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Just When You Thought
You Understood the
2010 HUD-1

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THE OTHER SIDE OF THE FENCE

Wayne Trapp, Vice President and State Manager

That wonderful time of year is here again. It is affectionately called the "eating season". I did really good this time; it was the second sentence before the "e" word came out. The eating season officially begins at Halloween and runs through Thanksgiving, Christmas and New Years day, and marks the end of the garden season.

As mentioned in my last article, this year's garden was horrible. I put out beans four times and only 8 beans came up; never got the first mess to eat. Ground hogs ate the tomatoes, Okra didn't come up, cucumbers were sorry and only a few squash produced. We must take the bad with the good. In years past we've had so much go to waste and this year we barely had enough to eat. Next year is another garden and it will be better.

This year's calf crop has done great. The early rain made the pastures so green and the grass grew well into summer which made for good gains. They have now been weaned and getting ready for free choice grain and hay before harvest in March. Not only did the calves do great the groundhogs continued to multiply. Every time I turn around there's another one. Standing on it hind legs, eating something while looking at me. The son-of-a-gun just dares me to come after him. I get rid of one and two more will appear within a few days and they're fat as mud. Beats all I've ever seen. If anybody knows how to get rid of them, please let me know.

You know, I always talk about my life on the farm and how we eat too much (which is true, oh how I love to eat) and how as I get older some things mean more to me while others don't mean as much. When our grandson, Hayden, came into my life everything changed. Things that I thought were important just don't matter anymore. When he looks at me and says Papa, everything is right with the world. Until him I wouldn't take the time to sit under the Pecan tree and look at the beautiful scenery or notice bugs on blades of grass until he showed them to me. He loves coming to the farm, riding on the tractor and just letting his imagination run wild. I look at him with his dark eyes and busy hands; he just gives such a feeling of love and contentment. A four year old can sure teach the true meaning of "living". I normally wouldn't do something like this but I've attached his picture. As you can tell he is teaching me something.



As we go into the "eating season" my hope for each of you is that you will be ever thankful for all you've been blessed with. That you will give to those less fortunate, continue to remember our troops and that you will take the time to "notice bugs on blades of grass". Happy Thanksgiving, Merry Christmas and Happy Holidays.

Thank you for your continued support of Old Republic Title. Without you we are nothing. Come see us. The door is always open. See you next time.....on the other side of the fence.

ATTORNEY GENERAL OPINION 11-75

R. Kirkland Moser, Assistant Vice President and Tennessee State Counsel

On October 21, 2011 the Tennessee Attorney General rendered an opinion regarding determining the ownership of land beneath a river and how to determine if it is navigable. Below is a portion of the opinion.



STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL

October 21, 2011
Opinion No. 11-75

Determination of Navigability and Ownership of Land Beneath a River

Question

When is a river legally deemed navigable, and how does such a determination affect ownership of the land beneath the river?

Opinion

Whether a particular waterway is navigable in the legal sense is a question of fact to be determined by a jury. The legal navigability of a waterway determines whether the land beneath those waters may be privately owned. If navigable, the title to the bed of waterway, to the low-water mark, is publicly owned by the State. Conversely, if non-navigable, then the land beneath the waterway can be privately owned. If a waterway has not been deemed legally navigable by a jury, then as regards ownership rights to the land beneath the waterway that waterway is not presumed to be either navigable or non-navigable. Nonetheless, even if a waterway is deemed non-navigable, the public maintains a right to free and uninterrupted use of the waterway for all the purposes of transportation and navigation to which it is naturally adopted.

Analysis

“Under Tennessee law title to the bed of a navigable stream, to the low-water mark, is publicly held and belongs to the State.” *Uhlhorn v. Keltner*, 637 S.W.2d 844, 846 (Tenn. 1982) (citing *State v. Muncie Pulp Co.*, 119 Tenn. 47, 99, 104 S.W. 437, 450 (1907)). Thus, the general rule is that land beneath a waterway that is navigable in the “technical legal sense of that term” is not “capable of private ownership.” *State ex rel. Cates v. West Tennessee Land Co.*, 127 Tenn. 575, 580, 158 S.W. 746, 747 (1913). In contrast, if the waterway is found to be non-navigable, then the land beneath the waterway can be privately owned.

However, even if the waterway is deemed non-navigable and the land beneath the waterway may be privately owned, Tennessee law generally recognizes that the public maintains “a right to the free and uninterrupted use and enjoyment of such stream for all the purposes of transportation and navigation to which it is naturally adapted.” *The Pointe Ass’n, LLC v. Lake Management Inc.*, 50 S.W.3d 471, 476 (Tenn. Ct. App. 2000) (quoting *State ex rel. Cates v. West Tennessee Land Co.*, 127 Tenn. 575, 158 S.W. 746, 749 (1913)). See also *Bauman v. Woodlake Partners, LLC*, 199 N.C. App. 441, 448-449, 681 S.E.2d 819, 824-825 (2009). But see *Austa La Vista, LLC v. Mariner’s Pointe Interval Owners Ass’n, Inc.* 173 S.W.3d 786, 791 (Tenn. Ct. App. 2005) (master deed and other documents appropriately restricted timeshare owners use of lake next to condominium timeshare by requiring payment of applicable fees to use the lake and other amenities).

“To be ‘navigable’ such that it invokes the prohibition on private ownership, a waterway must, in its ordinary state, be capable of and suited to navigation by vessels employed in the ordinary purposes of commerce.” *City of Murfreesboro v. Pierce Hardy Real Estate, Inc.*, No. M2000-00562-COA-R9-CV, 2001 WL 1216992 at *6 (Tenn. Ct. App. 2001), *appeal denied*, (Tenn. Feb. 19, 2002) (citing *Cates*, 127 Tenn. at 584-85, 158 S.W. at 747). “The determination of whether a waterway meets the definition, and is, therefore, navigable is one of fact to be determined by the jury.” *Id.* at * 6 (citing *Southern Ry. Co. v. Ferguson*, 105 Tenn. 552, 562-63, 59 S.W. 343, 346 (1900)). See also *Miller v. State*, 124 Tenn. 293, 300, 137 S.W. 760 (1911) (“Whether a freshwater stream is navigable is always a question of fact.”). If the legal navigability of a particular waterway has not yet been determined by a jury, there is nothing in Tennessee jurisprudence suggesting that the waterway should be presumed to be either navigable or non-navigable for purposes of determining rights of ownership of the land beneath those waters.

TALES FROM THE TRAIL... 'TIS THE SEASON TO MAKE MERRY ON YOUR ESCROW ACCOUNTS

John Anderson, Agency Auditor

As the holiday season approaches, many of us look forward to time spent with family, holiday shopping and good food. While some look at it as the year drawing to a close, for me it was always a time of warmth and excitement. Like many of you, I enjoy my Christmas shopping, something about the thrill of finding exactly the right gift for the right price. Those of you who have attended our seminars might remember I shared a story with you last year about someone getting into my bank account after an online purchase. While in the end I was able to save my own little "Whoville" from disaster, it will now forever remind me that the holidays are the prime season for little Grinches everywhere to come out of their caves and try to ruin our holiday.

Because of the rise in retail purchases, especially online, all of your accounts become a greater target of the Grinch as the season draws closer. And make no mistake about it, he gets smarter and smarter every year. The Grinch can't wait to get his paws on not only your personal accounts, but those escrow accounts too. With all of the trouble I went through to get my account squared away, it requires even more time and effort to clean up an escrow, trust or IOLTA account after it has been hit. The Grinch has more than one method to ensure that he can get your money and that includes taking it from the inside.

So what can we all do to make sure the Grinch doesn't steal our Christmas? Here are some helpful tips:



-  Ensure your escrow account reconciliations are up to date.
-  Make your deposits timely.
-  Send out payoffs immediately after disbursement and keep documentation in the file (copy of wire, overnight receipt or receipt from lender if hand delivered) to ensure you have done your part.
-  Lock up any unused checks and take periodic inventory to see if any are missing.
-  Review your cancelled checks to see to whom they were made payable and who endorsed them.
-  Look at your account daily for any unusual activity (that's how I found my Grinch)
-  You can also implement positive pay as an extra security measure.

Many of the procedures we talk to you about putting in place will help you, especially this holiday season. Have a happy and safe holiday season and be sure to watch out for that mean ole Grinch!



'TIS THE SEASON... RESPA GIFT GIVING GUIDELINES

Valerie M. Perry, Assistant Vice President & Agency Manager

I'm often asked what violates RESPA when it comes to Gift Giving and since it is that time of year, I offer the following information:

Can you give a holiday gift to a realtor, lender or any other settlement provider who is in a position to refer business to you? Like everything involving RESPA, the answer is, "It depends."



There is no \$25 minimum ("de minimus") amount that pertains to gift-giving in the RESPA statute or in Regulation X. When HUD and state enforcement agencies decide which cases to pursue, however, they will apply reasonable judgment to determine whether holiday gifts are significant enough to be linked to referrals or small enough to fall within the traditional business practice of thanking customers during the holidays. Tennessee does not have a permissible amount. Generally, however, here are a few easy holiday examples:

The answer is "no, you cannot accept the gift" if the gift is:

- ✔ A new Lexus
- ✔ An all-expense paid excursion to exotic Timbuktu
- ✔ Season tickets to the Titans, Predators, etc.

The answer is "yes, you can accept the gift" if the gift is:

- ✔ A small desk calendar
- ✔ A Starbucks coupon for a cup of coffee
- ✔ A delicious fruitcake

But the answer is more difficult, for instance, if you receive a bottle of wine. You might want to inquire into the value of the particular bottle before accepting the gift. A \$15 dollar bottle of wine for the holidays is probably fine, but a rare \$500 dollar bottle or a full case of wine would be considered a RESPA violation if you referred business during the course of the previous year to the gift giver. One final guide is whether the same gift is being given to every Realtor office in town, regardless of whether the office referred business to the gift-giver. Such blanket gift-giving would be less likely to be considered a RESPA violation.

In the end, your sense of whether a particular gift is tied to referrals or simply a small gesture of appreciation during the holidays is your best guide. Happy Holidays.



FEDERAL RESERVE SYSTEM INSTITUTION SEARCH TOOL

Pamela L. Zimmerman, Assistant Vice President and Agency Manager

The Federal Deposit Insurance Corporation (FDIC) "Bank Find" website (http://www2.fdic.gov/idasp/main_bankfind.asp) has previously been shared as a tool for tracking bank histories when there is a need to identify a predecessor or successor institution concerning releases, assignments, etc.

You can now add a second tool which tracks not only banks, but several other types of institutions. Check out the Federal Reserve System's National Information Center institution database at: <http://www.ffiec.gov/nicpubweb/nicweb/SearchForm.aspx>

Hope this site will prove useful as well!

Winter Cryptogram

Decode the words by finding each substitute letter!

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z
Q			W									P							Z	Y					O

B Z Z
 Q H S O O R B M

B T S
 Q D D Y Z

 T
 E D R Y

 E D H M

E E M B E
 M W E W P Q W B

 E E
 V S B W L H R E W

 E E Z E
 V B W W O W

 T
 U R Y

 E S
 S E S E H W Z

M T T E S
 P S Y Y W A Z



Intermission is finally here.
 Time for a break and some Holiday cheer.
 Solve the puzzle, have some fun -
 For this Newsletter is only halfway done.

ESCROW ACCOUNTS... AGAIN

Wayne Trapp, Vice President and State Manager

Just when you thought you were in the clear, it rears its ugly head. It's those ugly words we all hate to hear: **ESCROW ACCOUNT RECONCILIATIONS**. I know, you were just audited and your accounts were reconciled so what's the problem this time? There is money in the bank and I'm showing a positive balance so get off my back. That is probably what you say every time you see another article about Escrow Account Reconciliations or hearing that once again somebody took money from their escrow account because you didn't do it. Your account was squared away when last audited. Guess what? The account had not been reconciled since the last audit in 2010 and you had to work like a dog Thursday, Friday, Saturday and Sunday before the audit on Monday; that's why the account looked reconciled and it was. You worked four days to "get ready" for your audit. This account had not been looked at since the last audit and there's over \$5,000.00 in bank fees that you now have to cut a check for. You may think that bank fees are between you and the bank and is none of our business but it's the "escrow account" that's being hit so we have to write it up. If you don't cut a check MONTHLY from your operating account to the escrow account to cover bank fees then you are short. Don't let these bank fees build up. Let this be a part of your monthly reconciliation. All it takes is for somebody to go to the bank and cash a check instead of making a deposit and then everything goes haywire. You



now have checks bouncing and your name gets dragged through the mud. Please stay on top of this and don't let bank fees be the cause of shortages.

Earlier I used the words "to get ready for your audit". Believe it or not, we hear these words. What has to be done to get ready for an audit? If the escrow account is being reconciled monthly (as stated in the agency contract) you look at and clear up outstanding checks monthly, and bank fees are paid monthly then there shouldn't be anything to get ready for.

Gang, times have changed for all of us in the title industry. Gone are the days of waiting to do reconciliations until right before audits. Gone are the days of canceling audits because policies aren't done, I could go on and on and on. These changes are not just Old Republic Title wanting to be hard to deal with; it's caused by losses due to agent defalcations. Some of them could have been avoided if only the escrow accounts had been reconciled and then reviewed. Don't do one without the other. Reconcile and review. Some have been reconciled but never reviewed until it's too late. Don't put yourself in a position to have a loss (out of your pocket) due to not reconciling and reviewing your escrow account. Don't allow someone else to get into the escrow account because they know it's not being reviewed. Stay on top of it; it's your company and your name at stake.

Common Lien Issues

Michael P. Davis, Assistant Vice President and Underwriting Counsel
(Previously printed in Volume 17 · No. 1)

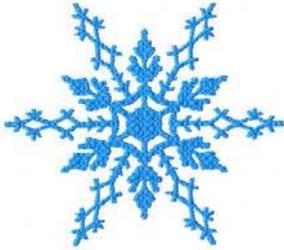
1. The effect of Bankruptcy on a judgment lien.

No telling how many times you have heard "I filed Bankruptcy on that debt and it has been discharged." So is the customer correct? Has it been discharged?

If indeed the customer did receive a discharge in Bankruptcy, they are correct that the debt has been discharged, but the *debt* is not your problem. Your problem is the *perfected judgment lien*. A debtor can obtain a discharge of some or all of their indebtedness if the debtor meets the statutory requirements for the discharge pursuant to 11 U.S.C. Section 727, 944, 1141, 1228 or 1328. So what is the effect of the discharge according to 11 U.S.C§ 524?

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(a) A discharge in a case under this title

(1) voids any judgment to the extent that such judgment is a determination of the personal liability of the debtor with respect to any [prepetition] debt discharged under ...this title...;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor...;

Pursuant to Section 524 (a) of the Bankruptcy Code, the debtor receives a discharge from **personal liability** for most pre-petition debts under the applicable provisions of the bankruptcy code, including debts evidenced by a pre-bankruptcy judgment. Further the debtor is protected from court actions to collect, recover, or offset any discharged debt as a **personal liability** of the debtor. Because Section 524 (a)(1) states that the discharge “voids any judgment,” one might assume that the effect of a discharge is also to void the judgment lien against the real property of the debtor, when the judgment was obtained prior to the debtor’s bankruptcy case. The result of the assumption that the lien is discharged would be the failure to require the satisfaction of the lien and the issuance of a policy without exception to a prior lien that would now have priority over your insured transaction.

The United States Supreme Court has held that a creditor’s right to foreclose on a lien survives the bankruptcy proceedings notwithstanding the discharge of personal liability of the debtor pursuant to 11 U.S.C. Section 524(a). See *Johnson v. Homestake Bank*, 501 U.S. 78,82-83, 111 S. Ct. 2150, 2153, 115 L. Ed. 2d 66, 73-74 (1991).

Keep in mind that the judgment lien will only attach to property owned by the debtor prior to the Bankruptcy filing. It will not attach to property acquired by the debtor after the Bankruptcy.

Is there anything that would prohibit the judgment lien from surviving? The only way the judgment lien will not survive the Bankruptcy is if during the Bankruptcy proceedings, the debtor’s attorney takes the necessary steps to avoid the lien based upon its impairment of the debtor’s exemptions provided under Tennessee law. If the court enters an order avoiding the lien, then not only is action on the debt enjoined, then action against the property is enjoined.

2. What property does a judgment lien attach?

The simple answer: *all property owned by the debtor*. Do not make the mistake of only applying a judgment lien against a particular property simply because that is the address listed on the judgment. A prime example of limiting the judgment to particular properties is in the case of a judgment in favor of a Homeowners Association against a builder. Just because that judgment originates because the builder did not pay the association dues on properties in one development does not limit that judgment lien to just the properties in that development. *The judgment lien against the builder will attach to all properties owned by the builder*.

3. How long are judgment liens effective?

Judgment liens are good for a period of ten years from the date of entry of the order, except for judgments in favor of a division of the federal government which are good for twenty years from date of entry of the order. *They key date to check is the date of the entry of the order, not the date of the filing of the judgment in the register’s office*. There are many occasions where judgments are not recorded until quite some time after the entry of the order, but remember that the calculation of the time period is not from the date of recording, but the date of the order.

4. How long are tax liens effective?

Federal and State tax liens are good for a period of ten years. Federal tax liens indicate on the face of the lien the last day for refiling an extension of the lien. If the extension is not filed by the date indicated on the lien, the lien will expire by operation of law.



IT'S THE MOST WONDERFUL TIME OF THE YEAR...

Pamela L. Zimmerman, Assistant Vice President and Agency Manager

... that's right; it's time to do year-end policy reporting! What better way to get in the holiday mood? OK, so maybe (or certainly) there are better ways, but year-end policy reporting is important.



Why? Because just like jolly old St. Nick, Wayne Trapp will be checking his list to see which agents last reported policies more than three months ago; whose last report showed that 25% or more of premium was from policies three months old or older; and/or whose outstanding policy inventory includes policies generated over 30 days ago.

We hear from many of you that business is slower (although there are pockets where there is more activity than others)... so why not take some time and catch up on policy issuing and reporting? While you are creating new policy jackets, be sure to check for policies that have been voided which need to be ezRemitted along with other policies in order to remove them from your inventory.

The American Land Title Association's Standard Procedures and Controls for the Title Industry publication (which was included in materials from our half-day Staff Training Seminars in Knoxville and Nashville earlier this year) includes the following bullet point under the topic "Policy Control and Administration Minimum Control Standards":

"Report the title policy and premium remitted to the underwriter in accordance with underwriter's contract and state requirements."

Old Republic agency agreements contain the following (or similar) language relating to policy reporting:

"Agent shall report to Insurer, on a monthly basis, in a form approved by Insurer, all title insurance policies, endorsements and any other Title Insurance Forms that Insurer may require to be reported, which have been issued since the previous report, and attach to the report a copy of each Title Insurance Form covered by the report. Agent shall also remit to Insurer, with the above report, all amounts due Insurer under this Agreement. The report and remittance shall be due on or before the 10th day of the second month following the closing date on which Insurer's title insurance liability attached. All Title Insurance Forms submitted to Insurer as required under this Section shall become the property of Insurer."

Thanks in advance for a year-end policy report! Phillip Brizendine would appreciate policies no later than Monday, December 19 (ezRemitted and policy copies with payment received in our office) so that they can be processed before year-end close on December 23... so make Phillip's holiday merry and bright and ensure that St. Nick won't leave a lump of coal in your stocking!

Hope your holidays are happy and that you have a prosperous 2012... with monthly policy reporting as one of your resolutions for the new year!!



PHILLIP'S FAQ'S

Phillip Brizendine, Agency Coordinator

As the policy processor and self-proclaimed ezJacket Guru in Tennessee, I get many questions from our agents regarding how to prepare their policies and reports. I wanted to take a moment to go over some of the frequently asked questions, as well as a few that I feel need to be asked.



ezJacket isn't calculating my policy with reissue credit. What's up with that?



This means that either a reissue credit option wasn't chosen, a reissue credit amount wasn't entered in the "Payoff/Prior Liability" field, or both.



I need to make a change on a policy entry. How do I do that?



If the policy or policies have not yet been remitted, click on the "Non Remitted Policies" tab, locate the entry you need to modify, and click "edit" in the last column (you may need to scroll to the right using the scroll bar at the bottom of the ezJacket menu depending on your screen resolution). You are then taken to a page that looks very similar to the one where you create jackets. You can change any options you chose or any data entered upon first creating the jacket. Make sure to click the "Calculate" button if you've done something that will change the premium, then click "Save".



I issued a policy, then realized I needed to issue a simultaneous owners/loan policy as well. What should I do?



Again, if the policies have not yet been remitted, you can use the edit feature I explained above to change the "Policy Category" to "Simultaneous Loan & Owners". Then, simply choose the other policy type you need to add and fill in any blank fields.

The reverse is also true; if you issued simultaneous policies and later realized you only needed to issue a single policy, you can change the "Policy Category" to a single type.

You can also use the edit feature if you need to change policy types (example: you issued a short form policy, but the lender requires the standard form).

In the above two instances, after clicking save and entering a brief explanation as to why you're cancelling the policy number, ezJacket will automatically void the policy number you are cancelling. Remember – voided policies need to be ezRemitted as well to be removed off of your inventory.



I need to make a change on a policy entry I've already ezRemitted. How should I handle that?



While you have an edit option on the "Remitted Policies" tab that works exactly as the one in the "Non Remitted Policies" tab, I ask that you not edit policies already remitted. There are issues that sometime arise when processing these changes.

Instead, please contact me so that we can work out a way to correct the issue.



I'm trying to do a remittance, but some of the policies in my "Non Remitted Policies" tab are in red and I cannot check them. How do I fix this?



This happens when information needed to remit the policy is missing. You can use the edit option to view the information entered and determine what information is missing. I typically find that it is a simultaneous file and the loan amount has been left out.

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Do I need to send a copy of the whole policy?



No. We only need copies of the schedules and endorsements. The jacket can be pulled from ezJacket if needed. I strongly urge you not to send in copies of the jacket as it saves you on printing and shipping costs, and us on shipping and scanning costs.



Do I need to send in the prior policy for reissue credit?



No. It was decided a few years ago that we do not need a copy of the prior policy – just make sure you keep a copy in your files. Be sure to enter the reissue credit amount in ezJacket!



Can I send you my policy copies by e-mail or on a disc or flash drive?



Absolutely – we can accept your policies by any of those three ways. Home office requires that they be in TIF or PDF format, preferably TIF.



What address do I send my report to?



Please send them to 201 4th Avenue N, Suite 150, Nashville, TN, 37219, and put the package to my attention. If you'd like to start e-mailing your policy copies, my e-mail address is pbrizendine@oldrepublictitle.com.

If you have any questions, please do not hesitate to contact me. Happy Holidays!



JUST WHEN YOU THOUGHT YOU UNDERSTOOD THE 2010 HUD-1...

Pamela L. Zimmerman, Assistant Vice President and Agency Manager

... “first drafts” of two possible Settlement Disbursement Forms (SDFs) which would replace the 2010 HUD-1 (as required by the Dodd-Frank Act), were released!

After a fifth round of testing the combined initial Mortgage Disclosure Form (replacing separate GFE and TILA disclosures), the Consumer Financial Protection Bureau (CFPB) posted two alternative prototype SDFs (one 5 pages long; the other, 6 pages long) on its website the week of November 7. Input was sought from both consumers and title industry professionals during a one-week comment period. Although the SDF drafts are not currently available on the CFPB website, they can be viewed from links in the 11/22/11 blog post by Mary Schuster, a member of ALTA’s RESPA Task Force, at www.RESPAlready.com.

A few items jump out fairly quickly... more specific itemized line items, but little room for additional items; new columns for Paid Outside of Closing (POC) items; and Title Charges now become the “1000” series instead of the “1100” series to which we’ve all been accustomed since the original HUD-1 came into existence.

It is anticipated that the CFPB will conduct four rounds of testing and revisions between now and February 2012, with a proposed rule out next spring, leading to rulemaking procedures in July 2012. While voting has closed on the first drafts, voting on preferred versions of later drafts will be open for one week after posting on the CFPB website. Visit: www.consumerfinance.gov/knowbeforeyouowe to sign up for e-mail updates as the project progresses.

ALTA’s RESPA Task Force has submitted comments to the CFPB focusing on four major points: integration of increased specific information relating to the loan transaction; section formatting (including reordering/renumbering of line items and itemization); continued use (or not) of “roll-up” lines; and tolerance issues. The Task Force is scheduled to meet with the CFPB on December 6. Stay tuned... we’ll keep you updated as new information is available!