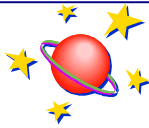


The Reporter

Spring Issue ★ Old Republic National Title Insurance Company, Boston, MA 02108 ★ 2004

Old Republic Title Launches StarsLink.com!



StarsLink is a website designed exclusively for Old Republic Title agents. Information is power and Old Republic Title will be delivering lots of it to our agents via this new website. The password-protected site offers state-specific information and resources along with a myriad of products and services at discounted rates – exclusively for Old Republic agents!

Once you visit www.starslink.com and become a registered user, we encourage you to fully explore the site. In addition to offering quick access and discounts on a wide-range of products and services, we also provide links to a number of essential industry-related publications.

- * Want to calculate a refinance rate?
- * Need to locate an ORT Office in New Mexico?
- * Want to post a topic for discussion with your peers?
- * Need a quick link to the SDN List ("Patriot Act")?
- * Want to get some specific exception language?

Visit www.StarsLink.com !!



A Cautionary Tale Regarding Good Funds

What is the conveyancing attorney's worst nightmare? It is the failure of a lender to properly fund an escrow closing transaction. As a result of the collapse of Abbey Financial several years ago, the Massachusetts legislature passed the so called "Good Funds Statute", M.G.L. Chapter 183, Sect. 63B. A few attorneys have been willing to overlook the statute either because of long standing business relationships or pressure from certain lender clients. The danger of doing so is readily apparent and very great.

One such case was the subject of a recent memorandum of warning from the Boston Office of Old Republic Title. The lender in this case, Island Mortgage Network, Inc., was a subsidiary of "Apponline.com" which, just as the name implies, was a company doing business over the Internet. Apponline.com advertised on numerous web sites attracting borrowers nationwide.

Island Mortgage bounced hundreds of checks in March, April and May of 2000. At first, Island Mortgage was able to cover its checks and continue to do business even though evidence of financial problems was becoming more and more apparent. Eventually, the company collapsed leaving approximately \$150,000,000.00 worth of unfunded and/or disputed mortgages. In Massachusetts, the total of unfunded loans was \$800,000.00. One agent closed all of the Massachusetts loans.

The Good Funds Statute should have averted a problem in Massachusetts but it did not. The agent in question failed to observe the terms of the Statute, exposing himself and others to liability and loss. What follows is a true account of what transpired after we sent the Island Mortgage Memo to our agents. We hope it proves instructive to all who read it.

A Simple Error Leads to a Major Problem

The agent had a long-standing relationship with a local Massachusetts mortgage company that was bought by Island Mortgage Network, Inc. Prior to the purchase, the agent closed numerous loans for the local mortgage company without a problem. As a result of this experience, the agent was not careful to confirm that the checks from this company cleared and that the funds for each closing were in fact available in his IOLTA account. After this local mortgage company was bought by Island Mortgage, Inc. the agent, lulled into a false level of confidence in his client's funding practice, continued to close loans without confirming good funds in his conveyancing account and, at first, there were no problems.

In May 2000, the attorney/agent received notice from his IOLTA bank that the loan proceeds checks from Island Mortgage Network Inc. had not been honored causing a deficiency in his conveyancing account. Because of his good standing with this bank, the bank at first continued to fund his outgoing checks despite the insufficient funds.

("Good Funds" continued on Page 2)

MARKETING TIPS/REMINDERS:



Attention Notaries Public: Under the final version of Executive Order 455, attorneys and their notary employees will no longer be required to keep a Notary Journal!

<http://www.mass.gov/legal/docs/EO455finalrevised.doc>



Bragging Rights: We are pleased to announce that Old Republic International (our parent company) is now listed as one of America's Largest Corporations in **FORTUNE 500** Magazine!



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A FREE GIFT IS JUST A CLICK AWAY! VISIT WWW.ORTBOSTON.COM TO CLAIM YOURS!

Of course the Island Mortgage transactions were not the only ones being handled by this agent. Funds from several other lenders relating to other loan closings had gone into his conveyancing account. The agent did not use a system of sub accounts for each lender in his conveyancing account. As a result of the positive cash flow in and out of his IOLTA account, all of the checks issued on the three Island Mortgage transactions were honored. The bank then stopped funding the overdrafts. Checks issued by the agent on non-Island Mortgage closings began to bounce. There was a domino effect involving a number of non-Island Mortgage closings.

Dual Agency Complicates the Matter

The agent wrote for two different title companies. Three of the Island Mortgage transactions were insured with ORT. About 50% of the non-Island Mortgage loans were also insured with ORT. Another carrier insured the rest. ORT took immediate steps to protect its insureds and the agent.

We went to the Island Mortgage borrowers and explained the situation that they were in. We offered to give them mortgage loans from ORT on the same terms as the Island Mortgage loans. In addition we agreed to indemnify them against claims arising under the Island Mortgage mortgages. In return we asked that they agree that, once we cleared the title of the mortgages from Island Mortgage, we could substitute, at no additional cost to them, a conventional mortgage lender for the ORT mortgages. ORT proceeded to pay off all the outstanding obligations of the agent relating to transactions insured by ORT.

Our agent was a dual agent, writing for ORT as well as another very large Massachusetts underwriter. Approximately \$325,000 of the unfunded Island Mortgage proceeds surfaced in connection with a sale and purchase money mortgage insured by the other carrier. This one transaction involved a sale where a loan policy only, was issued on the agent's other title company. The buyer did not get an owner's policy. The seller had received proceeds of more than \$330,000.00 by check drawn on the agent's account. The check was not honored. Old Republic tried to enlist the other title company in our proactive claims response.

We proposed that if the other title company would pay up to the amount necessary to preserve title in the buyer and confirm the lien of its insured mortgage Old Republic Title would permit the carrier to participate with ORT as a secured party under ORT's notes and mortgages. That same offer was also extended to any other transaction affected by the Island Mortgage problem closed by our dual agent. The other title company declined the offer. As a result, the seller is suing the agent, the buyer and the buyer's innocent lender. The district attorney is considering criminal charges against the agent.

In the middle of all this sits our agent. Because of these problems, his business has suffered greatly. One of the more remarkable aspects of this claim is the insensitive and completely different approach taken by the attorney-agent's other carrier. ORT did not await receipt of a written claim. We responded to our agent when he first told us of the funding problem. ORT took immediate action to replace the three notes and mortgages unfunded by Island Mortgage. Despite ORT's offer to share its secured status with respect to the Island Mortgage properties, the other carrier decided to save a small amount of money and expose its agent to personal liability. They paid as little as possible under their contractual policy obligations with little or no regard to the effect that decision had on the attorney agent.

Because of the other underwriter's decision, ORT decided to provide the attorney-agent with funds necessary cover the agent's liability for all dishonored checks drawn on his conveyancing account.

(“Good Funds” Cont'd on next panel)

We have made funds available to the agent without regard for whether they affect ORT's policies or those of the other carrier.

As for Island Mortgage, it has subsequently gone into an incredibly complex Bankruptcy in New York. This will be a long and messy bankruptcy case. It is the position of the investors in the loans that Island Mortgage originated that they are entitled to protection under their title insurance policies because they paid Island Mortgage for the loans. In their view, it is not their fault that Island Mortgage never funded the loans in question. It is the title insurance companies' position that since the loans were never funded, there are no valid mortgages to insure. The bankruptcy court will decide this issue.

The Lesson To Be Learned

The first and most important lesson here is quite obvious. Do not ignore the Good Funds Statute. The Statute is there as much for the protection of the closing attorneys as it is for the consumer. The perils of disregarding this statute, as demonstrated by this tale, are severe. There are other perils, of course, including the Disciplinary Rules and the Board of Bar Overseers, which are involved but not discussed in this story.

Damage in this case could have been contained to some extent. Some banks offer the ability to segregate each closing in a sub account under a master IOLTA account. With such a feature, the failure of one lender to fund a particular transaction would become readily apparent and would not taint the funding of other loans by other lenders. Damage control would have been much easier and would be confined to the Island Mortgage properties.

Many agents become involved in holding monies from closed loans for such things as unfinished new construction, discharging prior liens, completing work after the closing date, etc. Where do you hold the money? In this case, approximately \$130,000 in old escrow funds was held in the agent's conveyancing account. These funds were unsegregated from active, loan-closing funds. The bank, to honor the unfunded checks of Island Mortgage, used these funds.

We ask that all our agents learn from the experience of this one. Be aware of the Good Funds Statute. Send copies to your lenders if they fail to cooperate with you. Be personally familiar with G.L. Chapter 183, Sect. 63B; be sure your staff is too. It is there for your protection.

Employee Spotlight – Marty Haller



Marty Haller is our New England States Counsel and has been with Old Republic Title for 16 years. He likes to say, “I’m the exception in the title industry because I’ve only worked for ONE company!” He is always available to answer questions and enjoys working with attorneys and paralegals to solve their title problems.

Marty grew up in New Hampshire and is a graduate of UNH. He received his law degree from Boston College Law School and is a member of the MA and NH Bar Associations.

He now lives in Boston and enjoys sailing, travel and learning Spanish. One of his favorite things to do is call the office from his many tropical vacations and tell us just how nice the weather is.

