



1410 N. Westshore Boulevard, Suite 900  
Tampa, FL 33607-4547  
(813)228-0555 / (800)342-5957  
(813)228-0301 (Fax)  
www.oldrepublictitle.com  
Home Office: Minneapolis, Minnesota 55401-2499

## BULLETIN 10-03

To: All Old Republic National Title Agents and Offices  
From: Underwriting Department  
Re: Short Sales  
Date: July 2, 2010

It is hard to believe that we issued our first bulletin about short sales over two years ago and they continue to be such a significant portion of most agents' business. Over this period, some pitfalls have emerged for the unwary closing agent which have created some significant claims. As we have advised you in our previous bulletins, it is critical to **strictly follow** the lender's instructions in the short sale estoppel letter. This includes the instruction regarding when the lender must receive the payoff funds. For example, if the short sale estoppel letter directs that the transaction must close **and** the payoff funds received by a certain date, **they mean it**. Both things must happen by the specified date. Simply *sending* the payoff funds on the correct date is not sufficient. We have had several claims where the transaction closes late in the day on the stated date so the lender does not receive its wire until the next day. In those cases, the lender has returned the funds (usually two weeks later), and refuses to satisfy the mortgage without receiving additional funds. In the meantime, the buyer has moved into the property and we have insured the transaction. Accordingly, if your short sale estoppel letter requires that the lender receive the pay off funds by a certain date, make sure your closing occurs early enough in the day for this to happen. If you can't close until late in the day, you will need to get a revised estoppel authorizing receipt of the funds on the next day.

We have also experienced claims due to the failure of the closing agent to monitor the pending foreclosure action on the property. When you are closing a short sale transaction, you always need to be mindful of the fact that, although the owner has contracted to sell the property with the lender's approval, the lender is not stopping the foreclosure proceedings. If you are not careful, the CT could beat your deed to the recording office and generate a claim. Things really get sticky (and expensive) if there is a third party bidder at the sale. It is extremely important to always be aware of the scheduled foreclosure sale date. The original sale date is generally included in the final judgment of foreclosure. In a lot of cases, the sale date in the final judgment is delayed, so you will need to confirm the actual sale date by either reviewing the foreclosure docket or calling the Clerk's office. If the foreclosure sale is set for a date close to your short sale closing date, it is imperative that you get the lender to stop the sale before you close. Otherwise, you may be playing beat the clock to the recording office with the purchaser at the foreclosure sale and if you lose, the consolation prize is a claim.

\*\* 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.