

**FIDELITY NATIONAL TITLE GROUP
CHICAGO TITLE INSURANCE COMPANY (CTI)
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FIDELITY NATIONAL TITLE INSURANCE COMPANY (FNT)**

UNDERWRITING BULLETIN

**Federal Estate Tax Exclusion Set for 2017
Supplementing FNTG No. 92 (Jan. 04, 2016)**

I. Summary. The federal estate tax exclusion for **2017** has been set at **\$5,490,000.00**.

II. Overview. On January 1, 2013, Congress enacted **P.L. 112-240**, the “American Taxpayer Relief Act of 2012” [“**ATRA**”], which, among other things, sets the federal estate tax exclusion under **26 U.S.C. §2010** at **\$5,000,000** for estates of decedents dying in the year **2013** and **2014**. But these figures have been adjusted for inflation to **\$5,250,000** (for 2013), **\$5,340,000** (for 2014), **\$5,430,000** (for 2015), **\$5,450,000** (for 2016) and **\$5,490,000** (for 2017). The maximum tax rate for that portion of an estate which exceeds the exclusion was formerly **35%**; it is now **40%** (for decedents dying in 2013 or thereafter). Although the amount of the exclusion and the rate of taxation have been characterized as “permanent”, Congress may choose to make further changes in the future.

As noted in *N.J. Title Practice*, §5407 (4th Ed. 2016), the exclusion had been gradually increased from \$675,000 in 2000 to \$3,500,000 in 2009. In 2010, the exclusion was unlimited; *i.e.*, no tax was imposed on estates of decedents dying in that year. However, if Congress had not acted, the tax would have been restored in 2011. Congress responded by amending the statute, through the enactment of **P.L. 111-312**, the “Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010”, which set the exclusion at \$5,000,000 for decedents dying in the years 2011 and 2012. As noted above, **ATRA** has extended the \$5,000,000 exclusion (as adjusted for inflation) through, and possibly beyond, the years 2013, 2014, 2015, 2016 and 2017.

In other words, estates having a total value which is less than the amounts shown in the chart below are exempt from federal estate tax:

<u>Year of Death</u>	<u>Exclusion</u>	<u>Year of Death</u>	<u>Exclusion</u>
2001	\$ 675,000	2011	5,000,000
2002	1,000,000	2012	5,120,000
2003	1,000,000	2013	5,250,000
2004	1,500,000	2014	5,340,000
2005	1,500,000	2015	5,430,000
2006	2,000,000	2016	5,450,000
2007	2,000,000	2017	5,490,000
2008	2,000,000		
2009	3,500,000		
2010	[no tax]*		

Note: Figures for the years 2012-2017 have been adjusted for inflation.

* Assuming an appropriate election has been made, as explained below.

Nevertheless, P.L. 111-312 also provided that the estate of a decedent who died in 2010 (which exceeded the \$5,000,000 exclusion) was subject to taxation at the 35% rate, *unless an appropriate election was made when the 2010 estate tax return is filed*. (The time to file such returns was extended until October, 2011.) In other words, if we assume that a decedent died in 2010 (and his estate exceeded \$5,000,000), his executor or administrator must have timely filed an estate tax return in 2011 for the year 2010 *in which the appropriate election was made* in order to preserve the complete tax exemption for 2010. If he failed to file a timely return, the tax was imposed retroactively.

What is the result if a decedent died in 2010 (having an estate in excess of \$5,000,000) and his executor conveyed real estate to a *bona fide* purchaser for value *prior to* the enactment of P.L. 111-312 in December, 2010? Assuming his executor failed to file a tax return in 2011 in which he elected an exemption for 2010, did a retroactive lien for unpaid taxes attach to the realty of the purchaser? The answer is unclear.

III. Underwriting Practices. The underwriting practices set forth in *N.J. Title Practice*, §§ 5407 *et seq.* remain unchanged. These generally require that, in cases **where the decedent died within the last 10 years**, Schedule B – Section I of the commitment contain the following requirement:

Proof is required that the Federal Estate Tax in the estate of _____, who died on _____, 20____, has been fixed and paid, or that a release of the Land from the lien thereof has been obtained and recorded; or that said Estate is exempt therefrom.

Nevertheless, please bear in mind that in 2011 through 2017 (and possibly thereafter) fewer estates will be subject to the tax. However, on account of the possible retroactive imposition of a lien for unpaid taxes (under the scenario described in ¶ II above), it will be necessary to set up the following requirement in Schedule B – Section I of the commitment **where the decedent died in 2010** and his or her estate does or may exceed **\$5,000,000** in value:

Proof is required that the Federal Estate Tax in the estate of _____, who died on _____, 2010, has been fixed and paid, or that a return has been filed which elects a complete exemption from such tax. The Company reserves the right to add such additional requirements as it may deem appropriate in connection with the foregoing.

If you have any questions, please feel free to contact the State Office for guidance.

File this bulletin in *N.J. Title Practice* (4th Ed. 2016) at the end of **Chapter 54**. Underwriting bulletins, whether local or national, should not be distributed to customers or others without the permission of this office.