



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

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INSERT: Letter from the President

Why Affinity for Your E&O?

Title Industry Legislation: The Old and the New

■ by James C. Russick, Esq.

Two years ago, the Florida Legislature mandated that all contracts for the sale of residential property must include information about the windstorm mitigation rating of the structure. The effective date for this legislation was set at January 1, 2011 to give regulators the time to promulgate the necessary rules and forms.

This appeared to be good public policy at the time, but when the responsible agency was unable to timely perform its task, it became urgent that implementation be delayed or repealed because we would have had a situation where no real estate contract for improved property could be enforced. The devastating effect on real estate sales and the Florida economy was obvious.

The Legislature unanimously passed House Bill 545 during the 2010 regular legislative session that would have repealed these requirements. Inexplicably, the Governor vetoed this second bill. The Florida Land Title Association (FLTA), the Florida Association of Realtors, and the RPPTL Section of the Bar worked together to solve this problem by strongly supporting a veto override of the bill that would have repealed these requirements.

The Florida Legislature will not convene until March for 2011, but we have spent an extraordinary amount of time preparing for the upcoming session. There remains significant unfinished business in the face of ongoing challenges.

Last year, a bill was filed for the third year in a row by Senator Mike Bennett (R-Sarasota) that would have destroyed the promulgated rate system, redefined "premium" to mean only the funds received by an insurer, and overturn the economic loss rule by providing treble damages for the negligent issuance of any policy. This bill, if passed, would have devastated thousands of small businesses and created even more turmoil in an already volatile real estate marketplace.

The response was a bill to implement the recommendations of the Title Insurance Study Advisory Council. It was a voluminous bill that would have created a new chapter to the statutes for title insurance only. That bill has been revamped for the coming year.



Our bill this year will be significantly smaller in size yet preserve most of the legislative recommendations of the Title Insurance Study Advisory Council. Central to this legislation is the preservation of the rating system. This is essential for the protection of the public by maintaining the industry's ability to pay claims and to deliver our product and services statewide through the title agent delivery system. A pivotal piece to this proposed legislation is a prohibition on premium rebating while preserving the consumer's ability to negotiate the fee for all ancillary escrow and closing services. The one major change from last year's bill, and the key to reducing its intimidating size, was

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Powers of Attorney - to accept or not to accept, that is the question!

■ By *Wilhelmina Kightlinger, Esq.*

One of the most common questions that we receive on a daily basis is whether a power of attorney can be used for a party in a transaction. There are different types of powers of attorney. A General Power of Attorney grants to the attorney-in-fact powers regarding any property which the principal owns at the time of the grant of the power of attorney. A Special Power of Attorney grants to the attorney-in-fact powers for a particular transaction. A Durable Power of Attorney can be a general or special power of attorney and allows the attorney-in-fact to act on behalf of the principal even if the principal is incapacitated. A Military Power of attorney can be a general or special power of attorney and is used for military personnel only.

Many of the power of attorney forms that you receive from your customers and clients are from online sources, office supply companies, or prepared out-of-state. Regardless of where the power of attorney was prepared, executed, or its source, the general rule of law is that the location of the real property governs the validity of the power of attorney to convey an interest in real property. See *Callwood v. The Virgin Islands Nat'l Bank*, 221 F.2d 770 (3rd Cir. Ct. App. 1955). Thus, in order for the power of attorney to be used to convey or mortgage Florida real property the power of attorney must comply with Florida law. The authority granted to the attorney-in-fact must be clearly and plainly stated in the power of attorney. See Title Standard 1.3. In order to be used for the sale of real property and the execution of a deed, the power of attorney must contain the power to "sell and convey" the real property; the power "to sell" alone is not sufficient since courts have interpreted that phrase to mean that the attorney-in-fact only has the power to negotiate and execute a contract to sell the real property. The power of attorney does not have to specifically describe the land unless it is a

Special Power of Attorney. In order to rely on a power of attorney to mortgage real property, the power of attorney must authorize the attorney-in-fact to mortgage real property.

One of the most common problems which renders powers of attorney unacceptable is the manner in which the power of attorney is executed. Florida law requires that a power of attorney to convey real property must be executed with the same formality as a deed – two witnesses and a notary acknowledgment are required. *Fla. Stat. Sec. 709.015(2)*. To mortgage real property, the power of attorney must be executed with the same formality of a mortgage – a notary is required, but not two witnesses. However, under *Florida Statutes Section 689.111*, a power of attorney used for a mortgage of homestead property must be executed with the same formality as a deed; two witnesses and a notary are required. A Durable Power of Attorney must always be executed with the same formality as a deed – two witnesses and a notary acknowledgment, even if the Durable Power of Attorney is being used for a mortgage of non-homestead real property. *Fla. Stat. Sec. 709.08(1)*. These requirements apply regardless of where the power of attorney was executed or prepared – if the real property is in Florida, Florida law governs the conveyance or encumbrance of the real property. A Military Power of Attorney is a special exception since it is governed by Federal law which exempts a proper Military Power of Attorney from certain requirements under State law. However, a Military Power of Attorney must contain the same clear authority to sell and convey or mortgage the real property and must be recorded with the deed or mortgage to be insured. Just because the principal who executed a power of attorney is in the military does not make it a Military Power of Attorney. In order to be a Military Power



of Attorney, the document and its execution and acknowledgment must comply with 10 U.S.C., Sec. 1044. Please contact underwriting if you are asked to accept a document presented as a military power of attorney.

To execute a deed or mortgage, the attorney-in-fact must write the name of the principal and then sign his or her name as attorney-in-fact. Under Title Standard 1.2, the name of the principal can be written, printed, or typed. The original power of attorney must be recorded with the deed or mortgage executed by the attorney-in-fact. Because a power of attorney can be revoked, may terminate in accordance with its terms, or the principal may die or be deemed incompetent, you must obtain an affidavit from the attorney-in-fact stating that the principal is not deceased, has not been adjudicated incompetent or incapacitated, that the power of attorney has not been revoked, and a petition to determine the incapacity of or to appoint a guardian for the principal is not pending.

Personal execution of documents by the proper parties is preferred; the use of a power of attorney should be an exception and not the general rule. A power of attorney should not be used to close a transaction simply because it is inconvenient for the individual to sign the documents or attend the closing. A power of attorney cannot be used to convey or mortgage property to or in favor of the attorney-in-fact. Please contact underwriting if you have any questions regarding the use or acceptance of a power of attorney.



Class Action Litigation

■ *Dan Wold, SVP, General Counsel & Secretary
Old Republic Title, Minneapolis*

National title underwriters, including ORNTIC, have become involved in class action litigation in several states regarding alleged overcharges of recording fees. These cases can be very expensive and time-consuming for the underwriters and their agents. Both the underwriter and its agents may be required to respond to discovery inquiries, including testifying at depositions and responding in writing to questions about how recording fees are calculated and charged. Cases can take years to settle or otherwise come to a conclusion. Either the underwriter and or its agents can be found liable to class plaintiffs for recording fee overcharges. In order to minimize risk of loss due to claims and litigation based on allegations that incorrect recording fees were charged, we should be careful to:



- stay informed about current recording fees and recorders' office requirements;
- be careful to correctly calculate the recording fees on each transaction;
- if the circumstance arises where a mistake is made or about to be made, correct that mistake as soon as it is discovered, and if an overcharge has occurred, refund that overcharge to the consumer as soon as is possible; and
- train all of your closers to observe these guidelines.

ORT Holiday Schedule for 2011

New Year's Day	Friday, December 31, 2010
Memorial Day	Monday, May 30, 2011
Independence Day	Monday, July 4, 2011
Labor Day	Monday, September 5, 2011
Thanksgiving	Thursday, November 24, 2011
Day After Thanksgiving	Friday, November 25, 2011
Christmas	Monday, December 26, 2011

Title Industry Legislation: The Old and the New

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the abandonment of the idea to create a separate chapter of the code for title insurance.

Old Republic Title continues to be the title agent's advocate and a strong voice for the title insurance industry. We recognize it as our obligation to trumpet the role we all play in the economic well-being of Floridians. We are joined in this effort and enjoy the extraordinary support of the Florida Land Title Association (FLTA) and the Real Property, Probate and Trust Law (RPPTL) Section of the Florida Bar. We encourage your membership and involvement in these organizations and thank you for your continued support.

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

■ By Carolyn Broadwater, Florida State Counsel

Question: I've heard that some underwriters will insure sales out of receivers appointed in foreclosures and other underwriters prohibit it. Does Old Republic allow us to insure these transactions?

Answer: Old Republic will allow the insurance of sales out of receivers only with prior underwriting approval. We have specific requirements that must be met and receivership sales are analyzed on a case by case basis.



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

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Dear Friends:

It is that time again, when along with holiday cheer, time with friends and family, and bedecked trees and lamplights, I find myself contemplating the year that has passed and the one yet to come. There can be no doubt that these past several years have been difficult ones in many regards. Economic hardships have challenged families and businesses, forcing many to confront the loss of stability, work and even their homes. Worries of the unknown have had an astonishing effect upon even the most confident of persons, leaving many to wonder what they can rely on.

As a firm believer in the power of positive thinking, I cannot discount the fact that often good is born of hardship. The recent recession is no exception. We have watched in the papers, on television and in the lives of friends, as individuals have learned to live with less; as the entrepreneurial spirit has soared with new passions and careers being explored; as individuals wanting to give back to their communities have created a surge in volunteerism; and as families have become even more closely knit, renewing ties and the faith that collectively we are stronger than alone. What does this mean? That maybe the newest model car or gadget isn't necessary to our happiness. That to live in pursuit of our dreams is perhaps better than to live with too many "what ifs". That there is much to be learned from the age-old sayings that to give means to receive and that family is truly where the heart is.

In looking toward 2011, I am confident in our ability to persevere despite economic uncertainties. By utilizing a conservative business approach, Old Republic Title has been able to weather economic hardships in the past and will continue to do so in the future. We pass this unwavering strength and stability on to our customers through our century-plus commitment to doing business with integrity, by always standing behind our claims, and through unparalleled support to our agents and operations. It is no small wonder that since 1992, we have held the distinction of being the highest rated title insurer in the nation.

On behalf of the directors and executives at Old Republic Title, I'd like to thank you, our hardworking and loyal employees and agents, for your continuing dedication to the Company. Without your commitment and enthusiasm, Old Republic Title would not be the industry leader that it is.

Thank you for another great year! May your holidays be rich with family, friends and cheer, and may the New Year bring you health, happiness and continued success in all your endeavors.

Sincerely Yours,



Mark Bilbrey

President, Old Republic Title Insurance Group



Why Affinity For Your E&O?

Why Affinity for Your Professional Liability (E&O) Insurance?

When it comes to purchasing your E&O Insurance, Assistance from a knowledgeable and experienced insurance specialist has never been more important than it is today.

The Affinity team has more than a century of experience and is uniquely qualified to assist you in securing the coverage that fits your individual needs. Most insurance agents offer E&O insurance as an ancillary product to other insurance coverage and have to go to “brokers” who in turn go to the underwriting company to secure a quote. For the Title community we have the in-office facility to quote, bind and issue a quality product underwritten by an “A: XIV” carrier.

For your perusal here are some of our policy highlights:

- Limits from \$250,000 to \$1,000,000
- Deductibles starting at \$2,500
- Prior Acts/Retroactive Coverage (matching current policy date)
- First Dollar Defense Coverage
- Quotes within a week (sooner if needed)

If your current policy renews within the next 60 days you can download our E&O application at www.titleagenteando.net. Complete and e-mail or fax it back together with a copy of your current policy dec page and we will start our quotation process.

For Attorneys and Law Firms we have direct access to multiple carriers that cover all areas of practice, including those areas considered “*Hard to Place*” such as, Real Estate, Intellectual Property, Collections, claims history and disciplinary actions. As each attorney and law firm can be so different we ask that you call us. The answers to a few questions will determine which application will best suit your needs.

We look forward to working with you.

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