

## MEMORANDUM ON MUTUAL INDEMNIFICATION AGREEMENT

On September 24, 2003 Washington Title entered into a Mutual Indemnification Agreement (the "Agreement") with, Chicago Title Insurance Company, Commonwealth Land Title Insurance Company, First American Title Insurance Company of New York, Lawyers Title Insurance Corporation, Old Republic National Title Insurance Company, Stewart Title Insurance Company, Ticor Title Insurance Company, and Transnation Title Insurance Company of New York. The purpose of the Agreement is to expedite the clearance of certain types of title exceptions and limit the need to obtain individual letters of indemnity or performance. The Agreement applies not only to new clearance requests but also to those that remain outstanding. Other title insurance companies may subsequently enter into this Agreement and notice of their participation will be provided. This Memorandum explains how the Agreement is to be applied.

There are four scenarios in which the Mutual Indemnification Agreement can be relied upon:

1. When an Owner's policy has been issued -

A title insurer (the "Indemnitor"), directly or through an Agent, having issued an Owner's Policy in which it omitted a "Covered Defect", or insured against its collection or enforcement, is deemed to indemnify the new title insurer (the "Indemnitee") so long as the Indemnitee, in either its Owner's policy or Loan policy, in the same manner, omits the exception for the Covered Defect or insures against its collection or enforcement.

The Indemnitor under an Owner's policy has liability to an Indemnitee if the Indemnitor's insured is still in title, however, for purposes of the Agreement, the provisions for continuation of liability under the old NYBTU Rate Manual and the TIRSA Rate Manual, as applicable, are to apply. An agent is to consult with its underwriter before relying upon the continuation of liability provisions applicable to an Owner's policy.

A list of Covered Defects under the Agreement is annexed as Exhibit A to this Bulletin.

2. When a Loan policy has been issued, regardless of whether there is a change in the ownership of the estate or interest in the land that was mortgaged, and the insured mortgage is being further insured, either individually or as consolidated -

A title insurer (the Indemnitor), directly or through an Agent, having issued a Loan Policy insuring a mortgage in which the Indemnitor omitted a Covered Defect, or insured against its enforcement or collection, is deemed to indemnify the new title insurer (the Indemnitee) insuring the same mortgage (individually or as consolidated), when the Indemnitee, in the same manner, omits the exception for the

Covered Defect or insures against its collection or enforcement. In this scenario, for the prior title insurer to be an Indemnitor, the Covered Defect must have arisen prior to the date the mortgagor of the mortgage insured by the Indemnitor acquired title to the property as a bona fide purchaser for value. In this scenario, the Mutual Indemnification Agreement does not cover liens and other defects created, suffered or assumed by the Mortgagor.

3. When a Loan policy has been issued, and by reason of a deed in lieu of foreclosure or by a referee's deed in a mortgage foreclosure action of the insured mortgage, the insured lender is now the transferor or mortgagor of the property -

A title insurer (the Indemnitor) is deemed to indemnify the new title insurer (the Indemnitee) as to a Covered Defect which the Indemnitor omitted, or insured against enforcement or collection, in a Loan Policy when the transferor or mortgagor in the transaction to be insured by the Indemnitee is the Indemnitor's insured which has acquired title by a referee's deed in an action to foreclose the insured mortgage or by a deed in lieu of foreclosure of the insured mortgage. The Indemnitee must omit the exception for the Covered Defect or insure against its collection or enforcement in the same manner as was done in the Indemnitor's Policy.

4. When a Loan policy has been issued, and a referee is conveying the property in an action to foreclose the insured mortgage -

A title insurer (the Indemnitor) is deemed to indemnify the new title insurer (the Indemnitee) as to a Covered Defect which the Indemnitor omitted, or insured against enforcement or collection, in a Loan Policy when the Seller in the transaction to be insured by the Indemnitee is the referee in an action to foreclose the mortgage insured by the Indemnitor. The Indemnitee must omit the exception for the Covered Defect or insure against its collection or enforcement in the same manner as was done in the Indemnitor's Policy.

To rely on the Agreement, the Indemnitee, or its Agent, MUST obtain either: (i) a copy of the Indemnitor's title policy; or (ii) a copy of the Indemnitor's marked-up title report.

Under the terms of the Mutual Indemnification Agreement, you are still required to get a letter of indemnity for any matter that is not listed as a Covered Defect. In addition, while the purpose of the Mutual Indemnification Agreement is to reduce the need to request and to write letters of indemnity, you are still permitted to request a letter of indemnity for a Covered Defect.

**YOU ARE REQUIRED TO OBTAIN A LETTER OF INDEMNITY FOR ALL MATTERS, EVEN FOR "COVERED DEFECTS", WHEN THE PRIOR INSURER IS NOT A PARTY TO THE MUTUAL INDEMNIFICATION AGREEMENT AS SET FORTH ABOVE.**

## EXHIBIT A

### COVERED DEFECTS

The following matters, if neither satisfied, released, or disposed of in the Public Records (as defined in the Conditions and Stipulations of the Indemnitor's Policy) from the Land to be insured by the Indemnitee at the time that it issues a policy of title insurance, are Covered Defects under this Agreement:

- (a) Mortgages, federal tax liens, New York State and New York City Tax warrants, judgments, New York City Parking Violation Bureau judgments, Environmental Control Board liens, and Transit Adjudication Bureau judgments filed or docketed against a person or entity out of title, the lien of which has not expired by operation of law, provided no execution has been made, or action commenced to foreclose or to otherwise enforce the lien on the Date of Policy of Indemnitee's policy, and the amount of the lien does not exceed \$250,000. In the event that any such lien exceeds \$250,000 and a letter of indemnity in writing is obtained for that lien, then the Agreement shall remain valid as to each other lien not exceeding \$250,000 provided for in this paragraph;
- (b) Proof of Death, devolution of title, and federal and New York State estate taxes, regarding the estate of a prior owner when there has been recorded a conveyance for consideration to a bona fide purchaser;
- (c) Proof that as of the date of the death of a tenant by the entirety, the then surviving spouse and the deceased were married and not subject to the terms of a separation agreement when there has been recorded a conveyance for consideration from the surviving spouse, or from the fiduciaries of the estate of the surviving spouse, or from the distributes or devisees of the surviving spouse, to a bona fide purchaser;
- (d) As to a corporation in the chain of title to the property within the immediately prior ten years, proof of due incorporation, New York State Corporate Franchise tax, and New York City General Business tax, provided no execution has been made, or action commenced to foreclose or to otherwise enforce the lien thereof;
- (e) Errors in description of the property insured in a deed or conveyance (other than a Mortgage) executed prior to the deed or conveyance insured by the Indemnitor under an Owner's policy provided that the deed insured by the Indemnitor under an Owner's policy contains the correct description; and

- (f) **New York City Sidewalk Violations, but only when the Indemnitor's Policy is an ALTA policy.**

**DEFECTS NOT COVERED BY  
MUTUAL INDEMNIFICATION AGREEMENT**

- 1. Mechanic's liens**
- 2. Notices of Pendency and underlying actions**
- 3. Real estate taxes and tax liens**
- 4. Unrecorded closing instruments**
- 5. Any mortgage, federal tax lien, New York State and New York City Tax warrant, judgment, New York City Parking Violation Bureau judgment, Environmental Control Board lien, and Transit Adjudication Bureau judgment in the amount of \$250,000.01 or greater**
- 6. Other defects in titles that are not Covered Defects under the Mutual Indemnification Agreement**

# APPLICATION OF MUTUAL INDEMNIFICATION AGREEMENT

## 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. Indemnitor'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 Indemnitee'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 Indemnitee. This Subsection applies when the transferor or mortgagor in the transaction to be insured by the Indemnitee 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 Indemnitee 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**