

UNDERWRITING DIRECTIVE No. 9

TO: All Delaware Agents
FROM: Dwight E. Edwards
DATE: 12/23/09
SUBJECT: Creditors' Rights Risk

Old Republic National Title Insurance Company and its affiliated underwriters (the "Company") 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 the Company 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. Recent decisions by several courts have demonstrated the risk and complexity involved in this area, particularly when a party transferring an interest in real property is part of a family of commonly-owned, related entities. 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. The realities we face today require us to reassess our risk in this area and the procedures by which creditors' rights risk is undertaken. This coverage is classified as an unusual or hazardous risk.

The Creditors' Rights Questionnaire attached must be completed by the party requesting the coverage and the questionnaire must be returned to the State Office and ultimately reviewed by our Home Office. Use of the questionnaire is also advised for transactions not required to be sent to the Home Office. **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.

The analysis required to determine if creditors' rights coverage will be provided can be time-consuming and often requires the investment of our most sophisticated attorneys and financial officers. As a result, the Company may impose a fee to review financial statements of the parties to the transaction. Please be reminded that Creditors' Rights coverage is an extra hazardous risk and the coverage may only be given with the Company's prior written approval.

Should you have any questions, contact an Officer of the Company.

PLEASE DISTRIBUTE TO OTHER KEY PERSONNEL WITHIN YOUR ORGANIZATION



Commitment No.: _____
Updated: _____

CREDITORS' RIGHTS QUESTIONNAIRE

This Affidavit is given to induce Old Republic National Title Insurance Company ("the Company") to issue affirmative coverage for creditors' rights risk in its policy or policies of title insurance with full knowledge that the Company will rely upon the accuracy of the statements and answers provided herein. The undersigned further certifies that he or she has read and understands the statements and answers provided in this Affidavit. The Company reserves the right to solicit further information relating to the transaction to be insured based on information provided in this questionnaire or obtained from other sources.

1. Describe in detail the transaction to be insured.

2. What is the present use of the subject property?

3. a. If a Loan Policy is being issued, how are the loan proceeds being applied or disbursed?
b. If the loan proceeds are being disbursed to the borrower, how does the borrower intend to use the proceeds?

4. If the transaction to be insured involves a purchase money mortgage, will the loan proceeds be used for any purpose other than for the purchase of the subject property? If yes, describe in detail such other purposes and the intended recipients of loan proceeds.

5. Are any of the loan proceeds being disbursed to a party other than the mortgagor? If yes, explain in detail.

6. Is the buyer or mortgagor a special purpose entity (SPE)? If yes, be certain to answer questions 13 through 16 in detail.

7. If the transaction involves a refinance, answer the following:
 - a. When was the original mortgage placed on the subject property?

 - b. What relationship, if any, exists between the refinance lender and the prior lender?



8. What control, if any, will the seller or lender have over the property after this transaction is complete? If appropriate, include a copy of the loan agreement with this Affidavit.

9. Are there any other related transactions occurring prior to or at the same time as this transaction? If yes, explain in detail.

10. Describe the relationship between the buyer/mortgagor and the seller (answer "yes" or "no" to each of the following):
 - a. _____ The buyer/mortgagor is a creditor of the seller.
 - b. _____ The buyer/mortgagor is related to the seller (if yes, describe).
 - c. _____ The buyer/mortgagor or the seller has an ownership interest or other interest, direct or indirect, in the other party (if yes, describe).
 - d. _____ The buyer/mortgagor and seller are not related or affiliates; this is an arms'-length transaction.

11. Indicate whether the transaction involves any of the following, and be sure to describe any indicated matters fully in question #1 above:
 - a. _____ A leveraged buyout;
 - b. _____ A mortgage or distribution of partnership, limited partnership, limited liability company, corporation or other entity assets to pay a partner, limited partner, member, shareholder or other entity equity holder.
 - c. _____ A mortgage to secure an antecedent, unsecured debt;
 - d. _____ A partner, member, shareholder or other party with an equity interest in the borrower acting as a mortgagee;
 - e. _____ A modification of an existing mortgage;
 - f. _____ A guarantee or indemnity mortgage;
 - g. _____ A construction mortgage;
 - h. _____ Recapitalization of a corporation, partnership, limited liability company, corporation or other entity.
 - i. _____ Cross-collateralization or cross-default with land owned by a party or entity other than the mortgagor.
 - j. _____ A sale/leaseback.
 - k. _____ Loan proceeds will be used to pay dividends, or to make loans to a shareholder, member, partner, limited partner or other entity equity holder of the borrower.



12. If the transaction involves an acquisition/construction mortgage, is the borrower using all of the proceeds of the loan only for the purposes of acquiring the subject property, paying for the costs of constructing improvements on the subject property, and paying costs associated with constructing and maintaining the improvements on the subject property? If no, explain in detail.

13. If the buyer or mortgagor is a special purpose entity (SPE), was the entity newly formed, or was it in existence when it acquired title to the subject property?

14. If the buyer or mortgagor is a special purpose entity (SPE), how was the most recent fee transfer or acquisition structured? Was creditors' rights coverage issued to the SPE or the creditor, if any, at that time, or as part of any prior transaction involving the subject property?

15. If the buyer or mortgagor is a special purpose entity (SPE), when the initial fee transfer to the SPE took place, were non-consolidation opinions rendered by outside counsel? If so, did they include opinions as to whether the transaction as structured would not constitute a fraudulent conveyance under Section 548 or any other applicable creditors' rights laws?

16. The following supplemental documents are attached in support of this Affidavit:
 - a. _____ Independent appraisal of the subject property to loan to value analysis.
 - b. _____ Income and expense projections for SPE buyer or mortgagor, which include mortgage debt service projections for the full term of payment obligations under the new loan.
 - c. _____ Most recent Balance Sheet of SPE buyer or mortgagor.

17. If the subject property is leased, what percentage of the property is occupied?

18. Does this transaction involve a deed-in-lieu of foreclosure? If so, contact the Underwriting Department of the Corporate Legal Department immediately.

NOTE: The Company reserves the right in its sole and absolute discretion to either request additional materials or decline to issue creditors' rights coverage after its review of the contents of this affidavit and/or any supplemental documentation.



I/We, the undersigned, hereby affirm and attest that the statements and answers provided above are true and correct to the best of my/our information and belief.

BUYER/MORTGAGOR/LENDER

Signature

Signature

Printed name

Printed name

Date

Date