

PENN ATTORNEYS

TITLE ALERT

DATE: 12/11/08

RE: Title Alert 2008-22 REVISED HONA 257 –LandAmerica Financial Group, Inc & LandAmerica 1031 Exchange Services Company, Inc.

For your information, here is a special bulletin from First American's Home Office Underwriting Group, which updates Penn Attorneys Title Alert 2008-21 issued on 12/10/08.

Please pay particular attention to the bolded information herein.

NOTE: This Bulletin 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. This bulletin is intended solely for the purpose of underwriting policies of First American Title Insurance Company.

Purpose

This bulletin is being updated to reflect the continuing evolution of the status of LandAmerica Financial Group, Inc. and LandAmerica 1031 Exchange Services Company, Inc. We will continue to update this bulletin as conditions change.

In addition, this bulletin serves as a reminder of First American's continuing practices when dealing with qualified intermediaries in tax-deferred exchanges (26 U.S.C. §1031) and when dealing with good funds generally. (For prior Penn Attorneys Title Alerts on good funds and including transactions with Qualified Intermediaries in tax-deferred exchanges go to Title Alert 2007-15 or 2007-16:

http://www.pennattorneys.com/printable/title_alerts/2007-15.pdf &
http://www.pennattorneys.com/printable/title_alerts/2007-16.pdf)

Recent LandAmerica announcements

On Friday, November 21, 2008, Fidelity National Financial, Inc. announced that it was withdrawing from its plans to acquire LandAmerica Financial Group, Inc. ("LandAmerica"), the parent of the entities on the attached list.

Following this announcement, on November 24, 2008, LandAmerica 1031 Exchange Services Company, Inc. announced that it was terminating its operations and, at least in the short term, would be unable to honor requests for withdrawals.

Since this bulletin was originally posted on November 25:

- A Lancaster County District Court judge in Nebraska placed Lawyers Title Insurance Corp. and Commonwealth Land Title Insurance Co. under the control of the Nebraska Department of Insurance
- LandAmerica and LandAmerica 1031 Exchange Services Company, Inc. have filed for bankruptcy protection
- LandAmerica reached agreement to sell its main underwriter subsidiaries to operating divisions of Fidelity National Financial, Inc.
- The Fidelity underwriters have entered into interim reinsurance agreements with Commonwealth and Lawyers Title – which apply only to new policies issued and may be terminated. We expect this situation to continue to evolve.

First American's practices regarding good funds In response to the developments listed above, **First American is modifying its position related to the acceptance of funds from the trust accounts of LandAmerica's underwriter subsidiaries.**

Where consistent with the "good funds" rule in a given state, First American's agents and offices are no longer prohibited from (and it is discretionary on the part of each agent or office manager) disbursing based on checks drawn on the trust accounts of LandAmerica's underwriter subsidiaries (collectively, the "LandAmerica Underwriters"):

- Commonwealth Land Title Insurance Company
- LandAmerica NJ Title Insurance Company
- Lawyers Title Insurance Corporation
- United Capital Title Insurance Company

The better practice is still to have all funds transferred by wire transfer. In addition, while the prohibition on disbursing on LandAm Underwriters is no longer in effect, this action on First American's part does not negate the existing requirements as set forth in First American's bulletins listed above. **As always, the decision to disburse on uncollected funds is one which should be made with the understanding that the agent or office will still be responsible for liability created by an escrow account shortage that results from that decision.**

First American's practice for transactions involving LandAmerica 1031 Exchange Services Company, Inc. As stated above, LandAmerica 1031 Exchange Services Company, Inc. is in bankruptcy. Effective immediately, **approval from the First American Underwriting Department is REQUIRED** before First American will commit to insure any transaction involving the LandAmerica 1031 Exchange Services Company, Inc. or any of its affiliated exchange companies or subsidiaries (including a subsidiary acting as the exchange accommodation titleholder in a reverse exchange). This is the case whether LandAmerica 1031 Exchange Services Company, Inc. or an affiliate is in title to a property, or transfers funds (even good funds) with regard to a property.

The concerns, including the potential for a preferential transfer under 11 U.S.C. §547(b), are more fully explained in the home office bulletins referenced above. The position of First American may change if an Order is entered by the bankruptcy court satisfying First American that conveyances in which LandAmerica 1031 Exchange Services Company, Inc. is the exchange intermediary are in the "ordinary course" of business and are not subject to being set aside as a preferential transfer. First American will monitor the progress of the bankruptcy case to keep you updated regarding this issue. If you have any questions about these bulletins, please feel free to contact First American's underwriting department, including the Home Office Underwriting Department ((800)854-3643).

Reliance on Indemnity Letters

Greater care must be exercised, when deciding whether to rely on a transaction specific indemnity agreement from one of the LandAmerica Underwriters. Such indemnity letters are also not covered by the terms of the Fidelity Companies reinsurance agreements. Again, it becomes a risk analysis. **If you have any questions about these examples, or have a situation which doesn't fit, please call your First American underwriter.**

A. Indemnities from LandAmerica Underwriters may be accepted where the underlying issue is as follows and you do not have independent knowledge of that the item that is the subject of the indemnity is likely to be pursued including:

1. An unsatisfied mortgage that should have been paid out of a prior transaction and more than 2 years has passed since the prior transaction.
2. Unsatisfied liens and the property owner or prior closing office supplies evidence of payment, such as a HUD-1 or cancelled check.
3. Uncertainty as to proper service on or identification of parties in lawsuits and foreclosures which have been closed more than 2 years.

- a. **PA CAVEAT: Premises with a foreclosure in the chain of title may only be insured upon receipt of proof of personal service on all defendant(s)/owner(s) of both the complaint and notice of sale.**
- b. **PA CAVEAT: Premises with a tax sale in the chain of title may only be insured upon receipt of proof of personal service on all taxpayer/owner(s) of both the notice of claim and notice of sale; AND one year has passed since the recording of the tax sale deed. (For more on tax sales see Title Alert 2006-20: http://www.pennattorneys.com/printable/title_alerts/2006-20.pdf)**

1. Judgment liens in an aggregate amount of less than \$50,000 which may have been, but are not definitely, against a prior party in title, where the party against whom assessed has a relatively common name AND the judgment does not contain specific identifiers or a verifiable non-identity affidavit from a prior transaction is produced.
2. Local government and Code enforcement liens assessed against parties with similar names, but not naming the property to be insured.
3. Any matter which you would otherwise insure over, but might request an indemnity in an abundance of caution.

B. Indemnities from LandAmerica Underwriters should not be accepted where the underlying issue is:

1. A whole or partial failure of title, including the existence of ongoing litigation challenging the title, which may or may not be evidenced by a Lis Pendens.
2. Any unsatisfied mortgage or lien (even those meeting the criteria in section A above) for which there is indication of an attempt to collect, whether or not of record, litigation, demands being made, re-filing of notices and claims of lien, etc.
3. Judgment liens clearly attached to the property in question if evidence of payment is not produced as stated in A.2. above.
4. Judgment liens clearly naming a current or prior owner if evidence of payment is not produced as stated in A.2. above.
5. Situation in which you know there is a reasonable likelihood that the item that is the subject of the indemnity is likely to be enforced.

Penn Attorneys' underwriters are authorized to deviate from these guidelines on a case by case basis. Please contact Penn Attorneys for guidance.

LandAmerica Financial Group, Inc. Operating Divisions & Subsidiaries Commercial Services:
LandAmerica Assessment Corporation, LandAmerica Commercial Search Services Company,
LandAmerica Commercial Settlements, LandAmerica Exchange Company, LandAmerica Valuation
Corporation

Residential Services: American Title Company of Livingston, Atlantic Title & Abstract Company, Buyers Home Warranty Company, Buyers Real Estate Services, Inc., Channel Islands Escrow, Inc., Commonwealth Land Title Company, Gateway Title Company, Golden Escrow, Inc., Gulf Atlantic Title, Land Title Agency, Inc., LandAmerica Albuquerque Title Company, LandAmerica Alliance Company, LandAmerica American Title Company, LandAmerica Austin Title Company, LandAmerica Capitol City Title Services, Inc., LandAmerica Charter Title Company, LandAmerica Commonwealth Title of Austin, Inc., LandAmerica Commonwealth Title of Dallas, Inc., LandAmerica Commonwealth Title of Fort Worth,

Inc., LandAmerica Commonwealth Title of Houston, Inc., LandAmerica Lawyers Title of Amarillo, Inc., LandAmerica Lawyers Title of El Paso, Inc., LandAmerica Lawyers Title of Roswell, Inc., LandAmerica Lawyers Title of San Antonio, Inc., LandAmerica New Mexico Title Company, LandAmerica Partners Title Company LandAmerica Property Inspection Services, Inc., LandAmerica Texas Title Company, LandAmerica Wilson Title Company, LandAmerica Title Agency, Lawyers Title of Nevada, Rainier Title Company, Southland Title Corporation, StoneRidge Escrow Corporation, USA Title Affiliates, Inc.

Lender Services: LandAmerica Credit Services, Inc., LandAmerica Default Services, Inc., LandAmerica OneStop, Inc., LandAmerica Tax and Flood Services, Inc., LoanCare Servicing Center, Inc.

International Services: LandAmerica (Europe) SARL

Title Alerts from 1997 to present are available on our website at: <http://www.pennattorneys.com>

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