



OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

The Title Report

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The Other Side of the Fence

Wayne Trapp, Vice President and State Manager

We say this so often but it's true: I really can't believe another year is about to go into the books. Oh, how time flies. Seems like yesterday I pulled Lucky from the pond.

Looking back over things that went on at the farm it was a good year. The garden started off with a bang. We had enough rain to get things growing and then it turned off dry in the middle of the growing season. We still had enough things coming in to make bread & butter pickles, put up enough green beans to make it through the winter and all the canned tomatoes we can use. There was okra running out my ears for a while, right up to frost. The freezer is full of okra and if you look on shelves all those canned tomatoes and green beans sure are pretty. So now the garden is bare and has been tilled waiting until next year.

Since everybody knew about Lucky the calf I must tell you about the latest adventures. After getting the garden out and watching it grow, something was eating the tomato plants. After a few days of watching, wondering and setting out new tomato plants it appeared. A ground hog was living under the shop and he would come out and eat the garden plants. This was not a good thing and something had to be done. If you've ever been around a ground hog they will eat your garden completely up. Well, I decided to kill this sucker. One Saturday morning I get up before daylight and go outside with a cup of coffee and perched myself where I couldn't be seen and waited for the ground hog. You guessed it, he never appeared. So, after putting everything away, all of a sudden there he is feeding his fat self so here we go, get the gun, sneak around and what does he do but scamper under the shop and whistle at me. Yes, a ground hog can whistle. Now this goes on for a long time. He started eating my tomatoes the first of May and in the middle of August he was still sneaking around like a thief. One day I saw him from the house and got the gun went out the front door and started slipping around the house back behind the garage across the drive to the shop. Just as I look around the corner, under the shop he goes. This goes on until September, when finally he met his Waterloo. The funeral was held on a warm sunny Saturday with family and friends in attendance.

The last thing that happened was in October. I took a week off and was doing some fencing and cleaning out of fence rows. In cleaning out the rows there were a bunch of places where the fence was missing clips that hold it to the post. Well, there was a whole sack of clips about 100 yards from me but nooooo I wasn't going to walk that far to get some new ones, let's just use an old one hanging on the fence. In trying to work it around to fit, it was just about a hair and a half too short. What to do? What to do? I know I'll connect one side and then use the channel locks (a type of wire pliers) and pull the other side around and over the fence. So here I go pulling on that too short fence clip. Those channel locks slipped off the clip and came back and hit me right on the bridge of the nose. I don't know exactly how much force there was but it was enough to stagger me backward and bring tears to my eyes. Didn't break the nose but it did hurt and it left a pretty good scar. The words that were said can not be printed.

Well, enough of the silliness. It's time to get down to the serious stuff. In keeping with our tradition of giving to a charitable organization in lieu of individual presents we have donated this year to Second Harvest Food Bank and hope you will appreciate this donation.

During these hard times we are going through don't forget to hug the kids and keep your family and friends close to your heart because when it's all said and done family and friends are the most important things to us. Make sure your house is full of good food this season and eat too much every day. Diets begin in January.

From my house to yours Merry Christmas, Happy Holidays and a healthy and prosperous New Year. Come see us.....The door is always open.

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A MILESTONE IS MET AT OLD REPUBLIC TITLE

Wayne Trapp, Vice President and State Manager



If you will recall in 2007 Old Republic Title celebrated its 100th anniversary. Well in 2008 another anniversary was celebrated. In September Jo Ann Smith had her 50th anniversary with the company. How many people do we know can say they have worked in one place for 50 years?

Jo Ann is one of a kind. She is well respected by co-workers and customers alike. I could go on forever about the type of person she is but she would be embarrassed by such carrying on. Let's just say Jo Ann is a jewel and I hope each of you join all of us in saying to her "**HAPPY ANNIVERSARY**".

DECEASED, DIVORCED OR DISAPPEARED: PART TWO – DIVORCED

Michael P. Davis, Assistant Vice President and Claims Counsel

Last issue we started our discussion regarding missing interest as a result of death, divorce or the person having simply disappeared. In this second installment of the series we will deal with the effects of divorce on property rights and some of the pitfalls to avoid.

Many of our problems with divorces result from a lack of understanding of real property law. It is not unusual to review a divorce decree that fails to clearly divest interest of one of the divorcing parties or fails to require the execution of an instrument that does divest the interest of one of the divorcing parties. On some occasions we have just the opposite. In those cases we have decrees that effectively divest the property, but still require the execution of a Quitclaim Deed.

The first and most important step in dealing with divorces in our chain of title is the careful review of the language dealing with any real property. Whenever you are reviewing the divorce decree, you must be sure, if you are relying on the decree to divest the property, that the decree contains an adequate description of the property and that it contains language that specifically divests interest of one party and vests interest in the other party. If the decree contains sufficient divesting and vesting language, you should also make sure that a certified copy of the decree is recorded in the appropriate Register's

Office. On many occasions you will discover situations where parties have been divorced but no one followed through to have the decree recorded to provide notice to the world of the transfer of the divorced parties' interests.

So what should you do if your search finds the decree recorded, but upon review of the decree you discover that the language also requires the execution of a Quitclaim? If indeed the decree does require (in addition to divesting the property) the execution of a Quitclaim Deed, then the property is not insurable until such time as that Quitclaim is executed and recorded. The terms of the divorce decree must be followed specifically.

In reviewing the decree you must be careful to notice whether either party has been granted lien rights against the property as part of the divorce settlement. If indeed one of the parties has such rights, just like with any other lien holder it will be necessary to obtain a payoff and release for any such lien granted in the decree.

Next time we will talk about the missing interest caused by disappearance... 'til then, Happy Detecting.

IN THE COURT OF APPEALS OF TENNESSEE AT NASHVILLE**CHRIS D. THORNTON, ET AL. v. LESLIE HIGDON, JR., ET AL.**

No. M2007-01944-COA-R3-CV • Filed October 23, 2008

R. Kirkland Moser, Assistant Vice President and State Counsel

The plaintiffs filed this action to quiet title to a twelve-foot strip of property claimed by adjoining property owners, the defendants. The defendants disputed the plaintiffs' claim and pointed to a seventy-foot drainage tile they had constructed and maintained as evidence of their ownership of the disputed strip of land. The trial court found that the boundary line should be set in accordance with the plaintiffs' survey; however, the trial court also found that the plaintiffs were equitably estopped to challenge the defendants' right to maintain the drainage tile. Both parties appeal. The Court of Appeals affirmed the decision of the trial court in all respects.

The subject of this dispute is twelve feet of property. The plaintiffs, Chris and Julie Thornton, purchased the land immediately adjacent to Leslie ("Pete") and Darlene Higdon's property in July of 2004. Following their purchase, the Thorntons attempted to establish their boundary lines in order to obtain a mortgage. A surveyor performed surveys in August and September of 2004 for the Thorntons. During this surveying, a dispute arose between the Thorntons and the Higdons over the boundary located at their northwest and northeast corners, respectively. The Higdons objected to the placement of the boundary line. On April 14, 2005, the Thorntons filed suit to quiet title to the disputed property and to prevent further "encroachment" on their land by the Higdons. The Higdons answered, claiming that they had good title to the property, and raising the affirmative defenses of adverse possession, prescriptive use, and equitable estoppel.

The trial court held that the boundary lines should be set in accordance with the survey of the Thorntons' surveyor. This holding was based on the trial court's findings that the legal descriptions in the deeds in the chain of title were not determinative because there were "no calls" and "there are points of references and there are distances without any direction as to the exactness of how they were prepared or arrived at." The trial court went on to find that there were two possible outcomes for the surveys depending on where the surveyor started.

ANALYSIS — THE BOUNDARY LINE DISPUTE

"In resolving a boundary line dispute, it is the role of the trier of fact to evaluate all the evidence and assess the credibility of the witnesses." *Mix v. Miller*, 27 S.W.3d 508, 514 (Tenn. Ct. App. 1999) (citing *Norman v. Hoyt*, 667 S.W.2d 88, 91 (Tenn. Ct. App. 1983)). "When determining a boundary line that is in dispute, the court must look first to the natural objects or landmarks on the property, then to the artificial objects or landmarks on the property, then to the boundary lines of adjacent pieces of property, and finally to courses and distances contained in documents relevant to the disputed property." *Id.* at 513 (citing *Franks v. Burks*, 688 S.W.2d 435, 438 (Tenn. App. 1984); *Thornburg v. Chase*, 606 S.W.2d 672, 675 (Tenn. App. 1980)).

The trial court determined that the deeds passed down in the chain of title were poorly drawn and made without reference to surveys, resulting in the current dispute. The lack of physical monuments made the determination of the boundary lines even more difficult. Therefore, the trial court had to base its decision on the adoption of one of the two competing surveys presented by the parties. Both surveyors relied on iron pins, surrounding roads, surveys of surrounding properties, and the distances contained in the parties' deeds in determining the boundary lines. The trial court recognized that there were two possible boundary lines depending on where the surveyors started. Of special significance to the trial court was the boundary line on the western portion of Leslie Higdon's land, which had been established during a 2002 survey. This survey was the basis for Leslie Higdon's purchase of a portion of land from an adjoining property owner, and thereby established a boundary line between those two properties. Additionally, the court concluded that this land was the original starting point referred to in the Higdons' deed, therefore, the survey performed by the Thornton Surveyor, which used this line as its starting point, was the most accurate.

EXCESS RISK APPROVALS

Pamela L. Zimmerman, Assistant Vice President and Agency Manager

Every Old Republic Title Agency Agreement contains limitations on agent's appointment and authority, with language similar to the following:

"Agent shall not, without written approval from Insurer:

- A. Commit Insurer to a risk in excess of \$(_____);
- B. Commit Insurer to a risk which it has, by its rules, determined to be an extraordinary or unusual risk, or which Agent knows to be based upon a disputed title;
- C. Commit Insurer to a risk which, by its rules, instructions or manuals, requires prior approval by Insurer;
- ...
- I. Issue Title Insurance Forms covering any title in which Agent, its officers, directors, employees, partner or the attorney furnishing an opinion of title, have any interest, direct or indirect."

Use of the Request to Issue Excess Risk Policy form, a copy of which is available through our StarsLink website under the Agent Services heading, will assist you in complying with these requirements.

When you are involved in a transaction which falls into one of the categories above, please prepare a preliminary Commitment and submit a copy, along with the completed Excess Risk form (responding to specific questions about the transaction and noting any specific concerns or risks) to Kirk Moser, State

Counsel, via fax (615-726-0286) or e-mail (kmoser@oldrepublictitle.com). Kirk will review the information disclosed on the form and the Commitment, contact you if additional information is needed, and return the executed approval for your file, noting any modifications to be made to the Commitment.

Because the Excess Risk form requests information about the transaction in addition to matters which would be found in the search process, the requirement for approval applies to all agents, even if Old Republic Title has performed the search.

Phillip Brizendine, Agency Coordinator, makes a permanent record of each approval form to be matched with the resulting policy when remitted for processing. If Phillip receives an Excess Risk Policy for processing for which no approval is on record, he will send a request that the form be completed and returned along with a copy of the Commitment. Please note the resulting policy number and that it has already been reported when you submit the form in order to facilitate processing.

If the amount of the proposed policy(ies) changes, please submit a revised Excess Risk Request for approval. If a later modification increases the liability amount, please submit a new Excess Risk Request for the increased amount, noting the existing policy number for which an endorsement will be issued.

This approval process is intended to provide safeguards for your agency, as well as Old Republic Title, on policies involving excess or unusual risks. Your cooperation is greatly appreciated!

CHANGES IN LAWS AFFECTING TITLE INSURANCE AGENTS

Pamela L. Zimmerman, Assistant Vice President and Agency Manager

In an August 21, 2008 bulletin posted to the Department of Commerce and Insurance Website, the Commissioner summarized recent changes to laws affecting title insurance agents/producers, some of which had been mentioned in an article in the last edition of *The Title Report*.

Quoting from the bulletin concerning license renewals:

"Effective immediately, producers will renew their licenses *before the last day of their birth month*. Note that all renewals in 2009 will occur prior to the last day of the licensee's birth month regardless of when the producer renewed or was licensed in 2007.

The following two examples are provided to help clarify how these changes will work:

Example 1 - A producer last renewed his current license in August of 2007 and his birthday is in September. He will renew his current license prior to September 30, 2009. The next time his license will need to be renewed will be September 30, 2011.

Example 2 - A producer last renewed her current license in August of 2007 and her birthday is in July. She will renew her license prior to July 31, 2009. The next time her license will need to be renewed will be July 31, 2011."

continued from Page 4

We understand that the Department is actually sending out replacement licenses with the new renewal dates. If you have received a replacement license, but not already forwarded us a copy, please do so.

Further quoting from the bulletin concerning continuing education:

“Prior to the changes [in the law], producers that had been licensed continuously for fifteen (15) or more years, or were over the age of 65 were exempt from having to meet continuing education requirements. Effective January 1, 2009 a producer will only be exempt from continuing education requirements if

the producer, on the date of the producer's renewal, has been licensed continuously since 1994. As such, if you have not had to receive continuing education because you were over 65, but have not been continuously licensed since January 1, 1994, you will need to receive all required credit hours prior to renewing your license in 2009. Note that the law requires continuous licensure since January 1, 1994. So a producer whose license has been inactive for any amount of time since 1994 will not qualify for the exemption.”

The bulletin goes on to mention changes in the law regarding payment of referral fees. It is important to note that these changes are not applicable to the title industry as they would be in conflict with RESPA regulations and the provisions of T.C.A. 56-35-119,

TOP THINGS TO DO IN A SLOW MARKET

Are you sitting around waiting for the orders to come over the fax machine? Many agents have a “to-do” list miles long of things they wanted to accomplish a year or so ago, but couldn't find the time because they were just too busy. Well, take advantage of these slower times to get those things done. What, you can't find the list? Let us help you!

Dig into the heart of your escrow account

Print out and review your trial balance report. Look at the outstanding checks that have not cleared in the past 60+ days. Review the files that have outstanding balances. Clear them up now. Why wait any longer?

Review your E&O Policy for adequate coverage

We are no longer in a market where you can hope a customer will refinance before an issue arises. You may need your E&O coverage now more than ever. Did you recently change carriers? If so, did you obtain past acts coverage to include any transaction that closed from the day you opened the doors? If you do not have prior acts coverage and a claim is filed on a transaction you closed before you obtained your new E&O policy, your carrier will not cover the claim. Can you afford to have that kind of risk?

Marketing

When was the last time you paid a visit to your existing customers? If you are not knocking on their door, we can guarantee you someone else is. Everyone likes to feel appreciated--that includes your clients. Pull out that list of prospects that is sitting under the stack of papers on your desk and visit them, too. People don't know who you are unless you get out there and introduce yourself.

Train Your Staff

You've wanted to sit down and explain to them the

differences between the various rates and policies for over a year now. Take the time to do it. Do you have a person who wants to learn how to do closings? Train them now so when things do pick up they are ready to run. Do they have their notary yet? Start the process today.

Thinking of Upgrading or Changing Software Systems?

We realize it's difficult to think about spending money right now, but if you already have the funds allocated for it, pull the trigger. There is always a learning curve when implementing a change like that in your office. It's easier to learn when you have time to think.

Scanning

Remember you wanted to look into the cost of storing your documents electronically vs. the astronomical price you're paying to store the paper files? Hire a high school or college student to stand at the scanner and scan files.

Catch up on CE Credits

You pushed off one seminar, then another—you just didn't have the time. Bank up credits this winter. Visit sites such as www.tnlta.org, www.lorman.com or www.nbi-sems.com to view schedules of upcoming seminars or online credit opportunities.

Prepare Final Policies and Remit to Old Republic Title

This is the perfect time to catch up on the backlog of final policies. Contact Phillip Brizendine for a copy of your outstanding inventory report. Are you tired of dealing with the policy logs or you don't have enough jackets? Get signed up with ezJacket! See the article in this edition of “The Title Report” for more information.

FORECLOSURE RESCUE SCAMS

Elise Reed, Vice President and Associate Regulatory Counsel, Corporate Legal Department

Given the current state of the economy, a lot of homeowners are, sadly, dealing with the prospect of losing their homes. One way for them to avoid foreclosure is through a short sale. In a short sale, the homeowner sells the mortgaged property for less than the outstanding balance of the loan, provided that the lender approves and turns over the proceeds of the sale to the lender in full satisfaction of the debt. The short sale allows the homeowner to avoid having a foreclosure on their credit history. It is also faster and less expensive than a foreclosure. As of late, Old Republic has been closing and insuring these short sales more and more often.

Seems straightforward, right? It can be, but problems can arise when third parties get involved in the process. Some of these people are ethical, but many are not. "Foreclosure Rescue" companies are comprised of individuals interested in taking advantage of people in distress. They are there solely to scam homeowners and sometimes we become their unwitting accomplices. Let's take a look at the scams and then I'll list some of the red flags.

One scam is fee-based. In this situation, the criminal offers to help the homeowner stave off foreclosure, then collects an up-front fee and promptly disappears.

Another scam is the fake "bailout." Here, the scammer convinces the homeowner to surrender title to the house in the belief that he or she will be able to remain on as a renter and buy it back over the next few years. However, the terms of these deals are usually so onerous that the buyback becomes impossible. Oftentimes, the "rescuer" simply ceases to pay the new mortgage. The home then goes into foreclosure anyway and the original homeowner winds up evicted.

There is also a scam called the "bait-and-switch," where the homeowner does not even realize that

he or she is, in fact, selling their house and will no longer be in title. Many homeowners will later insist that they believed they were merely refinancing.

Title companies have been sued for closing transactions alleged to be rescue scams. A red flag in this situation would be a seller who doesn't appear to realize that they're actually a seller.

Other warning signs to watch for include:

If you notice that an agent is always utilizing one particular foreclosure rescue company, the agent might have an interest in that rescue company. We had one case where this happened and it turned out that the principal in the rescue company was the disbarred attorney husband of the agent.

Beware of the scheduling of back-to-back sales. The lender who is being shorted needs to acknowledge that he/she realizes that the property will be sold at a profit soon after the mortgage is (not fully) paid off.

Another back-to-back sales red flag is when a short sale is being financed by a second sale. Each sale should be completely separate.

Lastly, watch out for those situations where the seller is taking back a purchase-money mortgage which is going to be paid off in a week. Don't be comforted by the fact that the seller is taking back a mortgage, as they may just be trying to do indirectly what they can't do directly.

Remember, title agents and their employees are the first line of defense against these unethical scams; if something doesn't smell quite right, check it out. Trust your instincts. Even in these challenging times, if a deal doesn't meet the smell test, it's always best to "just say no."

Holiday Word Search

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

turkey
 ornament
 Christmas
 giving
 stuffing
 feast
 pumpkin pie
 gift
 blessing
 kindness
 Hanukkah
 menorah
 happiness
 tradition
 cookies
 snowman
 snowflake
 reindeer
 eggnog
 candles
 joy



ezJACKET and ezREMIT COMING TO YOUR OFFICE IN 2009

The number of agents using the ezJacket/ezRemit program first rolled out in late 2007 continues to grow. The program is working well and has recently been enhanced to add additional features, making it even more user friendly. For those of you already using ezJacket/ezRemit, the User Guide has been updated to include information about these recent enhancements.

During 2009, each agency office will be transitioned to the program, making inventory control and reporting more efficient for both agents and Old Republic.

If you are not already using ezJacket/ezRemit, visit our StarsLink website: www.starslink.com to get set up. Click on the Agent Services menu; click on ezJacket/ezRemit. Once the registration page appears, you can click on the User Guide link near the bottom of the screen to access updated information re: registration and use of the

jacket generator and remit functions. When you register, complete any required set up fields and click on the "OK" button to submit the request. Authorization will be approved through our state office and you will receive an e-mail with an activation link to gain access to the program.

Once you've registered and begun to use the ezJacket generator, please set aside your paper jacket inventory and Pam or Valerie will pick them up at their next visit.

For more information, refer to articles from our Spring and Summer 2008 *Title Report* newsletters which are archived and accessible via a link on our Tennessee home page (www.oldrepublictitle.com/tn).

As always, feel free to give Pam, Valerie, or Phillip Brizendine a call if you have any questions.



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