



COMMONWEALTH LAND TITLE INSURANCE COMPANY
LAWYERS TITLE INSURANCE CORPORATION
TRANSNATION TITLE INSURANCE COMPANY

TO:

All Ohio Agents and Branch Offices

FROM:

Samuel Shellhaas, Associate Underwriting Counsel

SUBJECT:

Bulletin – 06-05 “Land Trusts” (2 pages)

DATE: JANUARY 23, 2006

The Company has experienced an increased number of underwriting calls on “Land Trusts”. The Company is willing to insure these transactions subject to the guidelines set forth below.

A “land trust” has the following characteristics:

The trust instrument limits the trustee’s power to convey or mortgage the real estate by requiring that the “holder of the beneficial interests of the trust” consent to the transaction.

The property owner is usually listed as the holder of the beneficial interests of the trust.

The trust may refer to these beneficial interests as certificates of beneficial interest or units of beneficial interests. The beneficial interests may or may not be transferable to third parties.

The name of the trust is usually the street address of the trust, i.e., “The 165 Fairpark Drive Land Trust”.

A land trust is normally created to assist a property owner who is about to be foreclosed upon find a buyer. In other words, it is distressed property. The investor induces the property owner to transfer the property into a “land trust” and the investor becomes the trustee or creates an entity (LLC) which they control to become the trustee. The trustee then finds a purchaser for the property and transfers title to the property to the new buyer for, presumably, a fee with the balance of the net proceeds going to the original property owner.

This type of transaction is ripe for dispute between the property owner and the trustee over the amount of commission and fees that the trustee may charge in the transaction. This might cause the beneficiary/original property owner to attempt to attack the transfer into the trust and, as a consequence, any sale by the trustee. A bankruptcy trustee may try to void the transaction as a preference and nullify the transfer. Finally, the investor/trustee is usually negotiating with lien holders for reduced payoffs and this provides a third area for dispute should the investor/trustee misrepresent that the property has been transferred to the trustee or the terms of the subsequent sale.

In light of the above, we provide the following guidelines when insuring any transaction involving a land trust:

OWNER'S POLICIES

Never insure the trustee; insure only the transferee of the trustee.

When issuing a commitment, show title in the trustee, but run a name search on the original property owner for federal, state and judgment liens and bankruptcies, etc.

Require a deed from both the trustee *and* the original property owner.

REFINANCE LOAN POLICIES

When issuing a commitment, show title in the trustee, but run a name search on the original property owner for federal, state and judgment liens and bankruptcies, etc.

Require that the mortgage be signed by the both the trustee *and* the original property owner.

CLOSINGS

Show the Trustee and the original owner(s) on the HUD and have both sign the HUD.

Issue the proceeds check payable to both the trustee *and* the original property owner.

Do not accept a power of attorney from the original property owner to the trustee for the execution of closing documents or deeds.

There can be no assignment of the beneficial interest.

The end lender must know that the trustee has been in title less than 12 months.

The sale price can not be more than 120% of the property tax valuation.

You must obtain the written payoff from the lender whose mortgage is being paid off. The lender who is being paid off must be aware of the purchase price for which the Trustee is selling the property.

You may not insure any transactions where a foreclosure action is pending, the sheriff's sale has occurred, and/or the confirmation of sale has been filed.

You do not need to have the prior titleholders sign the deed and closing statement if they execute a consent which would read as follows:

_____ and _____ as beneficiaries under trust described as _____ and dated _____ hereby consent to the sale of the property by _____, Trustee of the _____ Trust to _____ for the sum of \$ _____.

Consent in so

