

N2K: Title Law in New Jersey

Presented By: Scott K. Sumner, Esq., CTP

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Learning Objectives

- ✓ Explain the purpose of title examination in New Jersey
- ✓ Understand New Jersey's race-notice recording system
- ✓ Identify components of a title commitment
- ✓ Recognize common title defects and underwriting concerns
- ✓ Understand estate, foreclosure, subdivision, and access issues affecting title
- ✓ Distinguish between marketable title and insurable title
- ✓ Apply title law concepts to real-world transactions

Why Title Examination Matters

Purpose of Title Examination

Title companies must determine insurability before issuing a title policy. The examination process helps identify:

- **Ownership interests**
- **Liens and encumbrances**
- **Easements and restrictions**
- **Pending legal actions**
- **Defects affecting marketability**

New Jersey Recording Act

(N.J.S.A. 46:21-1 et seq., 46:22-1 et seq)

Priority generally belongs to:

- ✓ First party to record
- ✓ Without notice of competing interests
- ✓ Who paid valuable consideration

Key Takeaways:

- Recording protects ownership interests
- Unrecorded documents may be valid between parties but vulnerable against third parties
- County land records provide constructive notice

Understanding the Title Searches – What is Being Searched ?

County Records

- ✓ Deeds
- ✓ Mortgages
- ✓ Assignments
- ✓ Easements & Restrictions
- ✓ Other Liens (UCC/CLC/FTL)
- ✓ Releases
- ✓ Lis Pendens

Court Records

- ✓ Superior Court Judgments
- ✓ Bankruptcy filings
- ✓ Chancery Proceedings

Municipal Sources

- ✓ Taxes
- ✓ Assessments
- ✓ Utility liens

Additional Searches

- ✓ Surrogate records
- ✓ Chancery Abstracts
- ✓ Corporate Status



Judgments, Liens & Municipal Searches



Judgments

- NJ Superior Court
- Attaches for up to 20 years

Municipal Searches

- Real estate taxes
- Sewer charges
- Water charges
- Farmland
- Added assessments

Corporate Searches

- Certificate of Formation
- Certificate of Good Standing
- Franchise Tax

The Title Commitment – the Roadmap to Closing

Schedule A

- Who, what, and how much

Schedule B-I

- Requirements to obtain coverage

Schedule B-II

- Exceptions from coverage

Schedule C (if not include in Sched A)

- Description of the insured land



Schedule B-I Requirements Overview

What Are Requirements?

Requirements are items that must be completed before a policy may be issued.

American Land Title Association
New Jersey Variation

Commitment for Title Insurance
2021 v. 01.00 (07-01-2021)

SCHEDULE B, PART I—Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
(Documents to be listed here)

Schedule B-I Requirements: Additional Examples

- ✓ Payment of taxes
- ✓ Affidavits of Title
- ✓ Notice of Settlement
- ✓ Rundown/Continuation

Examples of file –property specific requirements

- ✓ Payoff of mortgages
- ✓ Recording corrective documents
- ✓ Obtaining missing signatures
- ✓ Authority documents for entities ***
- ✓ Satisfying judgments and liens
- ✓ Surrogate Search – Estate information

- **The Importance of the Affidavit of Title**
Why It Matters

Affidavits of Title are used to help eliminate many standard requirements and exceptions:

- ☐ Marital status
- ☐ Authority to convey
- ☐ No unrecorded liens
- ☐ No undisclosed claims or recent construction
- ☐ No hidden possessory rights

Title Insurance Basics

What is Title Insurance?

A contract of indemnity against loss arising from title defects existing on the policy date. ". Sandler v. N.J. Realty Title Ins. Co., 36 N.J. 471, 478 (1962)

Why is it Different From Other Insurance?

- ✓ Looks backward, not forward
- ✓ Focuses on risk elimination
- ✓ Based on legal examination of title

Marketable vs. Insurable Title



Important Distinction

Marketable Title

- Free from reasonable risk of litigation or the need to bring a quiet title action. *Gaub v. Nassau Homes*, 53 N.J Super 209 (App Div 1958).

Insurable Title

- May have an alleged defect but still be insurable

The Title Policy-What's Covered?

All Policies divided into 6 Parts:

- Insuring clauses (“Covered Risks”)
- Exclusions from coverage
- Conditions
- Schedule A
- Schedule B (exceptions)
- Endorsements (if any)

The Title Policy-What's Covered?

The policies in effect today contain “Covered Risks”

All covered risks fall into one of the four following categories (previously known as “Insuring Clauses”)

1. Title not being vested in the insured as stated in schedule A.
2. Liens, defects or encumbrances not excepted on schedule B.
3. Unmarketability of title.
4. Lack of a right of access to and from the land

The Title Policy-What's Covered?

The policies in effect today contain “Covered Risks”

Additional Loan Policy Coverages:

1. Validity and enforceability of Mortgage
2. Priority of Mortgage
3. Construction Liens
4. Validity of Assignment

The Title Policy-What's Not Covered?

Exclusions:

1. Governmental police power
2. Eminent Domain
3. Acts of the insured
4. Known only to insured
5. No loss or damage
6. Post effective date matters
7. Failure to pay value.
8. Bankruptcy/Creditors rights
9. Authority to do business in NJ (Loan)
10. Usury, Truth-in-Lending and Consumer Credit Protection Laws. (Loan)

Transfer of Title and Deeds

Common Deeds

- ✓ General Warranty Deed
- ✓ Special (limited) Warranty Deed/Bargain & Sale Deed with Covenants Against Grantors Acts
- ✓ Quitclaim Deed

Access and Roadway Issues

Common Underwriting Concerns

- ✓ Legal access
- ✓ Road dedications
- ✓ Vacated streets
- ✓ ALTA 17 and 17.1 endorsements

Subdivision Issues

Potential Risks

- ✓ Illegal subdivisions
- ✓ Building permit restrictions
- ✓ Lot merger concerns
- ✓ Municipal enforcement actions
- ✓ ALTA 26 Subdivision Endorsement

Estate and Probate Matters

- Who Signs the Deed?

The Fiduciary Power Act, N.J.S.A. 3B:14-23 gives executors and administrators the power to convey real property without the need for court order.

Scenario	Signer
Intestate	Administrator
General Devise	Executor
Specific Devise	Executor + Devisee

What about Taxes?

Federal Estate Tax

- 10-year lien period
- Verify payment before closing
- Escrow if unresolved
- Applies only to larger estates

New Jersey Inheritance Tax

- 15-year lien period
- ITW required when applicable
- Beneficiary class determines tax
- Escrow may be required

New Jersey Estate Tax

- Applies only to older estates
- Repealed for deaths after January 1, 2018
- Verify waiver requirements
- Escrow if unresolved

Foreclosure and Involuntary Transfers stewart

Mortgage Foreclosure

- ✓ Lis Pendens
- ✓ Final Judgment
- ✓ Sheriff's Sale
- ✓ Redemption rights
- ✓ Bankruptcy Implications

Tax Sale Foreclosure

- ✓ Strict foreclosure
- ✓ Redemption periods
- ✓ Tax sale certificates
- ✓ Hennepin and Roberto Cases
- ✓ Revised Statute (judicial sale)

Role of Government Regulation Stewart New Jersey Oversight

Department of Banking & Insurance

- ✓ Filed forms
- ✓ Filed rates
- ✓ Licensing requirements
- ✓ Consumer protections

Key Takeaways

Remember These Five Things

- ✓ Title examination determines insurability
- ✓ Recording protects ownership interests
- ✓ The title commitment is the roadmap to closing
- ✓ Marketable title and insurable title are not the same
- ✓ Understanding title law helps identify and resolve risks before they become claims



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Keyword Search

Example : Absentee

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November 10, 2026, for our next webinar
N2K: Understanding the Inter-Underwriting
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