

IN THE SUPREME COURT OF FLORIDA

\_\_\_\_\_  
CASE NO. 66712  
\_\_\_\_\_

**FILED**  
SID J. WHITE  
APR 18 1985  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

PIONEER NATIONAL TITLE INSURANCE COMPANY

Petitioner

VS.

FOURTH COMMERCE PROPERTIES CORPORATION

Respondent  
\_\_\_\_\_

ON REVIEW FROM THE FOURTH DISTRICT COURT OF APPEAL

\_\_\_\_\_  
AMICUS CURIAE BRIEF WITH APPENDIX FOR AND ON BEHALF OF  
ATTORNEYS' TITLE INSURANCE FUND

\_\_\_\_\_  
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STATEMENT OF THE CASE AND FACTS

Attorneys' Title Insurance Fund adopts the Statements of the Case and Facts recited in the Peitioner's brief.

The questions certified to this court by the Fourth District Court of Appeal of Florida as matters of great public importance are:

QUESTION I

IS AN INSURER UNDER A MORTGAGEE INSURANCE POLICY THAT INSURES AGAINST LOSS OR DAMAGE SUSTAINED OR INCURRED BY THE INSURED BY REASON OF THE INVALIDITY OR UNENFORCEABILITY OF THE LIEN OF THE INSURED MORTGAGE UPON THE ESTATE OR INTEREST INVOLVED OBLIGATED, IN A FORECLOSURE OF SAID MORTGAGE, TO PROVIDE A DEFENSE TO THE INSURED AGAINST THE CLAIM OF A DEFENDANT RAISED BY GENERAL DENIAL THAT THE INSURED MORTGAGE WAS EXECUTED BY THE FEE SIMPLE OWNER OF THE MORTGAGE PROPERTY?

QUESTION II

WAS THE CLAIM ASSERTED IN THIS CASE BY WAY OF A GENERAL DENIAL THAT THE INSURED MORTGAGE WAS EXECUTED BY THE FEE SIMPLE OWNER OF THE PROPERTY SUBJECT TO THE INSURED MORTGAGE LITIGATION FOUNDED UPON AN ALLEGED DEFECT, LIEN, ENCUMBRANCE, OR OTHER MATTER INSURED AGAINST BY THE POLICY IN QUESTION OBLIGATING THE INSURER TO PROVIDE A DEFENSE TO THE INSURED?

ARGUMENT

QUESTION I

IS AN INSURER UNDER A MORTGAGEE INSURANCE POLICY THAT INSURES AGAINST LOSS OR DAMAGE SUSTAINED OR INCURRED BY THE INSURED BY REASON OF THE INVALIDITY OR UNENFORCEABILITY OF THE LIEN OF THE INSURED MORTGAGE UPON THE ESTATE OR INTEREST INVOLVED OBLIGATED, IN A FORECLOSURE OF SAID MORTGAGE, TO PROVIDE A DEFENSE TO THE INSURED AGAINST THE CLAIM OF A DEFENDANT RAISED BY GENERAL DENIAL THAT THE INSURED MORTGAGE WAS EXECUTED BY THE FEE SIMPLE OWNER OF THE MORTGAGED PROPERTY?

The answer to Question 1 is no.

In a mortgage foreclosure action, a mortgagee has the burden of proving the allegations in the complaint. A general denial merely puts the allegations in issue. The object under the current Rules of Civil Procedure is to reach issues of law and fact in one affirmative and one defensive pleading. The issues in a cause are made solely by the pleadings. Hart Properties, Inc., v. Slack, 159 So.2d 236 (Fla. 1964).

A general denial of the allegations that the insured mortgage was executed by the fee simple owner of the mortgaged property puts that allegation in issue and the mortgagee has the burden of proving the allegation by submitting evidence to support the allegation. A general denial does not add a cost of litigation on an insured mortgagee. Although the mortgagee has obligated itself to pay attorneys fees, the mortgagor has the burden of the cost of the litigation under the provision of the mortgage.

The insured must prove an actual loss under the policy before it is entitled to compensation for the cost of prosecuting the foreclosure action. See Goode v. Federal Title and Insurance Corporation, 162 So. 2d 269 (Fla. 2d DCA 1964), for the necessity of an insured to prove actual loss or damage. If the evidence submitted to prove the allegation is

sufficient, the insured has suffered no loss. If not and the mortgage is determined to be invalid because of defects in its execution, the insurer would be liable for loss under the coverage of the policy. An insurer might be well advised to provide a competent prosecution of the foreclosure action to avoid a later loss, but there is no provision in the policy imposing a duty to do so.

The mortgagee title insurance policy does contain a provision that the insured

" . . . shall provide for the defense of an insured in all litigation consisting of . . . defenses . . . interposed against a foreclosure of the insured mortgage . . . to the extent that such litigation is founded upon an alleged defect . . . or other matter insured against by this policy."

This provision appears in the American Land Title Association Standard Loan Policy Form (as amended in 1970), which, after approval by the Insurance Commissioner of Florida, is used by the title insurers doing business in Florida and which is required by most Florida and national lenders. (copy appears in the Appendix).

As explained above, a general denial does not interpose a defense, but merely puts the allegations in issue which requires the insured to submit evidence to prove the allegations the cost of which is borne by the mortgagor as provided for in the mortgage. If a denial of an allegation in a complaint is construed as interposing a defense, title insurers would be liable for the cost of all prosecutions of mortgage foreclosure actions, because, under the Rules of Civil Procedure, a defendant shall admit or deny the allegations in the complaint, and, if without knowledge, shall so state and the statement operates as a

denial. See Fla. R. Civ. P. 1.110. There is no language in the title insurance policy which imposes on the title insurer the cost of the burden of proof in the prosecution of a mortgage foreclosure action. The defenses for which a defense must be provided under the policy are not the denials made under the Rules of Civil Procedure but defenses against the foreclosure action interposed by the defendant which Rule 1.110 (c) requires to be stated in short and plain terms. Even then the defense interposed must be one for which an insurer is liable under the policy before a duty to defend arises. See Louisville Title Ins. Co., v. Guerrad, 409 So.2d 514 (Fla. 5th DCA 1982).

The answer to Question I is no.



QUESTION II

WAS THE CLAIM ASSERTED IN THIS CASE BY WAY OF A GENERAL DENIAL THAT THE INSURED MORTGAGE WAS EXECUTED BY THE FEE SIMPLE OWNER OF THE PROPERTY SUBJECT TO THE INSURED MORTGAGE LITIGATION FOUNDED UPON AN ALLEGED DEFECT, LIEN, ENCUMBRANCE, OR OTHER MATTER INSURED AGAINST BY THE POLICY IN QUESTION OBLIGATING THE INSURER TO PROVIDE A DEFENSE TO THE INSURED?

The answer to Question II is no.

As explained in the answer to Question I, a denial made under the Florida Rules of Civil Procedure for the purpose of reaching the issues is not a defense interposed by a defendant in a mortgage foreclosure action which obligates a title insurer under the policy in question to provide a defense to the insured. No claim under the policy resulted from the general denial.

The above explanation should be sufficient to answer the question. However, the question affirmatively states that a claim was asserted in this case (under the policy) and then questions whether that claim was founded upon an alleged defect, lien, encumbrance or other matter insured against by the policy in question obligating the insurer to provide a defense to the insured. The claim asserted in this case was for the costs and attorney's fees incurred in the mortgage foreclosure. The costs and attorney's fees included not only the cost of proving the allegation in the complaint in the mortgage foreclosure that the mortgage was properly executed but also costs and attorney's fees for defending against affirmative defenses and claims by a defendant not the mortgagor for material misrepresentation which did not concern the validity of the mortgage and which were made after the effective date of the policy. Also included in the claim in this case were costs of defending ten affirmative defenses by that defendant all of which arose after the effective date of the policy and none of which concerned the

validity or priority of the mortgage, except the third affirmative defense which claimed a usurious rate of interest. The policy excepts from coverage a claim based on usury. In addition, the claim in this case included the cost of defending five counterclaims, all of which are based on acts occurring after the effective date of the policy, which acts did not involve the mortgage being foreclosed and were claimed to be false representations by the insured, to be fraud by the insured, to be misleading acts by the insured and to be intentional, willful and wanton disregard of counter-plaintiff's rights by the insured, all acts involving a contract of sale entered into after the effective date of the policy. Defects, liens, encumbrances or other matters attaching after the effective date of the policy are not insured against by the policy. Also, defects, liens, encumbrances, adverse claims, or other matters created by the insured claimants are excluded from coverage of the policy. The answer to the question is no.

Even if the general denial did interpose a defense which obligated the insurer to assume the proof of the proper execution of the mortgage, the obligation to defend did not extend to the ten affirmative defenses and five counter-claims which had nothing to do with the validity or priority of the mortgage. Under the terms of the policy a title insurer has no duty to provide for the defense of the insured in a mortgage foreclosure action when the defenses or claims interposed are not insured against by the policy. Under the claim in this case if the general denial had interposed a defense, which it did not, the only costs and attorney's fees owed by the insurer would have been those attributable to the costs and attorney's fees for proving the proper execution of the mortgage. Once the validity of the mortgage had been proved, the covered portions of the claim would have been eliminated from the action. However, since in the mortgage foreclosure action the general denial did not interpose a defense and the affirmative defenses and counter-claims were not covered by the policy, the answer to Question II is no.

## CONCLUSION

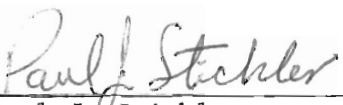
A denial of an allegation in a complaint in an action to foreclose a mortgage is not a defense interposed by a defendant and does not obligate a title insurer to provide for the defense of an insured under a provision of a title insurance policy that obligates a title insurer to provide for the defense of an insured for a defense interposed against the foreclosure of the insured mortgage by a defendant. A title insurer is not obligated to provide for the defense of an insured for affirmative defenses and claims interposed against the foreclosure of the insured mortgage by a defendant when the affirmative defenses and claims are not insured against by the policy. The obligation to provide for the defense of an insured for defenses and claims interposed by a defendant which are founded on matters insured against by the policy does not extend to other matters not insured against by the policy when the policy specifically provides that the duty to provide a defense extends only to matters insured against.

The answer to Question I is no.

The answer to Question II is no.

CERTIFICATE OF SERVICE

I CERTIFY that copies of the foregoing have been furnished to J. A. Plisco, 2875 South Ocean Blvd., Suite 213, Palm Beach, Florida 33480; Larry Klein, Suite 201, Flagler Center, 501 South Flagler Drive, West Palm Beach, Florida 33401; Thomas D. DeCarlo, Gunster, Yoakley, Criser & Stewart, P.A., P. O. Box 71, Palm Beach, Florida 33480; and Peter Guarisco, 2003 Apalachee Parkway, Tallahassee, Florida 32301.

  
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Paul J. Stichler  
Attorney

APPENDIX TO BRIEF OF AMICUS CURIAE

ATTORNEYS' TITLE INSURANCE FUND

Mortgagee Title Insurance Policy - coverage of American Land Title Association Loan Policy - 1970 - Amended 10/17/70.

*MORTGAGEE TITLE INSURANCE POLICY*

# **Attorneys' Title Insurance Fund**

*ORLANDO, FLORIDA*

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS CONTAINED IN SCHEDULE B AND THE PROVISIONS OF THE CONDITIONS AND STIPULATIONS HEREOF, ATTORNEYS' TITLE INSURANCE FUND, a business trust, herein called The Fund, insures, as of the Effective Date of policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorneys' fees and expenses which The Fund may become obligated to pay hereunder, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested otherwise than as stated therein;
2. Any defect in or lien or encumbrance on such title;
3. Lack of a right of access to and from the land;
4. Unmarketability of such title;
5. The invalidity or unenforceability of the lien of the insured mortgage upon said estate or interest except to the extent that such invalidity or unenforceability, or claim thereof, arises out of the transaction evidenced by the insured mortgage and is based upon (a) usury, or (b) any consumer credit protection or truth in lending law;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Any statutory lien for labor or material which now has gained or hereafter may gain priority over the lien of the insured mortgage, except any such lien arising from an improvement on the land contracted for and commenced subsequent to the Effective Date of policy not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Effective Date of policy the insured has advanced or is obligated to advance; or
8. The invalidity or unenforceability of any assignment, shown in Schedule A, of the insured mortgage or the failure of said assignment to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

*In Witness Whereof*, ATTORNEYS' TITLE INSURANCE FUND has caused this policy to be signed and sealed in its name by its President and Executive Secretary, by direction of its Board of Trustees, to become binding when countersigned by a member of The Fund.



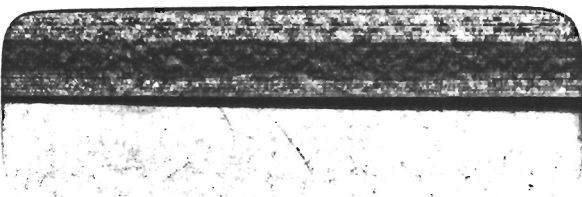
Attorneys' Title Insurance Fund

By

*Paul B. Comstock*

Paul B. Comstock

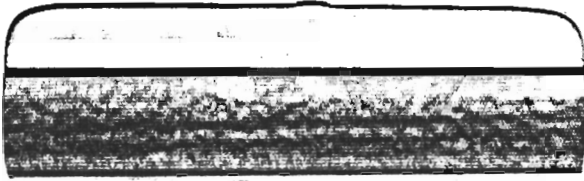
President and Executive Secretary



**SERIAL**

**MP-**

**SPECIMEN**



## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy:

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Effective Date of policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to The Fund and not shown by the public records but known to the insured claimant either at Effective Date of policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to The Fund prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to the Effective Date of policy (except to the extent insurance is afforded herein as to any statutory lien for labor or materials).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Effective Date of policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

## CONDITIONS AND STIPULATIONS

### 1. Definition of Terms

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A. The term "insured" also includes (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of such indebtedness (reserving, however, all rights and defenses as to any such successor who acquires the indebtedness by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin or corporate or fiduciary successors that The Fund would have had against the successor's transferor), and further includes (ii) any governmental agency or instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing said indebtedness, or any part thereof, whether named as an insured herein or not, and (iii) the parties designated in paragraph 2(a) of these Conditions and Stipulations.

(b) "insured claimant": an insured claiming loss or damage hereunder.

(c) "knowledge": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records.

(d) "land": the land described, specifically or by reference in Schedule A, and improvements affixed thereto which by law constitute real property; provided, however, the term "land" does not include any property beyond the lines of the area specifically described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall

modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": those records which by law impart constructive notice of matters relating to said land.

### 2. (a) Continuation of Insurance after Acquisition of Title

This policy shall continue in force as of Effective Date of policy in favor of an insured who acquires all or any part of the estate or interest in the land described in Schedule A by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage, and if the insured is a corporation, its transferee of the estate or interest so acquired, provided the transferee is the parent or wholly owned subsidiary of the insured; and in favor of any governmental agency or instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage; provided that the amount of insurance hereunder after such acquisition, exclusive of costs, attorneys' fees and expenses which The Fund may become obligated to pay, shall not exceed the least of:

- (i) the amount of insurance stated in Schedule A;
- (ii) the amount of the unpaid principal of the indebtedness as defined in paragraph 8 hereof, plus interest thereon, expenses of foreclosures and amounts advanced to protect the lien of the insured mortgage and secured by said insured mortgage at the time of acquisition of such

## CONDITIONS AND STIPULATIONS (continued)

- estate or interest in the land; or
- (iii) the amount paid by any governmental agency or instrumentality, if such agency or instrumentality is the insured claimant, in the acquisition of such estate or interest in satisfaction of its insurance contract or guaranty.

### (b) Continuation of Insurance after Conveyance of Title

The coverage of this policy shall continue in force as of Effective Date of policy in favor of an insured so long as such insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from such insured, or so long as such insured shall have liability by reason of covenants of warranty made by such insured in any transfer or conveyance of such estate or interest; provided, however, this policy shall not continue in force in favor of any purchaser from such insured of either said estate or interest or the indebtedness secured by a purchase money mortgage given to such insured.

### 3. Defense and Prosecution of Actions – Notice of Claim To Be Given by an Insured Claimant

(a) The Fund, at its own cost and without undue delay, shall provide for the defense of an insured in all litigation consisting of actions or proceedings commenced against such insured, or defenses, restraining orders or injunctions interposed against a foreclosure of the insured mortgage or a defense interposed against an insured in an action to enforce a contract for a sale of the indebtedness secured by the insured mortgage, or a sale of the estate or interest in said land, to the extent that such litigation is founded upon an alleged defect, lien, encumbrance, or other matter insured against by this policy.

(b) The insured shall notify The Fund promptly in writing (i) in case any action or proceeding is begun or defense or restraining order or injunction is interposed as set forth in (a) above, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which The Fund may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If such prompt notice shall not be given to The Fund, then as to such insured all liability of The Fund shall cease and terminate in regard to the matter or matters for which such prompt notice is required; provided, however, the failure to notify shall in no case prejudice the rights of any such insured under this policy unless The Fund shall be prejudiced by such failure and then only to the extent of such prejudice.

(c) The Fund shall have the right at its own cost to institute and without undue delay prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, and The Fund may take any appropriate action under the terms of this policy, whether or not it shall be liable thereunder, and shall not thereby concede liability or waive any provisions of this policy.

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

(e) In all cases where this policy permits or requires The Fund to prosecute or provide for the defense of any action or proceeding, the insured hereunder shall secure to The Fund the right to so prosecute or provide defense in such action or proceeding, and all appeals therein, and permit The Fund to use, at its option, the name of such insured for such purpose. Whenever requested by The Fund, such insured shall give The Fund all reasonable aid in any such action or proceeding, in effecting settlement,

securing evidence, obtaining witnesses, or prosecuting or defending such action or proceeding, and The Fund shall reimburse such insured for any expense so incurred.

### 4. Notice of Loss – Limitation of Action

In addition to the notices required under paragraph 3(b) of these Conditions and Stipulations, a statement in writing of any loss or damage for which it is claimed The Fund is liable under this policy shall be furnished to The Fund within 90 days after such loss or damage shall have been determined and no right of action shall accrue to an insured claimant until 30 days after such statement shall have been furnished. Failure to furnish such statement of loss or damage shall terminate any liability of The Fund under this policy as to such loss or damage.

### 5. Options To Pay or Otherwise Settle Claims

The Fund shall have the option to pay or otherwise settle for or in the name of an insured claimant any claim insured against or to terminate all liability and obligations of The Fund hereunder by paying or tendering payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred up to the time of such payment or tender of payment by the insured claimant and authorized by The Fund. In case loss or damage is claimed under this policy by an insured, The Fund shall have the further option to purchase such indebtedness for the amount owing thereon together with all costs, attorneys' fees and expenses which The Fund is obligated hereunder to pay. If The Fund offers to purchase said indebtedness as herein provided, the owner of such indebtedness shall transfer and assign said indebtedness and the mortgage and any collateral securing the same to The Fund upon payment therefor as herein provided.

### 6. Determination and Payment of Loss

(a) The liability of The Fund under this policy shall in no case exceed the least of:

- (i) the actual loss of the insured claimant; or
- (ii) the amount of insurance stated in Schedule A, or if applicable, the amount of insurance as defined in paragraph 2(a) hereof; or
- (iii) the amount of the indebtedness secured by the insured mortgage as determined under paragraph 8 hereof, at the time the loss or damage insured against hereunder occurs, together with interest thereon.

(b) The Fund will pay, in addition to any loss insured against by this policy, all costs imposed upon an insured in litigation carried on by The Fund for such insured, and all costs, attorneys' fees and expenses in litigation carried on by such insured with the written authorization of The Fund.

(c) When liability has been definitely fixed in accordance with the conditions of this policy, the loss or damage shall be payable within 30 days thereafter.

### 7. Limitation of Liability

No claim shall arise or be maintainable under this policy (a) if The Fund, after having received notice of an alleged defect, lien or encumbrance insured against hereunder, by litigation or otherwise, removes such defect, lien or encumbrance or establishes the title, or the lien of the insured mortgage, as insured, within a reasonable time after receipt of such notice; (b) in the event of litigation until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured, as provided in paragraph 3 hereof; or (c) for liability voluntarily assumed by an insured in settling any claim or suit without prior written consent of The Fund.

### 8. Reduction of Liability

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce



## CONDITIONS AND STIPULATIONS (continued)

the amount of the insurance pro tanto; provided, however, such payments, prior to the acquisition of title to said estate or interest as provided in paragraph 2(a) of these Conditions and Stipulations, shall not reduce pro tanto the amount of the insurance afforded hereunder except to the extent that such payments reduce the amount of the indebtedness secured by the insured mortgage.

Payment in full by any person or voluntary satisfaction or release of the insured mortgage shall terminate all liability of The Fund except as provided in paragraph 2(a) hereof.

(b) The liability of The Fund shall not be increased by additional principal indebtedness created subsequent to Effective Date of policy, except as to amounts advanced to protect the lien of the insured mortgage and secured thereby.

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

### 9. Liability Noncumulative

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount The Fund may pay under any policy insuring a mortgage hereafter executed by an insured which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

### 10. Subrogation Upon Payment or Settlement

Whenever The Fund shall have settled a claim under this policy, all right of subrogation shall vest in The Fund unaffected by any act of the insured claimant, except that the owner of the indebtedness secured by the insured mortgage may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness provided such act occurs prior to receipt by the insured of notice of any claim of title or interest adverse to the title

of the estate or interest or the priority of the lien of the insured mortgage and does not result in any loss of priority of the lien of the insured mortgage. The Fund shall be subrogated to and be entitled to all rights and remedies which such insured claimant would have had against any person or property in respect to such claim had this policy not been issued, and if requested by The Fund, such insured claimant shall transfer to The Fund all rights and remedies against any person or property necessary in order to perfect such right of subrogation and shall permit The Fund to use the name of such insured claimant in any transaction or litigation involving such rights or remedies. If the payment does not cover the loss of such insured claimant, The Fund shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss, but such subrogation shall be in subordination to the insured mortgage. If loss of priority should result from any act of such insured claimant, such act shall not void this policy, but The Fund, in that event, shall be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, lost to The Fund by reason of the impairment of the right of subrogation.

### 11. Liability Limited to this Policy

This instrument together with all endorsements and other instruments, if any, attached hereto by The Fund is the entire policy and contract between the insured and The Fund.

Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or any action asserting such claim shall be restricted to the provisions and conditions and stipulation of this policy.

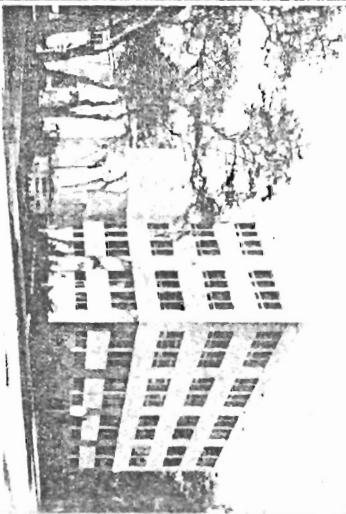
No amendment of or endorsement to this policy can be made except by writing endorsed hereon or attached hereto signed by either the President, a Vice President, or member of The Fund.

### 12. Notices, Where Sent

All notices required to be given The Fund and any statement in writing required to be furnished The Fund shall be addressed to its principal office at 32 West Gore Street, Post Office Box 2671, Orlando, Florida 32802.

MORTGAGEE  
TITLE INSURANCE  
POLICY

Attorneys'  
Title Insurance Fund  
ORLANDO, FLORIDA



OFFICES AT 32 W. GORE STREET  
ORLANDO, FLORIDA