Commonwealth

Land Title Insurance

Company

Annual Underwriting Seminars

September 12, 13 and 19, 2012

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Commonwealth Land Title Insurance Company

2012 Seminar Agenda

September 12th, 13th, and 19th

Schedule		Speaker
8:30 a.m. – 9:00 a.m.	REGISTRATION	
9:00 a.m. – 9:15 a.m.	Welcome/Opening Remarks The Market - A Company Perspective	Marybeth Meyers
9:15 a.m. – 9:45 a.m.	Case Law Updates	Cynthia Hall Ouzts
9:45 a.m. – 10:15 a.m.	Business Continuity Plan	Pillaure B. Cleary
10:15 a.m. – 10:30 a.m.	BREAK	
10:30 a.m. – 11:30 a.m.	Corporate Authority Issues	Gregory S. Brickle Joby C. Castine
11:30 a.m. – 11:45 a.m.	BREAK	
11:45 a.m. – 12:15 p.m.	Questions and Answers	Mark L. Hershberger
12:15 p.m. – 12:45 p.m.	Current Events	Gregory S. Brickle Cynthia Hall Ouzts
12:45 p.m. – 1:15 p.m.	LUNCH	
1:15 p.m. – 2:15 p.m.	Ethics: Fraud Detection and Prevention	Elizabeth (Liz) P. Reilly

The Market –
A Company Perspective

THE MARKET – A COMPANY PERSPECTIVE

I. COMPANY OVERVIEW

A. Local Agency Operation

B. FNTG Agency at the State Level

C. National Agency Support

II. MARKET CONDITIONS

A. National Outlook

B. State Outlook

Marybeth Meyers
CLTIC Annual Underwriting Seminar
September 12, 13 and 19, 2012

2012
Case Law Updates

Unauthorized Practice of Law

Matrix Financial Services Corporation vs. Frazer, et al.
Opinion No. 26859 (Supreme Court)
Refiled August 8, 2011

The Supreme Court replaced its decision filed August 16, 2010.

ISSUES:

1. Did the master-in-equity err in granting Matrix equitable subrogation to the rights of the January 2001 mortgage, giving Matrix priority over Kundiger's judgment lien?
2. Does the doctrine of unclean hands prevent Matrix from receiving the remedy of equitable subrogation?

RESULTS:

"Matrix hired LandAmerica OneStop to perform the title search, prepare the documents, and close this refinance loan-all admittedly without the supervision of a licensed attorney. Thus, Matrix committed the unauthorized practice of law in closing the refinance mortgage, clearly violating South Carolina law…

We take this opportunity to definitively state that a lender may not enjoy the benefit of equitable remedies when that lender failed to have attorney supervision during the loan process as require by our law. We apply this ruling to all filing dates after the issuance of this opinion."

QUERY: What does filing date mean?

Unauthorized Practice of Law

BAC Home Loan Servicing vs. Kiner
Opinion No. 27146 (Supreme Court)
Filed July 25, 2012

ISSUES:

1. Did the master err in holding BAC could not recover surplus funds because it was not a lienholder of record at the time of the sale?
2. Did the master err in holding BAC was barred from recovering surplus funds because he found no attorney participated in the closing of Mortgage 2?

RESULTS:

Mortgage 1 to Bank was recorded July 6, 2004. Mortgage 2 to Systems was recorded April 20, 2007. Bank foreclosed on Mortgage 1, the property was sold on July 6, 2010, and after mortgage paid off, $79,405 left over as surplus funds.

Systems assigned Mortgage 2 to BAC Home Loan Servicing on August 20, 2010, and BAC filed a claim for the surplus funds. Master held BAC lacked standing to claim the funds since it did not have a lien at the time of the sale and did not have a recorded interest until August 20, 2010, well after the July 6, 2010 sale date.

The Court first held that because Systems could have made a claim for the surplus funds, BAC is entitled to make the same claim.

The Court took this occasion to clarify that the **Matrix** decision, as refilled August 8, 2011, applies if the document seeking to be enforced is filed after August 8, 2011. Since the document seeking to be enforced as Mortgage 2 was filed April 20, 2007, BAC was entitled to claim an interest in the funds.

Fraudulent Misrepresentation

Moseley vs. All Things Possible, Inc.
Opinion No. 27074
Filed December 12, 2011

ISSUES:

Did the realtor's representations constitute actionable fraud when the easement was discoverable in the public records?

RESULTS:

Moseleys contracted to buy a lot from All Things Possible to build a house. Although the subdivision plat shows a drainage easement running diagonally across the entire length of the lot, there is no recorded easement. The plat provided to the Moseleys by the real estate agent had been altered by removing the lines reflecting the existence and location of the easement and a square drawn on the plat showing where they would build the house. After purchasing the lot, the Moseleys learned of the easement and the resulting inability to build a home that suited their needs so they sued All Things Possible, alleging inter alia, fraud.

The court must follow a case by case approach when determining if a hearer's reliance on misrepresentations as to matters of public record is reasonable. Whether the reliance was reasonable is a question of fact, keeping in mind the purpose of the recording act is to protect innocent purchasers, not fraudulent sellers.

Some interesting facts are the plat had been altered to remove the lines showing the existence and location of a drainage easement that rendered the lot unsuitable for where the buyers intended to build their house, which was penciled in on the plat, and the seller's representative had a Bible verse on his business card, which lead the buyer to conclude he was a "minister who dabbled in building."

Easements

Kelley vs. Snyder
Opinion No. 4929 (Court of Appeals)
Filed January 25, 2012

ISSUES:

Did Kelley have a prescriptive easement to use the road for ingress and egress to their property from a public road?

RESULTS:

Kelley purchased 28 acres of land in 1977 and the deed did not mention the property was subject to an easement. Snyder purchased the adjacent property from Rast in 1989 and the deed included an easement for a 20 foot access road to Highway 178, which appears to be the road at issue in this case. Kelley had a survey done of his 28 acres in 2005 that showed the roadway in question. Kelley filed a complaint against Snyder in 2008, alleging they created the 20 foot private road across his property without his permission and seeking an injunction to stop their use.

To establish a prescriptive easement, Snyder must show: (1) continued and uninterrupted use of the right of way for twenty years; (2) the indentify of the thing enjoyed; and (3) use which is either adverse or under a claim of right. To establish an easement by prescription, one need only establish either a justifiable claim of right or adverse and hostile use.

Finding that tacking of periods of prescriptive use is permitted where there is a transfer between the prescriptive users of either the inchoate servitude or the estate benefitted by the inchoate servitude, the Court held Snyder presented sufficient evidence to meet the burden of establishing a prescriptive easement over Kelley's land for access to a public road.

Easements

Proctor vs. Steedley
Opinion No. 4999 (Court of Appeals)
Filed July 11, 2012

ISSUES:

1. Did Proctor have an appurtenant easement or easement by necessity across Steedley's property?
2. Did the special referee err in expanding the scope of the easement?

RESULTS:

The Court had to determine if the nature of the easement granted to Proctor's predecessor in title was an easement in gross or an appurtenant easement:

"The character of an express easement is determined by the nature of the right and intention of the parties creating it. An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer. In contrast, an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. It also passes with the dominant estate upon conveyance. Unless an easement has all the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross."

The Court looked at the language in the deed as a whole and concluded the grantor intended to convey an appurtenant easement. It also confirmed that the easement was necessary for the enjoyment of the property and Proctor established an easement by necessity.

Easements

Judy vs. Kennedy
Opinion No. 4976 (Court of Appeals)
Filed May 23, 2012

ISSUES:

Did the owner of the servient estate have the right to erect a gate across an easement to keep trespassers off their property?

RESULT:

"The general rule is that the owner of the servient estate may erect gates across an easement if they (1) are so located, constructed and maintained as not to unreasonably interfere with the right of passage of the dominant estate, and (2) are necessary for the preservation of the servient estate, and (3) are necessary for use of the servient estate."

The Court found that the existence of the gate is not an unreasonable burden on the dominant estate but the owner must provide a method for the holder of the easement to unlock the gate.

Slander of Title

Solley vs. Navy Federal Credit Union, Inc.
Opinion No. 4937 (Court of Appeals)
Filed February 1, 2012

ISSUES:

Did the actions taken by Navy Federal Credit Union constitute slander of title and entitle Solley to recover actual and punitive damages?

RESULTS:

A co-tenant (Mullins) mortgaged the property with Bank without the knowledge of the other co-tenant (Solley) in 2006. When she discovered the mortgage, Solley filed a partition action in 2008 and eventually named Bank as a third-party defendant, alleging conversion, slander of title and negligence.

To maintain a claim for slander of title, the plaintiff must establish

1. The publication
2. with malice
3. of a false statement
4. that is derogatory to plaintiff's title, and
5. causes special damages
6. as a result of diminished value in the eyes of a third party

Wrongfully recording an unfounded claim against the property of another generally is actionable as slander of title. The Court held the plaintiff was entitled to actual damages and attorneys' fees, as well as punitive damage and remanded the case to recalculate actual and punitive damages.

Mechanics Liens

Ferguson Fire and Fabrication vs. Preferred Fire Protection, LLC, et al.
Opinion No. 4947 (Court of Appeals)
Filed February 29, 2012

ISSUES:

1. Did Ferguson's notice of lien comply with SC Code Section 29-5-20, et seq.?
2. Did the Court err in determining South Carolina law does not protect a materialman's lien until after the materialman records and serves a statement of the lien?

RESULT:

Whenever work is done or material furnished, the materialman must notify the owner of the furnishing of such labor or material and the amount or value thereof and the lien given by Section 29-5-20 shall attach to the real estate improved for the amount of the work done or material furnished.

The Court held that no lien attached until the materials that are the subject of the lien have been delivered and written notice, including the value of those materials, is provided to the owner.

Ferguson's notice was insufficient under the statute because it stated Ferguson **would be** supplying materials but did not provide a project completion date. Ferguson failed to thereafter provide notice to the owner after the materials were supplied and the job was completed. The Court also noted that under South Carolina law, no lien attaches to the property until notice of an actual demand for payment is made to the owner. In this case, Ferguson provided notice **before** furnishing the material, failed to identify the final amount of the goods delivered and never made a demand for payment. It is impossible for a notice of lien to precede the actual performance of work that creates the lien.

Adverse Possession

Dawkins vs. Mozie, et al.
Opinion No. 5018 (Court of Appeals)
Filed August 1, 2012

ISSUES:

1. Was Dawkins the sole and exclusive owner of the property based upon adverse possession?
2. Did res judicata bar the action?

RESULTS:

In 1984, Padget conveyed a 3.5 acre tract to his wife, Dolly, for her lifetime, and upon her death, to their daughter, Mozie. When Dolly died in 1992, her will left the 3.5 acre tract to Dawkins. Although the will was never probated, Dawkins moved onto the property in 1992.

In 1993, Padget filed a lawsuit seeking to set aside the 1984 deed have the deed construed as a constructive trust, asserting that his intention was never to have Mozie own the entire tract, but rather his intention was for all of his heirs to share the property. He died during the litigation, and the court eventually declined to set aside the deed or impose a constructive trust.

In 2005, Dawkins filed this lawsuit alleging she acquired the property by adverse possession because she moved onto the property in December, 1992, and had been in continuous, hostile, open, actual, notorious and exclusive possession since that time. She eventually amended her complaint to only seek ownership of the .75 acres where the house is located.

The Court affirmed that Dawkins provided ample evidence to support her adverse possession since 1992. She believed she had title under her mother's will, she lived there continuously since 1992 (most of the time with her children), she never paid rent for use of the property, she made numerous improvements to the property and paid taxes on it from 1992-2004. When Mozie filed an eviction action against Dawkins, she refused to vacate and continued to live there until 2005.

The issue of res judicata was not preserved on appeal and not addressed.

Water Rights/Coastal Lands

Dreher vs. SC Dept. of Health and Environmental Control
Opinion No. 5011 (Court of Appeals)
Filed July 25, 2012

ISSUES:

1. Did Tract D (.8443 acres of highland) constitute a small island and therefore make it subject to the Small Islands Regulation enforced by DHEC?
2. If Tract D is not subject to the regulation, was Dreher entitled to a bridge permit to connect Tract D to a .2409 acre tract known as 806 East Cooper Avenue?

RESULTS:

806 East Cooper and Tract D were previously a contiguous tract of high ground. Previous to Dreher's purchase of the parcels, two man-made canals were constructed resulting in Tract D being completely surrounded by coastal tidelands and waters. The chain of title for the two tracts demonstrates her title derives from an original grant in 1918 for the Folly Islands (known collectively at Folly Island) and being bounded by the Atlantic Ocean, the channel of the Stono Inlet, the Folly River and Folly Creek, and Lighthouse Inlet. Since Folly Island is expressly excluded from the Small Islands Regulation, Tract D is excluded from the definition of a coastal island and therefore not subject to the regulation.

The Court further concluded application for a bridge permit complies with other regulations and reversed the ALC's denial of the permit.

Assessments

Highland Property Owners Association, Inc. vs. Shumaker Land, LLC
Opinion No. 4952 (Court of Appeals)
Filed March 14, 2012

ISSUES:

1. Was Shumaker the successor to Declarant as defined by the restrictive covenants?
2. Were the seven lots owned by Shumaker subject to assessments levied by the Association pursuant to restrictive covenants governing the development?

RESULTS:

The original developer, Highlands Development Limited Partnership (HDLP),whose president was Shumaker, executed Covenants as the Declarant and developer of the subdivision that provided that annual assessments will commence after the conveyance of the lot by the Declarant to any person other than the sale of all of Declarant's interest in all of the properties. "Declarant" was defined as HDLP or any person or entity who succeeds to the title of Declarant by sale or assignment of all of the interests of the Declarant, if the instrument of sale or assignment expressly so provides.

HDLP conveyed the 7 lots in question to Shumaker individually but the deed did not mention the assignment of any rights under the Covenants. On the same day, Shumaker conveyed the lots to his LLC, and the deed failed to assign or transfer any rights under the Covenants to the LLC. The HOA levied assessments against the lots owned by the LLC and when they failed to pay, the HOA filed a lien on each of the lots in 2007. Fourteen months later, HDLP executed an Assignment of Declarant's rights to the LLC.

Under the facts of the case, the Court found that Shumaker is not the Declarant and the rights of the Declarant had not been assigned to Shumaker, and therefore Shumaker, LLC, cannot qualify as a Declarant by virtue of succeeding title to Shumaker. Therefore the lots were subject to assessments by the HOA upon the sale from Shumaker to Shumaker, LLC.

Business Continuity Plan

Business Continuity Plan

I. BCP-What is it and why consider having one?

II. Sample plans.

III. At the very least…options to consider.

Corporate Authority Issues

Business Entity Authority and Credentials-General Guidelines

1. Parties for Whom Credentials must be obtained

The authority and credentials of the active parties to the **current** transaction must be verified. This includes obtaining reliable credentials on a purchaser, seller and new mortgagee. It is not necessary to obtain credentials for a mortgagee whose loan is being assumed.

However, in non-residential transactions and residential transactions with an amount of insurance of $3,000,000.00 or higher: If there has been any transaction involving the same land within the past twelve (12) months which does not appear to be a routine, arms' length transaction involving a sale, lease, or mortgage involving unrelated parties who would qualify as "purchasers for value", the Company may consider it necessary to collect information on the details (including business entity credentials) pertaining to prior transactions. **Please Contact the State Office for Specific Underwriting instruction.**

NOTE: Please be on alert for entities operating under an assumed, fictitious or trade name.

2. Tiers of Authority Credentials Required

The Company will require credentials for the first tier business entity in a transaction and its constituent business entities. For example, if title is held (and is being conveyed) by a partnership which has three partners, which list of partners includes one corporation, one individual, and one LLC, the required "credentials" would be those pertaining to the title holding partnership, the corporate partner and the LLC partner.

However, if: (1) the transaction is complex, or (2) the transaction is not one for full value (e.g., a deed in lieu of foreclosure, or a conveyance which is clearly not "for value", or (3) the Amount of Insurance is substantial, the Company may require credentials information about other business entities which collectively comprise the title holder at levels beyond the first tier entity and constituent entities.

3. Self Dealing

The Company is concerned about: (1) a conveyances, leases or mortgages for the benefit of any party other than the title holding business entity; and (2) transactions under circumstances which may indicate self-dealing or conflicts of interest by corporate officers, LLC members or partners. If either of these situations are present in the transaction to be insured please call the State office for specific underwriting authority.

4. Exemptions from Credential Requirements

Authority credentials do not have to be obtained on the following entities:

a. FNMA

b. GNMA

c. Any agency of the state or federal government, or any branch of the military services

d. Any County or City of the State of South Carolina, if all they are doing is executing a deed, lease, or easement (not including deeds for closed streets, as to which separate issues exist)

e. Major banks (such as Wells Fargo or Bank of America), insurance companies, and Federal Credit Unions, so long as

   (i) They are selling residential property out of their REO inventory, and

   (ii) Title is going out of the same entity which acquired it (no mergers, no name changes), and

   (iii) They are acting for themselves, not as trustees for someone else.

f. Major developers or builders, selling lots or houses in the ordinary course of business (e.g., Mungo Homes selling a new house to a new purchaser)

SC-39-802
Ed. 8/12

UNDERWRITING CHECKLIST
AUTHORITY FOR ACTS OF A CORPORATION

RE: Title insurance commitment _____
Seller/Landlord _____
Purchaser/Mortgagor/ Tenant: _____

A. Each corporation which is a party to the transaction, whether as buyer, seller, mortgagor, mortgagee, tenant, or otherwise:

____ (1) is a valid and subsisting corporation under the laws of its domicile state, and

[Obtain either a Certificate of Existence--S.C. Corporation or Certificate of Good Standing --Foreign Corporation]

____ (2) has registered with appropriate governmental agencies and is duly qualified to do business in South Carolina

[Obtain either a Certificate of Authorization--Foreign Corporation, or proof satisfactory to the Company that the activities of the corporation do not amount to doing business under S.C. Code Section 33-15-101]

____ (3) has paid all taxes due to the State of South Carolina, or will pay such taxes at or before closing of said transaction

[Obtain a Certificate of Compliance if party is either a domestic corporation or a foreign corp. qualified to do business in SC]

B. Signatures of the corporate officers affixed to documents pertaining to the Land:

____ (1) accurately reflect each officer's current corporate title, and

____ (2) show that each document was signed by a person with rank of Vice President or higher, or other officer specifically designated in the corporate bylaws with authority to execute instruments; and

____ (3) are consistent with the name and rank stated in the notarial act.

____ (4) are attested by the corporate secretary or an assistant secretary, unless such attestation is not required by the bylaws of the corporation.

C. As to each corporation's signature on documents pertaining to the Land:

____ (1) each corporation's full, correct name is stated in all relevant documents, and

____ (2) the corporate seal (or the word "Seal") appears next to the corporation's signature block.

____ (3) the corporation's name is not purportedly signed either by an unincorporated "division", or by an incorporated "division" which is not the actual title holder.

____(4) if a trade name or assumed name or "d/b/a" name is used, it appears in the document after the full, correct name of the corporation.

D. With regard to witnesses to the acts of corporate officers:

____ (1) each officer's signature has been properly witnesses by two competent witnesses, and

____ (2) the signatures and printed names of both witnesses are affixed to each title document.

E. With regard to "self dealing" or inappropriate diversion of corporate assets:

____ (1) the transaction does not involve self dealing on the part of any officer, director, shareholder, or employee of a corporation, and

____ (2) the sale or loan proceeds were disbursed to, or for the benefit of, the corporation.

F. If any documents were executed by a person acting as attorney in fact ("agent") for a corporation:

____ (1) the agent's acts are supported by a valid power of attorney which has not expired or been revoked, and

____ (2) if the agent signed documents which are recorded, a valid power of attorney was recorded at or before the recordation of the documents to which the power of attorney pertains; and

____ (3) either the corporate bylaws specifically allow the appointment of an attorney in fact under a power of attorney or there is a specific corporate resolution authorizing the same.

G. The transaction involves either [check either (1) or (2)]:

____ (1) A business transaction which does NOT involve selling or mortgaging all or substantially all of the assets of a corporation, and

____ (a) the Company has been furnished a copy (certified by the corporate secretary or other officer authorized to do so) of a resolution of the corporate Board of Directors, authorizing the specific transaction to which the Company's title insurance pertains, which authority specifies, among other details, (1) the sale price or amount of the mortgage loan, (2) all other material terms of the transaction, and (3) the names, or titles, of those corporate officers who are authorized to conduct said transaction, and

____ (b) the transaction has been conducted and closed in accordance with the resolution of the Board of Directors,

____ (c) the corporate officers who signed, sealed, and delivered relevant documents were authorized to do so; and

____(d) there is satisfactory proof that shareholder approval is not required by the Articles of Incorporation [or] S.C. Code §33-12-101 [or in similar provisions of the law of another state to the extent they are applicable.]

OR

____ (2) A business transaction which DOES involve selling or mortgaging all or substantially all of the assets of a corporation, and

____ (a) the Company has been furnished a certified copy of a resolution of the corporate Board of Directors, having the characteristics mentioned in Para. G.1.a, above, and

____ (b) rights of dissenting shareholders have been fully protected by compliance with applicable law (as set forth in Code Sec. 33-13-101 et seq., or in similar provisions of the law of another state to the extent they [are] applicable), and

____ (c) the transaction has been conducted and closed in accordance with the resolution of the Board of Directors, and

____ (d) written consent for the transaction has been obtained from the holders of two-thirds (2/3) of all outstanding shares of the corporation, or of such greater number of shareholders as is required by the Articles of Incorporation or bylaws, which consents were obtained at a duly noticed and called meeting for the purpose of obtaining such consent in the manner prescribed in S.C. Code § 33-12-102 or in similar provisions of the law of another state to the extent they are applicable.

____ (e) the corporate officers who signed relevant documents were authorized to do so.

H. Applicable Company procedures have been completed [concerning the following matters]:

____ (1) SC Code Sec. 12-54-124 et seq., pertaining to sale of business assets [ ] (transfer of majority of assets), and

____ (2) SC Code Sec. 12-8-580 et seq., pertaining to sale by non-residents [ ] (non-resident withholding), and

____ (3) identification of persons named in lists promulgated under the USA Patriot Act, and

____ (4) authentication of documents (including title documents and others) which are signed or notarized outside the United States.

I. During the twelve (12) months immediately prior to the date of closing:

____ (1) the controlling ownership of the stock of a corporation has not changed, and

____ (2) title to the Land has not been conveyed, by deed or otherwise, to anyone other than an unrelated purchaser for value, and

____ (3) title to the Land has not been conveyed without simultaneous mortgage financing by an institutional lender.

J. The current transaction does not involve (or occur concurrently with):

____ (1) merger, conversion, or reorganization of a corporation, name change, or

____ (2) contribution of a corporation's Land to another business entity, or

____ (3) creation of a lien on a corporation's land as cross collateral for someone else's debts, or

____ (4) a conveyance of a corporation's land in lieu of foreclosure of a mortgage secures debt owed by either the grantor corporation or by someone else.

[If items 1-4 of Paragraph J apply to your transaction you must contact the state office for permission to insure.]

K. ____Requirements of the Foreign Investment in Real Property Tax Act (FIRPTA) have been complied with if applicable.

SC-39-803
Ed. 8/12

UNDERWRITING CHECKLIST
AUTHORITY FOR ACTS OF A LLC

RE: Title insurance commitment _____
Seller/Landlord _____
Purchaser/Mortgagor/ Tenant: _____

A. Each LLC which is a party to the transaction, whether as buyer, seller, mortgagor, mortgagee, tenant, or otherwise:

____ (1) is a valid and subsisting LLC under the laws of its domicile state, and

[Obtain either a Certificate of Existence--S.C. LLC or similar certificate from State of Organization]

____ (2) has registered with appropriate governmental agencies and is duly qualified to do business in South Carolina

[Obtain either a Certificate of Authorization--Foreign LLC, or proof satisfactory to the Company that the activities of the LLC do not amount to doing business under S.C. Code Section 33-44-1003]

____ (3) has a written operating agreement signed by all the members.

____ (4) has paid all taxes due to the State of South Carolina, or will pay such taxes at or before closing of said transaction

[Obtain a Certificate of Compliance or other satisfactory proof of payment of taxes]

B. Signatures of the LLC Members/Managers affixed to documents pertaining to the Land:

____ (1) accurately reflect each member or manager, and

____ (2) are consistent with the name and rank stated in the notarial act.

C. As to each LLC's signature on documents pertaining to the Land:

____ (1) each LLC's full, correct name is stated in all relevant documents, and

____ (2) the seal (or the word "Seal") appears next to the LLC's signature block.

D. With regard to witnesses to the acts of LLC Members/Managers:

____ (1) each member/manager's signature has been properly witnessed by two competent witnesses, and
____ (2) the signatures and printed names of both witnesses are affixed to each title document.

E. With regard to "self dealing" or inappropriate diversion of LLC assets:

____ (1) the transaction does not involve self dealing on the part of any member or manager of a LLC, and

____ (2) the sale or loan proceeds were disbursed to, or for the benefit of, the LLC.

F. If any documents were executed by a person acting as attorney in fact for a LLC:

____ (1) the agent's acts are supported by a valid power of attorney which has not expired or been revoked, and

____ (2) if the agent signed documents which are recorded, a valid power of attorney was recorded at or before the recordation of the documents to which the power of attorney pertains; and

____ (3) either the LLC operating agreement specifically allows the appointment of an attorney in fact under a power of attorney or there is specific written authorization signed by all the members.

G. The transaction involves either [check either (1) or (2)]:

____ (1) A business transaction which does NOT involve selling or mortgaging all or substantially all of the assets of a LLC, and

____ (a) with respect to any document which was not signed by all of the members/managers of a LLC, the Company has been furnished an operating agreement signed by all the members or written authorization signed by each LLC member /manager who has not personally signed relevant documents, authorizing the specific transaction to which the Company's title insurance pertains, which authority specifies, among other details:

(i) The sale price or amount of the mortgage loan, and
(ii) The names, or titles, of those LLC members/managers who are authorized to conduct said transaction, and
(iii) All other material terms of the transaction, and

____ (b) the transaction has been conducted and closed in accordance with the applicable LLC operating agreement, and the members/managers of the LLC who signed, sealed and delivered relevant documents were authorized to do so.

OR

____ (2) A business transaction which DOES involve selling or mortgaging all or substantially all of the assets of a LLC, and

____ (a) with respect to any document which was not signed by all (100%) of the members of an LLC, the Company has been furnished with written authorization signed by each LLC member who has not personally signed relevant documents, authorizing the specific transaction to which the Company's title insurance pertains, which authority specifies, among other details ,the information described in para. G(1)(a), above, and

____ (b) rights of dissenting LLC members have been fully protected by compliance with applicable law (as set forth in Code Sec. 33-44-404 et seq., or in similar provisions of the law of another state to the extent they may be applicable), and

____ (c) the transaction has been conducted and closed in accordance with the applicable LLC operating agreement and the written authorization of all (100%) LLC members, and the members of the LLC who signed, sealed and delivered relevant documents were authorized to do so.

H. Applicable Company procedures have been completed [concerning the following matters]:

____ (1) SC Code Sec. 12-54-124 et seq., pertaining to sale of business assets (transfer of majority of assets), and

____ (2) SC Code Sec. 12-8-580 et seq., pertaining to sale by non-residents (non-resident withholding), and

____ (3) identification of persons named in lists promulgated under the USA Patriot Act, and

____ (4) authentication of documents (including title documents and others) which are signed or notarized outside the United States.

I. During the twelve (12) months immediately prior to the date of closing:

____ (1) neither a LLC's name, nor the membership of a LLC, has changed, and

____ (2) title to the Land has not been conveyed, by deed or otherwise, to anyone other than an unrelated purchaser for value, and

____ (3) title to the Land has not been conveyed without simultaneous mortgage financing by an institutional lender.

J. The current transaction does not involve (or occur concurrently with):

____ (1) merger, conversion, or reorganization of a LLC, or

____ (2) contribution of a LLC's Land to another business entity, or

____ (3) creation of a lien on a LLC's land as cross collateral for someone else's debts, or

____ (4) a conveyance of a LLC's land in lieu of foreclosure of a mortgage securing debt owed by either the grantor LLC or by someone else.

[If items 1-4 of Paragraph J apply to your transaction you must contact the state office for permission to insure.]

K. ___ Requirements of the Foreign Investment in Real Property Tax Act (FIRPTA) have been complied with if applicable.

SC-39-804
Ed. 8/12

UNDERWRITING CHECKLIST
AUTHORITY FOR ACT OF A PARTNERSHIP

RE: Title insurance commitment _____
Seller/Landlord _____
Purchaser/Mortgagor/ Tenant: _____

A. Each partnership which is a party to the transaction, whether as buyer, seller, mortgagor, mortgagee, tenant, or otherwise:

____ (1) is a valid and subsisting partnership under the laws of its domicile state, and

[Obtain copy of Partnership Agreement or Memorandum thereof which identifies all Partners]

____ (2) with regard to Limited Partnerships:

(a) obtain a copy of Certificate of Limited Partnership with Secretary of State ,
(b) Verify the name includes the words "Limited Partnership" or "L.P.", and
(c) Verify or require that an affidavit of General Partners Authority designating the names of the general partner(s) with authority to execute instruments is filed in the county ROD before any conveyance or encumbrance of Limited Partnership Property.

___(3) with regard to Foreign Limited Partnerships:

(a) Obtain certificate of Limited Partnership or similar certificate from state of formation, and
(b) Obtain a certificate of registration to transact business in SC from SC Secretary of State.

___ (4) with regard to Limited Liability Partnerships:

(a) Please call the State Office for underwriting assistance.

B. ___ Each partnership which is a party to a sale or lease transaction (not refinance) has paid all taxes due the State of South Carolina, or will pay such taxes at or before closing of said transaction.

C. Signatures of the partners affixed to documents pertaining to the Land:

____ (1) accurately reflect each partner's title, and

____ (2) are consistent with the name and title stated in the notarial act.

D. As to each partnership's signature on documents pertaining to the Land:

____ (1) each partnership's correct name is stated in all relevant documents, and

____ (2) the partnership's seal (or the word "Seal") appears next to the partnership's signature block.

E. With regard to witnesses to the acts of a partnership:

____ (1) each partner's signature has been properly witnesses by two competent witnesses, and

____ (2) the signatures and printed names of both witnesses are affixed to each title document.

F. With regard to "self dealing" or inappropriate diversion of a partnership's assets:

____ (1) the transaction does not involve self dealing on the part of any partner or employee of a partnership, and

____ (2) the sale or loan proceeds were disbursed to, or for the benefit of, the partnership.

G. If any documents were executed by a person acting as attorney in fact ("agent") for a partnership:

____ (1) the agent's acts are supported by a valid power of attorney which has not expired or been revoked, and

____ (2) if the agent signed documents which are recorded, a valid power of attorney was recorded at or before the recordation of the documents to which the power of attorney pertains.

____ (3) The Partnership Agreement or Specific written authorization executed by all partners allows the appointment of an attorney in fact.

H. The transaction involves either [check either (1) or (2)]:

____ (1) A business transaction which does NOT involve selling or mortgaging all or substantially all of the assets of a partnership, and

____ (a) with respect to any document which was not signed by all of the partners of a partnership, the Company has been furnished written authorization signed by each partner who has not personally signed relevant documents, authorizing the specific transaction to which the Company's title insurance pertains, which authority specifies, among other details:

(i) The sale price or amount of the mortgage loan, and

(ii) the names of those partners who are authorized to conduct said transaction, and

(iii) all other material terms of the transaction, and

____ (b) the transaction has been conducted and closed in accordance with the applicable partnership agreement , and the partners who signed, sealed and delivered relevant documents were authorized to do so.

OR

____ (2) A business transaction which DOES involve selling or mortgaging all or substantially all of the assets of a partnership, and

____ (a) with respect to any document which was not signed by all of the partners, the Company has been furnished written authorization signed by each partner who has not personally signed relevant documents, authorizing the specific transaction to which the Company's title insurance pertains, which authority specifies, among other details, the information described in para. H(1)(a), above, and

____ (b) rights of dissenting partners have been fully protected by compliance with applicable law (as set forth in Code Sec. 33-41-310 et seq., for General Partnerships and in Code Sec. 33-42-430 for Limited Partnerships, or in similar provisions of the law of another state to the extent they may be applicable), and

____ (c) the transaction has been conducted and closed in accordance with the applicable partnership agreement and the written authorization of all (100%) partners, and the partners who signed, sealed and delivered relevant documents were authorized to do so.

I. Applicable Company procedures the following matters have been completed:

____ (1) SC Code Sec. 12-54-124 et seq., pertaining to sale of business assets (Transfer of Majority of Assets), and

____ (2) SC Code Sec. 12-8-580 et seq., pertaining to sale by non-residents (Non-resident Withholding), and

____ (3) identification of persons named in lists promulgated under the USA Patriot Act, and

____ (4) authentication of documents (including title documents and others) which are signed or notarized outside the United States.

J. During the twelve (12) month immediately prior to the date of closing:

____ (1) neither a partnership's name, nor the list of partners thereof, has changed, and

____ (2) title to the Land has not been conveyed, by deed or otherwise, to anyone other than an unrelated purchaser for value, and

____ (3) title to the Land has not been conveyed without simultaneous mortgage financing by an institutional lender.

K. The current transaction does not involve (or occur concurrently with):

____ (1) merger, conversion, reorganization of a partnership, or name change

____ (2) contribution of a partnership's Land to another business entity, or

____ (3) creation of a lien on a partnership's land as cross collateral for someone else's debts, or

____ (4) a conveyance of a partnership's land in lieu of foreclosure of a mortgage which secures debt owed by either the grantor partnership or by someone else.

L. ____ Requirements of the Foreign Investment in Real Property Tax Act (FIRPTA) have been complied with.

Questions and Answers

QUESTIONS and ANSWERS

1. Your firm's title insurance agency has prepared a title insurance commitment for a loan policy insuring a mortgage on a new factory. One of your colleagues asks, "Isn't it OK to put the easements and restrictions in the Schedule A land description, something like 'Said title is subject to" so and so, instead of cluttering up Schedule B? Schedule B annoys the lenders." How do you respond?

    A. No, it's not OK, because something becomes an "exception" only if it is put in the right Schedule, and in a commitment, that is Schedule B-2.

    B. Yes, it is OK, it doesn't matter where the title matters are located so long as they are described in one of the policy Schedules, or on an endorsement.

    C. No; it is OK to put "subject to" language in the land description, but you still have to describe those same title matters in Schedule B-2, saying "subject to" certain restrictions, easements, or other matters.

    D. No; but you can leave the easements and restrictions out of the commitment, and just put them in Schedule B of the final policy.

    E. No, but you can leave the easements and restrictions out of the commitment because that is already covered in a loan policy.

2. Your firm's client, Great Bank of the South, has reviewed a title insurance commitment for a $2 million construction loan to finance construction of a fast food restaurant. The store will be built on an outparcel in a shopping center, and the outparcel does not adjoin any public streets. The lender demands that you include in the Schedule A description of the insured mortgage a note which says "Subject property has unlimited access to a public highway by virtue of easements granted or reserved over Shoppers World." Can you do what the lender demands?

    A. Yes, because the shopping center developer which sold the outparcel has automatically created an access easement serving the outparcel.

    B. Yes, because an ALTA loan policy insures a right of access, and putting the note in Schedule A is just redundant, repeating the coverage the lender already has.

    C. Yes, because if we don't, Great Bank of the South will be unhappy, and Company underwriting doctrine is "Don't lose business because of easement questions."

    D. No, because we are not authorized to use "notes" in title insurance commitments or policies.

    E. No, but we can inform the lender that if the title examination confirms that access easements exist, and the closing is conducted properly, the lender will acquire a mortgage on both the outparcel and the access easement, and we can insure the lender's lien on both the fee and the easement; however, use of "notes" is not authorized.

3. A few days before closing, Great Bank of the South demands that you omit from your title insurance commitment the first exception in Schedule B-2, concerning defects, liens or encumbrances created, or first appearing of record, after the Effective Date of the commitment. Can you do what the lender wants?

    A. Yes, because the commitment, just like a policy, provides coverage only through the Effective Date, and later events or issues are not covered.

    B. Yes, because there's not much of a time lapse between the issuance of the commitment and the closing, so the risk is minimal.

    C. No, because it is not authorized by the title insurer.

    D. No, because the commitment is a promise to insure. If you strike out the exception concerning later title defects, the insurer may arguably wind up with a duty to issue a policy at a time when defects exist, and there is no other policy provision which would relieve the insurer of responsibility for those defects.

    E. No, because as a matter of law, a title insurer is not permitted to insure against title defects which occur in the future.

4. In a transaction in which your agency has issued a commitment for a $3 million loan policy insuring an auto dealership, Great Bank of the South contacts your firm three days before closing and requires that you sign a Closing and Escrow Agreement, which spells out how Great Bank's funds are to be disbursed, and under what circumstances. Great Bank's agreement specifies that (1) your firm is signing the agreement "as agent for" the title insurance company, and also (2) the insurer is "unconditionally obligated to issue its policy of title insurance in accordance with Great Bank's instructions set forth in this Closing and Escrow Agreement." Will your firm be able to sign the lender's agreement?

    A. Yes, because the law firm is authorized to represent both the bank and the title insurance company, if proper disclosures are given to both clients.

    B. Yes, because a title insurance agent which closes a real estate transaction is doing so as an agent for the insurer, and the bank's agreement is consistent with that arrangement.

    C. No, because the title insurance company has not authorized it, and the title insurance agency agreement specifically limits an agency's authority to issuing title insurance commitments, policies, and endorsements.

    D. No, because even though the law firm is authorized to act as an agent for the title insurer in matters other than title insurance, $3 million exceeds the authorized limit.

    E. No, because the law firm is acting as legal counsel only for the title insurance company, and cannot represent any other party in the transaction.

5. Your colleague who is handling a residential loan closing tells you their title examination, and a new plat, indicate that a new house in a relatively new subdivision sits directly on top of an electric power line and easement, which is in active use to serve several other houses. Your colleague has read the insuring provisions of an ALTA Short Form Residential Loan Policy, and noticed that it insures against loss or damage resulting from recorded easements and encroachments onto easements. Can you help your colleague out by issuing an ALTA Short Form Residential Loan Policy without taking exception to the encroachment in an Addendum to the policy?

    A. Yes, because in residential loan policies all easements and other encumbrances are covered by "standard exceptions", including an exception to easements.

    B. Yes, because if the insurer (or its title insurance agent) had not known about the encroachment, a loan policy could have been issued without the exception, and it is no different in a case in which the agent knows about the encroachment.

    C. Yes, because an encroachment onto a utility easement is a "de minimus" matter, and the insurer does not worry about such things.

    D. Yes, because "survey coverage" can be given in a residential loan policy, even though there is no survey, or the survey shows title defects or encumbrances.

    E. No, because coverage over a known, significant title defect (such as a substantial encroachment onto an easement actively used) can be given only if the insurer is informed of the situation and approves it.

6. Your firm's agency generated a commitment for a $300,000 owner's policy, insuring title to a house that will be acquired by a lender, by deed in lieu of foreclosure, and then immediately sold to your client, the buyer. The current owner has negotiated a "short sale", by which the lender will get only 80% of the actual loan balance. You notice that Schedule B-1 of the title insurance commitment does not contain any requirements specifically talking about the short sale or the fact the lender is acquiring title as an alternative to foreclosure. Your colleagues tell you "Don't worry about it, at closing we always get an estoppel affidavit from the mortgagors dealing with both those issues." Does the closing attorney's normal practice make title insurance commitment requirements unnecessary?

    A. No, because a title insurer assumes risk based on certain information and events; the insurer has the right, as a condition for insurance, to obtain its normal documentation, regardless of what the closing attorney or the lender may consider necessary.

    B. Yes, the title insurer does not care about how documents are obtained, or by whom; as long as the closing attorney routinely obtains the documents the insurer wants, the title insurer relies on the closing attorney to do things properly.

    C. Yes, because the closing attorney is legally obliged to obtain all relevant title and administrative documents pertaining to the closing, including those requested or required by the lender, the owner, the title insurer, and any government agencies involved in the deal.

    D. No; if the insurer does not make an appropriate commitment requirement, it probably cannot add additional Schedule B exceptions to deal with adverse title matters as to which the closing attorney did not obtain documentation satisfactory to the insurer.

    E. No, because the Insurance Code specifies which commitment exceptions and requirements must be used.

7. Your firm represents Jones Construction, Inc., which wants to buy a rural residential lot for $45,000. The developer hopes that the retail price for the completed home will be about $160,000. Record title to the lot was last conveyed to "Carolina Wildlife Refuge Sanctuary", which received a deed to the land in 2003. Your client has been dealing with Mr. Armitage Herkimer, whose letterhead says he is President of "Carolina Wildlife Refuge, Inc." The Secretary of State's records show that Carolina Wildlife Refuge, Inc., was formed as a South Carolina non-profit corporation in 2009. Your firm's title insurance agency is preparing a commitment for owner's and loan policies. Are you concerned about the Schedule A information concerning vesting of title?

    A. No, because the Secretary of State is carrying the seller as a valid corporation.

    B. Yes, because there is no apparent link between the grantee in 2003 and the current seller.

    C. Yes, because it's not clear whether there was a valid grantee in 2003.

    D. No, because the seller is a non-profit organization which can change its name at will.

    E. Yes, for reasons stated in B and C.

8. Hal Jones, principal of Jones Construction, Inc., is pressing you to set up a closing on the lot purchase. He knows Mr. Herkimer personally, and assures you "he is OK." Your firm has now determined that in 2003 there was no organized business entity using the name "Carolina Wildlife Refuge Sanctuary", but there really was an LLC called "Carolina Refuge Sanctuary, LLC", and Armitage Herkimer was its registered agent. The LLC was dissolved in 2005. Mr. Jones urges you not to worry about it because it's all the same people, Mr. Herkimer was the principal of the LLC and the organizer of Carolina Wildlife Refuge, Inc. Do you have enough information on which you can base a title insurance commitment?

    A. Yes, all you have to do is require a conveyance from Carolina Refuge Sanctuary, LLC, to Carolina Wildlife Refuge, Inc., then a deed to the purchaser.

    B. No, because it is still not clear what the 2003 deed accomplished, or who now owns title to the land.

    C. Yes, because a corrective deed from the grantor in the 2003 deed to Carolina Wildlife Refuge, Inc., skipping the LLC, will fix the gap in the title.

    D. Yes, because when the LLC dissolved in 2005, its title would have vested automatically in its members, and title would then have transferred automatically to the corporation when the LLC was reformed as a corporation in 2009.

    E. No, because the words "wildlife" and "refuge sanctuary" indicate that the land is restricted and cannot be used for construction purposes.

9. Your firm's client, Robert Bildmore, wants to resume single family construction because real estate in your county is heating up. He shows you a contract by which he has agreed to purchase three rural lots described as follows, first identifying the county in which they are located:

> "All of seller's right, title, and interest in and two the northern 1/3 of the eastern four lots of Wacandaw Plantation, on the Wacandaw River near the town of Castine, as shown on a plat of survey by Lowcountry Land Engineering, dated March 10, 1955, to be recorded. Said land is bounded on the north by the Wacandaw River, south by the run of Wacandaw Swamp, west by the Old River Road, and east by other land of seller, identified on said plat by cross hatching in red."

The seller claims to have purchased the land in 1989 by deed which described the land in exactly the same way. No such plat dated March 10, 1955, has been identified in the county land records. Will this description cause you any problems in preparing a title insurance commitment?

A. No, you can address the problem by requiring a "Recordation of a satisfactory plat of the land."

B. No, because you have three established boundaries – a road and two bodies of water – and the other boundary can be established by requiring a quitclaim from the current owner on the east.

C. No, because standards for description of rural land are less stringent than for urban property.

D. Yes, because there is insufficient information in the description to establish location of the property boundaries, except for the reference to the river; an unrecorded plat is not useful for description purposes.

E. Yes, because the description does not include the estimated acreage contained within the tract.

10. While you are studying the land description issue, Bildmore informs you that his lender, Great Bank of the South, insists that their loan policy must have an endorsement which "guarantees that the land can be used for purposes of constructing no fewer than five (5) single family residences having 3,000 square feet or more of heated space." You have already told him that (a) the county zoning ordinance imposes no limitations on the land other than prohibiting landfills, hog farms, and chemical plants, and (b) the title information available so far has not identified any recorded restrictive covenants. Is Bildmore justified in concluding that it will not be a problem to get such an endorsement?

    A. Yes, because if there are no restrictive covenants, he can build anything he wants on the land, so long as it is consistent with applicable zoning, and that is not a problem.

    B. Yes, because guarantees of authorized uses are a routine part of title insurance coverage.

    C. Yes, so long as the appropriate special risk premium is paid.

    D. No, because the Company's products do not "guarantee" anything.

    E. No, because the Company will not guarantee that applicable soil conditions and title issues do not prevent construction of specific types of dwellings.

11. Robert Bildmore's company, which holds title to all the land he purchases, is legally set up as "Bildmore Carolina Elegance, Inc." Robert is the President, his son, Ralph, is the Secretary/ Treasurer, and his wife, Sandra, is a corporate director. Robert tells you he is leaving the country for 30 days to hunt Ibex in northern Iraq, but he is giving his daughter, Cindy, a senior at Clemson, a power of attorney to sign his name, as President, on a mortgage and other documents needed at closing. Does use of a power of attorney cause you any concern?

    A. No, because a corporation or other business entity can designate someone as its agent, under a power of attorney, just as an individual can.

    B. No, because the transaction will already be a "done deal" when Robert leaves, and the actions at closing are merely ministerial, so having an agent sign for him is OK, using the style "Robert Bildmore, President, by Cindy Bildmore, his attorney in fact."

    C. Yes, because what he is describing is not having someone act as agent for the corporation, he's talking about someone acting as agent for him personally, in his capacity as a senior corporate officer.

    D. Yes, because you cannot have a relative serve as your agent in matters involving acts of a business entity such as a corporation.

    E. Yes, because corporations, partnerships, and LLC's cannot act by an agent, they can only act through a designated officer or manager.

12. Your firm is contacted by the pastor of a rural church which proposes to sell a ten acre tract (across the street from the church) for $300,000. Preliminary title information indicates that in 1934, the land was conveyed to the "Jericho Road Church" by deed describing it as "ten acres, more or less", in a particular county, "starting at an old stump on Jericho Road, bounded on the South by Jericho Road, North by the Castine Plantation, East by Giant Pecan Company, Inc, and West by the old Bellamy farm." There is no deed out of "Jericho Road Church." The pastor informs you the seller has been known as "Jericho Road Church of True Discipleship, Inc.", since 1967. He wants your firm to represent the church, and asks whether you can issue a title insurance commitment to insure the buyer and the buyer's lender, and it has to be done this week. Are there any immediate barriers to issuing the commitment?

    A. No, because whatever title defects or ambiguities exist can be handled by means of Schedule B-1 requirements.

    B. No, because the seller is a religious institution, and the law favors upholding title documents of churches and other non-profit organizations.

    C. No, because the land description can be fixed by having a new plat prepared and recorded, and the church can convey title by reference to the new plat.

    D. Yes, because it is essential to know that the church's administrative procedures for sale of land have been carried out, before a commitment can be issued.

    E. Yes, because both the vesting of title and the description of the land are in doubt; a commitment should not be issued if ownership of the land, or its boundaries, are unknown.

13. Mrs. Livingstone and her three adult children, Marcus, Gerald, and Philip, contact your firm about handling the sale of their summer home at the Lake. Title was formerly held by Mr. and Mrs. Livingstone; her husband died, intestate, in 1994, and since he did not leave much of an estate, the family did not do an estate administration. They tell you that the four of them – the mother and three children – want to sell quickly, because they have a buyer lined up willing to pay a good price if they can close this month. Mrs. Livingstone mentions that her other two children "won't be any trouble". Her daughter, Aurora, lives in a commune in California, and her other son, Joby, left the country 15 years ago and has not been heard from since. Off the cuff, are there any unusual risks or issues in this situation which you will have to address for title insurance purposes?

    A. Yes, it may be difficult (or impossible) to locate and deal with two of the owners, and one of them may be deceased.

    B. No, because an estate administration can be done now which will confirm that title passed to the widow and (50%) and her three good sons (50%). Adverse possession or laches would wipe out the interests of the other two children.

    C. No, because it is now impossible, under the Probate Code, to administer the estate, and title would be presumed to vest in those heirs who have been in physical possession of the land.

    D. No, because it is too late for Aurora to assert any claim to the title, and Joby is presumed to be deceased, so whatever fractional interest he might have owned would have passed by intestacy to his mother and siblings.

    E. Yes, because an action for partition and sale of the land cannot be commenced until Joby is located and arrangements are made for personal service of process.

14. One of your colleagues tells you that they have a deal pending involving sale of a small factory, and want your help in arranging owner's title insurance for $300,000, insuring over an outstanding fractional ownership interest, an old open mortgage, and an expired lease with option to purchase. The "old mortgage" was dated December 2003, and the lease expired in February of this year. Your colleague mentions that "it should be no trouble" because another title insurer previously "insured over" these issues in a $30,000 loan policy issued in 2007. Does the prior loan policy solve some of your title insurance issues?

    A. Yes, because anything which was previously "insured over" can automatically be handled in the same way in the future.

    B. Yes, because the title insurer who issues a new policy will have a right of recovery from the insurer which issued the 2007 loan policy.

    C. Yes, because the Amount of Insurance is small enough that title defects of this type are within the mutual indemnity agreements among various title insurers.

    D. No, because the title defects are significant, and the statements in A, B, and C are not true.

    E. No, because the statements in A, B, and C are true, but they are not applicable to non-residential land.

15. Your firm's title insurance agency is asked to insure title to a nice little farm which at one time was owned by a charitable organization which first acquired title in 1922. The chain of title shows that the next deed out, from the charity, was in 1945, and that deed specifically stated that title was "subject to the conditions and restrictions set forth in" the 1922 deed. The 1922 deed specified that "the said land shall be used solely and exclusively as a place of residence and care for veterans of the former Confederate States of America, and their widows and heirs, forever, and if said land is no longer used for said purpose, title shall revert to Grantor, his heirs, successors and assigns." The property has been used as a peach farm for some 30 years, and the only house on the land was built in 2001, for use as the current seller's residence. Does the old restriction cause any concerns, for title insurance purposes?

    A. No, because the doctrine of "cy pres", or "equivalent use" would have wiped out the restrictive covenant and the reverter ten years after the last resident of the Confederate veterans home moved out.

    B. No, because the law does not favor reversion of title, and persons claiming title as reversioners would have to actively assert their rights of reentry.

    C. Yes, because reversion clauses may still be valid, and do not require action on the part of the persons to whom title is supposed to pass when the condition is violated.

    D. Yes, because the reverter clause may have operated several years ago when the land use changed, vesting title in persons currently not identified; also, there may be a cemetery located on the land.

    E. No, because reverter (or reversion) clauses are now considered unconstitutional and void.

16. You have been asked to issue an owner's policy insuring Phase I of Brickle Farms Plantation, a new multi-phase residential development. Phase I will consist of 15 residential lots, plus an amenities package which includes a club house, tennis court, bike trails, and an enormous barbeque pit, all of which can be used by residents of the subdivision. Your title search picked up a document styled "Brickle Land Declaration of Covenants, Conditions, and Restrictions," recorded a few months ago. The search also identified a so-called "Vegetation Beautification Easement", in favor of and recorded by the previous owner at the time the current developer bought the land. This document requires that a strip 15 feet wide along two sides of the subdivision must be left in a "natural condition" or planted with "ornamental shrubs, fruit trees, or Palmettos." One of your firm's title insurance agents tells you, off the cuff, that:

    - An exception will be taken to the declaration of subdivision covenants, conditions, and restrictions, and
    - An exception will be taken to the barbeque pit, and
    - No Schedule B exception is necessary concerning the "vegetation beautification easement" because it enhances the appearance and value of all of Phase I.

    Do you agree with their conclusion?

    A. Yes, because the declaration is an encumbrance on the land, and the barbeque pit means that many other people have a right to use portions of the land.

    B. No, because the barbeque pit can be easily removed and is therefore not an encumbrance on title.

    C. No, because the vegetation easement imposes a limit on the use of the land, and therefore must be identified in a Schedule B exception.

    D. Yes, because the barbeque pit constitutes a potential hazard which may impose liability on the property owner.

    E. No, because (1) the barbeque pit, by itself, is not an adverse title matter if the rights of use are limited to those created in the subdivision declaration of covenants, conditions and restrictions, and (2) the vegetation easement limits use of a portion of the land.

17. Your firm's lender client in Boston is loaning money to a local South Carolina company which has its own lawyer. Lender will be getting a purchase money mortgage to secure the loan. The Boston bank sends you an "escrow instruction letter" which spells out the requirements that must be met at or before closing, including the sequence for recording title documents, and details of the loan policy the bank wants. The letter is addressed to your agency "as authorized agent for Commonwealth Land Title Insurance Company". The signature block on the letter is similarly set up for your agency to sign "as authorized agent for Commonwealth Land Title Insurance Company". Does this cause you any concern?

    A. No, because our firm's title insurance agency allows us to sign anything that Commonwealth itself could sign.

    B. No, because an escrow letter does not significantly increase the title risks the title insurer assumes when it issues a title insurance policy.

    C. Yes, because our title insurance agency agreement authorizes the agency only to issue commitments, policies, and endorsements.

    D. No, because the escrow letter merely duplicates the protection the lender receives in an ALTA "closing protection letter".

    E. Yes, because our agency is not authorized to do it, and also because it appears to indicate an insurance company is closing the transaction.

18. Your long-time clients, John and Marcia, ask you to represent them in the purchase of a house which is being sold by a local branch of a major bank. The bank acquired title by foreclosure about six months ago; some other law firm handled the foreclosure. John and Marcia are anxious to close immediately. They have their purchase money loan lined up, John's parents have wired him some additional funds needed for closing, and the price is great. The seller bank insists on closing in two days. You would be really lucky if you could even get a date down search done, coming forward from the Date of Policy of the seller's loan policy, but the seller says it cannot find its loan policy. Seller's deed will be a limited warranty deed. Is it possible to do an abbreviated title search and certification, relying on the fact the seller is an important bank?

    A. No; abbreviated searches ("short searches") are no longer authorized, and if "back title" is going to be used, you have to have a copy of the prior policy in hand.

    B. No, for the reasons stated in A, above, and also because back title procedure would require you to obtain permission from the title insurer to use a prior loan policy as back title for an owner's policy.

    C. Yes, because credentials are not necessary for those parties to a transaction which are major banks.

    D. Yes, because it is not necessary for the foreclosure proceedings to be reviewed in detail; it is presumed that if a court authorized a foreclosure sale, everything in the foreclosure was done correctly.

    E. No, because the Company will not insure a title which was acquired by foreclosure.

19. Your clients, John and Marcia, want to buy a pair of vacant lots in a nice subdivision which is starting to be active again. Your abstractor reports back that a lis pendens has been filed which describes one of the two lots, but they are unable to match up the lis pendens with any litigation on record. The lis pendens is now 8 months old. The caption on the lis pendens indicates the intended plaintiffs were three individuals, and the seller would be the defendant. Your client wants to move quickly on the closing. For title insurance purposes, what is the best course of action?

    A. Try to find out what the dispute was concerning the title; if information cannot be obtained quickly, contact the State Office for instructions.

    B. Make a commitment requirement for "release of record of lis pendens dated _____ recorded at _____."

    C. Use language in Schedule B-1 concerning unknown parties, such as "The Company reserves the right to make such other requirements and exceptions as it deems appropriate once the details of the transaction and the nature and identity of the parties are determined and made known to the Company."

    D. Make a requirement for quitclaims from the persons named in the lis pendens, who might claim some interest in the land.

    E. The lis pendens has expired in accordance with the Code, so no special requirements or exceptions are necessary.

20. You are asked to insure title to a lot that is described in the deed to the current seller as "Lot 23, Section 4, Happydale Residential Subdivision, as shown on plat by Castine Surveying and Plumbing, LLC, dated August 1, 2012, recorded at Book 124, page 765, together with the northern portion of Lot 24." Lot 24 is currently completely vacant. Would this land description require any special title insurance procedures?

    A. Yes, it would be necessary to require "recordation of a plat of survey satisfactory to the Company, depicting the land to be insured."

    B. Yes, it would be necessary to require a new plat to be recorded, but also to have the last record owner of Lot 24 to convey to the current seller unencumbered title to that portion of Lot 24 depicted on the new plat.

    C. Yes, it would be necessary to confirm that Lots 23 and 24 were both created by a valid subdivision plat, signed and sealed by a licensed South Carolina surveyor.

    D. No, because it was clearly the intention of the grantor to convey exactly one half of Lot 24, with the southern boundary line of the half lot running parallel to the northern boundary line.

    E. No, because it is always permissible to convey title by reference to a recorded plat, and the law does not prevent or limit subdivision of lots, unless applicable local ordinances impose conditions for splitting a lot.

21. Your firm is asked to handle closings of sales in a new residential project which has 12 brand new homes ready for occupancy. The developer, MegaHomes, LLC, has provided you with a plat showing 12 townhouses in two groups of 6, with one group on each side of a central area which includes a clubhouse, parking spaces, assorted amenities, and the MegaHomes sales office. You also received some of their sales brochures, advertising "luxury condominium homes at affordable prices". The dwellings are all two stories high and share common walls. Physically, the dwellings appear to be townhouses. There is no condominium master deed on record. You are asked to close the first sale later this week (and to provide loan and owner's title insurance) on "Unit 8, MegaHomes Farms, as shown on the Plat by Castine Surveying and Plumbing, Inc., dated August 1, 2012, recorded at Book 123, page 998" in the ROD's office. Unit 8 is depicted on the recorded plat. Is there anything about the MegaHomes project that causes you concern about whether title insurance will be available?

    A. Yes, the dwellings are not condominium units and should not be described as such.

    B. Yes, because you cannot make a condominium project out of townhouses with party walls.

    C. Yes, because a condominium dwelling cannot be designated as a "unit", it must be called an "apartment".

    D. No, because any type of dwelling or enclosed space which is capable of independent use can be subjected to a horizontal property regime.

    E. No, because townhouses consist of dwellings constructed on a horizontal axis, which is appropriate for a condominium regime.

22. Your firm's client, Cindy Clemson, owns a tract of 100 acres of unimproved land, just outside town. A scraped dirt road runs into the tract from the adjacent public road. About 100 yards in, there is a 1998 doublewide manufactured home which Cindy purchased from a dealer in Charlotte, North Carolina. She did not obtain a certificate of origin or certificate of title. Cindy rents the doublewide, on a verbal month to month basis, to her recently divorced niece, Claudine Clemson. There is nothing on record concerning the mobile home, or the lease to Claudine. Cindy wants your firm to handle a loan closing for her. She is borrowing $150,000 from Great Bank of the South to remodel an office building she owns in town. The loan approval letter from Great Bank specifies some things which must in the lender's title insurance policy, and prohibits others, including the following:

    - The loan policy must take no exceptions to any parties in possession or tenants, and
    - Since there's a mobile dwelling on the land, the loan policy must be endorsed with an ALTA 7-06 Manufactured Housing Endorsement

    Will the lender's demands cause you any trouble?

    A. No, because the lease is month to month and off record, and the manufactured housing unit has become part of the real estate by lapse of time.

    B. No, because an ALTA 7-06 endorsement can be issued before title to a manufactured home has been retired, and it is not necessary to take exception to a lease with a term of less than two years.

    C. Yes, because it may be difficult or impossible to get a certificate of title which is needed to start the process of retiring the title; also, Schedule B exceptions must be taken to any known right of possession – by lease or otherwise – held, or asserted, by some third party.

    D. Yes, because the ALTA loan policies cannot be issued unless there is paved access to and from the dwelling, and a graded dirt road is not sufficient "access" for policy purposes.

    E. Yes, because Cindy cannot create a valid mortgage on the land unless Claudine joins in the mortgage.

Answers will be provided after the seminar.

Current Events

Throughout the year, Commonwealth's title insurance agents and approved attorneys receive periodic bulletins and memoranda from our State Office, addressing title insurance underwriting matters and developments in real estate law. The purpose of this portion of the seminar is to elaborate on the information distributed in 2012, and to answer any questions presented by the audience.

Commonwealth's goal is to provide title insurance agents and approved attorneys with information and practical procedures which will help them avoid claims. The Company's decision to distribute a bulletin or memo is often the result of a spike in the number of claims the Company has received pertaining to a particular issue. The information distributed includes new insurance underwriting procedures, as well as reminders concerning existing procedures. All are important and should be incorporated into the daily operations of title insurance agents and approved attorneys.

Loss Prevention Bulletin No. 12-1

TO: **All South Carolina Title Insurance Agents**

DATE: **February 1, 2012**

FROM: **Cynthia Hall Ouzts, Esq.**
Gregory S. Brickle, Esq.
Mark L. Hershberger, Esq.

RE: **Manufactured Housing**

In 2011 the company suffered losses resulting from policies insuring manufactured homes located on the insured land. The claims were a result of improper settlement or post closing/recording issues. This Bulletin will highlight common trouble spots involving manufactured homes and offer suggestions on how to minimize losses in those areas.

In South Carolina manufactured homes are personal property until properly affixed to land. Since they are personal property they are first titled in the Certificate of Title System (CT) at the Department of Motor Vehicles (DMV). S. C. Code § 56-19-210 *et seq.*

Detailed underwriting guidelines and exception/requirement language for insuring title to land with manufactured housing are set out in the Underwriting Manual that is available on our website.

In short, it is a two step process. The manufactured home must be affixed to the land and then the CT must be retired at the DMV. Title is affixed by the filing of a Manufactured Home Affidavit in the Register of Deeds. S. C. Code § 59-19-500(1). The CT is retired by filing a copy of the affidavit along with the original CT with liens released and paid tax receipt at the DMV.

Many lenders request either an ALTA 7-06 or an ALTA 7.1-06 endorsement in their closing instructions. The ALTA 7–06 insures that the term “Land” includes a manufactured housing located on the land. The ALTA 7.1-06 goes on to insure the insured against loss by reason of (1) a manufactured housing unit not being located on the land, (2) the manufactured housing unit not being considered real property under state law; (3) the owner of the land not being the owner of the unit;(4) any lien being attached to the unit as personal property (motor vehicle lien); (5) the lien of the insured mortgage not being against the Land and (6) not being able to foreclose in a single foreclosure action. In order to issue the endorsements, you must ensure that the unit has been affixed to the land and that the CT has been properly retired.

The types of mobile home claims made were:

1. Certificate of Title Not Retired

This was the most common compliant. Please make sure that you have post closing procedures in place to ensure that the CT is retired at the DMV. The certificate should be obtained from the current owner. If he does not have one, a duplicate title must be obtained. Please make sure that a CT is in the name of the owner of the land before you close the transaction.

If there is a lien on the property as personal property, the lender will have the CT. If you are paying it off, have the lender send the title to you with the lien released. You can then file the appropriate documents to have title retired.

If the manufactured home is new, please make sure that the dealer files the Certificate of Origin and that a CT is issued in the name of the purchaser. Once the title is issued is his name, it may then be retired.

2. Manufactured Home not Affixed

If the unit is to be affixed, please make sure that the Manufactured Home Affidavit is properly recorded at the ROD. If the unit is not to be affixed, the Z-50 exception should be included in Schedule B stating the land does not include the manufactured unit located on the land. Of course, the ALTA 7-06 or 7.1-06 should not be issued.

3. VIN not included in Legal /Incorrect VIN used

Once the Manufactured Home Affidavit is filed and the CT is retired, the manufactured home is part of the land and a VIN should not be necessary in the legal description. However, it appears that we still have claims filed by lenders when the VIN is absent. If the lender's instructions require that a VIN be included in the legal description, please make sure that the correct VIN is referred to. Even though not necessary, the prudent solution seems to be to always include the VIN in the legal. That will reduce the number of claims being filed by lenders.

4. Lien not Perfected

When the unit is affixed to the land, a lien is perfected by the filing of a mortage.
In cases where the unit is not affixed, a mortgage should be filed on the land and the lender's lien needs to be reflected on the owner's CT at DMV in order to perfect a lien on the unit as personal property. If the lender's closing instructions call for them to be placed in a first priority position, you must be able to insure that the mortgage has a first lien position and that the lender is in a first lien position on the CT as well.

5. Manufactured Unit Sold at Tax Sale

In cases where the manufactured unit will not be affixed, it remains personal property and will be taxed separately. In such a case the title policy will contain the Z-50 exception which excludes the manufactured from coverage.

Nevertheless, please make sure that taxes are searched on the unit as personal property and that the taxes are current. Also, please advise the lender that the unit is taxed separately from the land. If the lender is reserving for taxes, it will need to know that there will be two tax bills to pay.

Lenders will most likely be unhappy to learn when they bring an action in claim and delivery to enforce the CT lien against the manufactured unit that it was sold for taxes, is occupied by a third party and is no longer located on the land. Providing this information to the lender will lower the incidents of claims of this type being filed. An ounce of prevention ….

As always, if you have any questions, please do not hesitate to contact the State Office.

Commonwealth
LAND TITLE INSURANCE COMPANY

Loss Prevention Bulletin No. 12-2

TO: **All South Carolina Title Insurance Agents**

DATE: **April 9, 2012**

FROM: **Cynthia Hall Ouzts, Esq.**
Gregory S. Brickle, Esq.
Mark L. Hershberger, Esq.

RE: **Paying off Equity Line (HELOC) loans**

One area in which the company continued to experience losses in South Carolina in 2011 arose from the failure to identify and properly satisfy HELOC (equity line) mortgages. The borrower (usually the seller in the new transaction) continues to make draws on the "paid off' equity line post closing.

Typically a title search reveals a mortgage for a sum of money and a second mortgage for a substantially smaller sum. The attorney may request and receive a "payoff' letter and pay the designated sums to the lender so that the lender will either send the satisfied mortgage to the attorney to record, or otherwise record the satisfied mortgage directly with the Registrar of Deeds. If the second mortgage is a HELOC, the lender may instead apply the proceeds to bring the balance to zero, but thereafter advance funds under the HELOC if the borrower continues to write checks or request additional funds.

A review of the title abstract may not disclose the identity of a HELOC. It is necessary to review the terms of the mortgage. If the terms of the mortgage allow the borrower to pay down the balance of the mortgage and further allow the borrower to draw or write checks on the mortgage up to a certain sum, the mortgage is probably a HELOC.

To avoid claims arising from HELOC mortgages:

1. Read the terms of the mortgage.
2. Comply with the mortgage terms regarding obtaining a satisfaction from the lender.
3. Require the borrower(s) to discontinue use of the HELOC as early as possible prior to closing to allow the lender to fix the termination balance and give a firm payoff statement.
4. Be sure the lender understands you are requesting a satisfaction of the mortgage. The written request for a payoff letter should include the sample "freeze" language below and should be signed by the borrower(s).

"In the event this loan is secured by a Mortgage allowing for advances of a credit line, please be advised that this letter authorizes you to freeze the referenced credit line upon issuance of your payoff statement. If you require further authorization, please contact the undersigned immediately. Payment pursuant to your payoff statement will eliminate any security interest you have in the property in question. In order to avoid unsecured additional advances, the account must be frozen upon issuance of your payoff statement. If you make any additional advances, they will not be secured by the subject property. We will be completing a closing transaction involving a new owner and/or lender in reliance on your release of your security interest in the property. Upon payment you will be obligated to issue a satisfaction of the mortgage securing the line of credit."

5. Obtain a letter from the borrower(s) requesting the lender to close the HELOC. A sample letter (Credit Line Authorization) is attached.
6. The borrower(s) should be advised that the loan is closed, they cannot borrow against it, and they must destroy any credit card or checks attached to the account. The borrower(s) should also be informed that the HELOC does not "transfer" to their new home, if any.
7. Account for all checks and/or credit cards issued with the HELOC mortgage.
8. Obtain an updated payoff statement no more than two days prior to closing.
9. Send the payoff funds to the lender.
10. Send the Credit Line Authorization (or similar direction) to the lender.
11. Obtain a satisfaction of the HELOC and record it with the appropriate county recorder's office.

Compliance with these procedures will prevent recurring claims and losses. The key is to recognize that the loan in question is a HELOC. Please ensure that all personnel in your office who handle mortgage payoffs are familiar with these guidelines, and refer to Procedure 15 in the Commonwealth Underwriting Manual for the detailed procedure.

As always, if you have any questions, please do not hesitate to contact the State Office.

Loss Prevention Bulletin No. 12-3

TO: **All South Carolina Title Insurance Agents**

DATE: **July 2, 2012**

FROM: **Cynthia Hall Ouzts, Esq.**
Gregory S. Brickle, Esq.
Mark L. Hershberger, Esq.

RE: **Search and Examination**

In 2011 the Company continued to experience losses resulting from search and examination errors. This bulletin will offer suggestions on how to minimize loss in this area.

I. Title Insurance Perspective

A. In General

Title insurance is a contract of indemnity. It indemnifies the insured against actual loss or damage arising from a defect or lien covered by the policy. It is not errors and omissions insurance and the premium charged for title insurance is not commensurate with covering such risks.

Title insurance differs from other forms of insurance in that the title company attempts to identify and eliminate risks as opposed to full risk assumption. "Title insurance is not mere guess work, nor is it a wager. It is based upon careful examination of the muniments of title and exercise of judgment". 7 Powell, *Law of Real Property,* §1029.

B. Risks

1. On-Record

There are two types of risks involved in title insurance: "on-record" and "off-record" risks.

"On-Record" risks are those risks that are uncovered by the title examination. The Company will either: (1) except to liens and defects revealed by the title examination; (2) suggest corrective action to be taken to cure the lien or defect; or (3) make an evaluation as to whether such lien or defect is an insurable risk. The Company's prime directive is to eliminate "On-Record" risks.

2. Off-Record

"Off-record" risks are those which will not be discovered by a title examination. "From the outset, the coverage of a title insurance policy was designed to cover only those hidden defects not discovered in the public records." 7 Powell, *Law of Real Property,* §1028.

3. Company Policy

Accordingly before a title policy may be issued, a satisfactory title examination must be conducted to ascertain and deal with all "On-Record" risks.

II. Length of Title Examination

A. Traditional Time Period

The authorities do not concur concerning the appropriate time period to search the chain of title. Theoretically, the chain should be continued back until a conveyance from the sovereign is located. This approach is not practical because of the expense and time involved.

The period of examination in the eastern states typically is conducted back to some firm muniment or documentary evidence of title, a period of thirty to one hundred years to a point beyond which any claims would be barred by the applicable statute of limitations. Casner A. James, Ed., *American Law of Real Property,* §18.16, Little Brown and Company, Boston 1952. At common law, the search period was fifty to sixty years. Burke D. Barlow, Jr., *Law of Title Insurance §15.1.* The most common search is for sixty years. A shorter search is sometimes requested, but sixty years has been the norm in South Carolina. Barnhill, Blackiston & Morris, *Searching Land Titles in South Carolina,* p.3 (S.C. Bar 1991).

The sixty year period may be based on the forty year adverse possession statute, S.C. Code §15-3-380, which bars actions for recovery of property unless the person has been in possession within forty years and twenty-one years for any period of minority. Prior to February 6, 1975, the age of majority in South Carolina was 21. This sixty-one year period was probably rounded to sixty by custom.

B. Time Period Acceptable for Issuing Title Insurance Policies

1. Forty Years Acceptable

As noted above S.C. Code § 15-3-380 bars actions for the recovery of title unless the person has been in possession within forty years. It is extremely rare that a claim is made based on a defect in the chain of title more than forty years old.

Therefore, for purposes of issuing a title policy, a chain starting with a warranty deed at least forty years old and continued to and including the date of recording of the instrument or estate insured is acceptable, subject to Item 2 below.

2. Residential Subdivision Lots

If searching title in a residential subdivision which has been in existence longer than the forty year period searched, you must make sure that items such as restrictive covenants and utility easements affecting the subdivision are obtained, reviewed and reflected as exceptions in any title policy issued even though they may have been recorded prior to the forty year period.

III. Sources of Title Information

A. In-House Search or Abstract

An in-house search or abstract for a forty year period to a warranty deed is an acceptable source of title information for the issuance of title policies.

B. Outside Abstracts

An abstract by a qualified examiner is often relied upon by certifying attorneys as a basis for issuing policies of title insurance. It is in the best interest of the certifying attorney and the Company that knowledgeable, reputable and careful abstractors who carry E&O coverage be used. As noted above title insurance has never been a product designed to cover errors and omissions in a title examination.

In the event an abstract is used as a basis for issuing a title insurance policy it must be thorough and complete. Copies of all documents affecting title should be included for review by the certifying attorney. It must be carefully examined to determine the extent and nature of the records abstracted or searched. In some instances, special assessments or other encumbrances may not be included in the abstract or search but may affect the title. Additional investigation will be required to determine the existence or nonexistence of these matters.

C. Title Policies/Back Title

An existing title insurance policy issued by the Company or other acceptable title companies may be relied upon as back title information. In the case of an owner's policy, (excluding Advantage Express) the search can be brought forward from the date of policy. In the case of a loan policy, (excluding short form loan policy) the search must be taken back one link in the chain and brought forward. This is necessary to determine if there are any subordinate matters not reflected as an exception in the loan policy.

If you have reason to suspect that the information reflected in an existing policy is not accurate or is incomplete, the policy may not be used for back title.

For instance in the case of lots in residential subdivisions, the prior policy should contain exceptions for covenants and easements which affect the subdivision. If it does not, the prior policy is not reliable back title evidence.

Likewise, a policy which contains only an exception in Schedule B for taxes for the current and subsequent years may not be reliable where the type of property to be insured is customarily subject to easements, CC&RS or other matters.

IV. 2006 ALTA Short Form Residential Loan Policy 6-17-06

A. Search & Exam Period

The Short Form did not replace the 2006 ALTA Loan Policy (6-17-06). It is an additional form of Loan Policy available to the lending community. The Short Form is designed to insure **only** permanent first mortgage liens on fee interests of existing improved one-to-four family residential property. It is not designed to insure temporary construction loans.

As with the 2006 ALTA Loan Policy, a Short Form is issued on each individual mortgage insured. *A lender who obtains a short form policy receives all of the same coverages* as *if the "long form" had been issued in on a one page document.*

B. Abbreviated Title Certifications ("Short Searches")

USE OF SHORT SEARCHES PROHIBITED**:** With regard to residential property only, the Company formerly authorized specific products to be issued based on an abbreviated title certification ("short search"). However, limited use of "short searches" is now prohibited.

C. Underwriting Analysis – Schedule B

1. In General

The Short Form is designed for use in "routine" residential closings on improved property with "routine" covenants, restrictions and easements where there are no problems with encroachments or violations. All title exceptions which appear in your preliminary report or commitment must fall within the generic pre-printed Exceptions and Affirmative Assurances on Schedule B. If any defect, lien or encumbrance does not fall within one of these categories, you must inform the lender **prior to closing** that the coverage of the Short Form is not available without attaching an addendum setting forth additional exceptions.

2. Exceptions from Coverage and Affirmative Assurance

a. Item One excepts to Covenants, Conditions and Restrictions of record. It then provides affirmative insurance that the covenants have not been violated and that a future violation will not result in a reverter or forfeiture of title and that there are no provisions therein which would extinguish, subordinate or impair the lien of the insured mortgage.

All Covenants revealed by the title examination should be reviewed to determine that they do not contain reversionary clauses. They should also be reviewed to determine if there are any present violations. Copies of the Covenants should be maintained in the file even though they are not shown as a specific exception on Schedule B.

b. Item Two excepts to any easements appearing in the public records and provides affirmative insurance that none of the improvements encroach upon the easements and that the easements will not interfere with the improvements.

All easements, whether created by express instrument or shown on a recorded plat, should be reviewed to determine that there are no encroachments by improvements into the easement. If there is such an encroachment, you must determine that the right to use or maintain the easement for the purpose which it was given will not interfere with the right to maintain encroaching improvements.

c. Item Three is a blanket exception pertaining to leases, grants, and exceptions or reservations of mineral rights. It provides affirmative insurance that the use of the land for residential purposes will not be impaired and insures against damage to the improvements by exercise of any mineral right.

You must review all reservations or grants of mineral rights you find in the public record. If such a reservation, grant or lease of mineral rights includes a **right of surface entry,** this policy may not be issued without an exception for the same in the addendum.

3. Underwriting Analysis – Addendum

The addendum is designed to set forth non-generic exceptions. An addendum should be attached and the "Addendum Attached" box checked. If the property is subject to riparian rights, consists of wetlands or abuts water, large encroachments or projections or other unusual defects or liens, exceptions for those matters must be shown in the addendum. If these matters are not shown on the addendum the Company will have liability if those matters cause loss to an insured.

V. Common Search and Exam Claims

A. Ad Valorem Taxes

All taxes, assessments and penalties legally assessed are a first lien upon property taxed, with the lien attaching at the beginning of the year during which the tax lien levied. S. C. Code §12-49-10. The lien attaches as of December 31 to real property for taxes to be assessed and paid during the ensuing year. S.C. Code §12-49-20. No further action is needed to perfect the statutory lien. *Taylor v. Mill,* 310 S. C. 526, 426 S. E 2d 311 (1992).

Missed ad valorem taxes continue to be a source of many claims. You must verify that taxes for the current year (if due and payable) and the prior ten years have been paid.

An exception for taxes for the current and subsequent years, a lien not yet due and payable, should be raised in every binder or policy issued.

B. Tax Sales

Please verify that the reason that the taxes are being showed as paid is not by reason of a tax sale. A tax sale and subsequent tax deed will vest prima facie title in the tax sale purchaser. This will ensure costly claims litigation even if the Company is successful in setting the tax deed aside. Each case must be exercised to discover any tax sales in the chain of title. You must familiarize yourself with how your county treasurer enters tax sales in the public record.

C. Money Judgments and Tax Liens

The Company continues to experience claims from missed judgments and tax liens. Please exercise great caution in searching the judgment and tax lien indices.

In South Carolina money judgments are automatically liens upon the real estate of the judgment debtor in any county in which the judgment or transcript is entered upon the book of abstracts and duly indexed. The duration of the lien is ten years from the date of entry. S. C. Code § 15-35-10. The judgment lien is a general lien on all of the debtor's real estate, *Matter of Hinson,* 20 B. R. 753 (bankruptcy 1982), and will attach not only to property owned by the debtor at the time the judgment is entered, but also to all real estate subsequently acquired during the life of the lien. *South Carolina Tax Commission v. Belk,* 266 S. C. 539, 225 S. E. 2d 177(1976).

The judgment rolls should be examined for money judgments for the last ten (10) years in the name of each owner in the chain of title during that time frame. Foreclosure actions during the last ten years should be checked for *deficiency* judgments which are also a lien. Purchasers should also be checked for judgment liens for the last ten years because such liens will attach to after acquired property.

Please bear in mind that **money judgments** in favor of the **United States of America** are effective for an initial period of **twenty (20) years** and may be renewed for an additional twenty (20) years. 28 U. S. C. § 3201. Money judgments should be checked for twenty years in the name of every owner in the chain during that time frame to ensure that there are no liens in favor of the USA. Purchasers should also be checked for twenty (20) years. Do not confuse this with **federal tax liens** which are enforceable **ten (10) years** from the date of assessment. 26 U. S. C. 6502.

To avoid confusion, please remember that **state tax liens** are effective from the date of assessment and continue in effect for ten (10) years **from the date of the tax lien filing.** S.C. Code § 12-54- 120(A)(1)(b) & (e); S. C. Code § 12-54-122 (A) (5).

Each owner in the chain within the last ten years and purchasers should be checked for federal and state tax liens.

SC UNDERWRITING BULLETIN NO. 12-01

TO: **All South Carolina Title Insurance Agents**

DATE: **January 20, 2012**

FROM: **Cynthia Hall Ouzts, Esq.**
Gregory S. Brickle, Esq.
Mark L. Hershberger, Esq.

RE: **Bankruptcy – Chapter 13 and Lien Stripping**

Attached is Bulletin 2012-RC-01 Lien Stripping in Chapter 13 Bankruptcy Cases from Fidelity National Title Group, Inc. regarding requests to insure sale transactions out of a Chapter 13 Wage Earners Bankruptcy Plan without exception to a junior lien.

Please contact the State Office if you have any questions.

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UNDERWRITING BULLETIN – No. 2012 - RC- 01

TO: All Operations and Agents

FROM: Office of the Chief Underwriting Counsel

DATE: January 19, 2012

SUBJECT: Lien Stripping in Chapter 13 Bankruptcy Cases

We are seeing, with increased frequency, requests to insure sale transactions out of a Chapter 13 Wage Earners Bankruptcy Plan without exception to a junior lien. This is sometimes referred to as "lien stripping".

The bankruptcy attorney moves to have the collateral in the form of a junior secured lien valued at zero, thus making it an unenforceable unsecured lien pursuant to 11 U.S.C. § 506, 1322 (b)(2) and 1327. This motion can be made before or after the Plan is approved, depending upon the requirements of the jurisdiction. As part of the motion, the bankruptcy attorney files an appraisal which establishes that the value of the property is not adequate to even secure the senior encumbrance, and the finding is made that the junior lien is unsecured based on subtracting the value of the senior lien from the fair market value. This order becomes part of the Chapter 13 Plan. **However, the lien is not actually voided until the debtor requests that it be voided upon the entry of the debtor's successful completion of the Plan and discharge. This second order is recorded to clear the lien of record.**

Typically, the Company is requested to insure after entry of the first order while the Plan is ongoing and not defaulted, but before the second order is entered. However, the Company does NOT want to insure these transactions between the first and second orders. The reason is that the vast majority of these Plans do not reach the second order (resulting from a successful completion of the Plan, and motion to avoid the lien of record). The failure rate of these Plans is very high. If the Plan is not successful, the lien holder *does* have the burden of getting an order "restoring the Lien", but the lien will have been of record in the Recorder's office the entire time. The problem is, if the debtor does not complete the Plan, the debtor does not benefit from the "tentative" lien strip.

If the Plan fails, we may not experience a claim or challenge if the junior lien holder does nothing. However, an attentive junior lien holder could move for an order restoring its lien, and at that point, our new insurance would be impacted. There is no way to predict how many of the Plans will fail; and, there is no way to predict how many former junior lien holders will act to restore their lien.

THEREFORE, in order to insure a sale out of a Chapter 13 Wage Earners Bankruptcy Plan, we will NOT rely on the first order described above. Instead, we will require an order pursuant to and in compliance with Bankruptcy Code section 363 to sell the property free and clear of liens. The motion which seeks this order must:

1. identify each lien holder or other party claiming a property right;
2. be served on each such lien holder or party pursuant to Bankruptcy Rule 7004;
3. provide opportunity for an adverse hearing;
4. be consistent with the order confirming the Plan; and
5. result in a final, non-appealable order.

Any exceptions to the above requirements must be discussed with Regional Counsel.

JDW and RJK

MEMORANDUM

TO: **All South Carolina Title Insurance Agents**

DATE: **March 1, 2012**

FROM: **Cynthia Hall Ouzts, Esq.**
Gregory S. Brickle, Esq.
Mark L. Hershberger, Esq.

RE: **Antecedent Debt**

Attached is a new underwriting procedure which had been added to the CLTIC Underwriting Manual. The purpose of the procedure is to prevent the Company, and our insured owners and lenders, from being unnecessarily exposed to title problems arising out of or in connection with mortgages insuring antecedent debts.

Updates to the manual on our website and to the various software programs will be implemented in due course. In the meantime, you may wish to manually add the new exception in your software "Look-Up" tables.

Please contact the State Office if you have any questions.

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19. **PROCEDURE, ANTECEDENT DEBT**

GENERAL RULE: If you are requested to issue a 2006 Loan Policy on a mortgage which secures debt funded over 30 days prior to the mortgage recording please include the following exception in the policy:

D-1 (Exception, Antecedent Debt)

The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage to secure an antecedent debt if the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws.

With respect to recording, when you receive documents for recording that you know secure debt which has not contemporaneously funded, be sure to present these for recording in a timely manner i.e., within 30 days of the funding. If you know that the non-contemporaneously funded secured debt was funded over 30 days prior, present the documents for recording ASAP and include the above exception in the mortgagee policy.

SC UNDERWRITING BULLETIN NO. 12-02

TO: **All South Carolina Title Insurance Agents**

DATE: **March 2, 2012**

FROM: **Cynthia Hall Ouzts, Esq.**
Gregory S. Brickle, Esq.
Mark L. Hershberger, Esq.

RE: **Tenants in Common with Rights of Survivorship**

Recent claims have been filed asserting that one cotenant who holds title to property with another cotenant as tenants in common with a right of survivorship may not unilaterally convey his right, title and interest in the property to the other cotenant.

South Carolina appellate courts have held that the following language creates a tenancy in common with rights of survivorship:

1. "to A & B and the survivor of them,"
2. "to A & B as tenants in common with right to survivorship,"
3. "to A & B for and during their joint lives and upon the death of either of them, then to the survivor of them."

In a typical claim situation husband and wife take title by language which creates a tenancy in common with right of survivorship. Husband then conveys his interest to wife by a general warranty deed. Wife then attempts to convey or mortgage the property. A claim is filed asserting that the husband should have joined in the deed or mortgage because he holds "indestructible" rights under *Davis v. Davis,* 223 S.C. 182, 75 S.E. 2d 46 (1953) and *Smith v. Cutler,* 366 S.C. 546, 623 S.E. 2d 644 (2005).

The above assertions notwithstanding, Commonwealth will insure without exception to the rights of a former tenant in common with rights of survivorship who has conveyed to the other tenant by general warranty deed. Joinder in the deed or mortgage is not necessary for title insurance purposes because the tenant who conveyed has no right, title or interest remaining in the property.

Please verify however that no instrument was filed of record prior to such conveyance wherein the "grantee" cotenant expressly refused to accept such a transfer.

Please contact the State Office if you have any questions.

1911 Gadsden Street 29201 P.O. Box 8357 29202 Columbia, SC
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FAX 803.765.0446
www.sc.cltic.com

SC UNDERWRITING BULLETIN NO. 12-03

TO: **All South Carolina Title Insurance Agents**

DATE: **April 24, 2012**

FROM: **Cynthia Hall Ouzts, Esq.**
Gregory S. Brickle, Esq.
Mark L. Hershberger, Esq.

RE: **Deed-in-Lieu Escrows**

Recently Commonwealth has received requests to act as escrowee in deed-in-lieu transactions.

The usual case is where a mortgagor agrees with its lender that in return for forbearance to foreclose, the lender will arrange for an escrow of a deed-in-lieu from the mortgagor. Usually the lender will seek assurances from CLTIC that if the borrower defaults, the deed-in-lieu will be delivered to the lender and recorded, and that CLTIC will issue a title policy insuring the lender as owner.

Another variation occurs when the lender originates a new loan and requires the escrow of deed-in-lieu as a condition of the loan. Again the lender will be seeking assurances that in the event of default, the deed-in-lieu will be delivered, recorded and insured.

This is a very high risk arrangement and CLTIC is unwilling to participate and will not serve as an escrowee.

Please be aware that as a title agent you are not authorized to enter into a deed-in-lieu escrow on behalf of Commonwealth. If you chose to enter into such an arrangement as an attorney or law firm, you must not indicate in any fashion that you are acting as an agent for Commonwealth. No Company escrow forms should be used or modified for use in such a matter. As a title agent you should not commit to issue a policy for future insurance, either by a title commitment or separate agreement.

Please direct any questions to the State Office.

The information contained in the Memorandum is intended solely for the use of the employees of Commonwealth Land Title Insurance Company, its affiliates and agents. Disclosures to any party not described above are prohibited unless approved by the Company's Legal Department.

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Commonwealth
LAND TITLE INSURANCE COMPANY

SC UNDERWRITING BULLETIN NO. 12-04

TO: **All South Carolina Title Insurance Agents**

DATE: **May 10, 2012**

FROM: **Cynthia Hall Ouzts, Esq.**
Gregory S. Brickle, Esq.

RE: **New CPL Procedure**

In January 2012, a new edition of the ALTA Closing protection Letter (CPL) was introduced which contains a limitation of $5 million. If a transaction involves a loan policy with an Amount of Insurance of more than $5 million, the lender will probably require an amended CPL, so that the protection afforded by the CPL coincides with the Amount of Insurance stated in the loan policy. Title insurance agents are not authorized to alter the text of a CPL using the AgentTRAX system. Only the State Office can request an amended version of the CPL.

Under existing underwriting guidelines all commitments for amounts of $5,000,000 or more, or for an unknown "amount to be determined," must be approved by the State Office, **before** they are issued. When submitting these commitments for over limits authorization, please include a CPL obtained through the AgentTRAX system and the State Office will request the amended version.

Attached are new underwriting procedures reflecting these changes which will be added to the CLTIC Underwriting Manual.

Please contact the State Office if you have any questions.

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PROCEDURE 7: CLOSING PROTECTION LETTERS

A. Background

1. The Company (and other title insurers) often issue agreements called “Closing Protection Letters” (CPL), by which the Company agrees to indemnify a lender against specific losses in the event an Approved Attorney who closes the lender’s transaction fails to carry out the lender’s written closing instructions, or embezzles money. The Company uses a CPL form which was promulgated by American land Title Association (ALTA). In the past, such agreements were sometimes referred to as an “insured closing letter”.

2. CPL’s may be of two types. Some CPL’s apply to all transactions closed by a specific Approved Attorney; these are sometimes referred to as a “blanket closing protection letter.” Other CPL’s which are referred to as a “transaction specific CPL” apply only to one specific transaction closed by a specific Approved Attorney.

3. The Company’s title insurance agents can generate either a blanket CPL or a transaction specific CPL using the AgentTRAX system. Approved Attorneys who are not affiliated with an agency, and agents who experience difficulty with the AgentTRAX system, may request that the State Office issue a CPL, by submitting the information form at the end of this section.

4. CPL’s normally will not be sent to anyone other than a mortgagee who is the lender in the transaction to which the CPL pertains. If more than one lender is present in the transaction, separate CPL’s may be issued for each lender.

5. In January 2012, a new edition of the ALTA Closing Protection Letter (CPL) was introduced, which contains a limitation of $5 million. If a transaction involves a loan policy with an Amount of Insurance of more than $5 million, the lender will probably require an amended CPL, so that the protection afforded by the CPL coincides with the Amount of Insurance stated in the loan policy. Title insurance agents are not authorized to alter the text of a CPL using the AgentTRAX system. The State Office can request an amended version of the CPL. When a draft title insurance commitment is submitted to the State Office for review:

   a. Obtain the regular CPL on line, using the AgentTRAX system; this CPL will contain the $5 million limit.
   b. Send the regular CPL to the State Office, along with the draft title insurance commitment, for review. As part of the review process, the State Office will request a replacement CPL with an increased limit.
   c. If the new CPL is to be sent to the lender at any address other than the address shown on the regular CPL, please specify the person and location to which the new CPL should be sent.

B. Claims

Claims arising under CPL’s should be filed with the Claims Department in Jacksonville, FL., or at such other claims office as the Company may specify. The Company usually contacts the Approved Attorney who closed the transaction to discuss the situation.

Rev. 5/12

MEMO TO: **Jeanette Livingston (jlivingston@cltic.com)**
Commonwealth Land Title Insurance Company
Columbia, SC
FAX # 803-252-4007

Sender _____ **Date:** _____

Phone: _____ **Fax:** _____

Email: _____

RE: Request for Closing Protection Letter (Insured Closing Letter)

☐ **Blanket CPL**

☐ **Transaction Specific CPL**

Lines marked with an asterisk * must be filled in for your request to be properly processed.

***Complete Name of Lender** _____

***Complete Mailing Address:** _____

_____

Attention: _____

***Fax Number OR email address:** _____

Loan Number _____

***Borrower's Name(s):** _____
(not required for blanket letter) _____

***Property Address** _____

***Approved Attorney's Full Name:** _____

***Law Firm** _____

***Street Address** _____

***City/State/Zip** _____

All request forms must be in this office by 4:00 PM to be processed the same day. If received after 4:00 PM request will be processed the next working morning.

1911 Gadsden Street
Columbia, SC 29201
Phone: 803-252-6500 or 800-922-5842

PROCEDURE 5: OVER LIMITS LETTERS

Commitments with Amount of Insurance under $5,000,000

Whenever agents are requested to write a commitment or policy in excess of the limits established in their agency contracts, it is necessary to obtain State Office permission. Our main concern is to identify extraordinary risks and to deal with them properly in accordance with Company underwriting procedures. You will be asked whether there are any unusual risks regarding the title. If there are none, permission will normally be granted and will be confirmed by a letter (sometimes referred to as an "over limits letter", or "large risk letter") or email which should be retained in your files. In cases involving coverage over $5 million, a copy of the over limits letter should be attached to the copy of the policy which is transmitted to the Agency Service Center.

Commitments for Amount of Insurance of $5,000,000 or more, or for an "Amount to be Determined"

A. All commitments for amounts of $5,000,000 or more, or for an unknown "amount to be determined," must be approved by the State Office, **before** they are issued. You will be given confirmation in writing if the commitment is approved as to form.

B. The Company's review of commitments pertains solely to insurance procedures and form, and not substantive matters of fact or law.

C. We recommend that you send the commitment to us by fax, e-mail or express mail a few days prior to the date you need to issue it. This will allow time for discussion of any required changes or affirmative coverage that you know will be needed. If you have a "punch list" of endorsements required by the lender, please send it with the draft commitment.

D. In January 2012, a new edition of the ALTA Closing protection Letter (CPL) was introduced, which contains a limitation of $5 million. If a transaction involves a loan policy with an Amount of Insurance of more than $5 million, the lender will probably require an amended CPL, so that the protection afforded by the CPL coincides with the Amount of Insurance stated in the loan policy. Title insurance agents are not authorized to alter the text of a CPL using the AgentTRAX system. The State Office can request an amended version of the CPL. When a draft title insurance commitment is submitted to the State Office for review:

   1. Obtain the regular CPL on line, using the AgentTRAX system; this CPL will contain the $5 million limit.
   2. Send the regular CPL to the State Office, along with the draft title insurance commitment, for review. As part of the review process, the State Office will request a replacement CPL with an increased limit.
   3. If the new CPL is to be sent to the lender at any address other than the address shown on the regular CPL, please specify the person and location to which the new CPL should be sent.

Requests for Over Limits Letters

Agents can request authorization by sending a request by FAX or email to the State Office using the following form.

TITLE INSURANCE AGENT'S REQUEST FOR AUTHORIZATION TO ISSUE TITLE INSURANCE IN AMOUNTS IN EXCESS OF AGENT'S CONTRACT LIMITS (TITLE INSURANCE FOR AMOUNT LESS THAN $5 MILLION)

DATE: _____

REQUEST SUBMITTED BY:

Name: _____
Name of Agency: _____
Address: _____
_____

AGENT'S FILE/CASE NUMBER: _____

Phone number: _____
FAX number: _____
e-mail address: _____

Name of Owner to be Insured: _____
Amount of Insurance Requested: _____

Name of Lender to be Insured: _____
Amount of Insurance Requested: _____

Are there any unusual matters affecting title? YES ☐ NO ☐

If the answer is "yes", describe them: _____
_____
_____

Describe any unusual title insurance coverages requested (or put "NONE"):
_____
_____
_____

Give a brief description of land to be insured (physical address):
_____
_____
_____

AUTHORIZATION

Thank you for your request. It is our understanding there are no unusual title issues, no unusual title insurance coverages have been requested, and the amount of insurance requested is less than $5 million. Based on the information you have provided, you are authorized to provide insurance in the amount(s) requested. Normal Company underwriting procedures, forms and filed rates are applicable. If you have any questions concerning title insurance underwriting, please contact the State Office. Thank you.

Commonwealth Land Title Insurance Company

BY: _____

Date: _____

IF THE AMOUNT OF INSURANCE REQUESTED IS $5 MILLION OR MORE, OR IF THE AMOUNT OF INSURANCE IS TO BE DETERMINED AND MAY POSSIBLY BE $5 MILLION OR MORE, SEND A DRAFT COMMITMENT TO THE STATE OFFICE AND DO NOT ISSUE THE COMMITMENT UNTIL YOU HAVE RECEIVED WRITTEN AUTHORIZATION.

Rev. 6/10

Commonwealth
LAND TITLE INSURANCE COMPANY

SC UNDERWRITING BULLETIN NO. 12-07

TO: **All South Carolina Title Insurance Agents**

DATE: **July 11, 2012**

FROM: **Cynthia Hall Ouzts, Esq.**
Gregory S. Brickle, Esq.
Mark L. Hershberger, Esq.

RE: **Verification of Bank of America Short Sale Approval Letters**

The Company has received a high number of claims involving the reliance on fraudulent short sale approval letters that were allegedly issued by Bank of America ("B of A"). In an effort to identify and prevent the use of the fraudulent approval letters B of A has launched an initiative to allow verification of approval letters presented to, or in the possession of, title companies. This service became available nationwide effective July 2, 2012, and can be used by direct operations and independent agents of the FNTG Family of Underwriters.

Authorization from the borrower is no longer required and B of A does not need to have written authorization for you to call. All you need is an approval letter in hand that B of A can verify. Written authorization is still required if you are not in possession of the approval letter.

Verification of approval letters can be obtained by calling the B of A Customer Care Department at 1-866-880-1232, Option 1. Note that all valid approval letters will include the following disclosure: "*Bank of America appreciates all of your efforts and cooperation in this matter. If you have any further questions, please contact our Short Sale Customer Care Department at 1-866-880-1232, Option 1.*" Approval letters that do not include that language are presumed to be invalid.

The B of A Customer Care hours of operation are Monday through Friday, 8 a.m. to 10 p.m. Eastern and Saturday, 9 a.m. to 5:30 p.m. Eastern.

B of A will verify the following information from the approval letter – As noted above be sure that you have the approval letter in hand during the verification process:

1. Loan number.
2. Property address.
3. Closing deadline date.
4. Original borrower's name.
5. Approved buyer's name.
6. Short Sale sales price amount.
7. Net proceeds amount to Bank of America.
8. *Note: B of A has agreed to add the payoff amount approved for junior lienholders, but it is not known when this information will be available. It is therefore suggested that you attempt to verify junior lienholder payoff amounts each time you contact B of A.*

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If the B of A Customer Care Associate can verify the legitimacy of the letter they will provide you with the following response upon completion of the verification process: *"Thank you, the information you provided is valid and accurate. We appreciate your partnership in this effort. Thank you for calling Bank of America."*

If the B of A Customer Care Associate cannot verify the legitimacy of the letter they will provide you with the following response upon completion of the verification process: *"Thank you for your responses. Based on the information you provided, I am not able to validate the approval letter you received. This incident will be escalated for further review. Close of escrow is not approved for this property. A representative from Bank of America will be contacting you with further information within 24 hours. We appreciate your partnership in this effort. Thank you for calling Bank of America."*

Because the verification from B of A is verbal all files should be documented with the date, time and outcome of the call.

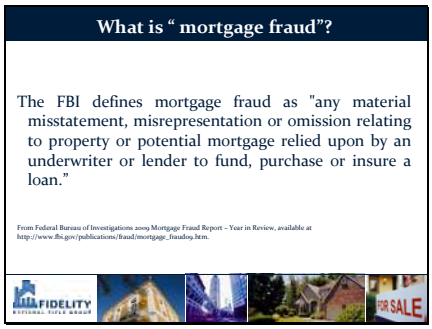
If you have any questions please contact:

Jeff Boas
Manager and Counsel, Title Loss Reduction and Education Department
Claims Department
Jacksonville, Florida
Office: 904-854-3475
Mobile: 904-576-1240

Ethics: Fraud Detection and Prevention

Slide 1

Slide 2



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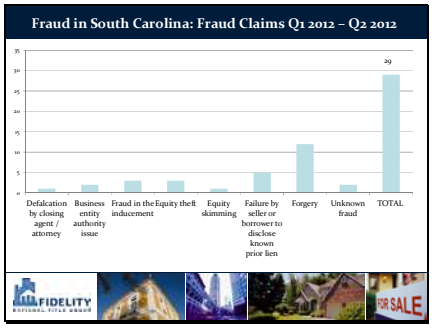

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Short Sale Fraud

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Short Sale Fraud Definition

Short sale fraud occurs when a party to the transaction deliberately misrepresents a fact *or omits a fact* to induce a lender, investor, or insurer to agree to a short sale that it would not have approved if it had known the truth.

From "Emerging Fraud Trends: Short Payoff Fraud," available at http://www.freddiemac.com/singlefamily/news/2010/0422_payoff_fraud.html

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Common Short Sale Fraud Schemes

- Undisclosed Payments
- Flopping
- Short Sale Buyback
- Fake Short Sale Approval Letters

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Fake Short Sale Approval Letters – Claim Example

In June 2012, three Southern California men, Atiqullah Nabizada, Kenneth Moore, and Ahmed Tariq Asghari were arrested after a grand jury returned two indictments charging them with bank fraud, wire fraud and aggravated identity theft in connection with the short sale fraud scam. They face a maximum sentence of 32 years in prison.

http://losangeles.cbslocal.com/2012/06/15/3-indicted-in-10m-short-sale-identity-theft-scams

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Fake Short Sale Approval Letters – Claim Example

"This is a big case for the FBI in Los Angeles, focusing on defrauding homeowners, banks, lenders, real estate schemes targeting distressed homeowners and short sale properties."
- FBI Special Agent Rich Ryan

Federal agents executing search warrants at the three fraudsters' homes and businesses seized over $1.7 million held in bank accounts, $548,937 in cash, two Bentleys and a Mercedes.

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Short Sale Fraud Red Flags

- Disbursements that have not been expressly approved by the loan servicer.
- Multiple HUD-1 settlement statements or payments made outside of escrow or "off the HUD."
- Short sale offering price is less than current market value.
- Sudden default, no workout discussions, and immediate offer at short sale price.
- Mortgage delinquency is inconsistent with borrower's spending, saving and other credit patterns.
- Short sale offer is from a related party.
- The Buyer and Real Estate Agent are the same person or are related parties.
- Quick (less than a month) turn-around time for short sale approval.

Source: https://www.efanniemae.com/utility/legal/pdf/fraudschchar.pdf

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Short Sale Fraud Prevention Tips

- Contact the lender directly to verify that the short sale approval letter is legitimate and the payoff amount is correct.
- Disburse payoff funds directly to the lender.
- Always get lender approval of the final HUD-1. Do not disburse any funds unless expressly approved by the lender.
- Obtain the executed mortgage satisfaction from the lender as soon as possible after closing and confirm that it has been recorded.

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Foreclosure Rescue/Mortgage Relief Assistance Fraud

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Foreclosure Rescue/Mortgage Relief Assistance Fraud

- Mortgage Relief Assistance Fraud: the homeowner is deceived into paying up-front fees to a scammer who promises to take steps to save the homeowner from foreclosure.
- Foreclosure Rescue Fraud: the homeowner is deceived into signing over title to the property with the belief that:
  - he will be able to remain in the house as a renter and eventually buy it back over time; or
  - he is signing documents to bring the mortgage current, but instead actually surrenders his ownership.

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Foreclosure Rescue Fraud Schemes

- Rent-to-Buy or Investor Lease-Back Scheme
- Bailout Scheme
- Bait-and-Switch Scheme

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Foreclosure Rescue/Mortgage Relief Assistance Fraud Red Flags

For Consumers:

- The foreclosure rescue company/credit counselor requires an upfront fee.
- Credit counselor guarantees that they can stop a foreclosure or get a loan modified.
- Credit counselor advises you to make mortgage payments directly to them, not the lender.
- Credit counselor/rescue company pressures you to sign over the deed to your home.

For Agents/Closers:

- Credit counselor accepts payment only by cashier's check or wire transfer.
- All communication regarding the transaction are with the "credit counselor."
- Credit counselor pressures the seller to sign the closing documents quickly without reading them at the closing.
- The buyer is paying less than fair market value for the property.
- Closing documents contain blanks, large blank spaces in the middle of the page, the signature page is unnecessarily a separate page, or the closing documents don't contain page numbers.

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Foreclosure Rescue/Mortgage Relief Assistance Fraud Prevention Tips

- Make sure the buyer and seller have received copies of the closing documents in advance of the closing.
- Make sure all closing documents are filled out completely at the closing table.
- Make copies of the closing documents immediately after closing.
- Make sure the "credit counselor" or foreclosure rescue company has an active state license.
- Be wary of any up-front payments or payees requiring cashier's checks.
- If the transaction involves the sale or refinance of encumbered property, confirm that the prior lender is aware of and involved in the transaction.

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Identity Theft Schemes

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Identity Theft Example: Red Flags

- Agent personnel communicated only with the "consultant," not the sellers or buyers, prior to closing.
- Sellers and buyers closed at two different locations in the same city at the same time.
- Sellers did not speak at the closing and produced fake out-of-state drivers' licenses as proof of ID.
- HUD-1 showed the sellers receiving no proceeds from the sale but showed $190,000 to be disbursed to "Contractor" and "Consultant."
- The real estate consultant changed one of the "Contractor" invoices by hand at closing to match the amount on the HUD-1.

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Preventing Identity Theft at Your Closings

- Confirm identities of the parties to the transaction.
- Confirm credentials and roles of third party representatives.
- Be cautious in transactions involving mail away closings and mobile notaries.
- Be wary of faxed documents sent in lieu of original or certified copies.
- If closing at two different locations, know what took place at both closings and who was there.
- Perform due diligence when a Power of Attorney is used.
- Question transactions where HUD-1 shows all proceeds being disbursed to third parties (not sellers).
- Do not disburse seller proceeds to third parties.

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Agent Impersonation Scheme

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Agent Impersonation Example: Red Flags

- Policy was an older form and didn't have a valid policy number.
- Florida Department of Financial Services and Department of State had no record of the fake agent.
- Florida Bar had no record of the attorney principal of the fake agent.
- Both the fake agent's and the seller's addresses were virtual offices in Miami.
- The fake agent would not communicate via phone – only email.

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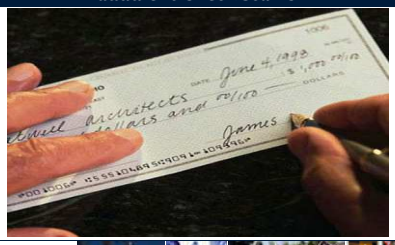
Agent Impersonation Prevention Tips

- Don't automatically rely on the work of other title agents.
- Familiarize yourself with current policy forms.
- Verify that the information on the policy is accurate.
- If you share office space or rent space to other real estate professionals, make sure your policy stock or access to online policy systems is secure at all times.
- Reach out to your Agency Management team or Underwriting Counsel with any questions or concerns.
- Trust your instincts – if something doesn't seem right, it probably isn't.

Slide 25

Fraudulent Check Scams



Slide 26

Spotting a Fraudulent Check Scam

- Check is not expected by agent or arrives with minimal or no additional documentation.
- Check is drawn on a foreign bank account.
- Prospective buyer/payor is out-of-state or out of the country.
- Check amount is greater than the earnest money deposit amount.
- Communication with prospective buyer/payor is via email.
- Prospective buyer/payor indicates urgency and directs the agent to deposit the check and cut a check back for the overage.

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Fraudulent Check Scam Prevention Tips

- Contact the bank the check is drawn on to verify the validity of the check and that the account it is drawn on contains sufficient funds.
- Look up the bank's routing number on your wire transfer website to verify that the check routing number is correct.
- Confirm that the funds are "**good funds**" that have cleared your account before you cut a check.
- Be aware that the deposited check may be rejected AFTER the funds out have cleared.

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Escrow Disbursement Fraud

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Escrow Fraud Prevention Tips

- **ALL** payments should be properly disclosed on the HUD-1 settlement statement.
- Disburse funds only to the entity or individual shown as the payee on the settlement statement.
- If the disbursement instructions change, have a new HUD-1 executed by all parties prior to disbursement of any funds.
- Confirm that prior liens are satisfied or released before issuing the title policy.
- When sending the funds via wire, be prudent - contact the bank to verify who owns the account.

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Escrow Fraud Prevention Tips

- NEVER reflect monies going into and out of your account unless they actually do.
- ALWAYS disclose to the lender any monies (or benefit of a forgiveness of debt) going back to seller/borrower or a relative.
- ALWAYS make sure that the commitment accurately reflects the status of title and required number of deed transactions.
- Question transactions where:
  - proceeds are requested to be transferred outside of U.S.;
  - escrow deposits being paid after closing (i.e. possibly from proceeds);
  - escrow deposits being paid by non-parties to the purchase contract;
  - HUD-1 shows unusually high fees to a vendor or the vendor is not typically part of escrow (i.e. landscape or painting company).

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Agent Defalcations

Definition: a misappropriation or embezzlement of trust or escrow funds held in a fiduciary capacity.

In 2011, the FNTG family of companies reported over **$17,000,000** in shortages caused by agent defalcations.

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Agent Defalcation Red Flags

- Payoff or premium check returned for insufficient funds.
- Slow or late payoff of a prior lien or mortgage.
- Failure of a lender to receive payoff funds as per the HUD-1.
- Agent's failure to reconcile trust/escrow accounts regularly.
- Monthly mortgage payment made by the agent after the transaction – lenders often tip us off when they notice a change in the payee and agent becomes payee.

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Defalcation Case Study #1– Agent Principal

- February 2012 – FNTG Claims Center received a lender's claim for unpaid prior mortgages. Agent principal claimed she had been duped by borrowers at the closings but had obtained the payoff funds from them.
- Mid-March 2012 - Agent principal admitted that the borrower had never actually provided the payoff funds and she had lied to buy time. The Company immediately terminated the agent.
- Late March 2012 – Company discovered that, in addition to stacking mortgages on the property which was subject of initial claim, agent principal stacked over $4 million in mortgages on her personal residence.
- Late March 2012 – Company filed suit. We reported the matter to the Secret Service, which has opened a joint investigation with the FBI. We reported the agent principal to the VA Bar and the VA Bureau of Insurance.
- The Company now has over 22 claims related to this defalcation with exposure over $4.7 million.

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Defalcation Case Study #2– Agent Employee

- February 2012 – agent principal contacted Underwriter to report three checks out of his trust account made payable to his bookkeeper.
- Employee had worked for the attorney for over **20 years**.
- IIU auditors assisted in a forensic analysis of trust account and discovered additional checks made payable to the employee, totaling **$216,000.**
- Theft had been ongoing for almost two years before the discovery.
- The employee had been managing the trust account exclusively during that time, with no oversight or review by the principal.
- IIU auditors discovered that the last time the principal had reconciled the account was October 2007.

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Preventing Defalcation in Your Agency

- ***DO*** use positive pay and three-way reconciliation methods.
- ***DO*** perform reconciliations timely.
- ***DO*** prepare diligently for audits - explain any discrepancies to the auditor in advance.
- ***DO*** view the audit process as a way to improve your accounting methods.
- ***DO*** have checks and balances in place.
- ***DO*** perform background checks on anyone who is handling escrow funds, sending wires, preparing checks and signing checks or other documents.

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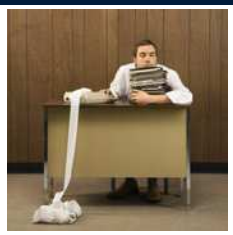
Tips for Internal Controls/ Best Practices



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Internal Controls/Best Practices

- Supervision & Control
  - Be involved in the day-to-day operation of your agency.
- Authorization
  - Do not pre-sign checks or use signature stamps.
  - Adequately secure unused check stock as well as notary stamps.
  - Secure incoming bank statements.
- Segregation of Duties
  - Ideally, authorization, signing, recording and reconciliation should be done by separate people.
  - Check signer should not reconcile the account.
  - Partners should divide or rotate duties.

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Internal Controls / Best Practices

Employees

- Long-term employees, family and friends are often the worst offenders.
- Make sure that employees know their work is being reviewed.
- Background checks are a small expense with a large return.
- Consider a compensation structure other than fluctuating monthly commission.
- Rotate job duties between employees; require employee vacation.
- Be observant of significant changes in employees lifestyles.

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Internal Controls/Best Practices - Accounting

Accounting Review

- Review trial balance report frequently; inquire into odd balances.
- Review payoff disbursements; ensure clearance of payoffs within 3 business days.
- Disburse or escheat dormant file balances.
- Review voided checks periodically to confirm proper reissue.
- Review outstanding checks periodically; cancel & reissue.
- Review check images for cleared checks periodically for questionable payments and amounts and review against ledger for altered payees.
- Compare cleared check lists from escrow software to bank statement.

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Prevent, Detect, Mitigate

- Be diligent.
- Be professionally skeptical.
- Ask questions when something doesn't feel right.
- Don't try to hide problems - delay makes it worse.
- Communicate with your Agency Representative, Manager, or Underwriter.