

Certificates of Insurance and Lenders



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Abstract

Recently both Freddie Mac and Bank of America announced they would no longer accept the new ACORD certificate and evidence of insurance forms. This article is from the IIABA Virtual University. Visit www.iiav.com to view Virtual University.

Freddie Mac

On November 2, 2006, Freddie Mac [announced](#) that it found the current ACORD 28 (2006/07) form unacceptable based on changes made to the form in July. Effective immediately, Freddie Mac said it will require either the previous ACORD 28 (2003/10) form, an ACORD 75 insurance binder, or a duplicate original insurance policy as evidence of insurance.

Background

On July 28, 2006, the ACORD 27 - Evidence of Property Insurance and ACORD 28 - Evidence of Commercial Property Insurance were released. Both forms were revised as required by vote of the ACORD Forms Standards Subcommittee. The forms now track the ACORD 24 - Certificate of Property Insurance form by saying they don't change the terms and conditions of the policy and the "will endeavor" language with regard to notice of cancellation is now included. The prior versions said the policy was in force and notice of cancellation WILL be sent. For example:

New ACORD 27:

"THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE OF PROPERTY INSURANCE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW."

Old ACORD 27:

"THIS IS EVIDENCE THAT INSURANCE AS IDENTIFIED BELOW HAS BEEN ISSUED, IS IN FORCE, AND CONVEYS ALL THE RIGHTS AND PRIVILEGES AFFORDED UNDER THE POLICY."

ACORD 24:

"THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW."

Mortgage Bankers Association

The Mortgage Bankers Association, various lenders, and investors raised concerns following the changes made by ACORD to the Evidence of Insurance forms in July:

"MBA concurs with Freddie Mac's conclusions that the revised ACORD 28 form is not substantive evidence of commercial property insurance and that lenders are not protected by the revised cancellation notification requirements," said Gail Davis Cardwell, senior vice president of commercial/multifamily at MBA. "MBA strongly advocates notification of policy cancellations to all insureds cited on the insurance policy and provision of substantive and legally binding evidence

of insurance to these same parties to promote timely and transparent insurance information on commercial properties.”

Bank of America

According to information provided to us, beginning January 15, 2007, Bank of America will only accept the following forms as proof of insurance:

- Insurance policy indicating a Lender's Loss Payable Endorsement
- Acceptable binder indicating a Lender's Loss Payable Endorsement
- Certificate of Insurance / Evidence of Insurance with a Lender's Loss Payable Endorsement

Apparently, an application for insurance will not be accepted as proof of insurance except for flood insurance. Presumably, policy evidence of a standard mortgage clause would be considered equivalent to a Lender's Loss Payable endorsement, which is the means in which the interests of mortgagees are more commonly protected by insurance policies.

Analysis

These decisions create a number of potential problems for agents and, on the surface, do not make a lot of sense. It is likely that many lenders will accept the old (2003/10) version of the Evidence of Insurance forms. One issue yet to be resolved is whether insurers and their agents can voluntarily use the old ACORD evidence of insurance forms. Before agents issue out-of-date ACORD forms, they should check with their carriers to make sure this is not in violation of that company's ACORD licensing agreement or ACORD's copyright.

What is most puzzling is the seemingly lack of understanding of the significance of the policy and the insignificance of the ACORD processing forms. A lender's rights are grounded exclusively in the policy. For example the old ACORD 27 says simply, "This is evidence that insurance as identified below has been issued, is in force, and conveys all the rights and privileges afforded under the policy." The Freddie Mac press release highlighted the same language:

The new form (2006/07) states that the evidence of commercial property insurance is “a matter of information only and confers no rights” for the “additional interest” on the policy, which could include a commercial mortgage servicer. The old form (2003/10), however states that evidence of commercial property insurance “has been issued, is in force, and **conveys all the rights and privileges afforded under the policy.**” [emphasis added]

As the highlighted text above indicates, the old form only conveyed "the rights and privileges afforded under the policy." If the mortgage company wasn't named or wasn't afforded cancellation notice in the policy, it doesn't matter which ACORD form is used...they'd only have the rights and privileges granted by that policy which, in this example, would be nothing.

In other words, the language of the ACORD forms is immaterial. Lenders have no more rights under the old form than the new form...either their rights and privileges exist in the policy (or statute) or they don't. If they don't have any rights under the policy, then the new form can't give them any greater rights and privileges than the policy (as the highlighted text above indicates)...if they do have rights under the policy, then the new wording is fine because the coverage and conditions are there regardless of the ACORD form used.

Lenders want to be named as a mortgagee on the policy and get the rights and privileges afforded by the mortgage clause...cancellation notice, coverage if insured commits fraud, etc. So, based on the commentary above, there are two possibilities:

1. **They're named on the policy as mortgagee.** That being the case, they have nothing to worry about. It doesn't matter whether that fact is demonstrated by the old or the new ACORD forms.
2. **They're not named on the policy as mortgagee.** That being the case, the old evidence of insurance form wording doesn't help because it "conveys all the rights and privileges afforded under the policy." Since none are afforded, the form is of no more value than the new evidence of insurance form.

Neither form guarantees their rights and privileges as a mortgagee under a policy. As far as is known, every state has a mortgage clause statute to protect the interest of lenders. The lender should only be concerned that they're named on the policy as such. If not, or if a mistake happens as to failure to notify of cancellation, etc., isn't that why they buy mortgageholders E&O?

For many or most agencies, the certificate process is highly automated. Requiring a copy of the entire policy just to indicate the rights of the lender under the contract is a financial and time burden on agents. If demanded by the lender, then perhaps the lender should be willing to pay for such evidence. Currently, this service is provided for free by most agencies. Lenders should be well aware of processing fees given that the following are commonly charged by lenders when securing a loan:

Origination Fee. This fee covers the cost of processing and document preparation for a loan. On a home purchase, this fee may be \$2,000 or more. Many agents have automated much of the process of issuing ACORD forms via their agency management systems or third-party vendors. If these forms are no longer acceptable, shouldn't agents be permitted to charge a fee of the party requesting the documentation?

3rd-Party Closing Costs. Closing a mortgage may require an appraisal, title search, inspections, recording fees, credit checks, etc., all things performed by third parties other than the lender. These fees are often \$2,000 - \$3,000. Agencies may also use third-party vendors for ACORD form issuance, a cost currently borne by the agency, not the insured or the party requesting documentation. If these fees should increase, shouldn't the parties benefited pay at least the increased costs?

Servicing Fee. A servicing fee pays for costs incurred after a closing, such as loan advances, account statements, escrow payments for property taxes or insurance, etc. This can amount to several hundred dollars annually. If agents are asked to issue ACORD forms on a regular basis, is it not reasonable that they pass along their costs to the requesting parties just as lenders do? In Virginia refer to IIAV's Technical Bulletin on agencies charging fees.

ACORD advises that an NAIC working group consisting of insurance and mortgage banking industry representatives is being established to examine this situation. The Virtual University will continue to monitor developments and this page will be updated as warranted. Such updates will be announced in our VUpoint newsletter. If you, your producers, or CSRs do not subscribe to this newsletter, each person can get his or her own personal subscription by simply providing an email address on the following page:

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