

Q & A CORNER

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OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

National Update

■ *Scott Pierce, Southeast Regional Manager*

The recent RESPRO conference in Washington, D.C. provided insight into how the Federal Government and states intend to regulate the title industry.

Representative Oxley, Chairman of the House Financial Services Committee, has asked the Government Accounting Office (GAO) to prepare a report on the title industry, focusing on what he believes to be anti-competitive practices due to the fact that: 1) Much of the industry premium is written by three large underwriter families, and 2) Realtors, mortgage brokers and builders actually choose the agent/underwriter that will issue the policy instead of the consumer that ends up paying for it. Additionally, the GAO will look at pricing structures in the title industry. Although the full report is due out this fall, a preliminary report is expected to be available at the end of April.

Erin Toll, Deputy Insurance Commissioner of Colorado who also chairs the



Title Insurance Working Group at the NAIC, and Ivy Jackson, head of RESPA enforcement at HUD, also spoke. There was an overall opinion expressed that due to recent scandals, such as the captive reinsurance agreements entered into by a number of underwriters in various states along with Realtors, builders and lenders (Old Republic Title did not have any such arrangements) and the sham affiliated

business agencies set up by underwriters and agents, that the premiums must be too high to allow for such "kickback schemes," in the words of those above.

In addition to captive reinsurance agreements and sham AfBA's, Toll and Jackson cited other examples of kickbacks and malfeasance in the industry such as:

- Policies that were not issued to the consumer for over three years
- Not recording documents for months after the closing
- Incorrect HUD-1's which violates Section 4 of RESPA
- Exorbitant fees paid to Realtors for rental of conference rooms
- Free printing of brochures for Realtors
- Free trips offered to Realtors & Builders

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State Regulatory Update

■ James C. Russick, Florida State Counsel

In the last issue of *In the Title Corner*, we headlined the pending threat of rate regulation based on a grossly inadequate “Final Data Call.” The Florida Office of Insurance Regulation had demanded from only the title insurance underwriters five years worth of data from all states in which we do business. No title agency data was solicited, notwithstanding the statutory mandate within *Section 627.782, F.S.* to set a rate sufficient “(b) . . . to allow title insurers, agents, and agencies to earn a rate of return on their capital that will attract and retain adequate capital investment in the title insurance business and maintain an efficient title insurance delivery system.”

Old Republic National Title Insurance Company responded to the data call by the December 31, 2005 deadline; however we did so with numerous specific objections and caveats. Shortly thereafter, the Fund filed suit against OIR. The Florida Land Title Association intervened in that litigation on behalf of the

plaintiff shortly thereafter.

In addition to the litigation, Old Republic National Title Insurance Company received copies of many letters that our agents sent to OIR pointedly setting forth our objections to the data call, particularly the failure of OIR to solicit title agency data. We thank each and every one of you who participated in the process for your critically important input.

We are pleased to report that the litigation has been withdrawn without prejudice. In other words, it may be refiled should there be a necessity to do so. But while the immediate threat has passed, we must remain vigilant. Rate review is not over. It is only beginning, and we know, based on recent discussions with officials with the regulator, that there remains a significant process before us, one that may take as long as three years. During this time, we have been encouraged to communicate with OIR, and we have been told that the data call to which we responded was not



“final.” Accordingly, each agent can anticipate the likelihood of a data call within the reasonably near future.

Old Republic National Title Insurance Company is currently working legislatively to put the necessary funding in the budget to fund a proper, professional data call. It is our belief that the title insurance industry will be better served in this way.

We will continue to be vigilant in our efforts to promote and maintain the title insurance industry, and particularly the role of the independent title agent. We thank you for your continued support of Old Republic National Title Insurance Company.

National Update *continued from page 1*

As such, Toll is working on rather stringent regulation in Colorado that she believes may be looked at by the NAIC as a model for the rest of the industry. Toll said that the perception from the regulators and the public is that title insurance offers no real value, is overpriced and is not a competitive industry. The “lack of value” perception stems from our loss ratios, which average

around 5%, where other industries such as homeowners insurance are 75%, auto insurance 60% and HMO’s pay out 86%. She acknowledged that most of our expense goes to minimizing losses through search and examination and closing the transaction, hence the low ratio; however, most regulators and consumers do not understand our industry. She cited an interesting statistic that

over a lifetime, an average consumer will spend over \$100,000 on health insurance, \$40,000 on auto insurance and only \$6,000 on title insurance, closing on only 6 homes, not including refinances.

All agreed that there is certainly a publicity and knowledge gap to be filled. We will keep you updated as this develops.

Florida Forms 9, 9.1 and 9.2

■ Suzanne M. Barry, Florida State Counsel

While the Florida Form 9 is regularly offered to lenders when issuing a mortgagee policy, agents are missing an excellent opportunity if they do not also routinely offer the Florida Form 9.1 or 9.2 to purchasers when issuing an owner's policy. When discussing the coverage and cost of the endorsements, agents should emphasize to purchasers that the additional coverage available under the Florida Forms 9.1 and 9.2 is significant. The premium for either endorsement is a minimum of 10% of the underlying owner's policy.

The Florida Form 9.1 is available for unimproved property. The Florida Form 9.2 is available for improved property. Both endorsements insure that, unless expressly stated in Schedule B, certain title matters do not exist. Those matters include violations of enforceable covenants, conditions or restrictions, that the restrictions do not provide for easements, assessments or first refusal rights, and that no improvements on adjoining land encroach onto the insured property. Both endorsements also affirmatively insure against damage to buildings as a result of the exercise of the right to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.

The Florida Form 9.2 contains considerable additional coverage for improved property. It provides that, unless excepted on Schedule B of the policy, no existing improvements on the insured property encroach onto the adjoining property or into any easement. Importantly, agents should note that the Form 9.2 may also give affirmative coverage even when certain matters are expressly excepted from coverage under the

policy. Specifically, the Florida Form 9.2 may provide coverage against loss incurred as a result of damage to an existing building encroaching into an easement. It may also insure against any loss suffered as a result of a final order requiring the removal of an encroachment that was listed in Schedule B (other than a fence, landscaping or a driveway) from neighboring property. Further, Form 9.2 may cover loss suffered as a result of an order denying the insured's right to maintain an existing building because of a violation of platted set back requirements, covenants, conditions, or restrictions.

When asked to provide affirmative coverage over a known violation or encroachment, the agent should carefully evaluate the risk involved and the likelihood of a loss. The analysis should include considerations such as how long the encroachment or violation has been in existence, how significant the encroachment or violation is, and the value of the property. Note, however, that even if the determination is made that coverage under a specific paragraph of the endorsement should not be given, the agent may still issue the endorsement. In that instance, a notation deleting the specific coverage should simply be added to Schedule B and the Form 9.1 or 9.2. For example, if a newly constructed house encroaches onto the neighbor's parcel, the encroachment must be expressly excepted in Schedule B and the following language should also be added to the exception: *"Coverage under paragraph 3 of the Florida Form 9.2 shall not apply to the previously described encroachment."*



The following notation may also be added to the bottom of the endorsement: *"Any deletions from the coverage provided under this endorsement appear in Schedule B of the policy."* By doing so, the owner is made aware of modifications to the coverage provided in the endorsement and directed to where those modifications may be found.

As always, if you have any questions, please feel free to contact the Underwriting Department at (800) 342-5957.

COMMENTS:

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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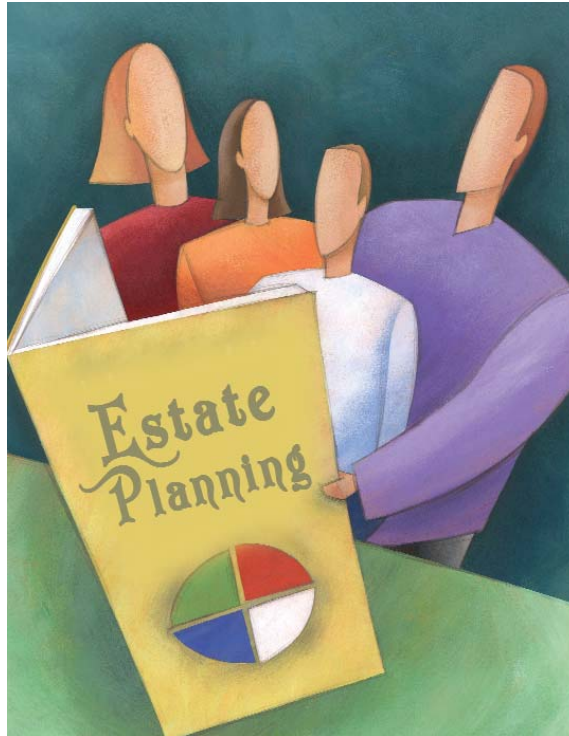
Enhanced Life Estates Deed Growing in Popularity

■ *Suzanne M. Barry, Florida State Counsel*

I have heard of enhanced life estate deeds, also referred to as “Lady Bird” deeds, but I have not seen one. What is the difference between an “enhanced” life estate deed and a “plain” life estate? What should I look for? Can we insure a deed from just the holder of that enhanced life estate?

Life estate deeds are a means of estate planning. Most commonly, the grantor conveys the property to the grantee and retains a life estate. The grantee then has a vested remainder interest in the property subject to the grantor’s life estate interest. Parents often utilize a life estate deed to convey the property to their children but retain a life estate in them. This method allows the parents to have possession of the property during their lifetime, and also for the property to pass to their children by operation of law without having to file a probate upon the parents’ death. However, the parents’ power over the property is substantially limited. The parents can no longer sell or refinance the property without their children assenting and joining in the conveyance or mortgage. Further, the parents may be liable to their children for any action the parents take which reduces the value of the property. Needless to say, this was not a perfect scenario.

Enhanced life estate deeds have emerged to deal with these limitations and, as such, are growing in popularity. These deeds contain additional language which



specifies the rights that the life tenant retains in the property following the conveyance. Since those retained rights can vary, it is very important for the agent to carefully review the language of these deeds to determine the powers of the life tenant. For example, the language contained in the granting clause of an enhanced life estate deed may read as follows:

Adam Smith, an unmarried widower, grantor to Adam Smith for a life estate, without any liability for waste, with full power and authority in said life tenant to sell, convey, mortgage, lease, or otherwise dispose of the property described herein, in fee simple, with or without consideration, without joinder

of the remainderman, and with full power and authority to retain any and all proceeds generated thereby, and upon the death of the life tenant, the remainder, if any, to Barry Smith, a single man, and Clara Smith, a single woman, as grantees.

In this “enhanced” life estate deed, just as in a “plain” life estate deed, Barry Smith and Clara Smith are vested with a remainder interest in the property subject to Adam Smith’s life estate interest. However, in the “enhanced” life estate deed, Adam has also retained considerable control over the future disposition of the property. Adam may still sell or mortgage the property without joinder on the deed by Barry and Clara. Pursuant to the

language in the deed, Adam may also retain all of the proceeds from a sale. Barry and Clara have not been granted an interest in any portion of the proceeds. Further, if Adam sells the property, Barry’s and Clara’s remainder interest is simply terminated. In essence, Adam still has many of the powers that he had as a fee simple owner. Additionally, Adam may also still claim the homestead tax exemption.

Unlike a fee owner, Adam can no longer dictate how the property will be disposed of after his death. Since Adam is not married and assuming he did not have any minor children, then upon Adam’s demise, Barry and Clara have fee simple title and can mortgage or convey the property without the need to probate Adam’s estate.

Enhanced Life Estates Deed Growing in Popularity *continued from page 4—*

However, it is important to recognize that if Adam had been married or had a minor child, then the conveyance to Barry and Clara may be deemed to violate the provisions contained in the Florida Constitution which prohibit the devise of homestead property to a third party if the decedent is survived by a spouse or minor child. Further, *Sec. 732.401, F.S.*, provides that if the decedent is survived by a spouse and lineal descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the lineal descendants in being at the time of the decedent's death. Therefore, if Adam had been married at the time of his death, it would be necessary for Adam's wife and his lineal descendants, if any, to join on a conveyance or mortgage by Barry and Clara.


Since an enhanced life estate deed provides a means to avoid probate while allowing the enhanced life tenant to retain substantial control of the property, it will likely be utilized more in the future. When insuring a deed into an enhanced life tenant and the remainderpersons, the commitment and policy should reflect the insureds as "Adam Smith, Barry Smith, and Clara Smith as their interest may appear." The policy should also contain an exception for the terms and conditions of the deed.

When insuring a conveyance from an enhanced life tenant, it is Old Republic's position that if, after careful review, the agent determines that the enhanced life tenant has retained the absolute power to convey or mortgage the property and confirmed that there are no

homestead issues, then an owner's or lender's policy insuring the title to the property conveyed by the enhanced life tenant to the purchaser without joinder by the remainderpersons may be issued without exception for the remainderperson's interest.

However, when issuing a lender's policy insuring a mortgage given by the enhanced life tenant, it is necessary that the remainderpersons also join on the mortgage. In addition, a search must also be performed and any judgments or liens against the remainderpersons must be satisfied or shown as an exception on the policy.

As always, if you have any questions, please feel free to contact the Underwriting Department at (800)228-0555.



Baby Boom!

Chris Pedersen, Title Plant Production Manager for the Orlando Title Plant of Central Florida, and his wife, Kimberly, are the proud parents of a second child, a baby girl that they've named Taylor Anne. Taylor arrived on March 2, 2006 and weighed 7 lbs. 15 oz. Mom and baby are both doing very well, and Chris and baby brother Quinton couldn't be more excited. Mom thinks she already looks like Daddy when he's working on underwriting files.

All of us at Old Republic wish Chris and Kimberly sincere congratulations!



Ask Your Underwriter

■ Linda M. Hernandez, Florida State Underwriter

Question: Which NEW issues are covered by the Second Revised Treaty?

Answer: There are five (5) NEW areas addressed in the Second Revised Mutual Indemnification Treaty recently approved by various underwriters.

1. Lack of recorded death certificate;
2. Lack of evidence of payment of Florida and Federal Estate Taxes;
3. Lack of subscribing witnesses to any recorded deed less than five (5) years old;
4. Incomplete or insufficient acknowledgment in any instrument affecting the chain of title by reason of the following defects:
 - a. Failure to include a seal or stamp;
 - b. Failure to state that one or all of the parties appeared before the notary;
 - c. Failure to include an English translation of any portion of the acknowledgment when it is written in another language;
 - d. Lack of authority of notary acknowledging instrument; and
 - e. Failure of the notary to designate whether the party(ies) acknowledging the instrument possessed a statutorily acceptable form of identification or was/were personally known to the notary.
5. Lack of corporate seal, if applicable.

For a review of the parameters of the treaty and other areas where the existing treaties have been expanded, please refer to ORT Bulletin # 06-02.

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