



First American Title

UNDERWRITING COMMUNICATION

Issued by

First American Title Insurance Company

NY-2018-003-Standard [Agency]

NA-2018-003-Standard

Title: **Bitcoin and other Cryptocurrency**
Written By: **New York Underwriting Department****
Date Issued: **February 13, 2018**

STANDARD

First American employees and title insurance agents must adhere to the following requirements, as applicable, for transactions involving Bitcoin or any other cryptocurrency (collectively, "Cryptocurrency"):

- **Escrow Services** – First American direct operations will not accept funds in Cryptocurrency or hold Cryptocurrency in escrow, whether connected with a real estate transaction or not.
- **Making or Taking Payments** – First American direct operations will not make payoffs, commission payments, or any other payments in Cryptocurrency, nor will First American accept payment for services or title premiums in Cryptocurrency.
- **Insuring Cryptocurrency Transactions** – Insuring Cryptocurrency real estate transactions presents special risks and requires separate underwriting approval. In this context, "real estate transactions" includes any real estate purchase, sale, or loan that is funded with Cryptocurrency.

Because First American will not conduct escrow services in Cryptocurrency, completing such transactions would necessitate utilizing outside escrow services or no escrow services at all (i.e. a direct transaction between the parties), and necessitate additional safeguards, including confirming receipt of payment, obtaining authorization to close/record, etc. Cryptocurrency transactions also raise concerns about IRS 1099-S reporting obligations¹, FinCEN reporting obligations¹, transfer tax calculations, and other issues. Before contacting underwriting for approval, be prepared to address all of these issues.

Separate underwriting approval is not required for transactions in which Cryptocurrency is converted to U.S. dollars prior to closing so that the closing may be conducted entirely in U.S. dollars. However, cash transactions must be processed according to existing rules governing "cash transactions."

¹ FinCEN considers cryptocurrency to be "currency" for purposes of the Geographic Targeting Orders

- **Closing Protection Letters** – Corporate Underwriting approval is required to issue a Closing Protection Letter (“CPL”) in connection with a Cryptocurrency real estate transaction.
- **Amount of Insurance** – The Amount of Insurance in a title insurance policy will not be expressed in a Cryptocurrency denomination. The Amount of Insurance must be consistent with regulatory requirements applicable in the relevant jurisdiction.

ADDITIONAL INFORMATION

In contrast to the coin and paper money of the United States², Cryptocurrency does not have legal tender status in any jurisdiction in the United States. Nevertheless, Cryptocurrency has become increasingly popular in recent years due to price appreciation, novelty, anonymity and a decentralized governing structure.³

Although Cryptocurrency has legitimate uses, it can also be used to finance illegal activity or evade anti-money laundering laws and regulations. As such, Cryptocurrency poses additional challenges for title insurance and escrow service providers beyond the often-cited problems of: (1) extreme price volatility relative to the U.S. dollar, (2) the difficulty of converting Cryptocurrency to U.S. dollars, and (3) the tax consequences associated with trading Cryptocurrency.⁴ Furthermore, like many taxing authorities, private parties, and lenders, First American lacks the infrastructure necessary to receive or disburse Cryptocurrency.

Recently, several news organizations have reported about Cryptocurrency real estate listings and successfully completed Cryptocurrency real estate transactions. However, many of these transactions utilized unusual or complicated maneuvers, such as converting the Cryptocurrency to U.S. dollars prior to the closing or transferring the sale proceeds outside of escrow. Although “true” Cryptocurrency real estate transactions are conceptually possible, they are extremely rare at this time.

Rest assured that First American will continue to update its policies and procedures as the operational, legal, and regulatory landscape surrounding Cryptocurrency evolves.

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² Government-sponsored currency is sometimes referred to as “fiat money” or “fiat currency.” That term is appropriate for legal tender that is not backed by a physical commodity (e.g. gold).

³ Cryptocurrency is often associated with blockchain technology because most Cryptocurrencies rely on blockchain technology to record information about Cryptocurrency transactions. However, blockchain and Cryptocurrency are not the same thing. A blockchain is a specific type of digital, decentralized or “distributed” ledger that can be used to record many types of information.

⁴ The Internal Revenue Service classifies Cryptocurrency as personal property for tax purposes. For additional information, see IRS Notice 2014-21: <https://www.irs.gov/pub/irs-drop/n-14-21.pdf>

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Contact Information for Questions:

Antonio Vozza, Esq.	(212) 381-6603	avozza@firstam.com
Patricia A. LaPorta, Esq.	(212) 381-6606	plaporta@firstam.com
Vincent L. Plaia, Esq.	(212) 381-6601	vplaia@firstam.com
Mitchell Gluck, Esq.	(212) 381-6602	mgluck@firstam.com
Antonio G. Vozza	(212) 381-6617	anvozza@firstam.com

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NOTE: This Underwriting Communication is intended for use by title issuing offices, title insurance agents and approved attorneys of First American Title Insurance Company and any reliance by any other person or entity is unauthorized.

NOTE TO AGENTS: While the scope of your agency is limited to the functions of underwriting and the issuance of title insurance policies on our behalf and does not include closing or escrow services, we sometimes provide information and recommendations with regard to your ancillary closing or escrow business as a courtesy to you. Moreover, some communications, depending on whether noncompliance could impact on liability under our policies or closing protection letters, should be considered directives. This Communication is being provided to you with those considerations in mind.

+++ This UWC should become a permanent part of your records to assure compliance with its requirements. *+++

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