Mortgage Modifications:
Tips for Structuring the Deal

By: Crystanna V. Cox
crccox@firstam.com

Scenario 1

- In 2015, Jane and John take out a $1,000,000 loan with Quick Money Bank for the purchase of Tract A.
- Quick Money Bank secures the loan with a $1,000,000 deed of trust / mortgage on Tract A.
- Title Agent issues a $1,000,000 loan policy to Quick Money Bank for the deed of trust / mortgage on Tract A.
- In 2019, Quick Money Bank tells Title Agent that they plan to modify the deed of trust / mortgage to extend the maturity date on the underlying note.

Quick Money Bank has an existing $1,000,000 loan policy. Can that existing loan policy be endorsed to insure the proposed modification by Quick Money Bank? Yes.
Scenario 1
The ALTA Endorsement 11-06 (Mortgage Modification)

See Issuing Standard and MO QOW #104 and KS QOW #40.

Scenario 2
• In 2015, Jane and John take out a $1,000,000 loan with Quick Money Bank for the purchase of Tract A.
• Quick Money Bank secures the loan with a $1,000,000 deed of trust / mortgage on Tract A.
• Title Agent issues a $1,000,000 loan policy to Quick Money Bank for the deed of trust / mortgage on Tract A.
• In 2019, Quick Money Bank tells Title Agent that they plan to modify the deed of trust / mortgage to extend the maturity date on the underlying note.
• Title Agent just learned that there is a second deed of trust / mortgage on Tract A in favor of Lots of Cash Bank. Lots of Cash Bank has offered to give Quick Money Bank a subordination agreement.

Scenario 2
Quick Money Bank has an existing $1,000,000 loan policy.
Can that existing loan policy be endorsed to insure the proposed modification by Quick Money Bank?
Yes.

Is there a way to make the proposed modification senior to the second deed of trust / mortgage in favor of Lots of Cash Bank?
Yes.
Scenario 2

The ALTA Endorsement 11.1-06 (Mortgage Modification with Subordination)

See Issuing Standard.
Reminder: MO QOM #476; KS QOM #362

Scenario 3

- In 2015, Jane and John take out a $1,000,000 loan with Quick Money Bank for the purchase of Tract A.
- Quick Money Bank secures the loan with a $1,000,000 deed of trust / mortgage on Tract A.
- Title Agent issues a $1,000,000 loan policy to Quick Money Bank for the deed of trust / mortgage on Tract A.
- In 2019, Quick Money Bank tells Title Agent that they plan to modify the deed of trust / mortgage to increase the loan amount from $1,000,000 to $1,500,000.

Scenario 3

Quick Money Bank has an existing $1,000,000 loan policy. Can that existing loan policy be endorsed to insure the proposed modification by Quick Money Bank and to cover the increased loan amount?
Yes, and we have TWO OPTIONS.
**Scenario 3 – Option 1**
The ALTA Endorsement 11-06 (Mortgage Modification)* + 
The CLTA Endorsement 107.2-06 (Amount of Insurance, Increase)

*See Issuing Standard and MO QOW #104 and KS QOW #40.

**Scenario 3 – Option 2**
The ALTA Endorsement 11.2-06 (Mortgage Modification with Additional Insurance Amount)

See Issuing Standard.

**Scenario 4**
- In 2015, Jane and John take out a $1,000,000 loan with Quick Money Bank for the purchase of Tract A.
- Quick Money Bank secures the loan with a $1,000,000 deed of trust / mortgage on Tract A.
- Title Agent issues a $1,000,000 loan policy to Quick Money Bank for the deed of trust / mortgage on Tract A.
- In 2019, Quick Money Bank tells Title Agent that they plan to modify the deed of trust / mortgage to increase the loan amount from $1,000,000 to $1,500,000.
- To secure this $500,000 increase, John and Jane are pledging Tract B to Quick Money Bank, a parcel that they already own.
Scenario 4

Quick Money Bank has an existing $1,000,000 loan policy on Tract A only. Can that existing loan policy be endorsed to insure the proposed modification by Quick Money Bank? Yes. See Scenario 3. Can that endorsement include Tract B? Depends upon your underwriter.

Scenario 4 – Option 1

Existing $1,000,000 loan policy on Tract A only:
- The ALTA Endorsement 11-06 (Mortgage Modification); AND
- ALTA Endorsement 12-06 (Aggregation)

New $500,000 loan policy on Tract B only:
- ALTA Endorsement 12-06 (Aggregation)

See Issuing Standards and MO QOW #104 and KS QOW #40.

Scenario 4 – Option 1

ALTA Endorsement 12-06 (Aggregation):
Confirm that one of the following conditions is met:
1) the Insured Mortgage under each of the specified policies is the same blanket mortgage encumbering all of the properties under all of the specified policies; OR
2) the Insured Mortgage under each specified policy is cross-collateralized with the Insured Mortgage under every other specified policy.

It is not sufficient if the mortgages are merely cross-defaulted, but not also cross-collateralized.
Scenario 4 – Option 2
The “Enhanced 11” Endorsement With Description Change

Scenario 4 – Option 3
The ALTA Endorsement 11-06 (Mortgage Modification)* +
The General “Blank” Endorsement**

* See Issuing Standard and MO QOW #104 and KS QOW #40.
** Reminder: MO QOW #451 and KS QOW #342 and MO QOW #104 and KS QOW #40.

Mortgage Modification: The Commitment
See Scenario 3 above

- In 2015, Jane and John take out a $1,000,000 loan with Quick Money Bank for the purchase of Tract A.
- Quick Money Bank secures the loan with a $1,000,000 deed of trust / mortgage on Tract A.
- Title Agent issues a $1,000,000 loan policy to Quick Money Bank for the deed of trust / mortgage on Tract A.
- In 2019, Quick Money Bank tells Title Agent that they plan to modify the deed of trust / mortgage to increase the loan amount from $1,000,000 to $1,500,000.
Mortgage Modification: The Commitment

How to set up the commitment?

**ALTA® 11-06 Endorsement to 2006**

1. **Commitment Date**
2. **Policy to be issued:**
   - [ ] ALTA®
   - [ ] Proposed Insured
   - [ ] Actual Insured
3. **Policy Amount:**
4. **Amount Guaranteed:** $1,500,000
5. **Requirement for recording of the mortgage modification.**

**Endorsement(s)**

- Loan
- Quick Money Bank

**Modification**
Mortgage Modification: The Commitment

How to set up the commitment?

SCHEDULE B, PART II

Exceptions

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attains, or is disclosed between the Commitment Date and the date on which all of the SCHEDULE B, PART II Requirements are met.
2. Rights or claims of parties in possession not shown by the Public Records.
3. Liens, or claims of easements, not shown by the Public Records.
4. Any encumbrance, easement, violation, variance, or adverse circumstances affecting Title that would be disclosed by an accurate and complete survey of the Land that could be ascertained by an inspection of the Land.
5. Any lien, or right to lien, for services, labor, or material rendered or to be rendered, excepted by law and not shown by the Public Records.
6. All items on title since the date of the original deed of trust / mortgage or any omitted matters on original policy due to indemnity agreements.
7. The fees of the General Taxes for the year 2016 and thereafter.

Mortgage Modification: Hili Approval

1) Prior loan policy and all endorsements issued with it;
2) Commitment; and
3) Proposed mortgage modification, if available.

Reminder: MO QOW #363 and KS QOW #256, but see KS QOM #373

Scenario 5 – Multiple Deeds of Trust / Mortgages

- In 2015, Jane and John take out a $1,000,000 loan with Quick Money Bank for the purchase of Tract A and Tract B.
- Tract A is in Alice County, and Tract B is in Barb County.
- Quick Money Bank secures the loan with a $1,000,000 deed of trust / mortgage on Tract A in Alice County and a $1,000,000 deed of trust / mortgage on Tract B in Barb County.
- Both deeds of trust / mortgages are secured by the same $1,000,000 note.
- Quick Money Bank wants one loan policy for a $1,000,000 covering both deeds of trust / mortgages.
Scenario 5 –
Multiple Deeds of Trust / Mortgages

Is one loan policy possible?

Depends upon your underwriter.

Loan policy on deed of trust / mortgage for Tract A only for $500,000 + ALTA Endorsement 12-06 (Aggregation)
Loan policy on deed of trust / mortgage for Tract B only for $500,000 + ALTA Endorsement 12-06 (Aggregation)

See Issuing Standard.

crcox@firstam.com