Doma Title Insurance, Inc.

Frequently Asked Questions

FAQs for the District of Columbia

760 Northwest 107th Avenue, Suite 401
Miami, FL 33172

Table of Contents

1. Powers of Attorney

- What is Doma's underwriting position with respect to the use of and reliance upon powers of attorney?

Use of powers of attorney for instruments of conveyance or encumbrance should be authorized sparingly based primarily on necessity rather than convenience. Documents which require the personal knowledge of the signer should not be executed by an attorney in fact unless that individual possesses the personal knowledge required to make the statements true. In light of the incremental title insurance risks associated with powers of attorney, justifying reliance on a power of attorney requires closer scrutiny. Situations will undoubtedly arise where a power of attorney is still needed to successfully conclude a transaction. In such situations, Doma agents should request authorization to rely upon the power of attorney from Doma underwriting counsel. Send a copy of the power of attorney along with the commitment and the reason why it is needed to DCunderwriting@doma.com.

- Does Doma require that a title agent communicate directly with the principal before accepting and relying upon their power of attorney?

Except where the principal is legally incompetent and a durable power of attorney is being used (and in such cases it may be best to speak directly with an attending physician to confirm the status of the principal), title agent best practices include direct communications between the title agency and the principal to confirm the bona fides of the transaction and the power of attorney. The communication should be initiated by the agent and should occur by phone or email. The communication should be documented in the agent's file. Items confirmed in the communication should include: (a) identification of the current transaction (parties, property, amount, type); (b) confirmation that the principal wishes to consummate the transactions; (c) confirmation that the power of attorney remains valid; (d) confirmation of the identity of the attorney in fact and the date of the power of attorney; (e) the reason why the principal is unable to execute the closing documents personally; and (f) the manner and method of payment of any proceeds due the seller.

- What are the necessary formalities for the execution of a power of attorney?

All powers of attorney executed in the District of Columbia must be signed by the principal in the presence of, and acknowledged by, a notary public who will acknowledge the signature. This includes both durable and nondurable powers of attorney and powers of attorney to convey or mortgage real property.

A power of attorney to convey or mortgage property executed in another state which does not comply with the District of Columbia execution requirements will be valid in the District of Columbia if, when it was executed, the power of attorney and its execution complied with the laws of the state where it was executed.

A District of Columbia power of attorney to be used in connection with real estate requires statutory language in bold print at the top of the first page thereof. That language is as follows:

> NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT OF 1998. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT

AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

A military power of attorney which is not executed in the presence of witnesses is acceptable to convey or mortgage title if it was executed in accordance with 10 U.S.C. § 1044b.

- May a power of attorney be used to execute an insurable deed or mortgage?

General powers of attorney which do not contain any specific powers as to real property may not be relied upon for title insurance purposes. Broadly worded powers of attorney which contain no property specific powers are not acceptable for insuring title. The power to “sell and convey” should be stated in a power of attorney relied upon in connection with a property sale. The power to “mortgage and encumber” should be stated in a power of attorney relied upon in connection with a finance or refinance transaction. The power to “purchase” should be stated in a power of attorney relied upon in connection with an acquisition transaction. Property specific language identifying the particular parcel of property involved in a transaction is preferred but is not required if the requisite powers are present. In addition to the general power being stated, the document should specifically indicate that the attorney in fact has the power to execute any and all documents necessary.

- If a power of attorney is approved for use in a transaction, what documents need to be recorded in the transaction?

In the District of Columbia, a conveyance, transfer, mortgage, or lease of real property under an unrecorded power of attorney shall not be insurable. Therefore, the original power of attorney must be recorded in the public records prior to and along with the instruments executed thereunder.

In addition, an affidavit must be obtained from the attorney in fact affirming that the principal is not deceased, that the principal has not filed for bankruptcy, that there have been no proceedings to determine incapacity or for the appointment of a guardian of the principal, and that the power of attorney has not been revoked or otherwise terminated. If the power of attorney is of the non-durable type, the affidavit should also include a statement that the attorney in fact is without knowledge of any incapacity of the principal. This affidavit is sometimes called an “alive and well” affidavit and should be recorded along with the original of the power of attorney, if at all possible.

- How should an instrument be signed when a power of attorney is being used?

The deed or mortgage must name the principal as the grantor in the identifying clause at the top of the deed or mortgage. The preferred method for signing the deed or mortgage in the signature block is for the attorney in fact to sign the principal’s name by himself as agent. For example, where Emilio Fernandez is the principal whose property is being conveyed, and Valerie Grandin is the attorney in fact, the attorney in fact should hand write the signature as “Emilio Fernandez by Valerie Grandin, his attorney-in-fact.”

- If a power of attorney was executed outside of the District of Columbia, may it be used for a DC transaction?

Yes, provided Doma underwriting counsel approves it. The following formalities of execution apply to powers of attorney executed outside of the District of Columbia.

A power of attorney to convey or mortgage property executed in another state which does not comply with the District of Columbia execution requirements will be valid in District of Columbia if, when it was executed, the power of attorney and its execution complied with the laws of the state where it was executed.

The power of attorney should contain a specific power for the type of transaction contemplated. Ideally, the power of attorney should also specifically reference or identify the property involved in the transaction to be insured.

- If a power of attorney is more than 1 year old, may it be used?

Non-durable powers of attorney should have a limited duration because preference is given to transaction specific powers of attorney. The older a power of attorney is, the greater the risk that it was revoked by the principal or is otherwise invalid. As a rule of thumb, non-durable powers of attorney that are more than one year old should be rejected in favor of requiring a new, transaction specific power of attorney from the principal. Consult with Doma underwriting counsel (DCunderwriting@doma.com) prior to relying upon a non-durable power of attorney more than one year old.

- May the trustee of a trust grant a power of attorney for use in a transaction?

Typically, a fiduciary may not grant a power of attorney and a trustee of a trust is a fiduciary. However, in limited situations, if the declaration of trust specifically gives the trustee powers to appoint or employ attorneys in fact, and also grants the trustee the specific power for the type of act for the property (for example, to sell, convey, or encumber) then a trustee may grant a power of attorney for use in an insured transaction. The power of attorney must be executed by the trustee in their capacity as trustee and not individually. Doma underwriting counsel approval (DCunderwriting@doma.com) is required for use of a trustee's power of attorney.

- May a District of Columbia limited liability company grant a power of attorney for use in a transaction?

No. The articles of organization and operating agreement must set forth the person or persons authorized to execute documents on behalf of the limited liability company. Sometimes the person so authorized gives a power of attorney to someone else. Such a grant of power is considered an assignment of a fiduciary duty and will not generally be recognized by Doma for insuring purposes. In such an instance, contact Doma underwriting counsel for guidance at DCunderwriting@doma.com

- May a District of Columbia corporation grant a power of attorney for use in a transaction?

District of Columbia corporations may appoint agents and not only may, but must, appoint an attorney in fact to execute the deeds of a corporation in the District. District of Columbia code section 42-602 provides that the deed of a corporation shall be executed and acknowledged either by an attorney-in-fact appointed for that purpose or, without appointment, by its president or a vice president if also attested by the secretary or assistant secretary of the corporation. For almost all other purposes, however, the method by which a corporation grants authority to agents is by a resolution passed by the board of directors of the corporation. Therefore, a power of attorney given by a District of Columbia corporation may be relied on only if it can somehow be reasonably construed as a resolution of the board of directors unless it is given specifically for the execution of a deed from the corporation.

Sometimes an officer or agent of a District of Columbia corporation purports to grant a power of attorney to another for performing some act or acts which would otherwise be performed by the officer or agent on behalf of the corporation. Generally, such a power of attorney is not acceptable. In such an instance, contact Doma underwriting counsel for guidance at DCunderwriting@doma.com.

- May an attorney in fact use a power of attorney to purchase and convey property from the principal to the attorney-in-fact?

No. If presented with such a situation, contact Doma underwriting counsel for guidance at DCunderwriting@doma.com. This includes a transaction in the back chain where a power of attorney was relied upon for conveyance from the principal to the attorney in fact.

- May an attorney in fact use a power of attorney to gift property from the principal to the attorney in fact or anyone else, including a charity?

No. If presented with such a situation, contact Doma underwriting counsel for guidance at DCunderwriting@doma.com. This includes a transaction in the back chain where a power of attorney was relied upon for conveyance in a gift transaction.

- Is a District of Columbia power of attorney valid for property acquired by the principal after the effective date of the power of attorney?

Yes.

- Is a power of attorney valid after the death of the principal?

No, never.

- May a power of attorney executed in the District of Columbia be relied upon to insure a transaction if the power of attorney does not meet the District of Columbia requirements as to form, content, and execution?

Generally, no; however, contact Doma underwriting counsel for review of the document. Also, military powers of attorney have different requirements. All powers of attorney should be reviewed and approved by Doma underwriting counsel (DCunderwriting@doma.com.)

2. Construction Liens/Mechanics' Liens

- Are mechanics' liens the same in each state?

No. Mechanics' liens are creatures of statute and are unique to each state in which such liens are created. Some states provide that a mechanics' lien takes priority over all other liens, including construction loan mortgages. Other states only give mechanics' liens priority over a mortgage if construction was commenced prior to the recording of the construction loan. Yet other states merely permit mechanics and materialmen to file a suit for money and then permit the docketing or recording of the final money judgment as a lien against the property, taking whatever priority might exist at the time of the filing or docketing of their judgment lien. In Washington, DC, the mechanics' lien takes priority over the lien for construction loan mortgage funds advanced after the date of the filing of the mechanics' lien.

- Why does Doma care about mechanics' liens?

Mechanics' liens can give rise to preventable claims, oftentimes large ones. For example, the standard loan policy of title insurance provides insurance that the lien of the insured mortgage has

priority over all liens, including mechanics' liens. Fortunately, in the District of Columbia, an unpaid mechanic or materialman must file a mechanics' lien which is discoverable in a title run-down which is a typical underwriting requirement for District of Columbia construction loans.

- Does Doma insure the lender against mechanics' liens?

The standard title policy (that is both owner's and loan policies) provides coverage against mechanics' liens in the basic policy terms. In order to eliminate the company's exposure to the risks associated with mechanics' liens, a standard mechanics' lien exception typically is automatically included by title policy processing software in both owner's and loan policies. This exception typically reads as follows: "*Any lien, or right to a lien, for services, labor or material heretofore or after furnished, imposed by law and not shown by the public records*."

- Doesn't an owner's policy and loan policy insure against mechanics' liens?

Yes, they both do. That is why it is important to determine if the loan to be insured contains "construction, rehabilitation, renovation" or other like funds. Title policies issued for these types of loans must contain the general mechanic's lien exception:

> "*Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law, and not shown by the Public Records."*

If the lender requires that this exception be removed, they are requesting affirmative mechanics' lien insurance and prior approval from Doma underwriting counsel is required (DCunderwriting@doma.com.)

- What is affirmative mechanics' lien coverage under a loan policy?

Every first mortgage lender wants to make sure its mortgage lien is in first position. Therefore, the lender almost always requests coverage against mechanics' liens. The coverage is provided by simply deleting the standard mechanics' lien exception. Once that is done, the coverage already in the standard loan policy becomes effective and the company is providing affirmative coverage for mechanics' liens. This is how a lender would get the requested mechanics' lien coverage on commonplace residential and small commercial transactions. Affirmative mechanics' lien insurance requires prior approval from Doma underwriting counsel (DCunderwriting@doma.com.)

Because an unpaid mechanic or materialman could file a mechanics lien, it is appropriate to add a "pending disbursement" clause to a construction loan policy (even though similar language may already appear in the policy jacket). This clause limits the policy coverage to the amount of money actually disbursed by the lender. Since a District of Columbia mechanics' lien only takes priority over funds disbursed subsequent to the filing of the mechanics lien, title rundowns will be required. They are performed before each construction draw to determine if any judgment, notice of a mechanics' lien or other liens have been filed. If any lien is filed, then the lender would be notified immediately that the disbursement will not be insured until said lien is cleared and/or released of record.

- Can an owner get affirmative mechanics' lien coverage in an owner's policy?

No. After all, it is the non-payment of a mechanic or materialman that leads to the filing of a lien notice and a suit which would result in a judgment lien. It is the owner who is responsible for getting people paid on their own property. If mechanics' lien coverage were given to an owner, the title company would be insuring the owner for what is his own financial responsibility.

- Is coverage against mechanics' liens an extra-hazardous risk?

Yes, it is. This is so because the mechanics lien will take priority over the lien of the insured mortgage as to funds disbursed after the mechanics lien has been filed. Therefore, in order to provide coverage against mechanics' liens in a construction loan policy, also known as affirmative mechanics' lien coverage, in any amount, an over limits request form must be utilized to request authorization from Doma underwriting counsel. Submit the form to DCunderwriting@doma.com.

3. Judgments & Involuntary Liens

- What is an "involuntary lien"?

Involuntary liens include, but are not limited to, judgments, and tax liens.

- What is a judgment?

A judgment is a final decision of a court in favor of one party and against another. A judgment may be for a sum of money or a judgment might establish the rights of parties with respect to certain real property. In either case, judgments that become a lien against real property, or affect the title to property in some manner, impact the issuance of title insurance and an exception must be taken for said judgment or said judgment must be paid and released of record. If you have a title insurance question involving a judgment or other type of involuntary lien, send it to DCunderwriting@doma.com.

- What is Doma's underwriting position with respect to insuring title when there are involuntary liens on title to the subject property?

If your title search or exam reveals a valid enforceable lien against the subject property, the lien must be released of record before Doma will insure a sale or refinance of the encumbered property without exception to the lien.

- Do I need to search for judgments against all parties to a transaction?

Yes, all parties to a transaction must be searched for judgments and liens. Judgments and liens that were entered against a purchaser prior to their purchase can attach to the property and should be shown as an exception on the owner's policy, and in some cases the loan policy also, even though many pre-existing liens in the District of Columbia would not take priority over the lien of a purchase money mortgage.

- When does a judgment attach to real property?

The judgment becomes final when the court gives its final decision in the case and specifies an amount of the judgment after getting proper evidence of the loss or damages. The judgment is indexed or recorded at which time it becomes a valid lien on all property of the defendant in the District of Columbia.

- When do judgment liens expire or become otherwise unenforceable?

Ordinary money judgments obtained in lawsuits between individuals and/or entities have a statute of limitations of twelve years from the date of entry of the judgment. The filing of a bankruptcy or entry into a payment plan with the judgment creditor may toll (extend) the expiration of the lien. To rely upon the statute of limitations to ignore a judgment lien, you should obtain Doma underwriting counsel approval, at DCunderwriting@doma.com.

- When do real estate taxes become a lien upon title to real property?

A tax shall automatically become a lien on the real property on the date the tax was due and unpaid or converted to a real property tax under § 47-1340. Pursuant to code § 47-1331, the lien for a tax shall be a prior and preferred claim over all other liens and shall be enforceable perpetually.

- When do other unpaid taxes become a lien upon title to real property

A tax lien may be filed with the District of Columbia Recorder of Deeds if a taxpayer neglects or refuses to pay the District within 10 days after receiving a Notice of Tax Due and a demand for payment. The tax lien puts the public on notice that the District has a preferred claim over other creditors.

- When do judgments in favor of the District of Columbia expire?

The statute of limitations on every final judgment or final decree for the payment of money rendered in the United States District Court for the District of Columbia or the Superior Court of the District of Columbia, when filed and recorded in the office of the Recorder of Deeds of the District of Columbia, is enforceable, by execution issued thereon, for the period of twelve years only from the date when an execution might first be issued thereon, or from the date of the last order of revival thereof. The time during which the judgment creditor is stayed from enforcing the judgment, by written agreement filed in the case, or other order, or by the operation of an appeal, may not be computed as a part of the period within which the judgment is enforceable by execution. To rely upon the statute of limitations to ignore a judgment lien, you should obtain Doma underwriting counsel approval, at DCunderwriting@doma.com.

- Besides federal income tax liens, what other types of involuntary federal liens are there?

Some examples of involuntary federal liens would be:

1. Judgments in environmental suits by the Environmental Protection Agency;
2. Judgments rendered in federal drug seizures or federal racketeering cases;
3. Judgments rendered in favor of the FDIC;
4. Deficiency judgments in foreclosure cases on loans guaranteed by entities of the federal government, such loans backed by the FHA or VA;
5. Federal estate tax liens;
6. Judgments rendered by federal district courts.

- What special rules apply to judgments in favor of the United States of America?

The Federal Debt Collections Procedures Act of 1990 created a separate set of rules when dealing with judgments in favor of the United States. This act pre-empts state laws that are inconsistent with it and provides that judgments in favor of the United States are to be effective for 20 years.

28 U.S.C. § 2410(c) provides a one year right of redemption to the United States where real estate is sold to satisfy a lien senior to the lien held by the United States other than a federal tax lien. In other words, the foreclosure of a deed of trust or mortgage is subject to this right of redemption

Judgments in favor of the United States of America are recorded in the same manner as are federal tax liens, and the United States and federal governmental agencies enjoy rights similar to those afforded the Internal Revenue Service.

Judgments in favor of the United States take priority over the lien of any later filed lien in the District of Columbia.

- Are federal income tax liens and other federal liens subject to any additional rules or requirements when it comes to their clearance for title insurance purposes?

For title insurance purposes, federal liens are generally subject to the same requirements as other judgments in the District of Columbia. While the expiration periods may differ, federal liens generally must be satisfied before a policy can be issued without exception to the lien just as with state court judgments.

- Does a federal lien, including a federal tax lien, against one of two tenants who hold title as joint tenants with rights of survivorship attach to the property?

Generally, even where only one of the joint tenants owes taxes, the lien attaches to the taxpayer's property interest and the entire property is subject to levy by the IRS. This is true as to joint tenants with survivorship, to tenancies in common, and to tenancies by the entirety.

- How is a lien duly recorded cancelled or released of record?

An existing lien can be released:

1. By written order of the plaintiff or its attorney and entry of the same by the clerk and duly docketed or indexed.
2. By quitclaim deed from the plaintiff to the current holder of record properly indexed and cross-referenced to the lien.
3. By a recorded instrument of satisfaction.

- Do property specific liens imposed by any governmental authority affect any other property owned by the same person against whom the lien was entered (a/k/a "bleeding liens")?

Unpaid real property taxes are arguably property-specific liens arising at the point of the tax billing as are other liens imposed by governmental authorities (such as code enforcement liens) and generally constitute a lien against land on which the violation exists. However, because some liens may arguably attach to all property owned by the debtor in the District of Columbia, present all open liens revealed in your title exam (which are not intended to be satisfied at closing) about which you have any question as to attachment to Doma underwriting counsel (DCunderwriting@doma.com) for a determination as to whether the lien must be resolved for title insurance purposes.

- How do I obtain a release or satisfaction of a judgment?

You must obtain a written payoff from the judgment creditor or holder or its attorney of record. The payoff must contain per diem interest so that you can calculate the amount necessary to satisfy the judgment in full as of the date of satisfaction.

If you cannot reach the judgment holder or its attorney of record, you may wish to enlist the services of a third-party lien release company such as reQuire (https://www.gorequire.com/) or PropLogix (https://www.proplogix.com/). Sometimes these companies can help.

- Is a partial release acceptable?

If the judgment creditor is not receiving full payment or for other reasons does not wish to release the judgment entirely, Doma may insure without exception upon recording of a release of the judgment that specifically releases only the subject property being insured. Check with Doma underwriting counsel at DCunderwriting@doma.com.

- What if the seller asks me to hold money in escrow rather than obtain a release of the judgment?

You may not hold money in escrow in order to provide insurance against an existing judgment without first obtaining approval from Doma underwriting counsel (DCunderwriting@doma.com).

- Can a judgment lien created in another state or in a foreign country (a “foreign judgment") become a lien on real property located in the District of Columbia?

Yes. Pursuant to section 15-352 of the code of the District of Columbia, a copy of any foreign judgment authenticated in accordance with the laws of the District may be filed in the Office of the Clerk of the Superior Court (“Clerk”). A foreign judgment filed with the Clerk shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner. If you have a title insurance question involving a foreign judgment, send it to DCunderwriting@doma.com.

- What action must be taken regarding foreign judgments that have been domesticated in the District of Columbia?

From a title insurance standpoint, a foreign judgment properly domesticated in the District of Columbia must be dealt with in the same manner as a judgment rendered by a District of Columbia court and duly docketed. Accordingly, even if the foreign judgment is not recorded properly in District of Columbia, a release may be required if the parties have actual notice of the existence of a judgment or potential lien. Consult underwriting counsel with any questions in this regard. DCunderwriting@doma.com

- Will Doma “insure over” satisfied but unreleased judgment liens?

The “best practice” is to obtain a release of record for any unreleased lien of record even when it is thought that the associated debt has been satisfied in full. Often, it is the expectation of the parties that the attorney and/or title agent will “clear” title as well as insure title.

If Doma is to consider insuring over an outstanding lien which “should have been released, the general rule is that Doma must receive some reliable documentation that unequivocally evidences payment in full of the underlying debt. Doma cannot rely upon “self-serving” statements from parties with vested interests or the application of “logic” in order to ensure that the debt is fully satisfied. Such a determination will vary from transaction to transaction and each request to insure without exception to an open lien must be presented to Doma’s underwriting counsel for review at DCunderwriting@doma.com.

- Do a tenant’s unpaid utility bills become a lien against the landlord’s interest in the property?

Generally, a lien against the leasehold of a tenant can “rise no higher in status” than the leasehold itself. In other words, such a lien would typically not become a lien on the landlord’s interest. Nevertheless, if you have this situation, contact Doma underwriting counsel at DCunderwriting@doma.com for review and approval as to whether Doma will insure without satisfaction of any unpaid utilities, including water bills.

- What do I do when I encounter a judgment against a person with the same name as a party to my current transaction?

If you encounter a judgment against a person with the same name as a party to your current transaction, you should treat the judgment as belonging to your party unless you are able to verify

with absolute certainty that the judgment debtor is not one and the same person as your party. Such verification can be accomplished by comparing the social security numbers of the two persons, if available, or potentially via other means. If you encounter this issue, present the transaction details, lien copies, and evidence that the parties are not one and the same to Doma underwriting counsel for review at DCunderwriting@doma.com.

- Are there any judgment liens that Doma considers sufficiently "low risk" to permit insuring over?

Determinations as to whether an open lien may be "insured over" will vary from transaction to transaction and each request to insure without exception to an open lien must be presented to Doma's underwriting counsel for review at DCunderwriting@doma.com.

- Where title is held in the name of a partnership, may a judgment against one of the partners be ignored for title insurance purposes?

In most jurisdictions, including the District of Columbia, a judgment creditor of a partner, or of any assignee of an interest in the partnership, may recover against the partner or assignee's interest in the partnership but not against the real property held in the name of the partnership. Nevertheless, where title is held in the name of a partnership, judgments against one or more of the partners generally must be cleared for Doma to insure without exception to the judgment. If a judgment appears in your title exam that you believe does not attach to the proposed insured property, contact Doma underwriting counsel (DCunderwriting@doma.com) to determine whether the judgment must be cleared for title insurance purposes.

- Where title is held in the name of a trust, may a judgment against the Trustee of the trust be ignored for title insurance purposes?

Where a judgment lien is held against the trustee in his/her individual capacity only, and you can confirm that the trustee does not, and has never, held any interest in the subject property, Doma may insure the transaction without clearance of the subject lien. If the judgment lien is against the trustee in his/her capacity as a trustee, it would attach to the property and must be satisfied and released. In all instances where the title agent wishes to insure without exception to a valid judgment, Doma underwriting counsel must be consulted for review and approval at DCunderwriting@doma.com.

- Where title is held in the name of a fictitious name, may a judgment against the owner of the fictitious name be ignored for title insurance purposes?

Generally, no. In all instances where the title agent wishes to insure without exception to a valid judgment, Doma underwriting counsel must be consulted for review and approval at DCunderwriting@doma.com.

- Does Doma permit a District of Columbia title agent to issue a policy without an exception for a judgment lien if the title agent holds in escrow sufficient money to pay the lien in full in the event it is enforced?

Generally, no. Such escrow accounts are subject to attachment by third party creditors or by a trustee in bankruptcy if one of the parties to the escrow files a bankruptcy. However, if the parties to the judgment are engaged in an active dispute over the amount necessary to satisfy the judgment, under extremely limited circumstances, Doma may permit the title agent to issue a policy without exception upon review and approval by Doma underwriting counsel of the facts surrounding the situation and the parties' proposed escrow agreement. In all instances where the title agent wishes to insure without exception to a valid judgment, Doma underwriting counsel must be consulted for review and approval at DCunderwriting@doma.com.

- Do purchase money mortgages enjoy priority over judgment liens previously entered against the mortgagor?

Generally, a purchase money security deed or mortgage will enjoy priority over liens against the purchaser of the property who simultaneously executes a deed of trust or mortgage for the purchase money. However, if your lien search reveals a judgment or lien against your purchaser, contact Doma underwriting counsel (DCunderwriting@doma.com) to determine whether the judgment must be cleared for title insurance purposes. District of Columbia purchase money priority status does not apply to federal liens which may take priority over the lien of a purchase money mortgage.

- Does a federal lien, including a federal tax lien, against one of two holders of title as tenants by the entirety attach to the property?

Yes. Under the “Craft” case, a federal lien against one of two tenants by the entirety attaches to the real property and must be satisfied and released.

- When property is jointly held, does a judgment against one of the joint tenants attach to the property and require clearance in a current transaction?

The judgment would not attach provided the tenancy had not been severed by an act of one or more of the joint tenants. It is imperative that the joint tenancy was duly created with the unities of time, title, interest, and possession and that it has not been severed, or arguably severed, in any way. Virtually any act by one of the joint tenants will serve to sever the tenancy, and that may well include merely filing bankruptcy. If you have a title insurance question involving a judgment against a joint tenant, send it to DCunderwriting@doma.com.

- Can an attorney of record in the underlying action giving rise to a judgment lien execute a satisfaction or release of the judgment on behalf of the judgment creditor?

Generally the answer is yes, however you should contact Doma underwriting counsel at DCunderwriting@doma.com in order to get approval to insure without exception.

- How is a federal court judgment lien perfected in the District of Columbia?

A final judgment or decree for the payment of money rendered in the United States District Court for the District of Columbia, or the Superior Court of the District of Columbia, from the date such judgment or decree is filed and recorded in the office of the Recorder of Deeds of the District of Columbia, is a lien upon the real property of the defendant.

The lien will remain fully in force for a period of twelve (12) years unless it is in favor of the United States when it will be fully in force for twenty (20) years, with the ability to extend the period for an additional twenty (20) years if the court approves and it is duly noticed and filed prior to the expiration of the initial twenty (20) year period. 28 U.S.C. 3201.

4. Estates and Probate

- Is there a federal estate tax (FET)? If so, how long does a FET lien last?

Yes. FET is due to the United States government for estates of decedents that exceed specified monetary thresholds for the year in which the decedent died. It is important to remember that the assets that are included for determining whether an estate is subject to FET are not limited to those assets that may be subject to a probate proceeding. The FET lien is 10 years from the date of the

decedent's death. Unlike some other types of liens, the FET lien itself does not actually have to be in writing and recorded to exist. Title agents are on notice that if a person has died, there is the possibility that there is a FET lien that encumbers real property owned by the decedent. The federal estate tax threshold for 2020 is $11.58 million for an individual and $23.16 million for a married couple. There is a much lower threshold for decedents who were not United States' citizens or lawful residents ("Green Card" holders). If you have a title insurance question involving federal estate taxes, send it to DCunderwriting@doma.com.

- Are there any District of Columbia specific death taxes? If so, what are they and how long are any liens valid?

The District of Columbia has an inheritance tax which is imposed on the clear value of property that passes from a decedent to some beneficiaries. Whether or not a District of Columbia estate tax return is required depends on the value of what's called the gross estate, which includes just about all of property. It includes these common assets:

1. Real estate
2. Bank accounts and certificates of deposit
3. Investment accounts, stocks, and bonds
4. Vehicles and other personal property
5. Proceeds from life insurance policies on your life, unless you didn't own the policy
6. Retirement account funds
7. Interests in a small business (sole proprietorship, limited liability company, or small corporation)

If some of the assets are owned with a spouse or someone else, only the value of the decedent's interest will be counted. The gross estate also includes assets held in a revocable living trust (to avoid probate) or other trusts that controlled by the decedent.

A District of Columbia death tax return is required for every estate valued in excess of $5,762,400 as of 2020. The amount of a decedent's assets exempt from D.C. estate tax to was reduced to **$4** million per person (or $8 million per couple) starting in January 2021 and will be adjusted annually for cost of living adjustments starting in 2022. With the adjustment, the 2022 exemption amount is projected to be approximately $4,254,000. The tax kicks in at a flat rate of 16% when someone dies with an estate valued at over the amount of the exemption at the date of death.

A lien for taxes in the District of Columbia is good for ten (10) years. If you have a title insurance question involving District of Columbia inheritance taxes, send it to DCunderwriting@doma.com.

- Does the will of a decedent who owned property as tenants by the entireties have to be probated for the surviving tenant by the entireties to convey? For this type of ownership, what death taxes must be addressed?

So long as the parties remained married continuously and without interruption by divorce throughout the period of time in which they owned the property, the estate of the first-to-die tenant by the entirety does not have to be probated for the surviving spouse to convey. So long as the first-to-die tenant by the entirety was a U.S. citizen or legal resident of the United States, federal estate taxes do not need to be addressed.

- Does the will of a decedent who owned property as joint tenants with rights of survivorship have to be probated in order for the surviving tenant(s) to convey? For this type of ownership, what death taxes must be addressed?

The estate of decedent who owned property as a joint tenant with rights of survivorship does not have to be probated for the surviving joint tenant(s) to convey. However, federal estate taxes must be addressed.

- Does the will of a decedent who owned property as tenants in common have to be probated in order for the deceased party's interest to be conveyed? For this type of ownership, what death taxes must be addressed?

The will of a decedent who owned property as tenants in common with other parties must be probated in order for the decedent's interest to be conveyed. The title to the interest held by the deceased tenant in common will vest in the duly qualified and appointed personal representative. Federal estate taxes, and District of Columbia inheritance taxes could be an issue and must be examined for applicability and, if applicable, addressed by being paid in full.

- What steps are required for conveyance of a decedent's property where probate proceedings are pending?

No conveyance can be made until a personal representative is duly appointed and qualified. Once that has occurred, the personal representative may convey the property.

- Are there any persons who may not be disinherited?

Yes. In the majority of states, and the District of Columbia, you can't intentionally disinherit your spouse unless they agree in writing to be disinherited in a prenuptial or postnuptial agreement. According to District of Columbia code 19-113, a surviving spouse or surviving domestic partner is, by a devise or bequest specified in section 19-112, barred on any statutory rights or interest he has in the real and personal estate of the deceased spouse or deceased domestic partner unless, within 6 months after the will of the deceased spouse or deceased domestic partner is admitted to probate, he or she files in the Probate Court a written renunciation to the following effect: "I, A B, surviving spouse or surviving domestic partner of late of , deceased, renounce and quit all claim to any devise or bequest made to me by the last will of my spouse or domestic partner exhibited and proved according to law; and I elect to take in lieu thereof my legal share of the real and personal estate of my deceased spouse or deceased domestic partner."

- May perfected judgment liens against a deceased property owner be ignored for title insurance purposes?

It depends upon the manner in which title was held by the deceased property owner and exactly who is the judgment lien is against. Unless the property was held as tenants by the entirety or a joint tenancy with rights of survivorship, the perfected judgment lien will generally need to be cleared. If probate is required to pass the interest of the deceased property owner, the perfected judgment lien will need to be cleared.

- What liens and interests survive probate of the will and the appointment of a personal representative in the estate of a deceased property owner?

In general, all outstanding liens and interests must be addressed by payment and release of record.

- How are adopted children treated when it comes to inheriting property from a deceased property owner?

Adopted children are treated the same as biological children. The adopted person shall be treated as if they were the birth child of the adoptive parent(s). Under District of Columbia Code § 16-312, a final decree of adoption establishes the relationship of parent and child between the adopter and adoptee for all purposes, including mutual rights of inheritance and succession as if the adoptee were born to the adopter. The adoptee takes from, through, and as a representative of his or her adoptive parent(s) in the same manner as a child by birth; and upon the death of an adoptee intestate, his or her property shall pass and be distributed in the same manner as if the adoptee had been born to the adopting parent(s) in lawful wedlock.

- May the heirs of a deceased property owner convey the property before the administration of the estate is completed?

No, title will vest in the personal representative who will convey the title to the heirs and/or devisees.

- If a decedent's will is probated in another state may that other state's probate proceedings be relied upon to convey property located in the District of Columbia?

No. A personal representative must be appointed in the District of Columbia who is vested with title and who will make any necessary conveyances. A nonresident of the District does not qualify to be appointed personal representative unless qualified and appointed in the District of Columbia.

- What documents should be recorded in the land records where a title transaction is occurring after a property owner has died?

The deed will come from the personal representative in whom the title vests. The searcher will need to obtain copies of a filing with the Register of Wills and the qualification and appointment of a personal representative who will be vested with title.

- If a mortgagee or deed of trust noteholder has died holding an open mortgage, how is that mortgage properly satisfied?

The mortgage must be paid and released, same as in the normal course. Since the ownership of a mortgage or a note secured by a deed of trust is typically treated as personalty, the heirs or devisees of the deceased lien holder will become the lien holder and may supply proper payoff figures and process the release documents. Failing this, the court can be petitioned to obtain a release.

- May a personal representative convey property owned by the decedent without a court order?

Yes. The duly qualified and appointed personal representative is vested with the title of the decedent and may convey that property without the need of a court order.

- What documents should be recorded in the land records to properly clear the lien of federal estate taxes?

A release in recordable form must be obtained and recorded to clear the lien of a filed federal tax lien. If the lien is an inchoate one (never recorded) then an estate tax closing letter may be obtained but it must show that all taxes due and owing have been paid. You must obtain an official writing indicating the federal estate tax obligation is fully satisfied or the lien for same specifically released as to the property to be insured.

- What documents should be recorded in the land records to properly clear the lien of the District's estate or inheritance taxes?

The District of Columbia must file a release of a filed estate tax lien.

- Is homestead property owned by the decedent treated any differently from other real property?

No. It is treated the same.

- What are the normal underwriting requirements which should be put into the commitment and are there any special precautions required to insure a transaction where the last owner of record has been deceased for less than one year even if probate is not required for that person's will?

All the normal underwriting criteria must be followed as in any other estate situation.

The following requirement should be put into the commitment:

Company must be furnished for review:

1. *Current appointment of a personal representative*
2. *Last Will and Testament*
3. *Certified copies of death certificate.*
4. *Proof of estate filing in the Register of Wills*
5. *Proof of payment of claims, inheritance taxes and/or estate taxes, or escrow for same (unless this is a sale to bona fide purchaser for valuable consideration)*
6. *List of interested persons*
7. *Duly created inventory reflecting property for sale.*

- When an estate is conveying real property how should the proceeds of sale be made payable?

The proceeds should be payable to the Personal Representative as Personal Representative or to the "Estate of [name of the decedent]".

5. Conveyances by Entities

- What is an entity?

An entity is an "artificial" person. As such, an entity legally exists but is not a human being. In business terms, an entity with which we would typically deal is an organization formed to conduct a trade or business under which real property is owned. An entity may be owned by one person, multiple individuals, by another legal entity, and by any combination thereof. Most entities can purchase and sell real property, make loans, borrow money, encumber or obligate the entity, depending on its constitutional documents, the laws of the state where the real property is located, and the laws of the state or country where the entity was formed..

- What are some common types of entities?

The most common types of entities are sole proprietorships, general partnerships, limited partnerships, corporations, and limited liability companies. Sometimes a land trust, a business trust, a pension plan, and a real estate investment trust (REIT), are also considered to be entities.

- What is not an entity?

Individuals that are doing business but are not formed and registered under the laws of a state are not considered “entities”. Examples of non-entities are individual ownership, joint ventures, DBA aka “doing business as,” a conservatorship, a guardianship, executor or administrator of an estate or trustee of a trust or bankruptcy estate.

- What are the general standards for an entity?

Entities must be formed and exist on a governmental level through filing constitutional documents with the appropriate governmental entity. The entity must have the capacity and authority to act. It must be in good standing in the state or jurisdiction where it was formed. Execution of documents on an entity’s behalf must be by properly authorized signatories acting in properly authorized capacities.

Generally speaking, self-dealing by an entity’s officers, directors, members, or shareholders, by which is meant a transfer of entity assets to such individuals, is not permitted and is a red flag for title insurance purposes. You should always contact Doma underwriting counsel at DCunderwriting@doma.com to discuss any title insurance transactions that involve self-dealing between an entity and such individuals.

- What is a corporation?

A corporation is one of the most commonly encountered business entities we see in the title business and it is considered a creature of statute, which means it can only be created and exist in conformity with the laws governing it. It is a legal entity that exists separately from the company’s owners who are referred to as shareholders. In addition to the shareholders, corporations also usually have directors and officers. A corporation is usually managed by its board of directors who are elected by and are ultimately responsible to its shareholders for their actions and conduct. The board of directors then, in turn, typically elect or appoint the corporate officers. Of these elected and/or appointed officers, the president of the corporation generally is vested with more authority than any other.

- When is an entity in “good standing?”

You must verify that the entity is in “good standing” in the state in which it was formed as of two dates -- the date when it came into title to the property involved in the transaction, and currently for the transaction to be insured. An entity is said to be in "good standing" in the state of its origin when it has been duly formed in accordance with the laws of the state and its ability to conduct its affairs has not been revoked or impaired.

A certificate of good standing for a District of Columbia entity is available from the Department of Consumer and Regulatory Affairs, Business and Professional Licensing Administration; Corporations Division for the following fees: Business Corporation fee: $15.00; Nonprofit Corporation fee: $30.00; Limited Liability Company fee: $15.00; Limited Partnership fee: $18.00; Limited Liability Partnership fee: $20.00; and Cooperative Association fee: $ 1.00.

If the entity is a foreign entity, (meaning an entity formed and filed in one of the 50 states or created in a foreign country) you need to determine “good standing” based on the laws of the state or country where the foreign entity was created and exists. Generally speaking, a foreign entity does not need to register in the District of Columbia in order to sell, mortgage or lease District of Columbia real estate on a “one-time” or limited basis. If the entity is actively engaged in buying and selling real estate in the District of Columbia, it must register in District of Columbia.

Contact Doma underwriting counsel (DCunderwriting@doma.com) if you have questions or concerns about an entity's good standing or what documentation is necessary to establish this fact.

- Who has authority to bind a corporation?

The articles of incorporation must be reviewed to confirm that any act is authorized or not specifically prohibited, particularly such acts as sales, mortgages, lease transactions, etc. The corporate by-laws must also be reviewed to identify the corporate official who is duly authorized to execute transaction documents on behalf of the corporation, such as a president or vice-president or secretary or any other person specifically authorized by a corporate resolution duly passed. Additionally, you must determine whether a transaction specific resolution is required to even participate in your specific transaction. Generally speaking, for a District of Columbia corporation, shareholder approval is not needed if the property is sold or mortgaged in the regular course of business (as opposed to a sale of all or substantially all of the corporate assets.)

If the transaction to be insured is the sale of all or substantially all of the property owned by the corporation, a specific resolution approved by the shareholders is required. In this case, the otherwise authorized signatories must also have the written consent by resolution of the shareholders.

In any transaction where it is clear that there is one or more dissenting shareholders, contact Doma underwriting counsel at DCunderwriting@doma.com for review of the situation.

Note: In the District of Columbia, a corporate deed **must** be acknowledged by an Attorney in Fact designated for that purpose or, where there is no designation, by the President or Vice President and acknowledged by the Secretary or Treasurer.

- What are the formalities for the execution of deeds and mortgages by a District of Columbia corporation?

Deeds, deeds of trust or mortgages shall be executed and acknowledged either (1) by an attorney-in-fact appointed for that purpose or (2) without appointment, by its president or a vice-president if also attested by the secretary or assistant secretary of the corporation according to District of Columbia code 42-605.

In addition to a deed or mortgage instrument, as to all other documents, you must confirm that the specified signatory has corporate authority by virtue of the articles of incorporation, by-laws, or by a specific resolution duly passed by the proper parties in accordance with the articles and/or by-laws. If you have any questions as to whether or not the party executing on behalf of the corporation is duly authorized, contact Doma underwriting counsel (DCunderwriting@doma.com) for assistance.

- What are corporate bylaws?

Corporate bylaws are a detailed set of rules for managing and operating the company adopted by the board of directors and/or shareholders after the company has been incorporated. Bylaws contain provisions for managing and regulating the business of the corporation as well as specifying the corporation's internal management structure and how the corporation will be run. Bylaws typically address requirements for meetings of the shareholders and the board of directors and provide for succession in the event a director is unable to carry out their duties.

- What is a limited liability company and when is it in “good standing?”

Just like all entities, a limited liability company (LLC) is a creature of statute which is formed and exists solely if it complies with the statutes governing same. It may be formed to conduct any lawful business and is owned and made up of individuals or entities or a combination of both, all called members. The main creation document is called the articles of organization. The rules for managing and operating a limited liability company is found in the operating agreement. Sometimes all members must agree on the sale of real property. Sometimes a designated member is authorized to do virtually all acts on behalf of the LLC and is called the managing member. Often the managing member is the authorized person to execute all real estate transaction documents. A review of the articles of organization and the operating agreement is necessary to determine who is authorized.

Additionally, you must verify the LLC is in “good standing” in the state in which it was formed as of two dates -- the date when it came into title to the property involved in the transaction, and currently for the transaction to be insured. An LLC is said to be in "good standing" in the state of its origin when it has been duly formed in accordance with the laws of the state and its ability to conduct its affairs has not been revoked or impaired.

A Certificate of Good Standing for a District of Columbia limited liability company may be obtained from the Corporations Division of the Department of Consumer and Regulatory Affairs for a fee of about $15.00.

- Who is authorized to sign for a limited liability company?

A limited liability company (LLC) is governed by an “operating agreement” and its “articles of organization,” and all amendments thereto. It is essential to ascertain the power or authority as well as the identity of the person or persons who will execute legal documents of behalf of the LLC.

District of Columbia LLCs are either managed by its members or by one or more managing members. This determination is made by a review of the operating agreement and articles of organization. In the absence of a provision to the contrary in these documents, all members collectively must execute a resolution appointing a specific person to execute on behalf of the LLC or, alternatively, all members must execute all documents necessary to convey or encumber property in the District of Columbia.

If there has been any recent change to the make-up of the LLC, you must be extremely careful in making sure you are actually dealing with the proper parties. This may include speaking with current and former members to confirm the current make-up of the LLC.

Even though an LLC should have a written operating agreement, sometimes none is created; particularly in single-member LLCs. If there is no operating agreement, generally all members are going to be required by Doma to execute real estate related documents.

In any case where you become aware of a member dissenting to a particular transaction being insured by Doma, contact Doma underwriting counsel at DCunderwriting@doma.com for review and approval of the transaction.

- What is a partnership?

The District of Columbia has adopted its form of the Uniform Partnership Act of 2010. Thereunder, “partnership” means an association of 2 or more persons to carry on as co-owners a business for

profit formed under § 29-602.02, predecessor law, or comparable law of another jurisdiction. “Partnership agreement” means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

Note that in the District of Columbia, there is no such entity as a joint venture.

When a general partnership is to convey real property, Doma will require that ALL partners sign the conveyancing instrument; even if a partnership agreement indicates otherwise.

- Who is authorized to sign for a District of Columbia general partnership?

Even though the partnership agreement may set forth who has authority to sign for the District of Columbia general partnership, generally Doma will require all general partners to sign. This eliminates any later arguments over who had what authority and when, as well as whether or not the signing partner had the permission of the other partners, even though it is not required.

Presently, general partnerships are not encountered very often in title transactions. Doma agents should contact Doma underwriting counsel to review title requirements for conveying or encumbering general partnership property, including the supporting documents that need to be recorded, if any (DCunderwriting@doma.com).

- Who is authorized to sign for a District of Columbia limited partnership?

Generally, one or more of the general partners of the District of Columbia limited partnership is authorized to sign as set forth in the limited partnership agreement. However, you should review the limited partnership agreement to determine whether there are multiple general partners, and if there are any provisions dealing with which of the general partners has the requisite authority, and whether any limited partners need to consent to the sale or mortgage. If the limited partnership is conveying all, or substantially all the partnership assets, consent of all the general partners as well as a majority of the limited partners is required. Generally, Doma will require ALL general partners to sign for a District of Columbia limited partnership.

Presently, limited partnerships are not encountered very often in title transactions. Doma agents should contact Doma underwriting counsel to review title requirements for conveying or encumbering limited partnership property, including the supporting documents that need to be recorded, if any (DCunderwriting@doma.com).

- Are there any special requirements if a District of Columbia corporation is conveying all or substantially all of its assets outside of the ordinary course of its business?

Yes. In the District of Columbia, a corporation selling all or substantially all of its assets outside the ordinary course of its business must get the consent of the shareholders to do so. Generally, the corporation’s board of directors adopts a resolution proposing the sale, and the shareholders of the corporation must then vote to approve it. Recorded proof of the compliance with this statute is necessary to be provided to Doma before title insurance can be written on such a transfer of title.

- Are there any special title requirements for transactions involving entities formed under the laws of another state of the United States or under the laws of a foreign country?

An entity formed under the laws of any other state of the United States or of a foreign county is considered a foreign entity. Foreign entities generally may own, lease, sell or mortgage District of

Columbia real estate. Foreign entities generally do not need a Certificate of Authority from the District of Columbia to sell, mortgage or lease District of Columbia real estate. The laws of the state where the entity was formed control the foreign entity, but the laws of the District of Columbia control the disposition of District of Columbia property.

There likely are special title requirements for an entity formed outside of the state of District of Columbia that vary as a function of the type of entity and the laws of the jurisdiction under which it was formed. If you encounter such an entity, contact Doma underwriting counsel for the title requirements involving that entity (DCunderwriting@doma.com).

- What are the title requirements where the name of an entity has changed after it has acquired title?

An entity may change its name for a variety of reasons, including a simple name change, or as a result of business activities involving that entity such as a merger, consolidation, conversion of entity type, or re-domestication from one jurisdiction to another. The title requirements vary as a function of the reasons giving rise to the name change as well as the laws of the jurisdiction under which the entity was formed and exist. From a title insurance perspective, it is **not** sufficient to simply recite the name of the new entity name formerly known as the former entity name on the deed or mortgage. Additional title requirements will be needed. Contact Doma underwriting counsel for the title requirements involving that entity due to the name change (DCunderwriting@doma.com).

- Are there any special title requirements for a transaction involving a nonprofit corporation?

No. The title requirements would be the same for a regular corporation.

6. Bankruptcy

- Will Doma insure a sale of property when the seller is in bankruptcy?

Yes. However, before Doma will insure title to a property being conveyed by a seller who is in an active bankruptcy, Doma will generally require review and approval of either: (1) A final non-appealable court order authorizing the sale; or (2) A formal order of abandonment by the bankruptcy trustee. Both of the foregoing requires the passage of the non-waivable appeal period of 14 days. Where an active bankruptcy proceeding is involved, you should work closely with Doma underwriting counsel for the precise title requirements and their fulfillment at DCunderwriting@doma.com.

- When is an order of the bankruptcy court final and non-appealable?

If not appealed, bankruptcy court orders approving the sale of real property held by the debtor are typically final 14 days after entry of the order.

- What if the transaction terms change after the bankruptcy order approving the transaction has been entered?

Doma will generally require an amended order authorizing the sale or refinance pursuant to the revised transaction terms.

- What does a bankruptcy order for a sale “free and clear of liens” mean?

An order to sell property “free and clear of liens” is most often obtained by chapter 7 trustees who are seeking to sell property of the estate. The effect of such an order is to remove certain involuntary lien holders’ claims from the real property and attach them to the proceeds from the sale. This allows a

trustee to sell a parcel that may be expensive to maintain or that is declining in value due to the debtor's lack of ability to maintain the property. Mortgages, real property taxes, and debts owed to homeowner associations will generally need to be paid at closing with any remaining proceeds being paid to the bankruptcy trustee for distribution to the remaining creditors. Where an active bankruptcy proceeding is involved, you should work closely with Doma underwriting counsel for the precise title requirements and their fulfillment at DCunderwriting@doma.com

- Will Doma issue a loan policy on a refinance loan when the borrower is in an active bankruptcy proceeding?

Before Doma will insure title for a refinance loan taken by a borrower who is in an active bankruptcy, Doma will require a final non-appealable court order authorizing the borrower/debtor to incur the new debt. Where an active bankruptcy proceeding is involved, you should work closely with Doma underwriting counsel for the precise title requirements and their fulfillment at DCunderwriting@doma.com

- Can the seller simply wait until the bankruptcy proceeding is over to sell real property?

If a seller has recently completed a bankruptcy (defined to be within twelve (12) months of the proposed sale), Doma requires a review of the bankruptcy schedules to determine whether the debtor properly disclosed the value of the real property to the bankruptcy court. Potential claim issue: If the property was listed in the bankruptcy as having a value of $150,000.00 and the seller received an order of discharge within the past year but is now selling the property for significantly more money, the bankruptcy trustee may be entitled to reopen the bankruptcy case to make a claim against all net proceeds from the sale of the home regardless of any exemptions the seller may have had in the property if he had properly disclosed the value. Where a bankruptcy proceeding was concluded within twelve (12) months prior to a potential sale, you should work closely with Doma underwriting counsel for the precise title requirements and their fulfillment at DCunderwriting@doma.com

- Does a bankruptcy discharge extinguish the debtor's judgment liens?

Even though the debtor may have been discharged from the personal liability for a properly scheduled judgment lien, the effect of that judgment lien on real or personal property remains unless specifically voided or released by court order. To remove a lien from real property via bankruptcy, the debtor must file a motion or assert a plan provision seeking valuation or avoidance. The judgment creditor may be obligated to release the lien when a discharged debtor is still in title and is selling same.

If a motion to avoid a judgment lien against real property is granted, Doma is likely to require that the order avoiding the lien be recorded in the real property records of the county where the property is located. In some cases, only a portion of a lien is avoided leaving the balance enforceable against the real property. Accordingly, it is important to carefully review lien avoidance and valuation motions and orders with Doma underwriting counsel.

Where a bankruptcy discharge is being relied upon to extinguish a debtor's judgment lien, you should work closely with Doma underwriting counsel for the precise title requirements and their fulfillment at DCunderwriting@doma.com.

- Does a bankruptcy discharge extinguish mortgage liens?

Generally, no. However, in Chapters 11, 12 and 13, a debtor may cram down (or reduce) the secured value of a loan secured by any property that is not the debtor's principal residence, or may strip off a junior priority security deed from the debtor's residence when the lien is deemed wholly unsecured based on the value of the collateral at the time the bankruptcy is filed.
Note: some jurisdictions have adopted the Model Chapter 13 Plan. Under the Model Plan, junior mortgage liens may be stripped through the Plan, rather than by separate Motion.
If the bankruptcy is not completed and is instead dismissed, the avoidance is annulled, and the lien is revived.

If the Debtor completes the bankruptcy and receives a discharge, the Debtor should obtain a certified copy of the order stripping the lien, or of the Plan and discharge order, and file said documents in the real property records in the county where the property lies.

If you are asked to remove or "insure over" any type of lien that was purportedly discharged in bankruptcy, you should carefully review the docket of any bankruptcy filed by the seller. It may be necessary for the seller to take some additional steps to clear the lien.

Some important points on bankruptcy court orders:

1. Final after 14-day appeal period
2. Title insurer will not waive the 14-day appeal period
3. Court cannot waive the appeal period
4. Orders regarding real property should reference legal description (not just the address)
5. Orders regarding real property should be recorded in the real property records
6. Orders are of no force or effect if bankruptcy is dismissed.

Where a bankruptcy proceeding is being relied upon to extinguish a mortgage, you should work closely with Doma underwriting counsel for the precise title requirements and their fulfillment at DCunderwriting@doma.com.

- What does Doma require if the buyer/borrower in a transaction is in an active bankruptcy?

Doma will require a final non-appealable order from the bankruptcy court approving the buyer's proposed purchase or financing of the property. Where a buyer/borrower is involved in active bankruptcy proceeding, you should work closely with Doma underwriting counsel for the precise title requirements and their fulfillment at DCunderwriting@doma.com.

- What do I do if the property transaction involves a property "abandoned" by the bankruptcy trustee?

If property has been formally abandoned by the Trustee, then it is no longer considered part of the bankruptcy estate. However, a formal abandonment order, and the expiration of the appeal period, specifically addressing the subject property is required for purposes of insuring title without an order authorizing the contemplated insured real estate transaction. Further, if equity is to be realized from the contemplated insured transaction, a specific order authorizing the transaction may still be necessary. Before you can proceed with insuring a transaction through Doma in reliance on an abandonment order, you should work closely with Doma underwriting counsel for the precise title requirements and their fulfillment at DCunderwriting@doma.com.

- If nothing in my title search indicates that a party to the current transaction is involved in a bankruptcy proceeding, do I have an obligation to check the bankruptcy records anyway?

A search of PACER should be conducted to verify that the parties are not in, nor have recently been involved in, a bankruptcy proceeding.

- How is property acquired after a bankruptcy discharge impacted by judgment liens against the bankrupt individual that may have been discharged in the bankruptcy proceeding?

Doma will not generally require a release of a judgment that was properly included in a bankruptcy of the seller if the bankruptcy ended in discharge prior to the seller acquiring the subject real property. If there is any question as to whether the judgment creditor received proper notice of the bankruptcy, please present the issue to Doma underwriting counsel for review (DCunderwriting@doma.com).

- What happens in a title transaction involving a property owned by person who was involved in a bankruptcy proceeding if that property was not scheduled in the bankruptcy proceeding?

If a seller or borrower failed to disclose the subject real property in a prior bankruptcy proceeding that ended in discharge, please present the issue to Doma underwriting counsel for review (DCunderwriting@doma.com).

- Where property has come through a bankruptcy proceeding, what documents from the bankruptcy proceeding should be recorded in the land records?

There are currently no requirements for specific documents to be filed among the land records in the District of Columbia.

- How far back in a chain of title to property must closed bankruptcy records be reviewed and examined?

For title insurance purposes, if the transaction involves equity being gained from the sale or refinance of real property owned by a seller/borrower who was involved in a bankruptcy that resulted in a discharge within the past 12 months, the bankruptcy records should be reviewed to ensure that the property and subject debts were properly disclosed in the bankruptcy schedules.

7. Formalities of Execution of Deeds and Mortgages/Deeds of Trust

- Why is a proper acknowledgment so important for a deed and mortgage?

Neither a deed nor a mortgage can be recorded in the District of Columbia without being properly acknowledged. The deed acknowledgement is very straight forward.

- Does a deed for District of Columbia property need witnesses to be insurable?

No, but it must be duly acknowledged.

- Does a mortgage or deed of trust for District of Columbia property need witnesses to be insurable?

No. But the signature of the mortgagors or grantors in a mortgage or deed of trust (the borrowers) must be notarized.

- Do the signatures on a deed or mortgage for District of Columbia property need to be acknowledged?

Yes. In order to be valid and recorded, the signatures on a District of Columbia deed or mortgage or deed of trust must be duly acknowledged by a notary public. An acknowledgment is a statement by a person who has executed a document that the document is his or her act and deed. An acknowledgment is made to the notary public but is not an oath or affirmation of truth—it is a statement that a certain person did something of his or her own free will.

- If the acknowledgement section of a District of Columbia deed or mortgage is in any language other than English, is that document insurable?

Only if a “true and complete English translation” certified as such by a translator is attached to the document when it is recorded.

- Can a District of Columbia deed or mortgage be acknowledged by a notary public in another state of the United States?

Yes, the acknowledgment of any instrument may be made outside the State but within another state and within the jurisdiction of the officer, before: (1) a clerk or deputy clerk of any federal court;
(2) a clerk or deputy clerk of any court of record of any state or other jurisdiction; or
(3) a notary public.

- Can a District of Columbia deed or mortgage be acknowledged by a notary public (civil law notary) in a foreign country?

The acknowledgment of any instrument may be made outside the United States before: (1) an ambassador, minister, charge d'affaires, counselor to or secretary of a legation, consul general, consul, vice-consul, commercial attaché, or consular agent of the United States accredited to the country where the acknowledgment is made; (2) a notary public of the country where the acknowledgment is made; or (3) a judge or clerk of a court of record of the country where the acknowledgment is made.

Due to the enhanced risk for title insurance fraud for documents executed in certain foreign countries, which changes from time to time as a result of the political climate in such countries, as well as the methods used by fraudsters, Doma underwriting counsel approval (DCunderwriting@doma.com) should be obtained before relying upon deeds or mortgages acknowledged in foreign countries by anyone other than qualified U.S. embassy staff.

- Is a deed or mortgage for District of Columbia property signed by remote online notarization insurable?

Yes, as of December 1, 2020, so long as it meets the following requirements:

a. Notary must be a commissioned online notary in a jurisdiction that has authorized RON;
b. Signer must be located in the United States and be a United States citizen or permanent resident;
c. Signers located outside of the United States require prior Doma underwriting approval;
d. Parties to the transaction, including the lender, must consent to the use of RON;
    i) Signers utilizing a RON platform shall sign a Doma approved consent form
    ii) Lender’s consent must be obtained in writing such as authorization in the closing instructions
e. RON must be conducted on a Doma-approved RON vendor’s platform that complies with

MISMO standards:

i) DocVerify www.docverify.com/Products/E-Signatures/E-Notaries
ii) eNotaryLog www.enotarylog.com
iii) Nexsys www.nexsystech.com/clear-sign/
iv) Notarize www.notarize.com/mortgage/title-agents
v) Notary Cam www.notarycam.com/eClose360
vi) Pavaso www.pavaso.com/ron/
vii) SIGNiX www.signix.com/secure-electronic-notarization

f. Confirm with District of Columbia Recorder of Deeds that they are accepting RON electronic documents for recording.

Check with Doma underwriting counsel to confirm the foregoing requirement have not changed before you rely on same to complete your transaction DCunderwriting@doma.com

- Is an “acknowledgment” the same thing as a “jurat”?

No. An acknowledgment is a statement by a person who has executed a document that the document is his or her act and deed. An acknowledgment is made to the notary public but is not an oath or affirmation of truth—it is a statement that a certain person did something of his or her own free will. A jurat differs from an acknowledgment. A jurat is used on affidavits where the affiant vouches, by oath or affirmation, that what is said in the affidavit is true. In contrast, an acknowledgment is a manner of authenticating an instrument by showing that it was the free act and deed of the person signing it.

Having a District of Columbia document “notarized” means acknowledging its execution by the signer before a notary public who then completes an acknowledgement. Having a District of Columbia affidavit “notarized” means not only signing the affidavit in the presence of the notary but also swearing or affirming the truthfulness of its contents, whereupon the notary public completes a jurat. They are different acts with different legal consequences.

District of Columbia deeds and mortgages require acknowledgments, not jurats. The statutes provide examples of statutory short forms of acknowledgment. The forms set forth in the statute may be used and are sufficient for their respective purposes. Acknowledgment forms use the word “acknowledged” in them. Jurat forms used the words “sworn to and subscribed” in them. The jurat belongs on affidavits and the acknowledgment belongs on deeds and mortgages. When an affidavit is to be used concerning District of Columbia real property and is to be recorded as part of the transaction, it is recommended that a hybrid of the two be used -- one which uses the words “sworn to, subscribed, and acknowledged.”

Sometimes an acknowledgment certificate is mistakenly drafted using jurat language. A District of Columbia deed or mortgage using jurat language rather than acknowledgment language is acceptable for title insurance purposes only if the language in the certificate indicates that the person signing the document swore or affirmed not only to the content of the document but also that he executed the instrument.

- Can a mistake in the formalities of execution of a deed or mortgage discovered after the document has been recorded be corrected by simply re-recording the document or by recording a scrivener's affidavit?

Most often, the answer is No. A corrective deed or mortgage is usually required for title insurance purposes. However, because of the complexity of the issues involved, it is best to contact Doma underwriting counsel to determine the proper way to rectify the mistake. Send a copy of the document containing the mistake along with the underlying title insurance commitment (or policy if the mistake is discovered after the policy was issued) along with a brief explanation of what happened to DCunderwriting@doma.com.

8. Federal Tax Liens

- What is a federal tax lien? Is it a judgment order from a court or is it just a filing by the federal government?

The IRS defines a federal tax lien as "the government's legal claim against your property when you neglect or fail to pay a tax debt." The IRS does not need a court order in order to file a notice of federal tax lien in the land records. It is a filing by the federal government in the land records. If you have a title insurance question involving a federal tax lien, send it to DCunderwriting@doma.com.

- What is the validity period of a federal tax lien?

Federal tax liens are valid for 10 years and 30 days from date of assessment unless the lien is refiled during this period. If the lien is re-filed, then the validity period is extended for another like period to conform with the refiling.

- Does a federal tax lien need to be recorded to be effective?

Yes, a federal tax lien must be filed among the land records in order to be effective. On the other hand, a federal estate tax lien is a secret lien that does not need to be recorded to be effective.

- Does a federal tax lien against an individual attach to property owned by a Trust?

That depends. Should you run into this situation, please reach out to Doma underwriting counsel at DCunderwriting@doma.com.

- Does a federal tax lien against an individual attach to a property owned by a limited liability company?

That depends. Should you run into this situation, please reach out to Doma underwriting counsel at DCunderwriting@doma.com

- Does a federal tax lien against one spouse attach to property held as tenants by the entireties?

Yes, a federal tax lien against one spouse attached to property held as tenants by the entireties.

- Does a federal tax lien attach to after acquired property?

Yes, a federal tax lien attaches to all property owned by the debtor, including after acquired property.

- How is a federal tax lien cleared?

Internal Revenue Code section 6325 provides for lien clearance as follows:

Once the lien is paid, a certificate of release of the lien is issued. This document should then be recorded in the land records. Alternatively, upon receipt of an agreed upon amount the United States may agree to release the property from the lien, by issuing a certificate of discharge which should then be recorded in the land records.

In some circumstances, the IRS may be willing to provide a withdrawal of the lien. When the withdrawal is filed, the amount is still due but is no longer a lien on the specific property.

If the borrower/seller asserts that the federal tax lien is not an actual lien on the property and/or any person may be injured by the appearance that the federal tax lien attaches to their property, they may request a certificate of non-attachment of lien. This certificate of non-attachment should then be recorded in the land records.

- Is a federal tax lien superior to a purchase money mortgage?

The IRS has ruled that a purchase money security interest or mortgage, valid under local law, is entitled to priority even though it may arise after a notice of federal tax lien has been filed against the purchaser/borrower. Such deed of trust or mortgagee must be a valid purchase money and means the guidelines of that jurisdiction.

> **Code of the District of Columbia § 15–104. Priority of liens. "**The lien of a mortgage or deed of trust upon real property, given by the purchaser to secure the payment of the whole or any part of the purchase-money, is superior to that of a previous judgment or decree against the purchaser."

If secondary financing is being insured, the purchase money doctrine will not protect the secondary lender, and an exception for a federal tax lien or any other intervening liens must be taken.

- Is a federal tax lien eliminated in a mortgage foreclosure proceeding? Isn't there a redemption period?

A federal tax lien recorded subsequent to the mortgage may be foreclosed out if the complaint properly names and duly serves notice upon the United States with the foreclosure action. The United States still maintains a right of redemption for 120 days from the date of sale, pursuant to 28 U.S.C section 2410. Title insurance policies issued before the right of redemption has expired must contain an exception for the right of redemption.

9. Mortgages/Deeds of Trust

- What does Doma require to insure mortgages/deeds of trust?

If the transaction involves insurance of a deed of trust, security deed, mortgage, or other encumbrance on a specific parcel or group of parcels, Doma will require a fully executed and notarized and recorded security instrument in favor of the lender for the amount agreed to by the parties. The lender will typically provide the security instrument.

- What does Doma require to insure a transaction involving a conventional loan?

Doma will require a fully executed and notarized security instrument in favor of the lender for the amount agreed to by the parties. The lender will almost always provide the security instrument. The agent must close and disburse the funds pursuant to the lender's written instructions. The mortgage must be recorded in the land records at the Office of the Recorder of Deeds.

- What does Doma require to insure a transaction involving a hard money loan?

Doma will require a fully executed and notarized security instrument in favor of the lender for the amount agreed to by the parties. The lender will provide the security instrument. The agent must close and disburse the funds pursuant to the lender's written instructions. The mortgage must be recorded in the land records at the Office of the Recorder of Deeds.

- What does Doma require to insure a transaction involving a loan from a private lender?

Doma will require a fully executed and notarized security instrument in favor of the lender for the amount agreed to by the parties. The lender will provide the security instrument. The agent must close and disburse the funds pursuant to the lender's written instructions. The mortgage must be recorded in the land records at the Office of the Recorder of Deeds.

- What does Doma require to insure a transaction involving a construction loan?

Doma will require a fully executed and notarized security instrument in favor of the lender for the amount agreed to by the parties. The lender will provide the security instrument. The agent must close and disburse the funds pursuant to the lender's written instructions. The mortgage must be recorded in the land records at the Office of the Recorder of Deeds. A pending disbursement clause must be added to the policy in order to require that title bring-downs occur at each disbursement in order to determine if an intervening lien is recorded. Typically, a requirement is inserted in the Commitment which requires all borrowers and guarantors to execute an indemnification agreement. Contact Doma underwriting counsel if the lender is requiring "affirmative" mechanics' lien coverage or the deletion of the mechanics' lien exception on a construction loan, at DCunderwriting@doma.com

- What does Doma require to insure a transaction involving a reverse mortgage loan?

Doma will require a fully executed and notarized security instrument in favor of the lender for the amount agreed to by the parties. The lender will normally provide the security instrument. The agent must close and disburse the funds pursuant to the lender's detailed written instructions. The mortgage must be recorded in the land records at the Office of the Recorder of Deeds.

There are additional requirements that you must be certain were verified by the lender. The borrower must be at least 62 years of age, the house being mortgaged must be the borrower's primary residence and there must be sufficient equity in the house pursuant to the lender's guidelines. The borrower also has to meet the financial eligibility requirements as established by HUD. Even though the lender will make the determination that the borrower meets the necessary requirements, if you are aware that one of those requirements is not being met (for example the borrowers ID shows an age younger than 62), you should not insure the mortgage, and should contact Doma underwriting counsel for guidance (DCunderwriting@doma.com).

If the reverse mortgage is federally insured there will be also be a secondary mortgage document in favor of the Department of Housing & Urban Development (HUD) that gets executed, notarized, and recorded in the land records at the same time the primary mortgage document is recorded. This secondary mortgage document should be shown as an exception on the loan policy that is issued.

- What does Doma require to insure a transaction involving a junior-priority loan?

Doma will require a fully executed and notarized security instrument in favor of the lender for the amount agreed to by the parties. The lender will typically provide the security instrument. The agent must close and disburse the funds pursuant to the lender's written instructions. The mortgage must

be recorded in the land records at the Office of the Recorder of Deeds. The commitment must list all loans to avoid any possibility of a “silent lien” slipping by the lender. The junior loan policy when issued must be subject to the first mortgage which should appear as an exception on the loan policy issued for the junior-priority loan.

- What does Doma require to insure a modification of a security instrument?

Doma will require a fully executed and notarized modification document. The lender will typically provide the modification document. The modification must be recorded in the land records of the county in which the property is located. If the terms of the modification are so extensive as to lead one to believe that the transaction is an entirely new one and not just a modification of the old one, contact Doma underwriting counsel at DCunderwriting@doma.com for review and approval. Such a situation could be considered a “novation” for which additional requirements may need to be added prior to being insurable.

- What does Doma require to insure an assignment of a security instrument?

Doma will require a fully executed and notarized assignment from the initial lender on the security instrument. The lender will generally provide the assignment. A title search must be performed to confirm the assignor has not previously assigned the security instrument. The assignment must be recorded in the land records of the county in which the property is located.

- What does Doma require to insure an assumption of a mortgage?

Doma will require a fully executed and notarized deed of assumption of mortgage. The lender will typically provide the assumption. A title search must be performed as it would for any sale of property. The deed of assumption must be recorded in the Office of the Recorder of Deeds.

- Who is required to sign the security instrument?

The mortgagors or grantors in a mortgage or deed of trust (the borrowers) must be all the parties vested with title and must make an acknowledgment.

If title is vested in an individual, even if the individual is married, only the individual in title must execute the document fully and said individual’s signature must be duly acknowledged. If the conveyance is without consideration, the spouse should also sign.

If title is vested in an individual who is single, the individual must execute the document fully, and the individual’s signature must be notarized.

If title is vested in a married couple, but only one spouse is the borrower, both spouses must execute the mortgage, and both signatures must be notarized.

If title is vested in a married couple and both are borrowers, then both spouses must execute the mortgage, and both signatures must be notarized.

If title is vested in a limited liability company (LLC), and the LLC is the borrower, the title agent needs a certificate of good standing showing the LLC is a valid LLC in the District, copies of the documents filed with the District of Columbia to create the LLC, and a copy of the operating agreement indicating who has the authority to sign the requisite documents for the transaction. Additionally, the title agent should be provided a resolution signed by the all the members of the LLC or such members as

identified in the operating agreement that names the individual or individuals who have the authority to sign for the LLC in the subject transaction. The manager or individual named in the resolution must execute the mortgage on behalf of the LLC, and the signature must be notarized.

If title is vested in a dissolved LLC, the dissolved LLC can act to “wind up” the business with all members signing, but the dissolved LLC cannot mortgage any real property where title is held by the dissolved LLC.

If title is vested in a corporation, and the corporation is the borrower, a certificate of good standing showing the corporation is a valid corporation in the District of Columbia must be provided along with copies of the documents filed with the District of Columbia to create the corporation, together with a copy of the bylaws of the corporation indicating who has the authority to make lending decisions for the corporation, (i.e. the shareholders, the board of directors, the officers etc.). Additionally, a resolution signed by the board of directors, officers or shareholders that specifies the name(s) of the individual or individuals who have the authority to sign for the corporation in the subject transaction. The individual(s) named in the resolution must execute the mortgage on behalf of the corporation, and the signature(s) must be notarized.

If title is vested in a dissolved corporation, the dissolved corporation can act to “wind up” the business, but the dissolved corporation cannot mortgage any real property where title is held by the dissolved corporation. All directors and shareholders must sign in this situation.

If title is vested in a general or limited partnership, the title agent should obtain a copy of the general or limited partnership agreement to determine who is the general or managing partner that has the authority to sign for the partnership. The general or managing partner must execute the mortgage on behalf of the partnership, and the signature must be notarized.

If title is vested in the trustee of a trust, the title agent should obtain copies of the trust agreement to verify the trustee has the authority to mortgage the subject property. The title agent may accept a certificate of trust providing the same information. The trustee of the trust must execute the mortgage on behalf of the trust, and the signature must be notarized. If the trustee is deceased, the title agent should be provided documents to determine the successor trustee that can act for the trust. The successor trustee of the trust must execute the mortgage on behalf of the trust, and the signature must be notarized.

If title is vested in a church, the church can mortgage the property, but the procedure necessary will depend on the type of governance involved in the church. Whenever a church is involved, you should work closely with Doma underwriting counsel for the precise title requirements and their fulfillment at DCunderwriting@doma.com.

- What does Doma require to satisfy a requirement for the release of a closed-ended mortgage/deed of trust?

Doma requires the release to be executed by a representative of the lender or entity currently holding the note and mortgage. This can be determined by the recorded mortgage, any recorded assignments or in some cases a recorded modification. The release must be recorded in the Office of the Recorder of Deeds.

If there is a question as to the current lender or entity holding the note and mortgage, a requirement should be raised requesting documents that verify the current holder.

If MERS appears as nominee on the mortgage or subsequent assignment, the status of the mortgage and current holder can be verified through the MERS website (www.mers-servicerid.org). However, a status of "inactive" on the MERS website is not in and of itself sufficient verification that a loan has been paid or foreclosed. Doma underwriting counsel should be consulted in those situations where there has been a request to clear a mortgage based on the inactive status appearing on the MERS website (DCunderwriting@doma.com).

- What if a release cannot be obtained and the mortgage/DOT has not yet expired?

Any requests to clear a mortgage without a release (recorded or to be provided) and without a payment being made as part of the transaction should be discussed with Doma underwriting counsel (DCunderwriting@doma.com). As part of this discussion, any and all documents evidencing payment of the mortgage in question should be provided.

This may include, but is not limited to:

-payoff letters
-cancelled checks
-proof of wire payments
-unrecorded releases
-prior settlement statements
-prior policies.

- What does Doma require to satisfy the requirement for the release of an open open-ended mortgage/deed of trust (e.g. a HELOC)?

Doma requires the release to be executed by a representative of the lender or entity currently holding the note and mortgage. This can be determined by the recorded mortgage, any recorded assignments or in some cases a recorded modification. The release must be recorded in the county recorder's office of the county where the subject property is located. Additionally, Doma requires verification that the line of credit has been closed.

- Do mortgages, deeds of trust and/or HELOC's expire?

In the District of Columbia, the statute of limitations on mortgages, deeds of trust and credit line deeds of trust is 12 years from the maturity date provided the maturity date is stated on the face of the mortgage or is ascertainable by the terms of the mortgage. If no due date is stated or ascertainable, then the statute of limitations is 35 years from the date of the mortgage. Before relying upon the statute of limitations to clear an otherwise open mortgage from the title, obtain approval from Doma underwriting counsel at DCunderwriting@doma.com .

- When a security instrument is released, does Doma require the return of the original Note?

Doma does not require the note to be returned.

- What procedures should be utilized for conventional mortgage payoffs?

Doma requires that a payoff letter be provided by the current holder of the loan or the current servicer of the loan directly to, and addressed to, the Doma agent. Doma agents should not rely upon payoff letters furnished by the borrower or any other third party without independently confirming their

accuracy with the lender directly. The payoff letter should indicate the amount due to pay the mortgage in full along with a per diem charge and the date though which the payoff amount is good.

- What procedures should be utilized for HELOC payoffs?

Doma requires that a payoff letter be provided by the current holder of the loan or the current servicer of the loan. Doma agents should not rely upon payoff letters furnished by the borrower or any other third party without independently confirming their accuracy with the lender directly. The payoff letter should indicate the amount due to pay the mortgage in full along with a per diem charge and the date though which the payoff amount is good.

Additionally, for a HELOC payoff, Doma also requires that the HELOC be closed. A letter from the current lender stating the line is closed must be provided as part of the payoff letter, or a request to close the HELOC signed by the borrowers must be sent to the lender with the request for a payoff letter, or, at the latest, with the payoff funds. If the payoff funds are wired, then the request to close the HELOC must be sent under separate cover.

- What procedures should be utilized for HAMP/HARP payoffs?

Doma requires that a payoff letter be provided by the current holder of the loan or the current servicer of the loan. Doma agents should not rely upon payoff letters furnished by the borrower or any other third party without independently confirming their accuracy with the lender directly. The payoff letter should indicate the amount due to pay the mortgage in full along with a per diem charge and the date though which the payoff amount is good.

Additionally, with a HAMP/HARP payoff, there may be a 2nd mortgage recorded to HUD for a deferred amount of the modified mortgage. Doma requires that a separate payoff letter be obtained for the 2nd mortgage, and the payoff funds be sent to the holder of the 2nd mortgage. Doma agents should not rely upon payoff letters furnished by the borrower or any other third party without independently confirming their accuracy with the lender directly. Watch out for a second payoff amount even if both mortgages show the same loan number!

- What procedures should be utilized for payoffs with private lenders?

Doma requires that a payoff letter be provided by the current holder of the loan. Doma agents should not rely upon payoff letters furnished by the borrower or any other third party without independently confirming their accuracy with the lender directly. The payoff letter should indicate the amount due to pay the mortgage in full along with a per diem charge and the date though which the payoff amount is good.

Additionally, with a private lender, the fully executed and notarized release and “paid and canceled note” should be provided with the payoff letter to be held in trust by the title agent until the payoff funds are sent. If the private lender is not willing to provide the original fully executed and notarized release to be held in trust, then the private lender must appear in person to the title agent and provide the release and “paid and canceled note” in exchange for the payoff funds.

- What procedures should be utilized for hard money loan payoffs?

Doma requires that a payoff letter be provided by the current holder of the loan or the current servicer of the loan. Doma agents should not rely upon payoff letters furnished by the borrower or any other third party without independently confirming their accuracy with the lender directly. The payoff letter

should indicate the amount due to pay the mortgage in full along with a per diem charge and the date though which the payoff amount is good.

Additionally, many hard money lenders are private lenders. With a private lender, the fully executed and notarized release and “paid and canceled note” should be provided with the payoff letter to be held in trust by the title agent until the payoff funds are sent. If the private lender is not willing to provide the original fully executed and notarized release to be held in trust, then the private lender must appear in person to the title agent and provide the release and “paid and canceled note” in exchange for the payoff funds.

- Are there any special considerations in handling the payoff of a reverse mortgage?

Doma requires that a payoff letter be provided by the current holder of the reverse mortgage. Doma agents should not rely upon payoff letters furnished by the borrower or any other third party without independently confirming their accuracy with the lender directly. The payoff letter should indicate the amount due to pay the mortgage in full along with a per diem charge and the date though which the payoff amount is good.

If the reverse mortgage was federally insured, there are actually two mortgages that need to be satisfied of record. The second mortgage release will be for the instrument that runs in favor of the Department of Housing & Urban Development (HUD).

- Are there any special considerations in handling a title transaction that has come through the foreclosure of a mortgage?

Doma will consider insuring title through a judicially foreclosed mortgage after the passage of one-year from the date of the final order entered in the foreclosure action. To insure title from a mortgage foreclosure, a copy of the complaint and the service list must be reviewed. All interested parties in the property, either title holders or lien holders, must have been personally served notice of the foreclosure. Additionally, the redemption period must have past, and there must be a proper deed issued to the proposed insured.

If Doma will be the first underwriter to insure the title after the completion of the foreclosure, prior Doma underwriting approval is required prior to committing to insure title (DCunderwriting@doma.com).

- Title to property came through a mortgage foreclosure proceeding. The mortgagor later reacquired the title. Does this create any title issues?

Yes, this will create title issues. If there were any junior lien holders whose interests were extinguished by the foreclosure of the first mortgage, and the property is then sold back to the foreclosed borrower, those junior lien holders may be returned to their original lien status. If a third-party bidder acquires the title to the foreclosed property and later conveys it to the original mortgagor -- the foreclosed mortgage may be revived. In all situations where a mortgagor later reacquires title to a foreclosed property, contact Doma underwriting counsel (DCunderwriting@doma.com) for review and approval of the transaction.

- The mortgage being insured was recorded without a legal description. How is this corrected?

Either the originally recorded instrument must be recovered, and the legal description added and re-recorded or a newly executed instrument with the legal description contained therein must be recorded.

- The mortgage being insured was recorded before the deed into the mortgagor. Does this sequencing error need to be fixed? If so, how?

Yes, this should be corrected by re-recording the mortgage after the deed. While the doctrine of after acquired title would seem to apply and negate the need to re-record to correct the order of the documents, there have been some unusual court decisions that could create a problem with a mortgage recorded before the deed. The best course of action is to re-record the mortgage after the vesting deed.

- I am insuring a construction loan. Are there any special clauses needed in the loan policy or its commitment?

If the mortgage to be insured is for a construction loan, the following pending disbursement clause must be included in the loan policy:

> *Pending disbursements of full proceeds of the loan secured by the mortgage covered by this policy, this policy insures only to the extent of the amount actually disbursed as of the date of this policy, but increases, as each disbursement is made in good faith and without any actual knowledge of any defects in, liens against, or objections to, the title up to the face amount of this policy; provided, however, that at the time of each disbursement of the proceeds of the loan to be insured, the title must be continued down to time of such disbursement for possible liens or other objections to title intervening between the date of this policy and the date of such disbursement. Each additional disbursement to be insured by this policy and each title continuation must be evidenced by an ALTA 33-06 Endorsement to the policy, which endorsement will (1) specify the amount of the disbursement to be insured and the total amount of the proceeds of the loan insured under this policy as of the date of such additional disbursement and (2) set forth all matters of record since the date of the preceding endorsement and specify to what extent such matter(s) will be excepted from coverage or insured over, as the case may be, but said endorsement will, in any event, exclude coverage for matters which an updated survey and/or inspection of the property would disclose. This policy does not guarantee the completion of the improvements nor the sufficiency of funds for the completion thereof*.

Note: This does NOT apply to Owner's Policies.

Additionally, the following exception may also be appropriate:

> *Possible supplemental assessments and taxes for improvements constructed on the land.*

All documents are to be fully executed and notarized. If a corporation is executing the waiver, their corporate seal should be affixed.

The ALTA 32 and 33 endorsements will be used for construction mortgages as draws are made.

A proper indemnity must be executed by the borrower in favor of Doma. Prior approval by Doma underwriting counsel is required DCunderwriting@doma.com

- When an owner's policy and loan policy are issued in the same transaction, does there need to be an exception for the loan in the owner's policy being issued?

Yes. The insured owner's mortgage is an exception on the owner's policy.

- Must a satisfaction of mortgage contain the legal description of the property?

Yes, it is preferable. The satisfaction/release of mortgage should always contain the legal description of the property but the failure to do so does not invalidate the release.

- Does Doma insure deeds in lieu of foreclosure?

Yes, Doma does insure deeds in lieu of foreclosure. However, any and all mortgages, judgments, tax liens or other matters affecting title will remain as exceptions unless paid through the closing. A deed in lieu of foreclosure does not satisfy, resolve, or clear any other liens on the property. In all situations where a deed in lieu of foreclosure is being insured, contact Doma underwriting counsel, at DCunderwriting@doma.com for review and approval of the transaction.

10. Trusts

- Can title to real property be held in the name of a trust?

In the District of Columbia, a trust is not considered a legal entity for acquiring, borrowing, conveying, or otherwise dealing with title to real property. Rather, title should be vested in the "trustee" of the trust. Title to real property that is an asset of the trust must be vested in and dealt with by the trustee or trustees of that trust.

- Who may act as a trustee of an intervivos or testamentary trust?

Any natural person who has capacity to take and hold property may be a trustee. A corporation may act as trustee if properly authorized and qualified to do business as a trust company in the District of Columbia. Also, a settlor may act as trustee of the trust they create.

- Is the trust property subject to judgments and state or federal tax liens against the settlor / trustee?

If the settlor retains the power to revoke the trust in whole or in part, the trust property may well be subject to the claims of creditors of the settlor to the extent of the power of revocation during the lifetime of the settlor. Normally, an estate or interest in land the title to which is vested in a trustee of a revocable trust is to be examined as if the title is vested in such trustee as both an individual and a trustee. If you have a title insurance question involving judgments or liens against the settlor / trustee of a trust, send it to Doma underwriting counsel at DCunderwriting@doma.com.

- What if there is no acting trustee of a trust?

If the instrument creating the trust appoints no trustee, or when the trustee dies, resigns, or is removed, review the trust instrument for a designated successor trustee or trustees. If such a provision fails to provide a method of appointment of a trustee, the court in the District of Columbia may appoint a trustee.

- Who acts for the trust if there are multiple trustees?

Generally, unless the trust instrument provides otherwise, a power vested in two or more trustees may only be exercised by their unanimous action. Upon death, resignation, removal, or incapacity of one of the co-trustees, the other or others may act unless the trust instrument provides there must be a specific number of trustees.

- What are the powers of the trustee?

The trustee's authority is limited to the authority conferred to the trustee by powers specified in the (1) trust instrument and (2) by statutes of the District of Columbia governing the operation of the trust. If an inconsistency exists between the powers expressed within the trust instrument and powers expressed in the trust law statutes, those powers contained within the trust instrument will control, for title insurance purposes. It is perfectly valid for the trust to incorporate by reference powers listed in a state statute.

- Can the trustee delegate powers?

Generally speaking, the answer is no. Unless otherwise specified in the trust instrument, the trustee may not delegate to others the performance of acts that the trustee can reasonably be required to personally perform. The trustee may not transfer the office of the trustee to another person. The trustee may not delegate the entire administration of the trust to a co-trustee or other person. For these reasons, a trustee may not give a power of attorney to another to act on their behalf unless the trust specifically so authorizes that action.

- What if there is a transfer to a named trust without naming a trustee?

A transfer to a named trust without naming a trustee may fail for lack of an adequately named grantee, i.e., a purported transfer to a non-entity. Contact Doma underwriting counsel at DCunderwriting@doma.com should this situation present itself.

- What is a trustee's certificate of trust?

A certificate of trust is effectively a detailed, but shortened, description of the major provisions of the trust agreement and is executed and acknowledged by the settlor and/or trustee of the trust. A trustee of a trust may provide a "certificate of trust" in lieu of providing a full copy of the trust instrument for examination.

- From a title insurance perspective, what is the main difference between a revocable and an irrevocable trust?

A revocable trust should be treated as though the trust property is subject to the claims of creditors of the settlor while the settlor retains the power to revoke the trust during the lifetime of the settlor. Additionally, for title insurance purposes, judgments against the settlor could possibly attach to property held by the trustee. Before proceeding without exception to such judgments, review the transaction with Doma underwriting counsel (DCunderwriting@doma.com.)

- Should the settlors and the trustees sign a deed from a revocable trust?

The trustee of a trust is usually the person, or persons (if there are co-trustees), with authority to act on behalf of the trust. Often, the trustee and settlor are the same person. A trust is regulated by its terms as to the scope of authority by the trustee, trustees, or settlor. Always review the trust instrument to confirm who holds the authority to act on behalf of the trust. Where the trust is

revocable, in the District of Columbia, Doma will require that settlor and trustees to execute a deed or mortgage to be insured.

- May a revocable trust be revoked by a last will and testament?

The terms of the trust dictate how it can be revoked. One of the main reasons for creating a trust is to avoid the expense and delay of probate proceedings, and particularly probate attorney fees. A revocable living trust doesn't require probate because the trust owns the assets. A will revoking the trust would be highly unusual given the purposes of a trust. Such a will would have to be probated itself as to its power to revoke, but only if the trust allows for such a revocation.

- If a transaction involves a trust as a party, what documents concerning the trust need to be recorded in the land records as part of the transaction?

Real property which is to become an asset of a trust is conveyed by a deed to the trustee of the trust. Likewise, a conveyance of trust property from a trust would be by deed from the trustee of the trust. The actual trust instrument does not need to be recorded. Confirmation of the trustee's authority can be verified off record.

11. Easements

- What is an easement?

An easement is a non-possessory right to use and/or enter onto the real property of another, or put another way, an easement is a right held by one property owner to make use of the land of another for a limited purpose. The easement will be a specifically described parcel and the rights to use the easement will be limited to that specifically described parcel.

For example, a lot in a subdivision could have a utility easement over the south 10 feet of the lot. The utility easement would give the utility company the right to place pipes, cables, wires, or whatever equipment is necessary to provide the utility on that limited portion of the property (the south 10 feet of the lot). The utility easement would also give the utility company the right to enter the south 10 feet of the lot (easement area) for purposes of maintenance and repair. The utility company does not own that parcel but has the rights to enter and use it.

Common easements would be utility easements, drainage easements, and ingress/egress easements.

There are typically two estates involved in an appurtenant easement, the dominant and the servient estates. The dominant estate is the land that is benefited by the easement and the servient estate is the land which is encumbered by the easement. The owner of the servient estate may use his or her property in any manner they desire provided the use does not interfere with the dominant estate's use of the easement area. If you have a title insurance question involving an easement, send it to DCunderwriting@doma.com.

- What are the primary classes or types of easements?

Generally, there are two classes of easements: appurtenant and in gross. Appurtenant easements attach to a specific parcel of land and typically have a dominant estate and a servient estate. Easements in gross are often described as personal easements and are held by the party to which it is granted, but still affect the property of another. Easements in gross have a servient estate but no

dominant estate. An ingress/egress easement is an example of an appurtenant easement. A utility easement is an example of an easement in gross.

- What is an appurtenant easement?

An appurtenant easement is an easement that is attached to a specifically described parcel of land. The appurtenant easement typically has a dominant and servient estate. The easement benefits the dominant estate and encumbers the servient estate.

An ingress/egress easement or access easement is an example of an appurtenant easement. The owner of the dominant estate will have the right to cross over the servient estate in order to get access to the dominant estate.

- Are easements insurable interests in land?

Doma will, with underwriting approval, generally insure title to the appurtenant easement as part of a title transaction involving the dominant estate. In a title transaction involving the servient estate, an exception will always be taken for the easement. If you encounter a situation where title insurance coverage is being requested for an appurtenant easement, contact Doma underwriting counsel at DCunderwriting@doma.com to discuss the particulars, including title requirements and exceptions and to obtain approval for the insurance.

In contrast, easements in gross, are rarely insurable. In exceptional circumstances, Doma underwriting counsel may approve title insurance for an easement in gross. Contact Doma underwriting counsel at DCunderwriting@doma.com to discuss the relevant issues, including title requirements and exceptions and to determine whether the easement in gross is insurable.

- Can the beneficial owner of an appurtenant easement transfer it to another?

Generally speaking, the answer is yes. The appurtenant easement is inextricably tied to two specific parcels of land, the dominant and servient estates, and it passes automatically along with the conveyance of the title to both parcels. The dominant estate is the specific parcel that receives the benefit of the easement. The servient estate is the specific parcel that is encumbered by the easement. An appurtenant easement will stay tied to the parcels and transfer along with a conveyance even if the easement is not mentioned in the deed; however, it is always advisable to specifically mention the easement as part of the deed grant.

- What is an easement in gross?

An easement in gross, or personal easement, is an easement held by a party who has been given rights to the property of another. It differs from an appurtenant easement in that there is no dominant estate. This type of easement has only a servient estate. Additionally, an easement in gross generally cannot be assigned to another party, but the servient estate is automatically conveyed subject to the easement.

- How are easements created?

Easements can be created by express grant, express reservation, dedication, implication, estoppel, prescription, and necessity.

Doma underwriting counsel's prior approval is necessary to insure an easement by implication, estoppel, prescription, or necessity even after a final court order has been entered creating same. (DCunderwriting@doma.com.)

An express grant is a specific written and recorded grant of a defined easement from the title holder of the servient estate to the title holder of the dominant estate (or to the grantee of the easement in gross). In the District of Columbia, title to the servient estate must be searched if the easement is going to be insured as a parcel in the legal description.

An express reservation occurs in a deed from the grantor to a third party wherein the grantor specifically reserves an easement over the land conveyed, for grantor's use, or the use of another owner of an adjoining parcel or parcels. This type of easement creates a servient estate out of the property being conveyed. In the District of Columbia, title to the servient estate must be searched if the easement is going to be insured as a parcel in the legal description.

A dedication is typically done by land developers who either record a plat of subdivision which subdivides the land and creates all the easements depicted on the plat, or through the recording of a deed of dedication that specifically describes the easements. Typical easements created by dedication would be easements for utilities, roadways, driveways, sidewalks, homeowners' association uses, etc. The easements created by dedication may be insurable provided the documents dedicating the easements are reviewed as part of the search.

An easement by implication is created as a result of a specific set of facts which accompany a conveyance of real property. The fact pattern must be absolutely exact and provable and requires a court of competent jurisdiction to confirm the easements existence. Until the court has duly ruled on the creation of such an easement and this ruling is reviewed and approved by Doma underwriting counsel, this is not an insurable easement. These types of easement are rare in the District of Columbia.

Another similar situation is easement by estoppel. This is an easement which is created as a result of a specific set of facts which accompany a conveyance of real property. Here again, the facts must explicitly yield a situation whereby the owner of the servient estate is estopped to deny the existence of the easement. This is not an insurable easement unless and until a court of competent jurisdiction confirms its creation by final decree and Doma underwriting counsel has reviewed and approved the insurance thereof.

A prescriptive easement is effectively created by the adverse use of the property of another for purposes which make up the easement. The requirements for prescriptive easements (which are very similar to the requirements of adverse possession) must be present, i.e. use by the claimant for a term of years, under color of title, whereby the use is open, notorious, continuous, hostile, and exclusive. This is not an insurable easement unless and until a court of competent jurisdiction confirms its creation by final decree and Doma underwriting counsel has reviewed and approved the insurance thereof.

An easement by necessity refers to an easement that is necessary to provide access to a parcel of property that otherwise would be surrounded by other property, and unable to be used or occupied. It is not sufficient that the existence of the necessity is all that needs to be proven, and such proof will be considered as evidence that the parties intended to create the easement rather than have property that has no access. The facts under which an easement by necessity can be created are rare. This is

not an insurable easement unless and until a court of competent jurisdiction confirms its creation by final decree and Doma underwriting counsel has reviewed and approved the insurance thereof.

- Do lenders on parcels on which easements are to be created have to join in the creation document?

Yes. Any lien holder on property over which an easement is being granted must join in the grant. If they do not join and subject their lien to the easement, a foreclosure of their lien would “wipe out” the easement grant. Therefore, it is necessary to search the title to the servient estate whenever Doma is asked to specifically insure an easement.

- Can an easement be terminated or extinguished? If so, how?

An easement can be terminated if abandoned, no longer used, adversely possessed or by merger of the dominant and servient estates or by re-conveyance from the dominant estate owner to the owner of the servient estate. While an easement may be terminated through these various manners, in order to insure a servient estate property without exception to the easement, Doma requires an express release of the easement. The release of easement must be executed by all the parties entitled to use the easement and must be joined in by any lenders who have a mortgage on the dominant estate. The release must be notarized and recorded in the land records of the county in which the property is located. Doma underwriting counsel must approve insuring property without taking exception for an easement based upon its termination or extinguishment (DCunderwriting@doma.com.)

- Are easements exceptions or should they be insured as part of the legal description?

Both. An appurtenant easement benefitting the insured property, such as an access easement, can be insured as a separate parcel once the recorded document creating the easement is reviewed and Doma underwriting counsel have given approval (DCunderwriting@doma.com.)

The terms of the easement should also be raised as an exception on the commitment and the policy, as these terms may provide restrictions to use, requirements of maintenance, rules and obligation regarding repairs and other various terms. Since those terms place on obligation on the insured party that run to the future, the policy must have an exception for the terms of the insured easement.

- If a deed in the chain of title contains a reference to an easement, or reserves an easement, how should that be handled in the title insurance commitment and policy?

The easement should be raised as an exception on the commitment and will remain an exception on the policy. The easement language in the deed should be reviewed to determine if the subject property is the dominant estate or the servient estate. If the subject property is the dominant estate, it may be appropriate to include the easement as an insured parcel on Schedule A (i.e. an access easement), provided a title search is conducted on the servient estate and Doma underwriting counsel have approved insuring the easement (DCunderwriting@doma.com.)

- May I insure an easement without prior Doma underwriting counsel approval?

No. Insuring an easement requires prior approval. Contact DCunderwriting@doma.com for the particulars as to these transactions, including search requirements, and verbiage to be contained in the commitment and policy.

12. Deeds & Conveyances

- Is the form of a warranty deed for District of Columbia property prescribed by District of Columbia law?

The District of Columbia Real Property code section 42-601 does not require a specific form of warranty deed to be used in the District of Columbia. However, acceptable forms of deeds, mortgages and leases are set out in this section. Generally defined elsewhere, a deed is a written document that gives ownership rights to a piece of land. In a deed, one or more persons, called the grantor(s), gives their ownership rights in land to a second person or persons, called the grantee(s). Deeds contain important information about the property and the terms of the property transfer. The necessary information is the name of the grantor, the name of the grantee, a legal description of the land being conveyed, any covenants desired to be included, and a proper acknowledgement by an authorized person such as a notary public.

- What about acknowledgements?

The following short form certificates of notarial acts are sufficient for the purposes indicated, as set forth in District of Columbia Code section 1-1231.15

Short Forms

(1) For an acknowledgment in an individual capacity:

District of Columbia
This record was acknowledged before me on _____ by _____
.....Date.....Name(s) of individual(s)

_____
Signature of notarial officer
[Seal]
[_____]
Title of office
[My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

District of Columbia
This record was acknowledged before me on _____ by _____
.....Date.....Name(s) of individual(s)
as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed).

_____
Signature of notarial officer
[Seal]
[_____]
Title of office
[My commission expires: _____]

(3) For a verification on oath or affirmation:

District of Columbia
Signed and sworn to (or affirmed) before me on _____ by _____
.....Date.....Name(s) of individual(s) making statement

_____
Signature of notarial officer
[Seal]
[_____]
Title of office
[My commission expires: _____]

(4) For witnessing or attesting a signature:

District of Columbia
Signed [or attested] before me on _____ by _____
.....Date.....Name(s) of individual(s)

_____
Signature of notarial officer
[Seal]
[_____]
Title of office
[My commission expires: _____]

(5) For certifying a copy of a record:

District of Columbia
I certify that this is a true and correct copy of a record in the possession of _____.
Dated _____

_____
Signature of notarial officer
[Seal]
[_____]
Title of office
[My commission expires: _____]".

- What is a general warranty deed in the District of Columbia?

District of Columbia Code section 42-604 provides “A covenant by the grantor, in a deed conveying real estate, “that he will warrant generally the property hereby conveyed,” or a grant of real estate in which the granting words are followed by the words “with general warranty,” shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives will warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of all persons whomsoever.”

- What is a special warranty deed in the District of Columbia?

District of Columbia Code section 42-605 provides “A covenant by a grantor in a deed conveying real estate, “that he will warrant specially the property hereby conveyed,” or a grant of real estate in which the granting words are followed by the words “with special warranty,” shall have the same effect as if the grantor had covenanted that he, his heirs, devisees, and personal representatives will forever warrant and defend the said property unto the grantee, his heirs, devisees, personal representatives, and assigns against the claims and demands of the grantor and all persons claiming or to claim by, through, or under him.”

- Are witnesses required for a District of Columbia deed to be valid?

The District of Columbia does not require witnesses for deeds to be valid. If it is duly executed and acknowledged in accordance with the laws of the District of Columbia or of another state, it will be accepted for recordation in the District of Columbia, provided the notary acknowledgement complies with District of Columbia law.

- When does a deed or other recording take effect?

District of Columbia Code section 42-401 effectively provides that any deed conveying real property in the District, or interest therein, or declaring or limiting any use or trust thereof, executed and acknowledged and certified and delivered to the person in whose favor the same is executed, shall be held to take effect from the date of the delivery thereof, except that as to creditors and subsequent bona fide purchasers and mortgagees without notice of said deed, and others interested in said property, it shall only take effect from the time of its delivery to the Recorder of Deeds for record.

- What type of deed should be used for title insurance purposes in a District of Columbia transaction?

In general, the contract for sale between a buyer and seller specifies the type of deed the seller is contractually obligated to deliver to the buyer at the closing. Most often, based on custom and usage, the type of deed specified in the contract for sale in the District of Columbia is a special warranty deed. Obviously, if the seller is an estate, trust, or entity, for example, the contract will contain language requiring a special warranty deed.

Doma routinely accepts and approves for title insurance purposes general warranty deeds and special warranty deeds. These types of deeds do not generally require Doma underwriting counsel review or approval.

In contrast, any form of quit claim deed requires Doma underwriting counsel review and approval before it may be used for title insurance purposes. Quit claim deeds do not actually purport to convey any title: only such title, if any, as is vested in the grantor thereof.

- Must a spouse join in the execution of a deed or mortgage for property that is titled in the name of the other spouse?

Spousal joinder is not required.

- I have been asked to put “powers” in a District of Columbia deed or mortgage to or from a trustee. What is that language, and why is it used?

The deed or mortgage should state that the trustee has “the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property and

to execute, deliver and record any and all documents necessary or desirable to accomplish the foregoing", or words of like effect.

The reason why powers language is included in deeds and mortgages is to reduce the likelihood that in a future title transaction the trustee will be required to produce a copy of the trust for review and/or to furnish a trust certificate affidavit. It doesn't guarantee that this will not be required, but it does substantially reduce that occurring.

- What is a ladybird deed?

A ladybird deed is also known as an enhanced life estate deed. Under such a properly drafted deed, in states that recognize them, the life tenant who is vested in title has the power to sell, convey, mortgage, and otherwise manage the fee simple estate without the joinder of the remainderman. When the life tenant eventually dies, assuming no intervening conveyances, the remainderman under the ladybird deed will inherit the property without the need for probate.

- Are ladybird deeds valid and insurable for District of Columbia property?

No. The District of Columbia does not recognize ladybird deeds.

- What is a transfer on death deed?

A transfer on death deed is a deed given during the grantor's life which provides, upon the death of the grantor, the title will become vested in the named grantee. A specific statute is necessary to permit the creation and use of this type of deed. This type of deed is recognized in the District of Columbia by statute. DC Code Title 19 Section 604.03

- How old do you have to be to convey title to District of Columbia real property?

The District of Columbia code section 46-101 provides "...the age of majority in the District of Columbia shall be 18 years of age". That being the case, one must be eighteen (18) years of age in order to make a valid deed in the District of Columbia.

It is not uncommon to encounter a title situation where title to a District of Columbia property is taken in multiple names, often in the name of parents and one or more children who are minors. Sometimes a title agent first learns of this title problem when the minor child appears in the agent's office to sign documents! If a property is to be encumbered by a mortgage or conveyed as part of a sale where any vested owner is a minor, a significant title problem is presented. Most often, a District of Columbia guardianship must be established for the minor, and a court order in that guardianship proceeding is required authorizing the transaction. If you encounter this situation contact Doma underwriting counsel at DCunderwriting@doma.com for assistance.

13. Standard Exceptions/ Regional Exceptions

- What is the difference between a standard exception and a special exception?

The standard exceptions (sometimes referred to as "pre-prints" or "pre-printed exceptions") are typically automatically populated into commitments and policies and are deemed broad in nature and not specific to the particular property insured. Special exceptions are transaction specific exceptions from coverage and pertain exclusively to the Insured Land. Special exceptions primarily derive from the title search and examination that is conducted.

- What are the typical standard exceptions used?

The six standard exceptions for the District of Columbia include:

1. The gap exception: *Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.*

2. The parties in possession exception: *Rights or claims of parties in possession not shown by the public records.*

3. The mechanics' lien exception: *Any lien, or right to a lien, for services, labor or material heretofore or after furnished, imposed by law and not shown by the public records.*

4. The easement exception: *Easements, rights of ways, utility agreements and servitudes, or claims thereof, not shown by the public records.*

5. The survey exception: *Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the land.*

6. The tax exception: *Real estate taxes, other public charges (including, but not limited to, assessments by any county, municipality, Metropolitan District or Commission) and the balance of any such charges payable on an annual basis which are not yet due and payable.*

It is quite common for many Commitments to contain the following note so that the Insured lender will know these standard exceptions will not appear in their final policy: *Note: Standard Exceptions 1-6 will not appear on the Lenders Policy of title insurance.*

- What are the typical special exceptions and where do you get them?

Special exceptions come directly from the title search and exam on the subject property and include reported easements, covenants, restrictions, and other similar matters. They also include a specific tax exception tailored to the specific jurisdiction in which the property is situated and is further tied to the most recent tax data obtained from the local taxing authority. This tax exception usually is tied to the tax periods of the local jurisdiction.

The special tax exception for the District of Columbia is: *"Taxes subsequent to the first (second) half of the year ending March 30, ____ (September 30, _____) a lien not yet due and payable, and any and all special assessments, front foot benefit charges, and/or tax or municipal liens or levies subsequent to the date hereof."*

In addition to the listing of easements and any other matter discovered in the title search, other special exceptions for the District of Columbia include:

1. Covenants, conditions and restrictions (but omitting any restrictions indicating any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin), if any, appearing among the public land records.

2. Subject to the Covenants, Conditions, Restrictions, Stipulations, Agreements, Easements and Rights of Way of record.

3. Rights of tenants under the Rental Housing Conversion and Sale Act of 1980, and all amendment thereto and regulations thereunder.

4. Rights of the District of Columbia to purchase the land described in this title commitment as described in the District's Opportunity to Purchase Amendment Act of 2008, as amended. (Does not apply if the land is improved with less than five residential units).

5. Condominium and/or Homeowner Association dues, fees and/or assessments associated with the Land accruing subsequent to Date of Policy, a lien not yet due and payable and having priority over the Insured Mortgage pursuant to Section 42-1903.13 of the District of Columbia Official Code as amended.

6. Unpaid water and sewer charges.

7. Notwithstanding any reference to acreage, square footage or other area measurement in the legal description set forth herein, this commitment/policy does not insure nor guarantee the area of the Insured Land.

8. NOTE: All recorded documents referred to herein are recorded among the Land Records of the District of Columbia, unless otherwise stated.

9. NOTE: Any reference herein made as to restrictions and/or restrictive covenants is intended to include, as if said language was set forth after each exception, the following: "Omitting any covenant of restriction based on race, color, religion, sex, handicap, familial status or national origin", unless and only to the extent that said covenant: (A) is exempt under Chapter 42, section 3607 of the United States code, or (B) relates to handicap but does not discriminate against handicapped persons. As used in this paragraph (or Endorsement) the words "covenants, conditions and restrictions" shall not refer to or include any covenant, condition or restriction relating the environmental protection or regulating or prohibiting the use, storage or release of hazardous or toxic waste or substances on the land.

Additionally, the following language must appear in ALL District of Columbia Commitments (it appears hard coded in the jacket from most service providers. Check to be sure it is there in your commitments.)

THE EXCEPTIONS ARE MEANT TO PROVIDE YOU WITH NOTICE OF MATTERS WHICH ARE NOT COVERED UNDER THE TERMS OF THE TITLE INSURANCE POLICY AND SHOULD BE CAREFULLY CONSIDERED.
IT IS IMPORTANT TO NOTE THAT THIS FORM IS NOT A WRITTEN REPRESENTATION AS TO THE CONDITION OF TITLE AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE LAND

- What is required to remove each standard exception?

The gap exception is noted as something that will be deleted from the final title policy because at that time, title would have been downdated through the recording of the insured documents. In some situations, a gap indemnity may permit the deletion of this exception. Contact DCunderwriting@doma.com for approval prior to deleting this exception.

Mechanics' lien exception: By deleting this exception, you are providing affirmative mechanics lien coverage if the policy insures a construction loan. If a purchase money mortgage or refinance mortgage is being insured and there has been no recent construction, then this exception may be deleted.

Parties in possession exception: may be removed in reliance on an owners/seller's affidavit which indicates there are no parties in possession of the insured property.

Easement exception: This exception may be removed on residential transactions based on affirmations or averments made in the owner/seller affidavit or with special exceptions for the particular property.

Survey exception: Upon receipt and review of an ALTA survey plat or its equivalent, the exception may be removed. It may also be removed on existing residential subdivision lots where an appropriate survey affidavit has been obtained. There are other situations wherein this exception may be removed with approval from DCunderwriting@doma.com

Tax exception: may be removed where the full special tax exception will remain in the policy.

- What are the standard requirements which should appear in a Commitment for property in the District of Columbia?

The following requirements must be complied with:

1. Pay the full consideration to, or for the account of, the grantors or mortgagors.

2. Pay us the premiums, fees and charges for the Policy.

3. Pay all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.

4. The Company requires receipt in writing of the name of anyone not referred to in this commitment who will acquire an interest in the land or who will execute a deed of trust encumbering the land. Additional requirements and/or exceptions may then be added.

5. Company must be furnished with executed underwriter approved Owner's/Seller's affidavit relating to, among other items, Mechanic's liens and parties in possession. NOTE: This affidavit may be used to eliminate/amend Standard Exceptions on Schedule B, Section II as to the MORTGAGEE Policy only.

6. Satisfactory evidence should be had that improvements and repairs, or alterations thereto are completed; that contractors, sub-contractors, labor and materialmen are paid and/or have released of record all liens or notice of intent to perfect a lien for labor or materials.

7. *The Company must be furnished with proof that no portion of the land described in this title commitment is presently leased for residential purposes. If any portion of the land is leased for residential purposes, the Company must be furnished proof of compliance with all of the provisions of the Title IV and Title V of D.C. Law 3-86, "Rental Housing Conversion and Sale Act of 1980" as amended.*
8. *Payment of all condominium fees and assessments which may be due and payable through Date of Policy*

- If a mortgage is being modified and the modification is to be insured, do I have any concerns involving the standard exceptions which were removed from the loan policy?

Generally, no. The update to title shall reveal any additional special exceptions which will be added to Schedule B.

- Does the removal of any standard exception require prior Doma underwriting counsel approval?

Generally no, but if there are complex issues with mechanics' liens or issues shown on the survey, consult Doma underwriting counsel at DCunderwriting@doma.com for assistance.

14. FIRPTA

- What is Doma's position regarding the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA)?

While you may receive FIRPTA questions from customers and real estate agents, please remember that FIRPTA is outside the scope of title insurance policy coverage and not an issue on which Doma underwriting counsel can provide much guidance. Title agents and their customers should always consult a legal or tax professional if you have specific FIRPTA questions for your Doma insured transaction.

- What is the purpose of FIRPTA?

FIRPTA enables the Internal Revenue Service (IRS) to collect income tax incurred as a result of a real property sale by a foreign person.

- How does the IRS collect income tax incurred due to a real property sale by a foreign person?

When a foreign person (individual or entity) sells real property located in the United States, FIRPTA requires the buyer to withhold and submit to the IRS up to 15% of the seller's gross proceeds (typically the sales price). These funds are a pre-payment on the tax liability owed by the foreign seller.

- Does the IRS impose penalties for failing to remit the tax withholding?

Yes. A buyer who does not remit the tax withholding to the IRS may be liable for the tax plus any penalties.

- When is FIRPTA withholding required?

There are two main questions that determine whether FIRPTA withholding is required:
(a) Is the seller a "U.S. person?" and
(b) Does an exemption to FIRPTA withholding apply?

- When is FIRPTA withholding not required?

Withholding is not required where the seller is a U.S. person, or the transaction is otherwise exempt from FIRPTA requirements.

- How do I determine if the seller is a U.S. person?

The criteria for determining whether a seller is a U.S. person depends upon the type of entity or individual the seller is.

Individuals: An individual is a U.S. person under FIRPTA if he or she is a citizen or legal resident of the United States. Citizens are those individuals born in the United States. Legal residents are those who: (a) are legally admitted for permanent residency as demonstrated by a “green card;” or (b) meet the “substantial presence test” as detailed in IRS Publication 519.

Corporations: A corporation is deemed a U.S. person if it is a domestic corporation, meaning a corporation that is created or organized in the United States. However, if a foreign corporation has previously elected to be treated as a domestic corporation for tax purposes, the foreign corporation may provide prior to closing an Exemption of Withholding Certificate or Letter from the IRS confirming that election.

Partnerships**:** FIRPTA uses a broad definition of “partnership” that includes joint ventures, limited partnerships and syndicates, among others. At a minimum, a partnership must have at least two members and not be classified as a corporation. A partnership is considered a U.S. person if it is created or organized in the United States.

Limited Liability Companies: An LLC has three options for how it is classified under FIRPTA: (a) a corporation; (b) a partnership; or (c) a disregarded entity. An LLC must make a specific election to the IRS to be classified as a corporation. If it has not made such an election, a multiple-member LLC will be treated as a partnership. A single-member LLC will be treated as a disregarded entity and its status will depend on whether its single member is deemed a U.S. person. If the single member is another single-member LLC, the analysis must be repeated until a decision can be made.

Trusts: There is a two-part test to determine whether a trust is a U.S. person: (a) Can a United States court exercise primary supervision over administration of the trust (the “Court Test”); and (b) Do one or more U.S. persons have authority to control all substantial decisions of the trust (the “Control Test”)? If the answer to both questions is “yes”, then the trust is a U.S. person under FIRPTA. The Code of Federal Regulations provides several examples to assist with this complicated analysis.

Multiple Sellers: In the case of more than one seller, the analyses listed above must be performed for each seller. If at least one seller is a foreign person, FIRPTA withholding is required for the portion of the sales price attributable to that person. For a foreign married couple, 50% of the sales price should be attributed to each spouse unless the spouses have otherwise designated a different split.

- Once I complete the analysis, how do I document my file regarding the seller’s status as a U.S. person?

If the seller is deemed to be a U.S. person, the seller must execute a Non-Foreign Status Affidavit or Certificate at closing.

- Are there any exemptions to the FIRPTA withholding requirement?

Yes, even if the seller is a foreign person, withholding may not be required if an exemption applies.

- What are the exemptions to the FIRPTA withholding requirement?

The primary exemption is for individual buyers who will use the property as their residence. This exemption applies where:

(a) the sales price is $300,000 or less; and

(b) the buyer has definite plans to reside at the property for at least 50% of the number of days that the property is used by any person during each of the next two 12-month periods after the sale. This exemption is not available to entity buyers, rental property or commercial investments. The buyer should execute an affidavit confirming that he or she will meet this residency requirement.

- How do I calculate the amount of withholding required?

The percentage of the sales price that the buyer is required to withhold varies depending on the amount of the sales price and the applicability of the buyer residence exemption. The following chart lists the different withholding percentage requirements:

Sales Price	Use of Property	Withholding Amount
$0 – $300,000	Buyer's Residence Exemption	0%
$300,001 – $1,000,000	Buyer's Residence Exemption	10%
$0 – $1,000,000	Not the Buyer's Residence	15%
$1,000,001 and higher	Any Use	15%

- Which party to the transaction is responsible for FIRPTA Compliance?

Buyers have the ultimate responsibility for complying with FIRPTA, including withholding and remittance to the IRS. However, many customers will look to you as the settlement agent for FIRPTA assistance.

- The transaction is subject to FIRPTA. What do I do with the money I withhold?

You should remit the withheld funds to the IRS at the time of disbursement.

15. Reporting transactions to FinCEN

- Are transactions in the District of Columbia subject to FinCEN Reporting under the Geographic Targeting Order (GTO)?

Yes. Reporting of cash sales in the District of Columbia of qualifying residential property for $300,000 or more where the buyer is a legal entity is required. If there is financing with an institutional lender, reporting is not required. However, reporting is required for hard money financing. More information about FinCEN reporting requirements is available below, and on AgentLink. Consult with Doma underwriting counsel at DCunderwriting@doma.com for any additional questions.

- What is FinCEN?

Established in 1990, FinCEN is a bureau of the U.S. Department of the Treasury. Its mission is "to safeguard the financial system from illicit use and combat money laundering and promote national

security through the collection, analysis and dissemination of financial intelligence and strategic use of financial authorities." FinCEN fulfills its mission by receiving and maintaining financial transactions data, analyzing and disseminating that data for law enforcement purposes, and building global cooperation with counterpart organizations in other countries and with international bodies. FinCEN's authority comes from the Currency and Financial Transactions Reporting Act of 1970, as amended by Title III of the USA PATRIOT Act of 2001 and other legislation. This legislative framework is commonly referred to as the Bank Secrecy Act (BSA).

- What is the Bank Secrecy Act?

The Bank Secrecy Act (BSA) is the primary U.S. anti-money laundering (AML) law and tool for detecting, deterring and disrupting terrorist financing networks. The BSA authorizes the Secretary of the Treasury to issue regulations requiring banks and other financial institutions to take a number of precautions against financial crime, including the establishment of anti-money laundering programs and the filing of reports that have been determined to have a high degree of usefulness in criminal, tax and regulatory investigations and proceedings, and certain intelligence and counterterrorism matters. See 31 U.S.C. § 310.

- What is money laundering?

Money laundering is the process of disguising financial assets produced through illegal activity. Through money laundering, the monetary proceeds derived from criminal activity are transformed into funds with an apparently legal source.

- What is a Geographic Targeting Order (GTO)?

Under the BSA, the director of FinCEN can issue orders imposing additional recordkeeping and reporting requirements on domestic financial institutions or non-financial trades or businesses in a specific geographic area for transactions involving certain amounts of United States currency or monetary instruments. These orders can be in effect for up to 180 days. See 31 U.S.C. § 5326(a); 31 C.F.R. § 1010.370.

- How is reporting accomplished under the GTO?

FinCEN reporting is accomplished using the FinCEN Currency Transaction Report. Doma supports its agents impacted by the current GTO by handling the filing of the currency transaction report. In order for Doma to conduct this mandatory reporting for each covered transaction, Doma agents shall complete and submit the following three documents to Doma, no later than 10 days after closing, via the AgentLink FinCEN GTO secure upload:

1. Fully completed and signed ALTA Information Collection Form, v. 4.2 (a copy of this form can be downloaded from AgentLink/UnderwriterLink/FinCEN GTO or from the ALTA website (www.alta.org);
2. Legible copies of all identification documents for persons listed on the ALTA Information Collection Form; and
3. Copy of commitment or deed of conveyance for the covered transaction reflecting the grantee.

The secure FinCEN Upload can be found in AgentLink under the Policy Application tab. In order to upload your FinCEN reporting documents you will need to fully complete the following data fields:

1. Agent File No. – This is critical information as this will be how Doma tracks your FinCEN compliance and retains your filing documents in its secure database.
2. Transaction Effective Date – It is critical that you select the transaction closing date as this is the date our Doma FinCEN team will work from to insure a timely report to FinCEN.
3. Document Type – You will need to upload each of the document types listed in the drop-down menu. You can choose these files and upload them to the secure system at the click of a mouse. You can also upload a combined Zip file of all the documents in one click.
4. Upload – Click upload for each of the documents you are adding to the FinCEN file. Always enter the agent file number so that all documents are properly routed to the covered transaction file in Doma's system.

It is the agent's responsibility to collect and deliver proper and legible documentation in order to facilitate reporting by Doma on your behalf. Doma agents will be contacted by the Doma FinCEN team if the information or documents completed are not adequate for Doma to complete the FinCEN reporting and BSA Currency Transaction Report (CTR) submission. When contacted by the FinCEN team for additional documentation or information, Doma agents are urged to promptly respond so that the FinCEN reporting can be completed in compliance with the FinCEN deadlines. The Doma compliance manager will reach out to non-responsive agents.

Once the covered transaction is reported to FinCEN, the Doma FinCEN team will forward to the agent a copy of the FinCEN BSA E-filing receipt which should be retained in the agent's title file. This information along with the identification documents should be securely stored for the full term mandated by the GTO, or for 5 years from the last expiration date of the GTO affecting the subject property.

- Can the GTO be renewed after the initial 180-day period?

Yes. GTOs can be renewed by the director of FinCEN following a finding that the circumstances justifying the original GTO continue to exist or be modified. Doma anticipates that the GTO will be continuously renewed for the foreseeable future with a potential expansion of the impacted jurisdictions.

- What are the effective dates of the GTO?

All GTOs are effective for 180 days from their effective date. Please check the most current Doma Bulletin on the GTO for firm dates for the current GTO issued to Doma. It is anticipated that the GTO will be continuously renewed and possibly expanded. Monitor Doma Bulletins for changes to GTO reporting obligations.

- Who is subject to the GTO?

All title insurance companies licensed in any U.S. state, including any subsidiaries or agents of the title insurance company (Covered Business), are subject to the requirements of the GTO.

- What types of transactions must the covered business report?

A covered business must report any real estate transaction that involves each of the following elements:

1. The buyer must be a legal entity, defined under the GTO as a corporation, limited liability company, partnership or other similar business entity, whether formed under the laws of a state, the

United States, or a foreign jurisdiction. Trusts are excluded from the definition of a legal entity. Also, no reporting to FinCEN is required under the GTO for "a business whose common stock or analogous equity interests are listed on a securities exchange regulated by the Securities Exchange Commission (SEC) or a self-regulatory organization registered with the SEC, or an entity solely owned by such a business.

2. Residential real property located in:

Texas – Counties of Bexar, Tarrant, and Dallas;
Florida – Counties of Miami-Dade, Broward and Palm Beach;
New York – The New York City Boroughs of Manhattan, Brooklyn, Queens, Bronx and Staten Island;
California – Counties of San Diego, Los Angeles, San Francisco, San Mateo and Santa Clara;
Hawaii – Counties of Honolulu, Hawaii, Maui, and Kauai, and the City of Honolulu
Nevada – Clark County;
Washington – King County;
Massachusetts – Counties of Suffolk and Middlesex;
Illinois – Cook County;
Maryland – Counties of Montgomery, Anne Arundel, Prince George's, Howard, and Baltimore, and the City of Baltimore;
Virginia – Counties of Arlington and Fairfax, and the Cities of Alexandria and Falls Church;
Connecticut – Fairfield County; and
District of Columbia – the District.

3. For a purchase price equal to or more than $300,000, except for Baltimore County and City of Baltimore where the purchase price is equal to or more than $50,000;

4. Without a loan or similar form of external financing from a financial institution (hard money loan transactions must be reported; state and federally regulated institutions are exempt from reporting); and

5. Any portion of the purchase price is paid using currency, cashier's check, certified check, traveler's check, personal check, business check, money order, wire transfer or virtual currency.

- How long does a covered business have to report a covered transaction to FinCEN?

Doma requires its agents to complete and upload the necessary information and documents no later than 10 days after closing so that Doma may timely report on the agent's behalf. Under the terms of the GTO, a Covered Business must report a Covered Transaction to FinCEN within 30 days of the closing of the Covered Transaction.

- How long is a covered business required to retain covered transaction records?

All records related to compliance with the GTO must be retained for a period of 5 years from the last day the GTO is effective. However, should the GTO be renewed (as is expected), all records related to compliance with the GTO must retained for 5 years from the last day the GTO is effective pursuant to all renewals of the GTO.

- What does the term "residential real property" mean?

For purposes of the GTO, "residential real property" means real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of one to four families.

- What is the threshold purchase price for a covered transaction under the GTO?

A purchase price of $300,000 or more in all affected jurisdictions, except for Baltimore County and the city of Baltimore, where it is $50,000 or more. The $300,000 threshold amount is consistent in all other affected jurisdictions.

- To what extent must a covered business verify information about the beneficial owner of a purchaser?

The GTO requires a covered business to collect and report certain identifying information about the beneficial owner(s) of the purchaser in a covered transaction. For purposes of the GTO, a "beneficial owner" means each individual who, directly or indirectly, owns 25% or more of the equity interests of the purchaser. The GTOs provide that the covered business must obtain and record a copy of the beneficial owner's driver's license, passport or other similar identifying documentation. The covered business may reasonably rely on the information provided to it by third parties involved in the covered transaction, including the purchaser or its representatives, in determining whether the individual identified as a beneficial owner is in fact a beneficial owner.

- Who is considered a covered business' "agent" for purposes of the GTO?

A covered business' "agent" refers to people or entities that are authorized by the covered business, usually through a contractual relationship, to act on its behalf to provide title insurance underwritten by the covered business (or its subsidiaries). FinCEN notes that the recordkeeping and reporting requirements under the GTO are triggered only when a covered business (or its subsidiaries or agents) is involved in a covered transaction by providing title insurance underwritten by that covered business (or its subsidiaries) in connection with the covered transaction.

FinCEN also recognizes that a person or entity may be an independent agent of a covered business, and thus may act on behalf of multiple title insurance companies. A covered business is responsible for the recordkeeping and reporting requirements under the GTO only when such agents are acting on its behalf in connection with a covered transaction.

- Who is the "individual primarily responsible for representing the purchaser?"

The "individual primarily responsible for representing the purchaser" means the individual authorized by the entity to enter legally binding contracts on behalf of the entity.

- An LLC may have many members. Does the GTOs require photo IDs on every member of the LLC?

With entities like corporations or LLC's, FinCEN's GTO requires reporting for beneficial owners. FinCEN defines a beneficial owner as any person with a 25% or more equity ownership interest in the purchasing entity.

- Can the terms of the GTO be shared with third parties, such as real estate investors, realtors, land title associations, proposed insureds, etc.?

Yes.

- What information must a covered business report about a covered transaction?

A covered business must report a covered transaction to FinCEN using the currency transaction report, and include the following information:

1. Identity of the individual primarily responsible for representing the legal entity;
2. A description of the identification (driver's license, passport or other similar identifying document) obtained from the individual primarily responsible for representing the purchaser with a copy retained in the file;
3. Identity of the purchaser and any beneficial owner(s) of the purchaser;
4. A description of the type of identification, driver's license, passport or other similar identifying document, obtained from the beneficial owner with a copy retained in the file;
5. Date of closing of the covered transaction;
6. Total amount transferred in the form of a monetary instrument;
7. Total purchase price of the covered transaction; and
8. Address of the real property involved in the covered transaction.

- Does the GTO define who is a beneficial owner?

A beneficial owner is an individual who directly or indirectly owns 25% or more of the equity interest in the legal entity.

- What if the legal entity purchasing the real property is owned by another legal entity?

If the purchasing legal entity is owned by another legal entity, the GTO requires the reporting of information about the beneficial owners of any and all of the related legal entities.

- Does private or seller financing qualify as "without a bank loan" under the GTO reporting requirements?

Yes, the reporting exclusion is only triggered by loans financed by a financial institution that is required to have an anti-money laundering policy. If financing is provided by a private lender, seller or other business that does not have a federal requirement to maintain an anti-money laundering policy, then the transaction is reportable.

- How do I know whether a lender is a state or federally regulated lender thereby exempting the transaction from FinCEN reporting?

Institutional lenders that exempt the transaction from FinCEN reporting are those lenders required by federal law to have an anti-money laundering policy.

One useful rule of thumb is whether the lender involved in the transaction is requiring the borrower to complete the federal loan application, **Form 1003**. Lenders who do not require use of this form generally are not federally regulated. Therefore, reporting of the transaction to Doma and FinCEN, assuming all other criteria are met, is mandated.

Another useful rule of thumb is whether the lender is listed on the **Nationwide Multi-state Licensing System website**, http://www.nmlsconsumeraccess.org/. If the lender is not listed on this site, the title agent can be virtually assured that they are working with a hard money lender that is not federally regulated. Therefore, reporting of the transaction to Doma and FinCEN, assuming all other criteria are met, is mandated.

If in doubt, consult with Doma underwriting counsel to determine if a lender falls under either classification of a state or federally regulated or institutional lender.

- Are the reporting requirements triggered even if the entire purchase price is paid entirely through a wire transfer?

Yes. Earlier version of the GTO excluded all wire transfers, but that was changed and now cash purchased which otherwise are required to report shall report if all funds are delivered via an electronic wire transfer.

- Is a settlement attorney or real estate agent required to report covered transactions to FinCEN?

No. The GTO only applies to the title insurance companies, and its subsidiaries and agents that received the GTO from FinCEN. It does not apply to businesses involved in the covered transactions that are not agents of the covered business, such as attorneys or real estate agents. While the definition of a covered business includes the insurer's agents, only one report is required for each covered transaction. Doma requires its agents to provide Doma with the necessary information to file the reports on the agent's behalf.

- If the covered business just insured the transaction but was not involved in the closing, does it need to report the transaction?

Yes. A covered business must report the transaction whenever it, or its subsidiaries or agents, are involved in the covered transaction. This includes when they only provide title insurance and not settlement services in the transactions.

- Can a covered business rely on information provided by real estate attorneys or agents when reporting?

Yes. For purposes of completing the FinCEN Currency Transaction Report, in addition to collecting information directly from the purchaser or the beneficial owner(s), a covered business may collect information regarding the purchaser or beneficial owner(s), when made available by from the real estate agent or attorney involved in the covered transaction.

16. PATRIOT/OFAC Searches

- What is a PATRIOT, or OFAC, search?

The Charles Jones Patriot Name Search is a certified search of lists published by the Office of Foreign Assets Control of the U.S. Department of Treasury ("OFAC"), consisting of the "Specially Designated Nationals and Blocked Persons", the "Foreign Sanctions Evaders", and the comprehensive "Consolidated List".

On October 10, 2014, OFAC upgraded the Sanctions List Search to incorporate additional sanctions lists. The improved search tool employs fuzzy logic on its name-search field to look for potential matches on the Specially Designated Nationals (SDN) List and on its Consolidated Sanctions List. This consolidated list includes the Non-SDN, Palestinian Legislative Council List "NS-PLC List," the Part 561 List, the Non-SDN Iran Sanctions Act List "NS-ISA List," the Foreign Sanctions Evaders List "FSE List," the Sectoral Sanctions Identifications List "SSI List" and the List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599, "the 13599 List".

- How does OFAC affect real estate transactions?

All agents and affiliates of North American Title Insurance Company must conduct Office of Foreign Assets Control (OFAC) searches on **all** parties to their insured real estate transactions.

- How do I perform an OFAC search?

The link for an online search of the OFAC list is https://sanctionssearch.ofac.treas.gov.

- What do I do if a name is searched and is found on one of the lists?

If the buyer, borrower, seller (including trustees of trusts or attorneys-in-fact if receiving payment from proceeds, legal entities and persons owning 50% or more in aggregate of an entity) or lender (non-institutional lender) name is searched and a hit comes back to you, the following due-diligence steps are recommended when you check a name to the SDN and Blocked Person List, before you call the OFAC "hotline" at 800-540-6322 for guidance from the U.S. Treasury Department:

Step 1. Compare the name of the buyer/seller with the name returned from the SDN List. Is the name of the buyer/seller an individual while the name on the SDN list is a vessel, organization or company (or vice-versa)?

If yes, you do not have a valid match. If no, go to Step 2.

Step 2. How much of the SDN's name is matching against the name of your buyer or seller? Is it one of two names matching (i.e., just the last name)?

If yes, you do not have a valid match. If no, go to Step 3.

Step 3. Compare the complete SDN hit info with all of the info you have on your buyer/seller, such as previous addresses, Social Security number, cedilla number, DOB and nationality. Are you missing a lot of info?

If yes, go back and get more information and then compare your complete information against the SDN hit. If no, go to Step 4.

Step 4. Are there a large number of similarities of exact matches?
If yes, then call the OFAC hotline at 800-540-6322. You may also reach out via email at ofac_feedback@treasury.gov or via U.S. mail as follows:

Office of Foreign Assets Control
U.S. Department of the Treasury
Treasury Annex
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Make sure you obtain the Treasury Department Agent's name from the hotline. In most cases, the agency's representative will tell you to continue with the transaction. If they ask you to halt or freeze a transaction, have OFAC send the order in writing and ask that the request come from the US Attorney for your area.

- When I make a report, what documentation should I retain for my file?

Copies of all relevant documentation and identifying information used in completing the search.

17. Closing Protection Letters/Insured Closing Letters

- What form of closing protection letter/insured closing letter is used?

The District of Columbia utilizes the American Land Title Association form of closing protection letter (CPL). It generally provides coverage against fraud, misapplication of funds or failure to comply with written closing instructions by the title agent when title insurance issued by North American Title Insurance Company is specified in writing.

- Is letter issuance required by state statute or regulation?

No. Upon request Doma may provide a closing protection letter (CPL) to a lender, buyer or borrower, but not to a seller, to a real estate transaction in which Doma title insurance policy or policies will be issued.

- Is there a charge for issuance of the letter in the District of Columbia?

Yes, the charge for the issuance of this letter shall be $50.00 per transaction, regardless of the number of letters issued for a specific transaction, and it shall be remitted in its entirety to the Insurer. It is suggested that the Closing Protection Letter premium be shown as a separate line item on the CD or HUD-1 Settlement Statement and remitted to the company along with the policy remittance.

- If there is a charge for the issuance of the letter, does the Doma agent retain any portion of the charge?

The full charge of the CPL must be remitted to Doma. Doma agents do not receive any portion of the CPL fee. The service fee for issuing a Closing Protection Letter is $50.00, per transaction, payable in gross to the Company and not subject to commissions or splits.

- Who is covered under the letter?

The ALTA form utilized in the District of Columbia can be issued to the lender and buyer/borrower but not the seller. It covers the party to whom it is issued.

- May a CPL be issued for a cash purchase?

Yes, the buyer may elect to purchase a CPL.

- Is the CPL issued in residential transactions only?

A CPL is available for residential and/or commercial transactions.

- Can a seller get a CPL?

No. A CPL is not available to a seller in the District of Columbia.

- Can a Buyer get a CPL?

Yes, a buyer may get a CPL.

- Am I allowed to change any of the wording of a CPL?

No, the CPL form filed for use in the District of Columbia is the ALTA form and may not be modified.

- If I need the amount of coverage under the CPL changed, what do I do?

The CPL does not have a set amount of coverage but it is capped at $2 million unless an approval is first obtained from Doma underwriting counsel at DCunderwriting@doma.com

- If I have any question about the verbiage of the CPL, what do I do?

Contact Doma underwriting counsel at DCunderwriting@doma.com.

- Are the CPL forms used in other states identical with the form used in the District of Columbia?

Yes, at least in those states which have also adopted the ALTA format. Other states, like Virginia and Ohio use their own distinct state form that is not used in any other state.

18. Over Limit Approvals and Insuring Extra Hazardous Risks

- What do I do when my transaction exceeds my agency's policy issuing limits?

You should request written approval from Doma underwriting counsel to get authority to issue the title insurance in the transaction. This is accomplished by sending an email to DCunderwriting@doma.com with the following information and documents:

1. The most current version of the Doma Over Limits Authorization Request Form. It is available on the Doma website, www.Doma.com in AgentLink/Underwriterlink/Forms.
2. A copy of the proposed title insurance commitment.
3. A copy of the title search results (computer printout) received from your title search provider.
4. A copy of the instruments referred to in the title insurance commitment, either as requirements or exceptions (the package of title documents furnished to you by your title search provider).
5. A copy of any existing title insurance policy that may have been used as a starter or base for title examination purposes.
6. A copy of any survey, if available.

Doma underwriting counsel will then review your submittal and respond. When approved, you will receive an approval code that you should retain in your closing file to be used when you remit your premium on that transaction.

- What is an extra hazardous risk?

Doma has identified certain issues that arise in connection with transactions as well as certain types of transactions that give rise to a higher risk of a claim being presented than is normally expected in typical title insurance transactions in the District of Columbia. Doma classifies these issues and transactions as extra hazardous risks in order to make its agents aware of them and to allow closer scrutiny of them by Doma underwriting counsel in order to mitigate the title insurance and business risks associated with them. Oftentimes an extra hazardous risk is connected with an esoteric or obscure issue of real property or title insurance law, or another area of the law that intersects with them, such as creditors rights laws. In such cases special expertise is needed to properly underwrite the issue or transaction.

- What do I do when my transaction involves an extra hazardous risk?

You should contact Doma underwriting counsel in writing before committing to insure a transaction that involves an extra hazardous risk. You must not commit to insure a transaction that involves an extra hazardous risk or provide coverage for an extra hazardous risk until you have received written approval from Doma underwriting counsel. The same form you use to request Over Limits Approval has been designed for use to request approval for insurance of an extra hazardous risk. The most current form to be used for this purpose is available for download on AgentLink.

- What transactions or title related issues have been identified to be extra hazardous risks?

Because the real estate marketplace, business risks, and laws are ever changing and evolving, it is difficult to compile an exhaustive list of extra hazardous risks. Matters considered extra hazardous can change and notice of these changes may be found in Doma bulletins. The following are examples of extra hazardous risks in the District of Columbia that require Doma underwriting counsel approval (listed in no particular order).

1. Insuring title to land formerly covered by navigable water;
2. Insuring title to property occupied by tenants
3. Insuring title to submerged lands;
4. Insuring title to air space;
5. Insuring title based on adverse possession;
6. Insuring financing transactions involving non-institutional “hard money” lenders without strict compliance with Doma’s then current underwriting guidelines;
7. Insuring title derived through: (a) tax deed less than four years old; (b) sheriff's deed under an execution sale; (c) Federal Marshall's deed under an execution sale; (d) sale by Commissioner of Internal Revenue for unpaid federal taxes, unless any of the foregoing were insured subsequent thereto under an owner’s policy by another underwriter without exception thereto;
8. Insuring transactions involving Indian / Native American / Native Band lands. These include (a) land within the boundaries of an Indian Reservation including land in trust for a tribe and land in trust for individuals (allotments) or (b) land interests outside of a reservation owned by a tribe, or owned by an organization whose ownership includes a tribe or an entity organized under tribal law;
9. Insuring title derived through escheat or forfeiture, unless insured subsequent thereto under an owner’s policy by another underwriter without exception thereto;
10. Insuring easements;
11. Insuring water rights;
12. Insuring title to beaches or recreational areas;
13. Insuring title when the seller, borrower or buyer is a party to an open bankruptcy proceeding;
14. Insuring title to railroad property;
15. Insuring an oil, gas, or mineral estate or any interest separate from the surface, including but not limited to, for example, wind, water, improvements;
16. Insuring conveyances with leasebacks to the grantor, or any other type of sale/Lease back or any type of synthetic lease;
17. Insuring options to purchase or rights of first refusal;
18. Insuring transactions involving municipal corporations or other governmental bodies, a church of any denomination, or a non-profit corporation;
19. Insuring a gift transaction to any grantee that is not recognized by the IRS as a Section 501(c)(3) tax exempt entity;
20. Insuring title derived through a “Small Lien” foreclosure, including title acquired through a foreclosure of a condominium association or homeowners’ association lien, unless insured subsequent thereto under an owner’s policy by another underwriter without exception thereto;
21. Insuring title derived through any other judicial proceeding (including foreclosure) where such title has not been previously insured after that judicial proceeding under an owner’s policy by another underwriter without exception thereto;
22. Insuring title derived through foreclosure or a deed in lieu of foreclosure, unless insured subsequent thereto under an owner’s policy by another underwriter without exception thereto;

23. Insuring without exception for an open mortgage not satisfied of record by the last mortgagee of record unless such mortgage is satisfied by payment in full in the current transaction;
24. Insuring properties that may be subject to PACA/PSA trusts, such as properties involved in the packing, processing, sale of fruits, vegetables, livestock, poultry, or meat products or derivatives therefrom including foods of any type;
25. Insuring over a title defect in reliance upon a Letter of Indemnity issued by another underwriter;
26. Insuring title where there is no direct access to an open and publicly dedicated road or where the sole means of access is by easement;
27. Insuring fractional ownership interests or fractional interests in notes secured by mortgages;
28. Insuring conveyances or encumbrances which appear to be a preference or in consideration for an antecedent debt;
29. Insuring conveyances by a corporation to one of its officers or by a partnership to one of its partners;
30. Insuring leveraged buyouts;
31. Insuring without taking exception for open code violations;
32. Insuring without taking exception for open claims of liens or judgments;
33. Insuring over construction/mechanic's liens in reliance on indemnity letters, affidavits, credit worthiness of the owner, builder, or other person;
34. Insuring without taking exception for any enforceable judgment lien;
35. Insuring without taking exception for any adverse matters shown on a survey;
36. Insuring title where the seller or borrower is not in sole and exclusive possession of the property being insured unless a general exception is taken for the rights of parties in possession;
37. Providing any form of affirmative coverage, such as insuring against enforcement of existing liens or other interests, such as adverse ownership, or litigation involving title;
38. Insuring title when you have actual knowledge of the refusal of a title insurance underwriter other than Doma to insure the title or the refusal of another title insurance agent to issue a policy insuring the title.

- Are there any endorsements issuable in the District of Columbia that are considered to be extra hazardous risks, and which require prior Doma underwriting counsel approval?

Yes. The following endorsements require Doma underwriting counsel approval before they may be issued or committed to be issued:

1. Zoning
2. Private Rights
3. Mortgage Modification
4. Aggregation
5. Non-imputation
6. Mezzanine
7. First Loss
8. Co-insurance
9. Easement, Damage Forced Removal
10. Encroachments
11. Interest rate swap
12. Shared appreciation
13. Severable improvements

14. Construction
15. Identified risk
16. Minerals
17. Energy projects
18. Tax credit
19. Anti-taint
20. Water
21. Option

19. Surveys

- When a District of Columbia survey is being ordered, what information and documents should the title agent furnish the surveyor?

Provide a copy of the title commitment along with legible copies of all instruments shown anywhere on the commitment.

Provide the surveyor with the names of the buyer, borrower, lender, the legal description as well as the street address of the property. Request that the survey be certified to the buyer, lender, title insurance agent, and Doma.

- Does Doma require a survey in order to insure title to District of Columbia property under an owner's or loan policy?

No. However, if an acceptable survey is not obtained, reviewed, and approved by the issuing agent, the following two exceptions MUST be included in both owner's and loan policies issued without the benefit of a survey:

1. *Any encroachment, encumbrance, violation, variation, or adverse circumstance that would be disclosed by an inspection or an accurate and complete land survey of the Land and inspection of the Land.*
2. *Easements, or claims of easements, not recorded in the Public Records.*

- What are the District of Columbia requirements for a current survey acceptable for title insurance purposes?

When used for waiving or omitting the survey exceptions in a title policy, the survey must comply with the standards of practice adopted by the American Land Title Association (ALTA) and/or the National Society of Professional Surveyors (NSPS).

For issuing a title policy, the title agent must review the survey to confirm the following:

1. The survey was made by The Office of the District of Columbia Surveyor or a District of Columbia Registered Land Surveyor/Engineer.
2. The drawing of the survey is signed and dated. If the date is not a recent date, the drawing of the survey should be recertified to a recent date. The seal of the surveyor must be affixed.
3. The drawing of the survey contains an adequate and accurate legal description which exactly matches the legal description contained in the commitment and to be contained in the deed or mortgage. If the survey is of acreage, the drawing should tie to at least one identifiable real property corner such as a permanent monument found. If the survey is of a

recorded subdivision, the drawing shall show lot and block number or other designations, including adjoining lots.

4. The drawing of the survey must reflect visible boundary lines, locations and dimensions of improvements, locations of utilities, easements, rights-of-way, and natural and manufactured objects affecting the property. The location of non-visible easements of record, other than those on recorded plats will not be shown on the drawing unless that information was furnished to the surveyor. Best practice is to provide such documents to the surveyor at the time the order is placed so that they may be reflected on the survey.
5. The survey notes or drawing explain any encroachments or discrepancies between the description in the recorded instrument and any markers on the ground, or other indicators, designating the boundary as actually used and occupied.
6. The survey shows that the subject property has legal access to a public road.

- What is the wording to be used for a survey exception when a current survey has been provided?

When only a house location survey is provided, which survey does not show all of the items listed in the preceding question, agents should remove the standard survey exception from the loan policy only. The standard survey exception would remain in the owner's policy unless the survey is an ALTA/NSPS survey.

- For a loan policy issued in a District of Columbia residential refinance transaction, is it ever possible to waive the requirement for a current survey?

Yes. There are four situations which do not require a current survey.

1. When the residential lender agrees to accept a policy with the standard survey exceptions.
2. When the residential refinance transaction involves a condominium unit. No survey is required, and the standard survey exceptions may be removed.
3. When a loan policy is issued in a refinance of residential property, Doma will waive the requirement for a current survey (within 90 days of closing) and rely on an older survey if there have been no changes since the date of the survey and an affidavit is obtained from the owner of the property attesting to that fact.
4. If the real property is a platted, single-family residential lot Doma will not require either a current or an older survey to insure a mortgage in a residential refinance transaction, if the title agent is provided with a prior owner's or loan policy on the property in which the standard survey exceptions were deleted. Any Schedule B exceptions on the prior policy involving survey matters must be carried forward to the new loan policy. The mortgagor must provide an affidavit accurately stating that no improvements have been subsequently constructed on the insured property or adjoining the property that would encroach onto the insured property. The affidavit must also state that it is given to induce Doma to issue the loan policy.

- For an owner's policy issued in a District of Columbia residential transaction, under what circumstances may an older survey be relied upon for title insurance purposes?

When issuing an Owner's Policy in connection with residential property, Doma will waive the requirement for a current survey (within 90 days of closing) and rely upon an older survey, if each of following requirements are met:

1. The subject property must be a platted, single family residential lot;
2. The title agent must be furnished with a satisfactory, prior survey of the subject property that shows the boundaries of the platted land and the location of all improvements situated upon the land;

3. The prior survey must be certified by the surveyor to any prior or current owner; and
4. The seller must furnish a satisfactory affidavit setting forth the following facts that must be based upon the personal knowledge of the affiant:
   a. There are no improvements currently located on the subject property that are not shown on the survey.
   b. There are no improvements to adjoining lands that encroach upon the subject property.
   c. The affidavit is being given to induce Doma to rely on the described survey.

- In a commercial refinance transaction, if the lender requires deletion of the standard survey exceptions will a current survey always be required?

Generally, yes, but not always. This is handled on a transaction specific basis and depends on several underwriting factors. Contact Doma underwriting counsel for guidance as to whether a current survey will be required in this instance. DCunderwriting@doma.com

- In a District of Columbia commercial resale transaction, will a current survey always be required to issue the owner's and loan policies without the standard survey exceptions?

Usually, but not always. This is handled on a transaction specific basis and depends on several underwriting factors. Contact Doma underwriting counsel for guidance as to whether a current survey will be required in this instance. DCunderwriting@doma.com

- In the District of Columbia, when a current survey is required, must it be an ALTA/NSPS Land Title Survey?

No. Most often, the survey requirement for subdivision lot residential property will be a simple "house location" survey which depicts the boundaries of the insured lot and shows the improvements therein with distances from the improvement to the nearest lot lines clearly marked.

The ALTA/NSPS survey is usually obtained in commercial transactions. It is significantly more costly that the traditional house location survey used in District of Columbia residential transactions. When a current survey is required in a residential transaction, Doma will accept a house location survey that is prepared by a licensed District of Columbia Land Surveyor, unless there are legal description issues or other survey related issues raised in the title search or on an affidavit provided by the owner.

In a commercial transaction, if the parties have not obtained an ALTA/NSPS Land Title Survey, obtain Doma underwriting counsel approval before relying upon the survey to remove the standard survey exceptions. DCunderwriting@doma.com.

- If the survey shows absolutely no matters which need to be excepted from coverage, may I issue a District of Columbia title policy without any exception at all for survey related matters?

Yes, but this is a relatively rare occurrence.

- Are Doma underwriting counsel available to assist in reviewing a survey?

Yes. Send a copy of the commitment and a copy of the survey to DCundewriting@Doma.com along with any questions or concerns you may have about the survey and the transaction.

20. High Risk and Fraud Prevention

- What is a high-risk transaction or title matter?

A high-risk matter includes any matter on which a policy is contemplated in excess of the amount permitted to be issued by the Agency Agreement. It is also one which may be within the permissible amount of the Agency Agreement, but which has elements which inherently create a greater risk of loss under a policy of title insurance than what is considered the normal risk in a typical transaction. We call these extra-hazardous title insurance risks. All extra-hazardous risk matters require review and approval by Doma underwriting counsel prior to the issuance of any title Commitment or final policy following a Preliminary Report, regardless of the liability amount (DCunderwriting@doma.com).

- Is it possible to insure high risk title matters?

Yes. After review and approval by Doma underwriting counsel, a title containing a high-risk element may be insured. Sometimes special terminology is necessary to modify, amend, mitigate or eliminate the risk associated with such insurance.

- What is the process for getting approval for high risk matters?

A Doma Over Limits Authorization Request form (locatable on AgentLink) is completed in its entirety and then submitted to Doma underwriting counsel along with the proposed Title Commitment or marked-up Preliminary Report (before recording/policy issuance). If more is needed, Doma underwriting counsel will request that from you. Any additional documentation which might be helpful in the analysis of the risk should also be submitted. So too, any cogent arguments or special considerations should be included with the submission to assist in gaining an approval. Doma underwriting counsel will review these things, and if approved, provide an approval code which would be included with the remittance of premium on that particular title file (DCunderwriting@doma.com).

- What are examples of high-risk matters or extra-hazardous title insurance risks?

In the District of Columbia, title derived through a foreclosure is one of the most often seen extra-hazardous risks. Another is the sale of any title involving property that has currently, or has had, tenants living therein. Consult with Doma underwriting counsel (DCunderwriting@doma.com) for approval regarding insuring any foreclosure title or any title which has, or has had, tenants occupying same.

Hard money loans are also an extra-hazardous risk requiring Doma underwriting counsel written approval, regardless of the amount of liability.

Any time a property abuts an ocean, lake, river, creek, stream or other body of water or water course, it is also considered a high-risk title. This is because there are rights in the insured land which belong to others which are not revealed by the title search. For example, there may be riparian rights in downstream owners. The jurisdiction might actually own the sub-aqueous beds of the water course even though there is no deed on the land records which reveal that ownership. The United States government might have ownership rights, rights to control development or navigational rights which arise by the mere existence of the water course on or abutting the land to be insured.

Any title which is derived through a judicial or non-judicial foreclosure, deed-in-lieu of foreclosure, bankruptcy, probate or litigation has a high risk associated with it. There are very precise rules and procedures which must be followed to successfully convey titles in these situations. Sometimes, even

missing one single element, can mean a total title failure and a substantial loss payable under the issued policy of title insurance.

Sale/leaseback transactions, development with severance of improvements or transfers of air or development rights and even simple construction can generate a myriad of high-risk matters.

If a title contains oil, gas or mineral rights, reservations or leases, it is an extra-hazardous title situation. Again, Doma underwriting counsel will look for the appropriate coverage exception.

If the survey or title evidence reveals overlapping legal descriptions or gaps or gores or metes and bounds descriptions that do not “close” there are potential major title problems. Properties currently or once owned by Native Americans have special title concerns which must be addressed. So too, are lands upon which cannabis is grown, packaged, distributed or in any way involved.

This list of extra-hazardous title insurance risks is not all inclusive and vigilance must be maintained in order to identify and such risk areas and seek direction from Doma underwriting counsel. DCunderwriting@doma.com

- Does it cost extra to get a policy which insures an extra-hazardous title insurance risk?

In most cases, the answer is, no. Some jurisdictions do have special endorsements that are issued to provide the needed coverage in extra-hazardous situations and some of those endorsements have premiums associated therewith. Refer to the District of Columbia Rate Manual for an indication as to whether or not there is any premium associated with an endorsement which addresses extra-hazardous risks.

- Is fraud really a problem in the title insurance business?

Yes! Fraud comes in all types of forms and our industry is under daily attack from real and cyber fraudsters daily. Virtually every state in the country has passed or is passing new legislation which define greater standards for title agents to protect non-public personal Information both physically and electronically. Phishing, pharming and all sorts of social engineering schemes are seen daily as these fraudsters attempt to gain access to our financial and personal data bases in order to harm. Malware and ransomware are rampant and many City governments around the country have been victims of ransomware. There are daily reports in all forms of media about innocent, unsuspecting people who have been defrauded out of their life savings from hacking fraudsters who have conned them in some way.

- What can we do about fraud?

The first line of defense is education. Get educated on what is going on. Check sources like the FBI Scams and Safety website at fbi.gov/scams-and-safety/common-fraud-schemes to learn the latest fraud schemes being perpetrated. You will find everything from funeral and cemetery fraud to counterfeit prescription drug fraud to more relevant topics like reverse mortgage fraud, prime bank note fraud and identity theft. The next step after education is to put systems in place to assist you and your staff in identifying fraud and protecting against it. Lastly, is to stay vigilant. Constantly remind staff to be on the lookout. Continually review, revise and update your fraud prevention systems.

- Can you give examples of what we should watch out for?

Common scams in the real estate arena include identity theft of individuals as well as entities. Old fashioned fake identification is used by one individual to impersonate a seller to sell property to which the true owner is not paying attention. This happens with entities, too. An LLC which owns real property can be “hijacked” by a fraudster claiming he/she is the managing member and they sell the property owned by the LLC.

Bogus powers of attorney are a huge area of concern. Not only must we review any power of attorney for legal sufficiency as to form, we must ALWAYS dig deep into the who’s and why’s of its use. Contact the principal to be certain the POA is being used in the manner desired by the principal. Ask questions. Demand answers. You are the last defense against fraud in these circumstances.

Elder fraud is another major area of concern. In one case, an agent had an elderly mother and very pushy and aggressive son come to a closing in which the woman’s home was being sold and the agent was being directed to give the proceeds to the son. Shortly after the closing, the elderly woman returned to the closing agent’s office to report that she was being coerced by her son to sell her home and give him the money. She couldn’t say anything at the time of the closing for fear of reprisal from the wayward son. This story happens way too often. Be the one who finds it and does something about it.

- What do we do if we find fraud?

Before policy issuance, contact DCunderwriting@doma.com for guidance.

Report, report, report. Consumer Fraud and Identity Theft can be reported to the Federal Trade Commission at 1-877-FTC-HELP or online at www.ftc.gov General fraud and other criminal matters can be reported to the FBI at (202) 324-3000 or online at www.fbi.gov or at tips.fbi.gov

The more these things are reported, the better chance law enforcement has to stem this growing tide. Give them a hand and Report It!

After Doma policy issuance, if fraud is found, contact the Doma claims department at claims@Doma.com.

- Do free and clear properties present additional fraud risks?

Yes. Common red flags of potential forgery and fraud are unencumbered, free and clear property accompanied by a recent change in vesting, last minute requests to disburse loan proceeds to the new title holder or a third party, the use of power of attorney forms without a legitimate reason or at the last minute before a closing, or an unjustified sense of urgency or rush on the title order or settlement. This list is not exhaustive but does include some of the most common scenarios, ripe for a fraudster.

Each situation differs and it may vary from transaction to transaction, but the theme is clear: Doma affiliates and independent agents must apply additional scrutiny to even the most routine of transactions when one or more of the red flags discussed above presents itself in a transaction to be insured by Doma. If a transaction appears questionable, ASK QUESTIONS – CONTACT Doma UNDERWRITING COUNSEL at DCunderwriting@doma.com. Remember, Doma underwriting counsel are always available to discuss with you any red flags you spot in an order. Our one-hour

response time means a few extra minutes could save you, your agency or Doma from a substantial claims-related loss.

- Do recent changes in company officers/agents present a need for close scrutiny?

Yes. See if entity filings in the District of Columbia match what is being presented to you. Recent changes in entity control are red flags that must be investigated. Contact DCunderwriting@doma.com for guidance.

21. Tenants Opportunity to Purchase Act ("TOPA") and District Opportunity to Purchase Act ("DOPA")

- What is Tenants Opportunity to Purchase Act (TOPA)?

Simply put, TOPA is an ultra-high-risk situation arising as a result of a statute existing in the District of Columbia which provides that anyone selling a property which contains rental accommodations must first offer the property to the tenants before said owner can sell the property. The law does not apply to refinances; only sales. All title insurance commitments for sale transactions must require the parties to provide sufficient information to determine if there is a potential application of TOPA which would result in additional requirements. All policies of title insurance issued in the District of Columbia should contain an exception to the rights of tenants under this statute. Additionally, approval for any sales which involve TOPA issues must be approved by Doma underwriting counsel, at DCunderwriting@doma.com.

- Are all housing accommodations the same?

No. There are 3 classifications of housing accommodations in the District of Columbia. There is a single-family accommodation. There is a 2-4-unit accommodation and there is a 5 or more-unit property. Each of these situations are different and each requires different notices, documentation and underwriting. Contact Doma underwriting counsel for assistance, at DCunderwriting@doma.com

- Who has rights?

Anyone with a right to possession has TOPA rights which must be addressed and exercised or extinguished. The right to possession could exist under a written lease, an unwritten lease, by a hold-over tenant; in virtually any conceivable situation.

- If the tenants have vacated do I have to worry; can't they just leave?

No. The statute says any person with a right to possession has vested rights under TOPA. Vacating the housing accommodation does not divest the tenant of TOPA rights. Moreover, no tenant may "waive" their rights under TOPA. Depending on what type of rental accommodation is involved, various notices and processes must occur before the tenant's rights can be deemed satisfied.

- Is the TOPA right only an option to purchase?

No. It is a statutory option to purchase as well as a right of first refusal. These are separate and distinct rights, and both must be addressed.

- Will the title search indicate that I have a TOPA issue and show that it is resolved?

No. The title search will not reveal the facts which would show whether or not TOPA is an issue or whether or not the law has been followed with respect to tenants' rights and their right of first refusal and option to purchase. The fact that virtually all the information necessary to properly analyze a

TOPA issue is “off record” is one of the factors that make this a high-risk area. Simple affidavits averring the necessary information is not enough. Copies of mailings, receipt of those mailings, pictures of postings on site, corporate formation documentation, lease copies, minutes of tenants meetings and minutes of corporate meetings, are only some examples of “off record” documents that may need to be reviewed in order to underwrite a TOPA risk. Contact Doma underwriting counsel for more direction in this regard, at DCunderwriting@doma.com

- Can I just pay the tenant to leave?

No. The statute must be followed to the letter of the law and the consideration allowable in certain instances is strictly controlled by the statute.

- What is the “CASD”?

This is the Department of Housing and Community Development’s Conversion and Sale Division who administers parts of the TOPA laws and filings.

- What is the District Opportunity to Purchase Act (DOPA)?

Simply put, DOPA is a statute existing in the District of Columbia which provides that anyone selling a property which contains 5 or more rental accommodations must first offer the property to the District of Columbia before said owner can sell the property.

- What is the most important thing to know about TOPA and DOPA?

Insuring a title subject to TOPA or DOPA tenants’ rights is an extra-hazardous risk fraught with concerns which are exceedingly difficult to properly address. Always contact Doma underwriting counsel for assistance in dealing with any TOPA or DOPA issue, at DCunderwriting@doma.com.

22. Commitments, Policies and Endorsements

- Does Doma offer training materials for the 2021 ALTA forms?

Yes. Doma has prepared a 3-part series of webinars which provide in-depth review of the 2021 ALTA forms. Seminar 1 covers the Owner’s Policy and Loan Policy. Seminar 2 covers the Commitments, Short Form Residential Loan Policies, and Endorsements. Seminar 3 covers the Homeowner’s Policy and the Extended Coverage Residential Loan Policies, including their short form versions. All of the webinars are available for viewing on Doma’s on-demand e-learning center, NATIC University (www.naticu.com). The seminars include downloadable materials.

- Are the 2021 ALTA forms available for use throughout the country?

Not yet. Regulatory submittals are underway in most jurisdictions, and approvals are expected in a piecemeal or patchwork manner. If and when approvals are granted in a particular state, Doma will send out a Bulletin making the forms announcement together with details for their deployment and use, including the switchover to the new forms for pending as well as future transactions.

- What should I do until the 2021 ALTA forms become available for use in my state?

Conduct business as usual using the existing set of commitments, policies and endorsements just as if nothing were changing.

- Will the premiums be changing simply because new policy and endorsement forms are going to become available?

No, premiums will remain the same without regard to whether the form being issued is a 2021 edition or a prior version.

- Are all ALTA commitments, policies and endorsements forms available for use in all states where Doma transacts business?

No. Some states approve only a subset of the forms. Further complicating matters, some states modify the forms that are approved for use to address legal particularities within a particular state. Doma multi-state agents need to exercise great care in using only the versions of the forms that have been approved for use in the state where the land to be insured is located. Doma publishes state-specific sets of the forms for each state where it conducts business, posts them on its website, and distributes them to the various software vendors.

- Are the schedules to the 2021 ALTA commitments and policies interchangeable with the schedules for use with earlier commitment and policy editions?

No. Doma agents should use the 2021 ALTA schedules only with the 2021 editions of the commitments and policies. Similarly, the ALTA schedules for earlier editions of the commitment and policies should not be sued with the 2021 editions of the commitments and policies.

- Isn't it true that some existing ALTA endorsements may be issued in connection with the 2021 policy forms?

Yes. Assuming the endorsement in question is approved for issuance in the state where the land lies, the following ALTA endorsements may continue to be issued with both the 2021 policy forms as well as the earlier policy editions. For now, all of these endorsements first adopted prior to 2021 continue to contain a "-06" in their numbering. Even so, they may be issued with both the existing and 2021 edition of the policies.

ALTA Endorsements Issuable With 2021 & Pre-2021 Policy Forms	
Number	Name
1-06	Street Assessments
5-06	Planned Unit Development - Assessments Priority
5.1-06	Planned Unit Development - Current Assessments
7-06	Manufactured Housing Unit
8.2-06	Commercial Environmental Protection Lien
9-06	Restrictions, Encroachments, Minerals - Loan Policy
9.1-06	Covenants, Conditions and Restrictions -Unimproved Land - Owner's Policy
9.2-06	Covenants, Conditions and Restrictions - Improved Land - Owner's Policy
9.3-06	Covenants, Conditions and Restrictions - Loan Policy
9.6-06	Private Rights - Loan Policy
9.6.1-06	Private Rights -Current Assessments - Loan Policy
9.7-06	Restrictions, Encroachments, Minerals - Land Under Development - Loan Policy

ALTA Endorsements Issuable With 2021 & Pre-2021 Policy Forms	
Number	Name
9.8-06	Restrictions, Encroachments, Minerals - Land Under Development - Owner's Policy
9.9-06	Private Rights - Owner's Policy
9.10-06	Restrictions, Encroachments, Minerals - Current Violations - Loan Policy
13-06	Leasehold - Owner's
13.1-06	Leasehold - Loan
15-06	Non-Imputation - Full Equity Transfer
15.1-06	Non-Imputation - Additional Insured
15.2-06	Non-Imputation - Partial Equity Transfer
16-06	Mezzanine Financing
17-06	Access and Entry
17.1-06	Indirect Access and Entry
17.2-06	Utility Access
18-06	Single Tax Parcel
18.1-06	Multiple Tax Parcel - Easements
18.2-06	Multiple Tax Parcel
18.3[-06]	Single Tax Parcel and ID
19-06	Contiguity - Multiple Parcels
19.1-06	Contiguity - Single Parcel
19.2-06	Contiguity - Specified Parcels
20-06	First Loss - Multiple Parcel Transactions
22-06	Location
22.1-06	Location and Map
23-06	Co-insurance - Single Policy
23.1-06	Co-Insurance - Multiple Policies
24-06	Doing Business
25-06	Same as Survey
25.1-06	Same as Portion of Survey
28-06	Easement - Damage or Enforced Removal
28.1	Encroachments - Boundaries and Easements
28.2-06	Encroachments - Boundaries and Easements - Described Improvements
28.3-06	Encroachments - Boundaries and Easements - Described Improvements and Land Under Development
29-06	Interest Rate Swap - Direct Obligation
29.1-06	Interest Rate Swap - Additional Interest
29.2-06	Interest Rate Swap - Direct Obligation - Defined Amount
29.3-06	Interest Rate Swap - Additional Interest - Defined Amount
31-06	Severable Improvements
33-06	Disbursement
34-06	Identified Risk Coverage
34.1	Identified Exception & Identified Risk Coverage

ALTA Endorsements Issuable With 2021 & Pre-2021 Policy Forms	
Number	Name
35-06	Minerals and Other Subsurface Substances - Buildings
35.1-06	Minerals and Other Subsurface Substances - Improvements
35.2-06	Minerals and Other Subsurface Substances - Described Improvements
35.3-06	Minerals and Other Subsurface Substances - Land Under Development
36-06	Energy Project - Leasehold/Easement - Owner's
36.1-06	Energy Project - Leasehold/Easement - Loan
36.2-06	Energy Project - Leasehold - Owner's
36.3-06	Energy Project - Leasehold - Loan
36.4-06	Energy Project - Covenants, Conditions and Restrictions - Land Under Development - Owner's
36.5-06	Energy Project - Covenants, Conditions and Restrictions - Land Under Development - Loan
36.6-06	Energy Project - Encroachments
36.7-06	Energy Project - Fee Estate - Owner's Policy
36.8-06	Energy Project - Fee Estate - Loan Policy
37-06	Assignment of Rents or Leases
38-06	Mortgage Tax
39-06	Policy Authentication
40-06	Tax Credit - Owner's Policy
40.1-06	Tax Credit - Defined Amount - Owner's Policy
41-06	Water - Buildings
41.1-06	Water - Improvements
41.2-06	Water - Described Improvements
41.3-06	Water - Land Under Development
42-06	Commercial Lender Group
43-06	Anti-Taint
44-06	Insured Mortgage Recording
45-06	Pari Passu Mortgage - Loan Policy
46-06	Option

- Isn't it true that some existing ALTA endorsements may only be issued in connection with the pre-2021 policy forms?

Yes. Assuming the endorsement in question is approved for issuance in the state where the land lies, the following ALTA endorsements may only be issued with the earlier policy editions. All of these existing endorsements adopted prior to 2021 contain a "-06" in their numbering. None of these existing endorsements should be issued with the 2021 editions of the policies. Instead, select the new version of that endorsement.

ALTA Endorsements Issuable Only With Pre-2021 Policy Forms	
Number	Name
3-06	Zoning
3.1-06	Zoning - Completed Structure
3.2-06	Zoning - Land Under Development
3.3[-06]	Zoning - Completed Improvement - Non-Conforming Use
3.4[-06]	Zoning - No Zoning Classification
4-06	Condominium - Assessments Priority
4.1-06	Condominium - Current Assessments
6-06	Variable Rate Mortgage
6.2-06	Variable Rate Mortgage - Negative Amortization
7.1-06	Manufactured Housing - Conversion: Loan
7.2-06	Manufactured Housing - Conversion: Owner's
8.1-06	Environmental Protection Lien
10-06	Assignment
10.1-06	Assignment and Date Down
11-06	Mortgage Modification
11.1-06	Mortgage Modification with Subordination
11.2-06	Mortgage Modification with Additional Amount of Insurance
12-06	Aggregation - Loan
12.1-06	Aggregation - State Limits - Loan
14-06	Future Advance - Priority
14.1-06	Future Advance - Knowledge
14.2-06	Future Advance - Letter of Credit
14.3-06	Future Advance - Reverse Mortgage
26-06	Subdivision
27-06	Usury
30-06	One-to-Four Family Shared Appreciation Mortgage
30.1-06	Commercial Participation Interest
32-06	Construction Loan
32.1-06	Construction Loan - Direct Payment
32.2-06	Construction Loan - Insured's Direct Payment
47	Operative Law - 2006 Owner's Policy
47.1	Operative Law - 2006 Loan Policy
47.2	Operative Law - 2013 Homeowner's Policy
47.3	Operative Law - 2015 Expanded Coverage Residential Loan Policy
	Operative Law Addendum for 2012 Short Form Residential Loan Policy
	Operative Law Addendum for 2015 Short Form Residential Loan Policy - Current Violations
	Operative Law Addendum for 2015 Expanded Coverage Residential Loan Policy

- Isn't it true that some new 2021 ALTA endorsements may only be issued in connection with the 2021 policy forms?

Yes. Assuming the endorsement in question is approved for issuance in the state where the land lies, the following ALTA endorsements may only be issued with the 2021 edition of the policies. None of these new endorsements contain a "-06" in their numbering, and should not be issued with pre-2021 editions of the policies.

ALTA Endorsements Issuable Only With 2021 Policy Forms	
Number	Name
3	Zoning
3.1	Zoning - Completed Structure
3.2	Zoning - Land Under Development
3.3	Zoning - Completed Improvement - Non-Conforming Use
3.4	Zoning - No Zoning Classification
4	Condominium - Assessments Priority
4.1	Condominium - Current Assessments
6	Variable Rate Mortgage
6.2	Variable Rate Mortgage - Negative Amortization
7.1	Manufactured Housing - Conversion: Loan
7.2	Manufactured Housing - Conversion: Owner's
8.1	Environmental Protection Lien
10	Assignment
10.1	Assignment and Date Down
11	Mortgage Modification
11.1	Mortgage Modification with Subordination
11.2	Mortgage Modification with Additional Amount of Insurance
12	Aggregation - Loan
12.1	Aggregation - State Limits - Loan
14	Future Advance - Priority
14.1	Future Advance - Knowledge
14.2	Future Advance - Letter of Credit
14.3	Future Advance - Reverse Mortgage
26	Subdivision
27	Usury
30	One-to-Four Family Shared Appreciation Mortgage
30.1	Commercial Participation Interest
32	Construction Loan
32.1	Construction Loan - Direct Payment
32.2	Construction Loan - Insured's Direct Payment
48	Tribal Waivers and Consents

- What has happened with the ALTA 23.1 endorsement as part of the 2021 ALTA forms adoption?

The 23.1 endorsement is a special case. ALTA revised and issued a new version of the 23.1 endorsement. Once it is approved for use in your jurisdiction, you should begin to use it, and "retire" the earlier version from your forms library. Once approved, the new version may be issued with both the 2021 and earlier policy editions. Issuance of the 23.1 endorsement requires prior underwriting approval.

- What has happened with the ALTA 34.1 endorsement as part of the 2021 ALTA forms adoption?

The 34.1 endorsement is a special case. ALTA issued an entirely new endorsement, the 34.1 endorsement as part of the 2021 forms set. Once it is approved for use in your jurisdiction, it may be issued with both the 2021 and earlier policy editions. Issuance of the 34.1 endorsement requires prior underwriting approval. The premium for this endorsement will be the same as for the 34.

- What are the so-called "Operative Law" endorsements and addenda?

As part of the release of the 2021 ALTA forms, ALTA has issued 4 endorsements and 3 addenda to be used only with the pre-2021 forms. These are the so-called "Operative Law" endorsements and addenda. They are meant to deal with potential issues that may arise in connection with former tribal lands due to the "McGirt" case, decided by the United States Supreme Court in 2020. Doma agents are not expected to encounter a need to issue any of the Operative Law endorsements or addenda. Should this expectation change in a particular state, a Doma Bulletin will be issued with the particulars.

- Which ALTA commitments and policies were revised and released as part of the 2021 ALTA publication?

All of them, except for the ALTA U.S. Policy. That said, 3 policy forms did not make the original publication date, and will be released during 2022, but with 2021 effective dates. The 3 policy forms to be released in 2022 are: the ALTA Residential Limited Coverage Mortgage Modification Policy, the ALTA Residential Limited Coverage Junior Loan Policy, and its short-form variant.

- Are there any changes as to which ALTA Endorsements require underwriting counsel approval prior to their issuance because of the new 2021 edition?

No. If the pre-2021 version required such approval, the new version, if any, requires such approval. If the pre-2021 version did not require such approval, the new version, if any, does not require such approval. The new ALTA 34.1 endorsement requires underwriting counsel approval.

- Will the pre-2021 versions of the ALTA commitments, policies, and endorsements automatically become obsolete and discontinued in a state if and when the 2021 editions are approved?

No. It is common for the form sets to coexist with one another and for agents to be able to choose among and between them for some time after new form sets are adopted. While it may be true that ALTA may "decertify" some of its forms, that does not automatically result in a decertified form being removed from availability for use in a particular jurisdiction. Doma will issue state-specific bulletins informing agents when to discontinue issuing a particular form. As a best practice, rule of thumb, when a newer edition of a particular commitment, policy, or endorsement form is approved for use in a jurisdiction, an agent should automatically begin to use the newer edition unless instructed otherwise by Doma in a Bulletin.

- If I have a transaction that straddles the availability of the 2021 ALTA forms in my state, what should I do?

Assume an ALTA Commitment is issued for a transaction, contemplating the issuance of a pre-2021 ALTA policy, and between the issuance of that commitment and the closing the 2021 edition of the ALTA policy becomes available for issuance. As a best practice, rule of thumb, the Doma agent should ultimately issue the newer edition of the contemplated ALTA policy, because of the enhanced coverage provisions therein contained at no additional charge to the insured. If you have any questions or concerns about which policy or endorsement form to issue, reach out to Doma underwriting counsel at your state specific email, at DCunderwriting@doma.com.

- Will the need to issue the ALTA 39 Authentication Endorsement go away with the 2021 ALTA forms?

Hopefully, it will. The 2021 policy jackets contain language recitals that should reduce the requests made for the issuance of this endorsement. The new language states: *"This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature."*

- Will I be able to modify the way I word exceptions for restrictive covenants when issuing the 2021 ALTA forms?

Yes. Agents throughout the country are long accustomed to appending the following language (or its equivalent) to exceptions for restrictive covenants in commitments and policies: "…*"but omitting any such covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin as provided in 42 U.S.C. Sec. 3604 or Sec. 3605, unless exempt under Title 42 U.S.C."* The need to do so is now eliminated by printed language contained within the 2021 commitment and policy forms, which reads as follows: *"Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage."*

- If Schedule A of a policy insures either a leasehold estate or rights under an easement, am I required to add as a Schedule B exception, the terms and conditions of that lease or easement?

Yes. If you have any questions about how to word this exception, contact your Doma underwriting counsel for assistance at your state specific email, at DCunderwriting@doma.com. New pre-printed language appearing in the 2021 ALTA forms does not eliminate this requirement.

- Is it true that the 2021 editions of the ALTA policies include expanded continuing coverage in favor of successors to and grantees from the insured under the policies compared with the earlier policy editions?

Yes. These changes appear in Condition 1 of the Owner's Policy and Loan Policy, within the definition for the term "Insured."

- What is the primary difference between a "Current Assessments" and "Assessments Priority" version of a commitment or loan policy?

They are virtually identical except for how they treat coverage issues of loan priority with respect to condominium and homeowner's association liens. The *Assessments Priority* version insures that such future assessments are inferior to the lien of the insured mortgage. The *Current Assessments* version

reflects that future assessments may have superiority over the lien of the insured mortgage. The substantive law of a given state determines which version is to be used in that state. If you don't know which version is issuable in the states where you do business, check with your Doma underwriting counsel at DCunderwriting@doma.com.

- Are the ALTA Homeowner's Policy and ALTA Expanded Coverage Residential Loan Policy (and its short form versions) available for issuance in all states where Doma transacts business?

No. These policies offer what has been described as expanded coverage compared to the base owner and loan policies. In states where these policies are available, their premiums are higher than for the base policies, on account of the expanded coverage they provide. If you are unsure whether the expanded coverage policies are available in your jurisdiction, check with your Doma underwriting counsel for that state at, DCunderwriting@doma.com.

- Are there additional underwriting requirements for issuing an ALTA Homeowner's Policy and ALTA Expanded Coverage Residential Loan Policy (and its short form versions) compared with the base owner and loan policies?

Yes. If you are not familiar with the underwriting requirements to issue the expanded coverage policies, check with your Doma underwriting counsel for that state at DCunderwriting@doma.com.

- Besides the ALTA set of endorsements, are there other endorsements available for issuance in a specific state?

Maybe. In many of the western states, state regulators have approved many of the endorsements published by the California Land Title Association. Also, state regulators in some states have approved certain endorsements that are unique or proprietary to that given state. Finally, in some states, Doma has filed its own endorsement forms issuable in connection with Doma policies. If you are in doubt as to all of the endorsements that are potentially issuable in any state where you are a Doma agent, reach out to your state Doma underwriting counsel at DCunderwriting@doma.com.

- May I issue a Doma branded endorsement to a NATIC branded policy?

Yes. Throughout the country, Doma is in the process of migrating its commitments, policies, and endorsements from the NATIC company name to the new Doma company name and brand. Once that has been completed, the NATIC branded commitments, policies, and endorsements will be retired. Occasionally, it becomes necessary to issue an endorsement to a previously issued policy. Invariably, the need will arise to endorse a NATIC branded policy after all NATIC branded endorsements are retired. In such an instance, it is entirely appropriate to issue the corresponding Doma branded endorsement to the NATIC policy. No prior underwriting approval is required to do so. If you have any questions about doing so, reach out to Doma underwriting counsel for assistance at your state specific email, at DCunderwriting@doma.com.

- What is an ALTA Short Form Residential Loan Policy?

The ALTA Short Form Residential Loan Policy is a simplified loan policy that incorporates terms and provisions of the standard ALTA Loan Policy and many ALTA endorsements. It doesn't require the necessity of producing the entire Loan Policy jacket. There are two standard ALTA Short Form Residential Loan Policies that are alternatives to issuing the standard "long" form loan policy. The short forms "Current Assessments" and the "Assessment Priority" (so renamed in 2021) are basically identical except as to how they treat coverage issues of condominium and homeowner's association

liens. If you are not sure which version of the short form policy is available in your state, contact Doma Underwriting Counsel at DCunderwriting@doma.com.

- Why should I use the ALTA Short Form Residential Loan Policy?

1. The lender requests it and it is available in your state.
2. The lender can market the loan within hours of the closing since the mortgage or deed of trust recording date or information is not needed to issue the short form loan policy.
3. The lender is provided "gap" coverage just like the standard loan policy.
4. It's a streamlined version of the standard loan policy and incorporates the terms and conditions of the "long" form.
5. The short form contains pre-printed exceptions and affirmative assurances acceptable to most lenders and institutional investors.
6. It is more profitable and productive to issue since it has less Schedule A and Schedule B information, and is therefore more efficient for an agent to generate and it requires less proof-reading time by the lenders.

- What are the five requirements to issue an ALTA Short Form Residential Loan Policy?

1. The Land must be improved residential property (1-4 family and condominium units);
2. The estate or interest in the land must be fee simple;
3. The land is platted or has a metes and bounds legal description of less than 25 acres;
4. The insured is an institutional lender that commonly makes residential loans; and
5. The mortgage or deed of trust being insured is a first priority lien OR a subordinate lien. (If subordinate, check the box and add the addendum and list any superior liens.)

- Must I still do a search and exam when issuing an ALTA Short Form Residential Loan Policy?

Yes. Although the policy form is abbreviated, the search and examination are not. Please follow the same search and underwriting guidelines for your location when issuing the short form as you would for the long form.

- When may an ALTA Short Form Residential Loan Policy not be issued?

Do not use the short form policy if:

1. The estate or interest in the land is a leasehold of any type, including a cooperative;
2. The mortgage or deed of trust is a construction or home improvement loan; or
3. The insured is a private lender such as a seller or a non-institutional lender.

- What date do I use for the Date of Policy on Schedule A?

You will use the execution date of the mortgage or deed of trust as the policy date. No recording information is included on the ALTA Short Form Residential Loan Policy.

- Is the legal description typed on the ALTA Short Form Residential Loan Policy?

No, the legal description is not typed on the ALTA Short Form Residential Loan Policy. Paragraph 4 of Schedule A indicates the legal description is the same as set forth in the Insured Mortgage.

- Are endorsements attached to the ALTA Short Form Residential Loan Policy?

Do not attach endorsements to the ALTA Short Form Residential Loan Policy. Indicate in Paragraph 6 of Schedule A which endorsements are applicable to your transaction by checking the appropriate boxes.

- Do I list any specific exceptions on the ALTA Short Form Residential Loan Policy?

For the vast majority of ALTA Short Form Residential Loan Policies, there are no specific exceptions listed. Any specific exceptions, if any, (such as a requirement that wasn't met) are to be listed on the "Addendum" to the ALTA Short Form Residential Loan Policy.

23. NATIC Rebrands as Doma

- Why is North American Title Insurance Company (NATIC) changing its name to Doma Title Insurance, Inc. (Doma)?

NATIC, part of North American Title Group, LLC, was formerly a wholly owned subsidiary of Lennar Corporation. In 2019, States Title, Inc., acquired NATIC's parent from Lennar. In preparation for its listing on the New York Stock Exchange (which occurred during 2021), the decision was made to unify and strengthen the brand name for the various operating entities. The publicly listed parent company became Doma Holdings, Inc., and the decision was made to rebrand NATIC into Doma Title Insurance, Inc. As part of this process, NATIC was initially redomesticated from being a California corporation into a South Carolina corporation. In addition to NATIC's rebranding. The affiliated title agencies have also rebranded their names to Doma Insurance Agency, Inc. and other state specific entity names, all under the Doma family of companies brand.

- When will the name change become effective in my state?

For NATIC, it is a bit different than our parent or the affiliated agents. As the underwriter, we need to file the name change requests in each of the states and the District of Columbia where we have a Certificate of Authority to operate. Each jurisdiction will review the name change and respond with their approval on their own time schedule. We will continue to operate as NATIC in a given state until the name change and all the policy forms rebranding process is fully accomplished and approved by the pertinent state regulator. We will notify our agents in each state via a Special Alert once this process is complete in any particular state.

- What does the name, Doma, stand for?

When considering our new brand name, we wanted to align ourselves with our vision of being a company that is architecting the future of home buying. The heart of everything we do is the feeling of "home," and our new brand name is our chance to better align ourselves with this core idea.

Doma, which means "roof" or "house" in Latin, represents the foundation of each of our lives: the place we feel welcome, comfortable and at home. Words like 'domicile' and 'domestic' are rooted in Doma, and the phrase "vitej doma" means "welcome home" in Czech. Its simplicity makes it a powerful and memorable word – it's easy to spell and pronounce and mirrors the ease and simplicity we are bringing to the home buying process.

It's important to acknowledge that the name we've chosen for our company also has associations with the acronym for the Defense of Marriage Act (D.O.M.A), legislation that is exclusionary to members of the LGBTQ+ community and stands in stark contrast to our core mission and beliefs. "Home" is a warm, welcoming and inclusive place; the Defense of Marriage Act represents this country's recent, historical intent to exclude a group of individuals from rights that others have without question.

We recognize that we have these four letters in common and emphasize that we share nothing else. Buying a home should inspire dreams about what the future will look like there, not create worry about the lengthy process and tons of paperwork, or worse, whether there will be additional roadblocks to obtaining that home because of the color of your skin, where you come from, who you choose as a life partner or your religious beliefs.

- Will I need a new Agency Agreement to continue as a policy issuing agent of Doma?

The good news is you will not. Doma Title Insurance, Inc. is just a name change. There is no other change in the entity, the team members supporting you and we continue to be your "underwriter next door" where accessing decision makers only takes one call or email. New state appointments or changes to your agency agreement will be accomplished through a Doma-branded amendment to your existing NATIC agency agreement. The terms and conditions of your agency agreement will not be impacted by our name change.

- Most of your bulletins and alerts providing your underwriting guidelines still use the NATIC name. Do these underwriting guidelines apply to transactions being written on Doma?

Yes. All NATIC branded bulletins, alerts and notices shall continue to apply to all transactions insured through Doma Title Insurance, Inc. As the states in which we operate approve the name change, you will begin to see Doma branded bulletins, alerts and notices but we will alert you to this impending change as we draw closer.

- What about policy forms? My software provider does not yet have the new Doma-branded policy, commitment and endorsement forms in my title production operating system.

Our policy, endorsement and commitment forms, as well as our closing protection letters, have to be refiled and approved in all states where we operate. These forms filings are already in process and should be finalized in coordination with the state's approval of our name change to Doma. We will notify you once the newly branded Doma forms packages have been approved for use and are available on your production software. We will likely roll out groups of states at one time but will notify you via Bulletin when this is scheduled to occur.

We will notify you once the newly branded forms packages are approved for use in your operational states. Please note that Doma Title Insurance, Inc. will continue to accept, honor and stand behind all NATIC-branded policy, endorsement and commitment forms, as well as closing protection letters.

- If I want to use Doma-branded forms, where can I get them?

Once our Doma-branded forms are approved, we will distribute them to the major software providers, so you will simply need to update your production software to secure the new forms. In addition, as state forms packages are approved, we will load them into UnderwriterLink on our agent portal website at AgentLink.doma.com.

- What about transactions where I issued a CPL branded as NATIC? Will those CPLs continue to be valid after the underwriter's name changes to Doma?

Doma Title Insurance, Inc. will continue to honor all NATIC-branded closing protection letters. We will also develop a response for you to share with your lenders if they are looking for a Doma-branded CPL on your transaction. These are filed forms, and until our state regulators approve the new Doma-branded version, only the NATIC version will remain available. Even after the new Doma branded CPL is available, Doma Title Insurance, Inc. will honor validly issued NATIC-branded CPL forms. Lenders can still validate their CPLs by visiting our website at https://doma.com/~/For-Our-Customers/CPL-Validation-aspx-13256-CPL-Validation.aspx.

- My lender customer is aware of the name change at NATIC/Doma. They are insisting I use a Doma CPL and policy forms. Can I get those online?

Once our name change to Doma has been approved and the forms packages for the applicable state(s) are approved for use, we will distribute them to the major software providers, so you will simply need to update your production software to secure the new forms. In addition, as state forms packages are approved, we will load them into UnderwriterLink on our agent portal website. Until the forms are approved in any particular state, the NATIC-branded forms are still the proper approved forms for use in your transaction. Contact your local underwriting counsel to work with you and your lender customer should questions remain, at DCunderwriting@doma.com.

- Many of your rate manuals are still branded as NATIC. Do these rates also apply to Doma?

The NATIC rate manuals continue to be the applicable rate guides for you as a NATIC/Doma agent in all our states. We are not required by our regulators to refile the manuals with the new Doma name. As we update our rate manuals in the coming year, you will notice the new name will be added to those filed manuals which we will continue to make available to our agents on AgentLink.

- What is the new website where I can find all Bulletins, Forms, underwriting materials and resources?

All these valuable resources and materials will continue to be available to you through AgentLink at AgentLink.doma.com.

- How do I file a claim for my customer if it is necessary?

All claims notices should be emailed to Claims@doma.com. You may also mail your claim notice to:

Doma Title Insurance, Inc.
760 NW 107th Avenue
Suite 401
Miami, FL 33172
Attention: Claims

- A NATIC policy was issued prior to the name change. My customer needs an endorsement to the policy. May I use a Doma-branded endorsement on a NATIC policy?

Yes, you may. Until the new Doma-branded forms are approved by your state regulator, you may use the NATIC endorsement form. Once the new forms are available, please use the corresponding Doma-branded endorsement form.

- Will any of the officers or employees of NATIC change now that we are operating as Doma?

All the people you work with every day at NATIC will continue to provide the same high level of support to you as we transition to the Doma name. It's a new name with the same great service and customer support you've always known from your partners at NATIC.

- I have a NATIC audit scheduled. Will the name change impact that date or require anything additional from me as an agent?

Your audit schedule and your audit contact will remain the same. Audit requirements will also continue to be the same.

- I just took a NATIC U course seeking continuing education credits. How will the name change to Doma affect those credits?

NATIC University is changing its name to Doma Academy and will be rebranded accordingly. However, when navigating the site and taking courses, agents can expect the same top-level experience and service they have known with NATIC. All classes previously taken on NATIC University will still be valid for CE and CLE reporting requirements for your state of licensure. New courses will be branded as Doma, but CE and CLE accredited courses already existing on the site with the NATIC brand will continue to be eligible for CE and CLE credit. These existing courses will continue to reflect the NATIC name for the near future.

- What about remittances? I have some checks made payable to NATIC and then some to Doma. May I combine those on one remittance report that I upload through AgentLink?

You may combine premium checks payable to NATIC and Doma into one remittance report. We are the same company, so it goes to the same account.

- What is the contact information for securing agency good standing letters or validating CPLs by our lender customers?

Letters of Good Standing can be obtained online at Doma.com (Agency Verification). Any support issues in connection with these topics should be directed to AgencyAdmin@doma.com.

24. Digital Funds Transfers and Good Funds Law

- Does Washington, DC have a Good Funds law?

DC's Good Funds law is codified in the DC Code in Section 31-5041.06.

- What types of funds are considered Good Funds?

In DC, “Disbursement of loan funds” means the delivery of loan funds by a lender to a settlement agent in the form of:

(A) Cash;

(B) Wired funds;

(C) Certified checks;

(D) Checks issued by the District of Columbia;

(E) Cashier’s check or teller’s check; or

(F) Checks drawn on a financial institution the accounts of which are insured by an agency of the federal, a state, or the District of Columbia government, and are located within the Fifth Federal Reserve District..

- Why do we have Good Funds laws?

Good Funds laws in most states provide direction for title agents and independent escrow companies as to what funds can be accepted for the purchase of property or the refinance of a current mortgage. Good Funds Laws are designed to protect consumers and ensure a real estate transaction can be completed with adequate funds for all expenses of settlement.

- Are Automated Clearing House (ACH) or credit card payments considered Good Funds?

Payments made through an Automated Clearing House (ACH) or credit card payments would not be considered Good Funds because of the ability to recall the funds (ACH) or challenge charges and reverse payments made by credit card.

- Are cryptocurrencies, such as Bitcoin, Ethereum, Solana, FTX Token, and Dogecoin considered Good Funds?

Cryptocurrencies, such as Bitcoin, Ethereum, Solana, FTX Token and Dogecoin, are not currently considered Good Funds for the purpose of conducting real estate transactions in the District of Columbia.

- Are funds transferred via digital applications such as Venmo, Zelle, and PayPal considered Good Funds?

Payments made through digital funds applications are not considered Good Funds, likely because of the ability to recall the funds, and should not be used to fund real estate transactions.

- Are there penalties for failing to follow the Good Funds law?

A lender shall, at or before loan closing, cause disbursement of loan funds to a settlement agent. A lender shall not receive or charge any interest on a loan until disbursement of loan funds and loan closing have occurred, and shall not require payment of any interest in advance.

Any person suffering a loss due to the failure of a lender or of a settlement agent to cause disbursement as required by the law is entitled to recover, in addition to the amount of actual damages, double the amount of any interest collected in violation of said law, plus any reasonable attorneys' fees incurred in the collection of that amount.

Additionally, civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of the law, or any rules or regulations issued under the authority of said law.

- Does DC's Good Funds law apply to all DC real property transactions?

DC's Good Funds law applies only to transactions involving purchase money loans made by lenders that are secured by first or second deeds of trust or mortgages, excluding second deeds of trust or mortgages for refinancing purposes only, on real estate containing not more than 4 residential dwelling units..

- What are ALTA's Best Practices for Digital Funds

As ALTA notes in its Good Funds Guide, "*Widespread use of reversals could cause instability of liquidity for title companies, title underwriters and banks."*

ALTA Best Practices for Digital Funds

While the digital funds transfers mentioned above currently would not meet the definition of "Good Funds" under Washington, DC law, that does not mean that all future digital funds transfers will be unacceptable or that digital funds transfers are prohibited in all transactions. Doma recommends that title agents investigating the acceptance of a digital funds transfer from a consumer into escrow consider the ALTA recommended *Best Practices for Digital Funds*.

The *ALTA Best Practices for Digital Funds* include the following requirements:

1. Security – The application or process used to transfer funds from the consumer to the escrow account should:
   - Provide for end-to-end encryption for all facets of the process.
   - Not require the consumer to enter or store their online banking credentials.
   - Be supported by technology vendors:
     - With a current SAE 16 Type 2 certification on all aspects of their technology solution.
     - Vetted by title agents and settlement providers to ensure adequate levels of E&O and cyber insurance.

2. Transfer – The transfer of funds should:
   - Meet state "Good Funds" requirements which under most state laws are irrevocable and immediately disbursable on receipt.
   - Take into account the acceptance capabilities of all parties to the transaction.
   - Be considered a bank-to-bank transfer or deposit of funds, and not treated as a consumer payment, that includes protections allowing for recalls or is governed by the federal Electronic Funds Transfer Act and its implementing regulations.

- Transfers should not be considered as a consumer to business payment for goods or services (*i.e.*, ACH or credit card). Under federal law, consumers cannot waive their right to reverse a transaction, even for a real estate purchase.
- Be transferred from a consumer's account at a depository institution directly into the settlement service provider's escrow account. Funds should not move through other bank accounts or be transferred to cybercurrency payment ledgers before deposit in an escrow account.
- Be final. All funds transfer methods must be final with no ability to claw-back or reverse the transaction.

3. Source – The source of funds should be:

- Directly linked to and transferred from the consumer's demand deposit account. Funds may not be sourced from a consumer's credit card, cybercurrency or any other non-depository source.
- Backed by the U.S. Dollar (USD). Funds should be transferred in USD converted to USD prior to transfer.

All Doma agents are advised to review and follow the Good Funds Laws of the state in which the property being insured is located. If they plan to accept transfers from providers like Venmo, Zelle or PayPal, funds must be transferred in USD or converted to USD prior to transfer or used to fund a real estate transaction. For additional digital funds providers, please contact your NATIC underwriting counsel for guidance as not all providers are created equal nor do they all comply with the ALTA Best Practices outlined above.

25. Using A Prior Policy To Eliminate Commitment Requirements

- Is there an agreement between underwriters to get indemnities in DC like in some other states?

There is no indemnity "treaty" between underwriters in DC at this time.

- What is the purpose of such agreements?

In order to expedite the closing of real estate transactions, facilitate the meeting of potential outstanding policy obligations and limit the need to obtain individual letters of indemnity, title companies sometimes become signatories to an agreement by which each signatory company agrees to indemnity any other current or future party to the agreement against certain losses or damages which may be suffered under an existing owner's title insurance policy, subject to the terms of the agreement.

- What do I do if the current seller has an owner's policy which insures against a defect which our title search discovers?

Talk to Doma Underwriting Counsel to get approval to insure the title notwithstanding the defect by obtaining an indemnity letter from the company which issued the owner's policy to the current seller. If approved, request a letter of indemnity directly from the company which issued the current owner's policy to the seller. Doma Underwriting Counsel can be reached at DCunderwriting@doma.com.

- May I dispense with obtaining a satisfaction for an open mortgage or other lien if the current owner has an owner's policy issued to them that does not take exception for the subject prior open mortgage or lien?

Sometimes. After approval by Doma Underwriting Counsel and after obtaining an appropriate and sufficient letter of indemnity from the exiting owners policy issuer, you may dispense with obtaining a satisfaction of an open lien. Doma agents who wish to rely upon a prior owner's policy to obtain a letter of indemnity in order to eliminate an open mortgage must obtain prior approval from Doma Underwriting Counsel to do so. Send the commitment for the current transaction, along with the prior policy, and a copy of the open lien to DCunderwriting@doma.com.

- Can every title defect in a DC title be cured by obtaining a letter of indemnity from another title company?

No. A letter of indemnity is generally only appropriate where the title defect is one which may be eliminated by the payment of money. If the defect is a missing title interest, then typically a letter of indemnity will not be an acceptable basis upon which Doma will insure.

- May I rely on a letter of indemnity issued by the title company which issued the prior owner's policy in order to resolve a potential defect without underwriting approval?

No. Doma Underwriting Counsel review is required before you may insure without exception to a potential defect based on a letter of indemnity. Contact them by emailing your commitment, the instrument in question, the prior policy and a brief description of the issue to DCunderwriting@doma.com.

26. Transactions involving Religious and Church Entities.

- I've been asked to insure a transaction involving a church / religious entity. Where do I begin?

Agents called upon to insure transactions involving religious entities may find themselves confronting several unique underwriting issues not typically found in dealing with other types of entities. Religious organizations can be formed under a variety of structures available under state statute, including not-for-profit corporations, religious corporations, charitable trusts, and corporate sole and unincorporated associations. Even under a corporate structure, determining who has authority to encumber or convey church-owned property may not be apparent from the by-laws and articles of incorporation alone.

To further complicate the issue of authority, differing church rules may apply for the type of transaction or the dollar amount involved. These rules may exist in the constitution and canons, rules, regulations and discipline of the church, which may be difficult for the title agent to secure for review. Where authority may exist for certain transactions, such as for a loan or refinance, it may not exist for a sale, or other type of transaction, depending on internal church organization and ruling documents.

Given the nuance and complication that may arise in any transaction involving church authority, Doma Underwriting Counsel should be consulted in every instance, whether it is a refinance, finance, or sale involving church real property. As much information as possible should be collected in every case and reviewed with your Doma Underwriting Counsel, at DCunderwriting@doma.com .

- Are all church / religious entities structured in the same manner?

No. Religious organizations fall into two general categories as either congregational or hierarchical and they may or may not be incorporated. Congregational churches are typically community churches, which are stand-alone entities independent of other church or larger religious associations. A hierarchical church is part of a larger organization where the individual church entities are answerable to higher church entity authority. Most of the major religious organizations such as Methodist, Catholic, or Episcopal churches are hierarchical in their organizational structure. The local parishes for these denominations are typically subject to limitations imposed by the higher organization.

Either of the foregoing types of religious organizations can be incorporated in the District of Columbia. Under DC Code 29-401.02 “Religious corporation” means a domestic nonprofit corporation that is a church or an integrated auxiliary of a church, as defined under the federal Internal Revenue Code or regulations promulgated thereunder, or any other such nonprofit corporation whose principal purpose is the advancement of religion. In a transaction involving an incorporated religious organization, the agent will comply with all typical corporate entity requirements regarding (ie, good standing certificate, resolution for the transaction, resolution for signing authority, review of Articles of Incorporation and Bylaws). Although normal corporate entity requirements must be followed in order to insure, the DC Code specifically indicates if the church doctrine dictates something contrary to the DC Code, then the church rules governing their affairs will control:

> § 29–401.40. Subordination to canon law or other religious doctrine.
>
> If religious doctrine or canon law governing the affairs of a religious corporation is inconsistent with this chapter on the same subject, the religious doctrine or canon law shall control to the extent required by the Constitution of the United States.

If this law is invoked in a religious organization transaction, contact Doma Underwriting Counsel at DCunderwriting@doma.com, for direction as to what underwriting requirements will be acceptable.

- How do I know whether I am dealing with a congregational or a hierarchical religious entity?

Begin by obtaining and reviewing the articles, by-laws and any amendments and resolutions of the entity. When possible, verify the corporate existence and good standing with the Secretary of State’s office. Be sure to read the documents. Certain transactions such as buying, selling, or refinancing may be subject to approval from a higher church office, or may require approval of a majority vote of the members of the congregation or board of directors, elders, or deacons.

Once you have collected and reviewed the structure documentation consult with your Doma Underwriting Counsel at DCunderwriting@doma.com confirm the type of entity.

- What do I do if the church / religious entity does not have any bylaws, articles of incorporation, or other organizational documents?

Unincorporated churches and religious entities offer additional concerns and challenges. Many of these are single churches with smaller congregations and possibly greater member involvement in real estate transactions and often shifting controlling persons. Community churches are more likely to be unincorporated associations. In some cases, a deed to an unincorporated church or religious

entity can be invalid if the unincorporated association is not a recognized legal entity capable of acquiring title to real property. Frequently, a lawsuit becomes necessary to resolve the title issues and render the title insurable. Internal rules and meeting minutes of the church and governing body must be obtained, assuming they exist.

Additionally, unincorporated churches and religious entities can be targets of fraud by unscrupulous types purporting to represent the congregation or association. This can happen when the church membership has diminished over time due to age and attrition exposing its organization and property. The title insurance industry has suffered claims from these fraudulent transactions, and recovering funds is difficult. The sale of a church property or hard money loan should be thoroughly researched and reviewed with Doma Underwriting Counsel, at DCunderwriting@doma.com.

.

- Who has authority to bind a church / religious entity?

In order to figure out who as proper authority, begin by obtaining and reviewing the articles, by-laws and any amendments and resolutions of the entity. The organizational documents may identify the person or persons who can act on behalf of the church / religious entity, such as an officer or trustees, or they may state whether a transaction specific resolution or consent is required for the transaction. Certain transactions such as buying, selling, or refinancing may be subject to approval from a higher church office, or may require approval of a majority vote of the members of the congregation or board of directors, elders, or deacons. Contact Doma Underwriting Counsel at DCunderwriting@doma.com if you have questions or concerns about who has authority to bind an entity involved in an insured transaction to be insured.

- What are the formalities for the execution of deeds and deeds of trusts by a District of Columbia church / religious entity?

For deeds and deeds of trust executed by a church / religious entity which is not a corporation to be insurable by Doma, the signature of the person signing must be clearly authorized by the organization's documents, there must be a resolution authorizing the transaction and confirming the signer's authority and the signatures must be properly acknowledged by a notary public.

If the entity is a corporation, then additional requirements exist. Deeds, deeds of trust or mortgages given by a religious organization that is a corporate entity shall be executed and acknowledged either (1) by an attorney-in-fact appointed for that purpose or (2) without appointment, by its president or a vice-president if also attested by the secretary or assistant secretary of the corporation according to District of Columbia code 42-605.

In addition to a deed or mortgage instrument, as to all other documents, the agent must confirm that the specified signatory has corporate authority by virtue of the articles of incorporation, by-laws, and/or by a specific resolution duly passed by the proper parties in accordance with the articles and/or by-laws.

If you are unsure whether a document has been properly executed, contact Doma Underwriting Counsel (DCunderwriting@doma.com) for review of the executed instrument.

- What are the title requirements where the name of a church / religious entity has changed after it has acquired title?

A church / religious entity may change its name for a variety of reasons. The title requirements vary as a function of the reasons giving rise to the name change as well as the laws of the jurisdiction under which the entity was formed and exist. From a title insurance perspective, it is not sufficient to simply recite the name of the new entity name formerly known as the former entity name on the deed or mortgage. Additional title requirements will be needed. Contact Doma Underwriting Counsel (DCunderwriting@doma.com) for the title requirements involving that entity due to the name change.

- Are there any special title requirements for a transaction involving church / religious entity that is also a nonprofit corporation?

No. Nevertheless, Doma's normal corporate entity requirements and any church rules or canons must be followed. If you are unfamiliar with insuring transactions involving church / religious entities, contact Doma Underwriting Counsel (DCunderwriting@doma.com) for the specific title requirements.

- How do I treat a judgment or lien against a church / religious entity?

Money judgments and liens against church / religious entities are treated no differently than judgments against others. They become liens against the real property of the church / religious entity upon proper lien perfection as mandated by DC law. A money judgment against a church trustee in the trustee's individual capacity would not create a lien against the church-owned property. However, if the lien appears to have been related to the trustee's church duties or was based on a debt of the church, for insuring title, the judgment should be treated as a lien against the church property. If you are unsure whether a judgment or lien against a church / religious entity attaches, contact Doma Underwriting Counsel (DCunderwriting@doma.com) for guidance.

27. Community Associations (HOA & Condo)

- What is a community association?

A community association is a collection of homes, condos, or other properties that are legally bound by a collection of documents, including rules and bylaws applicable to the community. The two most common types of community associations are a Homeowners Association (HOA) and a Condominium Association (CA).

If a property is part of a community association, membership is automatic when the buyer purchases that property. Sometimes, the community association may have a right of prior approval of a prospective purchaser or tenant. Sometimes, the community association may also have an option to purchase a property if the current owner wants to sell or convey the property. Community associations typically have the right to collect recurring and special assessments from the property owners for various reasons. When assessment remain unpaid, community associations have the right to place a lien on a property, and to foreclose that lien to enforce payment.

If a property is located within a community association, many state laws require the seller to disclose to the prospective purchaser that the home is part of a community association, whether the association's approval of the transaction is required, and the amount of recurring assessments.

Sometimes these laws obligate the seller to disclose the association's contact information and provide a set of the association documents governing the use and occupancy of the property.

The homeowners association's governing documents contain the rules, regulations, and all other contractual terms that members are bound by and which burden the properties located within the community association's boundaries. These documents are legally binding upon owners, occupants and lenders based on contract principles, and "run with the land." Therefore, it is very important that prospective buyers and lenders carefully review the terms of each of these documents because they will be contractually bound by them.

- What are the most common types of documents governing a community association?

A homeowners association usually has as its principal governing document, a Declaration of Covenants, Conditions & Restrictions (CC&Rs). These contain the rights and responsibilities of each member and the responsibilities of the association to its members. They include information about architectural restrictions, property use restrictions, property maintenance standards, assessments and more.

A condominium association usually has as its principal governing document, a Declaration of Condominium. These contain a graphical depiction of the location, dimension and identification information for each unit in the condominium project, the percentage interest each condominium has in the overall project, the rights and responsibilities of each member and the responsibilities of the association to its members. They include information about architectural restrictions, property use restrictions, property maintenance standards, assessments and more.

Usually, homeowners associations and condominium associations are incorporated in the state where the land lies, and usually are incorporated as a non-profit corporation. Like all corporations, each will have:

1. Articles of Incorporation - The Articles of Incorporation include basic information about the association, including the name of the association, its location, and the purpose of the association.

2. Bylaws – The Bylaws set out the technical rules and procedures for things like voting, the election of directors, and term limits.

Oftentimes an association will also adopt a set of Rules and Regulations. These provide additional guidance on how the community operates, do's and don'ts, etc. Sometimes these Rules and Regulations are not recorded in the public land records.

Over time, the association's documents often get revised and amended. All such amendments are supposed to be recorded in the land records.

Title agents must take special care to make exceptions in title insurance commitments and policies for all of the community association documents and to review them to make sure they are complied with prior to insuring a sale or mortgage of a property located within an association.

These documents are created during the formation of the association usually by the developer of a property. Once the developer turns over control of the community, the HOA is run by an elected

board of directors. This board has the power to implement additional rules. Additionally, local, state, and federal government bodies also pass new laws that may create or alter regulations that are set by the association.

- What are assessments and special assessments?

Assessments collected from property owners located within a community association are the primary source of funding for a community association. The right to charge and collect assessments is derived from the association's legal documents recorded in the land records and from applicable state law. Assessment revenue pays for "common expenses," such as maintenance and repair of common elements, any legal, professional, and management fees incurred by the association, and the association's general operating costs and overhead. Assessments also frequently fund a reserve account for irregular maintenance and long-term capital expenditures.

Special assessments are irregular, one-time assessments imposed by an association (sometimes requiring approval of a majority of homeowners), usually to cover a significant common expense not anticipated in the regular budget. These can be significant in amount, far in excess of the regularly recurring assessments.

When a homeowner fails to pay any regular or special assessment, a community association typically warns the owner of its intent to place a lien on the property for unpaid amounts. The homeowner has a set interval to pay what is owed – which varies by state and association. If the homeowner has not paid the delinquent amount by the end of this grace period, the association typically will record a lien with the county recorder for the unpaid assessments or dues.

Depending upon state law, and the provisions contained withing the association's documents, the lien will attach to the property as of:

1. the date the declaration for the community was recorded,
2. the date when the assessments became due, or
3. the date when the association first recorded a notice of lien in the land records.

The lien's priority is based on when the lien attaches to the property. State law or the association's governing documents might also set out the priority of assessment liens.

- What is a "super priority lien"?

A "super priority lien" is a type of lien that, under state law, gets a higher priority than other types of liens like a mortgage or deed of trust. If an association forecloses a super priority lien, the foreclosure often extinguishes a first-mortgage lender's property rights. The District of Columbia has such a super priority lien and care must be taken to be certain any outstanding bills are paid in full, any liens of record are paid and released and only certain ALTA endorsements may be issued regarding HOA's and Condominiums. Do not issue the ALTA 4, ALTA 5, ALTA 9, and/or CLTA 100 in DC. Instead, in the District of Columbia, Doma agents may issue the ALTA 4.1, ALTA 5.1, and ALTA 9.10 endorsements

In some states and communities, it is possible that super priority status for an association lien varies as a function of whether a mortgage or deed of trust is given by an institutional lender, or whether the mortgage or deed of trust is not a first mortgage or deed of trust.

The following 21 jurisdictions grant super priority lien status to association liens:

Alabama
Alaska
Colorado
Connecticut
Delaware
District of Columbia
Florida
Hawaii
Louisiana
Maryland
Massachusetts
Nevada
New Hampshire
New Jersey
Oregon
Pennsylvania
Rhode Island
Tennessee
Vermont
Washington
West Virginia

Because of the potential for super priority status, ALTA loan policies come in two “flavors.” One version is a “Current Assessments” type, and the other is the “Assessments Priority” type. These two versions are virtually identical except for how they treat coverage issues of loan priority with respect to condominium and homeowner’s association liens. The *Assessments Priority* version insures that such future assessments are inferior to the lien of the insured mortgage. The *Current Assessments* version reflects that future assessments may have superiority over the lien of the insured mortgage. The substantive law of a given state and the content of the association’s documents determines which version is to be used in that state. If you don’t know which version is issuable in the states where you do business, check with your Doma underwriting counsel at DCunderwriting@doma.com.

In these 21 jurisdictions, because of the super priority status issues, Doma agents should refrain from issuing the following endorsements: ALTA 4, ALTA 5, ALTA 9, and CLTA 100. Instead, in these 21 jurisdictions, Doma agents may issue the ALTA 4.1, ALTA 5.1, and ALTA 9.10 endorsements. In addition, any language offering affirmative coverage over liens created in covenants, conditions, and restrictions should not be added in Schedule B.

28. Remote Online Notarization (RON)

- What is RON?

Although RON is currently not permitted in DC, a Doma bulletin will be issued when it is. RON stands for Remote Online Notarization. Remote Online Notarization occurs when the signer of the document and the notary public are in different locations, and real-time two-way audio-visual communication is

used to accomplish the document signing. The notary watches the signer electronically sign a digital document, and the notary then electronically signs the digital document and affixes a digital notary stamp to the document. The electronic signing by the signer and notary replaces a wet signing of the document with ink, and there is no hardcopy of the document, only a digital document. If witnesses are required, the witnesses may also be able to sign via RON.

The RON process includes Knowledge Based Authentication (KBA) by the RON vendor. KBA is done by asking the signer questions which only the signer would know, such as the make of the first car the signer owned or a prior address. KBA allows the RON notary to verify the signer's identity along with the signer provided copy of their government issued photo ID.

A RON signing is conducted using an approved RON vendor.

For documents that must be recorded as part of the transaction, such as a deed and mortgage, those digital documents are then electronically recorded with the county recorder for the county where the subject property is located. If the county cannot electronically record, then the state RON statute or the RON statute of the state where the notary is located must allow the document to be papered out, meaning that a printed copy of the electronically notarized document can be generated and then recorded.

- What is RIN?

Although RIN closings are currently not permitted in DC, a bulletin will be issued when they are permitted. RIN stands for Remote Ink Notarization. RIN was conceived during the COVID-19 pandemic. It allows the signer and the notary to be in different locations and use real-time two-way audio-visual communication for the signing of the documents similarly to RON. However, with a RIN signing, the documents are not signed electronically, the signer wet signs the documents with ink, and then overnights the original wet signed documents to the notary. The notary then also wet signs and affixes the seal to the document. The original wet signed documents are recorded.

Some states enacted RIN provisions through executive orders of the governor or through quickly passed laws codifying the RIN provisions. Some states have kept these provisions or amended the laws to permanently codify the RIN provisions, but DC has not.

- Are there other types of e-closing or digital closing options?

None are permitted in DC currently and a Doma bulletin will be issued when they are permitted.

Nevertheless, there are three other main types of e-closings permissible is some other states: hybrid, IPEN, and PRON.

Hybrid involves digitally signing some documents and wet signing other documents (usually the documents that are recorded.)

IPEN stands for In Person Electronic Notary. In this type of e-closing, the signer and the notary are in the same location, but the documents are executed and notarized electronically.

PRON stands for Paper Remote Online Notary. PRON is basically a RIN closing but using a RON vendor. The signing is done through the real-time two-way audio-visual communications system.

However, the documents are wet signed by the signer, and then overnighted to the RON notary who then also wet signs the documents.

If you are not sure if a particular e-closing can be insured by Doma, contact Doma Underwriting Counsel at DCunderwriting@doma.com.

- Can I use RON in the District of Columbia?

No, it is not yet permitted, even though a law has been passed, it is not yet effective. Contact underwriting counsel DCunderwriting@doma.com with any questions you may have.

- Does Washington, DC have a RON statute?

No, it is passed but it is not yet in effect. According to the DC Office of Notary Commissions and Authentications ("ONCA") the District of Columbia does not allow remote notarizations at this time. The DC Council passed legislation allowing the Mayor to implement remote notarizations during the health emergency; however, remote notarizations shall not be permitted until the required Mayor's Order and Guidance from ONCA have been issued. Once this is completed, a Doma bulletin will be issued to all Doma agents.

- What are the requirements in DC for a RON closing?

As of February, 2022, the Mayor of Washington, DC has not provided the "further order" which is required before the DC RON statute can take effect. Once this happens, a bulletin will be issued notifying agents of the District of Columbia rules for RON.

- Is there a Federal RON law?

The Securing and Enabling Commerce Using Remote Electronic Notarization Act of 2021 (SECURE) has been proposed at the federal level. As of January 2022, the SECURE Act has not passed and is not a federal law. The SECURE Act was proposed in order to give individuals in every state access to RON closings, and create certainty around questions of interstate recognition.

The SECURE Act intends to:
-Authorize RON in every state.
-Create national standards for tamper-evident technology, multi-factor authentication and retention of audio-visual recordings.
-Benefit U.S. Citizens outside the U.S., especially those in the military stationed abroad.
-Complement state laws.

The SECURE Act will not:
-Impede consumer choice.
-Preempt state laws adhering to minimum protections.
-Impact state laws relating to wills, trusts or the practice of law.
-Favor any specific technology or restrict new advancements.