

**Agency Guides/Fannie Mae Multifamily/Delegated Underwriting and Servicing Guide/Part III: New Underwriting (04/07/09)/Part IIIA: Base Underwriting Requirements (04/07/09)/Chapter 3: The Property (02/16/11)/Section 323: Title Insurance (02/16/11)/Section 323: Title Insurance (02/16/11)**

### **Section 323: Title Insurance (02/16/11)**

Each Mortgage Loan must be covered by an acceptable title insurance policy meeting the following requirements:

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### **Section 323.01: Title Insurance Company (02/16/11)**

The title policy must be issued by a title insurance company that:

- is duly authorized to issue title policies in the jurisdiction where the Property is located; and
- has an acceptable rating with adequate reserves.

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### **Section 323.02: Policy Form (02/16/11)**

Subject to satisfaction of other requirements set forth in this Section, Fannie Mae will accept the standard 2006 or the 1992 ALTA forms of loan title insurance policies. In those states in which ALTA forms of coverage are not approved for use by the applicable state insurance board or commission, the Lender must obtain the closest equivalent alternative coverage.

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### **Section 323.03: Electronic Policies (02/16/11)**

- Electronically issued title insurance policies are acceptable provided that the title insurance coverage is enforceable against the insurer notwithstanding electronic issuance and/or electronic signatures.

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### **Section 323.04: Insured (02/16/11)**

The title policy must name the Lender as the insured and, upon assignment of the Mortgage Loan to Fannie Mae, must insure Fannie Mae (either by reference to the Lender's "successors and assigns, as their interests may appear" or by direct reference to Fannie Mae).

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### **Section 323.05: Effective Date (02/16/11)**

If a 1992 ALTA title insurance policy form is issued, the effective date of the title insurance policy must be no earlier than the date (and time, if the effective date includes time) of recording of the Security Instrument. If a 2006 ALTA title insurance policy form is issued, the effective date of the title insurance policy must be no earlier than the date of the funding of the Mortgage Loan.

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### **Section 323.06: Amount of Title Insurance Policy (02/16/11)**

The amount of the title insurance policy must be not less than the original principal amount of the Mortgage Loan

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### **Section 323.07: Mortgage Loan Description (02/16/11)**

The title insurance policy must insure the same property description as is contained in the Security Instrument.

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### **Section 323.08: Standard Exceptions (02/16/11)**

Standard exceptions (such as for matters not shown on public records) must be deleted. The title insurance policy may contain an exception for tenants in possession under residential leases.

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### **Section 323.09: Survey Exception (02/16/11)**

The standard survey exception, if any, to the title insurance policy must be deleted. Exceptions to matters shown on a recorded map or plat must be specifically described and are subject to the other requirements of this Section.

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### **Section 323.10: Exception for Taxes, Assessments, or Other Lienable Items (02/16/11)**

If the title insurance policy includes any exception for taxes, assessments, or other Lienable items, the title insurance policy must expressly insure that such taxes, assessments, or other Lienable items are not yet due and payable or not yet delinquent. In the event that taxes will become delinquent within 60 days after closing of the Mortgage Loan, then the Lender must require payment of taxes at closing.

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### **Section 323.11: Financing Statements (02/16/11)**

Any financing statements filed or recorded in the office in which the Security Instrument must be recorded and showing the Lender as the secured party and related assignments thereof to Fannie Mae must be shown as an informational note on Schedule B, Part II, and must not be listed as exceptions on Schedule B, Part I. Other financing statements (such as those filed or recorded with the state or local office(s) for UCC filings) may be shown as an informational note on Schedule B, Part II, but must not be listed as exceptions on Schedule B, Part I.

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#### **A.: Generally (02/16/11)**

Lender must obtain appropriate ALTA, CLTA or equivalent endorsements, including, but not limited to, the endorsement discussed herein. For each endorsement, the Lender must assure that the endorsement is adequately incorporated into or cross referenced by the related "base" policy.

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#### **B.: Required Endorsements (02/16/11)**

In jurisdictions where a required ALTA form of endorsement is not available, a substantially equivalent form of endorsement or affirmative coverage included in Schedule B of the title policy is acceptable. The following endorsements are required:

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### **1.: Environmental Protection Lien Endorsement (02/16/11)**

Each title insurance policy must include an acceptable Environmental Protection Lien Endorsement. ALTA Form 8.1 (or the previously issued ALTA Form 8 or equivalent endorsement) is acceptable. Part (b) of ALTA Form 8.1 (or the previously issued ALTA Form 8 or equivalent endorsement) may only take exception for a statute under which environmental protection Liens could take priority over the Mortgage Loan. The Lender is liable to Fannie Mae for any loss sustained by the inclusion of a statute that is not a "super lien" or does not take priority over the Mortgage Loan. Super lien statutes acceptable as exceptions for inclusion in the ALTA Form 8.1 endorsement are listed in Acceptable Super Lien Statutes (Form 4666).

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### **2.: Comprehensive Endorsement (02/16/11)**

A Restrictions, Encroachments, Minerals Endorsement (ALTA Form 9.3-06, Form 9.3 or Form 9) or an equivalent comprehensive endorsement must be included in the title insurance policy if any Lien, encumbrance, condition, restriction, or easement is listed in the title insurance policy. If an ALTA Form 9 endorsement (or an equivalent comprehensive endorsement) has been issued, but any Schedule B, Part I exception(s) continue to be excluded from the coverage provided through that endorsement for (i) encroachments onto the Property or onto easements or rights of way excepted in Schedule B of the title insurance policy, (ii) encroachments by the Improvements on the Property onto adjoining land, (iii) violations of existing covenants, conditions or restrictions, or (iv) other adverse circumstances, the Lender must determine whether the exception(s) would be acceptable to a reasonable, prudent Lender and to Fannie Mae.

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### **3. Creditor's Rights (02/16/11)**

A Creditor's Rights (ALTA Form 21-06) or the equivalent affirmative coverage must be included in all title insurance policies.

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### **4.: Other Endorsements (02/16/11)**

Where appropriate because of the type of Property, Lender must assure that the title insurance policy includes: Condominium Endorsement; PUD Endorsement; Variable Rate Endorsement; Leasehold

Mortgage Endorsement (or Leasehold Mortgagee Policy is also acceptable); Location Endorsement; Unlocated Easements; Contiguity-Multiple Parcel.

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### **Section 323.13: Document Retention (02/16/11)**

The Lender must examine and keep in its Servicing File copies of all easements, encumbrances, or other restrictions shown as exceptions in the title insurance policy. Upon request, legible copies must be delivered to Fannie Mae.