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F.A.^Q.

Index

2010

Title
FREQUENTLY ASKED ^ QUESTIONS

January 2010

How do I address Bulk Sales requirements in the commitment or policy?

You don't.

Under New Jersey law (N.J.S.A. 54:32B-1 et seq.), whenever a person or entity makes a "bulk sale" (which for these purposes is a sale of all or a part of its business assets other than in the ordinary course of business), the buyer is required to notify the Division of Taxation of such "bulk sale" at least 10 days prior to the close of the transaction. A buyer who fails to do this could become liable to the State for any past due tax obligations of their seller.

The New Jersey Division of Taxation's Technical Bulletin (TB-60) states that business assets ". . .include, but are not limited to, goodwill, materials, supplies, licenses . . . and realty if the primary use of the realty is to support a business on its premises." (emphasis added) Thus, in the proper circumstance, a sale of real property could fall into this category.

Please note, however, that this is not a title issue, and thus requests for affirmative coverage as to the application of or compliance with the bulk sales laws cannot be honored. Furthermore, this is not an appropriate subject of a B-I requirement nor of a B-II exception. This is a matter which is solely within the control of the parties. In addition, it is not a matter which can be discovered nor determined through a reasonable search of the land records.

Should a client or customer need further information on this issue, the Technical Bulletin (TB-60) and the forms for reporting these transactions are available on the Division of Taxation's website.

As always, should you have any questions or require further assistance on this or any other subject, please contact a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

February 2010

Title is vested in two unrelated people as tenants in common. They subsequently marry. Does the tenancy in common automatically convert into a tenancy by the entirety?

No.

N.J.S.A. 46:3-17.2 states, "A tenancy by the entirety shall be created when ... a husband and wife together take title to an interest in real property ... under a written instrument designating both of their names as husband and wife ..."

The key statutory requirement to create a tenancy by the entirety is that the grantees be "husband and wife" (or a civil union couple) at the time they take title. (There is case law that indicates that a tenancy by the entirety is created when a married couple takes title even if the deed does not on its face identify them as "husband and wife" or "married", but that is not relevant to the present inquiry.)

If the couple wishes to establish a tenancy by the entirety after they marry, they will need to record a deed from themselves to themselves as "husband and wife" or "married".

Title
FREQUENTLY ASKED ^ QUESTIONS

March 2010

The owner of a residential apartment building is refinancing. The new mortgagee wants us to affirmatively insure that the insured mortgage has priority over all of the tenants' interests under their leases. What language can we give?

In 1994, the New Jersey Supreme Court held that a foreclosing mortgagee could not evict a residential tenant from a property to which the mortgagee had acquired title through foreclosure without complying with the Anti-Eviction Act of 1986 (N.J.S.A. 2A:18-61.1 et seq.). This decision applied "irrespective of whether the tenancy was established before or after execution of the mortgage." (Chase Manhattan Bank v. Josephson, 135 NJ 209, 1994)

Because of this decision, we cannot simply insure that the mortgage has priority over all of the tenants' interests under their leases. Clearly in New Jersey, tenants' possessory rights are protected. While the mortgagee may be able to obtain fee simple title to the mortgaged property through foreclosure, they will not be able to automatically oust or "cut off" residential tenants.

Accordingly, under this set of facts, where we know that there are one or more residential tenants in possession of the premises, we would be willing to amend the parties in possession exception to read

Rights of tenants under unrecorded leases, as tenants only.

Any requests for additional affirmative language should be referred to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

April 2010

The proposed insured lender is insisting that I issue an ALTA 1-06. I thought that that endorsement was withdrawn. What should I do?

Contrary to local "title-lore", the ALTA 1 endorsement, commonly known as the "Street Assessment Endorsement", was not withdrawn when the 2006 ALTA forms were approved in 2007. Rather, the 2006 version of the endorsement was adopted (the ALTA 1-06) but the $25.00 charge for the endorsement was eliminated.

The ALTA 2006 form of loan policy provides similar coverage to the ALTA 1-06 in Covered Risk 11(b) where it provides coverage over

> 11. The lack of priority of the lien of the Insured Mortgage upon the Title... (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

Many lenders, however, prefer to also have an ALTA 1-06 endorsement issued with their policy. This is absolutely acceptable however you may no longer charge for issuance of this endorsement.

The ALTA 1-06 endorsement may be found in section 10.14 of our Rate Manual.

Title
FREQUENTLY ASKED ^ QUESTIONS

May 2010

The purchase money lender on my transaction will accept the "No Survey - Survey Endorsement". Can I issue that endorsement on a purchase?

There is no prohibition on issuing the so-called "No Survey – Survey Endorsement" (Lenders Survey Endorsement – Without Survey = Sec. 10.15 of Rate Manual) for a purchase money lender on a residential purchase ***HOWEVER*** in order to do so, the purchaser must specifically acknowledge in writing that he/she/they will not be receiving survey coverage.

This acknowledgement should confirm that the purchaser understands that survey coverage in the form of a Lenders Survey Endorsement – Without Survey will be issued to their lender but that such coverage cannot and will not be extended to them. It should also affirm that they understand that they could obtain survey coverage for the same $25.00 endorsement charge by providing an acceptable survey to us but that they have chosen not to do so. The following would certainly be acceptable:

> I acknowledge that I am paying $25.00 as part of my title insurance charges to obtain survey coverage for my lender in their title insurance policy but that I will not be afforded any survey coverage in my owners title insurance policy. I understand that if I provide the title insurance company with a survey acceptable to them I could also obtain survey coverage in my title insurance policy at no additional cost but have chosen not to do so.

The acknowledgement can be included in the affidavit of title or set forth in a separate writing signed by the purchaser(s). If it is included in the purchasers' affidavit of title, he/she/they should specifically place their initials or signature next to the statement waiving the coverage in addition to signing the affidavit in due course.

As always, feel free to address any questions you may have to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

June 2010

My examination of title reveals a lis pendens relating to an action to foreclose a mortgage. The foreclosure action has not yet gone to final judgment however the foreclosing lender has provided an Order approving a sale of the premises "pendente lite" (which in this case signifies "pending foreclosure"). Can we insure this?

Yes. Under New Jersey law (NJSA 2A:50-31) where mortgaged property is of such a character or so situated as to make it likely to deteriorate in value or to make its care or preservation difficult or expensive, the foreclosing lender may obtain an order in the pending foreclosure action to sell the property before entry of the final judgment of foreclosure. The sale may be public or private as the court orders. If public, a sheriff's sale will be held. Upon sale, the proceeds are brought into court where they are held until further order or judgment of the court.

From an underwriting standpoint, examination of these titles is little different from any other title deriving through a mortgage foreclosure action. In addition to the usual Chancery review (confirmation that the proper parties have been joined, served with process, etc.) and typical mortgage foreclosure-related requirements and exceptions, the title examiner must also confirm that each party to the foreclosure action has received service of the application for sale pendente lite (pending foreclosure) and that any objection(s) to the application have been disposed of. The sale must be conducted in strict conformity with the court order approving the sale. Once the sale occurs it will cut off all lienholders who are parties to the foreclosure action just like a "normal" foreclosure sale.

These orders are appealable. Any title commitment issued during the 10 day appeal period (measured from the entry of the order) must take exception to the possibility of an appeal.

As always, please address any questions on this or any topic to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

July 2010

We have just been told that the seller will not be at the closing and have been provided with a general Power of Attorney that is 3 years old. Will that be acceptable?

It depends. Any time we are asked to insure title being conveyed or mortgaged by use of a Power of Attorney, we must evaluate several matters.

First: Is the Power of Attorney itself acceptable? In order to be acceptable, the original document must be available and in recordable form. If we do decide to accept it for title purposes, the original Power of Attorney must be recorded before the deed or mortgage under which it was executed as a stand-alone document (i.e. not as an attachment to the deed or mortgage).

In addition, the Power of Attorney must give the Attorney in Fact the authority to convey or mortgage (as applicable). This authority does not necessarily have to be specific to the transaction you are insuring (although that is always preferable), but the authority to convey or mortgage must be clear.

Powers of Attorney that do not include a term or specifically stated termination date continue until revoked or until the principal dies. That having been said, the older a Power of Attorney is, the more scrutiny must be given to the transaction.

Second: Why are we being asked to accept documents executed by the Attorney in Fact? It is important to understand why the Principal cannot sign the documents him/herself.

If we are being asked to accept the Power of Attorney due to the Principal's disability, it must be a "durable" Power of Attorney and must contain the words, "this power of attorney shall not be affected by subsequent disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity. Please be reminded that the disability provision does not "relate back" to when the Power of Attorney was executed; the Principal must have been competent at that time.

Whether we are using the Power because of the Principal's disability or because the principal is unable to attend the closing or settlement the transaction itself must be an arms length transaction for full value. In addition you must obtain proof of non-revocation at the time the power is used. This can be in the form of an affidavit of non-revocation executed by the designated Attorney in Fact.

Third: If the proposed transaction involves mortgage financing you must ascertain if the Power of Attorney acceptable to the lender. It is important that the lender approve the use of a Power of Attorney as well as our being willing to accept it.

Please be reminded that it is not acceptable for an Attorney in Fact to delegate his/her authority nor for an Attorney-in-fact to convey to him/herself or someone related to them for nominal consideration. In fact, New Jersey law prohibits an Attorney in Fact from making any "gratuitous transfer" of the principal's property.

Title
FREQUENTLY ASKED ^ QUESTIONS

August 2010

Can a surviving Tenant by the Entireties or Joint Tenant disclaim the interest which devolves to them by the death of their co-tenant?

Yes. As you know, a disclaimer is a statutory means by which an heir, devisee, beneficiary or surviving co-owner can decline to accept any interest in real or personal property which he/she would otherwise receive by devise, descent or survivorship. (N.J.S.A. 3B:9-1 et seq.)

N.J.S.A. 3B:9-2(c) provides that any person who is a "...surviving joint tenant ... may disclaim in whole or in part any such property or interest therein ..." "Joint tenant" is defined as the co-owner of joint property which specifically includes tenancies by the entireties and joint tenancies. A disclaimer can be of an entire interest or of a partial interest.

A disclaimer must be in writing and must be signed and acknowledged by the person disclaiming the interest. It must describe the property being disclaimed (including municipality and county in which the real property is situated) and declare the disclaimer and its extent. (N.J.S.A. 3B:9-3)

A disclaimer of an interest in real estate must be delivered to the decedent's personal representative, filed with the surrogate or the clerk of the superior court and filed in the county clerk of the county in which the real property is located.

Under previous law, there were very specific time periods within which a disclaimer must be effectuated. Under current law, there is no specific time; rather, the disclaimer must be made before it is barred by one or more of the acts set forth in N.J.S.A. 3B:9-9, all of which are acts which are inconsistent with the intent to disclaim. It is important to note that one of the identified acts barring the right to disclaim is "a fraud on the individual's creditors as set forth in the 'Uniform Fraudulent Transfer Act'."

Practically, the effect of a properly executed disclaimer is as if the person disclaiming the interest predeceased the decedent. From an underwriting standpoint, one must review the disclaimer to confirm that it meets statutory requirements and confirm that it was properly served and filed. In addition, the title examiner must confirm that none of the acts specified in N.J.S.A. 3B:9-9 which would bar the right to disclaim have occurred.

As always, if you have any questions on this or any other matters, please contact a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

September 2010

The first mortgage on the title under examination is being foreclosed. What exactly should we require with regard to paying off this mortgage?

Assuming the foreclosure has not yet gone to final judgment, it will generally be necessary to obtain the following:

1. Proof of payment in full in accordance with current written payoff instructions which include both attorneys' fees and costs, as applicable;
2. Proof of dismissal of the underlying mortgage foreclosure action (typically accomplished by the filing of an appropriate stipulation of dismissal];
3. Discharge of the notice of lis pendens;
4. Discharge of the mortgage being paid off;

If the mortgage is being paid off after entry of the final judgment of foreclosure, vacation of the foreclosure judgment must also be provided.

Foreclosure counsel often resist providing these proofs where the payoff occurs after a final judgment of foreclosure is entered. They take the position that the mortgage technically has merged into the final judgment (thus it no longer exists) and procedurally they are only required to provide a warrant of satisfaction of judgment. Unfortunately, a final judgment of foreclosure and subsequent warrant of satisfaction of judgment typically do not appear in the county land records and will not be picked up in a standard search. By obtaining the required proofs, a file will contain clear evidence that the underlying litigation has been adequately concluded and establishes an official means by which we can search the county land record to determine that the mortgage has been appropriately discharged.

Litigation and mortgage foreclosure proceedings can be complicated and expensive. It is thus critical that any mortgage payoff statements obtained involving foreclosures are current and include attorneys' fees and sheriff's costs, as appropriate.

Please contact a member of our underwriting staff with any questions you may have.

Title
FREQUENTLY ASKED ^ QUESTIONS

OCTOBER 2010

A lender has chosen a different title agency to close the refinance we have been asked to insure. They are insisting that we issue a closing service letter naming that agent, who is not an agent of Old Republic's. Can we do that?

Absolutely not.

Old Republic's Closing Service Letters (CSL) may only be issued naming NJ attorneys who meet our stated criteria (below) or Policy Issuing Agents of Old Republic National Title Insurance Company. If you are requested to issue a CSL on a title agent and do not know whether or not they are appointed by Old Republic, please call the New Jersey State Office for verification.

The criteria for closing attorneys are as follows:

- Listed as an active member of the New Jersey Bar in the current Lawyers Diary; alternatively, proof that attorney is currently admitted to the New Jersey Bar and does not have his/her license suspended.
- Continues to be a member of the same law firm as listed in current Lawyers Diary.
- Office is located at same address as listed in current Lawyers Diary.
- Licensed to practice law in New Jersey for at least two years or associated with an attorney with at least two years experience.
- Engaged in full-time practice of law (no other occupation such as real estate developer, builder, etc.) with a staffed office open on a full-time basis capable of doing New Jersey business.
- Is not included on Company's Non-Approved Attorney List (copy available upon request).
- Is representing the borrower not the lender.

As always, please feel free to address any questions on this or any other topic to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

November 2010

The sellers in my transaction are anticipating a Homestead Rebate and are asking that we adjust the real property taxes at closing to reflect the rebate. How do we handle this?

Our first observation is that this not a title insurance issue and but rather a settlement issue for the parties to the transaction.

This issue has been the subject of increased inquiries since the State of New Jersey modified the method used to "pay" the rebate in the State Budget for 2011. Rather than receiving a check representing their rebate amount in the summer or fall following the year for which the rebate applies, qualified homeowners will receive their homestead benefit in the form of a credit against their property tax bill. Specifically, the 2009 homestead benefit will be credited to the second quarter real property taxes for 2011.

The obvious problem here occurs where the qualified homeowner conveys title to the real estate before the credit is applied. In fact, on the State's own website a "Frequently Asked Questions" on this topic states, "If you sell your home after you file your application, be sure to take the amount of the benefit into consideration at settlement as the homestead benefit stays with the property, not the owner." Sellers will obviously expect that adjustment to be made.

While the State's concern for the seller is admirable, in the real world it will be very difficult for a settlement agent to accomplish this goal. While municipal tax records may in the second quarter of the year reflect the credit as having been applied, there is otherwise no other way to confirm that the seller will be entitled to the rebate and what the amount of such rebate may actually be. The parties to the transaction may, of course, adjust this matter between themselves, however no insurance coverage may be given as to this issue nor should the title/settlement agent participate in that adjustment.

Those offices or agents who wish to include information about the Homestead Benefit in their commitments and policies may do so as a "Note for Information". The following language is suggested:

> NOTE FOR INFORMATION: New Jersey's Homestead Benefit Program is beyond the scope of title insurance coverage afforded by the policy. No coverage is given against loss resulting from or related to New Jersey's Homestead Benefit Program nor from adjustments made or not made at closing or settlement with respect to same.

For more information on the Homestead Benefit Program, visit Treasury's website, www.state.nj.us/treasury/taxation.

Title
FREQUENTLY ASKED ^ QUESTIONS

December 2010

Title to the principal matrimonial residence is vested in one spouse. He/she is refinancing (or selling) and has provided a pre-nuptial (ante-nuptial, pre-marital) agreement as proof that the non-title holding spouse does not have to sign the new mortgage (or deed). Is this acceptable?

Not without written confirmation from the non-title holding spouse of their awareness of the specific transaction and of the continuing validity of the pre-nuptial agreement.

While New Jersey law recognizes that a person can legally release or extinguish his/her right of joint possession to the principal matrimonial residence by pre-marital agreement (N.J.S.A. 3B:28-3(b)), the Uniform Pre-Marital and Pre-Civil Union Act (N.J.S.A. 37:2-1 et seq.) provides a number of bases upon which a party may have such an agreement ruled unenforceable.

While our first preference is always to have the non-title holding spouse sign the mortgage on or deed to the principal matrimonial residence as applicable, a simple, notarized statement including the following information from the non-title holding spouse may also allow us to insure without exception to their right of joint possession:

> I am the husband/wife of (title holding spouse). (Title holding spouse) is the owner of (address of property in question) which is my principal matrimonial residence. I waived all of my rights to and interests in this property including my right of joint possession under N.J.S.A. 3B:28-3 by a pre-marital agreement dated (date of agreement) which has been previously provided to you. I am aware that (title holding spouse) is now (selling the property to (buyer) for (purchase price)) or (refinancing/financing the property with (lender) for (amount of mortgage)).

As always, feel free to contact a member of our underwriting staff with any questions you may have.

2011

Title
FREQUENTLY ASKED ^ QUESTIONS

January 2011

Our county search reflects a tax sale certificate and a lis pendens pertaining to its foreclosure. The property is going to be sold to a third party. Are there any special requirements or issues we need to address?

Yes. Several years ago the New Jersey Supreme Court rendered its decision in the case of Simon v. Cronecker, 189 N.J. 304 (2007) where the question before the Court was whether a third party investor purchasing the affected property has a right to redeem a tax sale certificate (either directly or indirectly) once foreclosure proceedings have been instituted. The Court held that he/she does not unless he/she first intervenes in the foreclosure action and subjects his/her purchase of the property to judicial scrutiny. The Court held that without court approval, the investor has no right to participate, directly or indirectly, in the redemption process.

Therefore, when insuring title to property that is subject to a pending tax sale certificate foreclosure, it is not enough to merely obtain a redemption statement and pay the required redemption price. Rather, you must require either that the holder of the tax sale certificate confirm in writing that they will accept the redemption price and discontinue the tax sale certificate foreclosure action *or* that the purchaser intervene in the foreclosure action and obtain Court approval for redemption of the certificate. This requirement applies even if you believe that the sale is an arms length transaction for appropriate consideration.

To satisfy this condition, the following requirement must appear on Schedule B-I of the commitment following the entry for the Tax Sale Certificate and lis pendens:

> Written confirmation is required from the holder of Tax Sale Certificate No. ___ that (a) the redemption statement prepared by the tax collector is accurate and complete, (b) he/she will accept the payment of the redemption price as set forth in the redemption statement, and (c) he/she will discontinue the foreclosure suit, discharge the notice of *lis pendens*, and cause the Tax Sale Certificate to be discharged of record ***or in the alternative***, proof must be provided that the purchaser intervened in the foreclosure action and obtained Court approval for redemption of the certificate.

Please note, this requirement does not apply in a refinance transaction since the owner is not conveying his or her interest in the real property.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

February 2011

Can a recorded condominium lien be cut off by a final judgment in a mortgage foreclosure action?

Partially, yes.

New Jersey law (NJSA 46:8B-21) provides that a recorded condominium lien has limited priority over a prior recorded mortgage or other lien (except real property taxes or federal taxes). This priority is limited to an amount equal to 6 months' customary condominium assessments for the period immediately preceding the recording of the condominium lien.

In order to enjoy this "super priority", the condominium lien must have been recorded prior to a) the receipt by the association of the summons and complaint in an action to foreclose a mortgage on the subject unit or b) the proper filing of a lis pendens in such foreclosure action. In addition, the "super priority" expires as to a recorded lien 5 years after the date of recording of the lien.

To the extent that there are multiple liens recorded as to a single unit aggregating more than 6 months' customary condominium assessments or the recorded lien is for greater than 6 months' customary condominium assessments, the balance due over the 6 months' amount will be subordinate to the mortgage and "cut off" by the final judgment in foreclosure. In the situation of multiple liens, earlier recorded liens have first use of the "super priority".

For purposes of the statute, "customary condominium assessments" means the periodic assessments for regular and usual operating and common area expenses pursuant to the association's annual budget and do not include amounts for reserves for contingencies, late charges, penalties, interest, or collection costs.

As always, if you have any questions or require further assistance don't hesitate to contact a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

March 2011

Title is vested in two people as joint tenants. One of the parties has died and the surviving joint tenant is under contract to convey the real estate. There is no inheritance or estate tax implication, is there?

Actually, there is.

Both New Jersey and Federal law provide that the interest "passing" to the surviving joint tenant(s) may be taxable under New Jersey's Transfer Inheritance and/or Estate Tax or the Federal Estate Tax.

The New Jersey statute, N.J.S.A. 54:34-1(f) states, "The right of the surviving joint tenant or joint tenants, . . . to the immediate ownership or possession and enjoyment of real . . . property held in the joint names of two or more persons . . . shall upon the death of one of such persons, ***be deemed a transfer taxable in the same manner as though such property had belonged absolutely to the deceased joint tenant . . . and had been devised or bequeathed by his will to the surviving joint tenant or joint tenants*** . . ."

The Federal statute, 26 U.S.C.A. 2040(a) provides, ***"The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants with right of survivorship by the decedent and any other person . . ."*** (The federal law goes on to exclude tenancies by the entireties.)

Both the State and Federal statutes allow the surviving Joint Tenant the right to prove that he or she contributed to the purchase of the real property and to have that amount declared non taxable. This does not change our position that inheritance/estate taxes must be satisfactorily addressed.

Accordingly, any title commitment issued to insure a mortgage or conveyance by a surviving joint tenant must take exception to Federal and State Inheritance and Estate Taxes.

As always, any questions should be addressed to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

April 2011

Are there any special considerations when we find title vested in the record owner without any open mortgages?

Yes.

The forged or "naked" satisfaction continues to make headlines. A naked satisfaction is one which is recorded without corresponding evidence of the source of funds for payoff of the loan, such as another mortgage (in the case of a refinance) or a deed (for a sale).

This situation requires more than casual inquiry. Whenever you review a title search which shows no open mortgages you must do the following:

1. Ascertain whether the property was purchased for cash (i.e. without a mortgage). If it was, and the property was never the subject of a mortgage during the present owner's ownership, there is no need to make any further inquiry.
2. If the property was subject to a mortgage which appears to have been satisfied without utilizing the proceeds from a new mortgage you must ask your seller or borrower how they were able to pay off their mortgage without a new loan. You may require copies of documentation establishing how the mortgage was paid off; you may make additional inquiries from the lender that the loan was, in fact, paid in full.

Unfortunately, in this day and age, it is not appropriate to accept on face value that the record owner owns the property free and clear of mortgages. Further inquiry under this scenario is necessary.

Title
FREQUENTLY ASKED ^ QUESTIONS

May 2011

Are there any special requirements when insuring a title which was obtained by deed in lieu of foreclosure?

Yes.

First is the creditors' rights problem. If you are insuring the grantee under the deed in lieu of foreclosure's title and you are using the ALTA 2006 Owner Policy, the pre-printed Creditors Rights Exclusion will cover this concern and no additional exception need be added; if you are using the ALTA 1987 Residential "Plain Language" Policy, you must include the following exception on Schedule B:

> Consequences of an attack on the estate or interest insured herein under the Federal Bankruptcy Law or any creditors' rights law or state insolvency law.

If you are insuring a conveyance by the grantee under the deed in lieu of foreclosure you must run the deed in lieu of foreclosure grantor in upper courts through the date of your insured transaction; if that grantor has filed for bankruptcy protection after the date of the deed in lieu, you must call a member of our underwriting staff for assistance.

Second, the mortgage for which the deed in lieu of foreclosure was given may remain open until the grantee in the deed in lieu of foreclosure conveys title. In that subsequent transaction, the mortgage must be cancelled of record.

Third, it is not acceptable to insure a title being conveyed by a deed in lieu of foreclosure which had been previously executed and held in escrow in case of a future default. ***Only deeds in lieu of foreclosure which have been currently executed may form the basis for owners title coverage in favor of the grantee in the deed in lieu.***

As always, please address any questions you may have to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

June 2011

The present owner of the real estate we are examining died over a year ago. There is a creditor's claim filed in the Surrogate's file for this estate. Can I ignore it?

Not necessarily.

Under NJ law (NJSA 3B:22-4), a creditor of a deceased party seeking payment must present its claim to the executor or administrator within nine (9) months of the decedent's death. Within 3 months of that event, the personal representative of the decedent must advise the creditor of whether or not the claim will be paid in part or in full. Within 3 months of that notification, the creditor must file suit to recover any portion of the claim which was rejected.

When examination of the Surrogate's records relating to the deceased owner's estate reveals that such a claim was filed, proof must be sought from the personal representative that the claim was paid or in the alternative that the requirements of the statute were observed (a written response directed to the claimant outlining that all or a portion of the claim is rejected) and that more than 3 months have expired since that notice and no action to recover has been instituted. If these proofs cannot be obtained, the claim must be paid or a satisfactory escrow created (after consulting with a member of our underwriting department).

Many real estate professionals erroneously rely on NJSA 3B:22-22 et seq. (the "Decedent's Debts" law) to pass on all debts and obligations of a decedent after one year has expired since the date of death, including filed claims. This reliance is misplaced as this statute applies to debts of the decedent which have not risen to the level of a judgment or other form of perfected lien. (An example of this type of debt might be unpaid medical bills or credit cards.) While a filed claim is not "perfected", it still provides notice of a potential debt and must be properly addressed as set forth above.

As always, please feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

July 2011

Which Arbitration Endorsement should we be issuing and under what circumstances should it be issued?

The current approved form of Arbitration Endorsement is the NJRB-5-128 (ORT Form 4505 NJ) "Waiver of Arbitration". This form replaced the former "Arbitration Endorsement" in April of 2010. The difference between the two forms is that where the former endorsement redefined the Arbitration provision of the applicable policy, the current form deletes the Arbitration provision from the policy jacket.

This endorsement may be issued with both lenders and owners policies (including the 1987 "Plain Language" Residential Owners Policy) but only when requested by the proposed insured.

As a reminder, under section 10.67 of the New Jersey Land Title Insurance Rating Bureau Manual of Rates and Charges, no charge is to be made for issuance of this endorsement.

Title
FREQUENTLY ASKED ^ QUESTIONS

August 2011

We have just been presented with a check drawn on a foreign (non-US) bank. Is there anything about which I should be concerned with this check?

Yes. While banking policies vary between institutions, it can take weeks and even months for a foreign check to clear or be rejected. In the latter case (rejection), the funds can be removed from the depository account despite its having been "posted" and any disbursements made against those funds become the account holder's problem.

It is important to remember that New Jersey's Good Funds Law (NJSA 17:46B-10.1) prohibits title producers from disbursing closing proceeds unless those funds are "collected funds" which include attorneys' and title producers' trust or escrow account checks, cash, wire transfer, or certified, cashier's, teller's or bank checks.

Forewarned is forearmed – the real estate industry has experienced a series of scams involving foreign checks which seem to follow a similar pattern: a "buyer" contacts an attorney, realtor or title producer asking them to hold the deposit funds in connection with a potential real estate transaction. Those funds come in the form of a foreign check. Sometimes the "buyer" later asks to supplement the deposit with the funds they anticipate they will need to close and again provide a foreign check. Later, the deal "falls through" or in the alternative the "buyer" asks for release of some or all of the funds. The unwary escrow holder checks with his or her bank and is told that funds from the foreign check 'are available.' He or she then complies with the withdrawal request only to find out several months later that the foreign bank has rejected the check for any number of reasons (insufficient funds, account closed, etc.) and the funds are deducted from the escrow account leaving the escrow holder's account underfunded.

When it comes to foreign funds, the best practice is to require that they be wired in to your account.

As always, feel free to address any questions you may have to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

September 2011

Is the "standard" parties in possession exception enough when we are insuring a title which is coming out of a final judgment of foreclosure?

No. In these cases the "parties in possession" exception must be expanded to cover "holdover" owners (i.e. the owners who have lost title but still remain in possession of the insured premises) as well as tenants whose interests may have been disclosed by a recorded document (deed or lease) which interest was extinguished by the final judgment of foreclosure. Accordingly, the following exception is recommended:

> Rights or claims by parties in possession including but not limited to claims of title and/or claims under tenant protection laws.

This exception may be removed upon receipt of an affidavit from the proposed insured that they have personally inspected the property in question and it is vacant.

This "best practice" applies to titles where the proposed insured is the successful bidder at sheriff's sale at mortgage and tax sale certificate foreclosures as well as the successful plaintiff in foreclosures of tax sale certificates in personam where no public sale is held.

As always, feel free to address any questions you may have to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

October 2011

How long after the entry of a final judgment of foreclosure on a tax sale certificate must we wait before we may insure the title to property which derives through it?

As a general rule, one year.

The right of redemption is the right of the owner(s) of real property (and certain interested parties, for example, mortgagees) to redeem their interest in the property upon payment of the outstanding taxes due under the certificate (including, interest, costs and penalties). The right to redeem, when properly exercised, acts to "unwind" the foreclosure proceeding revesting title in the foreclosed property owner. ***Although this right is available only for a limited time, it is significant because it can divest a title that derives through a tax foreclosure judgment.***

Under N.J.S.A. 54:5-104.67, an application to re-open a final judgment entered in an *in rem* tax foreclosure action may be filed within three (3) months of the date of recording of the final judgment in the county land records. A similar right exists in an *in personam* tax foreclosure proceeding, except that the application to re-open the judgment must be filed within three (3) months of the date of entry of the final judgment under N.J.S.A. 54:5-87. In addition NJ Court Rule 4:50-2 provides that a party may bring a motion to be relieved from a final judgment within one year after the entry of the judgment for a number of reasons including mistake, inadvertence, surprise, or excusable neglect, newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial, fraud, misrepresentation, or other misconduct of an adverse party.

Based upon the foregoing, it is Old Republic's policy that titles which derive through a final judgment in a tax sale certificate foreclosure in the last 12 months may not be insured without approval of a member of our underwriting staff. In no event will we insure a title in which the final judgment was entered less than 3 months prior to the anticipated transaction.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

November 2011

We are being asked to insure a transaction where the present owner will be selling at a Short Sale and the Short Sale buyer will be immediately selling the property to someone else. Is there anything special we need to consider?

Yes, Old Republic's policy is that we will generally not insure "flips" whether they are part of a short sale transaction or otherwise; although we may be willing to do so on a case-by-case basis.

It is easiest to start with what Old Republic is clearly not willing to insure:

- Any transaction where the record owner is selling at short sale and the short sale buyer is then going to immediately sell the property at a profit. We may be willing to insure this type of transaction where the mortgagee(s) accepting the "short payoff" and the short sale seller have received full disclosure of all of the terms of the second transaction and indicated in writing their unconditional willingness to complete the first transaction with full knowledge of the second transaction. Where such an acknowledgement is available, the approval of a member of our underwriting staff must be obtained prior to insuring the transaction.
- Any transaction where the seller is selling at short sale and the short sale buyer is under contract to sell the property for a profit at a future date. Once again, we may be willing to insure this type of transaction where the parties have received full disclosure of all of the terms of the second transaction and indicated in writing their unconditional willingness to complete the first transaction. Where such an acknowledgement is available, the approval of a member of our underwriting staff must be obtained prior to insuring the transaction. We may be more willing to insure in this case if the short sale buyer is going to be putting sweat and financial equity in to the property before closing the second transaction, however you must still receive proof of disclosure to all parties and written acceptance by them as well as obtaining prior approval from a member of our underwriting staff.
- Any transaction where the seller acquired title within the last 6 months and is now selling for a profit – unless you obtain prior approval from a member of our underwriting staff.

The foregoing are general guidelines. In the final analysis any "flip" transaction must have the approval from a member of our underwriting staff prior to insuring whether it is part of a short sale or not.

As a reminder, when confronted with any short sale, extreme caution must be exercised and each and every condition of the short sale must be strictly complied with. If that is not possible, we are not interested in insuring the short sale. Typically, short sale instructions/conditions include a requirement that any intended sale by the short sale buyer be disclosed (in some cases, the parties are called upon to certify that there is no such subsequent transaction intended or planned). **There is no way around this except to disclose the specifics of the transaction and obtain approval.**

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

December 2011

Q Does a discharge in bankruptcy automatically "wipe out" judgment liens on real estate which was owned by the bankrupt debtor prior to filing his/her petition in bankruptcy?

A No, the discharge only eliminates the bankrupt debtor's personal liability on the judgment; it does not effect the lien of the judgment on real estate owned by the debtor prior to filing the Bankruptcy proceeding.

A Superior Court judgment against a person or entity who owns real property creates two sources of recovery – the judgment debtor individually (his/her personal property) and the judgment debtor's real property. A discharge in bankruptcy only relieves the bankrupt debtor of personal liability on a judgment debt. Unless the bankruptcy court avoids or specifically eliminates the judgment lien in the bankruptcy proceeding, the judgment's status as a lien on real estate owned by the bankrupt debtor is unaffected by a discharge in bankruptcy.

The leading case on this issue in New Jersey is Furnival Machinery Company v. King, et al., 142 N.J. Super 251 (App. Div, 1976).

Accordingly, where title was vested in an individual or entity prior to their filing a petition in bankruptcy the discharge thereunder in and of itself cannot be a basis for the elimination of judgments against the individual or entity and those judgments must be set up as exceptions to title regardless of whether or not the creditor was listed as a creditor in the bankruptcy.

These judgments are addressed in the usual way – discharge, release, etc. In addition, a debtor may avail themselves of the statutory procedure for cancellation of judgments after a discharge in bankruptcy (NJSA 2A:16-49.1) however such application is not failsafe and the assistance of a member of our underwriting staff should be sought where an order under this statute is being provided as the basis for removal of a judgment.

As always, feel free to address any questions to a member of our underwriting staff.

2012

Title
FREQUENTLY ASKED ^ QUESTIONS

February 2012

Q Our insured owners are conveying title to an LLC of which they are the owners. Do they need new title insurance for the LLC?

A It depends on the form of owners policy originally issued to them and whether or not the LLC will be paying consideration.

The definition of "Insured" in a 2006 ALTA Owners Policy includes:

(d) "Insured": The Insured named in Schedule A.
(i) The term "Insured" also includes . . .
(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.

Thus, under the 2006 ALTA Owners policy, if the named insured is conveying to a wholly-owned entity for nominal consideration, the policy will continue as of its original date in favor of the grantee without further endorsement.

It should be noted, however, that the 2006 ALTA Owners Policy does not include intra-family conveyances (i.e. those where the grantor and grantee are related by blood or marriage) in the definition of "Insured". In this circumstance, a Successors and Transferees Endorsement (Rate Manual Sec. 10-41) would be appropriate when such a conveyance is being made for nominal consideration.

The 1987 Residential Owners policy does not contain the same definition of "Insured". Under this policy form in order for it to continue in favor of the LLC under the stated circumstances (or a family member or a trust where the insured owners are trustees or beneficiaries) a Successors and Transferees Endorsement (Rate Manual Sec. 10-41) would be appropriate.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

March 2012

Q The seller in the present transaction is in a foreign country. They will sign the deed and related forms there. Is the only option for them to go to the US Consulate to have the documents acknowledged?

A No.

New Jersey law (N.J.S.A. 46:14-6.1) recognizes the following officers who may acknowledge instruments in this State as well as in any other State or foreign nation:

1) An attorney at law of the State of New Jersey;
2) A notary public of the State of New Jersey;
3) A New Jersey County Clerk or Deputy County Clerk;
4) A New Jersey Register of Deeds and Mortgages or a Deputy Register;
5) A New Jersey Surrogate or Deputy Surrogate.

In addition, the law authorizes the following officers to take acknowledgements;

1) Any officer of the United States, of a State or Territory of the United States or of a foreign nations that is at the time and place of the acknowledgement authorized by the laws of such jurisdiction to take acknowledgements.[1]
2) A foreign commissioner of deeds for New Jersey within the jurisdiction of the commission;
3) A foreign service or consular officer or other representative of the United States to any foreign nation, within the territory of that nation.

It should be noted that an attorney or notary of the State of New Jersey (who is authorized in New Jersey to take acknowledgements) may travel to any jurisdiction outside the State (such as another State or country) and take an acknowledgement for an instrument affecting New Jersey property while he or she is visiting that jurisdiction. On the other hand, New Jersey law does not recognize an acknowledgement taken in this State by a visiting foreign notary.

Any instrument being recorded, including an acknowledgement, must be in English or accompanied by a written translation into English. The accuracy of any such translation must be sworn to before an officer/notary authorized to take oaths.

Another method of acknowledgement is called an "apostille" which is a method of authentication of an acknowledgement of documents executed in a foreign nation. Should you receive a document with an apostille attached, kindly contact a member of our underwriting staff.

As always, feel free to address any questions to a member of our underwriting staff.

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[1] If the acknowledgement or proof does not specifically designate the officer as a "justice", "judge" or "notary", the acknowledgement itself or an affidavit appended to it must contain a statement of the officer's authority to take acknowledgements.

Title
FREQUENTLY ASKED ^ QUESTIONS

April 2012

Q. Is it acceptable for the members of a Limited Liability Company to give a power of attorney to one member to act on behalf of the LLC?

A. It may be acceptable depending upon the facts of the transaction.

Typically, the formation of a Limited Liability Company is memorialized by the members entering into an Operating Agreement. Most Operating Agreements identify a managing member or members who are responsible for various components of the LLC's day-to-day operation, often including transactions involving real property.

If there is no managing member or if the members wish to appoint someone else to sign on behalf of the Limited Liability Company, all of the members may give a Power of Attorney to the person or persons who will execute the documents relating to a particular transaction. The POA must refer to the specific property and transaction. In addition, you must inquire as to the reason the LLC is choosing to utilize the Power of Attorney. If you are not satisfied with the response you should call a member of our underwriting staff.

As with any Power of Attorney, it must be in recordable form and the original must be recorded as a standalone document before the deed or mortgage or other instrument(s) executed under it.

It is not acceptable for less than all members to sign the Power of Attorney. In addition, the Power of Attorney must be current; if it is more than 6 months since the POA was executed, a member of our underwriting staff should be consulted. The Attorney in Fact does not necessarily have to be a member of the Limited Liability Company although that is most common.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

May 2012

Q We have been asked to insure the refinance of a residential apartment building which is occupied by tenants. The lender is requiring that the "parties in possession" exception be removed. Is that acceptable?

A Yes, but it must be replaced with alternate language.

New Jersey law provides residential tenants with certain protections relating to eviction under N.J.S.A. 2A:18-61.1 (which is sometimes referred to as the "Anti-Eviction Act" or the "Tenants' Bill of Rights"). The law provides that a landlord cannot evict a residential tenant except upon establishment of one of the grounds set forth in the statute as good cause for eviction. In 1994, the New Jersey Supreme Court held that a foreclosing lender could not evict residential tenants without complying with this law [Chase Manhattan Bank v. Josephson, 135 N.J. 209 (1994)].

Accordingly, when insuring the conveyance or financing of a property which is occupied by residential tenants, you may remove the parties in possession exception but it must be replaced with the following:

> Subject to the rights of residential tenants under unrecorded leases, as tenants only.

(Of course, an exception would have to be taken to any leases which are actually recorded.)

For a lender, we may be willing to take the following exception which includes some affirmative insurance relating to the leaseholds provided you are given satisfactory proof that the statements regarding the tenancies included in this language are true:

> Subject to the rights of residential tenants under unrecorded leases, as tenants only, all of whom are in possession under oral month-to-month tenancies or under leases with terms of less than three years with no options to purchase the premises or other rights of any nature with a priority over the purchase money mortgage except to those found in NJSA 2A:18-61.1.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

June 2012

Q We have been holding an escrow for 5 years. Our last letter to the owner reminding them about the escrow was returned by the postal service as undeliverable. What do we do now?

A You may have to escheat it to the State of New Jersey.

N.J.S.A. 46:30B-1 et seq., the Uniform Unclaimed Property Act, provides that personal property which remains unclaimed for a period of three (3) years after it became "payable or distributable" is presumed abandoned and escheats to the State of New Jersey. While there is some debate whether or not this statute is applicable to title insurers and their agents, it does provide a method for addressing old, unclaimed escrows.

A few things must be kept in mind before seeking to escheat these funds.

First, the three year period begins to run when the purpose for which the escrow was established has passed. Thus, if an escrow is established for a Superior Court judgment, the three years would begin to run once the 20 year statute of limitations on enforcement of the judgment has passed without the judgment having been revived (in most cases, 23 years after the entry of the judgment). For an escrow for unpaid utility charges or taxes, the three years would begin to run on the day the charges or taxes were paid or the claim/lien resolved.

Second, reasonable efforts must be made to return the funds to the owner(s) of the funds (usually the depositor). It is a good practice to send periodic letters during the term of the escrow to the owner of the funds reminding them that the funds are being held and asking that they provide a forwarding address should they relocate.

If the term of the escrow has expired and three additional years have passed, and you have made a reasonable effort to locate the owner of the funds with no success, the funds should be escheated to the State of New Jersey. The proper forms and procedure to do so are accessed on line at www.unclaimedproperty.nj.gov.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

July 2012

Q Our tax search indicates that the property is subject to an unconfirmed assessment. Do we have to address this in the commitment or can we disregard it since it is "unconfirmed"?

A You cannot disregard it.

Municipalities pay for improvements such as new curbs, sidewalks, sewer systems, etc. by assessing the cost of those improvements to the property owners who benefit from the improvement. In order to do so, the municipality adopts an ordinance approving the assessment which is in addition to real property taxes. Before the improvement is completed, the assessment is known as "unconfirmed"; once the improvement is completed and the municipality determines by subsequent ordinance how the cost will be divided among property owners, it is known as "confirmed".

N.J.S.A. 40:56-33 provides that the assessment becomes a lien on affected real property with the adoption of the ordinance approving the proposed improvement. The subsequent ordinance merely apportions the actual cost of the improvement among the affected real properties.

Thus, an unconfirmed assessment is a lien on real estate from the moment the ordinance approving the work is adopted; the fact that it is "unconfirmed" only indicates that the amount of the assessment is unknown.

Accordingly, any time a tax and assessment search indicates the existence of an assessment, whether it is confirmed or unconfirmed, a specific exception for the assessment must be taken in any commitment to insure the affected real property. The exception may only be removed upon proof of payment in full of the assessment or upon establishment of an adequate escrow. If the latter course is chosen because the municipality has not yet confirmed the assessment and established the payment value for the property in question, a member of our underwriting staff should be consulted.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

August 2012

Question: Our seller will be selling pursuant to a bankruptcy order. The closing is scheduled for the day after the order will be entered. Can we insure this?

Answer: Probably not.

Bankruptcy Rule 6004 addresses the sale, use or lease of property of the bankrupt estate. Subsection (h) of that rule provides:

> (h) Stay of Order Authorizing Use, Sale or Lease of Property. An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.

This means that except for orders which specifically provide to the contrary, an order allowing property of the Bankruptcy estate to be sold or leased is virtually ineffective for 14 days following its entry (which is the date the order is entered on the docket of the bankruptcy clerk, not the date it is signed). For our purposes this specifically includes orders authorizing the sale of property free and clear of liens.

If the order specifically provides that the 14 day stay under the Rule is not applicable, insuring the transaction should still be approached with caution (as should any title deriving through a bankruptcy). A member of our underwriting staff is always available to help with these issues.

Obviously the 14 day period mentioned above tracks the 14 day period for a notice of appeal from a bankruptcy order to be filed under Rule 8002. If a notice of appeal is filed during the 14 day period, title should not be insured until the appeal has been adequately disposed of. Our underwriting staff should be consulted in this case.

(For your information, prior to a series of 2009 rule amendments, the 14 day periods recited above were 10 days.)

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

September 2012

Q What are Old Republic's guidelines for ordering Tidelands searches?

A Unless you know (from a prior file) that the property is not Tidelands affected you must order a Tidelands search for every file involving property in any of the 17 counties which are affected by Tidelands.

The 4 counties which <u>are not</u> affected by Tidelands are Morris, Hunterdon, Warren and Sussex.

In all other counties you must order a Tidelands search regardless of whether you are insuring a purchase or a refinance. Production of a prior owners (or loan) policy without exception <u>will not</u> satisfy this requirement.

If the search indicates that the property is claimed, you must take the following exception unless you determine that the entire claimed area has been granted:

> Right, title and interest of the State of New Jersey, in fee, in and to so much of the premises as is now or was formerly affected by the ebb and flow of the tide.

If the entire claim has been granted, you may remove this exception and in its place take exception to the terms of the grant.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

October 2012

Q The legal description of the land in the record owner deed includes a recital "together with" an easement. The proposed insured has requested that we include that recital in the Schedule A description in our commitment and policy when issued. Are there any special requirements or steps that should be taken before doing this?

A: Yes.

By including the "together with" recital in the legal description on Schedule A, we are insuring the title to that easement as if it were an additional tract. As such, the title to the easement in question must be searched and examined to be sure that it was properly granted, that it was not destroyed through the merger of the title to the dominant and servient estates earlier in the chain of title, and that there are no liens, mortgages, etc. on the servient estate which also burden the easement and have the ability to destroy the easement by foreclosure or execution.

It is important that we do not inadvertently insure an easement by including the "together with" recital in the description of the land on Schedule A of the commitment and policy. Such insurance should be given only after making an underwriting decision based upon a proper examination of title.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

November 2012

Q Would you please sort out the ALTA 9 family of endorsements now that two have been withdrawn, two introduced and the remaining amended?

A As you will recall, effective November 16, 2012, the following changes were made to the ALTA 9 family of endorsements:

ALTA 9-06 -- Amended
ALTA 9.1-06 -- Amended
ALTA 9.2-06 -- Amended
ALTA 9.3-06 -- Amended
ALTA 9.4-06 -- Withdrawn
ALTA 9.5-06 -- Withdrawn
ALTA 9.6-06 -- Adopted
ALTA 9.7-06 -- Adopted
ALTA 9.8-06 -- Adopted

As a result of these changes, we now have 4 forms of ALTA 9 endorsement for use in connection with loan policies and 3 for use in connection with owners policies.

LOAN
ALTA 9-06: Provides affirmative coverage similar to the "old" (unamended) ALTA 9-06 (addressing such matters as covenants, setback lines, encroachments, mineral rights)

ALTA 9.3-06: Provides affirmative coverage for certain items of loss pertaining to covenants only.

ALTA 9.6-06: Provides affirmative coverage for certain items of loss pertaining to "Private Rights" which is defined as (i) a private charge or assessment; (ii) an option to purchase; (iii) a right of first refusal; or (iv) a right of prior approval of a future purchaser or occupant.

ALTA 9.7-06: Provides affirmative coverage similar to the ALTA 9-06 but for policies issued covering a mortgage on land under development.

OWNER
ALTA 9.1-06: Provides affirmative coverage to an owner of unimproved (vacant) land as to certain items of loss pertaining to Covenants, Conditions or Restrictions.

ALTA 9.2-06: Provides affirmative coverage to an owner of improved land as to certain items of loss pertaining to Covenants Conditions or Restrictions.

ALTA 9.8-06: Provides affirmative coverage to an owner of land under developments as to certain items of loss pertaining to Covenants, Conditions or Restrictions.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

December 2012

Q Is there a new tax on real estate transfers going into effect on January 1, 2013 under the health care reform law (Affordable Care Act) which was enacted in 2010?

A No.

While the Affordable Care Act does include a tax increase which may affect a limited number of real estate transferors, the tax is a capital gain tax, not a transfer tax. This means that the tax is calculated and paid at the time the taxpayer prepares his/her federal tax return (usually at the end of the year), not at the time real estate is transferred.

This tax appears to affect high income households (single filers earning more than $200,000 per year and joint filers earning more than $250,000 annually) that realize a substantial gain on the sale of an asset (greater than $250,000 for single filers and $500,000 for joint filers).

Insofar as this is not a title issue, no exception or informational note should be included in any title evidence issued by a title company or agent. Parties inquiring about this issue should be directed to their tax professional.

As always, feel free to address any questions to a member of our underwriting staff.

2013

Title
FREQUENTLY ASKED ^ QUESTIONS

January 2013

Q What is the Federal Estate Tax Exemption for 2013?

A $5,250,000.00.

One of the amendments made by the so-called "Fiscal Cliff Deal" was to enact a permanent "basic" Federal Estate Tax exemption under 26 USC 2010 (c)(3)(a) of $5,000,000 which exemption is adjusted annually by a cost of living adjustment using a formula set forth in the statute. For 2013, the adjustment is $250,000.00.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

February 2013

Q We have issued a commitment in connection with a cash purchase. The buyer has requested a Closing Service Letter. May we issue one?

A Yes if the proposed insured is purchasing a one to four family dwelling which is to be his/her/their principal residence.

The Closing Service Letter (NJRB 6-04) which is currently approved by the NJ Department of Banking and Insurance for use by Rating Bureau members (including Old Republic) contains the following provision:

> If you are a purchaser of a one to four family dwelling, including a condominium unit, which is your principal residence and are paying cash for the purchase, you are protected, but only to the extent of the foregoing paragraph 2.

Paragraph 2, to which the paragraph refers, provides coverage as set forth in the letter related to fraud or misapplication in handling the buyer's funds.

Because of this provision, it is recommended that any title commitment issued for the cash purchase of a one to four family residence in which the buyer intends to reside as his/her/their principal residence should include the following on Schedule BII:

> NOTE: A Closing Service Letter is available for $75.00. Please contact issuing agent prior to closing to review a copy of a Closing Service Letter and to obtain this coverage.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

March 2013

Q The seller in our transaction is not represented by an attorney. They have asked us to prepare the deed for them. May we?

A No.

In New Jersey, the preparation of legal documents such as a deed is considered the practice of law which may only be undertaken by an Attorney at Law of the State of New Jersey. The only exception to that rule is that an individual representing him/herself may prepare his/her own documents.

Nor may a title agent retain an attorney to prepare conveyance documents for the parties to a transaction unless that attorney actually consults with the party for whom the document(s) will be drafted and that party provides a written request that such documents be drafted for them by the attorney. Naturally, a title company/agent may refer a party to a transaction to an attorney or attorneys for the purpose of drafting legal documents, but the party seeking the drafting of the legal document must independently retain that attorney and pay his/her fee.

This prohibition is not limited to deeds – it includes all forms of legal documents including but not limited to mortgages, notes, easements, releases, etc.

These prohibitions arise out of NJSA 17:46B-13 and In re Opinion No. 26 of the Committee on Unauthorized Practice of Law, 139 NJ 323 (NJ 1995).

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

April 2013

Q What is the Foreign Investment in Real Property Tax Act (FIRPTA) and what does it have to do with title insurance?

A. The Foreign Investment in Real Property Tax Act (FIRPTA) is a provision of the Internal Revenue Code [Section 1445] which requires the buyer of real estate to withhold 10% of the 'amount realized' from the sale of the real property where the seller is a 'foreign person.'

The Act places the responsibility to withhold the 10% on the buyer of real property or his agent. If he/she fails to withhold the proper amount, he/she may be held liable for the payment of the tax plus penalties and interest.

There are several exceptions to the 10% withholding requirement. The following two are most relevant to residential real estate closings:

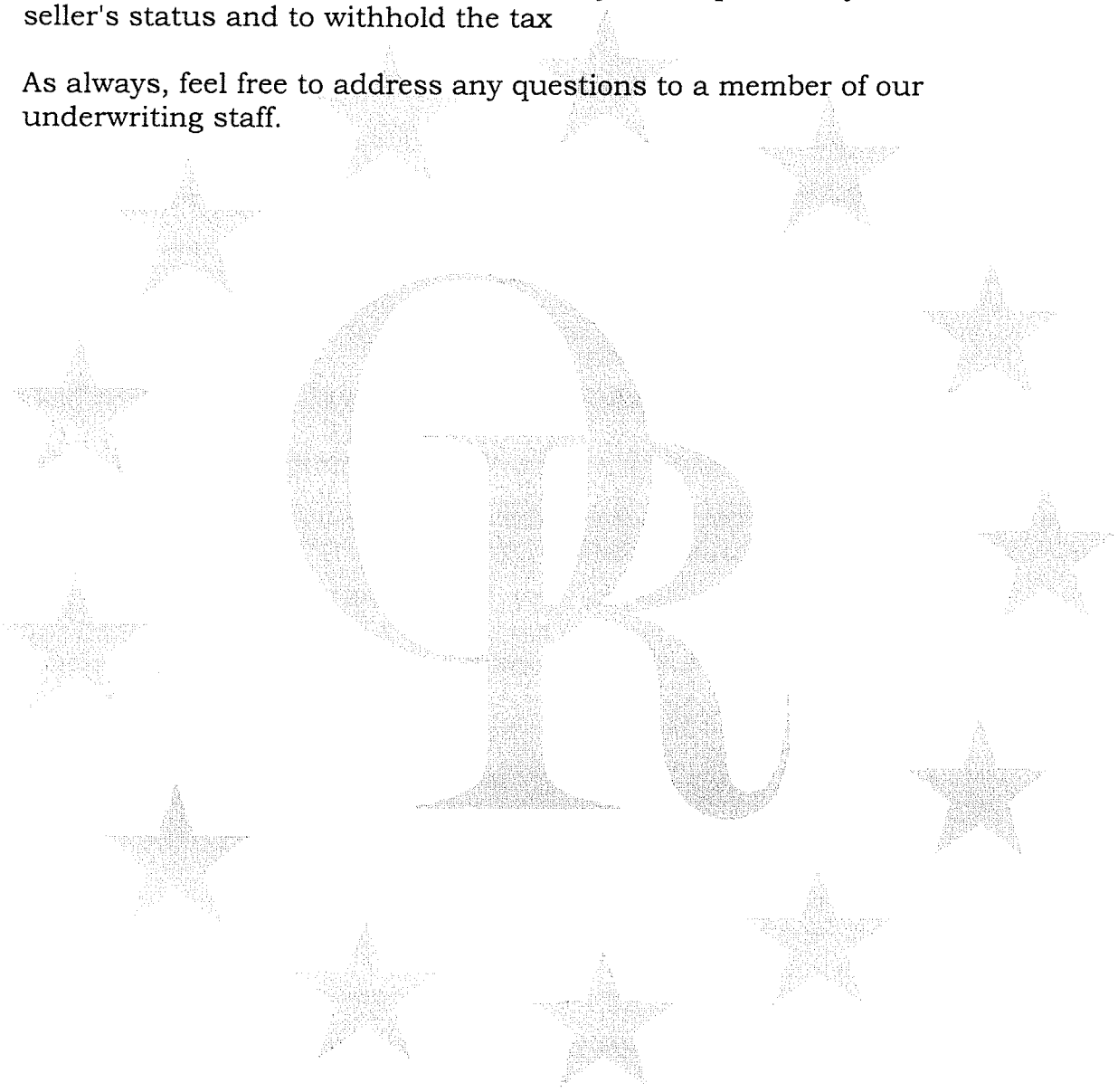
(1) An individual *buyer* is acquiring real property for use as a residence *and* the 'amount realized' is $300,000 or less. The seller's use of the property is not relevant. This exemption does not apply if the actual transferee (usually the grantee in the deed) is not an individual, even if the property is acquired for use by an individual. As proof of the exclusion from FIRPTA withholding, a buyer's exemption affidavit setting forth the sales price and that the property is being acquired for residential use is necessary.

(2) The seller is not a 'foreign person.' Withholding will be exempted if the transferor furnishes a Non-Foreign Status Affidavit (NFSA) which sets forth the seller's taxpayer identification number (i.e. social security number or identification number for business entity) and contains a statement that the transferor is not a 'foreign person.' The NFSA can be executed by a US citizen, a US green card holder, a proper corporate officer of a foreign corporation, a general partner of a foreign partnership or fiduciary of a foreign trust or estate. A transferee is not permitted to rely upon a NFSA if he or she has actual knowledge that it is false. He or she must then comply with FIRPTA withholding, unless another exemption applies.

The forms and instructions for FIRPTA withholding may be accessed on the Internal Revenue Service's website – www.irs.gov – by choosing form number 8288.

Settlement agents must be careful not to exceed the boundaries of their responsibilities in closing transactions. While one should be aware of the existence of this law, a settlement agent should not provide any advice concerning legal and tax ramifications of a transaction and should not prepare or determine the necessity of obtaining any of the affidavits discussed herein. Generally, it is the buyer's responsibility to determine the seller's status and to withhold the tax

As always, feel free to address any questions to a member of our underwriting staff.



Title
FREQUENTLY ASKED ^ QUESTIONS

May 2013

Q We no longer have access to the information provided by New Jersey's Child Support Case Information website. How do we address child support judgments against a party in title?

A Due to changes to the New Jersey Child Support Case Information website (www.njchildsupport.org), access to information about the status of a child support judgment is limited to the debtor. Thus, information from that website must come from him/her.

The debtor must provide a current printout of the Child Support Judgment status from the website prior to closing. Any arrearages shown thereon must be paid. To the extent the debtor is making "direct payments" (as opposed to through wage garnishment), the judgment should be paid at or prior to closing not only through the date of closing but also in advance for several weeks to address the additional charges that may occur between the date of closing and the recording of the deed and/or mortgage.

A copy of the printout should be attached to the Affidavit of Title and a statement verifying the information on it should be included in the Affidavit, such as, "I am the debtor on Child Support Judgment #XXXXXX. I personally obtained the attached printout of the status of the Child Support Judgment from the New Jersey Child Support website which printout is attached to this affidavit of title."

Please note, it is not acceptable to rely upon a mere statement in the affidavit of title that payments are current without the supporting printout from the official website.

If payments are being made through a County Probation Department, confirmation of the status information may be available through that office however, they are governed by the same privacy rules as the New Jersey Child Support website, and thus may also be unavailable to everyone except the debtor.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

June 2013

Q Has the UCC law been amended recently?

A Yes. Approved June 13, 2013 as P.L. 2013, Chapter 65, the amendments become effective on July 1, 2013.

The amendments do not affect the way that we deal with UCC filings in our daily title insurance practice. Some of the changes enable/further refine the provisions governing the use of electronic documents under the Uniform Commercial Code (UCC). The revised law also fine-tunes how a debtor's name should appear on a UCC filing/financing statement. Interestingly, for debtor-individuals who have a New Jersey Driver's license, the name on the filing must match the name on their most recent NJ driver's license (NJSA 12A:9-503).

If you would like a copy of the law as amended, it can be accessed on line at www.njleg.state.nj.us, choose "Chapter Laws" from the menu on the left (under the "Laws and Constitution" heading), choose "Chapter Laws 2013" and page down to Chapter 65.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

July 2013

Q How does one discharge or cancel a Notice of Settlement?

A NJSA 46:26A-11 (e) says,

> A discharge of notice of settlement shall be substantially in the form prescribed for a notice of settlement and shall be recorded by the party or authorized representative who recorded the notice of settlement. The recording officer shall record and index each discharge in the same fashion as a notice of settlement.

While no specific form of discharge is prescribed by the statue, it is to be substantially in the form prescribed for a Notice of Settlement and must be signed by the party who originally recorded it. The following would presumably satisfy this requirement:

Name .....)
Address .....)
(Seller or Mortgagor) DISCHARGE OF NOTICE OF SETTLEMENT

Name .....)
Address .....)
(Purchaser or Mortgagee)

The NOTICE OF SETTLEMENT recorded on (date) as instrument number (#) regarding a .....(contract, agreement or mortgage commitment) between the parties is hereby discharged.

THE lands which were the subject of the Notice of Settlement are described as follows:

Premises in the ..... of ....., (municipality) County of ..... and State of New Jersey, commonly known as ..... (street address) and more particularly described as follows:

(legal description)

Name of party or authorized representative .....

Address .....

(acknowledgment)

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

August 2013

Q The sole owner of the property for which we have received an application for title insurance has died. The seller is proposing to give a deed as "informal administrator/administratrix" of the decedent's estate. Is that acceptable?

A With limited exception, this will not be acceptable.

Under New Jersey law (N.J.S.A. 3B:10-3), where the total value of the real and personal assets of the estate of an intestate does not exceed $20,000.00, the surviving spouse[1] is entitled to all of the assets of the decedent without formal administration. Where there is no surviving spouse, an heir may likewise obtain the rights, powers and duties of an administrator by the filing of an affidavit however the total value of the real and personal assets in such a case cannot exceed $10,000.00. (N.J.S.A. 3B:10-4)

In either case, the party seeking to administer the estate must file an affidavit setting forth specific information required by the statute with the Surrogate of the county in which the decedent resided at the time of his/her death. In addition, for a non-spouse heir seeking this type of administration, he/she must have the written consent of all remaining heirs to do so. The statute provides that "upon the execution and filing of the affidavit . . . the (party making application) . . . shall have all of the rights, powers and duties of an administrator duly appointed for the estate."

If the fair market value of the real property in question is more than the respective dollar amount limitations mentioned above the estate probably does not qualify for "informal administration" and we are unwilling to accept a deed executed by the party who filed the affidavit under the statute (the surviving spouse or the heir). We will require that they obtain formal appointment as administrator/administratrix for the decedent's estate.

In the unlikely event that the real property in question is being sold for less than the limitation amount, we may be willing to accept a deed executed by the party filing the affidavit however, assistance from a member of our underwriting staff should be obtained.

As always, feel free to address any questions to a member of our underwriting staff.

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[1] For purposes of this release, "surviving spouse" includes domestic partners and civil union partners.

Title
FREQUENTLY ASKED ^ QUESTIONS

September 2013

Q Title to the condominium unit under examination is vested in the foreclosing lender by Sheriff's Deed. The condominium association was joined in the foreclosure as a defendant. There was a condominium lien filed after the lis pendens. Do I still have to worry about outstanding condominium fees/charges?

A Yes.

The New Jersey Supreme Court addressed this exact issue in 2006 in their decision in Highland Lakes Country Club v. Franzino, 186 N.J. 99 (2006) and held that while the Association's lien was terminated by the final judgment in foreclosure, the underlying debt remained and the Association could look to the new owner (who in that case had purchased from the lender who took title by Sheriff's Deed) for the arrearages. The Court found that the new owner had notice of this potential obligation because of the provisions of the Master Deed and by-laws of the Association.

New Jersey law provides a mechanism for avoiding this type of problem in NJSA 46:8B-21(d) which provides,

> d. Any unit owner or any purchaser of a unit prior to completion of a voluntary sale may require from the association a certificate showing the amount of unpaid assessments pertaining to such unit and the association shall provide such certificate within 10 days after request therefor. The holder of a mortgage or other lien on any unit may request a similar certificate with respect to such unit. Any person other than the unit owner at the time of issuance of any such certificate who relies upon such certificate shall be entitled to rely thereon and his liability shall be limited to the amounts set forth in such certificate.

The amount(s) shown as due on such a certificate must be paid in full at closing. If they are not, the exception for outstanding Association charges/assessments may not be removed and the ALTA 4.1-06 should not be issued as it insures that such charges are not prior to the insured mortgage.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

October 2013

Q Title is vested in a Limited Liability Company. The Managing Member has died and the sellers are proposing that the deed be executed by the Managing Member's personal representative. Is that acceptable?

A Yes, but only if the LLC members officially agree to give the personal representative that authority.

If the deceased member was the Managing Member, that Managing Member's personal representative (executor, administrator) does not automatically "step into the shoes" of the decedent and become the managing member unless the Operating Agreement for the LLC specifically so provides.

The personal representative does have the right to exercise whatever membership rights the decedent has in the LLC whether under an Operating Agreement or otherwise unless the Operating Agreement curtails or limits the rights of a member's personal representative.

If the Operating Agreement does not appoint a successor managing member in the event of the Managing Member's death, the best practice is to require all LLC members to sign the deed or in the alternative to require that all members appoint a new or successor manager to sign.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

December 2013

Q In connection with a title commitment we are issuing, we have been asked by the lender to run some searches on parties other than the borrower. Do I report the results in the commitment?

A We are occasionally asked to search the names of guarantors or the individual partners/members of a title-holding partnership or LLC in the county or in upper courts or to provide "pending litigation" searches in conjunction with a title order. None of these searches are directly related to the parties or the estate or interest to be insured – thus we often call them "ancillary searches".

The best practice is to provide the results of ancillary searches separate from (or outside) the title commitment. If it is necessary to include the results of those searches in the title commitment, they must be clearly identified as "Notes for information only".

As always, feel free to address any questions to a member of our underwriting staff.

2014

Title
FREQUENTLY ASKED ^ QUESTIONS

January 2014

Q The seller in the present transaction is a Limited Liability Company. The managing member of the seller LLC is another LLC. What searches/proofs do I need for the managing member LLC?

A You need to know that it (the managing member LLC) is in good standing in its state of formation and must have proof of who has authority to sign on its behalf. This may lead to a "layering" of entities where the managing member's managing member is also a LLC or other entity, etc. The "trail" should be followed until a natural person (an individual) is reached.

The signature line in this circumstance would look something like:

Abracadabra LLC

/s/ *Nancy L. Koch*
By: Xanadu, LLC, its managing member
By: Nancy Koch, the managing member of Xanadu, LLC

The same analysis applies regardless of the type of entity the managing member may be – corporation, partnership, etc.

In the event the managing member of the LLC is a corporation, it is not necessary to run a franchise tax search for that corporation since those taxes would not be a lien on the title-holding Limited Liability Company's real property.

The best practice is to obtain copies of the Operating Agreements for each entity to establish signatory authority. If that is not possible or practical, assistance from a member of our underwriting staff may be warranted.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

February 2014

Q Our tax and assessment search shows water as "private". That means we can ignore it since it can't become a municipal lien, right?

A No

There are a number of municipalities which have entered into contracts with private companies to provide water and/or sewer service using municipally-owned facilities. In this situation, **unpaid charges are municipal liens.**

The problem is that tax and assessment searches show these as "private" which may lull the unwary examiner into merely showing utility charges as "private" and not excepting the possible lien for unpaid charges.

Accordingly where the tax and assessment search shows water and sewer as "private" and the examiner is not certain as to whether the unpaid charges constitute a lien, the following exception should be included in the title insurance commitment:

> Municipal liens may be imposed for unpaid utility charges. The municipality should be contacted to see if unpaid charges do, in fact, constitute a lien.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

March 2014

Q We are insuring one unit in a multi-unit condominium building. The tax search came back with the notation "Common water account – possible outstanding charges – call for final reading" under the sewer and water entries. How do we address this?

A In addition to including the usual exception relating to water/sewer charges, you should also include the following exception:

NOTE: Water and Sewer are billed under one common account for all units in subject condominium building; the Land described herein does not have a separate water/sewer account.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

April 2014

Q Is there a "look back" period for transfers by title holders made prior to their death?

A Yes – 3 years.

NJSA 54:34-1(c) states, "...A transfer by deed, grant, bargain, sale or gift made without adequate valuable consideration and within three years prior to the death of the grantor, vendor or donor of a material part of his estate or in the nature of a final disposition or distribution thereof, shall, in the absence of proof to the contrary, be deemed to have been made in contemplation of death ..."

The Internal Revenue Code has a similar provision (26 USC 2035).

Such transfers are treated as taxable for purposes of New Jersey Transfer Inheritance and New Jersey Estate taxes and Federal Estate Taxes and the value of the property transferred included in the decedent's taxable estate.

Thus whenever title derives through a deed for nominal consideration in the last 15 years and the grantor in that deed died within 3 years of the conveyance, an Inheritance Tax Waiver or proof that the estate was exempt from Transfer Inheritance Taxes, Estate Taxes and/or Federal Estate Taxes must be obtained.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

May 2014

Q The land in question was tidelands claimed however the State had issued a grant to a prior owner. The description in the deed from the seller to our proposed insured only covers the upland; the property covered by the grant is not included in the description. Does the granted area automatically pass with the deed to the upland?

A Not necessarily.

In 2007, the NJ Supreme Court held in *Panetta v. Equity One*, 190 N.J. 307 (2007) that while a riparian right not mentioned in a deed can be appurtenant, a riparian grant cannot. The *Panetta* court held that a separately assessed riparian grant is not appurtenant to abutting upland property as a matter of law (at page 324). Obviously, then, if the tideland-claimed area is shown on the municipal tax map as a separate lot, it will not automatically pass with a conveyance or mortgage of the upland.

To the extent the upland and the tideland granted land are included in the same tax lot, the answer is a bit murkier. In this situation, assistance from a member of our underwriting staff should be obtained.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

June 2014

Q Are we permitted to insure titles which derive through in personam tax foreclosures?

A Yes, with caution.

Insuring these titles involves increased risk and thus requires increased scrutiny. A Chancery Abstract must be obtained and reviewed for regularity. All title and lienholders must be properly joined in the foreclosure action. If the United States of America is sought to be divested, the property must be subjected to public (Sheriff's) sale. (If the United State's interest is other than a Federal Tax Lien, underwriting assistance from a member of our staff should be sought.)

If the Final Judgment was entered **less than one (1) year prior to the transaction for which insurance is requested**, the following exceptions must appear and may not be removed without approval of a member of our underwriting staff:

- Consequences of the exercise of the right of redemption for a period of three months from entry of Final Judgment pursuant to N.J.S.A. 54:5-87.

- Consequences of the re-opening or vacating of the Final Judgment for a period of one year from the entry of said Final Judgment pursuant to Rule 4:50-1 et seq.

- Consequences of an attack on the estate or interest created by the final judgment dated (date of final judgment) recorded (date of recording of final judgment) in (recording information for final judgment) under the Federal Bankruptcy Law or any creditors' rights law or state insolvency law.

In addition, the following requirement and exception should be included:

- Proof is required that the owner whose interest was divested by the foreclosure of the Tax Sale Certificate is no longer in possession of the land being insured hereunder.

- Rights of parties in possession and tenants in possession of subject premises protected by N.J.S.A. 2A:18.16, et seq., the New Jersey Tenant Anti-Eviction Statute.

Please be reminded that Tax Sale Certificates enjoy priority over other Tax Sale Certificates in inverse order; thus the holder of a more recent Tax Sale Certificate may successfully cut off an older Tax Sale Certificate in a foreclosure.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

July 2014

Q Title is currently vested in the trustees of a living trust. The beneficiaries and the trustees are the same people. Is this a problem?

A It could be.

New Jersey case law has held that where the sole trustee and sole beneficiary of a trust are identical, the legal and equitable titles merge and the trust collapses. That is not necessarily the case where the trustee is only one of several beneficiaries or where there are multiple trustees and beneficiaries.

Thus in the situation where the sole trustee and the sole beneficiary are identical, the best practice is for the deed to come from the party as trustee and individually. Judgments and liens against the individual should be addressed. Requests to alter this practice should be addressed on a case by case basis.

Likewise, where the beneficiary and the trustee are the same individual and that individual has died, estate issues must be addressed.

Where there are multiple trustees and/or beneficiaries, the deed should come from the trustees.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

August 2014

Q Would you please remind us which charges are considered "pass through" charges in the Rate Manual?

A As you know, our rates and charges are regulated by the NJ Department of Banking and Insurance. Under NJSA 17:46B-41, 42, only rates and charges for title insurance that have been approved by NJDOBI may be charged; no variation is allowed. Old Republic is a member of the New Jersey Land Title Insurance Rating Bureau (NJLTIRB) and as such had adopted the Bureau's Manual of Rates and charges. Under the Manual, the following are charges which are to be passed through to the customer at cost:

Sec. 5.3.1 Pass Through Charges for Other Searches:

Including but not limited to:
Upper Court Searches
Tax Searches
Municipal Assessment Searches
Chancery Abstracts
Water Charge Searches
Corporate Reports
UCC Searches
Public Utility/Sewer Authority Searches

Sec. 5.3.2 Photocopy Charges:

Photocopy charges associated with the county search.[1]

Sec. 7.5 Overnight or Special Delivery Charges

When an insurer/agent is asked to use an overnight delivery service (or other special delivery or messenger service).

Sec. 7.6 Other Miscellaneous Charges

Including but not limited to:
Transaction Management Platform Fees
Wire Transfer Fees
Fees for Payoff Statements
"Other" Photocopy Charges[1]
Sales, use, services, ad valorem or other taxes of fees imposed by governmental entities or agencies

Please note: the cost of the county search is included in the $100.00 Examination Charge under Sec. 5.1. It is not a pass-through charge.

As always, feel free to address any questions to a member of our underwriting staff.

[1] Sec. 7.2.1 covers photocopy charges related to settlement/closing.

Title
FREQUENTLY ASKED ^ QUESTIONS

September 2014

Q We are being told that the signature of the preparer of a deed is no longer required in order to record the deed. Is that correct?

A Yes.

As we advised you in a memo dated April 27, 2012, the NJ Recording laws were revised effective May 1, 2012 (P.L. 2011, Chapter 217). One of the changes brought about by these amendments was the removal of the requirement that the party who prepares a deed sign it on the "Prepared by" line.

NJSA 46:26A-3(a)(5)(c) says that in order for a deed to be recordable, it must include the name of the person who prepared the deed. As you can see, under the law as revised no signature is required.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

October 2014

Q There is a mortgage which was due more than 6 years ago. Can I omit this as an "ancient" mortgage?

A Perhaps.

There are several issues to consider:

Statute of Limitations: The case of Security National Partners v. Mahler, 336 N.J.Super 101 (App.Div. 2000) held that a 20 year limitation period governs mortgage foreclosures. The 20 year period begins to run from the date the mortgagor fails to make payments.

In 2009, NJSA 2A:50-56.1 was enacted which establishes a statutory limitation period for residential mortgages. That statute states that an action to foreclose a residential mortgage may not be started after the first of the following events occurs:

- 6 years expires from the maturity date stated in the mortgage;
- 36 years expires from the date of the recording of the mortgage (as long as the mortgage itself does not provide for a longer repayment term)
- 20 years expires from the date the borrower defaulted.

We emphasize that the Statute only applies to residential mortgages; if the mortgage is not residential, the 6 year limitation period does not apply at all. Remember the 6 year period runs from the maturity date of the residential mortgage and is applicable only if it is the first of the limitation periods to expire.

Mortgagor: Where the borrower on the mortgage in question is a prior owner, the best practice is to obtain a copy of their owners policy to determine if the mortgage may be omitted under the inter-underwriter indemnification treaty or in the alternative with a letter of indemnity from the present owner's underwriter. Absent that, proof of payment should be obtained if available. If proof of payment is not available, we may be still willing to omit the mortgage based upon the statute of limitations discussed above but only as a last resort. Assistance from a member of our underwriting department should be obtained for mortgages where the maturity date is less than 20 years ago.

Where the borrower on the mortgage in question is the present owner, we are unlikely to omit based upon the fact that the statute of limitations may have expired. Assistance from a member of our underwriting department should be sought.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

November 2014

Q What are the classes or categories for New Jersey Inheritance Tax purposes and do they apply to NJ Estate tax?

A For Inheritance Tax purposes only, New Jersey separates heirs into 4 classes or categories under NJSA 54:34-2. They are as follows:

"Class A"
Spouse/Civil Union Partner
Father
Mother
Child (includes legally adopted and mutually acknowledged child)
Stepchild
Issue of Child or legally adopted Child

"Class C"[i]
Brother or sister, half-brother/half-sister
Spouse/civil union partner of child of decedent[ii]
Widow/widower of child of decedent[iii]

"Class D"
Everyone else

"Class E"
State of NJ or any political subdivision thereof, Educational institutions, Churches, Hospitals, Public libraries, Bible and tract societies, Institutions/organizations organized and operated exclusively for religious, charitable, benevolent, scientific, literary or education purposes (must be non-profit)

These classes do not apply to NJ Estate Taxes.

As always, feel free to address any questions to a member of our underwriting staff.

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[i] Class B was abolished in 1963.
[ii] i.e. son/daughter-in-law
[iii] i.e. son/daughter-in-law

Title
FREQUENTLY ASKED ^ QUESTIONS

December 2014

Q We have been asked to issue a "pro forma" policy. How do we go about doing that?

A A "pro forma" policy is a sample of how a policy for a specific file will appear assuming that all of the title requirements are met. They are often requested in connection with more complex commercial transactions.

To issue a pro forma policy, one would prepare the policy schedules as if all requirements were met.

- The date of the policy should be "date of closing or date of recording of the Insured Mortgage, whichever is later".
- The mortgage recital should include blanks where the dates and recording information would be included.
- The word "specimen" or "pro forma" would be inserted in place of the actual policy number on all schedules and on the policy jacket itself.
- The following language must be included on Schedule B of the policy (or in a letter accompanying the policy):

  This specimen policy is being provided as a courtesy; as such, it does not grant insurance nor bind the Company to insure in accordance with the terms of this specimen policy; the failure to include certain exceptions and/or requirements herein does not constitute a waiver of same by the Company.

As always, feel free to address any questions to a member of our underwriting staff.

2015

Title
FREQUENTLY ASKED ^ QUESTIONS

January 2015

Q What should be inserted in the first blank in paragraph 4 of the standard Affidavit of title?

A Paragraph 4of the "standard" Affidavit of Title addresses improvements to the property. Its first sentence reads:

> 4. **Improvements**. No additions, alterations or improvements are now being made or have been made to this property since _____.

Many practitioners insert the phrase "4 months last past" into this blank on the assumption that it refers to the now repealed statutory time frame within which a claimant wishing to file and enforce a mechanics lien must act. This is not correct, however. This phrase refers to the "look back" period during which municipalities may add assessments for improvements to the property under NJSA 54:4-63.1 et seq. Under this statute, an added assessment is retroactive to the time construction of the improvement is complete.

Thus, the best practice is for the affiant to fill in the approximate date improvements, alterations or additions were made to the property. If the property has not been improved, altered or added to by the present owner, they may certainly state "none".

If this section of the Affidavit of Title indicates that improvements were made within the "look back" period, the added assessment exception should not be removed until it is confirmed with the tax assessor that no such added assessment is forthcoming.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

February 2015

Title is vested in a decedent. The seller's attorney indicates that no estate/inheritance taxes have been paid and is willing to have an escrow held. How much should we hold?

A: Because the answer to this question depends on so many variables, the best answer is "Call Nancy, Clark or Chuck".

In order to evaluate the escrow amount, a completed Estate Debts Questionnaire must be provided. A form of Questionnaire is provided with this edition of FATQ.

The escrow should be held by the title agent or by the buyer's attorney. If the parties wish the estate attorney (or seller's attorney) to hold the escrow, a written escrow letter stating that the funds will not be released without Old Republic's approval must be obtained.

As always, feel free to address any questions to a member of our underwriting staff.

QUESTIONNAIRE ON ESTATE DEBTS

RE: Estate of _____

1. State date and place of death of decedent. _____
2. Has Will been probated or Letters of Administration been issued? Provide particulars, including the court of probate or administration.

   _____

   _____

   _____

3. Who were/are the devisees or heirs at law of decedent?

Name	Relationship to Decedent
_____	_____
_____	_____
_____	_____
_____	_____

4. State the business or occupation, if any, of the decedent at the time of death. _____
5. State the approximate gross value of the estate. $_____
6. State the approximate net value of the estate. $_____
7. State the approximate amount of case and liquid securities now owned by the estate. $_____
8. List the known unpaid debts, if any. _____

   _____

   _____

   _____

9. Have the funeral expenses and expenses of last illness been paid in full? _____
10. Is any claim or action pending or threatened by any creditor? _____ If yes, state particulars
11. Have New Jersey Transfer Inheritance Taxes, if any, been paid and release or waiver of same obtained?_____ If not, set forth the amount of New Jersey Transfer Inheritance Tax owed and attach a copy of the New Jersey Transfer Inheritance Tax return.
12. Have Federal Estate Taxes, if any, been paid and release obtained? _____ If not, please set forth the amount of Federal Estate Taxes owed and attach a copy of the Federal Estate Tax return.
13. Have New Jersey Estate Taxes, if any, been paid and a written consent to transfer from the Director of the Division of Taxation obtained? _____ If not, please set forth the amount of New Jersey Estate Tax owed and attach a copy of the New Jersey Estate Tax return.

The foregoing representations are within the personal knowledge of the undersigned and are submitted to Old Republic National Title Insurance Company to induce it to issue a policy or policies of title insurance on premises owned by the decedent insuring title without exception for the liens of any taxes or debts owed by the decedent and/or his/her estate.

Dated: _____ _____

Name

Witness:

_____ _____

Address

Title
FREQUENTLY ASKED ^ QUESTIONS

March 2015

Q Title is in the foreclosing lender by Sheriff's Deed. They have several judgments against them; how do we clear them?

A Naturally our first choice is to have them paid and/or released.

Often, however, they are unwilling to do so and instead are offering an indemnification. We may be willing to accept such an indemnification from the lender on a case by case basis. Approval for accepting such an indemnification should be obtained from a member of our underwriting staff.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

April 2015

Q Recently we have received requests from your office for loan policies on files which closed 30 days ago. Is there a problem?

A The major lenders have always used the underwriter as their "single point of contact" for obtaining missing policies. When we receive a policy request, we reach out to the agent whose file it is in order to obtain a copy of the policy. What has changed in the last several months is that the major lenders appear to be putting procedures in place to make sure that their policy delivery expectations are met. In most cases, those expectations are "30 days after settlement".

We understand that timely policy delivery will be one of the standards by which lenders will gauge the quality of settlement service providers. To make sure your office always makes the grade, policy production must be given priority and every effort made to meet the lenders' expectations.

This 30 day standard also comports with New Jersey law which provides in NJAC 11:17A-4.6,

> ... With respect to title insurance only, in all cases where the insurance producer prepares the policies of insurance, those policies shall be delivered to the insured or to the applicant within 30 days following the receipt by the insurance producer of the necessary proofs showing that all requirements or exceptions to title as set forth in the title commitment, and which customarily do not appear in the policy, have been satisfactorily disposed of.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

May 2015

Q (from Old Republic's Claims office) Are your agents comparing the legal description to the tax map?

A They'd better be!

We have recently had some claims wherein the legal description and the tax lot/block as shown on the municipal tax map were very different. In one case, the metes and bounds described only one of the two lots recited in the tax map reference.

While we are all careful to state that tax map information is provided for information only, we still must at a minimum confirm that our legal description approximates what the tax map shows. Recognizing that it may not be identical, if it is not close, it may signal that there is a problem, and the appropriate exception should be taken.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

June 2015

Q Given the United States Supreme Court's recent decision regarding same sex marriage, are there any procedures we need to change?

A Not really.

New Jersey has recognized same sex marriage for several years.

We are often asked how to properly vest title in a same sex couple. As with heterosexual couples, as long as the couple is validly married (or in a civil union) at the time they take title to the real property, it will vest in them as tenants by the entireties unless another form of ownership is clearly stated (such as "as tenants in common and not as tenants by the entireties").

Any indication of the parties' marital status will work. By way of example but not limitation:

John Doe and James Smith, husband and husband
John Doe and James Smith, married to each other
Jane Johnson and Sally Jones, wife and wife
Jane Johnson and Sally Jones, a married couple
Jane Johnson and Sally Jones, a civil union couple

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

July 2015

Q Our seller is the executor of the estate of the vested owner. She can't make it to the closing and wants to use a Power of Attorney to authorize the estate's attorney to sign everything. Is that ok?

A No.

It is generally unacceptable for a fiduciary to delegate his or her powers or authority; they are personal to him or her.

If the will states that the executor may delegate his/her authority by power of attorney, assistance from a member of our underwriting staff should be sought prior to accepting it.

If there are multiple (2 or more) personal representatives appointed and they wish to have one sign at closing by power of attorney from the other(s), assistance from a member of our underwriting staff should be sought.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

August 2015

Q The land which is being sold is the subject of an on-going In Personam Tax Foreclosure. Can we payoff (redeem) the tax sale certificate through the tax collector?

A ***NO***

As explained in our January 2011 FATQ, if your examination of title reveals a privately held tax sale certificate and a lis pendens relating to the foreclosure of that tax sale certificate, the buyer must intervene in the foreclosure action in order to get court approval of the sale. [Simon v. Cronecker, 189 N.J. 304 (2007)]

In this situation, the following requirement must appear on Schedule B-I of the commitment following the entry for the Tax Sale Certificate and lis pendens:

> Written confirmation is required from the holder of Tax Sale Certificate No. ___ that (a) the redemption statement prepared by the tax collector is accurate and complete, (b) he/she will accept the payment of the redemption price as set forth in the redemption statement, and (c) he/she will discontinue the foreclosure suit, discharge the notice of *lis pendens*, and cause the Tax Sale Certificate to be discharged of record ***or in the alternative***, proof must be provided that the purchaser intervened in the foreclosure action and obtained Court approval for redemption of the certificate.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

September 2015

Q If we are conducting a closing/settlement, should we use the new "CD" (Closing Disclosure) under TRID (TILA/RESPA Integrated Disclosure) as the Settlement Statement?

A No.

Under the rules revising RESPA which go into effect on October 3, 2015 the new Closing Disclosure (CD), which replaces the HUD-1, is only that – a disclosure form. To the extent it is signed at closing, the signature block of the CD reads, "By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form." In addition, the form does not contain signature lines for the seller nor for the settlement agent.

Accordingly, settlement agents will have to implement a separate Settlement Statement which sets forth the disbursement of funds of the transaction, is signed by all parties and the settlement agent, and contains a clear confirmation of the transaction and direction to disburse the funds in accordance with the Settlement Statement. Such a Settlement Statement would be in addition to the CD. The American Land Title Association (ALTA) has proposed such a form which is available on their website – www.alta.org.

As of this writing, Settlement Agents are free to adopt or develop whatever form of Settlement Statement they choose.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

October 2015

Q Our upper court search has returned a Child Support Judgment against our seller which is more than 20 years old. What should I do?

A Take an exception or require acceptable proof to omit.

Child support judgments are unique. They are not for a sum certain so the amount due on them may vary from time to time. In addition, they may by their own terms extend for a longer period of time than the 20 years afforded to traditional Superior Court judgments. For example, a child support judgment entered as part of a divorce when the child is 1 year old may provide that the non-custodial parent is to pay child support through college or perhaps until the child reaches a certain age which is more than 20 years in the future. Such a judgment could extend beyond 20 years.

Accordingly, when such a judgment is turned up in an upper court search, it cannot be omitted on time alone. The judgment must be set up in the commitment and may be removed upon production of proof that the obligation has expired (such as an order of emancipation) or proof that it is current.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

November 2015

Q My tidelands search indicates that there is a claim and further indicates that there may be grant which "covers" it. The map attached to the tidelands search shows the claimed area and the granted area and they seem to match. May I rely on that to remove the Tidelands exception?

A No.

Tidelands searches and grant searches only report the existence of the instruments shown on the search among the records of the Tidelands Management Bureau. They do not take the further step of analyzing what effect, if any, such instruments may have on the Tidelands claim affecting the land in question.

That must be done by a title examiner who must independently examine the grant to determine that it covers the entire claimed area and that it was made to the upland owner at the time of the grant. Some examiners prefer to engage a surveyor or tidelands expert to assist in the examination of the coverage issue.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

December 2015

Q We are now using the ALTA 33-06 for construction rundowns. Is the $150.00 + examination and pass-through charges rate collected only the first time it is issued or each time it is issued?

A It is collected each time the endorsement is issued.

The New Jersey Land Title Insurance Rating Bureau's Manual of Rates and Charges provides:

> 10.73 ALTA 33-06 DISBURSEMENT
> This endorsement, to be issued only in conjunction with loan policies insuring construction mortgages, provides a vehicle by which the Date of Disbursement Coverage under the said policy can be amended to the date of the current disbursement. The charge for the issuance of this endorsement shall be $150.00, plus the examination charge and applicable pass-through charges.

As always, feel free to address any questions to a member of our underwriting staff.

2016

Title
FREQUENTLY ASKED ^ QUESTIONS

January 2016

Q How do we document that an owner has waived owners title insurance coverage?

A Use the attached form.

NJSA 46:10A-3 provides

> Whenever in connection with the making of a real estate purchase money mortgage loan upon a 1, 2, 3 or 4 family dwelling house for a term exceeding 2 years, the mortgagee requires the issuance of a mortgagee policy of title insurance, the company issuing the policy of title insurance shall prior to the disbursement of the mortgage funds cause the mortgagor to be advised in writing of the fact that a mortgagee title insurance policy is to be issued, the name or names of the insured under said policy, and of the face amount of such policy. Such notice shall also advise the mortgagor of his right and opportunity to obtain title insurance in his own favor if the same has not already been ordered or obtained.

It is wise to apply this to both residential and commercial transactions despite the language of the statute.

While the attached form does not address the opportunity to consult with an attorney, where the buyer is not represented by counsel, it is advisable to include a statement to that effect on the form. The following may be useful: "I have been advised that I should consult an attorney of my choosing in connection with my decision to decline owners title insurance and have chosen not to do so."

As always, feel free to address any questions to a member of our underwriting staff.

NOTICE AND WAIVER

Pursuant to the Laws of the State of new Jersey, notice is hereby given that a mortgagee policy of title insurance is to be issued to _____, the prospective mortgagee in the amount of $_____, and that you may obtain an Owners Title Insurance Policy in your favor at an additional premium for the amount of your purchase price if not already ordered or obtained.

The Law requires that you sign the statement below if you do not wish to purchase this protection

This is to certify that (I) (We) as purchase money mortgagors have been notified that (I) (We) may purchase an Owners Policy of Title Insurance in (My) (Our) favor, and state that (I) (We) do not wish to purchase this protection.

_____

Dated: _____

_____

Disregard this form if not a purchase money mortgage made in the course of the purchase of a 1 to 4 family residence.

Title
FREQUENTLY ASKED ^ QUESTIONS

February 2016

Q Is the charge to process the 1099-S included in the pass-through charges under the NJLTIRB Rate Manual?

A No, it is not.

Federal law prohibits separately charging any customer for filing the required 1099-S [26 USC 6045(e)].

You should not feel that you are not being compensated for filing the 1099-S. The filed rate for settlement services takes into account all of the services that are performed at settlement including but not limited to the filing of the 1099-S. This coupled with the fact that it is not permissible under New Jersey law to add the cost of complying with the information reporting requirement to the filed charge clearly leads to the conclusion that you cannot charge separately for filing the 1099-S.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

March 2016

Q Title to a single family residence is vested in a married woman individually. Does her husband have to sign the deed?

A Probably.

New Jersey law gives the non-vested spouse the right of joint possession in the principal matrimonial residence. (NJSA 3B:28-3) Among other things, the vested spouse cannot mortgage or convey the principal matrimonial residence without involving the non-vested spouse.

Determining whether the land in question is the principal matrimonial residence is the first step. If it is not, this is accomplished by obtaining an affidavit from the non-vested spouse stating that the land in question is not their principal matrimonial residence and providing the street address for their principal matrimonial residence. It is beneficial for that affidavit to also acknowledge the transaction being insured. (Such as, "I understand that my spouse is selling/refinancing her real property at _____ to _____for $_____and give this affidavit in connection with that transaction.") It is not acceptable to obtain this affidavit from the vested spouse.

If the land in question is the principal matrimonial residence, the non-vested spouse must sign the deed (for a sale) or mortgage (for a refinance). If they are unwilling or unable to do so, the non-vested spouse may extinguish the right of joint possession by a contemporaneous deed to the vested spouse specifically reciting the statute and their intention to extinguish any interest, including the right of joint possession, in the subject land created by it.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

April 2016

Q We are being asked to insure a title where there is an active mortgage foreclosure. The final judgment has been entered but the Sheriff's Sale has not yet occurred. Are there any special requirements?

A Yes.

Include the following requirement in the title commitment:

> Proof is required that the Sheriff's Sale has either not been scheduled or if it has that it has been adjourned in accordance with NJSA 2A:17-36.

NJSA 2A:17-36 gives the borrower who is being foreclosed two opportunities to unilaterally adjourn a Sheriff's Sale for 14-days. After the second such adjournment, they must obtain a court order for further adjournments.

When a party seeks or requests an adjournment, the Sheriff issues a notice of adjournment. That document will be acceptable proof. If it is not stated in the notice of adjournment, the Sheriff's office must be called to determine the date to which the sale has been adjourned.

In addition to the foregoing, a copy of the transmittal of the payoff to the lender (if by check) or the wire confirmation (if by wire) should be sent to the foreclosure attorney. The docket number of the foreclosure should be shown on that transmittal.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

May 2016

Q Our tax search indicates that our property is part of a tax abatement program. Is there anything special we need to do?

A Yes; take the following exception in the policy:

> The insured land appears to be benefitted by a tax abatement; policy excepts the lien of any real property taxes which may attach by reason of restoration or reactivation of taxes, including but not limited to the retroactive imposition of real property taxes, resulting from a transfer or lease of the land to a person or entity not entitled to the abatement, or the use of the land for a purpose for which the abatement does not apply, or the failure of the owner of the land to comply with the terms and conditions of any agreement with the municipality regarding the abatement.

Tax abatement programs (sometimes referred to as "PILOT" or "Payment in Lieu of Taxes") are one method that municipalities use to encourage urban renewal and redevelopment. Developers and municipalities enter into an agreement regarding development and use of the land which provides for a tax abatement for a specific period. That agreement typically includes limitations on use, ownership, etc. which if violated permit the municipality to reinstate and sometimes retroactively impose taxes at the municipal rate.

Requests for affirmative insurance on this item must be discussed with and approved by a member of our underwriting staff.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

June 2016

Q Title is vested in "John Jones trading as Real Property Company". "Real Property Company" is a trade name for a sole proprietorship. Are there any special considerations here?

A Certainly.

First and foremost, a trade name is not an entity capable of holding title to real estate. Title must be treated as being vested in the sole proprietor (in the present case, John Jones).

This means, of course, that judgments must be run against the sole proprietor's name individually. In addition, judgments should be run against the trade name. Judgments which are turned up against either should be addressed.

Please be reminded that it is not proper to vest title in a trade name. If the title under examination is so vested, assistance from a member of our underwriting staff should be sought.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

July 2016

Q We have been provided with a discharge of mortgage but it was not signed by the holder of record. Is it valid?

A It may be.

In NJSA 46:11-18.6, New Jersey law provides

> b. A person which is the owner or holder of a mortgage duly recorded or registered in this State for which a prior assignment thereof is unrecorded, may execute a discharge, satisfaction-piece, release, subordination or postponement thereof, which instrument shall be accepted for recording by the county clerk or register of deeds and mortgages, so long as:
> (1) it meets the requirements of 46:15-1.1(now 46:26A-3 - Prerequisites for Recording); and
> (2) it contains wording in the body of the instrument setting forth the particulars concerning all assignments of the mortgage, whether or not recorded. (underlined for emphasis)

Thus, if the discharge contains the chain of ownership of the mortgage, it is acceptable. In addition, if the mortgage is a "MERS" mortgage and you are able to verify that the discharge came from the owner of the mortgage per the MERS website, you may accept it.

If the discharge does not contain the chain of ownership (or cannot be verified on the MERS website), proof that the party to whom payoff was made was the owner of the mortgage must be obtained. If the payoff was made to a servicer, proof of their authority must likewise be obtained.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

August 2016

Q Our search turned up a UCC-1 for solar panels on the land. The document says that it is not a lien on the real estate. Can I omit it or show it as subordinate to the insured mortgage on a loan policy?

A Not without a release or subordination, no.

Many of the typical filings made by solar panel companies state that they are not intending to take a security interest in the real property or to create a lien on real property. An examination of most of these filings indicates that the purpose of the filing is to create a security interest in a fixture - the solar panels. Some of them also purport to create an interest in the power generated by the panels.

These are an exception to title. An owner acquiring the affected real estate will take subject to the interest of the solar panel company unless it is terminated. Likewise, a lender taking a mortgage on the real estate will be subject to the interest created by the Financing Statement.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

September 2016

Q We have been asked to issue a SWAP endorsement in connection with a loan policy. Are there any special requirements?

A Yes. You must obtain approval from a member of our underwriting staff in order to issue a SWAP endorsement.

The SWAP endorsements are the ALTA 29-06, 29.1-06, 29.2-06 and 29.3-06. The default form in New Jersey is the ATLA 29.2-06 unless the parties will be treating the swap payments as additional interest in which case the ALTA 29.3-06 would be appropriate.

In order for us to evaluate issuance of the endorsement, you must provide

1. A copy of the fully executed Master Agreement (or its equivalent if the ISDA (International Swaps and Derivatives Association) forms are not being used);
2. A copy of the fully executed Schedule (if applicable);
3. A copy of the fully executed Confirmation;
4. A copy of the proposed mortgage; and
5. The maximum amount of the SWAP obligation.

If the Confirmation has not been executed, an unexecuted copy may be provided however, the endorsement may not be issued until the Confirmation has been executed.

The maximum amount of the SWAP obligation is filled in to the appropriate space on the ALTA 29.2-06 and premium is charged on that amount in addition to the charge for issuance of the endorsement per section 10.74 of the Rate Manual.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

October 2016

Q Title is vested in the trustee of a trust. He can't make it to the closing and wants to use a Power of Attorney to authorize his sister to sign everything. Will that be acceptable?

A No.

It is generally unacceptable for a fiduciary to delegate his or her powers or authority; they are personal to him or her.

If the trust agreement states that the trustee may delegate his/her authority by power of attorney, assistance from a member of our underwriting staff should be sought prior to accepting it.

If there are multiple (2 or more) trustees appointed for the trust in the trust agreement and they wish to have one sign at closing by power of attorney from the other(s), assistance from a member of our underwriting staff should be sought.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

November 2016

Q Would you please sort out the ALTA 9 family of endorsements?

A The New Jersey Land Title Insurance Rating Bureau of which Old Republic Title is a member has the following endorsements from the ALTA 9 family approved for use in NJ:

ALTA 9.1-06	CC&R Unimproved Land -Owner
ALTA 9.2-06	CC&R Improved Land - Owner
ALTA 9.3-06	CC&R - Lender
ALTA 9.6.1-06	Private Rights - Lender
ALTA 9.7-06	REM - Land Under Development - Lender
ALTA 9.8-06	REM - Land Under Development - Owner
ALTA 9.9-06	Private Rights - Owner
ALTA 9.10-06	REM - Current Violations - Lender

As a result of these changes, we now have 4 forms of ALTA 9 endorsement for use in connection with loan policies and 4 for use in connection with owners policies.

It should be noted that the ALTA 9-06 was withdrawn effective February 15, 2016. Accordingly, it may no longer be offered in New Jersey. Old Republic suggests that the ALTA 9.10-06 be offered in the ALTA 9-06's stead.

For a complete discussion of each endorsement and its applicability, Old Republic's Endorsements A (Access) to Z (Zoning) should be consulted.

Please be reminded that the forms approved for use in New Jersey are "NJ Variations" on the ALTA forms. This is because they exclude coverage relating to Affordable Housing.

This FATQ supplements and updates the November 2012 FATQ.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

December 2016

Q Has the New Jersey Estate Tax been eliminated?

A For 2017, it has been amended. It is eliminated effective January 1, 2018.

P.L. 2016, Chapter 57, "**AN ACT** adjusting certain State taxes to support strengthened investments in public and private assets in this State, amending and supplementing various parts of the statutory law pertaining to taxes of this State", addresses the New Jersey Estate Tax in section 7. The only changes are as follows:

For Decedents dying on or after January 1, 2017, a new tax schedule is applicable:

On any amount up to $100,000	0.0%	On any amount in excess of $500,000 up to $700,000	$10,000 + 4.0% of the excess over $500,000
On any amount in excess of $100,000, up to $150,000	0.8% of the excess over $100,000	On any amount in excess of $700,000 up to $900,000	$18,000 + 4.8% of the excess over $700,000
On any amount in excess of $150,000 up to $200,000	$400 + 1.6% of the excess over $150,000	On any amount in excess of $900,000 up to $1,100,000	$27,600 + 5.6% of the excess over $900,000
On any amount in excess of $200,000 up to $300,000	$1,200 + 2.4% of the excess over $200,000	On any amount in excess of $1,100,000 up to $1,600,000	$38,800 + 6.4% of the excess over $1,100,000
On any amount in excess of $300,000 up to $500,000	$3,600 + 3.2% of the excess over $300,000	On any amount in excess of $1,600,000 up to $2,100,000	$70,800 + 7.2% of the excess over $1,600,000

(for amounts over $2.1 million, refer to the statute or call for assistance)

Between January 1, 2017 and January 1, 2018, an exclusion of $2 million is applicable. Estates with a value of less than $2 million will not be subject to an Estate Tax.

For Decedents dying on or after January 1, 2018, the New Jersey Estate Tax will be eliminated.

The New Jersey Transfer Inheritance Tax remains unchanged.

As with Inheritance Taxes, if an escrow is to be held, the assistance of a member of our underwriting staff should be sought in order to determine the proper escrow amount. A completed Estate Debts Questionnaire should be obtained and provided.

As always, feel free to address any questions to a member of our underwriting staff.

2017

Title
FREQUENTLY ASKED ^ QUESTIONS

January 2017

Q How do we handle Vacant Property Registration Fees?

A Some municipalities have adopted a requirement that vacant properties be registered and are imposing a fee to do so.

It does not appear that there is legal authority in New Jersey to make this type of charge a municipal lien. Thus, it would seem that municipalities who are claiming that vacant property registration fees are a lien and thus the responsibility of the buyer are doing so without statutory authority.

On the other hand, we are told that municipal lien search providers are reporting Vacant Property Registration Fees as "notes" when they are made aware that they are being assessed against a property. While not necessarily a title issue, one would expect a settlement agent to bring this to the parties' attention before closing so that charges can be addressed.

To the extent the tax search shows vacant/abandoned property fees or charges, the following note for information and requirement should be included in the commitment:

NOTE: Although beyond the scope of coverage afforded by the policy, we call your attention (for informational purposes only) to the fact that some municipalities may have adopted an ordinance or ordinances concerning vacant or abandoned properties which could impose registration fees, fines and/or penalties. This is not covered by the Title policy.

Proof of payment of vacant or abandoned property registration fees, fines and/or penalties, if any, is required.

This note may also be applicable where it is known that the land is in fact vacant or abandoned.

As always, feel free to address any questions to a member of our underwriting staff.

Title
FREQUENTLY ASKED ^ QUESTIONS

February 2017

Q Title is vested in a lender who obtained title by Sheriffs Deed (or Deed in Lieu of Foreclosure). Our upper court judgment search shows judgments against them. What do we do?

A If title is in a lender other than a governmental entity (HUD or FNMA), the judgment must be addressed. We may accept indemnification from the selling lender on a case by case basis – the approval of a member of our underwriting staff should be obtained before doing so.

If the judgment is against a name similar but not identical to the name of the title holding lender, it may be possible to omit however, again, our underwriting staff should be consulted before doing so.

Judgments against HUD and FNMA may be omitted unless the property under examination is located in the municipality which is the creditor in the judgment.

As always, feel free to address any questions to a member of our underwriting staff.

Title

FREQUENTLY ASKED ^ QUESTIONS

March 2017

Q We will be holding an escrow for a judgment while the seller tries to locate the creditor and obtain a payoff. Is it enough to show the escrow as a line item on the Settlement Statement?

A No.

While the escrow should appear on the Settlement Statement, a separate Escrow Agreement should be entered into between the party who is depositing the funds and the party who will be holding the funds.

At a minimum, the Escrow Agreement should include the full names and addresses for all interested parties, the amount of the escrow, the purpose for which the funds are being held, the amount of time that the funds will be held, what has to occur to trigger a release of the funds, whether or not escrow fees may be deducted from the escrow fund, and what will occur if the parties don't take action in a timely manner. In addition, the Escrow Agreement should provide that Old Republic may take control of the funds if the title is threatened by the item for which the escrow was created.

A sample Escrow Agreement can be obtained by e-mailing Nancy Koch (nkoch@oldrepublictitle.com).

As always, feel free to address any questions to a member of our underwriting staff.