

PENN ATTORNEYS

TITLE ALERT

DATE: 05/15/09

RE: Title Alert 2009-06

**HONA 263 – Unacceptable Provisions in Short Sale
Approval Letters**

For your information, here is a special bulletin from First American's Home Office Underwriting Group, written by K. Gene Aalseth, V.P. & Associate Senior Underwriter, relating to unacceptable provisions in short sale approval letters. Please pay special attention to the section on subsequent transfers, as this position was not covered in any of our previous short sale memoranda. Please also be aware that this bulletin is effective in addition to, not in place of, Penn Attorneys Title Alert 2009-04 "Short Sale Approval Letter" issued 04/08/09.

Purpose:

This bulletin sets forth underwriting guidance for dealing with provisions that some lenders include in their short sale approval letters that we as a title insurer and settlement agent find objectionable.

Right to Void Transaction and Re-impose Security Instrument after Closing

Some lenders include in their short sale approval letter a provision which purportedly gives them the right to invalidate the short sale transaction and re-impose the security instrument after closing if certain events occur. One letter we have seen includes the following condition:

If the property was acquired by any means of fraud, [lender's name] reserves the right to pursue any and all actions available to it to offset its losses. If it is determined that Sellers and/or Buyers participated in any way to the fraud, this short sale will be void, and the Note and Security Instrument will remain in full force and effect.

If any provision which purports to give the lender the post closing ability to void the transaction and/or reimpose the lien of its security instrument appears in a short sale approval/estoppels or payoff letter you are NOT authorized to close the transaction unless the letter is amended in writing to remove the condition.

We cannot insure the new purchaser or lender free and clear of the short sale lender's security interest, if the short sale lender purports to reserve the right to void the short sale transaction and re-impose or maintain its lien after closing and disbursement.

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

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Notification of Subsequent Transfers

Some lenders include in their short sale approval letter a requirement that the title/escrow company or settlement agent notify them of any transfers of the property after closing. One letter we have seen includes the following condition:

There are to be no transfers of property within 30 days of the closing of this transaction. Escrow instructions must contain a clause that if such a transaction takes place then the title/escrow company must notify (Lender).

We are not in a position to continue to monitor the actions of the buyer after the closing of the transaction and you are NOT authorized to close the transaction unless the letter is amended in writing to remove the requirement. However, if at or before closing you are aware of any transactions scheduled to record concurrently with or after the short sale transaction, disclosure MUST be made to the short sale lender and any lenders funding the purchase(s) prior to closing. You are NOT authorized to close without full disclosure of the subsequent transaction.

Review All Short Sale Approval Letter Provisions

This is another reminder that all short sale approval letters have conditions for the lender's agreement to take a short payoff to be effective. Please be sure to read all short sale approval/estoppels and payoff letters carefully.

If ANY of the conditions purport to allow for the avoidance of the transaction and reimposition of the security instrument after closing, impose obligations on the title/escrow company or settlement agent to monitor the property after closing, or otherwise seem objectionable—please contact us.

Approved Attorneys are reminded that a **SHORT SALE TRANSACTION needs to be disclosed as such on the Attorney's Preliminary Certificate and Report on Title** and a copy of the Short Sale Approval Letter should be submitted with the application in order to determine if the conditions and provisions of the Short Sale Letter meet our underwriting guidelines.