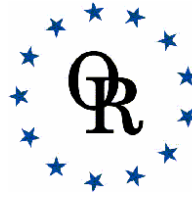


# Bulletin



**OLD REPUBLIC**  
National Title Insurance Company

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**To:** All Agents, Direct Operations & Attorneys in the State of Texas  
**From:** David W. Rhodes  
**Date:** January 29, 2007  
**Re:** Agriculture Exemption for Home Equity Loans

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There has been a decision in a recent case that requires some changes in the way we will be able to insure Home Equity loans on property that has had an Agriculture exemption on the tax rolls.

In Marketic v. U.S. Bank National Association, N.D. Tex., 2006, 436 F. Supp. 2d 842, the court addressed the foreclosure of a home equity loan. In November of 2001 Sharon Marketic obtained a \$195,000 home equity loan on 10 acres of rural land. The property had an Agriculture exemption which was removed so she could obtain the home equity loan at the insistence of the Lender. Some time subsequent to the closing, the property was re-designated as Agricultural on the tax rolls.

Marketic went into default in 2004, and the property was due to be foreclosed. This suit was filed to stop the foreclosure and resolve other issues with the home equity loan. Marketic argued that the loan could not be foreclosed because it had an Agricultural exemption. The court ruled that the property's designation as Agriculture use is relevant only at the time of foreclosure, not at the time the loan is made and stopped the foreclosure. This ruling throws doubt on the ability of a lender to foreclose a home equity loan if the property is subsequently re-designated as Agriculture after the loan closing. This was a Federal Court so the result might have been different if a Texas court had heard the case. While Legislation will be introduced to address the problem in the meantime we will close these loans under new guidelines.

## **Guidelines for Insuring Home Equity Loans on Property with an Agricultural Designation:**

- Delete item 2.(b) of the T-42 endorsement, and lender must acknowledge in writing that item 2. (b) of the T-42 endorsement will be deleted; or
- Require that the Agriculture designation of the property must have been removed for three (3) years or more prior to the closing of the home equity loan.
- DO NOT advise Borrowers to remove or re-designate the property as Agricultural after closing.
- The tract to be insured must not exceed 10 acres inclusive of any easements.

Please call our underwriting counsel if you have any questions or concerns.

### **Underwriting Counsel**

David Rhodes  
Steve Streiff

### **Administration**

Kindra Wessel  
Monica Damian