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## RESPA Reform Update

■ *Scott Pierce, Southeast Region Manager*

At the recent RESPRO Conference held in Washington, D.C., John Weicher, Assistant HUD Secretary, acknowledged that the settlement service environment today is much different than the one in existence when RESPA was adopted in 1974, hence, the need to reform RESPA to come into line with the current state of real estate lending and closings. He stated that in light of the numerous comments to the proposed rule, of which HUD received more than 40,000, the Department will be revising the rule that came out last year. However, Assistant Secretary Weicher said that the Secretary is committed to a new rule as soon as possible. That said, it appears that most all of the affected industry groups are threatening legal action unless there are serious changes made to the new proposal. No one has an issue with what the proposed rule is attempting to do: encourage effective shopping by borrowers and encourage consumer savings by lowering costs. However, with large lenders, realtors, mortgage brokers, title agents, and consumer groups pitted against each other, this seriously lowers the possibility of a consensus.

Of major concern in Congress is the effect that HUD's RESPA reform rule will have on small business. Chairman of the Senate Banking Committee, Richard Shelby (R-AL), expressed concern that the proposed rule will significantly impact the competitive landscape, especially in light of the fact that the top ten mortgage lenders control such a significant amount of the business. During testimony in Congress it was noted that 68% of title agencies are small businesses. Some of the main problems associated with the proposed rule as it is currently written are as follows:



- It is difficult for lenders to guarantee a rate for 30 days given the nature of the finance markets, especially without knowing whether the borrower will come back for the loan after shopping the rate and costs
- It appears to be inconsistent with existing laws in at least 43 states
- HUD's authority to implement such a rule without Congressional approval is in question
- The proposed rule has some inconsistencies with TILA
- It does not cover high interest loans
- There are no cure provisions for violations of the Section 8 exemption
- From the title industry perspective, it puts a great deal of control in the hands of the large lenders

Although the ALTA has proposed a dual packaging system with a separate settlement service package to be offered by the title industry, it is unclear that this will be in the new proposal. Without an industry consensus, the threat of lawsuits and the involvement of Congress, there are some that question whether or not a new rule can be adopted in the near future. We will update you once the revised rule is published.

*continued on page 2—*



## Ask Your Underwriter

■ *Linda M. Hernandez, Florida State Underwriter*

### **Question:**

**Does a Military Power of Attorney need witnesses, etc.?**

### **Answer:**

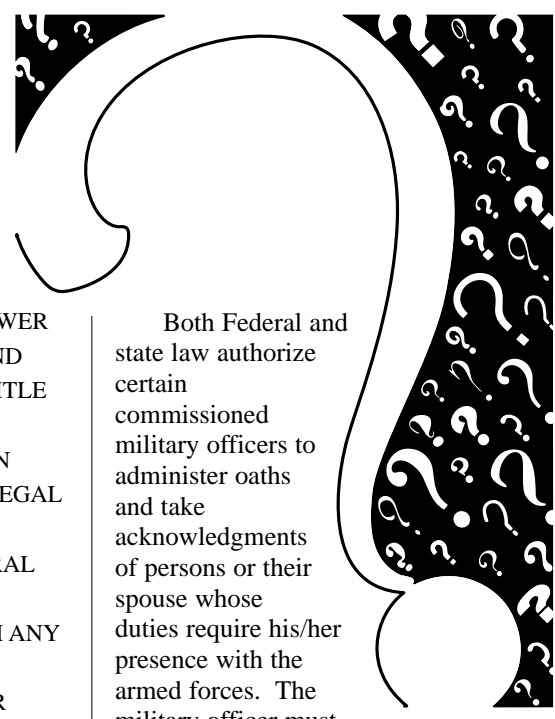
A Military Power of Attorney does not require witnesses and may be acceptable to convey or mortgage real property if prepared in accordance with 10 U.S.C., Section 1044b.

This section of the Code states that a Military POA is exempt from any requirements of form, substance, formality, or recording provided for powers of attorney under the laws of a state.

Notwithstanding the above, Old Republic National Title requires that a Military Power of Attorney contain the same clear authority required for non-military powers of attorney, such as the specific authority “to sell, convey, mortgage.” Further, we require the recording of all POAs relied upon in connection with real property, whether they are Military or non-military POAs.

10 U.S.C., Section 1044 also provides that in order to receive special recognition as a Military Power of Attorney, it must contain the following statement:

“THIS IS A MILITARY POWER OF ATTORNEY PREPARED AND EXECUTED PURSUANT TO TITLE 10, UNITED STATES CODE, SECTION 1044b BY A PERSON AUTHORIZED TO RECEIVE LEGAL ASSISTANCE FROM THE MILITARY SERVICES. FEDERAL LAW EXEMPTS A MILITARY POWER OF ATTORNEY FROM ANY REQUIREMENT OF FORM, SUBSTANCE, FORMALITY OR RECORDING THAT IS PRESCRIBED FOR POWERS OF ATTORNEY BY THE LAWS OF ANY STATE, COMMONWEALTH, TERRITORY, DISTRICT OR POSSESSION OF THE UNITED STATES. FEDERAL LAW SPECIFIES THAT A MILITARY POWER OF ATTORNEY SHALL BE GIVEN THE SAME LEGAL EFFECT AS A POWER OF ATTORNEY PREPARED AND EXECUTED IN ACCORDANCE WITH THE LAWS OF THE JURISDICTION WHERE IT IS PRESENTED.”



Both Federal and state law authorize certain commissioned military officers to administer oaths and take acknowledgments of persons or their spouse whose duties require his/her presence with the armed forces. The military officer must have the rank of second lieutenant or higher and must complete a certificate in substantially the form provided by Florida Statutes.

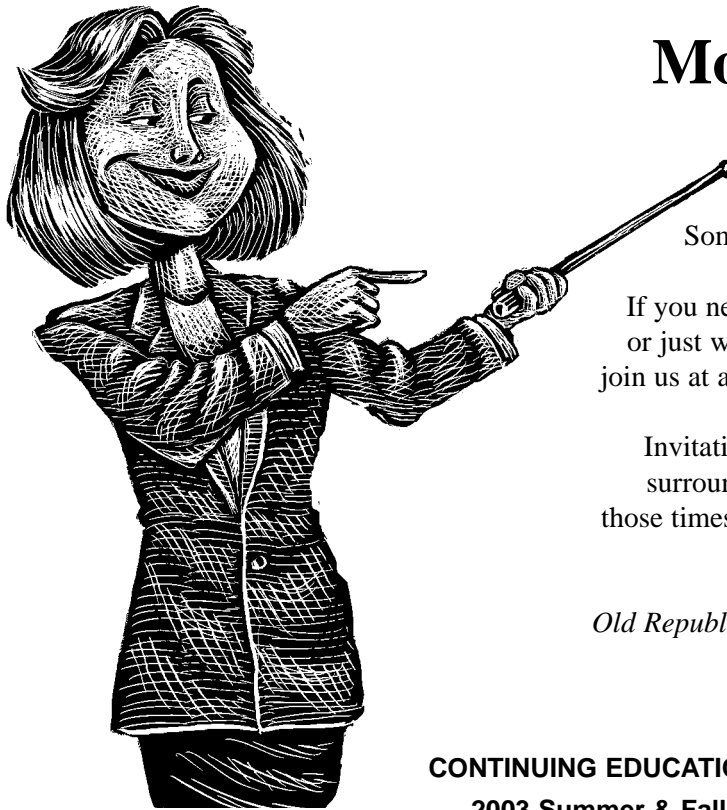
They are not required to show the county, state, territory or country (venue) where the acknowledgment is given because they are not bound by geographical boundaries as are, for example, state notaries, nor are they required to use a seal.

## RESPA Reform Update *continued from page 1—*

### HUD ENFORCEMENT

Also at the RESPRO Conference, Ivy Jackson, Acting Director RESPA and Interstate Land Sales Division, HUD, spoke on recent RESPA enforcement. HUD has added 10 compliance officers in the last few months and has continued their contract with Technical Analysis Center, located in Virginia to perform interviews and collect data for investigations. Specifically, HUD has been looking into the following RESPA violations:

- Sham AfBAs of all types: 20 are currently being investigated
  - Title agencies providing advertising, mailings and virtual tours to Realtors
  - Section 9 violations regarding required use of an affiliated title agency - there are 40 such cases
  - Affiliated Business Arrangements where returns are based on referrals and not ownership interest
  - Title agencies that do not perform any of the CORE title services
- In a case specific to Florida, a builder agreed to pay the closing costs of the buyer, yet charged the buyer a percentage of the sales price for the closing costs. The builder, however, was provided a “Butler Rebate” by the title agency which was not passed on to the buyer. The outcome of this investigation was not disclosed.



## More Continuing Ed Hours

Some new classes, great locations!

If you need hours before the end of the year, or just want some useful information, please join us at any one of the following presentations.

Invitations will be mailed to agents in the surrounding area for each Seminar, but if those times are not convenient, you are welcome to attend any presentation.

*Old Republic National Title Insurance Company –  
Your partners in education.*

### CONTINUING EDUCATION CLASSES 2003 Summer & Fall Schedule

<u>DATE</u>	<u>LOCATION</u>	<u>HOURS</u>	<u>CLASSES</u>
06/11/03 or 06/12/03	Miami	1 1 1 1 1	Notary Issues for the Title Agent Powers of Attorney RESPA Update Claims Avoidance Short Form Policy and Related Issues Location: t/b/d
08/05/03 or 08/06/03	Naples		Classes: t/b/d Location: t/b/d
09/10/03	Sarasota	1 1 1	Love and Marriage RESPA Update The Title Agent's Survival Guide for Bankruptcy
10/02/03	Lakeland	1 1 1	Love and Marriage RESPA Update The Title Agent's Survival Guide for Bankruptcy
10/09/03	Tampa		Classes: t/b/d Location: t/b/d
10/15/03 or 10/16/03	Jacksonville	1 1 1	Fraud & How to Avoid It The Title Agents' Survival Guide for Bankruptcy Claims Avoidance
10/22/03 or 10/23/03	Destin	1 1 2	Fraud & How to Avoid It A Cure For What Ails You Liens: An In-Depth Examination



## Support Our Troops! Absolutely!

Old Republic in Tampa is doing its part to support our troops in Iraq. Three of our employees have relatives stationed in the war zone, and we've done our part to keep them well-fed and somewhat comfortable by sending "goodie" boxes with everything from bug spray to beef jerky.

Gary Wynn, Supervisor of Policy Production in the Tampa Title Plant, has a son overseas. Pfc. Gary Wynn, Jr. is serving his country in the 101st Airborne Air Assault Unit of the 2nd Brigade in Baghdad. His very proud mom and dad are praying for his safe return.

Darlene Olver, Residential and Acreage Examiner in the Tampa Title Plant, has an unusual situation. Her niece, Sgt. Heather Mallard, and her niece's

husband, Sgt. Earl Mallard, are both in Iraq. They had to leave their 5-year-old son, RaShawn, with the head of the day care center in Germany

while they are serving overseas, and luckily, RaShawn has been at the day care center for years, so he's very comfortable.

Boxes of goodies went not only to Heather, but also to RaShawn. Unfortunately, Earl wasn't able to receive packages at his location.



Sheila Brown, Underwriting Assistant, also has a relative overseas. Her brother-in-law, Pfc. Chris Class, is in the Third Infantry stationed in Baghdad!

Chris's biggest request was for beef jerky, so plenty of beef jerky was sent overseas.

We all pray for the safe return of these and all our troops.

## Our Duty Under the Patriots Act

■ *Michael S. Davis, Florida State Counsel*

Executive Order 13224 was signed by George W. Bush shortly after the September 11 attacks on our country. The Executive Order freezes property and prohibits transactions with terrorists or parties that support terrorism, according to the government's Specially Designated Nationals and Blocked Persons (SDN) list. Specifically, the order states that "any transaction or dealing by United States persons or within the United States in property or interests in property blocked pursuant to this order is prohibited, including but not limited to the making or receiving of any contribution of funds, goods, or services to or for the benefit of those persons listed in the [SDN list] to this order or determined to be subject to this order."

As professionals involved in the property transfer process, this is where we get to draw our line in the sand. This message was reinforced by the passage of the USA Patriot Act. The Act requires "financial services organizations," which

appears to include title insurance and real estate attorneys, to implement procedures for matching client's names against the "Special Designated Nationals and Blocked Persons" list.

The war against terrorism has many fronts. Our marching orders are to be alert to prohibited transactions. Should we encounter a transaction involving a person or entity on the list of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Assets Control, our duty is to take action.

Executive Order 13224 contained the original list of blocked persons. That list is being continuously updated by the offices of the Secretary of the Treasury, Secretary of State, and Attorney General. Should you settle a transaction involving a person or entity on the list, you may be subject to personal sanctions for violation of this Executive Order. This is a duty imposed on the party filling out the HUD-1.

The SDN list is available (in alphabetical order) on the Department of

Treasury's web site which is [www.ustreas.gov/offices/enforcement/ofac/sanctions/terrorism.html](http://www.ustreas.gov/offices/enforcement/ofac/sanctions/terrorism.html).

While Old Republic National Title does not impose requirements as to the manner in which our agents and their applicants comply with Executive Order 13224, compliance is mandatory. The Treasury Department is still drafting the regulations for implementing the USA Patriot Act. All should become familiar with the list and run searches on sales or cash out refs to remove any concern.

Should you encounter any transactions involving suspected names on the Blocked Persons list, you should contact the OFAC for guidance at:

Office of Foreign Asset Control  
U.S. Department of Treasury  
Washington, DC 20220  
HOTLINE: 800-540-6322  
Fax: 202-622-1657

## Eeeeeek! An Error!!!!!!

■ Linda M. Hernandez, Florida State Underwriter

We often encounter underwriting issues involving errors in legal descriptions that are not discovered until after a deed **and** mortgage are recorded. We are talking about serious errors—the wrong lot or block number, or maybe an incorrect subdivision name or even the wrong Section, Township, or Range.

There is no “easy fix” to this problem and the solution is a three-step process:

1. You must obtain and record a Corrective Deed from the original grantor to our insured showing the correct legal description. This Corrective Deed should include a recitation that it is given to correct the legal description in Deed recorded in O. R. Book \_\_\_\_, page \_\_\_\_, Public Records of \_\_\_\_\_ County, Florida. In the alternative, the legal description in the original deed can be lined through and the correct legal typed in the body, **but** it will have to be re-signed by the grantors, re-witnessed, re-acknowledged and re-notarized before it can be re-recorded.
2. You must obtain and record a Quit Claim Deed from our insured to the true owner of the property erroneously described in the deed. In other words, the deed that was prepared with the wrong legal has “clouded” that person’s title, so now you have to remove the “cloud.” The Quit Claim Deed should state that it is given to release any possible interest of the Grantor by virtue of that certain Deed recorded in O. R. Book \_\_\_\_, page \_\_\_\_, Public Records of \_\_\_\_\_ County, Florida.
3. Last, but certainly not least, you must obtain and record a Corrective Mortgage signed by the mortgagor showing the correct legal

description.  
This  
Corrective  
Mortgage should  
state that it is given to  
correct the legal description  
in Mortgage recorded in O. R. Book  
\_\_\_\_, page \_\_\_\_, Public Records of  
\_\_\_\_\_ County, Florida. In the  
alternative, the legal description in  
the original mortgage can be lined  
through and the correct legal typed  
in the body, **but** it will have to be  
re-signed by the mortgagor, re-  
witnessed, re-acknowledged and re-  
notarized before it can be re-  
recorded. In either of these  
situations, a Satisfaction of  
Mortgage must be recorded to clear  
the “cloud” created on the property  
erroneously described in the  
mortgage **even if** the mortgage has  
now been re-recorded or a  
Corrective Mortgage recorded to  
reflect the correct legal description.

There is still the best alternative, and it is probably the one most often used. The mortgagor and the lender enter into a Partial Release and Mortgage Modification Agreement which provides for the release of the incorrectly encumbered property and transfers the lien of the mortgage to the correct property. When properly prepared, this Partial Release and Mortgage Modification eliminates the need for the Corrective Mortgage, re-recorded Mortgage, or Satisfaction of Mortgage mentioned above. This instrument must be signed by both the lender and the mortgagor and should contain a recitation that it is given to correctly reflect the legal description of the property intended



to be the subject of the mortgage recorded in O. R. Book \_\_\_\_, page \_\_\_\_, Public Records of \_\_\_\_\_ County, Florida.

**ALL** these steps are necessary in order to properly address this type of error and insure marketable title to the property. In addition, there is the matter of the potential liability under Florida Statute 697.10 imposed upon “any person (who) has prepared an instrument which due to an inaccurate or improper legal description impairs another person’s title to real property . . .” In any action relating to real property in which the court makes such a finding, “the court may award to the prevailing party all costs incurred by her or him in such action, including reasonable attorney’s fees, and in addition thereto may award to the prevailing party all actual damages that she or he may have sustained as a result of such impairment of title.”

### COMMENTS:

We invite your feedback and welcome your suggestions regarding **“In The Title Corner”** and the publication of future articles. Address correspondence to:

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# Preventing Shady Dealings

■ *Linda M. Hernandez, Florida State Underwriter*

It is crystal clear that Amanda Meshekey, an escrow closer in the New Port Richey office of Liberty Title, has certainly been doing her share of reading Old Republic Underwriting Bulletins!!

Last month Amanda astutely identified an illegal flip as it was about to unfold. It seems a customer wanted to buy a property and immediately resell it. He even had a buyer for it. So far, so good; however, the customer wanted to use the money from his sale to pay for his purchase and, of course, pocket the difference. Amanda quickly brought the matter to the attention of her supervisor and prevented both her company and Old Republic from becoming unwilling participants in a fraud.

Amanda told her customer that there were two ways in which he could accomplish the results he desired.

1. The contract or agreement between parties A and B is closed with A conveying the property to B. Thereafter, the contract or agreement between B and C is closed and B conveys the property to C.

She explained to her client that a commitment must be issued showing title

vested in "A" and requiring the conveyance from "A to B." Of course, a title premium would be collected on this conveyance. Further, the transaction between "A and B" must stand on its own with "B," independently, providing the funds necessary to close the transaction as reflected in the HUD-1 settlement statement. Likewise, the second part of the transaction between "B and C" must be properly documented. A second commitment would be issued showing title vested in "A" and requiring the conveyance from "A to B," as well as the one from "B to C." Title premiums would also be collected on the latter conveyance. Finally, she added that all disclosures required by his lender must be made and clearly documented in her files.

2. The contract or agreement between "A and B" is properly assigned to "C" and the closing takes place under that agreement with "A" conveying to "C." (See ORNTIC Bulletin No. **99-04** for a sample Assignment of Contract Form.)

"This second type of transaction is also permitted," she continued, "provided

the contract between 'A and B' is properly assigned to 'C' so that now 'C' owns the contract." The requirement for an assignment of contract must appear in the commitment and, as in the first transaction, this one must be properly documented by way of the HUD-1, to reflect all deposits and payments, including the payment due to "B" on the Assignment of Contract. An audit of Amanda's files in either of the situations described above would show that her settlement statement accurately reflected the transactions, i.e., the cancelled checks matched the disbursement items shown on each closing statement. Again, necessary disclosures to the lenders and other appropriate parties must be made.

By the time Amanda finished her explanation of what she is permitted to do, it was evident that her customer insisted on using the funds from the second transaction to fund the first—something strictly prohibited by ORNTIC. She courteously advised him that what he wanted was not a legal transaction and she would not assist him, after all.

THANKS, AMANDA!



Old Republic National Title Insurance Co.

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