



*A Division of Ohio Bar Title Insurance Company
A First American Company*

TITLE ALERT

Title Alert 2016-05

May 17, 2016

PA - STANDARD

Search, Examination, and Closing Procedures for Suspicious Releases and Uninsured Deeds

Purpose: To provide guidance and establish requirements regarding the Company's search, examination and closing procedures for detecting and dealing with (i) a suspicious mortgage release or satisfaction, or deed of trust reconveyance (release, satisfaction, and reconveyance hereinafter referred to by the general term "Release") that appears in the chain of title, (ii) a Suspicious Release introduced into the insured transaction to be recorded at or near the time of the closing and (iii) forgeries and uninsured deeds in the chain of title.

Background: First American companies spend millions of dollars each year on mortgage fraud claims. In an effort to prevent this, the Company has developed underwriting procedures for Suspicious Releases and uninsured deeds, as described in this Title Alert.

Standard: Follow the procedures set forth below.

A. Search, examination, and closing procedure for Suspicious Releases

A "Suspicious Release" is a release that does not coincide with a sale or refinance transaction. These Releases are considered suspicious because mortgages and deeds of trust are typically paid off as part of a sale or refinance transaction. Examples of Suspicious Releases include:

- A Release that was filed shortly before (but not as a part of) a closing;
- A Release presented at closing for recordation even though the title company or attorney doing the closing is not receiving funds to pay off the mortgage or deed of trust.

When examining the chain of title, the following steps must be taken, regardless of whether an initial title search, update, or date down of the Title is being performed.

1. Review

All Releases recorded within the last two years must be reviewed unless one of the following statements applies:

- The mortgage or deed of trust was recorded prior to, but not reflected in, a policy of title insurance issued by Ohio Bar Title Insurance Company;
- The mortgage or deed of trust was recorded prior to the last full-value insured transfer (apparent arm's length sale transaction with a purchase money first mortgage or deed of trust); or
- The mortgage or deed of trust was recorded more than 15 years ago and there is nothing further in the Public Records (i.e. an assignment) to indicate that the debt secured by the mortgage has not been paid in full.

If review is required, confirm that all of the following criteria are met:

- The Release is a full, valid release of the entire property to be insured;

- The Release was recorded subsequent to a new mortgage or deed of trust in favor of an institutional lender, the proceeds from which would have logically been used to pay off the obligation secured by the released mortgage (i.e., the timing of the recordation of the Release makes sense because it coincides with the recordation of a new mortgage with a similar or greater face amount); and
- The Release does not appear questionable on its face to the examiner (a “questionable” release may include those that are executed by the borrower, are hand written, or are “doctored up” in any way, etc.).

2. Exception and/or requirement

If the review confirms that all of the foregoing criteria are met, then no further steps are required. If, however, the criteria are not met, the matter should be reported in the Attorney's Preliminary Certificate and Report on Title and the following exception and/or requirement will be raised in the Commitment:

EXCEPTION

“[Mortgage or Deed of Trust] recorded [insert recording reference for mortgage or deed of trust] and the effect of a document purporting to be a release thereof recorded [insert recording reference for release].

NOTE: The Company will require satisfactory proof of full payment of the debt secured by the said [Mortgage or Deed of Trust] prior to removing this exception or insuring the contemplated transaction.”

REQUIREMENT

“Evidence satisfactory to the Company that the debt secured by [Mortgage or Deed of Trust] recorded [insert recording reference for Mortgage or Deed of Trust] has been paid in full.”

3. Closing

The Approved Attorney who closes the transaction is responsible for verifying that the Suspicious Release requirements are met by doing one or more of the following:

- Contact the lender and obtain verification that it has been paid off and has a zero balance;
- Require copies of the cancelled payoff checks; or
- Obtain other appropriate evidence of payment. If you are not certain of what evidence is acceptable, reach out to underwriting.

In addition, the Approved Attorney who closes the transaction must follow these same verification procedures for any Releases that appear in Title date downs prior to closing, or for any Release that is presented for recordation at the closing.

B. Search, examination, and closing procedure for uninsured deeds

An uninsured deed is a deed that does not correspond with a transaction insured by a title insurance company. Uninsured deeds require greater scrutiny because, without the involvement of a title insurer to monitor the transfer and verify the identities of the parties, the risk of fraud is greater. An uninsured deed may be identified by one or more of the following traits:

- The deed does not include a title company name or title order/escrow number on its face;
- The deed includes an “accommodation stamp” on its face;
- The deed is hand-written; or
- The deed includes other marks or stamps (or the absence thereof) on the deed that are inconsistent with deeds recorded by title insurance companies in the state and county where the property is located.

When examining the chain of title, the following steps must be taken, regardless of whether an initial title search, update, or date down of the Title is being performed.

1. Review

All uninsured deeds recorded within the last five years must be reviewed unless a subsequent insured deed has been recorded or one of the following circumstances apply:

- The deed is a family transfer from the record owner(s) to his/her/their family trust or a transfer from a family trust back to the trustors/settlors of the trust;
- The deed reflects an interspousal or interfamily transfer where no one is being removed from title or is losing any of their previous interest in the title. (An example of this type of deed would be a deed executed solely for purpose of changing status of the owners from tenants in common to joint tenancy. On the other hand, a deed from one spouse to the other should appear suspicious if the grantor is thereby removed from title, and the deed is not accompanied by a final divorce decree authorizing such transfer.); or
- The deed was recorded in conjunction with a final court order determining ownership. (For example, a court order pursuant to a probate, divorce, or quiet title action affecting the property.)

If review is required, confirm that the uninsured deed is valid. Consider the following when reviewing the validity of an uninsured deed:

- Is the signature of the grantor genuine? Has it been compared to a reliable signature, such as the signature on a previous purchase money deed of trust or mortgage? If no purchase money mortgage exists to perform this comparison, compare the signature on the uninsured deed to his or her signature appearing on other documents in the chain of title;
- Is the notary public reliable? In some states, online searches can be performed to determine whether or not the notary public is in good standing;
- Is the property owner occupied? Many forgeries, particularly those that do not involve family members, involve either vacant land or non-owner occupied property. This is not always the case; therefore whether the property is vacant or non-owner occupied is not determinative of insurability, but it may be a factor;
- Was consideration paid for the transfer? Again, this is useful information but not determinative; and
- How long ago was the deed recorded? Our standard for carefully scrutinizing uninsured deeds includes a five-year time period. This is because in many jurisdictions, five years may help with a variety of defenses, including with an adverse possession defense. But generally speaking, the newer the uninsured deed, the more suspicion it deserves.

Determining whether an uninsured deed is valid can be difficult. When in doubt, err on the side of caution.

2. Vest back and add appropriate exception and/or requirement

If the review confirms that the uninsured deed is valid, then no further steps are required. If, however, the validity of the deed cannot be confirmed, title must be reported as vested back to the last insured transfer and the following exception and/or requirement will be included in the Commitment:

EXCEPTION

"The effect of a deed executed by [grantor] to [grantee], recorded [insert recording reference for deed].

NOTE: The Company will require satisfactory proof that the deed was valid prior to removing this exception or insuring the contemplated transaction."

REQUIREMENT

“Evidence satisfactory to the Company that the deed executed by [grantor] to [grantee], recorded [insert recording reference for deed] is valid.”

Remember, if anything seems suspicious, it is appropriate to raise the issue in your Attorney’s Preliminary Certificate and Report on Title and require additional verification.

3. Clearing the exception and/or requirement

To clear the exception and/or requirement included in a commitment or preliminary report for the uninsured deed, one of the following steps may be taken, so long the identity of the grantor or affiant can be established:

- Obtain an affidavit from the grantor that the transfer was freely and fairly made with or without consideration; or
- Obtain a new deed signed and notarized in front of a First American agent, Penn Attorney[®], or notary public.

If you have any questions, please feel free to contact us.

Note: Under the Approved Attorney system, the scope of our relationship is limited to the functions of underwriting and the issuance of title insurance policies on your behalf and does not include closing or escrow services. We sometimes provide information and recommendations with regard to your closing or escrow business as a courtesy to you. Moreover, some communications, depending on whether noncompliance could impact on liability under our policies or closing protection letters, should be considered directives. This Advisory is being provided to you with those considerations in mind.

WARNING: This Underwriting Communication is intended solely for the employees of Penn Attorneys/Ohio Bar Title Insurance Company and its Approved Attorneys, and is not to be distributed to third parties, and any reliance by any other person or entity is unauthorized. This Underwriting Communication is intended solely for the purpose of underwriting policies of Ohio Bar Title Insurance Company.

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