FannieMae

No. 94-13

Announcement

Reference

- ● Selling
- ○ Servicing

This announcement amends the guide(s) indicated. Please keep it for reference until we issue a formal change.

Subject

Acceptable Title Insurance Coverage

We have reviewed our current policies and procedures related to title insurance coverage for mortgages secured by one- to four-family properties and have decided to make several changes to simplify the process for identifying acceptable title insurance companies and to minimize the potential for losses related to the type of coverage or the financial strength of the title insurer. These changes include:

- the institution of a requirement for title insurers that issue title policies for mortgages secured by one- to four-family properties to have an acceptable rating from one of several designated rating agencies. The use of rating agencies to perform an independent appraisal of each title insurer's financial condition and its ability to support its obligations is designed to ensure that Fannie Mae's mortgage investments are protected by title insurance provided by companies that have an acceptable claims-paying ability. This practice does not supersede the need for title insurers to satisfy the other eligibility requirements we specify in Part IV, Section 105, of the Selling Guide -- rather it replaces our current practice of reviewing, approving, and publishing the name of each title insurer that can insure mortgages that are delivered to us;

- a determination that any American Land Title Association (ALTA) title insurance policy that includes the creditor's rights exclusion language that ALTA adopted in 1990 will not constitute acceptable title insurance coverage because this exclusion does not assure full title protection to Fannie Mae; and

- the elimination of the need for lenders to call our regional offices to determine the acceptability of a specific title insurance company's short form title insurance policy or master title insurance policy and the related residential loan certificate -- provided that the lender (1) determines that the title insurer satisfies our rating requirement, (2) uses a standard ALTA form of these policies that is validly issued in the jurisdictions in which the insurer does business and (3) provides appropriate warranties to us.

More detailed information about each of these changes -- including the applicable effective dates -- follows.

Acceptable Title Insurers

All title insurers issuing title policies for mortgages secured by one- to four-family properties that are delivered to us on and after March 1, 1995 must have an acceptable rating from at least one of the independent rating agencies we use. The rating must be based on the financial statements for the insurer's previous fiscal year-end (although initially ratings may be based on statements for year-end 1993 or later since ratings based on year-end 1994 statements may not be readily available for all companies by March 1).

We will accept title insurer ratings that are developed by the following agencies -- Demotech, Inc.; Duff and Phelps Credit Rating Company; LACE Financial Corporation; Moody's Investors Service; or Standard and Poor's, Inc. Although we will specify what constitutes an acceptable rating from each of the rating agencies, this does not mean that we endorse the use of a particular rating, rating methodology, or rating agency for any purpose other than distinguishing the financial health of those title insurance companies that will be issuing policies for mortgages we purchase. We may announce additional rating agencies in the future or discontinue using the services of one or more agencies, if appropriate. Attachment 1 includes the addresses and telephone numbers of each of the rating agencies.

As of March 1, 1995, each title insurance policy for a first or second mortgage that is delivered to us must be written by a title insurance company that had at least one of the following ratings at the time the mortgage was closed (unless the insurer is covered by an acceptable reinsurance arrangement or we agree to accept other alternatives):

- a "Financial Stability Rating" of "S" (Strong) or better or a "Statutory Accounting Rating" of "C" (Average) or better from Demotech, Inc.;
- a "BBB" or better rating from Duff and Phelps Credit Rating Company;
- a "C" or better from LACE Financial Corporation;
- a "Baa" or better rating from Moody's Investors Service; or
- a "BBB" or better rating from Standard and Poor's, Inc.

Notwithstanding the fact that a specific title insurance company has at least one of the above ratings, we reserve the right to refuse to accept title insurance policies from that insurer by giving lenders advance notice of our intent to do so.

It is possible for a title insurer that satisfied our rating requirement when a mortgage was closed to have a deteriorating financial condition that results in its receiving a lower rating by the time the mortgage is delivered to us. In such cases, we do not want to automatically make the mortgage ineligible for delivery. Rather, the lender should contact its lead regional office to determine whether (1) we are willing to waive our rating requirement for an individual mortgage or a group of mortgages, (2) we will require an acceptable reinsurance arrangement to cover the mortgage(s), or (3) we will accept delivery of the mortgage(s) only under a negotiated commitment that requires some type of credit enhancement to reduce our exposure to potential losses that might result from the title insurer's inability to meet a financial obligation under the title insurance policy.

We will also consider requests that we waive our title insurer rating requirement for a new title insurer if the title insurer has not yet been rated by at least one of the acceptable rating agencies. To request a waiver of our policy in this instance, the lender should send the Director of Loan Acquisition in its lead Fannie Mae regional office sufficient financial information about the title insurer to enable us to make a proper appraisal of the insurer's financial condition and any risks that it might present to Fannie Mae. When the request for a waiver is being made in connection with a negotiated transaction, it should be made part of the negotiation process so that our decision can be reflected in the terms of the negotiated contract.

Reinsurance Arrangements

We will accept the policies of a title insurer that does not meet our rating requirement if the insurer is fully covered by reinsurance with a company that does satisfy our rating requirement. The primary insurer and the reinsuring company must both be licensed to issue title insurance within the state where the property is located and must be in good standing with that state's insurance regulator. Both insurance carriers must execute an Assumption of Liability Endorsement (Form 858). (A revised Form 858, which has been designed to accommodate reinsurance of both hazard and title insurers, is attached to this Announcement.) We will accept any equivalent endorsement that provides for 100% reinsurance of the primary insurer's policy and 90-day written notice of termination of the reinsurance agreement. The alternative endorsement must be attached to the title insurance policy for each individual mortgage.

Monitoring Title Insurer's Ratings

Lenders may obtain the initial information about a title insurer's rating from the insurer itself or directly from one of the rating agencies. Lenders must independently verify the ratings for the title insurance companies they use with the applicable rating agency once every six months.

If an insurer's rating goes below our required minimum rating at any time, the lender must stop submitting mortgages insured by that title company to us for purchase -- unless the title insurer provides coverage for the mortgage(s) by obtaining an acceptable reinsurance arrangement from another insurer that satisfies our rating requirement. When the insurer's rating again becomes acceptable, the lender may resume its delivery of mortgages covered by title policies issued by this title insurance company (without having to obtain reinsurance).

A title insurance company's failure to meet our rating requirement will not have any effect on mortgages we have already purchased; therefore, a lender does not have to be concerned about replacing that title insurer's existing title policies with new title policies issued by another title insurer that meets our minimum rating requirement.

Lender's Warranty at Delivery

By delivering a mortgage to Fannie Mae, the lender warrants that the title insurer that issued the title insurance policy has an acceptable rating from one of the acceptable title insurer rating agencies or, if it does not, that either the title insurer is covered by a reinsurance arrangement with another title insurer that has an acceptable rating (or the lender has obtained a waiver of our title insurer rating requirement or provided some type of credit enhancement in connection with the specific delivery).

We will evaluate a lender's compliance with our requirement for using title insurers that have acceptable ratings from one of the designated rating agencies as part of our on-going post-purchase underwriting performance reviews of mortgages delivered to us.

Acceptable ALTA Policy Forms

Part IV, Section 105.01, of the Selling Guide requires that title evidence be represented by a "mortgage title policy on a standard form approved by us." It goes on to state that we prefer the coverage provided by the American Land Title Association's (ALTA) standard policy.

The 1990 ALTA loan title insurance policy has a creditor's rights exclusion statement that excludes "any claim which arises out of the transaction creating the interest of the mortgagee insured under this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditor's rights laws." Because of concerns expressed by Fannie Mae and others, ALTA revised the creditor's rights exclusion when it issued its 1992 title policy form. In view of this, we have decided that we will no longer accept an ALTA title policy form that includes the specific language of the creditor's rights exclusion that ALTA adopted in 1990 -- effective with mortgages closed on and after November 1, 1994. The objectionable creditor's rights exclusion language appears in the 1990 ALTA forms and may appear in some amended versions of the 1970 and 1987 ALTA forms. The creditor's rights exclusion language included in the 1992 ALTA loan title insurance policy form (and, possibly, in some earlier forms) is acceptable.

We will accept delivery of seasoned mortgages that are insured under title policies issued on ALTA forms that include the language of ALTA's 1990 creditor's rights exclusion only under negotiated commitments that specifically permit the use of such title policy forms.

Use of Short Form or Master Title Insurance Policies

Part IV, Section 105.01, of the Selling Guide indicates that we will accept title insurance coverage provided by short form policies or residential loan certificates issued in conjunction with master title insurance policies as long as we have reviewed and approved the title insurer's program for issuing short form or master title insurance policies. Lenders are instructed to contact their lead Fannie Mae regional office to determine whether we have approved a specific insurer's programs.

To simplify this process, effective immediately, we will no longer require title insurers that issue short form or master title insurance policies to submit a letter of assurance to us before we will accept coverage they issue under those types of policies. Lenders may accept short form title policies or residential loan certificates issued in conjunction with master title policies from any title insurer -- as long as they confirm that (1) the title insurer satisfies our new title insurer rating requirement (even though the requirement does not otherwise become effective until March, 1995); (2) the title insurer or any of its branches, affiliates, or agents is authorized to do business in the jurisdiction in which the mortgaged property is located and the policies are validly issued in that jurisdiction; and (3) the policies the insurer uses are on standard ALTA policy forms that do not include the creditor's rights exclusion language from the 1990 ALTA loan title insurance policy (which we consider unacceptable) and otherwise satisfy our requirements for acceptable title insurance coverage. To make this confirmation, a lender will need to review the title insurer's documents -- short form title policy (with all endorsements or addenda), master policy (with all endorsements or addenda), residential loan certificate (including any addenda), and any other applicable documents -- and obtain any appropriate certifications from the title insurer. In states for which standard ALTA forms are not generally approved for use, lenders will need to assure that the non-standard forms have been reviewed and approved by the Fannie Mae regional office that has jurisdiction over the area in which the title insurer's home office is located.

From time to time, we will publish in the Selling Guide a list of the non-standard short form or master title insurance policies (and the related residential loan certificates)that we have approved and the states in which they may be used. Currently, we have authorized the use of no non-standard master policies and only one non-standard short form policy -- that form is the modified ALTA Short Form Residential Loan Policy (dated 10/17/92) that was approved by the Florida Department of Insurance for use with properties located in Florida.

We reserve the right to refuse to accept short form title policies or residential loan certificates issued in conjunction with master title insurance policies from any specific title insurer by giving lenders advance notice of our intent to do so.

By delivering a mortgage that has title insurance coverage evidenced by a short form title policy or a residential loan certificate that is issued in conjunction with a master title insurance policy, a lender warrants and agrees that it will promptly provide for the replacement of the short form policy or residential loan certificate with a full individual ALTA policy (at no cost to the borrower or us) if we later request one in connection with a sale (or other disposition) of the mortgage to a third party.

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Announcement

Lenders that have any questions about these new policies and procedures related to acceptable title insurance coverage should contact their Quality Control Representative in their lead Fannie Mae regional office.

Robert Engelstad

Robert J. Engelstad
Senior Vice President -
Mortgage and Lender Standards

Attachments

Announcement

Approved Title Insurer Rating Agencies

- Current title insurer rating publications can be obtained from the following agencies:

  Demotech, Inc.
  2941 Donnylane Blvd
  Columbus, OH 43235-3228
  800-354-7207

  LACE Financial Corporation
  118 North Court Street
  Frederick, MD 21701
  301-662-1011 or 1-800-323-6880

- Ratings for specific insurers may generally be obtained from the following agencies; however, in some cases, a rating must be obtained directly from the title insurer:

  Duff and Phelps Credit Rating Company
  55 East Monroe Street
  Chicago, IL 60603
  312-629-3833

  Moody's Investor Services
  99 Church Street
  New York, NY 10007
  212-553-0377

  Standard & Poor's, Inc.
  Insurance Ratings Services
  25 Broadway
  New York, NY 10004-1064
  212-208-1527