

The Utah Banker

The Official Publication of the Utah Bankers Association


UTAH BANKERS
ASSOCIATION
A Century Of Service



INSIDE:

UBA's Annual Ag Outlook

Page 8

Getting Out Front on
Financial Education

Page 11

Accord Insurance Certificates:

Does Your Borrower Really Have Coverage?

When extending real estate secured loans, banks normally require evidence that the borrower has properly insured the buildings and other improvements against loss by fire or other casualties. Banks properly view the insurance coverage as a material part of the overall security for the loan. Since the insurance policy itself is often not available at closing, banks customarily rely upon certificates of insurance issued on forms promulgated by the Association for Cooperative Operations Research and Development, better known in the banking community as ACCORD.

ACCORD is a non-profit insurance organization primarily comprised of insurance companies. For many years, bankers have relied on and insurance brokers have utilized forms promulgated by ACCORD as reliable proof that:

- The specified insurance coverage is in effect as of the date of the certificate;
- The borrower has in force the types of insurance coverages and required amounts of such insurance;
- The bank has an insurable interest in the real estate improvements;
- The insurer will provide the bank at least 30 days prior written notice of any policy cancellation.

Banks have typically accepted the ACCORD Form 27 as evidence of insurance in residential real estate transactions and the ACCORD Form 28 as similar evidence in commercial real estate transactions.

In July 2006, ACCORD revised its Forms 27 and 28 to remove the protections that banks had relied on in making their loans. Specifically, prior to the 2006 revisions, the ACCORD Form 28 (known as the 2003 form) provided, among other things, that (a) the insurer would



provide the bank with written notice in the event that the owner cancelled the policy prior to the expiration date and (b) the certificate conveyed all the rights and privileges afforded under the policy, which allowed the bank to rely on the certificate. The revised ACCORD Form 28, however, states that the "issuing insurer" is under no obligation or liability to mail a written notice of the cancellation to the bank named in the policy and further provides that the evidence of insurance is "a matter of information only and confers no rights" for the "additional interest" on the policy, which would likely include the lender.

Banks are understandably concerned about these revisions, and, in fact, the Mortgage Banker's Association has openly criticized the revisions, and Freddie Mac has said that it will not accept the new ACCORD Form 28. In an attempt to resolve the competing concerns between the financial services and insurance industries, representatives of ACCORD, lenders, insurers and other affected parties are meeting to discuss the revisions, the appropriate scope of the ACCORD forms, and the allocation of risk between banks and insurers. To date, no resolution has occurred.

In the meantime, Banks are struggling to find alternatives to relying upon the 2006 versions of the ACCORD Form 28 and ACCORD Form 27. Some banks are still attempting to require the

2003 version of the forms, but ACCORD regards these forms as obsolete and it is uncertain whether they remain as approved forms under state insurance regulatory laws. To protect themselves, prudent banks should refuse to accept the 2006 versions of the ACCORD Form 28 and ACCORD Form 27 and, instead, should require as proof of property insurance, one of the following:

- A certified copy of the full insurance policy;
- A copy of the declarations page from the policy, plus a loss payee endorsement naming the bank as loss payee if the bank is not named in the policy (standard mortgage holder's clause of ISO Form CP 00 10 "Building and Personal Property Coverage" or ISO Form CP 12 18 "Loss Payable Provisions," or their equivalent. Note: If using ISO Form CP 12 18, "Lender's Loss Payable" item must be selected.); or
- The 2003 version of the ACCORD Form 28 or ACCORD Form 27, as applicable (the date at the left footer of the form should read 2003/10 or a prior date).

Until an acceptable compromise between ACCORD, lenders, insurers and insurance brokers is reached, banks must remain cognizant of the limitations of the 2006 versions of the ACCORD Form 28 and ACCORD Form 27 when evaluating insurance coverage for its collateral.

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