



Seller Financing in a Residential Transaction Dodd-Frank Rules

Private Seller Financing in a Residential Transaction

The purpose of this Bulletin is to address the insuring of residential transactions that involve either a private seller mortgage or an agreement for deed, in light of recent regulatory changes in residential lending made under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). This Act requires residential mortgage products to be offered and issued only by licensed loan originators, but there are some exceptions.

A new lending rule under Dodd-Frank, referred to as the "Ability to Pay and Qualified Mortgage Rule" ("QMR"), outlines requirements for permissible seller financing transactions. It discusses exemptions that may apply to seller financing and may permit a seller to participate in seller financing without being a licensed loan originator; and penalties for engaging in impermissible seller financing.

Title Agent Does Not Have to Determine Whether Seller Financing Complies

While the requirements for permissible financing under QMR are many and the exemptions from the requirements are few, the remedies which may be pursued for regulation violations may impact the seller's ability to enforce the instrument in whole or in part. There is a concern that the remedies may impede the seller's ability to foreclose on their private seller mortgage or foreclose on an agreement for deed that is in default. Nonetheless, the standard loan policy form does not insure enforceability due to any consumer credit protection or truth-in-lending laws; and therefore, the title agent does not have to determine whether the transaction will comply with Dodd-Frank rules on seller financing.

Use the Standard Long Form ALTA Loan Policy

When insuring either private seller mortgages or agreement for deeds, the Short Form Residential Loan policy should NOT be used. That policy form is designed for institutional lenders. It incorporates by reference the terms and conditions of the standard loan policy. The standard long version of the ALTA Loan Policy should be used because it specifically sets forth all of the policy terms and conditions, including paragraph 5 of the "Exclusions From Coverage" which excludes coverage regarding the "Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law".

Insuring the Vendor in an Agreement for Deed

The ALTA 2006 Owner's Policy jacket does not contain any such exclusion from coverage relative to the invalidity or enforceability of the interest being insured. When asked, in rare instances, to issue a policy insuring the vendor of an agreement for deed, issue the ALTA 2006 Owner's Policy and add the following exception:

This policy does not insure against loss or damage arising out of the invalidity or unenforceability in whole or in part of the agreement for deed interest that arises out of the transaction evidenced by the agreement for deed interest and is based upon usury or any consumer credit protection or truth-in-lending law.

There is no requirement to add this exception when insuring an agreement for deed vendee.

Dodd-Frank Rules Seller Financing Decision Tree

