

Title Insurance for Private Money: Expert Witness Explains

Title Insurance Restrictions Limit Title Coverage for Private / Hard Money Lenders

IRVINE, CA, UNITED STATES, November 29, 2022 /EINPresswire.com/ -- There are challenges in getting and keeping title insurance coverage. In private (or hard) money lending, expert witness involvement and my own work as a private money lender, mortgage broker, and loan servicer have shown me how actual industry practices with respect to title insurance are evolving. Potential challenges in getting (the right) title insurance coverage, problems in maintaining coverage, challenges with claims, and potential countersuits or actions against third parties all may create limitations to, or challenges with title insurance coverage.



Joffrey Long

For private money lenders, there are changes occurring in the way title insurance is issued. Let's look at how title insurance, underwriting, coverage, and related factors have changed and continue to change:

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Title insurance coverage is being limited for private money loans. It's critical to understand the changes.”

Joffrey Long

POLICY ISSUANCE AND UNDERWRITING

The title insurer's initial offer to insure or “preliminary title report,” will contain more requirements if the loan is a private money loan. These may include:

- Documentation requirements, including the title insurer's advance receipt of copies of the proposed note, deed of

trust, any lender's escrow instructions, possible borrower entity information, and other documents

- Cash-out limitations, limiting the maximum amount of cash proceeds to a borrower from a transaction and/or restrictions on how the proceeds may be paid out

- Requirements regarding document signing and closing, including the use of title-approved notaries
- The condition that the title insurer will only insure the transaction based on their underwriter's approval of the proposed coverage
- Other requirements, either general, or specific to an individual transaction

After reviewing the transaction, the insurer may offer lower coverage amounts or exceptions to coverage. These may exclude coverage for some basic characteristic of the loan transaction, including limitations related to private money investors or fractionalized trust deed investments.

WHY THE CHANGES?

Fraud! Claims! There are higher percentages of title claims and related costs to insurers with respect to private (hard) money lenders, both in the area of title fraud and mortgage fraud. Expert witness cases in which I've been involved have related to the conduct of hard money lenders, real estate mortgage brokers, or those involved in mortgage loan servicing. The reason for more fraud impacting private money lenders is that private money loans generally close faster and with less inquiry or documentation than institutional or "bank-type" loans. Fraudsters want to close quickly, with a minimum of questions. The longer they wait, the more chance someone will "catch on" to the fraud and maybe, catch them!

TITLE AGENCY OR TITLE INSURANCE COMPANY

"Title companies," aren't necessarily title insurance companies. Many title companies do not provide title insurance policies. They are (title) agencies who issue policies on behalf of actual title insurance companies. Underwriting and decision making, as to what coverage will be granted, what requirements the title insurer will impose, and what exceptions to coverage will be required may vary from the title agency to the company actually issuing the title insurance to those involved in private money lending. This depends on which party is handling the evaluation of and issuance of the policy of title insurance.

Expert witness testimony is sometimes provided in cases where the insurers are litigating or are paying for the litigation of the matter. In these cases, the title insurer, rather than the agency, is usually the company involved in, or behind any litigation.

PRESERVATION OF TITLE POLICY COVERAGE

Loan modifications, changes of loan terms, changes of ownership, or other changes that occur after insurance is issued could give rise to a change in the insurance coverage. Not all title claims are accepted by title insurers. The timing of submission of the claim to the title insurer, actions taken by the parties from the time of discovery of a problem but prior to submitting the claim, and other factors may result in denial or limitations in coverage of any claim. Problems

that arise from action (or lack of action) after issuance of the policy may relate to loan servicing.

Title insurers may also deny coverage if they learn that information they deem to have been important wasn't provided to them at time of policy issuance.

CROSS-COMPLAINTS AGAINST THIRD PARTIES

When a title insurance company pays a claim to those insured under a policy, such as property owners or hard money lenders, they take over, through subrogation, the rights formerly held by the insured. Subrogation means basically, that the insurer "steps into the shoes" of the insured.

When this occurs, the insurer may attempt to recover from third parties, such as real estate brokers/mortgage brokers, escrow companies, and others. Major title insurers may have loss mitigation departments that evaluate these claims and the value of taking action against certain parties to recover funds.

It's interesting to note that in the relatively small world of private money-related litigation, there are some names that keep "popping up," individuals continually the subject of fraud / private money / title insurance litigation.

BFE or GFE: BONA FIDE ENCUMBRANCER OR GOOD FAITH ENCUMBRANCER

Advanced topic: In real estate lending, courts may sometimes rule that a lender was not a Bona Fide Encumbrancer, often referred to as a Good Faith Encumbrancer. ("GFE") With this determination, the lender may no longer have a security interest in the real property. In mortgage fraud litigation, a lender, or the lender's agent's failure to perform certain functions in the process of originating the loan may lead to claims that the lender is not a GFE in relation to the mortgage.

Expert witness work and the related knowledge and involvement provide a close look at situations where loans have gone badly and title insurance claims were filed. Making, arranging, or servicing private money loans requires title insurance and an approach to obtaining and maintaining the desired coverage.

NOTE: These are general observations, each transaction / circumstance may be different. Nothing here should be considered as a generally accepted business practice or a standard of care in the title insurance, real estate lending, and related industries. Concepts or statements should be reviewed by qualified legal, title insurance, and other experts.

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