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BULLETIN 008

TO: All Agents, Direct Offices and Attorneys in State of Texas

FROM: David W. Rhodes

DATE: September 20, 2000

SUBJECT: Reverse Mortgages Revisited

After two years and some additional legislation, it appears that FHA and Fannie Mae are ready to make and/or purchase these Reverse Mortgage loans. These loans are a form of home equity loans that allow qualified borrowers to receive regular payments during their lifetime.

Reverse Mortgage loans will be insured by attaching Endorsement No. T-43 Reverse Mortgage Endorsement to the Mortgagee Policy. There is no charge for the Reverse Mortgage Endorsement. The constitutional amendment and the enabling statutes authorizing Reverse -Mortgage loans set out the requirements that must be met to have a valid Reverse Mortgage loan. Most of these requirements are not covered by the title insurance policy and the T-43 endorsement. Just like Home Equity Loans, you must be careful not to accept additional liability created by a lender on closing instructions.

The T-43 Endorsement Form insures the amount of loan funds actually disbursed at the date of the policy but increases as each additional disbursement is made. This is very similar to construction loan policy language but you will not issue a down date endorsement in a Reverse Mortgage situation.

T-43 also insures that any subsequent disbursements shall be deemed to be made as of the date of the policy and have the same priority except as to any Bankruptcy of borrower prior to the date of any subsequent disbursement and any taxes or other governmental obligations secured by a statutory lien recorded subsequent to the date of the policy. So if you have a subsequent bankruptcy or Federal Tax Lien or State Tax Lien or Judgement, this would not be covered.

Paragraph 3 of the T-43 endorsement insures against any invalidity of the reverse mortgage lien because of the failure of the insured Mortgage to be created by a written agreement signed by each Owner and each Owner's spouse.

Paragraph 4 of the T-43 endorsement form excludes any loss or damage based on usury, and consumer credit protection law, and any violation of subsections (k) (2) through (k) (8), (m) or (p) of Section 50, Article XVI, Texas Constitution. These subsections are those requirements that the Lender must follow in order to have a valid lien against homestead to secure the reverse mortgage loan.

A copy of Section 50 is attached along with a copy of the T-43 endorsement form.

Quick Do's and Don'ts:

1. Lender may require only one owner to sign the Note. So long as all owners and their spouses sign the security instrument, the Notice of Counseling, Lender's Disclosure Notice as to Repayment and your title company documents; you may close and issue.
2. No P-39 Express Insurance can be given as to any of the items in T-43.

VERNON'S TEXAS STATUTES AND CODES ANNOTATED
CONSTITUTION OF THE STATE OF TEXAS-1876
ARTICLE XVI. GENERAL PROVISIONS

§ 50. Homestead; protection from forced sale; mortgages, trust deeds and. liens

Sec. 50 (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(7) a reverse mortgage.

(k) "Reverse mortgage" means an extension of credit:

- (1) that is secured by a voluntary lien on homestead property created by a written agreement with the consent of each owner and each owner's spouse;
- (2) that is made to a person. who is or whose spouse is 62 years or older,
- (3) that is made without recourse for personal liability against each owner and the spouse of each owner;
- (4) under which advances are provided to a borrower based on the equity in a borrower's homestead;
- (5) that does not permit the lender to reduce the amount or number of advances because of an adjustment in the interest rate if periodic advances are to be made;
- (6) that requires no payment of principal or interest until:
 - (A) all borrowers have died;
 - (B) the homestead property securing the loan is sold or otherwise transferred;
 - (C) all borrowers cease occupying the homestead property for a period of longer than 12 consecutive months without prior written approval from the lender, or
 - (D) the borrower:
 - (i) defaults on an obligation specified in the loan documents to repair and maintain, pay taxes and assessments on, or insure the homestead property;
 - (ii) commits actual fraud in connection with the loan; or
 - (iii) fails to maintain the priority of the lender's lien on the homestead property, after the lender gives notice to the borrower, by promptly discharging any lien that has priority or may obtain priority over the lender's lien within 10 days after the date the borrower receives the notice, unless the borrower:
 - (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to the lender;
 - (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings so as to prevent the enforcement of the lien or forfeiture of any part of the homestead property; or
 - (c) secures from the holder of the lien an agreement satisfactory to the lender subordinating the lien to all amounts secured by the lender's lien on the homestead property;

- (7) that provides that if the lender fails to make loan advances as required in the loan documents and if the tender fails to cure . the default as required in the loan documents after notice from the borrower, the lender forfeits all principal and interest of the reverse mortgage, provided, however, that this subdivision does not apply when a governmental agency or instrumentality takes an assignment of the loan in order to cure the default;
- (8) that is not made unless the owner of the homestead attests in writing that the owner received counseling regarding the advisability and availability of reverse mortgages and other financial alternatives;
- (9) that requires the lender, at the time the loan is made, to disclose to the borrower by written notice the specific provisions contained in Subdivision (6) of this subsection under which the borrower is required to repay the loan;
- (10) that does not permit the tender to commence foreclosure until the lender gives notice to the borrower, in the manner provided for a notice by mail related to the foreclosure of liens under Subsection (a)(6) of this section, that a ground for foreclosure exists and gives the borrower at least 30 days, or at least 20 days in the event of a default under Subdivision (6)(D)(iii) of this subsection, to:
 - (A) remedy the condition creating the ground for foreclosure;
 - (B) pay the debt secured by the homestead property from proceeds of the sale of the homestead property by the borrower or from any other sources; or
 - (C) convey the homestead property to the lender by a deed in lieu of foreclosure; and
- (11) that is secured by a lien that may be foreclosed upon only by a court order, if the foreclosure is for a. ground other than a ground stated by Subdivision (6)(A) or (B) of this subsection.
- (l) Advances made under a reverse. mortgage and interest on those advances have priority over a lien filed for record in the real property records in the county where the homestead property is located after the reverse mortgage is filed for record in the real property records of that county.
- (m) A reverse mortgage may provide for an interest rate that is fixed or adjustable and may also provide for interest that is contingent on appreciation in the fair market value of the homestead property. Although payment of principal or interest shall not be required under a reverse mortgage until the entire loan becomes due and payable, interest may accrue and be compounded during the term of the loan as provided by the reverse mortgage loan agreement
- (n) A reverse mortgage that is secured by a valid lien against homestead property may be made or acquired without regard to the following provisions of any other law of this state:
 - (1) a limitation on the purpose and use of future advances or other mortgage proceeds;
 - (2) a limitation on future advances to a term of years or a limitation on the term of open-end account advances;
 - (3) a limitation on the term during which future advances take priority over intervening advances;

- (4) a requirement that a maximum loan amount be stated in the reverse mortgage loan documents;
 - (5) a prohibition on balloon payments;
 - (6) a prohibition on compound interest and interest on interest;
 - (7) a prohibition on contracting for, charging, or receiving any rate of interest authorized by any law of this state authorizing a lender to contract for a rate of interest; and
 - (8) a requirement that a percentage of the reverse mortgage proceeds be advanced before the assignment of the reverse mortgage.
- (o) For the purposes of determining eligibility under any statute relating to payments, allowances, benefits, or services provided on a means-tested basis by this state, including supplemental security income, low-income energy assistance, property tax relief, medical assistance, and general assistance:
- (1) reverse mortgage loan advances made to a borrower are considered proceeds from a loan and not income; and
 - (2) undisbursed funds under a reverse mortgage loan are considered equity in a borrower's home and not proceeds from a loan.
- (p) The advances made on a reverse mortgage loan under which more than one advance is made must be made according to the terms established by the loan documents by one or more of the following methods:
- (1) at regular intervals;
 - (2) at regular intervals in which the amounts advanced may be reduced, for one or more advances, at the request of the borrower, or
 - (3) at any time by the lender, on behalf of the borrower, if the borrower fails to timely pay any of the following that the borrower is obligated to pay under the loan documents to the extent necessary to protect the lender's interest in or the value of the homestead property:
 - (A) taxes;
 - (B) insurance;
 - (C) costs of repairs or maintenance performed by a person or company that is not an employee of the lender or a person or company that directly or indirectly controls, is controlled by, or is under common control with the lender;
 - (D) assessments levied against the homestead property; and
 - (E) any lien that has, or may obtain, priority over the lender's lien as it is established in the loan documents.
- (q) To the extent that any statutes of this state, including without limitation, Section 41.001 of the Texas Property Code, purport to limit encumbrances that may properly be fixed on homestead property in a manner that does not permit encumbrances for extensions of credit described in Subsection (a)(6) or (a)(7) of this section, the same shall be superseded to the extent that such encumbrances shall be permitted to be fixed upon homestead property in the manner provided for by this amendment
- (r) The supreme court shall promulgate rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Subsection

(a)(6) of this section and to foreclosure of a reverse mortgage lien that requires a court order.

CREDIT(S)

Amended by voters in Nov. 4, 1999 election, eff. Jan. 1, 2000.

TEXAS REVERSE MORTGAGE ENDORSEMENT

G.F. No: _____
Attached to and made a part of OLD REPUBLIC NATIONAL TITLE INSURANCE
COMPANY Policy or Mortgagee's Policy number _____, this _____ day
of _____ 19____.

Notwithstanding anything to the contrary contained in this policy, the following terms and provisions shall control and apply:

1. This policy insures only to, and liability hereunder is limited to, the amount of proceeds of the loan secured by the lien instrument set forth under Schedule 'A' hereof actually disbursed as of the date of this policy, but increases as each such subsequent advance or disbursement of loan proceeds is made from time to time and as unpaid interest accrues on loan proceeds, so that any loss payable hereunder shall be limited to the amount of unpaid accrued interest and aggregate amount of loan proceeds actually disbursed and outstanding at the time a loss occurs hereunder; provided, however that each disbursement of loan proceeds is made in good faith and without knowledge of any defects in, or objections to, title; and further provided that in no event shall the liability of the Company hereunder exceed the fact amount of this policy.
2. The Company insures the Insured that any disbursements of such loan proceeds made subsequent to the date of this policy shall be deemed to have been made as of the date of this policy and such disbursements and accrued interest shall have the same priority as any advances made as of the date of this policy, except as to (i) bankruptcies affecting the estate or interest described on Schedule A hereof prior to the date of any such advance or disbursement; and (ii) taxes, costs, charges, damages and other obligations to the government secured by statutory liens arising or recorded subsequent to the date of the Policy.
3. Notwithstanding the provisions of paragraph 5 of the exclusions from coverage relating to consumer credit protection laws, the Company insures the Insured against loss, if any, sustained by the Insured under the terms of the policy because of invalidity or unenforceability of the lien of the insured mortgage by reason of the failure of the insured mortgage to be created under a written agreement with the consent of each owner of the estate or interest described in Schedule "A" and each owner's spouse, as set forth In Subsection (k)(1) of Section 50, Article XVI, Texas Constitution.
4. The Company does not insure against loss or damage based on (i) usury; or (ii) any consumer credit protection law and/or violation of Subsections (k)(2), (k)(3), (k)(4) (k)(5), (k)(6), (k)(7), (k)(8), (m), or (p) of Section 50, Article XVI, Texas Constitution and any regulatory or statutory requirements for a mortgage made pursuant to Subsection (a)(7) of Section 50, Article XVI, Texas Constitution; or (iii)

costs, expenses or attorney's fees required to obtain a determination of the amount of interest or indebtedness.

For purposes of this endorsement, "interest" means interest, compound interest, interest on interest, and interest contingent on the appreciation in the fair market value of the land charged in accordance with the terms of the insured mortgage.

This endorsement when countersigned below by an Authorized Countersignature Is made a part of said Policy. Except as expressly modified by the provisions hereof, this endorsement is subject to the following policy matters: (i) Insuring provisions; (ii) Exclusions from Coverage; (iii) Schedule "B" Exceptions; (iv) the Conditions and Stipulations; and (v) any prior endorsements. Except as stated herein, this endorsement does not, (i) extend the effective date of the policy and/or any prior endorsements: or (ii) increase the face amount of the policy.

IN WITNESS HEREOF, the OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY has caused this Endorsement to be executed by its President under the seal of the Company, but this Endorsement is to be valid only when it bears an authorized countersignature.

OLD REPUBLIC
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A Stock Company
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Authorized Countersignatory