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BULLETIN

FLORIDA BULLETIN 07-05

TO: ALL AGENTS AND TITLE PLANT OPERATIONS
FROM: UNDERWRITING DEPARTMENT
DATE: JULY 2, 2007
RE: NEW FLORIDA TRUST CODE

The new Florida Trust Code found in Chapter 736 of the Florida Statutes became effective July 1, 2007. While many significant changes were made to the Code, those of particular interest for title insurance underwriters and title agents is section 736.1017 entitled "Certification of Trust." This section specifically allows the trustee to provide a certification of the trust, rather than the entire trust instrument, to a person other than the beneficiary (i.e. a title agent). Under the statute, a person who receives the certification is not liable for acting in reliance on it unless he/she has knowledge that the representations in it are incorrect. Furthermore, a person who in good faith enters into a transaction in reliance on a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

The trust certification must be signed or otherwise authenticated by the trustee and contain the following information:

- (a) The trust exists and the date the trust instrument was executed.
- (b) The identity of the settlor.
- (c) The identity and address of the currently acting trustee.
- (d) The powers of the trustee.
- (e) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust.
- (f) The authority of co-trustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee.
- (g) The manner of taking title to trust property.

The certification of trust must also state that the trust has not been revoked, modified, or amended such that it would cause any of the representations contained in the certification to be incorrect.

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Accordingly, if the trustee provides a certification of trust in accordance with section 736.1017, Old Republic National Title Insurance Company will not require the title agent to review a copy of the trust *unless* you have knowledge that the statements made in the certification are inaccurate. We will rely on the statute to accept a deed or mortgage from the trustee named in the certification. If, however, you have knowledge that the certification is incorrect in any respect, you cannot rely on the statute and you will need to review a copy of the trust agreement. You will also need to review a copy of the trust if there is a certified final judgment against the person named as trustee, to confirm the trustee is not also a beneficiary. If the trustee is a beneficiary, you will need to obtain a release or otherwise dispose of the final judgment. Additionally, the new statute does not alleviate the need to comply with the Florida Constitutional homestead requirements. Therefore, if the property is the homestead of the trustee, he/she will need to execute the deed or mortgage individually and as trustee, with the joinder of his/her spouse.

Should you have any questions, please contact your Old Republic Underwriting Department.