

New Jersey N2K Hour: Understanding the Policy Series

Covered Risks in the Owners and Lenders Policies

Presented By: Sue Bavaro - NJ Underwriting
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Components of a Policy: Policy Form

Covered Risks

Covered Risks are what the policy covers

Exclusions from
Coverage

Exclusions are what the policy never covers

Terms and
Conditions

Conditions are the definitions and limitations that describe the coverage

Policy Schedules

The Schedules contain the information that is particular to this transaction and this property.

Schedule A

Defines the insured and the Land

Schedule B

Identifies the exceptions from coverage

Covered Risks on the 2021 OP and LP

Opening Sentence of Covered Risks on both OP and LP

- SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, Stewart Title Guaranty Company (the “Company”), insures as of the Date of Policy and, to the extent stated in Covered Risks 9 and 10*, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

- *Loan Policy cites Covered Risks 11, 13 and 14

Covered Risk 1.

Title being vested other than as stated in Schedule A.

Covered Risk 2

2. Any defect in or lien or encumbrance on the Title. Covered Risk 2 includes, but is not limited to, insurance against loss from:

- a. Defects
- b. Real estate liens
- c. Survey

Covered Risk 2a – Defects caused by

2a. Defects caused by:

- i. forgery, fraud, undue influence, duress, incompetency, incapacity, impersonation**
- ii. the failure of a person or Entity to have authorized a transfer or conveyance;**
- iii. a document affecting the Title not properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;**
- iv. Failure to perform those acts necessary to create electronic document**

Covered Risk 2a (continued)

v. Invalid POA

vi. a document not properly filed, recorded, or indexed in the Public Records, including the failure to have performed those acts by electronic means authorized by law;

vii. a defective judicial or administrative proceeding; or

viii. the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.

Covered Risk 2b.

Defect caused by ... the lien of real estate taxes or assessments due and payable, but unpaid

Covered Risk 2c.

Loss from ... the effect on the Title of an encumbrance, violation, variation, adverse circumstance, boundary line overlaps, or encroachment but only if the encumbrance, violation, variation, adverse circumstance, boundary line overlap or encroachment would have been disclosed by an accurate and complete land title survey of the Land.

Covered Risk 3.

Unmarketable Title.

Covered Risk 4.

No right of access to and from the Land.

Covered Risk 5.

A violation or enforcement of a law, ordinance, permit or governmental regulation, including those related to building and zoning, but only to the extent of the violation or enforcement described by the enforcing governmental authority in an Enforcement Notice that identifies a restriction, regulation, or prohibition relating to:

- a. the occupancy, use, or enjoyment of the Land;
- b. the character, dimensions, or location of an improvement on the Land;
- c. the subdivision of the Land; or
- d. environmental remediation or protection on the Land.

Covered Risk 6.

An enforcement of a governmental forfeiture, police, regulatory, or national security power, but only to the extent of the enforcement described by the enforcing governmental authority in an Enforcement Notice.

Covered Risk 7.

An exercise of the power of eminent domain, but only to the extent:

- a. of the exercise described in an Enforcement Notice; or
- b. the taking occurred and is binding on a purchaser for value without Knowledge.

Covered Risk 8.

An enforcement of a PACA-PSA Trust, but only to the extent of the enforcement described in an Enforcement Notice.

Covered Risk 9.

The Title being vested other than as stated in Schedule A, the Title being defective, or the effect of a court order providing an alternative remedy:

a. resulting from the avoidance, in whole or in part, of any transfer of all or any part of the Title to the Land or any interest in the Land occurring prior to the transaction vesting the Title because that prior transfer constituted a:

i. fraudulent conveyance, fraudulent transfer, or preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law; or

ii. voidable transfer under the Uniform Voidable Trans Act; or

Covered Risk 9. (continued)

b. because the instrument vesting the Title constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law by reason of the failure:

i. to timely record the instrument vesting the Title in the Public Records after execution and delivery of the instrument to the Insured; or

ii. of the recording of the instrument vesting the Title in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor

Covered Risk 10.

Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to the Date of Policy and prior to the recording of the deed or other instrument vesting the Title in the Public Records.

Covered Risks on LOAN POLICY – 2-22

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, Stewart Guarantee, insures as of the Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

Covered Risk 9.

9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. Covered Risk 9 includes, but is not limited to, insurance against loss caused by:

- a. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;**
- b. the failure of a person or Entity to have authorized a transfer or conveyance;**
- c. the Insured Mortgage not being properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;**

Covered Risk 9. (Continued)

- d. a failure to perform those acts necessary to create an Insured Mortgage by electronic means authorized by law;
- e. a document having been executed under a falsified, expired, or otherwise invalid power of attorney;
- f. the Insured Mortgage not having been properly filed, recorded, or indexed in the Public Records, including the failure to have performed those acts by electronic means authorized by law;
- g. a defective judicial or administrative proceeding; or
- h. invalidity or unenforceability of the lien of the Insured Mortgage as a result of the repudiation of an electronic signature by a person that executed the Insured Mortgage because the electronic signature on the Insured Mortgage was not valid under applicable electronic transactions law.

Covered Risk 10.

The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance on the Title as security for the following components of the Indebtedness:

- a. the amount of the **principal** disbursed as of the Date of Policy;**
- b. the **interest** on the obligation secured by the Insured Mortgage;**
- c. the reasonable **expense of foreclosure**;**

Covered Risk 10 (continued)

d. amounts advanced for insurance premiums by the Insured before the acquisition of the estate or interest in the Title; and

e. the following amounts advanced by the Insured before the acquisition of the estate or interest in the Title to protect the priority of the lien of the Insured Mortgage:

i. real estate taxes and assessments imposed by a governmental taxing authority; and

ii. regular, periodic assessments by a property owners' association.

Covered Risk 11.

The lack of priority of the lien of the Insured Mortgage upon the Title:

a. as security for each advance of proceeds of the loan secured by the **Insured Mortgage** over any statutory lien for service, labor, material, or equipment arising from construction of an improvement or work related to the Land when the improvement or work is:

i. contracted for or commenced on or before the Date of Policy;

or

ii. contracted for, commenced, or continued after the Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the **Insured Mortgage** that the Insured has advanced or is obligated on the Date of Policy to advance; and

Covered Risk 11. (continued)

b. over the lien of any assessments for street improvements under construction or completed at the Date of Policy.

Covered Risk 12.

The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.

Covered Risk 13.

13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title, or the effect of a court order providing an alternative remedy:

- a. resulting from the avoidance, in whole or in part, of any transfer of all or any part of the Title to the Land or any interest in the Land occurring prior to the transaction creating the lien of the **Insured Mortgage** because that prior transfer constituted a:
 - i. fraudulent conveyance, fraudulent transfer, or preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law; or**
 - ii. voidable transfer under the Uniform Voidable Trans Act;****
- or**

Covered Risk 13. (continued)

b. because the **Insured Mortgage** constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law by reason of the failure:

i. to timely record the **Insured Mortgage** in the Public Records after execution and delivery of the Insured Mortgage to the Insured; or

ii. of the recording of the **Insured Mortgage** in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

Covered Risk 14.

Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to the Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

DEFENSE OF COVERED CLAIMS

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.



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Please mark your calendars for our:

March N2K HOUR

March 12, 2024

Understanding the Policy Series - Exclusions

11:00AM