



SHINE BRIGHT

4 THINGS YOU SHOULD KNOW ABOUT AFFIRMATIVE COVERAGE

Sometimes referred to as “insuring over” or “insuring around,” affirmative coverage is issued by the title company – usually at the request of the mortgage lender – to protect the insured against specific, identified title defects, typically set forth in Schedule B of the title policy. Affirmative coverage can be a powerful tool to successfully close real estate transactions in the face of identified title defects. Here are four things to know about affirmative coverage:

EXAMPLE 1

Granting affirmative coverage is a decision by an underwriter to accept the risk of loss posed by an identified defect. Defects might include an encroachment, pre-existing lien, indefinite or vague easement rights, or incorrect legal descriptions contained in a prior vesting instruments. The affirmative coverage is granted by adding customized language to the policy, thus insuring against loss caused by the specific, identified title defect.

EXAMPLE 2

Underwriters may grant affirmative coverage in situations where the risk of loss is extremely low, but removal of the defect cannot be completed prior to closing. Affirmative coverage gives underwriters the flexibility to accept specific identified risks, without accepting an entire class or type of risk, and allow transactions to proceed. For example, a prior unreleased mortgage lien, for which there is evidence of full satisfaction, may remain in the chain of title. Due to the lender’s processing time and the municipality’s recording schedule, the release of the lien may not be able to be completed prior to the closing. In these situations, affirmative coverage allows the removal of the title defect, the unreleased lien, to proceed without impacting the closing schedule.

EXAMPLE 3

Affirmative coverage is more commonly granted in situations where the underwriter determines that the likelihood of loss resulting from the defect is extremely small. For example, an underwriter may grant affirmative coverage for a specific mechanic’s lien, without granting coverage for all mechanics’ liens attached to the property, because adequate bonds or indemnity agreements are in place to satisfy the lien.

EXAMPLE 4

The determination of whether to issue affirmative coverage is made on a transaction-by-transaction basis. Whether affirmative coverage is granted depends on the type of insurance being issued, that is, whether the title defect is identified on an Owner’s Policy or Loan Policy for title insurance. Underwriters are more likely to grant affirmative coverage requests in loan policies due to the fundamental difference in coverage afforded under the policy types.

Of course you do your part to exceed customer expectations at every stage. An effective title partner can assist you in that goal, by providing the resources to search out and assess any title flaws or restrictions, the means and options to resolve concerns, and the ability to assess and manage risk to the satisfaction of all parties, which may include ‘insuring over’ a perceived flaw with affirmative coverage that can help keep your deal together.

HELPING YOU SHINE BRIGHT