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## **BULLETIN 10-02**

To: All Old Republic National Title Agents and Offices  
From: Underwriting Department  
Re: Escrow and Sweep Account Responsibilities  
Date: April 28, 2010

### **General title agent escrow duties and responsibilities:**

A title insurance license is a privilege that imposes upon the holder solemn obligations. You are a chosen intermediary, entrusted with other people's money. It is imperative that you fulfill these duties, for the protection of your business, your underwriter, and the entire title agent community.

The public must have confidence in the title agent network for the real estate purchase and lending economy to thrive. Accordingly, there is built around you a host of statutes and regulations that create the Closing Protection Letter, the escrow account reconciliation and reporting process, and the financial record retention and disclosures necessary to bring financial transparency and accountability to your work.

Florida law specifically authorizes title insurance agents to "...engage in the business as an escrow agent ... in connection with real estate closing transactions involving the issuance of title insurance ..." Sec. 626.8473, F.S. But there are certain conditions imposed upon your escrow activities.

All funds received by a title insurance agent to be held in trust shall be immediately placed in an FDIC or NCUA insured financial institution. Please be aware that agents have paid a hefty price to the regulator for not promptly depositing escrow funds. "Immediate" is narrowly interpreted to mean the first opportunity after receipt.

\*\* This Bulletin should become a permanent part of your records to assist in your compliance with the requirements contained herein. \*\*

Please **provide a copy of this Bulletin to your staff** so they can read it and become aware of its contents.

**REMEMBER:** All ORT Alerts, Bulletins, Notices and our Newsletter can be found on our web site, [www.ortfl.com](http://www.ortfl.com).

Our Alerts and Bulletins are issued via fax and email, but you should check our web site frequently to make sure you have copies of everything issued.

Please call your Underwriting Department if you have any questions.

“Title insurance agents shall maintain separate records of all receipts and disbursements of escrow, settlement, or closing funds.” *Sec. 626.8473 (5), F.S.*

**Sweep accounts:**

There are a variety of sweep account vehicles and investments, but generally speaking a sweep account withdraws excess cash from an account for overnight investment for the purpose of earning interest. The funds are then re-deposited the next business day.

Sweep accounts pose special problems to title insurance agents seeking to earn interest on deposited escrow funds. These issues are both legal and pragmatic.

Practically, agents should do a periodic economic analysis as to whether or not an interest bearing escrow account makes sense. In periods of very low interest rates, the interest bearing escrow account often costs the title agent money because of the fees charged against the account for services that might otherwise be negotiated for free.

The legal issues are far more complex and founded upon the principle that you are a fiduciary and, therefore, a person charged with a higher duty to protect escrowed funds. Section 690-186.008, *F.A.C.* states, “A title insurance agent or title insurer may not use, endanger, or encumber money held in trust without the permission of the owner of such money, given after full disclosure of the circumstances.”

When analyzing the propriety of any sweep account, you must examine both the investment option elected and the structure of the sweep vehicle.

Current Florida law on its face would appear to allow you some significant latitude in your choice of investment options per *Sec. 626.8473(3), F.S.* In reality, your permissible choices are far narrower because it would be a breach of your fiduciary obligation to both your customer and your underwriter to put escrowed funds that belong to others at unreasonable risk. In other words, interest bearing sweep accounts, depending upon their structure and investments, can place you and your business at an unacceptable risk that violates your position of trust.

It should be obvious that escrow funds swept into stock or bond funds is prohibited. Less clear, but equally objectionable, would be investments in extra-territorial accounts (sometimes referred to as Eurodollar deposits), money market mutual funds rated lower than AAAM (S&P) and Aaa (Moody's), or investments with a maturity date of greater than one (1) day.

Investments that meet the approval of Old Republic National Title Insurance Company are those that are FDIC insured or those authorized in *Sec. 17.57(2)(a – f), (n), F.S.* These cited investments could generally be described as federal securities which are guaranteed by the full faith and credit of the United States Government.

But the actual investments are only half of the focus when analyzing sweep accounts. The account structure of the sweep vehicle is equally important. In a “one-to-one” sweep, the bank purchases an approved vehicle as set forth above on your behalf in your agency’s name. Distinguish from this “one-to-one” structure pooling arrangements where the bank deposits your funds with those of other sweep account participants into an omnibus account or pooling account. These pooled funds are then invested in the name of the bank, not in your agency’s individual name. This latter structure is prohibited because, in the event of bank failure, you stand as an unsecured creditor of the failed institution

The nature of an overnight sweep investment is rarely apparent on the face of your bank statement. It is the responsibility of the title agent to investigate any proposed investment vehicle with their bank to make sure that the criteria set forth herein are met. Failure to appreciate these responsibilities has resulted in the demise of not just agents, but a major out-of-state title insurance holding company.

We thank you for your diligence and professionalism when addressing these very important issues.