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Old Republic Title – Working for Agents

■ By James C. Russick, Vice President and Florida State Counsel

The 2006 Florida legislative session was one of great interest to Old Republic National Title Insurance Company and its agents. We worked hard on your behalf regarding several issues. They were the notary bill, the premium tax bill, and the title agency data call budget issue.

The first issue was the Notary Bill. You may recall that we repeatedly noticed you that HB567 and SB1312 would have required licensed title agents to maintain a notary journal separately listing each notarial act performed by the notary. We recognized that in a typical closing there would be multiple entries for the deed, two mortgages, the affidavit of no liens, the continuous marriage affidavit and the list expands from there depending on the details of each closing. This would have been a significant additional expense and administrative burden.

Old Republic Title representatives worked hard to defeat this bill, and we would like to thank the many agents who wrote their legislators about the

shortcomings with this proposed legislation. While the bill did pass the House, we were able to include an exemption for all title insurance agents so they would not have to keep the required journals.

The bill, as passed, read in pertinent part, *“117.071 Use of journal for notarial acts.—(1) A notary who is an attorney licensed to practice in this state or who is employed by an attorney licensed to practice in this state is exempt from this requirement. A notary who is employed by a licensed title insurance agency in this state or by a title insurance underwriter authorized to conduct business in this state is exempt from this section.”* Surprisingly, however, the Governor ended up vetoing HB567 on June 22, 2006, so



at this time, no one will need to maintain notary journals.

The next two issues were even more serious as they both relate directly to the review of title insurance rates that began last November. In the last issue of *In the Title Corner*, we reported on the initial rate review workshop and the predisposition of senior officials that title insurance rates were too high in Florida. One of the stated reasons put forth to justify these views was litigation



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filed by several of the Fidelity Title family of insurers, specifically Fidelity National Title, Chicago Title, and Ticor Title (formerly American Pioneer Title) to pay premium taxes on only that portion of the premium actually received by the underwriter. That litigation made OIR's general counsel question whether or not the agent's percentage was actually premium or merely commission and not subject to regulation. The Fidelity companies were not content to merely litigate this issue. Rather, they had HB857 filed on their behalf which, as originally written, would have codified their position, if passed. Old Republic Title worked vigorously against this bill, notwithstanding our short-term financial interests because it was not in the best interests of agents given the views espoused within the Office of Insurance Regulation. In fact, we worked out a compromise with Fidelity representatives that would have resulted in tax relief without the stigma to title agent's premiums; however, the changes could not be fully vetted during the session and the bill was unsuccessful.

But make no mistake. Rate review continues and it is clear that influential people within the Office of Insurance Regulation believe that title insurance rates are too high and, more specifically, that agents are making too much money. These opinions were formulated not based on statistical data obtained from agents, but from their observations of various underwriter abuses around the country. Accordingly, the industry sued OIR to curtail

ratemaking on last year's insufficient data call of insurers only.

Additionally, Old Republic Title sought and received a specific line item in the budget that reads, "From the funds provided in Specific Appropriation 2614, \$150,000 is provided to the Office of Insurance Regulation to gather title insurance data in accordance with section 624.501(27)(e)(2), Florida Statutes. The data shall be collected from licensed agencies, and insurers. The information collected shall be sufficient to give due consideration to the factors set forth in section 627.782, Florida Statutes. To assist with its data collection and analysis, the office shall retain the services of an independent actuary with experience and expertise in the title insurance industry."

At the latest workshop held June 15, 2006, OIR published a proposed data call of both insurers and agents that is directly related to these efforts. It is the necessary beginning to

rational and professional rate review that is removed from inappropriate political motivations. You should anticipate hearing much more about this in the coming months and years.

While this is the beginning of professionally founded rate making in Florida, it by no means presupposes any particular result. There remain significant threats to Florida title insurance agents. OIR is discussing lowering rates from the agent's portion of the premium. They have indicated a desire to modify the agency/insurer splits by regulation, and OIR will be considering a cap on related title services, which includes the closing fee. In short, there remain significant challenges. Throughout this process, Old Republic Title will continue to represent the best interests of agents, and we welcome your input and encourage your questions during this sensitive time.

Money, Money Everywhere, and Not a Dollar to Spend

Are you burdened with checks that haven't been cashed? Do you have checks payable to someone you can't find? Do you want to get these funds out of your hair so you can finally balance your books?

You can always escheat the funds with the State. Go to <http://www.fltreasurehunt.org> and print out the instructions and forms to complete this process. You'll be glad you did!



Remittances for Second Simultaneous Mortgages

■ *Linda M. Hernandez, Florida State Underwriter*

Our Data Entry Department continues to receive incorrect remittances from many of our agents on "second" simultaneous mortgage transactions. These are the situations where an agent insures a sale and a first and second mortgage. *Florida Administrative Code Rule 690-186.003(5)* states:

When an owner's and mortgagee's policy or policies covering identical land are to be issued simultaneously, the risk premiums applicable for the owner's policy shall be the regular owner's rate as provided for herein. The rate for the mortgage policy or policies so simultaneously issued will be a minimum of \$25.00 for an amount of insurance not in excess of the owner's policy.

It appears that what's happening is this: A lender requests separate HUDs for each of the mortgages; the agent's closing software treats the second mortgage as a separate file, i.e., an "A" file; and the premium is calculated as a separate transaction, rather than as a simultaneous one. This means that the premium for the second mortgage is calculated at the regular rate instead of at the simultaneous rate of \$25.00. Also, if the lender requests a Florida Form 9 on this second mortgage, the agent's closing software calculates the FF 9 based on 10% of the "full rate," that is, on 10% of the non-simultaneous rate, rather



than on 10% of the total of owner's premium + second mortgage simultaneous rate.

Many closing programs allow you to perform both "first" and "second" simultaneous mortgage calculations when calculating the owner's premium by simply inputting SI 1 and SI 2. Nevertheless, if your system does not allow it, you may want to do the calculations by hand.

Be aware of this very important issue when calculating premiums for your closings. The result is not only over-payment to the underwriter, but, more importantly, overcharges to the consumer which must be refunded.

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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For Immediate Release

Title Industry Trade Group Testifies At House Subcommittee Hearing

Washington, D.C., April 26, 2006 – Representatives from the American Land Title Association (ALTA), the national trade association for the land title industry, today appeared before the Subcommittee on Housing and Community Opportunity of the House Committee on Financial Services in a hearing entitled, “Title Insurance: Cost and Competition.” Representing the association was Rande Yeager, president and CEO of Old Republic National Title Insurance Company and current ALTA president.

The hearing followed a request by Committee Chairman Michael Oxley to the U.S. Government Accountability Office (GAO) for a study of the nation’s title insurance marketplace, and the regulation and competitive nature of the title insurance industry.

In his written and oral testimony, Yeager affirmed the industry’s desire to work more closely with the National Association of Insurance Commissioners, state insurance regulators and federal authorities to achieve greater clarity on the rules governing the title insurance industry, and to ensure that those rules are enforced.

“Our members have historically been strong supporters of the principles of the Real Estate Settlement Procedures Act (RESPA), and its objective of ensuring that competition is not skewed by illegal referral fees and other kickback practices,” said Yeager. “Such practices harm companies that are complying with the law because it hinders their ability to compete on a level playing field. We encourage all companies to comply with the letter and the spirit of RESPA, which will greatly benefit our members and our consumer customers.”

RESPA was enacted by Congress in 1974 to, among other things, eliminate kickbacks and referral fees that increase the costs of certain settlement services. RESPA’s provisions are enforced by the Department of Housing and Urban Development (HUD).

In his comments, Yeager pointed to recent regulatory enforcement actions taken against title companies that were the direct result of information provided to regulators by members of the title industry. When companies break the rules, according to Yeager, it puts those who operate within the law at a competitive disadvantage.

“The industry supports changes that will minimize unfair competitive practices by building on the public-private partnership that is already taking place between regulators and members of the title industry,” Yeager said.

To address his industry’s concerns, Yeager laid out a four-part plan:

- 1) Section 8 (anti-kickback provision) of RESPA should provide companies the right to file an action for injunctive relief against competitors that are violating the provision. Yeager stated that companies in the industry are in a position to know when their competitors are engaged in questionable or unlawful practices, and have a strong incentive to stop such practices.
- 2) That HUD respond, within a reasonable timeframe, to requests for guidance on RESPA compliance issues submitted by ALTA and other national trade associations representing settlement service providers. According to Yeager, this will help avoid problems that might not have occurred if such advice had been provided in a timely manner, such as with captive reinsurance last year. To minimize HUD’s workload in this regard, ALTA suggests that opinions might be developed by private counsel and submitted to HUD to either accept or reject. These opinions could be posted on the HUD RESPA Web site to assist anyone seeking HUD’s views on a particular matter.
- 3) States should be encouraged to adopt and enforce actions against the recipients of referral fees by title agents. Frequently, Yeager stated, it is these *recipients* who pressure title companies for referral fees, playing one company against another. Subsequently, companies that refuse to engage in this illegal practice are at a competitive disadvantage. Stronger enforcement on both sides will help to stop these practices, Yeager said.
- 4) Greater emphasis should be placed on consumer education, both directly and through the Internet. ALTA allocates substantial resources to educating its members and, for many years, has been actively engaged in consumer education, according to Yeager, who pointed out that ALTA’s Web site contains clear and helpful information for consumers as well as regulators. ALTA also has developed consumer-directed materials that explain the nature and purpose of title insurance, and actively encourages the distribution of these materials by state regulators and state land title associations. Yeager noted that, while it is likely that consumers will continue to rely on real estate professionals to recommend title insurance and other settlement service providers, ALTA believes that consumers can greatly benefit from this information.

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ABOUT ALTA

The American Land Title Association represents title insurance companies and their agencies nationwide on a variety of industry and legislative issues. Members of the Association search and insure land titles to protect real estate investors including homebuyers and mortgage lenders.

Rande Yeager Testifies for ALTA on Capitol Hill

Those who follow the title insurance industry on a national level know that the industry has recently come under attack from various groups. State insurance administrations, primarily in Colorado and California, along with providers of alternative products, and class action attorneys have placed a spotlight on industry practices nationwide, which has resulted in much more media scrutiny of our industry as well. Recently, the House Financial Services Subcommittee on Housing and Community Opportunity held a fact-finding hearing on the cost and competition of title insurance. This followed an investigation by the Government Accountability Office (GAO) at the request of Committee Chairman Michael Oxley.



Old Republic CEO, Rande Yeager, who currently serves as President of the American Land Title Association (ALTA), was asked to testify at the hearing. Mr. Yeager, as ALTA president, is in the precarious position of having to defend the practices of certain members of ALTA, while personally opposing these business practices. Mr. Yeager is an eloquent speaker and firm believer in the positive role that title insurance plays in today's real estate market. He is also a firm believer in protecting the consumer and ensuring that all participants in the title insurance industry compete on an equal level. His dedication to operating in an equitable and ethical manner resonates throughout Old Republic.

The one thing that is clear from the hearings and media attention is that most people not affiliated with our industry have no idea how it works. They constantly question why property and casualty insurers pay out 80% in claims, while title insurance companies pay out 5%. These critics are comparing apples to oranges and do not understand that the nature of our work is in claims prevention. ALTA estimates that 36% of title files have defects or issues that are cleared prior to closing, thereby preventing future claims.

It is incumbent upon each and every one of us involved in the title insurance industry, whether we are employed by an underwriter or agent, whether we are an attorney or non-attorney, whether we are management or staff, to act as ambassadors of the industry. As ambassadors, we should promote our industry and products through our words and actions. We should educate those unfamiliar with title insurance practices to the best of our ability, but also demonstrate through our actions that we are dedicated to ethical business practices and the protection of the consumer.

Promotion of Underwriting Counsel

On April 12, 2006, the Board of Directors elected James C. Russick as Vice President of Old Republic National Title Insurance Company. He is Florida State Counsel and head of the Underwriting Department for Old Republic's Tampa office.



Jim has been a committed member of the title insurance community, having twice served as a director of the Florida Land Title Association. He is currently a member and past chairman of the Governmental Affairs and Judiciary Committee of the FLTA. He also served as chairman of the Florida Title Underwriters Bureau and was a member of the Department of Insurance Sunset Working Group that revamped the Florida Statutes related to the issuance of title insurance in Florida. Additionally, Jim currently serves on the Forms Committee for the American Land Title Association and is the FLTA Forms Committee Chair.

Jim is a Board Certified Real Estate Attorney, and was recently awarded the Raymond O. Denham Memorial Award for outstanding and unselfish service to the Florida Land Title Association, to the abstract and title professions and to the public. We are very pleased to have Jim on our staff, and wish him sincere congratulations and continued success with the company.

Scott Pierce
Senior Vice President



Ask Your Underwriter

■ Linda M. Hernandez, Florida State Underwriter

Question: Are we required to get homeowner or condo association estoppel letters on residential refinances?

Answer: No, when dealing with refinances of residential (1-4 family) properties, you are not required to obtain estoppel letters from either condominium or homeowner associations.

The reason is simple. As to condominium assessments, we take exception to any losses resulting from the provisions and limitations contained in *Florida Statute 718.116* regarding the “relation back” of liens to the date of filing the declaration of condominium. Consequently, we have no exposure.

As to homeowners associations, there are no statutes creating a “relation back” provision, so the issue of priority is clear: homeowner assessment liens must be recorded and their priority established by the date of recording. When dealing with refinances—first, junior, or equity line mortgages—we do NOT need to obtain estoppels from the homeowners association. Our only exposure is the “gap” and, generally, we have that exposure anyway.

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