**Outside Counsel Bulletin**

**To:** **Outside Counsel for Commercial, Commercial Real Estate, Private Wealth Management and CIB Lending Transactions**

**From: SunTrust Internal Legal Commercial Lending Team**

**Date: September 21, 2015**

**Subject: Flood Insurance Regulatory Compliance**

The SunTrust Internal Legal Commercial Lending Team would like to take this opportunity to both update and remind you of our expectations with respect to your role in ensuring SunTrust Bank’s compliance with the National Flood Insurance Reform Act of 1994 and related legislation (the “**Flood Laws**”).

Specifically, on each commercial lending transaction that is secured by improved real property[[1]](#footnote-1) (whether the improvements are existing or are to be constructed[[2]](#footnote-2)), SunTrust expects its outside counsel representing us on the transaction to:

1. Coordinate with SunTrust to ensure that a SunTrust Bank employee obtains a special flood hazard determination form (“**SFHDF**”) from SunTrust Bank’s flood vendor (CT Lien) which identifies whether the real property is located in a Special Flood Hazard Area (“**SFHA**”).[[3]](#footnote-3)  We will not accept a flood determination from any other provider.
2. Provide the appropriate notice to the borrower on a timely basis if the property is located in an SFHA and ensure that the borrower signs the notice. [[4]](#footnote-4) SunTrust requires that the notice must be signed and dated by the borrower at least ten (10) days prior to closing.
3. If applicable, verify that the borrower has provided acceptable evidence of appropriate flood insurance prior to closing the loan transaction.[[5]](#footnote-5)
4. Confirm with an appropriate SunTrust Bank employee that the SunTrust Flood Central Review Team (“**FCRT**”) has approved the flood documents for the transaction prior to closing, and that otherwise all required flood insurance compliance is complete.

*Land*

While land is not insurable, SunTrust does have flood requirements for land loans. SunTrust requires a SFHDF for land taken as collateral even when no subsequent construction is contemplated. If the SFHDF indicates that the land is in an SFHA, the borrower must be notified in accordance with the requirements discussed above.

*Additional Guidelines for Buildings in the Course of Construction*

If a structure is to be built in an SFHA, SunTrust has elected to require that the flood insurance be reviewed by FCRT and in place prior to vertical construction, after the slab or foundation has been completed. If there are buildings/structures on the land on which the new construction will begin, those buildings will require flood insurance if located on the collateral parcel at loan closing – even if demolition is scheduled for soon after closing.

*Private Flood Insurance Policies*

If a borrower has private flood insurance (as opposed to a National Flood Insurance Program (“**NFIP**”) policy), the Flood Laws require that SunTrust review the private policy to confirm that it complies with FEMA-prescribed criteria. **Going forward, we are no longer asking that our outside counsel complete the compliance review of private flood insurance policies.** Instead, the SunTrust FCRT will review all private flood insurance policies for compliance with FEMA regulations.[[6]](#footnote-6) **We do expect, however, that our outside law firms will confirm with an appropriate SunTrust employee working on the transaction that FCRT has reviewed and approved the private policy, before the transaction is closed.**

*Tying of Collateral Physical Address to Legal Description*

SFHDF’s are ordered based on the real property’s physical address. SunTrust is required to have evidence that clearly ties the legal description that will be used on our security instrument back to the physical address used to order the SFHDF. (This is required for all real estate collateral, regardless of flood zone.) This tie can be confirmed with a single document that contains both the physical address and the legal description; possible examples include: prior mortgage instrument; tax records; title commitment; survey. You can provide valuable assistance in the process by identifying to the SunTrust closer on your deal, early in the process, documents that establish this tie.

*MIRE Events*

Please keep in mind that flood compliance requirements must be satisfied each time we are **M**aking, **I**ncreasing, **R**enewing or **E**xtending a loan – these credit events are commonly referred to as MIRE events. Unlike SFHDF’s (which, in certain circumstances, may be reused for subsequent credit events), a notice to borrower cannot be re-used. A new notice to borrower must be signed and dated for each MIRE event.

*Personal Property*

Remember also that when a loan is secured by a building and its contents/personal property, and the building is located within an SFHA, the Flood Laws require that adequate contents flood insurance coverage be in place and maintained for the life of the loan.[[7]](#footnote-7)

The flood insurance compliance process takes time internally, so we encourage you to be mindful of that as you work on transactions for SunTrust. The consequences of a federally-regulated lender not following the exact and technical requirements of the Flood Laws can be quite serious. **Thus, we will not close a loan unless all Flood Laws have been followed, and you are not authorized to close a loan for SunTrust if you have not received confirmation from an appropriate SunTrust employee that the above-described procedures have been followed.** No part of the SunTrust flood compliance process can be waived.

We thank you for your continued partnership and assistance. If you have questions about this bulletin, please contact the following SunTrust internal legal partner, as applicable:

* For loans originated by the Commercial or Private Wealth Management lines of business:

Nick Cook - [Nick.Cook@SunTrust.com](mailto:Nick.Cook@SunTrust.com); (404) 827-6722

* For loans originated by the Commercial Real Estate line of business:

Jennifer Rentenbach – [Jennifer.Rentenbach@SunTrust.com](mailto:Jennifer.Rentenbach@SunTrust.com); (404) 532-0166

* For loans originated by CIB:

Nick Cook - [Nick.Cook@SunTrust.com](mailto:Nick.Cook@SunTrust.com); (404) 827-6722, or

Diane White - [Diane.S.White@SunTrust.com](mailto:Diane.S.White@SunTrust.com); (404) 813-0371

1. Flood regulatory compliance is required for all real estate taken as collateral, even if the real estate is taken an as abundance of caution (i.e., there is no credit reliance on the real estate). [↑](#footnote-ref-1)
2. It does not matter whether future improvements will be bank-financed or not; the flood insurance regulatory requirements apply regardless, if we will take a mortgage on the real property. [↑](#footnote-ref-2)
3. The SFHDF must be ordered in the name of the borrower, not in the name of the collateral owner (if different from the borrower). A loan with multiple co-borrowers requires a determination containing all co-borrower names. [↑](#footnote-ref-3)
4. If a transaction has multiple borrowers, the notice can be provided to and signed by any one of the borrowers. [↑](#footnote-ref-4)
5. Acceptable evidence of flood insurance includes: (i) a copy of the complete flood insurance policy, including jacket; (ii) a copy of the declarations page; or (iii) a copy of a flood insurance application signed by the borrower’s insurance agent, with a paid premium receipt for the first year. If a copy of a borrower’s check is used as the evidence of paid premium, the check copy must be presented by the issuing flood agent. Insurance certificates (ACORD forms), temporary declaration pages and notifications referred to as LexisNexis statements are **not** acceptable evidence of NFIP flood insurance. For private flood insurance policies, a complete copy of the policy is required for review. [↑](#footnote-ref-5)
6. A complete copy of the private insurance policy is required for this review. Note that review by FCRT may take up to two business days to complete. If the private policy does not meet all six FEMA-required criteria, the borrower will be required to purchase adequate NFIP flood insurance in order to close the loan/credit event at hand. [↑](#footnote-ref-6)
7. Please see the September 12, 2014 Outside Counsel Website Bulletin posted on the Commercial Loan Documentation Website for more information on this topic, related to loans originated by lines of business other than SunTrust’s Commercial Real Estate Line of Business (CRE). Where applicable, the borrower will be asked to complete a flood compliance contents certificate to aid us in determining the appropriate amount of contents insurance coverage. [↑](#footnote-ref-7)