



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 11-02

To: All Old Republic National Title Agents and Offices

From: Underwriting Department

Re: Unauthorized Practice of Law in Short Sales –
Report on Hearing Held 2/11/11

Date: February 16, 2011

Last Friday, the Unauthorized Practice of Law Committee of the Florida Bar met to address the following question:

“Whether a nonlawyer who assists a property owner in a short sale transaction engages in the unlicensed practice of law? Would the answer be different if the nonlawyer was a real estate licensee regulated under Chapter 475, Fla. Stat., a title insurance agency/agent regulated under Chapter 626, Fla. Stat., or a mortgage broker or other individual regulated under Chapter 494, Fla. Stat.?”

The hearing generated an extraordinary amount of interest and played to a standing room only crowd composed of attorneys, title professionals, realtors, and mortgage brokers. Witnesses before the Committee represented each profession. Every facet of the title insurance community was well represented.

The Committee was made up of both attorneys and lay volunteers, most without a professional background relating to real property transactions.

The testimony was a combined effort to define and refine the issues for the Committee that began with a detailed description by the attorney who requested the formal ethics opinion of a short sale and how it is unique from a normal real property sales transaction. His testimony also included real life examples of harm to clients and problematic advertisements.

**** 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.

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.

Identification of the issues is no small task. There are some areas where there is no contention. Tax advice and bankruptcy advice are clearly outside the purview of a licensed title agent. But “negotiating the debt” is a much more difficult issue to address. While certainly a licensed title agent is charged with clearing objections to title and must seek estoppel information from a prior lienor, does that function become more representative in character in a short sale context? While it would appear that a licensed title agent can be a conduit of information between the parties, does the agent go too far if advocating a number that meets the demands of all parties to the transaction? Folded into these issues is the preparation of sample closing statements, the gathering of information required by the lender, and compliance with the short selling lender’s acceptance letter.

It should be noted that Committee members did ask questions of various industry presenters. Those questions centered on how a consumer was protected, with the focus being on required errors and omissions coverage as well as the necessary bonds required of a licensed title agency. There was also inquiry into the continuing education requirements of title licensees.

No intelligent discussion of these issues can occur without an examination of the relevant case law. There are several landmark decisions that guide the permissible activity of title agents. In summary, these cases allow a licensed title agent to perform those tasks necessary to comply with the insuring requirements set forth in a commitment. Accordingly, an agent can prepare a deed necessary to clear a cloud on title, notwithstanding the fact that the preparation of such a deed, if not being insured by the preparer, would be the unlicensed practice of law.

So what can you anticipate from here? Several things were disclosed by counsel to the Committee. First, counsel indicated that there was no intention by the Committee or the inquiry to erode the case law referred to previously. In other words, this hearing should not be viewed as a threat to the core business model of a licensed title agency. If anything is published, one can expect more definitional clarity. There will not be a focus on the word “assist” as used in the call of the question as that is too broad. But we might reasonably expect refinement to the concept of “negotiation” and possibly a better sense as to what does constitute legal representation versus the fulfillment of requirements to insure.

Counsel to the Committee began by explaining that the Committee has two options. They may decide not to publish any opinion at all, or they may recommend an opinion on either side of the question. That basic decision will not be made until the next scheduled meeting of the Committee. If they decide to proceed with an opinion, a draft of that opinion will be presented for discussion and approval by the Committee at its September meeting. There will be a 30-day publication of any proposed opinion to allow for public comment.

Bulletin 11-02
Unauthorized Practice of Law in Short Sales
February 16, 2011
Page 3

Ultimately, any recommended opinion will be presented to the Florida Supreme Court for adoption. There will be the opportunity for oral argument before the Court before finalization of any opinion. In other words, this is a protracted and considered process. It is not realistic to expect a finalized rule until 2012, if then. The fact that the Committee amalgamated various questions into the one in bold print above further complicates the process.

We hope that this description of the hearing and the ensuing process gives you some general guidance on how to conduct your business involving short sales. There are obvious activities to be avoided such as the rendering of tax or bankruptcy advice. We hope that this description of the pending, more difficult issues will assist you and your counsel until there is a more definitive statement from the Florida Bar.

The Committee has agreed to leave the record open until April 1 for any written comments which may be submitted to:

Jeffrey T. Picker, Assistant UPL Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

We would appreciate it if you would share copies of any written submissions with Jim Russick, Old Republic National Title Insurance Company, 1410 N. Westshore Blvd., Suite 800, Tampa, Florida 33607 as we wish to monitor this issue as closely as possible. We will keep you informed with any future developments.