



**FIRST AMERICAN TITLE INSURANCE COMPANY**

5775 Glenridge Drive, Suite A-200, Atlanta, GA 30328

404-250-1604 Fax: 404-250-1609

Date: October 31, 2003 **Underwriting Bulletin GA-96**

To: All Agents of First American Title Insurance Company and Attorney's Title Guaranty Fund

From: David S. Swan, Vice President and State Counsel

Subject: **MUTUAL INDEMNIFICATION AGREEMENT**

In an effort to increase the efficiency of operations, and expedite the closing process and issuance of title insurance policies to our customers, a number of title insurance underwriters entered into a Mutual Indemnification Agreement as of September 1, 2003. That agreement, sometimes referred to as an "Indemnification Treaty", covers issues commonly encountered in title examinations which may be the basis for liability of the underwriter of the title insurance policy held by a current seller or mortgagor. First American Title Insurance Company has entered into the Mutual Indemnification Agreement in the form attached to this bulletin as Attachment A with the underwriters listed on its Exhibit 1 on page 6 of this bulletin. In addition, First American has entered into a similar, but separate, Mutual Indemnification Agreement with American Pioneer Title Insurance Company, also attached hereto as Attachment II.

The Mutual Indemnification Agreement allows you, as First American's agent, to issue First American's owners or loan policies of title insurance provided a prior owners policy or loan policy (based upon which the lender has foreclosed) exists on one of the underwriters listed below and provided the particular title issue for which we require the indemnity is covered under the terms of the Mutual Indemnification Agreement. If you have a participating underwriter's prior policy and the matter is covered under the terms of the Mutual Indemnification Agreement attached hereto as Attachment A or Attachment B, it is not necessary to obtain a specific letter of indemnity from the underwriter.

We refer you to the Mutual Indemnification Agreement for an explanation of the covered matters. Generally, the Agreement covers issues relating to (1) unsatisfied judgments and federal or state tax liens which pre-date the indemnitor's policy (subject to the limitations contained in the attached Mutual Indemnification Agreement), (2) unsatisfied mortgages (security deeds) UCC 2's or Assignments of Rents and Leases prior to the indemnitor's policy (again subject to the limitations contained in the attached Mutual Indemnification Agreement) and (3) absence of corporate seal or lack of stated corporate capacity on

corporate deeds prior to the indemnitor's policy (again subject to the limitations contained in the attached Mutual Indemnification Agreement).

When relying on the provisions of the Mutual Indemnification Agreement to provide indemnification for a known defect, you should obtain a copy of either the prior owners policy which insures the current seller or mortgagor, or the prior mortgagee policy that insures a lender that has acquired title through foreclosure. We ask that you attach a copy of the other underwriters policy to your remittance copy of the policy and place a notation on the remittance copy stating that you are insuring over a specific title defect (describe the defect) based upon the Mutual Indemnification Agreement and the policy from the other underwriter.

It is important to remember that the liability under any indemnitor's policy is the face amount of the prior policy or \$500,000.00, whichever is less. When you are issuing a policy in an amount exceeding \$500,000.00, and the apparent liability for the noted title defect is greater than the amount of coverage under the indemnitor's policy or \$500,000.00, whichever is less, the protection afforded by the agreement would be insufficient and it would be necessary to obtain a written letter of indemnity from the underwriter of the prior policy, with coverage extending to the amount of the new policy.

One important provision of the Agreement is that in order to rely on its provisions, the indemnitor's policy, either owners or mortgagee, must be at least one year old. It is thought that title defects should be remedied whenever possible and many title companies would prefer to correct title defects

rather than to simply insure over them in reliance on the indemnities contained in the Agreement. Such defects may be more easily corrected within one year of issuance of the policy.

If you discover a title defect which would come within the scope of the Mutual Indemnification Agreement you may wish to disclose this title defect to all parties in the transaction, whether or not they are an insured, and state that you are not excepting the matter from coverage because of the existence of this indemnity. You should obtain such disclosure in writing with a signed acknowledgment and acceptance by the parties notified. (This type of disclosure should be made in all situations where we are accepting an indemnity or otherwise insuring over a title defect.)

If, after reviewing the attached Mutual Indemnification Agreement, you have further questions or comments, please contact the Underwriting Department at (404) 250-1604 or (800)328-2642.

## ATTACHMENT I

### MUTUAL INDEMNIFICATION AGREEMENT

#### INDEMNITY:

The undersigned companies, their successors and assigns, (hereafter “Indemnitor(s),” as further defined below and as shown on Exhibit I) agree to indemnify each other against loss or damage any signatory hereto (hereafter the “Indemnitee(s)” as further defined below) may suffer under Indemnitee’s loan or owner’s title insurance policy(ies) (hereafter “Indemnitee’s policy”) issued in reliance on this Mutual Indemnification Agreement (hereafter the “Agreement”) arising by reason of those “POTENTIAL DEFECTS,” described below, so long as Indemnitor previously has issued (a) an owner’s title policy insuring the current owner or (b) a loan policy insuring a lender who has taken title by foreclosure (hereafter the “Indemnitor’s Policy”) covering the land insured under Indemnitee’s Policy (hereafter the “Land”) without exception to the POTENTIAL DEFECTS subject, however to the terms, provisions and CONDITIONS of this Agreement.

#### POTENTIAL DEFECTS:

- I. A recorded Judgment, Federal Tax Lien, or State Tax Lien which may constitute an unsatisfied lien against the Land, as set forth in Section A, below; or
- II. An unsatisfied or improperly satisfied recorded mortgage, UCC2, or Assignment of Rents and Leases, as set forth in Section B, below, provided the mortgage was not granted by the insured owner; or
- III. The absence of a corporate seal or lack of stated corporate capacity of the person executing the deed of a corporation.

#### Section A (Judgments or Federal Tax Liens)

Item I above, shall mean a recorded judgment lien(s), from the face of which it appears that the principal is a sum certain, or a recorded federal tax lien or state tax lien which may have attached to the Land prior to the date of the Indemnitor’s Policy (hereafter the Lien(s)) provided:

1. The Lien(s) is not against the insured under the Indemnitor’s Policy;
2. The date of the Lien(s) is at least one (1) year old;

3. No notice of any proceedings or levy to collect the Lien(s) appears of record;

Section B (Mortgages):

Item II above, shall mean a recorded mortgage(s), UCC2, or Assignment of Rents and Leases which appears of record prior to the date of Indemnitor's Policy provided:

1. the mortgage was not given by the insured owner;
2. there is no evidence of foreclosure proceedings in the public record; and
3. the mortgage secures a principal amount of not more than \$500,000 and the Indemnitor's policy is at least one (1) year old; and
4. the mortgage does not appear, from the record, to secure revolving credit or an equity line of credit.

CONDITIONS:

The Indemnity provisions of this Mutual Indemnification Agreement are subject to the following conditions:

- a. The agreement is only applicable to policies issued on Georgia property.
- b. The Indemnitee is not required to authenticate a policy of the Indemnitor that appears valid on its face; however, if requested by the Indemnitor the Indemnitee shall be prepared to provide a copy of the policy on demand as a condition to making a claim under this Agreement.
- c. The liability of the Indemnitor is limited to the face amount and the terms of the Indemnitor's Policy or \$500,000, whichever is less; and
- d. The Indemnitor shall be notified of a claim under this Agreement, at the address listed below, as if the Indemnitee is an insured claimant under Indemnitor's Policy.
- e. Upon any claim being made under this Agreement, Indemnitor agrees to perform in accordance with the terms hereof, promptly and in good faith; however, until an Indemnitor is notified of a claim hereunder, there is no obligation to take any action allowed or required under the Indemnitors policy.
- f. This Agreement may be supplemented or superseded by any specific written indemnity agreements by and between any of these parties hereto and such specific agreements shall not be deemed to suspend, cancel, or otherwise terminate any of the rights or obligations of the parties under this agreement as to policies which may be written by the Indemnitee in the future; and

- g. This Agreement may be canceled by any party hereto, upon written notice given to all other parties after thirty (30) days from the date of the mailing of such notice. However, it is agreed that such cancellation shall not diminish or impair any of the indemnities arising under this Agreement prior to the expiration of such thirty (30) day period.
- h. For purposes of this Mutual Indemnity Agreement, an “Indemnitor” is defined as being a signatory to this agreement who is the issuer of an owners title policy to the transferor or mortgagor of the Property whose transferee or mortgagee is the insured under a policy issued by another signatory who relies upon the provisions of this Agreement. An Indemnitee is defined as the issuer of the policy to the transferee or mortgagee of the Indemnitor’s insured. However, it is understood and agreed that once the relationship of Indemnitor and Indemnitee is established hereunder, it shall continue in force so long as the Indemnitee has liability under its policy or under its Indemnity(ies) to subsequent insurers for a Potential Defect covered by the policy of Indemnitor, subject to the limitations of this Agreement.
- i. It is the intention of the Indemnitors that the “Exhibit II: Summary” be a part of this Agreement and a general guideline but in case of conflict between this Agreement and the Exhibit II: Summary, this Agreement shall control.

EXHIBIT I

TO

MUTUAL INDEMNIFICATION AGREEMENT

Signatories (Indemnitors) under the Mutual Indemnification Agreement:\*

American Pioneer Title Insurance Company

Attorneys' Title Guaranty Fund, Inc.

Chicago Title Insurance Company

Commonwealth Land Title Insurance Company

Fidelity National Title Insurance Company of New York

First American Title Insurance Company

Lawyers Title Insurance Corporation

Old Republic National Title Insurance Company

(formerly known as Title Insurance Company of Minnesota)

Security Union Title Insurance Company

(formerly known as Safeco Title Insurance Company)

Stewart Title & Guaranty Insurance Company, and its affiliated companies

Ticor Title Insurance Company

Title & Trust Company of Florida

Transnation Title Insurance Company

(formerly known as Transamerica Title Insurance Company)

United General Title Insurance Company

## EXHIBIT II: SUMMARY

### General Requirements for Reliance Upon the Mutual Indemnification Agreement:

The Indemnitee or its policy issuing agent must retain for its file at least one of the following:

- a) Owners Policy at least one (1) year old insuring the seller or mortgagor in the current transaction; or
- b) Loan Policy at least one (1) year old insuring a lender who has taken title by foreclosure to the covered Land insured under the policy.

### Matters covered automatically by the Mutual Indemnification Agreement:

- a) Liens arising from money judgments and federal or state tax liens up to a face amount of \$500,000;
- b) An unsatisfied mortgage, securing on its face no more than \$500,000 so long as it does not secure revolving credit or an equity line of credit, and unsatisfied UCC2s and Assignments of Rents and Leases;
- c) Absence of a corporate seal or lack of statement of corporate capacity on a deed in which a corporation is the grantor.

### General Conditions of coverage:

- 1) The Indemnitor's policy must be at least one year old and contain no exception for the subject title objection listed above;
- 2) There must be no record notice of any proceeding to enforce the judgment, tax lien, or mortgage;
- 3) The judgment or tax lien shall not be against the insured and/or the mortgage shall not have been executed by the insured;
- 4) The amount of the automatic indemnity is limited to the Face Amount of the Indemnitor's policy or \$500,000 whichever is LESS;
- 5) This indemnity is limited to policies issued on Georgia properties only; and
- 6) An Indemnitor is the underwriter who has already issued its policy without exception to the covered matter. An Indemnitee is an underwriter whose policy is issued in reliance upon the automatic indemnity given in the Mutual Indemnification Agreement.

Note: Nothing in this Agreement prevents an underwriter from issuing separate letters of indemnity or refusing to indemnify in cases not covered under this Agreement or requires any underwriter to issue a letter of indemnity, if at all, within the time set for the closing.

American Pioneer Title Insurance Company

By: \_\_\_\_\_

Attorneys' Title Guaranty Fund, Inc.

By: \_\_\_\_\_

Robbie Taylor, Executive Vice President

Chicago Title Insurance Company

By: \_\_\_\_\_

Commonwealth Land Title Insurance Company

By: \_\_\_\_\_

Pollyann S. Campbell, Assistant Vice President

Fidelity National Title Insurance Company of New York

By: \_\_\_\_\_

Sidney Holderness, Vice President

First American Title Insurance Company

By: \_\_\_\_\_

David S. Swan, Vice President

Lawyers Title Insurance Corporation

By: \_\_\_\_\_

Henry S. Rogers, Vice President

Old Republic National Title Insurance Company  
(formerly known as Title Insurance Company of Minnesota)

By: \_\_\_\_\_  
Lisa Brown, Assistant Vice President

Security Union Title Insurance Company  
(formerly known as Safeco Title Insurance Company)

By: \_\_\_\_\_

Stewart Title & Guaranty Insurance Company, and its affiliated companies

By: \_\_\_\_\_

Ticor Title Insurance Company

By: \_\_\_\_\_

Transnation Title Insurance Company  
(formerly known as Transamerica Title Insurance Company)

By: \_\_\_\_\_  
Pollyann S. Campbell, Georgia State Counsel

United General Title Insurance Company

By: \_\_\_\_\_

## ATTACHMENT II

### MUTUAL INDEMNIFICATION AGREEMENT

#### INDEMNITY:

The undersigned companies, their successors and assigns, (hereafter “Indemnitors(s),” agree to indemnify each other against loss or damage any signatory hereto (hereafter the “Indemnitee(s)” may suffer under Indemnitee’s loan or owner’s title insurance policy(ies) (hereafter “Indemnitee’s policy”) issued in reliance on this Mutual Indemnification Agreement (hereafter the “Agreement”) arising by reason of those “POTENTIAL DEFECTS,” described below, so long as Indemnitor previously has issued (a) an owner’s title policy insuring the current owner or (b) a loan policy insuring a lender who has taken title by foreclosure (hereafter the “Indemnitor’s Policy”) covering the land insured under Indemnitee’s Policy (hereafter the “Land”) without exception to the POTENTIAL DEFECTS subject, however to the terms, provisions and CONDITIONS of this Agreement.

#### POTENTIAL DEFECTS:

- I. A recorded Judgment, Federal Tax Lien, or State Tax Lien which may constitute an unsatisfied lien against the Land, as set forth in Section A, below; or
- II. An unsatisfied or improperly satisfied recorded mortgage, UCC2, or Assignment of Rents and Leases, as set forth in Section B, below, provided the mortgage was not granted by the insured owner; or
- III. The absence of a corporate seal or lack of stated corporate capacity of the person executing the deed of a corporation.

#### Section A (Judgments or Federal Tax Liens)

Item I above, shall mean a recorded judgment lien(s), from the face of which it appears that the principal is a sum certain, or a recorded federal tax lien or state tax lien which may have attached to the Land prior to the date of the Indemnitor’s Policy (hereafter the Lien(s)) provided:

1. The Lien(s) is not against the insured under the Indemnitor’s Policy;
2. The date of the Lien(s) is at least one (1) year old;
3. No notice of any proceedings or levy to collect the Lien(s) appears of record;

Section B (Mortgages):

Item II above, shall mean a recorded mortgage(s), UCC2, or Assignment of Rents and Leases which appears of record prior to the date of Indemnitor's Policy provided:

4. the mortgage was not given by the insured owner;
5. there is no evidence of foreclosure proceedings in the public record; and
6. the mortgage secures a principal amount of not more than \$500,000 and the Indemnitor's policy is at least one (1) year old; and
7. the mortgage does not appear, from the record, to secure revolving credit or an equity line of credit.

CONDITIONS:

The Indemnity provisions of this Mutual Indemnification Agreement are subject to the following conditions:

- a. The agreement is only applicable to policies issued on Georgia property.
- b. The Indemnitee is not required to authenticate a policy of the Indemnitor that appears valid on its face; however, if requested by the Indemnitor the Indemnitee shall be prepared to provide a copy of the policy on demand as a condition to making a claim under this Agreement.
- c. The liability of the Indemnitor is limited to the face amount and the terms of the Indemnitor's Policy or \$500,000, whichever is less; and
- d. The Indemnitor shall be notified of a claim under this Agreement, at the address listed below the Indemnitor's signature, as if the Indemnitee is an insured claimant under Indemnitor's Policy.
- e. Upon any claim being made under this Agreement, Indemnitor agrees to perform in accordance with the terms hereof, promptly and in good faith; however, until an Indemnitor is notified of a claim hereunder, there is no obligation to take any action allowed or required under the Indemnitors policy.
- f. This Agreement may be supplemented or superseded by any specific written indemnity agreements by and between any of these parties hereto and such specific agreements shall not be deemed to suspend, cancel, or otherwise

terminate any of the rights or obligations of the parties under this agreement as to policies which may be written by the Indemnitee in the future; and

- g. This Agreement may be canceled by any party hereto, upon written notice given to all other parties after thirty (30) days from the date of the mailing of such notice. However, it is agreed that such cancellation shall not diminish or impair any of the indemnities arising under this Agreement prior to the expiration of such thirty (30) day period.
- h. For purposes of this Mutual Indemnity Agreement, an "Indemnitor" is defined as being a signatory to this agreement who is the issuer of (a) an owners title policy to the transferor or mortgagor of the Property whose transferee or mortgagee is the insured under a policy issued by another signatory who relies upon the provisions of this Agreement or (b) a loan policy insuring a lender who has taken title by foreclosure. An Indemnitee is defined as the issuer of the policy to the transferee or mortgagee of the Indemnitor's insured. However, it is understood and agreed that once the relationship of Indemnitor and Indemnitee is established hereunder, it shall continue in force so long as the Indemnitee has liability under its policy or under its Indemnity(ies) to subsequent insurers for a Potential Defect covered by the policy of Indemnitor, subject to the limitations of this Agreement.
- i. It is the intention of the Indemnitors that the "Exhibit I: Summary" be a part of this Agreement and a general guideline but in case of conflict between this Agreement and the Exhibit I: Summary, this Agreement shall control.
- j. This agreement is entered into by and between the undersigned companies as of September 1, 2003, which date shall be considered the "Date" of the agreement notwithstanding the dates of execution indicated next to the signatures of the persons signing on behalf of each of said companies.

American Pioneer Title Insurance Company

By: \_\_\_\_\_

Patricia W. Bower, Counsel

Date: \_\_\_\_\_

American Pioneer Title Insurance Company

493 State Road 436

Casselberry, Florida 32707

First American Title Insurance Company

By: \_\_\_\_\_

David S. Swan, Vice President

Date: \_\_\_\_\_

First American Title Insurance Company

5775 Glenridge Drive

Suite A-200

Atlanta, Georgia 30328

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### Matters covered automatically by the Mutual Indemnification Agreement:

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- c) Absence of a corporate seal or lack of statement of corporate capacity on a deed in which a corporation is the grantor.

### General Conditions of coverage:

- 1) The Indemnitor's policy must be at least one year old and contain no exception for the subject title objection listed above;
- 2) There must be no record notice of any proceeding to enforce the judgment, tax lien, or mortgage;
- 3) The judgment or tax lien shall not be against the insured and/or the mortgage shall not have been executed by the insured;
- 4) The amount of the automatic indemnity is limited to the Face Amount of the Indemnitor's policy or \$500,000 whichever is LESS;
- 5) This indemnity is limited to policies issued on Georgia properties only; and
- 6) An Indemnitor is the underwriter who has already issued its policy without exception to the covered matter. An Indemnitee is an underwriter whose policy is issued in reliance upon the automatic indemnity given in the Mutual Indemnification Agreement.

Note: Nothing in this Agreement prevents an underwriter from issuing separate letters of indemnity or refusing to indemnify in cases not covered under this Agreement or requires any underwriter to issue a letter of indemnity, if at all, within the time set for the closing.