

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

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Title Insurance Regulatory Update

■ *James C. Russick, Florida State Counsel*

The 1999 Florida Legislature concluded its session with a major victory for the title insurance industry. The Florida Land Title Association, the Real Property Section of the Florida Bar, and the title insurance underwriters worked in concert to develop and pass a bill designed to defend the agent's right to earn and preserve a portion of the risk rate premium.

The focus of the legislation was the case of *Clark Butler v. The Florida Department of Insurance* decided by the trial court February 26, 1999. Therein the court found that the anti-rebate statute (Sec.626.9541(1)(h)(3)(a), F.S.), as it relates to a title insurance agent's portion of the risk rate premium, is unconstitutional. After the court entered its Summary Judgment, the trial judge stayed the order on motion of the industry to determine when the order should go into effect. On April 30, 1999, the court entered an order terminating this stay, effective May 14, 1999.

The *Butler* litigation disclosed some deficiencies in the Florida Statutes as they relate to title insurance. The statute failed to properly set out what it is that a title agent does to earn a portion of the risk rate premium. Additionally, the applicability to title insurance of Sec. 626.572, F.S., the provision that sets out how to legally rebate premiums, was unclear.

The industry successfully sponsored and had passed **HB 403** to address these issues and more. During the legislative process, a compromise with the Florida Homebuilder's Association became necessary, as they were a co-plaintiff in the *Butler* case. They drove a tough bargain. However, compromise was deemed necessary to preserve as much of the status quo as possible.

HB 403 will become law effective July 1, 1999, so long as the governor does not veto the bill. The bill contains the following significant provisions:

1. An express statement of legislative intent to preserve the agent delivery system for title insurance;
2. An amendment of the anti-rebate section to expressly prohibit the rebating of title premiums to customers;
3. An express statement that the statute setting out the rules for legally rebating insurance premiums is not applicable to title insurance;
4. It sets the title insurance rates for three years;
5. An amendment of the rates and the commission split on policies in excess of one million dollars;
6. A modification of the substitution loan rate for transactions in excess of \$250,000 so that there is no longer the requirement of "same lender";
7. It establishes a "new home purchase rate" that gives a developer a credit for owners policies on new sales when a prior mortgagee policy has been paid for by the developer; and,

Continued on page 5—

Tax Deferred Exchanges Under §1031

■ Michael S. Davis, Florida State Counsel

Old Republic National Title continues to be on the forefront of Tax Deferred Exchanges under §1031 of the Internal Revenue Code. We offer the expertise your clients and customers require and the backing they deserve to assist with Tax Deferred Exchanges of Real Property.

Old Republic will be pleased to serve as a Qualified Intermediary in those real estate transactions intended to qualify under §1031 of the Internal Revenue Code. When dealing with Old Republic, you are dealing with the highest rated title insurer in the nation. Further, you will deal directly with this company and not some subsidiary. We have the confidence in our people to offer the strength of our company as an Accommodator. The people who will assist you are located in Florida and have experience in working with many deferred exchanges, both large and small.

What is a §1031 Tax Deferred Exchange?

The Internal Revenue Code and Regulations define a deferred exchange as "an exchange in which, pursuant to an agreement, the taxpayer transfers property held for productive use in a trade or business or for investment (the 'relinquished property') and

subsequently receives property to be held either for productive use in a trade or business or for investment (the 'replacement property')."

Why do people exchange?

A taxpayer may wish to leverage an investment. Equity in one or more properties may be used to acquire one or more different like-kind properties. Raw land may be sold and the proceeds used to purchase another type of real property such as an office building. A taxpayer may have moved and may wish to sell property in his old

location and reinvest nearer his new home.

What are some of the common terms?

The **Accommodator** is the independent party assisting the transaction and assuring that the taxpayer does not have actual or constructive receipt of the proceeds of sale. The I.R.S. calls this party the qualified intermediary while others may call it a facilitator.

Like-kind Property is, in the case of real estate, simply that - real property. An apartment is like-kind to an office. Raw land is like-kind to a warehouse, etc.

Boot is part of the proceeds of sale that is not like-kind. It may be money received by the taxpayer, relief of debt or personal property.

Exchange Period is the time in which the exchange must be accomplished. It begins upon the closing of the sale of the relinquished property and ends at day 180, or when taxes are due for the year in which the time period began, whichever is sooner.

The **Identification Period** is the time in which the taxpayer must identify to the intermediary the replacement property the taxpayer may wish to acquire in the exchange. This period is 45 days in length starting with the transfer of the relinquished property.

Life of an Exchange:

The exchange should begin with careful planning by the taxpayer in consultation with the taxpayer's tax advisors. Typically, when the contract for sale is obtained, a qualified intermediary such as this company will be contacted. An agreement between the taxpayer and the intermediary will be arranged and the contract for sale will be assigned to the intermediary. For all purposes, the intermediary will be treated as the seller and will receive the proceeds of the sale. The taxpayer will, within the identification period, name properties that he may have an interest in acquiring. Once a purchase contract is entered into by the taxpayer, the contract to buy is assigned to the intermediary. The intermediary will then use the proceeds it holds to purchase the replacement property and title will be placed in the name of the taxpayer.

The above is an oversimplification of the process. Please feel free to discuss the tax deferred exchange with us at any time.

While Old Republic cannot offer legal or tax advice, we will be pleased to discuss the tax deferred exchange process, as well as our ability to assist with the exchange.

Tips from Auditing

■ *Renea Thompson, Senior Auditor*

Securing a final payoff statement from a lender on a revolving line of credit mortgage (RLC) presents no guarantee that those figures have not changed by the time a borrower approaches the closing table. With the ability of borrowers to easily access their available credit, usually by check or credit card, there is always the possibility of further charges being credited to the account after the payoff statement has been sent. We have had several claims that have resulted from payoffs of RLC mortgages. Three of the most recent claims total \$213,000.00.

To reduce the risk to you and Old Republic National Title when handling payoffs of RLC mortgages, we recommend the following procedures:

- When the transaction calls for a payoff of an RLC mortgage, have the borrowers complete and sign a "Borrowers Notice" form and fax it to

the lender (be sure to keep the confirmation). The notice should contain the lender's name and address, the borrower's name, the loan number and your file number. The body of the notice should also include the borrower's name and state that they intend no further draws or advances against their revolving line of credit, identified by the referenced loan number. The notice should also state that the borrowers agree to forfeit their rights to receive any such draws or advances, effective immediately. The borrowers are to sign said notice.

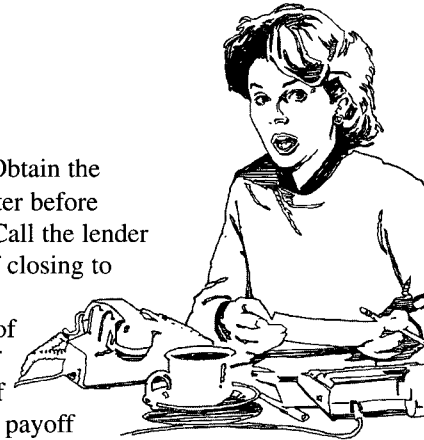
- Require the borrower to surrender and return all checks, credit cards, vouchers, or other means of accessing his/her credit line. Check with the lender to verify the number of the last check cleared so that you can compare it to the number of the first check the borrower has surrendered.

- Obtain the payoff letter before closing. Call the lender the day of closing to verify the accuracy of the payoff figures. If the verbal payoff figures differ from the original payoff letter, request a written, revised payoff letter from the lender.

- Forward the payoff check via Federal Express with a request for satisfaction.

- Follow up in obtaining any outstanding satisfactions.

An underwriting bulletin will be distributed within the next month that will include the borrower's notice form.



Escrow Closings & Agreements

■ *Linda M. Hernandez, Florida State Underwriter*

So...you're in a closing. Things are going along pretty well and you think you'll get home on time for a change.

That is, until someone says, "Oh, Ms. Closer, by the way, we're

going to have to hold some money in escrow for roof repairs. It seems the roof's got a

small leak." The folks note the anxiety on your face and your furrowed brow. They add, "Don't worry. We've already gotten estimates on the work and the roofers will be out to the house next week to start the job."

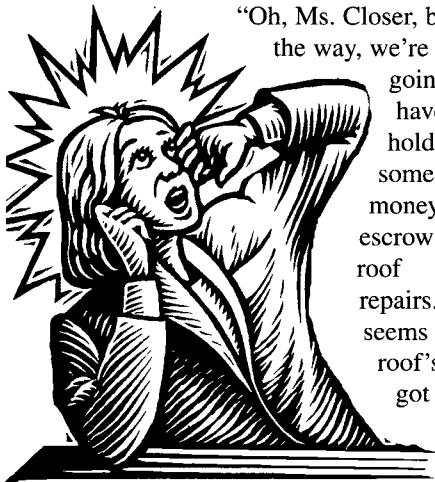
How many times have you found yourself in this situation? You grit your teeth and silently ask, do I have a sample Escrow Agreement in my computer files? Can I adapt it to this situation?

That little voice in your head screams, "Oh, no! I don't like escrow closings and I sure don't like preparing escrow agreements!!!"

Well, there's really nothing to fear, as long as you're prepared for this inevitable eventuality, that is. Our upcoming Continuing Education course, **Escrow Closings** (closings which for one reason or another do not completely finalize on closing day) and **Escrow Agreements**, will help you deal with these types of situations. (2 CEU hours)

We'll discuss the different circumstances under which these situations arise and we'll show you which terms and conditions to include in your Escrow Agreement so that you don't lose control of your file.

We'll let you know when this course will be offered in your area.



Quarterly Profile: Tampa Agency & Title Plant

PROFILE

Record Order Count - WOW! February's order count reached an all-time high! Great job everyone!

New Commercial Examiner - We were pleased to add David T. Ehlers, C.L.S., to our commercial examination team. David has over 25 years of title examination experience, which includes several projects in Polk County. Welcome aboard, David!

How Big Is Big? We proudly announce that Mortgagee and Owner's policies have been issued on Old Republic National Title in the amount of **\$18,150,890.00** insuring SunTrust Bank, Tampa Bay and Fairfield Double Branch Limited Partnership, respectively. These policies were issued by Attorney Carlton Ward of Richards, Gilkey, Fite, Slaughter, Pratesi & Ward, P.A. (Clearwater) and Attorney David Singleton of Holland and Knight, LLP (Tampa). Old Republic thanks you for this wonderful opportunity!

On behalf of our Tampa Agency and Title Plant staff, we wish to applaud our local Agents. Thank you for your business and our *JCS's!*

Robin Stein Cardella, Assistant Vice President

Washington Update

■ *Scott Pierce, Southeast Region Manager*

1. RESPA/TRUTH-IN-LENDING REFORM In an attempt to break an impasse between mortgage lenders and consumer groups, HUD Secretary Andrew Cuomo has been hosting numerous meetings with the Mortgage Brokers Association, the National Association of Mortgage Brokers, and consumer organizations in order to develop a consensus on mortgage reform.

The two major stumbling blocks appear to be the question of who will be able to offer packaged services to the consumer, and whether or not mortgage reform will include protection against predatory lending practices among home equity lenders. At a meeting in Washington in April, congressional staffers informed us that unless there is consensus within the industry, it is doubtful that RESPA/TILA reform will move forward this year. In fact, we were told it was not even on the agenda at this point.

As you may recall, a Joint Report by the HUD and FED proposed that mortgage

brokers and lenders who offer a loan "package" of "bundled services" at a guaranteed price be exempted from RESPA's referral fee prohibition. Members of the Mortgage Reform Working Group taskforce that made suggestions for reform were not entirely pleased with the HUD/FED proposal that was sent to Congress in July 1998. It is this displeasure with the proposal that has caused a lack of consensus within the industry. We will keep you updated as this progresses.

2. FINANCIAL SERVICES REFORM legislation is getting off to a fast start this year. This legislative package would break down the remaining legal barriers between financial institutions, securities firms, and insurance companies. This would allow banks to offer securities, distribute mutual funds, underwrite insurance, and engage in any other financial activity.

The Senate version of the bill allows national banks to sell and underwrite

insurance directly from an operating subsidiary. An amendment to the House version of the bill, "H.R. 10," would prohibit national banks from selling title insurance directly from the bank, but would allow banks to sell title insurance through a bank holding company. The House Banking Committee adopted this amendment on March 11. With this amendment to the bill, title insurance is the only line of insurance that must be sold through an affiliate in a bank holding company structure rather than directly by the bank. This amendment, however, is under attack from the banking industry as being too restrictive. Having a title insurance agency as part of a bank holding company will make it easier for state regulators to oversee the insurance function as opposed to the Comptroller of the Currency, the regulator of national banks. Regardless, it appears that banks will be able to participate in the title industry.

The Financial Services Modernization bill will now be referred to the House Commerce Committee. It is hoped that a similar amendment will make it into the Senate bill.



Claim of the Month

■ Donna M. Roberts, Florida Claims Administrator

The claim of the month in the State of Florida arises from what appears to be a typical refinance. Jim Borrower and Jane Borrower, his wife, applied for a refinance loan on a non-homestead property they own. The title insurance order was submitted to the agent along with a copy of the Borrowers' owner's title policy. The title search covered the period of time from the date of the owner's policy through the current effective date, including a twenty-year judgment search on the Borrowers.

The claim notice was submitted to Old Republic Title when the loan defaulted and the insured lender obtained the foreclosure search. The claim notice revealed the following:

1. 1980 - title is vested in Jim Borrower;
2. October, 1997 - Jim Borrower conveys to Jim Borrower and wife, Jane Borrower;
3. December, 1997 - Jim Borrower and wife, Jane Borrower, mortgage the property for \$100,000.00 and receive an owner's title insurance policy at this time

(this being the prior policy Old Republic Title's agent later used as a basis for their search);

4. April, 1998 - Jim Borrower and wife, Jane Borrower, close on the refinance transaction insured under the Old Republic title policy in the amount of \$140,000.00. (This transaction paid off the mortgage in item 3. As of the date the claim was filed, this prior mortgage remains unsatisfied in the Public Records);
5. Defects: Multiple Judgments and Federal Tax Liens were filed among the Public Records from 1985 through 1994 against a Jim Borrower. No record of Bankruptcy, Satisfactions or Non-Identity Affidavits, etc. was obtained at closing or found previously filed in the Public Records. The face amount of the liens exceeds the amount of the Old Republic title policy by several hundred thousand dollars.

The examination and review of the 1997 deed in the chain revealed



title was vested in Mr. Borrower, individually, prior to the estate by the entireties status being created. The ORT commitment should have contained a requirement to obtain Satisfactions or a Non-Identity Affidavit to clear the Judgments and Federal Tax Liens. Reliance on the prior title policy and the work of the previous insurer is deceptively reassuring, for, in fact, the ability to recoup from the insurer is remote.

Title Insurance Regulatory Update

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8. An amendment of the reissue rate so that reissue will be applicable if there is a prior owner's policy that is less than three years old.

The compromises with the homebuilders are evident. They

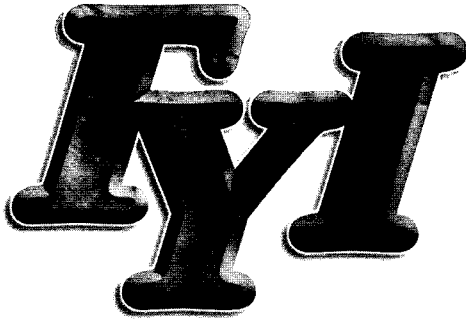
were also necessary to the successful passage of the bill.

There will likely be numerous questions regarding this legislation and the anticipated rulemaking necessary to implement the new bill. Please do not hesitate to call us with any questions.

COMMENTS:

We invite your feedback and welcome your suggestions regarding "In The Title Corner" and the publication of future articles. Address correspondence to:

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800-342-5957
Fax: 813-223-3401



FYI - Title Temps, Inc. is a new company to Florida which provides temporary staffing for escrow, title and lending companies. Title Temps, Inc. offers both temporary assistance and Temp-to-Hire programs.

They can be reached at **954-486-8400**.

REMINDER TO AGENTS - when you move or change phone numbers, you must notify the Department of Insurance of the change. You could be subject to a fine for failing to notify the DOI.

BABY BOOM

Peter Croizat, Tampa Agency Account Manager, is a proud father for the third time. **Miles Oliver Pierson Croizat** was born to Nancy and Peter on February 17, 1999, weighing in at 9.2 lbs. and measuring 21" long. Peter, the baby must be sleeping through the night because you don't even look tired!

Pete Bramm, Deerfield Account Manager, is a new father too. Pete and his wife, Kathy, are the proud parents of **Jonathan Peter Bramm** born April 29, 1999. Jonathan weighed 8 lbs.2 oz., was 21 inches long, and is the youngest of five children ranging in age from 10 years to 1 month. Congratulations Pete and Kathy!

Jennifer Welch, Assistant Bookkeeper, Tampa Operations, became a first-time mom in February. Jennifer and her husband, Bob, brought **Connor Hayden Welch** into the world on February 18, 1999, at 4:55 P.M. Connor weighed in at 7 lbs.10 oz., and was 24 inches long. Jennifer is back to work after a short maternity leave. Welcome back, Jennifer, and congratulations to you and Bob!



Old Republic National Title Insurance Co.

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