

# APPLICATION OF MUTUAL INDEMNIFICATION AGREEMENT

Michael Berey, Reporter

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## 1. Satisfaction of a Mortgage

A recording officer accepts a satisfaction of a mortgage for recording but marks the record "satisfaction withheld" due to there being a break in the chain of title to the mortgage. The mortgage is a Covered Risk under the Agreement so long as requirements of the Mutual Indemnification Agreement are otherwise satisfied. A written letter of indemnity need not be obtained under the Agreement.

Agreed upon by the participating companies as of July 30, 2003.

## 2. Indenmitor's Policy

Section 2(a)(iii) of the Mutual Indemnification Agreement provides that an Indemnitor's Policy includes a Loan policy that insured a mortgage to a lender that has since acquired all or some of the Land to be insured under the Indemnatee's policy as a consequence of a foreclosure or deed-in-lieu of foreclosure when the lender will be the transferor or mortgagor in the transaction to be insured by the Indemnatee. This Subsection applies when the transferor or mortgagor in the transaction to be insured by the Indemnatee is the nominee of the lender or otherwise is within the scope of the Section 2(a) ("Continuation of Insurance") of the Conditions and Stipulations of the ALTA Loan Policy.

Agreed upon by the participating companies as of August 7, 2003.

## 3. Performance Letters

Insurer's A, B, and C are participants under the Mutual Indemnification Agreement. Insurer A, which insured an Owner's policy, issued a letter of indemnity (either with or without performance) to Insurer B which insured an Owner's policy without raising the exception as to which it was indemnified. Insurer C, now issuing an Owner's or a Loan policy, is indemnified by Insurer B by the terms of the Mutual Indemnification Agreement. The matter in question is a Covered Risk. In the event a claim under the Agreement is made by Insurer C against Insurer B, Insurer B will have recourse against Insurer A under the letter of indemnity with performance.

If, however, Insurer A and C are participants under the Mutual Indemnification Agreement but Insurer B is not, Insurer C should request a letter of indemnity (with or without performance, as applicable) from Insurer B, which, in turn, will have recourse against Insurer A under the letter received by Insurer B. Insurer A and Insurer C do not here have the relationship of Indemnitor and Indemnatee under the Agreement.

Agreed upon by the participating companies as of August 7, 2003

**4. Break in Chain of Title**

Section 3 (b) of the Mutual Indemnification Agreement includes as a Covered Defect the devolution of title where there has been recorded a conveyance for consideration to a bona fide purchaser. The Covered Defect "devolution of title" is not limited to estate matters. This subsection also applies when there is a deed to Entity A and the next deed of record is from Entity B. The subsection also applies when there is a deed out of the purchaser at a foreclosure sale but not a deed out of the referee in the foreclosure action. That the Agreement does not covered unrecorded closing instruments does not limit the indemnity obligation in such cases.

Agreed upon by the participating companies as of August 19, 2003

**5. Break in Chain of Title**

The Covered Defect in Section 3(b) of the Mutual Indemnification Agreement for the devolution of title where there has been recorded a conveyance for consideration to a bona fide purchaser is not limited to estate matters. This subsection also applies when there is a life estate in the back chain of title and there is no proof that the life estate has been terminated or surrendered.

Agreed upon by the participating companies as of September 23, 2003

**6. Administration of Requests for Indemnification as to a Covered Risk**

The Memorandum on Mutual Indemnification Agreement provides that an Indemnitee must have a copy of the Indemnitor's policy in order for the Indemnitor to be liable to the Indemnitee for a Covered Risk. In lieu of a copy of the policy, the Indemnitor may acknowledge liability under the Mutual Indemnification Agreement by noting on a request for a Letter of Indemnity the following: "Liability under the Mutual Indemnification Agreement acknowledged for the exceptions raised in this letter". The notation must be signed by an officer or other authorized employee of the Indemnitor, with the name of the signatory printed below his or her signature. In the event that the exceptions are set forth on a separate sheet, the officer or other authorized employee of the Indemnitor must initial the exceptions.

Agreed upon by the participating companies as of March 4, 2004