

TO: MA and RI Agents
FROM: Underwriting Department
DATE: May 19, 2010
RE: Creditors Rights Risk

Old Republic National Title Insurance Company and its affiliated underwriters continue to routinely receive requests to provide insurance coverage for creditors' rights risks. The provision of any insurance coverage against creditors' claims presents a heightened risk to Old Republic in the current economic environment. That risk is made even more significant because an avoidance of an insured transaction for a creditors' rights risk for which we have provided insurance coverage may well lead to a total policy loss.

Decisions by several courts have demonstrated the risk and complexity involved in this area. Those cases have made clear that an appropriate creditors' rights analysis may involve a review which goes beyond the immediate parties to a transaction to be insured and beyond an examination of the financial condition of the specific transferor or the financial terms of the transaction at issue.

Recently, the Board of Governors of the American Land Title Association voted to decertify the ALTA 21 and 21-06 Creditors' Rights Endorsements. Those endorsements provide affirmative coverage to an insured when loss arises because the interest insured under a title insurance policy is set aside as a result of a claim of fraudulent conveyance or preferential transfer. In addition, Pennsylvania and Delaware have eliminated the Creditor's Rights Endorsement and at least three other states are well into the process of eliminating this endorsement as well.

These actions and the realities we face today require us to reassess our risk in this area and the procedures by which creditors' rights risk is undertaken. Old Republic has classified this type of coverage as an unusual or hazardous risk.

Consequent to the foregoing, all requests for creditors' rights coverage, either by way of endorsement or by deletion of the creditor's rights exclusion, must be referred to your local Underwriting Department, who may need to forward the matter to our Corporate Legal Department for further review.

In some circumstances in which a request for creditors' rights coverage is referred to our Corporate Legal Department, a Creditors' Rights Questionnaire may also be required to be completed by the party requesting the coverage. The completion of the questionnaire does not assure that the coverage will be provided. Answers disclosed on the questionnaire may lead to a decision to deny the request to provide the coverage or may lead to a decision to make further inquiries regarding the transaction.

We want to again emphasize that Old Republic considers insurance coverage for Creditors' Rights Risk to constitute an extraordinary risk and our Agents should be aware that requests to provide this coverage will be denied when the facts pertaining to any transaction on which we are asked to write title insurance disclose any possibility that the insured title can be challenged by a creditor or a trustee in bankruptcy.

Old Republic will continue to monitor economic conditions, legal and regulatory developments, and the ability to reinsure this risk in assessing whether we will continue to provide coverage for Creditors' Rights issues.

Thank you for your attention to this Bulletin. And, should you have any questions or concerns, please contact your local Underwriting Department:

★ [Massachusetts & Rhode Island – 800-370-6466](tel:800-370-6466)

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