

FLORIDA BULLETIN 99-6

TO: ALL AGENTS AND TITLE PLANT OPERATIONS
FROM: UNDERWRITING DEPARTMENT
DATE: JULY 20, 1999
RE: AUTHORIZED SEARCH PROCEDURES

Sales and refinances of platted residential property make up a significant portion of the land that we insure. In order to stay competitive in the marketplace, we have been studying ways to increase the efficiency of product delivery at no additional risk. This underwriting memo sets forth specifically approved procedures for agents who conduct their own searches. Our title plants will utilize these same procedures in an effort to maintain reasonable costs to you and to the consumer. Any agent requiring additional services may contact our plant managers.

PLATTED RESIDENTIAL PROPERTIES (SALES AND REFINANCES):

Old Republic Title will insure a residential sale or refinance based on an abbreviated search in any of the following circumstances:

1. Title based upon a search from an existing owner's policy written on any underwriter who is a signatory to the Indemnity Treaty (**see Bulletin 98-11 and the amendment thereto**).
2. Search based on a prior policy that does not insure the same lot we are being asked to insure in the present transaction, but insures another lot in the same subdivision. This will give you the common covenants and restrictions. Search the lot to be insured **from** the last warranty deed of record, which is accompanied by an institutional first mortgage at least 3 years old to a well-known lender, **forward**.
3. If you have no prior policy, search for the restrictions and easements by searching the records just before and after the time of platting. Search the lot to be insured **from** the last warranty deed of record, which is accompanied by an institutional first mortgage at least 3 years old to a well-known lender, **forward**.

4. Be certain you have searched back to a warranty deed to a bona fide purchaser for value. Apply the "Short Form Concepts" discussed below. In all cases, be certain that you have performed an adequate search for judgments, liens and bankruptcies.

JUDGMENT SEARCHES:

A review of judgment search procedures is appropriate when examining short search methodologies. There are several tools and techniques that deserve review because they will make any exam easier.

The Title Standards published by the Florida Bar, Real Property Section, are designed to eliminate needless objections to marketability of title and facilitate the examination of real property titles. Several are applicable.

The first Standard is the presumption of continuous marriage found in Title Standard 6.6. "Where an interest in land is or was previously vested in two persons as tenants by the entirety, the continuation of the estate by the entirety through the date of divestiture of the interest may be presumed in the absence of record evidence of dissolution of the marriage." This is important because a judgment or tax lien against one spouse only does not attach to property held by the entireties. Use this standard to eliminate otherwise valid judgments.

Title Standard 10.5 establishes the fact that there is a presumption that the use of a suffix such as "Jr." or "II" distinguishes that individual. In other words, "John Doe" is presumed to **not** be "John Doe, Jr." in the absence of any evidence to the contrary.

We have often been asked whether a judgment search is necessary against the buyer. Typically it is not. So long as there will only be a purchase money first mortgage (i.e., mortgage where all of the proceeds are used for the purchase of the property) given by either the seller or a new lender, the new mortgage lien takes priority over any judgment or tax lien against the buyer. Judgment searches on buyers are done as an accommodation to the insured lender, but are not a requirement to insure.

Old Republic will authorize the elimination of a judgment recorded after October 1, 1993, which fails to contain either in the body, or in an accompanying affidavit the address of the lienholder. **(See Florida Bulletin 99-2.)**

The Indemnification Treaties should not be overlooked here. They will permit the summary elimination of a number of judgments given the proper circumstances.

TITLE EXPERTISE:

The expertise of the examiner is essential to the implementation of this abbreviated search program. Clearly, there will be times when past experience or the examiner's critical eye will dictate/require that you to do a more exhaustive exam. Please do not ignore common sense or the examiner's instinct.

The expertise of the closing agent is equally important. There is a possibility that matters may arise or come to a closer's attention which may have not been disclosed in the search, whether or not abbreviated search procedures were used. Such matters should immediately be shared with the examiner for evaluation.

STANDARD EXCEPTIONS AND SHORT FORM CONCEPTS:

Whenever you are using short search concepts and do not have any base from which to begin, there is a concern about interests not eliminated by the Marketable Record Title Act. These include sovereign state interests (water, road, and mineral), easements in use, and privately held mineral estates. Old Republic will address these matters by amending the standard exceptions in our commitment and policy schedules. These changes will appear in the next printing. Until then, please add the following exceptions "standard exceptions" to any policy issued utilizing the short search procedures:

1. "Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the lands insured hereunder, including submerged, filled, and artificially exposed lands and lands accreted to such lands."
2. "State road right reservation(s), if any."
3. "Oil, gas and mineral right reservations, if any."

COMPLIANCE WITH REGULATORS:

Section 627.7845(1), F.S. states, "A title insurer may not issue a title insurance binder, commitment, endorsement, title insurance policy, or guarantee of title until the title insurer has caused to be conducted *a reasonable search and examination of the title* and of such other information as may be necessary, and *has caused to be made a determination of insurability of title*, including endorsement coverages, in accordance *with sound underwriting practices*" (emphasis added). The term "search" is not defined by the legislature. It prudently defers the definition of "search" to each underwriter to determine based upon an evaluation of its claims experience.

Bulletin 99-6
July 20, 1999
Page Four

A "search" is not defined by the RESPA regulations either. It is what we, the insurer, define it to be. Accordingly, the title search reports on platted residential transactions and refinances will follow the search procedures set forth in this memo, effective immediately.

COMMERCIAL TRANSACTIONS, UNRECORDED PLATS, AND ACREAGE:

There will be no change in the manner in which we search title to these types of transactions. They are more tedious and time consuming, have a heightened risk exposure, and require a full 30-year plus search under the Marketable Record Title Act. We are implementing the short search procedures to permit our agents and personnel to concentrate on these more difficult tasks.