



**OLD REPUBLIC** NATIONAL TITLE INSURANCE COMPANY



# News

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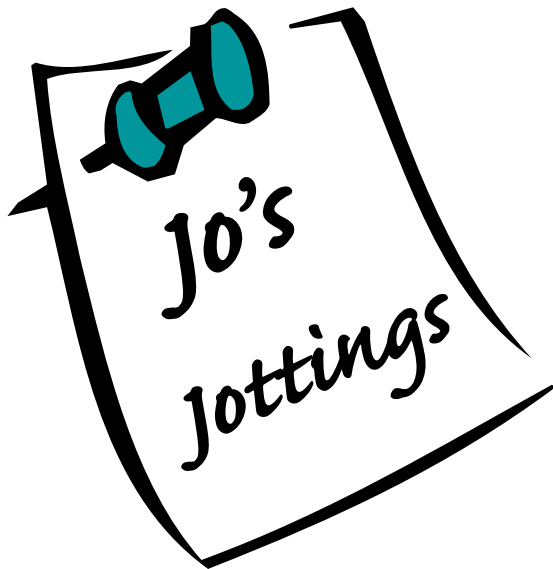
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## ★ 2010 Awards ★

★ #1 Premium & Policy Producer ★  
*Talley A. Lattimore*

★ Circle of Excellence Premium Producers ★  
*Tracey H. Reynolds*  
*Buist, Moore, Smythe & McGee*  
*Berry, Quackenbush & Stuart*  
*Robert C. Clawson*

★ Circle of Excellence Policy Producers ★  
*Tracey H. Reynolds*  
*Buist, Moore, Smythe & McGee*  
*Berry, Quackenbush & Stuart*  
*Hanover Title*



Happy New Year!

2011- It's hard to believe how far into the 21st century we are. This summer it will have been 15 years since the Olympic Games were held in Atlanta. Time is literally flying. Therefore, let me remind you that if I have not been to your office to do an Agency Review Audit, you will hear from me soon to schedule an appointment. If this news brings any questions to mind, please do not hesitate to contact me. You can reach me by calling the office at 803.799.9495 or call me direct at 803.622.7173.

Once again, do not hesitate to call me with any questions you may have about the Agency Review process or with any escrow issues at the numbers shown above. You may also email me at [jking@oldrepublictitle.com](mailto:jking@oldrepublictitle.com) if you prefer.

Many of you are new with Old Republic in 2010 and I look forward to meeting you and your staff and to working with you. I try to get new agents scheduled within a few months of the contract date so that we can meet and to make sure everything is going smoothly with your agency.

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## **DIRT LAWYER**

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Well, the snow in South Carolina has melted and it warmed up for Valentine's Day. This means that the flowers will be emerging in the not too distant future and people will be enjoying the warmth. Spring training for baseball is just beginning and I look forward to another banner year for the Atlanta Braves. It will still be strange not to watch Bobby Cox in the dugout. I say it every year, but this could be the year the Braves win another World Series.

I also have high hopes for the real estate business this year. From what I am hearing, everybody has some work to do and has closings on their calendar. All the lenders are being conservative with their money so each loan is harder to close. The hope is this will mean better loans so we will not have as much foreclosure in the future. I look for each month to be a little better than the last so that we can look back at 2011 as a good year.

For Christmas, I received a new circular saw because the old Makita needed some work. I had accidentally cut the power cord one too many times. This means it is time to prepare for the Mission trips. We will be in Beaufort, Dillon and El Salvador this year and several old and new friends are going along with us. There is something about crawling around in the dirt and putting on a new roof or floor that I really enjoy. It is also the people we meet and work with that is so much fun.

I hope all of you are making plans for a great 2011.

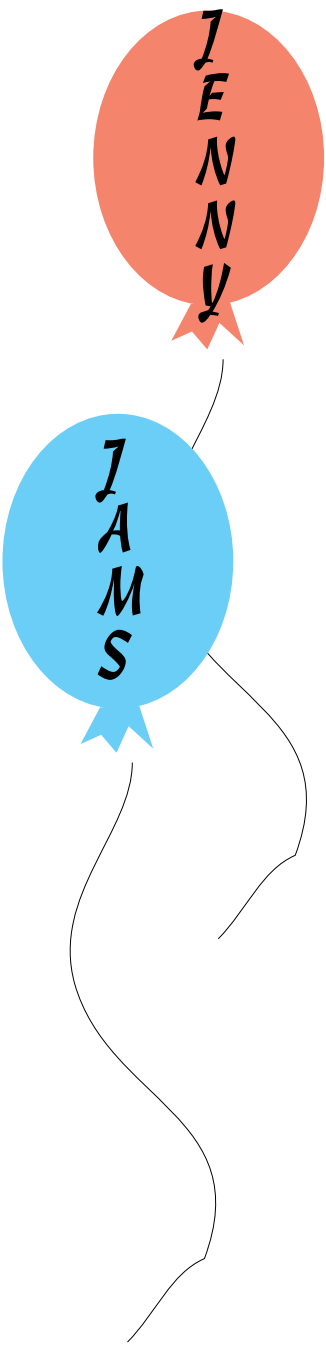
*Dirt*

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★ SPOTLIGHT ★

Welcome to our new agents:

- ★ Palmetto Law Associates, L.L.C.
- ★ S. Allan Hill
- ★ Catherine West Olivetti
- ★ Thomas B. Peterman
- ★ Allmon Law Firm, P.C.
- ★ Anderson | Oyer, L.L.C.
- ★ Larry N. Briggs, P.C.
- ★ Farnsworth Law Offices
- ★ Deschamps Law Firm
- ★ Harmon & Felts, P.A.
- ★ Butler, Foti & College, L.L.C.



Greetings Everyone! I hope this letter finds you well and warm. I have got Spring Fever something terrible and am ready to say goodbye to winter.

Wedding plans are coming along nicely and I am ready for June the 3rd to be here! I am also running another marathon with Team In Training to support the Leukemia and Lymphoma Society. I will be participating in the Country Music Marathon in Nashville on April 30 of this year. Wish me luck!

On a title insurance note, in the upcoming months you will be getting letters mailed to your home address from the South Carolina Department of Insurance. These letters are regarding renewal of your Individual License. This renewal will be done online and the letter will give you step by step instructions. Don't panic if you have not already received one. They are only sending letters to those people that were born in odd numbered years this year. Next year, you even numbered birthdays will be scheduled for payment. You have until the end of the month in which you were born to pay the fee of \$12.50. If you have any questions, do not hesitate to contact us.

We will be having our annual spring seminars this year on the following dates:

May 4 at the Harbor Club in Charleston

May 5 at the Clarion in Columbia

May 10 at the Embassy Suites in Greenville

These will include 4 hours of FREE CLE credit. The seminars will run from 9am - 1pm.

There will also be an opportunity to earn CLE credits for a small fee at the annual Spring Convention of the Palmetto Land Title Association on March 18 at the Columbia Metropolitan Convention Center. Definitely worth your time and money!

If you are interested in joining PLTA, please feel free to give me a call or visit the website at [www.scplta.org](http://www.scplta.org).

***In Memory Of***  
**JOHN GAILLARD MARTIN**

*On December 29, 2010, Jack Martin departed this earth and all of us lost a good attorney and friend. Jack was born in Connecticut and attended The Citadel for two years before joining the army. He attended the George Washington School of Law after his service and then moved to Columbia, South Carolina in 1945. Jack was in private practice for many years and was the state agent for Minnesota Title (Old Republic Title) beginning in the 1950s. He later became State Counsel for Old Republic Title until his retirement in 1993. Many an attorney relied on Jack to assist them on how to structure and close a real estate transaction. All of us will miss Jack, not only for his wise counsel, but as a friend.*

# TAXPAYERS BEWARE: ZERO PROFIT DOESN'T MEAN ZERO CAPITAL GAINS TAXES

YOUR SOURCE FOR UP-TO-DATE 1031 EXCHANGE NEWS

*Choose OREXCO to handle your next exchange. For more information about OREXCO and its QI services, please go to [www.orexco1031.com](http://www.orexco1031.com) or call Laura Huckaby at 866.543.1031*

In this difficult market, many taxpayers are selling property in short sales or other transactions with no profit. Unfortunately, what many taxpayers do not understand is that property may be sold with no profit, but still be subject to significant taxable capital gain.

How is this possible? It is possible simply because gain results not just from appreciation in value, but also results from depreciation deductions taken during ownership of the property, gain deferred from previous transactions, and from borrowing against appreciated equity in a declining market. These adverse tax consequences can be avoided by engaging in a Section 1031 tax deferred exchange.

## How to Determine Gain

The formula to determine taxable gain is: Sales price less adjusted basis<sup>1</sup> = taxable gain

## Three Situations Resulting In No Profit, But Taxable Gain

**1. Depreciation Recapture** If a taxpayer takes depreciation deductions, those deductions reduce the taxpayer's basis, thereby resulting in gain.

**Example:** Taxpayer acquires investment property A for \$200,000. Taxpayer's basis is therefore \$200,000. During taxpayer's ownership, taxpayer takes \$138,500 of depreciation deductions, thereby reducing taxpayer's basis to \$61,500. Taxpayer sells Property A for \$180,000.00. Even though taxpayer sells the property for \$20,000 less than what he originally purchased it for, he still has a taxable gain of \$118,500 ( $\$180,000 - \$61,500 = \$118,500$ ) which will result in approximately \$41,500 in federal and state taxes. This adverse tax result can be avoided by exchanging the property in a tax deferred exchange rather than selling the property.

**2. Carryover Gain** If a taxpayer sells property previously acquired in an exchange – at no profit or even at a loss – the taxpayer may still be faced with significant taxable gain.

**Example:** Taxpayer originally acquired Property A for \$20,000. Taxpayer disposed of Property A in a tax deferred exchange for \$100,000 and acquired Property B for \$150,000, thereby deferring taxes on \$80,000 of gain. Taxpayer's adjusted basis in Property B is \$70,000 ( $\$150,000 \text{ purchase price} - \$80,000 \text{ carryover gain} = \$70,000$ ). Taxpayer now proposes to sell Property B for the same price as he purchased it for – i.e. \$150,000. Although Taxpayer is not making a profit on this transaction, he will still have significant federal and state taxes of approximately \$28,000 on his gain of \$80,000.

**3. Excess Borrowing** If a taxpayer borrows against appreciated equity in their property, tax consequences can also result if the property thereafter declines in value and the taxpayer is forced to sell the property for little or no profit.

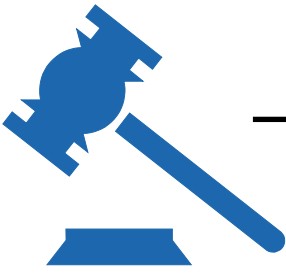
**Example:** Taxpayer acquired property A for \$1,000,000, paying \$200,000 cash and borrowing \$800,000. Taxpayer's basis is \$1,000,000. During Taxpayer's ownership, the property appreciates in value to \$1,400,000, enabling Taxpayer to refinance the existing loan of \$800,000 with a new loan of \$1,120,000. Taxpayer now sells, but since property values have declined, his selling price is \$1,120,000. Although Taxpayer will receive no cash from the sale, he will still have taxable gain of \$120,000 ( $\$1,120,000 - \$1,000,000 = \$120,000$ ), with combined federal and state taxes of \$42,000.

As illustrated by the foregoing examples, sales of property that yield little or no cash can still result in taxable gain. Before selling in a down market, taxpayers and their advisors should first determine the taxpayer's basis in the property to be disposed of and thoroughly discuss upfront the potential tax consequences. Taxpayers can avoid any of the tax consequences noted in these examples by engaging in a IRC §1031 tax deferred exchange.

*Taxpayers contemplating an exchange should always consult their tax or legal advisor.*

<sup>1</sup>Basis = Original purchase price

Adjusted Basis = Basis plus improvements less depreciation



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# CASE LAW

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Robert Coake and Susan Coake v. Kathleen Burt n/k/a Kathleen Thomason (Opinion No. 4761 Filed December 1, 2010) The case deals with the possible violation of the Residential Property Condition Disclosure Act by the seller. They buyers had to make some repairs to the home and wanted the seller to reimburse them. At the end of the trial the judge gave a directed verdict to the defendants and did not let the case go to the jury. The Court of Appeals reversed the lower court saying there were questions of facts and decided the case should to to the jury.

Earthscapes Unlimited, Inc. v. Richard F. Ulbrich and others (Opinion No. 26903 Filed December 13, 2010) The case is a foreclosure of a mechanic's lien based on landscape work done on a new house. The case was tried without a jury and the landscaper was awarded damages. The Supreme Court affirmed the lower court. The court agreed the company was due money for the work on a quantum merit theory and therefore did not address the issue of the mechanic's lien or whether there was a contract between the parties.

The Linda McCompany, Inc. v. James G. Shore and Jan Shore (Opinion No. 26878 Filed December 29, 2010) This is a new opinion of the prior case. The party had petitioned for a rehearing which the Court denied. However the Supreme Court rewrote their opinion regarding the life of a judgment. The new opinion does not change the decision and the Court says the judgment has active energy and, therefore, it lives after the ten years. The Court does stress this is a narrow holding limited to the facts similar to those at issue in this case. When a party is trying to enforce the judgment and merely waiting on a court order at the end of the ten years, then the judgment lien does live on. We all need to review this case and make sure the abstractors determine there is no active energy with a judgment.

M&T Group LLC v. Palmetto Point of Williamston LLC and others (Opinion No. 26910 Filed January 7, 2011) The lower court granted a summary judgment and our Supreme Court found there was an issue of fact so it reversed and remanded the case for trial. The interesting point is whether title to the property was insurable by title insurance. This is a real estate contract action and the provision in the contract says if the buyer can not get title insurance, they may terminate the contract and get a refund. Apparently, one company would insure and another one would not. There are very few other facts but it might be an interesting trial.

South Carolina Department of Transportation v. Horry County and others (Opinion No. 26911 Filed January 18, 2011) The case deals with an easement given to Horry County by the property owner in 1924. The County in 1930 gave the easement to the South Carolina DOT. The County in 1979 gave a deed to property owners of any interest they might have in the easement but they did not own the easement at that time. The SC DOT filed this declaratory judgment action to determine if they had a valid easement. A special referee held it was a valid easement and our Supreme Court confirmed that finding. This raised the question of how far back should a title search go?

AJG Holdings LLC and others v. Levon Dunn and others (Opinion No. 4779 Filed January 19, 2011) This case deals with restrictive covenants dealing with commercial activity and the enforcement of those covenants. There were also several causes of actions for torts, civil conspiracy and intentional infliction of emotional distress. The circuit court granted a partial summary judgment but stated the other matters should be determined by the jury. The Court of Appeals affirmed the lower ruling. The important part of this case is the question of whether a developer can keep the rights to modify or approve restrictions once the developer has sold all of the lots in the development. Both courts determined that once a developer has no property interest they did not retain any developer's rights.

Sara Mae Robinson and others v. The Estate of Eloise Pinkney Harris and others (Opinion No. 26914 Filed January 24, 2011) The quiet title action was about a deed and an estate that occurred in 1946. The circuit court granted summary judgment to the defendants saying the other side had waited over 50 years to question ownership of the property. The Court of Appeals reversed. The Supreme Court reversed the Court of Appeals and reinstated the summary judgment based on the theory of laches. There is a strong dissent in this case but the majority lays out the rule of laches.