CHICAGO TITLE INSURANCE COMPANY

TOPIC: Deeds of Trust

TITLE SEARCH & CLOSING RULES:

1. Required elements for a document to be an insurable Deed of Trust:
   a. Must be in **writing**.
   b. Must be **dated,** the same date as the Note.
   c. **Grantor** must be named and be ALL of the owners of the property. This includes all ownership interests, such as spouses, life tenants and remaindermen. Grantor must be capable of granting interest, not a minor or incompetent, and an entity must be in duly formed and in good standing in the state of their registration or incorporation
   d. Must name a **trustee**, if a DT. (If a true mortgage, then no trustee need be named.) Trustee must be capable of holding title to property and be someone other than the beneficiary. It can be any entity (corporation, partnership, limited liability company or individual), from North Carolina or elsewhere
   e. Must name the **beneficiary** (or "bearer"). Must be the same person or entity as the Note.
   f. Must contain **granting clause/operative words of conveyance** (e.g. "the Grantor has bargained, sold, given, granted and conveyed and does by these presents bargain, sell, give, grant and convey to said Trustee, his heirs, or successors, and assigns, the parcel of land situated . . .).
   g. Must contain sufficient **legal description** of the property. Must be the same property certified, usually the same as in the deed into the Grantor of the deed of trust.
   h. Must recite the **indebtedness** (sum certain) and refer to the **Promissory Note**, including **maturity date** of said Note. If for future advances, it must state that it is intended to secure future advances, has a stated maximum amount, a stated current outstanding amount and that all advances must be made within 15 years.
   i. Must state that the DT/Mortgage is to **secure the payment** of the indebtedness.
   j. Must contain a **defeasance clause** (e.g. "If the Grantor shall pay the Note secured hereby in accordance with its terms, . . . and shall comply with all of the covenants, terms and conditions of this Deed of Trust, then this conveyance shall be null and void and may be canceled of record at the request and expense of the Grantor.").
   k. Should contain **power of sale** provisions, if a DT (e.g. if there is a default in payment of sums due under the Note or a default in any other covenants, terms or conditions of the Note or Deed of Trust, . . . then it shall be lawful for and the duty of the Trustee, upon request of the Beneficiary, to sell the herein land conveyed at public auction for cash . . . and convey title to the purchaser.).
   l. Must be properly **executed** by grantor and acknowledged by a **notary public**. Use statutory forms for acknowledgments wherever possible, including the statutorily defined officers, to assure that conveyances are recordable and marketable.
   m. Individual or partnership "Seals" are no longer required on conveyances. However, **corporate seals** should still be affixed in order to have the benefit of the statutory presumption of authority of the signing officers.
   n. Must be **recorded** in all counties where any portion of the property is located.

2. Purchase Money Deeds of Trust: If a deed to grantee(s) and deed of trust from (all of) the grantee(s) for payment of a portion of the purchase price of the property are executed, delivered and recorded as part

of the same transaction, the purchase money mortgage lien is protected by *instantaneous seisin*, whether the deed of trust is for funds from the seller or a third party lender. And the principle applies as against judgments previously docketed against the grantee, spouse of the grantee (so long as property is not titled also in the name of the spouse), and liens of mechanics, materialmen and suppliers. However, the following exceptions apply:

a. The instruments must be recorded as part of the same transaction.
b. The purchase money mortgage must *not* have been intentionally made a subordinate lien to a construction lien.
c. The proceeds of the purchase money lien must actually be used for the purchase of the property
d. The lien has priority if and only to the extent that it is used for purchase, and not construction loans to be advanced for future improvement, of the property.
e. Only the first lien can be purchase money. Any second lien, such as an equity line, should not rely upon the doctrine. Therefore, for example, buyer judgments, contractor's liens, execution by buyer's spouse take priority over the purported "second" lien.

3. Existing Deeds of Trust noted on the Preliminary Opinion on Title: The Preliminary Opinion should identify any outstanding deeds of trust by name of beneficiary (and assignee, if known), Book and page of recording. Existing deeds of trust must fall into one of the below categories. The title insurer will assume that they will be paid and canceled unless the Opinion reflects otherwise. Suggested practice is to show on the opinion if the deed of trust will remain or be subordinated.

Planned handling of Deed of Trust at closing	**Suggested action by closing paralegal and attorney**	**Additional notation on Preliminary Opinion**
To be paid at closing (and canceled by the closing attorney soon thereafter)	Get payoff in writing directly from the lender and send in with your payoff letter and check by verifiable delivery (such as Federal Express or UPS) NOTE: *Attorney's payoff letter must say to apply payment, even if short, and notify of shortage immediately!* To payoff an equity line deed of trust, include: • Buyer's "freeze" request • Verification that no further draws or checks • Require return of documents for cancellation as soon as possible	
Release deed from the trustee and beneficiary will be obtained and recorded at closing.	Obtain written terms from the beneficiary or actual release deed *prior to closing*. Do not rely on verbal assurance.	

Subordination agreement executed by the trustee and beneficiary will be obtained and recorded at closing.	Must clearly identify your new loan to which the old lien is to be subordinated, by name, date, amount and preferably interest rate. Obtain written terms from the beneficiary or actual recordable subordination *prior to closing*. Do not rely on verbal assurance. Final opinion must include recording information and deed of trust to which it relates.	"Subordination Agreement to be recorded at closing"
Deed of trust will remain a prior lien and exception on the final policies to be issued		"To remain a prior lien"
Paid in full at a prior closing, to be canceled.	Disclose the deed of trust. Provide evidence of zero balance. Identify *who is responsible for obtaining cancellation and verify that they are following up on same*, preferably in writing. Request (do not assume) prior written affirmative coverage of the title insurer. (Remember: A prior loan policy "disappears" once that loan is paid off. So do not rely on it to protect you, your lender or the new title company.) NOTE: Often the title company can help you reach the right people or make the right demands to get these cancellations done – quickly!	"Paid in full on _____ by _____, closing attorney. Zero balance confirmed. [Provide copy or note about who has been contacted to follow up or any correspondence.]

4. <u>Equity Line Payoffs:</u>

(a) N.C.G.S. 45-81(c) requires a specific "freeze" request signed by the borrowers, as follows:

> "At any time when the balance of all outstanding sums secured by a mortgage or deed of trust pursuant to the provisions of this Article is zero, the lender shall, upon the request of the borrower, make written entry upon the security instrument showing payment and satisfaction of the instrument; provided, however, that such security instrument shall remain in full force and effect for the term set forth therein absent the borrower's request for such written entry.".
>
> This should be done several days before closing if at all possible.

(b) At closing, the attorney should request verification that all checks have cleared and should require that all extra checks be delivered to the attorney and destroyed in the attorney's presence (to verify their destruction).

(c) The entire equity line deed of trust should be carefully read to assure that any lender requirements for freeze of the loan, calculation of payoff and cancellation of the indebtedness have been fully completed.
(d) The attorney's payoff letter must clearly provide that the equity line is to be frozen and canceled.

Suggested payoff letter provisions are as follows:

Borrower's Request for Cancellation of Deed of Trust:

> Pursuant to Section 45-81(c) of the North Carolina General Statutes, we the undersigned Owner(s) of the property described in the deed of trust securing the equity line loan above referenced, hereby request that, IMMEDIATELY UPON RECEIPT OF PAYMENT TENDERED BELOW, YOU SHOULD CLOSE THIS ACCOUNT AND HONOR NO FURTHER ADVANCES. We have not written further checks, drafts or draws from the equity line account and will not do so in the future. We hereby agree to indemnify and hold harmless your bank, the undersigned closing attorney, any new purchaser of the property, any new lender accepting the property as security for their loan and any title insurer providing coverage on the basis of this payoff and intended cancellation of said lien, including but not limited to any loss as a result of this equity line account being used subsequent to the date of this notice and/or for checks/drafts being honored subsequent to the date upon which I/we state the account was last used by me/us.

_____
(Obligor / Owner of Property)

_____
(Obligor / Owner of Property

Attorney's specific request regarding equity line:

> THIS PAYMENT IS NOT TO BE CONSTRUED AS A PAYDOWN OF THIS ACCOUNT. THE ACCOUNT IS TO BE CLOSED. No more checks nor drafts should be honored. Please IMMEDIATELY acknowledge receipt of payment and your acceptance as satisfaction in full, by returning the enclosed copy of this letter in the envelope provided for your convenience, subject to the above check being honored and clearing our firm's trust account.

TITLE INSURANCE REQUIREMENTS, EXCEPTIONS AND COVERAGE:

Insuring a Deed of Trust. Deeds of trust on the fee simple title can be insured under the ALTA Loan Policy (Forms 1970 and 1992). Deeds of trust on a leasehold interest may be insured under the ALTA Leasehold Loan Policy (Forms 1975 and 1992) as well as under the ALTA Loan Policy.

Requirements for a valid Deed of Trust. Title insurers are often asked, especially by out-of-state counsel, to review deeds of trust for insurability. The requirements for insurability are described above.

Amount of Insurance. The amount of the policy ordinarily should be the face amount of the loan. (It may be proper to insure a larger amount, up to a maximum of 125% of the face value of the loan, under a negative amortization loan, discussed below.) The lien of a deed of trust is based upon the amount of the secured debt. As a result the lien will diminish as the loan is repaid. Loan policies limit liability to the sum of to the principal amount outstanding and interest accrued but unpaid at the time of the loss or damage. So the actual coverage amount of the policy decreases as the borrower makes their loan payments monthly. (Additional amounts for costs, such as attorney fees, incurred by the insured as a result of the loss or damage may also be included in the coverage but are in addition to the Amount of Insurance in Schedule A.)

Describing a Deed of Trust. The insured deed of trust should be specifically described, usually as to parties, amount, execution date, recordation date, time and place of recording (including Book, Page and county).

Exception for an existing Deed of Trust. If a prior deed of trust is reported on the title opinion, then the title company must do one of the following:

1. Add a requirement in Schedule B Section 1 of the commitment delivered to the attorney and lender that said deed of trust be canceled or released of record; or
2. If the attorney's preliminary opinion notes that the deed of trust will be subordinated (rather than canceled), the commitment will contain both a requirement for a copy of the recorded subordination and an exception for said deed of trust in Schedule B Section 2 of the commitment, adding the subordination recorded in Book _____, Page _____ (probably at closing); or
3. If the attorney's preliminary opinion notes that the deed of trust will not be canceled or subordinated, or it clearly cannot be paid off with the proceeds of the new closing, then an exception must be added to Schedule B Section 2 of the commitment.

FORMS:
Hypothecated Security Addendum

LEGAL DISCUSSION:
(Author: Jeffrey I. Hrdlicka, revised by Nancy Ferguson)

Deeds of trust and mortgages are a means of securing the payment of a debt or performance of an obligation. The debt may be established by promissory note, bond or other instrument. In North Carolina, a deed of trust or mortgage acts as a conveyance of the real estate. Upon repayment of the debt or performance of the obligation, the conveyance becomes void. If the grantor fails to repay the debt, fails to perform its obligations under the loan documents, or violates the terms of the deed of trust or mortgage, then a foreclosure sale is authorized.

Deed of Trust versus Mortgage. Under a deed of trust, the borrower (called the "grantor") conveys legal title to the real estate to a third party (called the "trustee") to hold for the benefit of the lender (called the "beneficiary") until the loan is repaid. Upon repayment of the loan, the trustee cancels the deed of trust and thereby restores title to the borrower without the necessity of a reconveyance. Under a mortgage, the borrower (called the "mortgagor") conveys the real estate to the lender (called the "mortgagee") as security for the debt. In North Carolina, certain limitations exist on foreclosure of a mortgage under a power of sale foreclosure. (See Subtopic - Foreclosure).

Priority of a Deed of Trust. The priority of a deed of trust is established by the time of recordation (and not by the order in which documents are recorded). Special care should be given when two deeds of trust are recorded in the same transaction. If two deeds of trust on the same real estate are recorded at the same

time, they are of equal priority. Therefore, title companies will take an exception in Schedule B for the deed of trust which is not being insured, unless:

1. The deed of trust which is supposed to be second in priority (the "junior deed of trust") contains language saying it is intended to be subordinate or second in priority to the insured deed of trust; or

2. A subordination agreement was recorded sometime after the deeds of trust subordinating the junior deed of trust to the insured deed of trust.

If there is subordination language, or a subordination agreement was recorded, the junior deed of trust will be listed as a subordinate matter in the policy. (For further priority discussion see Subtopic - Future Advances).

Variable Rate Mortgage: A "variable rate mortgage" is another term for an "adjustable rate mortgage" and is essentially a deed of trust that secures a loan whose interest rate changes based on changes in the "prime rate" of interest. In the past, the loan documents on a variable rate loan had to meet fairly strict requirements or the loan could be deemed unenforceable or the lender could lose the priority of its deed of trust. In recent years, however, these requirements have been greatly reduced. An ALTA Endorsement 6 is often requested and issued with a variable rate mortgage (See Residential Endorsements).

A Negative Amortization loan is another form of variable rate mortgage. A Negative Amortization loan is one where the initial payments are insufficient to pay the variable rate interest accruing, at least in the earlier stages. Under the terms of the deed of trust Negative Amortization Rider, the interest shortage is added to principal (the "negative amortization"), increasing the original loan amount to the higher maximum amount after the allowed negative amortization. For example, the monthly payments in the early yearsof the loan may be $850, while the interest accruing each month is $1,000. This causes the principal amount of the loan to increase by $150 per month. Therefore, the policy should be issued in the higher maximum amount, and the ALTA Endorsement 6.2 (Variable Rate Mortgage – Negative Amortization) should be used.

Modification of a Deed of Trust: The lender and borrower may negotiate new terms during the life of the deed of trust. For the new terms to be enforceable against third parties, a modification of deed of trust executed by both lender and borrower must be recorded. When the terms of the loan are significantly altered, an argument can be made that the lender and borrower have terminated the original loan and created a new loan, and that the existing deed of trust should only be given priority from the date of the new loan/modification. Therefore, lenders often want the loan policy endorsed to insure that the modification made was not so significant as to cause their deed of trust to lose its priority. Some modifications, such as increasing the amount of the deed of trust, will change the priority. Other modifications, such as a minor change to the interest rate, will not change the priority.

An extension of a balloon maturity mortgage was an impermissible preference until the revisions of the Bankruptcy Ref. Act of 1994 in 10/22/94. Historically, mere extensions have not been treated as novations or new mortgage. However, if other changes are made such that the nature and terms of the mortgage are really a different loan than originally, this would constitute a novation, giving priority to interim mechanics' liens, etc. *See* McNeary's Arborists, Inc. v. Carley Capital, 103 N.C.App. 650, 406 S.E.2d 644 (1991).

Assignment of a Deed of Trust: Lenders frequently sell promissory notes/loan agreements and assign the securing deeds of trust. In order to issue a loan policy or endorse a loan policy which insures the assignee, the assignment of deed of trust must be executed by the beneficiary of the deed of trust and

should be recorded. The Assignment information will be shown in Schedule A after the insured deed of trust. Preferably, the effective date of the policy should remain the date of recording of the deed of trust. If the lender requests that the effective date be later than the date of recording of the deed of trust, then the attorney must update the title and the endorsement must include any intervening matters.

Purchase Money Deed of Trust: The Purchase Money Deed of Trust ("PMDT") is a deed of trust which secures a loan, the funds from which were used solely to purchase real estate. Most "purchase money" deeds of trust are given to third party lenders a the time the purchaser purchases the property. But they can also be to the seller of the property or some other individual.

The significance of the PMDT is that it can give the lien of the deed of trust priority over preexisting judgments and liens against the purchaser. It also has priority over the marital interests of the purchaser's spouse, so long as the spouse is not a named grantee in the conveyance. (N.C.G.S. §39-13) This means that the judgments against the purchaser do not have to be satisfied and the spouse does not have to sign a purchase money deed of trust for property held in the other spouse's name in order for us to insure the priority of the loan. The benefits of a PMDT are at least partially lost if the loan is part purchase money and part something else (e.g., where loan funds are used to acquire land AND build improvements thereon). (See below and see related Topic "Construction Loans") In any event, these matters do attach to the owner's interest and exceptions should be taken in the owner's policy.

This instant priority for a PMDT relies upon the doctrine of instantaneous seisin. Instantaneous seisin is a legal fiction which provides that when a deed and PMDT are executed, delivered and recorded as part of the same transaction, the title conveyed by the PMDT attaches the instant the vendee acquires title and constitutes a lien superior to all others. This means that the PMDT be recorded in the "same transaction" as the deed.

The courts have provided that the "same transaction" occurs when the deed and PMDT are recorded at the same time (not necessarily at the same minute), but not when there are two weeks between the recordings. Where the actual cut off time is between the same time and two weeks is anybody's guess. While the courts have not specifically defined what is meant by "same transaction", a good rule of thumb is that if there be nothing recorded between the deed and PMDT, then they may be considered part of the "same transaction".

One twist to look out for involves a PMDT that is also a construction loan. In Dalton Moran Shook,Inc v. Pitt Development Company, 113 N.C. App. 707, 440 S.E.2d 585 (1994), the Court of Appeals held that the purchase money portion of the loan received priority under instantaneous seisin, but that the future advances for the construction portion of the loan did not receive priority and were subject to prior liens against the purchaser. Title companies have to except to these prior liens in this situation. As an example, in the Dalton Moran Shook case, the purchaser's architect began work prior to the purchaser taking title. Though paid from time to time, their entire lien related back to prior to the purchaser taking title. So when the purchaser did not pay the architect, the architect's lien was subordinate to the purchase money portion of the deed of trust, but had priority over the construction loan advances under the same deed of trust!

In review, a PMDT can give a lender priority over prior judgments and liens against the purchaser and can alleviate the requirement that the spouse sign the PMDT when the property is held only in the name of the other spouse. However, the following exceptions apply:

1. The instruments must be recorded as part of the same transaction. Childers v. Parker's, Inc., 274 N.C. 256, 162 S.E.2d 481 (1968).

2. The purchase money mortgage must not have been intentionally made a subordinate lien to a construction lien. Carolina Builders Corporation v. Howard-Veasey Homes, Inc., 324 S.E.2d 626, 72 N.C.App. 224 (1985).

3. The proceeds of the purchase money lien must actually be used for the purchase of the property. Slate v. Marion, 408 S.E.2d 189, 104 N.C.App. 132 (1991).

4. The lien has priority if and only to the extent that it is used for purchase, and not future improvement, of the property. Dalton Moran Shook v. Pitt Development Co., 113 N.C. App. 707, 710, 440 S.E.2d 585, 588 (1994)

Cancellation/Release: Obtaining a proper cancellation or release of a recorded deed of trust has become the most consistent headache of the title industry. In North Carolina, the closing attorney will pay off the existing debt due under a promissory note and request that the lender cancel the deed of trust. Unfortunately, for numerous reasons, the cancellation step often falls through the cracks, and the deed of trust remains of record.

Releases: Release fees should be obtained in writing if at all possible (especially if the lender is someone with whom you have not had a good relationship and who you trust). Obviously, if the lender does not want to release your tract when they actually receive your instructions and money, and the developer's loan documents do not have a specific release requirement in their loan documents (whether or not they are in default), your release fee may be at risk. The Trustee under the deed of trust is the person (or entity) with title to the real estate. The trustee is given the broad authority to cancel the lien upon verification that the debt has been paid. However, the Trustee's authority to unilaterally give releases of portions of the property is more limited, or nonexistent. Browne v. Davis, 109 N.C. 23, 13 S.E. 703 (1891)); Woodcock v. Merrimon, 122 N.C. 7313, 30 S.E. 321 (1898).

Release Deed: A release deed acts as a reconveyance to the borrower of the real estate interest conveyed by the deed of trust. The trustee must execute the release deed, along with the beneficiary, as title is considered to be with the trustee under a deed of trust. The advantage of a release deed is that it can release a portion of the secured property without the debt being satisfied.

Insuring over a Deed of Trust which is Paid Off at the Subject Closing: If the final opinion of the certifying attorney indicates that a deed of trust was paid off at the time of closing, title companies can issue a policy without exception for said deed of trust, even though it is not yet canceled of record.

Insuring over a Deed of Trust which is not being paid-off at the subject closing: Often a prior uncanceled deed of trust appears in the chain of title. The owner states that the deed of trust has previously been paid off and is inactive. The title insurer may be willing to insure over the deed of trust, if provided with sufficient evidence that the deed of trust has been paid off. Some of the things you can do to help the underwriting counsel make their decision are as follows:

1. Ask if the borrower or the attorney who was supposed to pay off the loan have a payoff letter, copy of the payoff check or a copy of the closing statement showing the loan being paid off?

2. Obtain from the current closing attorney a copy of the uncanceled deed of trust. We will generally insure if 15 years have passed since the maturity date shown on the deed of trust under N.C.G.S. 45-37(b).

Method of Cancellation: Please see "Satisfactions, Recordings, Re-recordings, Indexing and More Under the New North Carolina Mortgage Satisfaction Act" and "Deed of Trust Cancellation & Release – Commonly Used Methods in North Carolina (N.C.G.S. 45-37, revised effective 10-1-05)" (with links to appropriate forms) on-line at http://www.northcarolina.ctt.com/articles.asp --> Deeds of Trust

Subordination Agreements: As lenders desire to have first priority position on title to real estate, it is often necessary that a prior interest in the real estate be subordinated to the proposed insured deed of trust. A prior interest in real estate may be made subordinate (junior) to another interest by the act of the owner of the prior interest. If the interest is subordinated, it can be noted as a subordinate item referencing the recorded subordination agreement, rather than a prior exception, in Schedule B of the policy. If an interest is to be subordinated at closing, then a requirement must be included in schedule B section 1 of the commitment for the recordation of a subordination agreement prior to removing the interest as an exception in schedule B section 2.

Subordination of a Prior Deed of Trust: A prior deed of trust in the title chain may be subordinated by having the beneficiary on the prior deed of trust execute and record a subordination agreement. The subordination agreement must sufficiently identify the prior deed of trust and the new deed of trust, and must include terms which state the maximum amount of the new loan and the maximum rate of interest permitted on the new loan.

Subordination of a Prior Lease: A prior lease will often exist in the title chain to the real estate which is to be insured. The lender and the lessee (tenant) may enter into a Subordination Non-Disturbance and Attornment Agreement ("SNDA Agreement"). In the SNDA agreement each party acknowledges the other party's interest in the real estate. If the SNDA agreement contains language which subordinates the lease to the deed of trust, then the lease may be shown as a subordinate matter on schedule B 2 of the policy.

Hypothecated Security (Deed of Trust given to secure the debt of another): Frequently, we are asked to insure a deed of trust in which the owner/grantor is not the borrower under the promissory note. This usually occurs when an owner agrees to allow their real estate to be used as security for a loan to a family member or to the owner's business entity.

The Problem: A potential problem exists as a deed of trust must be based upon valid consideration. The owner/grantor under the above scenario does not receive the proceeds of the loan, so there is a question of receipt of valid consideration. Failure of consideration could prevent the lender from foreclosing and result in a claim on the policy.

The Solution: In the requirements section of the commitment require that a hypothecated security addendum (Sample Form attached as Exhibit A) be executed by the owner/grantor, attached to the deed of trust, and recorded with the deed of trust, whenever possible. If not, the title company may request that the attorney provide information about the consideration or benefit being received by the property owner for providing their property as security for the debt of another.

Future Advances and Equity Lines of Credit:

A future advances deed of trust is a deed of trust which is intended to secure repayment of funds loaned after it is executed, recorded and delivered to the lender. North Carolina law (N.C.G.S. § 45-68) requires that the future advances deed of trust state that (1) it is given wholly or partly secure future obligations which may be incurred thereunder, (2) the present and maximum principal amounts, including present and future obligations, which may be secured at one time, and (3) the period within which such future obligations may be incurred, which shall not be longer than 15 years. In North Carolina, we generally see two types of future advances deeds of trust:

1. Construction Loans - This is a future advances deed of trust in which advances are made during the construction of a building on the property. Upon completion of the construction, the deed of trust is often converted to a permanent deed of trust, so that there will be no new future advances. (See related Topic "Construction Loans")

2. Revolving Credit Lines (other than Equity Lines of Credit under N.C.G.S. 45-81 *et seq.)*- Lender agrees to make advances up to a certain limit. Thereafter, further advances will be made only to the extent that the borrower pays back the sums already loaned.

An Equity Line of Credit agreement may provide for additional notes to be secured by the recorded deed of trust up to the maximum "agreed aggregate limit" shown on the deed of trust. Payments may be applied, even to full payment of the entire balance, but the loan remains outstanding as does the lien until the borrower specifically *requests in writing* that the payment represent satisfaction ("freezing") of the loan and cancellation of the lien. (N.C.G.S. 45-81(c)).

Priority: As long as the above described statutory requirements are met, the future advances deed of trust will secure repayment with the same priority as if the funds were loaned on the the date of recordation. (An ALTA 14, 14.1 or 14.2, as appropriate to the particular transaction, should be included in the loan policy.)

Pending Disbursements Exception: A pending disbursements exception must be included in schedule B of our loan policy, as we need to clearly limit liability to the amounts actually disbursed under a future advances deed of trust.

Revolving Credit Endorsement: Lenders will often request a revolving credit endorsement to a loan policy insuring a future advances deed of trust. If the future advances deed of trust satisfies the North Carolina requirements (above), then the endorsement can be given.

Freezing and Cancellation: It is important to note that a revolving credit/equity line must not only be paid off, but *also canceled of record*. Failure to cancel the revolving credit/equity line deed of trust allows the borrower to continue to receive funds under said deed of trust. This can occur even though the borrower no longer owns the secured property. This is a frequent source of claims.

EXHIBIT: SUGGESTED HYPOTHECATED SECURITY ADDENDUM

ADDENDUM TO DEED OF TRUST FROM _____TO _____, TRUSTEE FOR_____, BENEFICIARY.

This Deed of Trust is given in the form of hypothecated security in that it is given to secure the debt of another, to wit: the indebtedness evidenced by the Promissory Note dated_____, in the amount of $_____ which is made and delivered by _____(hereinafter referred to as "Borrower") to and for the benefit of Beneficiary. _____(hereinafter referred to as "Owner") will derive a material and direct benefit from the loan evidenced by the note, and in accordance therewith, Owner agrees that such interest and benefit are sufficient consideration to support the Deed of Trust. In the event of a default by Borrower under the Note, Owner expressly acknowledges, covenants, and agrees that Beneficiary shall have all rights and remedies as set forth herein for default just as if Owner had executed the Note. Further, in the event of default under the Note, it shall likewise be deemed an event of default hereunder giving rise to all rights and remedies as set forth herein for default. Owner expressly agrees that, upon such default, Beneficiary may elect to enforce any rights and remedies which it may have under this Deed of Trust. The foregoing provisions are set forth and made by Owner as an inducement to Beneficiary to enter into the loan transaction secured hereby.

_____(Seal)
John Doe, Borrower

_____(Seal)
Jane Doe, Borrower