



# N2K: Preventing Claims

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## Reminders



PLEASE MUTE YOUR PHONE LINE DURING THE  
PRESENTATION

This Webinar does qualify for state licensing or CLE credit.

## DISCUSSION TOPICS

- Home Equity Line of Credit Account Closure
- Wire Fraud Theft
- Vacant Land Theft
- Missing Interest Claims
- Tideland Claims
- Expired Lis Pendens



## The HELOC – Home Equity Line of Credit

### Helpful Reminders:

- Even if the HELOC is paid to a zero balance at closing, the HELOC remains open, if not accompanied with an authorization from the borrower to close the account.
- If HELOC is not closed, borrower can withdraw funds, even if borrower no longer owns the property securing the loan.
- HELOC and other revolving credit mortgages are **NOT automatically** covered by the NJ Inter-underwriter Indemnification Agreement.
- Notice must be given to the Prior Insurer by the Current Insurer

# HELOC – continued

## Avoiding Costly Losses:

- Was a payoff quote received directly from the lender?
  - Confirm payoff if paying amount after the expiration of the payoff quote.
- Do not rely on the seller/mortgagor's account statement for the amount owed under the HELOC.
  - You must obtain an estoppel from the HELOC lender or the party's legal counsel.
- In a refinance, the borrowers generally do not want to close the account.
  - If so, inquire if the lender is willing to subordinate the HELOC to the refinance mortgage.

# HELOC – continued

## Avoiding Costly Losses:

- In a sale, the account must be closed. Always properly calculate pay-offs.
  - Lenders will not close an account or discharge the HELOC without borrower authorization to close the account.
  - The borrower must sign a form authorizing the lender to close the account, i.e., a “kill letter.” (This is a request in writing from the mortgagor to the lender to close the line of credit.)
  - A pay-off of a HELOC must always be accompanied by the signed close-out letter.

# HELOC – continued

## Best Practices:

- Maintain in your file copies of all pay-off information, close-out letters, and proof of delivery of the close-out letter (FedEx, USPS, UPS) and all communications with the HELOC lender.
- If an improper pay-off was sent, the line of credit may not be closed even if a close out letter is sent.
- Always contact your underwriter if you can not meet these guidelines. Certain additional requirements or conditions may be required in order to close.

## WIRE FRAUD THEFT

### Precautionary Measures:

- Do you have a secured email server?
  - Keep in mind – you get what you pay for. Free email is not secure!
- What precautions have you taken to ensure an imposter does not “hack” into your email server?
  - Software (Anti-virus, firewall, encrypted files, etc.)
  - Training employees (Good digital hygiene, secure passwords, etc.)
  - Inhouse or outsourced IT and Security.
- Do you regularly run reports on your email server to locate suspicious IP Addresses?



# Wire Fraud Continued

## Closing Due Diligence:

- When you open your closing file – obtain email, fax, address and telephone numbers for all parties to the transaction.
  - Best practice is to obtain this information in person if possible.
  - Telephone calls, emails, faxes, etc. can all be faked.
  - Always verify using alternative sources if possible.
- Watch out for new or altered wire instructions prior to closing.
  - Always confirm wiring instructions and any alterations very carefully.
  - Calling verified telephone numbers is the best option.

# Wire Fraud – Verification Flow

**Verify email from which wire instructions were received.**

**Independently verify information contained in the wire instructions.**

**Utilize confirmed telephone number for the person who sent the wire. instructions to actually have them confirm the bank account information.**

**Confirm appropriate party received wire through saved contact information.**

## VACANT LAND THEFT

- What to look for:
  - Vacant Lot
  - Mortgage Free
  - Foreign Owner (generally but not always)
  - Below Market Value (generally but not always)
  - Cash Transaction (mostly but not always)
  - Seller Unable to Attend Closing (usually abroad)

# What to look for – continued

- Listed for sale by realtor, who never met the seller
- Rush to close the transaction
- Request funds to be wired to foreign bank abroad (usually but not always)

# Vacant Lot Theft Example

- Vacant Lot (formerly demolished residence)
- True property owner disclosed in tax records, but never contacted by the agent
- Imposter pretended to be the property owner
- Mobile notary used for document signatures – imposter likely made a fake notary stamp
- No mortgage
- Property sold slightly below asking price
- Realtors and settlement agent were tricked
- Imposter texted insured owner to demand \$5,000.00 to remove a vehicle stored on the property.
- \$350,000.00 loss paid.

# How to Safeguard Against Vacant Land Theft

- Confirm that the real estate agent verified true identity of the seller (Photo Id., telephone number, current address, etc.)
- Ensure the listing agent has met the seller in person (Zoom, FaceTime) and verified their identity
- Be wary of properties listed at below market values for cash only sales
- **Send letter to the address in the property tax records to the owner informing them of the contract for the sale of the property**
- **Schedule telephone call with owner to verify intention to sell the land**

# Example Letter to Owner

Dear [Property Owner]

[Stewart Title Company] has been selected to provide Title Insurance and Settlement Services for the above referenced Property. In these uncertain times, and as part of our fraud prevention efforts, we are asking you to confirm you are the true Owner(s) of this Property. Additionally, we ask you to confirm you are aware of this pending sale and it is being done with your knowledge and permission.

If you are selling this Property, thank you for your confirmation and for allowing [Stewart Title Company] to be of service to you. Please contact us at the phone number or email address below with your confirmation and we will proceed with your transaction.

**IF YOU ARE NOT IN THE PROCESS OF SELLING THIS PROPERTY, PLEASE CONTACT US IMMEDIATELY AT [(XXX) XXX-XXXX], OR BY EMAIL TO THE ADDRESS FOUND BELOW.**

We sincerely thank you for your attention to this matter.

# Safeguard Continued:

- Review signatures on contract and closing documents, likely do not match
- Review information on Driver License and Passports
- Scrutinize photos that appear to be cut-and-paste job.
- Never allow a seller to arrange their own notary closing
- Verify the seller's bank account information via telephone directly with the owner/seller



## MISSING INTEREST CLAIMS

Common types of missed interests:

- Spouses
- Trusts (both recorded and unrecorded)
- Co-tenants
- Life Estates
- Heirs

# Missing Interest Continued

## Best Practices – Joint Ownership of Property

- Are both spouses supposed to be joined to the vesting deed?
- Are both spouses to be joined to the insured mortgage?
- Are the buyers married at the time the insured mortgage is to be recorded?
- Make sure both spouses are named as grantees in the deed, if required by the lender's instructions.
- Make sure both spouses are named as grantors in the insured mortgage and both spouses sign the mortgage.
- Watch out for divorced or divorcing couples – there is a big difference!

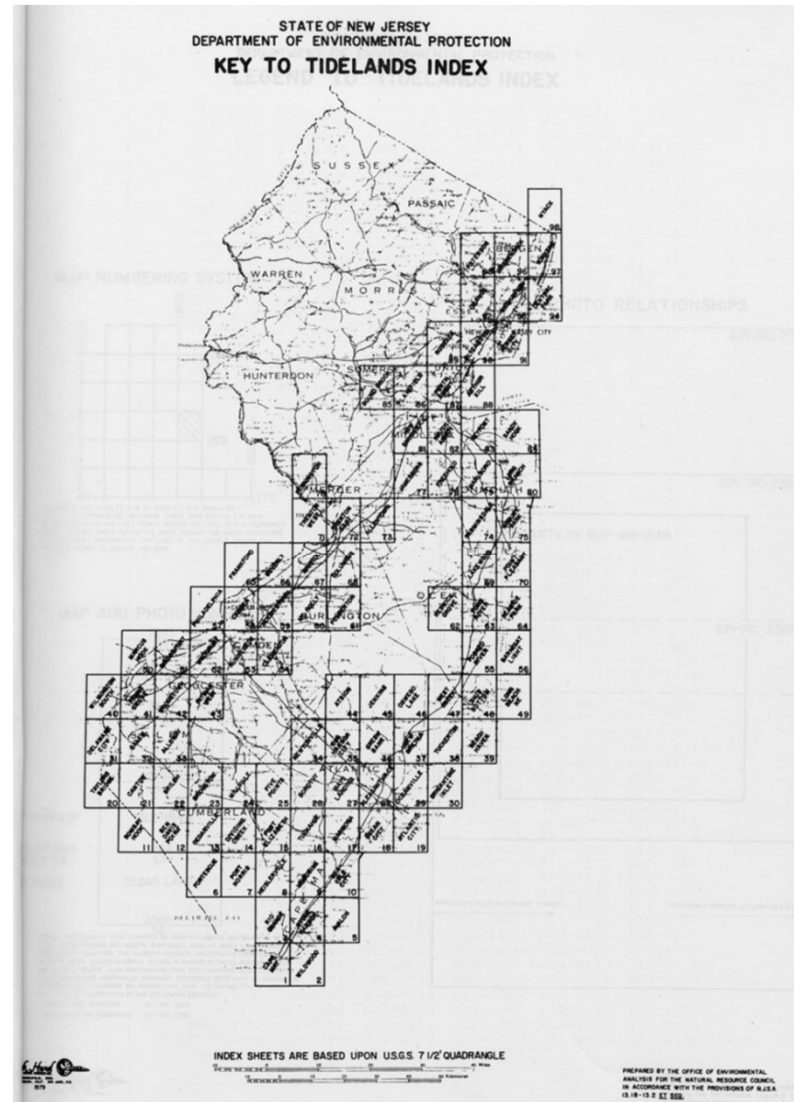
# Missing Interest Continued

## Best Practices – Deceased Person in chain of title

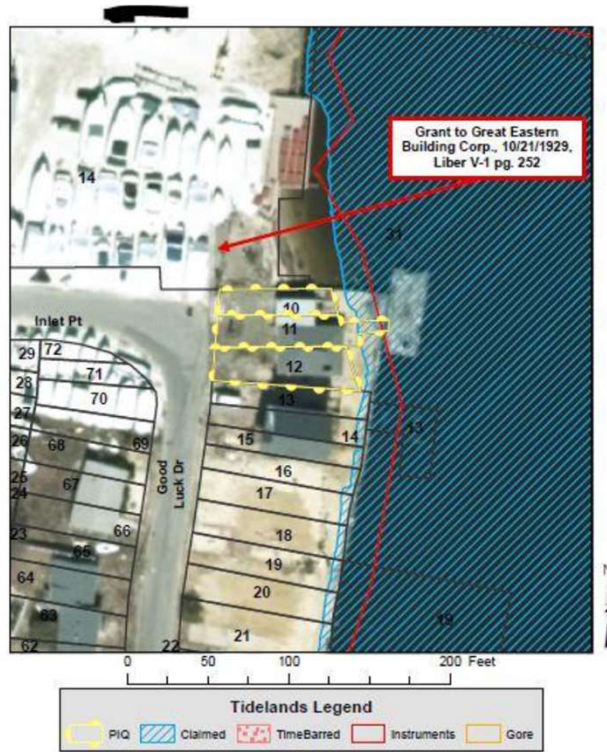
- Identify all individuals who have passed away in the chain.
- Is there a death certificate available?
- Is there a probated Last Will & Testament or Determination of Heirs?
- Is the probate of the estate completed?
  - Is there a current Executor or Personal Representative?
- Does a prior instrument identify the date of death?
- How was title held? (Tenants by the Entirety, Joint Tenants with Right of Survivorship, Tenants in Common)?

# Tideland Claims

- Every County except Morris, Sussex, Warren and Hunterdon has Tideland Claims.
- Tideland Claims are not limited to “shore areas” or ocean front property.
- NJ defines a “tideland” as: all lands that are currently and formerly flowed by the mean high tide of a natural waterway.



# Tideland Claims



HEREBY ISSUED TO: **TIDELAND SEARCH CERTIFICATE**

ATTN: [REDACTED]

SIGNATURE INFORMATION SOLUTIONS LLC CERTIFIES THAT ALL OR A PORTION OF THE PROPERTY HEREINAFTER DESIGNATED IS CLAIMED BY THE STATE OF NEW JERSEY AS AREA NOW OR FORMERLY BELOW MEAN HIGH WATER AS SHOWN ON THE APPLICABLE TIDELANDS MAP PREPARED BY THE OFFICE OF ENVIRONMENTAL ANALYSIS AND APPROVED BY THE TIDELANDS RESOURCE COUNCIL, SUBJECT TO PRIOR GRANTS OR LEASES OF STATE-OWNED TIDELANDS AND OTHER RESERVATIONS WHICH APPEAR ON THE ADOPTED MAP AND OVERLAY.

**APPLICABLE TIDELANDS MAP**

TIDELANDS MAP NUMBER: 392-2154

TIDELANDS MAP DATE: 27-MAY-1982

**DESIGNATED PROPERTY**

COUNTY: OCEAN

STATE: NEW JERSEY

MUNICIPALITY: TOWNSHIP OF BERKELEY

BLOCK: 1217

LOT: 10,11,12

STREET NUMBER & NAME: 60 GOOD LUCK DR

**SEARCH RESULTS**

FINDINGS: CLAIMED

TYPE OF CLAIM: SHORELINE

APPROXIMATE SIZE OF CLAIM: 3%

DATED: 16-MAY-2018

FEE: \$30.00

TAX: \$0.00

TOTAL: \$30.00

# Tideland Claims

## NJ Tideland Terms

- Grant: Deed from the State of New Jersey for the sale of its formerly flowed tidelands, i.e., upland.
- Statement of No Interest (SNI): Official document issued by the State of New Jersey attesting to the fact that a particular property or area is free from all state tidelands claims. SNIs are only issued when an applicant can prove beyond all doubt that the State of New Jersey has no tidelands claim to that particular parcel.

# Tideland Claims

## NJ Tideland Terms

- Lease: a long-term rental agreement from the State of New Jersey for the use of currently flowed tidelands.
  - Leases are only issued for projects that involve long term financing issues such as homes that have been constructed over water or large-scale development projects. Smaller construction projects over currently flowed tidelands require a License rather than a Lease.
  - Leases must be obtained for all proposed construction as well as any past construction regardless of whether or not the current property owner is responsible for that construction. The state does not grandfather homes over water with respect to Tidelands conveyances.

# Tideland Claims

## NJ Tideland Terms

- License: Short term rental agreement from State for use of its currently flowed tidelands.
  - Used for: Fixed structures, Bulkhead extensions that exceed or will exceed the mean high-water line, Marina slips, Yacht and Boat Club structures, Dredging within state-owned tidal water, Utilities or Utility-related structures, Bridge construction/maintenance over state-owned tidelands



# Tideland Claims

## Best Practices – Tideland Underwriting

- Did you obtain a tideland search report?
  - Does it show any claimed area (anything above zero is claimed)?
  - Are there any grants, licenses, statement of no interests on record?
  - If so, do they cover the entire Property or claimed area?
  - Was the grantee the upland owner at the time the grant was obtained?
  - Keep in mind: Licenses and leases expire; the general tideland exception is required.

# Tideland Claims

## Tideland Exceptions:

- General Exception - *Title, rights, or claims of the State of New Jersey to any part of the insured premises which is or may be alleged by the State of New Jersey to be, or is hereafter determined to be, salt marsh, tidelands or meadowland of land now or formerly flowed by the mean high tide of the ocean or any bays, rivers, streams, creeks, or their tributaries.*
- Grant Exception: *Terms, conditions and limitations as contained in Riparian Grant from the State of New Jersey recorded \* in Deed Book \*, Page \*.*

# Tideland Claims

## Tideland Claim Options:

- Leave the exception in the Policy.
- Delay closing until Grant is obtained.
- **Indemnity and undertaking based upon a current owner policy (Most Common).**
  - **Requires Stewart Underwriter approval.**
- Escrow of funds, together with an indemnity by sellers, with an application for a Grant, License, Lease, or Statement of No Interest.
  - Requires Stewart Underwriter approval.

## Lis Pendens (Notice of Pendency)

What is a Lis Pendens?



- A written document that informs the public of a pending lawsuit which makes a claim to an interest in real property.
- A recorded lis pendens provides constructive notice, or a warning, to prospective purchasers that ownership over the property is in dispute.
- A means to halt the sale of real property by deterring a buyer from completing the purchase.

# Lis Pendens – Types of Litigation

- Mortgage foreclosure actions, although the mortgage instrument provides constructive notice of the lien.
- Often used to secure a beneficiary's interest in real property during a trust/estate dispute.
- Generally used to enforce a purchase and sale agreement.
- Typically used in a divorce case where the divorcing parties are seeking to divide real property assets.

## **BEWARE: Do not Rely on Expired Lis Pendens**

Statutory duration of a Lis Pendens vary among jurisdictions:

### **Five Years (New Jersey)**

Lis Pendens can be extended for additional period prior to their expiration.

Many jurisdictions hold that an expired lis pendens imputes no constructive notice of the claim, even if the buyer knows about the expired lis pendens.

# How to Address an Expired Lis Pendens

- Do not make a unilateral decision to issue a policy even though the lis pendens has expired.
- You must obtain and review the court file (pleadings, orders, etc.) to determine the nature of the lawsuit.
- You must contact an underwriter to determine if STGC will insure over the expired lis pendens.

# Litigation Likely Even Upon Expiration of Lis Pendens

- An expired lis pendens may not impute constructive notice and thereby render the property claim in the lawsuit as unenforceable against the subsequent purchaser, but the immediate goal is not to prevail in litigation but rather to avoid the title insurance claim altogether.
- Savvy litigators will still file a lawsuit to attempt to impute constructive or implied actual knowledge.
- The cost of defending this type of litigation is time consuming and costly.



**Thank you!**

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