

In The Title Corner

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OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Documentary Stamps on Short Sales

■ *By James C. Russick, VP & Florida State Counsel*

In August, the Florida Department of Revenue published an unofficial statement that documentary stamps should be paid on the outstanding principal balance due on the promissory note, not the sales price of the property, when there was a sale of real property for less than the amount owed.

Old Republic National Title Insurance Company immediately realized the threat this position posed to agents' business. While most other underwriters quickly sent a knee-jerk response directing their agents to comply, Old Republic Title took a more deliberate, pro-agent approach. We did not suggest the collection of additional documentary stamps for the value of any relinquished debt. Nor did we encourage requiring hold harmless agreements. We advised agents to continue business as usual.

This was not done lightly. It was predicated on a thorough review of the relevant law and the strong public policy arguments. We

also elicited and received a tremendous amount of assistance and insight from a documentary stamp expert and title agent within the RPPTL Section of the Florida Bar. At the end of the day, our regional manager, Scott Pierce, with a determination to protect the best interests of Old Republic closing agents around the state, set our direction and

we requested a meeting with the Department of Revenue.

On August 29, 2008, Old Republic's lobbyist and I met with the general counsel and two deputy directors for DOR. During that meeting, we discussed legislative history, case law, the relevant statute, and several public policy issues. For their consideration, we presented them with sample due dili-

gence packages representative of the documentation required by various lenders

when considering whether to accept a short sale. At DOR's request, we also provided actual redacted documents (contracts, closing statements, and related documentation) from transactions closed by several of our agents around the state.

Subsequently, the DOR issued their official

Technical Advisory which essentially adopts the position advanced by Old Republic. Accordingly, documentary stamps should continue to be collected on the amount paid by the buyer to the seller in a short sale transaction.

While the Florida Association of Realtors also

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Eyes Wide Shut — Case Law Update

■ *By Jeanne F. Murphy, Florida State Counsel*

The new case of *Charles v. Florida Foreclosure Placement Center*, 33 Fla. L. Weekly D1932 (Fla.App. 3 Dist.), includes an interesting twist on the liability and duty of a closing agent. In *Charles*, a seventy-two-year-old widow owned a home she purchased in 1975. The home had been unencumbered since 1989, but in 2003 she took out a loan for \$81,000 and secured it with a mortgage on the property. Two years later, she mortgaged the property again to secure an additional \$35,000. When she was unable to make the payments, the second lender commenced foreclosure proceedings against her.

Shortly after the foreclosure action was filed, Mrs. Charles received an unsolicited visit from a representative of Florida Foreclosure Placement Center (“FFPC”), who allegedly said he could help her save her home without losing ownership. Mrs. Charles agreed to his help and executed a power of attorney in favor of FFPC. Two months later, FFPC sent Mrs. Charles to Quantum Title Services

(“Quantum”) to execute documents that purportedly would save her home from foreclosure without jeopardizing her ownership. In actuality, the documents prepared by Quantum and executed by Mrs. Charles at the closing were documents that transferred title to her property to a Jacqueline Pierre-Andre (“Pierre-Andre”), who was not present at the closing. The “sale” was financed with the proceeds of two loans in the total amount of \$165,000, brokered by a company named Envision.

Upon learning that she no longer owned her home, Mrs. Charles sued all of the players in this transaction, including the title agency, Quantum. As to Quantum, Mrs. Charles sought to recover for claims sounding in fraud, conspiracy to defraud and negligence. Although the trial court originally dismissed all of the claims, with prejudice, for failure to state a cause of action, the Third District Court of Appeal reversed and remanded the case with instructions to reinstate the

action. The court specifically found that the complaint alleged sufficient facts to state the cause of action for conspiracy to defraud against all of the parties and, as against the title company, Quantum, were also sufficient to support claims for fraud and negligence.

Addressing the conspiracy to defraud allegation, the court noted that to be liable, each co-conspirator need not act to further a conspiracy; each “need only know of the scheme and assist in it in some way to be responsible for all of the acts of his co-conspirators.” In this case, Mrs. Charles alleged that FFPC intended to defraud her when it told her that it was going to save her home without affecting title, when the real intent was to defraud her of the approximately \$55,000 in equity. The fraud was then carried out with the assistance of a straw buyer (Pierre-Andre), the mortgage broker (Envision) and the closing agent (Quantum), all of whom allegedly participated in a sham “sale” that satisfied Mrs. Charles’ existing debts

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EzJacket Is Ready to Use

■ By Walt Donovan, Director of Florida Title Operations

We are pleased to announce that Old Republic's ezJacket/ezRemit programs are available to our resident Florida agents. The program enables agents to generate policy jackets and remit statistical policy information through the StarsLink web site.

The ezJacket/ezRemit system eliminates the need to store and account for paper jackets, and automatically computes policy and endorsement premiums, calculating the agent share and underwriting remittance. Our goal is to have all Florida resident agents enrolled in ezJacket/ezRemit and to eliminate paper inventory and log book recordkeeping by year-end. In addition to generating the jackets themselves, the program will allow you to view and print reports for both reported and unreported jackets.

The program's ezRemit function enables agents to send their policy statistical information, creating an electronic record of each remittance. Upon submitting the report electronically, you can send the premium payment to Judy Ramirez and the Data Entry Department like you normally do. Jacksonville-

The screenshot displays the ezJacket/ezRemit web application interface. At the top, there is a navigation bar with the Old Republic logo and the text 'OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY' and 'ezJacket/ezRemit'. Below this, there are tabs for 'Non Remitted Policies', 'Remitted Policies', 'Reports', and 'Manage Users'. The main content area is a form for creating a jacket. It includes fields for 'Agent Number' (A09672), 'Property County' (select a County), 'File Number', 'Policy Category' (choose a policy category), 'Policy Type' (choose a policy type), 'Policy Effective Date', 'Purchase Price', 'Premium Amount', 'Net Premium Due ORT', and 'Loan Amount'. There are buttons for 'Add Endorsement', 'Recalculate', 'Clear All', and 'Generate Jacket'. A summary bar at the bottom shows 'Endorsement Total: .00' and 'Total Policy & Endorsement Premium: .00'.

serviced agents will continue to send premium payments to Lawana Skipper. Since we continue to build the SPLANT database for your use, we will ask that you continue to send the paper policies with the remittance.

Access to ezJacket/ezRemit is through our agents'-only website, StarsLink, and if you are not a current user, you will have to register for StarsLink. Your agency representative will confirm your StarsLink account information before he/she visits you and will be able to assist you in registering, if you have not already done so. After signing in to StarsLink, go to the Agent Services menu and select ezJacket/ezRemit. You will need to

register for ezJacket/ezRemit the first time you visit the site. Complete the registration information and submit by clicking the "OK" button. Authorization will be approved by our state office and you will receive an email with an activation link to gain access to the program.

Your Agency Representative will contact you to demonstrate ezJacket/ezRemit, help you start using this useful and efficient program, and pick up your unused jacket inventory. We hope you will enjoy the relief from maintaining paper inventory and log books that ezJacket/ezRemit provides.

More Discounts Through ORT's StarsLink!

■ By Debbie Compton, Agency Account Manager

As the Underwriter that focuses solely on its Agents, we appreciate the impact this challenging market has had on you, and we understand you're probably trying to save money wherever possible. To assist you in that effort, we are pleased to announce the addition of 20 nationally-recognized companies who offer our Agents greater savings.

Visit our StarsLink web site to view all the companies who provide discounts. Once you have logged in, click on **Agent Services** at the top of the page, **Star Services and Supplies**, and then click on the categories shown on the left side of the page for the name(s) of the companies who will provide you with a discount.

We hope you'll take advantage of Old Republic's StarsLink web site. Remember, we're "Your Partner in Building a Successful Future."

Forged Mortgage Satisfactions

■ *By Suzanne Barry, Florida State Counsel*

Although forged mortgage satisfactions have always been a problem, a recent investigation resulting in the discovery of 150 fraudulent satisfactions in the trunk of a vehicle underscores the gravity of the situation. Due to the increasing prevalence of forged or fraudulent satisfactions in the current market, it is imperative that agents are aware of and on the lookout for certain red flags when performing a title search and examination.

The most common red flag is the naked or unsupported mortgage satisfaction. A mortgage satisfaction is deemed unsupported when the search does not reflect a proximate sale or refinance transaction which would have provided the funds to satisfy the existing mortgage. Often, there is nothing of record to evidence how the mortgage was satisfied. In that instance, agents must contact the lender to verify the validity of the satisfaction.

When the search does reveal another mortgage recorded in proximity to the satisfaction, the mortgage must be reviewed to confirm that the transaction would have provided sufficient funds to satisfy the existing mortgage. Even though the payoff amount of a prior mortgage is unknown, an obvious disparity should be questioned. For example, a mortgage is recorded in 2006 in the amount of \$700,000. The same owner executes another mortgage in the amount of



\$100,000 which is recorded in January, 2008. A satisfaction of the original mortgage is recorded in February, 2008. Although there is another mortgage recorded in proximity to the satisfaction, it does not appear to have provided enough funds to satisfy the prior, relatively recent mortgage. Therefore, before issuing a commitment or policy without an exception for the 2006 mortgage, the agent should confirm the satisfaction with the lender.

Agents should also be careful when relying on a deed filed in proximity to the mortgage satisfaction. In reviewing the deed, the amount of documentary stamps paid will confirm that the transaction was a sale which would have provided adequate funds to pay off the prior mortgage, not merely a conveyance for little or

no consideration. Assume the same scenario as above except that, instead of a subsequent mortgage, a deed is recorded in January 2008. A purchase money mortgage is not recorded. The deed reflects that documentary stamps were paid in the amount of \$0.70. The lack of documentary stamps clearly evidences that the sales price would not have provided sufficient proceeds to pay off the prior \$700,000 mortgage. As such, the agent must contact the lender to confirm the authenticity of the satisfaction.

Unfortunately, forgery and fraud is growing more widespread. It is incumbent on our agents to be vigilant and confirm with the lender when the validity of a mortgage satisfaction is questionable.

Eyes Wide Shut — Case Law Update

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and replaced them with new financing which generated fees, costs and net proceeds pocketed by the co-conspirators, but not Mrs. Charles.

The fraud allegation against Quantum which withstood dismissal, was based on the assertion that Quantum knowingly concealed the nature of the documents that Mrs. Charles was signing and, knowing that she believed that she was preserving her ownership interest, intentionally failed to disclose that the documents she was signing would transfer ownership to a straw buyer, all for the purpose of depriving her of the equity in her home.

The negligence count alleged that as closing agent, Quantum had a duty to act in a reasonably prudent manner by at least identifying what Mrs. Charles was signing. The court noted that not only did Quantum fail to identify the documents, had Mrs. Charles known she was signing a deed and a closing statement for the sale of her home, she would not have executed them. The court went so far as to say, *in dictum*, that although Quantum clearly had no duty to explain the legal ramifications of the documents, as that would have been the unauthorized practice of law, it did have an obligation to at least identify them, inferring

that it was actionable negligence to fail to do so.

Accordingly, at least this court feels it is your duty as a closing agent to identify each document before your customer signs it. Keep in mind, however, that “identify” specifically does not mean “explain.” If you are not an attorney and questions come up about the document, you must refer the customer to their attorney, even if you are the one who prepared the document. The Florida Supreme Court has specifically held that although title insurance agents may conduct real estate closings incident to fulfilling conditions in the title insurance commitment, it is the unauthorized practice of law to give advice, orally or in writing, relating to the methods of taking title or concerning the legal effect of any document. See *Fla. Bar v. McPhee*, 195 So.2d 552, 554 (Fla. 1967). We realize this creates a delicate line for closing agents to walk, but at least you have the Florida Supreme Court behind you when you advise customers that you are prohibited from answering questions about the effect of closing documents or what they mean.

As always, if you have any questions, please do not hesitate to contact the underwriting department.

Documentary Stamps on Short Sales

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met with the DOR, to the best of our knowledge, no other title insurance underwriter doing business in Florida requested a meeting on your behalf. Thank you for continuing to allow Old Republic National Title Insurance Company to be your business partner.



■ Robin Cardella,
Vice President and
Mid-FL Operations Manager

We are extremely proud to announce additional companies who have made a commitment to Old Republic National Title Insurance Company and its customers:

Republic Land & Title, Inc.,
Palm Harbor – 10 Years +
Owner: Dick Gruber
Manager: Donna Crino

Comments and information

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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Ask Your Underwriter

■ *Carolyn Broadwater, Florida State Counsel*

Question: Does a bankruptcy automatically wipe out all judgments and mortgages on the property.

Answer: No. Actually, mortgages always remain unless the debtor obtained a special order that “strips” the lien. These orders are rarely obtained and we suggest that you check with us if you plan to rely on one.

As for judgments, the bankruptcy discharge releases the debtor from personal liability, but any judgment liens that had attached to debtor’s property prior to the filing of the bankruptcy petition remain liens against such property unless an order is obtained.



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