



# OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

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## **FLORIDA BULLETIN 06-02**

TO: ALL AGENTS AND TITLE PLANT OPERATIONS  
FROM: UNDERWRITING DEPARTMENT  
DATE: FEBRUARY 13, 2006  
RE: SECOND REVISED INDEMNITY TREATY

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In October 1998, most of Florida's major underwriters exchanged Mutual Indemnification Agreements (commonly referred to as the 'treaty') in order to enhance your ability to deliver your title insurance product in a timely, efficient manner. In 2001, since the "original" treaty proved so beneficial, many of Florida's underwriters agreed to participate in a "first revised" version which expanded the scope of the coverage provided under the original treaty. That expansion has also proven very successful. Accordingly, the treaty companies have sought further expansion of their agreement.

Old Republic Title Insurance Company is pleased to announce it has executed a Second Revised Mutual Indemnification Agreement with the following underwriters:

- ALLIANCE TITLE OF AMERICA, INC.
- ATTORNEY'S TITLE INSURANCE FUND, INC.
- CENSTAR TITLE INSURANCE COMPANY (F/K/A FIRST AMERICAN TITLE INSURANCE COMPANY OF TEXAS)
- CHICAGO TITLE INSURANCE COMPANY
- COMMONWEALTH LAND TITLE INSURANCE COMPANY
- FIDELITY NATIONAL TITLE INSURANCE COMPANY
- FIRST AMERICAN TITLE INSURANCE COMPANY
- INDUSTRIAL VALLEY TITLE INSURANCE COMPANY
- LAWYER'S TITLE INSURANCE CORPORATION
- NATIONAL TITLE INSURANCE COMPANY
- NORTH AMERICAN TITLE INSURANCE CORPORATION
- SECURITY UNION TITLE INSURANCE COMPANY (F/K/A SAFECO TITLE INSURANCE COMPANY)
- SOUTHERN TITLE INSURANCE CORPORATION
- STEWART TITLE GUARANTY COMPANY
- TICOR TITLE INSURANCE COMPANY
- TICOR TITLE INSURANCE COMPANY OF FLORIDA (F/K/A AMERICAN PIONEER TITLE INSURANCE COMPANY)
- TITLE AND TRUST COMPANY OF FLORIDA
- TRANSNATION TITLE INSURANCE COMPANY (F/K/A TRANSAMERICA TITLE INSURANCE COMPANY)
- UNITED GENERAL TITLE INSURANCE COMPANY
- WESTCOR LAND TITLE INSURANCE COMPANY

A detailed list of the provisions under the "second revised" (new) treaty is attached as Exhibit I. A summary of the provisions is also attached as Exhibit II for your easy reference.

**This Bulletin is to become a permanent part of your Bulletin Manual,  
and you are to comply with the requirements contained herein.**

## EXHIBIT I: GENERAL PROVISIONS UNDER NEW TREATY

The following general requirements and conditions must be satisfied in order to trigger the provisions under the "second revised "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 who 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.
2. The limitation of liability under the indemnitor's policy is the face amount of the prior policy or \$500,000.00, whichever is less. **This is a significant expansion from the "original" and "first revised" treaty which limited liability to \$250,000.00**
3. The treaty is applicable to Florida properties only.

The Second Revised Treaty addresses the following ten (10) potential title defects, the last five being entirely new categories for Treaty coverage:

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) \$500,000.00;
  - 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 *Section 61.14, Florida Statutes*.

**These provisions relating to judgments and tax liens are a significant expansion from the "original" and the "first revised" treaty. The aggregate liability is not limited to 20% of the face amount of the prior policy, and the aggregate amount of the liens addressed has doubled.**

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 \$500,000.00; **and**
  - c. The mortgage does not appear, from the record, to secure a revolving credit or equity line of credit loan.

**These provisions contain a significant expansion of coverage from the "original" and the "first revised" treaty. The principal amount of the open mortgage covered by the "first revised" treaty has been doubled.**

4. **DUE PROCESS ISSUES ARISING OUT OF PAST LITIGATION:** The 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.
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.
6. **LACK OF RECORDED DEATH CERTIFICATE:** The treaty will indemnify Old Republic against any loss or damage when an original death certificate is not of record in the county in which the Land is located, in order to eliminate the interest of an individual in the prior chain of title or the homestead interest of a spouse of an individual prior to the date of the Indemnitor's policy.

**This coverage is new to the "second revised" Indemnity Treaty.**

7. **FLORIDA AND FEDERAL ESTATE TAX LIENS:** The Treaty will indemnify Old Republic Title against loss suffered as a result of the absence of satisfactory proof of record in the county in which the Land is located that there are no estate tax liens in favor of the State of Florida or the United States of America which have attached or could have attached to the insured land due to death of a party prior to the date of the Indemnitor's policy.

**This coverage is new to the "second revised" Indemnity Treaty.**

8. **LACK OF SUBSCRIBING WITNESSES:** The Treaty will indemnify Old Republic Title against loss resulting from any deed or deeds to the Land that appear recorded prior to the date of the Indemnitor's policy which does not contain two subscribing witnesses for each Grantor, provided the deed has been of record for less than **five** years, in which case the title defect would be cured by the provision of *Section 95.231, Florida Statutes*.

**This coverage is new to the "second revised" Indemnity Treaty.**

9. **INCOMPLETE OR INSUFFICIENT ACKNOWLEDGMENTS:** The Treaty will indemnify Old Republic Title against loss occasioned by an instrument affecting the chain of title to the Land which contains one or more of the following defects:
  - a. Failure to include a seal or stamp as required by *Section 695.03, Florida Statutes*;
  - b. Failure to affirmatively state that one or all of the parties appeared before the individual taking the acknowledgment;
  - c. Failure to include a translation into English of any portion of the acknowledgment that is in a language other than English;
  - d. That an acknowledgment was taken by an individual not having the authority to acknowledge instruments to be recorded in the public records of counties in the State of Florida, as set forth in *Section 695.03, Florida Statutes*;

- e. The failure of the individual taking the acknowledgment to designate in the instrument whether one or more of the parties executing the instrument possessed a statutorily acceptable form of identification or, in the alternative, was personally known to the individual taking the acknowledgement.

**This coverage is new to the “second revised” Indemnity Treaty.**

- 10. **CORPORATE SEALS:** The treaty will indemnify Old Republic against any loss or damage incurred as a result of the failure of an instrument to include a corporate seal of the corporation whose interest is affected by the instrument and appearing recorded in the chain of title to the Land prior to the date of Indemnitor’s policy.

**This coverage is new to the “second revised” Indemnity Treaty.**

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 Second Revised Mutual Indemnification Agreement ("MIA"):

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

- 1) Owners Policy at least one (1) year old insuring the seller or mortgagor in the current transaction;  
or
- 2) 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 Second 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 \$500,000.00;
- c) Unsatisfied mortgages securing on their face no more than \$500,000.00 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;
- f) Lack of recorded death certificate of a prior individual;
- g) Lack of or unsatisfactory proof that there are no estate tax liens in favor of the State of Florida or the United States of America;
- h) Conveyances containing an insufficient number of subscribing witnesses;
- i) Acknowledgements that (1) fail to include a seal or stamp; (2) fail to state that the executing parties appeared; (3) fail to include a translation into English; (4) were taken by an unauthorized individual or (5) fail to state whether the individual was personally known or produced acceptable identification;
- j) Instruments failing to contain a corporate seal.

General Conditions of Coverage:

- 1) The indemnitor's policy must be at least one year old and contain no exception for the subject title objections listed above;
- 2) There must be no record notice of any proceeding to enforce the judgment, tax lien, mortgage, or estate tax lien;
- 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 \$500,000.00, 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 Second Revised MIA.

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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 Second Revised MIA or requires any underwriter to issue a letter of indemnity, if at all, within the time set for the closing.