

By Carolyn Monroe

President

ALTA 6 VARIABLE RATE MORTGAGE ENDORSEMENT

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To Policy No.

1. As used in this endorsement, "Changes in the Rate of Interest" mean those adjustments in the rate of interest calculated pursuant to the formula provided in the Insured Mortgage or the loan documents secured by the Insured Mortgage at the Date of Policy.

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 resulting from Changes in the Rate of Interest.
- **b.** the loss of priority of the lien of the Insured Mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the Insured Mortgage or the loan documents secured by the Insured Mortgage, which loss of priority results from Changes in the Rate of Interest.

3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, based upon usury law or Consumer Protection Law.

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.

Date:

_____ _____

Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**

Agent's Signature **By** **Carolyn Monroe**

President

ALTA 6.2 VARIABLE RATE MORTGAGE – NEGATIVE AMORTIZATION ENDORSEMENT

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To Policy No.

1. As used in this endorsement, "Changes in the Rate of Interest" mean those adjustments in the rate of interest calculated pursuant to the formula provided in the Insured Mortgage or the loan documents secured by the Insured Mortgage at the Date of Policy.

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 resulting from:
  - **i.** Changes in the Rate of Interest;
  - **ii.** interest on interest; or
  - **iii.** the addition of unpaid interest to the principal balance of the loan.
- **b.** the loss of priority of the lien of the Insured Mortgage as security for the principal balance of the loan, together with interest as changed in accordance with the provisions of the Insured Mortgage or the loan documents secured by the Insured Mortgage, interest on interest, or any unpaid interest which was added to the principal balance in accordance with the provisions of the Insured Mortgage, which loss of priority results from:
  - **i.** Changes in the Rate of Interest;
  - **ii.** interest on interest; or
  - **iii.** the addition of unpaid interest to the principal balance of the loan.

3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, based upon usury law or Consumer Protection Law.

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.

Date:

_____ _____

Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**

Agent's Signature **By** **Carolyn Monroe**

President

ALTA 7.1 MANUFACTURED HOUSING – CONVERSION – LOAN POLICY ENDORSEMENT

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To Policy No.

1. The term "Land" includes the manufactured housing unit located on the land described in Schedule A at the Date of Policy.

2. Unless excepted in Schedule B, the Company insures against loss or damage sustained by the Insured if, at the Date of Policy:

- **a.** A manufactured housing unit is not located on the land described in Schedule A.
- **b.** The manufactured housing unit located on the land is not real property under the law of the State where the land described in Schedule A is located.
- **c.** The owner of the land described in Schedule A is not the owner of the manufactured housing unit.
- **d.** Any lien is attached to the manufactured housing unit as personal property, including:
  - **i.** a federal, State, or other governmental tax lien;
  - **ii.** UCC security interest;
  - **iii.** a motor vehicular lien; or
  - **iv.** other personal property lien.
- **e.** The lien of the Insured Mortgage is not enforceable against the Title.
- **f.** The lien of the Insured Mortgage is not enforceable in a single foreclosure procedure.

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.

Date:

_____ _____

Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**

Agent's Signature **By** **Carolyn Monroe**

President

ALTA 7.2 MANUFACTURED HOUSING – CONVERSION – OWNER'S POLICY ENDORSEMENT

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To Policy No.

1. The term "Land" includes the manufactured housing unit located on the land described in Schedule A at the Date of Policy.

2. Unless excepted in Schedule B, the Company insures against loss or damage sustained by the Insured if, at the Date of Policy:

- **a.** A manufactured housing unit is not located on the land described in Schedule A.
- **b.** The manufactured housing unit located on the land is not real property under the law of the State where the land described in Schedule A is located.
- **c.** The Insured is not the owner of the manufactured housing unit.
- **d.** Any lien is attached to the manufactured housing unit as personal property, including:
  - **i.** a federal, State, or other governmental tax lien;
  - **ii.** UCC security interest;
  - **iii.** a motor vehicular lien; or
  - **iv.** other personal property 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.

Date:

_____ _____

Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**

Agent's Signature **By** **Carolyn Monroe**

President

ALTA 8.1 ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To Policy No.

1. The Company insures against loss or damage sustained by the Insured by reason of lack of priority of the lien of the Insured Mortgage over:

a. any environmental protection lien that, at the Date of Policy, is recorded in those records established under State statutes at the Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge, or is filed in the records of the clerk of the United States district court for the district in which the Land is located, except as set forth in Schedule B; or

b. any environmental protection lien provided by any State statute in effect at the Date of Policy, except environmental protection liens provided by the following State statutes:

None.

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.

Date:

_____ _____

Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**

Agent's Signature **By** **Carolyn Monroe**

President

ALTA ENDORSEMENT 9.0-06 RESTRICTIONS, ENCROACHMENTS, MINERALS - LOAN POLICY
(With Florida Modifications)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No._____To Policy No. _____

The insurance provided by this endorsement is subject to the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

The company insures the owner of the Indebtedness secured by the Insured Mortgage against loss or damage sustained by reason of:

1. Any incorrectness in the assurance that, at Date of Policy:
   (a) There are no covenants, conditions or restrictions under which the lien of the Mortgage referred to in Schedule A can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired.
   (b) Unless expressly excepted in Schedule B:

   (1) There are no present violations on the Land of any enforceable covenants, conditions or restrictions, nor do any existing improvements on the land violate building setback lines shown on a plat of subdivision recorded or filed in the Public records.

   (2) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land does not, in addition, (i) establish an easement on the Land; (ii) provide a lien for liquidated damages; (iii) provide for a private charge or assessment; (iv) provide for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant.

   (3) There is no encroachment of existing improvements located on the Land onto adjoining land, nor any encroachment onto the Land of existing improvements located on adjoining land.

   (4) There is no encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.

   (5) There are no notices of violation of covenants, conditions and restrictions relating to environmental protection recorded in the Public Records.

2. Any future violation on the Land of an existing covenant, condition or restriction occurring prior to the acquisition of title to the estate or interest in the Land, provided the violation results in:
   (a) invalidity, loss of priority or unenforceability of the lien of the Insured Mortgage; or
   (b) loss of Title to the estate or interest in the Land if the Insured shall acquire Title in satisfaction of the Indebtedness secured by the Insured Mortgage.

3. Damage to existing improvements (excluding lawns, shrubbery or trees):
   (a) which are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved; or
   (b) which results from the future exercise of any right to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

4. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment excepted in Schedule B.

5. Any final court order or judgment denying the right to maintain any existing improvement on the Land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in paragraph 1(b)(1) and 5, the words "covenants, conditions or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

The failure to expressly except any matter delineated in paragraphs 1(b)(1), 1(b)(2) or 1(b)(5) of this endorsement constitutes the Company's agreement to indemnify against loss or damage resulting from any matters delineated in paragraphs 1(b)(1), 1(b)(2) or 1(b)(5) only and provides no coverage for any other matters set forth in the covenants, conditions and restrictions.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

_____ _____
Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**
Agent's Signature **By** **Carolyn Monroe**
President

ALTA ENDORSEMENT FORM 9.1-06
RESTRICTIONS, ENCROACHMENTS, MINERALS - OWNER'S POLICY - UNIMPROVED LAND
(With Florida Modifications)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No._____To Policy No. _____

The insurance provided by this endorsement is subject to the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

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

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B.
   (a) Present violations on the land of any enforceable covenants, conditions or restrictions.
   (b) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land which, in addition, (i) establishes an easement on the land; (ii) provides for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter or right of forfeiture because of violations on the land of any enforceable covenants, conditions or restrictions.
   (c) Any encroachment onto the land of existing improvements located on adjoining land.
   (d) Any notices of violation of covenants, conditions and restrictions relating to environmental protection recorded or filed in the public records.
2. Damage to buildings constructed on the land after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.

Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in paragraph 1(a) the words "covenants, conditions or restrictions" shall not be deemed to refer to or include any covenants, conditions or limitations relating to environmental protection.

The failure to expressly except any matter delineated in paragraphs 1(a), (b) or (d) of this endorsement constitutes the Company's agreement to indemnify against loss or damage resulting from any matters delineated in paragraphs 1(a), (b) or (d) only and provides no coverage for any other matters set forth in the covenants, conditions and restrictions.

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.

_____ _____
Name of Agent Agent No.

_____
Agent's Signature

Old Republic National Title Insurance Company
By Carolyn Monroe
President

ALTA ENDORSEMENT 9.2-06 RESTRICTIONS, ENCROACHMENTS, MINERALS
OWNER'S POLICY - IMPROVED LAND
(With Florida Modifications)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No._____To Policy No. _____

The insurance provided by this endorsement is subject to the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

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

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:
   (a) Present violations on the Land of any enforceable covenants, conditions, or restrictions, or any existing improvements on the Land which violate any building setback lines shown on a plat of subdivision recorded or filed in the Public Records.
   (b) Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land which, in addition, (i) establishes an easement on the Land; (ii) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant; or (iii) provides a right of re-entry, possibility of reverter, or right of forfeiture because of violations on the Land of any enforceable covenants, conditions, or restrictions.
   (c) Any encroachment of existing improvements located on the Land onto adjoining land, or any encroachment onto the Land of existing improvements located on adjoining land.
   (d) Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.
   (e) Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.
2. Damage to existing buildings at Date of Policy:
   (a) Which are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;
   (b) Resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.
3. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment, other than fences, landscaping, or driveways, excepted in Schedule B.
4. Any final court order or judgment denying the right to maintain any existing building on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy.

Wherever in this endorsement the words "covenants, conditions, or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1(a) and 4, the words "covenants, conditions, or restrictions" shall not be deemed to refer to or include any covenants, conditions or limitations relating to environmental protection.

The failure to expressly except any matter delineated in paragraphs 1(a), (b) or (e) of this endorsement constitutes the Company's agreement to indemnify against actual monetary loss or damage resulting from any matters delineated in paragraphs 1(a), (b) or (e) only and provides no coverage for any other matters set forth in the covenants, conditions and restrictions.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

_____ _____
Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**
Agent's Signature **By** **Carolyn Monroe**

ALTA ENDORSEMENT 9.3-06 RESTRICTIONS, ENCROACHMENTS, MINERALS
(With Florida Modifications)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Attached to Policy Number _____

The insurance provided by this endorsement is subject to the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

The Company insures the owner of the Indebtedness secured by the Insured Mortgage against loss or damage sustained by reason of:

1. Any incorrectness in the assurance that, at Date of Policy:
   a. There are no covenants, conditions, or restrictions under which the lien of the Insured Mortgage can be divested, subordinated, or extinguished or its validity, priority, or enforceability impaired.
   b. Unless expressly excepted in Schedule B,
      i. There are no present violations on the Land of any enforceable covenants, conditions, or restrictions, or existing improvements on the Land that violate any building setback lines shown on a plat of subdivision recorded or filed in the Public Records.
      ii. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land does not, in addition, (A) establish an easement on the Land, (B) provide a lien for liquidated damages, (C) provide for a private charge or assessment, (D) provide for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant.
      iii. There is no encroachment of existing improvements located on the Land onto adjoining land nor any encroachment onto the Land of existing improvements located on adjoining land.
      iv. There is no encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.
      v. There are no notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.
2. Any future violation on the Land of any existing covenants, conditions, or restrictions occurring prior to the acquisition of Title by the Insured, provided the violation results in:
   a. invalidity, loss of priority, or unenforceability of the lien of the Insured Mortgage; or
   b. loss of Title if the Insured shall acquire Title in satisfaction of the Indebtedness.
3. Damage to improvements existing at Date of Policy, excluding lawns, shrubbery, or trees, located or encroaching on that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved.
4. Damage to improvements existing at Date of Policy excluding lawns, shrubbery, or trees, located on the Land resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.
5. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment excepted in Schedule B.
6. Any final court order or judgment denying the right to maintain any existing improvements on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy.

Wherever in this endorsement the words "covenants, conditions, or restrictions" appear, they do not include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1.b.i. and 6, the words “covenants, conditions, or restrictions” do not include any covenants, conditions, or restrictions (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not excepted in Schedule B.

The failure to expressly except any matter delineated in paragraphs 1.b.i., 1.b.ii. or 1.b.v. of this endorsement constitutes the Company’s agreement to indemnify against loss or damage resulting from any matters delineated in paragraphs 1.b.i., 1.b.ii. or 1.b.v. only and provides no coverage for any other matters set forth in the covenants, conditions and restrictions.

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.

_____

Name of Agent

Old Republic National Title Insurance Company

By: Carolyn Monroe
President

_____

Agent’s Signature

ALTA 10.1 ASSIGNMENT AND DATE DOWN ENDORSEMENT

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To PolicyNo.

1. The name of the Insured at the Date of Endorsement and referred to in this endorsement as the "Assignee" is amended to read:

2. The Company insures against loss or damage sustained by the Assignee by reason of:

a. The failure of the following assignment to vest title to the Insured Mortgage in the Assignee:

b. Any liens for taxes or assessments affecting the Title that are due and payable on the Date of Endorsement, except:

c. Lack of priority of the lien of the Insured Mortgage over defects, liens, or encumbrances other than those shown in the policy or a prior endorsement, except:

d. Notices of federal tax liens or notices of pending bankruptcy proceedings affecting the Title and recorded subsequent to the Date of Policy in the Public Records and on or prior to the Date of Endorsement, except:

e. Any modification, partial or full reconveyance, release or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except:

3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the assignment by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the assignment being a:

a. fraudulent conveyance or fraudulent transfer;

b. voidable transfer under the Uniform Voidable Transactions Act; or

c. preferential transfer.

4. This endorsement shall be effective provided that, at the Date of Endorsement:

a. the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Assignee; or

b. If the note or notes are transferable records, the Assignee has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transaction laws.

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.

Date:

_____ _____

Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**

Agent's Signature **By** **Carolyn Monroe**

President

ALTA 10-06 ASSIGNMENT ENDORSEMENT

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To Policy No.

1. The name of the Insured at the Date of Endorsement and referred to in this endorsement as the "Assignee" is amended to read:

2. The Company insures against loss or damage sustained by the Assignee by reason of:

a. The failure of the following assignment to vest title to the Insured Mortgage in the Assignee:

b. Any modification, partial or full reconveyance, release, or discharge of the lien of the Insured Mortgage recorded on or prior to the Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except:

3. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the assignment by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the assignment being a:

a. fraudulent conveyance or fraudulent transfer;

b. voidable transfer under the Uniform Voidable Transactions Act; or

c. preferential transfer.

4. This endorsement shall be effective provided that, at the Date of Endorsement:

a. the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Assignee; or

b. if the note or notes are transferable records, the Assignee has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transactions laws.

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.

Date:

_____ _____

Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**

Agent's Signature **By** **Carolyn Monroe**

President

ALTA 11 MORTGAGE MODIFICATION ENDORSEMENT

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To Policy No.

1. 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 upon the Title at the Date of Endorsement as a result of the agreement dated , recorded
("Modification"); and

b. The lack of priority of the lien of the Insured Mortgage, at the Date of Endorsement, over defects in or liens or encumbrances on the Title, except for those shown in the policy or any prior endorsement and except:
[Drafting Instruction: Specify exceptions, if any]

2. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the Modification being a:

a. fraudulent conveyance or fraudulent transfer;

b. voidable transfer under the Uniform Voidable Transactions Act; or

c. preferential transfer to the extent the Modification is not a transfer made as a contemporaneous exchange for new value or for any other reason unless the preferential transfer results solely from the failure:

i. to timely record the Modification in the Public Records after execution and delivery of the Modification to the Insured; or

ii. of the recording of the Modification in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

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.

Date of Endorsement:

_____ _____

Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**

Agent's Signature **By** **Carolyn Monroe**
President

ALTA 11.1 MORTGAGE MODIFICATION WITH SUBORDINATION ENDORSEMENT

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To Policy No.

1. 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 upon the Title at the Date of Endorsement as a result of the agreement dated , recorded
("Modification"); and

b. The lack of priority of the lien of the Insured Mortgage, at the Date of Endorsement, over defects in or liens or encumbrances on the Title, except for those shown in the policy or any prior endorsement and except:

c. The following matters not being subordinate to the lien of the Insured Mortgage:

2. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the Modification being a:

a. fraudulent conveyance or fraudulent transfer;

b. voidable transfer under the Uniform Voidable Transactions Act; or

c. preferential transfer to the extent the Modification is not a transfer made as a contemporaneous exchange for new value or for any other reason, unless the preferential transfer results solely from the failure:

i. to timely record the Modification in the Public Records after execution and delivery of the Modification to the Insured; or

ii. of the recording of the Modification in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

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.

Date of Endorsement:

_____ _____

Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**

Agent's Signature **By** **Carolyn Monroe**

President

ALTA 11.2 MORTGAGE MODIFICATION WITH ADDITIONAL AMOUNT OF INSURANCE ENDORSEMENT

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To Policy No.

1. For purposes of this endorsement only:
   a. "Modification": The agreement between and dated and recorded as document number
   b. "Date of Endorsement":

2. The Amount of Insurance is increased to $

3. Subject to the exclusions in Sections 4 and 5 of this endorsement, the Exclusions from Coverage, the Exceptions contained in Schedule B, and the Conditions contained in the policy, and any exclusion or exception in any prior endorsement, the Company insures as of the Date of Endorsement against loss or damage sustained by the Insured by reason of any of the following:
   a. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title as a result of the Modification;
   b. The lack of priority of the lien of the Insured Mortgage over defects in or liens or encumbrances on the Title, except:

   c. The failure of the following matters to be subordinate to the lien of the Insured Mortgage:

4. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law that is based on the Modification being a:
   a. fraudulent conveyance or fraudulent transfer;
   b. voidable transfer under the Uniform Voidable Transactions Act; or
   c. preferential transfer to the extent the Modification is not a transfer made as a contemporaneous exchange for new value or for any other reason unless the preferential transfer results solely from the failure:
      i. to timely record the Modification in the Public Records after execution and delivery of the Modification to the Insured; or
      ii. of the recording of the Modification in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

5. This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of the invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage because all applicable mortgage recording or similar intangible taxes were not paid at time of recording of the Modification.

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.

Date:

Name of Agent

Agent No.

Agent's Signature

Old Republic National Title Insurance Company

By **Carolyn Monroe**
President

ALTA ENDORSEMENT 13-06 LEASEHOLD - OWNER'S POLICY

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. _____ To Policy No. _____

1. As used in this Endorsement, the following terms shall mean:

   a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this Policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case as a result of a matter covered by this Policy.

   b. "Lease": the lease agreement described in Schedule A.

   c. "Leasehold Estate": the right of possession for the Lease Term.

   d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

   e. "Personal Property": chattels located on the Land and property that, because of their character and manner of affixation to the Land, can be severed from the Land without causing appreciable damage to themselves or to the Land to which they are affixed.

   f. "Remaining Lease Term": the portion of the Lease Term remaining after the Insured has been Evicted as a result of a matter covered by this Policy.

   g. "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Insured's expense or in which the Insured has an interest greater than the right to possession during the Lease Term.

2. Valuation of Estate or Interest Insured:

If in computing loss or damage it becomes necessary to value the Title as the result of a covered matter that results in an Eviction of the Tenant, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this Endorsement:

If the Insured is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title.

   a. The reasonable cost of removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.

   b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

   c. The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.

   d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease made by Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

   e. Damages that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.

   f. Reasonable costs incurred by the Insured to secure a replacement leasehold equivalent to the Leasehold Estate.

   g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, and landscaping costs.

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 to it.

_____ _____

Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**

Agent's Signature **By** **Carolyn Monroe**

President

ALTA ENDORSEMENT 13.1-06 LEASEHOLD - LOAN POLICY

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. _____ To Policy No. _____

1. As used in this Endorsement, the following terms shall mean:

   a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this Policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this Policy.

   b. "Lease": the lease agreement described in Schedule A.

   c. "Leasehold Estate": the right of possession for the Lease Term.

   d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

   e. "Personal Property": chattels located on the Land and property that, because of their character and manner of affixation to the Land, can be severed from the Land without causing appreciable damage to themselves or to the Land to which they are affixed.

   f. "Remaining Lease Term": the portion of the Lease Term remaining after the Insured has been Evicted as a result of a matter covered by this Policy.

   g. "Tenant": the tenant under the Lease and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of this Policy, the Insured Claimant.

   h. "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Insured's expense or in which the Insured has an interest greater than the right to possession during the Lease Term.

2. Valuation of Estate or Interest Insured:

If in computing loss or damage it becomes necessary to value the Title as the result of a covered matter that results in an Eviction of the Tenant, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Insured Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this Endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of this Policy and thereafter is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title.

   a. The reasonable cost of removing and relocating any Personal Property that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.

   b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.

   c. The amount of rent that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Insured has been Evicted.

   d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease made by Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

   e. Damages that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.

   f. Reasonable costs incurred by the Insured to secure a replacement leasehold equivalent to the Leasehold Estate.

   g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, and landscaping costs.

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 .

_____ _____

Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**

Agent's Signature **By** **Carolyn Monroe**

ALTA 14 FUTURE ADVANCE – PRIORITY ENDORSEMENT
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To Policy No.

1. The insurance for Advances added by Sections 3 and 4 of this endorsement is subject to the exclusions in Section 5 of this endorsement and the Exclusions from Coverage in the policy (except Exclusion 3.d.), the Conditions, and the exceptions from coverage contained in Schedule B.

2. The following terms when used in this endorsement mean:

- **a.** "Advance": Only an advance of principal 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.
- **b.** "Agreement": The note or loan agreement, the repayment of Advances under which is secured by the Insured Mortgage.
- **c.** "Changes in the Rate of Interest": Only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage or the Agreement at the Date of Policy.

3. 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, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances, and unpaid interest resulting from:
  - **i.** re-Advances and repayments of Indebtedness;
  - **ii.** earlier periods of no indebtedness owing during the term of the Insured Mortgage; or
  - **iii.** the Insured Mortgage not complying with the requirements of State law of the State in which the Land is located to secure Advances.

4. The Company further 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 of the Indebtedness.
- **b.** The lack 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 lack of priority is caused by:
  - **i.** Changes in the Rate of Interest;
  - **ii.** interest on interest; or
  - **iii.** increases in the principal of the Indebtedness resulting from the addition of unpaid interest.

5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

- **a.** The invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for any Advance 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.** Advance made subsequent to 20 years after the date of the Insured Mortgage or after a notice has been recorded in the Public Records limiting the maximum principal amount that may be secured to the extent causes the outstanding principal balance to exceed the amount stated in the notice.

c. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after the Date of Policy;

d. The lack 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. Knowledge of the Insured that a federal tax lien was filed against the mortgagor; or

ii. the expiration, after notice of a federal tax lien filed against the mortgagor, of any grace period for making disbursements with priority over the federal tax lien provided in the Internal Revenue Code (26 U.S.C.);

e. Any federal or state environmental protection lien; or

f. Any usury law or Consumer Protection Law.

6. The Indebtedness includes Advances.

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.

Date:

_____ _____

Name of Agent Agent No.

_____

Agent's Signature

Old Republic National Title Insurance Company

By **Carolyn Monroe**

President

ALTA 14.2 FUTURE ADVANCE – LETTER OF CREDIT ENDORSEMENT
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To Policy No.

1. The insurance for Advances added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the policy (except Exclusion 3.d.), the Conditions, and the exceptions from coverage contained in Schedule B.

2. The following terms when used in this endorsement mean:

- **a.** "Advance": Only an advance of principal made after the Date of Policy as provided in the Agreement, but within 20 years from the date of the Insured Mortgage, 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.
- **b.** "Agreement": The letter of credit and its reimbursement agreement, the repayment of Advances under which is secured by the Insured Mortgage.

3. 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, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances, and unpaid interest resulting from:
  - **i.** re-Advances and repayments of Indebtedness;
  - **ii.** earlier periods of no indebtedness owing during the term of the Insured Mortgage; or
  - **iii.** the Insured Mortgage not complying with the requirements of State law of the State in which the Land is located to secure Advances.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

- **a.** The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after the Date of Policy;
- **b.** Any federal or state environmental protection lien; or
- **c.** The limitations, if any, imposed under the Bankruptcy Code (11 U.S.C.) on the amount that may be recovered from the mortgagor's estate.

5. The Indebtedness includes Advances.

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.

Date:

_____ _____

Name of Agent Agent No.

_____ **Old Republic National Title Insurance Company**

Agent's Signature **By** **Carolyn Monroe**

President

ALTA 14.3 FUTURE ADVANCE – REVERSE MORTGAGE ENDORSEMENT
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. To Policy No.

1. The insurance for Advances added by Sections 3 and 4 of this endorsement is subject to the exclusions in Section 5 of this endorsement and the Exclusions from Coverage in the policy (except Exclusion 3.d.), the Conditions, and the exceptions from coverage contained in Schedule B.

2. The following terms when used in this endorsement mean:

- **a.** "Advance": Only an advance of principal 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.
- **b.** "Agreement": The note or loan agreement, the repayment of Advances under which is secured by the Insured Mortgage.
- **c.** "Changes in the Rate of Interest": Only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage or the Agreement at the Date of Policy.

3. 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, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances, and unpaid interest resulting from:
  - **i.** re-Advances and repayments of Indebtedness;
  - **ii.** earlier periods of no indebtedness owing during the term of the Insured Mortgage;
  - **iii.** the Insured Mortgage not complying with the requirements of State law of the State in which the Land is located 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 invalidity or unenforceability of the lien of the Insured Mortgage because of the failure of the mortgagor to be at least 62 years of age at the Date of Policy.

4. The Company further 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 of the Indebtedness.
- **b.** The lack 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 lack of priority is caused by:
  - **i.** Changes in the Rate of Interest;
  - **ii.** interest on interest; or
  - **iii.** increases in the principal of the Indebtedness resulting from the addition of unpaid interest.

As used in Section 4, "interest" includes lawful interest based on appreciated value.

5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

- **a.** The invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage as security for any Advance 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. Advance made subsequent to 20 years after the date of the Insured Mortgage or after a notice has been recorded in the Public Records limiting the maximum principal amount that may be secured to the extent causes the outstanding principal balance to exceed the amount stated in the notice if the Insured Mortgage does not qualify as a "home equity conversion mortgage" or second mortgage held by the Secretary of Housing and Urban Development under the National Housing Act;

c. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after the Date of Policy;

d. The lack 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.** Knowledge of the Insured that a federal tax lien was filed against the mortgagor; or
- **ii.** the expiration, after notice of a federal tax lien filed against the mortgagor, of any grace period for making disbursements with priority over the federal tax lien provided in the Internal Revenue Code (26 U.S.C.);

e. Any federal or state environmental protection lien; or

f. Any usury law or Consumer Protection Law.

6. The Indebtedness includes Advances.

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.

Date:

_____ _____

Name of Agent Agent No.

_____

Agent's Signature

Old Republic National Title Insurance Company

By **Carolyn Monroe**

President

ADDITIONAL INTEREST ENDORSEMENT

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. _____ to Policy No.: _____

The Company hereby insures against loss or damage by reason of:

(1) The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for additional interest subsequent to date of policy.

(2) Loss of priority of the lien of the insured mortgage as security for (i) the unpaid principal balance of the loan; (ii) the stated interest; (iii) the additional interest, which loss of priority is by the provisions in the insured mortgage for payment or allocation to the insured mortgagee of any additional interest.

"Stated Interest" as used in this endorsement shall mean only the fixed percent per annum interest on the unpaid principal balance of the loan provided in the insured mortgage at date of policy.

"Additional Interest" as used in this endorsement shall mean only those amounts calculated pursuant to the formula provided in the insured mortgage payable or allocated to the insured.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth-in-lending law, or (c) bankruptcy.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

_____ _____

Name of Agent Agent No.

_____

Agent's Signature

Old Republic National Title Insurance Company

By Carolyn Monroe

President

BALLOON MORTGAGE ENDORSEMENT

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. _____ To Policy No. _____

The Company hereby insures against loss or damage by reason of:

(1) The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for a conditional right to refinance and a change in rate of interest as set forth in the Mortgage Rider.

(2)Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest thereon, which loss of priority is caused by the exercise of the conditional right to refinance and the extension of the loan term to the new maturity date set forth on the rider and a change in the rate of interest, provided that all the conditionals set forth in paragraphs 2 and 5 of the Balloon Mortgage Rider have been met, and there are no other liens, defects, encumbrances, or other adverse matters affecting title recorded subsequent to the date of policy.

This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth-in-lending law, or (c) bankruptcy.

This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, if any, nor does it extend the effective date of the policy and any prior endorsements, or increase the face amount thereof.

_____ _____

Name of Agent Agent No.

Old Republic National Title Insurance Company

_____ **By Carolyn Monroe**

Agent's Signature *President*

CHANGE OF PARTNERS, MEMBERS OR SHAREHOLDERS ENDORSEMENT

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No._____ to Policy No. _____

The Company agrees that in the event of an occurrence of loss insured against by this policy, the Company will not deny liability hereunder on the ground that a dissolution or termination of the insured, whether it is a corporation, partnership, limited partnership, limited liability company or business trust, has occurred or a new entity has been formed by reason of one or more of its partners, members, shareholders, beneficiaries, or certificate holders having transferred their interest to another person or entity; by reason of withdrawal of one or more of the partners, members, shareholders or certificate holders from the insured; or by reason of the addition of one or more person or entities as a partner, member, shareholder or certificate holder.

Nothing contained herein shall be construed as extending the insurance hereunder as to matters attaching or created subsequent to the date hereof; or insuring the status of the insured after the transfer of the interest of a partner, member, shareholder or certificate holder or after the withdrawal or addition of new partners, members, shareholders or certificate holders.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy, nor does it increase the face amount thereof.

Name of Agent	Date	Agent No.

Agent's Signature

Old Republic National Title Insurance Company

By **Carolyn Monroe**

President