

TITLE EXAMINATION ISSUES AND WHY AN OWNER'S TITLE POLICY IS IMPORTANT

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October 8, 2019

New York State Title Insurance

I. Guaranteed Abstract of Title vs. Title Insurance Policy.

A. The Guaranteed Abstract of Title.

- A written summary of documents filed or recorded in public records discovered by a searcher which may affect the subject property, including such items as Deeds, Affidavits, Mortgages, Assignments, Modifications, Consolidations, Extensions, Spreader Agreements, Discharges, Judgments, Tax Liens and Warrants, Mechanics Liens, In Rem Proceedings, Lis Pendens, UCC Financing Statements and related UCC instruments, Surrogate's Court proceedings, Bankruptcies, etc.,
- Erie County Bar Association Residential Contract requires the Seller to provide a tax and title search which covers the property only, fully guaranteed by a title insurance corporation licensed under Article 64 of the Insurance Law and beginning with the first recorded source of title in the County Clerk's Office or a deed to an apparent owner recorded prior to 1920 (paragraph ATC2 (A))
- The minimum requirements of what an Erie County search should contain can be found in Standard 3 (Search Certificates) of the Standards of Title Examination of the Erie County Bar Association. A certificate similar to the one attached hereto as Exhibit 1 should be found in each search prepared under these standards.
- A search may contain multiple certificates issued by various abstract or title insurance companies. Without such a certificate you may not have any recourse for errors or omissions contained therein.
- Members of the Erie County Bar Association can obtain a free copy of the Real Estate Title Examination standards, as well as many other related materials, by contacting the Bar Association Headquarters at 716-852-8687.
- Search standards in other counties may differ and many go back only 40 or 60 years.
- Not limited by time, but the search contains no provisions as to how, when and where a claim should be made, so a formal lawsuit must be initiated.

B. What the Guaranteed Abstract of Title doesn't tell you.

- Whether any of the instruments such as deeds, mortgages, discharges, etc. are forgeries
- Whether any Deed in the chain of title:
 - was executed by mentally incompetent;
 - was executed by a minor who may have the right to disavow the execution upon reaching majority;
 - if a Corporation Deed, whether it continues in existence, whether it is current on its franchise taxes, whether it was executed by a proper representative, pursuant to its By-Laws and under a valid corporate resolution;
 - if a Partnership Deed, whether it was executed pursuant to the Partnership Agreement;
 - if a Trustee's Deed, whether it was executed pursuant to the terms of the Trust Agreement;
 - if the Grantor or Grantee is on the Specially Designated Nationals and Blocked Persons list ("SDN List");
 - whether the Deed was executed under duress, undue influence or misrepresentation;
- if a mortgage foreclosure or In Rem proceeding is in the chain, whether all proper procedures were followed;
- if a deed comes out of a judicial proceeding such as bankruptcy, estate, guardianship, matrimonial decree, power of attorney, whether it was properly authorized or whether jurisdiction over all parties was obtained;
- if the deed was properly delivered;
- whether a tenancy by the entirety continues to exist – divorce, annulment, separation, murder;
- whether the Soldiers and Sailors Civil Relief Act is applicable;
- ineffective discharge of mortgage – loan sold to 3rd party lender and discharged before assignment of mortgage;

- Mis-indexed documents in the public records and properly indexed documents containing incorrect information.

II. Title Insurance.

A. Good and Marketable Title and Insurable Title.

I. Good and Marketable Title.

- Marketable title has traditionally been defined as "good title, one that is free and clear from encumbrances or from material defects in the title . . . a title that is free from all reasonable doubt but not necessarily from all doubt" (3 Warren's Weed, New York Real Property, Marketability of Title, § 2.01; see also, Chesebro v. Moers, 233 N.Y. 75, 81-82, 134 N.E. 842, 844; 62 N.Y. Jur., Vendor and Purchaser, § 48).
- The ECBA Contract (Paragraph ATC5. (A)) "Quality of Title", states that the Seller shall convey good and marketable title, free and clear of all liens and encumbrances, but paragraph ATC5 (B) provides that Purchaser is still required to accept title if Title Defects, as defined therein, are insurable. (E.g. certain prior open mortgages of record renders title unmarketable, but title insurance may insure against collection.)

II. Insurable Title.

- Title insurance policy insures against loss or damage sustained or incurred by reason of unmarketable title SUBJECT TO the exclusions from coverage, the exceptions from coverage (Schedule B, Section II of Commitment and Policy) and the Conditions set forth in the policy.
- Most titles are insurable, but all defects are not.
- Underwriter determines which defects are acceptable risks.
- Title insurance company establishes underwriting standards. For the most part title insurance companies will follow the local Bar Association title standards.
- Not restricted to marketability standards; thus you can have unmarketable title but still have insurable title – e.g., Oil and Gas leases, restrictions, etc.

III. Forms and Their Creators.

- Standardized forms through agreement with the American Land Title Insurance Association (ALTA) and the mortgage banking industry. ALTA is

a national trade association representing the interests of the abstract of title and title insurance industries. In June, 2006, ALTA adopted new forms of the ALTA Owner's and Loan policies.

- The Title Insurance Rate Service Association (TIRSA) is a non-profit private organization licensed by the Superintendent of Insurance of the State of New York pursuant to Article 23 of the Insurance Law as a Rate Service Organization. Its members consist of the various title insurance underwriters licensed under the Insurance Law of the State of New York.
- TIRSA Rate Manual is the “bible” of the New York title insurance industry. Approved by the NYS Superintendent of Insurance. Sets forth rules, definitions, classifications of risk, rates for policies and endorsements and approved forms. It was last revised February 15, 2019. It can be downloaded free at:

www.tirsa.org

- Use free rate calculator software offered by the various title insurance companies to compute your particular premium. Fidelity National Title's rate calculator software can be found at:

nyrates.ctic.com

NOTE: Be sure to select the correct County for proper rate calculation.

- Various types of policies which are differentiated by their insurable interest, the three most widely used ones are:
 - (i) **Owner's or Fee Policy**
 - Insures ownership interest of purchaser or owner
 - Exceptions to policy
 - (ii) **Mortgagee or Lender's Policy**
 - Insures priority of mortgage
 - (iii) **Leasehold Policy**
 - Insures priority of lease or priority of mortgage secured by insured leasehold interest.

IV. The Policy.

- A contract by which the title insurer agrees to indemnify its insured against losses caused by defects in or encumbrances on the title not excepted from coverage. *Vournas v. Fidelity National Title Ins. Co.*, 73 Cal. Rptr. 4th 668, 675, 86 Cal. Rptr, 2nd 490 (1990).

- One time premium.
- Lasts for as long as insured continues to own the insurable interest.
- Two types of protection:
 - (i) duty to defend;
 - (ii) duty to indemnify for any loss incurred by the insured for an insured risk.

B. Commitment for Title Insurance. See Exhibit 2

- Sometimes referred to as a Certificate and Report on Title or a Title Report. Simply a promise to issue a title insurance policy upon certain terms and conditions – some courts have referred to it as a “pre-policy”. Unlike other “commitments” (e.g. a mortgage commitment), the title commitment is not signed by the insured.
- The Commitment is usually signed initially by the title examiner. With the passage of the Title Insurance Agent Law as of October 1, 2014, this will either be a title insurance agent or title insurance company underwriter. The Commitment used by most title insurance companies is the copyrighted American Land Title Association (“ALTA”) form and then countersigned at the time of closing.
- Limited life span: the earlier of 6 months from its “effective date” OR the issuance of the policy.
- “Effective” only when:
 - (i) the identity of the proposed insured and the amount of the policy have been inserted at time of issuance of Commitment or by subsequent endorsement; and
 - (ii) countersigned by an authorized signatory.
- Is the marked up Commitment at closing the same as the Policy?

See *Frydman v. Fidelity National Title Insurance Company*, 68 A.D.3d 622, 2009 NY Slip Op 9530, 891 N.Y.S.2d 381 (N.Y. App. Div., 2009) which involved an adverse possession claim based on a fence misplacement. The Court stated: “Assuming, as plaintiffs argue, that the prepolicy “certificate of title,” dated May 26, 1999, and the attached “marked title report” reveal an intention to cover claims based on a fence that varied from the actual boundary line, we would find that any such intention did not survive issuance of the policy. The certificate of title specifically states that upon delivery of

the final policy, the certificate becomes null and void. Moreover, section 15 of the policy specifically states that, together with any attached endorsements, it constitutes the entire contract between the parties, and defendant's liability is limited only to its terms (see Hess v Baccarat, 287 AD2d 834 [2001]).”

The Hess case (Hess v. Baccarat, 287 A.D.2d 834, 731 N.Y.S.2d 296 (N.Y. App. Div., 2001) involved the issuance of two different marked up Commitments (the case referred to them as Policies so they may have been pro-forma policies). One omitted an easement and the other excepted it, but the court held that the certificate becomes null and void upon issuance of the policy.

But see Goettler v. Peters, 639 N.Y.S.2d 843, 225 A.D.2d 660 (N.Y.A.D. 2 Dept., 1996) which stated: “ A title insurance commitment, which is issued at the time of the closing, constitutes a policy or contract of indemnity by the title insurer (see, L. Smirlock Realty Corp. v. Title Guar. Co., 52 N.Y.2d 179, 187-188, 437 N.Y.S.2d 57, 418 N.E.2d 650; Insurance Law § 1113[a][18]; Insurance Law § 6401[b]; 5A Warren's Weed, New York Real Property, Title Insurance, § 4.01 [4th ed.]. The issuance of a clean policy merely confirms the obligations already undertaken by the title company.”

In an unreported case (Peretz Strahl, Inc. v. Fidelity National Title Ins. of New York, 35654/2004, Supreme Court Kings County, New York Law Journal, Sept, 29, 2005, the Court stated, “It is clear that the marked up title certificate represents the agreement of the parties as to what items were to be covered under the policy and what items excluded. Absent any evidence that there was a subsequent agreement to modify the agreement, the title policy can not alter the agreement memorialized by the marked up title certificate.”

But as of August 1, 2015 all New York Commitments for Title Insurance must contain the following notice:

THIS REPORT IS NOT A TITLE INSURANCE POLICY. PLEASE REVIEW THIS REPORT WITH A REAL ESTATE PROFESSIONAL REPRESENTING YOUR INTEREST IN THIS TRANSACTION. PLEASE READ IT CAREFULLY. THE REPORT MAY SET FORTH EXCLUSIONS UNDER THE TITLE INSURANCE POLICY AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBERANCES AFFECTING TITLE TO THE PROPERTY. YOU SHOULD CONSIDER THIS INFORMATION CAREFULLY.

- My Opinion: A marked up Commitment at closing, properly signed, on which the entire premium has been paid, and listing all of the documents recorded or to be recorded at closing that may affect title (or accompanied by a Report of Closing), binds the insurance Company to issue the Policy.

C. The Marked Up Commitment.

- Cover page:
 - (i) Can be used for either a Loan Policy or an Owner's Policy, or the simultaneous issue of both or multiple policies.
 - (ii) Signed by Title Examiner prior to closing.
 - (iii) Signed and dated by "Authorized Signatory" of title insurance company at time of closing (the "binding of the policy").
 - (iv) Usually contains an Order Number, Title Number or File Number
 - (v) Usually contains signatures of officers of title insurance company.

- Schedule A:
 - (i) "Effective Date": Should be the date of the last certification on the abstract of title or written continuation notes. Should be within 6 months of exam.
 - (ii) Paragraph 1: Name(s) of insured and insured amount.
 - (iii) Paragraph 2: The estate or interest in the land is usually "Fee", but can be other interest such as "Leasehold" or "Easement".
 - (iv) Name of vested party in title and vesting instrument(s) – latter could be Deed(s), Will(s), Intestacy, Court Order, Appropriation, Condemnation, etc.
 - (v) Paragraph 3: Brief description of property location followed by legal description.

- Schedule B, Section 1 ("Requirements"):
 - (i) May or may not be used. Many companies only use Schedule B, Section 2.
 - (ii) Often used on Commercial deals.
 - (iii) Sets forth those exceptions to title for which the underwriter absolutely requires resolution before a policy can be issued.
 - (iv) Examples of Schedule B-1 exceptions are set forth in the sample Commitment attached to this outline.

- Schedule B, Section 2 ("Exceptions"):
 - (i) Sets forth those items which will remain as exceptions in the policy unless satisfactory curatives are presented.
 - (ii) If items cannot be omitted, affirmative coverage may be available, especially on a Loan Policy, e.g. easements, right of ways, restrictions, etc.

D. Boilerplate Language in Commitment and Policy:

Similar to other insurance policies:

- i. “Covered Risks” tells what you are protected against (e.g. errors, liens, claims to ownership, title breaks, etc. BUT be aware of “take aways” as contained in mandatory “New York Standard Endorsement”
- ii. Declaration pages (Schedules A and B) – specifies who, what, when and how much.
- iii. “Exclusions” – what’s not covered, the Exceptions on Schedule B but also the stated boilerplate exclusions. (e.g. building and zoning codes, environmental, condemnation)
- iv. Additional coverage available as provided by any endorsements to the policy.

E. Gap Coverage:

- Owner’s Policy – See Paragraph 10 of “Covered Risks.”
- Loan Policy – See Paragraph 14 of “Covered Risk”.
- Covers defects, liens or encumbrances on title that have been created or attached or has been filed or recorded between the Policy date and the date of recording, BUT see Paragraph 5 of “Exclusions from Coverage” on Owner’s Policy and Paragraph 7 of Loan Policy that excludes real estate taxes and assessments during the gap period
- NY Standard Endorsement expands above exclusions to include water charges and sewer rents that occur during the gap period as well as taxes and assessments.
- “Gap” does not mean “forever”. Documents to be recorded within a reasonable time after “mark up”.

F. Not in Commitment, but in Policy.

Defined Terms:

- Found in both the Owner’s and Loan Policy under “Conditions” portion of policy in Paragraph 1, “Definition of Terms”
- “Insured”:
 - (A) each successor in ownership of the indebtedness (e.g. assignees of mortgage);
 - (B) one who has control of the “transferable record” (meant to cover third parties such as MERS holding mortgages as nominee)

- (C) successor by dissolution, merger, consolidation, distribution or reorganization
- (D) conversion to another type of entity (e.g. LLP to LLC)
- (E) Grantee without consideration IF:
 - (1) if insured wholly owns grantee
 - (2) if grantee wholly owns insured
 - (3) if grantee is wholly owned by affiliated entity of insured
 - (4) if grantee is a trustee or beneficiary of a trust established by insured

How, When and Where about Claims.

- Written notice must be given to underwriter (not to Agent);
- Underwriter reviews claims for insurability:
 - Was a policy issued (not necessary to produce original policy);
 - Was premium paid;
 - Is claimant an insured under the policy (mortgage policy does not insure the owner);
 - Does the claim involve the property insured under the policy;
 - Is the claim a covered risk under the policy, or is it an excluded or excepted item;
 - Has the rights of the insurance company been prejudiced by the actions of the claimant (e.g. delay in sending notice of claim).
- Handling an insured claim:
 - Defend the title (using either in-house or outside counsel);
 - Bring an action to establish or clear title;
 - Settle the claim with either the claimant insured or third party;
 - If a lien or mortgage, pay it off and obtain an assignment or subrogation;
 - Pay the policy amount.

F. Reference Materials:

- “Real Estate Titles”,
3rd Edition, 2 Vols.
James M. Pedowitz

More definitive research source:

- “Warren’s Weed New York Real Property”
5th Edition
LexisNexis

FREQUENTLY ASKED UNDERWRITING QUESTIONS:

Q. What if the Deed was meant to create a tenancy by the entirety, but failed to include any language to that effect, e.g. as husband and wife; his wife; her spouse; as tenants by the entirety, etc.

A. If the parties were married at the time of conveyance, the parties hold title as tenants by the entirety. See EPTL § 6-2.2 (b). Title underwriters will require proof of marriage. Usually a recorded sworn affidavit will suffice. Ideally, a copy of their marriage certificate should be attached.

Estates, Powers and Trust Law § 6-2.2 When estate is in common, in joint tenancy or by the entirety

(a) A disposition of property to two or more persons creates in them a tenancy in common, unless expressly declared to be a joint tenancy.

(b) A disposition of real property to a husband and wife creates in them a tenancy by the entirety, unless expressly declared to be a joint tenancy or a tenancy in common.

(c) A disposition on or after January first, nineteen hundred ninety-six of the shares of stock of a cooperative apartment corporation allocated to an apartment or unit together with the appurtenant proprietary lease to a husband and wife creates in them a tenancy by the entirety, unless expressly declared to be a joint tenancy or a tenancy in the common.

(d) A disposition of real property, or a disposition on or after January first, nineteen hundred ninety-six of the shares of stock of a cooperative apartment corporation allocated to an apartment or unit together with the appurtenant proprietary lease, to persons who are not legally married to one another but who are described in the disposition as husband and wife creates in them a joint tenancy, unless expressly declared to be a tenancy in common.

(e) A disposition of property to two or more persons as executors, trustees or guardians creates in them a joint tenancy.

(f) Property passing in intestacy to two or more persons is taken by them as tenants in common.

Q. How should same sex married couples describe their tenancy?

A. Preferably, "To A and B as tenants by the entirety", but other forms are acceptable. See DRL § 10-a.

If no wording to indicate and you can prove marriage, they take as tenants by the entirety per above paragraph.

Domestic Relations Law § 10-a. Parties to a marriage.

1. A marriage that is otherwise valid shall be valid regardless of whether the parties to the marriage are of the same or different sex.

2. No government treatment or legal status, effect, right, benefit, privilege, protection or responsibility relating to marriage, whether deriving from statute, administrative or court rule, public policy, common law or any other source of law, shall differ based on the parties to the marriage being or having been of the same sex rather than a different sex. When necessary to implement the rights and responsibilities of spouses under the law, all gender-specific language or terms shall be construed in a gender-neutral manner in all such sources of law.

Q. What breaks a tenancy by the entirety?

A. Divorce, Annulment, Judicial Separation, and Conveyance by Deed. Ownership then becomes a Tenancy in Common. The murder of one spouse by the other, will terminate the right of survivor' interest.

Q. How long is a judgment good for?

A. All judgments are presumed to be paid and satisfied after twenty (20) years. See CPLR §211 (b).

CPLR §211. Actions to be commenced within twenty years.

b) On a money judgment. A money judgment is presumed to be paid and satisfied after the expiration of twenty years from the time when the party recovering it was first entitled to enforce it. This presumption is conclusive, except as against a person who within the twenty years acknowledges an indebtedness, or makes a payment, of all or part of the amount recovered by the judgment, or his heir or personal representative, or a person whom he otherwise represents. Such an acknowledgment must be in writing and signed by the person to be charged. Property acquired by an enforcement order or by levy upon an execution is a payment, unless the person to be charged shows that it did not include property claimed by him. If such an acknowledgment or payment is made, the judgment is conclusively presumed to be paid and satisfied as against any person after the expiration of twenty years after the last acknowledgment or payment made by him. The presumption created by this subdivision may be availed of under an allegation that the action was not commenced within the time limited.

Q. How long is a judgment considered a lien on real property?

A. Ten (10) years. See CPLR §5203. Can be extended for an additional 10 years. See CPLR §5014

SIDE NOTE:

A Federal civil action (non-tax related) judgment is valid for 20 years. 28 U.S.C. 3201(c) and can be renewed for another 20 years. Federal Tax Warrants are valid for 10 years.

A NY Tax Warrant is good for 10 years. See Tax Law §174-a.

§ 5203. Priorities and liens upon real property.

(a) Priority and lien on docketing judgment. No transfer of an interest of the judgment debtor in real property, against which property a money judgment may be enforced, is effective against the judgment creditor either from the time of the docketing of the judgment with the clerk of the county in which the property is located until ten years after filing of the judgment-roll, or from the time of the filing with such clerk of a notice of levy pursuant to an execution until the execution is returned, except:

- 1. a transfer or the payment of the proceeds of a judicial sale, which shall include an execution sale, in satisfaction either of a judgment previously so docketed or of a judgment where a notice of levy pursuant to an execution thereon was previously so filed; or*
- 2. a transfer in satisfaction of a mortgage given to secure the payment of the purchase price of the judgment debtor's interest in the property; or*
- 3. a transfer to a purchaser for value at a judicial sale, which shall include an execution sale; or*
- 4. when the judgment was entered after the death of the judgment debtor; or*
- 5. when the judgment debtor is the state, an officer, department, board or commission of the state, or a municipal corporation; or*
- 6. when the judgment debtor is the personal representative of a decedent and the judgment was awarded in an action against him in his representative capacity.*

b) Extension of lien. Upon motion of the judgment creditor, upon notice to the judgment debtor, served personally or by registered or certified mail, return receipt requested, to the last known address of the judgment debtor, the court may order that the lien of a money judgment upon real property be effective after the expiration of ten years from the filing of the judgment-roll, for a period no longer than the time during which the judgment creditor was stayed from enforcing the judgment, or the time necessary to complete advertisement and sale of real property in accordance with section 5236, pursuant to an execution delivered to a sheriff prior to the expiration of ten years from the filing of the judgment-roll. The order shall be effective from the time it is filed with the clerk of the county in which the property is located and an appropriate entry is made upon the docket of the judgment.

(c) Notwithstanding any other provision of law, where a court makes an oral or written determination on the record awarding ownership of an interest in real property, and a judgment effectuating such determination is docketed with the clerk of the county in which such property is located not later than thirty days thereafter, such judgment shall be deemed entered and docketed on the day immediately preceding the date of such determination solely for purposes of establishing the priority thereof against a judicial lien on such property created upon the simultaneous or later filing of a petition in bankruptcy pursuant to the United States bankruptcy code, as amended.

Q. Does the listing of a judgment in a Chapter 7 Petition for Bankruptcy filed by the judgment debtor automatically discharge the lien on real property that the judgment debtor owns upon the discharge in bankruptcy?

A. No - the debtor's obligation to personally pay the judgment is extinguished if the debtor has been discharged and the case has been terminated, but the lien of the judgment on the real property remains unless there is Order voiding the lien.

Q. If a person has a judgment against them and then files bankruptcy and lists the judgment in the bankruptcy petition and thereafter buys real property (all within the 10 year period), does the judgment lien attach to the newly acquired property?

A. No - provided that:

1. The judgment was properly listed in the Bankruptcy petition;
2. The Debtor has been discharged in the Bankruptcy case;
3. The case has been terminated.

The problem for the title examiner is trying to determine whether the docketed judgment has been, or is the one, listed in the Bankruptcy petition for the debtor. Sometimes it is hard to determine because the name of the creditor or the amount is different. An affidavit attaching the appropriate schedule (s) from the Bankruptcy petition is usually acceptable. Section 150 of the NYS Debtor and Creditor Law also provides a method for disposing of the lien. If you can establish the 3 criteria listed above, I usually do not require anything more (e.g. a §150 discharge).

Q. What do you need to clear title for real property listed in a Chapter 7 Bankruptcy filing which is less than 20 years old?

1. Certificate of Abandonment by the Trustee in Bankruptcy;
2. Deed from the Trustee in Bankruptcy;
3. An Affidavit stating that the Debtor was discharged, that the bankruptcy case was terminated, the real property was properly scheduled, was not administered by the Trustee, and no court order exists that would contradict the non-administration of said property.

Pursuant to Bankruptcy Code 11 U.S.C. §554, "*Unless the court orders otherwise, any property scheduled under §521(1) of this title not otherwise administered at the time of the closing of a case, is abandoned to the debtor and administered for purposes of §350 of this title*".

Q. If the survey shows variations in the distances for the lot lines as surveyed (i.e. measured) and as conveyed (i.e. deed or record) is it okay to use both?

No – it should be one or the other. We start with the presumption that you can only convey or mortgage that which you received – i.e. by deed. That doesn't mean that we won't sometime insure a different description. But by changing the description to one parcel, you may end up creating a gap or overlap in relation to the adjacent property. If the discrepancy is minor, we will sometimes

insert the phrase “more or less” after the distance. Today’s surveying instruments are highly sophisticated and extremely accurate compared to the chains and links that were historically used, so discrepancies are to be expected.

SIDE NOTE: I would convert historic descriptions using chains and links, or rods to feet. A chain is 66 feet long and there are 100 links to a chain, so to convert 8 chains and 7 links to feet, the calculation is $8.07 \times 66 = 532.62$ feet. A rod = 16.50 feet, so a 4 rod road is 66 feet wide. A good surveyor will show both references.

Q. Can property which has been specifically devised under a Last Will and Testament be conveyed directly by the Executor or directly by the specific devisee?

An Executor has no authority to convey specifically devised real property.

The prohibition is found in the EPTL §11-1.1 (b) (5) (Fiduciaries Powers), which lists the various powers that a fiduciary has by statute:

*(5) With respect to any property or any estate therein owned by an estate or trust, **except where such property or any estate therein is specifically disposed of:***

(A) To take possession of, collect the rents from and manage the same.

*(B) **To sell the same at public or private sale,** and on such terms as in the opinion of the fiduciary will be most advantageous to those interested therein.*

EPTL 11-1.1 E states:

*(E) **Any power to take possession of, collect the rent from, manage, sell, lease or mortgage, granted by this subparagraph (5), which is prohibited by the terms of the Will, deed or other instrument or by the provisions of this subparagraph (5), nonetheless exists, upon the approval of the surrogate, where such power is necessary for the purposes set forth in SCPA 1902.***

Section 1902 of the Surrogate’s Court Procedure Act states as follows:

§ 1902. *For what purposes real property is subject to disposition.*

The real property may be disposed of for any or all of the following purposes:

- 1. For the payment of the expenses of administration.*
- 2. For the payment of funeral expenses.*
- 3. For the payment of the debts of the decedent, including judgment or other liens, excepting mortgage liens, existing thereon at the time of his death.*
- 4. For the payment of any transfer, estate or other death tax.*
- 5. For the payment of any debt or legacy charged thereupon.*

But what if the specific devisee tells the Executor or Trustee: *I do not wish to take ownership of the property, but would rather have the cash from its sale. Would you please arrange for its sale and then distribute the net proceeds to me.*

There is proposed legislation to allow the fiduciary to sell specifically devised property under certain conditions.

Upon probate of the Will, the property vests in the devisee subject to the Executor's power to sell under EPTL 11-1.1 E and SCPA 1902 as set forth above. For that reason, the proper chain of title should be a conveyance by the Executor to the specific devisee, and then the conveyance by the devisee to the new buyer. We would also accept Deed where both the Executor and devisee join in as Grantors in the conveyance of the specifically devised property to the new buyer.

Q. What types of claims are typically filed?

- Unpaid real estate taxes. Especially in a situation where parcels have been combined. It appears that the County Assessor's Office has been going back to transactions that have closed several years ago and if one of the parcels had tax arrears, it has instituted In Rem proceedings to foreclose those tax arrears from the newly created parcel. The new Owner of the combined parcel had never received any prior notice or bills and now there are extensive penalties and interest that has been added.

- Open Mortgages. Especially Home Equity Line of Credit (HELOC) Mortgages.

- Missed Easements. This is especially true on vacant parcels where future improvements are unable to be constructed due to the existence of an easement. It can also apply to existing structures. Note that the insured is obligated to investigate on its own if evidence of an easement exists – e.g. overhead wires, junction boxes, utility poles, etc.

EXHIBIT 1



CHICAGO TITLE

424 Main St., Suite
200 Buffalo, NY 14202
www.NNYChicaooTitle.com

Search No.:

Chicago Title Insurance Company, a Florida corporation, for valuable consideration to it paid, GUARANTEES to

the record owners of an interest in or a specific lien upon the premises particularly described _____ on the date hereof and their successors in interest of record, that the SET-OUTS designated herein by margin numbers

_____ inclusive, are all the references affecting title to said premises, which appear upon

- a. INDICES to records, papers, files and documents in the office of the CLERK of the COUNTY wherein said premises are situate, and
- b. INDICES to wills and administration of decedent's estates in the office of the SURROGATE of the COUNTY wherein the premises are situate, and
- c. INDICES to bankrupts in the office of the CLERK of the UNITED STATES BANKRUPTCY COURT for the WESTERN DISTRICT OF NEW YORK.

against the names of the parties appearing in the within abstract during the periods in which it appears there was a

record interest in said premises under said names from _____ to the date hereof and upon

- d. JUDGMENT DOCKETS for ten years last past, and
- e. DOCKETS of FEDERAL TAX.LIENS for ten years and thirty days last past

against the names of the parties in such ownership in the office of the Clerk of the County wherein said premises are situate and the corporation GUARANTEES FURTHER that the SETOUTS HEREIN are correct statements as to such records and indices.

- f. Inactive Hazardous Waste Disposal Site Registry Index maintained in the County Clerk's Office for the County in which the Subject Premises is located against the tax map parcel number of the section, block and lot number of the Subject Premises.

The Guaranty under this Certificate shall not be limited by time.

Dated this **day of** _____, _____ and executed under seal.



CHICAGO TITLE

By: _____
Authorized Signature

- **Exhibit 2**

American Land Title Association

Order No:
Commitment

COMMITMENT FOR TITLE INSURANCE
Issued by

Chicago Title Insurance Company

Chicago Title Insurance Company, a Nebraska Corporation, herein called the Company, for a valuable consideration, hereby commits to issue the ALTA (6/17/06) Owner's or Lender's form of insurance policy as modified by the New York Coverage Endorsements or any other policy or policies of title insurance, as identified in Schedule A, in favor of the proposed insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor all subject to the provisions of Schedules A and B and to the Conditions and Stipulations which are hereby incorporated by reference and are made a part of the Commitment.

This Commitment shall be effective only when the identity of the proposed insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six (6) months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

WITNESS WHEREOF, Chicago Title Insurance Company has caused this Commitment to be signed and sealed as of the effective date of Commitment shown in Schedule A, the Commitment to become valid when countersigned by an authorized signatory.

Title Examiner

Underwriting Counsel

Issuing Office:
Chicago Title Insurance Company
424 Main Street, Suite 200
Buffalo, NY 14202
Tel: 716-854-2982 Fax: 716-852-7346

CHICAGO TITLE INSURANCE COMPANY

By:



President

By:

Secretary

Countersigned:

Authorized Signatory

No.

Effective Date: _____, 2014

1. Policy or Policies to be issued:

OWNER'S POLICY: ALTA OWNER'S POLICY (6/17/06) TO BE DETERMINED

Proposed Insured: John Doe and Jane Doe

LOAN POLICY 1: ALTA LOAN POLICY (6/17/06) TO BE DETERMINED

Proposed Insured: TO BE DETERMINED

Borrower: John Doe and Jane Doe

2. The estate or interest in the land described or referred to herein and which is covered by this Commitment is a

Fee

and at the Effective Date of this Commitment is vested in:

John Doe and Jane Doe, his wife.

By virtue of:

Warranty Deed made by John Smith and Jane Smith, husband and wife, to John Doe and Jane Doe, his wife, dated Month Day and Year and recorded in the ____ County Clerk's Office on Month Day and Year in Liber _____ of Deeds at page _____.

3. The land referred to in this Commitment is described as follows:

Address: 1234 Name of Street
City/Town: Buffalo
County: Erie
State: NY

(Legal Description Continued on Attached Page)



Issued By:

CHICAGO TITLE INSURANCE COMPANY

Schedule A (Continued)

No.

The land referred to in this Commitment is described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Buffalo, County of Erie and State of New York, being part of Lot No. __, Township __, Range __ of the Holland Land Company's Survey, and more particularly bounded and described as follows:

BEGINNING at

For Conveyancing Only

Together with all right, title and interest of, in and to any streets and roads abutting the above described premises. Our Policy of Title Insurance includes such buildings and improvements thereon which by law constitute real property, unless specifically excepted therein.



No.

REQUIREMENTS

The following requirements must be complied with prior to the policy being issued:

1. Satisfactory proof of good standing and proof of authority for the conveyance by the corporation shall be established.
2. As _____, LLC is a Limited Liability Company, the Company will require the following information and/or documents prior to closing:
 1. A Certificate of Good Standing from the New York Secretary of State.
 2. A Certificate of Good Standing from the New York Division of Taxation.
 3. Vote and/or consent of the members of _____, LLC authorizing the transaction to be insured.
3. _____ Partnership is a general partnership, we require the following:
 1. A copy of the partnership agreement, together with all amendments thereto, of _____ Partnership for our review and approval.
 2. Resolution of the general partners authorizing the transfer or mortgage. (Not required if all current partners execute the subject document.)
4. Proof of death of John Smith to be provided before closing.
5. The following judgment must be disposed of, or satisfactory proof that they are not against John Smith, who is in our chain of title:

JUDGMENT:

Court: Supreme, **County/Town:** Erie, **Index:** I-2014-1234, **Amount:** \$100,000.00, **Docketed:** January 1, 2009, **Perfected:** January 1, 2009, **Debtor:** John Smith, Jr., **Creditor:** Plaintiff, **Creditor's Atty.:** Plaintiff's Esquire.



No.

EXCEPTIONS

The Owner's Policy will be subject to the mortgage, if any, shown on Schedule B, Section 1 hereof. Schedule B of the Policy or Policies to be issued will contain exceptions to the following matters unless they are taken care of to our satisfaction:

1. Mortgages returned herewith and set forth herein. **(None)**
2. Rights and claims of parties in possession not shown of record.
3. Future installments of special assessments for improvements payable with County taxes.
4. Unpaid water charges, if any.
5. Any state of facts an inspection of premises would disclose.
6. New York Real Property Tax Law Sections 302 and 520 may affect the real estate tax liability if the premises described in Schedule "A" have a tax exemption. Pursuant to the Real Property Tax Law, the exemption of the premises from taxation terminates immediately upon the acquisition of title by a non-exempt entity. The premises shall be taxed pro rata for the unexpired term of that taxable year and subsequent thereon at the full valuation without benefit of such tax exemption.
7. Proof of payment of the 2013 County Taxes.
8. Proof of payment of the 2013 - 2014 City of Buffalo, 1st half and 2nd half, Real Property Taxes.
9. Proof of payment of the 2013 - 2014 City of Buffalo Sewer Rent.
10. Proof of payment of the City of Buffalo Public User Fees.
11. Proof of payment of the 1976-1977 City of Buffalo Occupancy Tax.
12. Exceptions as disclosed by Survey (Job No. _____) prepared by _____ Surveyor and dated _____ as follows:
 - a.
 - b.

CHICAGO TITLE INSURANCE COMPANY

ALTA 6-17-06 Owner's Coverage

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, Chicago Title Insurance Company, a Nebraska Corporation (The Company), insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13 and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but not imposed.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.
11. Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has not gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy.

EXCLUSIONS FROM COVERAGE - OWNER'S

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

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

Provision is made in the rate manual of this company filed with the Superintendent of Insurance of the State of New York for continuation of liability to grantees of the insured in certain specific circumstances only. In no circumstance provided for in this sub-section shall this company be deemed to have insured the sufficiency of the instrument of conveyance or to have assumed any liability for sufficiency of any proceedings after the date of this policy.



CHICAGO TITLE INSURANCE COMPANY

ALTA 6-17-06 LOAN COVERAGE

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, Chicago Title Insurance Company, a Nebraska Corporation (The Company), insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13 and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
 2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
- NOTE: Covered Risk 2(c) is deleted if the Land is improved by other than a 1-4 family dwelling or is vacant.**
3. Unmarketable Title.
 4. No right of access to and from the Land.
 5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
 6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
 7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
 8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

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

EXCLUSIONS FROM COVERAGE - LOAN

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

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).



CONDITIONS AND STIPULATIONS

1. The term "mortgage" when used herein, shall include charge, mortgage, hypothec, deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or If the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter¹ the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously Incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties Included under the definition of insured in the form of policy or policies committed for and only for actual loss Incurred In reliance hereon in undertaking In good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated In Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the Exclusions from Coverage and the Conditions and Stipulations of the form of policy or policies committed for in favor of the proposed Insured which are hereby Incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or Interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

Fidelity National Financial, Inc.
Privacy Statement

Fidelity National Financial, Inc. and its subsidiaries ("FNF") respect the privacy and security of your non-public personal information ("Personal Information") and protecting your Personal Information is one of our top priorities. This Privacy Statement explains FNF's privacy practices, including how we use the Personal Information we receive from you and from other specified sources, and to whom it may be disclosed. FNF follows the privacy practices described in this Privacy Statement and, depending on the business performed, FNF companies may share information as described herein.

Personal Information Collected

We may collect Personal Information about you from the following sources:

- Information we receive from you on applications or other forms, such as your name, address, social security number, tax identification number, asset information, and income information;
- Information we receive from you through our Internet websites, such as your name, address, email address, Internet Protocol address, the website links you used to get to our websites, and your activity while using or reviewing our websites;
- Information about your transactions with or services performed by us, our affiliates, or others, such as information concerning your policy, premiums, payment history, information about your home or other real property, information from lenders and other third parties involved in such transaction, account balances, and credit card information; and
- Information we receive from consumer or other reporting agencies and publicly recorded documents.

Disclosure of Personal Information

We may provide your Personal Information (excluding information we receive from consumer or other credit reporting agencies) to various individuals and companies, as permitted by law, without obtaining your prior authorization. Such laws do not allow consumers to restrict these disclosures.

Disclosures may include, without limitation, the following:

- To insurance agents, brokers, representatives, support organizations, or others to provide you with services you have requested, and to enable us to detect or prevent criminal activity, fraud, material misrepresentation, or nondisclosure in connection with an insurance transaction;
- To third-party contractors or service providers for the purpose of determining your eligibility for an insurance benefit or payment and/or providing you with services you have requested;
- To an insurance regulatory authority, or a law enforcement or other governmental authority, in a civil action, in connection with a subpoena or a governmental investigation;
- To companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and/or
- To lenders, lien holders, judgment creditors, or other parties claiming an encumbrance or an interest in title whose claim or interest must be determined, settled, paid or released prior to a title or escrow closing.

We may also disclose your Personal Information to others when we believe, in good faith, that such disclosure is reasonably necessary to comply with the law or to protect the safety of our customers, employees, or property and/or to comply with a judicial proceeding, court order or legal process.

Disclosure to Affiliated Companies – We are permitted by law to share your name, address and facts about your transaction with other FNF companies, such as insurance companies, agents, and other real estate service providers to provide you with services you have requested, for marketing or product development research, or to market products or services to you. We do not, however, disclose information we collect from consumer or credit reporting agencies with our affiliates or others without your consent, in conformity with applicable law, unless such disclosure is otherwise permitted by law.

Disclosure to Nonaffiliated Third Parties – We do not disclose Personal Information about our customers or former customers to nonaffiliated third parties, except as outlined herein or as otherwise permitted by law.

Confidentiality and Security of Personal Information

We restrict access to Personal Information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard Personal Information.

Access to Personal Information/

Requests for Correction, Amendment, or Deletion of Personal Information

As required by applicable law, we will afford you the right to access your Personal Information, under certain circumstances to find out to whom your Personal Information has been disclosed, and request correction or deletion of your Personal Information. However, FNF's current policy is to maintain customers' Personal Information for no less than your state's required record retention requirements for the purpose of handling future coverage claims.

For your protection, all requests made under this section must be in writing and must include your notarized signature to establish your identity. Where permitted by law, we may charge a reasonable fee to cover the costs incurred in responding to such requests. Please send requests to:

Chief Privacy Officer
Fidelity National Financial, Inc.
601 Riverside Avenue
Jacksonville, FL 32204

Changes to this Privacy Statement

This Privacy Statement may be amended from time to time consistent with applicable privacy laws. When we amend this Privacy Statement, we will post a notice of such changes on our website. The effective date of this Privacy Statement, as stated above, indicates the last time this Privacy Statement was revised or materially changed.