

FLORIDA BULLETIN 00-04

TO: ALL AGENTS AND TITLE PLANT OPERATIONS
FROM: UNDERWRITING DEPARTMENT
DATE: JUNE 27, 2000
RE: CLOSING INSTRUCTIONS ALERT

Mortgage fraud continues to be an ongoing problem for both lenders and title insurers. Recently, some national lenders have begun to address mortgage fraud in new ways in an effort to transfer the liability for mortgage fraud to the title agent or insurer. Specifically, lenders are beginning to address the illegal land flips and other forms of mortgage fraud by generating closing instructions designed to give the insured a claim under the Insured Closing Protection Letter rather than the policy.

The Insured Closing Protection Letter states in pertinent part that the insurer agrees to reimburse the lender "... for actual loss incurred by you in connection with such closing when conducted by said Issuing Agent ... when such loss arises out of: 1. Failure of said Issuing Agent ... to comply with your written closing instructions to the extent that they relate to (a) the status of the title to said interest in land"

The lending community has increasingly focused on this provision and tailored special or general closing instructions that, if followed, will either preclude mortgage fraud or provide an avenue for the lender to seek recoupment. The following is a list of the various issues we have seen addressed by lenders through their closing instructions:

1. Source of Title: Several lenders now require that the borrower be vested in title for a minimum specified period of time (usually 6 months or a year) prior to the closing of the current mortgage transaction. The fulfillment of this requirement may be made in several ways either under the policy or by separate letter. We recommend that you satisfy such a requirement by incorporating the requested information into Schedule A of the commitment. It should be shown under the "fee simple titleholder" as follows:

John Doe by virtue of that certain Warranty Deed recorded (insert the date of recordation) in O. R. Book _____, Page _____, Public Records of _____ County, Florida.

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2. Prohibition on Dual Transactions: These provisions prohibit double escrows, double closings, flip sales, pass-throughs, or equity skimming transactions. In other words, the agent is prohibited from closing a loan that is in concert with or is part of any series of transactions. These prohibitions address not only title events that may have occurred prior to the closing of the loan in question, but also to events that will occur after the closing, such as undisclosed secondary financing.
3. Record Title Requirements in Refinance Transactions: These provisions prohibit closing "refinance" transactions where the borrower has not yet acquired record title to the property to be mortgaged. These provisions address the inappropriate practice of processing the consummation of an agreement for deed as a "refinance." Similarly, the exercise of a purchase option under a lease cannot be closed as a "refinance." In either of these situations the HUD-1 cannot be truthful because payment to the seller is shown as a payoff of a prior loan. Additionally, Schedule A of the title insurance commitment has to be fraudulently completed to show the title vested in the borrower rather than in the seller. Both of these types of "refinance" transactions are prohibited by Old Republic whether or not they are prohibited by the closing instructions due to their criminal implications. These may only be legally handled as purchase transactions.
4. Source of Funds: These provisions require the closing agent to receive *from the borrower* all funds necessary to close. This will preclude the acceptance of any funds from a third party not disclosed on the settlement statement. These provisions also require the closing agent to verify items paid outside of closing (P.O.C.), such as a down payment that went directly to a developer or seller.
5. Written Authority: Mortgage fraud is becoming such a significant problem to many lenders that it is not unusual to see provisions requiring written authorization in order to deviate from the closing instructions. Authorization is required from the lender's president, or some other expressly designated individual. In other words, written authority from a loan processor is insufficient to protect the closing agent when these provisions are present.

We appreciate the fact that closing agents are often put into pressure packed situations where time is short and critical. It is easy to forget a general closing instruction that your agency agreed to abide by months or years before when they were received. These difficulties can be overcome by following a simple rule of thumb - **the HUD-1 and the title commitment must always speak the truth.**

Please do not hesitate to contact our Underwriting Department should you have any questions regarding this memo.