

Iowa Credit Union Division

REGULATORY ADVISORY

September 2005

Securing a First Mortgage Lien in Iowa

An Iowa credit union, as well as other Iowa financial institutions, must ensure that when making a real property loan, the loan is properly secured by a lien on the real property. Iowa Code § 533.16(4)(a) (2005), in authorizing a credit union to make first mortgage loans, requires the credit union to ensure that such loans are “. . . secured by liens on (the) real property.”

There is interest by some insurance providers to offer products that purport to protect a financial institution in the event the borrower defaults on a real property loan. In some instances, the insurance policy might provide that losses are paid due to “the existence of a superior lien not known to the insured or the insured’s agent on or prior to the loan closing.” The Iowa Insurance Commissioner has determined that such language is a form of title insurance and is illegal¹ for sale in Iowa.

The Iowa Attorney General was requested to opine on whether an in-state lending institution may purchase title insurance from an out-of-state company. The Attorney General concluded “It is not unlawful for lending institutions to purchase title insurance out of the state of Iowa on property located within Iowa, *but such title insurance does not satisfy Iowa law requirements for proof of first or prior lien status of mortgages held by Iowa lending institutions.*” [emphasis added.]

An Iowa credit union purchasing title insurance is obtaining just that, *insurance*. A title insurance policy transfers risk of loss to a title insurer – it does not purport to examine title or opine as to the status of title. As such, title insurance neither establishes that a credit union’s real property loans are “. . . secured by liens on real property”² as required by

¹ Iowa Code § 515.48(10) (2005) “Any [insurance] company organized under this chapter or authorized to do business in this state may... insure any additional risk not specifically included with any of the foregoing classes, which is a proper subject for insurance, is not prohibited by law or contrary to sound public policy, and which, after public notice and hearing, is specifically approved by the commissioner of insurance, *except title insurance or insurance against loss or damage by reason of defective title, encumbrances or otherwise.*” [emphasis added.]

² Iowa Code § 533.16(4)(a) (2005)

the Iowa Code, nor will it “. . .satisfy Iowa law requirements for proof of first or prior lien status of mortgages held by Iowa lending institutions”³ as described in the opinion issued by the Iowa Attorney General.

The Credit Union Division administrative rules, found in Chapter 189 of the Iowa Administrative Code (IAC), provide further guidance on the requirements for evidence of title in real estate loans. The rules direct that a credit union – lending for the purpose of acquisition or to refinance an acquisition, when a new mortgage, or similar instrument is filed – must obtain either: a) A written legal opinion by an attorney admitted to practice in the state in which the real estate is located, (1) showing marketable title in the mortgagor, (2) describing any existing liens, and (3) stating that the credit union’s mortgage, deed of trust or similar instrument is a first lien on the real estate; or b) Title insurance written by an insurance company licensed to do business in the state (other than Iowa⁴) in which the real estate is located, describing any existing liens and insuring the title to the real estate and the validity and enforceability of the mortgage, deed of trust or similar instrument as a first lien on the real estate. [See IAC 189-9.2 (533).]

CONCLUSION:

<p style="text-align: center;">Iowa Real Property First Mortgage Loan</p> <p style="text-align: center;">-----</p>	<p style="text-align: center;">Out-of-State Real Property First Mortgage Loan</p> <p style="text-align: center;">-----</p>
<p>1. <u>Required</u>: A written legal opinion, from an attorney admitted to practice in Iowa, showing proof of first or prior lien status, and stating the Iowa credit union’s mortgage or similar instrument is a first lien on the real estate.</p> <p>(NOTE: If an insurance policy is purchased to pay for a loss due to the existence of a superior lien, it must be bought out-of-state, but an insurance policy <i>does not satisfy Iowa Code § 533.16 for proof of first or prior lien status on the mortgage held by the credit union, and an attorney’s written legal opinion must still be obtained.</i>)</p>	<p>1. <u>Required</u>: A written legal opinion, from an attorney admitted to practice in the state where the real property is located, showing proof of first or prior lien status, and stating that the Iowa credit union’s mortgage or similar instrument is a first lien on the real estate;</p> <p style="text-align: center;">OR</p> <p>2. <u>Alternative</u>: If an attorney’s legal opinion is not available, then title insurance, written by an insurance company licensed to do business in the state in which the real estate is located, describing any existing liens, and insuring the title to the real estate and the validity and enforceability of the mortgage or similar instrument as a first lien on the real estate, must be purchased.</p>

³ Opinion No. 79-12-5, December 5, 1979 letter to John A. Pringle; 1979 Op. Atty. Gen. 523.

⁴ Insurance companies are not licensed to sell title insurance in Iowa. [Iowa Code §515.48(10)]