

DON'T JUDGE A BOOK BY ITS COVER: REVISED ACORD 27 IS NOT WHAT IT APPEARS TO BE!

By: Jordan Frame

As lender's counsel in real estate transactions, we often agree to accept certificates of insurance coverage issued by a local insurance broker as proof that the borrower is maintaining adequate insurance coverage. These certificates are typically issued on a standardized industry form or forms produced by the ACORD Corporation, and thus are often referred to as "ACORD forms".

One major problem with these forms is that, for the most part, they expressly disclaim reliance by third parties, by stating that they are issued for "information only" and "should not be relied upon as evidence of coverage." Lenders and lender's counsel have learned to deal with this problem, however, by requesting that the broker issue the certificate on an "ACORD 27" form, which, unlike other ACORD forms, is entitled "Evidence of Insurance", and states affirmatively that the form can be relied upon as "evidence that [the] insurance . . . has been issued". As a result, many lenders now specifically require in their loan commitments that the borrower deliver its insurance information on an ACORD 27 certificate.

Unfortunately, recent revisions to the ACORD 27 in 2006/07, have resulted in ACORD 27 being somewhat less than the sum of its parts. Although the revised ACORD 27 form is entitled "Evidence of Property Insurance", and labeled "ACORD 27" at the lower left corner (and thus looks very much like the earlier form), the "reliance" language (which had been the "meat" of the form) has been replaced with the ubiquitous "information only" disclaimer: "*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.*" Other aspects of the form have also been altered, including changing language that required the issuer to give notice to a lender before coverage could be terminated (and replacing with language to the effect that the lender would "*endeavor*" to give such notice).

It is difficult to imagine how this very contradictory language in the new ACORD 27 is intended to be reconciled. Rather, one might conclude that ACORD was acting to appease its insurance industry clients (including the brokers who are bound by such forms), while at the same time hoping to avoid dissension from the lending industry in overtly abandoning a widely-used form. From the standpoint of the lenders, however, the result is likely to be that much of the goodwill and trust that ACORD has engendered over the years will be eroded by this move.

If you have any questions regarding the ACORD 27 or need assistance with any of your real estate needs, please contact Jordan Frame (410-895-1202, or jframe@rosenbergmartin.com) or any attorney in our real estate group:

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