



Ask Your Underwriter

■ *Laura M. Licastro, Associate Florida Underwriting Counsel*

Question: I closed a purchase transaction last October and, as required by the buyer's lender, held money in escrow to pay the property taxes in November. Even though I held some extra funds, the seller did not tell me that he lost his homestead exemption and now I don't have enough to pay the taxes in full. Who is responsible for the shortage?

Answer: It depends. Most sale contracts contain a tax proration provision which sets forth how the property taxes are to be allocated between the buyer and the seller and what to do if the tax bill for the current year has not yet been issued. It is the closing agent's responsibility to prorate the taxes on the closing statement in accordance with the provisions of the contract.

Since tax bills are not issued until November in Florida, October can be a tricky time to close. In addition to tax prorations calculated pursuant to the contract, the purchaser's lender may also require the settlement agent to hold funds in escrow and pay the tax bill when it is issued. If the amount held in escrow is insufficient to pay the tax bill in full, the agent will generally have to collect additional funds from the buyer, the seller, or both. If the policy does not contain an exception for the lien of the current year's taxes (and such an exception will likely not be permitted if the lender is requiring the taxes to be escrowed), failure to pay the taxes in full might result in a claim against the policy.

Old Republic strongly recommends that you have the parties execute a tax proration agreement at closing which contains provisions indemnifying and holding the agent harmless in the event of a tax increase or failure to escrow sufficient funds. For added protection, this agreement should also obligate the appropriate party(ies) to remit the shortage to the agent immediately upon demand.



Old Republic National
Title Insurance Co.
100 S. Ashley Drive, Suite 700
Tampa, Florida 33602

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