5. TITLE EXAMINATION AND DISPOSITION OF OBJECTIONS

Title Insurance Disposition of Exceptions and Title Insurance Policies

Title Insurance

A purchaser or lender is responsible for making inquiry as to the condition or status of the property which is the subject of a sale or loan. Once the sale transaction is complete, absent fraud, deceit, or material mistake a seller is not responsible for matters which might affect the title to the property. The title report contains in a succinct manner information obtained from various public records that a title insurer is charged with searching. Interests in real property can be made part of the public record by recording in the county clerk's office or if your property is in Manhattan, Brooklyn, the Bronx or Queens the register's office any of the following documents: deeds, mortgages, declarations, easements, leases and restrictions. By recording one of these documents a person gives notice to all the world of its interest. This is called Constructive Notice and it means that all persons are presumed to know the facts even though they do not have actual notice. Therefore, a purchaser or lender is charged with having this knowledge. It is the purchaser's or lender's responsibility to obtain this information. That is where the title company comes in; it assumes the responsibility of the purchaser or lender for determining the status of title. The title company will search and examine the public records and create a detailed report of the status of the particular properties title.

In New York State the title insurance industry is regulated by the Insurance Department and the Insurance Law. Article 64 of the Insurance Law specifies the powers of a title insurer and enables the company to issue the policy of title insurance. Section 6401 of the Insurance Law defines the title insurance policy as "any policy or contract insuring or guaranteeing the owners of real property and chattels real and other persons interested therein, or having liens thereon, against loss by reason of encumbrances thereon and defective titles".

Unlike other forms of insurance which insure against loss due to a future occurrence, title insurance protects the insured against the possibility of loss or damage from defects in the title that exist, but where not excepted in the policy, but are asserted at a later time. Title insurance is indemnity insurance, not casualty insurance- that is - a title insurance policy is a contract of indemnity which insures against an actual monetary loss because of a defect or lien or other matter affecting title. Further, title insurance is written for a one time premium and the protection afforded continues until the interest of the insured is transferred or conveyed. For instance in an owner's policy, the insurance will continue even when the insured dies, his heirs

remain protected under the terms of the policy. If the insured is a corporation it will continue to protect its successors by merger, consolidation, dissolution, distribution, or reorganization by a conversion to another type of entity. A lenders policy covers the assignees of the insured so long as the assignment is recited in the schedule A. When the loan has been satisfied or otherwise discharged the policy is extinguished. If the mortgage is foreclosed and the insured mortgagee becomes the owner of the premises the loan policy continues to insure the foreclosing mortgagee.

In New York State the Title Insurance Rate Service Association, Inc. rate manual defines how to determine the amount of insurance. You may view the complete rate manual at **www.tirsa.org**. The amount of insurance for which a title policy is written is determined by the type of policy issued. An owner's policy is written for the fair market value, normally the selling price of the property (section 5 of the TIRSA manual). A loan policy is written for the amount of the loan (section 6 of the TIRSA manual).

The title policy consists of the policy jacket which includes the Covered Risks, the Exclusions from coverage and the Conditions. Inside the jacket are the Schedule A, which contains the name of the insured, the vesting information and the description of the insured premises. Schedule B in the owner's policy and Schedule B-I of the loan policy contain the exceptions to title - these are matters for which the policy does not insure against loss or damage and the company will not pay costs, attorney's fees or expenses which arise by reason of these exceptions. A loan policy contains one additional schedule, Schedule B-II where items that are subordinate to the lien of the insured mortgage are set forth.

<u>ALTA Policies</u>

As of May 1, 2007 the ALTA 2006 policy is the only policy form used in New York. It is available in all other jurisdictions. In the 1992 Owners Policy there were 8 insuring provisions, in the 2006 this has been expanded to10 and the New York endorsement adds Covered Risk 11. The owners policy insures that:

1. Title is vested as stated in schedule A
2. It insures against loss by reason of any lien or defect in or encumbrance on the

title (see covered risk 2 a, b & c)

3. It insures against unmarketable title

4. It insures against a lack of access to and from the land - but not the best access or physical condition or marketability of access. An access endorsement is available for loan policies in New York. In other jurisdictions it is available for both loan and owners.

5. It insures against the violation or enforcement of a any law, ordinance permit or governmental regulation restricting or relating to occupancy, use, character, dimensions subdivision or environmental protection if a notice describing the land is recorded in the Public Records setting forth the violation but only to the extent of the violation or enforcement referred to in that notice

6. It insures against an enforcement action based on police power not covered by covered risk 5 if the notice of the enforcement action describing the land is recorded in the Public Records setting forth the violation but only to the extent of the violation or enforcement referred to in that notice;

7. It insures against the exercise of the rights of eminent domain if a notice describing the land is recorded in the Public Records setting forth the violation but only to the extent of the violation or enforcement referred to in that notice;

8. It insures against any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without knowledge.

9. It insures against title being vested other than as stated in Schedule A or being defective

a) as a result of the avoidance of a transfer of all or any part of the title or interest in the Lands occurring prior to the current transaction because that prior transfer was a fraudulent or preferential transfer under federal bankruptcy, state insolvency or similar creditors' rights laws or

b) because the instrument vesting title constitutes a preferential transfer

under federal bankruptcy, state insolvency or similar creditors' rights laws by reason of the failure to record timely or for the recording to impart notice to a purchaser for value or to a judgment or lien creditor;

10. Any defect in or lien or encumbrance on title or other matter included in the forgoing Covered Risks that has been created or filed or recorded in the Public Records subsequent to the Date of the policy and prior to the recording of the insured instrument in the Public Records –The GAP Coverage.

11. "Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest as shown in schedule A of this policy"

In addition a mortgage policy also insures against:

9. The invalidity or unenforceability of the lien of the mortgage. It does not insure the validity or enforceability of the terms of the mortgage; it does not insure any method of foreclosure.

10. Insures against loss sustained by the lender by reason of the priority of a lien or encumbrance over the lien of the insured mortgage.

11. The lack of priority of the lien of the Insured Mortgage upon the Title

    a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor or materials furnished prior to the Date of Policy, and which has now gained or which may hereafter gain priority over the lien of the Insured Mortgage; and

    b) over the lien of any assessments for street improvements under construction or completed at Date of Policy

12. The invalidity or unenforceability of any assignment of the insured mortgage provided the assignment is shown in schedule A, or the failure of the assignment to vest title to the insured mortgage in the named insured assignee free and clear

of all liens.

13. Same as covered risk 9 in the owners

14. Same as covered risk 10 in the owners

Please bear in mind that the 2006 policy form at covered risk 9 & 10 in the owners policy and 13 & 14 of the loan policy offer post policy coverage that did not exist in the 1992 ALTA policy form.

An additional benefit to the insured in either an owners or a loan policy is the duty to defend. This is a key benefit of the policy. There is no need to bring an action in negligence to have the company defend. The company will pay the costs, attorney's fees and expenses incurred in the defense of the title as insured but only to the extent provided in the conditions and stipulations. Attorney's fees paid by the company do not reduce the amount of insurance.

The policy will also cover real estate taxes, judgments, liens, Federal Tax Liens, state and local taxes if these are <u>not</u> excepted in schedule B of the title policy.

Now that we have covered what is insured, we need to go over the exclusions from coverage under a title policy. These are the most significant basis for denial of coverage under the policy. These exclusions are:

1. Zoning, building laws, regulations which restrict, prohibit or regulate occupancy, police power, war power, subdivision, environmental protection but this does not limit or modify the coverage provided in covered risk 5

2. Rights of Eminent Domain;

3. Acts of the insured - this exclusion may apply to:

    a) Numerous defects the insured claimant caused or allowed.

    b) It excludes defects, liens, encumbrances or other matters not known to the company, not recorded in the public records at the date of policy but known to the insured and not disclosed in writing to the company by the insured prior to the date of issuance of the policy.

c) Matters resulting in no loss or damage to the insured.

d) Matters attaching or created subsequent to the date of policy - a post policy event it does not limit covered risk 9 or 10 for items in the gap.

e) Matters resulting in loss or damage which would not have been sustained if the insured had paid value for the estate or interest insured by the policy.

4. Creditor's rights- any claim arising out of the transaction vesting in the insured the estate or interest insured by the policy by reason of the operation of Federal bankruptcy, state insolvency or similar creditor's rights laws that is based on:

a. transaction creating the estate or interest insured by the policy being deemed a fraudulent conveyance or fraudulent transaction; or

b. the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:

(i) to timely record

(ii) or such recordation to impart notice to a purchaser for value or a judgment or lien creditor;

5. Any lien of Real Estate taxes or assessments imposed by governmental authority and created or attaching between the date of policy and the date of recording of the deed or other instrument in the public record vesting title as insured in Schedule A.

Title Examination and Abstracting

The creation of the title report is based on the work of many skilled practioners- the examiner, the reader and the underwriting counsel. In order to adequately prepare the report the examiner must undertake the painstaking search of the public records of the County Clerk's office, division of land records or in New York City, the Register's office, EXCEPT Richmond County. This entails examining, summarizing and classifying every instrument in the search period, of 40

years, with the potential need to go back further for covenants and restrictions and other encumbrances. The number and kinds of instruments found in examining the title vary for each title. Various problems may be encountered and the examiner must make every effort to search all available resource materials i.e. genealogies, old maps, and farm records.

In addition, the records of the Supreme Court for judgments, liens and mechanic's liens are examined in order to ferret out those items that are liens and encumbrances for which the title policy may not give coverage.

The taxing authority records are also examined for taxes and assessments, water and sewer charges and the resulting information included in the title report.

The Title Report

The title report certifies and sets forth who the record owner is based on the results of the title examination. This information is used to confirm that the correct party has contracted to convey or mortgage the premises. The names should match exactly including any initials; discrepancies must be disposed of at or prior to closing. Corporate names must be abstracted exactly as they appear in the recorded instrument. Where a fiduciary is named in the instrument the source of their authority must be fully detailed. Where there is more than one grantee the manner in which they took title must be completely set forth. Without words of designation the grantees will take equal shares as tenants in common.

A description of the property to be conveyed, leased or mortgaged will be contained in the schedule A of the title report. The description contained in the instrument defines the amount of property that is conveyed or encumbered. All descriptions in the chain of title are verified to determine if there have been previous sell-offs or acquisitions. The description in schedule A will be used in the transaction documents.

Disposition of Title Exceptions

The specific matters disclosed in the title search which constitute liens or encumbrances and other matters which will have an adverse affect on title become exceptions to title in Schedule B of the title report. These exceptions are often categorized as permanent (remaining in Schedule B at the issuance of the policy) or temporary (those exceptions that may be omitted from

Schedule B of the policy upon receipt of proper proof).

Permanent exceptions are covenants and restrictions, easements and the survey exception. Temporary exceptions include mortgages, leases, capacity of parties, liens and transaction specific exceptions.

The title report will be delivered to the Purchaser/Borrower's Counsel, Lender's Counsel and Seller's Counsel. It is of the utmost importance that each party to the transaction promptly review the title report Schedule B so that the exceptions can be disposed of at or prior to closing. Those exceptions that are not permitted encumbrances pursuant to the contract of sale must be dealt with in an expeditious manner by the proper party. They can be disposed of by submission of the appropriate affidavit, satisfaction, or other discharge of any judgments, liens or encumbrances. As the attorney for the buyer or for that matter, attorney for the lender, you should contact the counsel for the other party to be sure they are working on clearing the title exceptions.

Since the title report is of a particular effective date - the title company will run continuation searches to the date of closing. This will allow the company to bring the effective date of the report to the date of closing. Additional liens or encumbrances can be found and additional title exceptions raised.

Schedule B

Covenants and restrictions may be real or personal and they may impose affirmative or negative obligations. They are encumbrances to title. They can appear in a deed, a declaration or other instruments.

Often times the company will be able to soften the effect of the covenants, restrictions or agreements by providing affirmative insurance. In loan transactions the affirmative insurance can be provided by the issuance of the ALTA 9 endorsement (Restrictions, Encroachments, Minerals). Where a covenant and restriction has been violated the title company will consider: (a) the nature, extent and duration of the violation; (b) the age of the building; (c) the existence of similar violations in the area and (d) threats to enforce.

When affirmative insurance is requested and there has been no violation, and if there is no provision for forfeiture or reversion of title the affirmative insurance will state "that there is no

violation nor a provision for forfeiture or reversion of title under which the insured can be cut-off, subordinated or otherwise disturbed".

An easement is a limited right or privilege of enjoyment in a parcel of land (the servient estate) for the benefit of another parcel (the dominant estate). An easement is an encumbrance on the title of the servient estate. Examples of easements are: beam right agreements, party wall agreements or rights of way.

These encumbrances can render title unmarketable but not uninsurable. Affirmative insurance may be formulated to offer assurances to a mortgagee, fee owner or lessee. This should be negotiated with the title insurer.

The survey exception is included in schedule B. Where no survey has been located, the title report and policy will contain the following: "Any encroachment, encumbrance, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete survey of the land" and will remain an exception in an owners policy.

However, when the transaction is a loan on a one to four family residential property the title insurer has the option of deleting or omitting a survey exception because the coverage is provided in the ALTA 2006 Loan Policy.

A survey reading sets forth the encroachments, projections and variations of the existing improvements over the lines of title or upon easements. These items can render title unmarketable. If no exception is raised for these items then the title policy would cover the insured against a possible loss by reason of the encroachments, projections or variations which have rendered the title unmarketable.

Affirmative insurance can be given for lenders and owners depending on the encroachments. If a wall encroaches less than 6" onto a street, there is statutory authority that allows the insurer to give affirmative insurance that it can remain. "..wall may remain undisturbed for so long as it presently stands". [1]

Another exception which remains in the policy is the "Rights of tenants or parties in possession". It maybe supplemented by affirmative insurance for the lender if an affidavit stating that the tenants are tenants only with no rights of first refusal or options to purchase or omitted if an affidavit stating that there are no tenants is given.

1 General City Law Section 38A

The remainder of schedule B will contain liens, judgments and transaction specific exceptions. Liens are either general or specific. Some general liens are judgments, estate tax liens, federal tax liens and franchise taxes. General liens affect all property owned by an individual or entity in the county where the judgment or lien is docketed, not just the address of the debtor. Specific liens are those which are indexed by block and lot and only affect that property, they include mechanics liens, relocation liens, emergency repair liens and pest control liens to mention a few. These are monetary liens and they can be removed from the Schedule B by payment at closing or payment before closing and the delivery of a satisfaction or discharge to closing or by affidavit if the judgments are against a similar name as that of the owner. (Exhibit A) If the lienor or judgment creditor can not be present at closing for payment, then the title insurer may take an escrow - usually twice the amount of the lien - and await delivery of the satisfaction. This will allow affirmative insurance to be added to the exception in Schedule B as follows: "except but insure against collection out of the premises" this means that any loss from this lien will be paid from the escrow proceeds and not affect the title of the insured.

General Liens

A) Judgments are general liens. A money judgment is effective for ten years from the date of entry of said judgment in the court where issued and after docketing in the county clerks office where the real property is located.

If the judgment was rendered in a county other than where the real property is located it must be docketed in the county where the real property is located and it will be a lien on the real property only from the time of docketing.

The lien of a judgment may be extended. An action on the judgment must be commenced during the year prior to expiration of the ten years since the first docketing. This will result in a renewal judgment which will be effective for 10 years from the expiration of the initial docketing.

The lien of a properly docketed money judgment will not be affected by the subsequent conveyance of the real property to a bona fide purchaser. It may be enforced by the judgment creditor against the bona fide purchaser.

The lien of a money judgment may be released by:

1. Posting of a bond, pending the appeal of the judgment. The bond must be in an amount sufficient to secure the judgment creditor. The court may then, upon notice to the judgment creditor, by order release the judgment from the real property.

2. A satisfaction of judgment signed by the judgment creditor or its attorney of record can be filed in the county clerk's office where the judgment is docketed. A transcript of the filed satisfaction must be filed in the county clerks offices where the judgment was also docketed.

3. Where there is no execution pending or the judgment has not been extended it will expire on the passing of ten years since its first entry.

B) Estate Tax Liens arise where estate taxes are imposed on the transfer of property by reason of the death of the owner. They are excise taxes which are based on the value of the decedent's estate at the time of death. The liens are imposed by New York State and the Federal Government.

I) A Federal Estate Tax Lien is effective for 10 years from the decedents date of death. Upon an arms length conveyance of the real property by the surviving joint tenant or tenant by the entirety, the lien of the Federal Estate Tax will attach to the proceeds of the sale allowing the surviving joint tenant or tenant by the entirety to convey the property free of the said lien.

A Federal Estate Tax Lien may also be disposed of:

1. By obtaining and presenting for recording at closing, a release of lien from the Internal Revenue Service (IRS) or

2. By presenting proof of payment of the estate tax (canceled check) accompanied by the IRS Estate Tax closing letter or the 706 form or

3. By affidavit that the value of the decedent's estate was lower than the statutory taxable amount for the applicable year. (See Exhibit B)

Year	Effective Exemption	Year	Effective Exemption
1998	$625,000.00	2006 to 2008	$2,000,000.00
1999	$650,000.00	2009	$3,500,000.00
2000 and 2001	$675,000.00	2010	$5,000,000.00 or $0[2]
2002 and 2003	$1,000,000.00	2011	$5,000,000.00
2004 and 2005	$1,500,000.00	2012	$5,120,000.00

II) An Estate Tax Lien in New York State is effective for 15 years from the decedent's date of death. An arms length conveyance by the surviving joint tenant or tenant by the entirety has the same effect as in the case of a Federal Estate Tax lien. The lien attaches to the proceeds.

A New York State Estate Tax Lien can be disposed of:

1. By obtaining and producing for recording at closing, a certificate of discharge[3] or
2. By conveyance of the surviving joint tenant or tenant by the entirety or
3. By presenting proof of payment (a final receipt from the Department of Taxation and Finance of the State of New York) or
4. By a certificate of no tax due.

If the gross Estate amount for New York Estate Tax purposes is less than $1,000,000.00 for decedents dying during 2002 and thereafter, the lien of the New York Estate Tax may be passed on satisfactory proof by affidavit establishing said facts.

If a record owner of property dies intestate, an Heirship Affidavit will be used to establish who may convey, mortgage or lease the premises. (See Exhibit C)

C) Federal Tax Liens result from the non-payment of income tax and other federal taxes. They are effective upon all the property and rights to property, real or personal, belonging to the person who failed to pay said taxes.

2 Estates valued at $5 million or less are exempt from the tax. Estates worth more than $5 million are taxed at a 35 percent rate or $0 estate tax exemption/0% estate tax rate coupled with a modified carryover basis.

3 Tax law § 982 (c) and (d)

A notice of Federal Tax Lien will be filed in the County Clerk's office except for Kings, Bronx, Queens and New York County's where they are filed in the Registers Office. Prior to November 5, 1990 the filing was effective against a purchaser or mortgagee for 6 years and 30 days from the date of assessment. For liens filed subsequent to November 5, 1990, the filing is effective for ten years. The lien can be renewed for additional 10 year periods if refiled during the one year period ending 30 days after said 10 year period.[4] Liens filed prior to November 5, 1990 must have been refiled in order to attain the ten year period.

Federal tax liens may be disposed of by release, discharge or certificate of non-attachment. They may be obtained by following the requirements of the USC §6325, the release, discharge or certificate of non-attachment must be filed in the office where the notice of lien was filed.

D) Environmental Liens in favor of the United States are created as a result of the costs and damages for clean-up. These liens are filed in the office of the City Register in New York City (except Staten Island) and in the office of the County Clerk for other counties.

E) The New York State Franchise Tax is a lien for a period of 10 years on all real property owned by a corporation incorporated or ***doing*** business in New York State. The lien attaches on the date the Corporations tax return is required to be filed. A corporation's NYS Franchise tax return must be filed by March 15 next following the close of the calendar year or 2 1/2 months after the close of the Corporations fiscal year.[5] The lien for franchise taxes lapses ten years after the return was required to be filed.

The lien may be disposed of by payment or by obtaining a release of lien from the New York State Department of Taxation and Finance.

F) The City of New York Business Corporation Tax is substantially the same as the New York State Franchise Tax Statute. The Tax is a lien on all real property located within the

4 26 USC § 6323 (g) (3)
5 Tax Law § 209 (1)

City of New York which is owned by a corporation doing business in New York City.[6]

G) Public Health Law Lien are liens having preference over all other liens. These result from the action of the New York State Commissioner of Health to abate nuisances affecting the life and health of any locality in the State of New York. The expenses resulting from such abatement can be docketed as a judgment.

Specific Liens

A) Mechanics Liens liens are statutory liens on real property in favor of contractors, materialmen and workmen securing payment to them for work performed or materials supplied to improvements on real property for non-payment.[7]

A lien may be filed during the progress of the work and furnishing of materials but in no event later than eight months (four months for a 1 - 3 family residence) after completion. If the lien is not filed in the prescribed period, the lienor loses its right to create a mechanics lien. The lien must be filed in the County Clerk's office in the county where the property is located and it is effective for one year. Within 30 days of filing the lien a copy of the notice of lien must be served on the owner. Failure to file such proof of service with the County Clerk within 35 days after the filing of the lien will terminate the lien.

A mechanics lien may be disposed of:

1. By lapse of the one year period where the lienor has failed to commence an action to foreclose the lien, unless the lien is extended by court order, or
2. By an acknowledged certificate by the lienor that the lien is satisfied or released, or
3. By order of the court upon the lienor's failure to prosecute the lien, or
4. By bonding the lien pursuant to Lien Law section 19, or
5. By motion of the owner of the real property showing the lien is defective, or

6Administrative Code of the City of New York § 11-603 et seq
7 Lien Law § 3

6. By paying into the court the amount of the lien plus interest to the date of deposit.

Mechanic Liens are afforded special treatment under the lien law. Lien Law section13(1) says in part "…Persons shall have no priority on account of the time of filing their respective notices of liens, but all liens shall be on a parity...". The result is that a second filed mechanics lien will be on parity with the first. Because of the statutory treatment of mechanic's liens, title insurers will require that the mechanics lien be discharged or bonded in order to be omitted from the title report. This will avoid a small monetary lien from growing into a much larger monetary lien due to subsequently filed mechanics lien.

B) There are specific liens created pursuant to the Administrative Code of the City of New York. Some of these liens are "super liens" having priority over private liens even if those private liens are prior in time. These New York City liens are:

1. Relocation Liens are liens resulting from the expenses incurred in relocating tenants.[8] They maybe filed within four months from the date of the last expenditure. The relocation lien is effective for ten years unless it is continued for an additional ten years, enforced or discharged.[9]

2. Emergency Repair Liens are filed by the Department of Health for expenses resulting from the curing of emergency repair situations i.e.: providing fuel oil when there is no heat. These are super liens. It is effective for four years from the date of filing.

3. The Department of Rent and Housing Maintenance can file a lien for emergency repairs to multiple dwellings in order to correct violations of the building code resulting in dangerous conditions. The department files a record within its own department of the work performed within 30 days from the work or purchase order. This results in a secret lien during the 30 day period. Upon fixing the

8 Administrative Code § 26-301
9 Administrative Code § 26-305 4(b)

amount the department transfers the lien to the City Collectors records where it becomes a tax lien[10].

4. Pest Control Liens are docketed in the Pest Control Docket in each County Clerks office. They are effective for four years from the date of filing[11.]

5. Canopy Liens result from The Department of Highways filing a notice with the city collector for unauthorized or improperly maintained canopies. This notice is a lien[12].

6. Sidewalk Repair Liens arise from the repairing or installing of sidewalks or fencing of vacant lots by the Department of Transportation. They are filed in a separate index at the County Clerks office. The liens are then filed with the City Collector and are enforceable in the same way as real estate taxes[13].

7. Building Inspection fees and permit fees or renewal permit fees are super liens on the real property affected by same[14].

8. A lien for closing water taps is created in favor of the City of New York. It can be entered as a secret lien for 30 days, much the same as an Emergency Repair. When filed with the City Collector with real estate taxes it becomes a super lien.

9. Fire Department Inspection Fee Liens are super liens resulting from the failure to pay said fee imposed by the fire department for the issuance of permits, special permits and renewals of permits. The fees become a lien upon entry in the records of the fire department[15].

10. Department of Health Liens result from the entry of a work order in the records of the Department of Health. All expenditures resulting from the work order

10 Administrative Code § 27-2144(b)
11 Administrative Code § 17-151
12 Administrative Code § 19-124(i)
13 Administrative Code § 19-152
14 Administrative Code § 26-128
15 Administrative Code § 27-4029.1

constitute a lien on the real property where the work was performed. The City of New York deems said entry as notice. This is a super lien[16].

11. Oil Spill Lien pursuant to section 181-A of the New York Navigation Law is a lien for the costs incurred by the New York Environmental Protection and Spill Compensation Fund for cleaning up and removing of a discharge and for payment of damages from the discharge on the property. The lien attaches when the costs are incurred and 90 days have past since a demand is made by the administrator of the fund by certified mail, return receipt requested and a notice of environmental lien is filed. A copy of the notice must be served on the owner of the property within 30 days of filing and proof of service must be filed within 35 days of said service.

    The lien terminates upon:

    a) Satisfaction or unenforceability

    b) It is released by the fund administrator

    c) Payment of the sums due into Court

    d) Or the lien is vacated by court order.

    The lien is subject to the rights of any other person whose interest in the property was perfected before the notice of lien was filed. The environmental lien must be filed in the County Clerks Office where the property is located within 6 years of the occurrence.

12. Mortgages are a specific lien. It is consensual in that the owner/borrower consents to recording a mortgage in the real estate records against their property. It is specific in that it only liens the property described therein and no other real property of the owner/borrower. Mortgages can be assumed by subsequent purchases or assigned to a new lender thus maintaining the lien priority. The

16 Administrative Code § 17-151 et seq.

borrower or seller will request a pay-off letter from the lender. This will be given to the closer, who will contact the lender to confirm the pay-off figures and collect sufficient funds to deliver to the lender. Either an assignment of mortgage or satisfaction will be produced. If a satisfaction, since the title insurer's representative is making the pay-off, the mortgage will be omitted from the title report and will not appear in the final policy.

When a non-institutional mortgagee attends the closing to collect their funds they will need to deliver the original note, mortgage and satisfaction of mortgage. In certain instances the title insurer may agree to act as the escrow agent of the non-institutional lender and collect and deliver their funds if the note, mortgage, pay-off instructions and satisfaction are delivered into escrow with the company.

13. Lis Pendens or Notice of Pendency. The Lis Pendens is filed in mortgage and mechanics lien foreclosures. They can also be filed in any action that will affect the status of title, i.e. a constructive trust action. The title insurer will require that the lis pendens be cancelled and the action discontinued of record with prejudice. If the action is not disposed of the title insurer will except it and this means that the policy will not insure over it. Therefore, title may be subject to being vested other than as certified in the title report a risk that the insured may not be willing to accept and the closing may be adjourned until the Lis Pendens and action are disposed of.

CPLR Sec. 6514 is the statute that provides the means of removing the Lis Pendens. There are four methods that can be used to cancel a lis pendens under this statute:

a) Mandatory Cancellation- the court upon motion of any aggrieved person and upon notice as the court may require, shall direct the county clerk to cancel a notice of pendency if:
    i) service of a summons has not been completed within the statutory period (sec. 6512)
    ii) if the action has been settled, discontinued or abated;
    iii) if the time to appeal from a final judgment against the plaintiff has expired or
    iv) if enforcement of a final judgment against the plaintiff has not been stayed (sec. 5519)
b) Discretionary cancellation- the court, upon motion of any aggrieved person and upon

notice as the court may require, may direct any county clerk to cancel a lis pendens , if the plaintiff has not commenced or prosecuted the action in good faith;

c) Cancellation by stipulation- at anytime prior to entry of a judgment the lis pendens shall be cancelled by the county clerk without a court order, on the filing of:
    i) an affidavit by the attorney for the plaintiff showing which defendants have been served with process, which are in default in appearing or answering and which have appeared or answered and by whom and
    ii) a stipulation consenting to the cancellation, signed by the attorney for the plaintiff and signed by the attorneys for all defendants who have appeared or answered including those who have waived all notices; by the defendants who have been served with process and have not appeared but whose time to appear has not expired; and by any defendants who have appeared in person; it must be executed and acknowledged in the form required to entitle a deed for recording.
d) Cancellation by plaintiff- at any time prior to the entry of a judgment a lis pendens shall be cancelled by the county clerk without an order on the filing of an affidavit by the plaintiff's attorney showing that there have been no appearances and that the time to appear has expired for all parties.

Other underwriting issues which are raised and dealt with in the title report are:

<u>Authority of the owners to transfer or encumber the premises.</u>

It must be determined whether the individual is competent, of age and is who he or she represents him or herself to be. If the person is under age or incompetent they can not dispose of their Real Property without the appointment of a guardian and the proper court order authorizing the conveyance. A deed by an incapacitated person is void and title will not pass. If there is an impersonation or forgery the title policy will protect against it, so title Insurers, as risk eliminators make every effort to protect against these situations. Proof of identity will be required. Acceptable proof is a driver's license, passport, immigration and naturalization ID.

When title is held by a corporation, partnership, limited partnership or Limited Liability Company ("LLC") exceptions will be raised to establish the authority of the entity and its proper formation. Proof of the due incorporation of a corporation and its good standing in the state of

formation and authority to act in NY if not a domestic corporation will be called for. Proper formation of an LLC and limited partnership will be required. The articles of incorporation and by-laws of a corporation and the operating agreement of an LLC, as well as the partnership agreement of a general or limited partnership will be requested and analyzed for compliance with any restrictions contained therein as to sale or mortgage. A proper resolution or consent to the sale or mortgage will be required as follows:

A) Corporations:

Absent any specific provision in the certificate of incorporation the consent of 2/3rds of the stockholders and the majority of the Board of Directors is required for a sale. The authorization to mortgage may be given by the vote of the Board of Directors, unless the certificate of incorporation requires the vote of the stockholders.

B) Religious or Not for Profit Corporation:

No court order is required to authorize the sale, purchase or mortgage of real property except if the corporation is a type B or C Not for Profit Corporation and it is selling all or substantially all of its assets (then a court order is required). In addition the sale, mortgage or lease for more than 5 years, by a Religious Corporation requires a Court Order pursuant to section 12 of the Religious Corporation Law and notice to the Attorney General (section 2b RCL)

C) Limited Liability Company:

The operating agreement must be examined to determine where the authority sell, lease or mortgage granted by Sec. 202 (c) of the limited liability law resides.

D) Partnerships:

i) General Partnership- the sale or mortgaging of its real property generally requires the consent of the partners authorized by the partnership agreement. If there is no agreement, since a general partnership is not required to have a written agreement, the title insurer will call for the consent of all partners.

ii) Limited Partnership- under the Uniform Limited Partnership Act unless the partnership agreement states otherwise the consent of all general partners and 2/3rds of each class of limited partners must consent to the sale or mortgage. (Sec. 121-801 (c))

These will be raised as title exceptions. If proper proof, affidavits or resolutions are not supplied the exception will remain and the policy will not provide coverage over same.

Fiduciaries:

When title is held by a trustee or executor their capacity to convey title must be established. In order to confirm their ability to convey or mortgage the Trust Indenture or Last Will & Testament of the deceased must be reviewed. Where there are two (2) trustees' or executors they must act jointly; if there are three (3) or more a majority of the trustees or executors may act unless the trust instrument provides otherwise.

In the case of a Trust proof is necessary to show that: 1) the Trust is still in full force and effect, 2) proof title has not vested in the Beneficiaries, 3) that the Trustee is still authorized to act. Letters Testamentary and Letters of Trusteeship dated within six (6) months of closing must be presented at closing. The fiduciary deed must recite full consideration.

When title is to be conveyed by Power of Attorney the authority to convey or mortgage real property must be in writing and the title insurer will require it to be recorded to evidence the power. The current statutory form of power of attorney is durable (unaffected by the subsequent disability or incompetence of the donor) and is set forth in the General Obligations Law ("GOL") sec. 5-1501 it must be signed by the donor and attorney in fact and it must comply with requirements as to the cautionary notes and size of the print to be valid in New York. The construction of powers as to real estate transactions are set forth in sec. 5-1502A of the GOL. At the time of execution of any instrument pursuant to a power of attorney it must be in effect and an affidavit that the donor has not revoked the power and is still alive and consents to the transaction will be required by the title insurer. The death of either the donor or the attorney-in-fact revokes the power of attorney. If the power of attorney is given to two or more persons it is joint unless the instrument specifically states that the donees can act alone or severally.

<u>Transaction Specific Exceptions or Requirements</u>

1) In an assignment of lease transaction or in a mortgage on a lease transaction an Estoppel Certificate will be required from the landlord certifying that the lease is in full force and effect and that there is no existing default by the tenant in respect of any of the terms, conditions and agreements contained in the lease.

2) In an Assignment of Mortgage transaction the original note and mortgage will be required to be delivered at closing.

3) An affidavit of title will be required to clear any other exceptions to title (i.e.: similar name judgments, parking violations, environmental control board liens, tenants, etc.).

By sifting through the many documents in the chain of title which are recorded in the County Clerk's Office or Register's office and by evaluating the quality and impact of each of the documents a title insurer aids the purchaser and lender in their quest to obtain a clear title to their premises and gives the assurance that the state of facts insured in the policy will be protected against the attack of third parties or against the enforcement of liens- that an uninformed buyer or lender could fall prey to.

Kristin V. Bellouny
Senior Underwriting Counsel
Title Associates, a division of
Stewart Title Insurance Company

Exhibit A

AFFIDAVIT
(Individual)

State of New York ss.: }
County of }

TITLE NO:
DATE:

_____ Residing at _____

being duly sworn, deposes and says:

1. That (I am the) (grantor) in (deed) bearing even date herewith (conveying) premises known as _____.

2. There is presently ( ) tenant in said premises. Said tenant is in possession under a written lease containing a standard subordination clause fully and unconditionally subordinating said lease to all existing and future mortgages. There are no options to purchase or rights of first refusal either pursuant to written leases or by separate agreements.

3. There are no street vaults adjoining or in front of said premises.

4. Deponent agrees to indemnify Stewart Title Insurance Company ("Stewart") for any loss, cost of damage, for any unpaid vault charge(s) which have been or may be levied by the City of New York.

5. No work has been done upon the above premises by The City of New York nor has any demand been made by The City of New York for any such work that may result in charges by the New York City Department of Rent and Housing Maintenance Emergency Services or charges by The New York City Department for Environmental Protection for water tap closings or any related work.

6. No inspection fees, permit fees, elevator(s), sign, boiler or other charges have been levied, charged, created or incurred that may become tax or other liens pursuant to Section 26-
128 (formerly Section 643a-14.0) of the Administrative Code of the City of New York, as amended by Local Laws 10 of 1981 and 25 of 1984, and Section 27-4029.1 of the Administrative Code of the City of New York as amended by LL 43, 1988 or any other section of Law. Deponent agrees to indemnify "Stewart" for any loss, cost of damage, for any unpaid fee or charge claimed by the Department of Buildings and entered in the records of the City Collector after the date of closing.

7. That there has been no work performed by any agency of The City of New York to cure problems under the New York City Hazardous Substances Emergency Response Law. Nor can any lien be incurred pursuant to the aforementioned statute. Deponent agrees to indemnify "Stewart" from any loss, cost or damage, for any lien incurred up to the date of this affidavit, whether filed or unfiled.

8. In the absence of special water meter readings on the premises, the deponent agrees to pay any charges from the date of the last reading and any (revised) frontage charges, i.e. water rents and sewer charges entered and billed subsequent to the closing for the periods prior to closing, not show in the City Collector's records at or prior to closing.

9. That there are no Judgments, Federal Tax Liens, Parking Violation Judgments, Environmental Control Board Liens, Environmental Control Board Fire Liens, Transit Adjudication Liens, or any other liens against deponent in any jurisdiction.

10. That deponent is the same person(s) which acquired title to the premises herein by deed recorded in the _____ County Register's office on _____ in Reel _____ page _____.

11. None of the judgments, federal tax liens, parking violation judgments, environmental control board liens, environmental control fire liens, transit adjudication liens, or state tax warrants, set forth in Exception(s) _____ in Title No. _____ of Stewart Title Insurance Company ("Stewart"), are against deponent(s). Deponent(s) has (have) never resided or maintained an office at any of the addresses in the federal tax liens, parking violation judgments, environmental control board liens, environmental control fire liens, transit adjudication liens, or state tax warrants listed above.

That I make this affidavit to induce Stewart Title Insurance Company to insure said title free and clear of the aforesaid.

_____

_____

_____

Sworn and subscribed to before me
*this ___ day of _____ 20_*

Exhibit B

FEDERAL ESTATE TAX AFFIDAVIT
(Under Federal Estate Tax Minimum)

STATE OF NEW YORK)
) ss:
COUNTY OF)

_____ residing at

_____ being duly

sworn deposes and says:

THAT I am fully aware of assets of the estate of _____who died on

_____ a resident of _____County.

THAT I am fully aware of the assets of said estate because I am_____
_____

_____

_____

That the gross estate of said decedent, wherever situate is less than $_____
(see note over) and therefore, pursuant to the IRC no federal estate tax return need be filed.

That I understand that the gross estate for federal estate tax purposes includes all assets of any kind in the name of the decedent on (his, her) death as well as, among other items, insurance on decedent's life, jointly owned property, transfers during decedent's life without adequate or full consideration, powers of appointment, annuities, interests in a partnership or unincorporated business, gifts within 3 years of death, gift taxes paid on gifts within 3 years of death and the adjusted value of gifts made more than 3 years prior to death.

I make this affidavit knowing that the accuracy of same will be relied upon by Stewart Title Insurance Company for the purpose of issuing its policy of title insurance under its title number _____.

_____

Sworn to before me this
day of _____ 20___

_____
Notary Public

NOTE: The exempt gross estate is pursuant to the following schedule:

$600,000.00, when decedent died prior to 1998
$625,000.00, when decedent died during 1998
$650,000.00, when decedent died during 1999
$675,000.00, when decedent died during 2000 or 2001
$1,000,000.00, when decedent died during 2002 or 2003
$1,500,000.00, when decedent died during 2004 or 2005
$2,000,000.00, when decedent died during 2006, 2007 or 2008
$3,500,000.00, when decedent died during 2009
$5,000,000.00, when decedent died during 2010*
$5,000,000.00, when decedent died during 2011
$5,120,000.00, when decedent died during 2012

*Estates valued at $5 million or less are exempt from the tax. Estates worth more than $5 million are taxed at a 35 percent rate when decedent dies during 2011.

Exhibit C

AFFIDAVIT OF HEIRSHIP

TITLE NO.:

STATE OF)
) ss:
COUNTY OF)

_____, being duly sworn, depose(s) and say(s):

That (s)he is the _____of deceased, who acquired title to premises in follows:
described as _____(the Premises").

That said _____ died a resident of the County of_____ State of New
York, on the _____day of _____, 20__, seized of said premises, (testate) _____ (intestate, and no proceedings were had in the estate) leaving him/her surviving as his/her only lawful distributees, the following named persons:

NAME	ADDRESS	RELATIONSHIP

That said decedent left him/her surviving no husband or wife, no child or children, (legitimate or illegitimate) no adopted child or children, no descendants of any deceased child or children, no descendants of any deceased adopted child or children, no father or mother, no brothers or sisters, no issue of any deceased brothers or sisters, no grandparents, no uncle, no
aunt, and no issue of a deceased uncle or aunt other than those above named.

That all of the persons above named are of full age, except:

That all of the persons above named are of sound mind, except:

That said deceased in his/her lifetime was a citizen of the United States or a subject of _____.

This affidavit is made to induce Stewart Title Insurance Company to issue its policy of title insurance covering the above premises knowing that it relies upon the truth hereof.

_____

Sworn to before me this ___
day of _____ 20_

_____
Notary Public, State of New York

NEW YORK STATE BAR ASSOCIATION

PRACTICAL SKILLS –

PURCHASES AND SALES OF HOMES

TITLE INSURANCE

2010

Prepared by: Marvin Bagwell, Esq.
Joseph De Salvo, Esq.
2010 Update – Melvyn Mitzner, Esq.

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The ALTA 2006 Fee and Loan Policies: An Overview

Since 1992, the packaging, slicing and dicing of mortgages secured by real estate had led, for better or for worse, (with now because of the "tanking" of the subprime market and lenders, being for worse), to the development of secondary markets for all types of securitized loan "products". Securitization demands uniformity; so the variations among title policy forms which proliferated in different jurisdictions over the past fourteen years has been a hindrance to the wheels of commerce. The last decade and almost a half have also seen a market increase in the cost of real estate and consequent increase in the financial complexity of the transactions. Property owners no longer hold title for decades and lenders no longer hold mortgages for the term of the loan. All parties to a transaction now look towards how best to profit from the disposal of today's asset tomorrow and they expect title to be good when they convey. Good conveyancing attorneys no longer regard title insurance as an after thought to be obtained at the last minute before closing. More often than not, especially in commercial transactions, the title person, if not on the conference call when the deal is struck will certainly be on the email list later that same day.

Courts have not been sitting in the wings idling either. Judges and justices have been busy issuing rulings and opinions which have re-interpreted provisions of the 1992 policy forms. Time has moved on the ALTA has not stood still. ALTA, with the involvement of representatives from the realtor, lender and brokerage industries as well as from Fannie Mae and Freddie Mac, rewrote the 1992 policy forms. The Title Insurance Rate Service Association ("TIRSA"), the state endorsed ratings bureau comprised of most of the title underwriters licensed by the State of New York filed for approval to issue the new policy form and the New York State Insurance Department approved the issuance

of the new forms effective on May 1, 2007. On that date, the 2006 forms replaced the 1992 policy forms then in use in New York.

In this article, the author will attempt to outline the most significant new provisions contained within the new policy forms. There, of course have been many changes, but most of the new provisions which ALTA adopted for the national stage are already familiar to real estate practitioners in New York. For the most part, the changes take account of, and will not adversely influence the way we do business in New York. They have a significant impact upon how claims made under title policies are resolved. For space reasons, this article cannot possibly be exhaustive.

A. <u>Amount of Insurance:</u>

It is well advised first to examine the new definitions, which appear in the 2006 policy. Among the most significant is "Amount of Insurance". Under both the 1992 and under the new 2006 policies, instead of paying a claim title immediately, the title underwriter has the right to establish title through litigation. Litigation is timely and expensive process during which an insured owner may not have full access to the insured property and the lender may have a non-producing loan in its portfolio. In recognition of the fact that time is money, the 2006 policy provides that the "Amount of Insurance" may be increased by 10% if the title underwriter decides to litigate a claim and subsequently loses that litigation. That is, if the title underwriter is unable to establish title (fee policy) or lien priority (mortgage policy) through litigation, then the insured is entitled to recover 10% more than the coverage amount set forth on Schedule A. In addition, the policies provide that the insured decides on which date the amount of loss is to be determined. The date can be either the date on which the policyholder made the claim to the title underwriter or the date on which the claim is settled and paid. As property values go up and down, this flexibility gives the policy holder

the ability to choose the point in time which would result in the greater recovery. If however, the title underwriter litigates a claim and wins, the insured does not receive the 10% premium. The possibility that the title underwriter may be on the hook for 10% more than the amount insured is to serve as incentive for a claim department to settle claims earlier thereby getting money into the hands of the policyholder sooner rather than later. All is not weighted entirely on the side of the insured. The definition of "Amount of Insurance" also provides that the coverage payable as a claim may be reduced by the title underwriter's payment of prior losses or because liability will remain noncumulative. This means that payments made to a lender will reduce, by an equal amount, the coverage provided to the fee insured.

B. <u>Continuation of Coverage:</u>

The 2006 policy contains a new term, "Entity". An "Entity" is a corporation, partnership, trust Limited liability Company or other legal entity". This becomes significant because the definition of "Insured" now includes "Entity". The issue that ALTA addressed was one of continuation of coverage. Under the 1992 policy, coverage continued to a successor to an insured only if that successor gained its interest by operation of law. If a new deed had to be recorded to vest title, then coverage ended. Hence, coverage was lost in many corporate and natural inter-family transfers as when a subsidiary corporation transferred title to its parent (or vice-versa) or when a parent conveyed to a child. New York's title underwriters cured most of these continuation of coverage issues by amending (with Insurance Department approval) the TIRSA rate manual to provide that coverage continued for certain inter-family, no consideration transfers even when a new deed had to be recorded. By including "Entity" within the definition of "Insured", ALTA has adopted the New York continuation of practice. However, the practitioner should keep in mind that the

title underwriter still retains all rights and defenses that it had against any predecessor insured.

C. Gap Coverage:

Gap coverage is another New York practice that has been carried over the 2006 ALTA policy. The coverage provided by a title insurance policy speaks as of the closing date. Title Insurance covers loss from events which occurred in the past; it does not cover future or post-policy events. Under the New York Endorsement which is attached to every fee and mortgage policy issued in this State, title coverage includes the period from the date of closing to the date of recording. In other words, the title policy provides coverage to the insured against loss caused by liens or encumbrances, (with certain exceptions, such as for taxes and assessments), which arise during the time period from the closing to the actual recording of the instruments. This coverage is significant because for certain counties in New York, that time period or "gap" may be months long. ALTA has adopted the New York practice by permitting the "Date of Policy" to mean not just the closing date, but also the date on which the instruments are recorded.

D. Policy Coverage:

The 2006 policy uses the term "Covered Risks" to define what types of risks are the subject of the Insurance Coverage, previously this was referred to as the "Insuring Clauses Under the 1992 Polices". The number of "Covered Risks" appears to far exceed the number of the old Insuring Clauses. The eye is not deceiving you here. The 2006 policy lists all of the events, which the courts, real estate practitioners and even the various title companies' claims departments have agreed over the past century that the title policy covers. Rather than being left unsaid, such matters as forgery, fraud, lack of proper corporate authorization, invalid powers of attorney, etc. are now specifically spelled out as being covered. The new

coverage set forth in "Covered Risks" paragraph 2(a) really is yesterday's news and should not offer any surprises. (A full list of "Covered Risks and Exclusions" under the ALTA 2006 owner and loan policy is annexed at Exhibit "A:")

E. <u>Survey Coverage:</u>

"Covered Risks" paragraph 2 (c) provides coverage against losses caused by "[a] ny encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete lens survey of the Land." On its face one might assume that the policy provides survey coverage without the necessity of purchasing surveys but looks can be deceiving, it is necessary to read the policy in conjunction with both the New York Endorsement and the TIRSA Rate Manual.

In the case of the owner's policy, the New York Endorsement removes survey coverage completely by deleting paragraph 2 (c). The TIRSA Rate Manual requires that in the absence of a survey, the following language must appear in the policy; "subject to any state of facts an accurate survey would show". The result for fee insureds in New York is if they do not purchase a survey and provide the survey to the title company the title company will take a full survey exception. In affect, without a survey, the fee purchaser of a title policy would have no coverage for losses resulting from encroachment, gores, or "other adverse circumstances" affecting the land. If the fee insured purchases a survey and provides it to the title company, the title company will read the survey into the policy and take exceptions in the reading only for those defects that are shown on the survey.

The situation is a little different for lenders. The New York Endorsement to the Loan policy removes survey coverage but only if the property is not a 1 to 4 family residence. In other words, if the land to be insured is a 1 to 4 family residential property, then the lender will have survey coverage automatically. Because this coverage is in the

policy, the old survey Endorsement was removed. Since lender will not have survey coverage on 1 to 4 family residential properties automatically, and since there is no longer a Survey Endorsement which the lenders had required homeowners to purchase, the result is a 10% savings in the cost of title insurance for homeowners in New York. However, if the land is not 1 to 4 family residential and is mixed use, commercial or vacant and the owner does not provide the title company with a survey of the property, then the TIRSA Rate Manual requires the title company to insert the following language in the policy "subject to any state of facts an accurate survey would show". The result is that unless the property owner provides a survey to the title company, the lender will not have survey coverage for commercial property or for vacant land. The major change and it is good news for homeowners is a 10% savings in the cost of their title policy.

F. Government Regulation Matters:

The 2006 title policy specifically covers losses resulting from the enforcement of any laws, permits or governmental regulation affecting the insured land when notice of the violation and/or enforcement action is recorded in the Public Records. This coverage has resulted from the New York, case law to from Smirlock v. Title Guarantee, 437 N.Y.S. 2d 57 (1981) to Peretz Strahl, Inc. v. Fidelity, 806 N.Y.S. 2d 448 (2005) which decisions have been leading in the direction or providing insureds with this coverage.

G. Mechanics Liens:

There is one other instance where TIRSA, in deference to New York law and practice, had to make a change to the 2006 ALTA loan policy. While the form of the policy remains unchanged, thereby maintaining the policy's national unified nature, the New York Endorsement and TIRSA Rate Manual have been amended so to not give away the ranch. Covered Risk 11 insures a lender against loss "due to the lack of priority of the lien of the

Insured Mortgage upon the Title (a) as security for each and every advance of proceeds...over any statutory lien for services, labor or material..." Even though the policy goes on to limit the coverage to "proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated to on Date of Policy to advance (Covered Risk 11 (a)(ii), Emphasis added), New York law, through the trust provisions of Section 13 of the Loen Law, the Building Loan Affidavits required by Lien Law Section 22 and the newly-discovered Lien Law Section 73 Notice of Lending provision, provides that construction mortgage advances have lien priority over a mechanic's lien only to the extent that the construction advance takes place prior to the date on which a mechanic's lien is filed. Therefore, to nullify any thinking that the 2006 ALTA policy provided coverage to lenders in New York against after filed mechanic's liens, TIRSA deleted Covered Risk 11 and substituted the following coverage against loss or damage arising from: "the lack of priority of the lien of the Insured Mortgage upon the Title (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor or material furnished prior to the Date of Policy." (Emphasis Added) hence, the New York version of the 2006 ALTA policy provides coverage against mechanic's liens only during the gap period. After the recording date of the construction or building loan mortgage, the lender must contact the title company and obtain a title "run-down" or continuation search ("contin") to make sure that title is "clean", i.e., no third party has filed a mechanic's liens or other encumbrance, before the lender can obtain coverage that its advance has superior lien priority.

H. Conclusion:

The 2006 ALTA form policies contain many other changes that are less significant that the ones discussed above. Various "Exclusions from Coverage" have been restated; the

amount, which must be in play to invoke the Waiver of Arbitration provision, has been raised to $2 million and the Proof of Loss requirements have been eased, are among the changes. The creditors' rights exclusion which was a contentious part of the 1992 policy has not been removed in the 2006 loan policy form. The policy continues to exclude "[a}ny claim, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws" from coverage with the exception of eh instant transaction. Also, the Creditors' Right Endorsement continues not to be available in New York which means that the title underwriters do not cover the impact of the borrower's entering bankruptcy or running afoul of creditors' right statues post-policy or in the future. Certain policy provisions such as "Apportionment" and the infamous "Co-insurance" provisions and certain endorsements such the Last Dollar, have been eliminated as well. Time and your ability to persevere through this article (commendable if you have made it to this point) will not permit the author to discuss all of the new policy provisions.

By: Marvin N. Bagwell Esq.
Bagwell & Associates Title Agency LLC
New York, N.Y.

Revised by: Joseph D. DeSalvo Esq.
First American Title Insurance Company of N.Y.
New York, N.Y.

2010 Revision-
Melvyn Mitzner, Esq.
Keane & Beane, P.C.
White Plains, NY

TIRSA Owners Extended Protection Policy
("TOEPP") or (EAGLE)

In addition to the policy protections that are available to home buyers under the ALTA 2006 Owner Policy, home buyers since January 11, 2001 can opt for extended coverage by purchasing a TOEPP or EAGLE policy.

A. Overview:

On January 11, 2001 the New York State Department of Insurance approved First American Title Insurance Company's extended coverage policy which is nationally marketed as the EAGLE Owner's Protection Policy. Similar insurance policy forms have also been approved by the Department for other underwriters and are known as the "TIRSA Owner's Extended Policy" or "TOEPP".

The policy provides an alternative to the ALTA 2006 Owner's Policy affording additional title insurance protection to owners of an existing condominium unit or property improved by a one-to-four family residence. The owner must be a natural person and cannot be a commercial or legal organization or entity. By definition, however, natural person includes a trustee of a trust even if the trustee is not a human being. The premium for this coverage is 120% of the TIRSA Owners Policy Rates.

This article will attempt to delve deeper into the various coverages of the policy. Essentially the EAGLE/TOEPP policies differ from the ALTA 2006 Owners Policy in the following areas:

1) Expanded Coverage
2) Property Casualty Aspects
    i. Deductibles
    ii. Limitations of Liability
3) Consequential Damage Coverage
4) Market Value Enhancement

B. Expanded Coverage, Deductibles and Limitations of Liability:

The EAGLE/TOEPP policies include all of the usual insurance coverage provided in the ALTA 2006 policy together with certain expanded coverage. The practitioner should familiarize himself or herself with these enhancements to aid in the determination of whether the coverage under this policy is appropriate for their client.

I. Post Policy Coverage:

The EAGLE/TOEPP policy breaks from the traditional title insurance coverage which only provides cover for pre-policy events. Certain types of claims that arise after closing are covered under this policy, such as:

1) Claim from forgery or impersonation and the assertion of easement rights
2) Claims from the assertion of an interest in the title
3) Defective title
4) Rights arising out of leases, contracts or options

II. Access:

While the Alta 2006 policy provides coverage for the legal access to and from the premises, the EAGLE/TOEPP policy expands the policy coverage to actual vehicular and pedestrian access to the land.

III. Violation of a Covenant, Condition or Restriction:

Unless a violation of a covenant, condition or restriction is specifically expected in Schedule B the policy will provide coverage for forced removal or correction of a violation. In addition coverage is provided for a loss of title due to a violation of the covenant, condition or restriction prior to the insured acquiring title (right of reventer)

IV. Sub-Division Laws:

Subject to certain deductibles and liability caps the EAGLE/TOEPP policy provides coverage to the insured against the inability to obtain a building permit due to a violation of a subdivision law existing at the policy date. The policy also includes coverage if the insured is required to correct or remove the violation or if someone refuses to perform a contract to purchase, lease or make a mortgage due to said violation.
This coverage is subject to a deductible of $2,000.00 and maximum liability cap of $20,000.00.

V. Building Permits:

Policy coverage is afforded against the forced removal of a structure on the land (other than boundary walls and fences) which existed as of the date of the policy and built without a building permit. **This coverage is subject to a deductible of $4,000.00 and maximum liability cap of $25,000.00.**

VI. Zoning:

Policy coverage is afforded against the forced removal of a structure on the land(other than boundary walls and fences) which is existed as of the date of policy and built in violation of a zoning law or regulation. **Here again this coverage is subject to a deductible of $4,000.00, and maximum liability caps of $25,000.00.**

VII. Boundary Wall and Fence Misplacement:

Policy coverage is afforded against forced removal of a boundary wall or fence that encroaches onto a neighbors' land, if the fence on wall exists as of the policy date. **This coverage is subject to a deductible of $1,500.00 and maximum liability cap of $5, 000.00.**

VIII. Encroachments onto the Insured Land Policy:

Coverage is afforded if someone refuses to perform a contract to purchase, lease or make a mortgage because a structure of an adjoining landowner as existing as of the policy date encroaches into the insured land.

IX. Encroachments on Easements & Set-Backs:

Policy coverage is afforded against the forced removal of an existing structure for encroaching into an easement or over a set-back even if the easement or set-back is used as an exception in the policy. **However, if the encroachment is specifically excepted from coverage there is no coverage.**

C. Additional Features:

I. Cost of Relocation, Consequential Damage:

In the event that the insured is required to remove themselves from the insured premises by reason of a claim under the policy. The policy provides for the payment of reasonable costs of relocation of personal property up to 25miles from the insured premises. In addition the policy further covers the cost of repair of any damage to personal property because of relocation.

II. Market Value Increase:

The policy has built in market value increase feature. The policy amount increases ten percent (10%) of the policy amount shown on Schedule "A" each year for the first five (5) years following the policy date to a maximum of one hundred fifty percent (150%) of the policy amount shown in Schedule "A".

D. Conclusion:

The EAGLE/TOEPP policy offers a valuable alternative to the normal title coverage presently available under the ALTA 2006 fee policy. It has certain unique features which provides for additional protection in areas of future events, governmental regulation, zoning, and violations which until its approval in 2001 was unheard of in the title industry in New York. Whether or not this extended coverage is a value to your clients is a matter of discussion between you and your clients.

By: Joseph D. DeSalvo
First American Title Insurance
Company of N.Y.
New York, N.Y.

FIRST AMERICAN TITLE INSURANCE COMPANY OF NEW YORK			
NON BULK (BASIC) RATES PER THOUSAND			
	ZONE 1	***ZONE 2***	
PURCHASE PRICE UNDER ONE MILLION (DEVIATED RATES)			
0 TO $35,000.	$ 303.00	$ 342.00	FLAT
$35,001 TO $50,000.	$ 6.74	$ 5.67	PER THOUSAND
$50,000. TO $100,000.	$ 4.20	$ 4.62	PER THOUSAND
$100,001 TO $500,000.	$ 3.38	$ 3.71	PER THOUSAND
$500,001 TO $999,999.99	$ 3.03	$ 3.38	PER THOUSAND
PURCHASE PRICE ONE MILLION OR MORE			
0 TO $35,000.	$ 356.00	$ 402.00	FLAT
$35,001 TO $50,000.	$ 7.92	$ 6.67	PER THOUSAND
$50,001. TO $100,000.	$ 4.94	$ 5.43	PER THOUSAND
$100,001 TO $500,000.	$ 3.98	$ 4.36	PER THOUSAND
$500,001 TO $1,000,000.	$ 3.56	$ 3.98	PER THOUSAND
$1,000,001. TO $5.000,000.	$ 3.25	$ 3.66	PER THOUSAND
$5,000,001. TO $10,000,000.	$ 2.96	$ 3.25	PER THOUSAND
$10,000,001. TO $15,000,000.	$ 2.76	$ 3.07	PER THOUSAND
OVER $15,000,000.	$ 2.48	$ 2.76	PER THOUSAND
BASIC MORTGAGE RATES PER THOUSAND			
0 TO $35,000.	$ 299.00	$ 344.00	FLAT
$35,001 TO $50,000.	$ 6.61	$ 5.55	PER THOUSAND
$50,001. TO $100,000.	$ 4.10	$ 4.54	PER THOUSAND
$100,001 TO $500,000.	$ 3.31	$ 3.64	PER THOUSAND
$500,001 TO $1,000,000.	$ 2.96	$ 3.31	PER THOUSAND
$1,000,001. TO $5.000,000.	$ 2.71	$ 3.05	PER THOUSAND
$5,000,001. TO $10,000,000.	$ 2.47	$ 2.71	PER THOUSAND
$10,000,001. TO $15,000,000.	$ 2.31	$ 2.55	PER THOUSAND
OVER $15,000,000.	$ 2.07	$ 2.31	PER THOUSAND
BUILDING LOAN MORTGAGE RATES PER THOUSAND			
0 TO $35,000.	$ 356.00	$ 402.00	FLAT
$35,001 TO $50,000.	$ 7.92	$ 6.67	PER THOUSAND
$50,001. TO $100,000.	$ 4.94	$ 5.43	PER THOUSAND
$100,001 TO $500,000.	$ 3.98	$ 4.36	PER THOUSAND
$500,001 TO $1,000,000.	$ 3.56	$ 3.98	PER THOUSAND
$1,000,001. TO $5.000,000.	$ 3.25	$ 3.66	PER THOUSAND
$5,000,001. TO $10,000,000.	$ 2.96	$ 3.25	PER THOUSAND
$10,000,001. TO $15,000,000.	$ 2.76	$ 3.07	PER THOUSAND
OVER $15,000,000.	$ 2.48	$ 2.76	PER THOUSAND
If a purchaser elects to simultaneously obtain both fee title insurance and mortgage title insurance from First American, the premium for the mortgage title insurance is computed at the simultaneous rate. The premium for the mortgage title insurance would be computed using the basic Mortgage rate schedule above. The premium on the amount of the loan policy that doesn't exceed the owner's policy shall be calculated at 30% of the regular rate for loan policies. If the mortgage policy exceeds the owner's policy the excess would be computed at the full rate per thousand.			

TITLE INSURANCE RATE SERVICE ASSOCIATION, INC.

Activities of the Title Insurance Rate Service Association, Inc. (TIRSA)

TIRSA is licensed by the Superintendent of Insurance of the State of New York as the Rate Service Organization and statistical agent of the Department under Article 23 of the New York Insurance Law. Acting under the supervision of the Superintendent of Insurance, TIRSA receives, compiles and submits to the Department all statistical data for title insurance premiums, losses, expenses, etc.

Under the direct supervision of the Superintendent, TIRSA develops, maintains, amends, updates and submits to the Superintendent for approval, the Title Insurance Rate Manual for New York and any and all changes thereto.

Please note that the Fourth Reprint, Fourth Revision of the TIRSA Rate Manual is effective March 3, 2010 and is now available online.

Click here to access → **http://tirsa.org/TIRSA_Rate_Manual_041310.pdf**

Tirsa
370 Lexington Ave. Suite 704
New York, NY 10017

phone: (212) 867-8524
fax: (212) 867-8526

info@tirsa.org

American Land Title Association **New York State Land Title Association**
Members **Title Insurance Rate Manual** **Contact Us**

ALTA Owner's Policy (6-17-06)

POLICY OF TITLE INSURANCE ISSUED BY

stewart
title insurance company

Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, STEWART TITLE INSURANCE COMPANY, a New York corporation, (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
   (a) A defect in the Title caused by
      (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
      (ii) failure of any person or Entity to have authorized a transfer or conveyance;
      (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
      (iv) failure to perform those acts necessary to create a document by electronic means authorized by law
      (v) a document executed under a falsified, expired, or otherwise invalid power of attorney
      (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
      (vii) a defective judicial or administrative proceeding.
   (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
   (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (a) the occupancy, use, or enjoyment of the Land;
   (b) the character, dimensions, or location of any improvement erected on the Land;
   (c) the subdivision of land; or
   (d) environmental protection

   if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

Countersigned by:

Authorized Signature

STEWART - TITLE ASSOCIATES
Company

New York, NY
City, State

STEWART TITLE INSURANCE COMPANY INCORPORATED 1987 NEW YORK

President

Secretary

Part 1 of
Policy
Serial No.

If you want information about coverage or need assistance to resolve complaints, please call our toll free number: 1-800-433-0014. If you make a claim under your policy, you must furnish written notice in accordance with Section 3 of the Conditions. Visit our Word-Wide Web site at http://www.StewartNewYork.com

File No.:

COVERED RISKS (Continued)

9. Title being vested other than as stated in Schedule A or being defective
   (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
   (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
      (i) to be timely, or
      (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
      (i) the occupancy, use, or enjoyment of the Land;
      (ii) the character, dimensions, or location of any improvement erected on the Land;
      (iii) the subdivision of land; or
      (iv) environmental protection;

   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
   (a) a fraudulent conveyance or fraudulent transfer; or
   (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
(d) "Insured": The Insured named in Schedule A.
   (i) The term "Insured" also includes
      (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
      (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
      (C) successors to an Insured by its conversion to another kind of Entity;
      (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
         (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
         (2) if the grantee wholly owns the named Insured,
         (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
         (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
      (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
(e) "Insured Claimant": An Insured claiming loss or damage.
(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
(j) "Title": The estate or interest described in Schedule A.
(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. **CONTINUATION OF INSURANCE**
The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. **NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT**
The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. **PROOF OF LOSS**
In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. **DEFENSE AND PROSECUTION OF ACTIONS**
   (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
   (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
   (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. **DUTY OF INSURED CLAIMANT TO COOPERATE**
   (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
   (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. **OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**
In case of a claim under this policy, the Company shall have the following additional options:
   (a) To Pay or Tender Payment of the Amount of Insurance. To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
   (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
      (i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
      (ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

   Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
  (i) the Amount of Insurance; or
  (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
  (i) the Amount of Insurance shall be increased by 10%, and
  (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

v

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.
Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(c) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Claims Department at 300 East 42nd St, 10th Floor, New York, NY 10017.

NEW YORK STATE LAND TITLE ASSOCIATION, INC.

RECOMMENDED PRACTICES AND FORMS

March, 2009

NEW YORK STATE LAND TITLE ASSOCIATION, INC.
LAW COMMITTEE OF THE TITLE INSURANCE SECTION
RECOMMENDED PRACTICES AND FORMS

PREAMBLE

The New York State Land Title Association, Inc. has assembled this compilation of recommended practices and forms for use by all title insurers doing business in the State of New York. The purpose of such recommended practices is to simplify and expedite the title examination and underwriting process in a manner, which will benefit the users of title insurance services.

The recommended practices and forms set forth customary guidelines for the disposition of title problems and as the name clearly indicates their use is optional at the discretion of individual insurers.

The ultimate basis for the disposition of particular title problems is the evaluation and requirements set forth by the underwriting department of the insuring company.

GENERAL PRACTICES

G-1 BUILDING DEPARTMENT NOTICE OF PENDENCY (Lis Pendens)

A Notice of Pendency to enforce Building Department violations may be disregarded if a search shows that the violations which are the subject of the notice of pendency are no longer pending.

G-2 DEED FROM FIDUCIARY - CONSIDERATION

Where a deed from a fiduciary does not recite the actual amount of consideration paid, no exception as to the adequacy of consideration needs to be raised if:

A. The deed is on record for more than 10 years; or

B. There is other evidence or record of the payment of valuable consideration including, without limitation, the simultaneous execution of a purchase money mortgage or the payment of transfer taxes.

G-3 DELIVERY QUESTION

Where there is a time lapse between the date of a deed and the date of its recording, no objection needs to be raised where the deed has been on record for more than 10 years. If the deed has been on record for 10 years or less, the period search in a Surrogate's office

should be completed against the grantor from the date of the instrument to the date of recording in the county where the grantor resides and in the county where the property is situated. If no death was found then the question should be passed unless the grantee, or some one connected with him, was still in title and more definite information could therefore be obtained, or unless the death of the grantor is definitely known.

The question of delivery should not be raised where the interval between the date of the deed and the recording date thereof was less than 30 days unless there was affirmative knowledge of the death of the grantor prior to recording. Under this 30 day period no Surrogate's search need be made.

The question of delivery should not be raised where the interval between the date of the deed and the recording date thereof was greater than 30 days where the public record evidences a purchase money mortgage to an institutional lender or the seller(s) which is dated contemporaneously with the deed.

G-4 EXPIRED CITY OF NEW YORK UNSAFE BUILDING NOTICE OF PENDENCY (Lis Pendens):

In the City of New York, an Unsafe Building Notice of Pendency filed for more than 1 year may be passed if:

A. Within 1 year from its filing a final judgment has not been entered in said proceeding directing the demolition of the structure; and

B. Searches have been made for the period of 1 year from the date of filing of the Unsafe Building Notice with noting found.

G-5 FINANCING STATEMENTS UCC-1 (s)

Financing Statements, other than a financing statement filed against a Cooperative Interest in a Cooperative Organization, may be passed where they are on file for more than 5 years and there has been, was a change of ownership, or there will be a change at closing. Where, however, the transaction is to insure a mortgage and there is to be no change of ownership, then the Financing Statements should be excepted unless they are on file for more than 5 years and 30 days and have not been renewed.

Exception: Financing statements filed against a Cooperative Interest in a Cooperative Organization prior to July 1, 2001 are effective until June 30, 2006. Financing statements against a Cooperative Interest filed on or after July 1, 2001 with a Cooperative Addendum, or a financing statement filed prior to July 1, 2001 which is amended after July 1, 2001 by the filing of a Cooperative Addendum, are effective for 50 years.

G-6 INFANTS, INCOMPETENTS-DEED BY

Deeds executed by guardians, committees or attorneys in fact in behalf of their respective wards, incompetents or principals, instead of in their names by such representatives should not be deemed an objection to title where the instrument recites the source of authority for the act and the instruments have been properly indexed on the record against the respective infant, incompetent or principal.

G-7 LIMITED PARTNERSHIP

A. When a limited partnership formed under Article 8 of the Partnership Law takes title to real estate, the failure to commence or to complete the publication required under that Article before title passes to the partnership may be disregarded if the publication is ultimately commenced and complete.

B. When a limited partnership formed under Article 8-A of the Partnership Law takes title to real estate, the failure to commence or to complete the publication required under that Article may be disregarded.

G-8 MERGED MORTGAGE & FEE

A mortgage may be disregarded where the mortgage and fee title came into the same ownership of record more than 10 years ago without any recital of non-merger, where such owner is no longer in title and where the chain of title subsequent to the original common ownership of the fee and the mortgage contains no recital of, or reference to, such mortgage. Proof is also to be taken from the last owner that no demand has been made for payment, that no payment has been made of principal or interest, and that such last owner has not acknowledged the debt.

G-9 NOTICE OF PENDENCY OPEN MORTGAGE OR MECHANICS LIEN DISCHARGED

If a foreclosure judgment has not been entered or, if entered, was entered more than six years ago, a receiver has not been appointed or, if appointed, has been discharged by court order, and the mortgage or mechanic's lien has been satisfied prior to the pending transaction, the notice of pendency filed in an action to foreclose the mortgage or mechanics lien may be disregarded.

G-10 NOTICE OF PENDENCY UNSAFE BUILDING VIOLATION (Lis Pendens)

For an unsafe building violation, if the violation for which the notice of pendency was filed is no longer in effect and title has been derived from a conveyance by the City of New York, which acquired title pursuant to an in rem tax foreclosure subsequent to the filing of the notice of pendency, the notice of pendency may be deemed merged and not be an objection to title.

G-11 PUBLICATION OF JUDICIAL SALES IN THE FIVE COUNTIES OF NEW YORK CITY OR NASSAU COUNTY SALES IN NEW YORK LAW JOURNAL

When a Supreme Court Justice in the five counties of New York City or Nassau County designates the New York Law Journal as a paper for publication for the judicial sale of property in such county or where the Surrogate of the five counties of New York City or Nassau County designates the New York Law Journal as a paper for publication of notices under the Surrogate Court Procedure Act for the publication of Surrogate Court citations (with the exception of notices under Section 1801 of the Surrogate Court Procedure Act) publication should be deemed publication in a proper newspaper.

G-12 SHERIFF'S EXECUTION SALES-PRIOR JUDGMENTS

No objection should be raised to an insured title which has come through a sheriff's execution sale provided that the judgment under which the sale was had was obtained by personal service, by actual delivery to the defendant, there were no other judgment creditors, no other subordinate liens at the time of the execution sale, that the owner at the time of the execution sale was the debtor, and the execution sale has been properly brought and the purchaser under such sale or his successor in title is in possession.

G-13 STOCK REPLACED BY REAL ESTATE

When a custodian or general guardian holds stock in a corporation for the benefit of an infant and the corporation in liquidation conveys to the custodian or guardian an interest in real property represented by his proportionate share, the custodian or guardian can sell such real estate interest without securing a court order to sell. The same rule is applicable where an administrator or executor of an estate holds stock in a corporation which is liquidated and an interest in real estate replaces stock in the hands of the administrator or executor.

G-14 TAX SALES-RIGHT OF RE-ENTRY

In a title made through a tax sale or through a foreclosure of a tax lien, by an In Rem Proceeding or otherwise, a right of re-entry created 10 years prior to such tax proceeding may be passed even through the taxes in question accrued subsequent to the instrument reserving the right of re-entry and even though the right of re-entry was reserved as a means of enforcing the restrictive covenants. However, the restrictive covenants, as distinguished from the right of re-entry, should not be disregarded.

G-15 TAX TITLES

When title to property is made through a recorded tax deed properly describing the property under examination, and 10 years have elapsed since the recording of such deed, the title may be insured without requirement of an action to perfect the tax title, unless it is established that the tax for the year which resulted in the sale was paid before the sale either directly or under another assessment for the same tax.

CORPORATIONS

C-1 CORPORATE SEAL

A corporate instrument may be passed where no corporate seal was affixed.

C-2 CORPORATION DEED TO A COMPANY OFFICER

A deed from a corporation to a grantee who, from the record, appears to be an officer, director or stockholder of the grantor corporation, or a grantee obviously related to such a person, may be passed without objection when title has reached a purchaser for value.

C-3 CORPORATION- DEEDS DATED PRIOR TO INCORPORATION

A. When a deed is dated and recorded before the certificate of incorporation of a grantee is filed in the office of the Secretary of State and a confirmatory deed is obtained from the grantor to the corporation after the filing of the certificate of incorporation, the deed will be passed as sufficient without any requirement for further instruments from the incorporators or stockholders of the grantee or from those who furnished the consideration for the conveyance.

B. When a deed is dated before the certificate of incorporation of the grantee is filed in the office of the Secretary of State and the deed is recorded on the same day as the certificate is filed or later, the deed will be passed as sufficient without requirement of proof of delivery or of any confirmatory deeds.

C-4 FRANCHISE TAXES

Franchise taxes accrued more than 10 years ago against a corporation which has been dissolved within the past 10 years may be disregarded, provided the premises in question has been or is being conveyed to a purchase for value. If such dissolved corporation is the present owner, proof of the payment of taxes for the immediately preceding ten years should be obtained. For corporations that are active, franchise taxes accruing more than 10 years ago may be disregarded, provided that title has been or is being conveyed to a purchaser for value.

C-5 INTERLOCKING DIRECTORS OR STOCKHOLDERS

A conveyance from a corporation to a corporate grantee having interlocking directors or stockholders may be passed without objection when title has been conveyed to a purchaser for value.

C-6 OLD CORPORATIONS

When a corporation has been out of title and the property being conveyed has been improved for over 10 years, no search need be made for a certificate of incorporation.

DESCRIPTIONS AND BOUNDARIES

D&B-1 DESCRIPTION-DEFECT CAUSED BY CHANGE IN STREET LINES

Where there is a defect in the description appearing in a deed which has been on record for 10 years or more and the defect arose by reason of a change in the street line of the street by which the beginning point is monumented or by reason of a change in the street line of the street upon which the property abuts, the title may be insured without requirement of a correction deed, if both of the following conditions exist:
A. All subsequent deeds on record for 10 years or more correctly describe the property with reference to the changed street lines; and
B. The property has been improved for 10 years or more, and the grantor in the described deed owned no other property abutting the misdescribed property.

D&B-2 DESCRIPTION-VARIANCE BETWEEN STREETS ON FILED MAP AND IN PARTICULAR DESCRIPTION

Where a deed describes property by reference to a lot on a filed map and includes a description which coincides with the property location on the map, and after recording of the deed there is a change in the location of the line of the street from which the beginning point is monumented, title may be insured without requiring a correction deed.

D&B-3 EFFECT OF "SAME AS" RECITAL IN DEED

A. When an instrument purports to convey or mortgage all of the interest of an Owner but the instrument contains a recital that the property is the same as that described in (as distinguished from conveyed by) a previous instrument which conveyed or mortgaged only a fractional interest, the recital should be disregarded and the instrument passed as conveying or mortgaging the entire interest of the owner.

B. When a conveyance contains a defective description but the description is followed by a recital that the property is the same as that conveyed by or described in a previous instrument which contains a good description, the defective description should be disregarded and the deed passed as conveying the entire premises.

D&B-4 FENCE VARIATIONS

Where there are variations between the lines of the record title and lines of fences, hedges or retaining walls, the policy may except such variations but will not except failure of title to the land outside of such fence, hedge or retaining wall unless such variations exceed 12 inches.

D&B-5 INSURING GORES IN RECORD TITLE

Where there is a gore of less than 1 inch between 2 lots, contiguity between the 2 lots will nevertheless be insured unless there is an express reservation to the land in the gore or unless there is pending litigation over title to the gore.

D&B-6 PARTY WALLS

A. When the distances and dimensions given for 2 or more plots would make them contiguous except for the fact that the point of beginning in 1 or more of the descriptions is located opposite the center of a party wall, the monumentation may be disregarded and contiguity may be insured when the properties come into a common ownership provided that the gap between the point opposite the center of the party wall and the line determined by the distance is 3 inches or less.

B. When the point of beginning is described as being "at" the center of the party wall (as distinguished from "opposite") and the front of the party wall is set back from the street line at least 2 feet, the attempted location at the center of the party wall may be disregarded entirely as a monument even if the gap is more than 3 inches.

C. Where a common owner conveyed buildings separately monumenting some plots as opposite the center of a party wall, the monumentation may be disregarded for the purpose of insuring contiguity where the sum of the dimensions used in the conveyances totals all the property originally held by the common owner.

D. Where a grantor conveys premises monumenting the same as opposite the center of a party wall, such monumentation may be disregarded for the purpose of insuring contiguity where the dimensions used in the conveyance would otherwise convey all the property of the grantor.

D&B-7 RECIPROCAL DRIVEWAY EASEMENTS

Where a reciprocal driveway easement is in actual use by adjoining owners and the reciprocal easement is affirmatively recited in deeds of record on both sides for at least the past 10 years, and not subordinate to any mortgage, the reciprocal easement may be insured and any defect in its creation by the common owner disregarded.

D&B-8 VARIATION BETWEEN RECORD DESCRIPTION AND TAX MAP

A variation between a record description and a tax map of up to 1 inch may be disregarded.

ESTATE ADMINISTRATION & TAXES

E-I ADMINISTRATOR'S DEED-ADDITIONAL BOND

A deed made by an administrator of a decedent, to whom unrestricted letters have been issued, may be insured without compliance with SCPA 805 (3) if acknowledged waivers of citation, renunciation and consent to the appointment of the Administrator executed by all of the distributees, reciting that the filing of a bond is not required, were filed with the Surrogate prior to the issuance of the letters.

E-2 FEDERAL ESTATE TAXES

A. The lien for Federal Estate Tax may be disregarded when the federal gross estate of a decedent is as follows: for decedents dying between January 1, 1986 and December 31, 1997 a gross estate of not more than $600,000; for a decedent dying in 1998 a gross estate of not more than $625,000; for a decedent dying in 1999 a gross estate of not more than $650,000; for decedents dying in 2000 or 2001 a gross estate of not more than $675,000; for decedents

dying in 2002 or 2003 a gross estate of not more than $1,000,000; for decedent's dying in 2004 or 2005 a gross estate of not more than $1,500,000; for decedents dying in 2006, 2007 or 2008 a gross estate of not more than $2,000,000; and for decedents dying in 2009 a gross estate of not more than $3,500,000.

B. The lien for Federal Estate Tax against a deceased tenant by the entirety or a deceased joint tenant may be disregarded on a deed from the surviving tenant by the entirety or the surviving joint tenant to a purchaser who pays adequate and full consideration.

C. The lien for Federal Estate Tax against a deceased tenant by the entirety or deceased joint tenant may be disregarded upon a mortgage for adequate and full consideration from the surviving tenant by the entirety or the surviving joint tenant.

D. The lien for Federal Estate Tax against a decedent may be disregarded upon a mortgage for value or a transfer made to a purchaser for value which transfer or mortgage is made by the heirs, devisees or distributees of the decedent.

E. Where in an action party defendants are included as unknowns in an omnibus clause, no question will be raised as to possible Federal Estate Tax against the estates of any such unknowns who may be dead and the United States Government need not be named a party for purpose of cutting off such possible Federal Estate Tax. The United States Government is to be named as a party defendant for any other proper reason which may exist in the title.

E-3 INHERITANCE BY SURVIVING SPOUSE

A. DEATH OF DECEDENT PRIOR TO MARCH 1, 1964

1) When decedent died prior to March 1, 1964 and title is through a surviving spouse who claims the entire title under subdivisions 2 and 3 of Section 83 of the Decedent Estate Law because the estate was less than $5,000 deeds should be obtained from the surviving parents or parent, or where title is made through a spouse who claims the entire title under subdivision 4 because the estate was less than $10,000, deeds should be obtained from the surviving brothers and sisters or their descendants. However the requirement for such deeds will be waived if title is made through a proceeding in the Surrogate's Court by an administrator for leave to sell the property or an accounting proceeding or a proceeding for probate of heirship or other appropriate action or proceeding properly conducted and such parents or collaterals are joined as parties and an appropriate finding is made that the value of the estate is below the required amount.

2) The title from the surviving spouse of an intestate may be passed without requiring deeds from the parents or collaterals and without requiring any of the foregoing proceedings or actions if proof is furnished of all three of the following:

a) The estate was below the amount required to give the spouse the entire title; this may be established either by the estate tax proceeding or by affidavit; and

b) The property had been improved for more than 10 years; and

c) The deed from the surviving spouse or from his or her heirs, devisees or successors in interest had been recorded for more than 10 years.

B. DEATH OF DECEDENT BETWEEN MARCH 21, 1964 AND SEPTEMBER 1, 1992

1) When decedent died on or after March 1, 1964 and title is through a surviving spouse who claims the entire title under subdivisions 2 and 3 of Section 83 of the Decedent Estate Law or under paragraphs 3 and 4 of subdivision (a) of Section 4-1.1 of the Estates, Powers and Trusts Law (as said paragraph existed prior to September 1, 1992) because the estate was less than $25,000, deeds should be obtained from the surviving parents or parent.

However such deeds should be waived if title is made through a proceeding in the Surrogate's Court by an administrator for leave to sell the property or an accounting proceeding or a proceeding for probate of heirship or other appropriate action or proceeding is properly conducted and such parents are joined as parties and an appropriate finding is made that the value of the estate is below the required amount.

NOTE: The Following Did Not Take Effect Until March 1, 1974:

2) The title from the surviving spouse of an intestate may be passed without requiring deeds from the parents and without requiring any of the foregoing proceedings or actions if proof is furnished of all the following:
a) The estate was below the amount required to give the spouse the entire title; this may be established either by the estate tax proceeding or by affidavit, and
b) The property had been improved for more than 10 years, and
c) The deed from the surviving spouse or from his or her heirs, devisees or successors in interest had been recorded for more than ten years.

C. DEATH OF DECEDENT ON OR AFTER SEPTEMBER 1, 1992

When decedent died on or after September 1, 1992, and title is through a surviving spouse who claims the entire title under Article 4 of the Estates Powers and Trusts Law, deeds do not have to be obtained from the surviving parents or parent.

E-4 NEW YORK ESTATE TAX-DEATH AFTER July 1, 1978

A. The lien for New York Estate Tax may be passed where the decedent died a resident of New York State (i) prior to June 9, 1994 and the federal gross estate, including the subject real property, is not more than $108,333; (ii) on or after June 9, 1994 and on or prior to

September 30, 1998, and the federal gross estate, including the subject real property, is not more than $115,000; (iii) on or after October 1, 1998 and on or prior to January 31, 2000 and the federal gross estate, including the subject real property, is not more than $300,000; (iv) on or after February 1, 2000 and on or prior to December 31, 2001 and the federal gross estate, including the subject property, is not more than $675,000; or (v) on or after January 1, 2002 and on or prior to December 31, 2009 and the federal gross estate, including the subject property, is not more than $1,000,000.

B. The lien for New York Estate Tax against a deceased tenant by the entirety or joint tenant may be disregarded on a deed from the surviving tenant by the entirety or joint tenant to a bona fide purchaser for adequate and full consideration.

C. Where death occurs after May 25, 1990, the lien for New York Estate Tax against a deceased tenant by the entirety or deceased joint tenant may also be disregarded upon a mortgage for adequate and full consideration from the surviving tenant by the entirety or the surviving joint tenant.

D. Where death occurs after May 25, 1990, the lien for New York Estate Tax may also be disregarded against an interest in property held by the decedent and the decedent's surviving spouse as tenants by the entirety.

E. The lien for New York Estate Tax against a decedent may be disregarded upon a mortgage for value or a transfer made to a purchaser for value which transfer or mortgage is made by the heirs, devisees or distributes of the decedent.

E-5 POSTHUMOUS AND AFTER-BORN CHILDREN

When the record fails to show whether any child of a decedent was born after the death of the decedent or after the date of the decedent's will, and no proof on the subject is available, the question may be disregarded if 30 years have passed since the date of the death of the decedent, or if ten years have passed since a conveyance by the devisees to a bona fide purchase.

E-6 POWER OF SALE-ANCILLARY LETTERS OF PROBATE

A. Prior to September 1, 1967: Where a decedent dies in a State other than New York State, owning real property in New York State, and his will is probated in such foreign state and an ancillary probate is had in New York State, the foreign executor may act in New York State pursuant to a power of sale granted in the will without obtaining Ancillary Letters in New York, unless precluded by Section 131 of the Banking Law.

B. After September 1, 1967: Where a decedent dies in a State other than New York State, owning real property in New York State, and his will is probated in such foreign state, either an ancillary or original probate of the will must be completed in New York State and

ancillary Letters must be issued to the foreign executor before exercising in New York State a power of sale granted in the will.

E-7 PROBATE OF WILLS

A. When title is made through a will and the estate is out of title and the petition for probate, through not made by a blood relative of the decedent, shows that the heirs are direct descendants or brothers and sisters, the title will be insured without exception as to the sufficiency of such proof.

B. If under the same circumstances the petition shows that the heirs include nephews or nieces or more remote relatives, the title will nevertheless be insured without exception as to the sufficiency of such proof if 5 years have elapsed since the probate of the will.

C. Proof of Heirship on Probate - Where title is presently being made through a will and the petition is made for probate by the surviving spouse, who has had children with the decedent, the title will be insured without further proof of heirship, provided that the decedent had not had a prior marriage and satisfactory proof of that fact is furnished.

E-8 PROOF OF HEIRSHIP

When a deed from the heirs of a former owner who died intestate has been recorded for more than 10 years, and the only proof that such grantors are the only heirs are contained in a petition for letters of administration made by one who was not a blood relative of the decedent, the title will be insured without any exception as to the sufficiency of such proof.

E-9 PROOF OF HEIRSHIP & DEATH OF JOINT TENANT OR TENANCY BY THE ENTIRETY

A. When a deed from the heirs of a deceased former owner who died intestate or the surviving tenant by the entirety or joint tenant of a deceased former owner has been recorded more than 10 years, and the only proof that such grantor(s) are the surviving tenant by the entirety or joint tenant or the only heirs is contained in a statement in the transfer or estate tax petition or application for release of lien by a qualified person or (pursuant to Real Property Actions and Proceedings Law Section 341) in a recital contained in a duly acknowledged deed or mortgage or other instrument executed for the purpose of transferring title which is more than 10 years old to the effect that he/she is the surviving spouse or joint tenant or the only persons interested in the estate of the decedent, the title will be insured without exception as to the sufficiency of such proof.

B. A recorded release of New York Estate Tax may also be accepted as proof of death of a deceased joint tenant or tenancy by the entirety.

E-10 PROOF OF PAYMENT OF LEGACIES

Legacies whether expressly or impliedly charged on the real property of a decedent may be disregarded after 10 years from the date of death of the decedent if the estate has passed out of title.

E-11 PUBLIC ADMINISTRATOR'S SALES

Title made through sales by public administrators may be insured, if otherwise valid, despite the fact that no bond has been filed in the proceeding for the sale of the particular parcel and despite the fact that no bank has been designated in the order as the depository of the proceeds of sale.

E-12 PUBLIC ADMINISTRATOR'S SALES ACTING IN FIDUCIARY CAPACITY

If a person died intestate on or after June 1, 1965, title made through a sale made by a Public Administrator, acting as administrator of the estate under Section 11-1.1 of the Estates, Powers and Trust Law, may be insured without requiring the filing of an additional bond unless the court so requires.

LIENS AND JUDGMENTS

L&J-1 FEDERAL TAX LIENS

A. A notice of Federal Tax Lien based on an assessment made, on or before November 5, 1990 may be disregarded upon the execution and delivery of a deed, lease or mortgage affecting the property of the taxpayer to a Purchaser (as defined in Section 6323 of the Internal Revenue Code) or a Mortgagee after 6 years and 30 days have elapsed from the date of assessment set forth in the notice of Federal Tax Lien, unless the notice of Federal Tax Lien was refiled prior to the expiration of the 6 year and 30 days period. If the notice of Federal Tax Lien was refiled within the 6 year and 30 day period from the date of assessment, the notice of Federal Tax Lien may be disregarded after 10 years and 30 days have elapsed from the date of assessment set forth in the notice of Federal Tax Lien unless the notice of Federal Tax Lien was further refiled.

B. Federal Tax liens against one of the parties holding title as tenants by the entirety may be passed when title passes from the other tenant as a survivor following the death of his or her spouse. The lien will not be passed when both tenants by the entirety are alive.

L&J-2 FEDERAL TAX LIENS FILED BETWEEN DATE OF MORTGAGE AND RECORDING

Where between the time of a bona fide closing and the time of recording of the insured mortgage, a Federal Tax Lien is filed against a mortgagor, the Federal Tax Lien will be passed upon proof establishing the actual closing date and, if there is a delay between the date of the mortgage or mortgages and the recording thereof, the reason for the delay in recordation.

L&J-3 JUDGMENTS AGAINST PARTNERS

A. Where title is in a limited partnership or limited liability partnership duly formed, which is about to convey or mortgage property, judgment searches need not be run against general or limited partners and judgment liens against them may be disregarded.

B. When title is taken in the trade name of a general partnership in accordance with its named designation in the certificate of partnership which is properly filed, judgment searches need not be run against general or limited partners and judgment liens against them may be disregarded.

L&J-4 JUDGMENTS ENTERED BETWEEN DATE OF DEED OR MORTGAGE AND RECORDING

Where between the time of a bona fide closing and the time of recording instruments, a judgment is docketed against a grantor or mortgagor, the judgment will be passed upon proof establishing the actual closing date and, if there is a delay between the date of the deed(s) or mortgage(s) and the recording thereof, the reason for the delay in recordation.

L&J-5 NYC LIENS AND JUDGMENTS DURATION

A. Parking Violation Bureau Judgments:
8 years (N.Y. Vehicle and Traffic Law Section 241 (3))

B. Environmental Control Board Judgments:
8 years (NYC Charter Ch. 57 Section 1404)

C. Transit Adjudication Bureau Judgments:
10 years N.Y. Public Authority Law Section 1209-A; 1984 N.Y. Laws Ch.93)

L&J-6 PRIORITY OF A PURCHASE MONEY MORTGAGE OVER JUDGMENT AGAINST THE MORTGAGOR

Where real property is sold and conveyed, and at the same time a mortgage thereupon is given by the purchaser to secure the payment of the whole or a part of the purchase money, the lien of the mortgage upon that real property is superior to the lien of a previous money

judgment against the purchase money mortgagor. This may be followed whether the mortgage is made directly to the grantor or to a third party, so long as the mortgage recites that it is a purchase money mortgage.

L&J-7 SURETY BOND LIENS-WHEN DISREGARDED

A Surety Bond Lien may be disregarded after 10 years from the date of filing provided that such lien was not extended by court order and such extension noted in the record where the Surety Bond Lien is filed.

MORTGAGES AND FORECLOSURE OF MORTGAGES

M-1 FORECLOSURE

When a judgment has been rendered in favor of an Agency of the State or a Municipality other than the Industrial Commissioner of the State of New York, it will be adequate to join the State of New York or such Municipality without joining the Agency as a party defendant provided that appropriate recitals are contained in the complaint giving the reason for joinder as a Commissioner, agency, or municipality.

M-2 FORECLOSURES IN FEDERAL COURTS

Exception need not be taken to a publication of a public sale of realty or interest therein under any order, judgment or decree of any court of the United States provided it has been made in accordance with the Federal Statue (28 U.S. Code Sec. 2002) that reads as follows:

"A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state of judicial district of the United States wherein the realty is situated.

"If such realty is situated in more than one county, state, district or circuit, such notice shall be published in one or more of the counties, states, or districts wherein it is situated, as the court directs. The notice shall be substantially in such form and contain such description of the property by reference or otherwise as the court approves. The court may direct that the publication be made in other newspapers.

"This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency."

M-3 FORECLOSURE – PARTIES – SUCCESSORS OF DECEASED MORTGAGEE

When the holder of a junior lien dies intestate and no proceedings have been had in his or her estate for the appointment of an administrator, the lien will be deemed barred in an action to foreclose a prior mortgage if all the next of kin have been made parties and satisfactory proof is furnished of the death, the intestacy, the family history and the absence of creditors of the estate. In such situations the lack of proof that there were no creditors may be disregarded when more that 6 years have elapsed since the delivery of the referee's deed.

M-4 ASSIGNMENTS OF JUDGMENT TO UNITED STATES OF AMERICA

When a judgment, subsequent in lien to a mortgage being foreclosed and docketed prior to the filing of a notice of pendency, or a judgment docketed subsequent to the filing of a notice of pendency, is assigned to the United States of America after the filing of the notice of pendency in an action to foreclose such mortgage, then such assignment may be disregarded provided the record holder of such judgment filed prior to the notice of pendency, is properly joined and served as a party defendant, all necessary papers are served on such party, and the action goes to judgment and sale.

M-5 MORTGAGE SATISFACTION BY AFFIDAVIT RPAPL SECTION 1921

A mortgage secured by property improved by a one-to-six family, owner occupied, residential structure or residential condominium unit may be disregarded without the recording of a Satisfaction of Mortgage provided there has been compliance with RPAPL Section 1921.

M-6 RELEASE IN LIEU OF SATISFACTION OF MORTGAGE

When the premises affected by a mortgage lien is released of record instead of the mortgage being satisfied, the mortgage may be omitted as an objection to title.

M-7 SMALL ANCIENT MORTGAGES

A. A mortgage in the face amount of $25,000 or less which matured more than 12 years ago and which is not recited in the chain of title for 12 years or more, may be disregarded upon an affidavit that there has been no payment or demand for payment of principal or interest for 12 years, provided that the present owner or his or her ancestor was not the mortgagor and there has been one or more transfers of title for value.

B. An institutional mortgage in the face amount of $50,000 or less which contains no stated maturity date, which has been recorded for more than 30 years, and which is not recited in the chain of title for 12 years or more, may be disregarded upon an affidavit there has been no payment or demand for payment of principal or interest for 12 years, provided that the

present owner or his or her ancestor was not the mortgagor and there has been one or more transfers of title for value.

NOTE: B. amount increase March, 2009

M-8 UNRECORDED MORTGAGE

Recital of an unrecorded mortgage in a deed of record for 20 years or more may be passed on proof that there has been no payment or demand for payment of principal or interest for 12 years, and that the owners have had no knowledge of said unrecorded mortgage. Where such recital is contained in the last deed of record satisfactory proof will be required to dispose of the objection.

FORMS

LETTERS OF INDEMNITY

STRAIGHT LETTER OF INDEMNITY

Re:

We understand that you are about to issue your policy of title insurance covering the premises set forth in the above title number, and that in connection with your examination of title you have raised the following exception(s):

In consideration of your issuing your policy free from said exception(s), this Company does hereby agree to indemnify you and hold you harmless from any loss or damage, which you may sustain by reason of doing so.

This letter of indemnity extends to and covers the question of marketability of title, and extends to and covers any and all reissues to be issued by you affecting said premises, whether by fee insurance, mortgage insurance, or the assignment or foreclosure of any mortgage.

This letter of indemnity shall continue notwithstanding your issuance of further indemnities for the matters set forth herein, provided that you still have policy liability at the time of the issuance of such further indemnity.

Very truly yours,

SPECIAL MORTGAGE OR LIEN PAYOFF LETTER OF INDEMNITY*

Re:

We understand that you have been asked to issue your title policy insuring a transaction covering the premises set forth in the above title number and find that the following mortgage is open of record:

You have informed us that you have been requested to issue your title policy free of any exception as to said mortgage*.

This is to advise you that on or about _____ we caused payment in full to be made on said mortgage*.

However, we have not yet received the satisfaction documents. We assure you that we will continue to use our efforts to procure the same and to satisfy said mortgage* of record.

In any event, this Company agrees to and does hereby indemnify you, but only by reason of the enforcement or attempted enforcement of said mortgage* against the above premises provided you notify us within a reasonable time after receiving notice of said enforcement or attempted enforcement.

This letter of indemnity, and the representations and assurances set forth above, shall continue notwithstanding your issuance of further indemnities for the matters set forth herein, provided that you still have policy liability at the time of the issuance of such further indemnity.

Very truly yours,

***This letter of indemnity may also be used for other types of liens that are paid from loan proceeds as a result of a mortgage closing.**

FULL PERFORMANCE LETTER OF INDEMNITY

Re:

We understand that you have been asked to issue your policy of title insurance covering the premises set forth in the above title number, and that in connection with your examination of title you have raised the following objection:

In consideration of your issuing your policy free from the objection, this Company does hereby agree to indemnify you and hold you harmless from any and all loss, cost or damage which you may sustain by reason of your doing so. This Company further agrees that it will take the immediate steps necessary to dispose of said objection.

This letter of indemnity extends to and covers the question of marketability of title and extends to any and all reissues to be issued by you affecting said premises or any part thereof, whether by fee insurance, mortgage insurance, or assignment or foreclosure of any mortgage.

This letter of indemnity, and our obligation to dispose of the objection set forth above, shall continue notwithstanding your issuance of further indemnities for the matters set forth herein, provided that you still have policy liability at the time of the issuance of such further indemnity.

Very truly yours,

CONDITIONAL PERFORMANCE LETTER OF INDEMNITY

Re:

We understand that you have been asked to issue your policy of title insurance covering the premises set forth in the above title number, and that in connection with your examination of title you have raised the following objection:

In consideration of your issuing your policy free from the objection, this Company does hereby agree to indemnify you and hold you harmless from any and all loss, cost or damage which you may sustain by reason of your doing so. This Company further agrees that it will promptly take the necessary steps to dispose of said objection(s) if claim should properly be made upon you under the terms of your policy of title insurance.

This letter of indemnity extends to and covers the question of marketability of title and extends to any and all reissues to be issued by you affecting said premises or any part thereof, whether by fee insurance, mortgage insurance, or assignment or foreclosure of any mortgage.

This letter of indemnity, and our obligation to dispose of the objection set forth above if claim should properly be made upon you, shall continue notwithstanding your issuance of further indemnities for the matters set forth herein, provided that you still have policy liability at the time of the issuance of such further indemnity.

Very truly yours,

First American Title Insurance Company of New York

Current Developments

SPECIAL EDITION

SALES TAX

As reported in Current Developments issued August 2, 2010, effective September 1, 2010, certain title related services provided in connection with real estate or a cooperative unit situated in New York by title insurance companies, title insurance agents and examining counsel, whether or not they are located in New York, will be subject to the collection of New York State and local sales and compensating use taxes.

Services subject to tax include, but are not limited to, the following, when the product is delivered to the customer on or after September 1, 2010: title reports when no policy of title insurance is to be issued, lien searches, municipal and tax searches, copies of public records, and service charges imposed in connection with any such Information Services.

Information is set forth in the New York State Department of Taxation and Finance's Memorandum (TSB-M-10(7)S) dated July 19, 2010 titled "Sales and Compensating Use Tax Treatment of Certain Information Services", posted at http://www.tax.state.ny.us/pdf/memos/sales/m10_7s.pdf, and in a series of questions and answers, titled "Sales and Compensating Use Tax Questions Regarding Abstracts of Title", accompanying this Bulletin, which has been provided by the Department in advance of its formal release.

Sales tax will not be charged on the premium paid for issuance of a title insurance policy, on which a premium tax is paid to New York State.

First American
Title Insurance Company

Transaction Questions:

1. Where a title insurance company ("title company") or title agent orders an abstract/examination of title from an abstract search company ("search company") in connection with the issuance of a title report and title policy for a purchaser or purchaser's attorney, to be delivered at closing, who would be responsible for the collection of any sales tax due on such examination/abstract of title?

A - The title company or title agent would have to pay the tax to the search company, which would have to register for sales tax purposes, collect the tax, and file sales tax returns, remitting the tax with the return.

Follow-up Question: If a search company delivers an abstract of title and fails to add the sales tax to its bill to the title company or title agent that ordered the search, is the title company or title agent that ordered the abstract of title responsible for the tax?

Yes, the title company/title agent would be liable for the uncollected sales or use tax in that instance and would be required to pay the tax to the Tax Department.

2. Where a tax search is ordered from an independent search company, would the tax search be subject to sales tax if it was not ordered in conjunction with the production of a title report?

A - The taxability of a title company's purchase of a tax search depends on whether the title company is going to use the tax search in the course of preparing its title insurance policy. Where the tax search is going to be used in preparing the title insurance policy, the title company's purchase of the tax search is taxable. If the title company is not preparing a title insurance policy, but rather is just re-selling the tax search to its customer, the title company may purchase the tax search for resale, without paying sales tax, by giving the search company a resale certificate. In that case, the title company would have to register for sales tax purposes, collect sales tax on the sale of the tax search to its customer, file sales tax returns, and remit the tax.

3. The Title Insurance Rate Service Association Rate Manual allows a title company or its agent (a "Company") to impose additional work charges in issuing title insurance for especially difficult titles. Extra charges may be made at or after the receipt of the application for examination of title which may involve additional tax lots, multiple chains of title, land under water, land in bed of streets, rights-of-way, driveways, easements, strips and gores, foreclosures, proceedings under federal bankruptcy or state insolvency related statures, or which involve other unusual difficulties, or for unusual expenditures for travel, or for recording instruments, telephone, telegraph or delivery charges. Are these additional work charges subject to sales and compensating uses taxes?

A - If these additional charges are made by a title company as part of its charges to issue a title insurance policy, the charges are for the title insurance policy and would not be taxable. In other words, the amount of work or extra work performed does not alter the taxability of the underlying product.

4. Are title reports and certificates, such as certificates of title not prepared for the issuance of a policy of title insurance, lien searches, foreclosure certificates, cooperative unit searches, and zoning lot parties-in-interest certifications, subject to Tax?

A - Assuming that each of the certifications represents the Company's certification of some set of facts ascertained through searches of public databases and do not constitute insurance products, then they would all be taxable information services.

Follow-up Question: If a certification sets forth an amount of liability the Company could have under a certification, is it an insurance product for the application of the sales tax?

A - If the certified abstract is an insurance product, it would not be a taxable information service, but, in the absence of authority to that effect, the mere listing of a liability amount would not make a certified abstract into something other than an information service.

5. Is the Tax to be applied on the delivery of municipal searches? If so, is it charged by the Company to its customer or by the service company to the Company?

A - A search company's search of municipal records and the sale of the results would constitute a sale of a taxable information service. The answer to the question regarding at what level the tax would be imposed depends on whether the municipal searches are insured under the title insurance policy. If, as seems to be the case, they are not insured by the policy, but are provided by the title company as an accommodation to its customer, then the title company's purchases of the municipal searches from a search company would qualify for the resale exclusion if the title company gave the search company a resale certificate. In that case, the title company would have to register for sales tax purposes, collect the tax on these sales, file sales tax returns, and remit the tax.

6. If a Company charges a service charge to administer the ordering and forwarding municipal searches, is the Tax to be applied to the service charge as well?

A - Yes, if the services are not insured under the title company's title policy.

7. Is the Tax to be applied to the Company's charge for ordering and delivering the results of a land survey conducted by a licensed surveyor where the results of the land survey are incorporated into the title report?

A - No, because charges for the performance of a land survey by a licensed surveyor are not subject to sales and use tax.

Follow-up Question: What about the providing to a Company of a report by a non-surveyor on whether or not there are any changes to the state of facts as shown on an existing land survey? The service by the non-surveyor involves visually inspecting the real property and comparing it to the survey and noting any changes, such as a fence that was on the original survey but has been removed. No measurements are taken.

A - This is a nontaxable service.

8. When a title company, without issuing a title insurance policy, charges its customer for providing certified copies of instruments from the public records is a Tax to be charged and, if the Company imposes a service charge, is that subject to Tax?

A - The charge for the copies and the service charge would all be taxable.

9. When a Company charges its customer for corporate certificates of good standing and reports as to whether a company owes franchise taxes is a Tax to be charged and, if a Company imposes a service charge, is that subject to Tax?

A - The charge for the certificate and the additional service charge would all be taxable, assuming no title insurance policy was issued.

Follow-up Question: If a title policy is issued but the Company charges its customer for the above searches, is sales tax to be imposed?

A – If the customer must pay these additional charges in order to get the title insurance policy, these charges are considered to be charges for the title insurance policy and are thus not taxable.

10. If the abstract of title is produced through the search of a private database or national search engine, is the search taxable?

A - A charge for a search of a private database or national search engine for the purpose of preparing an abstract of title would be a taxable information service unless the resale exclusion applies as discussed above.

Zones Questions:

11. In Zone 2, where the cost of the abstract is included in the insurance premium, is the title company or agent responsible for collection of the tax? If so, on what amount is the sales tax payable? Who is the primary party responsible for payment of the tax?

A - The title company or the title agent is selling title insurance and is using the abstract in its business. Therefore, the title company or title agent must pay sales tax on its purchase of the abstract and should not collect tax on any portion of its charge for insurance. If the Insurance Department permits the title company to assert a charge labeled "sales tax recovery fee," such a charge would not be considered to be sales tax, but rather a pass-through of a tax borne by the title company or title agent.

12. In Zone 1, the abstract of title is billed separately from the title premium and neither charge is collected until the closing of title. Who is the primary party responsible for payment of the tax?

A - You have told us that in Zone 1, under certain circumstances the seller of the real property must obtain an abstract of title, while in other cases the purchaser of real property is the party that obtains the title abstract. You have further explained that in Erie County the seller must obtain a guaranteed abstract of title. In general, whoever buys the abstract of title from the search company must pay the sales tax to the search company and whoever sells the abstract of title must register for sales tax purposes, collect the tax, file sales tax returns, and remit the tax due with the returns. A guaranteed abstract of title, however, appears to be an insurance product, as Insurance Law section 6403(b)(2) makes issuance of guaranteed searches the doing of an insurance business. Thus, the sale of a guaranteed abstract of title is not subject to sales tax, but if an issuer of a guaranteed abstract of title buys a title abstract from a search company, the search company would have to register for sales tax purposes, collect sales tax on the sale, and report and remit the tax.

Follow-up Question: You indicate that an insured product is not sales taxable and that a guaranteed search is an insurance product. Is a certification by an underwriter or agent of a search of the record considered to be an insurance product, analogous to a guaranteed search, notwithstanding that there is no stated amount of possible liability in the search?

A - Same answer as in regard to question 4, above.

13. In Zone 1, in certain circumstances, an Attorney in private practice who is representing one of the parties may prepare and issue a title report to a Title company. Based on that title report the Company will issue a title insurance policy and remit a portion of the premium to the Attorney. The premium is paid for the services performed by the Attorney, including his or her closing attendance and the preparation of the title report. Is the portion of the amount remitted to the Attorney for the title report subject to Tax?

A – Since a non-lawyer is legally authorized to prepare a title report, then a lawyer's issuance of a title report would not be a legal service. In that case, the payment by the company to the lawyer for the title report is subject to sales tax because it is the payment for an information service. It is possible that some part of the payment to the attorney is for services other than preparing the abstract, in which case that part would not be subject to sales tax, but we would need further information to make that determination.

Follow-up question: In those jurisdictions in Zone 1 where it is customary for the seller to provide and pay for the abstract of title at the request of an examining counsel (usually the buyer's attorney), a Title Company or Title Agent opens a file and issues an invoice for the title premium and applicable endorsements based upon information provided by the examining counsel. The examining counsel then examines the abstract, issues a title report, clears and closes the title. A closing package including a marked up report, copies of curatives and the premium check is then sent to the Title Company which issues the final policy. Are the services of the examining counsel subject to sales tax?

A - No.

Administrative and Other Questions:

14. If title does not close or is cancelled for any reason, is there a sales tax due?

A - Tax is only due if there is a sale; if the failure of the closing to occur means that the title company does not owe the search company any consideration, then no tax would be due.

Follow-up Question 1: Assume the following scenario: the title company or title agent buys the abstract of title and tax search, pays the sales tax to the search company for the abstract and the tax search, also obtains municipal searches from a search company, and issues a tax exemption certificate to that company. The title company or agent prepares a title report and sends the report and the municipal searches (which are provided as an accommodation only and not as part of the insurance product) to its customer prior to closing. The closing is then cancelled and the title does not close.

Is there a tax due on the municipal searches?

A - If the closing is cancelled and the Title Company does not charge the would-be customer for those items, the Title Company doesn't have to collect tax. However, in that case, the title company would not be entitled to any refund of the sales tax it paid when it purchased the abstract.

Follow-up Question 2: If the Title Company or title agent imposes a cancellation charge on its customer for the title abstract, tax search and municipals, is the cancellation fee taxable?

A - Assuming that the items are not used by the title company and are not transferred to the customer, the Tax Department would treat the cancellation charge as nontaxable.

15. If the examination/abstract of title were performed by an employee of the title company or title agent rather than by an independent search company, would there be a sales tax due?

A - No sales tax would be due because payments to employees are not subject to sales tax.

16. Is the Tax to be applied to the actual charges to record instruments? Is there a distinction if the instruments are recorded in connection with a transaction being insured or if they are being recorded merely as an accommodation without insurance?

A - Charges for recording instruments are not subject to sales tax, regardless of whether the transaction is insured or not.

17. If the tax is collected for the State, is it automatically collected also by local tax authorities also collecting their own sales tax?

A – Local authorities do not collect their sales and use taxes. Rather, the seller of the abstract would collect both the State and local sales taxes, report the total on its sales tax return, and remit that amount to the Department. The Department handles the distribution of the sales tax imposed by the locality.

Follow-up Question: It is my understanding that there is an on-line sales tax rate calculator on the State website that will calculate the rate of tax, including the combined rate where there is a local tax involved. It might be a good idea to include the website address to assist those who have to calculate and collect the tax.

A - We agree. http://www8.nystax.gov/STLR/stlrHome

18. If the abstract is produced by a company in another state or country, is the search taxable?

A – This question could be interpreted in two ways. One is the following: When a person produces a title abstract at its office outside NY, must that person pay sales tax on its purchase of the real property records search service that was presumably performed in NY? Read that way, the short answer is that the purchase of an information service, including a search of real property records, would not be subject to NY state or local sales or use tax, if the seller of the search service delivers the information it found to a purchaser located outside NY. If the purchaser of the abstract information subsequently uses the information in New York, however, use tax would apply, as discussed below.

An alternative reading of that question is the following: What is the taxability of a title abstract service produced outside NY? The answer is that it doesn't matter where the abstract is produced; what matters is where it is delivered and used. If the abstract is compiled remotely in another State but then delivered to the customer (i.e., the title company) in NY, the sale would be subject to State and local (county and/or city) sales taxes at the combined rate in effect where it is delivered. If the search company that produces the report has nexus with New York, it would be a "vendor" under Tax Law section 1101(b)(8) and it must register for sales tax purposes, collect the tax due, and remit the tax with its sales tax returns. If the search company does not have nexus, then the title company to which the abstract was delivered would have to report and pay the uncollected sales tax directly to the Commissioner of Taxation and Finance. If the title company is itself registered for sales tax purposes, it would report the tax due on its purchase of the abstract on its sales tax return and pay the tax with that return. If the title company is not registered for sales tax purposes, the title company would report the tax on Form ST-130, Business Purchaser's Report of Sales or Use Tax. See Tax Bulletin Do I Need to Register for Sales Tax (TB-ST-175).

In addition to owing State and local sales tax on its purchase, the title company that purchased the abstract would owe additional local use tax if it uses the abstract in another jurisdiction in NY that has a higher local tax rate than the local rate that applied in the jurisdiction where the abstract was originally delivered, but only to the extent of the difference between the two rates. For purposes of the use tax, the abstract would be used in another jurisdiction if the abstract itself or the title report derived from the abstract were to be used by the purchaser (i.e., the title company) in the other jurisdiction. An example of when the abstract would be subsequently used by the purchaser in another jurisdiction would be sending the abstract to a title company's main office to be reviewed and analyzed in the process of issuing a title insurance policy. Another example is the use by the purchaser of a title report derived from the abstract at a closing in a different jurisdiction from where the abstract was originally delivered.

Follow-up Question 1: The title company is to pay the sales tax if the search company does not have a nexus with New York. What standard is the title company to apply to make this determination?

A - The title company has to pay sales tax directly to the Department whenever the vendor fails to collect it. So the title company never has to figure out if the vendor has nexus with the state.

Follow-up Question 2: Local sales tax appears to be payable based upon the location of the Company to which the abstract is delivered. Accordingly, if a Company in New York County receives the abstract, the New York City sales tax rate is to apply. What if, however, the tax is collected not by the search company but by the Company either as the provider of the information or under a resale certificate and the parties to the transaction are in multiple, different locations?

Assume a transaction in which the title company takes delivery of the abstract in New York County, the property is located in Erie County, the Seller's counsel is located in White Plains, in Westchester County, the Buyer's Counsel is located in Nassau County, and the Lender's Counsel is located in Manhattan. Each of these parties receives the taxable information.

What determines the local sales or use taxes, as applicable, that apply and how are the local taxes assessed as amongst the parties?

A - The applicable local sales tax rate would be that of the jurisdiction to which the search company delivered the abstract to the title company and the tax would be owed by the purchaser, i.e., the title company. If the title company then uses the abstract information in another jurisdiction with a higher local sales tax rate, it would owe use tax based on the difference in rates. Use tax necessitates a use by the purchaser in a jurisdiction in which the purchaser is a resident. In this context, "use" requires the title company or its agent to exercise any right or power over the abstract information.

For example, a title company is asked by the purchaser of real property located in Zone 2 to provide title insurance. Assume that (a) the title company purchases an abstract of title and has it delivered to its offices in Jurisdiction 1, where the abstract is analyzed and a title report is prepared; (b) the title company mails a copy of the abstract to its independent contractor attorney at his or her office in Jurisdiction 2 for the preparation of an opinion of counsel; (c) the title company also mails the title report at no charge to the real property seller in Jurisdiction 3; and (d) the title company marks up the title report at the closing in Jurisdiction 4. Under these facts, the title company would only owe use tax in Jurisdiction 4 where the closing occurred and would only owe additional sales and use tax if the local tax rate in Jurisdiction 4 was higher than the local rate in Jurisdiction 1. The title company does not owe use tax in Jurisdiction 2 because it is the independent attorney, not the title company, that uses the abstract information there. Likewise, the title company does not owe use tax in Jurisdiction 3 because it did not use the abstract information there.
Similarly, if the issue is the title company's sale of taxable search services, the title company would collect sales tax based on where it delivered the search.

19. How will the sales tax apply to a company out of state which pulls NY public records and sells them out of state?

A - If the NY public records are delivered outside NY to the out of state company and that company then sells them outside NY, there would be no NY State or local sales tax due on either that company's purchase or its subsequent resale of the records outside NY. But if the out of state company uses the NY records to produce a title abstract and sells the abstract to an out of state purchaser, the title abstract purchaser would be subject to NY state and local use tax if that purchaser later brings it into NY for use here and that purchaser was a resident of NY at the time it purchased the abstract out of state.

As stated above, the abstract is considered to be used in NY if the abstract itself or a title report derived from the abstract is used in NY. An example of when the abstract is used would be sending the abstract to a title company's main office in NY to be reviewed and analyzed in the process of issuing a title insurance policy. Another example is the use of a title report derived from the abstract at a closing in NY.

Follow-up Question: If the real estate transaction closes outside of New York and the abstract is not reviewed in New York is the abstract being brought "into NY for use here"?

A - If there is no delivery of the abstract to the purchaser in New York, and no use of the abstract information in New York, there would be no sales and use tax liability in New York.

20. Will the Department provide a definition of an "abstract of title" (or examination of title) for the Title

COMMONWEALTH LAND TITLE INSURANCE COMPANY

COMMON EXCEPTIONS AFFIDAVIT

Title No. Block Lot

Premises:

State of New York)
County of)

Borrower(s)/Seller(s), of full age, being duly sworn according to law, deposes(s) and say(s):

1. I am , the owner of the above described premises ("the Premises").

2. That none of the (judgments), (federal tax liens), (parking violation judgments), (environmental control board lien), (State tax warrants), (City tax warrants), set forth in exception(s) of the captioned title report are against me/it.

3. That there has been no work done upon the Premises by the City of New York, nor any demand made for any such work by the City of New York that may result in charges assessed by the Office of Rent and Housing Maintenance, Emergency Repairs Division.

4. That there have been no work done upon the Premises by the City of New York, nor any demand for any such work by the City of New York that may result in charges assessed by the Department of Health.

5. That there are no unpaid fees or charges levied by the City of New York Department of Buildings for inspections, reinspections, examinations, services or permits relating to the Premises.

6. That there are no street vaults abutting the Premises described in Schedule A.

7. There are presently ( ) tenants in the Premises. Each of said tenants is either

   (a) in possession under a lease containing a standard subordination clause fully and unconditionally subordinating said lease to all existing and future mortgages, (and) (or)

   (b) a statutory tenant.

8. All persons in possession are in possession as tenants only. There are no options to purchase or rights of first refusal either pursuant to written leases or by separate agreements.

9. That there are no tenants in the Premises.

10. That I/We have not been known by any other married or maiden name within the last ten years.

That I/We make this affidavit to induce COMMONWEALTH LAND TITLE INSURANCE COMPANY to insure title to the aforesaid policy.

_____

_____

Sworn to before me this ___ day of
_____, 20___.

_____
Notary Public

(STRIKE OUT EVERYTHING THAT IS INAPPLICABLE)

AFFIDAVIT OF HEIRSHIP

STATE OF NEW YORK)
) ss:
COUNTY OF)

, being duly sworn, deposes and says:

THAT he/she is the_____ of _____ who acquired title to the premises in _____ County, State of New York., described as

_____

THAT said _____died testate/intestate, leaving him/her surviving as his/her only lawful distributes the following named persons, whose names, degrees of relationship and Post Office addresses are as follows:

NAME	ADDRESS	RELATIONSHIP

THAT the above-named decedent left him/her surviving no spouse, no child, no adopted child, no posthumous child and no children of any deceased child or adopted child, no father, no mother, no brother or sister and no descendants of any deceased brother or sister, no grandparents, no uncle, no aunt, and no issue of a deceased uncle or aunt other than those above named.

THAT all of the above-named persons are over the age of 18, except

_____

THAT all of the above-named persons are of sound mind, except

_____

THAT said deceased in his/her lifetime was a citizen of the Unites States of America /a subject of

_____

THAT he/she makes this affidavit under penalty of perjury to induce Commonwealth Land Title Insurance Company/Lawyers Title Insurance Corporation to issue its policy of title insurance covering the above premises knowing that they will rely on the facts recited herein.

_____

Sworn to before me this
day of_____, 2 0 _

_____

Notary Public

COMMONWEALTH LAND TITLE INSURANCE COMPANY
Two Grand Central Tower | 140 East 45th Street | 22nd Floor | New York, NY 10017
212-949-0100 | fax 212-986-3049

AGREEMENT TO HOLD ESCROW

Title No.:
DEPOSITOR:

Amount of Deposit:
PREMISES:

(Name)

(Forwarding Address)

City ST. Zip

CNTY. DIST. SECT. BLCK. LOT(S)

COMMONWEALTH LAND TITLE INSURANCE COMPANY, as Depositary, acknowledges receipt from the Depositor of the sum of:
($) Dollars for the purpose indicated below, **AND UPON THE TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE HEREOF WHICH TERMS AND CONDITIONS ARE MADE PART OF THIS AGREEMENT AS IF FULLY SET FORTH HEREIN:**

TO HOLD the said sum as security for the production, by Depositor, to Depositary on or before of the following proofs satisfactory to Depositary:

This Deposit is not assignable or transferable by the Depositor.

Depositor's Attorney:

NAME (Please print) PHONE NUMBER

ADDRESS

COMMONWEALTH LAND TITLE INSURANCE COMPANY

DATED:

Francis M. Hoffman

DEPOSITOR: (Please Print) BY: (Please Print)

DEPOSITOR: (Signature) (Depositary Signature)

To induce Depositary to enter into this agreement, the undersigned guarantees the performance of all the obligations of the Depositor.

(Witness) (Signature)

NOTE: IN THE CASE OF A DEPOSIT MADE BY A CORPORATION, A LIMITED LIABILITY PARTNERSHIP OR A LIMITED LIABILITY COMPANY, AN INDIVIDUAL GUARANTY IS REQUIRED.

THE FOLLOWING ARE THE TERMS AND CONDITIONS WHICH ARE REFERRED TO IN THE AGREEMENT AND UPON WHICH THE DEPOSIT IS MADE:

1. Upon receipt of the proofs required herein, Depositary agrees to refund the balance of the funds deposited after deducting the service charges and all other expenses and payments incurred, if any, by Depositary as set forth below.

2. a) In no event shall interest be allowed to the Depositor on the Deposit. The deposit may be invested by Depositary for its own benefit.

b) In addition, Depositary may receive additional benefits, either directly or indirectly, by reason of its deposit and maintenance of the escrow funds in a bank or other financial institution. Depositary shall have no obligation to account to Depositor for the value of, or to pay to Depositor the value of, any benefit received by Depositary, directly or indirectly, by reason of the deposit of the escrow funds with any bank or financial institution or the maintenance of such accounts. Those benefits may include, without limitation, credits allowed by such bank or financial institution on loans to Depositary or its parent company and on accounting, reporting and other services and products of such bank or financial institution, and earnings on investments made with the proceeds of such loans. Such benefits shall be deemed additional service charges or compensation to Depositary for its services in connection with this escrow.

c) Depositary may commingle the deposit held hereunder with other similar deposits, but not with the Depositary's own funds. Depositor agrees and acknowledges that Depositary shall have no liability for the return of the Deposit in the event of the failure or insolvency of the bank or financial institution in which the deposit is deposited.

2. If Depositor fails to deliver the proofs or perform such other acts required herein within the time specified, Depositary may at its sole option, but is not obligated to, take such steps as are necessary to dispose of the liens or other defects against which the deposit was taken, and Depositary is authorized after such date, and without notice to Depositor, to pay, satisfy, discharge or otherwise dispose of the said items, to retain counsel in connection therewith, and to pay such expenses, disbursements and/or counsel fees out of the deposit. Notwithstanding the preceding sentence, in the event that Depositary considers it advisable to protect the title to the premises or the marketability thereof. Depositary is authorized without notice to Depositor to pay, satisfy or otherwise dispose of the liens or other defects against which the deposit was taken at any time.

3. The Depositor agrees that Depositary may deduct service charges from the deposit in accordance with the following Schedule:

a) $30.00: on the closing date
b) $50.00: on the date by which Depositor is required to deliver the necessary proofs, if such proofs have not been delivered to Depositary
c) $75.00: one year from the date of closing
d) $100.00: two years from the date of closing
e) $150.00: three years from the date of closing
In the event that the escrow is held for a period greater than three years, the service charge for each year, or part of year, after the third, shall increase 10% per year, until the required proofs are delivered to the Depositary.
f) Additional service charges may be deducted by Depositary for any special services rendered.
g) In the event that the sum remaining after payment of all service charges and other expenses incurred by Depositary under this agreement is less than $10.00, then that sum may be retained by Depositary as an additional service charge.

4. Depositor agrees to indemnify, save and hold harmless Depositary from all losses and expenses arising from Depositor's failure to comply with its obligations under this agreement, including, but not limited to, reasonable legal fees incurred by Depositary in enforcing this agreement. Depositor authorizes Depositary to offset against the deposit or any other of Depositor's funds held by Depositary any amounts that Depositor owes to Depositary for any reason, including, but not limited to, Depositor's indemnification, unpaid title charges, and losses and expenses incurred by Depositary as a result of any defects, liens and encumbrances affecting the Depositor's title to the insured premises not covered by this agreement which become known to Depositary.

5. Depositor acknowledges that it is familiar with Section 1317 of the Abandoned Property Law. In the event that Depositary has sent the balance of the deposit to New York State pursuant to the provisions of Section 1317, and thereafter the Depositor requests that the Depositary return the deposit to Depositor, the Depositary shall take the necessary steps to retrieve the deposit from New York State and pay the same to Depositor. Depositor agrees to cooperate with Depositary in such procedure. Depositary may impose an additional service charge of not less than $300.00 therefor. Depositor agrees to notify the Depositary of any change in its mailing address, such notification to be by certified mail, return receipt requested, making reference to the title number.

6. In the event that the deposit is taken for more than one purpose, the allocation of the funds among the several purposes shall be at the sole discretion of the Depositary unless the Depositor and Depositary agree to a specific allocation.

7. To assure Depositary of compliance by Depositor of its obligations hereunder, Depositor grants to Depositary a security interest in the deposit, superior to all other liens, encumbrances or claims.

8. Depositor and Depositary agree that this agreement shall not give rise to any cause of action in favor of a lienor or any third party against the deposit or Depositary.

9. Depositor acknowledges that the deposit is made to induce Depositary to issue its policy of title insurance to its insured in respect to the premises. Depositor understands and agrees that Depositary may issue subsequent title insurance policies and/or may indemnify other title insurance companies or third parties in order to protect and preserve the insured's title. If Depositary has issued subsequent title insurance policies and/or has indemnified other title insurance companies or third parties in order to protect the title to the premises as insured, Depositor shall not be entitled to a return of the deposit solely by reason that the current insured shall no longer retain an interest in or title to the premises, and the deposit shall continue to be held as an indemnity and security in accordance with the terms hereof.

10. Depositor acknowledges that any waiver by the Depositary of any particular provision of this agreement shall not constitute a waiver of any other provision contained herein. In the event that any provision of this agreement is held unenforceable, all other provisions hereof shall remain in full force and effect.

11. This agreement constitutes the entire agreement between the Depositor and Depositary. This agreement may not be modified except by an agreement in writing signed by the Depositor and Depositary.

12. This agreement shall be interpreted in accordance with the laws of the State of New York.

COMMONWEALTH LAND TITLE INSURANCE COMPANY
Two Grand Central Tower | 140 East 45th Street | 22nd Floor | New York, NY 10017
212-949-0100 | fax 212-986-3049

AGREEMENT TO PAY ESCROW

Title No.: _____ Amount of Deposit: $_____

DEPOSITOR: Buyer: ____ Seller: ____ **PREMISES:**

_____ _____
(Name)

_____ _____
(Forwarding Address)

_____ _____

_____ _____
City ST. Zip

_____ _____ _____ _____ _____
CNTY. DIST. SECT. BLCK. LOT(S)

COMMONWEALTH LAND TITLE INSURANCE COMPANY, as Depositary, acknowledges receipt from the Depositor of the sum of:
_____ ($_____) Dollars for the purpose indicated below, **AND UPON THE TERMS AND CONDITIONS SET FORTH ON THE REVERSE SIDE HEREOF WHICH TERMS AND CONDITIONS ARE MADE PART OF THIS AGREEMENT AS IF FULLY SET FORTH HEREIN:**

TO PAY out of said sum without necessary delay, the following liens affecting the premises:

1.
2.
3.
4.
5.

Together with interest, penalties and other charges necessary to obtain the satisfaction thereof, returning any balances, less applicable service charges, to Depositor. The Depositor agrees to pay, on demand, to the Depositary any deficiency in case the deposit is not sufficient for such purposes.

Depositor's Attorney:

_____ _____
NAME (Please print) PHONE NUMBER

_____
ADDRESS

_____ COMMONWEALTH LAND TITLE INSURANCE COMPANY

_____

DATED: _____

DEPOSITOR: _____ BY: _____
(Please Print) (Please Print)

DEPOSITOR: _____ _____
(Signature) (Depositary Signature)

To induce Depositary to enter into this agreement, the undersigned guarantees the performance of all the obligations of the Depositor.

_____ _____
(Witness) (Signature)

NOTE: IN THE CASE OF A DEPOSIT MADE BY A CORPORATION, A LIMITED LIABILITY PARTNERSHIP OR A LIMITED LIABILITY COMPANY, AN INDIVIDUAL GUARANTY IS REQUIRED.

THE FOLLOWING ARE THE TERMS AND CONDITIONS WHICH ARE REFERRED TO IN THE AGREEMENT AND UPON WHICH THE DEPOSIT IS MADE:

1. After payment of the liens affecting the premises, the Depositary agrees to refund the balance of the funds deposited after deducting the service charges and all other expenses and payments incurred, if any, by Depositary as set forth below.

2. a) In no event shall interest be allowed to the Depositor on the Deposit. The deposit may be invested by Depositary for its own benefit.

b) In addition, Depositary may receive additional benefits, either directly or indirectly, by reason of its deposit and maintenance of the escrow funds in a bank or other financial institution. Depository shall have no obligation to account to Depositor for the value of, or to pay to Depositor the value of, any benefit received by Depositary, directly or indirectly, by reason of the deposit of the escrow funds with any bank or financial institution or the maintenance of such accounts. Those benefits may include, without limitation, credits allowed by such bank or financial institution on loans to Depositary or its parent company and on accounting, reporting and other services and products of such bank or financial institution, and earnings on investments made with the proceeds of such loans. Such benefits shall be deemed additional service charges or compensation to Depositary for its services in connection with this escrow.

c) Depositary may commingle the deposit held hereunder with other similar deposits, but not with the Depositary's own funds. Depositor agrees and acknowledges that Depositary shall have no liability for the return of the Deposit in the event of the failure or insolvency of the bank or financial institution in which the deposit is deposited.

3. a) The Depositor agrees that Depositary may deduct a service charge of $30 from the deposit on the closing date.

b) In the event that the sum remaining after payment of all service charges and other expenses incurred by Depositary under this agreement is less than $10.00, then that sum may be retained by Depositary as an additional service charge.

4. Depositor agrees to indemnify, save and hold harmless Depositary from all losses and expenses arising from Depositor's failure to comply with its obligations under this agreement, including, but not limited to, reasonable legal fees incurred by Depositary in enforcing this agreement. Depositor authorizes Depositary to offset against the deposit or any other of Depositor's funds held by Depositary any amounts that Depositor owes to Depositary for any reason, including, but not limited to, Depositor's indemnification, unpaid title charges, and losses and expenses incurred by Depositary as a result of any defects, liens and encumbrances affecting the Depositor's title to the insured premises not covered by this agreement which become known to Depositary.

5. Depositor acknowledges that it is familiar with Section 1317 of the Abandoned Property Law. In the event that Depositary has sent the balance of the deposit to New York State pursuant to the provisions of Section 1317, and thereafter the Depositor requests that the Depositary return the deposit to Depositor, the Depositary shall take the necessary steps to retrieve the deposit from New York State and pay the same to Depositor. Depositor agrees to cooperate with Depositary in such procedure. Depositary may impose an additional service charge of not less than $300.00 therefor. Depositor agrees to notify the Depositary of any change in its mailing address, such notification to be by certified mail, return receipt requested, making reference to the title number.

6. In the event that the deposit is taken for more than one purpose, the allocation of the funds among the several purposes shall be at the sole discretion of the Depositary unless the Depositor and Depositary agree to a specific allocation.

7. To assure Depositary of compliance by Depositor of its obligations hereunder, Depositor grants to Depositary a security interest in the deposit, superior to all other liens, encumbrances or claims.

8. Depositor and Depositary agree that this agreement shall not give rise to any cause of action in favor of a lienor or any third party against the deposit or Depositary.

9. Depositor acknowledges that the deposit is made to induce Depositary to issue its policy of title insurance to its insured in respect to the premises. Depositor understands and agrees that Depositary may issue subsequent title insurance policies and/or may indemnify other title insurance companies or third parties in order to protect and preserve the insured's title. If Depositary has issued subsequent title insurance policies and/or has indemnified other title insurance companies or third parties in order to protect the title to the premises as insured, Depositor shall not be entitled to a return of the deposit solely by reason that the current insured shall no longer retain an interest in or title to the premises, and the deposit shall continue to be held as an indemnity and security in accordance with the terms hereof.

10. Depositor acknowledges that any waiver by the Depositary of any particular provision of this agreement shall not constitute a waiver of any other provision contained herein. In the event that any provision of this agreement is held unenforceable, all other provisions hereof shall remain in full force and effect.

11. This agreement constitutes the entire agreement between the Depositor and Depositary. This agreement may not be modified except by an agreement in wiring signed by the Depositor and Depositary.

12. This agreement shall be interpreted in accordance with the laws of the State of New York.