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INSURANCE REQUIREMENTS FOR WRAP-AROUND MORTGAGE TRANSACTIONS

INTRODUCTION

At InsuranceForInvestors, we are, quite literally, experts at properly insuring all types of seller-financed and/or investor-related properties. However, due to the continual large number of **improperly documented, established, serviced, and maintained seller-financed wraparound transactions that we insure and the resulting unnecessary service efforts that our company experiences as a result of these improperly completed transactions**, InsuranceForInvestors has established the following policy outlining the requirements that must be met in order for our company to quote or issue insurance on any wraparound-mortgaged property.

PURPOSE OF THIS POLICY

The purpose of this policy is to address the many avoidable (yet predictable) insurance-related issues that arise after a wraparound transaction has been completed. These issues normally exist for no other reason than that the parties involved (buyer, seller, Realtor/transaction coordinator, attorney, and loan servicing company) have failed to properly address the issue of escrow accounts and/or insurance billing. This results in an excessive amount of manhours and associated costs due to unnecessary service, cancellations, reinstatements, billing disputes, and disagreements between the parties long after the transaction has already been completed.

RESPONSIBILITY

It is the responsibility of the parties involved in the transaction (buyer, seller, Realtor/transaction coordinator, attorney, and loan servicing company) to address the issues related to payments and billing. InsuranceForInvestors will ensure that we properly quote and issue the correct coverage for the new buyer in accordance with all applicable laws and insurance guidelines, but it is the responsibility of the parties previously mentioned to arrange for timely payment and/or provide all necessary documentation and/or information when requested. InsuranceForInvestors is in no way responsible for 'reconstructing' this third-party transaction for the parties involved or resolving disputes between the parties in the event the transaction was not established and completed properly. Our responsibility is in the capacity of insurance only and it begins and ends with properly issuing the correct coverage for the property and working as the agent/advocate for our client (the new buyer or named insured policy owner).

EFFECTIVE DATE

These requirements are effective as of **October 27, 2011** and we regret that we will not be able to offer a quote on any property or transaction not meeting the transaction requirements listed below.

REQUIREMENTS FOR INSURANCE

1. **The new homeowner's insurance policy MUST be issued in the name of the NEW BUYER – not the seller (a.k.a. the 'borrower' on the underlying lender's mortgage documents.)**

Reason: The **new buyer** is the only party that has both *legal and equitable title* to the property. The legal ownership has transferred to the new buyer and it is this new buyer that has the 'insurable interest' in the property – not the seller. **Only the legal owner of the property may be the named insured.** The seller may have *previously* owned the property – but that is no longer the case. The property has transferred ownership and the previous owner no longer has an 'insurable interest' in the property. In addition, a homeowner's policy is intended for *owner-occupants* of a home and it provides coverage for liability, personal contents, and the physical property itself – as well as several other coverages. Only the 'named insured' policy owner (the new buyer) has coverage under the policy for personal contents and physical damage to the property as previously mentioned. In addition, knowingly issuing a policy in the name of a party that does not qualify for coverage due to occupancy or insurable interest may be considered a "material misrepresentation" on an insurance contract.

2. **If the SELLER is carrying back a mortgage loan of any amount, they must be listed as a "MORTGAGEE" on the policy to properly secure their interest in the property. Placing them as an 'Additional Insured' only provides *liability* protection under the policy.**

Reason: A "mortgagee" is also considered a "loss payee" in a homeowner's insurance policy due to the loss payee clause 438BFU. If the seller is carrying back a mortgage loan of any amount and he or she is not listed as a mortgagee, then under the terms of the policy the seller has absolutely no protection with regards to the mortgage loan in the event of a loss or damage to the property. Assuming the seller is carrying back a mortgage loan (any amount), simply listing him or her as an "additional insured" does NOT properly protect his or her interest in the property as "additional insured" parties are normally only conferred *liability protection* under the policy for claims resulting in litigation or liability for which the "additional insured" may be a party.

3. **The policy premium MUST NOT BE PAID from the SELLER'S original escrow account. The billing needs to be set up to be paid by the buyer either on electronic draft (monthly) or paid in full at closing.**

Reason: This is one of the largest issues with regards to insuring wraparound transactions. Most investors and buyers want to perform a wraparound sale but at the same time have all of the billing and payments remain exactly as they were before the sale. *This is simply not possible.* The new policy is issued in the name of the NEW BUYER – not in the name of the seller (previous owner). If the billing is set up to be paid by the underlying mortgagee from the SELLER'S (a.k.a previous owner's) escrow account, the vast majority of mortgagees will simply **refuse to pay the invoice** since the name on the insurance policy does not match the name on the existing escrow account. The mortgagee refuses to pay for the insurance, no secondary escrow account was set up for the new buyer at closing (as it should have been), and the new buyer has to be contacted for payment – usually with a down payment plus several month's of regular payments being due in arrears. This creates cancellations for non-payment, disputes between the parties, and an enormous amount of avoidable service work and, in many cases, a refusal by the carrier to reinstate the policy. If unable to reinstate, the new replacement policy is almost always 25%+ more expensive.



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SUMMARY OF REQUIREMENTS

1. Policy Must be issued in the name of the new buyer / new homeowner
2. Seller should be listed as a "mortgagee" if carrying back a loan (or Additional Insured if there is other interest aside from carrying back a mortgage loan)
3. Billing must either be paid in full each year by the new buyer (insured), set up on monthly EFT drafts, or paid from a secondary escrow account established at closing and maintained by the servicing company.

ACTIONS WE CANNOT / WILL NOT PERFORM

1. **Knowingly issue an Evidence of Insurance (ACORD 028) form in the name of the SELLER in order to mislead the lender or other parties in regards to the property transfer.**

Reason: Not only does this present a major issue with regards to professional ethics, it also presents an enormous errors and omissions exposure for our company. In the event of a large loss, the mortgagee will have inaccurate data in their files due to an intentional misrepresentation and they may have cause to pursue legal action.

2. **Issue a Declarations Page form in the name of the SELLER in order to mislead the lender or other parties in regards to the property transfer.**

Reason: Same reasons as above. In addition, while an ACORD 028 (Evidence of Insurance) form does not directly modify the insurance contract and it is not a part of the insurance contract itself (it is simply a 'proof of insurance' issued by an agent), a Declaration's page is different. The Declarations page is an actual part of the legal insurance contract summarizing the coverages, fees, and other key information. Declaration's pages may only be created and issued by the actual insurance company itself (not the agent or broker) and intentionally modifying or falsifying a Declaration's page constitutes a violation of insurance law, it violates the contract itself, and may well be considered fraud in certain situations.

3. **In addition, regardless of the agreement between the parties (primarily the transaction coordinator and the new buyer), it is the Named Insured (new buyer) that the insurance company is entering into an insurance contract with – not anyone else. Therefore, it is the new buyer (policy owner) that is required to sign the insurance application and documentation and the new buyer is ultimately responsible for payment, filing of claims, etc. IF THE INVESTOR OR TRANSACTION COORDINATOR HAS A POWER OF ATTORNEY AND IS WORKING WITH AND MAKING INSURANCE PURCHASING DECISIONS ON BEHALF OF THE NEW BUYER (NAMED INSURED), A COPY OF THIS POWER OF ATTORNEY DOCUMENT NEEDS TO BE PROVIDED TO OUR COMPANY TO ENSURE THAT THE INDIVIDUAL WE ARE WORKING WITH HAS THE FULL LEGAL AUTHORITY TO MAKE THESE INSURANCE-BASED DECISIONS.**