



TO: Alliant National Texas Agents
DATE: November 14, 2025
SUBJECT: ***Insuring transactions involving federally recognized Native American Indian Tribes***

Underwriting has received various requests to insure purchase, lease and loan transactions involving federally recognized Native American Indian Tribes ("Tribe") or related subsidiary entities ("Tribal Entity") that offer unique and non-traditional pathways for home ownership. These pathways include but are not limited to programs involving shared ownership, lease to own, options to buy or earned equity structures.

Underwriting requirements: While these pathways embody creative alternatives for homeownership, there are underwriting risks related to jurisdictional issues (due to the lack of waiver of sovereign immunity to federal and state courts), recharacterization issues (due to the lease agreement being deemed a mortgage causing the "tenant" to be the actual owner) and possible homestead issues (due to finance issues if the tenant buys out the lease). Therefore, if you are asked to insure a transaction in which a Tribe or Tribal Entity is involved, you must seek underwriting approval of the transaction prior to insuring, and the following requirement must be included in Schedule C of your title commitment;

The proposed insured for the Owner or Loan Policy appears to be an entity of Native American tribe (insert name of Indian Tribe). Company requires the Tribe, for itself and any Tribal Entity involved, to:

- 1. Waive any sovereign immunity from suit (and any defense based thereon) that the Insured may possess; and***
- 2. Waive any defense due to failure to exhaust remedies in the courts of the Tribe that the Insured may possess; and***
- 3. Consent to jurisdiction over the Insured in the federal courts of the United States of America and the courts of the State of Texas; and***
- 4. Consent to venue for the Insured in the federal courts of the United States of America and the courts of the State of Texas.***

If the jurisdictional and sovereign immunity hurdles are overcome, underwriting will require a review of the details of your specific transaction to determine its insurability. Underwriting may have additional exceptions with regard to the Deed of Trust or Mortgage such as unenforceability, recharacterization, etc., as well as exceptions to the various documents involved in the transaction. Examples of such exceptions include:

Exceptions

1) Owner's Policy

- *Any defect, lien, encumbrance, or claim that Title is vested other than in the Insured, due to allegation or determination that any or all of the documents entered into between ____ **[insert name of Tribe or Entity]** Homebuyer Earned Equity Agency and **[insert name of the tenant]**, such as the (i) Residential Lease Agreement, (ii) Long Term Purchase Agreement, and (iii) Option to Purchase, are recharacterized as a mortgage or other form of security instrument.*
- *Terms and conditions of the Residential Lease Agreement between ____ **[insert name of Tribe or Entity]** Homebuyer Earned Equity Agency and **[insert name of the tenant]**.*
- *Terms and conditions of the Long Term Purchase Agreement between ____ **[insert name of Tribe or Entity]** Homebuyer Earned Equity Agency and **[insert name of the tenant]**.*
- *Option to purchase in favor of **[insert name of tenant]**.*
- *Terms and conditions of any down payment assistance program or earned equity program agreement between ____ **[insert name of Tribe or Entity]** Homebuyer Earned Equity Agency and ____ **[insert name of Entity]**.*
- *Any interest (equitable or otherwise) of **[insert name of tenant]** in and to the Land created by any document between **[insert name of tenant]** and ____ **[insert name of Tribe or Entity]** Homebuyer Earned Equity Agency.*

2) Loan Policy

- *Any claim of invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage based on the application of a Tribe's law resulting from the failure of the Insured Mortgage to specify State law as the governing law with respect to the lien of the Insured Mortgage*

As always, please contact us with any questions or comments.