



TITLE TALK

Old Republic National Title Insurance Company

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A Holiday Message from Rande Yeager Chairman, Old Republic Title Insurance Group

Year of Challenge is Backed by Optimism

As the year draws to a close, most people will look back on 2008 as a time of transition and challenge. From housing foreclosures and mortgage crises, to stock market losses, 2008 has been a year of turmoil for businesses and families.

Despite the country's latest challenges and the housing industry's temporary misfortunes, one theme continues to rise above the setbacks to make itself heard on both personal and professional levels: the theme of hope and optimism.

One thing we have learned from over a century of business, is that the door of opportunity is always open, no matter the adversity that might lie behind it. History has shown there will always be up and down times. These kinds of hardships only encourage Americans to fly further and to soar higher.

Even during the latest market difficulties, Old Republic Title remains financially strong, secure and trustworthy in honoring our commitments to our customers. Since 1992, the Old Republic Title Insurance Group has held the distinction of being the highest rated title insurance group in the nation. We are inspired by this positive accomplishment.



Our consistently positive ratings reflect a promise to uphold smart management principles. It also reveals a conviction to fiduciary ethics and integrity, and a vow to honor our commitments to our customers today, as well as far into the future. These commitments generate confidence and trust in Old Republic Title, from clients to our employees.

We've built our business on the momentum generated by good faith. I have every reason to believe that the Company will greet the New Year with enthusiasm rather than fear, with optimism rather than despair, and with affirmation and credibility rather than doubt.

Our future success is linked securely to the skills, energy and outlook put forth by our amazingly capable employees and most importantly, agents. It is their hard work and faith in our organization that on a daily basis gives life to the American dream of home ownership.

May you have a warm and peaceful holiday season among friends and family, with best wishes for a productive and peaceful New Year.

Happy Holidays, Rande

Final RESPA Rule

By Anne L. Anastasi, CLTP

On November 12, 2008, the Department of Housing and Urban Development (HUD) published its long awaited RESPA reform rule with the goal in mind to help consumers shop for their loans and to better understand the loan process. For the first time in the 30 years that RESPA has existed, HUD will require lenders and mortgage brokers to provide a standard Good Faith Estimate (GFE) that clearly discloses key loan terms and closing costs.

The new GFE will be 3 pages in length and will clearly state the term of the loan, the interest rate, whether the interest rate is fixed or adjustable, prepayment penalties (if any), balloon payments (if any) and the total closing costs.

THE CLOSING SCRIPT

The American Land Title Association led the charge for the real estate industry when the proposed rule sought to impose responsibility and liability on the closing industry that included the reading of a "closing script" to the borrowers at the end of each closing.

The "closing script" would have required us to describe loan terms and calculate differences in fees shown on the GFE that differed from the charges on the final HUD1/1A. In HUD's own estimation, the Closing Script would have required an additional 45 minutes per closing at a cost of over \$676 million per year in title industry labor.

Due to concerns voiced by ALTA and thousands of title people, HUD withdrew the Closing Script concept from the final rule but created a page 3

to the HUD1 that contains similar information that would have been voiced in the script. The difference however is significant in that the lender is now responsible for inputting or supplying the information for the new page 3 while we simply fill in the final charges. The liability and responsibility for any differences in fees between the GFE and HUD1/1A will rest with the lenders giving them 30 days to make the consumer whole if certain charges exceed the estimates.

TOLERANCES

You now realize that certain "estimates" on the GFE will now be binding. HUD has divided all settlement charges into three buckets of varying tolerances. The first bucket is a "zero tolerance" bucket, meaning that

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IRS Liens in a Foreclosure

For an IRS lien recorded after the deed of trust and at least 30 days prior to the foreclosure sale, written notice has to be given to the IRS at least 25 days prior to the foreclosure by personal delivery, or certified or registered mail. (26 USC 7425(b)(2)). If the trustee fails to give such notice, the IRS lien continues to attach to the real estate until the IRS agrees to the sale free and clear of the lien (26 USC 7425(c)(2)). The IRS has 120 days after foreclosure sale to redeem the property, even if they gave consent. The redemption price is the price paid by the successful bidder plus interest. They do not pay for improvements to the property. The purchaser is not reimbursed for the cost of any improvements.

Tenancy by the entirety will not protect the real estate from the lien attaching, per U.S. v Craft case in April, 2002.

In Schedule B-1 require: "Receipt of satisfactory evidence that notice was given to IRS at least 25 days prior to foreclosure sale in compliance with 26 USC 7425(b)(c)."

In Schedule B-2, during the 120 day redemption period take the following exception in the policy: "Right of the IRS to redeem the real estate within 120 days from the foreclosure sale pursuant to 26 USC 7425(d)." [Note: To remove this exception after the 120 days the title must be updated and the current owner must provide an affidavit that they have not received notice of redemption by the IRS.]



IRS lien & Living Trust

The general rule in Virginia has been that a judgment or lien against an individual will not attach to property held by that person in a fiduciary capacity, i.e., as a trustee of a trust. October 30, 2008 the rule changed in Virginia.

In *Alexandra P. Murnan v. Stewart Title Guaranty Co.*, (U.S. District Ct., E.D. Virginia) the federal court held that IRS liens against an individual attached to real estate held by that person as trustee of a trust in which the person was the settlor, the sole beneficiary, and the trustee of the trust, and retained the right to revoke the trust.

Therefore, have your title examiners report matters to you relating to judgments of the individual as well as the trustee. Take special care with IRS liens in the chain of title. Do not hesitate to contact our office for underwriting assistance.

Claim Report from Counsel Rob Baker— The Deed and Mortgage MUST Match

Claim trends are triggered by the slightest adjustment in the real estate industry. Our most recent trend results from covenants not executing purchase money mortgages. I believe that the tightening lending requirements have created this trend.

We have experienced a large increase of claims from lenders claiming a cotenant failed to execute the mortgage. Our investigations of most of these claims have revealed that the purchase agreement lists both covenants as buyers. Subsequently, one of the covenants is taken off the loan because he/she failed to qualify for the loan. Unfortunately, this is not communicated to the seller and its documents are not changed to reflect the lender's requirement. Finally, the deed into both covenants is executed and recorded while only one cotenant executed the mortgage.

To resolve these claims, we must have the cotenant execute the mortgage. However, most claims are received when the loan is in default. A nonperforming loan reduces the cooperation of the cotenant. We are often forced to file a declaratory judgment actions to resolve these claims. These tend to be expensive as borrowers become greedy and believe the error is their "get out of jail" free card.

I know we have instructed our agents to read and to exactly follow the lender's closing instructions. I fear some closers have obsessed on the closing instructions and failed to review the documents delivered by the seller. If there are two covenants on a deed, then both covenants must execute the mortgage regardless of lender's instructions. Of course, the lender must approve this alteration to its instructions. If not, the transaction cannot close.

With lenders tightening their underwriting standards not every prospective purchaser may qualify for a mortgage. Please be vigilant of last minute changes by the lender. Make sure that the deed complies with the commitment. If any changes occur that are not reflected in the lender's instructions make sure you get written authorization from the lender. Finally, please feel free to contact us with your questions as issues arise.



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those items designated by HUD that fit in this bucket must be exactly the same on the GFE and the HUD1/1A. HUD has placed many of the lenders fees, such as origination and discount points in this bucket plus they have included transfer taxes here.

The second bucket is the "10% tolerance" bucket in which certain charges (in the aggregate) must be within 10% of the GFE estimates. HUD has placed charges from providers as picked by the lender along with recording fees in this bucket. As an example, if the lender recommends a title agency, and the consumers chooses the recommended provider, the final fees on the HUD1/1A will be calculated (along with the other items in this bucket) and must be within the 10% tolerance limit.

The third bucket has no restrictions attached, meaning that charges in this bucket are only estimates and do not have to have a correlation to the charges on the HUD1/1A. Fees in this category are those imposed by providers chosen by the borrower, tax escrows and per

diem interest.

AVERAGE COST PRICING

On the plus side of the rule is settlement service provider's new ability to Average Cost Price. Recognizing that some fees are difficult for us to get accurate, such as overnight and recording fees and further recognizing our vulnerability to class action suits, HUD has made it appropriate for a provider to use averaging. The method to calculate the average will be up to the individual provider but once established it must become that provider's standard. As an example, if you calculate the average of your overnight deliveries over the most recent 12-month period, you can feel safe in charging that amount on your HUD1/1A. You must, however, at a minimum of every 6 months, recalculate your average price.

THE NEW HUD1/1A

The HUD1/1A has been amended and now has references on most lines to the corresponding area of the GFE to allow for easier comparisons. Title Premiums, endorsements and related fees will be combined onto one line of the HUD1/1A but then broken out later in the 1100 series of lines. All third party

disbursements must be shown separately. The new HUD1/1A will take significant IT work and staff training.

AGENCY SPLIT DISCLOSURE

A major source of concern within the title agent community is the new HUD1/1A requirement to disclose the agent/underwriter contractual split of the title premium. Though the industry fought to have this requirement removed, it remained in the final rule with HUD rationalizing the importance of the consumer's knowledge of the fees retained by the agent. In some states, the portion retained by the Agent is negotiable and thus, according to HUD the importance of an accurate disclosure.

There are additional ramifications of the new rule for the lending community when it comes to disclosing yield spread premiums but since the Federal Reserve is working on new Truth in Lending (TILA) forms, many lenders will likely wait until the TILA forms are promulgated before they start the overwhelming process of changing their systems. The new rule takes effect 1/16/2009 but the use of the new GFE and HUD1/1A is not required until 1/1/2010.



Is your customer's title clean?

Title insurance from Old Republic Title offers far better protection than copycat products and cut-rate services. We have the financial strength, experience and stability to safeguard your customers — and you — from costly and time-consuming real estate title disputes. That way the focus stays on housekeeping — not on keeping the house.

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