



Photo: Scott Rothwell Photography

*You may be in first position today, but will you be in first tomorrow? Did you know that there's a policy that offers true "title" insurance for equity ownership in real property mezzanine loan transactions, insuring your first priority security interest in the pledged equity, with no post-policy exclusion?*

Read all about it here. And, visit [www.eagle9.com](http://www.eagle9.com) or call 800.700.1191 to learn more about First American's EAGLE 9<sup>®</sup> UCC Insurance Program.

As with any insurance contract, there are exceptions, exclusions, and conditions to coverage contained in the policy. Some coverages may not be available in your area, or for your transaction, due to legal, regulatory, or underwriting considerations. Please contact First American for further information. Depending on the states involved, First American's EAGLE 9<sup>®</sup> UCC Insurance Policies are issued through either First American Title Insurance Company and its subsidiaries, or First American Property & Casualty Insurance Company, members of The First American Corporation family of companies.



**The First American Corporation**

UCC DIVISION

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**EAGLE 9<sup>®</sup> UCC LENDER'S  
INSURANCE POLICY  
AND THE MEZZANINE ENDORSEMENT**

**A Higher Level of Protection for  
Mezzanine Lenders**



**The First American Corporation**

UCC DIVISION

# PROTECTION FOR MEZZANINE LOAN TRANSACTIONS

## THE ADVANTAGE OF A MEZZANINE ENDORSEMENT

A UCC Mezzanine Endorsement expands the coverage provided by the *EAGLE 9<sup>®</sup> UCC Lender's Insurance Policy*. The endorsement insures, by removing several of the exclusions from coverage, that the mezzanine borrower/pledgor owns the equity in the real property owning entity. It also insures the mezzanine lender as a "Protected Purchaser," and senior secured party with respect to the equity. Mezzanine lenders can now have peace of mind that their mezzanine loan is secured by the equity ownership of the real property owner. That's because First American's UCC Division offers equity "ownership" coverage with an *EAGLE 9<sup>®</sup> Lender's Policy*, when accompanied by a Mezzanine Endorsement.

## GETTING COVERAGE IS EASY

The *EAGLE 9<sup>®</sup> Lender's Policy*, when accompanied by a Mezzanine Endorsement, protects mezzanine lenders on multiple levels. It offers assurance that upon foreclosure, no adverse claims can be made against the pledged equity. It also insures the ownership of the equity, and commits First American to defending any challenge to the lien perfection and priority of the mezzanine lender. Finally, it provides indemnity coverage to the mezzanine lender for ownership of the pledged equity, ensuring that the:

- Equity interests are securities under Article 8, and investment property under Article 9 of the UCC
- Issuer has effectively "opted-in" to Article 8
- Mezzanine lender has a first priority security interest in the pledged equity
- Mezzanine lender is a "Protected Purchaser" under Article 8

First American can also insure the ownership of equity collateral that is a general intangible under Article 9. However, knowledgeable commercial lawyers, as a prudent banking practice, would not consider lending against equity as a general intangible, if the alternative of lending against the equity as investment property is available.

## REDUCE YOUR LEGAL FEES

An *EAGLE 9<sup>®</sup> Lender's Policy* with our Mezzanine Endorsement can reduce legal costs for your clients in multiple ways. First, it can lower up-front legal fees and costs in closing the mezzanine loan. Second, it cuts the cost of assigning the loan to the permanent lender by reducing the due diligence effort of the transferee.

## OBTAINING AN *EAGLE 9<sup>®</sup>* LENDER'S POLICY AND THE MEZZANINE ENDORSEMENT

First American makes the process of obtaining protection straightforward by requiring minimal documentation. All you need is a mezzanine loan agreement, mezzanine equity pledge agreement, and organizational documents from the mezzanine borrower/pledgor and the issuer of the pledge equity. Just follow these steps:

### STEP 1: OPT-IN TO ARTICLE 8 OF THE UCC

"Opting-in" is the simple process of adding a single sentence provision to the organizational document requiring the equity interests in the real property-owning entity to be governed by Article 8. "Opting-in" can occur at the closing of the mezzanine loan. However, this step isn't necessary if the pledged equity is common or preferred stock in a corporation, because the pledged equity is already a security under Article 8, and investment property under Article 9.

### STEP 2: OBTAIN AN ARTICLE 8 MATTERS PROXY

By obtaining an Article 8 Matters Proxy, the mezzanine lender will be acquiring a limited proxy from the mezzanine borrower. This ensures that the lender has the sole right to vote the pledged equity with respect to Article 8 matters. It's a crucial step, because most knowledgeable practitioners believe that an issuer can opt out of Article 8, and potentially convert the investment property pledged collateral back into a general intangible, with negative results for the lender. Furthermore, lenders are cautioned not to fund a mezzanine loan without an Article 8 Matters Proxy. The effect of the proxy may be obtained by a provision in the organizational document prohibiting an amendment to the opt-in provision—without the consent of the mezzanine lender.

### STEP 3: PERFECT YOUR SECURITY INTEREST BY CONTROL

Finally, obtain control perfection of the security interest of the mezzanine lender in the pledged equity, by either taking possession of certificated securities with appropriate endorsement, or through a tri-party control agreement with the issuer of the pledged equity for uncertificated securities. Given lender foreclosure leverage, certification of the investment property equity is preferred.



## IMPORTANT COVERAGE YOUR CLIENTS DESERVE

Offer your clients the protection of an *EAGLE 9<sup>®</sup> UCC Lender's Insurance Policy* and Mezzanine Endorsement. This valuable coverage offers true "title" insurance for equity ownership in real property mezzanine loan transactions. By utilizing the protections of a "Protected Purchaser" under Article 8 of the Uniform Commercial Code, the mezzanine lender can obtain insurance coverage of their priority security interest in the pledged equity collateral. The mezzanine lender also has the assurance that upon foreclosure, no adverse claim in the pledged equity can impact their interest. This coverage is provided **without** a post date of policy exclusion and **without** the requirement that the Insured verify the covered equity collateral in Schedule A of the policy.

For more information, call the UCC Division of First American today at 800.700.1191.

First American *IS* the UCC Insurance Company.