

**New Jersey
N2K Hour:**

**Preventing
Claims**

**Webex Presentation:
January 14, 2020**

stewart title®

Real partners. Real possibilities.™

Stewart Title N2K Hour:

Presenting Education, Timely Information, Industry News

Our Focus: Insurability and Claims Prevention

N.J.S.A. §17:46B-13

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.

Title Insurance Claims in New Jersey

- Roughly 1000 claim inquiries were sent to Stewart in 2019.
- Claims are categorized under ALTA codes
- Most Common Types of Claims:
 - Failure to Follow Instructions
 - Legal Descriptions Errors
 - Outstanding Liens & Interests

Failure to Follow Instructions

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

Unrecorded Mortgages

- If a mortgage isn't recorded, it isn't a lien on the property. Other liens (mortgages, judgments, etc.) can attach to the property in a superior position
- From a claims position, this can lead to subordinations, buying out superior positions, or even tendering full policy limits to the Insured.
- NJ counties are notorious when it comes to board dates. They can be anywhere from 1-3 weeks long.

Unrecorded Mortgages

- Diligent post-closing procedures are the best defense:
 - Confirm that documents go on record
 - If documents are rejected, resolve and resend ASAP.
 - Make sure cover sheets and recording fees are correct beforehand.
 - Always contact the county and/or the underwriter when in doubt.

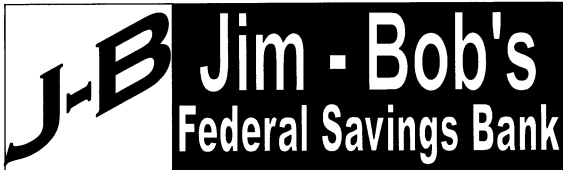
Out of Order Recordings

- How to Avoid 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!**

A few words about HELOCs

- Whenever a HELOC is paid off – all borrowers on the loan must sign a closeout/freeze letter.
- This letter should be sent to the lender and you keep a copy in the file.
- Follow up to make sure the loan is discharged on record – if not, resend letter to lender and demand discharge.
- Always confirm the payoff for the HELOC is correct – a discrepancy could prevent it from being closed.

Mortgage Payoffs



September 6, 2007

ATTN: Samuel Smitherson, Esq.
Dewey, Cheatum & Howe
Tylertown Road
Basto, NJ 08037

VIA FAX (856)867-5309

Subject: Line of Credit Payoff
Loan Number: 1254687131-7
Borrower Name: Andrew & Andrea Andrews
Property Address: 2972 Atlantic Avenue
Allaire, NJ 08207

This letter has the enclosed payoff information which you requested in reference to the loan number that is listed above. Also, during this process there will be a suspension in monthly payments and line of credit advances up to 90 days. If this loan is in a current status of default, we will continue our proceeding for the loan. Please remit a certified check of money order payable to Jim-Bob's Federal Savings Bank, along with this letter, to the address listed below or call for wiring information

Jim-Bob's Federal Savings Bank
Pinewald-Keswick Road
Double Trouble, NJ 08721

The check must be sent to the attention of the Payoff Department. Upon receipt of certified funds, we will release the first lien.

Payoff as of 09/28/2007 \$113,944.03 Per Diem: \$20.05

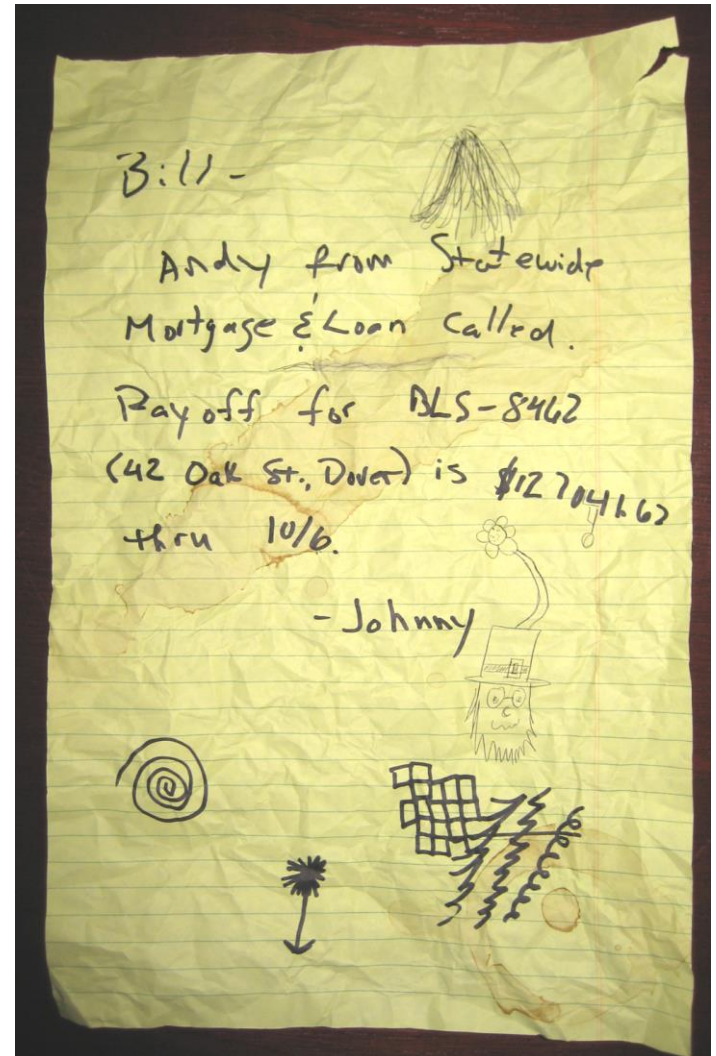
Funds received after 09/28/2007 but prior to 10/01/2007 require the additional per diem interest. You cannot use the per diem interest for calculation of additional days beyond the end of the month for which this quote is provided. You must contact our office for an updated payoff figure.

All calculations are subject to final audit and payoff amount may change if taxes and/or insurance are delinquent. If you have additional questions or need an updated payoff figure, please call 1-800-555-2323. Any questions regarding the release of your loan documents should be directed to our Lien Release Department via fax at (856)555-3434, and include loan number, borrower's name, payoff date and contact person at your office.

Sincerely,

Jim-Bob's Federal Savings Bank

V.S.

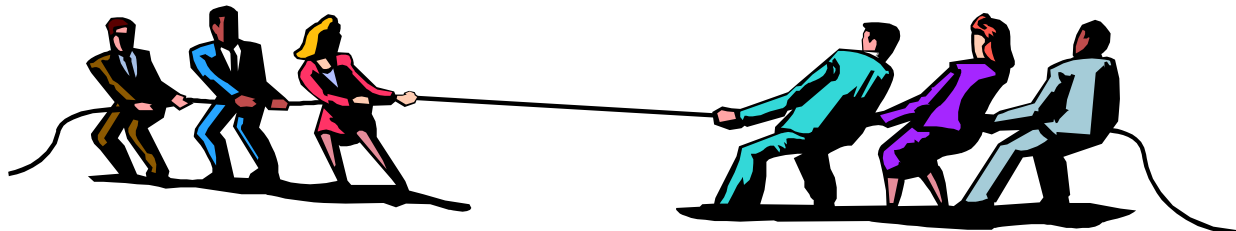


Mortgage Payoffs

- Confirm all payoff amounts with lender before closing.
- Make sure you are paying off the correct mortgage on the correct property.
- For private mortgages, require the discharge be in hand before the closing.
- Follow up to make sure the appropriate discharge is on record.

Missing Interests

- EVERYONE on title must sign all documents that affect title (Deeds and Mortgages are the most common issue).
- Remember – a non-titled spouse must sign off on a deed or refinance for the principal marital home under N.J.S.A. 3B:28-3
- Missing interest claims typically end up having to be resolved by court order.



Missing Interests

- Understand how the property is held
 - Individually, jointly, trusts, business entities
- Watch out for red flags (\$1 deeds, family transfers, back and forth transfers) – the most recent deed may not include all interested parties.
- Life estates and remainderman must sign off.
- Use online databases to clear up possible deceased interests or request a death certificate.
- For testate estates, always review the will.

Legal Description Errors

- A legal description should allow a person to identify the property to the exclusion of all others.
- Metes and Bounds description or a reference to a Filed Map are the two best descriptions.
- Street addresses and tax information are NOT acceptable.
- Always confirm that the description used on previous documents is accurate before bringing it forward.
- Confirm the correct description is attached before recording.

Senior Mortgages

- Residential mortgages can't be enforced 6 years from the date of maturity or 36 years from date of recording if no maturity date (N.J.S.A 2A:50-56.1)
- Commercial mortgages expire after 20 years from the date of default (Security National Partners v. Mahler 336 N.J. Super. 101 (App. Div. 2000))
- Anything else needs a payoff or an explanation to clear.
- When in doubt, talk to your underwriter. With sufficient proof, we can authorize an omit.

Claims and Foreclosures

- When reviewing a foreclosure, you must confirm all interested parties are properly named and served:
 - Spouses
 - Junior lien holders
 - Personal Representative (if borrower is deceased)
- Senior interests can't be cut off in foreclosure and therefore do not have to be named.
- A Deed in Lieu is NOT a foreclosure – no interests are cut off!

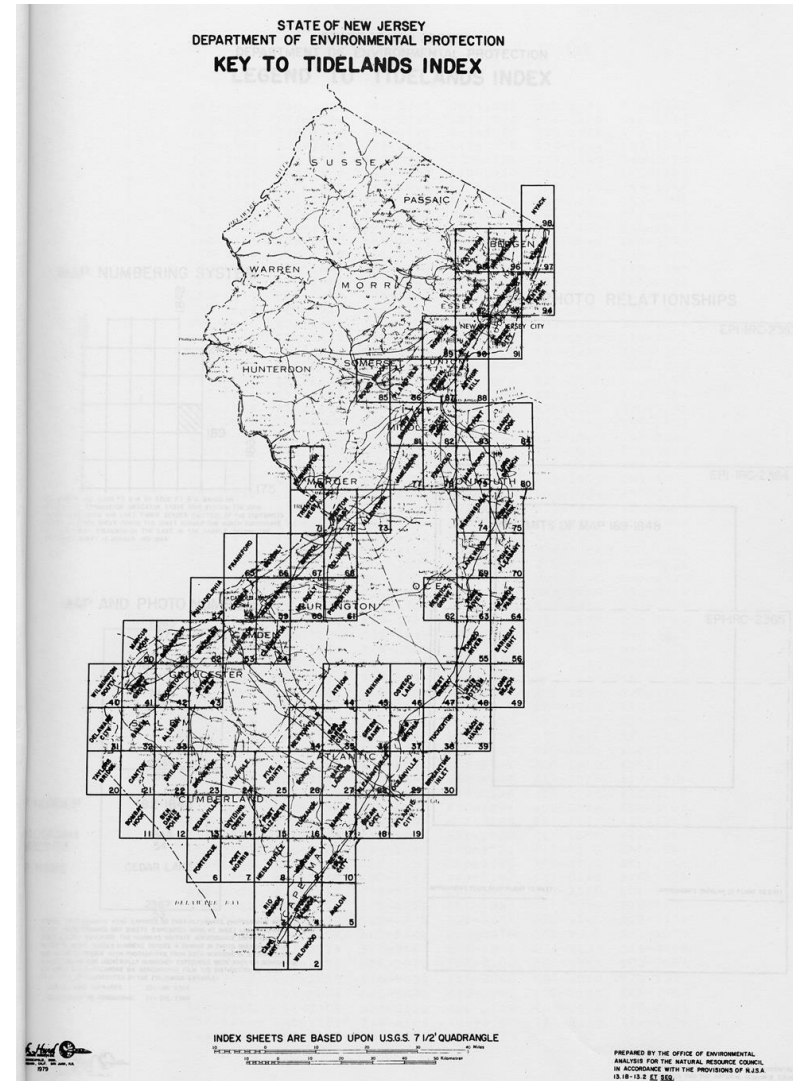


The case of dueling foreclosures

- Borrower has a first and second mortgage and defaults on both. Both lenders initiate foreclosure proceedings.
- The first mortgage foreclosure is always going to have a priority interest over the second. It doesn't matter who started first or finished first.
- If insuring an interest derived from a second mortgage foreclosure, you must except for the first mortgage and any other superior liens.

New Jersey Tideland Claims

- Every County except **Morris, Sussex, Warren and Hunterdon** has Tideland Claims.
- Tideland Claims are not limited to “shore areas” or ocean front property.
- Tideland Searches are pass through charges.



New Jersey Tideland Claims

- If the Tideland Search shows the property is claimed, you must confirm the existence of any riparian grants.
- If Grant Search shows that there is a Grant, you must obtain a copy of the Grant, and determine that the Grant covers the property.
- 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 Tideland Claims

- 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 *.*

- If the Tidelands Search disclosed that all or part of the property is claimed and the Grant Search shows that there is no Grant, an exception must be raised to the rights of the State of New Jersey.

New Jersey Tideland Claims

- The best exception language:

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 Tideland Claims

- If there is a Tidelands Claim, contact the Stewart State Office. Possible solutions include:
 - Indemnity and 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.

Inter-Underwriter Indemnification Agreement

- All major title insurance companies are a party to the “treaty”.
- Allows parties to rely on a **current Owner Policy** to omit certain items.
- Amount of liability must be under \$1 million
- Remember – When an Insured lender takes title as a result of foreclosure, that Loan Policy “converts” into an Owner Policy
- When relying on treaty, keep copies of the policy in your file.

Inter-Underwriter Indemnification Agreement

- Prior owner mortgages provided that there are not pending or successfully-concluded foreclosure proceedings.
- HELOCs require written notice to Prior Insurer of intention to rely on the policy. Keep a copy of that written notice in your file.
 - If you don't notify the Prior Insurer, they have no obligation!

Inter-Underwriter Indemnification Agreement

- Judgments, federal tax liens, and any other statutory or common law liens.
 - If liens do not expire within a fixed period of time, you must notify the Prior Insurer in writing.
- Tax sale certificates, provided that there are not pending or successfully-concluded foreclosure proceedings.
 - Also needs written notification to Prior Insurer.

Inter-Underwriter Indemnification Agreement

- Federal estate taxes, NJ Estate and Inheritance taxes.
- Marital rights arising in favor of the spouses of record title-holders.
- Alleged or actual defects or irregularities in judicial proceedings.
- Lack of metes and bounds or filed map descriptions, or scriveners' errors contained in descriptions **provided** the land can still be identified from the documents themselves.

Letters of Indemnity (LOI)

- If the Treaty does not cover a title issue, a LOI is an option.
 - Requires an active owner (or lender policy where the Insured derived title by foreclosure or deed in lieu) and without exception to the title issue.
 - Contact the title insurance underwriter's state office to request the LOI.
 - Make sure to provide copies of your new title commitment, title search, current policy, and any other relevant documents.

What about Starter Policies?

- Starter policies can be used to begin title searches during real estate transactions.
- This is not the same as relying on the Treaty.
- Remember – you must have a current policy in order to rely on the Treaty.
 - You must also notify the Prior Insurer in writing regarding HELOCs, Tax Sale Certificates, and Judgments that do not expire.
- Pay attention to the details of the starter policy if you come across title issues. It may not be usable under the Treaty.

Avoiding Claims

- Understand and apply all applicable standards and requirements to the issue
- Take your time – a large number of claims are a result of rushed work.
- When in doubt – call your underwriter!

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Keyword Search

Example : Absentee

Find it

☒ All of these words ☐ This exact phrase ☐ Any of these words

Select a Location

Select a state ▼

Virtual Underwriter

THANK YOU FOR JOINING US

Please mark your calendars for our:

February N2K HOUR

Tuesday
February 18
11:00AM

Cyber Fraud Prevention