



**UNDERWRITING COMMUNICATION**

Issued by

***First American Title Insurance Company***

**NJ-2012-011-Guideline**

Title: **Denial of Realty Transfer Fee Exemption for Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac)**

Written By: **Laurence J. Usignol**

Date Issued: **September 13, 2012**

**Purpose:** To inform First American offices and agents of an emerging Realty Transfer Fee (“RTF”) exemption issue concerning deeds from Fannie Mae and Freddie Mac.

**Background:** The State of New Jersey has long required the collection of fees as part of the recording process relating to deeds, with the amount of the RTF being dependent upon the identity of the parties, the amount of consideration, and the nature of the property being conveyed. NJSA 46:15-5 *et seq.* One of the many grounds for exemption from the RTF is for conveyances

(b) By or to the United States of America, this State, or any instrumentality, agency, or subdivision thereof .... [ NJSA 46:15-10]

This summer the Cape May County Clerk filed an action in the United States District Court of New Jersey challenging the refusal of Fannie Mae and Freddie Mac to pay any RTFs on their sales of real property (commonly referred to “REOs”, an acronym for “real estate owned”), since Fannie Mae and Freddie Mac were claiming to be exempt from the RTF obligation by virtue of being an “instrumentality, agency, or subdivision” of the United States of America. The Cape May County Clerk contends that Fannie Mae and Freddie Mac are private entities for purposes of the RTF and are not eligible to claim the exemption reserved to governmental instrumentalities.

At least two (2) Counties (Camden and Cape May) have recently begun to reject deeds from Fannie Mae and Freddie Mac which claim this governmental instrumentality exemption. We are concerned that more county recording officers will take the same position and begin to reject deeds from Fannie Mae and Freddie Mac which claim this exemption.

**Guideline:** When closing an REO transaction where Fannie Mae or Freddie Mac is the seller, you should escrow the realty transfer fee until you have verified that the deed claiming the governmental instrumentality exemption has been recorded. Once you have verified the recording of the deed, you may refund the transfer fee escrow. If you already know that a particular county recording officer denies the governmental instrumentality exemption to Fannie Mae and Freddie Mac and requires payment of the transfer fee, you must pay the transfer fee when submitting the deed for recording.

**Contact Information for Questions:** Contact your local First American underwriter.

NOTE: This Underwriting Communication is intended for use by title issuing offices, title insurance agents and approved attorneys of First American Title Insurance Company and any reliance by any other person or entity is unauthorized.

While the scope of your agency is limited to the functions of underwriting and the issuance of title insurance policies on our behalf and does not include closing or escrow services, we sometimes provide information and recommendations with regard to your

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ancillary closing or escrow business as a courtesy to you. Moreover, some communications, depending on whether noncompliance could impact on liability under our policies or closing protection letters, should be considered directives. This Communication is being provided to you with those considerations in mind.

\* \* This Underwriting Communication should become a permanent part of your records to assure compliance with its requirements.