



# OLD REPUBLIC TITLE

## *News*



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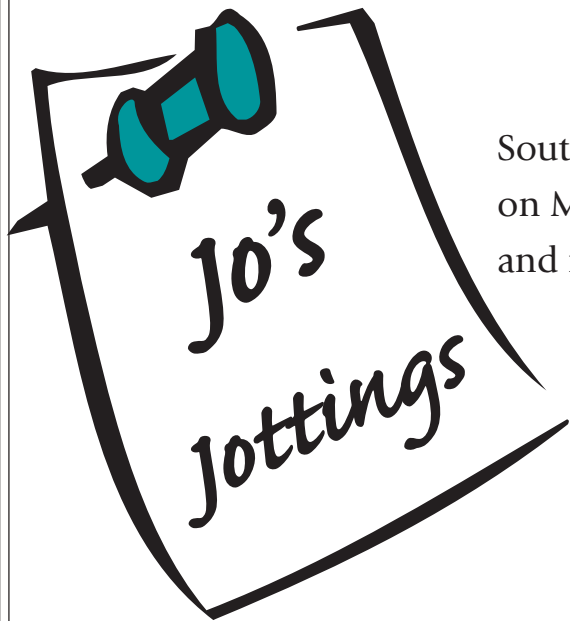
## DIRT LAWYER

Well, the BIG NEWS: Our daughter is blessing us with a grandchild. I was wondering if I was old enough to be a grandfather and I have been assured very strongly that I am. My thoughts then went to what I could do with this child; whether the child would be interested in doing a title search, learning how to bring a quiet title action, rooting for the Braves or going on mission trips. These are all good questions that will have to be answered in the future, but we are all excited about having a new addition to the family.

Summer is upon us and we are gearing up for the mission trips. I know we will be doing roofs this summer so I had to go out and buy a new miter saw and I found a new tool to hold the crayons on the roof. Now before you start laughing, realize when you are making marks on black paper on the roof, regular pencils are a little hard to see. You can find big fat yellow and red crayons at any hardware store to use for the roof. The new tool holds the crayon so it acts like a pencil and it makes it harder to lose. We are always losing things on the roof or they are falling off. I have not been through my old tools yet so there is no telling what I will need to replace or find that I have lost. The great news is two other attorneys have decided to join us at one camp. We will be doing carpentry, plumbing and electrical. Now that is a dangerous thought: having three lawyers show up at your house at 7:00 in the morning to do work. I am very grateful for their help and I will be reporting to you all the work that will be done.

The other good news is that most of you are closing some transactions. It has started with refinances and now I am hearing that some people are buying. I think this will continue but we must be patient and realize that the economy will not return to the pace of three years ago for a long time. We must also realize that our clients will have to work harder to get a loan, which means it will be a better loan and they may be having it for a good length of time. I hope all of you have come through this recession intact and we can look forward to many years of business together.

*Dirt*



Hello! My name is Jo King and I joined the South Carolina State Office as the new Agency Auditor on March 1st. I am a native South Carolinian, born and raised in Greenville.

First of all, let me say that I am delighted to be back in South Carolina. I have been with Old Republic in the Georgia State office for seven years and before that worked in the industry with another underwriter for nine and a half years. Prior to becoming an Agency Auditor, I was responsible for establishing, managing and disbursing escrow accounts for large commercial transactions. I maintained a database and coordinated the investigation of claims with three in-house underwriters. I also supervised office personnel. I have been an Agency Auditor since 1998. As an Agency Auditor, I received an Award for the Southeast Region.

My husband and I have homes in Greenville and on Fripp Island. My husband is a retired Air Force pilot and current civil service employee. My daughter, April, and son, Matthew, both graduated from the University of Georgia and still live and work in Athens, Georgia.

I visited many of your offices with Kathy Kloplic before she retired May 1st and with Ivey and Jenny over the past few weeks. I also met many of you at our seminars. During these visits and seminars, I realized how important Kathy has been to Old Republic and to our agents. I look forward to continuing the same close relationships as your new Agency Auditor. Those of you that I have not met, I am eager to meet you and look forward to working with you all.

In future newsletters, I will provide tips to prepare for an Agency Review. I will also share with you audit experiences and other helpful information. Stay tuned . . .



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Summertime is here, or at least summer time temperatures are. Hopefully, some of your business is starting to warm up as well. Meanwhile, we have been cooking up some refreshing new ideas here at Old Republic.

In case you haven't heard, we now have EZ Jackets. For those of you who do not know what these are, they are online jacket covers. Talk about easy? This will really simplify your life, your record keeping, and reporting. You simply log onto the Old Republic website, select the StarsLink icon and register. Once you have been granted access to that site (a matter of minutes), you proceed to the Agent Services tab and select EZ Jackets/EZ Remit. You will also have to be granted access to this site, but again, it only takes a few moments. Once you have registered the first time, you will then go directly to that site to access your jackets. Not only does the site assign your jacket number, it keeps account of all the jackets you have requested and remitted. No more keeping track of inventory or creating a report to send in at the end of the month. This site is very user friendly and self explanatory. It even has a handy rate calculator that can help ensure you calculated the correct amounts. It also breaks down how much total premium goes to the agent and how much to Old Republic, which is a good second check to see if your totals are correct.

If you are interested in EZ Jackets and have trouble logging on or understanding the website, please contact our office and speak to Nancy Buczynski.

I hope everyone has a great summer and please let us know if there is anything we can do to help you.

*Jenny*

# Welcome to all those new to Old Republic Title!

## **New Agents:**

- |                                      |                                     |
|--------------------------------------|-------------------------------------|
| ★ Askins, Chandler & Askins          | ★ H. Fulton Ross, Jr.               |
| ★ James F. Walsh, Jr.                | ★ Heather M. Cairns                 |
| ★ Brian C. Phillips, L.L.C.          | ★ Warlick, Tritt, Stebbins & Murray |
| ★ Spencer Andrew Syrett              | ★ Law Office of Brian A. Katonak    |
| ★ Kenison, Dudley & Crawford         | ★ Law Office of John Chappel Benso  |
| ★ Kathy Ouzts Rushton                | ★ W. Sherwyn Jacobs                 |
| ★ Robert H. Corley                   | ★ Charles V.B. Cushman, III         |
| ★ Lee, Erter, Wilson, Holler & Smith | ★ DuBose-Robinson, P.C.             |
| ★ Law Offices of Paul L. Agnew       | ★ Sarah U. Shiflett, P.A.           |
| ★ Adler Law Firm                     | ★ McDowell Law Offices              |
| ★ Phillips Law Firm                  | ★ Busbee, Hunter & Griffith, P.C.   |
| ★ Jack Brickman                      | ★ Donald B. Hocker                  |
| ★ Marsha M. Banks                    | ★ James E. Knight Jr.               |

## **New Approved Attorneys:**

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|---------------------|--------------------------------|
| ★ Reddick & Kaiser  | ★ Holly-Marie Sarvis Patterson |
| ★ Harry V. Ragsdale |                                |



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# CASE LAW

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Carlyle McGill v. Tracy Moore and others (Opinion No. 26585 Filed January 20, 2009) This case deals with contracts for the sale of land and specific performance was asked for as the remedy. An adjacent landowner was trying to purchase the neighbor's property but it was heir's property. The purchaser produced individual contracts for the heirs but the contracts all stated that closing will take place once all heirs had signed a contract. All the heirs but one signed contracts and some of them closed, but not all. The buyer brings this action seeking specific performance and the master ruled against him because the contract contained a condition precedent which had not been satisfied. The Supreme Court affirmed this decision.

Dorothy Windham v. Donald Allen Riddle and Jennifer D. Riddle (Opinion No. 26586 Filed January 20, 2009) This case deals with appurtenant easements and how they can be created and transferred. The master found the parties had an appurtenant easement; the Court of Appeals reversed that decision and the Supreme Court affirmed the Court of Appeals. It is an extensive discussion of appurtenant vs. in gross easements. The Court does say that an easement can not be created in an installment land contract because legal title remains in the seller. This calls into question the practice of granting an easement to yourself when you continue to own the underlying fee.

Windle E. Skipper as PR of the estate of C.D. Nixon vs. Gloria N. Perrone and Carol Repec Perrone as PR of the estate of Joel E. Perrone and others (Opinion No, 4489 Filed January 27, 2009) The Court of Appeals affirms a special referee decision to set aside a deed on the ground of undue influence. The decision was based on the facts and the appeal was based on laches, estoppel and waiver. The Court found none of them applied and the facts were very clear.

William F. Dykeman and others vs. Wells Fargo Home Mortgage Inc. (Opinion No. 26593 Filed February 9, 2009) The Supreme Court affirmed a circuit court decision regarding the penal statute for failure to satisfy a mortgage within 90 days. The lender in this case did satisfy the mortgage more than 90 days after receiving the funds but the borrower had to meet a condition precedent of making a request for the mortgage to be satisfied. In this case the court said just sending the money and complying with all the "borrower's responsibilities" does not meet the test of requesting a satisfaction. Therefore, all the statutory requirements were not met and the lender was not penalized.

Horry County, a body public, vs. Michael R. Ray and others (Opinion No. 4501 Filed February 10, 2009) The case deals with a foreclosure sale and the purchaser at the sale gave a fraudulent check to the county. The county disbursed funds not knowing the check was fraudulent and the new purchaser put a new mortgage on the property. The new purchaser who gave the fraudulent check

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defaulted on the new mortgage and the contest is between the new lender and the county. The county had filed a Lis Pendens against the property but it did not file a lawsuit within 20 days of the Lis Pendens and it later cancelled the Lis Pendens. The Special Referee found the county did not have a lien on the property and the Court of Appeals affirmed that decision. There is a good discussion of what a Lis Pendens can and can not do.

Donald Reese Campbell vs. Wendy L. Jordan and others (Opinion No. 4517 Filed March 12, 2009) The parties are appealing a partition in kind that had been ordered by a special referee. It was family owned property consisting of four tracts located in two different counties. The family members had been deeding the property to one another and needed the partition to clear up the title and decide who gets what. The Court of Appeals affirms the referee's decision and it is an interesting discussion of the factors that make up a partition in kind.

AJG Holdings LLC, and others vs. Levon Dunn and others (Opinion No. 4508 Filed February 24, 2009) The case deals with the use of four lots in a subdivision for a bed and breakfast when the lots in the subdivision had been restricted to prohibit any commercial use. The lawsuit is still to be tried and the appeal was concerning a preliminary injunction which had been issued by the trial court. The Court of Appeals affirmed the injunction but reversed the decision of the lower court to not require a bond. It was remanded to require the execution of a sufficient bond.

James T. Judy vs. Ronnie F. Judy (Opinion 4528 Filed April 8, 2009) This is another case dealing with partition of property. The land was left to the two men to be divided equally between them. However the brothers did not get along and after several confrontations and actions the probate court did partition the property and voided several deeds and leases on the property. This action was brought later in tort for damages to the property. The lower court jury found for the plaintiff and awarded damages but the Court of Appeals reversed the decision based on res judicata from the probate court action.

C. Steve Clardy and Michael S. Clardy vs. Jack Bodolosky and United-Magnolia LLC (Opinion No. 4540 Filed May 5, 2009) The case is a breach of contract action concerning the sale of a motel. The parties had a contract to sell and the time period was about to expire. After negotiations the seller agreed to extend the time but he wanted more money. The terms were agreed upon and the contract was modified and the seller's attorneys said make a check payable to his trust account. The buyers followed these directions. Later the seller tries to rescind the contract saying he wanted the deposit to be given to him. The lower court and the Court of Appeals agree the written contract governs and all terms were met and order specific performance.

Larry Lee Fesmire, Jr. and Teresa M. Fesmire vs. George B. Digh (Opinion No. 4549 Filed May 20, 2009) The parties owned a condo together and wanted to go their separate ways. The lawsuit asks for the enforcement of an alleged oral contract for one owner to sell to the other. The master granted specific performance on the oral contract. The Court of Appeals reversed the master's order and remanded the case for an accounting and partition by sale. The court found certain letters admitted into evidence should not have been used in the form they were presented and the oral contract was barred by the Statute of Frauds.

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## Who is “disqualified” from providing Qualified Intermediary Services?

In an IRC §1031 tax deferred exchange, a Qualified Intermediary (“QI”) is an individual or business entity who facilitates the exchange of property. Specifically, the QI acquires the relinquished property from the taxpayer, causes it to be transferred to the buyer, holds the exchange proceeds to avoid the taxpayer’s actual or constructive receipt thereof, acquires replacement property and causes it to be transferred to the taxpayer.

Under the Treasury Regulations governing §1031 exchanges, the use of a QI is a “safe harbor” which means a proscribed format or method, which, if followed, prevents the transaction from being disallowed. Specifically, the QI safe harbor allows the taxpayer to avoid a determination by the IRS that the taxpayer had actual or constructive receipt of the exchange proceeds.

The Treasury Regulations, however, expressly prohibit certain persons from acting as a QI. See Treas. Reg. 1.1031(k)-1(k). If a disqualified person acts as the QI, the exchange could be invalidated. It is therefore important to understand who is “disqualified” when choosing a QI to handle your exchange.

### *Agents of the taxpayer are disqualified*

Any person who is an agent of the taxpayer at the time of the transaction is disqualified. Under the Regulations, this includes those that have acted as the *taxpayer’s employee, attorney, accountant, investment banker, or real estate agent or broker within the two year period preceding the exchange.*<sup>1</sup> Such individuals will be treated as an agent and are disqualified from acting as the QI, unless the prior services performed for the taxpayer pertained only to 1031 exchanges.

- **Example:** Attorney B provides legal advice to Mr. Smith, from time to time, regarding a variety of matters—estate planning, taxes, and miscellaneous real estate matters—and has done so in the two years preceding the date the relinquished property is transferred. Attorney B is disqualified from acting as Mr. Smith’s QI.

### *Those who are related to the taxpayer and those who are related to an agent of the taxpayer are disqualified*

Those who are “related” to the taxpayer or to an agent of the taxpayer—as defined in IRC § 267(b) or §707(b) (substituting 10% for 50%)—are also disqualified. These relationships include the following:

- Family members, including brothers and sisters (whether by the whole or half blood), spouses, ancestors, and all lineal descendants;
- Corporations in which the taxpayer has more than 10 percent interest
- Partnerships in which the taxpayer has more than 10 percent interest
- Trusts in which the taxpayer is both the fiduciary and grantor or fiduciary and beneficiary

**Example:** Attorney C has never represented taxpayer. Attorney C is, however, taxpayer’s sister. Attorney C is disqualified from acting as the QI for taxpayer.

**Example:** Attorney D regularly represents taxpayer on a variety of legal matters and is thus an agent of the taxpayer. Attorney D’s sister provides QI services. Attorney D is disqualified because he is an agent of the taxpayer and attorney D’s sister is also a disqualified person because she is related to an agent of the taxpayer.

Continued

**Example:** XYZ, a corporation, provides QI services. Attorney D owns a 15% interest in XYZ. Attorney D represents taxpayer on a variety of matters and has done so within the 2 years preceding the date of the transfer of the relinquished property. Attorney D is disqualified because he is an agent of the taxpayer. XYZ is also disqualified because it is related to Attorney D.

While one should always consult with a tax or legal advisor when contemplating an exchange, choosing the right QI is essential to the actual validity of the exchange.

<sup>1</sup> i.e. the two year period that ends on the date of the transfer of the first relinquished property.

For additional information, please visit [www.orexco1031.com](http://www.orexco1031.com) or contact:

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*Congratulations to Mandy Trotter of our State Office. On May 15th she happily became Mrs. Rick Corley!*

*Congratulations also go out to Cantzon Foster, II. February 21st he married Krisdee Ann Schmale.*

*Best Wishes to our Newlyweds!!*

*Please visit our website at [www.oldrepublictitle.com/scnational](http://www.oldrepublictitle.com/scnational) to view the on-line version of this newsletter.*