

OLD REPUBLIC TITLE

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Spotlight

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DIRT LAWYER

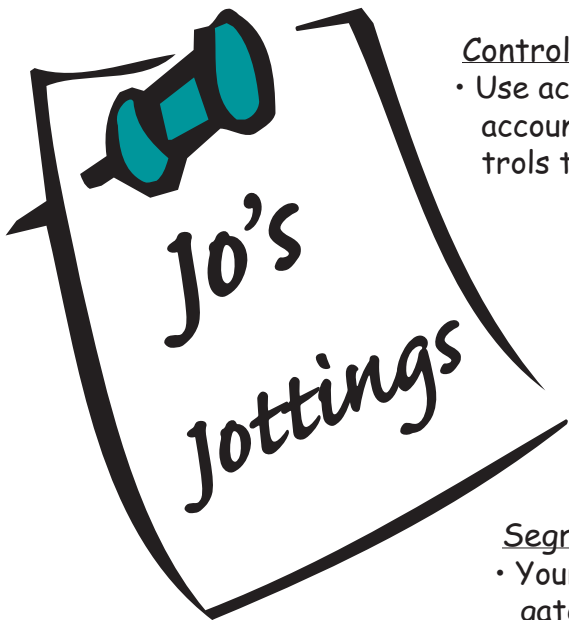
Well, the summer is drawing to an end and I am ready to take a deep breath and stay home for a while. We finished all our mission trips and nobody received any serious injuries and great work was done. In Beaufort, we worked on a house where the bathroom was added 30 years after the original construction. It needed a new roof, some septic tank work and repairs to the ceiling. The team worked hard and all was done in one week. In Dillon, we worked on the house of a lady who had 12 children, 42 grandchildren and numerous great-grandchildren. We replaced a portion of the roof, painted the outside, repaired the ceilings and installed a new toilet. We were able to meet many of the family and they all helped and continued to work after we left. The two attorneys that went with us to Dillon worked on a different house and put a new roof on, repaired a large amount of flooring and learned more about plumbing and septic tanks than they ever wanted to know. I do appreciate the two of them going and they want to go back. In Nicaragua, we mixed concrete by hand for a community center floor, held vacation bible school and bible study and delivered food to the people in one of the neighborhoods. The homes in this neighborhood were the size of a small bedroom and were built of concrete or siding or tarps with barely enough room to walk between the homes. It was a very humbling experience.

We have had some questions about the 2006 ALTA Short Form Residential Loan Policy. Please be aware it can be used when insuring one to four family residences in a loan policy. You must be able to give affirmative coverage over all restrictions and easements, make sure all taxes are paid and you can give survey coverage with no special exceptions (this would mean any water exceptions). If you have any questions, please feel free to contact us.

It appears from the August and September reports that some real estate is moving and I thank you for getting those reports to us. I hope the trend continues and the last of 2009 will be good to all of us. The HUD1 and new GFE (good faith estimate) are still on schedule to take effect in January 2010 and we are learning as much as we can about it. We are planning seminars on December 3 (Columbia) and December 10 (Charleston) to help all of us understand what to do.

I would also like to announce that on October 8, 2009, Kathy and I became grandparents and all are doing well.

Dirt



Control Procedure

- Use accounting controls to safeguard assets and ensure that the accounting system will deliver accurate information. The main controls that are beneficial to an escrow accounting system are:

- Bank Statements
- Segregation of Duties
- Receipts Control
- Security of Checks
- Wire Transfer Security
- Proper Labeling of Accounts
- Funds Held after closing
- Management Review

Segregation of Duties

- Your internal control system is stronger when you properly segregate duties and is also a check against unintentional errors.
- We understand that in many small offices complete segregation of escrow responsibilities is not possible. In these cases, it is recommended that the managing attorney receive directly from the bank the unopened bank statement for review.

Wire Transfer Security

- Authorization to wire transfer funds should be limited to key employees.
- The best protection against proper use of a telephone transfer is to use a call back procedure. The bank calls back an individual, other than the person who ordered the transfer, to verify the wire is an approved transaction.
- Be cautious about giving out bank account information or wire transfer delivery instructions over the phone to persons you do not know. Unscrupulous persons can use this information to steal from your accounts.

Proper Labeling of Accounts

- Proper labeling of accounts means that you should identify all escrow accounts as such on the bank statements, deposit tickets and on the checks used in the account. This helps avoid confusion with your individual or corporate accounts. It has the added benefit of extending the FDIC's insurance coverage for each customer, instead of for the entire account.

Funds Held After Closing

- On occasion, holding funds in escrow for a customer is necessary. Some situations where this occurs are construction payouts, earnest money deposits or for various purposes (completion of projects, disputes, etc.). In these cases, a written agreement should be prepared and executed by all parties to the escrow. The agreement details the amount held, the duration, the purpose and how to disburse the funds. This type of agreement will serve as a paper trail in the escrow file explaining why you are holding the funds. Prior to final disbursement of funds held, written acknowledgment from all parties should be obtained as required by the holding agreement.

Bank Errors

- If you encounter significant bank errors, follow up with the bank promptly. By preparing the bank reconciliations monthly, you will catch bank errors timely. List any bank errors on the reconciliation each month. Once the bank makes the appropriate corrections, remove the errors from the reconciliation. Generally, banks only give 30 days from the receipt of the bank statement to identify errors in the statement. If the bank has not been notified within 30 days, your opportunity to recover may be lost.



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As many of you know the South Carolina Department of Insurance has made several changes this year.

First, they have now decided to add a new biennial fee of **\$25** to be paid by **ALL** producers licensed in South Carolina. This fee is in addition to the biennial appointment fee of \$40 that Old Republic will continue to pay on your behalf. This new fee does not have to be paid until **November 1, 2010**. We will be sending out reminders closer to that deadline so that you are not faced with retaking the test and filling out more paperwork. Renewal applications and renewal fees must be paid online.

Second, the South Carolina Department of Insurance has gone paperless, or at least they are attempting to. This means if you have a new attorney or employee in your office that wants to become licensed they will have to complete the application process online. This also means they will need to be able to pay with a credit card at the time they submit the application. The Department of Insurance will run a SLED check and check exam results online as well.

We have been informed by agents applying for a new license and those trying to renew that they are experiencing problems with the website. The SCDOI has informed us that they are experiencing some technical difficulties and hope to have the glitches worked out as soon as possible. We will keep you posted with any new updates.

Finally, I am proud to report that I finished my first triathlon Sunday, September 13th. I participated in the Nation's Triathlon in Washington, DC on behalf of the Leukemia and Lymphoma Society. It took me 3 1/2 hours to complete and was a great challenge, especially the swim. The Potomac River was a bit chilly and the current was pretty swift so I was thankful to survive the swim. Many of you were generous enough to make donations to LLS and kind enough to support me. I can not tell you how much I appreciate the support and stories that many of you have shared about loved ones you have lost to cancer or loved ones that are survivors. Each and every one of them are an inspiration to me. I sincerely thank you and recognize that I could not have done it without you!

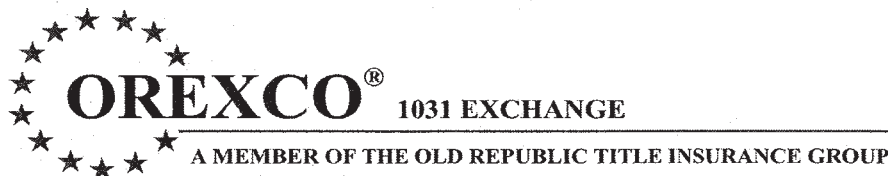
Jenny

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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.*¹ 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.

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.



CASE LAW

W. Harold Jones, v. Mandy Leagan, Jeff Leagan, James D. Owens and Helen M. Owens (Opinion No. 4551 Filed May 27, 2009) This case deals with adverse possession and laches. The Court of Appeals affirmed a Special Referee's finding that the Owens owned the property through adverse possession and that laches barred any interest of Jones. The court went through all the elements of adverse possession and also stated that ownership can be established with less than residence on the property.

Eliza Frazier and Dorothy Anderson Brailford v. Simon Smallseed and others (Opinion No. 4558 Filed June 4, 2009) The Court of Appeals decided this case of adverse possession and easement by prescription by affirming part and reversing part. One side argued they owned the property by color of title and adverse possession. The Court found that the party did not have color of title since the deed in 1951 did not include the property in question and did not have adverse possession because they exercised no control of the property. The other side argued they had a prescriptive easement over the road to their property. To acquire this easement the Court gave us three elements which are continued use for twenty years, identity of the easement and the use being adverse to others. The party did not have use of the easement for twenty years so the lower court decision was reversed as to the easement.

Peter S. Santoro and Mary Santoro v. Warren H. Schulthess (Opinion No. 4575 Filed July 1, 2009) This case is a fight between neighbors concerning the level of a pond, contractual relations and restrictions as to use of the property. The Santoros were trying to sell their property that was located adjacent to a pond and Schulthess owned the pond and was repairing the dam. The Court of Appeals found that Schulthess had asserted his rights as a property owner when he informed people that the lot for sale was not located on the pond and there was no interference with a contract for sale. The Court found the action for trespass was not supported with evidence. In repairing the dam, water had backed up on the other property temporarily but had returned to its normal level once repairs were made. The Court found no evidence of permanent damages to the lawn. The Court found the lot owned by Schulthess was not subject to the restrictions of the subdivision and therefore the temporary parking of his trailer on the lot did not violate the restrictions.

Mortgage Electronic Systems Inc. v. Daniel P. White and others (Opinion No. 4589 Filed July 13, 2009) This case is a foreclosure of property not owned by the borrower, the borrower demands a jury trial two years after the filing of the complaint, and the borrowers asserted claims against the closing attorney. These claims against the attorney were dismissed at the request of the borrowers. The Court of Appeals affirmed the lower court decision that denied a jury trial and found the mortgage void as to the fee simple owner. The mobile home was ordered sold and a monetary judgment was rendered.

Springs and Davenport, Inc. d/b/a H.B. Springs Co. v AAG, Inc. and John Mancino (Opinion No. 4588 Filed July 13, 2009) The Court of Appeals affirmed a Master's order concerning a real estate commission. The parties had signed a commission agreement and a sale of the property took place. The seller took back a purchase money mortgage and told the real estate agent they would get paid as the note was paid off. The buyer defaulted on the loan, the seller foreclosed and took back the property at the judicial sale. The seller argued since they did not get paid for the property the remainder of the commission was not due. The court and the Master found the commission plus interest and attorney fees were due the agent.

Ken Buffington and others v T.O.E. Enterprises, a South Carolina General Partnership and others (Opinion No. 26685 Filed July 13, 2009) The Supreme Court affirmed a lower court decision concerned the enforcement of restrictions. The property was restricted to residential use and the appeal concerned whether equity should be used to determine whether the restrictions should not be enforced. The Court reaffirmed that equity should be used but in this case the appellant had not met the burden and the restrictions were enforced.

Hynes Family Trust and Richard W. Hynes, Trustee v. Heide Spitz (Opinion No. 4594 Filed July 21, 2009) The case deals with a fight over a drainage easement between townhouses. One owner disconnected the drainage pipe from the other house

