

# In The Title Corner

SECOND QUARTER 2009 • VOLUME 12, ISSUE 2

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INSERT: Old Republic's Title Insurance Subsidiary Forms Joint Underwriting Venture With Attorneys' Title

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

## New Joint Venture Announced

■ *By Scott Pierce, Senior Vice President*

Rande Yeager, Chairman and CEO, is pleased to announce the formation of a Joint Venture between Old Republic National Title Holding Company and Attorneys' Title Insurance Fund, Inc. (See Insert)

The new joint venture will be Attorneys' Title Fund Services, Inc., known as The Fund, and will provide the same service, technology, education and marketing support and underwriting to Florida real estate attorneys that The Fund does today. Old Republic National Title will act as the insurer for the new company.

The formation of this new joint venture focuses on our continued commitment to the independent agency system. Agents currently using Old Republic National Title can continue utilizing the services from the current ORNTIC offices and those Fund Members will continue doing the same through the offices of The Fund.

# Legal Department Reorganization

■ *By Scott Pierce, Senior Vice President*

In order to better service the needs of our agents and also protect the Company's position and agency base in regulatory matters, I have found it necessary to implement a major change within our legal department. That change entails a separation of responsibilities that will be carried out by our senior counsel, Jim Russick, and Craig Jontz, a former member of our legal department with more than 24 years of experience as an underwriter.



*Jim Russick*

Craig has a strong background in real property law and is experienced in dealing with complex commercial transactions. He has also held important positions such as Senior Vice President and Southeast Regional Underwriting Counsel with another underwriter. He has returned to ORT to assume Jim's duties as Chief Underwriting Counsel for Florida Agency Operations in our Tampa office, thus freeing Jim to serve in the newly created position of Governmental Affairs Counsel, reporting to me.



*Craig Jontz*

During the past several years, Jim has been focusing more and more on the Regulatory and Legislative issues that so seriously affect our industry, especially the agency base which is our mainstream of revenues. In his new role of Governmental Affairs Counsel, he will be able to direct more of his time toward addressing ongoing regulatory issues such as the Study Commission, working on forms and rate-related issues, and representing the Company's interests at industry and bar meetings. Jim will continue participating in our agency seminar efforts and providing underwriting assistance for those agents that have called upon him in the past.

With Jim and Craig lending their expertise in these separate areas, I feel confident that this reorganization of duties will enable us to meet successfully the increasing demands being placed on the legal department due to the additional number of agents, the complexity of transactions, and the mounting regulatory issues.

I want to thank both Jim and Craig for their willing and invaluable support in working with me toward the achievement of this goal. Please take a moment when you have the opportunity to express your congratulations to both of them.

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# When the Deed is Done— Deeds in Lieu of Foreclosure

■ By Jeanne F. Murphy, Florida State Counsel

Before the real estate market went into a tailspin, you would rarely see a financial institution accept a deed in lieu of foreclosure, and only occasionally see a non-institutional lender accept one. But now that it is a strange new world out there, we are seeing more and more lenders of all kinds accepting deeds in lieu of foreclosure to avoid the expense of a foreclosure action. We thought it would be a good idea to address some of the most common issues associated with such deeds.

At first glance, it would appear that a deed in lieu of foreclosure is pretty clear-cut and wouldn't create any issues. The mortgagor gives a deed transferring fee title to the encumbered property to the mortgagee and the mortgage is extinguished, right? Unfortunately, not always. In fact, Florida courts have historically tried to protect real property ownership, so they are reluctant to hold in favor of a transfer of fee title, absent clear and unambiguous statutory authority or evidence that it was the intention of the owner/mortgagor.

Accordingly, Florida courts seem to start with the presumption that a deed from the mortgagor to the mortgagee is not an absolute conveyance, but rather is being given as additional security for the loan. This has been held true even when the mortgagee who received the deed executed and recorded a satisfaction of the mortgage. The rationale was that the recorded satisfaction is not evidence that the mortgagor intended the deed to be an absolute conveyance, since the satisfaction is not binding on the mortgagor. Accordingly, a deed from a borrower to a mortgagee may raise an objection to title if there is nothing affirmatively establishing that the intention of the mortgagor was intended to be an absolute conveyance of the property.

To avoid the risk that the deed in lieu of foreclosure is construed simply

as additional security, it should contain a legend on its face specifically stating that the deed is being given as an absolute conveyance of the title in consideration of the cancellation of the debt secured by the mortgage, and not as additional security. It is best to reference the mortgage being satisfied by its recording information. Some suggested language is as follows:

**"THIS DEED IS IN LIEU OF FORECLOSURE AND IS INTENDED TO BE AN ABSOLUTE CONVEYANCE OF THE TITLE TO THE ABOVE-DESCRIBED REAL PROPERTY, AND NOT AS ADDITIONAL SECURITY, AND IS IN CONSIDERATION OF THE FULL SATISFACTION OF THE DEBT SECURED BY THAT CERTAIN MORTGAGE IN FAVOR OF \_\_\_\_\_, DATED \_\_\_\_\_, AND RECORDED IN O.R. BOOK \_\_\_\_\_, PAGE \_\_\_\_\_ OF THE OFFICIAL RECORDS OF \_\_\_\_\_, COUNTY, FLORIDA (THE 'MORTGAGE')."**

Generally, the inclusion of this language will merge the ownership of the fee simple title with the ownership of the lien of the mortgage in the same person or entity, so the lien of the mortgage will be extinguished.

Many lenders choose to avoid a merger of title and extinguishment of the lien of the mortgage because they want to preserve their rights as against inferior liens, including any that might be recorded in the gap between the last title search and the recordation of



the deed in lieu. This is accomplished by including in the legend on the deed in lieu that the deed is being given as an absolute conveyance of the fee simple title, that the consideration for the giving of the deed is the release of the personal liability of the debtor, but that it is the intention of the parties that the fee simple title and the lien of the mortgage do not merge. If this is the goal, the suggested language is as follows:

**"THIS DEED IS IN LIEU OF FORECLOSURE AND IS INTENDED TO BE AN ABSOLUTE CONVEYANCE OF THE TITLE TO THE ABOVE-DESCRIBED REAL PROPERTY, AND NOT AS ADDITIONAL SECURITY, IN CONSIDERATION OF THE RELEASE OF THE PERSONAL LIABILITY OF THE MORTGAGOR FROM THE DEBT SECURED BY THAT CERTAIN MORTGAGE IN FAVOR OF \_\_\_\_\_, DATED \_\_\_\_\_, AND RECORDED IN O.R. BOOK \_\_\_\_\_, PAGE \_\_\_\_\_ OF THE OFFICIAL RECORDS OF \_\_\_\_\_, COUNTY, FLORIDA (THE 'MORTGAGE'), BUT IT IS THE INTENTION OF THE PARTIES THAT THERE SHALL NOT BE A MERGER OF THE FEE WITH THE LIEN OF THE MORTGAGE."**

In the absence of other evidence of contrary intent, this should preserve the lien of the mortgage in favor of the mortgagee but still convey the fee title. If you subsequently insure a deed out of

*Continued on page 4—*

## *When the Deed is Done—Deeds in Lieu of Foreclosure continued from page 3—*

the lender to a third party, you would also need the lender to record a satisfaction of the mortgage.

If a deed in lieu of foreclosure in your back chain does not expressly state the intention of the parties and you are insuring a deed from the mortgagee/grantee to a bonafide purchaser or mortgagee for value, such purchaser and/or mortgagee would be able to rely on the record, pursuant to *Florida Statute 695.01*. Accordingly, we would not require you to take any corrective action.

It is important for policy issuing agents to remember, however, that,

unlike a foreclosure action, when a mortgagee accepts a deed in lieu of foreclosure, the deed does not extinguish intervening junior liens and encumbrances of which the mortgagee/grantee had actual or constructive notice. Accordingly, if you are insuring a deed in lieu of foreclosure, the mortgagee/grantee will be taking title to the property subject to any intervening liens and encumbrances, unless they are released of record. Therefore, exceptions would need to be made for such matters in the title insurance commitment and policy.

Another issue which is raised by

deeds in lieu of foreclosure, is the fact that such deeds may be avoided by a creditor of the mortgagor as being a fraudulent conveyance in the event the mortgagor, within one year of the deed in lieu of foreclosure, files a petition in bankruptcy or has such a petition filed against him/her. Additionally, it may be considered a preferential transfer if bankruptcy is filed within 90 days after the deed (or one year in the case of certain parties). Accordingly, the ALTA 1992 owners' and lenders' title policies, with Florida modifications, contain preprinted exclusions for any claims arising under the foregoing.



■ *By Scott Pierce, Senior Vice President*

On June 30th, our Florida Operations Office Manager and Agency Administrator, Pat Martin, will be retiring after a career that started 24 years ago. In August, 1985, Pat began temporary employment with our company, then called Title Insurance Company of Minnesota. Pat took the temp job as a receptionist/processor at our direct branch office in the City of Temple Terrace, after obtaining a degree in Mass Communications from the University of South Florida. Prior to that time, she had served Temple Terrace as Assistant City Clerk for seven years before leaving to complete a college education that had been placed on hold while she raised a family.

According to Pat, her intent in pursuing work on a temporary basis

was to allow her to be available to assist her husband when he finalized his plans to begin a new business on his own. Those plans, unfortunately, did not materialize, for her husband died during her employment with our company. Soon after, when I made the decision to move the state administrative office from Jacksonville to Tampa and close several of our direct Florida branch offices so as not to compete with our agents, Pat accepted the position of Agency Administrator and became the second employee to join our Florida Operations staff.

Pat's dictation, typing and writing skills were invaluable to me, and although I changed my mind a number of times as to how I wanted something worded, she never complained. Her ability to decipher what I had on my note pad was uncanny. The grammar on my letters was always perfect, even if it was "not quite" what I wrote. I am certain that on the day my first PC was installed, which included "spell-check" and e-mail, Pat's productivity increased enormously!

We were rather small in 1987, having slightly over 3% of the market

and operating only two offices in Florida. Since then, although our Florida Operations network has expanded significantly, Pat has continued to keep pace with the demands and also attend to the needs of our agents and staff. Throughout her 24 years, she has always remained dedicated to the company and responsible in carrying out her duties. Recently, however, after becoming aware of a desire to devote more of her time to her personal life, she made the decision to retire. Her immediate plans are to spend more time with her four children and six grandchildren, take a trip across the U.S. with her fiancé, enjoy working in her home and yard, and pursue other interests.

Pat will be greatly missed by all of us at Old Republic National Title, as she helped lay the foundation for our agency network, something that has increased dramatically over the years and one which we are so proud of today!

Here's wishing Pat success in all her future travels and enjoyment with her family for years to come!



■ *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:

★ **20 YEARS** ★

Executive Title of Florida, Inc., Brandon

★ **16 YEARS** ★

Complete Title Services, Inc., Clearwater

★ **15 YEARS** ★

Levin Tannenbaum, P.L., Sarasota

★ **13 YEARS** ★

Akerman, Senterfitt, Ft. Lauderdale  
Jacksonville, Miami, Orlando and Tampa

★ **11 YEARS** ★

Robinson & Associates, P.A., Coral Gables  
Robert F. Rogers, Esq., Naples

★ **10 YEARS** ★

Anclote Title Services, Inc., Tarpon Springs  
Cohen, Norris, Scherer, Weinberger &  
Wolmer, Delray Beach

Paul A. Murray, P.A., Naples

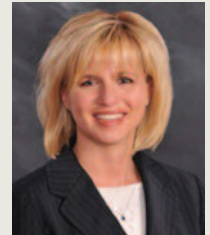
Surety Title Corporation, Naples

Dean J. Trantalis, Esq., Wilton Manors

Westminster Title Agency, Inc., Bonita Springs

## Wilhelmina F. Kightlinger Joins Old Republic National Title Insurance Company

Wilhelmina F. Kightlinger has joined Old Republic National Title Insurance Company as Commercial Underwriting Counsel for Florida Agency Operations in our Tampa offices.



Willie will be in charge of underwriting for commercial transactions, and will assist in overseeing and expanding the Company's commercial services for agents and their customers. Additionally, she will conduct seminars to agents on the importance and complexities of commercial transactions.

She received her Juris Doctor degree with highest honors from the Florida State University College of Law. She is a member of the Florida Bar, the Hillsborough County Bar Association and the American Bar Association (ABA).

Willie frequently speaks at seminars on special title insurance issues in commercial real estate transactions, land trusts, Florida documentary stamp taxes and intangible tax issues, and commercial real estate closing and lending. In 2008, she was honored to be named one of the top women in Florida commercial real estate by the *Florida Real Estate Journal*.

Prior to entering the title insurance industry in 2005, she was a partner in the real estate department of an international law firm. While there, she represented developers in all aspects of acquisitions, due diligence investigations, financing, and the dispositions of commercial properties.

To contact Willie, please call her at (813) 228-0555, or email her at [wkightlinger@OldRepublicTitle.com](mailto:wkightlinger@OldRepublicTitle.com).

### *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:

#### **In The Title Corner**

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# Ask Your Underwriter

■ Laura M. Licastro, Associate Florida Underwriting Counsel

**Question:** I have a deed in my chain of title with an error in the legal description. Can it be fixed with a scrivener's affidavit?

**Answer:** No. It also cannot be fixed by simply correcting the error on the original deed and then re-recording it, unless the correction is initialed by the grantor(s) and the deed is then re-executed, re-witnessed and re-acknowledged. The only other way to fix the error is with a corrective deed.



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JUNE 2009



# NEWS BULLETIN

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**FOR IMMEDIATE RELEASE**  
**THURSDAY, JUNE 11, 2009**

**NYSE: ORI**

## **OLD REPUBLIC'S TITLE INSURANCE SUBSIDIARY FORMS JOINT UNDERWRITING VENTURE WITH ATTORNEYS' TITLE INSURANCE FUND, INC.**

**CHICAGO – June 11, 2009 – Old Republic International Corporation (NYSE: ORI)**

announced today that its title insurance subsidiary, Old Republic National Title Holding Company (ORNTHC), had joined with Attorneys' Title Insurance Fund, Inc. (The Fund) to form a joint underwriting venture, Attorneys' Title Fund Services, LLC (ATFS). The terms of the agreement provide that Old Republic National Title Insurance Company (ORNTIC/Old Republic Title), a wholly-owned subsidiary of ORNTHC, will offer title insurance coverage to The Fund's existing agency network, while ATFS will act as ORNTIC's Managing Title Agent (MTA) for those agents. Under this arrangement, ATFS will provide The Fund's network of 6000 real estate attorney members underwriting, claims processing, educational and property information services. In reaching this agreement, both The Fund and Old Republic Title are fulfilling their mission, as each company emphasizes the importance of the title insurance industry's independent agency system. For the latest five-year period, The Fund's annual agency premium production has averaged approximately \$385 million. In 2008, 80% of ORNTIC's national title premium volume came from independent agents.

### **About The Old Republic Title Insurance Group (ORTIG):**

ORTIG is comprised of Old Republic National Title Insurance Company, American Guaranty Title Insurance Company, and Mississippi Valley Title Insurance Company. It is one of the nation's largest title insurance groups, operating in 49 states, the District of Columbia, and Puerto Rico through a network of Company-owned offices, subsidiaries, authorized agents and approved attorneys. ORTIG is committed to being the most financially stable title insurance group in the industry.

Since 1992, it has been the highest rated title insurance group in the nation. No group has equaled ORTIG's consistently high ratings. These ratings reflect the Group's consolidated operating performance and strategic relationship with its parent company, and its excellent capitalization, superior liquidity, sound investment strategy, reserve adequacy and market position

### **About Old Republic International Corporation**

Chicago-based Old Republic International Corporation is an insurance holding company whose subsidiaries market, underwrite and provide risk management services for a wide variety of coverages primarily in the property and liability, mortgage guaranty, and title insurance fields. One of the nation's 50 largest publicly owned insurance organizations, ORI has assets of approximately \$13.2 billion and shareholders' equity of \$3.6 billion or \$15.47 per share as of the end of this year's first quarter. Its market valuation, as of June 10, 2009, was approximately \$2.3 billion, or \$9.89 per share.

**For more information about the Old Republic Title Insurance Group, visit us at:**

**[www.oldrepublictitle.com](http://www.oldrepublictitle.com).**

**For the latest news releases and other corporate documents on**

**Old Republic International visit [www.oldrepublic.com](http://www.oldrepublic.com).**