

July 2, 1970

SUBJECT: INSURANCE

WITHDRAWN

Circular Letter 12 (1970)

TO ALL DOMESTIC INSURERS AND UNITED STATES BRANCHES OF ALIEN INSURERS

Evidences of Title to Real Estate

This letter supersedes the Department letter dated February 28, 1966 on this subject. Sections 1(b)(2), 1(c), 3(c) and 3(d) of the 1966 letter have been amended in order to set forth the Department's current requirements.

Evidences of title to real property or leaseholds owned by or mortgaged to domestic insurers and United States branches of alien insurers supervised by this Department are to conform to the following rules:

1. Policies of Title Insurance or Title Guaranty

a. On properties located in New York State, the Department will accept as evidence of good title, policies of title insurance issued by companies authorized to do such business in this State.

b. On properties located in any other State, the Department will accept as evidence of good title:

(1) Policies of title insurance issued by companies authorized to do such business in this State.

(2) Policies of title insurance or guarantees of title, issued by companies authorized to do such business in such other State, provided there is on file with the insurer owning the property, leasehold, or mortgage, a duly executed certificate, renewed annually, from the supervising official of such other State, certifying that the title company is authorized in that State. With respect to those states which issue continuous certificates of authority, the Department will accept written assurances, furnished annually by the title insurer, that its certificate of authority is in effect and has not been revoked, cancelled or suspended.

(3) (In States which do not require title insurers to be licensed): Policies of title insurance or guarantees of title, issued by companies for whom there is on file with the insurer owning the property, leasehold, or mortgage, a duly executed certificate, renewed annually, from the supervising official of the title insurer's State of incorporation, certifying that the issuance of a title insurance policy is permissible under the laws of that State and the charter of the issuing company.

c. The policy of title insurance on all real estate or leaseholds owned by or mortgaged to the insurer shall run to such insurer as owner in fee simple of the real estate or as first mortgagee on such real property as of the date of recording of the respective title deeds and mortgages and shall protect the insurer in an amount at least equal to the amount of the purchase price as of the date of acquisition of the real property or the principal amount of any mortgage owned. The description in the title policy shall agree with that in the deed, lease, mortgage or assignment.

The requirement that the title policy shall be as of the date of recording of the respective title deeds and mortgages is satisfied if the policy contains a "Validation and Modification" clause including the following provision: If the recording date of the instruments creating the insured interest is later than the policy date, such policy shall cover intervening liens or encumbrances, except real estate taxes, water charges and sewer rents.

d. In the event the insurer has a master title insurance policy on file it may accept duly executed certificates of title from the title company named as insurer in the master title policy provided the certificate incorporates therein the terms of the master policy.

## 2. Registered or Torrens Titles

If the property is situated in a State which provides by law for the registration of title to real property, a duly authenticated certificate of the title, issued by a court of competent jurisdiction or by an authorized public officer of that State is acceptable to the Department.

## 3. Abstracts of Title and Attorney's Opinions

a. In cases where no acceptable title insurance exists, the Department will accept a duly executed abstract of title, with searches, or a certified copy of such papers, accompanied by a comprehensive attorney's opinion. Such abstract and searches should go back a reasonable period of time and be brought down and certified to the date of the recording of the deed, lease, mortgage or assignment of the mortgage to the insurer.

b. Such abstract with searches must cover the local record offices (county clerk, register, etc.), the offices of the State and the United States courts of the jurisdiction and all other records of liens against real property and, unless there are other evidences of the payment of taxes, should include a tax search brought down to show the payment of all taxes, assessments or installments thereof to the date of recording of the instruments.

c. In lieu of retaining the abstract, an insurer may adopt a procedure whereunder the abstract is returned to the borrower under an adequate form of receipt, or whereunder the abstract is held by the mortgage loan correspondent servicing the loan. In the latter procedure, the insurer shall retain the comprehensive attorney's opinion and shall be in possession of a duly executed certificate, stating that the abstract is held by the correspondent and that it shows the beginning and ending dates of the chain of title reported therein and the name of the examiner who prepared the abstract.

d. If the title and title evidence are such as to be generally acceptable to prudent lending institutions and leading attorneys in the community in which the mortgaged property is situated, such title and title evidence will be accepted by the Department, provided the insurer is in possession of a comprehensive attorney's opinion indicating the scope of the examination made of the underlying official title records.

#### 4. Estoppel Certificate

Where the mortgage has been acquired by assignment and the evidence is other than a title policy, the insurer should have an estoppel certificate or agreement from the owner unless it is not reasonably possible to obtain such estoppel certificate or agreement, in which case counsel of the insurer should give reasons in writing for not being able to obtain same.

#### 5. Record of Approval of Evidence of Title

In all cases there shall be a record showing that a member of the insurer's legal or other competent department is satisfied that the evidence of title is in order.

Please acknowledge receipt of this letter.

Very truly yours,

(Signed) RICHARD E. STEWART

Superintendent of Insurance