

The Credit Card Competition Act



**The Start
of a New
Interchange
Battle?**

Thinking About Mortgage Loan Title Policy Endorsements



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Banks require loan title insurance policies for nearly all credit facilities secured by real estate mortgages. These policies insure the validity and priority of the lien of the mortgage, subject to exceptions and exclusions that are either standard or are specific to the title of the mortgaged property. As with other types of insurance policies, coverage can be enhanced by endorsements if the additional premium for the endorsement is paid and the title underwriter approves their issuance.

In Delaware, permitted endorsement forms and their premiums are generated by the Delaware Title Insurance Rating Bureau and approved by the Delaware Department of Insurance. The approved forms are updated and revised from time to time; most recently, there are wording changes and seven new available endorsements effective April 1, 2023. Nearly 60 loan policy endorsements are approved; space doesn't permit discussing particular endorsements, but there are some general concepts to keep in mind that may be helpful.

The primary thing to think about with endorsements is that the nature of a title insurance policy is an indemnity, not a guaranty. Even if the defect covered by the endorsement occurs, the title insurer will not pay the bank unless the bank suffers an actual loss due to such defect, meaning the loan must not have been fully repaid, after the bank has exercised its legal remedies.

The appropriate endorsements for each mortgage loan depend on the particular circumstances of the real estate, the loan, and the state of title. Some endorsements provide very helpful and

nearly essential coverage; however, the cost of the endorsements should be understood. The approved premiums are not negotiable, and vary from relatively small ones (for example, \$50 for the often-issued variable rate interest, environmental protection lien, future advance-priority, direct access and entry, and single tax parcel endorsements; and \$135 for the indirect access and entry and multiple tax parcel endorsements), to those charged as percentages of the entire title premium (such as the 10% surcharge for the popular restrictions, encroachments, minerals endorsement if the property is not a one-to-four family dwelling; and the 25% surcharge for the encroachments, boundaries and easements-described improvements-land under development endorsement). Interest rate swap endorsements (basically insuring that the mortgage secures additional interest for swap repayment/swap breakage fees) come in four varieties, but all have a 10% surcharge if issued at the same time as the policy and a pricey 20% surcharge if issued later after the loan policy. Zoning endorsements have an even higher 25% surcharge.

Because proper underwriting is needed for the agent to issue an endorsement (for example, the title underwriter may require a zoning certificate from the applicable municipality, or a zoning consultant report to issue a zoning endorsement), the bank already may have comfort on the matter without the endorsement. Banks and their counsel should keep this in mind and consider the relative cost and coverage of each endorsement.



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