

# Stewart<sup>®</sup> Bulletin

SLS2008010

**Date:** August 18, 2008

**From:** Stewart Legal Services

**To:** All Issuing Offices

**RE:** **The Federal Deposit Insurance Corporation's (FDIC) role as Receiver and Conservator for failed banking institutions - Title implications for sales and loan payoffs**

Dear Associates:

Due to recent economic circumstances, the FDIC is increasingly being appointed to step into the management of failed lenders. You may be asked to insure real estate owned by a failed institution or to payoff a loan where a failed institution is the mortgagee of record. This Bulletin describes general requirements for such situations, and includes the specific requirements relating to the takeover of IndyMac Bank, FSB by the FDIC. These general requirements may be supplemented or revised based upon the specific facts relating to the failed institution and the nature of the FDIC's role. Please consult with a Company underwriter as necessary.

## **Appointment of the FDIC as Receiver and/or Conservator**

The FDIC may be appointed as Receiver and/or Conservator for a failed banking institution by either the Office of Thrift Supervision, the Office of the Comptroller of the Currency or by a state regulatory authority, depending on the institution's charter and whether it is state or federally chartered. The FDIC must be appointed Receiver for any failed insured Federal depository institution and the FDIC must accept such appointment.

## **FDIC's rights and duties as a Receiver or Conservator**

As Receiver or Conservator, by operation of law, the FDIC succeeds to all rights, titles, powers, and privileges of the depository institution, including the ability to deal with all loans and real estate.

A Receiver generally collects and liquidates the failed institution's assets to pay its creditors and depositors. The FDIC as Receiver may dispose of the failed institution's assets itself. A Receiver or Conservator has the ability to merge a failed institution with another insured depository institution and to transfer its assets. The FDIC may form a

new institution or a bridge bank to take over the assets of the failed institution. In such situations, a new institution is created to accept the failed institution's assets, and the FDIC can become the Conservator of the new institution as well of the Receiver of the failed institution. The FDIC as Receiver may convey the failed institution's assets to the FDIC as Conservator of the new institution.

### **Documentation of Appointment of the FDIC as Receiver and/or Conservator**

When insuring a transaction where the FDIC has been appointed as Receiver or Conservator of an institution, you must receive evidence of the appointment of the FDIC in that role. This also applies to property or mortgages held in the name of the failed institution that has been taken over by the FDIC. Please require the following:

- \* Proof is required that the FDIC has been appointed as the Receiver or Conservator, as applicable, of the named institution, and that the FDIC has accepted such appointment.

[Note: It is not necessary to record this document.]

### **Agreement to Transfer Assets of the Failed Institution**

You must ascertain if there is any agreement pursuant to which the FDIC as Receiver of the failed institution undertakes to transfer the assets of the failed institution to the FDIC as Conservator of a new institution or to a different institution. If there is such an agreement, it must be examined to determine what assets are intended to be purchased. If you become aware that there is such an agreement, please require the following:

- \* Proof is required that the subject property is included in the assets transferred from the FDIC as Receiver of [the failed institution] to [the FDIC as Conservator of] the new institution.

[Note: This generally will be in the form of a Purchase and Sale Agreement. It is not necessary to record this document.]

### **FDIC solely as Receiver**

When insuring land that was or is in the name of the failed institution after the FDIC is appointed Receiver, and if no transfer of assets to another institution or to the FDIC as Conservator is contemplated, you must require:

- \* A deed, acceptable to the Company, conveying the subject property from the FDIC as Receiver to the insured.
- \* Power of attorney, in recordable form, acceptable to the Company, relating to the execution of the deed.

### **FDIC both as Receiver and as Conservator**

When insuring land that was or is in the name of the failed institution after the FDIC is appointed Receiver and the FDIC forms a new institution or merges the assets of the failed institution with an existing one, you must require:

- \* A deed, acceptable to the Company, conveying the subject property from the FDIC as Receiver to the new or succeeding entity.

[Note: This grantee may be the FDIC in its capacity as Conservator of a new institution.]

- \* A deed, acceptable to the Company, conveying the subject property from the new or succeeding entity to the purchaser.

[Note: This grantor may be the FDIC in its capacity as Conservator of the new institution.]

- \* In the alternative, you may accept a single deed executed by the FDIC both as Receiver of the failed institution and as Conservator of the new institution, as grantors, to the purchaser, as grantee.
- \* Powers of attorney, in recordable form, acceptable to the Company, relating to the execution of all deeds.

### **Example - Property in the name of IndyMac**

Recently, the FDIC was appointed as Receiver for IndyMac Bank, F.S.B. ("IndyMac Bank"). The FDIC created a new Federal savings association known as IndyMac Federal Bank, F.S.B. ("IndyMac Federal") and FDIC became the Conservator of IndyMac Federal. FDIC as Receiver for IndyMac Bank entered into an Insured Deposit Purchase and Assumption Agreement dated July 11, 2008 (the "Purchase Agreement") with the FDIC as Conservator for IndyMac Federal to transfer substantially all of IndyMac Bank's assets to the FDIC as Conservator for IndyMac Federal. Included in the assets transferred by the Purchase Agreement were loans, mortgage servicing rights and real estate. Unless otherwise advised, it is not necessary to require any further documentation relating to the appointment of the FDIC as Receiver for IndyMac Bank or Conservator for IndyMac Federal.

When you insure title to property that was or is in IndyMac Bank's name as of July 11, 2008, you must require the following:

- \* A deed, acceptable to the Company, conveying the subject property from the FDIC as Receiver for IndyMac Bank to the FDIC as Conservator for IndyMac Federal.

- \* A deed, acceptable to the Company, conveying the subject property from the FDIC as Conservator for IndyMac Federal to the purchaser.
- \* We believe the FDIC will be utilizing two deeds. However, you may accept a single deed executed by the FDIC both as Receiver of IndyMac Bank and as Conservator of IndyMac Federal, as grantors, to the purchaser, as grantee.
- \* Powers of attorney, in recordable form, acceptable to the Company, relating to the execution of all deeds.

[Note: A power of attorney may already be recorded in your jurisdiction.]

### **Payoff of Loans held by the FDIC as Receiver or Conservator**

Outstanding loans are generally treated as an asset of the failed institution. They may be retained or transferred. You must determine the appropriate entity to give you a payoff statement and a release of the security interest. The recorded documents must be consistent. When paying off a loan in the name of a failed institution, you must require the following:

- \* Proof is required that the FDIC has been appointed as the Receiver or Conservator, as applicable, of the named institution, and that the FDIC has accepted such appointment.
- \* Ascertain if there is a contract conveying the failed institution's assets to a new or different institution, and if mortgages/deeds of trust are intended to be transferred or retained.
- \* If there is an agreement pursuant to which FDIC as Receiver is transferring the assets of the failed institution to a new or different institution, you should require an assignment of the mortgage, in recordable form, from the FDIC as Receiver of the failed institution to the new or merged institution. The assignee of the mortgage should produce the release.
- \* If no transfer of the failed institution's mortgage loan portfolio is contemplated, the FDIC as Receiver for the failed institution should produce the release.

### **Example - Payoff of IndyMac loans**

When you insure title to property where IndyMac is the beneficiary of a deed or trust or the holder of a mortgage on the property, you must require the following:

- \* An assignment, in recordable form, of the security interest from FDIC as Receiver for IndyMac Bank to FDIC as Conservator for IndyMac Federal.

- \* Recordation of a release, appropriate for your state, of the security interest by FDIC as Conservator for IndyMac Federal.
- \* Powers of attorney, in recordable form, acceptable to the Company, relating to the execution of all instruments (assignments and releases).
- \* All funds for payoff of existing loans held by IndyMac Bank should be disbursed to IndyMac Federal. You can obtain payoff information from IndyMac Federal by calling 800-781-7399 or at [www.indymacbank.com](http://www.indymacbank.com).

For on-line viewing of this and other bulletins, please log onto [www.vuwriter.com](http://www.vuwriter.com).

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**Note:** Copy and distribute this bulletin to your escrow officers, title examiners, title officers, searchers and anyone else that you feel should know about it.

### **References**

**Bulletins Replaced:**

None.

**Related Bulletins:**

None.

**Underwriting Manual:**

None.

**Exceptions Manual:**

None.

**Forms:**

None.