

**MEET
THE
EXPERTS:**

Talking Title Topics

Presented:
October 17, 2017
The Falls at
The Double Tree
Mt. Laurel, NJ

stewart title®

Real partners. Real possibilities.™

stewart title

Real partners. Real possibilities.™

FEATURING:



JOHN CROWLEY, ESQ.



DAVID RUBIN, ESQ.

Moderated by:



LARRY BELL, ESQ

**WELCOME!
&
OPENING REMARKS**

stewart title

Real partners. Real possibilities.™

stewart title

Real partners. Real possibilities.™

NJUWing@Stewart.com

stewart title

Real partners. Real possibilities.™

www.VUwriter.com

Picture Clipping Images Link Attach File File Printout Scanner Printout Record Audio Record Video Data Time & Time Stamp Date Equation Symbol Symbols Select Location Recently Viewed Terms of Use State Laws and Customs Toolkit

stewart
Virtual Underwriter

Virtual Underwriter

[Home](#) [Forms](#) [Bulletins](#) **[Real Estate Practices](#)** [Standard Exceptions](#) [Underwriting Manual](#) [Special Alerts](#)

Everything you need.

With VU, you have access to information needed to underwrite a real estate transaction, 24 hours a day, seven days a week. [Click here](#) for a tutorial.



Keyword Search

All of these words This exact phrase Any of these words

Select a Location

 ▼

Virtual Underwriter

stewart title

Real partners. Real possibilities.™

Virtual Underwriter



stewart title

Real partners. Real possibilities.™

Virtual Underwriter

Security Instruments (Deed of Trust vs. Mortgage)

Standard Exceptions and Requirements

State-specific Policy Variations

Title Insurance Form and Filing Regulations

Transfer Taxes

Usury

Withholding Taxes

Witness Requirements

stewart title

Real partners. Real possibilities.™

Virtual Underwriter



Title Clearance; Insurability; Advocacy

N.J.S.A.17:46B-13 Prohibition against the practice of law

No title insurance company and no title insurance agent shall engage in the practice of law or render legal services, legal advice or legal opinions.

Nothing in this act shall be construed to permit or authorize acts by a title insurance company or title insurance agent which may now or hereafter be prohibited by the Supreme Court of the State of New Jersey.

PROPERTY CO-OWNERSHIP QUESTIONS

stewart title

Real partners. Real possibilities.™

Co-Ownership of Property

- What are the different ways to own property?
- How are different tenancies created?
- How do liens affect co-owned property?
- Who needs to sign?

Tenancy in Common

- May involve any number of people
- They only share the unity of possession
- Their interests do not need to be equal in value, quality, or duration
- There are no rights of survivorship and upon death of a tenant in common ownership interest in a property passes to his/her estate
- A tenant in common may individually sell, devise, and encumber **only** their interest any way they choose and without the consent of co-tenant. May involve any number of people

Tenancy in Common

- They only share the unity of possession
- Their interests do not need to be equal in value, quality, or duration
- There are no rights of survivorship and upon death of a tenant in common ownership interest in a property passes to his/her estate
- A tenant in common may individually sell, devise, and encumber **only** their interest any way they choose and without the consent of co-tenants

Joint Tenancy

- Ownership of a single estate held by two or more people who hold title equally and jointly as though they collectively are one person
 - unities of possession, interest, time, and title must always be present
- Intent must be clear to create Joint Tenancy
 - Example: A and B, as joint tenants with the right of survivorship and not as tenants in common
- Joint tenancy provides right of survivorship by which the interest of a deceased joint tenant passes upon death to the surviving joint tenant(s) by operation of law

Joint Tenancy

- No right to dower or curtesy with Joint Tenancy
- Termination of joint tenancy:
 - Death: Joint tenancies may be terminated by the death of all but one of the joint tenants
 - Voluntary Severance: Unless prohibited by a valid agreement any joint tenant may convey or encumber that joint tenant's undivided fractional interest in a property held in joint tenancy however that would eliminate all of the four units that joint tenancy is based upon
 - Involuntary Severance: Bankruptcy proceedings of a joint tenant, divorce, enforcement of a federal tax lien against one joint tenant, a statutory lien, a levy of execution

Tenants by the Entirety

- Reserved only for property held by married couple or civil union partners
- Requires all four unites of title: interest, title, time, and possession – and unity of person (valid marriage or civil union partnership)
- In New Jersey, a conveyance or devise to a married couple or civil union partners is presumed to create a Tenancy by the Entirety (TBE), unless specific wording contradicts the presumption
- Parties must be married/in civil partnership at the time of taking title!

Tenancy by the Entirety

- Federal tax lien against one spouse attaches to the delinquent taxpayer/spouse's interest in the property and can be enforced by non-judicial sale of the property or by judicial foreclosure
- Federal tax liens are extinguished upon the death of the delinquent taxpayer/spouse and do not transfer to the surviving spouse
- Tenancy by the entirety may be terminated by: death, divorce, mutual agreement, joint conveyance from both spouses into one spouse

Life Estates

- Created by conveyance or devise for either the benefitting party's life or the life of another.
- Holder of a Life Estate must sign off on all conveyances or encumbrances (deeds, mortgages, etc.)
- Obtain a death certificate to clear title
- Lien against holder of a Life Estate is extinguished against property upon death.
 - Judgment holder can only execute against the Life Estate, not the remainder interest.

What about Marital Rights?

- A non-titled spouse has a marital interest in the primary marital residence.
- Spouse must join in instrument being signed related to that property (deed, mortgage, or lease)
- Divorce extinguishes marital rights.
 - Review divorce judgment to confirm there aren't any provisions related to this property.
- A non-titled spouse must sign the mortgage during the refinance on the primary marital home!

What about Marital Rights?

Question – Property is held by John Doe, a married man and Kevin Smith, a single Man as tenants in common. Doe and Smith are now selling the property, who needs to sign the deed?

What about Marital Rights?

Answer – John Doe, his spouse, and Kevin Smith should all sign the new deed. However, if it is confirmed that the property being sold was not the primary marital residence of John Doe, his spouse does not need to sign.

Liens and Ownership Issues

- If property is owned as tenants in common, a judgment against fewer than all co-owners will only constitute a lien on the interest of the debtor.
- If property is owned as joint tenants or tenants by the entirety and debtor predeceases the other co-tenants, lien of judgment is extinguished against the property.

**CORPORATIONS
&
ENTITIES
QUESTIONS**

stewart title

Real partners. Real possibilities.™

Corporation Basics – What to look for

- That the corporation has been duly organized in accordance with applicable statutes.
- The exact and precise name of the corporation.
- The date of commencement of the corporate existence.
- That the corporate duration has not expired.
- That the documents under which it operates do not contain any provisions affecting the corporation's power to acquire, hold, convey, mortgage, or otherwise deal in real property.

Corporation Basics

- That there are no statutory limitations to the power of the corporation to act or operate in real estate transactions.
- That, at the present time, the corporation is in good standing in the state of its incorporation.
- That the consent or approval of a regulatory agency is not necessary.

Requirements to Insure a Corporation

That approval or consent of the shareholders when involving all or substantially all of the assets of the corporation has been obtained, or when the corporation has had its charter revoked for longer than three years

Requirements to Insure a Corporation

That there is a resolution of the board of directors of the corporation, duly certified by its secretary, authorizing the transaction and execution of the pertinent real estate documents, or if any officer is empowered by the articles of incorporation, charter, or any other corporate document, that there is a certificate issued by the secretary of the corporation stating the name of the person acting in this capacity and certifying that this person's authority to execute transactions on behalf of the corporation has not been amended, modified, or revoked.

Defunct Corporations

- **Termination of Corporate Existence**

- **Automatic Dissolution** A corporation is automatically dissolved upon the expiration of the period for which it was created without any direct action on the part of the state or the members of the corporation
- **Voluntary Dissolution** Voluntary dissolution occurs when the shareholders of a corporation agree to effectuate the dissolution of the corporation
- **Involuntary Dissolution** Involuntary dissolution occurs when the dissolution of the corporation takes place under the provisions of general dissolution statutes or under statutes permitting judicial dissolutions

Corporate Vesting Examples

- ABC Corporation, a (State of Incorporation) corporation.
- ABC Corporation, a not-for-profit (State of Incorporation) corporation.
- ABC Corporation, a (Type of Corporation) (State of Incorporation) corporation.
- ABC Corporation, a defunct or dissolved (State of Incorporation) corporation.
- The shareholders of ABC Corporation, a defunct or dissolved (State of Incorporation) corporation.
- The Statutory trustees of ABC Corporation, a defunct or dissolved (State of Incorporation) corporation

Limited Liability Companies

- The form of ownership most common in real estate transactions is in the form of a Limited Liability Company
- A limited liability company is a business entity which exists independently from its owners, but which elects not to be treated as a separate entity *for tax purposes*
- On September 19, 2012, Governor Chris Christie signed the **Revised Uniform Limited Liability Company Act** (the “Revised LLC Act”) that substantially modifies and modernizes New Jersey law governing the formation and operation of limited liability companies (“LLCs”) incorporated in New Jersey

What is now required...

- The Revised LLC Act, provides that the Operating Agreement may be in writing, oral or even implied based on how the LLC operates.
- The Revised LLC Act permits an LLC to file a “statement of authority” with the State Treasurer setting forth those individuals or entities with the authority (or lack thereof) to execute agreements relating to the transfer of real estate and enter into any other transactions on behalf of the LLC

Limited Liability Companies...

- Need proof of formation to insure an LLC sale or mortgage.
- Once an LLC has been validly created, judgments against the individual members do *not* constitute liens against LLC property.
- Need Resolutions of the LLC providing authority to consummate the transaction and, provide authority for an individual to execute instruments on the LLC's behalf

**DECEDENTS
&
ESTATE
QUESTIONS**

stewart title

Real partners. Real possibilities.™

Federal Estate Taxes

- Federal Estate Taxes are a lien against real property for 10 years from the date of death.
- Obtain proof that any Federal Estate Taxes due are paid prior to closing
- If closing is to occur prior to receipt of proof of payment, an escrow must be held and Indemnity Bond completed by seller
- A Federal Estate Tax is due depending upon the value of the estate at the date of death.

Federal Estate Taxes

- Federal Estate Tax Exemption has been over \$5 million per individual since 2011:
 - 2012: \$5.12 million
 - 2013: \$5.25 million
 - 2014: \$5.34 million
 - 2015: \$5.43 million
 - 2016: \$5.45 million
 - For 2017, it is \$5.49 million per individual
- Typically, a majority of estates are not going to be subject to Federal Estate Taxes

New Jersey Inheritance Tax

- NJ Inheritance Tax is a lien for 15 years from the date of death
- Upon full payment of the NJ Inheritance Tax, the Department of Taxation will issue an Inheritance Tax Waiver (ITW) which is to be filed in the county in which the real property is located.
- If the estate is taxable, an Inheritance Tax Waiver must be obtained for the property in question prior to closing.
- If closing is to occur prior to receipt and filing of Inheritance Tax Waiver, an escrow must be held and Indemnity Bond completed by seller.

New Jersey Inheritance Tax

- NJ Inheritance Tax is based upon the amount inheritance received by a devisee or heir at law.
- We do not require an Inheritance Tax Waiver if all beneficiaries are Class A beneficiaries
- All other beneficiaries, except “non-profits” are subject to NJ Inheritance tax after calculation of a threshold exemption
- A Questionnaire in Connection with Debts or Claims of the Estate must be completed

New Jersey Inheritance Tax

- **Class A:** Father, mother, grandparent, grandchild, spouse, domestic partner, civil union partner, child, stepchild, legally adopted child, issue of a child or legally adopted child, any mutually acknowledged child, and non-biological child conceived by artificial insemination during a civil union or domestic partnership (unless it is proven that non-biological parent did not intend to be child's parent)
- **Class C:** Brother, sister (including half-brother/sister),
- **Class D:** Any transferee who isn't Class A, C, or E
- **Class E:** State of NJ, educational institutions, churches, hospitals, etc. (Most charitable conveyances)

New Jersey Estate Tax

- Effective for estates where decedent dies after 12/31/01
- New Jersey Estate Tax is a lien on the property. Cannot transfer without Director's consent.
- Tax must be paid within 9 months plus 30 days of date of death.
- For estates in excess of \$675,000 (DOD Prior to 1/1/2017) or \$2,000,000 (DOD 1/1/2017 and after) , must have:
 - Completed estate questionnaire
 - Proof of payment of New Jersey Estate Taxes
 - Estate Tax Waiver from Division of Taxation to be recorded – If not recorded, you must hold an escrow
- New Jersey Estate Tax will be eliminated for residents dying on or after 1/1/2018!

Decedents' Estates

TESTATE PROCEDURES

- Probate of Will
- Appointment of Executrix/Executor
- Appointment of Administrator c.t.a. (*cum testamento annexo*)
- Marshalling of assets
- Payment of estate debts
- Payment of NJ Inheritance Tax , NJ Estate Tax, and/or Federal Estate Tax, if applicable and Obtain ITW
- Sale of assets
- Distribution of estate assets to devisees
- Final accounting of estate

Decedents' Estates

INTESTATE PROCEDURES

- Administration of estate
- Appointment of Administratrix/Administrator
- Marshalling of assets
- Payment of estate debts
- Payment of NJ Inheritance Tax, NJ Estate Tax and/or Federal Estate Tax
- Obtain Inheritance Tax Waivers
- Sale of assets
- Distribution of estate assets to heirs at law
- Final accounting of estate

Decedents' Estates

DEVOLUTION OF PROPERTY UPON DEATH

N.J.S.A. 3B:1-3 provides that real and personal property **passes upon the death of a person** (the decedent), to the persons to whom the property is devised by will or, in the absence of a will, to the decedent's heirs at law.

- If property passes by will, it may be by specific devise or residuary devise.
- A deed from the Estate to the heir/devisee is required!

Decedents' Estates

- 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.
 - If decedent dies intestate, as a general rule we will accept an administrator's deed without requiring the heirs to join in the conveyance.
 - If a decedent dies leaving a will and the devise is a general devise, we will accept a Deed from the executrix without requiring the devisees to join in the conveyance.
 - If the decedent dies leaving a will and the devise is specific, we will ask that the deed be executed by the executrix and the specific devisees.

Decedents' Estates

Question – Mother owns property and dies in 2007 without a will leaving three adult children (John, Karen, Michael). In 2016, Michael dies without a will with no other heirs. John and Karen are named administrators of both estates. Mother's property is now being sold to a third party. Who needs to join in signing the deed?

Decedents' Estates

Answer – John and Karen should sign the deed both individually and as the co-administrators of both the Mother's and Michael's estate.

Even though Michael died in 2016, he still was entitled to 1/3 of his mother's estate. Upon his death, his estate was still entitled to that 1/3.

Therefore, John and Karen should sign the deed in their individual capacity and as administrators to eliminate any question of remaining interest.

Decedents' Estates

TESTAMENTARY TRUSTS

- A testator may devise property to a testamentary trust created by the terms of his own will
- In this situation, the will itself establishes the trust and sets the boundaries of the trustee's authority
- The creation of any testamentary trust is dependent upon:
 - The death of the testator
 - Probate of the will.
- An intervivos or living trust may be the devisee under a will
- If property is placed in testamentary trust, the Trustee must join the Executor in signing the deed!

Decedents' Estates

- Is Executrix complying with the terms of the will?
 - If not, have all heirs/devisees agreed to the transaction?
- Is Executrix/Administratrix acting in the best interest of the estate?
 - For example: Selling property for fair market value?
 - Watch out for self-dealing transactions!
- Judgments against Decedent
 - Tenancy in Common: Judgments do not die with decedent
- Judgments against Heir or Devisees
 - Residuary beneficiary: No | Specific Devise: Yes

Decedents' Estates

Question – Mother dies with a will leaving her estate to her two children, John and Tim. John is named the executor of the estate. John, on behalf of the estate, is now selling the property to a developer for less than fair market value. What should we do?

Decedents' Estates

- Answer – We need more information. Why is it being sold for less than fair market value? Is Tim aware of this transaction? Has he approved of it? Best way to move forward is to either have Tim join the signing of the deed or sign an affidavit stating he approves of the transaction.
 - If the Executor is not acting in the best interest of the estate and the devisees, a claim could be made in the future.

Decedents' Estates

- Missing Estate or Heir Information – What to consider?
 - Passage of time
 - Current owner title policy?
 - Heirship affidavits
 - When in doubt – talk with your underwriter!

**FORECLOSURE
DIL & REO
QUESTIONS**

stewart title

Real partners. Real possibilities.™

REOs and Post Foreclosure Title Issues

- Is there a redemption period? Was there a Federal Tax Lien or USA lien against the foreclosed owner, was there proper notice?
- Is the borrower still in the property?, was there an eviction proceeding?
- Did the record owner of the note, as evidenced by title conduct the foreclosure?
- Review the Final Judgment, this will sometimes address senior lien holders or reformation actions to address legal description issues as well as shortened redemption periods in some cases. As well as determine if a deficiency judgment was imposed against the borrower.

REOs and Post Foreclosure Title Issues

- Review the legal description on the Foreclosure Deed, does it match with the foreclosed mortgage/deed?
- If there was a senior lien, was there a policy issued at the time of origination? Was there a TSG issued and insured with the foreclosure?
- Were all parties addressed in the foreclosure with an interest /Did the borrower die?
- What was the foreclosed Sale amount and what is the property being sold for?

REOs and Post Foreclosure Title Issues

- What was the foreclosed Sale amount and what is the property being sold for? This is to address any equity issues.
- Was a Bankruptcy filed by the foreclosed borrower? What type of Bankruptcy?

Foreclosures in the chain of title

- Review of the proceedings and condition of title derived from the foreclosure in the chain of title:
- Search and Exam should review the proceedings as they would if the current owner was the subject of the foreclosure similar in the way you review the foreclosure of the current owner.

Foreclosure: What Could Possibly go wrong?

- Reviewing the Chancery Abstract – the chancery abstract only provides you what has been filed in the case. This does not provide whether everyone was properly joined.
 - When reviewing look for properly named defendants
 - Proper service and default
 - Proper Notices of Motions
- Notice of Sale
 - Not required to be filed electronically (often mistaken as a missing document in abstracts)
- Filings during an active Bankruptcy
- Missed liens/judgments – need to cross reference complaint with title search

Foreclosures in the chain of title

- Review of the Deeds— Was the deed in the chain, after the foreclosure for a **bona fide purchase (BFP)**?
- Was the foreclosed borrower placed back in title? if this is the case, underwriting should review,
- In the event the mortgagor under the mortgage or deed of trust foreclosed subsequently reacquires title to the property, it is possible that such a reacquisition may effectuate the revival of the junior liens and encumbrances that were cut out by the foreclosure action

Foreclosures in the chain of title

- Was the foreclosure sale amount more or less than the purchase price at the time of the REO transaction in the chain of title?
- Lastly, time can be on your side, depending on the defect but underwriting should be consulted as there are some state statutes that would bar action after time, depending on the defect.

Foreclosure Issues

- **NJSA 2A:50-56.1.** Statute of limitations relative to residential mortgage foreclosures
 1. Six years from the maturity date or date of last payment as set forth in the mortgage
 2. Thirty-six years from the date of recording of the mortgage OR if the mortgage is not recorded, thirty-six years from the date of execution

Insuring title derived through a deed in lieu

- The Deed in Lieu of Foreclosure is one that can be attacked very easily therefore, careful consideration and review of title must be made to insure clear title.
- Since this is a transaction not resulting from a foreclosure, any junior lien interests must be released of record.
- Any matters found of record that could be senior to the mortgage/DOT that is subject of the DIL, must also be addressed, as a normal practice in insuring title.
- In most cases, the lender will already have a foreclosure action pending, and this must be released and dismissed with prejudice to insure.

Insuring title derived through a deed in lieu

- The mortgage must be released of record. If not, the mortgage must remain as an exception on the policy.
- The grantor/mortgagor must vacate the property and surrender possession to the grantee/mortgagee.
- The grantor/mortgagor must execute a Deed in Lieu of Foreclosure Affidavit and Estoppel Certificate, which may be modified consistent with local practices, in addition to a customary seller's/owner's affidavit.

Insuring title derived through a deed in lieu

If your search discloses a deed in lieu of foreclosure recorded in the chain of title within 90 days prior to the current transaction, contact our underwriting team. In such situations, additional requirements and exceptions may be raised. For example, it may be necessary to confirm that the grantor/mortgagor of the deed in lieu has not filed bankruptcy. In addition, you may be required to obtain verification of the outstanding balance of the recently released debt in order to compare it to the current sale price. Otherwise, it may be necessary to insert a creditor's rights exception into the new policy.

Question

There is a foreclosure in my chain of title, what do I need to do?

And the answer is...

1. Do you have an Owner's policy?
2. Was the foreclosure within the last ten years?
3. Are we the first bona fide sale after Foreclosure?

Reviewing the Foreclosure

Chancery Abstract vs Certificate of Regularity

- Which one should I order and why?
- And the answer is...

Question.....

I reviewed my Chancery and there are so many notes? How do I know which ones are important and which ones are not important?

Reviewing the foreclosure

- Issues/Concerns
 - Were all necessary parties with possible outstanding ownership interests named in the suit (non-vested spouse, heirs, etc.)
 - Are all lienholders named in the suit so that their interests may be extinguished

Reviewing the foreclosure

- Service - were all defendants named and properly served
- Can you connect the proper parties? Are the assignments into the foreclosing lender all of record and do they allow you to connect the dots?

Weighing the Risk

- How can this affect my transaction?
- Risk - purchase price vs foreclosed mortgage

I Have A Question!

- I reviewed my Chancery and I just want to double check, there was a first mortgage and a second mortgage. The first mortgage foreclosed, we don't care about the second, correct?
- And the answer is.....

Question

I reviewed the search and the Chancery and we have a big problem. There is a note that service may be deficient on a creditor with a \$1000 judgment. How do I fix this?

- a. Serve them myself
- b. Call the creditor
- c. Harass the foreclosure firm until I get an answer
- d. None of the above

Lis Pendens...Question

- I understand that liens filed subsequent to the Lis Pendens will be cut off. What if there was no Lis Pendens, do they need to redo the foreclosure?
- And the answer is...

Lis Pendens

- NJSA 2A:15-8 - Until either final judgment or Lis Pendens is filed, bona fide purchaser does not have constructive notice
- NJSA 2A:15-7 - From the date of the filing forward, any party acquiring title is deemed to have taken with knowledge of the pending action and will be bound by any subsequent judgment in the action
- NJSA 2A:15-11 - Lis Pendens is effective for five years

Lis Pendens

The Complaint should be amended to name parties with interests appearing subsequent to the mortgage but prior to the filing of the Lis Pendens.

Recurring Issues

- Condominium lien - Is there anything that needs to be paid since the mortgage was recorded first?
 - And the answer is.....
- A tax sale certificate was not named in the foreclosure, is this an issue?

BANKRUPTCY QUESTIONS

stewart title

Real partners. Real possibilities.™

Bankruptcy Issues

Bankruptcy Chapters

Chapter 7:

This is a liquidation of all the debtor's non-exempt assets with the proceeds to be used to pay creditors

Chapter 11:

This is a reorganization of a business, whether owned individually or through an entity. It results in a plan for the continuing operation of the business

Chapter 13:

This is a reorganization of the debts of an individual. Like Chapter 11, it also results in a plan.

Bankruptcy Issues

Automatic Stay:

- Under 11 U.S.C. §362 upon the filing of a Petition for Relief, both the debtor and the debtor's property are protected against further actions by creditors.
- The stay is automatic and protects all of the debtor's property wherever located even if a creditor does not have notice of the bankruptcy.
- Matters stayed would include: collection activities; enforcement of judgments; creation, perfection, or enforcement of liens; commencement or prosecution of any court action to recover a debt.

Bankruptcy Issues

Automatic Stay:

The automatic stay continues until the property is no longer subject to the jurisdiction of the bankruptcy court or an order is entered lifting the stay. 11 U.S.C. §362. Only the bankruptcy court can lift the stay; state courts and other federal courts do not have that power. It generally takes 20-30 days to lift the automatic stay

Bankruptcy Issues

Pending Case:

- Abandonment - The trustee, or the debtor-in-possession (under Chapter 11 or Chapter 12) may abandon property after giving notice to all interested parties of the proposed abandonment.
- Exempt Property - Debtors are given the choice of using state exemptions or, if the state does not prohibit the federal exemptions, federal exemptions
- Fraudulent Transfers - A trustee may void a fraudulent transfer, which is any transfer of the debtor's property within two years if the debtor received less than a "reasonably equivalent value" in exchange for the transfer and was insolvent on the date of the transfer. 11 U.S.C. §548.

Bankruptcy Issues

Sales out of Bankruptcy:

Who has the authority to sell ?

- The trustee will sell property of the estate in a Chapter 7 proceeding or, if qualified and appointed, in a Chapter 11 proceeding.
- A debtor-in-possession in a Chapter 11 proceeding will sell property of the estate, subject to limitations by court order (generally limited to sales in the ordinary course of business).
- The debtor will sell property other than in the ordinary course of business in a Chapter 13 proceeding.

Bankruptcy Issues

Sales out of Bankruptcy:

Taking Title from a Trustee:

- Trustee may sell property only after notice and a right to a hearing.
- Twenty days notice prior to sale is required to be given to the debtor, trustee and all creditors. Rule 2002.
- Certificate of mailing must be reviewed to establish mailing was timely and to proper parties.

Bankruptcy Issues

- Notice must —
 - a) Describe sales price and other terms
 - b) Identify purchaser
 - c) Contain description (general or legal) of property
 - d) State time within which objections must be filed
- Objections—
 - a) If objections made, court must hold hearing
 - b) If not made, sale may proceed

Bankruptcy Issues

Sales Free and Clear:

- The sale of the property must be covered by the plan
- Hopefully, the plan itself makes provision for the sale of property free and clear of liens
- If a sale free and clear of liens not provided for in the plan, an order is required
- Only those liens specifically listed as being the subject of the sale free and clear will be divested from the property. Many times real estate taxes, first mortgages of record and federal tax liens are not included in the listing. Make sure all liens of record are listed or are getting paid from sale proceeds.

Bankruptcy Issues

Effect of Bankruptcy on Liens Against Real Property:

- A discharge in bankruptcy is not an extinguishment of the debt discharged, but rather is an injunction against the creditors regarding the enforcement thereof against the debtor personally. The debt itself continues and the lien against the property remains undisturbed.
- **After a discharge, a creditor retains its perfected lien unless the lien has been avoided by an adversary proceeding, judgment, or other Bankruptcy court order.**

What to do about the remaining Lien

- *A Discharge of Debtor does not necessarily mean that any judgments or liens are automatically removed*
- Lien avoidance based upon homestead exemption in 11 USC 522(f)
- Here's a simple example. Say you own a home with \$20,000 of equity (it's worth that much more than your mortgage), are entitled to a \$30,000 [Federal] homestead exemption, and have a judgment lien against you and the home for \$15,000. All of your equity is protected by the homestead exemption because the amount of equity is less than the maximum protected amount. The judgment lien all cuts into that protected equity. So it can be "avoided" or removed through bankruptcy

N.J.S.A 2A:16-49.1

At any time after 1 year has elapsed, since a bankruptcy was discharged from his debts, pursuant to the acts of Congress relating to bankruptcy, he may apply, upon proof of his discharge, to the court in which a judgment was rendered against him, or to the court of which it has become a judgment by docketing it, or filing a transcript thereof, for an order directing the judgment to be canceled and discharged of record.

**CONDO/CO-OP &
COMMUNITY
ASSOCIATION
QUESTIONS**

stewart title

Real partners. Real possibilities.™

Community Associations

Perhaps the best place to start would be tracing the history of the condominium form of ownership from Roman times to the present....

Or we can skip several hundred years, when the Condominium form of ownership became recognized in New Jersey around 1968

Are you a Condominium, Homeowners Association or Planned Unit Development

- The first step in dealing with community associations is determining what form we are dealing with.
- Homeowner's Association (HOA) this is the closest to the familiar, individual form of home ownership. While part of community individuals are vested with fee title in an individual lot in the Association
- Condominium Association – A form of ownership, created by Statute N.J.S. 46:8B-9 (the Condo Act). Individuals purchase a Unit becomes a tenant in common with all other unit owners with each having a proportionate interest.

Community Association Basics

Cooperative Ownership:

- Legal title to the real and personal property of the project is vested in a cooperative entity.
- Individuals purchase shares of stock in the cooperative corporation and occupy the units pursuant to proprietary leases.
- Ownership is a personal property interest, not real property
- If insurable, a Leasehold Owners/Loan Policy would be applicable.

Condo Association Membership

- Members of Condo Association and Homeowners' Association take title subject too the Association's Governing Documents
 - Master Deed
 - By-Laws
 - Declaration of Restrictive Covenants
 - Rules & Regulations

Dues, Liens Judgments

- Once an individual purchases a unit/residence in an association, they AUTOMATICALLY become members and are required to pay monthly assessments
- Failure to pay those assessments may result in the filing of a Claim of Lien against the unit
- Failure to pay those assessments may result in a money judgment against the owner
- Failure to pay those assessments may result in foreclosure of the Association's lien.

Community Association Underwriting Issues

- When presented with a property which is part of an Association, one must look for the liens of the Association for non-payment.
- Prior to closing any transaction, a demand **MUST** be made on the Association (its attorney or property manager) for a statement of accounts to clear any/all outstanding issues.
- Liens against the property will only be released when a Unit/Homeowner's account is brought current

Community Association Underwriting Issues

- Judgments held by an Association should be treated as any other judgment shown on an Upper Court Search.
 - Always ensure that discharges and warrants to satisfy are procured when clearing liens and judgments to avoid a headache down the road

Community Association Underwriting Issues

Avoiding Condo Association Liens:

- NJSA 46:8B-21 (d) – Association must provide the unit owner, unit purchaser, holder of mortgage or other lien a certificate evidencing the amount of unpaid assessments within 10 days of the request.
- All parties other than the unit owner are entitled to rely on the certificate with their liability limited to the amounts in the certificate.

The Six Month Priority

- ONLY APPLIES TO CONDOMINIUM FORMS
- Once the 6 month priority is paid, all liens MUST be released.
- This is a purchaser out of foreclosure's responsibility (bank or third party)
- “We don't need to release the liens, they expire by operation of law” ..be prepared to hear this mantra

Questions.....

- The Association took title can we insure the transaction
 - The Association may take title through foreclosure proceedings or judicial sale
 - When presented with these, we need to tread with caution...pleadings in both actions must be reviewed and scrutinized
- The Association's Lien was not discharged after the bankruptcy/foreclosure can we still proceed with the transaction?

TIDELANDS QUESTIONS



stewart title

Real partners. Real possibilities.™

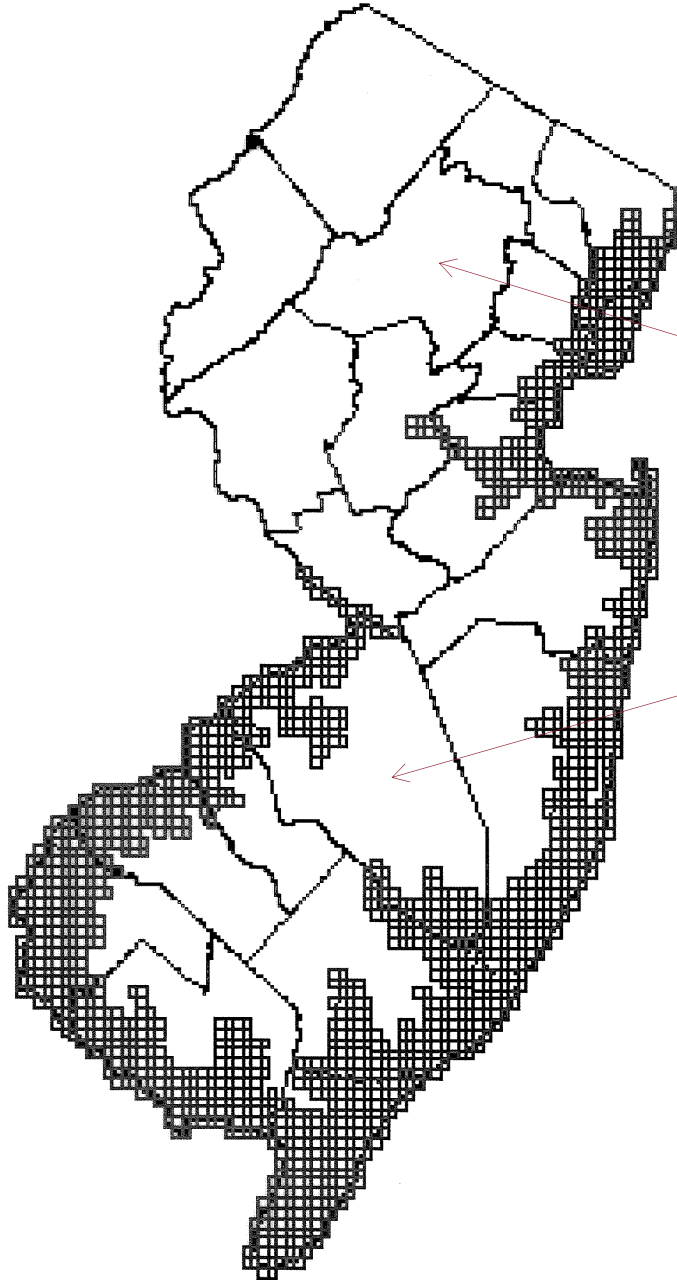
New Jersey Tidelands

- What is a tideland?
 - All lands that are currently or were formerly flowed by the mean high tide of a natural waterway.
- When to run a search?
 - Every County Except **Morris, Sussex, Warren and Hunterdon** has Tideland Claims.
 - Tideland Claims are not limited to “shore areas” or ocean front property.
 - Claims also exist in northern counties and in areas sometimes blocks from present watercourses.
- Tideland Searches are pass through charges.
- If the Tideland Search shows the property is unclaimed, no exception is necessary for rights of State of New Jersey.

NEW JERSEY TIDELANDS KEY MAP

stewart title

Real partners. Real possibilities.™



New Jersey Tidelands

**No Need To
Order if your
Property is
Located Here**

New Jersey Tidelands

- If the Tideland Search shows the property is claimed, you need to see whether or not a grant has been obtained.
 - If there is a Grant, you must obtain a copy of the Grant, and determine that the Grant covers the property.
- You must review the Grant, and the property description. If you cannot tell if the entire property is granted, you should ask the surveyor to plot it out.
- As to “Shoreline” Grants, you may not assume they cover interior streams and they may not be relied upon for that purpose without written approval of the company.
- You may not assume a Grant covers lands later claimed by the state due to erosion. For example, where the Grant line lies waterward of the claim line.

New Jersey Tidelands

- You may not assume a Grant covers all lands later claimed by the state where the grant pre-dates the claim map and the high water line on the Grant does not match the claim line. For example, where claimed stream beds do not match the location of the streams on the grant map.
- After the grant is reviewed for coverage, you need to make sure that the grantee was the upland owner at the time the grant was obtained.
 - If not, the grant is ineffective.
- Tideland Products provide claim status, tideland maps, and any notes relevant to the property.

New Jersey Tidelands

Property is claimed! Now what?

If the Grant covers the entire area claimed by the State, show the Grant as an exception on Schedule B as follows:

*Terms, conditions and limitations as contained in Riparian Grant from the State of New Jersey recorded * in Deed Book *, Page *.*

– The following affirmative insurance may be given:

“Policy will insure that the grantee was the upland owner at the time the grant was made.”

- Provided, a search of the public record confirms that the grantee was, in fact, the upland owner at the time of the grant was made.

New Jersey Tidelands

- As to all property, which borders on tidal flowed water, the below exception should be taken, unless written permission is given by the company to remove the exception.
 - *Title is not insured as to any portion of the premises lying below the present or former high-water mark of (Name of body of water)*

New Jersey Tidelands

- What is property is claimed and there is no grant?
 - Must except for rights of State of New Jersey:
 - *Title, rights, or claims of the State of New Jersey to any part of the insured premises which is or may be alleged by the State of New Jersey to be, or is hereafter determined to be, salt marsh, tidelands or meadowland of land now or formerly flowed by the mean high tide of the ocean or any bays, rivers, streams, creeks, or their tributaries.*

New Jersey Tidelands

Ways to resolve the state's claim include:

- Leave the exception in
- Indemnity with undertaking based upon a prior policy
- Escrow of funds, together with an indemnity by sellers, with an application for a Grant or Statement of No Interest.

Note: The amount of time necessary to obtain a Grant and the appreciation of property in the current market increases the risk in determining the escrow amount and the sufficiency of coverage in any prior policies relied upon for indemnities.

New Jersey Tidelands

- What about condominiums and Tidelands claims?
 - If a portion of the condominium property is claimed by the state and there isn't a grant, contact your Stewart Underwriter.
 - Depending on the situation, we may be able to pass if we can determine that the grant only affects the common elements of the condominium and not the actual unit being sold.

CONSTRUCTION LIEN QUESTIONS

stewart title

Real partners. Real possibilities.™

Construction Lien Issues

We are insuring a refinance and our search turned out a Notice of Unpaid Balance recorded 3/13/2012. The property owner says that he and the contractor had a dispute over the final amount owed on the project. The property owner does not want us to escrow. What do I do?

Construction Lien Issues

- The Construction Lien Law replaced the Mechanic's Lien Law in NJ in 1994

N.J.S.A. 2A:44A-1 et Seq.

- Statutory lien in favor of contractors/sub contractors, suppliers and other parties designated by statute who furnish labor or materials in the construction of improvements on a parcel of land.
- Amendments implemented in January of 2011 specifically relating to residential properties

Construction Lien Issues

- Construction Lien Law (NJSA 2A:44A-1) governs the process.
- In order to file, there must be a written contract
- Construction lien claims (CLC) must be filed within 90 days (non-residential) or 120 days (residential) of the last work performed or services provided.
- A Notice of Unpaid Balance (NUB) may be filed within 90 days of the last work or services provided.
 - A NUB must be filed for residential property
 - Parties who acquire an interest in the land with a pending NUB take subject to subsequently recorded CLC.

Construction Lien Issues

- An action to enforce a lien claim must be brought within 1 year of the filing of the claim or within 30 days of a demand by the property owner to commence suit to enforce the claim.
- CLCs and NUBs (and any related Lis Pendens) must be discharged before any new encumbrances or advance of funds for construction loans

Insuring Construction Loans

- If you are insuring a mortgage where there will be construction draws – a pending disbursement clause must be set up in the commitment and policy!
- See STGC Bulletin NJ2010005 on Virtual Underwriter for exact language.
- Each time funds are disbursed, a title examination must be continued to the current date to discover any possible liens (including CLCs and NUBs)

Construction Lien Issues

- A party must perform work “under a contract” to be entitled to a lien
- Any contractor, sub-contractor or supplier who provides work, services, material or equipment is entitled to a lien based on the contract price
- If the contract is with a tenant, the lien is only on the leasehold estate, unless the owner has authorized the work in writing

Construction Lien Issues

- The lien claim must be served on the owner within 10 days of filing with the county clerk
- Lien claim must specify amount, effective date of lien and be recorded in the county clerk's office in the Construction Lien Index Book
- Within 10 days of commencement of an enforcement action, notice must be filed with the county clerk and marginally notated in the lien book
- A lis pendens must also be filed

Construction Lien Question

We are insuring a sale out of a developer. The plumbing subcontractor filed a construction lien claim and filed a Lis Pendens covering our property. Seller says that the plumber is out of luck since the claim was filed more than 90 days after the completion of work. The buyer needs to move in as they have sold their home and the moving van is waiting at our property. Can we omit?

Construction Lien Question

- You may omit a Lien Claim or NUB if it more than a year from the recording of the lien and there is not a Lis Pendens of record.
- If there is an LP then the lien needs to be addressed.
 - BONDING
 - PAYMENT INTO COURT.
 - N.J.S.A . 2A:44A-31

**TITLE
CURATIVE
QUESTIONS**

stewart title

Real partners. Real possibilities.™

CLEARING TITLE OVERVIEW

- So your searches have come in and upon initial review there appear to be encumbrances on title.....
 - How are we going to clear them?
- Clearing title is the exercise of applying the rules we have been talking about to a risk assessment determination.

Judgments, liens and Execution sales

Does this judgment affect my transaction?

- In general, judgment liens take priority over subsequent liens, claims, encumbrances, and are subordinate to previous liens, claims, encumbrances, and conveyances found of record.
- In any jurisdiction, the priority of a judgment lien over any subsequent matter of record is dependent upon the following factors:
 - The precise time in which the judgment lien attaches.
 - The nonexistence of any applicable federal, constitutional, statutory, or case law.

Duration of the Lien Period

- The duration of a judgment lien varies from state to state. New Jersey provides that a judgment lien encumbers real property for a period of twenty years.
- The conditions under which a judgment can be extended, renewed, or revived--in those states where allowed--are statutorily prescribed and strict compliance with the statutes is required.

Duration of the Lien Period

Ordinarily, when the extension, renewal, or revival occurs before the expiration of the judgment lien, the judgment lien continues in existence and its validity and priority is preserved. However, when the judgment lien expires prior to the extension, renewal, or revival, jurisdictions are divided as to the effect of the extended, renewal, or revival lien upon liens and encumbrances of record.

How Do I Clear a Judgment Lien From Title?

In addition to the statutory time termination, a judgment lien may also be terminated through any of the following:

- The payment or satisfaction of the judgment.
- The release of the property from the lien of the judgment by the judgment creditor.
- The proper foreclosure of a prior lien.
- An execution sale and return for the full amount of the judgment
- Acquiring a subordination of lien through agreement with the creditor

How Do I Clear a Judgment Lien From Title?

- A final order vacating the judgment.
- The reversal of the judgment in appeal proceedings.
- By operation of law.
- **Note:** Under the Bankruptcy Code, a judgment lien on real property at the time of the bankruptcy is not affected by the discharge of the debtor (unless otherwise specifically disposed of by an order of the Bankruptcy court.)

How Do I Clear a Judgment Lien From Title?

- Purchase money mortgages take priority over any prior judgment or lien attaching to the property through the mortgagor.
 - **N.J.S.A. § 46:9-8. Purchase money mortgage over judgments**

Whenever real estate situate in this state is or shall be sold and conveyed, and a mortgage is given by the purchaser at the same time, on the real estate sold, to secure the payment of the purchase money or any part thereof, such mortgage shall be preferred to any previous judgment which may have been obtained against such purchaser.

Clearing Judgments Question

QUESTION: Susan and Joe, married, took title in 1985. Susan passed away in 2011. Joe is selling but there are several judgments docketed against Susan before she died. I am sure these are direct hit judgments. How do I clear these?

The Answer is....

- If the judgment is against both spouses, it attaches to the property
- Judgments against one spouse when both husband and wife are in title:
 - Still attach to the property but only to the extent of the debtor spouses right of survival interest
 - If the debtor spouse predeceases the non-debtor spouse
 - the judgment will be extinguished unless the creditor has begun execution proceedings on the property

Clearing Judgments

- Applies only to entireties property
- If property is held as tenants in common judgments against the deceased debtor are not extinguished
- If only one spouse is in title and the judgment is against only the non-titled spouse, the judgment does not attach to the property

Clearing Judgments

- Under N.J.S.A. 2A:16-1 a judgment is effective from the date of entry, which means it expires 20 years from the date of entry (not from the date of docketing)
- Under N.J.S.A. 46:9-8, purchase money mortgages have priority over judgments; refinance mortgages do not
- **Jones v. Parker, 258 A.2d 26 (N.J. Super. Ct. App. Div. 1969)**
 - A judgment must be filed using the same first name and last name of the judgment debtor, as the name by which the party acquired title, in order to be effective against subsequent purchasers

Clearing Judgments

- If your search turns up a judgment with a name variation and you know it's your borrower it must be addressed (actual knowledge)
- If you can't eliminate the judgment but you have a current owners policy without exception, it may fall under the Inter-Underwriter Indemnity Agreement
- Follow Court Rule 4:42-11 to calculate amount due
- It is not good practice to contact the creditor or attorney unless you are certain that the judgment affects title
- Check Stewart's "Rule of Thumb" Judgment Chart for escrow amounts!

Child Support Judgments

- Pursuant to N.J.S.A. 2A:17-56.23a, child support orders shall be considered judgments on the date they are due and are liens against real property.
- Pursuant to N.J.S.A. 2A:17-56.23b, a lien is imposed on the net proceeds of any settlement for a law suit, civil judgment, civil arbitration award, inheritance or worker's compensation award. If the net proceeds exceed \$2,000, any child support judgment must be paid first.

Child Support Judgments

- If the support is paid through the Probation Department, they can provide you with current figures, and releases where necessary.
 - Obtain 3rd party authorization from the borrower
- If the judgment is held directly by the creditor spouse, call the attorney listed in the upper court search. They will provide you with the payoff figure and a release.
- If the judgment is against a prior owner, try to locate the owner's policy
- Child support usually accrues weekly, so if we are going to escrow, we will generally add for a few weeks

Clearing Judgments Question

Question: We have a refi borrower listed on a \$1,000,000 judgment that contains 4 different individuals and 3 different LLC's. The borrower's explanation is that he was part of a restaurant that went under a few years ago so he doesn't think it should be an issue for him personally. Title is vested in the borrower individually. Does this judgment have to be cleared?

Clearing Judgments Question

Best Answer: Yes

- If he owns the property as an individual and the judgment is against him as an individual (along with other parties) it needs to be cleared, even though the borrower is alleging it is a business debt
- He will need to negotiate with the creditor to either get the lien of the judgment removed from the property or subordinated to the new mortgage

A mortgage that has been paid.

- If a mortgage has been paid but a discharge not been recorded, you can use N.J.S.A. 46:187-11.5
 - the New Jersey Legislature enacted this law in 1999 to provide a relatively simple and expeditious means of removing mortgages from the record when a lender has failed to have a mortgage discharged, or canceled of record, in a timely manner.
 - Pursuant to this law, an attorney-at-law or licensed title insurance producer who has caused a “residential mortgage” to be paid can obtain its discharge by filing a detailed affidavit which sets forth the steps taken to obtain a discharge of the mortgage from the lender.

Clearing Old Mortgages

If the facts surrounding the payoff of an old mortgage do not fit the requirements of **N.J.S.A. 46:18-11.5 et seq.**, then a court action under **N.J.S.A. 2A:51-1 et. seq.** can also be commenced. This type of action requires the filing of a complaint in Superior Court and thus is a more time consuming and costly endeavor.

Clearing Old Mortgages: Commercial

- Mortgages which have a maturity date more than 20 years ago are no longer enforceable.
- It was HELD in *Security National Partners v. Mahler*, 336 N.J. Super. 101 (App. Div. 2000) that the statute of limitations for enforcement of a mortgage is 20 years. Thus, a lender's right to enforce a mortgage expires 20 years after the last payment is due.

Clearing Old Mortgages: Residential

N.J.S.A. § 2A:50-56.1 provides that an action to foreclose a residential mortgage shall not be commenced following the earliest of:

- (i) six years from the maturity date of the note or mortgage;
- (ii) 36 years from the date of the recording; or
- (iii) 20 years from the date of default.

**TITLE POLICY
&
FORMS
QUESTIONS**

stewart title

Real partners. Real possibilities.™

Policy Basics – 2006 Owner's Policy

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of...

- 10 Covered Risks

Exclusions and Exceptions

What's the difference?

- Exclusions: Included in every policy – no changes
 - Example: “Defects, liens, encumbrances, adverse claims, other matters...created, suffered, assumed or agreed to by the Insured Claimant”
 - Judgments against the Insured, Easement given by the Insured
- Exceptions: Standard vs Transaction Specific
 - Example: “Subject to added or omitted assessments pursuant to N.J.S.A. 54:4-63.1 et seq.”
 - Example: “Parking Garage Declaration as contained in Deed Book 7390, Page 30.”

Definition of Terms

Who is the Insured?

- Insured (Part 1) The Insured named in Schedule A.
 - Insured also includes:
 - A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;

Definition of “Insured”

- Insured (Part 2):
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured, (2) if the grantee wholly owns the named Insured, (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

Definition of “Insured”

- Policy definition of Insured allows coverage to continue in these situations without a Successor & Transferees Endorsement:
 - \$1.00 Deed from individual to wholly owned LLC or vice versa
 - Trusts created for estate planning purposes
- If transfer does not fall within the definition of Insured, a Successor & Transferees Endorsement is necessary for coverage to continue!
 - No Endorsement = Policy is dead! (Watch out for old policy versions!)

Policy Basics – 2006 Lender’s Policy

COVERED RISKS

- SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank 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:
 - 14 Covered Risks

Definition of Insured

- The Insured (Part 1). The Insured named in Schedule A.
- The Insured also includes:
- (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;

Definition of “Insured”

- (B) the person or Entity who has “control” of the “transferable record,” if the Indebtedness is evidenced by a “transferable record,” as these terms are defined by applicable electronic transactions law;
- (C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
- (D) successors to an Insured by its conversion to another kind of Entity;

Definition of “Insured”

- (E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured, (2) if the grantee wholly owns the named Insured, or (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;
- (F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

Definition of “Insured”

- Policy definition of Insured allows coverage to continue in favor of successors, assignees, etc. of original lender.
- Example: Mortgage was originally given to BOA. BOA sells the loan to Wells Fargo. Coverage continues in favor of Wells Fargo. (Assignment must be recorded)
- Example: Mortgage was originally given to Countrywide Home Loans. BOA purchases and merges with Countrywide. BOA is now the Insured.

**POAs,
ACKNOWLEDGMENTS
&
CLAIMS AVOIDANCE**

stewart title

Real partners. Real possibilities.™

Powers of Attorney

- Three types of Powers of Attorney:
 - General – confers power to execute certain transactions but does not specify real property covered
 - Special – confers power to execute certain transactions and specifies real property covered
 - Durable or Continuing – power of attorney which continues to be valid despite the principal becoming incompetent or deceased if relying party has no notice of the principal's death
- Power of Attorney must be in recordable form, and be recorded either prior to or simultaneously with the documents being executed by the holder of the Power.

Powers of Attorney

- Things to consider when dealing with a POA:
 - Who is the Attorney in Fact? Are there multiple parties?
 - Scope of Authority: Does POA allow the sale of property?
 - Self-dealing by Attorney in Fact: is the transaction for the benefit of the principal?
 - Has the POA been revoked?
 - Always have Attorney in Fact execute an Affidavit of Non-Revocation
 - Is principal alive?

Powers of Attorney

Question – An elderly woman with full capacity gave a POA to her attorney. The attorney then sold her property to a developer for \$10.00. The woman is now contesting the sale and threatening legal action. Developer is now selling for fair market value. Can we insure this transaction?

Powers of Attorney

Answer – Not without a lot more information. There are red flags all over this question. A \$10.00 sale to a developer does not appear to be in the best interest of the principal. Combine that with the fact that the principal is contesting that sale and is threatening legal action, we are unable to insure without first having the dispute resolved.

Acknowledgments in NJ

- **NJSA§ 46:14-2.1. Acknowledgment and proof**
 - a. To acknowledge a deed or other instrument the maker of the instrument shall appear before an officer specified in R.S. 46:14-6.1 and acknowledge that it was executed as the maker's own act.
 - The officers of this State authorized to take acknowledgments or proofs in this State, or in any other United States or foreign jurisdiction, are:
 - (1) an attorney-at-law;
 - (2) a notary public;
 - (3) a county clerk or deputy county clerk;
 - (4) a register of deeds and mortgages or a deputy register;
 - (5) a surrogate or deputy surrogate.
- Any NJ officer can take an acknowledgment outside NJ.

Acknowledgments in NJ

- What about acknowledgements outside the United States?
 - Any officer of the United States
 - Any foreign service or consular officer or other representative of the United States to a foreign nation within the territory of that nation
 - Any officer of a foreign nation authorized at the time and place of the acknowledgement by the laws of that jurisdiction to take proofs and acknowledgements
 - If the acknowledgment does not designate the officer as a justice, judge or notary, the acknowledgment or an affidavit appended must contain a statement of the officer's authority to take acknowledgments or proofs.

Claims Avoidance

CAUSE: Failure to Follow Instructions

- Examples of these types of claims include:
 - Unrecorded Mortgages
 - Payoff Errors
 - Not closing Home Equity Lines of Credits (HELOC)
 - Out of order recordings
 - Missing title interests on documents
 - Execution Issues

Claims Avoidance

Avoiding Unrecorded Mortgage Claims

- Hand deliver or send all documents to the clerk as soon as possible after the closing – Don't let them sit!
- Get confirmation at the time of recording or follow up with the recording office to make sure the documents are on record
- If documents are rejected by the clerk – correct them and resubmit ASAP
- Make sure the correct recording fees are included and be aware of any county specific requirements

Claims Avoidance

Avoiding Improper Payoffs and HELOC Claims

- A HELOC must be closed in addition to being paid off! If the it is not closed after being paid off, it can be drawn back up.
- The payoff of a HELOC must always be accompanied by a signed close out letter. This letter must be signed by the borrower!
- Always keep a copy of the signed close out letter in your file
- Make sure the payoff amount is correct, HELOC might not be closed if the wrong amount sent, even with a close out letter.
- Only a borrower can authorize a close out and all borrowers must sign the close out letter
- If a signed close out letter was sent but the lender failed to release the HELOC, provide a copy and demand a release

Claims Avoidance

Avoiding Out of Order Recordings

- Mark the mortgages as First, Second, etc.
- Hand the Recording Clerk the mortgages in the correct order
- Check the public records after recording to make sure the order is correct.
 - If the mortgages are recorded out of order, contact the lender to obtain a subordination.

DO NOT RE-RECORD!

Claims Avoidance

Avoiding Signing Issue Claims

- All title holders must appear on the face of the mortgage and all must execute the mortgage – spouses and trustees are the most common issues
- Make sure to check the back title, the most current deed may not include the entire interest

Claims Avoidance

Legal Description Issues

- Examples of legal description claims include:
 - Missing legal descriptions
 - Incomplete legal descriptions
 - Incorrect legal descriptions (wrong property)
 - Insufficient legal descriptions
 - Typos in the description
- When it comes to legal descriptions, if it doesn't make sense – double check it!

Claims Avoidance

Avoiding Incorrect Legal Description Claims

- Exercise care and ensure a detailed review
- Review the legal descriptions in the back title – do not presume the current instrument is correct
- If the property is comprised of multiple parcels be sure all parcels are accounted for – look out for exceptions/out sales
- Legal descriptions must be recorded with Mortgages
- When doing multiple closings – keep documents separate!

Claims Avoidance

Avoiding Mortgage Priority Claims

- Perform a thorough search of the land records
- Search all aliases and keep search terms general to uncover all possibilities
- Always perform a bring down title examination
- Search in accordance with underwriting guidelines
- Expired Mortgages!
- Watch out for Red Flag situations
 - Private lenders, non-arms-length transactions, seller without any open mortgage, back to back conveyances, etc.

Claims Avoidance

Avoiding Prior Lien Claims

- Conduct a thorough search of the public records
- Do not rely solely on credit reports
- Know the statutes on expiration
- Match DOBs, license numbers, addresses, etc. to eliminate possible lien issues.

Claims Avoidance

Avoiding Outstanding Ownership Interest Claims

- Always review the deeds in the chain of title
 - Watch for red flags – go further back in title if necessary
 - How was property held?
- Right of survivorship vs. wills and intestacy
 - Obtain/review death certificates
 - Review probate records when necessary
- Current owner and other possible interest holders
- Life estates

QUESTIONS & ANSWERS

PROGRAM WRAP-UP

stewart title

Real partners. Real possibilities.™

THANK YOU!

stewart title[®]

Real partners. Real possibilities.™