

FEDERAL STANDARD ABSTRACT

TITLE NEWS

Issue #10

July 2005

NEW YORK STATE'S MUTUAL INDEMNIFICATION AGREEMENT

Traditionally, obtaining clearance for an exception to title which should have been resolved when a prior title insurance policy on the same property was issued can be a torture. In July 2003, the Mutual Indemnification Agreement (hereinafter called "Agreement") was signed by a number of underwriters in New York State. The purpose of this Agreement is to streamline the process. This Agreement was expanded effective April 1, 2005 with the execution of the First Amended and Restated Mutual Indemnification Agreement (hereinafter called "Restated Agreement").

The procedure is simple. Generally, if an exception to title is a "Covered Risk" under the Restated Agreement, the title insurer to be indemnified (the "Indemnitee") has a copy of either the title insurance policy issued by or on behalf of the prior insurer (the "Indemnitor") or a copy of the Indemnitor's marked up title report, and the Covered Risk is not listed as an exception to title in the Indemnitor's title policy or marked-up title report, the Indemnitor is deemed to indemnify the new insurer without further action on the part of either company. If the Covered Risk was excepted but insurance was afforded against collection or enforcement, the Indemnitee is indemnified by the prior title insurer, provided that the new title insurer similarly excepts but insures against collection or enforcement.

So what is a Covered Risk? For title policies issued by an Indemnitee after April 1, 2005, mortgages and money judgments (not including federal tax liens), the lien of which has not expired by operation of law, against a person or entity out of title, each in an amount not exceeding \$250,000 can be a Covered Risk, provided that no execution has been made or action commenced to foreclose or otherwise enforce the lien on the issue date of the Indemnitee's policy.

The Restated Agreement added to the Covered Risks for both an Owner's and Loan policy of the new insurer issued on or after April 1, 2005, a mortgage in the original principal amount of \$500,000 or less, open or record, made by the current record owner, not excepted in a Loan policy issued by the Indemnitor, when the proceeds of the mortgage insured by the Indemnitor were used to pay off that prior mortgage. However, additional steps must be taken before an obligation of indemnification can exist for this Covered Risk. The Indemnitee must obtain a copy of i) the mortgage payoff, ii) certified, bank or attorney's escrow check, check of Indemnitor or its agent, or proof of electronic sending and confirmation made by Indemnitee or its agent for the payment of the amount stated in the payoff letter as due, and iii) letter whereby payment was sent to the holder of the mortgage as stated in the payoff letter.

NEW YORK CITY REAL PROPERTY TRANSFER TAX AND MORTGAGE TAX

The City of New York has changed the taxation rules for 1 to 2 family dwelling with an attached garage and/or vacant land.

Previously, when a conveyed or mortgaged property was composed of two tax lots, one of which was improved by a 1 or 2 family dwelling, and the other an adjoining parcel of vacant land used in conjunction with the dwelling, or was an adjoining parcel improved with a garage used in conjunction with the dwelling, New York City has determined that the two lots were to be taxed at the 1-3 family (residential) rate.

Now, the City of New York has taken the position that the above combination of parcels, for Mortgage Tax and Transfer Tax purposes, shall be deemed as commercial property. At closing, the appropriate taxes based on the higher commercial rates shall be collected to assure prompt recording of the documents.

REDUCED PREMIUM RATE NOTICE

To better ensure that borrowers are informed of the availability of such reduced rate and in compliance with the Court's interpretation of Section 14, two additional requirements have been instituted in any order for a refinance or subordinate mortgage loan policy.

- i. Title companies to send a Preliminary Notice to Borrower directly to the borrower at the address of the property being refinanced, and
- ii. At Closing, the title closer shall obtain the borrower's signature on the Closing Notice to Borrower.

DISCLAIMERS

These materials have been prepared by Federal Standard Abstract for informational purposes only and should not be considered professional or legal advice. Readers should not act upon this information without seeking independent professional or legal counsel.

The information provided in this newsletter is obtained from sources which Federal Standard Abstract believes to be reliable. However, Federal Standard Abstract has not independently verified or otherwise investigated all such information. Federal Standard Abstract does not guarantee the accuracy or completeness of any such information and is not responsible for any errors or omissions in this newsletter.

While we try to update our readers on the news contained in this newsletter, we do not intend any information in this newsletter to be treated or considered as the most current expression of the law on any given point, and certain legal positions expressed in this newsletter may be, by passage of time or otherwise, superseded or incorrect.

Furthermore, Federal Standard Abstract does not warrant the accuracy or completeness of any references to any third party information nor does such reference constitute an endorsement or recommendation of such third party's products, services or informational content.

If you have any questions, comments or suggestions please feel free to e-mail us at fsa@federalstandardabstract.com.