Chapter 70

INDEMNITIES AND UNDERTAKINGS

§70.01. Overview. The process by which a title insurer receives sufficient security to enable it to waive or "insure over" an objection to title is called **indemnification**. It is sometimes necessary or advisable to obtain an indemnity agreement from a financially responsible party with respect to a title defect, lien, or encumbrance. The indemnity may or may not be secured by a deposit of money or its equivalent (such as a **letter of credit**[1]), sometimes known as a **title indemnity escrow fund**. The indemnity may also include an **undertaking** to remove from the record a defect, lien, or encumbrance, usually within a specified time period.

An indemnity agreement which is *not* coupled to a deposit of funds is sometimes known as an **unsecured indemnity**. The lack of a deposit creates a greater risk for the insurer because the indemnitor may prove incapable of meeting its financial obligations. Therefore, in cases where an unsecured indemnity is utilized, title insurers often find it necessary to obtain proof of the indemnitor's creditworthiness.

To illustrate the foregoing, consider the following example. Assume a title company is insuring the sale of a newly constructed single-family home. Title to the realty is vested in an LLC formed by the builder; the LLC's sole asset is the real estate on which the house has been built. The search discloses a Superior Court judgment docketed against the LLC owner in the amount of $50,000.00, which the debtor alleges has been paid, although no proof of payment is presented. The builder proposes to have the LLC execute an unsecured indemnity. However, if the creditor attempts to enforce the judgment against the purchaser (now insured by the title company), it is unlikely that the LLC indemnitor will have the liquid assets necessary to pay the debt or reimburse the title company. The best solution is therefore to insist

[1] See §59.03.

on a deposit in excess of $50,000.00 (to cover accrued interest and possible litigation costs). If this is not possible, the builder itself (rather than the LLC) should sign the indemnity. Nevertheless, prudence suggests that a review of the builder's financial statements will be necessary.

Title insurers have traditionally relied on three types of indemnification:(a) the "personal" indemnity or undertaking; (b) the indemnity with deposit; and (c) letters of indemnity, each of which is discussed below.

§70.02. The "Personal" Indemnity or Undertaking. This form of *unsecured* indemnity is requested by the insurer in exchange for waiving or "insuring over," or insuring against loss occasioned by objections to title, based on a party's agreement to indemnify the insurer.[2] In most versions, the party further agrees (or "undertakes") to remove the item from record, either by a given date, or within a certain number of days after demand by the insurer. The indemnity is usually (but not always) executed by the seller or borrower, and its use is normally restricted to liens, such as judgments or mortgages.[3] [See Exhibit A.] The word "personal" has been placed in quotation marks, because the form is intended to obligate an *individual* (such as a seller or borrower) to indemnify the insurer. Even if the indemnitor is a business entity (such as a closely held corporation or limited liability company), it may be prudent to have the form signed by the individuals who are the owners of the entity.[4]

§70.03. The Indemnity with Deposit. This form of *secured* indemnity is requested by the insurer in exchange for waiving or "insuring over" objections to title based on a person's or entity's agreement to indemnify the insurer *plus* a security deposit which is sometimes [erroneously] referred to as an "escrow".[5] Because it provides additional security for the insurer, it is considered superior to the "personal" indemnity form discussed in the previous section. The use of the form is normally restricted to liens, such as judgments or mortgages. [See Exhibit B.] The form may also require the indemnitor-depositor to take affirmative steps (*i.e.*, an undertaking) to remove from the record the lien or encumbrance at issue.

§70.03A. The Indemnity and Undertaking Agreement. The Indemnity and Undertaking Agreement [I&UA], is intended to create a standardized

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[2] See §10.07.

[3] See Chapters 71 and 81 (respectively).

[4] See §70.01.

[5] See §59.01.

document which supersedes the variety of forms currently in use.[6] The I&UA may be employed with or without the deposit of funds. In cases where a title indemnity escrow fund is created, ¶5 of the I&UA is operative, which incorporates by reference an **Addendum** to the I&UA.[7]

The I&UA, as its name implies, contains both an indemnification provision and an undertaking, which obligates the indemnitor to cause the lien, defect, or encumbrance to be removed of record when demanded by the insurer. The indemnitor is also obligated to defend the insured's title, if necessary. The additional provisions found in the Addendum relate to the deposit of funds and are incorporated by reference into ¶5. Note that the I&UA is *not* designed to be used in connection with **tidelands** claims, which are discussed in Chapter 115.

§70.04. Letters of Indemnity. A letter of indemnity is a device by which one title insurer discharges *an obligation to its insured arising under a policy* through delivery of a letter to another title insurer.[8] By custom (which is reinforced by the wording of many issuing agency contracts), agents are not empowered to issue indemnity letters.[9] They may accept letters *on the underwriter's behalf*, if the letter is addressed to the underwriter. There are three types of letters:

- Straight [Exhibit C]
- Performance or Undertaking [Exhibit D]
- Conditional or Demand Performance [Exhibit E]

Acceptance of a letter from another company may be an appropriate alternative to obtaining an undertaking or agreement with deposit. Since a title insurer presumably has more assets than most individual or corporate indemnitors, it is often a preferable solution. However, one must remember that *the liability of the issuer is customarily limited to the face amount of its existing policy.*

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[6] See Exhibit B-1.

[7] See Exhibit B-2.

[8] Note that the Inter-Underwriter Indemnification Agreement (commonly called the "Indemnity Treaty") has superseded the issuance of indemnity letters in many instances. See §70.08. In some cases, it may be appropriate to issue a letter to satisfy extra-policy liability. See §70.06 for a discussion of circumstances under which a letter is customarily issued.

[9] See §9.05 regarding issuing agency contracts.

It is only appropriate to request an indemnity letter in circumstances where one's underwriter would feel obligated (by custom) to issue one.[10] As suggested by the preceding sentence, it is important to remember that the issuance of indemnity letters is governed by *custom*, and *not* by statute or rule of law. Although many in the industry seem to regard a request for issuance of a letter as an implied criticism of one's underwriting skills, this should not be the case. Letters of indemnity are a very convenient and economical way to resolve potential claims. If no such device existed, almost every objection to title raised by another insurer would result in the formal opening of a claim, and the consequent expenditure of funds to resolve that claim, often by the commencement of a suit in Superior Court, etc.

The texts of most forms of letters of indemnity in common use contain wording such as "in consideration of your issuing your policy free and clear of said objection." Thus, it is generally understood by the insurer giving the letter that the insurer receiving it will omit (and not merely provide affirmative insurance regarding) the item in question. In cases where the item will *not* be omitted, but affirmative insurance will be provided instead, the text may be varied accordingly, based on the mutual agreement of the parties. Once the letter has been accepted and the policy has been issued without exception, the risk arising from the continued existence of the item in question on the record has, in effect, been transferred from one insurer to the other.[11]

Thus, for example, if Company A delivers an indemnity letter to Company B concerning an old mortgage which has been paid but never canceled of record, Company A understands that Company B will issue its policy without exception for the mortgage. If Company B does not intend to omit the item, it should ask Company A to vary the text of the letter to state, *e.g.*, "in consideration of your providing affirmative insurance with regard to said objection." Assuming that Company B issues its policy without exception, if Company C later raises the same objection, it is customary for Company B (rather than Company A) to indemnify Company C, because if Company B does not indemnify Company C, it will, most likely, trigger a claim against itself.

It is usually inappropriate to ask Company A to indemnify Company C, because its insured no longer has an interest in the land (so the coverage afforded un-

[10] See §70.06.

[11] It is unclear if the loss indemnified against includes attorneys' fees. See §70.07.

der its policy has lapsed); its liability is limited to that which was afforded to Company B under the terms of the original letter of indemnity.[12] Nevertheless, because Company A still remains liable to Company B under the terms of the original letter, if Company C suffers a loss and demands indemnification from Company B, Company B may in turn demand indemnification from Company A.

As noted above, the amount of liability assumed by the issuer of an indemnity letter is usually limited to the face amount of the issuer's policy. What is the extent of the issuer's obligation where it has issued a "performance" letter regarding an outstanding interest or lien, and the holder of the interest or lien demands a sum in excess of the policy amount? A similar problem may occur where the amount of a lien for which a "straight" (*i.e.*, non-performance) indemnity is issued exceeds the face amount of the issuer's policy, and the insurer is forced to pay the lien in order to protect its insured's title. The answer is unclear, but it may be that the issuer is obligated to contribute only up to its policy amount, so that the insurer which accepted the letter must contribute the rest. The foregoing examples illustrate the fact that indemnity letters, while useful devices, are incapable of resolving every problem.

§70.05. Performance *vs.* "Straight" Letter. The **"straight"** letter merely states that the issuing company will indemnify and hold harmless the other company [Exhibit C].[13] The **performance** letter (sometimes known as an **undertaking** letter) obligates the issuer to take affirmative steps to clear up the title defect; it also contains a promise of indemnification [Exhibit D].[14]

A third type of letter, known as the **conditional** or **demand performance** letter [Exhibit E], obligates the issuing company to take affirmative action only upon demand by the company receiving the letter, or upon the occurrence of a specified condition. It is rarely used today.

As a general rule, it is safe to accept a "straight" letter for a defect (such as a lien) which will expire of its own accord. One should usually request a "performance" letter, however, where the defect will not be cured by time (*e.g.*, an outstand-

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[12] The wording of the letter regarding "reissues" refers *only* to future policies issued by the insurer receiving the letter and *not* to policies issued (in the future) by another insurer.

[13] Note that the Inter-Underwriter Indemnification Agreement (commonly called the "Indemnity Treaty") has superseded the issuance of indemnity letters in many cases. See §70.08.

[14] It is unclear if the loss indemnified against includes attorneys' fees. See §70.07.

ing interest) or where the amount of a lien is substantial (*e.g.*, a $1,000,000.00 mortgage). Since most companies are reluctant to issue "performance" letters, these matters must often be decided on a case-by-case basis. Inasmuch as the "performance" letter includes an undertaking to act affirmatively to clear up a defect in or cloud on title, a request for issuance may be viewed as a claim, or at least a quasi-claim.[15]

§70.06. Issuance of Indemnity Letters. As noted above, it is appropriate to issue an indemnity letter *in order to discharge a policy obligation to an insured*.[16] In other words, if the insured has a basis for presenting a claim under the policy, it is probably appropriate to issue a letter. By extension of this reasoning, it is *generally inappropriate* to issue a letter where:

- the current owner is not an insured; or
- a mortgage policy (but not a fee policy) was issued;[17] or
- the matter in question is *excepted* from coverage; or
- the matter in question is *excluded* from coverage.

Exhibit F is a letter which attempts to explain the philosophy underlying the foregoing. However, the list is *not* intended to cover every conceivable situation. For example, it may be prudent to agree to issue an indemnity letter in cases where one may have assumed extra-policy liability by providing settlement services, or by holding an escrow with respect to a mortgage or judgment.[18] Another situation in which it may be appropriate to issue a letter is one in which only a loan policy was issued, but the insured lender is now the owner of the fee, owing to foreclosure of its mortgage, etc.

Where an insured lender attempts to foreclose, only to discover an outstanding lien senior to the priority of the insured mortgage, its title insurer may

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[15] See Chapter 13.

[16] See §70.04. Note that the Inter-Underwriter Indemnification Agreement (commonly called the "Indemnity Treaty") has superseded the issuance of indemnity letters in many cases. See §70.08.

[17] But, as noted below, if the insured lender has become the owner through foreclosure, etc., the policy is customarily treated as the equivalent of an owner's policy for this purpose.

[18] See §13.06, and Chapters 59 and 106.

choose to issue a "**foreclosure comfort letter**."[19] This is an offer to issue an indemnity letter under certain circumstances. Rather than paying off the senior lien outright, the underwriter instructs its insured mortgagee to proceed with the foreclosure, offering to insure the purchaser at sheriff's sale without exception for the lien, or – in the event that the purchaser obtains title insurance from another underwriter – to indemnify the new underwriter. The aim is to induce the new underwriter to issue a policy without exception. The comfort letter is not an indemnification itself, but rather is a promise to issue a letter of indemnity in the future. The purchaser still needs to obtain an actual letter of indemnity by following the letter's instructions.

Example 1: Company X insures A as the owner of Blackacre in 2000. In 2015, A conveys Blackacre to B by quitclaim deed. B is *not* insured by Company X. B enters into a contract to sell Blackacre, and another title company raises an exception for a restriction not excepted in Company X's policy. One is asked to issue an indemnity letter on behalf of Company X.

Analysis: Since A is no longer in title, and B is not an insured, one should not issue the letter.

Example 2: Same facts as Example 1, but B also obtained a policy from Company X.

Analysis: Company X has a policy obligation to B; therefore, the letter should probably be issued.

Example 3: Same facts as Example 2, but assume that the policy excepted the restriction and provided affirmative insurance against enforcement.[20]

Analysis: Company X has no policy obligation to B because the restriction was *excepted* from coverage; the affirmative insurance was applicable only upon *enforcement* of the restriction. Since this has not occurred, one should not issue the letter. [See Exhibit F.]

§70.07. Underwriting Practices. The decision to accept an indemnity or undertaking must frequently be made on a case-by-case basis. It is important to bear in mind that, all too often, an indemnity which is unsupported by a deposit merely gives the title insurer a right to sue the indemnitor, who may or may not be

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[19] Exhibit F-1 contains a sample foreclosure comfort letter. With respect to foreclosures and mortgage priority, see §83.03. For a discussion of the coverage afforded by a loan policy, see Chapter 84.

[20] See §§10.06 *et seq*. regarding affirmative insurance.

financially responsible.[21] If the indemnity is accompanied by a deposit of funds, one should be concerned about the possibility of a subsequent **bankruptcy** filing by the indemnitor. If this occurs, the trustee may demand the turnover of the funds as property of the estate. However, if the agreement makes it clear that the funds belong to the title company, it may be possible to resist successfully.[22]

When an indemnity is accepted, it is preferable to except and insure over the matter which is the subject thereof, rather than omit or waive the objection, in order to avoid questions of marketability.[23] However, as noted above, the acceptance of an indemnity issued by another title insurer generally obligates the recipient to *omit* the item in question.[24]

It is important to remember that, in the absence of specific wording, a promise to "indemnify and save harmless" may *not* be construed to include attorneys' fees, costs, and expenses.[25] For this reason, the forms of indemnity agreements prepared by most underwriters include language which specifically refers to attorneys' fees, etc. Therefore, in cases where the indemnitor submits a form which has been prepared by the indemnitor, it is suggested that the indemnity be carefully reviewed to ensure that it complies with the underwriter's guidelines. If the document does not specifically refer to attorneys' fees, costs, and expenses, it is recommended that wording to this effect be added; *e.g.:*

> The undersigned agrees to save harmless the Company from any and all loss, cost or damage, *including, without limitation, reasonable attorneys' fees, costs, and expenses,* it may sustain by reason of _____.

The form of **indemnity letter** customarily used by some title companies in New Jersey does *not* refer to attorneys' fees.[26] If a title company accepts a letter of

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[21] See §70.01.

[22] See §§29.10, 29.16, and 59.11.

[23] See §§10.07 and 77.05.

[24] See §70.04. Note that the Inter-Underwriter Indemnification Agreement (commonly called the "Indemnity Treaty") has superseded the issuance of indemnity letters in many cases. See §70.08.

[25] 42 C.J.S. *Indemnity*, §20 (1991).

[26] The wording typically used is "indemnify and save you harmless from all loss, cost or damage which you may sustain." See §§70.04 *et seq.* and Exhibits C, D, and E.

indemnity from another insurer and thereafter expends attorneys' fees in defending its insured, may it recover those fees from the insurer which issued the letter? The answer is unclear.[27]

§70.08. Indemnity Treaty. In 2006, all of the title insurance underwriters then doing business in New Jersey entered into an **Inter-Underwriter Indemnification Agreement**, referred to herein as **Treaty (2006)**. Treaty (2006) was intended to eliminate the preparation and delivery of indemnity letters in most (but not all) circumstances where they previously were customarily issued.[28] Thereafter, Treaty (2006) (and its First Amendment) were replaced by the **Inter-Underwriter Indemnification Agreement (Amended and Restated as of December 2009)**, referred to herein as **Treaty (2009)**. It is believed that all title insurers currently doing business in New Jersey have signed Treaty (2009).[29]

Many of the revisions made in Treaty (2009) are technical in nature, but others are substantive. Nevertheless, *the basic principles underlying the operation and effect of Treaty (2006) remain the same in Treaty (2009)*. (These are discussed in more detail below.) A summary of the most significant changes follows:

- A definition of the word "Estate" has been added.
- The liability limit has been increased from $500,000.00 to $1,000,000.00 (or the face amount of the existing policy, whichever is the *lesser*).
- The scope of the coverage has been expanded to include the following title objections:
  - ✓ judgments, federal tax liens, and any other statutory or common law liens
  - ✓ alleged or actual defects or irregularities in judicial proceedings
  - ✓ lack of a metes and bounds or filed map description, or scriveners' errors (provided that the land conveyed is identifiable)

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[27] However, the Inter-Underwriter Indemnification Agreement specifically includes "reasonable legal fees."

[28] See §§70.04 *et seq.* Treaty (2006) became effective in or about May, 2006, and was subsequently revised to add a First Amendment thereto. Most of the changes made by the First Amendment were technical in nature.

[29] See Exhibit I for the text of Treaty (2009). Because underwriters enter or leave the state from time to time, it may be advisable to confirm that the underwriter which issued the prior policy is a signatory to the Treaty.

How does Treaty (2009) work? Assume that one's examination of title discloses the existence of an undischarged mortgage made by a prior owner. The open mortgage is set up as an exception in the commitment, and if a policy insuring the current owner is then provided, which policy does *not* list the mortgage as an exception, the exception for the mortgage may be omitted from the commitment. *It is unnecessary to request a letter of indemnity from the insurer which issued the policy in order to omit the mortgage as an exception.* Treaty (2009) provides that the underwriter is indemnified against loss, as if an indemnity letter had been issued. However, it does *not* apply to *all* situations. So it is advisable to familiarize oneself with what Treaty (2009) does and does not cover.

Scope and Operation of the Treaty. As noted above, Treaty (2009) applies to most (but not all) cases where indemnity letters are customarily requested. Specifically, it applies to:

A. Mortgages, *provided* there are no pending or successfully concluded proceedings to foreclose the mortgage; *and further provided* that, with respect to home equity mortgages or other revolving credit mortgages, contemporaneous notice is given to the Prior Insurer of the Current Insurer's intention to rely on the Prior Insurer's policy in accordance with the Agreement.

B. Judgments, federal tax liens, and any other statutory or common law liens *provided*, *nevertheless*, that in the case of any lien which will not expire in a fixed period of time, contemporaneous notice is given to the Prior Insurer of the Current Insurer's intention to rely on the Prior Insurer's policy in accordance with the Agreement.

C. The liens of federal estate taxes, New Jersey estate and transfer inheritance taxes.

D. Tax sale certificates, *provided* there are no pending or successfully concluded proceedings to foreclose the certificate(s); *and further provided* that contemporaneous notice is given to the Prior Insurer of the Current Insurer's intention to rely on the Prior Insurer's policy in accordance with the terms of the Agreement.

E. Marital rights arising in favor of the spouses of record title-holders.

F. Alleged or actual defects or irregularities in judicial proceedings.

G. Lack of metes and bounds or filed map descriptions, or scriveners' errors contained in descriptions, *provided* that the land conveyed may still be identified from the documents themselves.

Treaty (2009) uses the terms **Prior Insurer** and **Current Insurer** (as did Treaty (2006)). Prior Insurer means one which has issued a policy which is still in effect and which is being requested to indemnify the Current Insurer. The policy must – in general – be an *owner's policy*. If the Prior Insurer's policy is a *loan policy*, the insured lender (as opposed to another party) must have acquired title by foreclosure or deed in lieu of foreclosure.

The Prior Insurer's policy must not have lapsed; *i.e.*, the "Insured" (as defined in the policy) must still hold title to the land insured. Assume that B obtained a policy from X Title Insurance Company, but B has conveyed to C, and Current Insurer is asked to insure a conveyance from C to D. The Treaty (2009) is *not* effective against X, because its policy lapsed when B conveyed to C.

It is also important to remember that the liens, interests, and other matters listed above cannot have arisen against the *current owner*. They must have arisen against a *prior owner* and must *not* have been *excepted* from coverage. This is because (as explained below) the Treaty (2009) does *not* cover matters which are excluded or excepted from coverage under the existing policy. Furthermore, although the scope of covered items has been expanded by the Treaty (2009), not all title exceptions fall within its scope. For example, tidelands claims and outstanding ownership interests are not covered.

Note that items A, B, and D above require that the Current Insurer provide for "contemporaneous notice" to the Prior Insurer. However, the Prior Insurer is *not* required to take affirmative steps to satisfy the lien in question upon receipt of such notice. *To the extent the Prior Insurer is prejudiced* by the failure to provide such notice in a timely fashion, it may not be obligated under Treaty (2009) to indemnify the Current Insurer.[30]

As noted above, liens and interests which are excepted (or excluded) from coverage under the Prior Insurer's policy are *not* subject to the operation of Treaty (2009). Liens or interests arising against the Prior Insurer's insured are excluded from Treaty (2009) because they are excluded from coverage under the "acts of the insured" exclusion found in the policy. Similarly, liens, etc., attaching *after* the *original effective date* of the Prior Insurer's policy are beyond the scope of the Treaty. This is consistent with the wording of the policy, which excludes post-policy matters from coverage.[31]

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[30] Art. IV, §§A, B, and D (requiring the Current Insurer to provide contemporaneous notice) must be read together with Art. V, §J (which relieves the Prior Insurer of liability only to the extent it has been prejudiced by the lack of thereof).

[31] See, *e.g.*, ALTA Owner's Policy (2006), Exclusion 3 (discussed in §13.02A.).

Accordingly, although a loan policy does not lapse where the insured mortgagee takes title by foreclosure or deed in lieu of foreclosure, and thus may be relied upon for Treaty (2009) purposes, it does *not* (contrary to popular belief) "convert" to an owner's policy. The exclusions from and exceptions to coverage contained in the loan policy will still apply. Both matters arising after the effective date of the policy *and* matters that the insured lender could have addressed in a properly conducted foreclosure are excluded from coverage. The underwriter to insure the lender's subsequent grantee will not be indemnified under Treaty (2009).

Example 1: A, a judgment debtor, conveys title to B. B grants a purchase money mortgage to an insured lender, L, whose policy does not contain an exception for the lien of the judgment. Subsequently, B executes a deed in lieu of foreclosure in favor of L.

Analysis: L's loan policy has not lapsed. The underwriter to insure L's grantee may rely on Treaty (2009) to omit the docketed judgment against A. The judgment is senior to the lien of L's mortgage and could not have been addressed in a properly conducted foreclosure.

Example 2: Same facts as Example 1, but assume that the judgment was docketed against B, either before or after the effective date of L's loan policy.

Analysis: If the judgment was docketed against B after the effective date of the policy, it is plainly excluded from coverage. Furthermore, even if docketed *prior* to the recording of L's mortgage, a judgment against a borrower is junior to the lien of a purchase money mortgage.[32] Therefore, L, who enjoyed first lien position, could have named and served B's judgment creditor in a properly conducted foreclosure. The failure to do so was an "act of the insured." The underwriter to insure L's grantee is unable rely on Treaty (2009) to omit the judgment.

The Current Insurer is indemnified by the terms of the Treaty (2009) "against loss or damage, including reasonable legal fees." The amount of indemnification is limited to the *lesser* of: (a) the face amount of the Prior Insurer's policy; or (b) $1,000,000.00 (formerly $500,000.00). Note that the Treaty does *not* require the Prior Insurer to take affirmative steps to remove from the record an exception raised by Current Insurer. Instances where so-called **performance** (or **undertaking**) **indemnity letters** were customarily requested under prior practice are thus beyond the scope of the Treaty (2009).[33]

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[32] N.J.S.A. 46:9-8. See §81.03.

[33] See §70.05.

§70.08A. Indemnity Treaty; Underwriting Practices. If one's examination of title discloses a lien or other matter which falls within the scope of Treaty (2009), one should attempt to obtain a copy of the policy (if any) issued in favor of the current owner. Once one has obtained the policy, the policy should be reviewed to confirm that it is in effect (*i.e.*, that the insured is the current owner of the land) and that the matter in question is neither *excepted* nor *excluded* from coverage. Assuming these criteria are met, the exception should be omitted, and a notation to that effect should be made in the file. The Prior Insurer's policy should be retained for reference.

If the matter in question does not fall within the scope of Treaty (2009), or if a copy of the Prior Insurer's policy cannot be obtained, or if it is unclear whether the Current Insurer has executed Treaty (2009), the exception should not be omitted. If the Prior Owner's policy is no longer in effect, or if the matter is excepted or excluded from coverage thereunder, or if it exceeds (or may exceed) the limit of coverage under Treaty (2009) (the lesser of the face amount of the Prior Insurer's Policy or $1,000,000.00), the exception should not be omitted. If the matter is one where issuance of a performance indemnity letter has customarily been requested, one should still request that a performance indemnity letter be issued.[34] Questions involving the foregoing should be referred to one's underwriting supervisors.

[34] See §70.05.

BLANK TITLE INSURANCE COMPANY

PERSONAL UNDERTAKING

ORDER NO.:

INDEMNITY NO.·

WHEREAS the BLANK TITLE INSURANCE COMPANY, either directly or through its agent, _____, hereinafter referred to as "the Company," is about to issue its title insurance policy or policies or commitments therefor, all hereinafter referred to as "the Title Insurance Policy," in respect to the land therein described as follows:

AND WHEREAS the Company in its search and examination preparatory to fulfilling said request has determined that title to said real property appears to be subject to the following items:

AND WHEREAS the Company has been requested to issue the Title Insurance Policy, and may hereafter in the ordinary course of its business issue title insurance policy or policies or commitments therefor in the form or forms now or then commonly used by the Company in respect to the land or to some part or parts thereof, or interests therein, all of the foregoing being hereafter referred to as “Future Policies or Commitments,” either free and clear of all mention of the aforesaid items or insuring against loss or damage because of said items set out above.

NOW THEREFORE the undersigned, jointly and severally, for themselves, their heirs, personal representatives and assigns do hereby covenant and agree with the Company: 1) To forever fully protect, defend and save the Company harmless from and against all the items referred to above, and from any and all loss, cost, damage, attorneys’ fees and expenses of every kind and nature which it may suffer, expend or incur under or by reason of, or in consequence of, the Title Insurance Policy on account of, or in consequence of, or growing out of the items referred to above, or on account of the assertion or enforcement or attempted assertion or enforcement thereof or of any rights existing or hereinafter arising or which may be claimed to exist under, or by reason of, or in consequence of, or growing out of the items referred to above; 2) To provide for the defense, at their own expense, on behalf and for the protection of the Company and parties insured or who may become insured, against loss or damage under the Title Insurance Policy (but without prejudice to the right of the Company to defend if it so elects) in all litigation consisting of actions or proceedings based on any items referred to above which may be asserted or attempted to be asserted, established or enforced in, to, upon, against

or in respect to the land or any part thereof, or interest therein; and 3) To pay, discharge, satisfy or remove all or any of the items referred to above, (a) on or before _____, (b) when called upon by the Company after _____ days' notice in writing and mailed to the undersigned at the address set out below; and 4) That each and every provision herein shall extend and be enforced concerning future policies or commitments.

Nothing contained herein shall be construed so as to obligate the Company to issue its Title Insurance Policy, in the form requested herein. However, should the Company issue any such Title Insurance Policy, it will do so in reliance upon the undertaking of the undersigned and the issuance of such Title Insurance Policy shall be the consideration for the above undertaking by the undersigned.

The Company shall have the right at any time hereinafter, after notice to the undersigned below, when it shall deem necessary, expedient, desirable or of interest to do so, in its sole discretion, to pay, discharge, satisfy or remove from the title to said real estate all or any of the items set out above. The undersigned covenants and agrees to pay to the Company all amounts so expended on demand.

FOR EXECUTION BY CORPORATIONS	FOR EXECUTION BY INDIVIDUALS
IN WITNESS WHEREOF, the undersigned, being the hereinafter named corporation, has caused these presents to be signed by its _____ President and has caused its corporate seal to be hereto affixed this ____ day of ____, 20__	IN WITNESS WHEREOF, the undersigned have executed this agreement this ____ day of _____, 20__.
President	
Secretary	

ORDER NO:

COUNTY:

STATE:

AGREEMENT WITH DEPOSIT TO PROTECT AGAINST DEFECTS IN TITLE

WHEREAS, the BLANK TITLE INSURANCE COMPANY, hereinafter referred to as Title Company, is about to issue its title insurance policy, insuring against loss by reason of defects in the title to the real estate described as follows:

AND WHEREAS, Title Company has raised as exceptions to the aforesaid title the following mentioned actual or supposed rights, interests, liens, claims, encumbrances, or defects in title:

AND WHEREAS, Title Company has been requested to issue its title insurance policy as aforesaid either free and clear of all mention of the aforesaid exceptions or insuring against loss by reason thereof:

AND WHEREAS, Title Company may issue either concurrently herewith or hereafter and in the ordinary course of its business another policy or policies in the forms nor or then commonly used by Title Company, insuring against loss by reason of defects in the title to said premises or to some part or parts thereof or interest therein, either without mention of the aforesaid exceptions or insuring against loss by reason thereof;

NOW, THEREFORE, in consideration of the issuance of said title insurance policy or policies as aforesaid, the undersigned jointly and severally covenant and agree with Title Company forever fully to protect, defend and save harmless Title Company from and against the above mentioned rights, interests, liens, claims, encumbrances and defects in title, and each and every of them and against any right, interest or

defect growing out of the same and against all loss, costs, damages, and attorneys fees and expenses of every kind and nature which it may suffer, expend or incur under or by reason, or in consequence of, said title insurance policy or policies including loss, costs, damages, fees and expenses incurred in actions brought to enforce this agreement; to defend at undersigned' s own costs any and every suit, action or proceeding in which such rights, interests, liens, claims, or encumbrances arc asserted against said real estate; and to satisfy or remove all of said rights, interests, liens, encumbrances or defects on or before_____.

It is expressly understood that the joint and several liability of the undersigned shall in no way be affected by any action the Title Company may take with respect to the liability of any one of the undersigned by way of release, settlement, compromise or other adjustment of such liability.

Also for the consideration aforesaid, the Grantor hereby transfers to the Title Company funds as set forth below, to indemnify Title Company as herein provided and for the other purposes herein set forth. Said funds so deposited are as follows:

Title Company shall have the right, when it shall deem it necessary or desirable or when it deems itself insecure, to use or apply such fund, in such manner and in such amounts as it may deem necessary or advisable, to the payment, discharge, satisfaction, acquisition or removal from the title to said real estate of the said rights, interests, liens, claims, encumbrances and defects or of any of them.

If in the sole discretion of the Company it is deemed that the fund is insufficient at any time to satisfy or remove the aforementioned exceptions to title, the Title Company shall have the right to require the deposit of additional collateral, in an amount sufficient to permit the satisfaction or removal by the Title Company of the aforementioned exceptions. Any additional funds so deposited shall be subject to the terms of this agreement to the same extent as though initially deposited hereunder. In the event additional funds are not deposited within 10 days following written demand therefor, the Company shall have the right in its sole discretion to advance such additional funds as may be required, and the undersigned expressly covenant and agree to protect, defend and save harmless the Title Company for all such additional amounts expended. For the purposes of this paragraph, proof of mailing to the undersigned at the address listed below shall be deemed conclusive evidence of notice of demand, and said 10 day period shall commence to run on the third day following such date of mailing.

Where, in the Title Company's sole discretion, it is necessary in order to remove the aforesaid exceptions to dispose of pending litigation the undersigned hereby confer irrevocable authority on the Title Company to settle or dismiss any counterclaim, crossclaim, set-off or other prayer for affirmative relief which may be asserted in such, either by the undersigned or other parties claiming under them

and expressly covenant and agree to protect, defend and save harmless the Title Company from any expense incurred thereby.

Title Company shall be the sole judge as to the need for it to be represented by or have the advice of legal counsel of its own choosing, and the undersigned shall be liable to the Company for fees so incurred.

Title Company shall have the full right, power and authority to invest said fund or to commingle any and all cash at any time constituting said deposit or part thereof with its own funds, and all income derived from any use which may be made by it of such cash shall belong to Title Company. In caseof any sale or exchange of, substitution for, or addition to said collateral the provision of this agreement shall extend to such new,· exchanged, substituted or additional collateral or the proceeds thereof. Title Company shall be under no duty to invest or reinvest any cash at any time held by it hereunder.

In case the rights, interests, liens, claims, encumbrances, defects in or objections to the title aforesaid are paid, discharged, satisfied or removed from the title to said real estate to the satisfaction of Title Company (as to which Title Company shall be the sole judge), without use of said fund, or in case any surplus remains in the hands of Title Company after it shall have used the fund in the manner hereinbefore provided and shall have reimbursed itself for all loss, damages or disbursements, such fund or surplus, after deducting the costs, expenses, fees for services and attorneys' and solicitors' fees, if any, of Title Company, shall on demand, and upon surrender to Title Company of all outstanding receipts for said fund, be paid or delivered to:

Title Company shall be under no necessity of recognizing any assignment of said fund or any part thereof until the original or a signed duplicate of the assignment, accepted in writing by the assignee, is deposited with and approved by Title Company.

It is understood and agreed that Title Company shall not be required to see to the collection of either principal of or interest upon any securities deposited hereunder or to give notice or make any presentment or demand for payment thereof, and Title Company shall not be liable to any person whomsoever for any loss occasioned by its failure so to do; but it may nevertheless at its option take such action as it may deem advisable for its own protection.

IN WITNESS WHEREOF, the undersigned _____ hereunto set ____ hand__ and seal ___ this _____ day of_____, 20___

_____

_____

_____

_____

BLANK TITLE INSURANCE COMPANY

AGENT: _____
TITLE NO. _____
PROPERTY ADDRESS: _____

INDEMNITY & UNDERTAKING AGREEMENT
(with or without Deposit of Funds)

WHEREAS, BLANK TITLE INSURANCE COMPANY (hereinafter "Insurer"), through its policy-issuing agent,_____ _____, is about to issue its title insurance commitment or policy or policies or an endorsement or endorsements thereto (hereinafter the "Title Insurance Policy"), No._____ _____ with respect to the real property located in the _____ of _____, County of _____, and State of New Jersey, as more particularly described therein (hereinafter the "Land");

AND WHEREAS, Insurer has raised as an exception or exceptions in the commitment a certain defect, encumbrance, adverse claim or other matter affecting the Land (hereinafter collectively the "**Exception(s) to Title"**), more particularly described as follows:

_____

AND WHEREAS, Insurer has been requested to issue its Title Insurance Policy in favor of its Insureds, or may in the future be requested to issue a title insurance policy or policies or commitments therefor; or issue hold-harmless or indemnity letters or assume obligations under the Inter-Underwriter Indemnification Agreement in order to induce other title insurers to issue title insurance policies or commitments therefor, with respect to the Land or to some portion thereof, or estates or interests therein, insuring against loss or damage by reason of the Exception(s) to Title;

AND WHEREAS, the undersigned (hereinafter the "Indemnitor") has agreed to execute this Agreement in order to induce Insurer to issue the Title Insurance Policy or Future Policies or Commitments insuring against loss or damage by reason of the Exception(s) to Title.

NOW THEREFORE, in consideration of the foregoing, the undersigned Indemnitor does hereby covenant and agree with Insurer as follows:

(1) to protect, defend, and save Insurer harmless from and against any and all loss, cost or damage Insurer or its Insureds may sustain on incur (including, without limitation, reasonable fees paid to attorneys and other professionals and expenses) by reason of the Exception(s) to Title;

(2) to provide for the defense, at Indemnitor's own cost and expense, on behalf and for the protection of the Insured and its current or future Insureds against or damage arising

under the Title Insurance Policy (but without prejudice to the right of the Company to defend if it so elects) in all litigation arising from or relating to the Exception(s) to Title which may be asserted or attempted to be asserted, established or enforced in, to, upon, against or in respect to the Land or any part thereof, or any estate or interest therein;

(3) upon receipt of written demand from the Insurer, to remove the Exception(s) to Title from the title to the Land, by an instrument duly recorded in the land records of _____ County, or filed in the Civil Judgment and Order Docket of the New Jersey Superior Court or United States District Court, on or before _____days from the date of such demand;

(4) The term "Indemnitor" as used in this Agreement means and includes the Indemnitor and his, her or its successors and assigns. If there is more than one Indemnitor, each Indemnitor and his, her or its successors and assigns shall be jointly and severally liable for the obligations assumed hereunder.

[**Note:** The following ¶ 5 is to be completed only if Insurer requires a deposit of funds in connection herewith. If no deposit is required, ¶ 5 may be struck out. In the event this ¶ 5 is applicable, the terms and conditions of the attached Addendum are incorporated by reference herein.]

(5) (a) To further secure the obligations assumed hereunder, Indemnitor, simultaneously with the execution of this Agreement, will cause to be deposited the sum of $_____, in a bank account designated by Insurer or its policy-issuing agent, the same to be held in escrow (hereinafter the "title indemnity escrow fund" or "TIEF") until the Exception(s) to Title have been removed from the title to the Land.

(5) (b) Insurer may, in its sole and unfettered discretion, apply all of part of the TIEF to such payments as it may deem necessary or advisable to clear the Exception(s) to Title from the Land. However, nothing contained in this paragraph shall be construed to relieve Indemnitor from the obligations imposed by this Agreement.

(5) (c) Once the Exception(s) to Title have been removed from the title to the Land, any surplus in the TIEF account shall be returned to Indemnitor, with interest (if any) accrued thereon, less any fees or expenses incurred by Insurer in causing the Exception(s) to Title to be removed from the Land.

(5) (d) Indemnitor agrees to complete such forms as may be reasonably required by Insurer, its policy-issuing agent or the bank in connection with the TIEF, including, without limitation, Indemnitor's tax identification number (if the TIEF is to be held in an interest-bearing account). All required forms or other information shall be supplied simultaneously with the

execution of this Agreement and the transmittal of the funds to be deposited.

(5) (e) In accordance with NJLTIRB *Rate Manual* §6.5, Indemnitor agrees to pay an escrow administration charge of $_____ simultaneously with the deposit of the funds.

It is understood and agreed that this Agreement contains the entire understanding between the parties hereto. No variations, modifications or changes shall be binding upon any party hereto unless agreed upon in writing by all parties to this Agreement.

IN WITNESS WHEREOF, the undersigned has / have executed this Indemnity Agreement and Undertaking the _____ day of _____, 20__.

Indemnitor:

_____

By: _____

Address: _____

_____

Phone No. _____

E-mail_____

___ See attached Addendum, the terms and conditions of which are incorporated herein by reference.
___ No Addendum is attached.

BLANK Title Insurance Company
Indemnity & Undertaking Addendum
Property Address: _____
Title No. _____

ADDENDUM TO
INDEMNITY & UNDERTAKING AGREEMENT
(Deposit of Funds)

If Insurer requires that a Title Indemnity Escrow Fund ["TIEF"] be established, as set forth in ¶5 of the attached Indemnity & Undertaking Agreement, the following additional terms and conditions will apply. In the event of a conflict between the terms of the attached Indemnity & Undertaking Agreement and this Addendum, the latter shall control.

A. Insurer shall have the right, when it shall deem it necessary or desirable or when it deems itself insecure, to use or apply such TIEF, in such manner and in such amounts as it may deem necessary or advisable, to the payment, discharge, satisfaction, acquisition or removal from the title to said Land of the Exception(s) to Title.

B. If in the sole discretion of Insurer it is deemed that the TIEF is insufficient at any time to satisfy or remove the Exception to Title, Insurer shall have the right to require the deposit of additional collateral, in an amount sufficient to permit the satisfaction or removal of record by Insurer of the Exception(s) to Title. Any additional funds so deposited shall be subject to the terms of the Indemnity & Undertaking Agreement and this Addendum thereto to the same extent as though initially deposited hereunder. In the event additional funds are not deposited within ten (10) days following written demand therefor, Insurer shall have the right, in its sole and unfettered discretion, but not the duty, to advance such additional funds as may be required, and the Indemnitor expressly covenants and agrees to protect, defend and save harmless Insurer for all such additional sums expended. For the purposes of this paragraph "B", proof of mailing to the Indemnitor at the address listed in the Indemnity & Undertaking Agreement shall be deemed conclusive evidence of notice of demand, and said ten (10) day period shall commence to run on the third day following such date of mailing.

C. Insurer shall have the right, in its sole and unfettered discretion, but not the duty, to engage or obtain the advice of attorneys, accountants, surveyors, engineers, or other professionals regarding the disposition of the TIEF and the removal of the Exception(s) to Title. Indemnitor shall be liable to reimburse Insurer for its reasonable fees and expenses incurred thereby.

D. In the event a bankruptcy petition is filed by or against the Indemnitor, the TIEF shall not be considered an asset of the Indemnitor-debtor's estate. Indemnitor attests that it is solvent as of the date of this Agreement.

E. It is understood and agreed that Insurer shall not be required to see to the collection of either principal of or interest upon any securities deposited hereunder, or to give notice or make any presentment or demand for payment thereof, and Insurer shall not be liable to any person whomsoever for any loss occasioned by its failure so to do; but they may nevertheless at their option take such action as they may deem advisable for their own protection.

F. It is understood and agreed that this Agreement is not intended to confer any benefits, rights, privileges, causes of action or remedies at law or in equity upon any person or entity, other than Insurer and Indemnitor. The parties further agree that this Agreement does not obligate Insurer to take any action, or refrain from taking any action, or incur any liabilities, or assume any duties, other than those which may be specifically set forth herein.

Indemnitor(s) initial(s): _____ _____ _____

Blank Title Insurance Company
123 Main Street, Newark, New Jersey 07102

June 10, 2002

ABC Title Insurance Company
c/o XYZ Title Agency
456 Main Street
Newark, NJ 07102

Attention: Edward Encumbrancer, Title Officer

RE: Our No. 12345
Your No: 6789
Smith to Jones

Gentlemen:

We understand that in the captioned matter you raise the following question:

Judgements *vs*. Richard Roe shown on the captioned commitment; Nos. J-10595-73; J-07459-75; DJ-26705; and DJ-35060-79.

In consideration of your issuing your policy of title insurance free from said objection, this Company does hereby agree to indemnify you and hold you harmless from any and all loss, cost or damage which you may sustain by reason of your doing so.

This letter of indemnity extends to and covers the question of marketability of title and extends to any and all reissues to be issued by you affecting said premises or any part thereof whether by fee insurance, mortgage insurance or the assignment or foreclosure of any mortgage. Our liability under this letter is limited to the amount of our existing policy, or $100,000.00.

Very truly yours,

BLANK TITLE INSURANCE COMPANY
BY: _____
William Williams, Office Counsel

"Straight Letter"

Blank Title Insurance Company
123 Main Street, Newark, New Jersey 07102

June 10, 2002

ABC Title Insurance Company
c/o XYZ Title Agency
456 Main Street
Newark, NJ 07102

Attention: Edward Encumbrancer, Title Officer

RE: Our No. 12345
Your No: 6789
Smith to Jones

Gentlemen:

We understand that in the captioned matter you raise the following question:

Judgements *vs*. John Doe shown on the attached sheet. (Docket No. J-08191-80).

In consideration of your issuing your policy of title insurance free from said objection, this Company does hereby agree to indemnify you and hold you harmless from any and all loss, cost or damage which you may sustain by reason of your doing so. The Company further agrees to dispose of said objection of record within six (6) months of the date hereof.

This letter of indemnity extends to and covers the question of marketability of title and extends to any and all reissues to be issued by you affecting said premises or any part thereof whether by fee insurance, mortgage insurance or the assignment or foreclosure of any mortgage. Our liability under this letter is limited to $60,000.00, the amount of our existing policy.

Very truly yours,

BLANK TITLE INSURANCE COMPANY
BY: _____
William Williams, Title Officer

Blank Title Insurance Company
123 Main Street, Newark, New Jersey 07102

June 10, 2002

ABC Title Insurance Company
c/o XYZ Title Agency
456 Main Street
Newark, NJ 07102

Attention: Edward Encumbrancer, Title Officer

RE: Our No. 12345
Your No: 6789
Smith to Jones

Gentlemen:

We understand that in the captioned matter you raise the following question:

Judgements *vs*. Richard Roe shown on the captioned commitment; Nos. J-10595-73; J-07459-75; DJ-26705; and DJ-35060-79.

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

This letter of indemnity extends to and covers the question of marketability of title and extends to any and all reissues to be issued by you affecting said premises or any part thereof whether by fee insurance, mortgage insurance or the assignment or foreclosure of any mortgage. Our liability under this letter is limited to $100,000.00, the amount of our existing policy.

Very truly yours,

BLANK TITLE INSURANCE COMPANY
BY: _____
William Williams, Title Officer

"Demand Performance Letter"

Blank Title Insurance Company
123 Main Street, Newark, New Jersey 07102

June 10, 2002

Barry Barrister, Esq.
456 Main Street
Newark, NJ 07102

RE: Title No. 12345
Smith to Jones
Edison, New Jersey

Dear Mr. Barrister:

Your letter of June 9, 2002 has been referred to me for response. The Company does not feel that the issuance of a Letter of Indemnity is appropriate in this case, for the following reasons:

We are willing to issue our Letter of Indemnity to another underwriter where we are, or may be, liable to our insured under an existing policy, as evidenced by another underwriter's raising of an objection to title not present in the existing policy. The Letter, if issued, creates a privity of contract between the two underwriters, and is issued when the insureds under an existing policy may properly maintain a claim against the insurer. Thus, the Letter is issued in substitution for this Company's obligations to its insureds under the policy.

In this case, the requested indemnification covers restrictive covenants found in Deed Book Y49, page 321 &c., which are an exception to title in the existing policy, which exception states that the restrictions have been violated. While it is true that the policy extends a form of affirmative insurance covering same, the coverage is limited to the "...outcome of any action to enjoin..." etc. Thus, the Company has no current liability to its insureds and will not become liable *unless and until an injunction is entered*. As this has not occurred, the insureds have no claim against this Company under Insurance Policy No. 12345. To issue the requested Letter of Indemnification would place this Company in the anomalous position of bearing greater liability to the purchasers' underwriter than it currently bears to its insureds.

I trust the foregoing has served to explain the Company's position. If I can be of further assistance, please do not hesitate to contact me.

Very truly yours,

BLANK TITLE INSURANCE COMPANY
BY: _____
William Williams, Title Officer

July 11, 2016

John Smith, Esq.
Smith and Jones, Attorneys-at-Law

RE: XYZ Bank vs. Jones / 123 Main St, Anytown, NJ
Title No. 12345 (Blank Title Agency)
Your No. 6789

Dear Mr. Smith:

A copy of your letter of July 10 to our agent, Blank Title Agency, was received in this office today. It appears that a title search obtained by you in connection with the captioned matter has disclosed the following prior lien or interest not excepted from coverage in the policy issued to your client, XYZ Bank, the insured lender

Tax Sale Certificate No. 001-2001 recorded in Mortgage Book 4321, page 987.

It appears that the tax sale certificate referred to above was satisfied at or prior to the date on which the insured mortgage was recorded, but remains open of record.

Nevertheless, please be advised that the Company is prepared to insure the successful bidder at the foreclosure sale without exception for these items, or to deliver a letter of indemnity to the successful bidder's title company. If your client is the successful bidder, the Company is prepared to insure a subsequent purchaser without exception, or to deliver a letter of indemnity to the purchaser's title company.

I trust the foregoing will prove helpful to you. If I can be of further assistance, please feel free to contact me. Thank you for your many courtesies.

Very truly yours,
BLANK TITLE INSURANCE COMPANY

By: _____
Richard Roe, Vice President

INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

In consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the signatories hereby agree, subject to the provisions and limitations contained in this Agreement, all of which are conditions precedent to liability hereunder, to indemnify each other as follows.

I. Definitions:

A. "Current Insurer" means a title insurance company which is insuring a transaction and has requested, or would, absent this Agreement, request indemnification from Prior Insurer. "Current Insurer" may also be referred to as "Indemnified Company".

B. "Prior Insurer" means a title insurance company which has issued a policy which is still in effect and which is being requested to indemnify "Current Insurer". "Prior Insurer" may also be referred to as "Indemnifying Company".

C. "Policy" means an owner's or loan policy of title insurance issued by Prior Insurer or to be issued by Current Insurer. For the purposes of this Agreement, a loan policy shall be considered the equivalent of an owner's policy if the insured thereunder has acquired title to the estate or interest insured by foreclosure or deed in lieu thereof.

D. "Estate" means the estate or interest insured under the Policy issued by Prior Insurer or to be insured under the Policy to be issued by Current Insurer, as the same is described in Schedule A of the Policy.

II. Indemnification Provisions. Prior Insurer hereby indemnifies Current Insurer against loss or damage, including reasonable legal fees, by reason of certain defects, liens or encumbrances, not excepted or excluded from coverage under the policy issued by Prior Insurer, which defects, liens or encumbrances are set forth in more detail below.

III. Limitation of Liability. The indemnification provided hereunder shall in no event exceed the lesser of:

(A) the amount of insurance in effect under the policy issued by Prior Insurer; or

(B) $1,000,000.00.

IV. Conditions Precedent to Indemnification. The provisions of this Agreement shall be effective only when the following conditions are met and Current Insurer has been furnished with a copy of Prior Insurer's **Owners' Policy**, which policy is still in effect, and any one or more of the following alleged or apparent defects, liens or encumbrances affecting the title of a previous owner of the Estate are disclosed by an examination of the record title to the Estate, and which are not excepted or excluded from coverage under Prior Insurer's Policy:

A. Mortgages, *provided* there are no pending or successfully-concluded proceedings to foreclose the same; *and further provided* that, with respect to home equity mortgages or other revolving credit mortgages, contemporaneous notice is given to the Prior Insurer of the Current Insurer's intention to rely on Prior Insurer's policy in accordance with this Agreement.

B. Judgments, federal tax liens, and any other statutory or common law liens *provided, nevertheless*, that in the case of any lien which will not expire in a fixed period of time, contemporaneous notice is given to the Prior Insurer of the Current Insurer's intention to rely on Prior Insurer's policy in accordance with this Agreement.

C. The liens of federal estate taxes, New Jersey estate and transfer inheritance taxes.

D. Tax sale certificates, *provided* there are no pending or successfully-concluded proceedings to foreclose the same; *and further provided* that contemporaneous notice is given to the Prior Insurer of the Current Insurer's intention to rely on Prior Insurer's policy in accordance with the terms of this Agreement.

E. Marital rights arising in favor of the spouses of record title-holders.

F. Alleged or actual defects or irregularities in judicial proceedings.

G. Lack of metes and bounds or filed map descriptions, or scriveners' error contained in descriptions, *provided* that the land conveyed may still be identified from the documents themselves.

V. Conditions and Stipulations.

A. The sole obligation of Prior Insurer arising hereunder is to indemnify Current Insurer against loss arising from matters covered by this Agreement.

B. The indemnification provisions of this Agreement shall only be operative where the Policy issued by Prior Insurer, by its terms, is still in effect at the time indemnification is sought by Current Insurer.

C. In the event notice of a claim or a potential claim is received by Current Insurer, Current Insurer shall promptly give notice thereof, in the manner provided elsewhere in this Agreement, to Prior Insurer.

D. Current Insurer shall preserve evidence in its file of the applicability of indemnification as provided herein and shall furnish same to Prior Insurer with any notice of claim or potential claim as provided elsewhere herein.

E. Nothing contained herein shall be construed to: --

1. deprive Prior Insurer of any of the rights provided for by the terms of its Policy, including, without limitation, rights of subrogation provided for therein and the right to cure defects in title; or

2.change the effective date or any of the other terms and conditions of any Policy, or to provide indemnification against defects, liens or encumbrances created or attaching subsequent to the effective date of any Policy; or

3. prevent Prior Insurer from agreeing, by letter signed by an authorized officer of Prior Insurer, to indemnify Current Insurer against matters not covered by this Agreement; or

4. prevent Prior Insurer, with respect to any matter not covered by this Agreement, from providing indemnification by means of a writing which incorporates by reference the terms of this Agreement, as if the matter in question had been covered by this Agreement; or

4. obligate Prior Insurer to take affirmative steps to cure any alleged defect, lien or encumbrance covered by this Agreement, or to reimburse Current Insurer or its insured for attorneys' fees or expenses arising from any matter not covered by this Agreement; or

5. create any rights in non-parties to this Agreement (including, without limitation, the insured under the policies issued by Prior Insurer or Current Insurer), or to give rise to any claim by a non-party that he, she or it is a third-party beneficiary of this Agreement.

F. The provisions of this Agreement, as amended, shall only apply to real property situated in the State of New Jersey, unless a signatory expressly elects otherwise by a writing designating such additional states or jurisdictions as it may wish to include. Notice of such election shall be given to the other signatories as provided elsewhere herein.

G. All notices required to be provided hereunder shall be given in writing by registered or certified mail (return receipt requested), or other form of writing, *provided* sender has proof of delivery thereof, to the address of any business office designated by the recipient in the most recent official directory of the New Jersey Land Title Association [NJLTA], or to such other address which may from time to time be designated by written notice given to the Executive Director of NJLTA.

H. .Any signatory to this Agreement may withdraw upon giving thirty (30) days' notice. Such withdrawal will affect only matters for which indemnification is sought after the expiration of the notice. Indemnification provided before the expiration of the notice shall not be affected by the withdrawal and shall continue to be effective in accordance with this Agreement.
This Agreement shall be open to participation by any title insurance company licensed to do business in New Jersey. A title insurance company executing this Agreement must give simultaneous notice of same to all other participating companies in accordance with ¶ G above, except that such notice need not be provided to companies which execute this Agreement within sixty (60) days of the earliest execution date set forth below. All obligations under this Agreement between a company signing this Agreement and any other participating title insurance

company shall become effective thirty (30) days after the date on which the signatory company becomes a party to this Agreement, *provided nevertheless*, that this provision shall not apply to any company which has executed the previous version of this Agreement or the First Amendment thereto, in which case this Agreement shall be come effective immediately upon execution.

I. Any insurer which is a signatory to this Agreement may, by notice sent at any time to another signatory in accordance with ¶ G above, decline to participate in this Agreement as to such other signatory or as to all other signatories. If such notice is sent prior to the effective date of the other company's or companies' participation in this Agreement, then those companies shall have no obligations under this Agreement to each other. If such notice is sent after the effective date of the other company's or companies' participation in this Agreement, then those companies shall have no obligations under this Agreement to each other for any title insurance policies issued after the date of such notice. Notices sent pursuant to this paragraph are required to be sent to only those signatories to this Agreement affected thereby.

J. Whenever written notice is required to be given under the terms of this Agreement (including, without limitation, notice required under § IV above), the same shall be deemed to be effective upon receipt thereof, *provided, nevertheless*, that recipient shall not be liable for loss occasioned by the failure to give timely notice, but only to the extent that recipient has been prejudiced by its failure to receive such notice prior to the date actually received.

K. This Agreement supersedes the Agreement previously entered into by the signatories hereto and the First Amendment to said Agreement, except that nothing contained herein shall affect the rights and obligations of the parties with respect to indemnifications provided under the previous Agreement and the First Amendment thereto.

L. This Agreement shall be effective as to each signatory as of the date executed by such signatory. Within sixty (60) days of the earliest execution date below, an executed copy of this Agreement shall be delivered to all signatory companies.

IN WITNESS WHEREOF, the parties set forth below have executed this Agreement as of dates set forth below.

[Signature Pages to follow]

SIGNATURE PAGES [IN INDIVIDUAL COMPANY COUNTERPARTS]
TO

INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

LAWRENCE J. FINEBERG — V.P. & REGIONAL COUNSEL

NAME — TITLE

DATE: December 11, 2009

ON BEHALF OF THE FOLLOWING COMPANY(IES):

CHICAGO TITLE INSURANCE COMPANY

TICOR TITLE INSURANCE COMPANY

TICOR TITLE INSURANCE COMPANY OF FLORIDA

SECURITY ~~XXXXXXX~~ UNION TITLE INSURANCE COMPANY

SIGNATURE PAGES [IN INDIVIDUAL COMPANY COUNTERPARTS]
TO

INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

John M. Nikolaus — President

NAME John M. Nikolaus — TITLE

DATE: February 16, 2010

ON BEHALF OF THE FOLLOWING COMPANY(IES):

Conestoga Title Insurance Co.

[redacted]

SIGNATURE PAGES [IN INDIVIDUAL COMPANY COUNTERPARTS]
TO

INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

CHRISTOPHER P. MARRA
NAME

VP
Vice President
TITLE

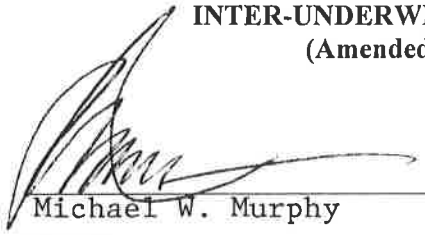
DATE: December 10, 2009

ON BEHALF OF THE FOLLOWING COMPANY(IES):

FIDELITY NATIONAL TITLE INSURANCE COMPANY

SIGNATURE PAGES [IN INDIVIDUAL COMPANY COUNTERPARTS]
TO

INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)



Michael W. Murphy
NAME

Vice President
TITLE

DATE: January 20, 2010

ON BEHALF OF THE FOLLOWING COMPANY(IES):

First American Title Insurance Company

United General Title Insurance Company

T.A. Title Insurance Company

Censtar Title Insurance Company

SIGNATURE PAGES [IN INDIVIDUAL COMPANY COUNTERPARTS]
TO

INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

Michael W. Aiken — Vice President

NAME Michael W. Aiken — TITLE

DATE: January 26, 2010

ON BEHALF OF THE FOLLOWING COMPANY(IES):

Investors Title Insurance Company

SIGNATURE PAGES [IN INDIVIDUAL COMPANY COUNTERPARTS]
TO

INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

Gary M. Ham

Gary M. Ham
NAME

V.P. & N.J. State Manager
TITLE

DATE: December 11, 2009

ON BEHALF OF THE FOLLOWING COMPANY(IES):

Lawyers Title Insurance Corporation

Commonwealth Land Title Insurance Company

LandAmerica NJ Title Insurance Company

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INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

James J Duffy — EVP, General Counsel

NAME — TITLE

DATE: 12-15-09

ON BEHALF OF THE FOLLOWING COMPANY(IES):

National Title Ins. of New York, Inc.

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INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

Frank A. Melchior S. V. P. & G. C.

NAME TITLE

DATE: December 10, 2009

ON BEHALF OF THE FOLLOWING COMPANY(IES):

New Jersey Title Insurance Company

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TO

INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

Floyd Kramer — Executive Vice President

NAME — TITLE

DATE: 1-21-10

ON BEHALF OF THE FOLLOWING COMPANY(IES):

North American Title Insurance Company

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INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

Vice President
New Jersey State Manager
TITLE

NAME Daniel May

DATE: February 15, 2010

ON BEHALF OF THE FOLLOWING COMPANY(IES):

Old Republic National Title Insurance Company

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(Amended and Restated as of December, 2009)

Robert Attorney — V. P.

NAME — TITLE

DATE: 2/1/10

ON BEHALF OF THE FOLLOWING COMPANY(IES):

Security Title Guarantee Corp. of Balt.

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INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

Lydia Fowler

NAME LYDIA FOWLER

AGENT SERVICES MGR., U.P.

TITLE

DATE: 1/15/2010

ON BEHALF OF THE FOLLOWING COMPANY(IES):

STEWART TITLE GUARANTY COMPANY

SIGNATURE PAGES [IN INDIVIDUAL COMPANY COUNTERPARTS]
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INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

_____ PRESIDENT

NAME J. CHRISTOPHER PHILLIPS TITLE

DATE: 12/31/09

ON BEHALF OF THE FOLLOWING COMPANY(IES):

TITLE RESOURCES GUARANTY COMPANY

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(Amended and Restated as of December, 2009)

Patricia W Bower — General Counsel

NAME PATRICIA W. BOWER — TITLE

DATE: 2/1/2010

ON BEHALF OF THE FOLLOWING COMPANY(IES):

Westcor Land Title Insurance Company

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INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

NAME: Steven H. Winkler

Chief Underwriting Counsel
TITLE:

DATE: February 24, 2014

ON BEHALF OF THE FOLLOWING COMPANY(IES):

WFG NATIONAL TITLE INSURANCE COMPANY

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(Amended and Restated as of December, 2009)

Felice K Sh

NAME: Felice K. Shapiro

TITLE: Executive VP and Chief Underwriter

DATE: 8/23/2017

ON BEHALF OF THE FOLLOWING COMPANY(IES):

AmTrust Title Insurance Company

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TO

INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

NAME: LAWRENCE C. BELL

TITLE: Senior Vice President

DATE: August 13, 2018

ON BEHALF OF THE FOLLOWING COMPANY(IES):

CATIC TITLE INSURANCE COMPANY

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TO

INTER-UNDERWRITER INDEMNIFICATION AGREEMENT
(Amended and Restated as of December, 2009)

J. K. R.

NAME: Jody K. Rogow

General Counsel

TITLE:

DATE: November 19, 2018

ON BEHALF OF THE FOLLOWING COMPANY(IES):

Amrock Title Insurance Company

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TO

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DocuSigned by:
Albert Boyce
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NAME: Albert Boyce TITLE: Vice President

DATE: 2/17/2021

ON BEHALF OF THE FOLLOWING COMPANY(IES):

American Guaranty Title Insurance Company