You may issue a new Commitment without the need of requesting an indemnity from a prior insurer, if you have complied with all of the following:

1. You are in possession of a policy from the prior insurer, which policy takes no exception to the “defect(s)”. The policy must be an owner’s policy issued to the current titleholder, ***or*** a loan policy to a lender that is acquiring, or has acquired the subject property by foreclosure or by a deed-in-lieu of foreclosure and is now the seller on your transaction.
2. The prior policy must be issued by a signatory to the Mutual Indemnity Agreement as reflected on the attached Appendix A. (Note: Remember to keep the prior policy in the file as it acts as the Indemnity itself!)
3. The land must be located in Michigan.
4. The aggregate amount of the “defect(s)”, as described in paragraph 5 below, must be $500,000.00 or less, ***and*** equal to or less than the face amount of the prior policy. (Note: If the aggregate amount of the defect(s) exceeds the face amount of the prior policy ***or*** is greater than $500,000.00, you must make a specific request for an indemnity from the prior insurer.)
5. The “defect” must be one of the following:

a). A question exists as to whether there is an unreleased dower interest on the property.

b). A question exists as to whether any of the following matters were properly released:

1. a mortgage – (an indemnity ***will*** ***be required*** in the circumstances provided below in paragraphs 7 and 8)

2. a levy of execution or notice of judgment lien

3. an attorney’s lien,

4. a child support lien,

5. a construction lien,

6. a divorce decree lien,

7. a fixture filing,

8. a MESC lien,

9. a condominium association lien,

10. a federal or state tax lien.

c). A question exists as to whether notice or due process was effectively given to parties in judicial proceedings such as: probates, foreclosures, quiet title actions, bankruptcies or other proceedings, or because of the failure to appoint a conservator or guardian ad litem to represent the interest of an absent defendant(s).

d). A question exists as to whether a fiduciary (i.e., trustee, conservator, personal representative, attorney in fact, etc…) had authority to convey or mortgage property due to failure to record proper evidence of that authority.

e). A question exists as to the ownership of property being vested other than as recorded. (Example: An affidavit of

missing title deed is recorded instead of the original deed; the vesting deed has fallen into the “gap” and is not yet

discoverable; or, there exists a hole in the chain of title.)

1. There is ***no*** recorded evidence of any legal proceeding to foreclose or enforce the interest or “defect(s)”. (Note: Should there be a recorded notice of a proceeding to foreclose or enforce the interest/defect, you must make a specific request for an indemnity from the prior insurer.)
2. If the “defect” is an open mortgage recorded within 6 months ***prior*** to the date of the prior policy (a “gap” mortgage)*,* or, if the “defect” is an open, future advance/ revolving credit/ equity line, mortgage of ***any*** date, *The Indemnitee title company must obtain an indemnity letter from the Indemnitor title company indemnifying over the matter.* (Note: You may ***not*** issue the Commitment free of the defect without the indemnity.)
3. If the “defect” is a failure to record the vesting deed to a mortgagor, where the mortgage is to be foreclosed, a deed in lieu of foreclosure is to be given or for a sale out from the foreclosing lender, *the Indemnitee title company must obtain an indemnity letter from the Indemnitor title company indemnifying over the matter.* (Note: You may ***not*** issue the Commitment free of the defect without the Indemnity.)