

Fannie Mae Multifamily / Delegated Underwriting and Servicing Guide / Part III: Underwriting (08/23/99) / III, Chapter 1: Mortgage Terms and Loan Documents (08/03/05) / III, 111: Title Insurance (08/03/05)

III, 111: Title Insurance (08/03/05)

Mortgages must be covered by an acceptable title insurance policy. To be acceptable, a title insurance policy must satisfy the following requirements:

1. Single Risks; Reinsurance. The maximum single risk assumed by any single title insurer may not exceed 25 percent of that company's capital, surplus, and statutory reserves. Excess amounts may be covered by acceptable reinsurance arrangements with other acceptable title insurance companies.

2. Acceptable Title Insurers. The title insurance policy must be written by an insurer that has an acceptable rating from at least one of the following independent rating agencies: Demotech, Inc.; Duff and Phelps Credit Rating Company; LACE Financial Corporation; Moody's Investors Service; or Standard and Poor's, Inc. The Lender may obtain the initial information about a title insurer's rating from the insurer itself or directly from one of the rating agencies; however, the Lender must independently verify the rating with the applicable rating agency every six months. (Exhibit III-34 includes the addresses and telephone numbers of each of the rating agencies).

Each Mortgage that is delivered to Fannie Mae must have a title insurance policy that was written by a title insurer that had at least one of the acceptable ratings discussed below at the time the Mortgage was closed (unless the insurer is covered by an acceptable reinsurance arrangement). Acceptable ratings include the following:

- (a) a "Financial Stability Rating" of "S" (Substantial) or better or a "Statutory Accounting Rating" of "C" (Average) or better from Demotech, Inc.;
- (b) a "BBB" or better rating from Duff and Phelps Credit Rating Company;
- (c) a "C" or better rating from LACE Financial Corporation;
- (d) a "BAA" or better rating from Moody's Investors Service; or
- (e) 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, Fannie Mae reserves the right to refuse to accept title insurance policies from that insurer by giving the Lender advance notice of Fannie Mae's intent to do so.

Fannie Mae will also consider requests that it waive its title insurer rating requirement for a new title insurer if the title insurer has not yet been rated by at least one of the above designated rating agencies. To request a waiver of Fannie Mae's policy in this instance, the Lender should submit the waiver request through the Deal Management system with sufficient financial information about the title insurer to enable Fannie Mae to make a proper appraisal of the insurer's financial condition and any risks that it might present to Fannie Mae.

If an insurer's rating goes below Fannie Mae's required minimum rating at any time, the Lender must stop submitting Mortgages insured by that title company to Fannie Mae for

purchase, unless the title insurer provides coverage for the Mortgage by obtaining an acceptable reinsurance arrangement from another insurer that satisfies Fannie Mae's 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 insurer (without having to obtain reinsurance).

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 designated title insurer rating agencies or, if it does not, that the title insurer is covered by reinsurance with another title insurer that has an acceptable rating.

3. Insurance Company's Authority to do Business. Each title insurance policy must be written by an insurer authorized to do business in the jurisdiction in which the Property is located. This requirement does not apply to policies on Iowa Properties; however, such policies must be written by an insurer authorized to do business and issue the policies in the jurisdiction in which the policy is issued.
4. Amount of Policy. The amount of the title insurance policy must be no less than the original principal amount of the Mortgage.
5. Named Insured. Either in Schedule A or by way of acceptable endorsement, the policy must name as an insured the "Fannie Mae." If California Land Title Association ("CLTA") forms are used, an endorsement in the form of CLTA 104 or an equivalent endorsement providing the same coverage as CLTA 104 is acceptable; CLTA 104.1 is not acceptable. The Lender also may be included as a named insured; the phrase "Fannie Mae and/or [Lender], their successors and/or assigns, as their interests may appear" is acceptable if the Lender is included.
6. Loan Policy Forms.
 - (a) Subject to satisfaction of other requirements set forth in this Section 111, Fannie Mae will accept the standard 1992 American Land Title Association ("ALTA") form of loan title insurance policy, or the 1990, 1987, or 1970 (amended October 17, 1970 and October 17, 1984) ALTA loan form policies provided that the creditor's right exclusion has been deleted.
 - (b) In those states in which ALTA forms of coverage are not approved for use by the applicable state insurance board or commission, Fannie Mae requires similar coverage. Questions regarding the acceptability of forms other than ALTA (or CLTA as specified in this Section 111) forms should be addressed to [the Lender's Fannie Mae NAM counsel](#).
7. Environmental Protection Lien Endorsement. Each title insurance policy must include an acceptable Environmental Protection Lien Endorsement. ALTA Form 8.1 (or the previously issued ALTA Form 8 or equivalent endorsement) is acceptable. Part (b) of ALTA Form 8.1 (or the previously issued ALTA Form 8 or equivalent endorsement) may take exception for a statute under which environmental protection liens could take priority over the Mortgage. The following environmental protection statutes have been determined to be acceptable for inclusion in Part (b) of the ALTA Form 8.1 (or equivalent endorsement):

Arizona: A.R.S. Sec. 48-309

Arkansas: Code of 1987 Anno. Sec. 15-58-101 et seq.

Connecticut:	CT G.S.A. Section 22a - 452a
Louisiana:	Louisiana Statutes Ann., R. S. 30: 1148 and R. S. 30: 1149.6 LSA R. S. 30: 2281 LSA R. S. 33: 1236 (21)
Maine:	38 MRSA Sec. 1370
Michigan:	(a) MCLA Sec. 324.11143(3) — also codified as MSA 13A 11143(3) (b) MCLA Sec. 324.20138(2)(a), (4) and (6) — also codified as MSA 13A 20138(2)(a), (4) and (6)
Minnesota:	Minn. Stat. Ann. Sec. 514.67 (West)
Missouri:	R S Mo. 263.140 and 444.930
New Hampshire:	RSA 147-B
New Jersey:	NJSA 58: 10-23.11 et seq.
New Mexico:	3-48-7 NMSA 1978 69-25B-8 NMSA 1978
New York City:	Administrative Code of the City of New York Sections 17-101 to 17-174
New York State:	Sec. 1307 of Public Health Law
Ohio:	Ohio Rev. Code Ann. Sec. 3767.41
Oklahoma:	17 OSA S6, 53.1 and 53.2
Pennsylvania:	32 P S Sec. 5101 et seq.
Texas:	Texas Health and Safety Code Sec. 361.194 Texas Health and Safety Code Sec. 342.007-342.008 Texas Local Government Code Sec. 214.001, 214.0015(b), (d) and (e); and Texas Natural Resources Code Sec. 134.150, if applicable. Texas Rev. Civil Statutes Ann. Art. 1175 Sec. 37 (d) (Vernon's 1988 Supp.)

Texas Rev. Civil Statutes Ann. Art. 4436 (Vernon's 1988 Supp.)

Texas Rev. Civil Statutes Ann. Art. 4477-7 Sec. 13(g)(7) (Vernon's 1988 Supp.)

Texas Rev. Civil Statutes Ann. Art. 4477-9B Sec.4.03(b)(c) and (d) (Vernon's 1988 Supp.)

Texas Rev. Civil Statutes Ann. Art. 5920-11 Sec. 9(a) (Vernon's 1988 Supp.)

Washington: RCW 70.121.140

Wisconsin: W.S.A. Chapter 292.81

Any reference in Part (b) of ALTA Form 8.1 (or equivalent endorsement) to a statute not listed above must be approved by the Lender's Fannie Mae NAM counsel prior to delivery of the Mortgage.

8. Standard Exceptions. Standard exceptions (such as for matters not shown on public records) must be deleted. However, the title insurance policy may contain an exception for tenants in possession under residential leases.
9. Effective Date. The effective date of the title insurance policy must be no earlier than the date (and time, if the effective date includes time) of recording of the assignment of the Security Instrument to Fannie Mae. If the assignment to Fannie Mae is insured by an endorsement, the date of the policy must be extended to the date of that assignment.
10. Survey Exception. The standard survey exception, if any, to the title insurance policy must be deleted. Exceptions to matters shown on a recorded map or plat must be specifically described and are subject to the other requirements of this Section 111.
11. Legal Description. The legal description of the Property in the title insurance policy must conform to that shown on the survey of the Property and to the description contained in the Security Instrument. Alternatively, the title insurance policy may be endorsed to provide that the legal description is the same as shown on the survey. Any exception pertaining to the Property (other than liens or similar matters not required to be shown on a survey meeting the requirements of Section 113 of this Part) and listed in the title insurance policy must be shown on the survey. (See Section 113 of this Part for survey requirements.)
12. Exception for Taxes, Assessments, or Other Lienable Items. If the title insurance policy includes any exception for taxes, assessments, or other lienable items, the title insurance policy must expressly insure that such taxes, assessments, or other lienable items are not yet due and payable.
13. Exceptions for Liens, Encumbrances, Easements, Etc.
 - (a) Affirmative Insurance. Any lien, encumbrance, condition, restriction, or easement of record must be listed in the policy, except for any such matter of record (such as a racially restrictive covenant) that is legally unenforceable. The title insurance policy

must affirmatively insure that the improvements do not encroach upon the listed easements or insure against all loss or damage due to such encroachment.

- (b) Forms. A Restrictions, Encroachments, Minerals Endorsement (ALTA Form 9) or an equivalent comprehensive endorsement acceptable to Fannie Mae must be included in the title insurance policy if any lien, encumbrance, condition, restriction, or easement is listed in the title insurance policy. If the applicable state insurance board or commission does not permit ALTA Form 9 to be given, the Lender must obtain as much specific insurance from the title insurance company over those items normally included in a comprehensive endorsement (e.g., insuring over violations of set back lines, easements and encroachments, and reservations of mineral rights) as permitted by that state's insurance board or commission and then contact **the Lender's Fannie Mae NAM** counsel to determine whether the alternative proposed by the title insurance company will be acceptable.
 - (c) Exception or Exclusion Uninsured; Lender's Explanation. If an ALTA Form 9 endorsement (or an equivalent comprehensive endorsement) has been issued, but any Schedule B, Part I exception(s) continue to be excluded from the coverage provided through that endorsement for (i) encroachments onto the Property or onto easements or rights of way excepted in Schedule B of the title insurance policy, (ii) encroachments by the improvements on the Property onto adjoining land, (iii) violations of existing covenants, conditions or restrictions, or (iv) other adverse circumstances, the Lender must determine whether the exception(s) would be acceptable to a reasonable, prudent Lender and to Fannie Mae, consistent with the DUS product line and this Guide. If the Lender determines that the particular exception is acceptable, a written explanation regarding the acceptability of each such exception or exclusion must be submitted as part of the loan delivery documents. The explanation provided by the Lender or the Lender's counsel must be specific, clear, and provide sufficient information about each exception and the Lender's reasoning in its determination that the exception is acceptable.
 - (d) Unlocated Easements. If Schedule B, Part I indicates the presence of any easements that are not located on the survey, the title insurance policy must provide affirmative insurance against any loss resulting from the exercise by the holder of an easement of its right to use or maintain that easement. CLTA Form 103.1 or an equivalent endorsement is required for this purpose. If the applicable state insurance board or commission does not permit such coverage to be given, the Lender must contact **the Lender's Fannie Mae NAM** counsel to determine whether the alternative proposed by the title insurance company will be acceptable.
14. Appurtenant Easements Insured. Any appurtenant easements (such as access or utility easements) determined by the Lender (consistent with Fannie Mae requirements and prudent Lender practice) to be necessary to the operation of the Property as underwritten must be set forth as part of the legal description and affirmatively insured as a separate insured interest in land in the title insurance policy.
 15. Exceptions for Mechanics' or Materialmen's Liens. The policy must contain no exception for any filed or unfiled mechanics' or materialmen's liens.
 16. Location Endorsement. Title insurance policies for Mortgages **secured by a Property where use of a CLTA form of title policy is required or acceptable** also must include an endorsement designating the location of the improvements and the land location. CLTA Form 116 or CLTA Form 116.1 or an equivalent form is acceptable for this purpose.
 17. Tax and Parcel Numbers. The title insurance policy must include, as an informational note,

(a) the recorded plat number (and recording information), if any, and (b) the Property parcel number(s) or tax identifying number(s), as applicable, for the Property, if such numbers are available in the jurisdiction in which the Property is located.

18. Financing Statements; Assignment of Leases. Any financing statements filed or recorded in the office in which the Security Instrument must be recorded and showing the Lender as the secured party and related assignments thereof to Fannie Mae must be shown as an informational note, and must not be listed as exceptions on Schedule B, Part I. Other financing statements (such as those filed or recorded with the state or local office(s) for UCC filings) may be shown as an informational note, but must not be listed as exceptions on Schedule B, Part I.

Any recorded assignment of leases that provides collateral for the Mortgage and the assignment to Fannie Mae by the Lender must be shown as an informational note, and must not be listed as an exception on Schedule B, Part I.

The Lender must examine and keep in its Mortgage file copies of all easements, encumbrances, or other restrictions shown as exceptions in the title insurance policy. Upon request, legible copies must be delivered to Fannie Mae.