

# PENN ATTORNEYS

## TITLE ALERT

**DATE:** 12/15/06

**RE:** Title Alert 2006-22

**PA Corporate Tax Liens & Bulk Sales**

**CORPORATE TAX LIENS:** It has long been an underwriting requirement that for a PA or foreign corporation or limited liability company (“LLC”) to sell or mortgage Pennsylvania real estate it must pay at closing any SETTLED taxes disclosed by a Lien Certificate<sup>1</sup> from the PA Department of Revenue. The certificate is required because the corporate tax liens are “silent”, meaning the liens exist by statute without a filing in the county records and any amount due is ascertainable only by obtaining the certificate. The payment is required because the tax liens are a first lien against real estate over all prior recorded mortgages, claims, liens and judgments under the PA Fiscal Code, 72 P.S. §1401.

The most important aspect for title purposes is, as mentioned above, that these liens are not filed in the county records and will silently continue to encumber corporate assets even after they are disposed of, up to the date of the payment of the tax liabilities, including accrued interest. Effective immediately, are the following procedures:

**Seller or Owner Corp/LLC:** We will continue to raise settled taxes due the Commonwealth of PA. You must be sure to pay any settled taxes at closing. **A lien certificate stating “not found” or “no record” or which shows no balance due allows the requirement to be removed.** It is also recommended to obtain a closing Affidavit executed by the Seller and/or Owner Corporation/LLC concerning corporate matters, including taxes. See Affidavit following this Title Alert. The Affidavit is also available on our website at [www.pennattorneys.com](http://www.pennattorneys.com) in the Forms Library.

If estimated amounts are given, you must escrow twice the amount shown until a new lien certificate reveals the true amount of settled taxes, and obtain an Indemnity Agreement. An Indemnity Deposit Agreement is also available on our website in the Forms Library.

### Penn Attorneys Title Insurance Co.

**State Headquarters**  
**900 State Street, Ste 320**  
**Erie, PA 16501**  
**814-454-8278 \* 800-352-2216**

[erie@pennattorneys.com](mailto:erie@pennattorneys.com)

**Eastern Pennsylvania Office**  
**New Bridge Center, Ste 317**  
**480 Pierce Street**  
**Kingston, PA 18704**  
**570-288-1108 \* 800-929-4024**  
[euro@pennattorneys.com](mailto:euro@pennattorneys.com)

<sup>1</sup> A lien certificate can be obtained by sending a request with \$2.00 to PA Department of Revenue, Dept. 280946, Harrisburg, PA 17128-0946, which may take 7-14 days to be processed and returned.

After closing, in order to pay the taxes and release the balance of any escrow money, contact one of the following at the PA Department of Revenue Lien Section to obtain the actual settled tax amount after the corporation has notified you that they have filed their tax returns:

1. **William Williams**, Tax Discovery Specialist, PA Department of Revenue  
Tel: 717-346-1981 Fax: 717-783-8263 email: [wwilliams@state.pa.us](mailto:wwilliams@state.pa.us)
2. **Jack Fromm**, Head of PA Dept. of Revenue Lien Section. Tel: 717-705-7632

NOTE that accrued interest charges are not assessed until the time of tax payment which necessitates holding twice the estimate on the certificate. You should also contact the above if the corporation alleges having paid the taxes, but the lien certificate is still showing taxes due.

**BULK SALES:**

**Effective 1/1/07, Penn Attorneys Title Insurance Co. will discontinue the following Bulk Sales “NOTICE” on commitments: “NOTICE: Company does not assume any liability for or make any representation regarding compliance with Title 72 P.S. 1403 of the Fiscal Code.”**

**APPROVED ATTORNEYS TAKE NOTE:** the elimination of the requirement concerning Bulk Sales and coverage under the policy, does not in any way change the importance—**or your obligation to your client**—of obtaining a Bulk Sale Clearance Certificate from the PA Dept. of Revenue. Failure of the purchaser to require or acquire a Clearance Certificate from a corporate or LLC seller results in joint and several liability of the purchaser and the seller for any corporate taxes through the date of transfer. **As an attorney, you still have a duty to your clients to inform them of the potential liability and to protect them by obtaining a Bulk Sale Clearance Certificate.**

For any questions or concerns, contact your servicing Penn Attorneys office.

**CLOSING AFFIDAVIT FOR A  
CORPORATION, LIMITED LIABILITY COMPANY OR PARTNERSHIP**

Penn Attorneys' File No. \_\_\_\_\_

Premises: \_\_\_\_\_

**COMMONWEALTH OF PENNSYLVANIA ) ss**

**COUNTY OF \_\_\_\_\_ )**

BEFORE ME, the undersigned officer, personally appeared the undersigned, who, being duly sworn according to law, and intending to be legally bound, depose(s) and say(s) that as to each Grantor/Mortgagor that is a Corporation, Limited Liability Company or Partnership:

- A. That the Corporation, Limited Liability Company or Partnership has been duly formed according to the laws of its incorporation or formation and is in good standing.
- B. That there are no corporate taxes due the Commonwealth of Pennsylvania by said Corporation or Limited Liability Company.
- C. That all parties signatory to documents in this transaction are duly authorized to execute same on behalf of the Corporation, the Limited Liability Company or the Partnership.
- D. That no shareholder consent is required by the Corporation, nor member consent required by the Limited Liability Company, nor limited partner consent required by the Partnership, nor are any other approvals or consents required by others to this transaction.

This affidavit is made for the purpose of inducing Penn Attorneys Title Insurance Co. to issue its title insurance policy, insuring the title thereto and its duly authorized Approved Attorney to hold settlement on the above premises and to make disbursement of funds arising out of said transaction.

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

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Sworn and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Notary Public: \_\_\_\_\_ My Commission Expires: \_\_\_\_\_

**PENN ATTORNEYS TITLE INSURANCE CO.  
INDEMNITY DEPOSIT AGREEMENT**

**TITLE NO.** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**PREMISES:** \_\_\_\_\_

BY AND BETWEEN \_\_\_\_\_ (hereafter called Indemnitor) and PENN ATTORNEYS TITLE INSURANCE CO., hereinafter referred to as the Insurer.

AND WHEREAS, the Insurer is about to issue its title insurance commitment/policy insuring against loss by reason of defects in the title to the subject premises;

AND WHEREAS, the Insurer has noted as exceptions to the aforesaid title the following actual or supposed rights, interests, liens, claims encumbrances or defects in title:

AND WHEREAS, the Insurer has been requested to issue its title insurance policy as aforesaid, either without mention of the aforesaid exceptions or insuring against loss by reasons thereof;

AND WHEREAS, the Insurer may issue either concurrently herewith or hereafter and in the ordinary course of its business another policy or other policies in the form or forms now or then commonly used by the Insurer, insuring against loss by reason of defects in the title of said premises or to some part or parts thereof or interests therein, either without mention of the aforesaid exceptions or insuring against loss by reason thereof;

NOW, THEREFORE, in consideration of the issuance of said title insurance policy as aforesaid, the undersigned covenant and agree with the Insurer forever fully to protect, defend and save harmless the Insurer from and against the above mentioned rights, interests, liens, claims, encumbrances, damages and attorney's fees and expenses of every kind and nature which it may suffer, expend or incur, under or by reason or in consequence of, said title insurance policy or policies, including loss, costs, damages, fees and expenses incurred in action or brought to enforce this agreement.

In case the liens, encumbrances or defects in the title aforesaid are paid, discharged, satisfied or removed from the title to said real estate to the satisfaction of the Insurer (as to which the Insurer shall be the sole judge), then the above obligation to be void, otherwise to remain in full force and effect.

A. **If checked**  , and in order to further secure Indemnitor's obligations under this Indemnity Deposit Agreement, Indemnitor deposits with Insurer \$ \_\_\_\_\_, (hereafter called "Deposit") on the following terms and conditions:

1. The Deposit shall be held for the benefit of Insurer by a third party depository institution selected by Insurer, to protect Insurer against loss by reason of so insuring.
2. Insurer may, at its sole discretion, use any portion of the Deposit to protect itself or its insureds against the Exception, whether to pay to have the Exception released, subordinated, satisfied or otherwise removed as a cloud or encumbrance on title.
3. Insurer may transfer the Deposit, or any portion thereof, in any court of competent jurisdiction, in an action in the nature of an interpleader, and subtracting therefrom Insurer's reasonable costs and expenses, including attorney's fees, when doing so.

4. When, in Insurer's sole determination, the title to the land is no longer subject to the Exception, Insurer agrees to return to Indemnitor any Deposit still remaining with Insurer. Until then, neither Indemnitor nor any party claiming by or through Indemnitor shall have any claim on the Deposit
5. The Indemnitor acknowledges and agrees that the Deposit held by Insurer hereunder shall be deemed a "deposit account," as set forth in 13 PA CSA §9102 (revised Article 9 of the Uniform Commercial Code). It is the intention of both Indemnitor and Insurer that the Deposit be maintained in a "deposit account" over which Insurer has sole and total control, and that the depository institution receiving the "deposit account" shall follow any and all instructions originated by Insurer as the secured party directing the disposition of the Deposit in the "deposit account" without further consent by Indemnitor as the debtor. Indemnitor acknowledges and agrees that Insurer shall be the sole signatory on the "deposit account". It is further agreed that a security interest in favor of Insurer in the Deposit is perfected by Insurer taking possession of the Deposit.
6. Indemnitor further agrees that, in the event Insurer deems the Deposit inadequate, at any time, Indemnitor will within 10 days of written request by Insurer, deposit additional collateral in the amount requested by Insurer, which collateral will be held as Deposit pursuant to this Indemnity Deposit Agreement.
7. Provided Insurer uses ordinary care and diligence to safeguard the Deposit, Insurer shall have no liability under this Indemnity Deposit Agreement to Indemnitor. Without limiting the foregoing, Insurer shall not be responsible for the loss of funds due to bank negligence or failure.

B. **If checked**  , and when the Tax Identification Number (TIN) and a completed IRS Form W-9, Request for Taxpayer Identification Number and Certification of the Indemnitor are furnished to Insurer, any funds shall be held in an interest-bearing account, with the interest to accrue, and be added, to the principal. **The TIN of Indemnitor is:** \_\_\_\_\_ . If the preceding box is not checked, the Insurer shall hold the funds in a non-interest bearing account.

"Indemnitor," as used in this Indemnity Deposit Agreements, shall mean each and every party signing this Indemnity Deposit Agreement, their successors and assigns, being jointly and severally liable hereunder.

"Insurer," as used in this Indemnity Deposit Agreement, shall also include its successors and assigns.

Written notice shall be deemed delivered if sent by overnight mail service or certified mail, return receipt requested, to the addresses shown herein.

IN WITNESS WHEREOF, the parties have executed this Indemnity Deposit Agreement either in person or by their duly authorized officers or agents, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**PENN ATTORNEYS TITLE INSURANCE CO.**

**INDEMNITOR**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Name*

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*Title*

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*Title*

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*Street Address*

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*City/State/Zip Code*