

**New Jersey
N2K Hour:**

**Understanding
the Title
Commitment
and Search and
Exam
Information**

Webex Presentation,
September 14, 2021

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What is a title commitment?

- A title commitment is the title company's promise to issue a title policy and sets forth the requirements and conditions under which the insurer will agree to insure.
- The title commitment is usually divided into four separate schedules disclosing information about the property.
- A commitment is sometimes referred to as a title binder.
- In NJ, there are two forms of commitment which are most commonly used: the ALTA Plain Language Commitment and the ALTA Commitment.
- These forms have replaced the Preliminary Certificate and Report on Title.

What is a title commitment? (cont.)

- A title commitment will consist of a jacket and the schedules.
- The jacket contains the terms under which the commitment is effective, including the Conditions.
- A title commitment expires 180 days from its effective date or when the policy is issued.
- The commitment contains the insurer's agreement to issue the policy in accordance with the terms of the commitment once the requirements contained in the commitment have been complied with, including the payment of the premium and related charges.

County Recorders

- In NJ, all documents are recorded at the County level.
- In Essex and Hudson Counties, the recording office is referred to as the Register of Deeds and Mortgages.
- In the remaining 19 counties, the recording officer is the County Clerk and exercises the functions of the register.
- Municipal recordings are not usually included as part of this statutory scheme, but Mercer County does submit deeds to the municipality after they have been recorded by the County Clerk.
- There are also some municipalities which may require copies of recorded deeds for future tax and utility bills.

Abstract vs. Search

- An abstract is a formal compilation of title information which often begins with the original grant of title from the sovereign, and which is continuously updated to reflect subsequent transactions, so that it forms a permanent record of the title history of a particular parcel.
- A search normally extends for a period of 60 years and is prepared in connection with a particular transaction.
- A search or abstract usually consists of the chain of title, which includes copies of each successive instrument affecting title and the searcher's "index work", disclosing which indexes were consulted, and which names were searched for certain time periods.

How are County Records Searched?

- NJ courts have interpreted the Recording Act to only require a reasonable duty of searching.
- A searcher or title examiner will first establish an unbroken chain of title (normally for a period of 60 years) for the premises in question (PQ) by consulting the index and listing all recorded documents that appear to be relevant.
- The searcher will then conduct an adverse search for each successive owner in the chain of title and will go through all record books for any conveyances or liens that have been recorded against the property while the successive owner held title.

How are County Records Searched? (cont.)

- In most cases, when a searcher determines that a document in an adverse search affects the PQ, a circle will be drawn around the page number.
- If the document does not affect the PQ, a line or checkmark will be drawn through the page number.
- A searcher will use this method so their adverse work can always be reviewed at a later date to determine if an error was made, or if a document was not included as part of their search.

Issuing the Title Commitment

- The back chain of title will disclose if there are any recorded liens, restrictions, or easement agreements that burden the property.
- The searcher will then submit their findings to a reader, so the reader can start to compile the title commitment.
- Based on the back chain of title, a reader will set up requirements on Schedule B-I based on the Vesting Deed and any other issues that may come up on record.

Commitment Schedules and Breakdown

- The effective date of the commitment is usually the “board date,” which is the date to which the indices have been posted in the county clerk’s or register’s office.
- The title commitment is divided into four separate schedules; Schedule A, Schedule B-I and B-II, and Schedule C.
- Schedule A: effective date; proposed insured name(s); policy or policies to be issued; policy amount(s); how title is currently vested; and description of the premises in question.

Commitment Schedules and Breakdown (cont.)

- Schedule B - Section 1: requirements for insuring title; e.g., disposition of certain liens; creation of record of the estate or interest to be insured; and payment of premium.
- Schedule B - Section 2: exceptions to title; i.e., liens, defects, encumbrances, and other matters which will appear in Schedule B of the policy unless disposed of, such as easements, restrictive covenants, and survey matters. Real estate tax and mortgage information also appears in this section or may be set forth on separate schedules.
- Schedule C: Legal description of the property.

How to Mark Up Title Commitments

- Prior to closing, title companies will typically mark up a title commitment based on items received by the parties prior to closing.
- All requirements in Schedule B-I need to be satisfied at the time of closing, or else any outstanding requirements will be added as exceptions on the final policy.
- Schedule B-II will often include several general exceptions, and any recorded documents that burden the property.

How to Mark Up Title Commitments (cont.)

- The general exceptions in Schedule B-II will often include any tax liens, unrecorded easements, tenants in possession, or any liens recorded in the gap period from the date of the title commitment and the recording date of the Deed or Mortgage.
- An Owner's Affidavit from the seller can provide enough information for some general exceptions to be removed from the policy.
- Please consult your Underwriter on this issue.

General Survey Exception

- The general survey exception can only be removed or omitted by endorsement in NJ.
- Please do not omit the general survey exception entirely from the Owner's or Loan policy.
- In NJ, the NJ Survey endorsement can be issued for both Owner's and Loan policies, if there is an existing survey for the property.
- If there is no survey, a Lender's Survey (without Survey) endorsement can be issued for a Loan policy.
- Also, a Survey (without Survey) endorsement is available for residential condominiums as well.

Setting up Requirements

- Based on the Vesting Deed, title companies require an Owner's Affidavit to be submitted at closing which discloses the record owner's knowledge about the property and any underlying issues which may affect title.
- If property is vested in an entity, title companies will require organizational documents to be submitted prior to closing, so they can confirm which individuals are authorized signatories on behalf of the vested owner (entity).
- The seller is also required to satisfy all liens that may come up in an Upper Courts judgment search.

Setting up Requirements (cont.)

- If the transaction is a cash purchase, a Deed will be required at closing from the seller conveying the property to the buyer.
- If there is a loan on the transaction, the title company will additionally require the original Mortgage and any other loan documents that the lender plans to record for the transaction.
- If the mortgage is a construction loan, a title company may require additional items to provide coverage for the loan, such as a copy of the Construction Loan Agreement between the borrower and lender.

Conducting Searches

- In NJ, title requirements normally include a tideland search on the property; Upper Courts judgment search, bankruptcy search, and Patriot Act search on the current vested owner.
- A tideland search will disclose if a property is claimed by the State of New Jersey. If the property is claimed, then an appropriate exception in Schedule B-II needs to be taken for any lands that are currently and formerly flowed by the mean high tide of a natural waterway.
- The judgment search will disclose if there are any additional judgments that need to be satisfied or discharged by the seller prior to closing.

Conducting Searches (cont.)

- A bankruptcy search will disclose if there is any bankruptcy proceedings against the seller. If the seller is currently in bankruptcy, then a vacation of the automatic stay or a court order authorizing the sale of the property will be required in order to proceed with the transaction.
- Also, please be aware of any recorded Lis Pendens for the property.
- If there is a recorded Lis Pendens, then the property may currently be in foreclosure, or they may be an open litigation affecting the property.

Conducting Searches (cont.)

- A discharge of the lis pendens is required in this circumstance in order to proceed with the transaction.
- A Lis Pendens expires after 5 years, but that does not mean the litigation has ceased.
- If a Lis Pendens comes up in your search, please follow up with the parties to obtain more information on the litigation or foreclosure.
- A chancery abstract must be ordered if the property is coming out of foreclosure.

Chancery Search

- For NJ transactions, a chancery abstract is required in all cases when the title company is insuring the purchaser at the sheriff's sale or the first bona fide purchaser for value (BFP) from the purchaser at sheriff's sale.
- After the first BFP in the chain of title following the sheriff's deed, there is no need to review a chancery abstract.
- When reviewing a chancery abstract, please check to see if all junior lienors were properly named and served, and when the Notice of Lis Pendens was recorded.

Buyer's Judgments and Liens

- When insuring a cash purchase or a purchase with a loan, title companies are not normally concerned with buyer's judgments or liens.
- An Owner's policy does not cover any act of the insured based on Exclusion 3(a) of the Owner's policy jacket.
- In NJ, a purchase money mortgage has super priority over purchaser's judgments and liens based on N.J.S.A. 46:9-8.
- Please note that lenders may still require buyers to satisfy all judgment liens prior to closing, so you may still have to run judgment searches on buyers for a purchase transaction.

Additional Requirements

- Additional requirements may be added if title defects are discovered in the back chain of title (e.g. missing spousal interest, typo with grantor or grantee name on Deed, incorrect legal description).
- These title defects may require a letter of indemnity from the previous insurer or the recording of a Corrective Deed at closing.
- Please note in NJ, some title defects discovered in the back chain of title are covered under the Inter-Underwriter Indemnification Agreement (Treaty) if there is an existing policy for the property.

Estate Requirements

- If the property is vested in an estate, then a requirement must be raised for the payment of NJ Estate Tax and NJ Inheritance Tax.
- A recorded Inheritance Tax Waiver (ITW) can satisfy the requirement, but if an ITW has not been recorded yet, then an estate questionnaire is required to determine a sufficient escrow for the payment of the estate and inheritance tax at closing.
- The seller is still responsible for obtaining the ITW, even if an escrow is held at closing. Please consult your underwriter for further guidance.

Removing Exceptions from Schedule B-II

- Some general exceptions may be removed from Schedule B-II when the policy is issued to the new purchaser and/or lender.
- An Owner's Affidavit from the seller (purchase) or borrower (refinance) may be sufficient to remove any general exceptions pertaining to unrecorded easements; tenants or parties in possession; or any unrecorded liens or unpaid assessments on the property.
- If the owner discloses on their Affidavit of Title that there are tenants on the property, then the rights of tenants or parties in possession exception must remain.

Removing Exceptions from Schedule B-II (cont.)

- Any recorded easement or deed restriction which burdens the property must be raised as an exception on Schedule B-II.
- Please review the terms of the recorded easement or deed restriction before removing these exceptions from the title commitment or policy.
- If the easement or restriction runs with the land and there is no expiration date set forth in the document, then a termination must be recorded in order to remove the exception.

The General Tax Exception

- The general tax exception must never be removed from Schedule B-II or from the Owner's and Loan policies.
- The exception can only be amended to include that taxes are current or that there are currently none due and payable for the specific quarter at the Date of Policy.
- Real estate taxes are payable on a quarterly basis in NJ.
- Also, the following exception must also be included on all title commitments and policies:
 - **Added and omitted assessments, pursuant to N.J.S.A. 54:4-63.1 et seq.**

The General Tax Exception (cont.)

- If the property is new construction or the tax search discloses that assessments are TBD, then this exception cannot be removed or omitted.
- If the buyer or lender requests for this exception to be removed, please consult your underwriter for further guidance.
- Also, please check your tax search if there are any liens or penalties that must be paid by the assessed owner.
- These liens must be satisfied prior to closing.
- If not, then an exception must be added to the policy for any unpaid liens.

Adding Exceptions to Schedule B-II

- Exceptions can always be added to Schedule B-II based on judgment/lien searches, or if a requirement has not been satisfied prior to closing.
- If a tideland search discloses that an area of the property is claimed, then an exception must be added to Schedule B-II.
- Also, please be aware of any open litigation that may affect the property.
- The open litigation must be resolved, and a requirement must be added to your title commitment.
- Please consult your underwriter if any exceptions should be added to the title commitment or policy.

Adding Exceptions to Schedule B-II (cont.)

- Acreage is never insured on an Owner's or Loan policy.
- If your legal description references acreage for the property, then the following exception must be included on your title commitment and policies:
 - **Content of acreage of subject property is not hereby insured.**
- Please review the survey for your property carefully to see if the surveyor references any acreage on the survey legal description.

Adding Exceptions to Schedule B-II (cont.)

- Also, if any street or public right of way is located within the boundary line of the property, then the following exception must be included on Schedule B-II as well:
 - **The title to any lands lying in the bed of any street, road or avenue, abutting, adjoining, passing through or crossing subject property is not hereby insured.**
- Also, please review your property either with a survey or an overhead of the property on Google Earth to confirm if there are any streams, tributaries, or waterways that are in close proximity or are located on the property.
- If so, then an exception must be added for the encroachment.

Construction Loans

- If we are issuing a loan policy for a construction loan, a pending disbursement exception must be added in Schedule B-II.
- Also, any recorded Construction Lien or Notice of Unpaid Balance (NUB) must be raised as an exception, unless it has been discharged or expired by statute.
- NJ is a filed lien state, so if there is no recorded construction lien or NUB, you can remove the general mechanics lien exception based on your rundown search.

Notice of Settlement and Board Date

- Please always confirm that your Notice of Settlement is on record, and your title commitment is updated to reflect the new board date for the county.
- The Notice of Settlement must be on record to avoid any liens that may be filed or recorded during the gap period.
- If there is ongoing construction on the property, or the property is land under development, updated searches must be performed to confirm that no new liens have been filed or recorded against the property.

Wrap Up and Review

- Title commitments are compiled based on searches from County records for the premises in question (PQ).
- Title commitments are typically divided into separate Schedules, which must include a list of requirements and exceptions to title.
- General exceptions can be removed based on satisfaction of title requirements and receipt of an Owner's Affidavit and survey.
- Additional requirements and exceptions can always be added to the title commitment based on judgment/lien searches or a tideland search.

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October N2K HOUR

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Insuring a Leasehold Interest