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Form

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Tennessee

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The Other Side of the Fence

Wayne Trapp, Vice President and State Manager

It's newsletter time again and I hope this finds everyone enjoying the spring weather. The sun is shining, grass is green, flowers are blooming and pollen is growing. Heads are hurting, eyes are running and noses are blowing. Everything is wonderful, wouldn't you say?

The garden has been planted. This year we don't have out as much as in years past because we can't give it away fast enough. I've only put out 35 tomato plants, two rows of

roma beans, seven hills of squash, four pepper plants and a row of cucumbers. I started planting cucumbers in a row instead of hills a couple of years ago. Once they come up I'll run a fence along the row and the "cukes" will climb the fence instead of running across the ground. This makes them easier to pick and they don't take up as much room. Around the 4th of July there should be plenty to eat. If anybody wants a good meal come on out. We'll fix a big bowl of green beans, fried squash, sliced tomatoes, fried corn, a skillet of cornbread, and a pitcher of sweet tea. If we can still breathe, after eating all of that, we'll go out under the big pecan tree and make a freezer of ice cream. No wonder I stay fat.

Calving season was a success. The pastures are full of little black and white faced calves running around. For me there is something therapeutic about walking out in the field and just standing there watching the calves. You know they actually learn life lessons just as we do. They learn to eat by watching their mothers, learn where the shade and water are by following the older ones in the herd, just as we learned how to do things by watching and listening to others and trying to do what we have seen and heard. My buddy Frankie came up last weekend and helped me give vaccinations to the cows and calves. This takes us about 3 hours to do but is a necessary job and is now over until the fall.

While talking about cows, I have to take a minute to let everyone know about the demise of "Lucky". You may recall Lucky was the calf I pulled out of the frozen pond when he was about 10 days old. Lucky was fine and developed into a really good Angus steer and was being sold to an individual for beef. Well, if you think back to the tornadoes we had in February, you'll remember it was rougher than a cob. Thunder, lightning, rain, wind and destruction, we had it all. Once everything calmed down we had another round of thunder storms with lots of lightning. The next day I walked around the farm checking out fences and just making sure things were okay. Much to my surprise I looked over and saw Lucky lying in, you guessed it, the pond. The only thing I can figure out is that he was drinking water and was struck by lightning. So once again he was pulled out of the pond, but this time there wasn't anything to be done for him. Lucky was not very lucky.

Well it's time to shut up for now and let ya'll read the learning parts of this newsletter. Maybe you will find something of interest to you. As always thanks for everything ya'll do for Old Republic Title and remember to come see us. The door is always open.

See you next time.....On the other side of the fence.

INSURANCE PRODUCER (AGENT) LICENSING and RENEWAL UPDATES

Pamela L. Zimmerman, Assistant Vice President and Agency Manager

The Tennessee Department of Commerce and Insurance has announced rule changes affecting insurance producer (agent) licensing and renewal.

Effective January 2008, three (3) of the twenty-four (24) continuing education credit hours required every two (2) years following the date of issuance of the original insurance producer license must be from approved ethics courses. Certificates of compliance for courses previously submitted and approved for credit may only be repeated and submitted for credit every three (3) years. Rule 0780-1-56-.08 (1) (Attorney limited insurance producers are exempt from CE requirements.)

Effective July 1, 2008, under Rule 0780-1-56-.07(7), new applicants taking the examination to become licensed as a resident insurance producer (agent) must be fingerprinted for background checks through the Tennessee Bureau of Investigation (TBI) and the Federal Bureau of Investigation (FBI). Requests for fingerprint-based background checks must be submitted through the use of Cogent Tennessee Applicant Background Check Procedures as follows:

1. Registration

- Call 1-877-862-2425 or register online at www.tennessee.cogentid.com
Make sure that your Social Security Number is collected correctly
- Agency ORI #: **TN920680Z** (required for registration)
- Transaction Type: **"IP"** (required for registration)

2. Payment

- Call 1-800-964-7690 to submit payment via credit or debit card.
- Go online to www.tnprints.com to submit payment via credit or debit card.
- Money orders made out to Cogent Systems are also accepted at the fingerprint service sites. CASH is NOT accepted.

3. Fingerprinting

- Go to the facility nearest you to be fingerprinted, no appointment necessary. (Print locations are available at www.tennessee.cogentid.com) **Applicant must be registered and have made arrangements for payment prior to fingerprinting.**
- At the fingerprint service site, the Applicant must provide valid State or Federal government issued identification.
- Fingerprints will be electronically forwarded to the

Tennessee Bureau of Investigation and all results of the fingerprint background check will be provided to the Tennessee Department of Commerce and Insurance.

Applicants may be fingerprinted prior to taking the examination. Obtaining the fingerprints beforehand will minimize the risk that the license issuance will be delayed while awaiting the results from both the TBI and the FBI.

Licenses CANNOT be issued until the background checks have been received by the Tennessee Department of Commerce and Insurance, so it is recommended that fingerprinting be scheduled at least as early as the pre-licensing course registration.

In addition, following passage of an Amendment to T.C.A. 56-6-107 to be effective January 1, 2009 (SB4203, signed by the Governor on June 19, 2008, but no Public Chapter number has been assigned at this writing), renewal of all insurance producer (agent) licenses (resident, non-resident, and attorney limited insurance producer) will occur on the last day of the producer's birth month. Rule 0780-1-56-.09 A transition plan has not yet been formulated by the Department. Additional details will be posted on the Department's website (www.state.tn.us/commerce/insurance) when available.

In the future, non-renewal of licenses within a one year grace period will result in the necessity of repeating the licensing application process as if a license had never been issued, and the Department will also automatically terminate underwriter appointments after the lapse of the year. It is very important to notify the Department of any change of address during the twenty-four (24) month license period (form available at www.state.tn.us/commerce/insurance/agentsRes.html) so that the Department's renewal notice reaches you in order to allow timely renewal.

Please remember that it is the responsibility of the individual licensed insurance producer/limited insurance producer (agent) to comply with licensing and renewal statutes and rules, including the new requirements. Old Republic Title will make every effort to keep you informed of changes as we are made aware of them.

Thanks for your cooperation in ensuring that licenses and appointments remain current by renewing timely and providing us with a copy of the renewed license when received!

THE IMPORTANCE OF RECONCILING TRUST/ESCROW ACCOUNTS

Valerie Matlock-Perry, Assistant Vice President and Agency Manager

I know you are all thinking “Who doesn't reconcile their bank accounts?” and “Why do we have to listen to this again?” Well, you would be alarmed to hear that there are agents out there who haven't reconciled their accounts in months, sometimes years. Not only have they not reconciled, they haven't even bothered to open and look at their monthly bank statements. I'm writing this article because the subject matter is fresh on my mind due to recent events. Lately, I've received several phone calls regarding title companies whose checks are bouncing due to insufficient funds. These are not Old Republic Title agents, but if any of you are behind in your reconciliations I want you to be aware of the problems that can arise if you are not reconciling every single month.

How many of you have forced a balance on a file in order to get checks cut because there are people in your office waiting to get their proceeds or real estate commission? You might tell yourself, “I'll fix this after end of the month when things slow down”. Next thing you know, several weeks have gone by and you pick up that file and can't remember why it's still out. You file it away and never think about it again. That file might be \$100.00 short. You might do that very same thing to ten files a month for a year. You would be left with a shortage of \$12,000.00 in your escrow account. If you don't balance, don't close until you do. Please do not close a loan if you do not have funding. When the auditor comes to do your annual audit and the reports are run, shortages will show up. Old Republic will have you put that money back into the escrow account immediately, no matter the reason for the shortage. If this were to happen, would you have access to thousands of dollars to fund this kind of shortage or would you have to get a loan? Not only would ORT require that the monies be funded but you would run the risk of being cancelled. If you were cancelled and had to fill out an application for another underwriter, what would happen when you got to the question that asks if you have ever been cancelled by another underwriter? If you were to answer that question truthfully, you would have to tell them you were cancelled due to a shortage in your escrow account. No underwriter would want to sign you. You would be out of

business because of a seemingly innocent action that could end up costing you thousands of dollars and possibly your livelihood.

You are responsible for looking at your bank statements when they come in every month. For an example of what might happen if you don't, let's say you don't have time to look at your bank statements when they come in and you let them pile up for six months. You stay late one night and decide you're going to reconcile your escrow account. You start looking at the bank statements and realize that the bank has made an error (they possibly left a zero off of a deposit amount, the teller accidentally transposed some numbers and a deposit was made into the wrong account, a check cleared twice, etc.). What if someone gained access to your account through the Internet (I know for a fact that this has happened), recreated your checks down to the ABA number and account number and used them to pay their own bills? If you're not looking at your statements on a monthly basis, there is no way you would notice this. Keep in mind you have thirty days to bring a mistake to the bank's attention. After that, they can use their discretion as to whether or not they take care of it for you.

I continue to harp on this because the only way to be immune to this type of situation is to stay on top of your reconciliations. We see and hear about problems almost weekly. As business continues to slow down, more and more problems will come up and we don't want any of you to fall victim. Reconciling your escrow account should be the most important thing you do every month.

Please let me know if you have any questions and if we can help you in any way. We can put you in contact with companies that reconcile agents' escrow accounts and their fees are very reasonable.

DECEASED, DIVORCED OR DISAPPEARED: PART ONE

Michael P. Davis, Assistant Vice President and Claims Counsel

Recently we have seen a number of claims dealing with missing interests either as a result of death, divorce or the persons having just disappeared. The fact that we are seeing these claims made me aware that it would be helpful if I were to write a series dealing with the missing interest problem and provide practical tips that will help you solve the problem. In this first part of the series, we shall enter the world of the dead and take a look at what sources and information are available to aid you in your search of the missing interest.

Did anyone ever tell you that you had to be a private detective to be in the Title Insurance business? Probably not, but the longer you are in this business the more you develop your detective skills. Dead people cause problems from the grave. How many times have you searched a chain of title only to find that someone in the chain you are searching no longer appears in the chain without any record of their interest having been divested? Many times this is a result of the death of that party, but how do we know for sure that the party is deceased? This is where you put on your detective hat.

Where do you start to find information about whether or not your person is deceased?

One good resource is Ancestry.com. Ancestry.com, a subscription service, gives you access to several sources of information including Social Security Death Index, Census Reports and Obituaries. Searching your missing party on Ancestry.com can provide you with information such as the date of death and where your party died, as well as information regarding the person's descendents. The date of death is a major clue you will need to continue with your detective work.

If in your research you are able to uncover that your party is actually deceased and you are able to determine the date of death of your party, you will have opened other opportunities for investigation. With the date of death and location of death you will now be able to search through records of the probate courts where your party died to see if there was an estate admitted. Many

times you will find where an estate dealing with your deceased person's interest in the real property was admitted through a probated will that was simply never mentioned in any of the records in the Register of Deeds. You should be cautious even if you find a probated estate and should verify if indeed the real property was included and defined as part of the estate under the probated will. If the will is not worded correctly, there is always the possibility that the real property is not included as part of the estate and will pass outside of the probated estate.

What if you can't find any record of the death of the party?

It can be helpful to look at other documents in the Register's Office unrelated to the particular property you are trying to insure. These documents can provide details about the death of a party that were not included in the documents in your chain.

Checking tax rolls to see if your party is vested in any other property and looking to see who the tax bills are sent to or have been paid by can help establish a link to persons who can provide information regarding your party.

There are other sources to consider such as local funeral homes, churches and even neighbors that you can consult with that can provide invaluable information about your party and when he or she may have died. You may even have to make a trip to the cemetery to take a picture of the headstone for proof of death.

The key to solving the mystery of your dead person is being able to look beyond just what your title search reveals and look to other sources. You have to put on your detective hat and become Magnum, P.I.

Next time we will talk about the missing interest caused by divorce. Until then, Happy Detecting!

EFFECT OF A DELINQUENT PROPERTY TAX SALE ON AN EASEMENT BURDENING THE REAL PROPERTY SOLD

R. Kirkland Moser, Assistant Vice President and State Counsel

Occasionally, we are asked to issue an endorsement which provides coverage in case a tax sale extinguishes a prior recorded appurtenant easement. This endorsement usually contains the following language: "The Company hereby insures the Insured against loss or damage which the Insured shall sustain by reason of the easement described in Schedule A being extinguished through a foreclosure of taxes which constitute a lien on the servient tenement". Our opinion is a tax sale does not extinguish a prior recorded easement. Unfortunately, we do not have any Tennessee authority to support our opinion. Recently, the Tennessee Attorney General was asked the question and now we at least have someone who shares our opinion. Attorney General's Opinion Number 08-86 on the following question was issued on April 7, 2008: "Does a tax sale held for non-payment of delinquent property taxes extinguish a prior recorded easement running with the land that burdens the real property sold?". The Attorney General said NO and the following is the opinion in its entirety.

Opinion No. 08-86

QUESTION

Does a tax sale held for non-payment of delinquent property taxes extinguish a prior recorded easement running with the land that burdens the real property sold?

OPINION

No. A Tennessee court applying the majority rule would determine that a tax sale of the burdened property does not terminate an easement running with the land.

ANALYSIS

Liens for property taxes are a first lien upon the property regardless of the time the taxes accrued. Tenn. Code Ann. § 67-5-2101(a) (2007) provides that

[t]he taxes assessed by the state of Tennessee, a county, or municipality, taxing district, or other local governmental entity, upon any property of whatever kind, and all penalties, interest, and costs accruing thereon, shall become and remain a first lien upon such property from January 1 of the year for which such taxes are assessed.

taxes). These tax liens are "a lien upon the fee in the property, and . . . any and all other interests in the property . . . of any nature whatever." Tenn. Code Ann. § 67-5-2102(b) (2007).

Tenn. Code Ann. § 67-5-2501(a)(1) (2007) provides that a court may order a sale of the property for delinquent real property taxes. This statute specifically states that a tax sale is "subject to the equity of redemption" and does not list any other items to which the sale is subject. Additionally, the tax deed constitutes "an assurance of perfect title to the purchaser of the land[.]" Tenn. Code Ann. § 67-5-2504(b) (2007). Thus, the effect of a tax sale is that it extinguishes junior liens. *See Obion County ex rel. N. Fork Drainage Dist. v. Massengill*, 177 Tenn. 477, 151 S.W. 2d 156, 157-58 (1941) (termination of lien for special assessment upon tax sale).

If a property tax lien has first priority regardless of the time the taxes accrued, the lien is a lien on all interests in the property, and a tax sale is specifically subject to the equity of redemption and nothing else, it might follow that all liens or encumbrances upon the property, including easements, are extinguished when the property is sold at a tax sale. However, while Tennessee courts have not considered whether a tax sale extinguishes an easement burdening the property sold, most courts in other jurisdictions have held that the easement survives. *See* 7 A.L.R.5th 187, § 2[a]. Courts adopting the majority rule focus on the interests that have been assessed for property taxes. *Id.* *See also District of Columbia v. Capital Mortgage & Title Co., Inc.*, 84 F. Supp. 788 (D.D.C.1949); *Hearn v. Autumn Woods Office Park Property Owners Association*, 757 So.2d 155 (Miss.1999); *Lipman v. Shriver*, 144 A.2d 37 (N.J. Super. 1958); *Ross v. Franko*, 40 N.E.2d 664 (Ohio 1942). These courts reason that if the value of the easement is considered when assessing the property, the assessed value of the dominant estate (the estate benefitting from the easement) is increased and the assessed value of the servient, or burdened, estate is decreased. *Ross*, 40 N.E. 2d at 665. Consequently, the easement is a part of the dominant estate, not the servient estate, and the assessment and tax lien on the servient estate do not attach to the easement. *Id.*; *Lipman*, 144 A.2d at 39 (quoting *Niestat v. Equitable Security Co.*, 48 A.2d 907 (N.J. Ch. 1946)). Therefore, a tax sale of the servient estate cannot extinguish the easement because the easement is a part of the "undisturbed" dominant estate. *Ross*, 40 N.E. 2d at 665.

See also *Willingham v. Gallatin Group, Inc.*, 2001 WL 134599, *5-*6 (Tenn. Ct. App. Feb. 16, 2001) (discussing priorities as applicable to property taxes but not business

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In Tennessee, the existence of easements is considered when assessing the value of real property for tax purposes. Tenn. Code Ann. § 67-5-602 (2007) provides as follows:

(a) [I]n determining the value of all property of every kind, the assessor shall be guided by, and follow the instructions of, the appropriate assessment manuals issued by the division of property assessments and approved by the state board of equalization. * * *

(b) For determining the value of real property, such manuals shall provide for consideration of the following factors:

(1) * * *

(5) Legal restrictions on use[.]

“[L]egal restrictions on use” include easements and other “restrictions that run with the land, rather than those that are personal to the parties in possession.” *Hoover v. State Bd. of Equalization*, 579 S.W.2d 192, 194-96 (Tenn. Ct. App. 1978) (analyzing Tenn. Code Ann. § 67-606, a previous version of Tenn. Code Ann. § 67-5-602). The Tennessee statutes that give tax liens priority over other liens do not mention easements. An easement is not a lien, and to eliminate it in a tax sale would

denigrate the worth and dignity of an easement. As the court observed in *Capital Mortgage & Title Co.*, 84 F. Supp. at 790,

[t]o hold that the right-of-way is destroyed through no act or neglect of [the owners of the dominant estate], but merely because the owner of the servient estate has failed to pay his taxes, would be to deprive them of a vested property right because of a circumstance beyond their control. Surely it can hardly be expected that the [owners of the dominant estate] should come in and pay taxes on the adjoining property merely in order to preserve their rights-of-way over it.

Accordingly, it is the opinion of this Office that Tennessee courts would apply the majority rule and determine that a tax sale of the servient estate does not terminate an easement running with the land.

ROBERT E. COOPER, JR.
Attorney General and Reporter
BARRY TURNER
Deputy Attorney General
NICHOLAS G. BARCA
Assistant Attorney General

ezJACKET/ezREMIT UPDATE

Pamela L. Zimmerman, Assistant Vice President and Agency Manager

The ezJacket/ezRemit program now has over 75 registered users and has been implemented in over 25 agent offices, with additional agents being added on a regular basis. If you have not yet registered and would like to know more about the program, log into our StarsLink site (www.starslink.com) and take a look at the online user guide available on the ezJacket page accessed from the Agent Services dropdown menu.

Some “helpful hints”, in addition to those in the article in our spring newsletter (available on our Tennessee home page www.oldrepublictitle.com/tn) and the user guide mentioned above, are listed below. Hopefully, this will assist in more efficient use for both participating agents and Phillip Brizendine, Agency Coordinator, who processes all the policy remittances, whether electronic or paper.

- Remit electronically once a month; send payment check(s), a copy of the remittance report created through ezJacket, and copies of schedules for policies listed on the report directly to Phillip on the same day as the electronic information is transmitted; policy schedule copies are requested as we continue to build our S-Plant (search back titles) database
- During transition to ez-generated jackets, please separate any schedule copies with policy numbers from pre-printed jackets from those schedule copies with ezJacket policy numbers
- If it becomes necessary to create a simultaneous Owner's policy after the related Loan policy, send the policy copies directly to Phillip with a note so that the loan policy

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OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Invites you to our
ANNUAL SEMINAR

Friday, August 15, 2008 • 8:00 a.m. - 4:00 p.m.

DoubleTree Hotel - Downtown
315 4th Avenue North • Nashville, TN 37219
(615) 244-8200

Scheduled topics include: Fostering an Ethical Workplace; Forms and Tools for Closing and Clearing Title; Recognizing, Preventing and Mitigating Identify Theft; Claims Issues and Administration; Case Law and Legislative Updates; Condominiums and Manufactured Housing.

The cost is \$75.00 for attorneys and \$50.00 for non-attorneys which include all materials, continental breakfast, lunch and two breaks.

We encourage ALL Tennessee agents, attorneys and staff members to register as soon as possible to insure a space at the seminar. Also, if accommodations are needed, please contact the DoubleTree directly AS SOON AS POSSIBLE as rooms are limited. Be sure to mention you are with the Old Republic Title seminar in order to receive the seminar room rate of \$134.00 (double occupancy).

6.0 hours of CLE and CE credits will be applied for and are anticipated.

The following will be attending from _____ agency/approved attorney office:

_____	_____
_____	_____
_____	_____
_____	_____

Please make checks payable to:
Old Republic Title

And mail/fax form to:
Valerie Matlock-Perry/Pam Zimmerman
201 Fourth Avenue North, Suite 150
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Fax 615-726-0286

ezJACKET/ezREMIT UPDATE

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- premium can be adjusted to reflect the simultaneous rate
- If it becomes necessary to VOID and replace a policy because the wrong type was issued, i.e., standard Owner's replaced with enhanced Owner's (or vice versa) or standard Loan replaced with short form or enhanced Loan (or vice versa), just generate the new jacket without entering the premium calculation information and send the policy copies (including the VOID jacket) directly to Phillip with an explanatory note
 - If it becomes necessary to VOID a policy from a simultaneous group (i.e., Owner's, simultaneous Loan, and/or second Loan where one was issued in error), send the

VOID policy copy and jacket directly to Phillip with an explanatory note

- Any policy reporting copies that need special handling, as detailed above or otherwise, should be clipped or banded together so that Phillip will know they need to be dealt with separately

VOID policy copies will be submitted for inclusion in S-Plant.

Please feel free to call Phillip directly if you have any specific questions about the ezJacket program. Comments and suggestions are always welcome as participation in the program grows, so let us hear from you . . . and thanks for your cooperation!



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