

title underwriting for investors — faq

What has changed?

Due to nearly simultaneous pressure from all 3 of our underwriters (and we presume all other major underwriters share a similar view) we are now required to have assignment contracts signed by the seller. Although assignment fees are ultimately revealed in the HUD/ALTA statement at closing, underwriters now require that they be separately acknowledged presumably to make sure there is no doubt that sellers are aware that there is an assignment fee which could be more more easily glossed over at closing.

What is Clear Skies' new procedure?

We now require that orders involving an assignment contract, have either:

- 1.A signature of the seller on the assignment contract (electronic signatures like DOCUSIGN are acceptable for this document).
- 2.A document that is separate from the HUD/ALTA statement that provides very clear wording that the seller is acknowledging that there is an assignment of contract taking place and what the amount of the assignment fee is (electronic signatures are acceptable for this document).

What are my alternatives?

While we are careful to remain mindful of our underwriters' new requirements, we understand that there may be investors who may want to explore other alternatives. We encourage you to reach out to your attorney to evaluate what options are a good fit for you. If you don't have an attorney, we would be happy to refer one to you.

Are there other underwriters out there that we could insure with?

Possibly. Although we imagine that it is no coincidence that three of the largest underwriters, in a short span of time, all came to a similar decision on these matters.

Is this a temporary guidance?

In short, this seems to be a general change of sentiment across the board since multiple underwriters have released similar messaging. Although we cannot tell the future, it seems like this may be more of a lasting change. Of course, we will be the first to let our clients know if there is some sort of reversal.

But the contract says it's assignable, can it still be used?

Standard Real Estate Contracts in New Jersey, by default, have the words “and/or assigns” next to the buyers name. Guidance by our underwriters clearly references these common contracts and others and reiterates that they are insufficient for their insurance guidelines, still leaving room for a seller to say they were misled or deceived.

Short Sales

It should be reiterated that Clear Skies Title will not be involved in the assignment or double closing of a short sale. It is our opinion that the bank approving the short sale is doing so under the impression that the reduction of their mortgage represents what all parties agree to is the actual value of the property. If the buyer knowingly has another buyer for a significantly higher value, this would contradict their representation to the bank approving the short sale and could potentially be construed as fraud. This could have a negative impact on all parties involved and cause the original mortgage to “snap back”. The one exception would be if the short sale bank is willing to sign/acknowledge the assignment contract.

“Blind HUDs”

The term “blind HUDs” refers to the HUD/ALTA form being created in a way that the buyer and seller see different versions of the form. It typically means that one version would only show the buyer side and the other, only the seller side. It is our opinion that a buyer or seller could say that they were intentionally misled or worse, defrauded, since it is customary that both parties sign the exact same version of the HUD/ALTA form. For this reason Clear Skies does not allow blind HUDs for any transactions where we are settlement agent. Recent language in the guidelines offered by several major underwriters including Fidelity and Westcor in October and November of 2020, reiterate that Blinds HUDs are not acceptable to them.