



Considerations and Mechanics of Commercial Real Estate Transactions

2017 Mississippi Valley Title/Old Republic Title 2017 Agent Seminar

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OLD REPUBLIC INSURANCE GROUP

Old Republic Specialized Commercial Services

Commercial Due Diligence Products

- Settlement Services
 - Full closing and settlement
 - Complete escrow and disbursement
- 1031 Exchange Services (Old Republic Exchange)
- Land Survey
 - ALTA/NSPS Land Title Surveys
 - Topographical
 - As-Built
 - Boundary
- Zoning Reports
 - Municipal Letters/Certificates
 - Zoning Summary Information and Detailed Reports

Old Republic Specialized Commercial Services

Commercial Due Diligence Products (continued)

- Environmental Products (ESA)
 - Phase I
 - Phase II
 - Soil
 - Asbestos
- Property Condition Assessments
 - Roofing, HVAC, etc.
 - ADA Compliance Reports
 - AB 1103 Report
- Appraisal Valuation
 - Commercial Appraisal
 - Restricted Report, Broker's Price Opinion
- Flood Zone Determinations and Elevation Certificates



Old Republic Specialized Commercial Services

Benefits

- Quality control of due diligence products
 - Technical review of surveys
 - Title review
 - Risk reduction
- Standard product formats with Old Republic branding
- Status reports and personalized customer service
- Financial strength of Old Republic National Title Insurance Company
- Pre-qualified, insured and contracted vendors
 - Established database
 - Screened for professional licenses and insurance
 - Contracted on per-order basis
 - Product meets customer requirements and timeframe
 - Enforcement provisions for non-compliance
- Cost savings
 - Employee costs related to time spent finding providers, placing orders and maintaining status of multiple products



Old Republic Specialized Commercial Services

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Commercial Real Estate Transactions

Considerations

- Parties to the transaction
 - Title Agent/Seller/Buyer/Lender/Broker
- What is being Sold/Purchased/Financed?
 - Unimproved real estate
 - Improved real estate
 - Fee, leasehold or easement interest
 - Distinctions between multi-family, office, retail and other properties
 - Location/size/multiple parcels
- Timing
 - Closing date (factors in exchange and year-end transactions)
 - Due diligence period
 - Title search
 - Title commitment delivery
- Method of closing
 - Escrow
 - Sit down



Commercial Real Estate Transactions

Mechanics – Pre-closing

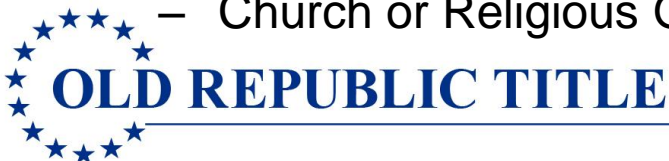
- Contract/Purchase Sale Agreement
 - Get written into contract
 - Obtain complete copy with all counterparts
 - Earnest money
- Know parties and respective counsel, consultant, surveyor, etc.
 - Contact information for all contact groups
- Know your role and other's roles
 - Who is responsible for providing certain information?
- Request/Obtain Transaction Checklists
 - Critical date schedules
 - Seller/Purchaser closing checklists
 - Lender title requirements
 - Lender survey requirements



Commercial Real Estate Transactions

Mechanics – Pre-closing (continued)

- Title Search
 - Search period
 - Office of the Judge of Probate
 - Additional search resources
 - Copies of vesting deeds and all B-II exceptions
- Title Commitment
 - Million Dollar + Approval
 - How is title vested
 - What interest in being insured
 - Certain exception and requirement clauses
- Entity Considerations (Foreign or Domestic)
 - Corporation
 - General Partnership
 - Limited Partnership
 - Limited Liability Company
 - Trust
 - Church or Religious Group



Commercial Real Estate Transactions

Mechanics – Pre-closing (continued)

- Sample Entity Requirement Clauses

Corporation

We will require a proper resolution signed by the directors /incorporators/ officers of _____, Inc. authorizing the transaction and naming the directors/incorporators/officers that will execute the documents on behalf of the corporation.

or

As to _____, Inc., we must be furnished with a copy of:

- 1. Articles of Incorporation/Certificate of Formation*
- 2. Written Bylaws and all Amendments thereto*
- 3. Current Directors/Incorporators/Officers*

Limited Partnership

Limited Partnership Agreement and all amendments thereto and other evidence satisfactory to the Company that _____ is a valid partnership under the laws of the State of Alabama and that all necessary consents, authorizations, resolutions, notices and partnership actions, relating to the loan and the execution and delivery of the note and mortgage, and/or relating to the sale and the execution and delivery of the deed, and required under applicable law and all partnership agreements have been conducted, given or properly waived.

Commercial Real Estate Transactions

Mechanics – Pre-closing (continued)

- Sample Entity Requirement Clauses

Limited Liability Company

As to _____, LLC, we must be furnished with a copy of

- 1. Articles of Organization/Certificate of Formation*
- 2. Written Operating Agreement/Company Agreement and all amendments thereto*
- 3. Current Membership Roster*

or

Satisfactory proof there have been no amendments to the Articles of Organization/Certificate of Formation, Operating Agreement/Company Agreement or changes in membership since its formation.

Trust

See Ala. Code § 19-3B-1013 (1975) Certification of Trust

Church or Religious Organization

Execution of mortgage (deed) to be authorized in compliance with Ala. Code § 10A-20-2.05 (1975) ((Ala. Code § 10A-20-2.06 (1975)); or in accordance with the organizational and controlling laws of the governing of said organization.

Commercial Real Estate Transactions

Mechanics – Pre-closing (continued)

- Selected Commercial Requirement Clauses

Commercial Broker's Lien

The subject property is commercial property and therefore a sworn statement is required from both the Seller(s) and Purchaser(s) that there is no unpaid or disputed real estate commission, all compensation due or to become due under any listing, agency or other brokerage agreement has been paid or has been waived in writing by the potential lien claimant, and there has been no written notice received concerning any unpaid real estate commission which could give rise to a Broker's Lien pursuant to Ala. Code § 35-11-450 et seq.

Mechanic's Lien (General)

We require that we be furnished full disclosure of the proposed construction project, including but not limited to the following:

- a) Copy of the Construction Contract and any amendments thereto;*
- b) Proposed Disbursement Controls by Lender;*
- c) Construction Budget;*
- d) Copy of Payment and Performance Bond; if any;*
- e) Nature of the proposed project, i.e. Apartment Complex, Commercial Building, etc.*
- f) Appraised amount of the project.*

We reserve the right to make other and further requirements deemed necessary upon receipt and review of this information



Commercial Real Estate Transactions

Mechanics – Pre-closing (continued)

- Selected Commercial Requirement Clauses

Mechanic's Lien (No work started)

We will require a Non-Commencement of Construction from the owner and contractor, stating no construction has started on the property, including site work and grading. Said indemnity to be in form and content satisfactory to the Company.

Mechanic's Lien (Work Started)

We have been informed independent of record that construction has commenced on the project prior to the recordation of the mortgage to be insured herein. Therefore, we require the following:

- a) Affidavit and indemnity in form and content satisfactory to the Company from the General Contractor, setting out all parties who have or will have supplied labor and/or materials to the project prior to the recordation of the insured mortgage;*
- b) Non-contingent lien waivers in form and content satisfactory to the Company by all parties named in the affidavit and indemnity required above.*
- c) We require a Construction Lien Indemnity from borrower indemnifying The Company. Said indemnity to be in form and content satisfactory to the Company.*

Note: The Company reserves the right to make other and further requirements upon review of said information.



Commercial Real Estate Transactions

Mechanics – Pre-closing (continued)

- Selected Commercial Exception Clauses

Lease

Terms and Conditions of that certain Lease Agreement executed by _____ to _____, dated _____, and evidenced by that certain Memorandum of Lease recorded in Book _____, Page _____.

Easement

Terms and conditions contained in that certain Reciprocal Easement Agreement with Covenants and Restrictions by and between _____ and _____, recorded in Book _____, Page _____, and as amended by First Amendment recorded in Book _____, Page _____.

Rights of Tenants

Rights of tenants in possession, as tenants only, under prior outstanding unrecorded residential leases.

Survey Matters

The following matters shown on the ALTA/NSPS Land Title Survey by _____, Project No.____, dated _____, signed and certified _____, and last revised _____.

a. _____

b. _____

Commercial Real Estate Transactions

Mechanics – Pre-closing (continued)

- ALTA/NSPS Survey
 - Review
 - Proper certifications to owner/lender/Old Republic
- Title and Survey Objection Letter
 - Anticipate comments
 - Endorsement requests
- Satisfaction of all B-I requirements
- Escrow Instruction Letter
 - Lender
 - Buyer
 - Seller
- Proforma Policy with Endorsements
 - Preparation
 - Proforma policy language





OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Policy Number: PROFORMA

Issued by: **ABC Title Agency, Inc.**
Address: **9876 Main Street**
Pointe Clear, Alabama 35254

SCHEDULE A

File No.: **17-12345** Policy Number: **PROFORMA**

Amount of Insurance: **\$12,670,000.00**

Date of Policy: **March __, 2017 at __: __ m**

Address Reference: **1234 South First Street**
Zip City, AL 35304

1. Name of Insured:

CAPITAL ONE MULTIFAMILY FINANCE, LLC and/or FEDERAL HOME LOAN MORTGAGE CORPORATION, its successors and/or assigns, as their interests may appear.

2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:

Fee Simple

3. Title is vested in:

Apartment Investors, LLC, a Delaware limited liability company

4. The Insured Mortgage and its assignments, if any, are described as follows:

Multifamily Mortgage, Assignment of Rents and Security Agreement from Apartment Investors, LLC, a Delaware limited liability company securing a loan from Capital One Multifamily Finance, LLC in the original principal sum of \$12,670,000.00, dated March __, 2017, and recorded on March __, 2017 in the Office of the Judge of Probate, Lauderdale County Alabama, in Mortgage Book ____, Page ____.

Assignment of Security Instrument by Capital One Multifamily Finance, LLC to Federal Home Loan Mortgage Corporation dated March __, 2017 and recorded on March __, 2017 in the Office of the Judge of Probate, Lauderdale County, Alabama, in Mortgage Book ____, Page ____.

5. The land referred to in this Policy is situated in the Lee County, State of Alabama, and is described below or, if no description appears below, is the land described in the instrument(s) set forth in item 4 above:

Lot 1, according the Survey of Zip City, as recorded in Plat Book 3 Page 44, in the Office of the Judge of Probate, Lauderdale County, Alabama.



SCHEDULE B - I

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Taxes and special assessments for the year 2017 and subsequent years, not yet due and payable.
2. Any prior reservation or conveyance, together with release of damages, of minerals of every kind and character, including, but not limited to, oil, gas, sand and gravel in, on and under the Land.
3. Rights of tenants in possession, as tenants only, under prior outstanding unrecorded residential leases.
4. Easements, restrictions, notes and setback lines as shown on Plat Book 3, Page 44.
5. Alabama Power Company Easement recorded in Deed Book 323, Page 19.
6. Sanitary Sewer Easement recorded in Deed Book 803 Page 181 and Deed Book 803 Page 223.
7. Alabama Power Company Easement recorded in Book S Volume 12.
8. Memorandum of Agreement to that certain Nonexclusive Installation and Service Agreement dated February 18, 2001 between Previous Owners, a California limited partnership and Marcus Cable Associates LLC recorded in Deed Book 2383 Page 634.
9. The following matters shown on the ALTA/NSPS Land Title Survey by ECE Surveying & Design, LLC, Project: The Pines at Zip City, dated January 17, 2016, signed and certified April 13, 2016, and last revised May 22, 2016:
 - a. Encroachment of Garage into 20' Water Easement near easterly property line.
 - b. Encroachment of Garage into 20' Water Easement near westerly proeprty line.
 - c. Encroachment of Sand Playground Area into 75' Alabama Power Company Easement.
10. Intentionally deleted.
11. This is a PRO FORMA POLICY furnished to or on behalf of the party to be insured. It neither reflects the present status of title nor is it intended to be a commitment to insure. The inclusion of endorsements as part of this policy in no way evidences the willingness of the Company to provide any affirmative coverage shown therein. There are requirements that must be met before a final policy can be issued in the same form as this PRO FORMA POLICY. A commitment to insure setting forth these requirements should be obtained from the Company.



SCHEDULE B - II

SUBORDINATE MATTERS

In addition to the matters set forth in Schedule B-1, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:

Financing Statement from Apartment Investors, LLC, a Delaware limited liability company, as Debtor, to Capital One Multifamily Finance, LLC, as Secured Party and showing Federal Home Loan Mortgage Corporation, as Assignee, and recorded March __, 2017 in the Office of the Judge of Probate, Lauderdale County, Alabama in UCC Book ____, Page ____.

Commercial Real Estate Transactions

Mechanics – At closing

- Prorations
- Settlement statement
- Receipt of funds
- Does the insured require a marked commitment?
- Disbursement of funds
- Release of escrow items
- Instruments to be recorded
 - Who is in possession?
 - Who is responsible for recording?

Commercial Real Estate Transactions

Mechanics – Post-closing

- Recording of instruments
 - Properly executed and acknowledged
 - All exhibits and correct legal description attached
 - Indexing instructions
 - Appropriate order
 - Accurate recording fees
- Releases of liens and encumbrances
- Title policy issuance and delivery
 - Review and approval
 - Where and how to send
 - Timing requirements
- Return of recorded instruments



THANK YOU

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