

In The Title Corner

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OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Ongoing Clarification Efforts With DFS

■ *James C. Russick, Vice President & Florida State Counsel*

Not much time has passed since the October 1, 2007 publication by the Florida Department of Financial Services of their Bulletin DFS-12-2007, but a good deal has happened since then. You will recall from Old Republic Title Bulletin 07-11 that the focus of the DFS Bulletin was on the proper completion of the HUD-1 Settlement Statement.

The DFS Bulletin indicated that there was a required consolidation of items into the settlement or closing fee on line 1101 of the HUD-1. They said, for instance, that "notary fees" from line 1106 should no longer be separately charged. DFS and agent representatives of the Florida Land Title Association (FLTA) have had follow-up discussions, and we have begun to learn the regulator's full interpretation of the new statutory definitions of "closing services" and "primary title services" as defined in Sec. 627.7711, F.S.

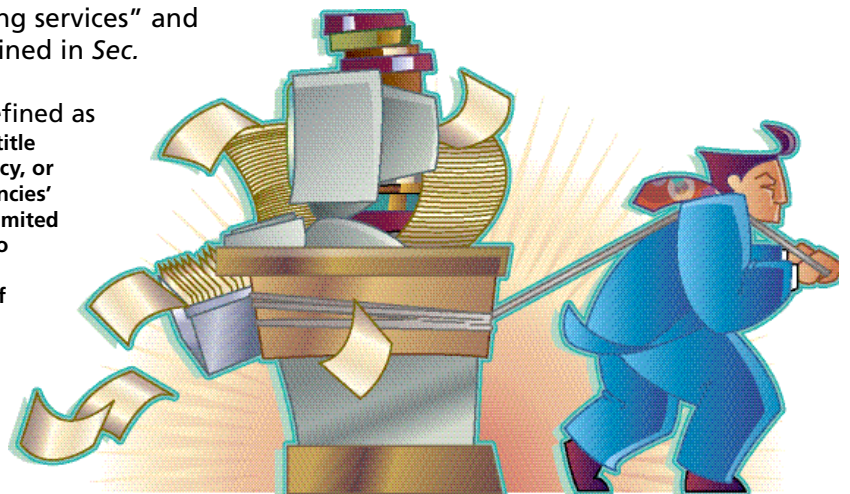
Closing services are now defined as "...services performed by a licensed title insurer, title insurance agent or agency, or attorney agent in the agents' or agencies' capacity as such, including, but not limited to, preparing documents necessary to close the transaction, conducting the closing, or handling the disbursing of funds related to the closing in a real estate closing transaction in which a title insurance commitment or policy is to be issued."

DFS has given this definition a strict interpretation. They have

indicated that in their opinion, it is no longer appropriate for a title insurance agent or agency to separately charge for the variety of fees the industry has been historically charging, such as a "post closing fee," a "notary fee," or a "mortgage processing fee."

The regulator has taken an equally literal interpretation of the new definition of "primary title services" which the statute now states, ". . . means determining insurability in accordance with sound underwriting practices based upon evaluation of a reasonable title search . . . , determination and clearance of underwriting objections and requirements to eliminate risk, preparation and issuance of a title insurance commitment setting forth the

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requirements to insure, and preparation and issuance of the policy." Based upon this definition, DFS has stated that an agent may not separately charge for a "binder fee," "bring down fee," "title update fee," "recertification" or "gap fee."

While not without some controversy, the agent response to this generally in the marketplace has been to increase the "closing fee" to capture the necessary income to generate the product and deliver the services.

What has been more controversial is the DFS position on "third party fees." DFS officials have stated, for instance, that "wire fees" and "express mail fees" must be included within the single "closing fee" set forth on line 1101 of the HUD-1. Arguably, the expressing of documents is part of the agent's responsibility to "conduct the closing." But such a view fails to weigh the nuances of the issue. A closing agent could send a payoff by ordinary mail. The additional interest cost to the consumer would far exceed the cost of sending the payoff by express mail. So what is the proper analysis when the borrower specifically requests the agent to utilize a more expensive and efficient means? This is but one example where there needs to be more discussion.

The FLTA has undertaken to engage DFS in an ongoing dialogue and to seek clarifications on several issues. The FLTA has sent a letter to DFS which reads substantially as follows, to-wit:

"Dear Ms. Chandler and Mr. Wenger:

As you are aware, the Florida Land Title Association (FLTA) is a trade organization which represents thousands of title agents, title underwriters, and their employees doing business in the State of Florida. As the newly installed Chair of the FLTA's Agent's Section, I would like to thank you both for supporting an open dialogue with Florida's title industry.

FLTA recently concluded its annual convention in Bonita Springs. Florida's seventeen major title underwriters and more than one hundred agents were in attendance. A major topic of discussion was House Bill 111 and the Department of Financial Services Informational Memorandum, DFS-12-2007, issued October 1, 2007. During our Agents Section Committee Meeting, it came to light that agents and underwriters across the State differ in their interpretation of HB-111. There are clearly inconsistencies in the allocation of fees among agents on the HUD-1 Settlement Statement. As such, we are requesting a more detailed clarification by the DFS to ensure that all agencies are compliant. I am respectfully submitting the four major areas of concern:

1. The possible difference between DFS interpretations and requirements under the Real Estate Settlement and Procedures Act (RESPA);

2. Different interpretations from OIR for insurers than for agents from DFS;

3. The analysis by DFS that HB-111 limited the labeling on the settlement statement to only four areas: closing fee, premium, title search, and ENDORSEMENTS.

4. Inclusion of the Closing Fee in Federal Truth-In-Lending calculations.

I am enclosing a copy of the memorandum issued by the law firm Ryberg and Smith, dated

November 19, 2007, which outlines more specifically some of the RESPA analysis so that you can better understand our concerns.

The FLTA Board is most appreciative for the continued dialogue with you. Our goal is to create a uniform understanding of HB-111, which is compliant with DFS and RESPA regulation. It is in the best interest of the Consumer to ensure that all title agencies throughout Florida are accurately representing their fees on the HUD as prescribed by the Department. I look forward to speaking with you in the future on these matters."

Clearly, these issues are in a state of flux which raises the question as to your current proper practice. Old Republic Title recommends that you aggregate expenses into a single closing fee to the extent reasonably possible. There is no legitimate argument that a "binder fee," for instance, is a legitimate charge. It is part of the premium. Equally, a "mortgage processing fee" would properly be part of your closing fee regardless of the additional work to closing a lender-funded sale versus a cash sale. You may disclose the separate acts that define the higher, aggregate closing fee either on the face of the HUD-1 or on a separate sheet to help you explain your total charge. This will make you compliant with both state and federal guidelines. Regarding necessary third party fees, we recommend that you aggregate where possible, and be prepared to adjust upon further regulator clarification.

We will keep you posted with developments as they occur.

Re-Assessing Homeowner Association Assessments...

■ *Jeanne F. Murphy, Florida State Counsel*

Some significant revisions were recently made to *Chapter 720, F.S.*, dealing with the payment of assessments for homeowner association fees and the liens for said assessments. Specifically, *Section 720.3085* was added and includes the following under subsection (2):

“(2) A parcel owner is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the present parcel owner may have to recover any amounts paid by the present owner from the previous owner.”

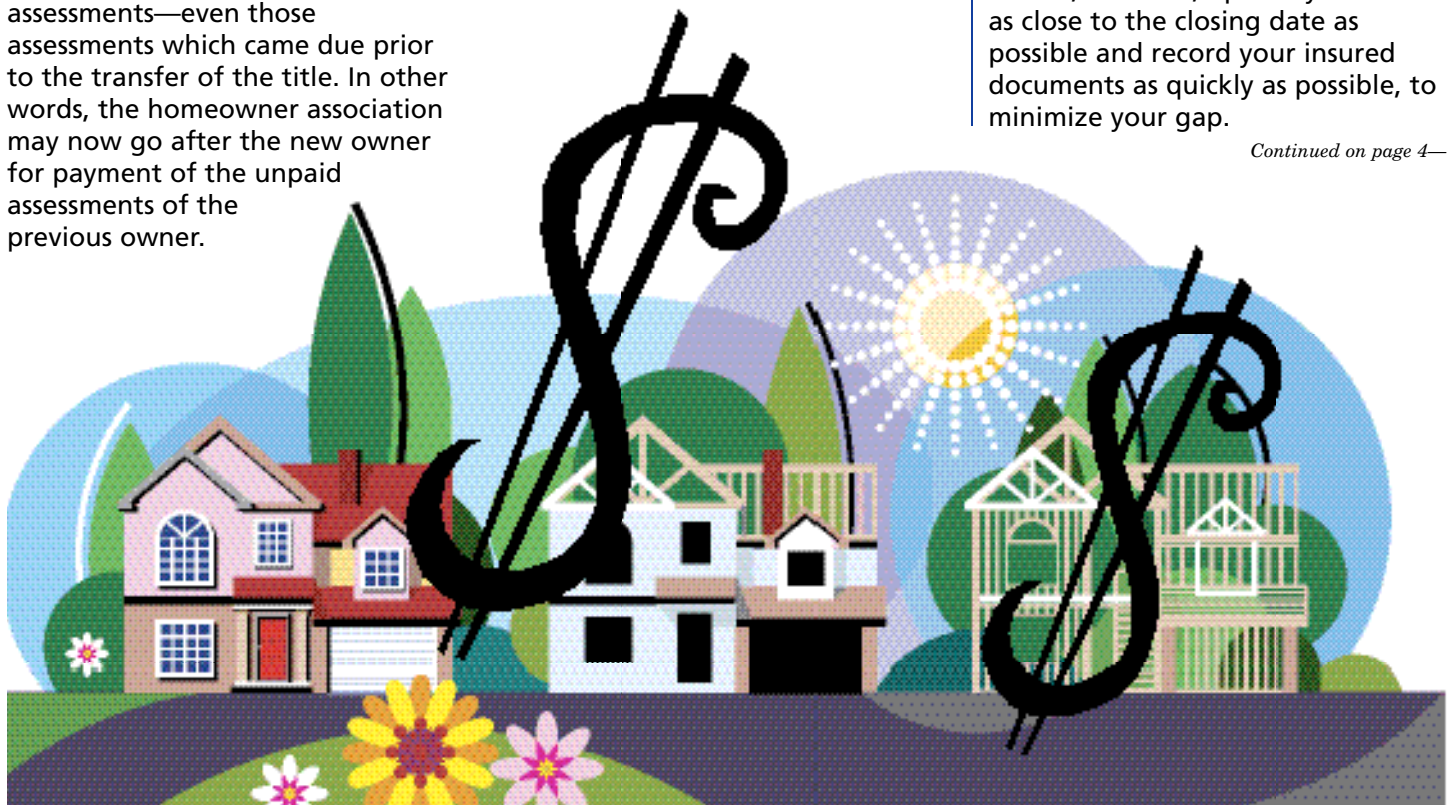
Therefore, under the new statute, all parcel owners, *including lenders who purchase the property at a foreclosure sale*, will be jointly and severally liable with the previous parcel owner for all unpaid assessments—even those assessments which came due prior to the transfer of the title. In other words, the homeowner association may now go after the new owner for payment of the unpaid assessments of the previous owner.

The new provision does not affect the priority of homeowner assessment liens. They still must be recorded and their priority is established on the date of recording. However, due to the new “joint and several liability,” several trial courts in Florida have interpreted the new statute as giving homeowner association assessments a unique status even in relation to mortgages or ownership interests that have priority. Specifically, these trial courts have not allowed a foreclosing lender to foreclose out any rights the homeowner association has under the new statute to go after said lender for the payment of outstanding assessments. This is true, notwithstanding that there is no lien filed by the homeowners association

or that the lien is filed subsequent to the mortgage. The significance of this for title insurance underwriters and policy issuing agents is that, at least for now, if you have a homeowner association lien in your search, you will have to require it to be released even if the homeowner association lien was filed *after* the mortgage that was foreclosed and the homeowner’s association was named and served as a defendant in the foreclosure suit.

Nevertheless, our *underwriting* guidelines for residential refinances have not changed. As long as your search does not show a recorded homeowner association lien, you still do not need to obtain an estoppel letter from the homeowner’s association. You should, however, update your title as close to the closing date as possible and record your insured documents as quickly as possible, to minimize your gap.

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That said, we want to caution you to continue to review your loan closing instructions. It is likely that this new legislation will prompt lenders to start requiring closing agents to confirm that there are no outstanding homeowner association assessments due. If this requirement does appear in your loan closing instructions, then you must obtain a written estoppel from the homeowner's association and pay any outstanding or delinquent amounts.

Due to the fact that purchase and sale contracts generally require prorations of the homeowner association assessments, estoppel letters have always been required in residential sales transactions. The new legislation obviously does not change this and, in fact, loan closing instructions may also be revised to add this as a requirement. Additionally, although unpaid homeowner association assessments do not trigger coverage under the title insurance policy unless a lien is recorded, closing agents may find themselves in the middle of a dispute if the purchaser discovers *after* the closing that he/she is responsible for unpaid assessments which were due *prior* to the closing. Accordingly, in a residential sales transaction, you should obtain an estoppel letter from the homeowner's association and follow the terms of the purchase and sale contract for payment of any outstanding assessments. If, for some reason, the purchaser and/or lender is going to take title subject to the outstanding assessments, make sure you have something signed by the buyer and/or lender acknowledging that there are

outstanding homeowner association assessments due.

You should also be aware of the new *Section 720.3085 (4)*, which does not allow a homeowner's association to file a claim of lien for unpaid assessments unless a written notice or demand for past due assessments (and any other amounts owed) has been made by the association. It also provides that the owner has 45 days to make payment, so a foreclosure action to foreclose a lien for delinquent assessments may not be brought until the 45 days have expired. *Section 720.3085 (4)* reads as follows:

(4) A homeowners' association may not file a claim of lien against a parcel for unpaid assessments unless a written notice or demand for past due assessments as well as any other amounts owed to the association pursuant to its governing documents has been made by the association.

The written notice or demand must:

(a) Provide the owner with 45 days to make payment for all amounts due, including, but not limited to, any attorney's fees and actual costs associated with the preparation and delivery of the written demand.

(b) Be sent by registered or certified mail, return receipt requested, and by first-class United States mail to the parcel owner at his or her last address as reflected in the records of the association, if the address is within the United States, and to the parcel owner subject to the demand at the address of the parcel if the owner's address as reflected in the records of the association is not the parcel address. If the address reflected in the records is outside the United States, then

sending the notice to that address and to the parcel address by first-class United States mail is sufficient.

Notwithstanding this provision, we will not ignore a recorded claim of lien even if the owner can prove that the homeowner's association did not comply with the terms of the new statute. It will still be necessary for the owner to obtain a release of the lien.

There may be some constitutional challenges to this new statute, and it is our understanding that there may be a lender's bill to amend it, so stay tuned. If you have any questions regarding the foregoing, please do not hesitate to call the Underwriting Department.

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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“Phishing” for Escrow Money

■ *Laura M. Licastro, Associate Florida Underwriting Counsel*

The increasing popularity of online banking has provided criminals with new opportunities to trick unsuspecting people into giving out private information, thereby allowing the perpetrator access to bank account or other financial information. A title agent’s escrow account can be particularly vulnerable due to the large sums of money that flow in and out each day. One class of techniques used by criminals to obtain access to a bank account over the internet is known as “phishing.” The purpose of this article is to discuss the various types of phishing, how to avoid them and what to do if your escrow account falls victim to a phishing scheme.

One of the most typical kinds of phishing is the use of an email that looks like it is from a legitimate business, but asks you to respond and provide information such as bank account numbers, usernames and passwords or a social security number. The email usually gives an urgent-sounding reason for the request. Some common examples are warnings that your account is overdrawn, is in danger of being closed or that you might be a victim of identity theft and need to “verify” your information. Most legitimate companies will never ask for personal or financial information in an e-mail. If you receive such an e-mail from a company you have never done business with, it is probably best to just delete it. The act of opening the e-mail, even without responding to it, may be enough to tell the sender that yours is an active e-mail address and you could end up subjecting yourself to even more spam e-mail.

If you have done business with the purported sender of the e-mail, you must still use extreme caution. The

actual sender can very easily design the e-mail to look like it is coming from the company it claims to be by cutting and pasting slogans, symbols and other company information found elsewhere on the internet. Rather than responding to the e-mail with the requested information, the best thing to do is to call the company that supposedly sent the e-mail at its main number and discuss the request over the telephone. Even if the e-mail says a follow-up phone call will be made if

you fail to respond to the e-mail, make the call yourself. If you make the call to the number provided to you on correspondence that definitely came from the company, you will know that you are dealing with them and not with a scammer.

Another typical kind of phishing is inclusion of embedded links in an e-mail requesting that you click on the link or cut and paste it into your browser. Sometimes the link

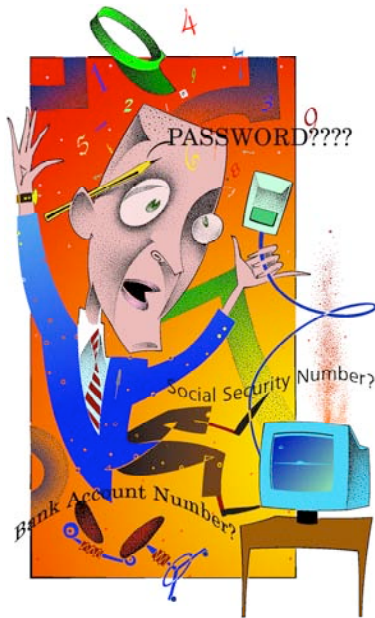
will simply be words that are underlined or are in a different color from the rest of the text of the e-mail. Other times, the link may look like a regular web address. In fact, the link may even look exactly like the web address of the company it claims to be. Phishers can be very good at creating a fake website that looks exactly like the legitimate one. The link may take you to the fake website or to a pop-up form or data-entry page where you are requested to input personal or financial information. Other times, the link may bring you to a website that automatically starts downloading a virus to your computer. Instead of clicking on the link or cutting and pasting it into your browser window, manually type in the address of the

company’s home page in your web browser instead. If the e-mail is legitimate, you should be able to get to where you are being requested to go from the company’s home page.

Phishing can also occur over the phone. Someone may simply call your business claiming to be from the government or a bank and start asking for information. A common scheme involves the criminal pretending to be from a bank calling to tell you that you have been a victim of fraud or identity theft. This can be particularly alarming, especially if the call purports to be regarding your escrow account. To be sure the call is legitimate, ask the caller to give you his or her name and company address and phone number. Then, tell them you will call right back. Look up the company’s or bank’s name in the phone book or on your statement or invoice and call that number instead. When a bank calls to verify the legitimacy of a transaction, they will usually ask you to provide specific transaction information, such as dates, amounts and other parties involved.

If you think your escrow account has been compromised by a phishing scam or other form of identity theft, there are several steps you should take immediately. First, immediately notify the bank(s) with which you maintain an account. The bank should let you know what additional steps to take. After you hang up with the bank, notify your Old Republic representative that you suspect your escrow account may have been compromised. Finally, you can contact the Federal Trade Commission’s ID Theft Clearinghouse at 1-877-438-4338. In fact, even if you are not a victim, you should contact the company that the phisher was trying to impersonate so they can investigate the matter. Most companies will appreciate any information that will stop a phisher from gaining access to anyone’s account.

If you have any questions, please contact the Underwriting Department.



New Addition to Closing Protection Letter – Agent Verification Instructions

In case you haven't noticed, something new has been added to our Closing Protection letters. Anyone wishing to verify the status of the agent named in the letter can now do so via the Internet by following the brief instructions appearing just above the subject line. These instructions were included for the purpose of facilitating the verification process for lenders and others who need to be assured that the letter is valid and the agent is in good standing.



December 12, 2007 -- Ref: 4228525 -- FLA01

EXAMPLE MORTGAGE COMPANY
100 S. MAIN STREET
TAMPA, FL 00000
Attn: LOAN DEPARTMENT

VERIFICATION NUMBER

Binder/Order Number:

Closing Protection Letter on Behalf of:

OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY
100 S. ASHLEY DRIVE SUITE 700
TAMPA FL 33602
813-228-0555 - PHONE
tcarlson1@oldrepublictitle.com

To verify this agent is in good standing, go to www.oldrepublictitle.com, select Agent Verifications from the Products and Services dropdown and enter in Reference Number **4228525**.

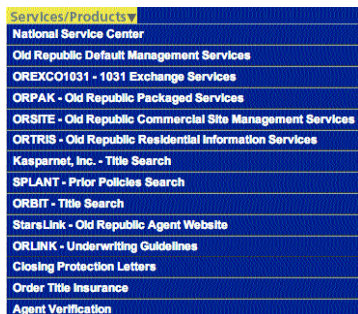
VERIFICATION NUMBER

RE: Insured Closing Service
Florida Issuing Agent or Approved Attorney

This verification process is simple. Just access the company's website at www.oldrepublictitle.com and click on "Services/Products" which appears at the top of the home page just below the logo and company banner.

The screenshot shows the website's header with the Old Republic logo and navigation menu: Home, About Us, Services / Products, Resources, Contact Us, Office Locator, Search, Help. Below the header is a banner with the text "Servicing the Title Insurance Community for 100 years." and an aerial photo of a residential neighborhood. The main content area is divided into two columns. The left column features a box for "ORI (NYSE) Stock Information" and a "Latest News" section with a link to "October 25, 2007 Old Republic Reports Third Quarter and First Nine Months". The right column is titled "Our Business" and contains a paragraph about the company's 100th anniversary and services.

This will bring up a dropdown list. Viewers can then select "Agent Verification" at the bottom of the list and enter the reference number that appears within the instructions and also at the top of the closing protection letter following the date. Entering the reference number will produce a new screen that not only presents the status of the agent, but also indicates the names and addresses of the agent and lender to whom the closing protection letter pertains.



The screenshot shows the Old Republic National Title Insurance Company website. At the top, there is a blue header with the company logo and name. Below the header, a search prompt reads "Please enter search criteria using reference number or agent number". There are two input fields: "Reference Number" and "Agent Number". The "Agent Number" field is selected, and the text "Agent is in good standing" is displayed in green. Below the search fields, there are two buttons: "Submit" and "Print". The search results show the date "12/12/2007 -- Ref: 4228525 -- FLA01". Underneath, there are three columns of information: "Lender:" (EXAMPLE MORTGAGE COMPANY, 100 S. MAIN STREET, TAMPA, FL 00000), "Pertaining to:" (FL), and "Agent Information:" (OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, 100 S. ASHLEY DRIVE SUITE 700, TAMPA FL 33602). At the bottom, there is a footer with navigation links and copyright information.

In an effort to get this information out to those who need to know, we have instructed our staff to mention this web site to lenders when they call for verifications. You may want to do the same with those lenders you work with frequently. If you have any questions regarding insured closing letters, please contact Tanya Carlson at (800) 342-5957 or tcarlson1@oldrepublictitle.com.



Christina James in our Tampa Plant and her husband, Peyton, are very proud to announce there has been another *addition* to the Old Republic "family." **Marcellous Peyton James** arrived on **September 17, 2007**. He weighed **6 lbs. 2 oz.** and measured 21 inches long. Mom, Dad and big sister, Jayla, are really enjoying this new addition to their family. We would like to wish sincere congratulations to the James family!



Ask Your Underwriter

■ *Carolyn Broadwater, Florida State Counsel*

Question: I read your Bulletin about the new Trust Certification statute. Do we need to record the trust certifications?

Answer: Yes. The certifications should be recorded. This puts the necessary evidence of the trustee's authority on the public records.

Question: If we have a successor trustee signing, rather than a trustee, can we still rely on just a trust certification?

Answer: No. In this situation, we will need to review the trust to insure that the particular successor trustee has the authority to sign instruments.

As always, if you have any further questions, please contact your Underwriting Department.



Old Republic National
Title Insurance Co.
100 S. Ashley Drive, Suite 700
Tampa, Florida 33602

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DECEMBER 2007

