

Franklin American Mortgage Company requires, as evidence of title, that an American Land Title Association (ALTA) Mortgagee Policy of Title Insurance and any required endorsements thereto, or its state approved equivalent, be provided for each mortgage loan purchased. The policy must be written on a standard form and be issued by a title insurance company that is satisfactory to Franklin American Mortgage Company.

The maximum single risk that can be assumed by a title company in connection with any mortgage is 50% of the sum of the company's capital, surplus and reserves (other than its loss and claim reserves). Greater amounts must be covered by reinsurance of coinsurance of another acceptable title company.

Chain of Title

Franklin American Mortgage Company requires a complete title commitment to be included in every closed loan package. Conventional and VA loans require a 6-month chain of title from the effective date of the title commitment including new construction or construction to permanent loans.

FHA and USDA loans require a 12-month chain of title. A minimum of 12-months chain of title as evidenced by the title commitment, satisfactory to Franklin American Mortgage Company review and meeting FHA anti-flipping requirements.

The Chain of Title documentation provided within the commitment must include the dates of transfer, the transferor, and transferee. In cases where there have been no conveyances, verbiage such as "six-month Chain of Title clear" or "there have been no documents conveying the land in the past XX (6, 12 or 24) months" are acceptable.

Evidence of Title

The Mortgage Policy of Title Insurance may be in the form of either (i) an ALTA Short Form Residential Loan Policy, including any related addenda or attachments, or (ii) an ALTA Residential Loan Policy, or its equivalent, provided that:

- The policy is validly issued in the jurisdiction in which the property is located.
- The policy is on a standard ALTA form that does not include the creditor's rights exclusion language from the 1990 ALTA loan policy.
- The insurance coverage and documents meet the requirements set forth herein.
- In the case of a Short Form Policy:
 - Any Addenda thereto (i) includes only subordinate lien matters (if other matter are included, Franklin American Mortgage Company requires an ALTA Residential Loan Policy).
 - Correspondent Lender warrants and agrees that it will promptly provide a full individual ALTA Residential Loan Policy (at no cost to the borrower or Franklin American Mortgage Company) in replacement of the Short Form Policy if Franklin American Mortgage Company later requests such replacement in connection with a sale (or other disposition) of the mortgage to a third party.

The title policy must insure that the title is generally acceptable and that the mortgage constitutes the first lien on a fee simple or leasehold estate in the property. All subordinate liens must be listed and state that they are subordinate to the first lien.

The policy must bear an effective date no earlier than the later of the date of the final disbursement of the loan proceeds or the date the mortgage was recorded. It must be in an amount or least equal to the original loan amount, and include, if applicable, any maximum possible increase due to negative amortization.

NOTE: *The named insured should be the "Correspondent Lender, and its successors and/or assigns."*

Environmental Protection Lien Endorsement

For conventional loans, each policy of title insurance must include the ALTA Form 8.1, Environmental Protection Lien Endorsement, or its equivalent. Part (b) of ALTA Form 8.1 may make an exception only for those specific state statutes that provide for possible subsequent super liens that could take priority over the mortgage. This endorsement is not required for government loans.

In addition to the general title insurance requirements, the title policy must include affirmative coverage for the adjustable-rate mortgage and take no exception to the adjustable feature or to any negative amortization that may occur.

An adjustable-rate mortgage that does not provide for negative amortization requires an ALTA 6 or 6.1 endorsement or its equivalent.

An adjustable-rate mortgage that has either scheduled negative amortization or the potential for it requires coverage that equals 110% of the original mortgage amount (or higher amount if the terms of the note permit negative amortization above 110%). Franklin American Mortgage Company requires an ALTA 6.2 endorsement or its equivalent. If an equivalent endorsement is provided, it must provide protection in an amount sufficient to cover the mortgage amount, plus the maximum amount of negative amortization that is permitted.

Exceptions to Title

The title to the property that secures the mortgage must be good, salable and free and clear of all liens and encumbrances. Franklin American Mortgage Company will not purchase a mortgage that has an unacceptable title impediment.

Unacceptable Title Exceptions

Two of the more common unacceptable impediments to title are unpaid real estate taxes and survey exceptions.

- Real estate taxes must be shown as being current or as being future taxes that are not yet due and payable. Any situation in which taxes are not current is not acceptable. If the tax bill has not been issued, the Correspondent Lender must provide proof that the taxes are not delinquent.
- Survey exceptions are not acceptable. If surveys are not commonly required in particular jurisdictions, the Correspondent Lender should provide an ALTA 9 endorsement and, if applicable, a CLTA endorsement 116. If the title company will not issue a policy without a survey exception, Franklin American Mortgage Company will not purchase the mortgage.

The right of first refusal is an undesirable impediment. If any of the exceptions to title convey such a right, the Correspondent Lender must diligently attempt to obtain from the beneficiary a Waiver of Right of First Refusal. If the beneficiary refuses to execute the Waiver, Franklin American Mortgage Company will consider purchasing the loan in the absence of such Waiver provided the Correspondent Lender documents the file regarding its attempt to obtain the Waiver. In addition, the title policy must not be subject to any title exceptions other than those permitted under this Section.

Acceptable Title Exceptions: Conventional Mortgages

For conventional mortgages, Franklin American Mortgage Company will not question title on the basis that title is subject to one or more of the following conditions:

- Customary public utility subsurface easements provided the location is ascertainable and fixed and they do not extend under any buildings or other improvements. The exercise of the rights there under must not interfere with the use and enjoyment of any improvements on the mortgage premises.
- Above-surface public utility easements that extend along one or more of the property lines for distribution purposes or along the rear property line for drainage purposes provided the location is ascertainable and fixed and they do not extend more than 12 feet from the property lines and do not interfere with any of the buildings or improvements or with the use of the property itself.
- Encroachments on public utility easements by a garage, tool shed, or similar structure that is not attached to or a portion of, the dwelling structure, provided that the encroachments do not interfere with the use and enjoyment of the easements or the repair and maintenance of the dwelling structure.

- Restrictive covenants and conditions, and cost, setback, or minimum size restrictions provided their violation will not result in a forfeiture or reversion of title or a lien of any kind of damages or have an adverse effect on the fair market value of the property. The restrictive covenants, conditions, and restrictions must neither create nor provide for (1) any lien that would be prior to the lien of the mortgage; (2) any right of first refusal; or (3) the elimination of the lien of the mortgage. In addition, they must be commonly acceptable to private institutional mortgage investors in the area where the mortgaged property is located, and the title policy must affirmatively assure that no violation of any restrictive covenant, condition or restriction exists.
- Mutual easement agreements of record that establish joint driveways or party walls constructed on the subject property and on an adjoining property provided all present and future owners and their heirs, successors and assigns forever, have unlimited and unrestricted use of them. (Joint driveways or party walls may be constructed wholly on the mortgaged property, wholly on an adjoining property, or partly on each property).
- Encroachments on either side of the property line of the mortgaged premises by hedges or removable fences (not retaining walls) provided that neither the misplacement nor a future correction thereof, will interfere with the use and enjoyment of the balance of the mortgaged premises not occupied by improvements.
- Encroachments on adjoining property of one foot or less by eaves or other overhanging projections, or by structures such as tool sheds, or by driveways, provided there is at least a 10-foot clearance between the buildings on the subject property and the affected property line. If available, an endorsement to the title policy which affirmatively insures against loss suffered by reason of the entry of a decree or court order requiring the removal of the encroachment is required.
- Encroachments on the subject property by improvements on adjoining property provided the encroachment (1) does not touch any improvements on the subject property; and (2) does not interfere with the use and enjoyment of any improvements on the subject property nor the subject property not occupied by improvements.
- Outstanding oil, water, or mineral rights that are customarily waived by private institutional mortgage investors in the area where the subject property is located provided they do not materially alter the contour of the property. In addition, (i) the exercise of such rights will not result in damage to the subject property or impairment of its use or marketability for residential purposes and there is no right of surface or subsurface entry within 200 feet of the residential structure; or (ii) there is a comprehensive endorsement that affirmatively insures the Correspondent Lender against damage or loss due to the exercise of such rights, and the exercise of such rights will not result in damage to the subject property or impairment of its use or marketability for residential purposes.
- Variations between the appraisal report and the records of possession regarding the length of the property lines provided the variations do not interfere with the current use of the improvements and are within an acceptable range (for front property lines, a 2% variation is acceptable; for all other property lines, 5% is acceptable).
- Rights of tenants in possession, as tenants only, under prior unrecorded leases provided the subject property is a 2- to 4-family property, and such rights do not include the right of first refusal to purchase the property. No rights of tenants in possession may have a duration of more than two years.
- Minor discrepancies in the description of the area provided the Correspondent Lender provides a survey and affirmative title insurance against all loss or damage resulting from the discrepancies.
- Exceptions to Indian claims provided the Correspondent Lender is insured against all loss and damage from such claims.

Other Exceptions

Any exception not noted above is acceptable only if the Correspondent Lender warrants that the subject of the exception:

- Does not interfere with the use and enjoyment of any present or proposed improvements on the subject property, or the balance of the subject property not occupied by improvements.
- Does not affect the marketability of the subject property.
- Has minimal or no effect on the value of the subject property.
- Is acceptable to the Mortgage Insurance Company if the mortgage is insured.
- Is commonly acceptable to private institutional mortgage investors in the area where the subject property is located.

Properties in Iowa

FAMC requires an Iowa Title Guaranty Certificate that meets all title coverage requirements as set forth in this chapter. Refer to the [Loan Documentation Guidelines](#) chapter for requirements on Title Opinions delivered in lieu of a Title Commitment with the closed loan file.

Coverage for PUDs and Condos

If the mortgage is secured by a unit in a planned unit development or a condominium project, and a homeowners' association exists, all components of the unit estate must be described in the legal description, including (i) the name of the project; (ii) the unit itself; (iii) the undivided interest in the common elements (for a condo); (iv) the non-exclusive easement to use the common areas and facilities (for a PUD); and (v) any significant limited common elements or exclusive easements over the common areas.

If the unit owners own the common areas of the project as tenants in common, the policy must reflect that ownership. The Policy may describe limited common elements or exclusive easements specifically or by reference to the constituent documents.

Coverage

In addition to the general title insurance requirements, the title policy must insure that the mortgage is superior to any lien for unpaid common expense assessments. In jurisdictions that give these assessments have been paid through the effective date of the policy.

As applicable, the title policy must:

- Insure against any impairment or loss of title of the first lien caused by any past, present or future violations of any covenants, conditions or restrictions of the master deed for the project. It must specifically insure against any loss that results from violation that existed as of the date of the policy.
- Insure that the unit does not encroach on another unit or on any of the common elements, areas or facilities. The policy must also insure that there is no encroachment on the unit by another unit or by any of the common elements, areas, or facilities.
- Insure that the mortgage is secured by a unit in a condominium project that has been created in compliance with the applicable enabling statutes.
- Insure that real estate taxes are assessable and lienable only against the individual condominium unit and its undivided interest in the common elements, rather than against the project as a whole.
- Insure that the owner of a PUD unit is a member of the owners' association and that the membership is transferable if the unit is sold.

If the owners' association owns the common elements, areas or facilities of a project separately, Franklin American Mortgage Company requires title insurance on those areas to insure that ownership. The title must be free and clear of any liens and encumbrances, including any statutory or mechanics' liens for labor or materials related to improvements on the common areas that began before the title policy was issued.

Endorsements

- An ALTA 4 endorsement, or its equivalent, must be attached to each policy or incorporated in the text of the policy for condominium loans.
- An ALTA 5 endorsement, or its equivalent, must be attached to each policy or incorporated in the text of the policy for PUD loans.

Coverage for Leasehold Estates

An ALTA Leasehold Loan Policy or a CLTA 107.5 endorsement which stipulates that the property improvements are insured in the same manner as the land, or its equivalent is required for a mortgage that is subject to a leasehold estate.

Survey Requirements

If the title company insuring the mortgage requires a survey to remove exceptions to survey matters, the Correspondent Lender must provide in the Loan Delivery Package a survey of the subject property. The survey provided must conform to the title insurance company's standards and any community or local laws or standards relating to surveys. If a survey is not provided, the title company must insure against the risk of not having a survey performed. The survey must not be more than 120-days-old and, as applicable, must include in detail the legal description, lot dimensions, street address, front and side set back of improvements, size and location of improvements, dimensions and location of easements, size and location of any encroachments, location of street or access, and surveyor's certification.

Franklin American Mortgage Company must be provided with a Hold Harmless Agreement/Survey executed by the borrower(s) in acknowledgement of any encroachments or protrusions.

Refinances – *Franklin American Mortgage Company will accept an affidavit of No New Improvement with a copy of old or existing surveys.*

Private Transfer Fee

Private Transfer Fee Covenants may be attached to real property by the owner or another private party, frequently the property developer, and provide for transfer fee to be paid to an identified third party, such as the developer, upon each resale of the property. The fee is typically stated as a fixed amount or as a percentage and often exists for period of ninety-nine (99) years.

Many states have enacted legislation to address private transfer fee covenants. Some states allow the covenants subject to recordation and disclosure requirements but prohibiting them when fees are paid to private third parties, with exceptions.

The Federal Housing Finance Authority (FHFA) has banned the purchase of loans that have a private transfer fee covenant created after February 9, 2011, with exceptions. The rule allows for private transfer fees paid to homeowners' associations, condominiums, cooperatives, and certain tax-exempt organizations that use the fees to directly benefit the properties encumbered by the covenants.

FAMC will not purchase mortgage loans with private transfer covenants created after February 9, 2011, that do not directly benefit the property encumbered by the covenant.

FAMC will purchase mortgage loans that have private transfer fees directly benefiting the property and homeowners. These fees would include, but not be limited to: homeowner's associations, condominium associations, fees for cooperative housing, fees charged by a government authority, transfers of a club membership relating directly to the property and certain non-profits for the purpose of supporting activities benefitting the real property.