

**New Jersey  
N2K Hour:**

**Inter-  
Underwriter  
Indemnification  
Agreement**

**Webex Presentation:  
April 12, 2022**

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## History of the “Treaty”

- Before the Treaty, title companies had to request a letter of indemnity for each and every title issue that arose.
- In 2006, all title insurance underwriters doing business in NJ entered into the Inter-Underwriting Indemnification Agreement.
- The purpose was to streamline the indemnity process between underwriters regarding a number of common issues.
  - It eliminated the need for a formal letter of indemnity for these issues.
- In 2009, the Treaty was revised to what we now know it as.

## The Current Version of the Treaty (2009)

- In 2009, the following changes were made:
  - The policy liability limit was increased to \$1 million.
  - Coverage was expanded to also include:
    - Judgments, Federal Tax Liens, and any other statutory/common law liens
    - Alleged or Actual defects in judicial proceedings
    - Lack of metes and bounds or file map description or scrivener's errors (as long as the property can be identified by other means).
- As of 2018, all title insurance companies doing business in NJ have entered into the Treaty.

## Treaty Definitions

- **Current Insurer** – title insurance company which is insuring a transaction and has requested, or would, absent this Agreement, request indemnification from a Prior Insurer.
- **Prior Insurer** – title insurance company which has issued a policy which is still in effect and which is being requested to indemnify the Current Insurer
- **Estate** – Estate or interest insured under the Policy issued by Prior Insurer or to be insured under the Policy to be issued by Current Insurer, as the same is described in Schedule A of the Policy

## Treaty Definitions

- **Policy** – Owner’s or Loan policy of title insurance issued by Prior Insurer or to be issued by Current Insurer.
  - A Loan Policy shall be considered the equivalent of an owner’s policy if the insured thereunder has acquired title to the estate or interest insured by foreclosure or deed in lieu.
- **Limitation of Liability** – Indemnification shall in no event exceed the lesser of (A) The amount of insurance in effect under the policy issued by the Prior Insurer; or (B) \$1,000,000.00.

## Conditions for Coverage under the Treaty

- The Current Insurer must be furnished with a copy of the Prior Insurer's Owner's Policy (including Schedules A & B), which is still in effect
  - The policy may be presented to the Current Insurer's policy-issuing agent instead of the Insurer directly.
  - "Policy in effect" means that the named Insured (or its successors as defined in the Policy) still has an interest in the property.
- There are seven (7) types of issues covered by the Treaty.

## What's Covered - Mortgages

- *Mortgages, provided there are no pending or successfully-concluded proceedings to foreclose the same; and further provided that, with respect to home equity mortgages or other revolving credit mortgages, contemporaneous notice is given to the Prior Insurer of the Current Insurer's intention to rely on Prior Insurer's policy in accordance with this Agreement.*
  - No LPs on record (either current or successfully closed foreclosures)
  - HELOCs and other credit line mortgages require written notice to Prior Insurer regarding reliance under the Treaty. Written notification by email is acceptable.

## What's Covered - Judgments

- *Judgments, federal tax liens, and any other statutory or common law liens provided, nevertheless, that in the case of any lien which will not expire in a fixed period of time, contemporaneous notice is given to the Prior Insurer of the Current Insurer's intention to rely on Prior Insurer's policy in accordance with this Agreement.*
  - Written notice by email to Prior Insurer is acceptable.
  - Most common liens do have an expiration date. If you are unsure, contact your Underwriter.
  - Does not apply to judgments with attempted or pending enforcement actions.



## What's Covered – Estate Taxes

- *The liens of federal estate taxes, New Jersey estate and transfer inheritance tax.*
  - Keep in mind, coverage under the treaty does not negate standard estate requirements such as surrogate searches and estate questionnaires. These still must be performed!
  - Federal Estate tax threshold has been over \$5 million since 2011.
  - NJ Estate Tax for 2017 was \$2 million and eliminated in 2018.

## What's Covered – Tax Sale Certificates

- *Tax sale certificates, provided there are no pending or successfully-concluded proceedings to foreclose the same; and further provided that contemporaneous notice is given to the Prior Insurer of the Current Insurer's intention to rely on Prior Insurer's policy in accordance with the terms of this Agreement.*
  - No LPs on record (either current or successfully closed foreclosures)
  - Same general process as a HELOC, written notice by email to Prior Insurer is acceptable.

## What's Acceptable Notice?

- When a situation requires “contemporaneous notice” to the Prior Insurer, the following methods are generally acceptable:
  - Email
  - Physical Mail
  - Fax
- Phone calls **are not acceptable**, it must be written notice.
- Always include a copy of the existing policy, commitment, and summary of the issue.
- When in doubt, contact the Prior Insurer.

## What's Covered – Marital Rights

- *Marital rights arising in favor of the spouses of record titleholders.*
  - Pursuant to N.J.S.A 3B:28-3, a non-titled spouse is automatically afforded a right of joint possession in the primary marital residence as long as they occupy it.
  - This right cannot be released, extinguished, or subordinated without the consent of the spouse OR a court order.
  - From a title perspective, this requires that the non-titled spouse sign off on the deed or mortgage during the sale or refinancing of the marital home.

## What's Covered – Legal Descriptions Errors

- *Lack of metes and bounds or filed map descriptions, or scriveners' error contained in descriptions, provided that the land conveyed may still be identified from the documents themselves.*
  - The deed or mortgage containing the error must also include some sort of identifying information regarding the property.
  - Examples: Recitals (meaning and intending clauses), tax information, etc.

## What's Covered – Defects in judicial proceedings

- *Alleged or actual defects or irregularities in judicial proceedings.*
  - This type of issue requires underwriter guidance.
  - Major defects are not covered and would require curative action and/or a formal letter of indemnity.
  - Minor defects regarding service or procedural matters would fall into this category.
  - Contact your underwriter if you see something in title that may apply here!

## What's NOT covered?

- Any lien of record against the current owner;
- Riparian claims;
- Missing interests;
- Description errors;
- Survey matters;
- Lack of access;
- Missed easements or restrictions
- Violations of restrictions;
- Defects in Master Deeds;
- Adverse possession;
- Defective bankruptcy or foreclosure proceedings;
- Violations of the Automatic Stay Order in Bankruptcy or any other court order;
- Association dues;
- Recorded contracts of sale;

## What's NOT covered?

- Pending judicial proceedings;
- Competency/Capacity;
- Defectively formed corporation or other legal entities;
- Open property taxes and assessments;
- Farmland roll back taxes;
- Insufficiencies of Powers of Attorney;
- "Self dealings" (conveyances by fiduciaries to themselves);
- Escrow compliance issues; and
- Any and all other title defects and encumbrance



## 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.

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# THANK YOU FOR JOINING US

See you next month on

**MAY 10, 2022**

Tuesday

11:00AM

Marital Rights in the State of New Jersey