

Date: June 25, 2013

To: All Texas Agents

From: Ellen Wied, Vice President/Underwriting Counsel

RE: New Insuring Standard for Home Equity Loans and Reverse Mortgages

EFFECTIVE IMMEDIATELY: Any Power of Attorney (“POA”) to be used in connection with the closing of a home equity loan or a reverse mortgage must be executed and notarized at the office of the title company or the lender. If executed at the office of the lender, we will require a written certification from the lender that the POA was executed at its office.

Last Friday, the Texas Supreme Court issued its opinion in *The Finance Commission of Texas, the Credit Union Commission of Texas and the Texas Bankers Association v. Valerie Norwood, et al.* The Supreme Court judicially reviewed several interpretations issued by the Finance Commission and Credit Union Commission relating to certain Constitutional provisions governing home equity lending.

Section 50(a)(6)(N) of the Constitution provides that a loan may be closed only at the office of the lender, title company or an attorney. This provision was enacted to prevent the loan from closing in a borrower’s home.

The Commissions’ interpretation of this provision had allowed a borrower to mail both the required consent to the lender and a POA executed by the borrower. These interpretations by the Commissions were found to be invalid by the Supreme Court.

The Texas Supreme Court determined that the execution of a POA on a home equity loan transaction was part of the closing process and must occur only at one of the locations specifically allowed by the Constitutional provision in Section 50(a)(6)(N). Allowing a borrower to mail in the executed POA was a circumvention of the Constitutional requirement.

As a consequence, the insuring standards of FNTI have been revised to address the ruling. Since the reverse mortgage provisions of the Constitution also contain the requirement for the closing to occur at the title company, the lender or an attorney’s office, it is reasonable to assume that the ruling also impacts the use of a POA on those transactions as well.