

FLORIDA BULLETIN 01-01

TO: ALL AGENTS AND TITLE PLANT OPERATIONS
FROM: UNDERWRITING DEPARTMENT
DATE: JANUARY 22, 2001
RE: "NEW" INDEMNITY TREATY

In October, 1998, most of Florida's underwriters exchanged Mutual Indemnity Treaties among themselves in an effort to facilitate and insure to your customers timely delivery of the title insurance product in an efficient and sensible manner. The "original" Mutual Indemnity Treaty was an experiment—intentionally narrow in scope—but one that has proven to be very beneficial to all its participants. Accordingly, the FLTA Forms Committee recently addressed expanding the scope of treaty coverages.

Effective **December 14, 2000**, Old Republic National Title Insurance Company is pleased to announce it has executed a "new," expanded Mutual Indemnification Treaty with the following underwriters:

*Old Republic National Title Insurance Company
Attorneys' Title Insurance Fund, Inc.
Chicago Title Insurance Company
Commonwealth Land Title Insurance Company
Fidelity National Title Insurance Company of New York
First American Title Insurance Company
LandAmerica (Commonwealth Land Title Insurance Company
and Lawyers Title Insurance Corporation)
National Title Insurance Company
Security Union Title Insurance Company
Stewart Title Guaranty Company
Ticor Title Insurance Company*

We will advise you as additional underwriters become participants in the "new" treaty. For those companies not yet signatories to the "new" treaty, but which are participants in the "original" treaty, the provisions of the "original" treaty (reported to you in Old Republic Bulletins **98-11** and **98-11a**) between Old Republic National Title Insurance Company and the underwriters listed below are still in effect:

American Pioneer Title Insurance Company

Non-signatories and/or non-participants in either treaty are the following:

*Alliance Title Insurance Company
American Realty Title Assurance (ARTA)
United General Title Insurance Company*

GENERAL PROVISIONS UNDER NEW TREATY

The following general requirements and conditions must be satisfied in order to trigger the provisions under the "new" Indemnity Treaty:

1. The agent must maintain a copy of either the prior Owner's policy or a prior Mortgagee policy that insures a lender that has taken title to some or all of the property insured by either foreclosure or deed in lieu of foreclosure. Either policy must be at least one (1) year old. **This is a significant expansion from the "original" treaty which was limited to only prior Owner's policy coverage;**
2. The limitation of liability under the indemnitor's policy is the face amount of the prior policy or \$250,000.00, whichever is less; and
3. The treaty is applicable to Florida properties only.

The "new" Treaty addresses five (5) potential title defects (a summary of these provisions is attached for easy reference), the last two being entirely new categories for Treaty coverage, as follows:

1. **HOMESTEAD:** There were no changes regarding these defects. The treaty still indemnifies the new insurer against loss or damage when there is a lack of joinder by the spouse of a grantor, the lack of a statement on the deed that the grantor is a single person, or the lack of a statement on the deed or other recorded instrument that the property in question conveyed by the deed is not the homestead of the grantor.
2. **JUDGMENTS AND FEDERAL TAX LIENS:** The Treaty will indemnify Old Republic Title against loss arising from a judgment or Federal Tax Lien, provided:
 - a. The Lien(s) is not against the insured under the Indemnitor's Policy;
 - b. The date of the Indemnitor's policy is at least one (1) year old;
 - c. The face amount of the Lien(s) does not exceed (in the aggregate) \$250,000.00;
 - d. No notice of any proceedings or levy to collect the Lien(s) appears of record;
 - e. The Lien is not a child support certificate of delinquency filed pursuant to F.S. 61.14.

These provisions relating to judgments and tax liens are a significant expansion from the "original" treaty. The aggregate liability is no longer limited to 20% of the face amount of the prior policy, and the aggregate amount of the liens addressed has increased five-fold.

3. **MORTGAGES:** The treaty will indemnify Old Republic Title against any loss or damage occasioned by a prior open mortgage of record, provided:
 - a. There appears no foreclosure proceedings respecting the mortgage; **and**
 - b. The mortgage secures a principal amount of not more than \$250,000.00 and the Indemnitor's policy is at least one (1) year old; **and**
 - c. The mortgage does not appear, from the record, to secure a revolving credit or equity line of credit loan.

These provisions are an expansion of coverage from the "original" treaty in two respects: (1) The age of the open mortgage qualifying for indemnification has been shortened from five years to one year; and (2) The principal amount of the open mortgage covered by the "new" treaty has been increased by 250%.

4. **DUE PROCESS ISSUES ARISING OUT OF PAST LITIGATION:** The “new” treaty will indemnify Old Republic Title against any loss or damage occasioned by one or more of the following:
- a. Failure to appoint a guardian or attorney *ad litem* to represent the interest of an absent defendant(s) in a probate, foreclosure, quiet title, partition suit, divorce or other proceeding which has resulted in a final judgment affecting title to the Property prior to the issuance of Indemnitor's policy;
 - b. Deficiencies in, or the absence of, a diligent search affidavit filed in the case prior to service upon a defendant by publication as may be required by law.

This coverage is new to the Indemnity Treaty.

5. **TRUSTEES AND ATTORNEYS-IN-FACT:** The treaty will indemnify Old Republic Title against any loss or damage where, prior to the date of the Indemnitor's policy insuring the current seller or mortgagor of the Property, there appears insufficient or no record notice of the power or authority of the grantor to make the conveyance of the Property, provided that there appears no notice of record in the county where the Property lies, of any proceeding to attack or set aside the conveyance by the trustee or attorney-in-fact.

This coverage is unique to the “new” Indemnity Treaty as well.

A summary of these provisions is attached for your easy reference.

As always, should you have any questions, please contact your Old Republic Title Underwriting Department at 800-342-5957 or 813-228-0555.

EXHIBIT II: SUMMARY

General Requirements for Reliance Upon the Revised Mutual Indemnification Agreement:

Must retain for your files at least one of the following:

- a) Owners Policy at least one (1) year old insuring the seller or mortgagor in the current transaction;
or
- b) Mortgagee Policy at least one (1) year old insuring a lender who has taken title to some or all of the covered land insured under the policy.

Matters covered automatically by the Revised MIA:

- a) Conveyances of a possible homestead without joinder of a spouse if the grantor was married;
- b) Liens arising from money judgments (but not a certificate of delinquency for child support) and federal or state tax liens up to a face amount of \$250,000.00;
- c) Unsatisfied mortgages securing on their face no more than \$250,000.00 so long as it does not secure revolving credit or equity lines of credit;
- d) Lack of guardians or attorneys ad litem to represent an absent defendant or deficiencies in or absence of, a diligent search affidavit (when required by law) in any judicial proceeding ("The Case") which results in a final, unappealable judgment affecting the title to the property;
- e) Lack of, or insufficient notice of, record of the authority of an attorney-in-fact or trustee to make a prior conveyance to the seller or mortgagor in the current transaction so long as the indemnitor's policy insuring the title without exception is at least one year old.

General Conditions of coverage:

- 1) The indemnitor's policy must be at least one year old and contain no exception for the subject title objection listed above;
- 2) There must be no record notice of any proceeding to enforce the judgment, tax lien, or mortgage;
- 3) There must be no record notice of any proceeding to attack or set aside the title resulting from The Case or the conveyance referenced in items d) or e) above;
- 4) The amount of the automatic indemnity is limited to the Face Amount of the indemnitor's policy or \$250,000.00 ,whichever is LESS;
- 5) This indemnity is limited to policies issued on Florida properties only; and
- 6) An indemnitor is the underwriter who has already issued its policy without exception to the covered matter. An indemnitee is an underwriter whose policy is issued in reliance upon the automatic indemnities given in the Revised MIA.

Note #1: A policy-issuing agent should obtain permission from the underwriter of the new policy (the proposed indemnitee) to rely upon the terms and provisions of the Revised MIA before insuring over one or more of the defects referred to in items a) through e) above.

Note #2: Nothing in the Revised MIA prevents an underwriter from issuing separate letters of indemnity or refusing to indemnify in cases not covered under the Revised MIA or requires any underwriter to issue a letter of indemnity, if at all, within the time set for the closing.