

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

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“Do-it-Yourself” Insured Closing Letter Request Program Now Available Via Internet to Florida Agents

Patricia Martin, Agency Administrator

We now have a system available in Florida that allows our agents with access to the World Wide Web to order their own insured closing letters on line. For the past few months, our Tampa office has been inputting ICL requests into an Internet program that is presently used by Old Republic in other states. Once the information is entered on the Internet, our Home Office in Minneapolis transmits the actual insured closing letters to lenders and agents automatically via fax or e-mail 52 minutes of every hour.

Aside from a few occasional delays when the Internet is down, overall we have found the program to be easy to use and believe that after becoming accustomed to using the system, our agents will also find it a useful tool. Agents who need an ICL letter in less than two hours, or those who do not have Internet access may, of course, continue to fax their ICL requests to our Jacksonville or Tampa offices as they have been doing.

The following is a list of instructions to serve as a guide in using the program:

- 1. Log on to the Internet.
2. Type in the address for the insured closing letter program, which is www.oldrepublictitle.com/onlineforms/iclr.htm
3. After the closing letter screen appears, as is shown in the example on page 4, insert your agent number in the first box. If you do not know your agency number, please call Pat Martin or D.J. Richmond at (800) 342-5957.
4. Insert your agent number again in the second box and type after it, without a space, the initials ornt. These initials serve as your authorization code (A99999ornt). Then insert your fax number, name and e-mail address in the appropriate boxes.
5. The next box asks where and how the letter is to be sent. To fax to the lender, just click your mouse on that box. To fax or e-mail yourself a copy, click on the appropriate box and fill in your e-mail or fax number.
6. The next box, entitled “Special Reference Data,” is where you would insert information such as your borrower’s name or property address. You will need to type this information all on one line, without hitting your enter key.
7. For most of you, the letters to type in the next box entitled “Letter Type Code” will always be FLA01. Please Note: For those of you with multiple branch offices that do not have individual agency numbers, please call Pat Martin or D. J. Richmond to obtain the special code number assigned to your offices.
8. Continue to fill in the lender information in the boxes that follow, as shown in the example. The number of characters that can be input

Mechanics Liens 101

■ Carolyn W. Broadwater, Florida State Counsel

Occasionally, we encounter a Notice of Commencement filed prior to closing. What does this mean? It means that subsequently recorded Mechanics Liens have priority over title matters dating back to the recording date of the Notice of Commencement. If no Notice of Commencement is recorded, the Mechanics Lien's priority is the date of its recording. Subcontractors and contractors can, under Florida law, file claims of lien within ninety (90) days after the initial furnishing of the labor, services or materials by the lienor. The only exception to the ninety-day rule occurs when the contractor abandons the job or terminates the contract. In this instance, the Claim of Lien must be filed within ninety (90) days of the contractor's default.

The good news is that no construction lien is enforceable for longer than one year after recording unless, within that time, an action to enforce it has been commenced. There is a method for shortening that time period as well. Pursuant to F.S. Section 713.22, the property owner may record a Notice of Contest of Lien. If the lienor fails to institute a suit to enforce his lien within sixty (60) days following the recording (service) date of the Notice, the lien is automatically extinguished.

The Notice of Commencement may also have a relatively short existence. If you can verify that more than ninety (90) days have elapsed following the furnishing of any materials or work, or that construction was never begun and ninety (90) days have elapsed, a title policy may be issued without

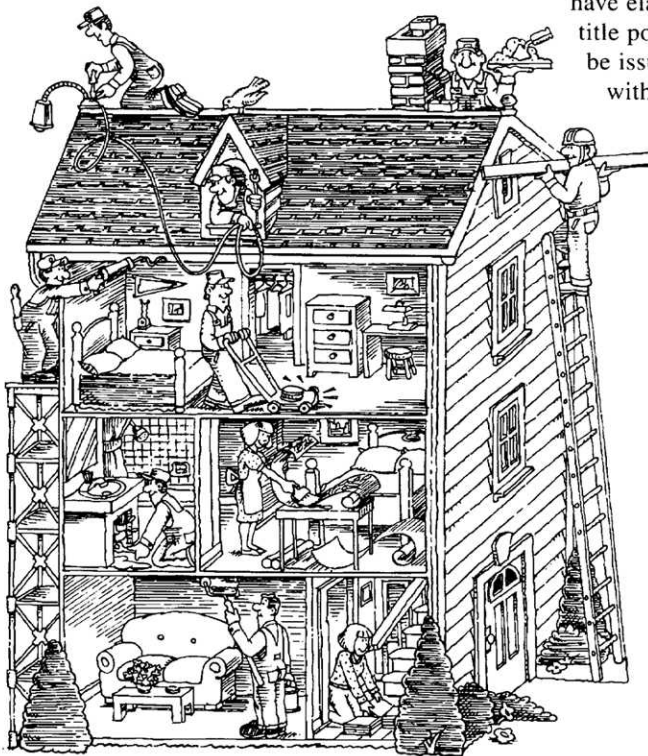
exception for the Notice of Commencement. Please consult Underwriting regarding acceptable proof of such facts.

If construction is in progress, the Notice of Commencement may be extinguished by the proper filing of a Notice of Termination. The Notice of Termination must include a Contractor's Affidavit, which states that the contractor has been paid in full, as have all of the sub-contractors, and that construction has been completed. The Notice of Commencement then expires thirty (30) days after the recording of the Notice of Termination.

In order to insure a mortgage when a Notice of Commencement has been recorded and work has been done within ninety (90) days, the following will be required:

- (1) A Notice of Termination;
- (2) An Owner's Affidavit naming the contractor and all parties giving notice to owner;
- (3) Lien waivers and releases of all liens from any parties who gave notice to the owner or who are listed as unpaid on the contractor's Final Affidavit;
- (4) Contractor's Final Affidavit.

Any Claim of Lien filed against the property may be transferred from the property pursuant to Section 713.24 of the Florida Statutes. This involves depositing money or a bond in the Clerks' office in the amount of the Claim of Lien, plus interest at the legal rate for three years, plus \$1,000.00.





Ask Your Underwriter

■ *Linda M. Hernandez, Florida State Underwriter*

Question

Does the new Privacy of Consumer Information Act require that our customers sign the Disclosure?

Answer

The Act makes no such requirement; however, many of you have decided that you want a signed, dated Disclosure for your file. These may be kept with your file contents for seven years.

Question

It is our understanding that a Power of Attorney has to be executed with the same formality as the instrument for which it is being used. The statutes regarding the recording of mortgages do NOT require witnesses, yet we are being told that we need witnesses on both the Power of Attorney and the Mortgage if the mortgage is on homestead property. Can you explain?



Answer

Yes. Clearly, there are certain contradictions in our laws. On one hand, Florida Statute 709.015 (*Power of attorney; authority of agent when principal listed as missing*) recognizes the general principle that a power of attorney must be executed with the same formality as is required for the instrument to be executed under it. It is also generally held that a mortgage, being only a lien under Florida law, is not a transfer of an interest in real property and, therefore, is not within the scope of Florida Statute 689.01 (*How real estate conveyed*). On the other hand, Florida Statute 689.111 (*Conveyances of homestead; power of*

attorney) provides that "a deed or mortgage of **homestead** realty...may be executed by virtue of a power of attorney **executed in the same manner as a deed.**" How do we reconcile these apparent contradictions? It is our opinion that in Florida, a mortgage of homestead property or a power of attorney given to execute a mortgage covering homestead property shall contain two witnesses. Check our next issue for more information on the different types of Powers of Attorney.



Ask Your Underwriter

COMMENTS:

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
Old Republic National Title
Insurance Co.
100 S. Ashley Drive, Suite 700
Tampa, FL 33602
800-342-5957
Fax: 813-223-3401

Insured Closing Letter Request

FAX: 612-371-1191 Phone: 800-328-4441
Email: ICL@oldrepnatl.com

SAMPLE

Issuing Agent/ Location Data:

Agent ID Code:
Authorization Code:
Agent FAX:
Requested By:
Agent E-mail:

Check for "YES"; Leave Blank for "NO"

E-mail to Lender FAX to Lender
 E-mail Copy to Agent FAX Copy to Agent

Special Reference Data for this Letter Request (if applicable):

Agent Order / File Number: (Required for Pennsylvania Requests)

Lender Information

Letter Type Code: (Required)

Lender Contact:

Lender E-mail:

Lender Name:

Name (cont.):

Street Address:

Address (cont):

City:

State/Province:

Zip/Postal Code:

Phone: (xxx-xxx-xxxx)

FAX: (xxx-xxx-xxxx)

More §1031 Exchange Pitfalls and Problems

■ Michael S. Davis, Florida State Counsel

In our last issue, we discussed problems that can occur when a taxpayer makes personal use of property held for investment or for use in trade or business. Because the relinquished property and replacement property must be held for investment or use in a trade or business, personal use of the property is very limited. In this issue, we will review certain problems that may occur when dealing with mortgages in tax-deferred exchanges.

In some contracts for the sale of the relinquished property, the taxpayer has agreed to take back a mortgage in part payment of the purchase price. Often, this is done to assist the purchaser with the financing of the acquisition property. This purchase money mortgage is part of the proceeds of the sale of the relinquished property, and in order to qualify as part of the deferral under I.R.C. §1031, the mortgage must be payable to the Intermediary. Thus, the proceeds of the sale, cash and mortgage will be held by the Intermediary as exchange proceeds. In order to defer the entire gain on the sale of the taxpayer's relinquished property, one requirement is that the entire proceeds from

that sale be used toward the purchase of the replacement property. This purchase money mortgage is part of the proceeds from the sale; therefore, it must, likewise, be used in the purchase of the replacement property.

The purchase money mortgage held by the Intermediary must be converted to cash or must be used as part of the purchase of the replacement property. This mortgage must either be sold on the open market or must have a short-term payout in order to generate the cash necessary for purchase of the replacement property. Alternatively, the seller of the replacement property must be willing to accept an assignment of the mortgage as part of the purchase price for the replacement property.

If the mortgage held by the Intermediary cannot be used to purchase the replacement property, then it is quite possible that all or a part of the gain the taxpayer sought to defer will not be deferred, but will be recognized.

Mortgages can present other problems in a deferred exchange. If the taxpayer's relinquished property is encumbered by a mortgage, the

replacement property to be acquired by the taxpayer must likewise be encumbered by a mortgage or mortgages in an equal or greater amount. To the extent that a taxpayer does not replace a mortgage, that taxpayer will be said to have incurred debt relief. Thus, if a taxpayer's relinquished property has a mortgage on it of \$200,000.00 and the replacement property acquired by the taxpayer has a mortgage of \$150,000.00, the taxpayer has enjoyed a reduction in his obligations of \$50,000.00. This "debt relief" will cause an equivalent portion of the gain from the sale of the relinquished property to become recognizable at the time of sale, rather than deferred under I.R.C. §1031. In the future, we will continue to cover certain problems that are incurred in a tax-deferred exchange.

Please keep in mind that Old Republic National Title Insurance Company is happy to serve as an Exchange Intermediary. Please contact Michael Davis, Florida State Counsel, email: mdavis@oldrepatl.com or the Underwriting Department at 800/342-5957, for further information.

"Do-it-Yourself" Insured Closing Letter Request Program *continued from page 1*

for the lender's name and address boxes is limited to 30.

9. As long as there have been no changes to your agency name, address or fax number, the "Agent Name & Address Information Change" blocks, which are not shown on the sample, can be left blank. Your agent information will then be pulled from a database at our Home Office at the time you input your agent number at the beginning of the request. If there has been a change, however, and the new information has not been communicated to our Tampa or Jacksonville offices where you

normally order your ICL letters, please proceed to enter it. You will then need to notify the proper ORT office of the change so that we can make the necessary adjustments to the system. Otherwise, the system will revert to the original information unless you insert the new data each time you request a letter.

10. Once all the information has been inserted in the appropriate boxes, page down to the bottom and click once on "Submit Your Request." This action will send your request to our Home Office computer where it will be held in queue and

transmitted within two hours.

After you have submitted your request, a new screen will appear that will allow you to click on "Return to Insured Closing Letter" if you have more letters to do.

PLEASE KEEP IN MIND the importance of carefully inserting the correct information into each block to ensure that your letters will experience no delays or failures in reaching their proper destinations.

We hope you will try out the new ICL Internet system at your earliest convenience. If you have any questions or difficulties in using this new program, please call Pat or D.J.

Underwriting Department Hours, Extensions and Phone Numbers

In our continuing effort to provide our agents with excellent service, we take this opportunity to remind you that your Old Republic National Title Insurance Company Underwriters are in the office and available to answer your questions and address your concerns from 8:30 A.M. to 5:30 P.M. We may be reached through our receptionist or, after hours, through the voice-mail system at 1-800-342-5957 or 813-228-0555. Our extension numbers are provided here for your convenience:

CAROLYN BROADWATEREXT. 203
JIM RUSSICK.....EXT. 222
LINDA HERNANDEZ.....EXT. 224
MIKE DAVIS.....EXT. 219

Below, you will find our cell phone numbers; however please try calling us at the office before calling us direct. If we are not available by cell phone for some reason, our personal voice-mail messages will inform you of that. Otherwise, our cell phones are on from 8:00 A.M. until 6:00 P.M., Monday through Friday, and often at other times as well. If we are not able to answer your call, please leave a message and we will return the call as quickly as possible. Old Republic recognizes that you may have a need for underwriting services at times other than during the usual business hours. We will make ourselves available during those non-business hours as much as possible.

CAROLYN BROADWATER813/503-4087
JIM RUSSICK.....813/335-0306
LINDA HERNANDEZ.....813/220-7585
MIKE DAVIS.....813/765-7331



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Bulk Rate
U.S. Postage
PAID
Tampa, FL
Permit #1648