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Title Insurance Coverage: Real Property Subject to Indian Land Claims

Sec. 38a-424a-1. Purpose

Sections 38a-424a-1 to 38a-424a-4, inclusive, are intended to provide guidelines to maximize the availability of title insurance coverage with respect to real property that is the subject of an Indian land claim consistent with the operation of title insurers on a safe and sound financial basis. Nothing in sections 38a-424a-1 to 38a-424a-4, inclusive, is intended to prohibit title insurers from providing coverage on a basis more favorable to the insured.

(Effective December 22, 1994)

Sec. 38a-424a-2. Definitions

As used in Sections 38a-424a-1 to 38a-424a-4, inclusive:

(1) "Commissioner" means the Insurance Commissioner of the State of Connecticut.

(2) "Exception" or "Indian land claim exception" means the reference to or identification of an Indian land claim lawsuit or notice of intent to sue appearing in Schedule B of the title insurance policy.

(3) "Indian land claim" means a claim for real property or monetary damages based on an alleged illegal transfer, use or occupation of such real property and which claim is based on a violation of any condition or restriction established by common law, statute or other governmental enactment on alienation of lands owned by Native American Indians or Native American Indian tribes.

(4) "Non-residential real property" means vacant unimproved real property, real property with improvements other than a one-to-four family residence, or a non-residential unit in a common interest community.

(5) "Notice of intent to sue" means a written declaration provided to or filed with any municipal government official giving notice that the party filing such notice intends to pursue an Indian land claim and providing a general description of the real property affected which declaration is actually known to the title insurer or recorded in the land records of the municipality affected.

(6) "Residential real property" means real property with improvements consisting only of a one-to-four family residence, including a residential unit in a common interest community.

(7) "Title insurer" means a company organized under laws of this State for the purpose of transacting, as insurer, the business of title insurance and any foreign or alien title insurer engaged in this State in the business of title insurance as insurer.

(Effective December 22, 1994)

Sec. 38a-424a-3. Required practices

(a) **Existing owner's policy—sale or mortgage.** If the real property has been identified in an Indian land claim lawsuit which has been filed in court, or is the subject of a notice of intent to sue, and an owner's policy has been issued by the title insurer to the present owner, the title insurer, upon payment of the appropriate premium, shall issue a new owner's policy to a bonafide purchaser of that real property and a new loan policy to that purchaser's mortgagee taking the Indian land claim exception contained in subsection (e) of this section. If the amount of insurance coverage requested exceeds that under the existing policy the title insurer may limit any loss or damage to the insured by reason of an Indian land claim to the amount of the existing policy.

(b) **Existing loan policy—refinancing.** If the real property has been identified in an Indian land claim lawsuit which has been filed in court, or is the subject of a notice of intent to sue, and a loan policy has been issued by the title insurer to the present mortgagee, the title insurer, upon payment of the appropriate premium, shall issue a new loan policy to the lender taking the Indian land claim exception contained in subsection (e) of this section. If the amount of insurance coverage requested exceeds that under the existing policy, the title insurer may limit any loss or damage to the insured by reason of an Indian land claim to the original amount of the existing loan policy.

(c) **Existing loan policy—foreclosure or deep-in-lieu-of-foreclosure.** If the real property has been identified in an Indian land claim lawsuit which has been filed in court, or is the subject of a notice of intent to sue, and a loan policy is held by the foreclosing lender, the title insurer that issued such policy, upon payment of the appropriate premium, shall issue an owner's policy to the mortgagee named in the loan policy or to the transferee of such mortgagee when title to such real property has become absolute in the mortgagee or its transferee by virtue of a judgment of strict foreclosure or of a deed in lieu of foreclosure from the mortgagor taking the Indian land claim exception contained in subsection (e) of this section. If the amount of insurance coverage requested exceeds that under the existing policy the title insurer may limit any loss or damage to the insured by reason of an Indian land claim to the original amount of the existing loan policy.

(d) **Waiver requirement.** As a condition to the issuance of a policy pursuant to subsections (a), (b) and (c) of this section, the title insurer may require the insured under the existing policy to waive or relinquish any right to file a claim under the existing policy concerning any Indian land claims.

(e) **No reduction in new policy due to pending Indian land claim or notice of intent to sue.** A title insurer may take an exception in any policy issued pursuant to subsection (a), (b) or (c) of this section for the pendency of any Indian land claim lawsuit or notice of intent to sue which identifies, describes or includes the property insured by such policy, provided that no such exception shall operate to reduce the scope and level of coverage below that which was provided in the policy being replaced.

(f) **No existing owner's or loan policy—sale/refinancing.**

(1) If the real property has been identified in an Indian land claim lawsuit which has been filed in court, a title insurer who is not currently the insurer of the property shall issue a policy to a bona fide purchaser or bona fide mortgagee upon payment of the premium, provided that said policy may make exception for any Indian land claim.

(2) If real property is not subject to an Indian land claim lawsuit which has been filed in court but is located in an area subject to a notice of intent to sue, a title insurer who is not currently the insurer of the property shall issue a title insurance policy to a bona fide purchaser or bona fide mortgagee which may make exception for any Indian land claim but shall provide affirmative coverage against actual loss or damage resulting from a final judgment rendered against the insured in any Indian land claim action. The title insurer shall also defend the insured in any Indian land claim lawsuit commenced after the issuance of the policy and shall pay all costs of such defense including court costs, attorney's fees and expenses, all to the extent provided in the conditions and stipulations of the policy.

(3) Coverage for Indian land claims under this section for non-residential real property may be limited to $500,000 if reinsurance coverage is unobtainable from the title insurer's existing reinsurer in the normal course of business.

(Effective December 22, 1994)

Sec. 38a-424a-4. Underwriting guidelines

Title insurers shall, immediately upon the effective date of sections 38a-424a-1 to 38a-424a-4, inclusive, file with the Commissioner all underwriting guidelines relating to title insurance coverage covering Indian land claims. No changes to such guidelines adopted after the effective date of sections 38a-424a-1 to 38a-424a-4, inclusive, shall be effective until filed with the Commissioner.

(Effective December 22, 1994)