

**Recommended Practices
New York State Land Title Association, Inc.**

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**NEW YORK STATE LAND TITLE ASSOCIATION, INC.
LAW COMMITTEE OF THE TITLE INSURANCE SECTION
RECOMMENDED PRACTICES AND FORMS**

PREAMBLE

The New York State Land Title Association, Inc. has assembled this compilation of recommended practices and forms for use by all title insurers doing business in the State of New York. The purpose of such recommended practices is to simplify and expedite the title examination and underwriting process in a manner, which will benefit the users of title insurance services.

The recommended practices and forms set forth customary guidelines for the disposition of title problems and as the name clearly indicates their use is optional at the discretion of individual insurers.

The ultimate basis for the disposition of particular title problems is the evaluation and requirements set forth by the underwriting department of the insuring company.

GENERAL PRACTICES

**G-1 BUILDING DEPARTMENT NOTICE OF PENDENCY
(Lis Pendens)**

A Notice of Pendency to enforce Building Department violations may be disregarded if a search shows that the violations which are the subject of the notice of pendency are no longer pending.

G-2 DEED FROM FIDUCIARY - CONSIDERATION

Where a deed from a fiduciary does not recite the actual amount of consideration paid, no exception as to the adequacy of consideration needs to be raised if:

- A. The deed is on record for more than 10 years; or
- B. There is other evidence or record of the payment of valuable consideration including, without limitation, the simultaneous execution of a purchase money mortgage or the payment of transfer taxes.

G-3 DELIVERY QUESTION

Where there is a time lapse between the date of a deed and the date of its recording, no objection needs to be raised where the deed has been on record for more than 10 years. If the deed has been on record for 10 years or less, the period search in a Surrogate's office should be completed against the grantor from the date of the instrument to the date of recording in the county where the grantor resides and in the county where the property is situated. If no death was found then the question should be passed unless the grantee, or some one connected with him, was still in title and more definite information could therefore be obtained, or unless the death of the grantor is definitely known.

The question of delivery should not be raised where the interval between the date of the deed and the recording date thereof was less than 30 days unless there was affirmative knowledge of the death of the grantor prior to recording. Under this 30 day period no Surrogate's search need be made.

The question of delivery should not be raised where the interval between the date of the deed and the recording date thereof was greater than 30 days where the public record evidences a purchase money mortgage to an institutional lender or the seller(s) which is dated contemporaneously with the deed.

G-4 EXPIRED CITY OF NEW YORK UNSAFE BUILDING NOTICE OF PENDENCY (Lis Pendens):

In the City of New York, an Unsafe Building Notice of Pendency filed for more than 1 year may be passed if:

- A. Within 1 year from its filing a final judgment has not been entered in said proceeding directing the demolition of the structure; and
- B. Searches have been made for the period of 1 year from the date of filing of the Unsafe Building Notice with noting found.

G-5 FINANCING STATEMENTS UCC-1 (s)

A Financing Statements, other than a financing statement filed against the Cooperative Interest in a Cooperative Organization securing a loan against the cooperative shares, may be passed where it is on file for more than 5 years and thirty days.

NOTE: Financing statements filed against a Cooperative Interest in a Cooperative Organization prior to July 1, 2001 were effective until June 30, 2006. Financing statements against a Cooperative Interest filed on or after July 1, 2001 with a Cooperative Addendum, or a financing statement filed prior to July 1, 2001 which is amended after July 1, 2001 by the filing of a Cooperative Addendum, are effective for 50 years.

NOTE: Amended March 2009

G-6 INFANTS, INCOMPETENTS-DEED BY

Deeds executed by guardians, committees or attorneys in fact in behalf of their respective wards, incompetents or principals, instead of in their names by such representatives should not be deemed an objection to title where the instrument recites the source of authority for the act and the instruments have been properly indexed on the record against the respective infant, incompetent or principal.

G-7 LIMITED PARTNERSHIP

A. When a limited partnership formed under Article 8 of the Partnership Law takes title to real estate, the failure to commence or to complete the publication required under that Article before title passes to the partnership may be disregarded if the publication is ultimately commenced and complete.

B. When a limited partnership formed under Article 8-A of the Partnership Law takes title to real estate, the failure to commence or to complete the publication required under that Article may be disregarded.

G-8 MERGED MORTGAGE & FEE

A mortgage may be disregarded where the mortgage and fee title came into the same ownership of record more than 10 years ago without any recital of non-merger, where such owner is no longer in title and where the chain of title subsequent to the original common ownership of the fee and the mortgage contains no recital of, or reference to, such mortgage. Proof is also to be taken from the last owner that no demand has been made for payment, that no payment has been made of principal or interest, and that such last owner has not acknowledged the debt.

G-9 NOTICE OF PENDENCY OPEN MORTGAGE OR MECHANICS LIEN DISCHARGED

If a foreclosure judgment has not been entered or, if entered, was entered more than six years ago, a receiver has not been appointed or, if appointed, has been discharged by court order, and the mortgage or mechanic's lien has been satisfied prior to the pending transaction, the notice of pendency filed in an action to foreclose the mortgage or mechanics lien may be disregarded.

**G-10 NOTICE OF PENDENCY
UNSAFE BUILDING VIOLATION (Lis Pendens)**

For an unsafe building violation, if the violation for which the notice of pendency was filed is no longer in effect and title has been derived from a conveyance by the City of New York, which acquired title pursuant to an in rem tax foreclosure subsequent to the filing of the notice of pendency, the notice of pendency may be deemed merged and not be an objection to title.

**G-11 PUBLICATION OF JUDICIAL SALES IN THE FIVE COUNTIES OF
NEW YORK CITY OR NASSAU COUNTY SALES
IN NEW YORK LAW JOURNAL**

When a Supreme Court Justice in the five counties of New York City or Nassau County designates the New York Law Journal as a paper for publication for the judicial sale of property in such county or where the Surrogate of the five counties of New York City or Nassau County designates the New York Law Journal as a paper for publication of notices under the Surrogate Court Procedure Act for the publication of Surrogate Court citations (with the exception of notices under Section 1801 of the Surrogate Court Procedure Act) publication should be deemed publication in a proper newspaper.

G-12 SHERIFF'S EXECUTION SALES-PRIOR JUDGMENTS

No objection should be raised to an insured title which has come through a sheriff's execution sale provided that the judgment under which the sale was had was obtained by personal service, by actual delivery to the defendant, there were no other judgment creditors, no other subordinate liens at the time of the execution sale, that the owner at the time of the execution sale was the debtor, and the execution sale has been properly brought and the purchaser under such sale or his successor in title is in possession.

G-13 STOCK REPLACED BY REAL ESTATE

When a custodian or general guardian holds stock in a corporation for the benefit of an infant and the corporation in liquidation conveys to the custodian or guardian an interest in real property represented by his proportionate share, the custodian or guardian can sell such real estate interest without securing a court order to sell. The same rule is applicable where an administrator or executor of an estate holds stock in a corporation which is liquidated and an interest in real estate replaces stock in the hands of the administrator or executor.

G-14 TAX SALES-RIGHT OF RE-ENTRY

In a title made through a tax sale or through a foreclosure of a tax lien, by an In Rem Proceeding or otherwise, a right of re-entry created 10 years prior to such tax proceeding may be passed even through the taxes in question accrued subsequent to the instrument reserving the right of re-entry and even though the right of re-entry was reserved as a means of enforcing the restrictive covenants. However, the restrictive covenants, as distinguished from the right of re-entry, should not be disregarded.

G-15 TAX TITLES

When title to property is made through a recorded tax deed properly describing the property under examination, and 10 years have elapsed since the recording of such deed, the title may be insured without requirement of an action to perfect the tax title, unless it is established that the tax for the year which resulted in the sale was paid before the sale either directly or under another assessment for the same tax.

CORPORATIONS

C-1 CORPORATE SEAL

A corporate instrument may be passed where no corporate seal was affixed.

C-2 CORPORATION DEED TO A COMPANY OFFICER

A deed from a corporation to a grantee who, from the record, appears to be an officer, director or stockholder of the grantor corporation, or a grantee obviously related to such a person, may be passed without objection when title has reached a purchaser for value.

C-3 CORPORATION- DEEDS DATED PRIOR TO INCORPORATION

A. When a deed is dated and recorded before the certificate of incorporation of a grantee is filed in the office of the Secretary of State and a confirmatory deed is obtained from the grantor to the corporation after the filing of the certificate of incorporation, the deed will be passed as sufficient without any requirement for further instruments from the incorporators or stockholders of the grantee or from those who furnished the consideration for the conveyance.

B. When a deed is dated before the certificate of incorporation of the grantee is filed in the office of the Secretary of State and the deed is recorded on the same day as the certificate is filed or later, the deed will be passed as sufficient without requirement of proof of delivery or of any confirmatory deeds.

C-4 FRANCHISE TAXES

Franchise taxes accrued more than 10 years ago against a corporation which has been dissolved within the past 10 years may be disregarded, provided the premises in question has been or is being conveyed to a purchase for value. If such dissolved corporation is the present owner, proof of the payment of taxes for the immediately preceding ten years should be obtained. For corporations that are active, franchise taxes accruing more than 10 years ago may be disregarded, provided that title has been or is being conveyed to a purchaser for value.

C-5 INTERLOCKING DIRECTORS OR STOCKHOLDERS

A conveyance from a corporation to a corporate grantee having interlocking directors or stockholders may be passed without objection when title has been conveyed to a purchaser for value.

C-6 OLD CORPORATIONS

When a corporation has been out of title and the property being conveyed has been improved for over 10 years, no search need be made for a certificate of incorporation.

DESCRIPTIONS AND BOUNDARIES

D&B-1 DESCRIPTION-DEFECT CAUSED BY CHANGE IN STREET LINES

Where there is a defect in the description appearing in a deed which has been on record for 10 years or more and the defect arose by reason of a change in the street line of the street by which the beginning point is monumented or by reason of a change in the street line of the street upon which the property abuts, the title may be insured without requirement of a correction deed, if both of the following conditions exist:

- A. All subsequent deeds on record for 10 years or more correctly describe the property with reference to the changed street lines; and
- B. The property has been improved for 10 years or more, and the grantor in the described deed owned no other property abutting the misdescribed property.

D&B-2 DESCRIPTION-VARIANCE BETWEEN STREETS ON FILED MAP AND IN PARTICULAR DESCRIPTION

Where a deed describes property by reference to a lot on a filed map and includes a description which coincides with the property location on the map, and after recording of the deed there is a change in the location of the line of the street from which the beginning point is monumented, title may be insured without requiring a correction deed.

D&B-3 EFFECT OF “SAME AS” RECITAL IN DEED

A. When 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 (as distinguished from conveyed by) 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.

B. When a conveyance contains a defective description but the description is followed by a recital 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 as conveying the entire premises.

D&B-4 FENCE VARIATIONS

Where there are variations between the lines of the 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 12 inches.

D&B-5 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.

D&B-6 PARTY WALLS

A. When the distances and dimensions given for 2 or more plots would make them contiguous except for the fact that the point of beginning in 1 or more of the descriptions is located opposite the center of a party wall, the monumentation may be disregarded and contiguity may be insured when the properties come into a common ownership provided that the gap between the point opposite the center of the party wall and the line determined by the distance is 3 inches or less.

B. When the point of beginning is described as being “at” the center of the party wall (as distinguished from “opposite”) and the front of the party wall is set back from the street line at least 2 feet, the attempted location at the center of the party wall may be disregarded entirely as a monument even if the gap is more than 3 inches.

C. Where a common owner conveyed buildings separately monumenting some plots as opposite the center of a party wall, the monumentation may be disregarded for the purpose of insuring contiguity where the sum of the dimensions used in the conveyances totals all the property originally held by the common owner.

D. Where a grantor conveys premises monumenting the same as opposite the center of a party wall, such monumentation may be disregarded for the purpose of insuring contiguity where the dimensions used in the conveyance would otherwise convey all the property of the grantor.

D&B-7 RECIPROCAL DRIVEWAY EASEMENTS

Where a reciprocal driveway easement is in actual use by adjoining owners and the reciprocal easement is affirmatively recited in deeds of record 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.

D&B-8 VARIATION BETWEEN RECORD DESCRIPTION AND TAX MAP

A variation between a record description and a tax map of up to 1 inch may be disregarded.

ESTATE ADMINISTRATION & TAXES

E-I ADMINISTRATOR'S DEED-ADDITIONAL BOND

A deed made by an administrator of a decedent, to whom unrestricted letters have been issued, may be insured without compliance with SCPA 805 (3) if acknowledged waivers of citation, renunciation and consent to the appointment of the Administrator executed by all of the distributees, reciting that the filing of a bond is not required, were filed with the Surrogate prior to the issuance of the letters.

E-2 FEDERAL ESTATE TAXES OF A DECEDENT WHO WAS A CITIZEN OR RESIDENT OF THE UNITED STATES

1. (a) The lien for Federal Estate Tax may be disregarded when the federal gross estate of a decedent is as follows: for decedents dying in 2001 a gross estate of not more than \$675,000; for decedents dying in 2002 or 2003 a gross estate of not more than \$1,000,000; for decedent's dying in 2004 or 2005 a gross estate of not more than \$1,500,000; for decedents dying in 2006, 2007 or 2008 a gross estate of not more than \$2,000,000; for decedents dying in 2009 a gross estate of not more than \$3,500,000; for decedents dying in 2011 or 2012 a gross estate of not more than \$5,000,000; and for persons dying on or after January 1, 2013 a gross estate of not more than \$1,000,000.

(b) For decedents dying in calendar year 2010, the lien for Federal Estate Tax may be disregarded if the decedent's estate elected not to pay Federal Estate Taxes.

(c) For decedents dying in calendar year 2010, the lien for Federal Estate Tax may be disregarded if the decedent's estate elected to pay Federal Estate Taxes and if the federal gross estate of the decedent is not more than \$5,000,000.

2. The lien for Federal Estate Tax against a deceased tenant by the entirety or a deceased joint tenant may be disregarded on a deed from the surviving tenant by the entirety or the surviving joint tenant to a purchaser who pays adequate and full consideration.
3. The lien for Federal Estate Tax against a deceased tenant by the entirety or deceased joint tenant may be disregarded upon a mortgage for adequate and full consideration from the surviving tenant by the entirety or the surviving joint tenant.
4. The lien for Federal Estate Tax against a decedent may be disregarded upon a mortgage for value or a transfer made to a purchaser for value which transfer or mortgage is made by the heirs, devisees or distributees of the decedent.
5. Where in an action party defendants are included as unknowns in an omnibus clause, no question will be raised as to possible Federal Estate Tax against the estates of any such unknowns who may be dead and the United States Government need not be named a party for purpose of cutting off such possible Federal Estate Tax. The United States Government is to be named as a party defendant for any other proper reason which may exist in the title.

NOTE: Recommended Practice E-2 does not apply to the Estate of a decedent who is not a citizen or a resident of the United States. In addition, other provisions of law may apply to a resident of a possession of the United States.

Amended October 2011

E-3 INHERITANCE BY SURVIVING SPOUSE

A. DEATH OF DECEDENT PRIOR TO MARCH 1, 1964

1. When decedent died prior to March 1, 1964 and title is through a surviving spouse who claims the entire title under subdivisions 2 and 3 of Section 83 of the Decedent Estate Law because the estate was less than \$5,000 deeds should be obtained from the surviving parents or parent, or where title is made through a spouse who claims the entire title under subdivision 4 because the estate was less than \$10,000, deeds should be obtained from the surviving brothers and sisters or their descendants. However the requirement for such deeds will be waived if title is made through a proceeding in the Surrogate's Court by an administrator for leave to sell the property or an accounting proceeding or a proceeding for probate of heirship or other appropriate action or proceeding properly conducted and such parents or collaterals are joined as parties and an appropriate finding is made that the value of the estate is below the required amount.
2. The title from the surviving spouse of an intestate may be passed without requiring deeds from the parents or collaterals and without requiring any of the foregoing proceedings or actions if proof is furnished of all three of the following:
 - (a) The estate was below the amount required to give the spouse the entire title; this may be established either by the estate tax proceeding or by affidavit; and
 - (b) The property had been improved for more than 10 years; and

(c) The deed from the surviving spouse or from his or her heirs, devisees or successors in interest had been recorded for more than 10 years.

**B. DEATH OF DECEDENT BETWEEN MARCH 21, 1964
AND SEPTEMBER 1, 1992**

1. When decedent died on or after March 1, 1964 and title is through a surviving spouse who claims the entire title under subdivisions 2 and 3 of Section 83 of the Decedent Estate Law or under paragraphs 3 and 4 of subdivision (a) of Section 4-1.1 of the Estates, Powers and Trusts Law (as said paragraph existed prior to September 1, 1992) because the estate was less than \$25,000, deeds should be obtained from the surviving parents or parent.

However such deeds should be waived if title is made through a proceeding in the Surrogate's Court by an administrator for leave to sell the property or an accounting proceeding or a proceeding for probate of heirship or other appropriate action or proceeding is properly conducted and such parents are joined as parties and an appropriate finding is made that the value of the estate is below the required amount.

NOTE: The Following Did Not Take Effect Until March 1, 1974:

2. The title from the surviving spouse of an intestate may be passed without requiring deeds from the parents and without requiring any of the foregoing proceedings or actions if proof is furnished of all the following:

(a) The estate was below the amount required to give the spouse the entire title; this may be established either by the estate tax proceeding or by affidavit, and

(b) The property had been improved for more than 10 years, and

(c) The deed from the surviving spouse or from his or her heirs, devisees or successors in interest had been recorded for more than ten years.

C. DEATH OF DECEDENT ON OR AFTER SEPTEMBER 1, 1992

When decedent died on or after September 1, 1992, and title is through a surviving spouse who claims the entire title under Article 4 of the Estates Powers and Trusts Law, deeds do not have to be obtained from the surviving parents or parent.

**E-4 NEW YORK ESTATE TAX OF A DECEDENT WHO WAS A RESIDENT OR NON-
RESIDENT OF NEW YORK STATE**

1. (a) The lien for New York Estate Tax may be disregarded when the decedent died (i) prior to September 30, 1998, and the federal gross estate, including the subject real property, is not more than \$115,000; (ii) on or after October 1, 1998 and on or prior to January 31, 2000 and the federal gross estate, including the subject real property, is not more than \$300,000; (iii) on or after February 1, 2000 and on or prior to December 31, 2001 and the federal gross estate,

including the subject property, is not more than \$675,000; or (iv) on or after January 1, 2002 and the federal gross estate, including the subject property, is not more than \$1,000,000.

(b) The lien for New York Estate Taxes may be passed where the decedent died during calendar year 2010 if the federal gross estate, including the subject property, was or would have been not more than \$1,000,000, regardless of whether the decedent's estate elected to pay federal estate taxes.

2. The lien for New York Estate Tax against a deceased tenant by the entirety or joint tenant may be disregarded on a deed from the surviving tenant by the entirety or joint tenant to a bona fide purchaser for adequate and full consideration.

3. Where death occurs after May 25, 1990, the lien for New York Estate Tax against a deceased tenant by the entirety or deceased joint tenant may also be disregarded upon a mortgage for adequate and full consideration from the surviving tenant by the entirety or the surviving joint tenant.

4. Where death occurs after May 25, 1990, the lien for New York Estate Tax may also be disregarded against an interest in property held by the decedent and the decedent's surviving spouse as tenants by the entirety.

5. The lien for New York Estate Tax against a decedent may be disregarded upon a mortgage for value or a transfer made to a purchaser for value which transfer or mortgage is made by the heirs, devisees or distributees of the decedent.

NOTE: Amended October 2011

E-5 POSTHUMOUS AND AFTER-BORN CHILDREN

When the record fails to show whether any child of a decedent was born after the death of the decedent or after the date of the decedent's will, and no proof on the subject is available, the question may be disregarded if 30 years have passed since the date of the death of the decedent, or if ten years have passed since a conveyance by the devisees to a bona fide purchase.

E-6 POWER OF SALE-ANCILLARY LETTERS OF PROBATE

A. Prior to September 1, 1967: Where a decedent dies in a State other than New York State, owning real property in New York State, and his will is probated in such foreign state and an ancillary probate is had in New York State, the foreign executor may act in New York State pursuant to a power of sale granted in the will without obtaining Ancillary Letters in New York, unless precluded by Section 131 of the Banking Law.

B. After September 1, 1967: Where a decedent dies in a State other than New York State, owning real property in New York State, and his will is probated in such foreign state, either an ancillary or original probate of the will must be completed in New York State and ancillary

Letters must be issued to the foreign executor before exercising in New York State a power of sale granted in the will.

E-7 PROBATE OF WILLS

A. When title is made through a will and the estate is out of title and the petition for probate, through not made by a blood relative of the decedent, shows that the heirs are direct descendants or brothers and sisters, the title will be insured without exception as to the sufficiency of such proof.

B. If under the same circumstances the petition shows that the heirs include nephews or nieces or more remote relatives, the title will nevertheless be insured without exception as to the sufficiency of such proof if 5 years have elapsed since the probate of the will.

C. Proof of Heirship on Probate - Where title is presently being made through a will and the petition is made for probate by the surviving spouse, who has had children with the decedent, the title will be insured without further proof of heirship, provided that the decedent had not had a prior marriage and satisfactory proof of that fact is furnished.

E-8 PROOF OF HEIRSHIP

When a deed from the heirs of a former owner who died intestate has been recorded for more than 10 years, and the only proof that such grantors are the only heirs are contained in a petition for letters of administration made by one who was not a blood relative of the decedent, the title will be insured without any exception as to the sufficiency of such proof.

E-9 PROOF OF HEIRSHIP & DEATH OF JOINT TENANT OR TENANCY BY THE ENTIRETY

A. When a deed from the heirs of a deceased former owner who died intestate or the surviving tenant by the entirety or joint tenant of a deceased former owner has been recorded more than 10 years, and the only proof that such grantor(s) are the surviving tenant by the entirety or joint tenant or the only heirs is contained in a statement in the transfer or estate tax petition or application for release of lien by a qualified person or (pursuant to Real Property Actions and Proceedings Law Section 341) in a recital contained in a duly acknowledged deed or mortgage or other instrument executed for the purpose of transferring title which is more than 10 years old to the effect that he/she is the surviving spouse or joint tenant or the only persons interested in the estate of the decedent, the title will be insured without exception as to the sufficiency of such proof.

B. A recorded release of New York Estate Tax may also be accepted as proof of death of a deceased joint tenant or tenancy by the entirety.

E-10 PROOF OF PAYMENT OF LEGACIES

Legacies whether expressly or impliedly charged on the real property of a decedent may be disregarded after 10 years from the date of death of the decedent if the estate has passed out of title.

E-11 PUBLIC ADMINISTRATOR'S SALES

Title made through sales by public administrators may be insured, if otherwise valid, despite the fact that no bond has been filed in the proceeding for the sale of the particular parcel and despite the fact that no bank has been designated in the order as the depository of the proceeds of sale.

E-12 PUBLIC ADMINISTRATOR'S SALES ACTING IN FIDUCIARY CAPACITY

If a person died intestate on or after June 1, 1965, title made through a sale made by a Public Administrator, acting as administrator of the estate under Section 11-1.1 of the Estates, Powers and Trust Law, may be insured without requiring the filing of an additional bond unless the court so requires.

LIENS AND JUDGMENTS

L&J-1 FEDERAL TAX LIENS

A. A notice of Federal Tax Lien based on an assessment made, on or before November 5, 1990 may be disregarded upon the execution and delivery of a deed, lease or mortgage affecting the property of the taxpayer to a Purchaser (as defined in Section 6323 of the Internal Revenue Code) or a Mortgagee after 6 years and 30 days have elapsed from the date of assessment set forth in the notice of Federal Tax Lien, unless the notice of Federal Tax Lien was refiled prior to the expiration of the 6 year and 30 days period. If the notice of Federal Tax Lien was refiled within the 6 year and 30 day period from the date of assessment, the notice of Federal Tax Lien may be disregarded after 10 years and 30 days have elapsed from the date of assessment set forth in the notice of Federal Tax Lien unless the notice of Federal Tax Lien was further refiled.

B. Federal Tax liens against one of the parties holding title as tenants by the entirety may be passed when title passes from the other tenant as a survivor following the death of his or her spouse. The lien will not be passed when both tenants by the entirety are alive.

L&J-2 FEDERAL TAX LIENS FILED BETWEEN DATE OF MORTGAGE AND RECORDING

Where between the time of a bona fide closing and the time of recording of the insured mortgage, a Federal Tax Lien is filed against a mortgagor, the Federal Tax Lien will be passed upon proof establishing the actual closing date and, if there is a delay between the date of the mortgage or mortgages and the recording thereof, the reason for the delay in recordation.

L&J-3 JUDGMENTS AGAINST PARTNERS

A. Where title is in a limited partnership or limited liability partnership duly formed, which is about to convey or mortgage property, judgment searches need not be run against general or limited partners and judgment liens against them may be disregarded.

B. When title is taken in the trade name of a general partnership in accordance with its named designation in the certificate of partnership which is properly filed, judgment searches need not be run against general or limited partners and judgment liens against them may be disregarded.

L&J-4 JUDGMENTS ENTERED BETWEEN DATE OF DEED OR MORTGAGE AND RECORDING

Where between the time of a bona fide closing and the time of recording instruments, a judgment is docketed against a grantor or mortgagor, the judgment will be passed upon proof establishing the actual closing date and, if there is a delay between the date of the deed(s) or mortgage(s) and the recording thereof, the reason for the delay in recordation.

L&J-5 NYC LIENS AND JUDGMENTS DURATION

- A. New York City Parking Violation Bureau Judgments filed in the County Clerk's office in any county in New York City:
8 years (N.Y. Vehicle and Traffic Law Section 241 (3))
- B. Environmental Control Board Judgments:
8 years (NYC Charter Ch. 57 Section 1404)
- C. Transit Adjudication Bureau Judgments:
10 years N.Y. Public Authority Law Section 1209-A; 1984 N.Y. Laws Ch.93)
- D. New York City Parking Violation Bureau Judgments filed in the County Clerk's office in any county in New York City against a person or entity who is no longer in title may be disregarded if title has passed to a purchaser for value.

NOTE: Amended March 2009

L&J-6 PRIORITY OF A PURCHASE MONEY MORTGAGE OVER JUDGMENT AGAINST THE MORTGAGOR

Where real property is sold and conveyed, and at the same time a mortgage thereupon is given by the purchaser to secure the payment of the whole or a part of the purchase money, the lien of the mortgage upon that real property is superior to the lien of a previous money judgment against the purchase money mortgagor. This may be followed whether the mortgage is made directly to the grantor or to a third party, so long as the mortgage recites that it is a purchase money mortgage.

L&J-7 SURETY BOND LIENS-WHEN DISREGARDED

A Surety Bond Lien may be disregarded after 10 years from the date of filing provided that such lien was not extended by court order and such extension noted in the record where the Surety Bond Lien is filed.

MORTGAGES AND FORECLOSURE OF MORTGAGES

M-1 FORECLOSURE

When a judgment has been rendered in favor of an Agency of the State or a Municipality other than the Industrial Commissioner of the State of New York, it will be adequate to join the State of New York or such Municipality without joining the Agency as a party defendant provided that appropriate recitals are contained in the complaint giving the reason for joinder as a Commissioner, agency, or municipality.

M-2 FORECLOSURES IN FEDERAL COURTS

Exception need not be taken to a publication of a public sale of realty or interest therein under any order, judgment or decree of any court of the United States provided it has been made in accordance with the Federal Statute (28 U.S. Code Sec. 2002) that reads as follows:

“A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state or judicial district of the United States wherein the realty is situated.

“If such realty is situated in more than one county, state, district or circuit, such notice shall be published in one or more of the counties, states, or districts wherein it is situated, as the court directs. The notice shall be substantially in such form and contain such description of the property by reference or otherwise as the court approves. The court may direct that the publication be made in other newspapers.

"This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency."

M-3 FORECLOSURE – PARTIES – SUCCESSORS OF DECEASED MORTGAGEE

When the holder of a junior lien dies intestate and no proceedings have been had in his or her estate for the appointment of an administrator, the lien will be deemed barred in an action to foreclose a prior mortgage if all the next of kin have been made parties and satisfactory proof is furnished of the death, the intestacy, the family history and the absence of creditors of the estate. In such situations the lack of proof that there were no creditors may be disregarded when more than 6 years have elapsed since the delivery of the referee's deed.

M-4 ASSIGNMENTS OF JUDGMENT TO UNITED STATES OF AMERICA

When a judgment, subsequent in lien to a mortgage being foreclosed and docketed prior to the filing of a notice of pendency, or a judgment docketed subsequent to the filing of a notice of pendency, is assigned to the United States of America after the filing of the notice of pendency in an action to foreclose such mortgage, then such assignment may be disregarded provided the record holder of such judgment filed prior to the notice of pendency, is properly joined and served as a party defendant, all necessary papers are served on such party, and the action goes to judgment and sale.

M-5 MORTGAGE SATISFACTION BY AFFIDAVIT RPAPL SECTION 1921

A mortgage secured by property improved by a one-to-six family, owner occupied, residential structure or residential condominium unit may be disregarded without the recording of a Satisfaction of Mortgage provided there has been compliance with RPAPL Section 1921.

M-6 RELEASE IN LIEU OF SATISFACTION OF MORTGAGE

When the premises affected by a mortgage lien is released of record instead of the mortgage being satisfied, the mortgage may be omitted as an objection to title.

M-7 SMALL ANCIENT MORTGAGES

A. A mortgage held of record by an institutional lender in the face amount of \$50,000 or less which matured more than 12 years ago and which is not recited in the chain of title for 12 years or more, may be disregarded upon an affidavit that there has been no payment or demand for payment of principal or interest for 12 years, provided that the present owner or his or her ancestor was not the mortgagor and there has been one or more transfers of title for value.

B. A mortgage held of record by an institutional lender in the face amount of \$50,000 or less which contains no stated maturity date, which has been recorded for more than 30 years, and which is not recited in the chain of title for 12 years or more, may be disregarded upon an affidavit there has been no payment or demand for payment of principal or interest for 12 years, provided that the present owner or his or her ancestor was not the mortgagor and there has been one or more transfers of title for value.

APPLICABLE TO MORTGAGES HELD OF RECORD BY OTHER THAN AN INSTITUTIONAL LENDER

C. A mortgage held of record by other than an institutional lender in the face amount of \$25,000 or less which matured more than 12 years ago and which is not recited in the chain of title for 12 years or more, may be disregarded upon an affidavit that there has been no payment or demand for payment of principal or interest for 12 years, provided that the present owner or his or her ancestor was not the mortgagor and there has been one or more transfers of title for value.

D. A mortgage held of record by other than an institutional lender in the face amount of \$25,000 or less which contains no stated maturity date, which has been recorded for more than 30 years, and which is not recited in the chain of title for 12 years or more, may be disregarded upon an affidavit there has been no payment or demand for payment of principal or interest for 12 years, provided that the present owner or his or her ancestor was not the mortgagor and there has been one or more transfers of title for value.

NOTE: Amended March 2009

M-8 UNRECORDED MORTGAGE

Recital of an unrecorded mortgage in a deed of record for 20 years or more may be passed on proof that there has been no payment or demand for payment of principal or interest for 12 years, and that the owners have had no knowledge of said unrecorded mortgage. Where such recital is contained in the last deed of record satisfactory proof will be required to dispose of the objection.

FORMS

LETTERS OF INDEMNITY

STRAIGHT LETTER OF INDEMNITY

Re:

We understand that you are about to issue your policy of title insurance covering the premises set forth in the above title number, and that in connection with your examination of title you have raised the following exception(s):

In consideration of your issuing your policy free from said exception(s), this Company does hereby agree to indemnify you and hold you harmless from any loss or damage, which you may sustain by reason of doing so.

This letter of indemnity extends to and covers the question of marketability of title, and extends to and covers any and all reissues to be issued by you affecting said premises, whether by fee insurance, mortgage insurance, or the assignment or foreclosure of any mortgage.

This letter of indemnity shall continue notwithstanding your issuance of further indemnities for the matters set forth herein, provided that you still have policy liability at the time of the issuance of such further indemnity.

Very truly yours,

SPECIAL MORTGAGE OR LIEN PAYOFF LETTER OF INDEMNITY*

Re:

We understand that you have been asked to issue your title policy insuring a transaction covering the premises set forth in the above title number and find that the following mortgage is open of record:

You have informed us that you have been requested to issue your title policy free of any exception as to said mortgage*.

This is to advise you that on or about _____
we caused payment in full to be made on said mortgage*.

However, we have not yet received the satisfaction documents. We assure you that we will continue to use our efforts to procure the same and to satisfy said mortgage* of record.

In any event, this Company agrees to and does hereby indemnify you, but only by reason of the enforcement or attempted enforcement of said mortgage* against the above premises provided you notify us within a reasonable time after receiving notice of said enforcement or attempted enforcement.

This letter of indemnity, and the representations and assurances set forth above, shall continue notwithstanding your issuance of further indemnities for the matters set forth herein, provided that you still have policy liability at the time of the issuance of such further indemnity.

Very truly yours,

*This letter of indemnity may also be used for other types of liens that are paid from loan proceeds as a result of a mortgage closing.

FULL PERFORMANCE LETTER OF INDEMNITY

Re:

We understand that you have been asked to issue your policy of title insurance covering the premises set forth in the above title number, and that in connection with your examination of title you have raised the following objection:

In consideration of your issuing your policy free from the objection, this Company does hereby agree to indemnify you and hold you harmless from any and all loss, cost or damage which you may sustain by reason of your doing so. This Company further agrees that it will take the immediate steps necessary to dispose of said objection.

This letter of indemnity extends to and covers the question of marketability of title and extends to any and all reissues to be issued by you affecting said premises or any part thereof, whether by fee insurance, mortgage insurance, or assignment or foreclosure of any mortgage.

This letter of indemnity, and our obligation to dispose of the objection set forth above, shall continue notwithstanding your issuance of further indemnities for the matters set forth herein, provided that you still have policy liability at the time of the issuance of such further indemnity.

Very truly yours,

CONDITIONAL PERFORMANCE LETTER OF INDEMNITY

Re:

We understand that you have been asked to issue your policy of title insurance covering the premises set forth in the above title number, and that in connection with your examination of title you have raised the following objection:

In consideration of your issuing your policy free from the objection, this Company does hereby agree to indemnify you and hold you harmless from any and all loss, cost or damage which you may sustain by reason of your doing so. This Company further agrees that it will promptly take the necessary steps to dispose of said objection(s) if claim should properly be made upon you under the terms of your policy of title insurance.

This letter of indemnity extends to and covers the question of marketability of title and extends to any and all reissues to be issued by you affecting said premises or any part thereof, whether by fee insurance, mortgage insurance, or assignment or foreclosure of any mortgage.

This letter of indemnity, and our obligation to dispose of the objection set forth above if claim should properly be made upon you, shall continue notwithstanding your issuance of further indemnities for the matters set forth herein, provided that you still have policy liability at the time of the issuance of such further indemnity.

Very truly yours,