

Title Tips - "When Title Insurance Coverage Terminates"

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Question: Our insured is planning to convey property to a trust or LLC. Their attorney has called inquiring as to whether their title insurance coverage will terminate on the transfer. Will it?

Answer: If they are insured using the ALTA One-to-Four Family Residential Policy - 1987 (NJR 1-06) or the ALTA Owners Policy - 1992 (NJR 1-11), coverage will terminate. If they are insured under the ALTA Owners Policy - 2006 (NJR 1-15) or the Expanded Coverage Homeowners Policy - 2008 (NJR 1-16) policy, coverage may continue, depending upon the transaction.

The New Jersey Supreme Court rendered a decision in Shotmeyer v. New Jersey Realty Title Ins. Co. on June 5, 2008. In that decision, the Court confirmed what the title industry had been advising clients for many years - that coverage terminates when the insured voluntarily conveys their entire interest in their property to another person or entity; but if the interest in the property is transferred as a matter of law (such as to an heir, devisee, or merger successor) the coverage remains in effect.

Under the definition of "Insured" in the 1987 Residential and 1992 Owners policies, coverage terminates when the insured voluntarily transfers title to another person or entity, whether or not that person or entity is in any way related to the grantor. However, coverage is continued if the transfer occurs as a matter of law. (It may also be continued under the 1992 Owners policy for any warranties made by the transferor.)

If the insured is covered by the 1987 Residential or 1992 Owners policies, there are two options to maintain coverage. First, they can obtain a new policy insuring the new entity. Second, they can purchase a Successors and transferees Endorsement (NJR 5-66) to the existing policy. This endorsement modifies the definition of "Insured" in the two policies to include the following:

1. successors by operation of law, as opposed to those taking by voluntary transfer; or
2. trustees or beneficiaries of an inter vivos or testamentary trust, providing the insured is the settlor or testator and that the transfer is for no or nominal consideration; or
3. transfers for no or nominal stated consideration provided the insured and transferee are related by blood or marriage; or
4. the transferor is the owner of all or substantially all of the stock or other interests in the transferee or vice versa; or
5. all or substantially all of the stock or other interests in both the transferor and transferee are owned by the same person or entity.

The cost for the endorsement is 10% of the applicable underwriting charge if purchased with the original policy, and 20% of the currently applicable underwriting charge for the underlying policy if the endorsement is issued subsequent to the issuance of the policy.

Please note that if the insured is the holder of a 2006 Owners or 2008 Expanded Coverage Homeowners policy, the definitions of "Insured" and "Continuation of Coverage" should be reviewed in light of the proposed transfer. The 2006 Owners policy contains a definition of "Insured" very similar to the definition in the Successors and Transferees Endorsement. The "Continuation of Coverage" in the 2008 Expanded Coverage Homeowners policy is limited to heirs and devisees, divorce situations, trustees or successors of a trust made by the insured, and beneficiaries of a trust on the insured's death. Consideration should be given to one of the other alternatives if the transfer does not fit into one of these specific situations.

As always, please call a member of our team if you have any questions.

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