

In The Title Corner

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OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Are You Ready for the New HUD-1 and GFE Changes?

■ by Brenda J. Cannon, Florida State Counsel

As the January 1, 2010 implementation date for the new Good Faith Estimate ("GFE") and HUD-1 reforms quickly approaches, we wanted to remind you of some of the most important changes that will impact your business. These changes reflect HUD's intent to provide consumers with better tools and information so that they can "shop" closing costs upfront, thereby—at least in theory—eliminating the surprise of additional fees at closing and reducing overall closing costs to consumers.

The new GFE, which will continue to be provided by the lender to its prospective borrower, is an important part of this effort to provide detailed information on closing costs to the consumer. The first page of the new GFE summarizes the loan terms and charges, while the second page lists the settlement charges and subtotals for certain cost categories. "Tolerance rules," contained in

the last page, set out what charges cannot increase ("zero tolerance" costs) from the GFE to the HUD-1, what charges can increase in the aggregate by no more than 10% ("10% tolerance" costs), and what charges are permitted to increase unrestricted ("unrestricted"). Because the GFE flows into the HUD-1, costs shown on the GFE are directly transferred to the pertinent sections of the HUD-1 (for example, GFE #4—the amount for title services and lender's title insurance—must be shown on Line 1101 of the HUD-1).

The new HUD-1 also contains major revisions, including the addition of "inside" and "outside" columns and a new third page. This new page includes direct comparisons to the figures shown on the GFE and the same three cost categories: zero tolerance, 10% tolerance, and "can increase." Transfer taxes and loan-related charges (such as origination



charges and points) are examples of costs which fall under the zero-tolerance category while recording fees fall within the 10% tolerance category. Examples of costs which are permitted to increase unrestricted include homeowners' insurance and escrow deposits. Costs for title services may fall within one of two categories as explained below.

The 1100 section, "Title Charges," of the new HUD-1 contains some of the most important changes. Line 1101 reflects the total charge for "Title services and lender's title insurance," including Line 1102's "Settlement or closing fee." The settlement/closing fee on the new HUD-1 will not be itemized or broken out into various charges but instead will be shown as a total and then

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Whatever Floats Your Boat: Sovereignty Rights and Title Insurance

■ by *Laura Licastro, Associate Florida Underwriting Counsel*

One of the best things about living in the State of Florida is the easy access to many different types of bodies of water, both fresh and saltwater, for recreational purposes. However, for title agents, all that water can make you feel like you are drowning when it comes to searching title and preparing commitments and policies. The purpose of this article is to discuss one of the most common water right issues every title agent has to deal with – sovereignty rights – to explain the reason for the sovereignty rights exception and discuss some of the factors to be considered when a request is made to delete the exception.

The standard sovereignty rights exception reads as follows:

Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the lands insured hereunder, including submerged, filled, and artificially exposed lands and lands accreted to such lands.

When Florida became a state in 1845, it acquired title to all lands submerged beneath navigable waters and tidally-influenced waters. Title to sovereignty lands is now vested in

the Trustees of the Internal Improvement Fund (“TIIF”).

Navigable waters are waters that are both actually used for navigation and waters that are “navigable-in-fact,” meaning capable of navigation. All freshwater lakes should be treated as navigable unless you have a contrary determination from the Underwriting Department. For a river or stream, the test for navigability is whether it is capable of sustaining boat traffic. The boat need not be a cruise ship or a barge. If a boat of any size can float down the river or stream, it should be considered navigable. The fact that the land may be submerged only part of the time and a dry bed the rest of the time does not necessarily affect its legal status as navigable-in-fact.

Because such a relatively large portion of Florida was submerged beneath navigable or tidally-influenced waters in 1845, and due to the absolute nature of the State’s right to these lands (MRTA does not apply, for example), all commitments should contain the standard sovereignty rights exception. Some form of sovereignty rights exception must remain in the policy unless the

submerged lands have been properly deeded out by TIIF, it can be clearly demonstrated that title to formerly submerged land was properly acquired by the private owner or none of the land was submerged sovereignty land at the time Florida became a state.

Since 1917, TIIF has had the authority to convey submerged sovereignty lands by deed to private owners. To rely on such a deed, it should be carefully reviewed for the identification of the conveyed lands as submerged land. Even though submerged lands have been deeded out by TIIF, it is still necessary to include an exception for the inalienable right of the public to use the navigable waters and the rights of Florida and the United States to regulate the use of navigable waters.

If the property to be insured is adjacent to or located near tidally-influenced water, the question of whether currently non-submerged portions of the land have been filled should also be considered. Formerly submerged lands created by avulsion are still sovereignty lands. However, some artificially filled lands are no longer sovereignty lands.

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UPCOMING SEMINARS 2009 SEMINAR SCHEDULE



<p>Wednesday October 7, 2009 9:30 am - 11:45 am</p>	<p>ORLANDO Sheraton Orlando North Hotel 600 North Lake Destiny Drive Orlando, FL 32751</p>	<p>The New GFE and HUD-1 - Jim Russick (2 hrs. CE / 2.5 hrs. CLER) (For reservations, contact Janine Taylor at jtaylor1@oldrepublictitle.com or 800-342-5957)</p>
<p>Wednesday October 8, 2009 9:30 am - 1:30 pm</p>	<p>OCALA Holiday Inn Hotel & Suites Ocala Conference Center 3600 SW 38th Avenue Ocala, FL 34474</p>	<p>The New GFE and HUD-1 - Jim Russick (2 hrs. CE / 2.5 hrs. CLER) Ethics in the Title Insurance Business - Barbara Burke (1 hr. ethics) (For reservations, contact Janine Taylor at jtaylor1@oldrepublictitle.com or 800-342-5957)</p>
<p>Tuesday October 13, 2009 8:30 am - 2:45 pm</p>	<p>TAMPA Quorum Hotel 700 N. Westshore Boulevard Tampa, FL 33609</p>	<p>The New GFE and HUD-1 - Jim Russick (2 hrs. CE / 2.5 hrs. CLER) Special Considerations for Commercial Real Estate Transactions - Willie Kightlinger (1 hr.) Managing Your Escrow / Trust Account - Jonathan Yasko, Entrust Solutions, LLC (1 hr.) (For reservations, contact Janine Taylor at jtaylor1@oldrepublictitle.com or 800-342-5957)</p>
<p>Thursday October 15, 2009 8:30 am - 2:00 pm</p>	<p>JACKSONVILLE Marriott Hotel at Southpoint 4670 Salisbury Road Jacksonville, FL 32216</p>	<p>Homestead Headaches - Jeanne Murphy (1 hr.) The New GFE and HUD-1 - Jim Russick (2 hrs. CE / 2.5 hrs. CLER) Managing Your Escrow / Trust Account - Jonathan Yasko, Entrust Solutions, LLC (1 hr.) (For reservations, contact Gail Hinson at ghinson@oldrepublictitle.com or Debbie Ortega at dortega@oldrepublictitle.com or 800-940-7112)</p>
<p>Tuesday October 27, 2009 Times t/b/d</p>	<p>DESTIN Sandestin Golf & Beach Resort 9300 Emerald Coast Parkway West Destin, FL 32550</p>	<p>The New GFE and HUD-1 - Jim Russick (2 hrs. CE / 2.5 hrs. CLER) (Additional courses t/b/d) (For reservations, contact Gail Hinson at ghinson@oldrepublictitle.com or Debbie Ortega at dortega@oldrepublictitle.com or 800-940-7112)</p>
<p>Wednesday November 11, 2009 1:00 pm - 4:00 pm</p>	<p>MIAMI Marriott-Miami Airport 1201 NW LeJeune Road Miami, FL 33126</p>	<p>The New GFE and HUD-1 - Jim Russick (2 hrs. CE / 2.5 hrs. CLER) Managing Your Escrow / Trust Account - Jonathan Yasko, Entrust Solutions, LLC (1 hr.) (For reservations, contact Holly Culp at hculp@oldrepublictitle.com or 800-805-1497)</p>
<p>Thursday November 12, 2009 9:00 am - 12:00 pm</p>	<p>DEERFIELD BEACH Hilton Deerfield Beach/ Boca Raton 100 Fairway Drive Deerfield Beach, FL 33441</p>	<p>The New GFE and HUD-1 - Jim Russick (2 hrs. CE / 2.5 hrs. CLER) Managing Your Escrow / Trust Account - Jonathan Yasko, Entrust Solutions, LLC (1 hr.) (For reservations, contact Holly Culp at hculp@oldrepublictitle.com or 800-805-1497)</p>

NOTE: If you are unable to attend a seminar in your area, or you need additional credit hours, the FLTA offers seminars in a variety of locations. For their schedule, you may go to <http://www.flta.org/>.



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

★ **33 YEARS** ★

Ansbacher & Schneider, P.A., Jacksonville

★ **32 YEARS** ★

Rogers Towers, Jacksonville

★ **28 YEARS** ★

Rish, Gibson & Scholz, P.A.,
Attorneys at Law, Port St. Joe

★ **25 YEARS** ★

Ryan & Marks Attorneys, LLP, Jacksonville
South Florida Title Services, Inc., Stuart

★ **21 YEARS** ★

Bold City Title & Abstract, Inc., Jacksonville
Patterson & Anderson, P.A., Jacksonville Beach

★ **13 YEARS** ★

Pro Title & Abstract, Inc., Naples
Tri-County Title & Trust, Inc., Miramar

★ **12 YEARS** ★

Timothy J. Cotter, P.A., Naples

★ **11 YEARS** ★

Sheldon Evans, P.A., Weston
Siesky, Pilon & Potter, Naples
South Florida Title & Escrow Co., Inc., Hollywood

★ **10 YEARS** ★

Consumer Land Title Insurance Agency, Coral Gables
M G Title Services, Inc., Miami

WE'VE MOVED TO A NEW LOCATION



After more than fifteen years in the same location, we are excited and pleased to announce that the Tampa office of Old Republic National Title Insurance Company has moved. Our new office address is:

Old Republic National Title Insurance Company
1410 N. Westshore Boulevard, Suite 800
Tampa, FL 33607-4547

Our phone numbers will remain the same:
800-342-5957 and 813-228-0555.

The Tampa Plant numbers are also the same:
866-948-4853 and 813-865-0149.

Our fax numbers for the various departments have also remained the same. They are as follows:

Auditing	813-228-9024
Agency	813-223-3432
Claims	866-227-2703
Underwriting	813-228-0301
State	813-223-3401
ICL Letters	813-228-8019
Plant	866-596-8764

We hope that if you're in our area, you'll stop by for a visit and a tour. We look forward to seeing you.

Whatever Floats Your Boat: Sovereignty Rights and Title Insurance continued from page 2—

The Butler Act, passed in 1921 and formally repealed in 1957, allowed landowners whose land bordered on navigable waters to bulkhead, fill or improve the land from the mean high water mark out into the channel so long as the filling and improving did not interfere with navigation and title to this filled or improved land was automatically conveyed to the upland owner. After the Butler Act was repealed, some landowners continued to fill their land illegally and then conveyed the illegally-filled land to unsuspecting buyers. In 1993, legislation was passed to address this problem. Chapter 93-206 created 253.12(9) which reads, in relevant part, "All of the state's right, title, and interest to all tidally influenced land or tidally influenced islands bordering or being on sovereignty land, which have been permanently extended, filled, added to existing lands, or created before July

1, 1975, by fill, and might be owned by the state, is hereby granted to the landowner having record or other title to all or a portion thereof or to the lands immediately upland thereof and its successors in interest."

The statute also provides that it, "... shall not grant or vest title to any filled, formerly submerged state-owned lands in any person who, as of January 1, 1993, is the record titleholder of the filled or adjacent upland property and who filled or caused to be filled the state-owned lands." Therefore, if it is determined that all or a portion of land to be insured was, at one point prior to July 1, 1975, tidally-influenced land which has since been filled, the sovereignty rights exception may be deleted notwithstanding the filling of the land, even if done illegally, so long as the person who did the filling was not the owner as of January 1, 1993. In order to determine these facts, it will

likely be necessary to review maps, aerial photographs and other historical data.

In the event there is neither a TIF deed properly conveying sovereignty lands nor a statutory authority to support removal of the sovereignty rights exception, it will be necessary to resort to other methods to determine whether the exception may safely be deleted. Routine deletion of the standard exception without the proper back-up data is not justified and should never be done on an automatic basis. Depending on the type of water body involved, the standard exception may be replaced with a more specific exception. As always, any questions regarding sovereignty rights, or any other water rights issue, should be directed to the Underwriting Department.

Are You Ready for the New HUD-1 and GFE Changes? continued from page 2—

incorporated into Line 1101. This section is also significant because title charges may fall within the 10% tolerance category or within the unrestricted category, depending on certain factors. If a consumer chooses a settlement agent from the lender's "accepted provider" list (which must contain at least 3 providers), title charges will fall under the 10% tolerance category. However, if a consumer chooses a settlement agent not shown on the lender's "accepted provider" list, title charges will then fall under the unrestricted category.

The new HUD-1 and GFE present significant changes and challenges to our agents, but they also present tremendous opportunities for building on and solidifying your existing lender client relationships, as well as expanding your lender client base. Because the HUD-1 will, in effect, mirror the GFE, you will need to coordinate and work closely with the lender regarding the preparation of the GFE. We would encourage you to begin working with your lender clients now to establish procedures for the coordination between your office and the lender in preparing and implementing these changes.

We also encourage you to prepare and learn as much as possible by attending one of our upcoming seminars and, as always, contacting your Old Republic Underwriting Department for assistance.

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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www.orfl.com



Ask Your Underwriter

■ *Carolyn Broadwater, Florida State Counsel*

Question:

I have a closing and my seller filed a Chapter 7 bankruptcy case. In the case, this property is listed as surrendered. Am I fine to close?

Answer:

No. Although surrender does sound like it clears the property for sale, it does not. If the property is exempt, listed on Schedule C, and it has been more than 30 days from the creditor's meeting with no objections having been filed, then the property may be sold. Alternatively, there is a procedure for abandonment by the trustee. Please call Underwriting for specific guidance.



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SEPTEMBER 2009





Join Florida's CFO Alex Sink in the battle to curb mortgage fraud



THE ROLE OF TITLE AGENTS IN COMBATING MORTGAGE FRAUD SCHEMES

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

DIVISION OF INSURANCE FRAUD

200 E. Gaines Street
Tallahassee, FL 32399-0323



Don't put your reputation, career and freedom at risk. Instead, be part of the solution and report suspected mortgage fraud to the DFS Fraud Hotline 1-800-378-0445 or on the web at <https://secure.flds.com/fraud>



DFS Fraud Hotline
1-800-378-0445
www.MyFloridaCFO.com



ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

Florida Department of Financial Services



WHERE DOES MORTGAGE FRAUD OCCUR?

Mortgage fraud knows no boundaries; it occurs in the smallest neighborhoods and in the most affluent gated communities.

HOW CAN TITLE AGENTS HELP COMBAT MORTGAGE FRAUD?

Title agents play an important role in the real estate transaction. They are entrusted with a fiduciary responsibility to close real estate transactions and disperse funds in accordance with Florida Statute 626.8473.

Title agents can be a first-line defense against mortgage fraud by reporting suspicious real estate transactions such as:

- Illegal property flipping
- Real Estate Appraisal Fraud
- Illegal Straw Buyers
- Suspected identity theft
- Silent seconds
- Foreclosure bailout schemes
- Reverse mortgage scams

WHAT IS MORTGAGE FRAUD?

Under Florida's mortgage fraud law, (FS 817.545) the crime is defined, in part, as a material misstatement, misrepresentation or omission relied upon by a lender, borrower or anyone involved in the mortgage lending process to fund, purchase or insure a loan.

Mortgage fraud occurs when a consumer or mortgage industry professional provides or intentionally uses incorrect information that is relied upon by an underwriter or lender to cause them to fund, purchase or insure a mortgage loan which they otherwise would not have approved. The intentional omission of certain information, such as the borrower's self employment status or true source of funds used for the down payment, earnest money deposit and/or buyer's closing funds, can also be considered an act of mortgage fraud. Mortgage fraud may occur with or without the knowledge or active participation of the borrower.

HOW DOES MORTGAGE FRAUD AFFECT OUR COMMUNITIES?

Mortgage fraud can have many adverse consequences for both the consumer and the community. Specifically, mortgage fraud can result in:

- Unrealistically inflated property values
- Higher interest rates
- Identity theft
- Compromised credit ratings
- Higher property taxes
- Defaulted loans and foreclosed properties resulting in the inability to sell a home due to factors such as lower property values and deterioration of neighborhoods caused by increased crime and abandonment of nearby properties

