



# The Reporter



Old Republic National Title Insurance Company

Fall Issue – October 2008



## REVERSE MORTGAGES

Don't be afraid of Reverse Mortgages! Old Republic Title's new "Value Plus" Program on Reverse Mortgages will help you understand the basics, explain the safeguards and provide the underwriting assistance this unique product requires. Call your Agency Representative to schedule a seminar in your office.

## FDIC Raises The Limit ... But Is My IOLTA Safe?



Congress has raised the FDIC depositor insurance limit from \$100,000.00 to \$250,000.00, but does that mean that funds held in your IOLTA Account are safe?

Just before this increase in the FDIC's insurance limit, the American Land Title Association (ALTA) asked the FDIC to clarify its insurance coverage of deposit accounts related to real estate transactions in the event of a bank failure. ALTA described the following situation to the FDIC:

"Our members are involved in all aspects of the title and real estate transaction, including table and escrow closings. As part of the closing, they may have the total real estate loan deposited, as good funds, in an escrow account in the title agency's name for the benefit of the buyer or refiner of real estate. With the possibility of bank failures on the increase, several of our members are posing the question, what happens if during the time between the deposit of the lender's funds in the escrow account and the disbursement of those funds at closing, typically 24-48 hours, the insured financial institution where the escrow account is held closes its doors? Obviously there is the \$100,000.00 insurance guarantee provided by the FDIC, which we understand is extended through to separate account holders; however, the amount of a typical home purchase can well exceed even these protections. One can easily imagine a tragic situation where borrowed funds intended for a home purchase disappear leaving buyer, seller, lender and closing agent all at a loss."

In response, the FDIC cited its insurance regulation: "[f]unds owned by a principal or principals and deposited into one or more deposit  
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## NEWS AND INFO:

**REBA'S ANNUAL MEETING – November 3, 2008** The annual meeting and conference of The Real Estate Bar Association will be held Monday, November 3, 2008, at the DCU Center in Worcester. Keynote Speaker: Attorney General, Martha Coakley. For registration and more information, visit [www.reba.net](http://www.reba.net)

**HAMPDEN COUNTY REGISTRY OF DEEDS:** Effective October 1, 2008, Hampden County Registry of Deeds instituted new recording procedures. As a result, there is a limit on documents per transaction. The Registry will only accept ten (10) documents per transaction, unless they are related to the same closing. For further information, visit [www.registryofdeeds.co.hampden.ma.us](http://www.registryofdeeds.co.hampden.ma.us)

**PLYMOUTH COUNTY REGISTRY OF DEEDS:** Effective July 1, 2008, the postage and handling fee for unregistered land increased from \$1.00 to \$2.00 per instrument. See: [www.plymouthdeeds.org](http://www.plymouthdeeds.org)



## FDIC Raises The Limit ... (continued from Page 1)

accounts in the name of an agent, custodian or nominee, shall be insured to the same extent as if deposited in the name of the principal(s)." 12 C.F.R. §330.7(a). According to the FDIC, the insurance coverage would "pass through" the agent or custodian to the actual owners, meaning funds belonging to each owner would be aggregated with any other funds at the same insured depository institution and insured up to the FDIC's limit.

However, three requirements must be satisfied prior to obtaining such "Pass-through" coverage: (1) the custodial nature of the account must be disclosed in the deposit account records of the insured depository institution {12 C.F.R. §330.5(b)(1)}; (2) the interests of the actual owners must be ascertainable either from the account records of the insured depository institution or records maintained in good faith by the escrow agent or other party {12 C.F.R. §330.5 (b) (2)}; and (3) the agency or custodial relationship must be genuine, meaning through this relationship the deposit must actually be owned by the named owners and not by the agent or custodian {12 C.F.R. §§330.3 (h) and 330.5 (a) (1)}.

The FDIC maintains that the agent can satisfy the first two requirements by opening the account under a title such as "Title Company as Custodian" or "Title Company Escrow Account" and by maintaining its own records as to the interests of the parties (buyer, seller, lender). Presumably, a designation as an "IOLTA Account" would satisfy the FDIC requirement of disclosing the custodial nature of the account.

Now, let's consider the situation where you have three closings with the same lender, who is wiring the funds for each closing to your IOLTA Account. It appears the FDIC insurance coverage would be limited to a total of \$250,000.00, provided the above requirements are met. That is, it does not appear that the FDIC limit applies to each closing but rather to each lender.

The FDIC has suggested that the escrow agent may want to consider placing funds in multiple institutions, when funds exceed the insurance limits of the FDIC. Of course, the practical consequences of such an approach may be onerous.



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## FDIC Raises The Limit ... (continued)

ALTA advises that the FDIC response highlights the importance of having escrow accounts with banks that are financially sound and operate well above their regulatory capital requirements.

Please be aware, some banks may have made investments in companies that are facing difficulties, and the bank's future may be tied to the success and failure of such investments. On the other hand, your bank may provide insurance in addition to the insurance provided by the FDIC. For example, the Depositors Insurance Fund insures deposits in Massachusetts-chartered savings banks over the FDIC's per depositor limit.

Knowing your bank's financial strength and depositor's insurance limit is of paramount importance.



## Employee Spotlight NEW HIRES!

We are excited to report the addition of three new Agency Account Managers to our talented sales team.

Please join us in welcoming...

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