



UNDERWRITING COMMUNICATION

ID NUMBER: MA-2018-009-Advisory
ISSUED BY: Massachusetts Underwriting Department
DATE ISSUED: October 5, 2018
TITLE: FRAUD ALERT – Potential Fraudulent Transactions

Purpose: To alert company employees and policy-issuing agents about potential lack of authority and potential fraud issues associated with named individuals and properties.

Background: First American Title has discovered a potential fraud scheme involving multiple properties in Massachusetts. Property owners who are in foreclosure are contacted by an individual proposing to assist the homeowner. The proposal is to help the homeowner obtain financing to payoff the delinquent mortgage(s) – a method to “rescue” the property from foreclosure. The homeowner executes documents purporting to authorize the individual’s efforts. The documents are then used to convey title to the property to a third party who sells the property to a bona fide party. When the original property owner discovers the subsequent transfer, they have claimed that the conveyances were not authorized, and were fraudulent. For an example of such allegations, see: <http://massrealestatelawblog.com/2018/06/19/convicted-felon-strikes-again-in-complex-forgery-scam-lawsuits-claim/>

Advisory: Do not rely upon any recorded documents, or close any transaction, involving the parties or properties listed below without prior approval by a First American underwriter.

The following persons or properties may be involved in the transactions:

- Allen (J.) Seymour
- Richard Chase
- 127 Western Avenue, Cambridge, MA
- 30 Pembroke Street, Somerville, MA
- 755 Boylston Street. Brookline, MA
- Tracey (J.) Brice

Also, learn the warning signs that may indicate that your deal may have a higher risk potential for fraud. The following red flags are indicators that your transaction may be at risk:

- Property is in foreclosure or is otherwise distressed;
- Recently recorded deed, release of mortgage, or power of attorney not associated with an apparent arms-length transaction;
- Unpaid mortgages that would typically have been paid and released by prior transactions appearing in the chain of title;
- There is a rush to open and close the transaction.

Names may change, however, the risk factors or red flags are fairly constant. Recognizing red flags in the chain of title will help you to prevent potential claim in the future.

Contact Information for Questions:

The Massachusetts Underwriting Department at (866) 916-0967 or (617) 345-0088

ADDITIONAL INFORMATION

See also National Underwriting Communication NA-2016-011 attached hereto.

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NOTE: This Underwriting Communication is intended for use by title issuing offices, title insurance agents, and approved attorneys of First American Title Insurance Company and any reliance by any other person or entity is unauthorized. While the scope of agency of First American Title Insurance Company agents is limited to the functions of underwriting and the issuance of title insurance policies on First American's behalf and does not include closing or escrow services, First American sometimes provides information and recommendations with regard to its agent's ancillary closing or escrow business as a courtesy to them. Moreover, some communications, depending on whether noncompliance could impact on liability under First American's title insurance policies or closing protection letters, should be considered directives. This Communication is being provided to First American agents with those considerations in mind. This Underwriting Communication should become a permanent part of your records to assure compliance with its requirements.

If you have questions, please contact your local underwriter or the Corporate Underwriting Department at (800) 854-3643.



First American Title

UNDERWRITING COMMUNICATION

Issued by

First American Title Insurance Company

NA-2016-011-Standard

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

Issued By: Corporate Underwriting Department

Date Issued: April 28, 2016

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 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: The Company spends 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 Standard.

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 First American;
- 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 following exception and/or requirement (as applicable in your jurisdiction) must be raised:

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 closer, escrow officer, title officer, attorney or agent 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 closer, escrow officer, title officer, attorney or agent 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/settlers 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 vested back to the last insured transfer and the following exception and/or requirement (as applicable in your jurisdiction) must be included:

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 commitment or report 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 as 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 or notary public.

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Contact: If you have any questions, please feel free to contact the Corporate Underwriting Department at (800) 854-3643 or your local underwriter.

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