



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

NEWS

January 2009

Vol. 14, No. 1

Contents

PAGE 1

2008 Awards

PAGE 2

Kathy's Corner

PAGE 3

1031 Exchange

PAGE 4

Jenny Jams

PAGE 5

Strength & Stability

PAGE 6

Dirt Lawyer

PAGE 7

2008 Respa Reform
Analysis

PAGE 10

Spotlight

PAGE 11

Case Law

A publication of
OLD REPUBLIC
National Title
Insurance Company
South Carolina



2711 Middleburg Drive
Suite 304
Columbia, SC 29204-2413
Phone: (803) 799-9495
Toll Free: (800) 922-8811
Fax: (803) 771-7941
Email
ihart@oldrepublictitle.com
kklopcic@oldrepublictitle.com
dkadlowec@oldrepublictitle.com
nbuczynski@oldrepublictitle.com
jsarvis@oldrepublictitle.com
atrotter@oldrepublictitle.com



2008 Awards



#1 Premium Producer

Buist Moore Smythe McGee, P.A.



#1 Policy Producer

Talley A. Lattimore, Esquire



Circle of Excellence Premium Producers

Talley A. Lattimore, Esquire

Harvey, Casterline & Vallini, L.L.P.

Tracey Reynolds, Esquire

Ormand, Ashley and Gibbons, P.A.



Circle of Excellence Policy Producers

Tracey Reynolds, Esquire

Harvey, Casterline & Vallini, L.L.P.

Robert Clawson, Esquire

Gregory K. Martin, Esquire



It's that time of year again when we show our appreciation to all of our agents for working with Old Republic Title and, as your auditor, I am very much aware of the good work you do. Most of you know that we have been bringing a chocolate treat to all of you each December. In that regard, I have a little story I would like to share about the first year that I was fortunate enough to visit each and every agent in December bringing the treat.

It was December 1991. I had been with the Company since July 31st, had never driven to most parts of South Carolina, and was given the task (opportunity) of delivering a box of chocolate to all Old Republic Title (Minnesota Title) Agents in South Carolina. My husband talked me into wearing a Santa Claus hat on this mission. So, out I go, my hat on my head, my trunk full of sweet smelling chocolate, a list of agent names and addresses, a road map of South Carolina and several local maps to keep me from getting lost.

I have a lot of memories from those first visits to our agents, but one in particular stands out. I entered the lobby of the agents Law Firm, was waiting for the receptionist to acknowledge me when she looked up and said, "I don't know who you are, but I know what that brown box is. Please, come in." That year was a special holiday season for me and I have had the pleasure of repeating it each year since then. What a great way to meet all of the people I would and still do work with throughout the State.

It was my last year to make the deliveries, as I am retiring in 2009. For those of you that I didn't visit this year, I missed seeing you and wish you all the same holiday cheer. I do know you all have been taken care of by our other little Santa Claus, Jenny. She has been with us since 2006 and has done a wonderful job keeping you all safe by keeping me off the road. I hope everyone had a very Merry Christmas and wish you all a prosperous New Year.



Important Questions to Ask When Selecting an Exchange Accommodator

Utilizing a Section 1031 Like-Kind Exchange remains a viable option for investors in this volatile economy. In light of the recent closings of some well-known companies in the Qualified Intermediary (“QI”) industry, it is imperative that your client evaluate the strength and stability of any QI he considers using to facilitate a 1031 Exchange. When the opportunity arises for your client to make use of this tax-deferral mechanism, performing proper due diligence is key. It will give the client peace of mind that his Exchange will be processed accurately and his funds will be secure. Part of that due diligence includes asking the QI some of the following questions before commencing an Exchange and entering into an exchange agreement.

- Are you a member of the Federation of Exchange Accommodators (FEA)?

The FEA is a trade association for exchange professionals and represents almost 300 QI’s nationwide. Although the Qualified Intermediary field is currently unregulated, the FEA requires that its members adhere to a strict code of ethics. According to the FEA website:

Membership in the FEA is a privilege for companies that uphold the highest standards of ethics, quality, knowledge and performance. Membership is not automatic and each member is subject to a review by the Board of Directors who determines whether an application is accepted or rejected. <http://www.1031.org/aboutFEA/ethics.htm>

- Do you carry Errors and Omissions Insurance, and are you and your employees covered by a Fidelity Bond?

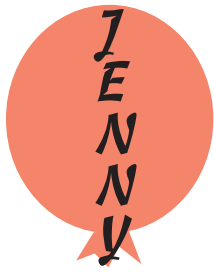
It is important to ask for proof of insurance and inquire as to the nature and coverage of the insurance.

- How and where will my exchange funds be invested?

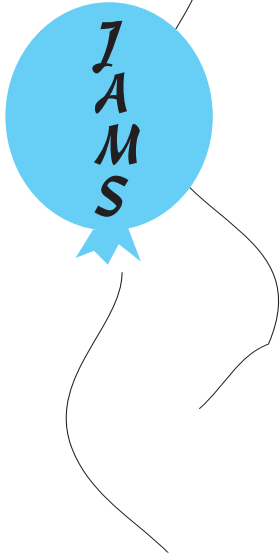
Now more than ever, the liquidity and security of the exchange funds should be of foremost concern to an Exchanger. Funds should be protected while held in Trust by the QI and readily available for the purchase of replacement property.

These are just a few of the questions that an Exchanger should ask when deciding which QI best fits his exchange needs. For additional information, please visit www.orexco1031.com or contact:

Ashley L. Culberson, Esq.
Regional Sales Executive
866-330-1031 (Toll Free)
aculberson@orexco1031.com



Happy New Year to Everyone! I hope that this year has gotten off to a good start for all of you and that we can leave behind the gloom from 2008.



Old Republic Title has learned of a new tool to deter the traditional scheme of fraudulently satisfying a mortgage. Specifically, this involves mortgages held in the name of MERS. There have recently been several forged MERS satisfactions placed on record. Please be alert to the red flags and protect any suspicious transaction with due diligence.

If you see the red flag of a naked satisfaction (defined as one unaccompanied by another transaction) involving a MERS mortgage, you may go to:

<https://www.mers-servicerid.org/sis/>

MERS maintains this Service Identification System through which we may confirm that a mortgage has been properly satisfied and is no longer being serviced.

As always, if I can be of assistance to any of you, please let me know.

Jenny



Strength & Stability

During these very difficult months of financial uncertainty, it is well worth a look at who's insuring your real property transactions. As potential indemnitors to real property owners and lenders, title insurers need a little scrutiny.

In 2008 and for the 16th straight year, the Old Republic Title Insurance Group received the highest financial strength ratings from all the major rating agencies. No other title group can make that claim. Our superior financial strength can be attributed to and measured by the following:

- Old Republic Title's claims reserves are 6.0 times the 5 year average annual claims payments, which is higher than our competitors. (Go ahead. Ask them what their ratios are!)
- Old Republic Title's parent Company, Old Republic International, is a multi-billion dollar diversified public company with a total debt to equity ratio of less than 5%.
- Founded in 1907, Old Republic Title is here to stay!
- Old Republic Title's self imposed single-site reinsurance retention limit is \$500 million*. We proudly continue to insure real property transactions in every state in the Union.

*Where permitted by state law and subject to underwriting approval.



Since 1992, the Old Republic Title Insurance Group has held the distinction of being the highest rated title insurance group in the nation.

Old Republic National Title Insurance Company | Old Republic General Title Insurance Corporation | Mississippi Valley Title Insurance Company | American Guaranty Title Insurance Company

2711 Middleburg Drive, Suite 304
Columbia, SC 29204
800.922.8811
oldrepublictitle.com/sc

DIRT LAWYER

Well, the holidays are behind us and this is not the December newsletter. We decided with the cards, the chocolate and the calendars, that we would wait 'til January to send you the newsletter. I hope you had a good holiday and got everything you wanted. My wife, Kathy, and I had been doing a lot of traveling last fall so we stayed home for this holiday and were surrounded by friends and family. One dinner we were having for three turned into an occasion for eleven, but we had enough food. I will warn my golf buddies my new golf bag has a lot of red on it with some pictures.

As the New Year begins, everybody wants to know what is going to happen to our business. Well, most people are already having calls about refinancing but I have heard the credit requirements are a little bit tougher. My hope is that refinancing will continue and that we will slowly start to see some growth.

The Hart family is planning the mission trips for the year. Kathy will be leading two groups to Nicaragua and I will go on one of the trips. Kathy is directing a Salkehatchie camp in Dillon, SC where I will be working on a house. In addition, I will be going to another Salkehatchie camp in Beaufort, SC. One of the reasons I go on these trips is to work with power tools and I always have to buy a new one each year. Last year the new tool was a pressure washer. It worked great to prepare the house for painting but we had to be careful not to punch holes in the siding with it. People have been known to write names in the siding or the pavement with pressure washers. I wonder what tool I will need for this year. I will keep you informed and I hope the start of the new year is great for all of us.

Dirt

2008 RESPA REFORM ANALYSIS

On Wednesday, November 12th, HUD issued its long-awaited RESPA mortgage reform package to assist borrowers to shop for the lowest cost mortgage and related closing services. This includes a standard Good Faith Estimate (“GFE”) that discloses key loan terms and closing costs. The rule in its entirety is posted on HUD’s web site at www.hud.gov.

This is considered a significant victory for the settlement services industry, as the proposed “closing script” that could have potentially added 30 minutes or more to the closing is gone. In its place is an additional new page on the HUD-1 Settlement Statement that allows consumers to compare loan terms and closing costs with those listed on the GFE.

BULLET POINT INDEX

- * Modified GFE will contain non-itemized title charges in 1100 series
- * Modified HUD-1 with new page 3 will compare actual costs to GFE and disclose tolerances
- * Recording charges subject to 10% tolerance
- * Average charge can be used for any settlement service subject to specific requirements
- * Definition of “required use” changed and discounts can be offered through affiliated settlement service providers in some cases
- * Effective date for new GFE and HUD-1 is January 1, 2010. Effective date for remainder of rule is January 16, 2009.

ANALYSIS

Although the most significant changes in the March 2008 proposed HUD regulation failed to make the final cut, there are still some important changes being made by HUD in its final RESPA rule. These changes will impact the title insurance industry in different ways, but not nearly as much as the original proposal would have.

What was left out: In the face of thousands of comments, HUD decided to remove some of the more controversial provisions of the proposed rule, all of which the title insurance industry had lobbied against. For instance, the closing script was eliminated, which would have caused a great many problems for the title insurance industry. HUD also decided against calling owners’ title insurance “optional.” In addition, recording charges were originally subject to a no-tolerance standard and that has been changed. Finally, while HUD decided against specific language permitting volume discounting at this time, it will consider rule changes in the future allowing for negotiated and volume discounts which balance consumer protection while providing “adequate market flexibility and due consideration to small business concerns.”

Overview of the new rule: The final rule is a stripped-down version of the original proposal. It contains a new GFE and HUD-1, each of which must be used as of January 1, 2010. The regulations concerning those forms become effective the same day, including the concept of “tolerances” for the cost of items listed on the GFE. However, other changes will be effective January 16, 2009. These include the ability to use average cost pricing for certain settlement services and a new definition of “required use” in the affiliated business setting and a description of how “required use” relates to packaging and consumer discounts.

continued next page

Description of Elements of the New Rule

New forms: The new GFE and HUD-1 forms have been changed to make them more comparable than they have been in the past. It will be easier for consumers to find particular categories of costs on each form and to see how the actual amount charged differs, if at all, from what was estimated in the GFE. In place of the closing script concept, the HUD-1 will have a new third page which includes a chart comparing GFE disclosures with HUD-1 charges. The chart is divided into three categories, with each category representing a different “tolerance” for pricing changes (from the GFE to the HUD-1) for the component costs found in each category. Charges that cannot increase include most of the lender charges for the loan itself and transfer taxes on deeds and mortgages/deeds of trust. Charges that, in total, cannot increase more than 10% include recording charges, (a welcome change from zero tolerance proposed in March), lender required settlement services where the lender selects the provider, and title services, title insurance and owner’s title insurance where the borrower uses a settlement service provider identified by the lender. The amount charged for all other services may change at closing.

Page three of the HUD-1 also contains a table of loan terms. The lender is supposed to supply information for this form, so that the settlement agent can put it together, including loan amount and term, initial interest rate, initial monthly payment amount, whether the interest rate can go up and how much, whether the principal balance can rise, whether there is a balloon payment or prepayment penalty and the amount of the monthly escrow payments, if any.

The GFE is binding on the lender unless a new GFE is provided prior to settlement. This can be done if “changed circumstances” result in increased costs for any settlement service, such that the charges would exceed the tolerance for those charges. However, if there is a violation of tolerance requirements, which would violate Section 5 of RESPA, the originating lender will have 30 days after closing to remedy the situation by reimbursing the borrower for the overages. A similar 30 day cure provision is permitted for settlement agents to revise the HUD-1 should an inadvertent or technical error occur in its preparation whether the error involves an overcharge, undercharge or any misstatement of fact. Such an error would violate Section 4 of RESPA and would need to be corrected to avoid liability.

ALTA attempted to get HUD to alter the GFE so that the 1100 series of charges would be fully itemized in order to enhance the ability of borrowers to comparison shop. This category includes not only title insurance charges, but also attorneys’ fees and costs of survey. ALTA believes that borrowers having a detailed listing of each service (including lender’s title insurance, owners’ title insurance and closing services) would be armed with the information they need to shop. HUD decided that too much detail would be confusing to consumers and left the form as it was. ALTA also lost its argument that the agent and underwriter portions of the title insurance premium should NOT be split out on lines 1107 and 1108, since the split does not affect the consumer. Although it seems inconsistent with its position of itemization in the 1100 series of charges, HUD decided the split should be shown on the HUD-1.

The HUD-1 will also contain a designated line for the closing fee (Line 1102). In order to limit what it considers unnecessary itemization, however, HUD’s rule calls for the settlement statement to combine administrative and processing services related to title insurance at line 1101 with the overall charge for title services. Because of this change, HUD finds it unnecessary to continue to define “primary title services” as a particular set of services. The definition of “title services” is “any service involved in the provision of title insurance (lender’s or owner’s policy), including but not limited to: title examination and evaluation; preparation and issuance of a title insurance policy or policies; and the processing and administrative services required to perform these functions. The term also includes the service of conducting a settlement.” 24 CFR 3500.2.

Effective Dates: As mentioned earlier, the new GFE and HUD-1 forms will be required as of January 1, 2010. The current forms will remain in effect until that time. If, however, a settlement provider issues a new GFE form prior to the effective date, it will be subject to all the requirements of the new GFE including compliance with tolerance provisions and use of the new

continued next page

HUD-1. Other components of the final rule, including the average charge and required use provisions and the technical amendments will take effect immediately upon the effective date of the rule (January 16, 2009).

Average Charge: An average charge can be used for any settlement service, “provided that the total amounts received from borrowers for that service for a particular class of transactions do not exceed the total amounts paid to the providers of that service for that class of transactions.” While the average charge concept will be very useful for industry, the preceding quote is important to remember. Care will have to be taken so that the total average charge billed does not exceed the total paid for a given service. HUD states that one of the benefits of the average charge is that it will save administrative fees for settlement service providers and HUD expects that those savings will be passed onto consumers due to the pressures of competition.

In calculating an average charge, a provider may define a class of transactions based on time, loan type or geographic area. The average charge must be recalculated at least every 6 months. If a settlement service provider uses an average charge for a class of transactions, the provider must use the same average charge for every transaction within that class. An average charge may NOT be used for services where the charge is based on the loan amount or property value, because it would cause smaller borrowers to subsidize larger borrowers. For instance, an average charge may NOT be used for title or mortgage insurance. A provider “must maintain all documents that were used to calculate the average charge for at least three years after any settlement in which the average charge was used.” This last provision concerning record-keeping will be very important to keep in mind, as well. See 24 CFR 3500.8 (b)(2).

It is important to note that the average charge concept is the exception to HUD’s rule. HUD states in its proposal that “(t)he amount stated on the HUD-1 for any itemized service cannot exceed the amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge in accordance with paragraph (b)(2) of this section.” 24 CFR Section 3500.08 (b)(1). In other words, RESPA does not allow mark-ups. Should we provide distinct and necessary additional services, however, it is appropriate to charge a fee equal to the value of the additional services rendered.

Required Use and Packaging: The concept of “required use” and how it relates to offers for consumers to use affiliated businesses was examined by HUD. Basically, “economic disincentives that are used to improperly influence a consumer’s choices are as problematic under RESPA as are incentives that are not true discounts.” Preamble pg. 133. Legitimate consumer discounts can still be offered, but the rule limits the tying of such a discount to the use of an affiliated service provider.

The definition of “required use” has been changed to explain when discounts can be offered so that they qualify for the affiliated business exemption under 24 CFR 3500.15. “(A) settlement service provider may offer a combination of bona fide settlement services at a total price (net of the value of the associated discount, rebate or other economic incentive) lower than the sum of the market prices of the individual settlement services and will not be found to have required the use of the settlement service providers as long as: (1) the use of any such combination is optional to the purchaser; and (2) the lower price for the combination is not made up by higher costs elsewhere in the settlement process.” 24 CFR 3500.2.

SPOTLIGHT

New Arrivals

- ★ October 27, 2008, Charlie Bryant, Esquire with Harley, Casterline & Vallini, LLP became daddy to twins, John Isaac Bryant and Sophia Isabel Bryant!

New Locations

- ★ Robert A. Hedesh, Esquire, LLC has relocated. His new address is 710 21st Ave. North, Suite K, Myrtle Beach, SC 29577. Office phone number is (843) 839-0442 and fax is (843) 839-0448.
- ★ White and White Law Offices have relocated their Anderson location to 612 East River Street, Suite 201, Anderson, SC 29624. Office phone number is (864) 222-2283 and fax is (864) 222-2287.

Welcome Aboard!

- ★ Marcia Davis joins the team at the law office of Holly Wall.
- ★ Hope Dorn came on board with the Columbia branch of White and White Law Offices.



CASE LAW

Steven K. Fox V. George C. Moultrie and others (Opinion No. 26546 Filed September 15, 2008) This is a new tax sale case concerning a Federal tax lien. The County had followed the statutory procedure for a tax sale and did not give notice to the Federal government even though there was a tax lien filed against the owner. The purchaser at the tax sale and the county argues the purchaser bought free and clear pursuant to state law. The Master found the purchaser bought the property subject to the Federal tax lien and our Supreme Court affirmed that decision.

Federal Financial Company, a general partnership v. Carol D. Hartley, individually and as trustee for the Daniel Wayne Hartley Trust and others (Opinion No. 26554 Filed October 13, 2008) First let me point out this case is not about the validity of a tax sale. The Court is deciding the validity of a mortgage placed on the property prior to the tax sale. It appears this case is very fact sensitive. The owner had taken out a mortgage and after several years failed to pay the taxes. The lender and the owner might have been given notice of the tax sale and the right to redeem and both took no action. The property was sold to the Forfeited Land Commission and the owner continued to make mortgage payments for 22 months after the sale. The owner attempted to pay the taxes and was told she had to purchase the property, which she did. The Master found the owner had redeemed the property and therefore the mortgage was still valid. The Supreme Court reversed the decision and said she purchased the property and there was no fraud or scheme involved. Therefore the prior mortgage was extinguished by the tax sale. It is a very interesting case.

Samantha Gauld v. O'Shaugnessy Realty Company d/b/a Prudential Carolina Real Estate and others (Opinion No. 4455 Filed November 14, 2008) This is an action brought by a purchaser of property against her realtor, the seller's realtor and both their companies. She alleges breach of contract

and other fraudulent acts by the defendants. This is based on alleged loss of value because of a road being built. The Circuit Court found there was no evidence of any damages so that summary judgment against all defendants was appropriate. The Court of Appeals affirmed this decision without any oral argument.

James W. Coker v. Catherine G. Cummings and others (Opinion No. 4471 Filed December 18, 2008) The case deals with a boundary dispute that has a long history. It is unclear from reading the case how much property is in question but one of the parties purchased a lot and had been using the adjacent property for gardening and other things for over twenty years. The master granted a summary judgment to the defendants and stated all the parties had occupied the de facto boundary lines for a long period of time and the lines had been mutually recognized and acquiesce to. The moving party was then precluded from claiming the boundary line was not the true one. The Court of Appeals affirmed this decision.

E. Ervin Dargan, Jr. and New River Corporation v. James B. Tankersley and others (Opinion No. 26574 Filed December 22, 2008) The case deals with a quiet title action and a “catch-all provision” in a legal description. The master had found one of the parties had title to the property even though the deed from the common grantor had excluded the disputed property. The master ruled that a later plat and deeds showed the grantee in the chain of title felt he owned the property and therefore he conveyed it. Our Supreme Court reversed this decision and found a catch-all provision in a prior deed in the other party’s chain of title had conveyed the property. This deed was from the common grantor and conveyed all the property the grantor had in the county. The Court discusses these provisions and finds they can convey title in South Carolina. □