

Title Management Today

Title Gram™

Current legal issues published by Title Law Associates for the benefit of the title insurance and real estate industries
Volume 13, Issue 7 Supplement

Date: August, 2003

PROPOSED UNIFORM MORTGAGE SATISFACTION ACT

In the July issue of Title Management Today we briefly mentioned the proposed Uniform Mortgage Satisfaction Act at pages 12 and 13 and promised . . . "more on this later". We were unable to bring you more information at that time because our computer caught a virus and crashed. All is well now. For more information regarding the National Conference of Commissioners on Uniform State Laws [NCCUSL] concerning the proposed Act go to the ABA web site located at www.abanet.org/rppt/cpmmitees/rp/i6/home.html . A Memo from Committee Chair Patrick Mears appears there.

THE UNIFORM NONJUDICIAL FORECLOSURE ACT

At the same web site you may also review the foregoing. It has been adopted by the NCCUSL and is being considered for endorsement by the ABA, Committee member Ira Waldman wrote a summary of the Act which is posted on the web site. The full Act as approved and recommended for enactment may also be down loaded from the above web site or from www.law.upenn.edu/bll/ulc/ufbposa/2002final.htm .

ALTA FORMS COMMITTEE REPORT CONTINUED

The July 2003 issue also contained an abbreviated discussion of the ALTA Forms Committee Projects for 2003. A more detailed discussion is set forth below.

The American Land Title Association Forms Committee met most recently in Las Vegas on March 10 & 11, 2003. The primary focus of this meeting was to review and approve the Commercial Endorsements produced by a subcommittee in a meeting in January. The Forms Committee is proposing 13 new commercial endorsements to meet the needs of commercial lenders. These endorsements are standard forms of familiar endorsements used in the industry. In addition, the Committee has decided to amend the boilerplate that ends each ALTA endorsement.

The first act of the Forms Committee in March, however, was to change Covered

Risk 12 in the Homeowner's Policy in response to California SB 800. SB 800 empowers a builder to limit its exposure for warranty claims if the builder imposes specified duties on the buyer in CC&Rs. The change limits the title insurer's liability if the homeowner fails to comply with the restrictions, and suffers a loss resulting from that failure.

The Forms Committee is also conducting a parallel comprehensive review and revision of the 1992 ALTA Owner's & Loan Policies, beginning with the Loan Policy. Some advances were made in the review of the policies during the ALTA Annual Meeting in October, but the commercial endorsements occupied almost all of the two days of meetings in March.

The new endorsement proposals include:

1. The ALTA 14, 14.1 & 14.2 Future Advance endorsements. The ALTA 14 is designed for use in states that give optional future advances the same priority as obligatory advances. The ALTA 14.1 is designed for states that subject optional future advances to intervening liens if the intervening lienor has given the lender actual notice of the lien. The ALTA 14.2 is designed to insure the lien as security for reimbursement obligations for standby letters of credit or surety bonds. These endorsements have ferreted out and modified all of the provisions in the loan policy that might be viewed as conflicting with future advance coverages.
2. The ALTA 15, 15.1 & 15.2 non-imputation endorsements. The ALTA 15 is designed for use when a new member, partner or shareholder joins an entity. The ALTA 15.1 should be used when there is a complete changeover in ownership of the title holding entity. The 15.2 is for use when there is a partial turnover in ownership. Until now, the status of the party receiving the benefit of the nonimputation provision under the terms of the policy has often been cloudy, but these endorsements define the beneficiaries' entitlement to payment for losses.
3. The ALTA 16 Mezzanine Financing Endorsement. The New York (TIRSA) Mezzanine Financing

Endorsement was the starting point for this endorsement, but there have been some substantial changes. The New York endorsement measures the payment to a beneficiary upon its ownership of the entity holding title, either through foreclosure of pledges or by direct grant when the loan is made. The ALTA endorsement eliminates that limitation. As a result, it is suitable for insuring even an unsecured lender (leaving one to wonder if its narrowly focused name is still appropriate). The non-imputation provisions of the TIRSA endorsement seemed difficult, so they were extensively revised in the ALTA version.

4. The ALTA 17 Access and Entry Endorsement. The Access and Entry Endorsement insures pedestrian and vehicular access, and the validity of the existing curb cuts, to boot. In approving this endorsement, the Forms Committee recognized that it was limited to land that abuts an open street, so it decided to create an ALTA 17.1 for insuring land that does not directly abut a street.
5. The ALTA 18 & 18.1 Tax Parcel Endorsements. The ALTA 18 is used for insuring a single parcel, insuring that the land is not being taxed together with any other real property or does not constitute a separate tax parcel for real estate taxes. The ALTA 18.1 is used for multiple parcels, including the same coverage as the ALTA 18, and adding coverage if the easements described in Schedule A are cut off or disturbed by the non-payment of real estate taxes assessed against the servient estate.
6. The ALTA 19 & 19.1 Contiguity Endorsements. The ALTA 19 should be used to insure that multiple parcels insured in a parcel are contiguous to each other. The ALTA 19.1 insures that the insured land is contiguous to other, uninsured land. These are conventional contiguity endorsements insuring against the failure of Parcel A of the land to be contiguous to Parcel B along specified boundaries. The endorsement also insures that there are no gaps strips or gores between the boundaries specified in the endorsement.
7. First Loss. The ALTA Forms Committee also considered a form of First Loss endorsement (the ALTA 20), but was unable to agree on all of its provisions, so it has not been reported out. The most controversial issue was whether to pay the amount of an impairment of the lender's collateral, or to provide a letter of credit, certificate of deposit, U.S. Treasury securities or cash as substitute collateral.

If you would like a copy of the endorsements reported by the committee, contact Bob Bozarth rbozarth@landam.com and I will be happy to attach copies on a return message.

We would like to thank Robert Bozarth, Major Transactions Counsel at LandAmerican, for presenting this information to the Title Insurance Committee of the Real Property, Probate and Trust Law Section of the ABA

TITLE MANAGEMENT TODAY

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Published at 612 Boyer Road, Cheltenham, PA. 19012
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 Located at www.titlelawannotated.com .
 MARKETING OFFICES: 800.743.7472. Please visit our web site located at
www.createsolutions.com .

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Annual Subscription Rate is \$185

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