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The Other Side of the Fence

Wayne Trapp, Vice President and State Manager

It looks as though winter is gone and spring has sprung. The grass is green, pollen is high, eyes are running and everybody is sneezing. Don't you just love this time of year?

Out on the farm everything is fine. We have 18 new calves that are having the time of their lives, running and playing and sleeping. It's so relaxing to

walk down to the pastures and just watch how the cows take care of their babies. This weekend the garden will be tilled and made ready to plant. I think I'll make it a little bigger this year; not too much, but about 12 feet longer. This way we can have wider rows which will keep us from stepping on everything. We are completely out of bread & butter pickles so we need to put out more cucumbers so we can make enough to last another year. We give away almost as much as we keep, but that's okay; we like sharing. Speaking of pickles, a big roast with fresh green beans, mashed potatoes, fried corn, bread & butter pickles, hot cornbread and tea would taste pretty good right now. You know I can't write without talking about food.

You may remember that last summer we had a ground hog problem. He got in the garden and ate more than his fair share until we finally got rid of him. Now we have another one. I saw him yesterday so out comes the Elmer Fudd hat and a huntin' we will go. Stay tuned as I'll keep you posted on this fiasco.

As Spring and Summer roll around, this is normally the time of year that our industry sees more closings. I'm sure everyone will welcome more business right now as we have seen a big down turn in the market over the past few months. At Old Republic Title we do not take your business for granted. We know you have a choice and you have chosen to use Old Republic Title and for that I say "THANK YOU". We always want to treat you right. We hope to always give you sound underwriting advice and that you feel comfortable when calling. Old Republic Title is an agency based company. We are not trying to steal your customers; we just want to help you make them happy.

Again, thank you for your loyalty and allowing us the opportunity to serve you.

Come see us; the door is always open. See you next time....On the Other Side of the Fence

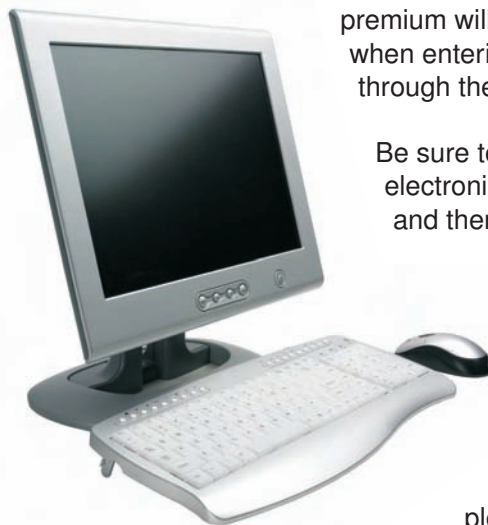
ezJACKET/ezREMIT UPDATE

Valerie Matlock-Perry and Pamela L. Zimmerman
Assistant Vice Presidents and Agency Managers

Agency offices not already using ezJacket will be transitioned to the program during 2009. If you are not already signed up, go to the StarsLink website at www.starslink.com. You will need a StarsLink username and password to access the system; if not already registered, you may register online. Once you've been approved for StarsLink, simply click on "Agent Services"; the first tab will be ezJacket/ezRemit. To register for ezJacket, just review your information shown on the screen and click "OK". For your convenience, a link to the User Guide shows on the "Create Jacket" screen when ezJacket is opened. This helpful tool covers step-by-step use of the ezJacket/ezRemit program.

Effective April 8, 2009, the following new options became available on ezJacket:

- A Tax Credit Endorsement option has been added when generating an Owner's Policy Jacket. (NOTE: This endorsement is typically used only for Commercial closings with a premium of 25 cents/1000; minimum \$50.00; maximum \$1,000.00.)
- The Miscellaneous Category has been added. Under this category Agents now have the option to report endorsements for both Owners and Loan Policies where the Amount of Insurance is being modified to increase the insured amount, as presently included on our rate calculator. Simply enter the prior policy number, the amount the policy is being increased to, and the amount the policy is being increased from.
- A Policy Type "Limited Duration (Construction Loan)" has been added, as presently included on our rate calculator.



ezJacket users now have the ability to electronically sign policy jackets. Old Republic has enhanced the online policy jacket generation system allowing you to insert an electronic signature on the front page of your policy jackets. See pages 55-59 of the User Guide for instructions.

Via the "Profile" tab, users can also now decide if they want to have the premium amount automatically calculated when entering numbers on the "Create Jacket" screen. If the user is on a slower internet connection or is fast at keying the numbers in, the auto calculation feature may be turned off, requiring the "Calculate" button to be clicked after entering numbers. If the auto calculation feature is left on, then the premium will be automatically calculated when entering numbers and tabbing through the screen.

Be sure to use the ezRemit feature to electronically remit your monthly report and then mail a copy of the remittance report, copies of policy schedules and endorsements, along with payment, to our office, preferably the same or following day. (While it is not necessary to include the policy jacket, if you do, please send only the first page showing the policy number.) The policy copies will then be included in our online S-Plant (Search Back Title) site, available to registered agents. If you are not yet taking advantage of S-Plant, call Valerie, Pam, or Phillip Brizendine for access.

Only policy jackets are generated through the ezJacket program; if you would like to receive a PDF version of a commitment jacket or if you have questions about ezJacket/ezRemit, please feel free to contact Phillip at 615-244-2101 or pbrizendine@oldrepublictitle.com.

CASE LAW UPDATE

R. Kirkland Moser, Assistant Vice President and State Counsel

BIELFELDT v. TEMPLETON

No. M2008-01093-COA-R3-CV - Filed February 18, 2009

This case arises from a dispute over a contract for the sale of land. In the contract, Appellee Sellers made no warranty concerning the exact acreage of the tract. Appellant Buyer was given the right to have the tract inspected and surveyed prior to closing; however, he did not exercise that right. At the closing, Appellant also executed a waiver to any claims arising from a determination that the assumed acreage was incorrect. A survey performed after the closing indicated that the tract was approximately three acres less than the parties thought. Appellant Buyer brought suit against Appellee Sellers on grounds of fraudulent misrepresentation. When the matter was heard, the trial court entered an Order of Dismissal, dismissing Mr. Bielfeldt's complaint. The Court of Appeals affirmed the trial court.

Appellees Templetons were the owners of the disputed tract of land. The Templetons obtained the tract from Mr. Templeton's mother by deed dated May 20, 1979. The deed contains four parcels, described in metes and bounds, and six exclusions. The tax map indicated that this tract was approximately 15.31 acres. In 2004, an adjoining property owner acting on behalf of the Appellant Larry Bielfeldt, contacted the Templetons about purchasing the 15.31 acre tract. Mr. Templeton ultimately agreed to sell the tract for \$20,000 per acre. At the time he agreed to purchase the tract, Mr. Bielfeldt had neither viewed the tract, nor spoken with the Templetons.

On December 13, 2004, the parties entered into an Agreement of Sale (the "Contract"). Because there was some uncertainty as to the exact acreage of the tract, the parties used the 15.31 acres from the tax map to negotiate the total purchase price. In the Contract, the Templetons made no warranty as to actual acreage, but granted Mr. Bielfeldt the opportunity to have the property surveyed prior to closing. The tract was described in Exhibit A to the Contract. However, in that exhibit, the Templetons expressly made no warranty as to the actual acreage being sold.

Mr. Bielfeldt did not exercise his right to have the tract surveyed, and the closing was completed by mail sometime in May 2005. As part of the closing, Mr. Bielfeldt executed a Survey Waiver Acknowledgment. Also in connection with the closing, Mr. Bielfeldt executed a Notice and Waiver, in which he was advised of his right to purchase an Owner's Title Insurance Policy on the tract, which he waived.

Approximately three months after closing, Mr. Bielfeldt had the property surveyed. The surveyor determined that the acreage contained in the tract was actually 12.86 acres.

Mr. Bielfeldt filed a Complaint against the Templetons seeking treble damages in the amount of \$146,400.00 due to allegations of fraud on the part of the Templetons. Mr. Bielfeldt also asked the court to reform the deed to reflect the property description made by Mr. Bielfeldt's surveyor. The Templetons answered the complaint denying the material allegations contained therein and raising, as affirmative defenses, failure to state a claim, waiver of survey, assumption of the risk, and the lack of a warranty. When the matter was heard, the trial court entered an Order of Dismissal, dismissing Mr. Bielfeldt's complaint.

The Court of Appeals found that from the inception of their dealings with Mr. Bielfeldt (or his agent), the Templetons never asserted that they knew the exact acreage of the tract. Because they were not certain of the exact acreage, the Templetons specifically made no warranty, and gave Mr. Bielfeldt the right to inspect and/or survey the tract before the closing. Mr. Bielfeldt did not avail himself of this right until after the closing. A person who knows the danger, appreciates the danger, and voluntarily exposes himself or herself to the danger is deemed to have assumed the risk of the injury he or she incurs. *See, e.g., Gann v. International Harvester Co.*, 712 S.W.2d 100 (Tenn. 1986). Under Tenn. R. Civ. P. 8.03, express assumption of the risk is a complete defense to liability. In not

continued from Page 3

exercising his right to have the tract surveyed prior to the closing, Mr. Bielfeldt assumed the risk that the property contained less acreage.

The Court of Appeals further found that Mr. Bielfeldt voluntarily signed a waiver of his right to bring a claim against the Templetons based upon actual acreage. Therein, Mr. Bielfeldt expressly agreed that, in the event a later survey revealed that the tract contained less acreage, he would have no claim against the Templetons for any credit or reduction of the sales price. A party who, by express or implied waiver, has refrained from exercising or enforcing his or her rights in a matter may be equitably estopped from asserting a claim. ***Chattem, Inc. v. Provident Life and Accident Ins. Co.***, 676 S.W.2d 953 (Tenn. 1994). Consequently, the Court of Appeals concluded that Mr. Bielfeldt waived the very relief he sought.

Comment:

It is interesting to note that Mr. Bielfeldt did not purchase Owner's Title Insurance. Regardless if he had or had not purchased title insurance, the issue related to acreage probably would not have been covered. Title companies are in the business of guaranteeing title, not acreage, and title insurance is no substitute for an accurate survey. There is a difference between title and acreage described in the policy. Regardless of this, many times an Insured will argue, when the acreage received falls short of the acreage promised in the description used in the policy, there has been a partial failure of the title to the difference. Therefore, most underwriters require that the reference as to the amount of acreage be removed from the property description or that an exception similar to the following be placed in the schedule B of the policy, "Any inaccuracy in the area, square footage, or acreage of land described in Schedule A. The Company does not insure the area, square footage, or acreage of the land."

TIMELY POLICY REPORTING

Pamela L. Zimmerman, Assistant Vice President and Agency Manager

Old Republic Title Agency Agreements contain a provision covering reporting schedules, with language similar to the following:

"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."

In addition to being a part of the Agency Agreement, regular monthly reporting is a good business practice, enabling more productive and efficient agency operations by eliminating the time consuming effort of dealing with large backlogs of policies and inventory control issues. Use of the ezJacket/ezRemit program (see article on Page 2) makes reporting even easier!

Your cooperation in establishing and following a regular monthly reporting schedule is much appreciated!

DECEASED, DIVORCED OR DISAPPEARED: PART THREE – DISAPPEARED

Michael P. Davis, Assistant Vice President and Claims Counsel

In previous articles I talked about the effects of death and divorce on title to real property. This is the third and final part of our discussion of “Deceased, Divorced or Disappeared?” and this time we are going to take a look at Gone Without a Trace.

How many times have your search results indicated a missing person in the chain of title, whether it was a complete gap in the chain or simply the failure of one person in the chain to have executed a deed? There are so many ways that missing persons can affect title. How do we deal with a missing person's interest?

Sometimes the problem of a missing person is solved by simply looking in the phone directory and locating your missing person; other times it's not quite so simple. The missing persons problem can be related to our previous discussions on Deceased and Divorced. A gap in your chain of title could be the result of the death of a party or it could be from the fact that a Quitclaim Deed was ordered by the court in a divorce but was never executed.

If the gap is the result of a death, this problem may be resolved by the use of Affidavits of Heirship or it may require the actual probate of an estate whether it be probating the will for muniment of title or the full administration of the estate.

If divorce is the cause of the gap and your problem is the ex has disappeared and failed to execute a Quitclaim Deed as required by the divorce decree, it may require going back to the divorce court to have an order entered modifying the decree to vest the property and remove the requirement of the Quitclaim Deed.

So far the issues involving missing persons have been rather simple to deal with, but what if the problem is a vested owner no one can find? For instance, you have an inherited property for which title is vested in the children of the deceased but one of the children has been estranged from his or her siblings for twenty years. You don't know if that individual is dead or alive. In this situation if the parties want to sell the property the only option they have is a partition action where the court can order the property sold and the proceeds for the missing interest invested for the benefit of the missing party.

There are many tools available today to help you locate missing persons. You might be surprised at just what you can find by just Googling the person's name. Other internet pay sites, including sites like ancestry.com, provide you with a search of public records and various publications that may contain information related to your missing party. Just making phone calls to former neighbors can create results that lead you to the party. Other sources you should consider are tax rolls, phone directories (including internet phone searches, i.e. whitepages.com), and just searching other documents in the Register's Office related to your missing person.

The real trick to finding your missing person is persistence. To find that person you almost have to become Jim Rockford or Thomas Magnum.



THE UPCOMING HUD CHANGES

James C. Russick, Vice President and Florida Underwriting Counsel

After many years of study and investigation, the United States Department of Housing and Urban Development (HUD) has promulgated new rules for residential loan transactions that will impact every title insurance agent. These rules implement, among other things, a new Good Faith Estimate (GFE) and a new HUD1 closing statement.

The official effective date for the required use of these new forms is January 1, 2010. However, a lender may elect early implementation of the new GFE. If so, the entire transaction so initiated must be done in accordance with the new rules which include the new 3-page HUD-1. Old Republic Title anticipates that many lenders will not wait for the deadline to convert to these new rules so it is imperative that closing agents are prepared for this change prior to the new year.

Preparation will require training and updated software for your closing system. Old Republic Title will be conducting training on the requirements later in the year.

Why the changes? HUD's primary motivation is to better educate consumers, and to give them the tools necessary to properly compare the cost of their loan transaction; hence, the enhanced GFE. The new GFE establishes a standard 3-page form. The first page contains a summary of the specific loan terms and charges. The second page discloses the settlement charges and gives subtotals for eleven cost categories. The last page sets forth the tolerance rules. Some fees must be exact while others must be within 10% of the estimated cost on the GFE. The actual charge for title services and lender's title insurance cannot increase by more than 10% from the GFE. Additionally, HUD altered the settlement statement to add a new third page. That page includes a chart comparing the GFE with the actual charges that is designed to assist the consumer.

While there are still some technical issues regarding implementation of these regulations, Old Republic National Title anticipates that this transition should be reasonably smooth. We look forward to working with our agents to assist you in timely compliance with the new regulations.



BRIGHT IDEA

Here's an example of what one of our agents finds useful in their operation. We thought this stamp on the front of their closing files was a great idea for anyone with numerous escrow accounts.

JOHN ANDERSON JOINS ORT

Wayne Trapp, Vice President and State Manager

Please join us in welcoming John Anderson to the Old Republic Title team as an additional Agency Auditor. John came to us from another underwriter where he held the same position. While working from his home in Knoxville, he will be auditing all agents in the Eastern Time Zone. We are pleased to have John with us and I know you will welcome him into your offices. John's email is janderson1@oldrepublictitle.com.



SAVE THE DATES!

Old Republic Title's remaining half-day Tennessee Staff Training Seminars are scheduled for Wednesday, November 4 in Chattanooga at the Sheraton Read House Hotel and Wednesday, December 2, in Nashville at the Nashville School of Law. Plan to join us for "BACK TO BASICS: An Overview of Basic Title Insurance Principles." Come 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.

Our full day Annual Agent Seminar has been scheduled for Friday, August 7 at the Downtown Nashville DoubleTree Hotel. Topics will include Legislative and Case Law Updates; Claims Issues and Trends; New RESPA Regulations; 1031 Exchanges; Tennessee Unclaimed Property and Escheat; and Workplace Issues During Difficult Times.

Registration materials will be sent approximately 6 weeks prior to the specific events, but we wanted everyone to mark your calendars now. Hope to see you there!!

NAME OUR NEWSLETTER!

Help us come up with a new name for "The Title Report." The office that suggests the winning new title will get a pizza party. Please email your suggestions to Allison Barnwell at abarnwell@oldrepublictitle.com by July 1, 2009. Thank you and may the best suggestion win!



THINGS LEARNED LATER IN LIFE THAT I WISH HAD BEEN LEARNED EARLIER

Wayne Trapp, Vice President and State Manager

As we get older we find ourselves going to the doctor more often. Every time we have a physical the doctor always wants us to come back in 3-6 months for a check-up. While in the waiting room recently I picked up a newsletter called "*Mature Lifestyles*". There was a section called *Gaining a Better Perspective on Life* that really hit me. It talks of things learned from elderly people, and man, is it so true. I want to share a few of them and hope one of them hits you also.

I've learned.....that just one person saying to me, "You've made my day!" makes my day

I've learned.....that you should never say "no" to a gift from a child

I've learned.....that it's those small daily happenings that make life so special

I've learned.....that everyone you meet deserves to be greeted with a smile

I've learned.....that when you harbor bitterness, happiness docks elsewhere

I've learned.....that a smile is an inexpensive way to change your looks

I've learned.....that money doesn't buy class

I've learned.....that life is like a roll of toilet paper. The closer it gets to the end, the faster it goes

And now for my favorite:

I've learned.....that there's nothing sweeter than sleeping with your babies and feeling their breath on your cheeks.

That's the one I really loved. It has meaning. Good night, Hayden.



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