

Date: October 26, 2020

To: All Agents

From: FNTI Underwriting Department

RE: The Federal Deposit Insurance Corporation (FDIC) acting as Receiver of a Failed Bank

---

In light of the recent bank failures of Almena State Bank (Kansas) and First City Bank of Florida, October 23<sup>rd</sup> and October 16<sup>th</sup> respectively, the third and fourth bank failures of 2020, we thought it important to reemphasize FNTI's underwriting requirements involving the Federal Deposit Insurance Corporation (FDIC), as receiver, taking over failed banking institutions. This Bulletin is provided to establish underwriting guidelines to be utilized when insuring a proposed transaction wherein the FDIC has been appointed as Receiver of a failed bank, and wherein the subject transaction pertains to either the sale of real property owned by the failed bank, or the payoff of a loan owned by the failed bank.

### **The FDIC's History, Role and Powers as Receiver**

Pursuant to the authorities granted under the Banking Act of 1933, and after the collapse of many U.S. banks during the initial years of the Great Depression, Congress created the FDIC, an independent U.S. government corporation with the responsibility of insuring bank deposits in eligible banks against loss in the event of a bank failure and to regulate particular banking practices. Amongst its many powers, Congress granted the FDIC powers in its role as a receiver of a failed bank. Similar to a bankruptcy trustee, the FDIC, acting as receiver of the failed bank, has the authority to step into the shoes of a failed bank and may liquidate and/or transfer any assets of the failed bank to an acquiring bank or directly to an independent third party.

Typically, the FDIC will be appointed as receiver for the failed bank by either: (1) the Office of Thrift Supervision, (2) the Office of Comptroller of the Currency, or (3) a State regulatory authority. Should there be any doubt as to such appointment having occurred, please require evidence of the FDIC appointment.

Thereafter, once appointed, the FDIC steps into the shoes of the failed bank and acquires all right, title, power and interest of the failed bank, inclusive of the right to manage all secured loans (i.e. deeds of trust, mortgages) or real property owned by the failed bank. Amongst its powers as receiver of a failed bank, the FDIC has the authority to do the following:

1. Dispose of the assets of the failed bank; or
2. Merge the failed bank with another FDIC insured bank or sell the assets (i.e. real property and mortgages) of the failed bank to a buying FDIC insured bank; or
3. Create a new bank, or use a "bridge bank" to manage the assets of the failed bank, wherein the FDIC will generally act as the Conservator of the new FDIC-created bank.

This Underwriting Bulletin becomes a part of the principles and practices with which you are to comply under the terms of your Underwriting Agreement with First National Title Insurance Company. Should the content of this bulletin address the closing and escrow function, this information should be considered a directive and part of the principles and practices if non-compliance would result in liability to FNTI under either the insured closing service letter or policy of title insurance notwithstanding that the Underwriting Agreement does not include the closing and escrow functions of your agency.

## **FNTI's Underwriting Guidelines**

### **Scenario 1. Transactions wherein the FDIC is acting solely as Receiver**

#### a) **Real Property owned by the failed bank**

If the subject real property is an asset of the failed bank, and is currently being conveyed by the FDIC as Receiver of the failed bank, you must require a deed from the FDIC, acting as Receiver of the failed bank, to the proposed insured. In many cases, the FDIC, acting as Receiver, will execute these deeds through a Power of Attorney, given either to a representative of the failed bank, or a representative of the FDIC.

#### b) **Payoff of Mortgages/Deeds of Trust by the FDIC as Receiver**

If the mortgage/deed of trust is an asset held by the failed bank, and the FDIC has been appointed as Receiver of the failed bank, and the mortgage/deed of trust has not been assigned since being in the possession of the failed bank, you must require a payoff statement from the FDIC acting as Receiver, along with a release of lien, or satisfaction of mortgage.

### **Scenario 2. Transactions wherein the FDIC has conveyed the failed bank's assets to another existing FDIC insured bank (i.e. the Buying Bank)**

#### a) **Real Property previously owned by the failed bank and subsequently conveyed to a Buying Bank**

When the subject property has been conveyed by the FDIC as Receiver of the failed bank to a Buying Bank, and there is no deed of record conveying the subject real property from the FDIC as Receiver of the failed bank to the Buying Bank, you must require: (1) a deed from the FDIC as Receiver of the failed bank to the Buying Bank, and (2) a subsequent, second deed from the Buying Bank to the proposed insured buyer.

#### b) **Payoff of Mortgages/Deed of Trust previously owned by the failed bank and subsequently conveyed to a Buying Bank**

When the Mortgage/Deed of Trust that was previously an asset of the failed bank has been conveyed by the FDIC as Receiver of the failed bank to a Buying Bank, the payoff statement, and either the release of lien or satisfaction of mortgage, should come from the Buying Bank. To substantiate the authority of the Buying Bank to provide a

This Underwriting Bulletin becomes a part of the principles and practices with which you are to comply under the terms of your Underwriting Agreement with First National Title Insurance Company. Should the content of this bulletin address the closing and escrow function, this information should be considered a directive and part of the principles and practices if non-compliance would result in liability to FNTI under either the insured closing service letter or policy of title insurance notwithstanding that the Underwriting Agreement does not include the closing and escrow functions of your agency.

payoff statement and either a release of lien or satisfaction of mortgage, you should require at least one of the following:

1. A recorded/recordable Assignment of Mortgage, evidencing the conveyance of the subject Mortgage/Deed of Trust to the Buying Bank; or
2. A copy of the asset purchase agreement between the FDIC as Receiver of the failed bank and the Buying Bank, documenting that the subject Mortgage/Deed of Trust was included in the asset purchases of the Buying Bank; or
3. A recorded/recordable Affidavit, from the FDIC as Receiver of the failed bank, affirming that it conveyed the subject Mortgage/Deed of Trust to the Buying Bank.

Scenario 3. Transactions wherein the FDIC as Receiver of the failed bank either uses a bridge bank to take over the assets of the failed bank, or the FDIC creates a new institution

Note: If the FDIC forms a new institution, usually the FDIC will also act as Conservator of the new institution.

- a) Real property previously owned by the failed bank and subsequently conveyed to a bridge bank or the new FDIC-created institution

When the subject property has been conveyed by the FDIC as Receiver of the failed bank to a bridge bank or a new FDIC-created institution, and there is no deed of record evidencing the conveyance, you must require: (1) a deed from the FDIC as Receiver of the failed bank to the FDIC as Conservator of the new FDIC-created institution or bridge bank, and (2) a subsequent, second deed from either the FDIC as Conservator of the new FDIC-created institution, or bridge bank, to the proposed insured buyer. When dealing exclusively with a new FDIC-created institution, you may also accept one single deed from the FDIC in both capacities as Receiver of the failed bank and Conservator of the new FDIC-created institution, to the proposed insured buyer.

- b) Payoff of Mortgages/Deed of Trust previously owned by the failed bank and subsequently conveyed to a bridge bank or the new FDIC-created institution

When the Mortgage/Deed of Trust that was previously an asset of the failed bank has been conveyed by the FDIC as Receiver of the failed bank to a new FDIC-created institution or bridge bank, the payoff statement and release of lien, or satisfaction of mortgage, should come from the Conservator of the new FDIC-created institution, or the bridge bank. To substantiate the authority of the Conservator of the new FDIC-created institution, or the bridge

This Underwriting Bulletin becomes a part of the principles and practices with which you are to comply under the terms of your Underwriting Agreement with First National Title Insurance Company. Should the content of this bulletin address the closing and escrow function, this information should be considered a directive and part of the principles and practices if non-compliance would result in liability to FNTI under either the insured closing service letter or policy of title insurance notwithstanding that the Underwriting Agreement does not include the closing and escrow functions of your agency.

bank, to provide a payoff statement and either a release of lien or satisfaction of mortgage, you should require at least one of the following:

1. A recorded/recordable Assignment of Mortgage, from the FDIC as Receiver of the failed bank to the FDIC as Conservator of the new FDIC-created institution, or to the bridge bank; or
2. A recorded/recordable Affidavit, from the FDIC as Receiver of the failed bank, affirming that it conveyed the subject Mortgage/Deed of Trust to the FDIC as Conservator of the new FDIC-created institution, or to the bridge bank; or
3. Documentation, subject to underwriting approval, substantiating the conveyance of the aforementioned Mortgage/Deed of Trust to the FDIC as Conservator of the new FDIC-created institution, or to the bridge bank.

As always, should you have further questions, please do not hesitate to contact an FNTI team member.

This Underwriting Bulletin becomes a part of the principles and practices with which you are to comply under the terms of your Underwriting Agreement with First National Title Insurance Company. Should the content of this bulletin address the closing and escrow function, this information should be considered a directive and part of the principles and practices if non-compliance would result in liability to FNTI under either the insured closing service letter or policy of title insurance notwithstanding that the Underwriting Agreement does not include the closing and escrow functions of your agency.