

REAL ESTATE LAW AND PRACTICE
Course Handbook Series
Number N-652

Commercial Real Estate Financing 2017

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New York, New York 10036

Title and Survey

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*Vice-President and Chief New York
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Old Republic National Title Insurance Company

Reprinted from the PLI Course Handbook, Commercial Real Estate Financing 2016 (Order #149203)

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February 2014

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HOW TO READ A TITLE REPORT

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“Any searches reported herein are furnished FOR INFORMATION ONLY. They will not be insured and the Company assumes no liability for the accuracy thereof. They will NOT BE CONTINUED to the date of closing.”

- A. Department of Buildings
- B. Department of Housing Preservation
- C. Emergency Repair Search
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THE MOST REQUESTED TITLE POLICY ENDORSEMENTS FOR COMMERCIAL TRANSACTIONS

The following is a list of the Endorsements to title policies that are most frequently by counsels involved in commercial transactions. A brief description of each Endorsement is provided as well.

1. Issue Presented:

There are multiple routes of access to the insured premises, but one route is preferred. Can I obtain comfort that we will have access over the preferred route?

Access Endorsement

This endorsement insures the lender against loss in the event that there is no access to the insured premises over a physically open and specifically named public street.

2. Issue Presented:

The loan documents contain provisions that permit the lender to share in the appreciation in value of the premises or which give the lender a percentage of the cash flow, receipts, etc. What comfort can we obtain that these arrangements will enjoy the same lien priority as the original mortgage?

Endorsement for Additional Interest

This endorsement insures the lender against loss in the event that a court holds that “additional interest”, as defined in the loan documents are (1) invalid or unenforceable or (2) do not have the same lien priority as the principal of the loan secured by the mortgage. However, the endorsement does not insure the amount of the additional interest although it does permit the title company, by filling in a blank to cap the amount of the loss or damage which the insured can suffer. Note that the endorsement also does not insure against the results of a bankruptcy filing or against “unconscionability or unreasonableness.”

3. Issue Presented:

The title report or commitment shows that the premises are encumbered by covenants and restrictions (“C & R’s”) and easements. In addition, the survey shows easements and encroachments. Can we obtain comfort that violations of the C & R’s, the locations of the easements and of the encroachments will not endanger the priority of the insured mortgage?

4. Issue Presented:

The loan transaction covers multiple properties in multiple states. Can we obtain one master title policy? Can we shift losses around the insured properties?

Cluster Endorsement also known as Aggregation Endorsement

The Cluster endorsement enables a lender to aggregate coverages on multi-site transactions. The endorsement provides an amount of total coverage but also breaks down the coverage on a per parcel basis. The fact that the endorsement totals the coverage allows the lender to also shift some title losses from one parcel to another. However, in New York, the endorsement does not cover losses attributable to the failure to pay the mortgage recording tax.

5. Issue Presented:

Condominium units present unique difficulties because they are a part of a regime which shared common interest and expenses. What can title insurance offer?

Condominium Endorsement

This Endorsement insures against loss or damage if the unit and its common elements are not part of the condominium regime; the failure of the condominium documents to create a condominium under New York law; violations of covenants which restrict the use of the condominium unit (except environmental); the priority of any condominium liens prior to the policy date; failure of the unit to be assessed by real property taxes; against encroachment of one unit upon another; and the loss of title through the condominium's board exercise of its right of first refusal.

6. Issue Presented:

What happens when the amount of the purchase price or mortgage is so large that the buyer and lender do not want any one title underwriter to write the entire purchase price or mortgage amount?

Co-Insurance Endorsement

In co-insurance, any number of underwriters will agree to assume the liability for a certain percentage of the total amount of the purchase price or mortgage upon the subject property. In this the names of the co-insuring underwriters, their addresses, policy number, amount of insurance and the proportion of their liability is set forth. The endorsement provides that each underwriter is only liable for its percentage of the whole amount, notice of the claim must be given to each underwriter at its address, any future endorsement must be signed by all of the Co-insures and the Endorsement takes effect on the closing day and may be executed in counterparts.

7. Issue Presented:

The metes and bounds description of two or more parcels do not have a discernable common boundary. Is there an Endorsement that provides coverage?

Contiguity Endorsement

This Endorsement insures against loss or damage if it turns out that the parcels are not contiguous with each other along their common boundary.

8. Issue Presented:

We are entering into a contract or lease to purchase real property. Can we receive comfort that our interest as contract vendee is valid and enforceable?

Commercial Contract Vendee Endorsement

This Endorsement insures that the Contract Vendee has a valid and enforceable interest under the Contract of Sale. The policy insures against loss or damage due to the unenforceability of the right to receive a deed, the refusal of a trustee in bankruptcy to give a deed and the inability of the insured to take title free of intervening adverse interests, except those which were excepted. There are many exclusions from coverage such as real estate taxes, mechanics liens, federal tax liens, state tax liens, defects which would have been shown by an accurate survey, changes in laws, mortgage recording taxes, attorney fees and expenses and problems resulting from the failure to record the Contract of Sale. The amount of the title underwriter's liability is limited to the policy amount or to the sum of difference between the fair market value of the land at the time the insured was to purchase it under the Contract and the cost under the Contract, plus the unreimbursed consideration paid the insured, plus the actual cost of the building and improvements actually made by the insured and the actual direct costs related to the acquisition of the land.

9. Issue Presented:

Can I obtain protection against violations of Environmental Protections Laws?

Environmental Protection Lien Endorsement; New York

This Endorsement only protects against environmental liens that are recorded at the date of policy. It excludes liens provided for the Section 1307 of the Public Health Law.

***Environmental Protection Lien Endorsement:
New York City***

This Endorsement provides the same coverage as the State Endorsement but excludes coverage for liens arising under Section 17-151 of the Public Health provisions of the City's Administrative Code. The Endorsement can only be issued for properties located in New York City.

***Environmental Protection Lien Endorsement
(For Mortgages made to the State of New York or
a Public Benefit Corporation Thereof and Federal
Government Agencies)***

This Endorsement provides the same coverage against recorded liens as the prior two endorsements but does not contain exclusions for statutory liens.

10. Issue Presented:

We are buying into a partnership. We want to have comfort that a change in partners will not result in a legal dissolution of the partnership and a termination of the coverage provided by the title policy.

Fairway Endorsement-Withdrawn 2006

In the case, Fairway Development Company v. Title Insurance Company of Minnesota, 621 F.Supp. 120 (1985), an Ohio District Court held that a change in a partnership created a new partnership and that the new partnership had no coverage under an existing title insurance policy. If an insured purchases a Fairway endorsement, the title underwriter agrees that it will not raise a later change in the partnership as a defense (termination of the policy because of a change in the name insured) to the payment of a claim. See **2006 Policy, Conditions and Stipulations Section 8(d)**

11. Issue Presented:

How about a Fannie Mae mortgages that contains balloon provision? If the balloon payment is not made, but instead the mortgage is extended, is there an endorsement that will protect the lender's lien priority?

Fannie Mae Balloon Mortgage Endorsement: New York

In the event that a mortgage which will be insured by or sold to Fannie Mae, this Endorsement insures that the mortgage will not be rendered invalid nor will its lien priority be lost because of the exercise of the balloon provision in the mortgage including the extension of the loan terms and a change in the interest rate providing that no other liens or defects have arisen since the policy date.

12. Issue Presented:

Okay, we now have one master title policy that covers multiple sites. Suppose we have a title loss on one of the sites. Will we have to foreclose the mortgage against all sites to recover from the title company for a title loss on one site?

First Loss Endorsement

If the lender experiences a loss or series of losses which aggregate to ten per cent of the policy's face amount, then the title company cannot require the foreclosure of the mortgage or deed of trust before having liability for a compensable loss under the title policy. The title company also agrees to subordinate its subrogation rights to the rights that the insured may have against the property.

13. Issue Presented:

For mortgage tax purposes, title to the subject property will flow through an Industrial Development Agency ("IDA"). The IDA wants an owner's policy, but the IDA will be in title for seconds only before conveying, assigning or leasing the property to the eventual owner. Will the eventual owner be required to pay for a second policy?

Industrial Development Agency of Similar Public Benefit Corporation Transfer to Beneficial Owner Endorsement

Under the terms of this Endorsement, the title underwriter extends the coverage provided under the policy to the Beneficial Owner of the property. The Beneficial Owner is defined as the legal entity that is or will be the grantor to the IDA, is or will be the grantee from the IDA or is or will be the IDA's nominee. "Beneficial Owner" also includes that assignee of a leasehold from the IDA. The Endorsement also passes on the title coverage to certain identified successors-in-interest to the Beneficial Owner.

14. Issue Presented:

Our transaction is so large that two or more underwriters are required to co-insure it. How do we avoid getting caught up in a ___ match among the underwriters if we have a title loss?

Joint and Several Liability Endorsement

Under this endorsement, the underwriters agree to be responsible for the loss of the other underwriters up to a certain amount. Once that amount is reached, then the underwriters liability is in proportion to their pro rata share of the transaction.

15. Issue Presented:

The metes and bounds property description has varied over the years. We are not certain that the current description matched the survey. Can we obtain comfort that the described land is the same as the land shown on the survey?

Land Same as Survey Endorsement

This endorsement insures that the land as described in the title policy is the same as the land shown on the survey.

16. Issue Presented:

The owner's policy and the loan policy provide coverage based upon the fee interest in the property. How about coverage based upon a leasehold interest in the property?

Leasehold Endorsement (Loan Policy) and Leasehold Endorsement (Owner's Policy)

These two endorsements cover the leasehold owner or lender from certain defined losses and damages if the lessee is evicted from the property as a result of the loss of a covered matter under the underlying Policy. The covered loss or damage includes the value of the remaining leasehold estate as well as the cost of removing personal property up to 100 miles, the rent that the insured may be obligated to continue to pay and damages which the lessees may be required to pay to its sub lessees, among others.

17. Issue Presented:

I remember the Mezzanine as being the floor between the ground floor and the second floor at Macy's where men's unmentionables used to be located. Now, my client's lender wants a Mezzanine Endorsement and my client has to execute it! What are we getting into?

Mezzanine Financing Endorsement

Mezzanine financing works as follows: your client is probably a member of an LLC or a partner in a partnership. Let's stick with the LLC for clarity's sake. The LLC owns a parcel of real property. The parcel is probably encumbered by a mortgage or a deed of trust, the priority of which is insured by a title underwriter. In addition, the LLC is the insured under a fee or owner's title insurance policy. Your client, the member of the LLC is about to borrow additional funds from a lender. To secure the loan, the lender is going to require that your client, the LLC member, pledge his membership interest to the lender. If a title claim were to arise, the membership interest in the LLC might lose a great deal of its value. Therefore, the lender wants "divs" on any payment that the title underwriter may make to the member in resolution of the title claim. The payment to the lender would be made pursuant to the terms and conditions of the Mezzanine Financing Endorsement. The lender is the Mezzanine Lender and the loan secured by a Pledge of the member's interest is the Mezzanine Loan.

Under the Mezzanine Endorsement, the borrower assigns his or her right to a claim payment under the title policy to the Mezzanine Lender. If there is a loss under the title policy before the Mezzanine Lender gains control of the member's interest, the claims payment goes to the Mezzanine Lender. In order to make this assignment of a claims payment possible, the borrower is required to execute the Endorsement.

The loss under the policy is the member's proportionate share amount of the Actual Loss as that term is defined in the policy.

For its part, the Mezzanine Lender agrees that it has no rights in the title to the land, that it has no right to negotiate with the title underwriter as to amount of the loss, that the title underwriter has not waived any defenses that it might have against the borrower, that the title company still has its subrogation rights if it makes a payment, and that the title company still has the rights to insure additional mortgages secured by the land without obtaining the

lender's consent. The title underwriter agrees that if a loss occurs after the Mezzanine lender acquires title to the member's interest, it will not deny having liability because of the transfer

18. Issue Presented:

We cannot begin to comprehend the complexities of the mortgage recording tax as it relates to recording mortgages against commercial property in New York City. Can we obtain comfort that the correct mortgage tax has been paid?

Mortgage Tax Endorsement

Under New York statutory law, even if one could record a mortgage without paying the recording tax, the lender cannot assign nor foreclose the mortgage until the tax is paid. Pursuant to the Mortgage Tax Endorsement, the title underwriter insures the owner of the mortgage against loss or damage if the correct mortgage tax is not paid.

19. Issue Presented:

The transfer of zoning rights in New York City enable a developer to build higher and thereby is valuable. Are development rights (universally and incorrectly referred to as air rights" insurable?

New York City "Development Rights" Endorsement

The most comprehensible and concise explanation of development rights I have found is provided by the writers of the webpage for Air Rights New York at www.airrightsny.com from which I will now quote, "The Zoning Resolution of the City of New York recognizes two distinct type of development right, aka air rights, that are commonly brought and sold in the course of real estate transaction; there are Floor Area Ratio (FAR) rights that can be transferred between the owners of contiguous properties that have been consolidated into a single zoning lot, and there are transferable development rights (TDRs) that the owners of certain landmark and historical district properties are eligible to sell to certain nearby receiving properties."

Here is an example, drawn from the Air Rights New York webpage and from "Buying Sky: The Market for Transferable Development Rights in New York City" (appearing on the Furman

Center for Real Estate and Urban Policy at the New York University's webpage at www.furmancenter.org) of how the FAR system works. The City's Zoning Resolution defines FAR as "the total floor area on a zoning lot, divided by the lot area of that zoning lot." Therefore a building containing 25,000 square feet of floor area on a zoning lot of 10,000 square feet has a FAR of 2.5. This means that a landowner with a 5,000 square foot lot could construct a building with 12,500 of floor area on her zoning lot. But suppose the building has only 10,000 square feet of floor area. Then, the owner of the building has an excess of 2,500 square feet of FAR. If the owner of a contiguous lot in the same zoning district merges his lot with the zoning lot of the owner of the additional 2,500 FAR, the owner of the contiguous lot can purchase her additional 2,500 FAR and add the 2,500 FAR to his building.

The agreement setting forth the terms of the transfer of the FAR from one building to another is the Zoning Lot Development Agreement ("ZLDA"). The Declaration of Zoning Lot Restrictions evidences the agreement of the adjoining property owners and other "parties in interest" to the terms and conditions of the new zoning lot. "Parties in interest" is defined in the City's Zoning Resolution.

The Development Rights Endorsement insures that all of the parties in interest as defined by the Zoning Resolution of the City of New York have joined in the execution of the ZLDA and the Declaration of Zoning Lot Restrictions. The Endorsement may insure an Easement for Light and Air if one is created. The Endorsement does not insure the amount of the FAR that is transferred. Therefore, contrary to popular thought, the Endorsement does not insure the development rights themselves, but only that the parties in interest have signed the ZLDA.

20. Issue Presented:

We are purchasing an interest in a partnership. The partnership owns real estate and has a fee title insurance policy. We understand that under the "acts of the insured" exclusion from coverage, the title company could deny having liability for any title defect not a matter of public record, but known to the partners. Can I obtain comfort that the title company will not assert this right and deny our claim if a title problem arises after we buy into the partnership?

Non-Imputation Endorsement

If the incoming partner purchase a Non-imputation endorsement, the title company will waive its right to deny a claim based upon the act of the insured policy exclusion but only as to the extent of the less of the percentage interest purchased by the incoming partner, the difference in value of the insured estate without the defect and its value with the defect, or the policy amount.

21. Issue Presented:

We are entering into an option to purchase a parcel of real estate. What comfort can the title insurance company provide that the option is valid and enforceable?

Option Endorsement

The Option Endorsement insures the holder of the option that it has a valid and enforceable interest as Optionee under the Option to purchase the land.

Since the terms and conditions of this endorsement mirrors the Contract Vendee Endorsement discussed above, please see that discussion for a fuller explanation.

22. Issue Presented:

A lender has a mortgage that covers several parcels. The borrower has asked the lender to release one of the parcels from the lien of the mortgage. Can the lender obtain title coverage to the effect that the mortgage remains as a lien upon the unreleased properties?

Partial Release of Mortgage Premises Endorsement

This endorsement provides that the mortgage remains as a valid and enforceable lien on the land not released and that the mortgage's lien priority is not affected by the release.

23. Issue Presented:

Our lender client is about to make a commercial revolving credit loan. Can we obtain comfort that the future advances after the borrower pays down the loan will enjoy the same lien priority as the initial advances?

Commercial Revolving Credit Endorsement For Commercial Credit Line Mortgages Which Secure a Maximum Principal Indebtedness of Less than \$3,000,000

In New York, there are three Commercial Revolving Credit Endorsements. Both insure the lender against loss or damage which the lender might sustain arising from a loss of priority due to advances made under the loan documents, provided of course that the lender has no actual notice of the sale or transfer of the property. The first endorsement covers commercial transactions for less than \$3 million. This endorsement excepts from coverage federal tax liens, bankruptcy filings, real estate taxes and assessments, mechanics liens and other statutory liens, which have priority over the mortgage.

Commercial Revolving Credit Endorsement (Limited Term Special Coverage) For Commercial Line Mortgages Which Secure Maximum Principal Indebtedness of Less Than \$3,000,000

This Endorsement is only effective if the insured mortgage has a term of three years or less and is not a building loan. This Endorsement provides coverage against losses caused by mechanics' liens.

Commercial Revolving Credit Endorsement For Commercial Credit Line Mortgages Which Secure a Maximum Principal Indebtedness of \$3,000,000 or More

In addition to the exclusions set forth in the less than \$3 million Endorsement described above, this Endorsement excludes mechanic's liens from coverage. It also adds an exclusion for New York's mortgage tax. Under statute (Tax Law, 253-b), only commercial line mortgages under \$3 million dollars enjoy an exemption from the imposition of mortgage taxes.

24. Issue Presented:

Tell me whether the title industry Endorsement issues that will protect my client against covenants and restrictions, easements, mineral rights and other encumbrances that may have an adverse impact upon the fee title to the land.

TIRSA or ALTA 9 (Restrictions, Encroachments, Minerals) a/k/a “All-inclusive” or “Comprehensive” Endorsement

The TIRSA or ALTA 9 (American Land Title Association) Endorsement insures against loss or damage caused by

1. C & R’s which adversely affect the insured mortgage’s lien priority;
2. C & R’s, violations thereof, encroachments, recorded environmental protection notices, unless excepted in Schedule B of the policy;
3. Future violations of C & R’s which would result in a forfeiture or reversion of title;
4. Damage caused to shrubbery or trees which are located in the easement areas; and
5. Final court orders requiring the removal of encroachments, or denying the right to maintain any improvements on the land.

This Endorsement is available only to lenders.

25. Issue Presented:

We represent a lender who is about to purchase an existing mortgage from the original lender. How can we be sure that the coverage provided by the existing title policy will continue to the new lender?

Successor-in-Ownership of Indebtedness Endorsement (Loan Policy)

Based upon the representations of the assignee or purchaser of the indebtedness, the title underwriter will extend the coverage provided by the title policy to the new owner of the indebtedness. However, the endorsement does not change the policy’s effective date, the amount of coverage, and it continues the exclusions and exceptions contained in the original policy. Further, it does not insure the legal sufficiency or validity of the assignment.

26. Issue Presented:

The Endorsements are based upon endorsements drafted by the American Land Title Association (“ALTA”) for use nationally. However, as we well know, certain New York laws and practices, particularly

in the areas of mechanics' liens and foreclosures, differ greatly from national practices. How are the differences resolved?

Standard New York Endorsement (Loan and Owner's)

Certain provisions of the ALTA loan and owner's policy are replaced by the Standard Endorsements. The Loan policy version provides coverage for mechanics' liens which arise prior to the loan's closing date, excludes form coverage real estate taxes, assessments and water and sewer charges which are incurred between the closing date and the recording date. The endorsement also excludes High Cost Home and Subprime Home Loans, as statutorily defined, from coverage. The Owner's Endorsement also provides coverage for losses attributable to pre-closing date mechanics' liens but as in the Loan policy, it too excludes coverage for real estate taxes, assessments and water and sewer rents.

27. Issue Presented:

Our client is about to enter into an interest rate SWAP Agreement. Can we receive comfort that the additional interest will not render the mortgage unenforceable or cause it to lose its lien priority?

SWAP Agreement Endorsement

An interest rate swap occurs when one party agrees to pay a set interest rate and the other agrees to accept a floating rate. When the floating interest rate is higher than the set rate, additional interest will be generated. The concern is that this additional interest does not adversely affect the mortgage's lien priority. This Endorsement provides the requested coverage. However, the Endorsement does not cover usury nor does it insure the amount of additional interest that a court may determine is proper.

28. Issue Presented:

The tax parcel description as shown by the local taxing authority does not match the metes and bounds property description. Can we obtain comfort that any loss resulting from this problem will be covered by the title company?

Tax Parcel Endorsement-Single Tax Lot and Tax Parcel Endorsement- More Than One Lot

The endorsements are self-descriptive. Both insure that the lands as described in Schedule A of the policy are not assessed as separate tax lots which include no land other than that which is described in Schedule A. Hence, the title company is insuring that a foreclosure of lands not included in Schedule A but which are shown as a part of the tax lot will not result in a loss of title to the insured property.

29. Issue Presented:

The loan documents provide that the interest rate may change during the term of the loan. The change may be regular, it converts to a fixed rate or it may be negatively amortized. Can we receive comfort that the change in the interest rate will not adversely affect the mortgage or deed of trust's lien priority?

Variable Rate Mortgage Endorsement, Variable Rate Mortgage Endorsement-Fixed Rate Conversion and Variable Rate Mortgage Endorsement-Negative Amortization

The three endorsements referenced above provide coverage that a future interest rate change or conversions will not render the underlying mortgage unenforceable nor destroy the mortgage's lien priority. The title company will require that the lender set forth the conversions clearly in the recorded loan documents

30. Issue Presented:

In the event of a claims loss, we do not want to have to go through an arbitration hearing to recover as required by the Policy. How can we avoid the arbitration provisions of the title policy?

Waiver of Arbitration Endorsement

This endorsement deletes Conditions and Stipulations Section 13 of the ALTA Owner's Policy and Section 14 of the ALTA Loan Policy thereby eliminating the arbitration requirement from both policies.

HOW TO REVIEW A SURVEY

- I. Historical Background
 - A. What is surveying?
 - B. What is a survey?
 - C. Chains and links
- II. Title Requirements
 - A. Legible, completed and dated
 - B. Certifications
 - C. Signed and sealed by a licensed surveyor
 - D. Must cover all of property that is to insured
 - E. Must contain a north arrow
 - F. Must contain street names with distances to nearest cross street
- III. Title Report
 - A. Raise survey exceptions, until survey is provided:
 - “Subject to any state of facts an accurate survey would show”
 - “The exact courses, distances and dimensions are not insured
 - B. The amount of land is never insured even if the surveyor shows the amount on the survey
 - C. If the survey is over 6 months old, title company may require an updated survey, but
 - Residential (1-4 family residences): Physical inspection by title company may substitute for an updated survey
 - Commercial: a licensed surveyor must update survey or Title Company will raise exception covering “any changes since the date of the survey”
- IV. Survey Reading
 - A. Excepts from coverage those encumbrances and adverse matters that the Title Company determines affect the title to the real property based upon a review of the survey in conjunction with a review of the public record
 - B. Replaces the broad “any state of facts” survey exception which mean hat the Title Company is now insuring that there are no

other title issues EXCEPT the ones that the Title Company raises in the survey reading

- C. Typical issues raised in a survey reading
- V. Most Typical Issue Raised: Out of Possession
- A. Title to a portion of the property may have been lost to an adjoining property owner due to adverse possession
 - B. Title Company does not determine whether adverse possession exists. That must be determined by a court of law. “Out of possession” indicates that a possible adverse possession claim exists
 - C. Out of possession raised whenever a fence, wall, hedge or other structure stands one foot or more inside a record line and cuts off access to the land behind it.
 - D. If property owner can access the land without traveling on the land of another, then the Title Company will not raise the exception, or more likely will omit the exception.
- VI. How to Review a Survey
- A. Take the metes and bounds property description from the title report or the last deed of record and the survey and compare the two
 - B. Make note of any differences
 - C. Surveyor may go in a different direction than metes and bounds description (i.e. southerly as opposed to westerly)
 - D. Advances in technology; GPS v. chains and links
 - E. Saving grace: The “same as” clause
- VII. Certifications: Surveyor must certify the survey to
- A. Property owner
 - B. Lender
 - C. Title Company
 - D. Title Underwriter

ESCROW FUNDING PROCESS

- I. What is an Escrow Funding?
- II. Drawbacks of Funding Through Attorneys
 - A. Attorney thefts from their escrow funds
 - B. Law firms going out of business
- III. Drawbacks of Funding Through Title Agents
 - A. Agent defalcations
 - B. Unauthorized Practice of Law
 - C. Unavailability of Closing Protection Letters in (“CPL’s”) in New York
- IV. Result: Increased Reliance in New York by Lenders Upon Title Underwriters to Fund Large L

Exhibits

How to Read a Title Report

Qld Republic National Title Insurance Company

Title No.:

SCHEDULE A

Proposed Insured:

Effective Date: September 2, 2014

Purchaser

Mortgagee
appear.

its successors and/or assigns as their respective interests may

Amount of Insurance:

Fee

Mortgage \$200,000,000.00

THIS COMPANY CERTIFIES that a good and marketable title to the premises described in Schedule A, subject to the liens, encumbrances and other matters, if any, set forth in this certificate may be conveyed and/or mortgaged by:

As to Fee:

by deed from dated September 19, 2003 and recorded September 25, 2003 in the Queens County Register's/Clerk's Office in

Deed covers premises under examination and more.

As to Leasehold:

as derived by the following:

Lease made by and between a subsidiary of the as Landlord and as dated 09/19/2003, a memorandum of which was recorded on 09/25/2003 in CRFN

Second Amendment to Agreement of Lease between a subsidiary of the as Landlord and as tenant dated 12/21/2010 and recorded 12/29/2010 in CRFN

The estate or interest in the land described or referred to in this certificate and covered herein is:

Leasehold

Premises described herein are known as:

Address:

County:

Issued by:
True North Abstract, L.P.
1125 Ocean Avenue, Lakewood, NJ 08701
Telephone: 732-333-2447 Fax: 732-333-2448

Old Republic National Title Insurance Company

City/Town: Queens
Section:
Block:

District:
Lot:

Title No.:

SEE SCHEDULE A, LEGAL DESCRIPTION ATTACHED.

Issued by:
True North Abstract, L.P.
1125 Ocean Avenue, Lakewood, NJ 08701
Telephone: 732-333-2447 Fax: 732-333-2448

Old Republic National Title Insurance Company

Title No.:

SCHEDULE A CONTINUED

LEGAL DESCRIPTION

All that certain plot, piece or parcel of land situate, lying and being in the County of Queens, City and State of New York bounded and described as follows:

Issued by:

True North Abstract, L.P.
1125 Ocean Avenue, Lakewood, NJ 08701
Telephone: 732-333-2447 Fax: 732-333-2448

NY Report - Legal Description

098698/50

Old Republic National Title Insurance Company

Title No.:

CLOSING REQUIREMENTS

1. All parties attending the closing will be required to furnish a photo driver's license or other acceptable photo identification card to be copied.
2. All personal checks in excess of \$500.00 must be approved by the Company PRIOR TO CLOSING.
3. Borrower and lender must comply with the mortgage recording requirements of the New York State Department of Taxation and Finance. Every mortgage offered for recording must contain the following recital:

"The real property [is or is not, whichever applies] principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities."

NOTE: This recital may be stated on the mortgage instrument itself or it may be included by the attachment of a separate page to the mortgage signed by the person making the statement.

4. Applicable Mortgage Recording Tax is due at closing.
5. If an Assignment of Mortgage is offered at closing for recording, then the Borrower and Lender must comply with the requirements of Section 275 of the Real Property Law:

a) The Assignment of Mortgage must contain the following language:

"This assignment is not subject to the requirements of Section 275 of the Real Property Law because it is an assignment within the secondary mortgage market."

-or-

- b) There must be affixed to, and recorded as part of the Assignment of Mortgage, an affidavit executed by the mortgagor stating that the assignee is not acting as a nominee of the mortgagor or owner of the property, and that the mortgage continues to secure a bona obligation.
6. If any of the closing instruments herein are to be executed by a Power of Attorney, then the following requirements must be complied with:
 - a) The proposed Power of Attorney instrument must be submitted to this Company for Underwriting consideration prior to closing.
 - b) At closing an affidavit will be required from the attorney for the Principal to show that the Power of Attorney has not been revoked and that the Principal of the Power is alive and competent at the time of closing.
 - c) The Power of Attorney must be in recordable form and must be submitted at closing for recording simultaneously with the closing documents.
 7. Tax Map block and lot numbers must appear on each instrument offered for recording.

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Old Republic National Title Insurance Company

Title No.:

8. Form TP-584 New York State Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate, together with payment, if any, are due upon delivery of closing deed. (The transfer tax return must be signed by BOTH seller and purchaser).
9. New York State Board of Equalization and Assessment Real Property Transfer Report (Form RP-5217) must accompany closing deed for recording. (The form must be signed by BOTH seller and purchaser).

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Title No.:

SCHEDULE B

Hereinafter set forth are the additional matters which will appear in the policy as exceptions from coverage, unless disposed of to the Company's satisfaction prior to the closing or delivery of the policy. Company reserves the right to raise additional exceptions.

1. Rights of tenants or persons in possession, if any.
2. Mortgages set forth herein (0) - See Mortgage Schedule.
3. Covenants, Conditions, Restrictions, Easements, Agreements, etc. of record:

4. Tax Search: Herein.

5. Bankruptcy Searches run against _____ f/k/a _____ and _____

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Old Republic National Title Insurance Company

Title No.:

Returns: NONE

6. FOR INFORMATION ONLY:

Bankruptcy Searches run against the same/similar name as
Returns: None Found

7. Satisfactory Proof by affidavit must be furnished whether any work has been done upon the premises by the City of New York, or any demand made by the City for any work, which may result in charges being imposed by:

- a. the New York City Department of Rent and Housing Maintenance, Emergency Services;
- b. the New York City Department of Environmental Protection for Water Tap closing or any related work; and
- c. by the New York City Department of Health;

whether or not such charges are liens against which this policy protects.

8. Policy excepts any fees, charges, liens and assessments which pursuant to the Administrative Code of the City of New York may have attached although not yet filed with the County Clerk, Register and/or Department of Finance (City Collector's Office).

The purchaser and/or mortgagee should obtain satisfactory proof showing whether any work has been done upon the premises described in Schedule "A" by the City of New York, or any demand made by the City of New York for any such work which may result in fees, charges, liens and/or assessments by the New York City Department of Rent and Housing Maintenance, the New York City Department of Health, the New York City Department of Environmental Protection, the New York City Department of Buildings and the New York City Fire Department for emergency repairs, water tap closing, leaking tap or service pipe repairs or any related work. The Department of Buildings and the Fire Department may also have liens for unpaid fees for inspections, reinspections, examinations or services rendered by the Department, and for permit fees billed by the Department of Buildings.

9. For informational purposes only:

For New York City Properties Only: The City of New York requires the owners of certain income producing properties to file a Real Property Income and Expense ("RPIE") form with the City's Department of Finance annually. If the property owner does not file the RPIE form or files the form late, then the Department of Finance may assess a penalty of 3 to 5 percent of the property's final assessed valuation. The penalty will appear on the owner's real property tax bill. Because there may be significant time lag between the due date for the RPIE form and the date on which the penalty and interest appear on the tax bill, the policy will except and not cover any and all RPIE charges, fees and penalties which may be assessed by the Department of Finance against the property or its owner after the date of the title policy.

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Old Republic National Title Insurance Company

Title No.:

10. The Transit Adjudication Board Judgment Book is illegible and destroyed and cannot be searched as to the name of the certified owner and proposed purchaser, if any. Company requires an affidavit and indemnity as to knowledge of any Transit Adjudication Board Judgments.
11. A final water/sewer rent bill is required at closing. In the absence of such a bill showing an actual reading of consumption, policy will except all water meter and/or sewer rent charges from the date of that last actual reading of the meter including all charges entered thereafter and which might include usage prior to date of the policy.
12. PROPERTIES NOT YET CONVERTED TO METERED WATER BILLING:
DEP will be charging a 100% surcharge in the event a water meter has not yet been installed. Company will pick up same at time of closing if DEP shows property as subject to surcharge.
13. Please note for Kings, Queens, Bronx and New York Counties: If there will be a deed submitted for recording at or prior to closing, please be advised that all transfer tax forms must be in e-tax form format prepared on-line through the Acris system. For more information please see www.nyc.gov/acris.
14. Searches were run in Queens County and in New York County for judgments, liens, federal tax liens, etc. against the same/similar name as _____ The following returns were found: 1 ECB vs.
15. Searches were run for judgments, liens, federal tax liens, etc. against the same/similar name as _____ The following returns were found: 2 ECBs. See Herein.
16. FOR INFORMATION ONLY:
Searches were run in Queens County and in New York County for judgments, liens, federal tax liens, etc. against the same/similar name as _____ The following returns were found: None.
17. Deeds and Mortgages must contain the covenant required by Section 13 of the Lien Law and such covenant must be absolute and not conditional. The covenant is not required in deeds from referees or other persons appointed by a court for the sole purpose of selling property.
18. Proof required to show all tenancies and parties in possession. All leases affecting the premises must be produced and examined in advance of closing, and determination made as to whether any instrument is required from the lessees in order to subordinate.
19. UCC Searches run in the county against _____ and _____ The following returns were found: NONE
20. UCC Searches run in the _____ against _____ and _____ The following returns were found: NONE

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Title No.:

- 21. FOR INFORMATION ONLY:
UCC Searches run in the County of Queens and in the County of New York against
. The following returns were found: None.
- 22. FOR INFORMATION ONLY:
UCC Searches run in the New York State Department of State against
The following returns were found: None.
- 23. For Informational Purposes Only:
Searches were run for pending litigations against the same/similar name as
and . The following returns were found: 9 open cases vs.
See Herein.
- 24. If the mortgage to be insured, is to be a building loan mortgage:
a) Building loan agreement, complying with all the provisions of the Lien Law, must be obtained
and filed with or before the mortgage to be insured.
b) Building permit must be obtained before the first advance is made.
c) Certificate of Occupancy must be obtained and the survey brought to date to show the
completed dwelling before the final advance is made.
Pending disbursement of the full proceeds of the loan secured by the mortgage set forth under
Schedule "A" hereof, policy insures only to the extent of the amount actually disbursed, but
increases as each disbursement is made in good faith and without knowledge of any defect, in, or
objections to , the title, up to the face amount of the policy. At the time of each disbursement of
the proceeds of the loan, the title should be continued down to such time for possible liens of
objections intervening between the date hereof and the date of each disbursement.
- 25. No title will be insured to any land lying below the present or any former high water line of East
River;
- 26. Except the right of the United States Government to establish harbor, bulkhead or pierhead lines
or to change or alter any such existing lines and to remove or compel the removal of fill and
improvements thereon (including buildings or other structures) from land now or formerly beyond
the high water mark of East River without compensation to the insured.
- 27. Except the rights of the United States Government, the State of New York and the City of New
York or any of their departments or agencies to regulate and control the use of the piers,
bulkhead, land under water and land adjacent thereto.
- 28. Lease made by and between _____, as Landlord, and _____ as Tenant, dated _____
was recorded on _____ in CRFN _____ a memorandum of which _____
Second Amendment to Agreement of Lease between _____, a
subsidiary of the _____,
tenant dated _____, as Landlord and _____, as
and recorded _____ in CRFN _____

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Title No.:

With regards thereto:

- (a) Proof is required to show that such lease has not been assigned, altered, modified or amended previously, except as shown in the certificate; that lease is in full force and effect and that no defaults now exist in relation thereto;
- (b) An estoppel certificate is required from the owner of the fee;
- (c) Written consent is required from the owner of the fee;
- (d) Policy will except all the terms, covenants, conditions, provisions and agreements contained in said lease.

29. The Company requires for its review satisfactory evidence that this transaction by the seller/borrower has been properly approved as required by applicable law, and that all required notices and appraisals have occurred. At the time the Company is furnished with these items, the Company may make additional requirements or exceptions.
30. Proof is required as to the following with regard to a Limited Liability Company:
- 1. Proof of due formation: proof of filing of the Articles of Organization with the Secretary of State; and proof of publication of the Articles of Organization (or a notice containing the substance of the articles)
 - 2. Articles of Organization and Operating Agreement must be produced and reviewed; additional exceptions may be raised upon review of same;
 - 3. Proof is required that there has been no change in the make-up or composition of the organization, and that there have been no amendment made to the Articles of Organization or Operating Agreement;
 - 4. Proof is required that the party or parties executing instruments on behalf of the organization have authority to act;
 - 5. Certificate of Good Standing is required.
31. For Information: Premises benefited by a tax exemption.
32. Effective September 1st, 2010, the collection of Sales and Use tax on the provision of information services and title products is required pursuant to section 1105 of the New York State Tax Law. Accordingly, said tax will be charged, and reflected on this company's bill, on title products and searches including but not limited to: certificates of occupancy, Department of Buildings, Fire Department, Emergency Repair, Street Reports, Highway Department, Health Department, Department of Environmental Protection, Department of Air Resources, Oil Burner, Landmark and Patriot Act (or their variations where applicable).
33. For Fee Policy: Policy will except any rent stabilization fees not transferred to the NYC Department of Finance as of date of closing. Company will order Rent Stabilization Fee Search upon request.

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Title No.

34. Until a guaranteed survey is received, policy will not insure courses, distances and dimensions of subject premises or the bed of any street, road or avenue passing through same, and will except any facts such a survey or personal inspection would show.

Note: Insurance Law Sec. 64 Subdivision 6409(c) requires that title companies offer, at or prior to closing, an optional policy to cover the homeowner for the FUTURE market value of his house. You may, therefore, elect to obtain protection in excess of your purchase price. If you do not wish this additional statutory coverage, you MUST WAIVE by signing in the space below this exception:

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1125 Ocean Avenue, Lakewood, NJ 08701
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Title No.:

Privacy Policy Notice for Old Republic National Title Insurance Company and True North Abstract, L.P.

Purpose of this Notice

Title V of the Gramm-Leach-Bliley Act (GLBA) generally prohibits any financial institution, directly or through its affiliates, from sharing nonpublic personal information about you with a nonaffiliated third party unless the institution provides you with a notice of its privacy policies and practices, such as the type of information that it collects about you and the categories of persons or entities to whom it may be disclosed. In compliance with the GLBA, we are providing you with this document, which notifies you of the privacy policies and practices of Old Republic National Title Insurance Company and True North Abstract, L.P..

We may collect nonpublic personal information about you from the following sources:

- Information we receive from you such as on applications or other forms;
- Information about your transactions we secure from our files, or from [our affiliates or] others;
- Information we receive from a consumer-reporting agency;
- Information that we receive from others involved in your transaction, such as the real estate agent or lender.

Unless it is specifically stated otherwise in an amended Privacy Policy Notice, no additional nonpublic personal information will be collected about you.

We may disclose any of the above information that we collect about our customers or former customers to our affiliates or to nonaffiliated third parties as permitted by law.

We also may disclose this information about our customers or former customers to the following types of nonaffiliated companies that perform marketing services on our behalf or with whom we have joint marketing agreements:

- Financial service providers such as companies engaged in banking, consumer finance, securities and insurance;
- Non-financial companies such as envelope stuffers and other fulfillment service providers.

WE DO NOT DISCLOSE ANY NONPUBLIC PERSONAL INFORMATION ABOUT YOU WITH ANYONE FOR ANY PURPOSE THAT IS NOT SPECIFICALLY PERMITTED BY LAW.

We restrict access to non-public personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

We appreciate this opportunity to be of service to you.

The undersigned acknowledges that I/we have read and understand the above Privacy Policy Notice.

Date: _____

Seller(s) _____

Buyer(s)/Borrower(s) _____

Seller(s) _____

Buyer(s)/Borrower(s) _____

Old Republic National Title Insurance Company

Title No.:

MORTGAGE SCHEDULE

NONE

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Old Republic National Title Insurance Company

Title No.:

MUNICIPAL DEPARTMENT SEARCHES AND STREET REPORT

Any searches or returns reported herein are furnished FOR INFORMATION ONLY. They will not be insured and the Company assumes no liability for the accuracy thereof. They will NOT BE CONTINUED to the date of closing.

Certificate of Occupancy Search:	HEREIN
Department of Buildings Search:	HEREIN
Department of Fire Search:	HEREIN
Emergency Repair Lien Search:	HEREIN
Street Report:	HEREIN
Department of Air Resources Search:	HEREIN
Oil Burner Permit Search:	HEREIN
Highway Department Search:	HEREIN
Department of Health Search:	HEREIN
Landmark Search:	HEREIN

STREET VAULTS

In New York City, if there is a STREET VAULT, it is suggested that applicant investigate possible unpaid license fees by the City of New York for the use of such vault, because the right to maintain it IS NOT INSURED, nor does the Company insure that the vault charges have been paid

REAL ESTATE TAXES – NEW YORK CITY

TAX	FISCAL YEAR BEGINS	DUE DATES	LIEN DATES
City Assessed Valuation of \$40,000 or less*	July 1	July 1, October 1, January 1 & April 1	July 1, October 1, January 1 & April 1
Assessed Valuation of over \$40,000	July 1	**July 1 & January 1	**July 1 & January 1
Annual Water (non-metered) Annual Sewer	July 1	June 30	June 30 ^c
<p>*Includes real property held in cooperative form where the assessed valuation for such property divided by the number of dwelling units equals \$40,000 or less.</p> <p>** Taxes are liens and are due and payable in semi-annual installments on July 1 and January 1. NOTE: Local Law requires owners of real estate assessed at more than \$40,000 to pay real estate taxes in semi-annual installments while continuing quarterly payments for properties assessed at \$40,000 or less.</p>			
CITY TAX	<p>The grace period on taxes is through the 15th day of the month beginning with the due date. Interest from the due date is added at the rate of 9% per annum provided the property is improved and the annual tax is \$2,750.00 or less. If the property is improved and the annual tax is more than \$2,750 or if the property is vacant or unimproved land, interest is calculated at 18% per annum.</p>		
WATER METER CHARGES AND SEWER CHARGES	<p>Water^a and sewer charges are now administered^a by the New York City Department of Environmental Protection (Bureau of Water and Energy Conservation) located at 59-17 Junction Blvd., Corona, New York, Telephone #718-595-4600. They have developed a new computer system (the Customer Information System, or CIS) for processing and issuing water and sewer charges. The charges generated through this new system will not be posted in the New York City Department of Finance's computer systems, where water and sewer charges have been posted in the past.</p> <p>Any search for unpaid water and sewer charges must include both the Department of Finance (for charges established before CIS was implemented and the Department of Environmental Protection (Bureau of Water and Energy Conservation).</p> <p>The charges are based on water meter readings. Sewer charges are calculated on the quantity of industrial wastes discharged into the sewer and become liens on the date of entry. If not paid within thirty days following the date of entry, interest at the rate of 18% per annum, from the date of entry is added to date paid.</p> <p>NOTE: To obtain a special meter reading, the homeowner should contact the New York City Department of Environmental Protection (Bureau of Water and Energy Conservation) at the above address for an appointment on payment of a fee of \$55.00. If for any reason the homeowner fails to keep the appointment, the fee paid is non-refundable. The homeowner will then have to make another appointment on payment of the required fee of \$55.00.</p>		

WATER AND SEWER CHARGES (FRONTAGE)	If annual charges are not paid by the last day of the month following the month of entry, interest at 18% per annum from the due date is added to date paid.	
WATER METER CHARGES AND SEWER CHARGES (FOR QUEENS COUNTY ONLY)	<p>In certain areas of Queens County, metered water charges are paid to the Jamaica Water Company (a Private Co.). The meter is read approximately every 90 days and a bill mailed 7 days later.</p> <p>To obtain a special meter reading, the homeowner should contact the Jamaica Water Company (Telephone #718-298-8100) to set up an appointment at no charge to the customer.</p> <p>New York City Dept. of Environmental Protection bills all Queens residents for sewer charges (except areas where a cesspool is located). Sewer charges are based upon a percentage of water consumption. Jamaica Water Company supplies its Queens customers records to the City once a year so that they may bill for sewer charges. Jamaica Water Co. is not responsible for calculating any sewer charges. Any questions regarding sewer bills, contact the Bureau of Water and Energy Conservation at (718) 595-4600.</p> <p>NOTE: The New York City Bureau of Water and Energy Conservation now has access to Jamaica Water Company computer system and therefore can readily obtain information from them.</p>	
ASSESSMENTS	<p>LIEN DATE When entered</p>	<p>DUE DATE When entered</p>
	<p>LAST DAY TO PAY WITHOUT PENALTY Within 90 days of entry (within 30 days on assessments for emergency repairs or services and Department of Health Pest Control charges).</p> <p>INTEREST PENALTY FOR LATE PAYMENT Assessments accrue penalty at the same rate as a City Tax upon the premise to which they relate (except assessments based upon emergency repairs made or services performed pursuant to Department of Housing Preservation and Development authorization which accrue penalty at the rate of 10% per annum).</p>	
BOILER AND ELEVATOR	<p>LIEN DATE When entered</p>	<p>DUE DATE When entered</p>
	<p>LAST DAY TO PAY WITHOUT PENALTY Within 30 days of entry.</p> <p>INTEREST PENALTY FOR LATE PAYMENT Interest on all Boiler and Elevator charges18% per annum.</p>	
VAULT	<p>LIEN DATE June 1</p>	<p>DUE DATE June 1</p>
	<p>LAST DAY TO PAY WITHOUT PENALTY Within 30 days of entry.</p> <p>INTEREST PENALTY FOR LATE PAYMENT Interest rates on all Vault charges.....8% per annum. March 1, 1989 to date.....8.0% per annum.</p>	

NOTES

1. Your canceled check is your receipt. Receipted bills will not be returned unless written request accompanies payment.
2. General information call: Taxpayer Assistance (718) 935-9500.
3. Interest computation: (For Real Estate Taxes call N.Y.C. Department of Finance (718) 934-6000.) Due to possible fluctuation in the interest rate and the complexity of interest calculations, it is recommended that an official bill be obtained from the appropriate Borough Office of the Department of Finance, requesting an interest calculation to the contemplated date of payment. (For water and sewer charges call the Department of Environmental Protection (718) 935-7000.)
4. Information regarding In Rem: Call (718) 935-6535, 6533, 6534.
5. Information regarding refunds: Call (718) 935-9500.
6. Certain assessments may be paid in installments by arrangement. Delinquent taxes and other charges may also be paid in installments by arrangement. Contact the local office of the Department of Finance to determine whether such an arrangement can be made.
7. Checks should be made payable to New York City Department of Finance.
8. Effective July 1, 1990, interest due on late payments is calculating using daily compounding rather than simple interest. The interest rate is fixed annually by the City Council.
9. To obtain a receipt upon payment, you must pay by cash or certified check.

MUNICIPAL, DEPARTMENTAL AND INFORMATIONAL SEARCHES

No state or municipal department searched for notices of violation of laws, regulations and ordinances filed therein are made UNLESS SPECIFICALLY REQUESTED BY THE APPLICANT. Such searches, if requested, are made by the particular municipal department and are called "Record Search" and disclose only those violations reported by the last inspection made by the City and do not show the present condition, which can be ascertained only by the applicant's requesting the City to make a new inspection and paying its fees therefore. Such searches are not continued to date of closing nor are new searches made even in event of adjournment of closing.

This Company does not, in any event, insure that the buildings or other erections upon the premises or their use comply with Federal, State and Municipal laws, regulations and ordinances, and therefore we assume no liability whatsoever by reason of the ordering of such searches and do not insure their accuracy. Such information as has been furnished to us by the various departments is set forth in the Municipal Department Violations Schedule.

Any searches or returns reported herein are furnished FOR INFORMATION ONLY. They will not be insured and the Company assumes no liability for the accuracy thereof. They will not be continued to the date of closing.

CENTRAL VIOLATIONS BUREAU

In New York City, since about July 1, 1961, only the Fire Department, the Department of Health, the Department of Air Pollution Control and the Department of Water Supply, Gas and Electricity have been reporting violations issued by them affecting multiple dwellings to the Central Violations Bureau established pursuant to Section 328 of the Multiple Dwelling Law. In its report of its search for violations the Department of Buildings includes such violations affecting multiple dwellings filed by the aforesaid departments in the central bureau.

STREET VAULTS

In New York City, if there is a STREET VAULT, it is suggested that applicant investigate possible unpaid license fees by the City of New York for the use of such vault, because the right to maintain it IS NOT INSURED.

A street vault is any subsurface opening, structure, or erection, whether or not covered over, to the extent that it extends from the building line under the street. If there is a street vault used in connection with the premises herein described, the applicant should acquaint himself with the provisions of Title Z of Chapter 46 of the Administrative Code of the City of New York, which imposes an annual charge for maintaining such vaults in New York City.

MUNICIPAL SEARCH SCHEDULE - Enclosed herewith.



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LANDMARK SEARCH

COMPANY:		DATE :	08/28/2014
TITLE #:		COUNTY:	QUEENS
PREMISES :			
BLOCK:	LOT:	SJC REF:	

THE ABOVE PROPERTY IS REFLECTED IN THE RECORDS AS:

A LANDMARK PROPERTY

NOT A LANDMARK PROPERTY

THIS PROPERTY IS NOT A LANDMARK PROPERTY,
YET IS IN THE HISTORIC DISTRICT KNOWN AS:

PROPERTIES THAT ARE NOT ACTUAL LANDMARK PROPERTIES, YET ARE LOCATED IN A HISTORIC DISTRICT,
MUST ADHERE TO THE SAME RULES AND REGULATIONS AS IF THE PROPERTY WAS A LANDMARK.

NO LANDMARK VIOLATIONS WERE FOUND.

ATTACHED ARE COPIES OF LANDMARK VIOLATIONS
FOUND AGAINST THE ABOVE PREMISES.

IMPORTANT NOTICE ABOUT SEARCH INFORMATION
S.J. CARROLL JR. INC. DOES HEREBY STATE THAT THE RECORDS OF THE ABOVE CITY AGENCY WAS EXAMINED AND THAT THE INFORMATION REPORTED ABOVE IS TRUE AND ACCURATE
ABSTRACT OF THE INFORMATION CONTAINED THEREIN ON THE ABOVE NOTED DATE. THIS REPORT IS FOR INFORMATION PURPOSES ONLY. NO LIABILITY IS ASSUMED HEREUNDER.
Page 1 of 1

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for over 35 years*

EMERGENCY REPAIR SEARCH

COMPANY : DATE : 08/28/2014

TITLE # : COUNTY: QUEBENS

PREMISES : SJC REF:

DATE OF LAST PRINTED LIEN BOOK: 07/22/2014

RECOUPMENT UNIT:

*TOTAL MONEY DUE: 0.00

WORK IN PROGRESS:

XXX NO EMERGENCY REPAIRS HAVE BEEN GIVEN OUT SUBSEQUENT TO THE LAST LIEN BOOK.

THE ATTACHED EMERGENCY REPAIRS HAVE BEEN GIVEN OUT AT THE ABOVE ADDRESS.

*NOTE: THE DEPARTMENT OF HPD HAS ADVISED US THAT CERTAIN RECORDS OF THEIR OFFICE MAY BE INACCURATE. A PAYOFF LETTER MUST BE OBTAINED ON ALL PROPERTIES WHERE THERE IS MONEY OWED TO THE RECOUPMENT UNIT. HPD HAS CONFIRMED THAT PROPERTIES THAT REFLECT A ZERO BALANCE ARE ACCURATE AND THAT A PAYOFF LETTER IS NOT REQUIRED..

IMPORTANT NOTICE ABOUT SEARCH INFORMATION

S.J. CARROLL JR. INC. DOES HEREBY STATE THAT THE RECORDS OF THE ABOVE CITY AGENCY WERE EXAMINED AND THAT THE INFORMATION REPORTED ABOVE IS TRUE AND ACCURATE ABSTRACT OF THE INFORMATION CONTAINED THEREIN ON THE ABOVE NOTED DATE THIS REPORT IS FOR INFORMATION PURPOSES ONLY NO LIABILITY IS ASSIGNED HEREUNDER.

Page 1 of 1

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HIGHWAY SEARCH

DATE : 08/28/2014

SJC REF:

COMPANY:

TITLE #:

COUNTY: QUEENS

PREMISES :

BLOCK: _____ LOT: _____

TO: HIGHWAY DIVISION
DEPARTMENT OF TRANSPORTATION

XXX NO VIOLATIONS

_____ VIOLATIONS NOTED BELOW

Kindly conduct a search, of your department, for violations against the above-mentioned premises. Said search will be picked up by a representative of our company.

Note, this search was conducted at the Department of Transportation and may not include Violations on file at the County Clerks' Offices.

Sincerely,

S.J. CARROLL JR., INC.



S.J. CARROLL JR., INC.

Researching the Records of NYC Agencies

Quality & Service
for over 35 years

TAX SEARCH

COMPANY: _____ DATE : 08/28/2014
 TITLE #: _____ TAX MAP ATTACHED
 COUNTY: QUEENS BLOCK: _____ LOT: _____ SJC REF: _____
 PREMISES : _____

2014/2015 A.V.	TAX CLASS: 2-	TAX RATE: 13.145	BUILDING CLASS: D8		
(TRANS.) LAND:	1,215,322	TOTAL: 19,953,741	EX. 1,215,322	EX. 1,215,322	
(ACTUAL) LAND:	1,064,250	TOTAL: 19,802,669	EX. 1,064,250	EX. 1,064,250	

REASON FOR EXEMPTION: _____ A.O.: N/A

WATER & SEWER RENT CHARGES ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION MAY BE PENDING. (SEE SEPARATE WATER DEPARTMENT SEARCH.)

2014/2015	TOTAL TAX	REVISION OF A.V.	TAX DUE
1 1/2 DUE 07/01/14	1,231,582.58	1,231,582.58	0.00
2 1/2 DUE 01/01/15	1,231,582.58	1,231,582.58	0.00

SUBJECT TO CONTINUATION PRIOR TO CLOSING.
NOTHING ELSE FOUND.

IMPORTANT NOTICE ABOUT SEARCH INFORMATION

Some of the items returned hereon may have been paid but payment not officially posted. Receipts of such items should be produced on closing. This commitment includes such unpaid taxes, water and sewer charges and other matters relating to taxes which are indexed, as of the date of this commitment, against the above block & lot on the official records of the Department of Finance, Office of the City Collector. No responsibility is assumed for any error or omissions on the record nor any taxes levied after the date of this commitment. If a tax exemption is noted above, same may terminate on the date when premises are conveyed by the certified owner, and the full tax rate thereupon be reinstated. Our tax search does not cover any part of the street on which the premises to be insured abut.

Page 1 of 1



S.J. CARROLL JR., INC.

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for over 25 years

WATER DEPARTMENT SEARCH

COMPANY: _____ DATE : 08/28/2014
 TITLE #: _____ COUNTY: QUEBENS
 PREMISES : _____
 BLOCK: _____ LOT: _____ SJC REF: _____

ACCOUNT #	DUE	BALANCE
	08/28/14	\$0.00

THE ABOVE ACCOUNT BALANCE(S) REFLECT THE TOTAL OWED TO THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.

THE BELOW CHARGES ARE FOR ADJUSTMENT PURPOSES ONLY AND ARE ALREADY INCLUDED IN THE ABOVE ACCOUNT BALANCE. THEY ARE NOT OWED IN ADDITION TO THE ACCOUNT BALANCE.

METER #
METER #:

(A TITLE READING SHOULD BE OBTAINED ON ALL ACCOUNTS.)

IMPORTANT NOTICE ABOUT SEARCH INFORMATION

S.J. CARROLL JR. INC. DOES HEREBY STATE THAT THE RECORDS OF THE ABOVE CITY AGENCY WAS EXAMINED AND THAT THE INFORMATION REPORTED ABOVE IS TRUE AND ACCURATE ABSTRACT OF THE INFORMATION CONTAINED THEREIN ON THE ABOVE NOTED DATE, THIS REPORT IS FOR INFORMATION PURPOSES ONLY, NO LIABILITY IS ASSUMED HEREUNDER
Page 1 of 1

68 Jay Street - 5th Floor, Brooklyn, New York 11201 ☎ 718-852-0051 ☎ Fax 718-852-0533 ☎ www.sjcarroll.com



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Quality & Service
for over **35** years

STREET REPORT SEARCH

COMPANY: DATE : 08/28/2014
TITLE #: COUNTY: QUEENS
PREMISES :
BLOCK: LOT: SJC REF:

FRONT STREET:

WIDTH: MAPPED AT 100' BY THE CITY OF NEW YORK

DEDICATED: NO TITLE

OTHER INFO:

CROSS STREET:

WIDTH: MAPPED AT 60' BY THE CITY OF NEW YORK

DEDICATED: DEED DATED 11/04/1874

OTHER INFO:

CROSS STREET:

WIDTH: MAPPED AT 60' BY THE CITY OF NEW YORK

DEDICATED: DEED DATED 11/04/1874

OTHER INFO:

IMPORTANT NOTICE ABOUT SEARCH INFORMATION
S.J. CARROLL JR. INC. HEREBY STATES THAT THE RECORDS OF THE ABOVE CITY AGENCY WAS EXAMINED AND THAT THE INFORMATION REPORTED ABOVE IS TRUE AND ACCURATE
ABSTRACT OF THE INFORMATION CONTAINED THEREIN ON THE ABOVE NOTED DATE. THIS REPORT IS FOR INFORMATION PURPOSES ONLY. NO LIABILITY IS ASSUMED HEREUNDER.

Page 1 of 1

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FIRE DEPARTMENT * CITY OF NEW YORK
BUREAU OF REVENUE MANAGEMENT
9 METROTECH CENTER
BROOKLYN, N.Y. 11201-3857

REPORT AND RECORD SEARCH REQUEST

VIA: S.J. CARROLL JR., INC.
68 JAY STREET, SUITE #518
BROOKLYN, N.Y. 11201

SEARCH #

CHECKED BY

COMPANY:

DATE : 08/28/2014

TITLE #:

COUNTY: QUEENS

SJC REF:

The undersigned requests the following information:

PREMISES :

1. Record of existing Fire Department Violations FEE:\$10.00
 2. Record of Permit for FEE:\$10.00
 3. Other FEE:\$10.00
TOTAL FEE: \$10.00

State applicant's interest in or relation to premise: TITLE INSURANCE

(THE CITY OF NEW YORK IS NOT BEING SUED, NOR IS THERE ANY INTENTION TO SUE THE CITY OF NEW YORK)

DO NOT WRITE BELOW THIS LINE

Gentlemen:

AUG 16 2014

In reply to your request concerning the premises mentioned above, please be advised that as of 9 A.M on _____
our records show the following:

SEARCHED BY: S.A.
Chief of Fire Prevention

NO VIOLATIONS
Bureau of Fire Prevention
Fire Dept, City of N.Y.

VIOLATIONS RECORDED ABOVE ARE ONLY THOSE WHICH ARE A MATTER OF RECORD IN THE HEADQUARTERS OF THE BUREAU OF FIRE PREVENTION, AND MAY NOT
INCLUDE VIOLATIONS ISSUED BY LOCAL OFFICES.

Page 1 of 1



S.J. CARROLL JR., INC.
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Quality & Service **35**
for over years

HEALTH RECORD SEARCH

DATE : 08/28/2014

SJC REF:

COMPANY:

TITLE #:

COUNTY: QUEENS

PREMISES :

BLOCK: , LOT:

TO: DEPARTMENT OF HEALTH
125 WORTH STREET
NEW YORK N.Y. 10013

KINDLY CONDUCT A SEARCH OF YOUR DEPARTMENT FOR COPIES OF ALL WINDOW GUARD VIOLATIONS ON FILE.

THANK YOU FOR YOUR ASSISTANCE.

NO VIOLATIONS
 VIOLATIONS ATTACHED



S.J. CARROLL JR., INC.

Researching the Records of NYC Agencies

Quality & Service

for over 35 years

CERTIFICATE OF OCCUPANCY

COMPANY:

DATE : 08/28/2014

TITLE #:

COUNTY: QUEENS

PREMISES :

BLOCK:

LOT:

SJC REF:

Attached find Certificate of Occupancy #

issued on

for a

Please note: This is a temporary certificate of occupancy which expires on 10/13/2014.

According to the Building Department Index Records there are no alteration plans approved subsequent to this certificate of occupancy that either change or propose to change the legal occupancy of these premises.

IMPORTANT NOTICE ABOUT SEARCH INFORMATION

S.J. CARROLL JR., INC. DOES HEREBY STATE THAT THE RECORDS OF THE ABOVE CITY AGENCY WAS EXAMINED AND THAT THE INFORMATION REPORTED ABOVE IS TRUE AND ACCURATE ABSTRACT OF THE INFORMATION CONTAINED THEREIN ON THE ABOVE NOTED DATE. THIS REPORT IS FOR INFORMATION PURPOSES ONLY. NO LIABILITY IS ASSUMED HEREUNDER. REPORT MAY NOT INCLUDE MINOR APPLICATIONS THAT DO NOT REQUIRE A NEW CERTIFICATE OF OCCUPANCY.

Page 1 of 1

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HOUSING & BUILDING SEARCH

COMPANY:	DATE :
TITLE #:	COUNTY: QUEENS
PREMISES :	SJC REF:

A SEARCH OF THE RECORDS OF THE DEPARTMENT OF BUILDINGS, AND THE RENT AND HOUSING MAINTENANCE DEPARTMENT OF THE CITY OF NEW YORK WAS MADE ON THE ABOVE DATE. THE FOLLOWING VIOLATIONS WERE REPORTED PENDING. THIS DATA IS AS OF 06/06/2014.

BUILDING DEPARTMENT: VIOLATIONS ATTACHED (11 PAGES)

RENT & HOUSING MAINTENANCE: NO VIOLATIONS

CLASSIFICATION

MULTIPLE DWELLING: HEREAFTER ERECTED CLASS "A"

NOT A MULTIPLE DWELLING:

IMPORTANT NOTICE ABOUT SEARCH INFORMATION
 S J CARROLL JR, INC. DOES HEREBY STATE THAT THE RECORDS OF THE ABOVE CITY AGENCY WAS EXAMINED AND THAT THE INFORMATION REPORTED ABOVE IS TRUE AND ACCURATE
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S.J. CARROLL JR., INC.

Researching the Records of NYC Agencies

Quality & Service **35**
for over years

AIR RESOURCE SEARCH

DATE : 08/28/2014

SJC REF:

COMPANY: TRUE NORTH ABSTRACT, L.P.

TITLE #:

COUNTY: QUEENS

PREMISES :

BLOCK: _____ LOT: _____ N/A

TO: DEPARTMENT OF AIR RESOURCES
59-17 JUNCTION BLVD.
CORONA, N.Y. 11368

FROM: S.J. CARROLL JR., INC.
68 JAY STREET, SUITE #519
BROOKLYN, N.Y. 11201

Kindly conduct a search, on your department, for violations against the above mentioned premises. Said search will be picked up by a representative of our company.

Sincerely,

S.J. CARROLL JR., INC.

(SEE ATTACHED)



THE CITY OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Bureau of Environmental Compliance
55-17 Junction Boulevard, 8th Floor, Flushing, New York 11373-6108

DATE: 08/08/14

S. J. Carroll Jr. Inc.
68 Jay Street, Fl#5
Brooklyn, NY, 11201

TITLE SEARCH INQUIRY
Property Located at:

Dear Sir/Madam:

Please be advised, it is a violation of the New York City Administrative Code, Title 24, Air Pollution Control Code, to operate fuel-burning, refuse-burning or process equipment as specified in the Code without a valid Certificate. If such equipment, although unknown to us, exists it is automatically in violation of the law. This applies regardless of the information provided here in.

The Division of Air/Noise Permitting, Enforcement and Policy has searched its files regarding the Above referenced premise and has found:

No records for this premise

No outstanding record of violation(s)

Additional information. See Attachments(s). Please note that a certificate that has expired May be subject to violation unless the certificate is renewed or canceled by the current or potential owner. The owner, on the date of issuance of any violation, is responsible for both penalty and compliance

Page 1 of 

RECORDS CONTROL UNIT
(718) 595 - 3855

3AH:sd



NYC DEP Boiler Information



PHONE: 732.331.2467
FAX 732.333.7498
1125 Ocean Avenue
Suite 1008
Lakewood NJ 08701
info@truenorthabstract.net
www.truenorthabstract.net

BANKRUPTCY SEARCH

09/18/2014

Title #:
County: Queens

Name:

Name:

There is no record of a bankruptcy filing for the above mentioned individual, corporation or business.

The following information has been found:

The following office(s) have been checked:

U.S. Bankruptcy Court, Eastern District.

FOR INFORMATION PURPOSES ONLY. COMPANY DOES NOT ASSUME ANY LIABILITY.

098699/50



PHONE: 732.222.2547
FAX: 732.252.2440
1125 Ocean Avenue
Suite 100B
Lakewood NJ 08701
info@truenorthabstracts.com
www.truenorthabstracts.com

PATRIOT SEARCH

September 18, 2014

Title #:

County: Queens

Name:

Name:

No information found for Specially Designated Nationals

The following information has been found:

FOR INFORMATION PURPOSES ONLY. COMPANY DOES NOT ASSUME ANY LIABILITY.

098689/50

The foregoing Title Report was provided through the courtesy and authorization of Jo-Ann Whitehorn, Zuleika Brylski, Zoima Simmons and Charles Katzenstein of True North Abstract Abstract, L.P., 112S Ocean Avenue, Lakewood, NJ 08701.

Commercial Endorsements

Title Policy Endorsements That Are Available in New York

By Marvin N. Bagwell

Currently, there are only six promulgated title policy forms which are approved by the State Department of Financial Services and offered by title companies for use in New York State: the Owner's or Fee policy, the Loan or Mortgage policy, the TIRSA Owner's Extended Protection Policy (also known as the TOEPP policy), the Short Form Resident Loan Policy, the Residential Limited Coverage Junior Loan Policy and the United States of America policy. However, there are almost fifty endorsements available to real estate practitioners that provide extended or additional coverage above those offered by the policy forms. In this article, the author will provide a list of the endorsements and a brief description of each endorsement. By necessity, the full terms and conditions of each endorsement are not set forth in this outline. The reader is directed online to TIRSA.org for the full text of each endorsement.

Unless indicated otherwise, the premium for each endorsement is \$25.00.

Access Endorsement

- This endorsement insures the lender against loss in the event that there is no access to the insured premises over a physically open and specifically named public street.

Endorsement for Additional Interest

- This endorsement insures the lender against loss in the event that a court holds that "additional interest," as defined in the loan documents, is (1) invalid or unenforceable or (2) does not have the same lien priority as the principal of the loan secured by the mortgage. However, the endorsement does not insure the amount of the

additional interest although it does permit the title company, by filling in a blank, to cap the amount of the loss or damage which the insured can suffer. Note that the endorsement also does not insure against the results of a bankruptcy filing or against "unconscionability or unreasonableness."

- This endorsement requires underwriter approval prior to issuance.
- The premium is the full applicable loan rate per thousand for the amount of insurance above the face amount of the policy.

Cluster Endorsement (a.k.a. Aggregation Endorsement)

- The Cluster endorsement enables a lender to aggregate coverages on multi-site transactions. The endorsement provides an amount of total coverage but also breaks down the coverage on a per parcel basis. The fact that the endorsement totals the coverage allows the lender to also shift some title losses from one parcel to another. However, in New York the endorsement does not cover losses attributable to the failure to pay the mortgage recording tax.
- This endorsement requires underwriter approval prior to issuance.

Condominium Endorsement

- This endorsement insures against loss or damage if: the unit and its common elements are not part of the condominium regime; the failure of the condominium documents to create a condominium under New York law; violations of covenants that restrict the use of the con-

dominium unit (except environmental); the priority of any condominium liens prior to the policy date; failure of the unit to be assessed for real property taxes; against encroachment of one unit upon another; and the loss of title through the condominium's board exercise of its right of first refusal.

Co-Insurance Endorsement

- In co-insurance, any number of underwriters will agree to assume the liability for a certain percentage of the total amount of the purchase price or mortgage upon the subject property. In this endorsement the names of the co-insuring underwriters, their addresses, policy number, amount of insurance and the proportion of their liability is set forth. The endorsement provides that each underwriter is only liable for its percentage of the whole amount. The endorsement further provides that notice of the claim must be given to each underwriter at its address, and any future endorsement must be signed by all of the co-insurers, and the endorsement takes effect on the closing day and may be executed in counterparts.

Contiguity Endorsement

- This endorsement insures against loss or damage if it turns out that the parcels are not contiguous with each other along their common boundary.

Commercial Contract Vendee Endorsement

- This endorsement insures that the Contract Vendee has a valid and enforceable interest under the Contract of Sale. The policy insures against loss or damage due to the unenforceability of

the right to receive a deed, the refusal of a trustee in bankruptcy to give a deed and the inability of the insured to take title free of intervening adverse interests, except those which were excepted. There are many exclusions from coverage such as real estate taxes, mechanic's liens, federal tax liens, state tax liens, defects which would have been shown by an accurate survey, changes in laws, mortgage recording taxes, attorney fees and expenses and problems resulting from the failure to record the Contract of Sale. The amount of the title underwriter's liability is limited to the policy amount or to the sum of difference between the fair market value of the land at the time the insured was to purchase it under the Contract and the cost under the Contract, plus the unreimbursed consideration paid the insured, plus the actual cost of the building and improvements actually made by the insured and the actual direct costs related to the acquisition of the land.

- This endorsement requires underwriter approval prior to issuance.
- The premium is one hundred twenty percent (120%) of the owner's rate for the amount of the insurance purchased.

Residential Contract Vendee Endorsement (Fee or Leasehold)

- This endorsement does not cover nor exclude as much as the Commercial endorsement. The Residential endorsement covers the right to receive a deed under the contract, unless the insured does not fulfill the contract's terms, and that a trustee in bankruptcy will not decline to issue a deed. The endorsement does not cover matters arising after the policy date, pre-policy mechanic's liens, attorney fees to enforce the contract except those incurred in a defense of

the validity of the contract, and the imposition of mortgage recording taxes.

- The premium is one hundred twenty percent (120%) of the owner's rate for the amount of the insurance purchased.

Cooperative Endorsement (Owner's and Loan)

- This endorsement excludes from coverage liens and encumbrances that were of record prior to the date of the deed to the Cooperative Corporation. However, the policy provides that all mortgages affecting the Cooperative Corporation are set forth in Schedule B. The endorsement covers title to the building and land; the validity of the cooperative regime; the proper location of the cooperative building; there being no forfeiture or reversion provision; that real estate taxes on the land and building have been paid up to the closing date; maintenance charges on the unit have been paid up to the closing date; and that the co-board's right of first refusal has not been exercised. In addition, the owner's endorsement covers the cost of moving the owner's personal property in the event of an eviction as the result of a matter insured against.

Environmental Protection Lien Endorsement: New York

- This endorsement only protects against environmental liens that are recorded at the date of policy. It excludes liens provided for the Section 1307 of the Public Health Law, which provides for nuisance and sanitation liens.

Environmental Protection Lien Endorsement: New York City

- This endorsement provides the same coverage as the State endorsement but excludes coverage for liens arising under Section 17-151 of the Public Health

provisions of the City's Administrative Code. This provision authorizes the Department of Public Health to impose liens against properties in which health violations exist. The endorsement can only be issued for properties located in New York City.

Environmental Protection Lien Endorsement (for Mortgages Made to the State of New York or a Public Benefit Corporation Thereof and Federal Government Agencies)

- This endorsement provides the same coverage against recorded liens as the prior two endorsements but does not contain exclusions for statutory liens.

Fannie Mae Balloon Mortgage Endorsement: New York

- In the event that a mortgage will be insured by or sold to Fannie Mae, this endorsement insures that the mortgage will not be rendered invalid nor will its lien priority be lost because of the exercise of the balloon provision in the mortgage including the extension of the loan terms and a change in the interest rate provided that no other liens or defects have arisen since the policy date.

First Loss Endorsement

- If the lender experiences a loss or series of losses which aggregate to ten percent (10%) of the policy's face amount, then the title company cannot require the foreclosure of the mortgage or deed of trust before having liability for a compensable loss under the title policy. The title company also agrees to subordinate its subrogation rights to the rights that the insured may have against the property.
- This endorsement requires underwriter approval prior to issuance.

- The premium is ten percent (10%) of the full applicable loan rate.

Industrial Development Agency of Similar Public Benefit Corporation Transfer to Beneficial Owner Endorsement

- Under the terms of this endorsement, the title underwriter extends the coverage provided under the policy to the Beneficial Owner of the property. The Beneficial Owner is defined as the legal entity that is or will be the grantor to the IDA, is or will be the grantee from the IDA, or is or will be the IDA's nominee. "Beneficial Owner" also includes that assignee of a leasehold from the IDA. The endorsement also passes on the title coverage to certain identified successors-in-interest to the Beneficial Owner.

Joint and Several Liability Endorsement

- Under this endorsement, the underwriters agree to be responsible for the loss of the other underwriters up to a certain amount. Once that amount is reached, then the underwriter's liability is in proportion to its pro rata share of the transaction.
- The premium is charged by each underwriter at the rate of \$1 per \$1,000 of the total amount of insurance for which the joint and several liability applies.

Junior Loan Policy Endorsement 1 and 2

- The Junior Loan Policy endorsement 1 protects the second mortgage lender from the loss of priority resulting from the recording of a deed to or a mortgage on the subject property after the policy date or the date of the endorsement. If the property is one to four family residential, then Junior Loan Policy endorsement 2 insures the second lender that its mort-

gage will retain the mortgage's original loan priority even if the lender makes future advances to the borrower or the loan's interest rate is changed. Real estate taxes, assessments, water and sewer charges, Federal tax liens, and liens and encumbrances known to the lender are excluded from coverage.

Land Same as Survey Endorsement

- This endorsement insures that the land as described in the title policy is the same as the land shown on the survey.

Leasehold Endorsement (Loan Policy) & Leasehold Endorsement (Owner's Policy)

- These two endorsements cover the leasehold owner or lender from certain defined losses and damages if the lessee is evicted from the property as a result of the loss of a covered matter under the underlying policy. The covered loss or damage includes the value of the remaining leasehold estate as well as the cost of removing personal property up to 100 miles, the rent that the insured may be obligated to continue to pay and damages which the lessees may be required to pay to its sublessees, among others.

Manufactured Housing Unit Endorsement

- This endorsement amends the term "land" in the title policy to include a manufactured housing unit located on the land on the policy date. However, this is just the beginning of the story. New York does not have a law, as do other states that permit a manufactured home to be legally attached to the land. Mobile homes that were manufactured after 1994 in New York are registered in the Division of Motor Vehicles, as are automobiles. Therefore, manufactured homes built after 1994 cannot be legally attached to land. The result is

that some title underwriters will not insure manufactured homes while others go through all sorts of gyrations involving tax assessment information, affidavits and UCC requirements or exceptions to insure titles. Some underwriters will insure modular homes while others will not. The best advice is to contact your underwriter.

Market Value Policy Rider

- Section 6409(c) of the Insurance Law requires title underwriters to offer at the time of closing or before a market value rider to natural person owners of a one-to-four family residential property including cooperative units. Under the endorsement, the title underwriter insures the owner against loss or damage not exceeding the market value of the property at the time of the loss. The market value is determined by a panel of three arbitrators; one selected by the insured, one by the title underwriter and the third by the two arbitrators. There is a similar endorsement for the TIRSA Extended Owner's Protection Policy (TOEPP) as well.
- The premium is ten percent (10%) of the full owner's rate.

Mezzanine Financing Endorsement

- Mezzanine financing works as follows: your client is probably a member of an LLC or a partner in a partnership. Let us stick with the LLC for clarity's sake. The LLC owns a parcel of real property. The parcel is probably encumbered by a mortgage, the priority of which is insured by a title underwriter. In addition, the LLC is the insured under a fee or owner's title insurance policy. Your client, the member of the LLC, is about to borrow additional funds from a lender. To secure the loan, the lender is going to require that your client, the LLC member, pledge his or her membership interest to the

lender. If a title claim were to arise, the membership interest in the LLC might lose a great deal of its value. Therefore, the lender wants “divs” on any payment that the title underwriter may make to the member in resolution of the title claim. The payment to the lender would be made pursuant to the terms and conditions of the Mezzanine Financing endorsement. The lender is the Mezzanine Lender and the loan secured by a pledge of the member’s interest in the Mezzanine Loan.

- Under the Mezzanine endorsement, the borrower assigns his or her right to a claim payment under the title policy to the Mezzanine Lender. If there is a loss under the title policy before the Mezzanine Lender gains control of the member’s interest, the claims payment goes to the Mezzanine Lender. In order to make this assignment of a claims payment possible, the borrower is required to execute the endorsement.
- The loss under the policy is the member’s proportionate share amount of the Actual Loss as that term is defined in the policy.
- For its part, the Mezzanine Lender agrees that it has no rights in the title to the land, that it has no right to negotiate with the title underwriter as to amount of the loss, that the title underwriter has not waived any defenses that it might have against the borrower, that the title company still has its subrogation rights if it makes a payment, and that the title company still has the rights to insure additional mortgages secured by the land without obtaining the lender’s consent. The title underwriter agrees that if a loss occurs after the Mezzanine Lender acquires title to the member’s interest, it will not

deny having liability because of the transfer.

- This endorsement requires underwriter approval prior to issuance.
- The premium is twenty percent (20%) of the owner’s rate.

Mortgage Tax Endorsement

- Under New York statutory law, even if one could record a mortgage without paying the recording tax, the lender cannot assign nor foreclose the mortgage until the tax is paid. Pursuant to the Mortgage Tax endorsement, the title underwriter insures the owner of the mortgage against loss or damage if the correct mortgage tax is not paid.

New York City “Development Rights” Endorsement

- A development right is the right of the owner to build a structure to the height permitted by the City’s zoning code. Simplified, if the code permits a building to be constructed up to six floors, but the existing building only has four floors, then the owner of the building has two floors of excess development rights. Provided that certain requirements are met, a neighboring owner may purchase the excess two floors of development rights from the owner of the building. The agreement setting forth the terms of the transfer of the development rights from one building to another is the Zoning Lot Development Agreement (“ZLDA”). The Declaration of Zoning Lot Restrictions evidences the agreement of the adjoining property owners and other “parties in interest” to the terms and conditions of the new zoning lot. The Development Rights endorsement insures that all of the parties in interest as defined by the Zoning Resolution of the City of New York have joined in the execution of the ZLDA and the Declaration

of Zoning Lot Restrictions. The endorsement may insure an Easement for Light and Air if one is created. The endorsement does not insure the amount of the floor area development rights. Therefore, contrary to popular thought, the endorsement does not insure the development rights themselves.

Non-Imputation Endorsement

- If the incoming partner purchases a non-imputation endorsement, the title company will waive its right to deny a claim based upon the act of the insured policy exclusion but only to the extent of the lease of the percentage interest purchased by the incoming partner, the difference in value of the insured estate without the defect and its value with the defect, or the policy amount.
- The premium is twenty percent (20%) of the full owner’s rate.

Option Endorsement

- The Option endorsement insures the holder of the option that it has a valid and enforceable interest as Optionee under the Option to purchase the land. Since the terms and conditions of this endorsement mirrors the Contract Vendee endorsement discussed above, please see that discussion for a fuller explanation.
- This endorsement requires underwriter approval prior to issuance.
- The premium charge depends upon so many variables that it will not be stated here. Inquiring minds are directed to Section 33 of the TIRSA Rate Manual.

Partial Release of Mortgage Premises Endorsement

- This endorsement provides that the mortgage remains as a valid and enforceable lien on the

land not released and that the mortgage's lien priority is not affected by the release.

- The premium for this endorsement is \$150.

Planned Unit Development Endorsement

- This endorsement insures against the lender or unit owner from suffering a loss due to violations of restrictive covenants unless a notice of the violation has been recorded, unpaid prior unit owner assessments, enforced removal of any structure which encroaches upon adjoining land and the enforcement of a first right of refusal to purchase the land.

Residential Revolving Credit Endorsement (Owner-Occupied One-to-Six Family)

RCE-1

- This endorsement insures the lender against loss that the lender may incur because of a loss of the lien priority of the insured mortgage as a result of advances made by the lender to the owner. Losses resulting from Federal tax liens, bankruptcies, real estate taxes, assessments and water and sewer charges are not covered.
- The premium for this endorsement is ten percent (10%) of the full applicable loan rate.

Commercial Revolving Credit Endorsement for Commercial Credit Line Mortgages Which Secure a Maximum Principal Indebtedness of Less Than \$3,000,000

RCE-2

- In New York, there are three Commercial Revolving Credit endorsements. All three insure the lender against loss or damage which the lender might sustain arising from a loss of priority due to advances made under the loan documents, provided

of course that the lender has no actual notice of the sale or transfer of the property. The first endorsement covers commercial transactions for less than \$3 million. This endorsement excepts from coverage federal tax liens, bankruptcy filings, real estate taxes and assessments, mechanic's liens and other statutory liens, which have priority over the mortgage.

- The premium for this endorsement is ten percent (10%) of the full applicable loan rate.

Commercial Revolving Credit Endorsement (Limited Term Special Coverage) for Commercial Line Mortgages Which Secure Maximum Principal Indebtedness of Less Than \$3,000,000

RCE-3

- This endorsement is only effective if the insured mortgage has a term of three years or less and is not a building loan. This endorsement provides coverage against losses caused by mechanic's liens.
- This endorsement requires underwriter approval prior to issuance.
- The premium for this endorsement is twenty percent (20%) of the full applicable loan rate.

Commercial Revolving Credit Endorsement for Commercial Credit Line Mortgages Which Secure a Maximum Principal Indebtedness of \$3,000,000 or More

RCE-4

- In addition to the exclusions set forth in the less than \$3 million endorsement described above, this endorsement excludes mechanic's liens from coverage. It also adds an exclusion for New York's mortgage tax.
- Under statute (Tax Law, 253-b), only commercial line mortgages under \$3 million enjoy an ex-

emption from the imposition of mortgage taxes.

- This endorsement requires underwriter approval prior to issuance.
- The premium for this endorsement is ten percent (10%) of the full applicable loan rate.

Residential Mortgage Endorsement

- This endorsement insures the lender against loss that results from an easement that is not fixed or ascertainable or which interferes with the use of the building and improvements located on the land. The endorsement also insures that there are no violations of any covenants and restrictions reference in Schedule B or the policy on the land and that a future violation will not cause a forfeiture of reversion of title.

TIRSA or ALTA 9 (Restrictions, Encroachments, Minerals) a/k/a "All-Inclusive" or "Comprehensive" Endorsement

- The TIRSA or ALTA 9 (American Land Title Association) endorsement insures against loss or damage caused by:
 1. Covenants and Restrictions ("C & R's") which adversely affect the insured mortgage's lien priority;
 2. C & R's, violations thereof, encroachments, recorded environmental protection notices, unless excepted in Schedule B of the policy;
 3. Future violations of C & R's which would result in a forfeiture or reversion of title;
 4. Damage caused to shrubbery or trees which are located in the easement areas; and
 5. Final court orders requiring the removal of encroach-

ments, or denying the right to maintain any improvements on the land.

- This endorsement is available only to lenders.
- The premium for this endorsement is ten percent (10%) of the full applicable loan rate.

Reverse Mortgage Endorsements for Mortgages Made Pursuant to Sections 280 and 280-a of the Real Property Law

- This endorsement insures the lender against a loss of lien priority due to advances made to a borrower under a reverse mortgage including shared appreciation, accrued but unpaid interest or compound interest. However, the endorsement does not insure against usury, violations of consumer protection laws or of RPL Sections 280 or 280-a. Losses resulting from Federal tax liens, bankruptcies, real estate taxes, assessments, water and sewer charges, and liens encumbrances or other matters known to the lender are not covered. Finally, the title company does not cover legal fees, costs and expenses incurred by the lender to establish the amount of the loan.

Successor-in-Ownership of Indebtedness Endorsement (Loan Policy)

- Based upon the representations of the assignee or purchaser of the indebtedness, the title underwriter will extend the coverage provided by the title policy to the new owner of the indebtedness. However, the endorsement does not change the policy's effective date, the amount of coverage, and it continues the exclusions and exceptions contained in the original policy. Further, it does not insure the legal sufficiency or validity of the assignment.

Standard New York Endorsement (Loan and Owner's)

- Certain provisions of the ALTA loan and owner's policy are replaced by the Standard endorsements. The Loan policy version provides coverage for mechanic's liens that arise prior to the loan's closing date, excludes from coverage real estate taxes, assessments and water and sewer charges which are incurred between the closing date and the recording date. The endorsement also excludes High Cost Home and Subprime Home Loans, as statutorily defined, from coverage. The Owner's endorsement also provides coverage for losses attributable to pre-closing date mechanic's liens, but as in the Loan policy, it too excludes coverage for real estate taxes, assessments and water and sewer rents.
- There is no premium for this endorsement.

SWAP Agreement Endorsement

- An interest rate swap occurs when one party agrees to pay a set interest rate and the other agrees to accept a floating rate. When the floating interest rate is higher than the set rate, additional interest will be generated. The concern is that this additional interest does not adversely affect the mortgage's lien priority. This endorsement provides the requested coverage. However, the endorsement does not cover usury nor does it insure the amount of additional interest that a court may determine is proper.
- The premium is the loan rate per thousand for the amount of insurance above the face amount of the policy.

Tax Parcel Endorsement—Single Tax Lot and Tax Parcel Endorsement—More Than One Lot

- The endorsements are self-descriptive. Both insure that the lands as described in Schedule A of the policy are not assessed as separate tax lots, which include no land other than that which is described in Schedule A. Hence, the title company is insuring that a foreclosure of lands not included in Schedule A but which are shown as a part of the tax lot will not result in a loss of title to the insured property.

Variable Rate Mortgage Endorsement, Variable Rate Mortgage Endorsement—Fixed Rate Conversion—and Variable Rate Mortgage Endorsement—Negative Amortization

- The three endorsements referenced above provide coverage that a future interest rate change or conversions will not render the underlying mortgage unenforceable nor destroy the mortgage's lien priority. The title company will require that the lender set forth the conversions clearly in the recorded loan documents

Waiver of Arbitration Endorsement

- This endorsement deletes Conditions and Stipulations Section 13 of the ALTA Owner's Policy and Section 14 of the ALTA Loan Policy, thereby eliminating the arbitration requirement from both policies.

This may not have been the most exciting of articles to ever appear in this *Journal*, but the author hopes that it is helpful.

Marvin N. Bagwell is the Vice-President and Chief New York State Counsel for Old Republic National Title Insurance Company and is based in Westbury, New York.

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How to Review a Survey

SURVEYS ADVANCED- SPOKEN PRESENTATION

By Paul P. Reisman

- Since you all deal with surveys every day, you should be familiar with this, but let me read this to you-the American Congress on Surveying and Mapping (ACSM), defines surveying as “the science and art of making all essential measurements to determine the relative position of points or physical and cultural details above, on, or beneath the surface of the Earth, and to depict them in a usable form, or to establish the position of points or details. It is the detailed study or inspection, as by gathering information through observations, measurements in the field, questionnaires, or research of legal instruments, and data analysis in the support of planning, designing and establishing of property boundaries. **I never realized it was so complicated.** In plain English- a survey determines the boundaries, position and extent of a part of the earth's surface by linear and angular measurement. It is known to be the act by which the quantity of a piece of land is ascertained. It contains a statement of the courses, distances and quantity of land. A title survey observes in the field and represents on the map all the physical facts incidental to the parcel of land under examination. It reflects all matters affecting that piece of property which are visible to the naked eye or discernable by review of the public records.

-Surveys have been in existence for thousands of years. It is believed that Stonehenge was set out by prehistoric surveyors using peg and rope geometry. That was around 2500 BC. The Egyptians used surveys to re-establish property boundaries by rope stretchers (surveyors) by using simple geometry, in order to re-establish boundary lines when the Nile River overflowed its banks and washed out farm boundaries. The precision of the Great Pyramids in Egypt are evidence of the Egyptians command of surveying. The Romans utilized surveys in order to divide the empire into taxing districts. In England, the Domesday Book of 1086 recorded the names of all land owners and the area of land they owned, the quality of the land etc.. although it did not reflect any maps showing exact locations. We can be sure that surveys were utilized.

Surveys entered the modern age in the 18th century with the development of modern surveying tools.

CHAINS AND LINKS- we've all read old legal descriptions of larger parcels which were described by these "chains and links"- which was the common method of land measurement for almost 200 years.

A CHAIN was made up of 100 links.

Each Chain was 66 feet long.

Each link, therefore, was 0.666 of a foot- or 7.92 inches.

So if you ever come across an old chains and links legal description that has survived, you can convert the distances simply by multiplying the distance in chains by 66. So , for example of you have a distance of 10 chains, that would be 660 feet.

The standard unit of measuring land in the USA is the ACRE. An Acre = 43,560 square feet (or 10 square chains-66 X 66 X 10—43,560 sq. ft)

There are exactly 640 acres in one square mile.

As a point of reference- the tradition of surveying goes back to the earliest days of our republic. Some of our greatest leaders were trained surveyors. Obviously George Washington is the first to come to mind- he was the Surveyor General for Virginia by the time he was 17 years old. His surveys of the western part of Virginia were utilized for over 100 years after his death. Thomas Jefferson was also a trained surveyor, having been the County Surveyor for Albermarle County Virginia at one point. Even President Lincoln spent some time surveying as a young man.

I- Survey Requirements-

a) Legible, complete and dated.

b) Certified to title insurance company or institutional lending institution. If a new survey, it must be guaranteed to both the owner of the property and the title underwriter. If a lender is involved, it would likewise need to be guaranteed to the lender.

c) Signed and sealed by the surveyor. It must contain the name, address, telephone number of the surveyor together with his registration number.

d) Make sure survey covers all of our property.

e) Make sure it contains a north arrow.

f) Must contain street name with distance to nearest cross street

g) Survey exception must be raised anytime we do not have a survey- "Any state of facts" and "the exact courses, distances and dimensions not insured etc.."

h) Generally, if over 6 months old, either an updated survey is required or, in the case of a residential 1-4 family property, a physical Company inspection is required. In the case of a commercial survey, either a licensed surveyor is to update the survey by inspection, or an exception taken for "any changes since the date of the survey".

i) For 1-4 family residences, we can omit the survey exception based upon the taking of a Survey Affidavit. The old survey endorsement is no longer available. Instead, the Loan Policy provides survey coverage to the insured lender under Covered Risks 2c: (insures against encroachments, encumbrances, violations, variations or adverse circumstances). Therefore, if the survey exception is ever omitted, and no survey reading is included, then Covered Risk 2c is effective.

j) Unlike a residential Loan Policy (1-4 family dwelling), we cannot delete the survey exceptions and provide survey coverage for a residential or commercial Owner's Policy or a commercial Loan Policy.

II- Survey Readings/Issues- (see sample surveys in your packets -signatures and surveyor seals have been removed)

- A survey reading is effectively our interpretation of the title issues that have been raised or brought to our attention as a result of the survey.
- The survey reading excepts from coverage those encumbrances and adverse interest which we have determined effect the title to the real property based upon our review of the survey in conjunction with the public record.
- Replaces the broad "any state of facts" exception which means that we are now insuring that there are no other title issues that a survey would disclose EXCEPT the ones we raise in the survey reading.
- Confirms that the description in our record matches the survey- that it closes, and that there are no overlaps or gaps between neighboring properties.
- Make sure North arrow properly reflected.
- After making sure that all of the required information appears on the survey, compare the survey to the record legal description, filed map and tax map.
- In preparation of survey reading, good rule of thumb is to go clockwise around the survey, taking one line at a time.
- I have handed out a survey abbreviation guide for your reference. Quite often the surveyor, to save room, will simply insert these abbreviations.
- Evidence of Railroad lands- search reveals property formerly owned by a railroad- **Sec. 18 of the Transportation Law giving NYS a preferential right to acquire-** raise:

All or a portion of the premises described in Schedule A were owned by *, until such time as the property in question was conveyed to * by deed dated * and recorded * in Liber/Reel * Page *.- Proof in the form of a written release or notification of exemption from the Commissioner of the New York State Department of Transportation (the "DOT") must be provided to the Company as evidence that the DOT's preferential right to acquire any property abandoned for railroad transportation purposes, created pursuant to Section 18 of the New York State Transportation Law, had been waived or deemed inapplicable at the time of the aforementioned conveyance.

III. Typical Issues Disclosed by Surveys-

- Encroachments onto streets
- Encroachments onto adjoining properties
- Encroachments from adjoining properties onto insured premises
- Mislocations- fences, hedges, walls, curbs etc..
- Party Walls
- Utility lines or poles
- Easements or evidence of traveled ways
- Lack of access
- Common driveways
- Contiguity between or among multiple parcels
- Water rights
- Violations of set back requirements or covenants and restrictions
- Variations between property and tax map or filed map
- Variations between courses and distances and those reflected in the record legal description.

IV- Lands Now or Formerly Under Water

- z If you ever need to determine if Letters Patent have been issued for a particular site (Land under water or formerly under water)- send letter request to Office of General Services, Bureau of Land Management, Mayor Erasmus Corning 2nd Tower—26th Floor, Albany, New York 12242- provide copy of tax map, current maps, survey etc.. to help identify the property – NOTE- if looking at letters patent, they may be full grants to the naked fee or they may be commercial letters requiring the use of the premises for commerce

Certain standard exceptions to be added:

- a) Subject to riparian rights of others, but riparian rights are not insured. (RIPARIAN RIGHTS DOCTRINE- the owners of land bordering on a waterway have equal rights to use the water passing through or by their property)
- b) No portion of the within premises lying below the high water mark of >>>> is insured. -Although our insured probably has the same riparian rights, these rights are not insured due to the litigious nature of riparian use.
- C) Policy excepts rights of the Federal Government, State of NY or any other municipalities to erect or relocate piers and bulkhead lines and to regulate usage
- d) No land now or formerly under water will be insured (This reflects the common law presumption that lands under navigable waters are considered public highways, title to which vests in the State in trust for the use of the people. As a result, title should not be insured to any land that is below the current or former high water line. Note that the exception states the present or *former* high water line. Title to accreted lands (land added to by natural action of soil carried by the body of water) or lands obtained through reliction (*soil added because the water has receded*) are not insured..
- E) easements over beach and dunes
- F) Navigational servitude exceptions

- z Navigable water is a general term which may legally differ from jurisdiction to jurisdiction. It may mean a body of water which commerce is or may be carried on with other states/countries or it simply may be a body of water large enough to ebb and flow - tidal waters. Tidal water is navigable as a matter of law. No inquiry as to actual navigability is required. Water that is “navigable in fact” is navigable. A waterway is navigable in fact when it is

used, or is susceptible of being used, in its natural state for travel, recreational use, trade or commerce.

- Under the **Public Trust Doctrine** land under navigable water is presumed to be owned by the State of New York in its sovereign capacity as a trust for the people of New York.

-

V- Out of Possession/Adverse Possession- I get a great deal of questions with regard to out of possession matters.

- Note that if our property ever seems to be benefited by an out of possession situation, adverse possession is generally not insurable absent the entry of a non-appealable court order.
- July 7, 2008-Adverse Possession statute revised- New Elements of Adverse Possession established. Under the new law, no person may now acquire title to land by adverse possession without showing a claim of right to the land founded on a reasonable basis for the belief that the property belongs to the adverse possessor.
- Certain encroachments and activities deemed as “permissive and non-adverse” which previously might have been considered as evidence tending to show such use and occupation of the land by the adverse possessor “as owners are accustomed to possess and improve their estates”. These encroachments and activities include de minimis (not defined) non-structural encroachments, such as fences, hedges, plantings, sheds and non-structural walls, and acts of lawn mowing or similar maintenance across the boundary line of an adjoining owner.
- Language in new statute somewhat contradictory- adverse possessor may have knowledge of another’s superior right, however, he must still be able to assert that he had no reasonable basis to believe that someone else may have a superior right.
- Title company may not determine if adverse possession does or does not exist. This is strictly a matter which must be determined by a court of competent jurisdiction. We only raise evidence of a possible adverse possession situation.
- Out of possession exception raised whenever a fence, wall hedge or other structure stands one foot or more inside a record line and cuts off access to the land behind it. Property owner must have no way of accessing that property on the other side of the fence, wall or hedge without having to travel upon an adjoining owners land.
- If property owner can access that land without travelling upon another person’s property, then we will not raise an out of possession.
- Questions to ask if seeking to omit the exception:
 - a) When was it erected or planted?
 - b) By whom and at whose expense?

- c) What is on the affected area?
 - d) Any disputes, notices received etc?
-
- If condition has been in existence clearly for less than 10 years- obtain affidavit from adjoining owner.
 - If condition has been in existence for over 10 years, a deed or boundary line may be required for recording (fence affidavit not sufficient)

VI-Important Recommended Practices

a) Effect of “Same As” recital in deed- i) Where an instrument purports to convey or mortgage ALL of the interest of an Owner, but the instrument contains a recital that the property is the same as that described in a previous instrument which conveyed or mortgaged only a fractional interest, the recital should be disregarded and the instrument passed as conveying or mortgaging the entire interest of the owner. This is not the case if the recital say “same as conveyed by” as opposed to “same as described”.

b) When a conveyance contains a defective description, but it is followed by a recitation that the property is the same as that conveyed by or described in a previous instrument which contains a good description, the defective description should be disregarded and the deed passed.

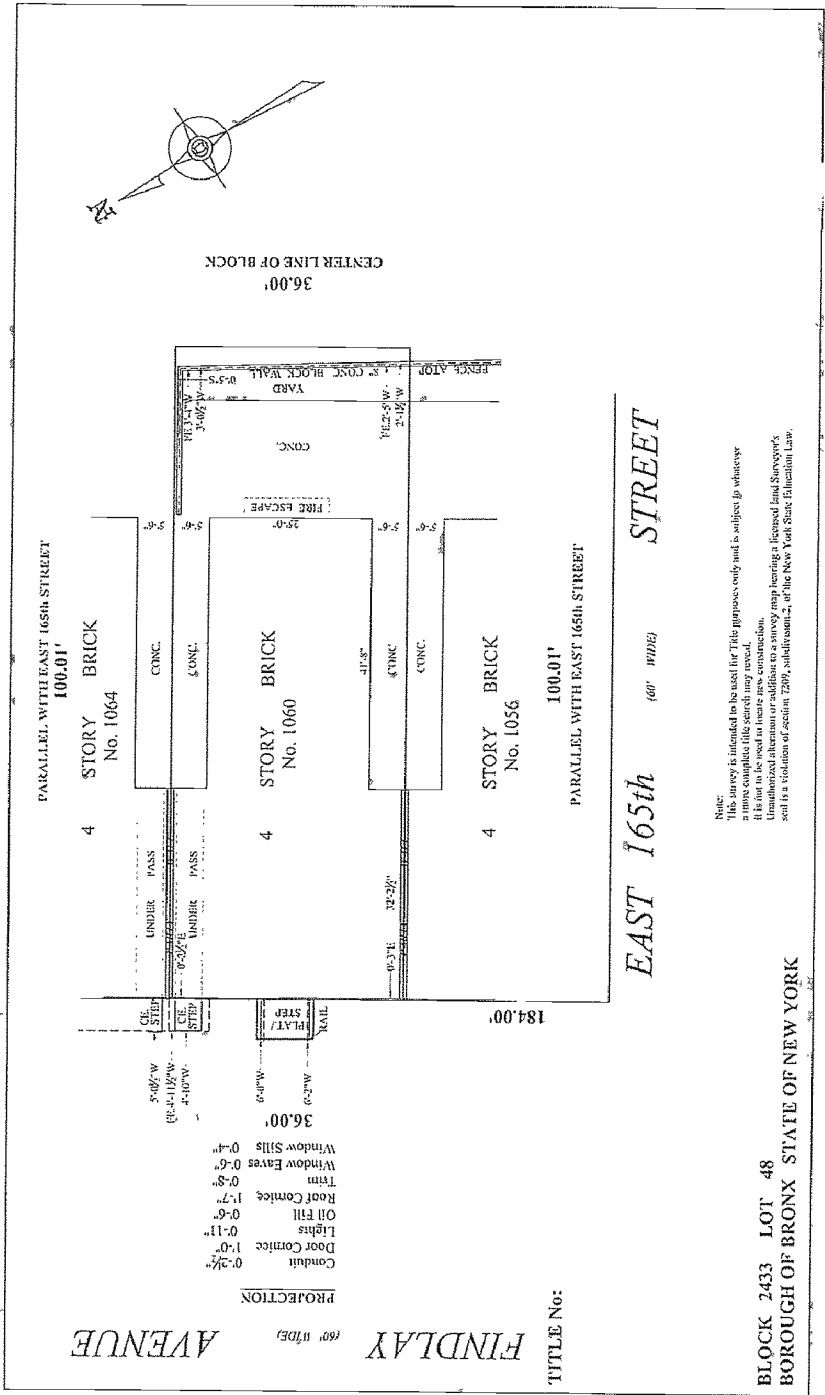
c) Fence Variation- where there are variations between the lines of record title and lines of fences, hedges or retaining walls, the policy may except such variations but will not except failure of title to the land outside of such fence, hedge or retaining wall unless such variations exceed 1/2 inches.

d) Insuring Gores in Record Title- Where there is a gore of less than 1 inch between 2 lots, contiguity between the 2 lots will nevertheless be insured unless there is an express reservation to the land in the gore or unless there is pending litigation over title to the gore.

e) Common Driveways/Reciprocal Easements- where a reciprocal driveway easement is in actual use by adjoining owners and the easement is affirmatively recited in deeds on both sides for at least the past 10 years, and not subordinate to any mortgage, the reciprocal easement may be insured and any defect in its creation by the common owner disregarded.

f) Variation between record description and tax map- may be disregarded if the variation is up to 1 inch.

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AVENUE

(60' WIDE)

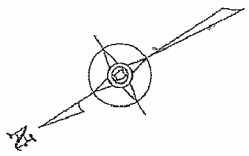
FINDLAY

TITLE No: 184.00

EAST 165th STREET (60' WIDE)

BLOCK 2433 LOT 48
BOROUGH OF BRONX STATE OF NEW YORK

Note: This survey is intended to be used for Title purposes only and is subject to whatever rights complete title search may reveal. It is not to be read as future proof, construction, or any other survey map. Having a licensed Land Surveyor's seal is a violation of section 2309, sub-section 2, of the New York State Education Law.



CENTERLINE OF BLOCK 36.00'

PARALLEL WITH EAST 165th STREET 100.01'

4 STORY BRICK No. 1064

4 STORY BRICK No. 1060

4 STORY BRICK No. 1056

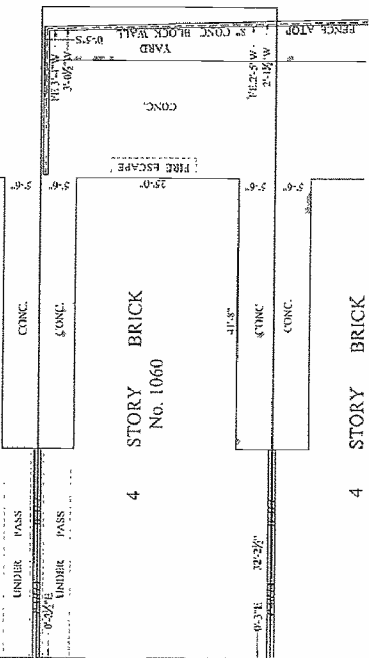
PARALLEL WITH EAST 165th STREET 100.01'

PROTECTION

Conduit	0'-2 1/2"
Door Cornice	1'-0"
Lights	0'-11"
Oil Fill	0'-6"
Roof Cornice	1'-7"
Trim	0'-8"
Window Eaves	0'-6"
Window Sills	0'-4"

36.00'

6'-2 1/2" W	PLAT /
6'-0" W	STEP
6'-0" W	UNDER PASS
6'-0" W	ROOBER PASS
6'-0" W	CE. STEP
5'-0" W	CE. STEP
4'-10" W	CE. STEP
4'-10" W	CE. STEP
5'-0" W	CE. STEP



**Minimum Standard
Detail Requirements**

for

**ALTA/ACSM
Land Title Surveys**

**AMERICAN
LAND TITLE
ASSOCIATION**



as adopted by

American Land Title Association
American Congress on Surveying & Mapping
National Society of Professional Surveyors

1999

ABBREVIATIONS IN A SURVEY

APT.	Apartment	'	minute
Ave.	Avenue	mon.	monument
blk.	block	N.	North
BR.	Brick	N/F	Now or Formerly
C.I.P.	Cast Iron Pipe	opp.	opposite
C.B.	Catch Basin	Pcl	Parcel
⊕	Center Line	P.W.	Party Wall
cl.	clear	Pl.	Place
conc. Ret. Wall	Concrete Retaining Wall	℞	Property Line
cor.	corner	R.C.P.	Reinforced Concrete Pipe
o	degrees	Ret. w.	Retaining Wall
desc.	description	Rd.	Road
D.H.	Drill Hole	R.O.W.	Right of Way
E.	East	"	Seconds
El.	Elevation	S.M.H.	Sewer Manhole
encr.	encroachment	S.W.	Sidewalk
f.	fence	S.	South
F.E.	Fire Escape	st	stake or stone
found.	foundation	ST.	Street or Story
FR.	Frame	T.C.	Top of Curb
H. or Hdg.	Hedge	V.T.	Vitrified Tile
inv.	invert	w.	wall
I.P. Fd.	Iron Post Found	W.	West
I.P. & W.F.	Iron Post and Wire Fence		

Escrow Funding Process

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American Land Title Association® (ALTA®)

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Washington, DC 20036

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Web: <http://www.alta.org>

**CLOSING PROTECTION LETTER
SINGLE TRANSACTION
BLANK TITLE INSURANCE COMPANY**

Addressee:

Date:

Name of Issuing Agent or Approved Attorney (the "Issuing Agent" or "Approved Attorney," as the case may require):

[Name of Issuing Agent or Approved Attorney appears here.]

Transaction (the "Real Estate Transaction"):

Re: Closing Protection Letter

Dear

In consideration of Your acceptance of this letter, Blank Title Insurance Company (the "Company"), agrees to indemnify You for actual loss of Funds incurred by You in connection with the closing of the Real Estate Transaction conducted by the Issuing Agent or Approved Attorney on or after the date of this letter, subject to the Conditions and Exclusions set forth below and provided:

- (A) the Company issues or is contractually obligated to issue a Policy for Your protection in connection with the closing of the Real Estate Transaction;
- (B) You are to be the (i) lender secured by the Insured Mortgage or (ii) purchaser or lessee of the Title;
- (C) the aggregate of all Funds You transmit to the Issuing Agent or Approved Attorney for the Real Estate Transaction does not exceed \$ _____; and
- (D) Your loss is solely caused by:
 - 1. failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions that relate to:
 - (a) the disbursement of Funds necessary to establish the status of the Title or the validity, enforceability, or priority of the lien of the Insured Mortgage; or
 - (b) the obtaining of any document, specifically required by You, but only to the extent that the failure to obtain the document affects the status of the Title or the validity, enforceability, or priority of the lien of the Insured Mortgage;
 - or
 - 2. fraud, theft, dishonesty, or misappropriation of the Issuing Agent or Approved Attorney in handling Your Funds or documents in connection with the closing, but only to the extent

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that the fraud, theft, dishonesty, or misappropriation relates to the status of the Title or to the validity, enforceability, or priority of the lien of the Insured Mortgage.

Conditions and Exclusions

1. Your transmittal of Funds or documents to the Issuing Agent or Approved Attorney constitutes Your acceptance of this letter.
2. For purposes of this letter:
 - a. "Commitment" means the Company's written contractual agreement to issue the Policy.
 - b. "Funds" means the money received by the Issuing Agent or Approved Attorney for the Real Estate Transaction.
 - c. "Policy" or "Policies" means the contract or contracts of title insurance, each in a form adopted by the American Land Title Association, issued or to be issued by the Company in connection with the closing of the Real Estate Transaction.
 - d. "You" or "Your" means the Addressee of this letter, the borrower if the Land is solely improved by a one-to-four family residence, and subject to all rights and defenses relating to a claim under this letter that the Company would have against the Addressee,
 - (i) the assignee of the Insured Mortgage; and
 - (ii) the warehouse lender in connection with the Insured Mortgage.
 - e. "Indebtedness," "Insured Mortgage," "Land," and "Title" have the same meaning given them in the American Land Title Association Loan Policy (06-17-06).
3. The Company shall have no liability under this closing protection letter for loss arising out of:
 - a. failure of the Issuing Agent or Approved Attorney to comply with Your closing instructions that require title insurance protection inconsistent with that set forth in the Commitment. Your written closing instructions received and accepted by the Issuing Agent or Approved Attorney after issuing the Commitment that require the removal, where allowed by state law, rule, or regulation, of specific Schedule B Exceptions from Coverage or compliance with the requirements contained in the Commitment shall not be deemed to require inconsistent title insurance protection;
 - b. loss or impairment of Your Funds in the course of collection or while on deposit with a bank due to bank failure, insolvency, or suspension, except loss or impairment resulting from failure of the Issuing Agent or Approved Attorney to comply with Your written closing instructions to deposit the Funds in a bank that You designated by name;
 - c. any constitutional or statutory lien or claim of lien that arises from services, labor, materials, or equipment, if any Funds are to be used for the purpose of construction, alteration, or renovation. This subsection does not affect the coverage, if any, as to any lien for services, labor, materials, or equipment afforded in the Policy;
 - d. fraud, theft, misappropriation, dishonesty, or negligence of Your employee, agent, attorney, or broker;
 - e. Your settlement or release of any claim without the Company's written consent;
 - f. any matters created, suffered, assumed, or agreed to or actually known by You;
 - g. Federal consumer financial law, as defined in 12 U.S.C. § 5481 (14), or other federal or state laws relating to truth-in-lending, a borrower's ability to repay a loan, qualified mortgages, consumer protection, or predatory lending;
 - h. federal or state laws establishing the standards or requirements for asset-backed securitization including, but not limited to, exemption from credit risk retention;

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-
- i. the periodic disbursement of Funds to pay for construction, alteration, or renovation on the Land relating to the Real Estate Transaction; or
 - j. the Issuing Agent or Approved Attorney acting in the capacity of a qualified intermediary or facilitator for tax deferred exchange transactions as provided in Section 1031 of the Internal Revenue Code.
 4. If the closing is to be conducted by an Approved Attorney, a Commitment must have been received by You prior to the transmittal of Your final closing instructions to the Approved Attorney.
 5. When the Company shall have indemnified You pursuant to this letter, it shall be subrogated to all rights and remedies You have against any person or property had You not been indemnified. The Company's liability for indemnification shall be reduced to the extent that You have impaired the value of this right of subrogation.
 6. The Company's liability for loss under this letter shall not exceed the least of:
 - a. the amount of Your Funds;
 - b. the Company's liability under the Policy at the time written notice of a claim is made under this letter;
 - c. the value of the lien of the Insured Mortgage; or
 - d. the value of the Title insured or to be insured under the Policy at the time written notice of a claim is made under this letter.
 7. If You are not a purchaser, borrower, or lessee, You must hold the Indebtedness both at the time that the Company is notified of a claim pursuant to this letter and at the time that payment is made to make a claim for indemnification under this letter.
 8. Payment to You or to the owner of the Indebtedness under the Policy or Policies or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to the Conditions of the Policy.
 9. The Issuing Agent is the Company's agent only for the limited purpose of issuing Policies. Neither the Issuing Agent nor the Approved Attorney is the Company's agent for the purpose of providing closing or settlement services. The Company's liability for Your loss arising from closing or settlement services is strictly limited to the contractual protection expressly provided in this letter. Other than as expressly provided in this letter, the Company shall have no liability for loss resulting from the fraud, theft, dishonesty, misappropriation, or negligence of any party to the Real Estate Transaction, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.
 10. In no event shall the Company be liable for a loss if the written notice of a claim is not received by the Company within one year from the date of the transmittal of Funds. The condition that the Company must be provided with written notice under this provision shall not be excused by lack of prejudice to the Company.
 11. You must promptly send written notice of a claim under this letter to the Company at its principal office at _____ . If the Company is prejudiced
-

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by Your failure to provide prompt notice, the Company's liability to You under this letter shall be reduced to the extent of the prejudice.

- 12. The Company shall have no liability under this letter if:
 - a. the Real Estate Transaction has not closed within one year from the date of this letter; or
 - b. at any time after the date of this letter, but before the Real Estate Transaction closes, the Company provides written notice of termination of this letter to the Addressee at the address set forth above.

- 13. The protection of this letter extends only to real estate in [State], and any court or arbitrator shall apply the law of the jurisdiction where the Land is located to interpret and enforce the terms of this letter. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law. Any litigation or other proceeding under this letter must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

- [14. Either the Company or You may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000. There shall be no right for any claim under this letter to be arbitrated or litigated on a class action basis. If You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and You. If the Real Estate Transaction solely involves a one-to-four family residence and You are the purchaser or borrower, the Company will pay the costs of arbitration.]

This closing protection letter supersedes and cancels any previous letter or similar agreement for closing protection that applies to the Real Estate Transaction.

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

(The name of a particular issuing agent or approved attorney may be inserted in lieu of reference to Issuing Agent or Approved Attorney contained in this letter and the words "Underwritten Title Company" may be inserted in lieu of Issuing Agent.)





STATE OF NEW YORK
INSURANCE DEPARTMENT
160 WEST BROADWAY
NEW YORK, NEW YORK 10038-3393

Circular Letter
No. 18 (1992)
December 14, 1992

SALVATORE R. CURIALE
SUPERINTENDENT OF INSURANCE

TO: ALL AUTHORIZED TITLE INSURERS IN NEW YORK STATE
RE: CLOSING PROTECTION LETTERS TO LENDERS FROM TITLE INSURERS

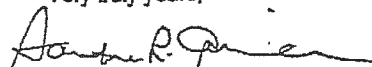
It appears that closing protection letters (CPL) have been typically requested by lenders, and then issued by title insurers, at closings in this State. Under the CPL, the title insurer purports in effect to indemnify the lender (mortgagee) in the event of losses caused by any improper acts or omissions, not by the title insurer's agent, but by the lender's attorney in connection with the underlying real property transaction. Generally, a CPL deals with failure to comply with instructions as well as fraud or dishonesty in the collection and payment of funds due to or advanced by the lender. As such, the CPL is in the nature of fidelity or surety coverage, or resembles professional liability insurance against legal malpractice on the part of the lender's attorney.

As a rule, title insurers lack authority to issue a CPL to a lender insofar as that lender's attorney is concerned, because its purported protection falls beyond the scope of the monoline title insurer's license and writing authority that is exclusively confined to Section 1113(a)(18) of the Insurance Law. Thus a CPL that attempts to address acts or omissions on the part of the lender's attorney is unauthorized, would give lenders no solace in the past, and should no longer be issued (whether on an individual closing or blanket basis) by New York licensed title insurers. Even in the unusual situation where the title insurer's approved attorney and the lender's designated attorney happen to be one and the same, it is unclear what a CPL purports to do beyond the title insurance policy itself. Insofar as it diverges from the title insurance policy, a CPL would constitute an unauthorized act.

Consequently, under no circumstances should a title insurer licensed in this State issue closing protection letters in the future with respect to New York real property transactions. Any blanket CPL issued in the past should be rescinded as to future transactions. A title insurer is not precluded, however, from issuing an appropriate agent authorization letter, confined to the title insurer's liability as principal for the acts of its agent within the scope of that agent's authority on the title insurer's behalf.

Written acknowledgement of this Circular Letter should be sent no later than January 8, 1993 to the attention of Daniel J. Sheridan, Senior Insurance Examiner, Property & Casualty Insurance Bureau, at the above address, specifically indicating, pursuant to Section 308 of the Insurance Law, the numbers of CPLs (individual closing and blanket basis) issued to date and any CPL-related losses thus far incurred or paid. Please direct any questions concerning this Circular Letter to Mr. Sheridan (212-602-8725).

Very truly yours,


SALVATORE R. CURIALE
SUPERINTENDENT OF INSURANCE



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Howard Mills
Superintendent

The Office of General Counsel issued the following opinion on December 28, 2005, representing the position of the New York State Insurance Department.

Re: Issuance of Closing Protection Letter by Title Insurance Company

Question Presented:

May a title insurance company issue, in New York, a letter that makes such title insurance company liable for acts of its title agent that are within the scope of that title agent's authority while acting on the title insurer's behalf?

Conclusion:

A title insurance company may issue, in New York, a letter that makes such title insurance company liable for acts of its title agent that are within the scope of that title agent's authority while acting on the title insurer's behalf.

Facts:

The Department issued Circular Letter No. 18 ("CL #18") on December 14, 1992, which addressed the issuance of closing protection letters ("CPL") by title insurance companies to lenders. Apparently, such CPLs protected lenders against losses caused by improper acts or omissions by a lender's attorney in connection with underlying real property transactions. CL #18 equated such coverage to fidelity, surety or professional liability insurance and found, among other things, that "title insurers lack authority to issue a CPL [closing protection letter] to a lender insofar as that lender's attorney is concerned, because its purported protection falls beyond the scope of the monoline title insurer's license and writing authority that is exclusively confined to Section 1113(a)(18) of the Insurance Law."

However, CL #18 stated that a title insurer would not be precluded from issuing an appropriate agent authorization letter that is confined to the title insurer's liability as principal for the acts of its agent within the scope of that agent's authority on the title insurer's behalf.

The inquirer acknowledges the positions taken in CL #18 and submitted, for the Department's review and approval, a sample closing protection letter. Subsequently, the inquirer has withdrawn his request for review and approval of such sample letter and, instead, asked that we issue a general response to his inquiry.

Analysis:

As CL #18 stated, title insurance companies lack authority to issue a closing protection letter ("CPL") to a lender regarding the acts of the lender's attorney because the protection offered is beyond the scope of the monoline title insurance company's license and writing authority that is exclusively confined to Section 1113(a)(18) of the Insurance Law. However, a title insurance company is not precluded from issuing an appropriate agent authorization letter that is confined to the title insurance company's liability as principal for the acts of its agent within the scope of that agent's authority on the title insurance company's behalf, as stated in CL #18.

The protection afforded by closing protection letters should be limited to the title insurance policy itself. One concern that was highlighted in CL #18 involved situations where the title agent that is being protected by a closing protection letter is also the lender's attorney. CL #18 stated that "[e]ven in the unusual situation where the title insurer's approved attorney and the lender's designated attorney happen to be one and the same, it is unclear what a CPL purports to do beyond the title insurance policy itself. Insofar as it diverges from the title insurance policy, a CPL would constitute an unauthorized act." Any coverage that is provided under such letter must, as stated in CL #18, be limited to activities that are within the scope of the title agent's duties. A closing protection letter that offers coverage that goes beyond a title agent's duties would be prohibited.

For further information please contact Associate Attorney D. Monica Marsh, at the New York City Office.

Old Republic National Title Insurance Company
400 Post Avenue, Suite 310
Westbury, New York 11590
Phone: (516)478-5880
Fax: (516)333-5428
email:
Attention:
Vice President & New York State Counsel

(“Funding Agent”)

_____ Abstract Co., Inc.

(“Escrow Agent”)

November 3, 2014

Re: Title Insurance: \$ _____ mortgage loan from _____
(Lender) to _____ (Borrower)

Ladies and Gentlemen:

This letter shall constitute escrow instructions to you from _____ a Delaware limited liability company (together with its successors and/or assigns, the “Lender”) in connection with the approximately \$ _____ loan (the “Loan”) to be made to _____ a New York limited liability company (the “Borrower”), with respect to the property located in _____, New York as more specifically set forth in the proforma title policy attached hereto (the “Property”).

A. Delivery of Documents. _____ has delivered to Escrow Agent, the following documents relating to the Loan (collectively, the “Delivered Documents”), all of which are executed originals and in recordable form (except that the Assignment and the Prior Loan Documents have otherwise been delivered to Escrow Agent or are in the possession of Escrow Agent). Concurrently with the funding of the Loan and the satisfaction of the Closing Conditions (as hereinafter defined) (the “Closing”), the Escrow Agent shall take possession of all of the Delivered Documents for the benefit of Lender and deliver them in accordance with the provisions of this letter.

1. Assignment of Mortgage (the “Assignment”);

2. Amended, Restated and Consolidated Mortgage, Assignment of Leases and Rents and Security Agreement (the "Security Instrument");

3. Gap Mortgage made by Borrower (the "Gap Mortgage");

4. Assignment of Leases and Rents executed by Borrower in favor of Lender (the "Assignment of Leases");

5. Two (2) 255 Affidavits executed by Borrower (the "255 Affidavits");

6. 275 Affidavit executed by Borrower (the "275 Affidavit");

7. UCC-1 Financing Statement showing Borrower, as debtor, and Lender, as secured party (the "Financing Statement");

8. Copies of all recorded mortgages and the original promissory notes corresponding to such mortgages as listed in the mortgage schedule attached to the Assignment, and an original Allonge assigning such promissory notes to Lender (collectively, the "Prior Loan Documents");

9. One (1) Assignment of Security Instrument (the "Assignment of Security Instrument");

10. One (1) Assignment of Assignment of Leases and Rents (the "Assignment of ALR"); and

11. One (1) UCC-3 Assignment of Financing Statement (the "UCC-3").

B. Wire Transfer. On the Settlement Date (as defined herein), Funding Agent will receive from or on behalf of Lender by wire transfer the amount indicated as the Total to Title Company in the Final Mortgage Loan Closing Statement (the "Closing Statement"), a copy of which will be telecopied to you on or before the Settlement Date (the "Loan Funds") which funds shall be held in escrow by Funding Agent until such time as disbursed or returned as provided herein.

C. Conditions to Closing. The following are Lender's conditions to Closing and releasing the Loan Funds held by Funding Agent (collectively, the "Closing Conditions") on the Settlement Date:

(i) The Escrow Agent has received all of the Delivered Documents.

(ii) Funding Agent has received from Lender the Loan Funds and is prepared to immediately disburse said funds in accordance with the Closing Statement.

(iii) Escrow Agent is in possession of the deed vesting fee simple title in the Property in Borrower.

(iv) The Escrow Agent is unconditionally and irrevocably committed to issue to Lender an ALTA Loan Policy of Title Insurance (the "Policy"). The Policy:

(a) shall be effective as of the date and time of the Settlement Date, regardless of the recording or failure to record the Delivered Documents in the applicable county recorder's office;

(b) shall show the named insured as _____ and its successors and assigns";

(c) shall provide coverage in the amount of the Loan indicated in the Closing Statement;

(d) shall show title to the fee interest in the Property vested in Borrower;

(e) shall contain a legal description identical to the legal description attached to the Security Instrument as Exhibit A;

(f) shall insure the Security Instrument to be a valid first lien on the Property pursuant to the Escrow Agent's commitment for title insurance (the "Commitment") as shown on the copy attached hereto as Exhibit A, and shall incorporate all of the notations and changes included thereon and include all of the endorsements attached thereto as indicated; and

(g) shall reference the Assignment of Leases and one of the Financing Statement either in Schedule A or as subordinate items in Part 2 of Schedule B.

(v) Each page of the Policy and each endorsement attached thereto must reflect the correct Policy Number. Further, each endorsement to the Policy must be signed and dated.

(vi) You shall have notified _____ at _____ (or in his absence, _____ of the same firm at _____ (collectively, the "Lender Notice Parties") that conditions (i), (ii), (iii) and (iv) of this paragraph have been satisfied.

D. Closing. When all of the foregoing Closing Conditions have been fully met:

(i) You shall notify one of the Lender Notice Parties that Funding Agent has received the Loan Funds; and then

(a) Funding Agent shall disburse the Loan Funds in the manner specified in the Closing Statement; and then (but no later than 10 days thereafter).

(b) The Escrow Agent shall submit for recording, in the appropriate records of the County of _____, New York, the Assignment and 275 Affidavit, the Gap Mortgage, the Security Instrument, the Assignment of Leases, the 255 Affidavits, the

Financing Statement, the Assignment of Security Instrument, the Assignment of ALR, and the UCC-3, in that order.

(c) The Escrow Agent shall send the Prior Loan Documents and deliver the Policy both via overnight courier to:

(ii) The disbursement of any funds delivered in accordance with the terms of this letter shall constitute Escrow Agent's unqualified, unconditional and irrevocable agreement to:

(a) issue the Policy as set forth herein,

(b) comply with all of the terms set forth herein,

(c) insure the so-called "gap" during the period from the date of the Commitment and settlement date through the date and time of recording of the Security Instrument, and

(d) record or file, as appropriate, the originals of the Delivered Documents.

(iii) All title insurance premiums, recording fees, escrow fees, taxes and other closing costs, to the extent that same exceed the amount provided therefor in the Closing Statement, are to be paid by Borrower, and Funding Agent's disbursement of any funds delivered to Funding Agent hereunder shall evidence Escrow Agent's and Funding Agent's, as applicable, receipt of all such premiums, fees and other costs. Promptly after the Closing, Escrow Agent agrees to file any Form 1099 necessitated by the consummation of the loan.

E. Compliance Dates.

(i) If for any reason, by 3:00 P.M. (local time) on _____, 2014 (the "Settlement Date"), Funding Agent has not received from Lender the Loan Funds, you are to immediately notify one of the Lender Notice Parties for further instructions.

(ii) If for any reason, on the Settlement Date or by 1:00 P.M. (local time) of the business day following the Settlement Date, either Escrow Agent or Funding Agent are not prepared to comply with the provisions of Paragraph D above (with the exception of Paragraph D(i)(c)), such party is to immediately notify one of the Lender Notice Parties for further instructions and return the Loan Funds to Lender.

F. Confirmation. As soon as the Delivered Documents have been recorded in accordance with the terms of this letter, Escrow Agent shall send written confirmation of such recording to one of the Lender Notice Parties, which written confirmation sets forth the date and time of recording and the recording information of each recorded document.

G. Return of Documents. The original recorded Delivered Documents are to be returned after the recording directly by the Register's Office of Kings County to the record and return listed on the documents to:

Attention: _____

H. Interest. By its execution of this letter below, Borrower agrees that, from and after the date upon which the Loan Funds are placed on the wire by Lender (regardless of the actual date of the Closing), the full amount of the Loan thereupon shall be deemed to be disbursed to Borrower and evidenced by the Amended, Restated and Consolidated Promissory Note executed by Borrower in evidence of the Loan (the "Note") and shall bear interest at the rate provided in the Note; provided, however, that Borrower's obligations under the Note shall arise only when such funds are disbursed to or for the benefit of Borrower, and should the Loan fail to close for any reason, interest shall remain due and payable by Borrower as provided in the Note only through the date on which the Loan Funds are returned to Lender.

I. Escrowed Loan Documents. On or prior to the date hereof, Borrower has delivered to Lender or its agent (which may include Lender's counsel or a custodian acting on its behalf) fully executed and where appropriate, acknowledged original counterparts of each of the documents listed on Exhibit B attached hereto, including, without limitation, duplicate original counterparts of each of the Recorded Documents (collectively, the "Loan Documents"). The Loan Documents shall be held by Lender in escrow pending the Closing (Borrower acknowledges that while Lender is holding the Loan Documents in escrow, it may transfer possession thereof to its agent on its behalf). The Loan Documents shall be deemed to be delivered from Borrower to Lender upon the Closing. If the Closing shall not occur for any reason, Lender will return (or will cause to be returned) the Loan Documents to Borrower.

J. Notices. (i) Except as otherwise expressly provided herein, any notice, consent, approval, request, demand, document or other communication which any party is required or may desire to give, deliver or make to any other party pursuant to this letter shall be in writing, and may be personally delivered or given or delivered by United States registered or certified mail, return receipt requested, by overnight delivery service (e.g., Federal Express), or by telecopied transmission addressed as follows:

If to Lender:

With a copy to:

If to Borrower:

With a copy to:

If to Funding Agent or Escrow Agent:

At the address set forth above.

(i) Any party may designate a different address for itself by notice similarly given. Any notice, demand or document shall be deemed to have been given upon actual delivery or attempted delivery, provided such attempted delivery is made on a business day. Notices hereunder may be given by an attorney for a party hereto.

(ii) A duplicate copy or communication of any notice or other communication delivered or given to Lender pursuant to this letter shall be delivered in the same manner to a Lender Notice Party at the address, telecopy and telephone numbers set forth above.

K. Amendment. The undersigned firm, as attorneys for Lender and on behalf of Lender, reserves the right to modify the foregoing instructions at any time prior to the recording of the Delivered Documents upon the consent of Borrower, not to be unreasonably withheld or delayed.

L. Counterpart Execution. This letter may be signed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. A signed fax of this letter shall constitute an original.

M. Sale of Loan. It is anticipated that the Loan may be sold after the closing thereof. Upon Escrow Agent's receipt of the original executed Assignment of Mortgage/Deed of Trust and Security Agreement and Assignment of Leases and Rents and one (1) UCC financing statement assignment, fully completed, Escrow Agent shall, at Borrower's sole cost and expense, record the same and issue an endorsement to the Policy (the "Endorsement") insuring the assignment of Lender's interest under the Security Instrument to the entity purchasing the Loan.

Please confirm your agreement to comply with the foregoing instructions by signing the attached copy of this letter in the space provided on the bottom of this page and returning it to me.

Very truly yours,

, a Delaware limited liability company

By: _____
Counsel for the Lender

Accepted and agreed to:

FUNDING AGENT

Old Republic National Title Insurance Company

By: _____
Name:
Title: Vice President & New York State
Counsel
Date:

ESCROW AGENT

_____ Abstract Co., Inc.

By: _____
Name:
Title:
Date:

ACCEPTED AND AGREED TO:

BORROWER

[Signature Page Sent Separately]

EXHIBIT A

MARKED TITLE COMMITMENT OR PRO FORMA POLICY

EXHIBIT B

LOAN DOCUMENTS

1. Amended, Restated and Consolidated Promissory Note
2. Gap Mortgage Note
3. Amended, Restated and Consolidated Mortgage, Assignment of Leases and Rent and Security Agreement
4. Gap Mortgage
5. Assignment of Leases and Rents
6. Loan Agreement
7. Cash Management Agreement
8. Deposit Account Control Agreement
9. Guaranty of Recourse Obligations
10. Environmental Indemnity Agreement
11. Assignment of Management Agreement and Subordination of Management Fees
12. Borrower's Closing Certificate
13. Post-Closing Agreement
14. Title Company Escrow Agreement
15. UCC-1 Financing Statements
16. W-9 Request for Taxpayer ID
17. Disbursement Authorization
18. Violations Indemnity and Undertaking Agreement
19. Two (2) 255 Affidavits
20. 275 Affidavit

Old Republic Title Escrow Instructions

Prior to funding, we will require:

- a) Fully executed Settlement/Disbursement Statement
- b) Fully executed Escrow Letter
- c) Receipt of Funds
- d) Confirmation from our agent that is in possession of all necessary documentation in order to close and issue final policy.
- e) Authorization to Disburse from lender and borrower
- f)

In addition, kindly copy our counsel, _____, whose e-mail address is _____ on all correspondence.

ESCROW DEPOSIT AGREEMENT
(Interest Bearing)

This Escrow Agreement is made this _____ day of _____, 201__, by and among _____ whose address is _____ (the "Seller"), _____ whose address is _____ (the "Purchaser"), and **Old Republic National Title Insurance Company**, a national title insurance underwriter duly licensed by the State of New York, whose address is 400 Post Avenue, Suite 310, Westbury, New York 11590 (the "Company").

WHEREAS, Purchaser has requested that Company hold Purchaser's deposit moneys in escrow in connection with Purchaser's acquisition of real property described as _____ located at _____ as more fully described in that certain Contract of Sale between the Seller and Purchaser dated _____, 201__ (the "Contract"); and

WHEREAS, Company, pursuant to the terms and conditions set forth below, has agreed to hold Purchaser's escrow deposit;

NOW THEREFORE, the parties agree as follows:

1. Company agrees to hold the sum of \$_____ in an interest bearing trust account (the "Escrow") to be used strictly in accordance with the terms and conditions of the Contract until the Closing of Title as such term is defined in the Contract.
2. The Escrow shall be deposited in an interest-bearing account with an insured banking institution of the Company's choosing. Any interest thereon shall be held in the Escrow for the same purpose for which the principal is held. Neither the payment of interest nor the return of principal is guaranteed by the Company.
3. The Company shall be entitled to deduct the sum of \$250.00 from the Escrow as compensation for opening the account.
4. The Seller and Purchaser acknowledge that the Company has no obligation to deposit the Escrow unless and until the depositor provides the Company with its taxpayer identification number, social security number or such other information as may be required by the depository institution to open the account or to provide reporting information to the Internal Revenue Service in connection with the account.
5. The Company is acting as a stakeholder hereunder and has no liability with respect to the Escrow except to hold and apply the Escrow in accordance with the Contract. The Purchaser and Seller acknowledge and agree that Company shall have no liability in the event of the failure or insolvency of the depository bank or other institution in which the Escrow is deposited.

6. The parties agree to hold Company harmless and to indemnify, protect and defend Company against any and all liability, costs or expenses, including but not limited to legal fees and costs of suit, incurred by Company in any way related to the Escrow. The Company shall not be responsible for any losses incurred in connection with the Escrow unless such losses are directly caused by a willful act of Company or by Company's gross negligence. In the event of a dispute with respect to the Escrow, the Company either shall hold the Escrow until the earlier occurrence of either the written agreement between the parties, or the entry of an order by court of competent jurisdiction directing the disbursement of the Escrow. The Company may, at its sole discretion, interplead and deposit the funds with a court of competent jurisdiction. Any cost or expense which the Company may incur in connection with any interpleader motion shall be deducted from the Escrow and used to reimburse the Company.
7. Any and all notices or direction to be provided in connection with this Agreement shall be made in writing by U.S. Postal Service certified mail return receipt requested, by overnight courier services, or by fax to the addresses shown below. Notices given by mail shall be deemed to be delivered in accordance with the return receipt. Notice made by overnight courier service shall be deemed delivered as shown upon the receipt of the courier service. In the case of fax notice, notice shall be deemed received based upon the printed confirmation provided to the faxing party.
8. This Agreement shall be interpreted in accordance with the laws of the State of New York and all parties hereby subject themselves to the jurisdiction of the courts of the State of New York for any matters in connection with this Agreement.
9. Notice shall be given as follows:

To Purchaser:

With a carbon copy to:

To Seller:

With a carbon copy to:

To Company: Old Republic National Title Insurance Company
400 Post Avenue, Suite 310
Westbury, NY 11590
Attn: _____

This Agreement is executed as of the date first above written.

SELLER

PURCHASER

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

By: _____

Title: _____

ESCROW DEPOSIT AGREEMENT
(Non-Interest Bearing)

This Escrow Agreement is made this ____ day of _____, 201__, by and among _____ whose address is _____ (the "Seller"), _____ whose address is _____ (the "Purchaser"), and **Old Republic National Title Insurance Company**, a national title insurance underwriter duly licensed by the State of New York, whose address is 400 Post Avenue, Suite 310, Westbury, New York 11590 (the "Company").

WHEREAS, Purchaser has requested that Company hold Purchaser's deposit moneys in escrow in connection with Purchaser's acquisition of real property described as _____ located at _____ as more fully described in that certain Contract of Sale between the Seller and Purchaser dated _____, 201__ (the "Contract"), and

WHEREAS, Company, pursuant to the terms and conditions set forth below, has agreed to hold Purchaser's escrow deposit;

NOW THEREFORE, the parties agree as follows:

1. Company agrees to hold the sum of \$ _____ in a non- interest bearing trust account (the "Escrow") to be used strictly in accordance with the terms and conditions of the Contract until the Closing of Title as such term is defined in the Contract.
2. The Company shall deposit the Escrow in a non- interest bearing account with an insured banking institution of the Company's selection. Seller and Purchaser acknowledge and agree that Company shall have the right to intermingle this Escrow with other escrow deposits which the Company is holding in the depository institution.
3. The Company shall be entitled to deduct the sum of \$250.00 from the Escrow as compensation for opening the account.
4. The Company is acting as a stakeholder hereunder and has no liability with respect to the Escrow except to hold and apply the Escrow in accordance with the Contract. The Purchaser and Seller acknowledge and agree that Company shall have no liability in the event of the failure or insolvency of the depository bank or other institution in which the Escrow is deposited.
5. The parties agree to hold Company harmless and to indemnify, protect and defend Company against any and all liability, costs or expenses, including but not limited to legal fees and costs of suit, incurred by Company in any way related to the Escrow. The Company shall not be responsible for any losses incurred in connection with the Escrow unless such losses are directly caused by a willful act of Company or by Company's gross negligence. In the event of a dispute with respect to the Escrow, the Company

either shall hold the Escrow until the earlier occurrence of either the written agreement between the parties, or the entry of an order by court of competent jurisdiction directing the disbursement of the Escrow. The Company may, at its sole discretion, interplead and deposit the funds with a court of competent jurisdiction. Any cost or expense which the Company may incur in connection with any interpleader motion shall be deducted from the Escrow and used to reimburse the Company.

6. Any and all notices or direction to be provided in connection with this Agreement shall be made in writing by U.S. Postal Service certified mail return receipt requested, by overnight courier services, or by fax to the addresses shown below. Notices given by mail shall be deemed to be delivered in accordance with the return receipt. Notice made by overnight courier service shall be deemed delivered as shown upon the receipt of the courier service. In the case of fax notice, notice shall be deemed received based upon the printed confirmation provided to the faxing party.
7. This Agreement shall be interpreted in accordance with the laws of the State of New York and all parties hereby subject themselves to the jurisdiction of the courts of the State of New York for any matters in connection with this Agreement.
8. Notice shall be given as follows:

To Purchaser:

With a carbon copy to:

To Seller:

With a carbon copy to:

To Company:

Old Republic National Title Insurance Company
400 Post Avenue, Suite 310
Westbury, NY 11590
Attn: _____

This Agreement is executed as of the date first above written.

SELLER

PURCHASER

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

By: _____

Title: _____

NOTES

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