

**TO: HOLLAND LAND TITLE CLIENTS**  
**FROM: HOLLAND LAND TITLE UNDERWRITING DEPARTMENT**  
**DATE: DECEMBER 22, 2011**  
**RE: MEDICAID ESTATE RECOVERIES**

New York State has recently amended its social services law to expand the definition of definition of "Estate" in Medicaid Recoveries.

Section 369 (6) of the Social Services Law provides that a Medicaid estate claim can be asserted against property that passes outside an individual's probate estate, to the extent of the individuals interest in the property at the time of death. The regulations provide that the post death lien should be imposed against the real property as soon as practicable after the individual's death, to put mortgage lenders and prospective purchasers on notice.

Effective September 8, 2011, assets subject to estate recovery can be any real property where the recipient has any legal interest at the time of death, including jointly owned real estate, retained life estates and interests in trusts.

It will be important to identify possible situations were a Medicaid estate claims can be made. In the event title is certified in one or more individuals who have:

1. Executed conveyance documents prior to closing.
2. Executed documents using a Power of Attorney.
3. Have an interest in a life estate affecting the real property.
4. Have a conservator, or court appointed guardian.
5. Have died and the death certificate indicates party died in long term care facility or hospital.

In these instances care must be taken and the following requirements should be raised in your title report/commitment

Possible lien for medical assistance in favor of the Department of Social Services pursuant to Section 369, Par. 2 (a) (ii) of the Social Services Law. This exception will be removed upon submission of the following:

- (a) a copy of the death certificate must be produced to determine whether the individual died in a medical facility; and
- (b) an affidavit must be obtained from the executor, administrator, (or distributees if taking title directly from heirs at law of the decedent) or specific or residuary devisees under the individual's last will and testament to the effect that the decedent did not die as an in-patient in a medical institution, nursing facility or intermediate care facility for the mentally retarded and that medical assistance was not paid to any such facility by the Department of Social Services on the decedent's behalf.

In the event you have any questions please contact someone in our underwriting department.