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Word Scramble

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The Other Side of the Fence

Wayne Trapp, Vice President and State Manager

Hello to everyone. I hope your summer has been filled with family, friends, cookouts and fun. Kids are back in school now so maybe a little sanity can return to households.

Let me give an update as to what has been going on at Windy Hill Farm. We named our place Windy Hill Farm because the house sits on a little rise and

there seems to always be a good breeze blowing. It didn't take a lot of smarts to come up with that name, did it? Even in the really hot temperatures you can sit under the big pecan tree between the driveway and garden and still be comfortable.

Anyway, let's start with this year's garden. Remember back in May it was raining nearly every day. At my place we had about 10 inches of rain and it washed away the first two plantings. I had to plant that sucker three times but it was worth it. The harvest has been bountiful to say the least. We have put up over 60 jars of bread and butter pickles, 12 jars of dill pickles and 48 jars of pickle relish. On one Saturday alone I picked 20 gallons of cucumbers and gave most away and still picked eight gallons on Sunday. We are going to make one more run of pickles and then give away the rest of the cucumbers. Green beans. They are running out our ears. We put out 3 rows of the Roma beans; they are the big flat beans. After the rains came I put them out again. After the next big storm all the beans were washed away so to the co-op I go for more beans. Seems there was a bean shortage this year and all the Romas were gone, so Blue Lake beans it was. I think every bean came up. There are three rows of the prettiest beans and they are bearing like crazy. We've probably given away two or three bushel, put up that many and still have more than we know what to do with. Maybe we can find somebody to give them to and if not, the cows will enjoy them.

Cows and calves are doing well. We have 15 big healthy calves and with the rains this year, pasture grass has been great. I'm not complaining at all because last year I was worrying about having enough water to get through the summer. They will now have plenty of grass and water to do them all summer and fall.

Thanks again to all of you for choosing Old Republic Title as your underwriter. We value your friendship. It's time to go now; I gotta pick beans. See you next time....On the other side of the fence.

CASE LAW UPDATE

R. Kirkland Moser, Assistant Vice President and State Counsel

IN RE: **MILBURN HOGUE** and **MELANIE HOGUE**
 No. M2008-01700-SC-R23-CQ
 SUPREME COURT OF TENNESSEE, AT NASHVILLE
 February 5, 2009, Session
 July 2, 2009, Filed

The issue in this case concerns a certified question from the United States Bankruptcy Court for the Middle District of Tennessee to The Tennessee Supreme Court addressing the following issue: what amount may each member of a married couple with custody of a minor child claim as a homestead exemption, pursuant to Tennessee Code Annotated section 26-2-301(f), in a joint petition for bankruptcy? The Supreme Court held that the statute allows each individual debtor spouse with custody of a minor child to claim a \$25,000 exemption for a combined exemption of \$50,000, based upon the plain and ordinary meaning of the statutory language.

On March 27, 2008, Milburn and Melanie Hogue filed a joint Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the Middle District of Tennessee. The Hogues are married, and their six-year-old child resides with them. The Hogues' principal residence has a stipulated market value of \$136,100 and is encumbered by two mortgages totaling \$72,419.09.

In Schedule C of their bankruptcy petition, the Hogues claim a \$50,000 homestead exemption in their principal residence, representing an exemption claim of \$25,000 by each spouse. The Hogues rely upon Tennessee Code Annotated section 26-2-201(f) (Supp. 2008), which grants an enhanced homestead exemption of \$25,000 to "an individual who has one (1) or more minor children in the individual's custody."

The Chapter 13 Bankruptcy Trustee ("the Trustee") administering the Hogues' bankruptcy objected and contended that the Hogues' total homestead exemption was limited to \$7,500, pursuant to Tennessee Code Annotated section 26-2-301(a).

The Bankruptcy Court did not rule on the Trustee's objection, but instead, certified the following question to The Tennessee Supreme Court pursuant to Rule 23 of the Courts Rules. [W]hether T.C.A. § 26-2-301(f) (2007) together with the rest of T.C.A. § 26-2-301: (1) grants an enhanced homestead exemption of \$50,000 to husband and wife debtors having dependent minor children and filing for bankruptcy jointly; (2) grants a single enhanced homestead exemption of \$ 25,000 to these joint debtors; or (3) grants an enhanced \$ 25,000 homestead exemption only to non-married individuals with dependent minor children. The Supreme Court held that Tennessee Code Annotated section 26-2-301(f), which grants an enhanced homestead exemption of \$25,000 to an individual who has custody of one or more minor children, authorizes an enhanced homestead exemption of \$25,000 each to a husband and wife having custody of one or more minor children and filing for bankruptcy jointly, resulting in a total homestead exemption of \$50,000.

Thank you to everyone who submitted suggestions in the contest to name our newsletter.

*We are pleased to announce the new name, "Title Matters", was sent to us by
 Tony Whitson of Stites & Harbison.*

Congratulations, Tony!

RED FLAGS

Valerie Matlock-Perry, Assistant Vice President and Agency Manager

In the past, we've sent out all sorts of "Red Flag" alerts telling our agents what to pay attention to before, during and after closings. This is a different type of "Red Flag" alert; this is informing you of what we, as an underwriter, are paying attention to when it comes to our agents.

1. **Failure to reconcile bank accounts properly and timely** - Your Agency contract states that you are to reconcile all such accounts "not less frequently than monthly". Reconciling is to include funding any shortages immediately, researching and eliminating old, uncleared checks and funding outstanding deposits. If a deposit is outstanding, it never made it to the bank and needs to be researched.
2. **EZ Jacket report shows jackets generated but not reported** - Old Republic is keeping a close watch on agents' EZ Jacket activity. Please make sure that when you generate a jacket, you remit that jacket; do not let it go unremitted for months at a time. This would be no different than letting a stack of policies sit in a drawer for months on end and not sending them in to us. Your Agency contract reads: "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".
3. **High volume of insured closing letters generated, low volume of policies reported** - This goes along with Paragraph 2 above. We are keeping a close watch on the number of ICLs each agent generates and it is a huge red flag if the agent is requesting a high volume of ICLs but is not reporting policies.
4. **Delaying or re-scheduling audits** - This speaks for itself: if all sections of your title company are being monitored, you should welcome an auditor any time. (Obviously, we realize unforeseen circumstances arise). It causes your underwriter concern when it becomes obvious that you do not want an auditor darkening your door. We have had seminar speakers that were previous title agents tell how they always rescheduled audits in order to have time to get their books clean and current. They would even stop taking money from one underwriter and start taking from another until after the audit was completed and then start all over again once the audit was completed. Along this same line, failure to provide auditors with files, bank reconciliations, or other requested items is another red flag.
5. **Changes in lifestyle or spending habits; chemical dependency or frequent gambling** - Although your underwriter is not a babysitter or a parent, we do take note of these items. As everyone knows, the "title" community is a small one and one that likes to talk. Obviously, we would thoroughly investigate any rumors but more often than not, where there's smoke, there's fire.
6. **Delinquent recording of mortgages and deeds** - Your Agency contract states that the agent is to "Timely transmit to the appropriate public office and cause the recording of all documents necessary to insure the interest, estate or title described in the policy, and to timely issue appropriate Title Insurance forms".

Please contact us if you have any questions regarding the above mentioned red flags. We will be happy to help you in your effort to avoid these circumstances.

MARSHALING OF PROPERTY AND THE DOCTRINE OF INVERSE ORDER OF ALIENATION

Michael P. Davis, Assistant Vice President and Claims Counsel

In Kirk's office is a very old collection of books that includes Tennessee Reports from the 1800's. A recent claim has forced me to blow the dust off some of those books including Volume 99 Tennessee Reports to look at the case of Meek vs. Thompson 99 Tenn. 732, 42 S.W. 685 (1897). I recall studying marshalling of property in law school, but I was completely unfamiliar with the Doctrine of Inverse Order of Alienation.

According to Black's Law Dictionary, marshalling assets is an equitable doctrine requiring a senior creditor having two funds to satisfy his debt, to resort first to the one fund which is not subject to the demand of a junior creditor of the common debtor, to avoid the inequity which would result from an election of the senior creditor to satisfy its demand out of the only fund available to the junior creditor, thereby excluding the junior creditor from any satisfaction.

The Doctrine of Inverse Order of Alienation takes marshalling a step further. This doctrine, a form of marshalling, requires a creditor holding a mortgage or mortgages on two or more parcels securing the same debt first to foreclose on the parcel or parcels that the mortgagor has not conveyed, and then, as among the parcels that the mortgagor has conveyed, to foreclose on the inverse order of conveyance (alienation), requiring foreclosure on the most recently conveyed parcel before foreclosure on a previously conveyed parcel. *Restatement, 3rd, Property (Mortgages, §8.6(a)*. This doctrine is adopted in Tennessee in Meek vs. Thompson, *supra*.

In Meeks there was a prior judgment lien against all of the property of the debtor in Knox, Jefferson and Campbell Counties that all other lien holders acknowledged had priority as to their liens. All of the properties had been sold under decree of the court and the funds were being held by the court. The question in controversy was how the judgment creditor should be satisfied, not that the judgment creditor was entitled to be first satisfied. The lower courts in Meeks held that the junior lien holders should contribute ratably to the discharge of the judgment. The Supreme Court reversed this decision and clearly stated:

It will thus be seen that, though adopted by the Courts without the aid of statute, yet it has been so long established, and so uniformly applied, that it may well be regarded as a rule of property in this State.

In order to apply the doctrine it is required that the junior lien holder file an action to enjoin the foreclosure by the senior lien holder. If the junior lien holder fails to take such action prior to the foreclosure then the right to raise the doctrine is generally lost unless there is a very strong justification of the delay of action by the junior lien holder.

The Meeks opinion is still good law in Tennessee and in a time when foreclosures are so rampant, the opinion could be very relevant in today's market. The use of the doctrine could help second lien holders prevent a complete loss of their security interest.



"Each moment of the year has its own beauty, a picture which was never before and shall never be seen again"

- Ralph Waldo Emerson

POLICIES ARE NOW “EZ” IN TENNESSEE

Pamela L. Zimmerman, Assistant Vice President and Agency Manager

Over 80% of Tennessee Old Republic Title agencies are enrolled in and using the ezJacket/ezRemit policy jacket generation and reporting program . . . with plans to transition those who are not already users by the end of 2009.

If you are not already a user, you must first register for our StarsLink website. Please visit www.starslink.com and register online. Once your StarsLink account is activated, register for ezJacket/ezRemit by simply clicking on the “Agent Services” tab and selecting “ezJacket/ezRemit.” Review your information shown on the screen and click “OK”. You will receive an e-mail that access has been approved. A link to the User Guide is located at the bottom of the “Create Jacket” screen when ezJacket is opened. We suggest you print the guide, updated most recently in July 2009, to use as a step-by-step reference in navigating the program. Feel free to contact me, Valerie Matlock-Perry, or Phillip Brizendine for assistance or additional information.

Once you've registered and started to use ezJacket, please set aside unused paper jackets; you may return them or hold for Valerie Perry or myself to pick up next time we visit.

For more information about the ezJacket program, refer to articles in our Spring, Summer and Winter 2008 and Spring 2009 newsletter issues, available on our Tennessee Old Republic home page (www.oldrepublictitle.com/tn).

Just a few reminders to make policies and reporting even “ez”er:

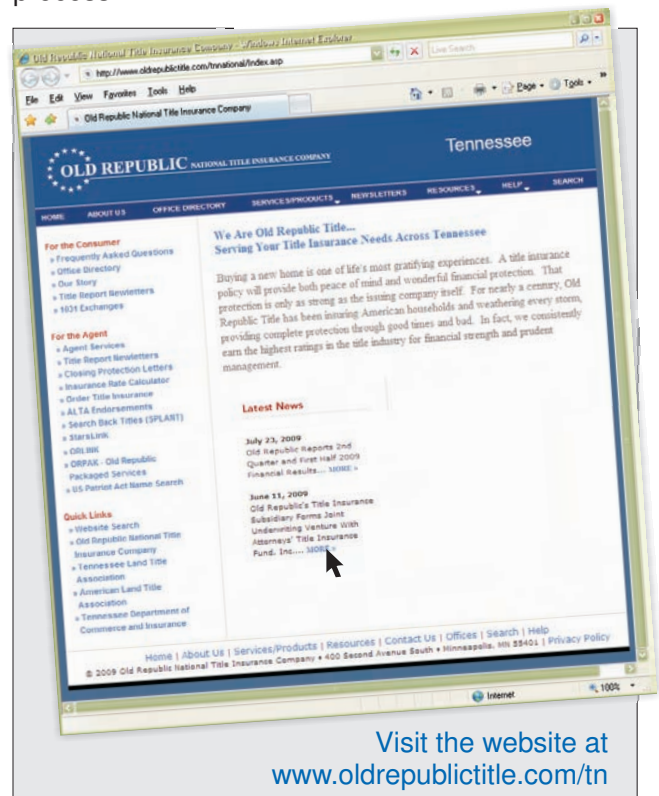
Be sure to enter all policy information in the boxes provided on the “Create Jacket” screen. Phillip has recently noticed that some Simultaneous Loan Policies have been created without showing a liability amount which in some cases can cause an incorrect calculation of premium.

Please submit the policy copies and payment as soon as possible after the

online remittance, including a copy of the Remittance Report generated through ezJacket. Please make sure that all policies listed on the Remittance Report are included in the mailing. Any specific processing instructions which need to be communicated to Phillip (i.e., delayed Simultaneous Owner's policy with request to adjust Loan policy previously reported) should be noted on the Remittance Report copy.

When a policy is voided, you will be prompted to give the reason. Void policies must also be electronically remitted, preferably at the time voided. If not remitted until/as a part of the next regular policy remittance, please highlight or circle the VOID policy number(s) on the Remittance Report copy.

We're here to make it “ez” . . . let us know how else we can help! Thanks for your cooperation during this last phase of the implementation process.



Visit the website at
www.oldrepublictitle.com/tn

CONTINUING EDUCATION OPPORTUNITIES

Pamela L. Zimmerman, Assistant Vice President and Agency Manager

With our 2009 Annual Seminar just behind us (over 225 agents, approved attorneys, and their staffs joined us . . . our largest attendance ever), there are still several additional continuing education opportunities available before the end of the year.

Old Republic Title's two remaining half-day Tennessee Staff Training Seminars "BACK TO BASICS: An Overview of Basic Title Insurance Principles" are scheduled as follows:

Wednesday, November 4:
Sheraton Read House Hotel, Chattanooga

Wednesday, December 2:
Nashville School of Law, Nashville

Join us to hear the tragic story of how a multitude of title problems affected one Tennessee family and how Old Republic helped them deal with the issues! Registration materials will be mailed to agents located in the surrounding areas approximately one month prior to the seminar date. If you were unable to attend this session held in Knoxville this spring and would like to attend on one of the above dates, please request registration information from either Pam Zimmerman or Valerie Matlock-Perry. The course has been approved for three hours of general CLE and CE credit.

In addition, the Tennessee Land Title Association has scheduled the following seminars (Visit TLTA's website www.tnlta.org or contact TLTA at 615-286-

1600 for additional information and registration):

Wednesday, September 16: Tennessee Land Title School, Level II Training, "A Day Late and a Dollar Short" (Foreclosure, Bankruptcy, Short Sales) presented in Chattanooga, Knoxville, Memphis and Nashville. This course has been approved for three hours of general CLE and CE credits.

Friday, November 6: Hot Topics in Real Estate 2009 full-day seminar, co-sponsored with the Tennessee Bar Association, at the Sommet Center in Nashville. Confirmed speakers and topics are: Anne Anastasi, "Navigating Challenging Times"; Dewees Berry, "TN Case Law Update"; Kelly Derryberry, "HUD Enforcement"; and Chuck Welch, "TN Legislative Update". A panel of Claims Counsel will review and address questions re: claims issues. Registrants may choose to attend a presentation on either "RESPA Rule Implementation Overview" by Anne Anastasi or "Title Aspects of Foreclosure and Bankruptcy on Commercial Property" by Ed Brading. Approval for six hours of CLE and CE credit, with at least one dual (CLE) and one ethics (CE) hour, is anticipated.

Monday, November 16 (Knoxville) and Friday, December 11 (Nashville): TLTA will sponsor a full-day, hands-on training seminar re: implementation of the RESPA final rule, including the new GFE and HUD-1. See the "Save the Date" flier included in this newsletter for information. Registration details will be shared when available.

CLOSING PROTECTION LETTER UPDATE

Pamela L. Zimmerman, Assistant Vice President and Agency Manager

Old Republic Title's Closing Protection Letter (CPL) website has recently been upgraded. Although access to the request form is now gained through a log-in page, the information you have always used to begin the process (Agent Number and Authorization Code) remains the same. If you need a reminder of either of these, please contact Phillip Brizendine, Agency Coordinator.

All information previously created and saved in your agency's CPL database transferred to the new format. You may add, edit or delete contact and lender information. Once the information form is completed and submitted, the letter may be printed, saved, e-mailed and/or faxed. CPL activity for your

agency can be viewed, but CPLs are not available to be reprinted by agents, so please be sure to print or save the letters when created.

Branch office or Closing Agent/Attorney information can only be added, edited, or deleted through the Tennessee Old Republic Title office. Contact Phillip with any requests.

An updated CPL User Guide is now available; simply click on the "Help" button on the order page to access. Refer to the User Guide for additional information, or contact Phillip with specific questions or requests.

THINGS LEARNED LATER IN LIFE THAT I WISH HAD BEEN LEARNED EARLIER: PART II

Wayne Trapp, Vice President and State Manager

In our last newsletter I had listed a few things read in a magazine while in the doctor's office. These are things learned later in life that we wish had been learned much earlier. Little did I know this would be such a hit. Thanks to those of you that sent e-mails about this article, and since it was a hit, here are a few more.

I've learned....that sometimes all a person needs is a hand to hold and a heart to understand

I've learned....that being kind is more important than being right

I've learned....that to ignore the facts doesn't change the facts

I've learned....that love, not time, heals all wounds

I've learned....that I can't choose how I feel, but I can choose what to do about it

I've learned....that everyone wants to live on top of the mountain but all the happiness and growth occurs while
you're climbing it

I've learned....that when your grandchild holds your finger in their fist you're hooked for life

This last one was not listed anywhere and I learned it from a two year old named Hayden. It really knocked me for a loop.

I've learned....that when your grandchild lays his head on your shoulder and whispers "my Nano" you finally understand what really matters in this life.

Hayden is my grandson. On this particular night, right after his bath when he was wrapped in a towel, while holding him he put his little head on my shoulder, his little arm around my neck and he whispered those words "My Nano" (he can't say PaPa Wayneo). I haven't been the same since and don't want to be.

Y'all have a good day.

WORD SCRAMBLE

Unscramble the six words below. The letters that wind up in the red slots will, when put in the correct order, spell the prize for the office that is first to solve the word scramble and send the answers by email to abarnwell@oldrepublictitle.com.

Hint: These six words are related to real estate and title insurance.

TCNEAJD

___ ___

AYBDORUN

___ ___

RODCIRTE

___ ___

SORNEDE

___ ___

CWROES

___ ___

T TSAEE

___ ___

SAVE THE DATE !!!

TENNESSEE LAND TITLE ASSOCIATION

RESPA FINAL RULE IMPLEMENTATION PROGRAM

PRESENTED BY KAREN E. KOOGLER
AUTHOR OF THE
“RESPA FINAL RULE STUDY MANUAL”

MONDAY, NOVEMBER 16, 2009, KNOXVILLE
OR
FRIDAY, DECEMBER 11, 2009, NASHVILLE

THE CLOCK IS TICKING....ARE YOU PREPARED?
MANDATORY COMPLIANCE DATE:
JANUARY 1, 2010

AGENDA HIGHLIGHTS:

- OVERVIEW AND POTENTIAL IMPACT OF THE FINAL RULE ON MAIN STREET TITLE AGENTS
- AVERAGE CHARGE: WHAT IT MEANS TO YOU
- THE NEW GOOD FAITH ESTIMATE: BUCKETS, TOLERANCES & BREACHES
- IT'S ALL ABOUT YOU: SERIES 1100 CHARGES
- CROSSING THE BRIDGE: HUD-1 LINE ITEM REVIEW



6 HOURS CLE/CE ANTICIPATED
REGISTRATION INFORMATION AVAILABLE SOON

About the Speaker:

Karen Koogler has authored 15 industry textbooks. She has personally instructed more than 10,000 students in state prelicensing programs (Florida, Indiana, and Virginia) and has provided regulatory compliance programs to title agents, attorneys and other settlement service providers at ten times those numbers during the past 25 years.