

**LIMITED PRE-FORECLOSURE POLICY T-98**

**Issued By**

\_\_\_\_\_ **TITLE INSURANCE COMPANY**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, EXCEPTIONS FROM COVERAGE AND THE CONDITIONS AND STIPULATIONS HEREOF, \_\_\_\_\_ Title Insurance Company, herein called the Company, insures, as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the reason of:

1. Any defect in, or lien or encumbrance on the title to the estate or interest in the Land described in this Policy recorded in the Public Records on or subsequent to the Date of Recording of the Foreclosing Mortgage.
2. Any transfer or conveyance of the title to the estate or interest in the Land recorded in the Public Records on or subsequent to the Date of Recording of the Foreclosing Mortgage.
3. Any assignment, modification or release of the Foreclosing Mortgage recorded in the Public Records on or subsequent to the Date of Recording of the Foreclosing Mortgage.
4. Any notice of pending bankruptcy proceedings affecting the title to the estate or interest in the Land recorded in the Public Records on or subsequent to the Date of Recording of the Foreclosing Mortgage.
5. Any lien for stand by fees, taxes or assessments by any taxing authority that are due and payable at Date of Policy.
6. Any federal tax lien, state or local tax lien, or judgment lien recorded in the Public Records on or before, or after, the Date of Recording of the Foreclosing Mortgage against the mortgagor or grantor of the Foreclosing Mortgage or against a transferee or grantee from the mortgagor or grantor identified in a transfer or conveyance of the title to the estate or interest in the Land recorded in the Public Records on or subsequent to the Date of Recording of the Foreclosing Mortgage.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the insured, but only to the extent provided in the Conditions and Stipulations.

The following matters, the Exclusions From Coverage, are expressly excluded from the coverage of this Policy and the Company will not pay loss or damage, costs, attorney's fees or expenses which arise by reason of:

1. Any invalidity, unenforceability, lack of priority or ineffectiveness: (i) of the Foreclosing Mortgage; or, (ii) of any of the instruments or other matters shown in the Exceptions From Coverage in this Policy or in any endorsement to this Policy.
2. Defects, liens, encumbrances, adverse claims or other matters:

- a) created, suffered, assumed or agreed to by the Insured Claimant;
  - b) known to the Insured Claimant whether or not disclosed in the Public Records;
  - c) resulting in no loss or damage to the Insured Claimant;
  - d) recorded or filed in the Public Records subsequent to Date of Policy.
3. Any lien for standby fees, taxes or assessments by any taxing authority, attaching or incepting prior to the date of recording of the Foreclosing Mortgage.

IN WITNESS HEREOF, the \_\_\_\_\_ Title Insurance Company has caused this policy to be executed by its President, under the seal of the Company, but this Policy is to be valid only when it bears an authorized countersignature, as of the Date of Policy set forth on the Pre-Foreclosure Policy Combined Schedule. [Witness clause optional]

\_\_\_\_\_

(Printed Name of Title Insurance Company)

By: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

\_\_\_\_\_  
Printed Name:

**LIMITED PRE-FORECLOSURE POLICY COMBINED SCHEDULE**

**Title Company File No.:**

**Policy No.:**

**Premium: \$**

**Date of Policy:**

**Amount of Insurance: \$**

**Name of Insured:**

**Foreclosing Mortgage:**

In this Limited Pre-Foreclosure Policy: (i) the deed of trust, or other lien, described below is referred to as the "Foreclosing Mortgage"; and, (ii) the date and time of filing in the Public Records of the Foreclosing Mortgage is referred to as the "Date of Recording".

**Land:**

The land referred to in this policy is described as follows:

**Estate or Interest:**

The estate or interest in the land that is covered by this policy is:

**EXCEPTIONS FROM COVERAGE:**

The Exceptions From Coverage include all terms of the documents creating or offering evidence of the Exceptions From Coverage noted below. This policy does not insure against loss or damage {and the Company will not pay costs, attorneys' fees or expenses} which arise by reason of:

1. Standby fees, taxes and assessments by any taxing authority for the year \_\_\_\_\_, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, *Texas Tax Code*, or because of improvements not assessed for a previous tax year.
2. Insert here, using numbered and/or lettered paragraph descriptions, an exception(s) for each recorded item(s). By exception to any matter: (i) the Company does not represent the priority or validity of the matter; (ii) the Insured does not agree that the matter is valid or superior to the Foreclosing Mortgage; and, (iii) the Insured does not ratify or confirm the matter. [Insert item description(s) and recording information or state: "Item 2 {two} is hereby deleted"].

Authorized Countersignature

\_\_\_\_\_

\_\_\_\_\_  
(Printed Name of Title Insurance Agent or  
Direct Operation or Title Insurance Company)

By:

\_\_\_\_\_

\_\_\_\_\_  
(Signature)

Title:

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Printed Name:

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## CONDITIONS AND STIPULATIONS

### 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "insured": the insured name herein. The term also includes the owner of the indebtedness secured by the foreclosing mortgage. The Company reserves all rights and defenses against any insured acquiring an interest in the foreclosing mortgage subsequent to Date of Policy which the Company would have had against the insured named herein or any subsequent insured.
- (b) "insured claimant": an insured claiming loss or damage hereunder.
- (c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records.
- (d) "land": the land described herein and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to herein, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (e) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.

### 2. DEFENSE AND PROSECUTION OF ACTIONS - NOTICE OF CLAIM TO BE GIVEN BY AN INSURED CLAIMANT

- (a) Upon written request by the insured and subject to the options contained in Section 4 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim which may cause loss or damage, but only as to those stated causes of action alleging a matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and

shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

- (b) The insured shall notify the Company promptly in writing in case (i) of any litigation as set forth in (a) above, or (ii) knowledge shall come to an insured hereunder of any claim which might cause loss or damage for which the Company may be liable by virtue of this policy.

If prompt notice shall not be given to the Company, then all liability of the Company shall cease and terminate in regard to the matter or matters for which prompt notice is required; provided, however, the failure to notify shall in no case prejudice the rights of the insured under this policy unless and except to the extent that the Company shall be prejudiced by such failure.

Subject to the provisions of this policy, if the insured acquires all or part of the estate or interest in the land by foreclosure of the foreclosing mortgage, trustee's sale pursuant to the foreclosing mortgage, conveyance in lieu of foreclosure of the foreclosing mortgage, or other legal manner which discharges the foreclosing mortgage, and the insured notifies the Company as required herein of a lien, encumbrance, adverse claim or other defect in the title to the estate or interest in the land insured against by this policy, the Company shall promptly investigate the charge to determine whether the lien, encumbrance, adverse claim or defect is valid and not barred by law or statute. The Company shall notify the insured in writing, within a reasonable time, of its determination as to the validity or invalidity of the insured's claim or charge under the policy. If the Company concludes that the lien, encumbrance, adverse claim or defect is not covered by this policy, or was otherwise addressed when this policy was issued, the Company shall specifically advise the insured of the reasons for its determination. If the Company concludes that the lien, encumbrance, adverse claim or defect in title is valid and insured against by this policy, the Company shall take one of the following actions: (1) institute the necessary proceedings to clear the lien, encumbrance, adverse claim or defect from the title to the estate or interest; (2) indemnify the insured as provided in this policy; (3) upon payment of appropriate premium and charges therefore, issue to the insured claimant or to a subsequent owner, mortgagee or holder of the estate or interest in the land, a policy of title insurance without exception for the lien, encumbrance, adverse claim or defect, said policy to be in an amount equal to the current value of the property or, if a loan policy, the amount of the loan; (4) indemnify another title insurance company in connection with its issuance of policy(ies) of title insurance without exception for the lien, encumbrance, adverse claim or defect; (5) secure a release or other document discharging the lien, encumbrance, adverse claim or defect; or (6) undertake a combination of (1) through (5) herein.

- (c) The Company shall have the right at its own cost to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to prevent or reduce loss or damage insured against by this policy; and the Company may take any appropriate action, whether or not it shall be liable under the terms of this policy, and shall not thereby concede liability or waive any provisions of this policy.

- (d) Whenever the Company shall have brought any action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination in a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

- (e) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured hereunder shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for such purpose. Whenever requested by the Company, the insured shall give the Company, at the Company's expense, all reasonable aid (i) in any action or proceeding in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending the action or proceeding, and (ii) in any other act which in the opinion of the Company may be necessary or desirable to prevent or reduce loss or damage insured against by this policy, including but not limited to executing corrective or other documents.

### **3. PROOF OF LOSS OR DAMAGE - LIMITATION OF ACTION**

In addition to the notices required under Section 2 of these Conditions and Stipulations, a proof of loss or damage, signed and sworn to by the insured claimant shall be furnished to the Company within 91 days after the insured claimant shall ascertain or determine the facts giving rise to loss or damage. The proof of loss or damage shall describe the matter insured against by this policy which constitutes the basis of loss or damage, and, when appropriate, state the basis of calculating the amount of the loss or damage.

Should the proof of loss or damage fail to state facts sufficient to enable the Company to determine its liability hereunder, insured claimant, at the written request of Company, shall furnish such additional information as may reasonably be necessary to make such determination.

Failure to furnish the proof of loss or damage shall terminate any liability of the Company under this policy as to such loss or damage.

### **4. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the right to exercise the following additional options at any time:

- (a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.
- (i) to pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or
- (ii) to purchase the indebtedness secured by the foreclosing mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the

foreclosing mortgage, together with any collateral security, to the Company upon payment therefore.

Upon the exercise by the Company of either of the options provided for in paragraphs (a)(i) or (a)(ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (b)(ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

## **5. DETERMINATION AND PAYMENT OF LOSS**

This policy is a contract indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A;

(ii) the amount of the unpaid principal indebtedness secured by the foreclosing mortgage at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the estate or interest in the land encumbered by the foreclosing mortgage without the lien, encumbrance, adverse claim or other defect insured against and the value of the estate or interest subject to the lien, encumbrance, adverse claim or other defect insured against by this policy.

(b) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 2 of these Conditions and Stipulations.

- (c) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

## **6. LIMITATION OF LIABILITY**

- (a) If the Company removes an alleged matter insured against by this policy, or takes action in accordance with Section 2 or Section 4, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the insured with respect to matters insured against this policy.
- (c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

## **7. REDUCTION OF INSURANCE; TERMINATION OF LIABILITY**

All payment under this policy, except payment made for costs, attorneys' fees and expenses, shall reduce the amount of insurance pro tanto.

## **8. SUBROGATION UPON PAYMENT OR SETTLEMENT**

Whenever the Company shall have paid or settled a claim under this policy, it shall be subrogated to the rights of the insured claimant unaffected by any act of the insured claimant, limited only by the amount paid by the Company. The insured claimant shall cooperate with the Company in enforcing these subrogation rights.

## **9. ARBITRATION**

Unless prohibited by applicable law or unless this arbitration section is deleted by specific provision in the Schedule of this policy, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less SHALL BE arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from a corporation, trust, partnership, association or other legal entity). All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules in effect on the date of the demand for arbitration is made or, at the option of the Insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the law of the state in which the land is located permit a court to award attorneys' fees to a prevailing party.



The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules. A copy of the Rules may be obtained from the Company upon request.

#### **10. LIABILITY LIMITED TO THIS POLICY**

This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

Any claim of loss or damage whether or not based on negligence, or any action asserting any claim, shall be restricted to the terms and provisions of this policy.

No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, validating officer or authorized signatory of the Company.

No payment shall be made without producing this policy for endorsement of the payment unless the policy is lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

#### **11. SEVERABILITY**

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision, and all other provisions shall remain in full force and effect.

#### **12. NOTICES WHERE SENT**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company, Attention: Claims Department.