



Meeting Commitment Requirements

Presented by:
LEGAL EDUCATION DEPARTMENT
of
Attorneys' Title Fund Services, LLC

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All references herein to title insurance policy forms and endorsements are
intended to refer to the policy forms and endorsements issued by Fund members
as duly appointed title agents of Old Republic National Title Insurance Company.

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AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Commitment Number: <i>Chopra to Black</i>	Revision Number: <i>None</i>	Issuing Office File Number: <i>Chopra to Black</i>	Issuing Agent: <i>5555</i>
Property Address: <i>2059 Tillman Avenue Winter Garden, FL 34787</i>	Loan ID Number: <i>61638695</i>	Issuing Office's ALTA® Registry ID: <i>0112233</i>	Issuing Office: <i>Keebler, Nabisco & Amos, P.A.</i>

SCHEDULE A

1. Commitment Date: May 13, 2023 @ 11:00 PM
2. Policy to be issued:

Proposed Amount of Insurance:

 - a. OWNER'S: 2021 ALTA® Owner's Policy with Florida Modifications

\$550,000.00

Proposed Insured: Edward F. Black and Pamela M. Black

The estate or interest to be insured: Fee Simple
 - b. MORTGAGEE: 2021 ALTA® Loan Policy with Florida Modifications

\$410,000.00

Proposed Insured: Nutter Butter Bank, its successors and/or assigns as their interests may appear

The estate or interest to be insured: Fee Simple
3. The estate or interest in the Land at the Commitment Date is: Fee Simple
4. The Title is, at the Commitment Date, vested in: Sonia Chopra and Rahul B. Chopra, wife and husband and, as disclosed in the Public Records, has been since April 12, 2007.
5. The Land is described as follows: Lot 86, BRONSON'S LANDINGS, according to the Plat thereof, recorded in Plat Book 66, Page 139, of the Public Records of Orange County, Florida.

Old Republic National Title Insurance Company
1408 Westshore Blvd, Suite 900, Tampa, Florida, 33607, (612) 371-1111

Wally Amos

AUTHORIZED SIGNATORY
Wally Amos, Attorney at Law

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by Old Republic National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Schedule B-I

Issuing Office File Number: Chopra to Black

REQUIREMENTS

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
 - (1) Warranty Deed from Sonia Chopra and Rahul B. Chopra, wife and husband, to Edward F. Black and Pamela M. Black, husband and wife.
 - (2) Mortgage from Edward F. Black and Pamela M. Black, husband and wife, to Nutter Butter Bank in the amount of \$410,000.00.
5. An update of the title search must be completed just prior to the closing and the commitment must be endorsed to require clearance of, or take exception for, any additional title defects or adverse matters found.
6. Record satisfaction of the mortgage from Sonia Chopra and Rahul Chopra to Bank of America, N.A., dated April 2, 2007, and recorded in O.R. Book 9209, Page 1399, Public Records of Orange County, Florida.
7. Satisfaction of the revolving credit mortgage in favor of Bank of America, N.A., recorded May 21, 2007, in O.R. Book 9266, Page 4797, Public Records of Orange County, Florida. Said mortgage must be closed to future draws prior to closing, the payoff amount must be verified the day of closing, and owner must give an affidavit that owner has no checks or credit or debit cards facilitating draws from the account. Confirm that the Satisfaction of Mortgage is recorded post-closing.
8. Record satisfaction or affidavit of non-identity containing the legal description of the real property to be insured and sufficiently establishing that the affiant is not the same person named in the federal tax lien recorded under the following Official Records: Instrument No. 2019-543912 and Instrument No. 2020-0000741, Public Records of Orange County, Florida.
9. The official records show one or more certified judgments or state tax liens against Rahul Chopra, individually, or a similarly named person. Since it appears title was taken and may have been continuously held as tenants by the entirety, these judgments or tax liens have not been listed. It is necessary for you to evaluate how title was taken and has been held to date. If you determine that such liens may have attached to the property covered herein, this product will be modified, at your request to list and provide copies of these instruments. See T.N. 18.03.05 and 30.06.
10. Execution of closing affidavit by appropriate parties representing possession and no adverse matters, including actions taken by owner or others that would give rise to litigation or lien.
11. Closing funds are to be disbursed by or at the direction of the Title Agent issuing this policy.
12. Homeowner's Association estoppel letter must be furnished showing that all assessments are current and that there are no unpaid special assessments.

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AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Schedule B-I (Continued)

Issuing Office File Number: Chopra to Black

- 13.** That certain Notice of Commencement recorded in Document #20230152273, Public Records of Orange County, Florida, shall be deleted, when the following requirements are met:
- (1) Obtain an owner's affidavit which contains the following:
 - (a). names and addresses of all persons serving notice to owner pursuant to Sec. 713.06(2), F.S., (or if none received, the affidavit should so state),
 - (b). a statement that a personal inspection of the property was made to determine whether persons posted a notice to owner on the property,
 - (c). the names and addresses of all persons having privity of contract with the owner under Sec. 713.05, F.S.,
 - (d). a statement that the improvement described in the notice of commencement has been completed, (identifying the notice by book and page where recorded),
 - (e). a statement that the owner has obtained the affidavit required by Sec. 713.06(3)(d)(1), F.S., from all parties having privity of contract with the owner under Sec 713.05, F.S., and
 - (f). a statement that all persons serving notice to owner, and all persons having privity of contract with the owner under Sec. 713.05, F.S., have been paid in full.
 - (2) A Waiver and Release upon Final Payment under Sec. 713.20(5), F.S., must be obtained from all personal serving notice to owner and from all persons having privity of contract with the owner under Sec. 713.05, F.S.

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AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Schedule B-II

Issuing Office File Number: Chopra to Black

EXCEPTIONS FROM COVERAGE

SOME HISTORICAL LAND RECORDS CONTAIN DISCRIMINATORY COVENANTS THAT ARE ILLEGAL AND UNENFORCEABLE BY LAW. THIS COMMITMENT AND THE POLICY TREAT ANY DISCRIMINATORY COVENANT IN A DOCUMENT REFERENCED IN SCHEDULE B AS IF EACH DISCRIMINATORY COVENANT IS REDACTED, REPUDIATED, REMOVED, AND NOT REPUBLISHED OR RECIRCULATED. ONLY THE REMAINING PROVISIONS OF THE DOCUMENT WILL BE EXCEPTED FROM COVERAGE.

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I Requirements are met.
2.
 - a. General or special taxes and assessments required to be paid in the year 2023 and subsequent years.
 - b. Rights or claims of parties in possession not recorded in the Public Records.
 - c. Any encroachment, encumbrance, violation, variation or adverse circumstance that would be disclosed by an inspection or an accurate and complete land survey of the Land and inspection of the Land.
 - d. Easements or claims of easements not recorded in the Public Records.
 - e. Any lien, or right to a lien, for services, labor or material furnished, imposed by law and not recorded in the Public Records.
3. Any Owner's Policy issued pursuant hereto will contain under Schedule B the following exception: *Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the Land insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.*
4. This policy does not insure against loss of damage by reason of the following exceptions:

Any rights, easements, interests or claims which may exist by reason of, or reflected by, the following facts shown on the survey prepared by American Surveying and mapping dated February 23, 2007:
 - a. Five foot drainage and utility easement along the north lot line of subject property.
 - b. Ten foot drainage easement along the east lot line of subject property.
 - c. Five foot drainage and utility easement along the south lot line of subject property.
 - d. Twelve foot utility easement along the west line of subject property which is encroached upon by a drive.
5. All matters contained on the Plat of Bronson's Landings, as recorded in Plat Book 66, Page 139, Public Records of Orange County, Florida.
6. Surveyor's Affidavit recorded in Official Records Book 9361, Page 4281, Public Records of Orange County, Florida.

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AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Schedule B-II (Continued)

Issuing Office File Number: Chopra to Black

7. Development Agreement recorded July 8, 2002, in Official Records Book 6560, Page 9077, Public Records of Orange County, Florida (hereinafter "Development Agreement"). Such Development Agreement may establish and provide without limitation for restrictions regarding land use and development.
8. Use Agreement recorded March 21, 2006, in Official Records Book 8539, Page 4387, Public Records of Orange County, Florida (hereinafter "Use Agreement"). Such Use Agreement may establish and provide without limitation for obligations pertaining to landscaping, irrigation, and maintenance of paved roads and pavement markings.
9. Covenants, conditions, rights, assessments, easements and restrictions recorded September 18, 2006, in Official Records Book 8865, Page 1636, Public Records of Orange County, Florida (hereinafter "Declaration"). Such Declaration may establish and provide without limitation for easements, liens, charges, assessments, or option to purchase, a right of first refusal and/or the prior approval of a future purchaser or occupant.
10. Any lien provided by County Ordinance or by Ch. 159, F.S., in favor of any city, town, village or port authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.

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AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Commitment Number: <i>Chopra to Black</i>	Revision Number: <i>2</i>	Issuing Office File Number: <i>Chopra to Black</i>	Issuing Agent: <i>5555</i>
Property Address: <i>2059 Tillman Avenue Winter Garden, FL 34787</i>	Loan ID Number: <i>61638695</i>	Issuing Office's ALTA® Registry ID: <i>0112233</i>	Issuing Office: <i>Keebler, Nabisco & Amos, P.A.</i>

SCHEDULE A

1. Commitment Date: June 13, 2023 @ 11:00 PM
2. Policy to be issued:

a. OWNER'S: 2021 ALTA® Owner's Policy with Florida Modifications	Proposed Amount of Insurance:
Proposed Insured: Edward F. Black and Pamela M. Black	\$550,000.00
The estate or interest to be insured: Fee Simple	
b. MORTGAGEE: 2021 ALTA® Loan Policy with Florida Modifications	\$410,000.00
Proposed Insured: Nutter Butter Bank, its successors and/or assigns as their interests may appear	
The estate or interest to be insured: Fee Simple	
c. MORTGAGEE: 2021 ALTA® Loan Policy with Florida Modifications	\$(enter text here)
Proposed Insured: (enter text here)	
The estate or interest to be insured: (enter text here)	
3. The estate or interest in the Land at the Commitment Date is: *(Identify each estate or interest covered, i.e., fee, leasehold, etc.)* Fee Simple
4. The Title is, at the Commitment Date, vested in: *(Identify vesting for each estate or interest identified in Item 3 above)* Sonia Chopra and Rahul B. Chopra, wife and husband and, as disclosed in the Public Records, has been since *(Date)* April 12, 2007.
5. The Land is described as follows: Lot 86, BRONSON'S LANDINGS, according to the Plat thereof, recorded in Plat Book 66, Page 139, of the Public Records of Orange County, Florida.

Old Republic National Title Insurance Company
1408 Westshore Blvd, Suite 900, Tampa, Florida, 33607, (612) 371-1111

Wally Amos

AUTHORIZED SIGNATORY
Wally Amos, Attorney at Law

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COMMITMENT
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ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Schedule B-I

Issuing Office File Number: Chopra to Black

REQUIREMENTS

All of the following Requirements must be met:

- Wa 1:* ~~The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.~~
- Wa 2:* ~~Pay the agreed amount for the estate or interest to be insured.~~
- Wa 3:* ~~Pay the premiums, fees, and charges for the Policy to the Company.~~
- Wa 4:* ~~Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.~~
- Wa (1)* ~~Warranty Deed from Sonia Chopra and Rahul B. Chopra, wife and husband, to Edward F. Black and Pamela M. Black, husband and wife.~~
- Wa (2)* ~~Mortgage from Edward F. Black and Pamela M. Black, husband and wife, to Nutter Butter Bank in the amount of \$410,000.00.~~
- Wa 5:* ~~An update of the title search must be completed just prior to the closing and the commitment must be endorsed to require clearance of, or take exception for, any additional title defects or adverse matters found.~~
- Wa 6:* ~~Record satisfaction of the mortgage from Sonia Chopra and Rahul Chopra to Bank of America, N.A., dated April 2, 2007, and recorded in O.R. Book 9209, Page 1399, Public Records of Orange County, Florida.~~
- Wa 7:* ~~Satisfaction of the revolving credit mortgage in favor of Bank of America, N.A., recorded May 21, 2007, in O.R. Book 9266, Page 4797, Public Records of Orange County, Florida. Said mortgage must be closed to future draws prior to closing, the payoff amount must be verified the day of closing, and owner must give an affidavit that owner has no checks or credit or debit cards facilitating draws from the account. Confirm that the Satisfaction of Mortgage is recorded post-closing.~~
- Wa 8:* ~~Record satisfaction or affidavit of non-identity containing the legal description of the real property to be insured and sufficiently establishing that the affiant is not the same person named in the federal tax lien recorded under the following Official Records: Instrument No. 2019-543912 and Instrument No. 2020-0000741, Public Records of Orange County, Florida.~~
- Wa 9:* ~~The official records show one or more certified judgments or state tax liens against Rahul Chopra, individually, or a similarly named person. Since it appears title was taken and may have been continuously held as tenants by the entirety, these judgments or tax liens have not been listed. It is necessary for you to evaluate how title was taken and has been held to date. If you determine that such liens may have attached to the property covered herein, this product will be modified, at your request to list and provide copies of these instruments. See T.N. 18.03.05 and 30.06.~~
- Wa 10:* ~~Execution of closing affidavit by appropriate parties representing possession and no adverse matters, including actions taken by owner or others that would give rise to litigation or lien.~~
- Wa 11:* ~~Closing funds are to be disbursed by or at the direction of the Title Agent issuing this policy.~~
- Wa 12:* ~~Homeowner's Association estoppel letter must be furnished showing that all assessments are current and that there are no unpaid special assessments.~~

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AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Schedule B-I (Continued)

Issuing Office File Number: Chopra to Black

~~Wa 13. That certain Notice of Commencement recorded in Document #20230152273, Public Records of Orange County, Florida, shall be deleted, when the following requirements are met:~~

- ~~(1) Obtain an owner's affidavit which contains the following:~~
 - ~~(a) names and addresses of all persons serving notice to owner pursuant to Sec. 713.06(2), F.S., (or if none received, the affidavit should so state);~~
 - ~~(b) a statement that a personal inspection of the property was made to determine whether persons posted a notice to owner on the property;~~
 - ~~(c) the names and addresses of all persons having privity of contract with the owner under Sec. 713.05, F.S.;~~
 - ~~(d) a statement that the improvement described in the notice of commencement has been completed, (identifying the notice by book and page where recorded);~~
 - ~~(e) a statement that the owner has obtained the affidavit required by Sec. 713.06(3)(d)(1), F.S., from all parties having privity of contract with the owner under Sec. 713.05, F.S., and~~
 - ~~(f) a statement that all persons serving notice to owner, and all persons having privity of contract with the owner under Sec. 713.05, F.S., have been paid in full.~~
- ~~(2) A Waiver and Release upon Final Payment under Sec. 713.20(5), F.S., must be obtained from all personal serving notice to owner and from all persons having privity of contract with the owner under Sec. 713.05, F.S.~~

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Schedule B-II

Issuing Office File Number: Chopra to Black

EXCEPTIONS FROM COVERAGE

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The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

- Wa* ~~1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I Requirements are met.~~
2. a. General or special taxes and assessments required to be paid in the year 2023 and subsequent years.
- Wa* ~~b. Rights or claims of parties in possession not recorded in the Public Records.~~
- c. INTENTIONALLY DELETED.
- Wa* ~~d. Easements or claims of easements not recorded in the Public Records.~~
- Wa* ~~e. Any lien, or right to a lien, for services, labor or material furnished, imposed by law and not recorded in the Public Records.~~
- Wa* ~~3. Any Owner's Policy issued pursuant hereto will contain under Schedule B the following exception: Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the Land insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.~~
4. INTENTIONALLY DELETED.
5. All matters contained on the Plat of Bronson's Landings, as recorded in Plat Book 66, Page 139, Public Records of Orange County, Florida.
6. Surveyor's Affidavit recorded in Official Records Book 9361, Page 4281, Public Records of Orange County, Florida.
7. Development Agreement recorded July 8, 2002, in Official Records Book 6560, Page 9077, Public Records of Orange County, Florida (hereinafter "Development Agreement"). Such Development Agreement may establish and provide without limitation for restrictions regarding land use and development.
8. Use Agreement recorded March 21, 2006, in Official Records Book 8539, Page 4387, Public Records of orange County, Florida (hereinafter "Use Agreement"). Such Use Agreement may establish and provide without limitation for obligations pertaining to landscaping, irrigation, and maintenance of paved roads and pavement markings.

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COMMITMENT
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Schedule B-II (Continued)

Issuing Office File Number: Chopra to Black

9. Covenants, conditions, rights, assessments, easements and restrictions recorded September 18, 2006, in Official Records Book 8865, Page 1636, Public Records of Orange County, Florida (hereinafter "Declaration"). Such Declaration may establish and provide without limitation for easements, liens, charges, assessments, or option to purchase, a right of first refusal and/or the prior approval of a future purchaser or occupant.

~~Wa 10. Any lien provided by County Ordinance or by Ch. 159, F.S., in favor of any city, town, village or port authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.~~

11. Encroachments, encumbrances, violations, variations, or adverse circumstance, if any, actually shown on the survey prepared by Patrick M. Kelley, P.L.S., Florida Licensed Surveyor and Mapper of Blackburn Surveying, Inc., dated June 16, 2023, bearing Job #Teach-86ZIP 12:
- a. 5' drainage and utility easement along the northerly and southerly boundary lines of the subject property;
 - b. 10' drainage easement along the easterly boundary line of the property and 12' utility easement along the westerly boundary line of the property;
 - c. Encroachment of concrete drive upon 12' utility easement;
 - d. Encroachments of high vinyl fences across property line to the east running to the brick wall on lots 24 and 25 of the Reserve at Waterford Pointe, Phase 1;
 - e. Encroachment of screened pool and patio area upon 10' drainage easement;
 - f. Encroachment of a/c pads from lot 85 of Bronson's Landings across the northerly boundary;
 - g. Encroachment of vinyl fence from lot 85 of Bronson's Landings across the northerly boundary; and
 - h. Encroachment of fences upon northerly and southerly drainage and utility easements and upon the easterly drainage easement.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by Old Republic National Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; and Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

Abstracts and Title Search Reports

by Glenn Martin, Fund Education Support Representative

Fund branches offer more than 40 products and services to help Fund Agents complete successful real estate transactions. With so many products and services to choose from, it can be a little confusing deciding what product is best suited for your transaction.

Let's take a closer look at two products: Abstracts and Title Search Reports.

What Is an Abstract?

In the past, Abstracts were a popular method of compiling title-related documentation for real estate transactions. Although rarely used today, in many areas of Florida Abstract products are still available through our Fund branches.

An Abstract provides a condensed history of the title to a parcel of real property by compiling copies of instruments that are recorded in the public records. Abstracts are "non-examined" products that do not provide the attorney with any instructions, notes, exceptions or correctives necessary before a commitment or policy can be written.

Why Would I Use an Abstract.?

Earliest Public Record or EPR Abstracts (Fund product code 11) include the entire history of the property going all the way back to the beginning of the public records in the state. Some situations, such as quiet title actions, may require an EPR Abstract when no prior Abstract can be located. EPR Abstracts can be very costly and are rarely used.

MRTA, Partial, and Continuation Abstracts (Fund product code 12) include a condensed history of the property starting from a given date and going forward in time up to a specific end date or certified through date.

MRTA Abstracts are prepared when no previous Abstract exists and the root of title is used as the beginning date. The guidelines of the Marketable Record Title Act are used to determine the root of title. Title matters prior to the root that are not eliminated by the Act

are included.

Partial Abstracts can be ordered when a previous abstract on the property does not exist and circumstances dictate that only a short period of time should be searched. Most attorneys order this type of abstract to prepare foreclosure proceedings or other litigation, or to bring title current from a prior title policy before a new sale or new financing.

Abstract Continuations start from the certified date on a previously prepared abstract and go forward in time up to a specific end date or certified through date. A continuation of an abstract is used prior to the closing of a sale or new financing.

Abstract Final Continuations (Fund product code 13). After the instruments that are executed at the closing or litigation have been recorded, a final continuation is usually prepared. This is normally done within 90 days of a previous certification date.

What Is a Title Search Report?

This report is a "non-examined" product and represents a condensed history of title to a parcel of real property by chronologically listing instruments (and providing copies of instruments) that are recorded in the public records. Deeds, mortgages, easements, judgments, divorces, and probate proceedings are some of the instruments listed in a Title Search Report. Title Search Reports may start at the effective date of the base title (if provided) or go all the way back to the root of title if an MRTA search is needed. Title matters prior to the root that are not eliminated by the Act are included in the report.

Why Would I Use a Title Search Report.?

A Title Search Report (Fund product code 07) provides the attorney with information from which status of title can be determined. The report includes:

- Name (s) of parties currently in title.
- A listing of all muniments of title from its beginning date.
- Standard exceptions that should be made

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Abstracts . . . *(continued from page 20)*

- part of any future commitment or policy.
- A listing of all instruments found during a 20 year name search of all parties in interest during the time period covered by the report.
- Current and delinquent tax information.
- A listing of all instruments found during a 20-year name search on the proposed purchaser/mortgagor.
- From public records, copies of the instruments that are listed on the Title Search Report.

The information in this report requires examination by the attorney and may be relied on for litigation or issuance of a Fund commitment and policy. Title Search Reports are primarily used when a RESPA-related transaction is to be insured. This allows a Fund Agent to perform essential core services and participate in a percentage of the risk premium.

According to Don Fretz, Broward Branch Production Manager, "We recommend Title Search Reports to our customers over any Abstract product, because Title Search Reports present the information in a more user-friendly format and can save attorneys time during the examination process."

Please contact your local Fund branch for more information on Title Search Reports or Abstract products.



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CONCEPT

October 2002, Volume 34

When is a Marketable Title Not Enough?

by Silvia B. Rojas, Fund Senior Underwriting Counsel

Picture the following scenario: An owner reviews his title insurance policy because he is unable to sell at market value the insured property despite a brisk market for comparable properties. The policy states right on the front cover that it insures against the unmarketability of title. He is in doubt. Should he contact the insurer and file a claim against the policy?

What is missing from this scenario is the reason why the insured is unable to sell the property. The fact that he is in doubt also raises the issue of lack of education as to the coverage under the policy. The closing agent may not have explained to the insured the coverage and limitations of title insurance. He will, most probably, be contacted for clarifications and could possibly be on the receiving end of unsavory comments from a very distraught owner.

Educating the consumer on the coverage and limitations of title insurance at or prior to closing could prevent similar confrontational situations. This article will review the issue of marketability as it relates to a title insurance policy to simplify the process of educating the consumer. It will review and analyze laws, cases and title policy provisions pertinent to the understanding of this terminology and provide an update to a prior article, "Is This Title Marketable?" 23 *Fund Concept* 45 (May 1991). Knowing when marketable title is not enough will empower the consumer in making better choices regarding their real estate investments.

Terminology. Marketability, marketable title and insurable title are terms you should become familiar with. Knowing this terminology is the first step in the preliminary assessment regarding the viability of a claim for unmarketability of title under the title policy.

The current ALTA form title insurance policies (element 3 of the insuring provisions on the front jacket of the forms) insure against the *unmarketability of title* within policy limitations. They not only cover actual loss due to a title issue but also cover against a title issue's affect on reasonable expectations of the insured for market value. The title issue impairing market value can be a title defect,

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lien or encumbrance.

Marketable title is only a segment of the overall concept of *marketability*. Economic factors also influence the marketability of property. Title policies do not cover economic factors unrelated to title such as, but not limited to, physical condition of the subject property, influence on market value caused by physical conditions on adjacent properties or other surrounding properties. But, as you will note from the following sections, the lines between economic factors and factors affecting marketability of title are sometimes blurred.

Coverage for marketability of title is limited by the exceptions, exclusions, conditions and stipulations of the title policy. Some of those limitations may be severe enough to affect market value, so that an *insurable title* is not necessarily a marketable title. Title policies are also limited monetarily as they are indemnity contracts not guarantees of marketable title. See Sec. 7 of the Conditions and Stipulations of both the owner's and mortgagee policies. Also see *Lawyers Title Ins. v. Synergism One*, 572 So.2d 517 (Fla. 4th DCA 1990), where the court held that an insured cannot force recovery without an adverse determination by a court.

Economic Factors Influencing Marketability. A marketable property is "free from any reasonable objection of a reasonable buyer" whether due to economic factors or unmarketable title. Economic factors affect market value but not title. Lack of a paved street, for example, could impair the market value but not affect title. See *Hocking v. Title Insurance & Trust Co.*, 234 P.2d 625 (Cal. 1951). Contaminants on the property affect the condition of the property but not the title to the property. See *McManus v. Rosewood Realty Trust*, 719 A.2d 600 (Sp. Ct. N.H. 1998). Zoning regulations limiting use of property do not appear on land records and violations of them, unless appearing on the

land records, do not constitute defects in title. See *Schlindrer v. Manson*, 2001 WL 1614633 (Conn. Super. 2001). The courts, on a number of occasions, have held that governmental regulations, reservations and restrictions do not affect the marketability of title. See *Yellowstone II Development Group, Inc., v. First American Title Insurance Co.*, 20 P.3d 755 (Mont. 2001) (inability to subdivide); *Matter of Garfinkle*, 672 F.2d 1340 (11th Cir. 1982) (navigational servitude, TIF mineral rights and erosion control line); and *Edwards v. St. Paul Title Ins. Co.*, 563 P.2d 979 (Colo. App. Div. 1 1977) (taxing district). An economic factor not associated with a physical condition may also affect market value. For example, a stigmatized property, such as one in which a death has occurred, could affect market value but not title.

Marketability of Title. Marketability of title refers to defects affecting legally recognized rights and incidents of ownership. To render title unmarketable, the title defect, lien or encumbrance must present a real and substantial probability of litigation or loss at the time of the conveyance. See the *Schlindrer* case above. Though a lien, such as a mortgage or judgment, or a title defect, such as lack of marital status or a break in the chain of title, may be easier to detect, detecting encumbrances may present a challenge.

Though contaminants can be removed, artifacts and locations of archeological sites cannot be moved if protected by law. The presence of archeological sites on a property may breach a seller's promise to convey marketable title as they can reasonably be expected to materially inhibit, impede or preclude applications for permits for construction, alteration or improvements and constitute an encumbrance. See *Create 21 Chuo, Inc. v. Southwest Slopes, Inc.*, 918 P.2d 1168 (Hawaii App. 1996), where the property was found to contain the remains of an ancient Hawaiian village. Though a "spirits in possession" exception may not be appropriate, an exception for loss due to a finding by a

court of competent jurisdiction that the site is a protected archeological site should be inserted. For further research on federal and Florida laws affecting this issue, see <http://www.cr.nps.gov/seac/protectng.htm> and <http://www.ibsgwatch.imagedjinn.com/learn/floridalaw.htm>. The test used in this case was based on the inability, due to governmental regulations, to use the property for its intended use. Neither the exclusion in the jacket of the ALTA policy nor other case law interpreting the effect of governmental regulations on title were discussed since this was a rescission of contract action rather than a claim under a title policy.

Encroachments affect the marketability of title. For example, failure to formulate an exact legal description of a road traversing the property to be insured clouds the title to the property. See *McCone v. Butts*, 616 So.2d 535 (Fla. 5th DCA 1991). Encroachments of wooden decks into adjacent land and relocation of boundary lines, which cause violations of setback zoning ordinances, support a summary judgment for return of deposit monies based on unmarketability of title. See *Kera v. DeFilippo*, 736 N.Y.S.2d 340 (N.Y.A.D. 1 Dept. 2002), in which the court held that the fact that no reputable title insurer would insure without exception for such matters entitled purchasers to summary judgment. This case blurred the lines between marketability and marketable title by including zoning issues under the umbrella of unmarketable title. However, the current ALTA form policy excludes zoning issues from coverage.

The existence of an encroachment does not present a genuine issue of fact regarding marketable title in all instances. For example, an encroachment of 20 feet by a street upon the insured parcel may constitute a title defect rendering title unmarketable. The encroachment does not render the title unmarketable as a matter of law. Whether title is rendered unmarketable is a question of fact for the jury. See *Mellinger v. Ticor Title Insurance Company of California*, 113 Cal.2d 357 (Cal. 1 DCA, Div. 4, 2001). The

encroachment may affect market value but may also affect the title to the portion of the property it crosses over to make it unmarketable, i.e., free from reasonable doubt. However, if an encroachment is found to be insignificant, a different holding could result. For example, in *Mertens v. Berendsen*, 1 P.2d 440 (Cal. 1931), a building encroached upon a city street by no more than two inches. Title was found marketable as a matter of law since there was no reasonable probability of the commencement of an action by the city with regards to such an immaterial overlap.

Coverage against unmarketability of title is only one of the elements of coverage stated on owner's and mortgagee policy jackets. A court may hold that unmarketability of title is not essential for filing a claim under other elements of coverage. See *Stewart Title Guaranty Co. v. Greenlands Realty, LLC*, 58 F.Supp.2d 370 (D. N.J. 1999), where the court found that though title was marketable because the defect was insignificant, the title insurer still had a duty to cover the loss or damages sustained under element 2 of the insuring provisions ("any defect in or lien or encumbrance on the title"). The court did not grant summary judgment in favor of the title insurer based on the precept that insurance contracts are liberally construed in favor of the insured and strictly construed against the insurer. The court looked at each coverage provision separately instead of the insurance contract as a whole to substantiate the existence of a genuine issue of fact precluding summary judgment. The possibility that a court may look at each element separately and the predisposition of the courts to construe insurance contracts liberally in favor of the insured could give credence to claims for matters substantially encumbering the property, such as archeological sites, even though the encumbrance results from a government regulation.

As shown above, whether an issue rises to the level of an encumbrance on title is subject to interpretation. If an issue falls under the category of a title defect, lien or encumbrance,

whether or not of record, an exception must be made under the title insurance policy unless already excluded from coverage by other provisions of the policy jacket. If in doubt, better to contact a Fund underwriting counsel now than a claims attorney later.

Insurable Title. Title policies insure that title is marketable subject to the exclusions, exceptions, conditions and stipulations contained therein. Since July, 1986, the ALTA 1970 Owner's Policy Form B provides marketability coverage, i.e. insures against loss or damage due to unmarketability of title. Insurability policies prior to that date would cover the insured only for actual loss sustained, usually resulting from a claim made on the title by a third party. The current ALTA 1987 Owner's Policy defines unmarketability of title as:

an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

The mortgagee policy has a similar definition but adds "or the insured mortgage" after the words "Schedule A." In addition, Reg. 4-186.007, F.A.C., only authorizes coverage against loss by encumbrance, or defective title, or adverse claim to title.

Insuring over a known title defect, i.e., deleting an exception for a known title defect, does not indicate marketability of title and does not relieve the insurer of liability for unmarketability of title. See *Nebo, Inc. v. Transamerica Title Insurance Company*, 98 Cal. Rptr. 237 (Cal. App. 4 Dist. 1971). Also, Sec. 627.784, F.S., states:

Casualty title insurance prohibited. A title insurance policy or guarantee of title may not be issued without regard to the

possible existence of adverse matters or defects of title.

Therefore, adverse matters and defects of title must be shown as exceptions. However, title is insurable regardless of title defects, liens or encumbrances as long as these are made exceptions to the policy. These exceptions would relieve the insurer of liability regarding such matters whether or not title is made unmarketable due to such exceptions.

On occasion affirmative coverage is given over liens and encumbrances. In addition to the authorized affirmative coverage endorsements, Reg. 4-186.005(16), F.A.C., authorizes affirmative coverage against known claims for ascertainable sums of money in reliance on security commensurate with the risk. Caution should be exercised in preparing a binding and unambiguous escrow or indemnity agreement to avoid shifting the liability from the security to the insurer. See *Aouate v. Hotel Europe, Inc.*, 792 So.2d 596 (Fla. 3d DCA 2001), where the court faced with affirmative coverage on the policy based upon reliance on security found that the insured had good and marketable title. The court also found that the monies placed in escrow represented a settlement proposal and not a lien in a liquidated amount so that the seller could decline to settle. Though not discussed in the case, as stated above, Reg. 4-186.005(16), F.A.C., requires that the sums of money be ascertainable. The ability to give affirmative coverage may have been questionable under the regulations.

Importance of Educating the Consumer.

The title insurance policy is not a panacea for all issues affecting the marketability of an insured parcel. Start at the commitment stage to educate the proposed insured. Whether a reasonable buyer is willing to purchase the property or a reasonable lender is willing to lend based on such security may depend on a wider variety of issues directly related to the

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When is a Marketable ...

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property than covered under the title insurance policy. If you are issuing a title insurance commitment, it should be reviewed with the proposed insured to ascertain whether any of the exceptions and exclusions affecting the marketability of title will be acceptable and to clarify what types of issues will not be covered by the title policy. The old saying "an ounce of prevention is worth a pound of cure" holds true even in relation to title insurance. Marketable title may not be enough when other factors exist that lower the value of the investment. □

Mortgage Exception Includes ...

(Continued from page 147)

The court commented that the purpose of Schedule B is to identify matters affecting the insured property that are excepted from coverage and the identification of matters is not the equivalent of a title abstract, a title search, or a representation as to title. The court also commented that any negligence of the attorney/title insurance agent in not reading the senior mortgages or disclosing the dragnet clauses to the junior lender arose in the attorney's capacity as attorney for the lender, not as agent for the title insurer, and was not an issue in this case. □



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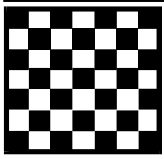
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Play By The Rules

Member Agent Responsibilities

by Mary Frances Meyers, Fund Risk Manager

In addition to the responsibilities and duties to sellers, purchasers and lenders, Fund Member Agents are charged with certain responsibilities and duties to the underwriter, THE FUND.

One of the primary duties owed to THE FUND is to remit policies and premiums on a timely basis. The Florida Department of Financial Services (formerly Department of Insurance) considers "timely," those policies issued within 30 days of the closing, or when all of the commitment requirements have been satisfied. *The Fund Procedures Handbook* recommends that policies be issued and premium remitted within 30 days after closing or when all commitment requirements are satisfied.

There are many agents who comply with the rules and regulations and process their transactions as timely as the recording offices allow. The policies are sent to the insureds and to THE FUND for processing as soon as documents are received back from recording. There are, however, some agents who send closing documents to recording and think their job is finished. The files are put away or placed in a post-closing pile that often times is ignored until angry insureds start calling about final policies and original documents. Then a hunt begins to find the appropriate file to complete the closing transaction. It is only then that recording errors might be found, uncleared checks surface, and perhaps even a file where none of the original documents have been recorded yet will be found.

A closing transaction includes everything from the contract stage to issuing the final policies and sending the policies and premiums to the appropriate parties. It does not conclude when the parties have signed all the documents and everyone leaves the closing table clutching their checks or copies of documents. The transaction is only half done and it is imperative for member agents and their staff to understand the importance of following through and completing the transaction. If the post closing is not done on a timely basis, how will you know if documents have been recorded correctly? How will you know if checks have cleared in order to correctly reconcile the escrow or trust account? How will you account for outstanding forms? How will you justify the use of escrow funds for purposes other than paying the premium due to the underwriter? Because if you do not remit policies and premiums on a regular and timely basis, the funds in the escrow account are being used for some other purposes. Technically speaking, that can be classified as misuse of escrow funds, or theft.

If you have questions about issuing the policies or filling out the forms, *The Fund Procedures Handbook* is a tremendous guide. There are also underwriting counsels and customer service representatives who can assist you.

As an additional convenience to Fund Member Agents, your quality assurance representatives are available to pick up policies and premiums and forward them for processing. All you need to do is call.

Palm Beach & Broward areas - Cathy Allen,
954-771-0150

Miami-Dade & Monroe areas - Annie Bell,
305-459-2640

Southwest & Treasure Coast areas - Rita Day,
941-753-9200

North & Central Florida areas - Dondra McEachern - 407-240-3863



CONCEPT

November 2006, Volume 38

Taxes and Non-Record Special Assessments – Deletion of the Standard Exception

By Melissa S. Scaletta, Fund Senior Underwriting Counsel

At the closing of a real estate transaction insured by title insurance, a commitment is issued. The exclusive form of title insurance commitment issued in Florida is the American Land Title Association, hereinafter "ALTA," 1966 revision. The commitment binds the title insurance underwriter to issue a title insurance policy or policies in accordance with the terms of Schedules A, BI and BII, and the commitment jacket. While schedules of a policy vary greatly from transaction to transaction, the jacket is an approved form which is not subject to change. The jacket contains certain standard exceptions. This article focuses on the standard exception for taxes and non-record special assessments. The relevant portion of the standard exceptions is as follows:

The owner's policy will be subject to the mortgage, if any, noted under item two of Section I of Schedule B hereof. All policies will be subject to the following exceptions: (1) taxes for the year of the effective date of this Commitment and taxes or special assessments which are not shown as existing liens by the public records....

Standard exceptions may be omitted from the final policy, provided the insuring Fund Member Agent complies with essential underwriting guidelines to minimize the risk associated with each of those exceptions. Most institutional lenders will require that the standard exceptions be omitted from the final mortgagee policy. For

this reason, Schedule B of the mortgagee policy does not contain preprinted standard exceptions. The standard exceptions are preprinted in Schedule B of the owner's policy; however, the standard exceptions may be deleted from the owner's policy by applying the same underwriting techniques as those used for issuing the mortgagee policy without standard exceptions. See TN 25.03.07 for underwriting guidelines for deleting the standard exceptions and TN 25.03.06 for deleting the standard survey exception.

The standard exception for taxes and non-record special assessments encompasses liens for real property taxes and various governmental liens. Florida real property taxes are due and payable on Nov. 1 of each year. These taxes, if not discharged, become a first lien on the real property beginning on Jan. 1 of that year. Secs. 197.122 and .333, F.S. See "Insuring Clerks' Tax Deeds," 32 *Fund Concept* 169 (Nov. 2000). Fund Member Agents are permitted to modify

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the portion of the exception pertaining to taxes by confirming through the county or ATIDS that real property taxes are current. Because real property taxes are not payable until Nov. 1 of the tax year, all commitments and policies issued prior to Nov. 1 in which taxes have been determined to be current will contain the following exception for taxes, "Taxes for the year _____ (insert year of commitment or policy) and thereafter, which are not yet due and payable." Commitments and policies issued during November and December in which taxes have been determined to be current will contain the following exception: "Taxes for the year of the effective date of this policy have been paid as evidenced by receipt no. _____, dated _____."

Tax bills for land located within the reach of a Community Development District (CDD) will typically contain charges for operation and maintenance fees assessed and capital reduction charges made pursuant to that CDD. Ch. 190, F.S., provides for the creation of Community Development Districts as a local unit of special-purpose government created to perform specialized functions. Generally, CDDs utilize bonds to finance public improvements which are then paid back from proceeds of ad valorem taxes. Sec. 190.03, F.S. CDD operation and maintenance fees and capital reduction charges are frequently due on a different annual date than real property taxes. Sec. 190.024, F.S., provides that from Jan. 1 for each year the property is subject to a CDD, the assessment will constitute a lien of equal dignity with the liens for state and county taxes until the assessment is paid.

Authority for non-record assessments may be derived from various sources. Municipal charters may provide that municipal assessments shall constitute liens on real property assessed from the date of passage of the resolution or ordinance authorizing the improvement. TN 30.06.01. Municipal liens may also be created pursuant to Ch. 170, F.S., the supplement method of making local improvements. Certain

municipal improvements may be financed by assessments approved by a municipal resolution or ordinance. Sec. 170.03, F.S. Sec. 170.05, F.S., requires notice of the resolution be published in a newspaper of general circulation within the municipality, but the resolution or ordinance may not be recorded in the public records or shown on the tax rolls. Ch. 170 assessments shall be payable at the time and in the manner stipulated in the resolution. Sec. 170.09, F.S. Sec. 159.17, F.S., provides that a municipality may issue revenue bonds to finance water, sewer, or gas systems; and the municipality shall have a lien on all lands or premises served by said systems for all service charges. Ch. 159 liens attach to the property when the service charge becomes due and payable. See TN 25.03.09; "What Ch. 159, F.S., Liens Mean to Real Estate Practitioners," 25 *Fund Concept* 28 (Mar. 1993). Municipal liens may have status and priority coequal with real property taxes and may have an unlimited duration. TN 25.03.05.

Ch. 153, F.S., allows county water and sewer districts to levy special assessments for construction or reconstruction of county water and sanitary sewer systems. These assessments become liens on the benefited property upon the confirmation of the resolution authorizing the improvements. The assessment may be paid subsequent to confirmation of the county resolution or in installments subject to interest over a period of up to 20 years. Sec. 153.05, F.S. Unpaid assessments constitute a lien on equal parity with real property taxes. Sec. 153.67, F.S.

Mobile home park recreational districts are granted the authority to assess mobile home lot owners to finance the costs of maintenance of the streets, lights, recreational facilities, and other common areas within the mobile home recreational district. The assessments may be collected monthly or annually as part of the real property taxes. Mobile home park recreational assessments are a lien on real property. Sec. 418.304, F.S.; TN 30.06.01.

Examination Tips

The standard exception for taxes and non-record special assessment liens may be deleted or modified upon examination of the county tax collector's records and the public records and upon inquiry, familiarity, and examination of the municipal and county resolutions, ordinances, and codes for the subject property. Fund Member Agents are advised to utilize the following examination tips when deleting the tax and non-record assessment exception.

Real Property Taxes

- All current folio numbers must be searched. When a parcel of property has been split or subdivided, multiple folio numbers may exist. If parcels have been combined, one replacement folio number may have been assigned. If parcels have been subdivided or combined, searching the previous folio number is also recommended in case delinquent taxes were not paid prior to the change in the folio number. Legal descriptions separated by the word "and" often have multiple folio numbers. Contact the county property appraiser if you are uncertain of the correct folio number(s).
- Check for both current and delinquent taxes. Some county assessors may require a separate search for the current year's taxes and delinquent taxes. "Tax certificate issued" and "tax deed applied for" would indicate delinquent taxes; however, when a tax deed is applied for, outstanding tax certificates must be paid. Therefore, it is possible that ATIDS may reflect tax certificates as "paid" when payment of that tax remains outstanding.
- Check for bankruptcy or litigation files. Because no tax certificates can be issued while the taxpayer is in bankruptcy, some counties maintain separate tax files for properties involved in bankruptcy or litigation.

Community Development Districts

- Look for Notice of Community Development District on the public record.
- Examine the tax bill with particular attention to assessment date and due date.

Non-Record Assessment Liens

- Become familiar with municipal and county resolutions, ordinances, and codes pertaining to assessments for improvements, water, sewer, or gas systems for the land being insured.
- Determine whether municipality may issue revenue bonds to finance water, sewer, or gas systems, which could result in a lien on the subject property pursuant to Ch. 159, F.S.
- When insuring land within a mobile home park, determine whether the land is subject to a mobile home recreational improvement district.

Upon determination that the property to be insured lies within the reach of a municipal, county, mobile home recreational district, or any other non-record lien authority, it is necessary to contact that authority prior to closing to determine whether all financial obligations pertaining to that property are current, rendering the subject property free from non-record liens. Fund Member Agents are advised to become acquainted with the authorities available for estoppel information pertaining to non-record liens and establish their own form estoppel letters and procedures for confirming that payments are current and that no non-record lien exists prior to closing. See "Necessity of Checking With Local Tax Authorities for Assessment Liens – Palm Beach and Other Counties," 26 *Fund Concept* 163 (Oct. 1994); "Necessity of Checking With Local Tax Authorities for Assessment Liens – Dade," 26 *Fund Concept* 76 (Jun. 1994); and "Necessity of Checking With Local Tax Authorities for Assessment Liens – Broward," 25 *Fund Concept* 128 (Sep. 1993). Please note that the contact

information for the taxing authorities in these articles has not been updated but may serve as a starting point for a Fund Member Agent in compiling his or her own list of contacts. Fund Member Agents are also authorized to use the services of a reputable non-record lien search company to assist in determining that the property is not subject to non-record liens.

Underwriting Guidelines

Real Property Taxes

Assuming taxes are current, commitments and policies issued prior to Nov. 1 will contain an exception for the current year's taxes and subsequent years, as referenced earlier in this article. Any delinquent taxes must be paid at or prior to closing, as indicated by a commitment requirement; otherwise, the final policy shall contain an exception for those delinquent taxes. Commitments and policies issued in November and December may show taxes paid, also as discussed herein, upon confirmation of payment or payment by a Fund Member Agent from closing proceeds. When an examination of tax records reveals an outstanding tax certificate, the commitment must require redemption of the tax certificate. If the tax certificate is not redeemed, the final policy must contain an exception for the tax certificate.

Community Development Districts

Commitments and policies must contain an exception for any recorded notice that the property is subject to CDD assessments. If the tax bill includes an assessment for a CDD which is not confirmed to be paid for previous years and the current year, a requirement shall be made in the commitment for payment of any assessments due and/or delinquent. Upon confirmation of previous and the current year's payment of CDD assessments or payment by a Fund Member Agent from closing proceeds, the commitment and policy may show the current year's obligation as paid, similar to paid real property taxes discussed herein.

Non-Record Assessment Liens

Whenever a Fund Member Agent learns a resolution or ordinance exists providing for a

non-record municipal assessment lien, an exception tailored to the specific resolution or ordinance shall appear in the commitment and policy in the following form, "Pending municipal assessment liens for public improvements, notice of which is contained in Resolution(s) (or Ordinance(s)) no.(nos.) _____. The amount of the assessment or levy, if any, has not been determined." TN 25.03.05. If estoppel letters from non-record lien authorities (municipalities, counties, or other) or results from a non-record lien search indicate a lien balance due, the balance should be paid prior to or at closing. If any assessment balance is not paid in conjunction with the closing, the final policy shall contain an exception for the non-record assessment lien. ☐

What You Should Know About the Public Records and the Social Security Number

By R. Lynn Lovejoy, Fund Underwriting Counsel

We all know that not all individuals have driver licenses, student identification cards, or voter registration cards, all of which have been used for identification in the past and are still used to some extent to identify individuals. But there is one number literally every American has or will have during his/her lifetime. It is, of course, that unique nine digit number called the Social Security number. There are thousands of people with the same name. And in order to keep them all straight, businesses, big and small alike, began using the Social Security number to separate the Mary Smith who is a 20-year old college student now living in Orlando, formerly of Miami, from her 80-year old great-grandmother, who also has the same name, now living in Miami, formerly of Orlando, and who both may be applying for credit.

Identity fraud is rampant. All it takes is a name, matching birthdate, and Social Security number, and anyone can become Mary Smith at Mary Smith's disastrous expense. In recent years, it has been government agencies that have helped to spread the crime of identity fraud by

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New Guidelines for Handling Uncertified, Expired, and Otherwise Unperfected Judgment Liens

By Patricia P. Jones, Fund Vice President - Underwriting

THE FUND has approved for issuing commitments and policies new enhancements for handling money judgments that are *potential* liens. These include uncertified judgments, expired judgments, and judgments lacking the creditor's address.

The guidelines set out below were developed with due consideration given to underwriting risk, changes in the law, claims experience, and marketplace realities. They are used by Fund examiners in the preparation of commitments and other examined products and may be utilized by Fund Member Agents who are preparing their own commitments based on ATIDS searches or other search information.

Judgment Liens That Never Have Been Certified. Previously, uncertified money judgments were considered a gap risk for up to 20 years from the date the judgments were recorded. Under these new guidelines, uncertified money judgments that were recorded *more than one year prior to the date of the search* may be ignored for commitments and other examined products where the amount of insurance is \$3 million or less. For approving commitments for policies over \$3 million, Fund underwriting counsel will review with the preparer the status of all uncertified judgments.

THE FUND will require that only those judgments which are recorded within the one-year period behind the date of the search be handled as a gap risk. That is, a requirement

must be made for the amount of the judgment to be escrowed prior to closing pending a determination that a certified copy of the judgment did not get recorded prior to the deed or mortgage being insured. Member agent requests for waiver of this requirement should be discussed with underwriting counsel.

Judgment Liens That Have Expired After the Initial 10-year Period. Previously, judgment liens that had expired for an initial ten-year period were considered a gap risk for 30 days following the expiration date of the judgment. Under these revised guidelines, money judgment liens that have been of record for 10 years prior to the date of search and have expired by law may be ignored for issuing policies of \$3 million or less. For approving commitments for policies over \$3 million, Fund underwriting counsel may review with the preparer the status of all expired judgments.

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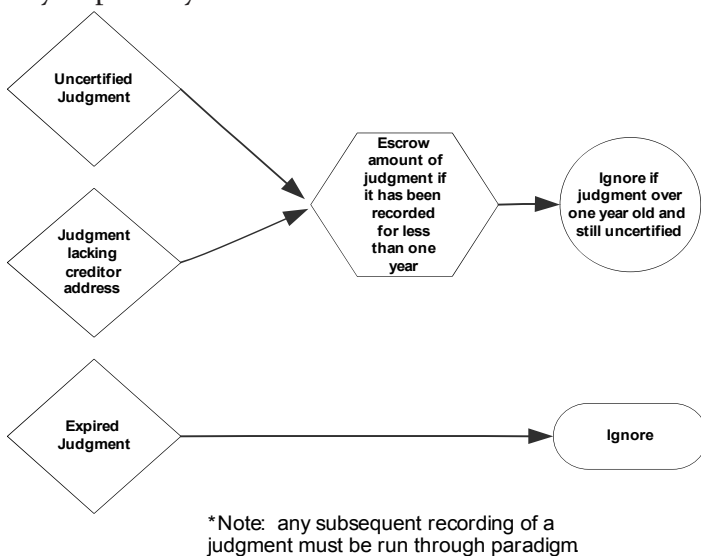
Judgment Liens... *continued from page 33*

Judgment Liens That Omit the Creditor's Address (Applies to Certified and Uncertified Judgments). These judgments carry the same risk as uncertified judgments, because the possibility exists that a new certified copy of the judgment, together with the creditor's address affidavit, could be recorded in the gap.

For policies of \$3 million or less, judgments that do not have the creditor's address or a simultaneously recorded address affidavit may be ignored if the judgment was recorded more than one year prior to the date of the search. For approving commitments for policies over \$3 million, Fund underwriting counsel will review with the preparer the status of all money judgments which appear to omit the creditor's address.

Judgments lacking a creditor's address or creditor's address affidavit entered within the one-year period behind the date of the search must be handled as a gap risk. That is, a requirement must be made for the amount of the judgment to be escrowed prior to closing, pending a determination that a judgment lien was not perfected prior to the deed or mortgage being insured.

The procedure of searching for a creditor's address affidavit recorded 10 instruments before and after a recorded judgment will still be necessary to establish that a judgment recorded one year prior to the date of search was not perfected for failure to provide a creditor's address by separately recorded affidavit.



Disaster Recovery and Business Continuity Planning

By John Simmons, Fund Enterprise Product Manager

(It is not just about backing up your data!)

The phone rings at 3:00 a.m., and you learn that a fire has destroyed your office. Does your firm have a well-formulated contingency plan ready to implement?

A disaster can have a significant negative impact on your law practice. Common examples include fires, hurricanes, tornadoes, floods, plumbing leaks, burglaries, power outages, virus attacks, and computer system crashes. It can result in a partial loss (such as theft of your computer system and data) or complete devastation (including loss of all your client matter files).

In order to minimize the impact, you need a plan tailored to your firm. It should address recovery from the disaster as well as continuing to do business during the recovery period. Here are a few items to consider:

1. Where can you temporarily set up shop?
2. Is it viable for staff to telecommute?

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The Importance of Getting a Release

By Mauri Hawkins, Claims Counsel, Attorneys' Title Insurance Fund, Inc.

Introduction. In reviewing a Fund title search report, we have seen an unsatisfied mortgage or lien or a requirement on a title commitment as to an outstanding construction claim of lien, an open mortgage, or an association assessment lien. These items usually require a satisfaction or a release to be executed, delivered, and filed for recording with the appropriate county clerk to comply with underwriting requirements. Obtaining releases is part of the closing process. Even though the Fund Member should complete this process prior to closing the file and delivering the file to storage, the Claims Department continues to see the issue of not getting a release in many of the above mentioned areas. As this article may be a refresher for some, it may also be new information for others.

Notice of Commencement and Construction Claim of Lien. Developers and homeowners alike have elected to have work performed on property owned by an entity or individual. In some cases, to start the process, a notice of commencement is executed and filed in the official records. The notice provides a period of completion of the construction which is typically one year. It is interesting to note that the notice of commencement is not a lien, cloud, or encumbrance on the title but does provide constructive notice that claims of lien may take priority. Sec. 713.13(3), F.S. The notice of commencement, however, can be amended for many reasons, including to shorten or extend the time frame of the expiration of the notice.

If a notice of commencement has not expired or been terminated then a construction claim of lien relates back to the filed notice. But if a notice of commencement is not filed then the "relate back" theory does not apply; instead, the claim of lien priority is based on the date and time the lien is

recorded. Pursuant to Sec. 713.08(5), F.S., "[t]he recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim." Uniform Title Standard 8.3. But even if the claim of lien has "inclusion or omission of any information in the claim," the lien is not *per se* invalid and a court may permit enforcement of the lien. Sec. 713.08(4), F.S. Usually the claim of lien expires one year from the date of recording unless a lawsuit has been filed within the one-year period to enforce the lien. Sec. 713.22(1), F.S.

Thus it is critical that the member gather information as to the commencement of construction to determine the time frame of the improvements. Sec. 713.13(2), F.S. Also if the work has been completed or if the work ceases and all lienors are paid, then a notice of termination should be obtained. Sec. 713.132, F.S. The notice of termination, however, is not effective until the later of 30 days after the recorded notice of termination or the date provided in the notice of termination, when the notice is served on the contractor and each lienor. Sec. 713.132(4), F.S.

For a recorded and valid claim of lien it is necessary for the Fund Member to either obtain

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and record a satisfaction or release of the claim of lien or have the claim of lien transferred to security. Secs. 713.207 and 713.21, F.S. If the lienor has since filed litigation within the requisite period of time then the lienor's interest must be addressed as the lawsuit is associated with the previously recorded claim of lien which may relate back to the notice of commencement.

For more information, see Chapter 21 of *Fund Title Notes – Construction Liens*, regarding claim of lien and the discharge of construction liens on real property.

Mortgage. Outstanding mortgages of record remain a common claims issue. From the conventional mortgages to the revolving credit mortgage or equity line of credit mortgages, the satisfactions or release, for some reason, do not make it to the clerk's office for recording. To satisfy the requirements found in the title commitment, the satisfaction or release is to be recorded in the proper county.

If the satisfaction or release is forwarded to your office, the document should be immediately forwarded to the appropriate clerk's office for recording. However in some cases the lenders have elected to record the instruments by their own means and many of the releases are properly recorded in the correct county.

However, in some instances, the satisfaction or release is never executed or delivered for recording. As more time passes from the date of closing, it is harder to find the correct lenders or gain the assistance of the lender to execute and record a release.

Sec. 701.04, F.S., states, in part,

Whenever the amount of money due on any mortgage, lien, or judgment shall be fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom such payment shall have been made, shall execute in writing an instrument acknowledging satisfaction of said mortgage, lien, or judgment and have the same acknowledged, or proven, and duly entered of record in the book provided by law for such

purposes in the proper county. Within 60 days of the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall send or cause to be sent the recorded satisfaction to the person who has made the full payment. In the case of a civil action arising out of the provisions of this section, the prevailing party shall be entitled to attorney's fees and costs.

As this statute is helpful in gaining cooperation of some lenders, this does not help in resolving outstanding revolving credit mortgages or equity line of credit mortgages. These mortgages typically "allow the borrower to access the equity in their property utilizing credit devices including checks, ATM cards and creditor cards." TN 22.05.16. Due to the broader options available to the borrower and the language usually included in the mortgage, these mortgages are not automatically satisfied by just paying down the balance to zero.

Each lender has their own requirements to gain a satisfaction of the mortgage, and thus it is important to review the estoppel letter as to the steps necessary to satisfy the mortgage. Usually if the lender's required steps to close the account and satisfy the mortgage are not followed, then the lender is not willing to satisfy the mortgage even if a zero balance exists on the loan.

Thus to ensure a satisfaction of the mortgage, review the lender's estoppel letter as to its requirements and follow the directions given. Also keep documentation sent to the lender in your transaction file to show delivery of the requested items such as a "close the account" letter. Also if funds are wired to the lender, do not forget to deliver the lender's required documentation to close the account pursuant to the lender's instructions.

Even though the second revised Mutual Indemnification Agreement ("Treaty") does provide limited indemnification based on certain criteria and conditions being met, the Treaty does not cover a mortgage with a principal amount greater than

The Fund's main website can be accessed at www.thefund.com. The Fund's website for consumers can be found at www.fundhomeinfo.com.

\$500,000 or an unsatisfied revolving credit mortgage or equity lines of credit mortgages.

For more information, see Subchapter 22.05 of *Fund Title Notes – Satisfaction and Releases of Mortgage* and Appendix C – Mutual indemnification Treaty.

Association Assessment Lien. Homeowners' associations and condominium associations continue to file liens for a number of things such as past due assessments. The duration of the homeowners' association lien is based on the "five-year statute of limitations for enforcing a contract unless the homeowner association documents provide otherwise." See TN 18.06.05. The condominium association lien, however, has a one-year duration unless an action to enforce the lien has commenced within that time. See TN 18.06.12. However, "[t]he 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel." Sec. 718.116(5)(a), F.S.

Thus to ignore an assessment lien may result in continuously increasing assessment balances and possible foreclosure litigation involving the owner and lender. To obtain a release, contact the appropriate association for an estoppel letter. Also be aware that some communities may have more than one association connected with the property. Review the estoppel letter(s) as to the amount owed and also the expiration date for the amount shown in the letter. In addition, if the owner owns more than one property within the community, then review the estoppel letter to ensure that the letter addresses the correct property. Once payment is made, continue to follow up with the association for the release.

Conclusion. Admittedly not all cases are clear-cut and easy to resolve, but obtaining satisfactions and releases in the areas mentioned above will reduce claims and will also improve and provide accurate county records. So before the file is closed and sent to storage, take one more look to ensure that the outstanding claim of lien, mortgage, and association assessment lien have each been properly addressed, and the county records reflect the satisfaction or release. □



**Industry Insights from R. Norwood Gay,
Senior Vice President and Chief Legal Officer,
Attorneys' Title Fund Services, LLC**

NEW FORMS - ALTA RESPA TASK FORCE PRESENTS TO CFPB

The ALTA RESPA Task Force met on Mar. 17, 2011, with the Consumer Financial Protection Bureau (CFPB) for continued discussions on the design of a combined TILA, GFE and HUD-1 disclosure statement, as mandated by the Dodd-Frank Act. This was our third meeting with CFPB, including one conference call.

The focus was the forms designed by the Task Force for CFPB's consideration. We presented two forms. The first would be used at the beginning of the transaction and contains both GFE and TILA disclosures, together with such estimated settlement charges as the borrower is likely to incur at closing and a list of three providers of services the lender is requiring for the closing but which the borrower may choose, INCLUDING PROVIDERS NOT ON THE LIST. The second form is to be used near the closing date and it combines disclosures made under the current HUD-1 (but not using the current HUD-1 format) and a final TILA disclosure.

ALTA members have found that the borrower most wants to know three things:

1. What is my monthly payment?
2. What is my interest rate?
3. How much do I need to bring to closing?

Answers to these questions are highlighted front and center on page one of each of the two disclosure forms using a "snapshot section".

Our forms suggest a reduction of the number of charges involved in the infamous "tolerances" created by the latest RESPA reform and a

SHORTCUT TO THE FINISH LINE: FUND INTRODUCES ‘POLICY – EXPRESS CHECKOUT’

BY PHILIP A. HOLTSBERG, SR. UNDERWRITING COUNSEL

One important way The Fund is Always Driven is its relentless pursuit of operational efficiencies available to our members in conducting their transactional real estate practices. These efficiencies help our members remain competitive, improve their profitability, and ultimately help preserve and protect the issuance of title insurance as a core component of the transactional practice of real property law. The purpose of this article is to announce and detail our support for a new efficiency-enhancing initiative we are dubbing “Policy - Express Checkout.” While this initiative is entirely optional and voluntary for each member to adopt (or not) in their practice, we believe that it offers significant economies and is worthy of your consideration and implementation.

Clients often mistakenly assume that the real estate closing is the transactional finish line for the closing agent. Experienced attorneys and their paralegals know better. The transactional finish line is not crossed until its file is completed, all i’s and t’s dotted and crossed, respectively, and the file is ready for archival storage. Let us use the metaphor of an iceberg to represent the aggregate time expenditures required by an attorney and their staff to completely handle a real estate transaction from intake through archival storage. From most clients’ perspectives, they see only the “tip” of that iceberg – the exposed part of the iceberg above the waterline. As

we know all too well, below the waterline remains the bulk of the iceberg mass: the time and effort expended either pre- or post-closing and almost all of it outside of the clients’ awareness (but hopefully not outside of their appreciation). The Policy - Express Checkout initiative is intended to shrink both the iceberg’s mass “below the waterline” while at the same time making more of the iceberg visible to the title agents’ clients and customers. Increased efficiency AND more client satisfaction. Interested? Read on!

The Fund is pleased to announce that members may now issue and deliver both owners’ and lenders’ policies simultaneously with their closing disbursements, even though the closing documents have not been filed in the official public records and recording information is not yet available! This allows you and your staff to work directly from your marked-up commitment and to prepare the final policy schedules at the precise moment when all of the required and pertinent information is at hand and is top-of-mind. Moreover, in many transactions you will

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be able to physically deliver the policy to the insured before they leave your office, or include it in the express delivery return envelope of the lender's closing package. This is what "Policy - Express Checkout" is all about - policy issuance and delivery before instrument recordation has occurred.

The remainder of this article is presented in a convenient question and answer format, hopefully anticipating and answering the questions you might have should you choose to implement Policy - Express Checkout in your office.

Q1: *We currently have a Fund branch prepare our draft commitment schedules (using a Product 20). If we decide to implement Policy - Express Checkout, does anything change in our order or in the delivered draft commitment schedules?*

A: No. You will continue to order and receive the same product, and there will be no change in the prepared draft commitment schedules.

Q2: *We currently have the Fund branch prepare our draft commitment schedules and final policies (using a Product 24). May we use this Product if we decide to implement Policy - Express Checkout?*

A: No. This product is designed anticipating that the final policy will be issued after the transaction documents have been recorded and the recording information is available. The Fund branch requests that you send in the marked-up commitment after closing, together with a request form for the final policy (which includes the policy jacket numbers you have pulled) once the recording is completed. Of course, if you started a transaction by ordering a Product 24, you can always convert it into a Product 20 and prepare the final policy schedules yourself.

Q3: *We currently conduct our own title examinations and prepare our own commitments. If we decide to implement Policy - Express Checkout, does anything change in either the title examination or commitment preparation process?*

A: No.

Q4: *Is there a different Closing Protection Letter (CPL) if we decide to implement Policy - Express Checkout; does anything about the CPL or the*

CPL request process change?

A: No.

Q5: *Is there any change required to the way we "narrow the gap" if we decide to implement Policy - Express Checkout?*

A: No. The "gap" is the time between the effective date of the commitment and the date the instruments to be insured will be recorded. "Narrowing" the gap is the process by which the original effective date of the commitment is brought closer to the date of closing. This entails updating the title examination to as current a time as is practicable prior to closing and the update not revealing any title defect or other adverse matters. You should still obtain a "gap affidavit" from the seller(s) or mortgagor(s) stating that there are no matters pending against them that could give rise to a lien that would attach to the subject property between the effective date of the commitment and the recording of the insured instruments and that they have not executed and will not execute any instrument that would adversely affect the title to the subject property or the lien of any mortgage to be insured. Finally, you should record the insured instruments as soon as possible after closing.

Q6: *Is Policy - Express Checkout available even if our firm does not e-record our closing documents using a service such as Simplifile (for example)?*

A: Yes. Policy - Express Checkout may be used by Fund Members who record closing documents the traditional way (by delivering them to the official recorder's office for processing and their eventual return, whether via courier, mail, overnight delivery, etc.) That said, The Fund strongly encourages its members to adopt and implement an e-recording solution as a way to garner additional efficiencies in their closing practices, to minimize the risk of gap matters arising, as well as the risks associated with document handling (e.g., misdelivery, lost documents, etc.).

Knox's Basic Judgment Lien Paradigm (updated 2015)

The Basic Judgment Lien Paradigm is an effort to organize the various changes to Florida judgment lien law since 1987. The inspiration was Rohan Kelley's use of a paradigm to organize and simplify Florida homestead law.

Like the homestead paradigm, the sheet is divided into two parts. If the answers to the questions leave you on the left hand side of the page, then the judgment is still a lien. If the answers carry you to the right hand margin at any point, then the judgment is not a lien. However, note **this paradigm does not address title insurance gap issues presented by judgments that are not perfected as liens**, nor any subsequent recordings of judgments that may create a perfected lien which must be run through the paradigm pursuant to the WARNING contained on the right hand side of the paradigm and the WARNING below.

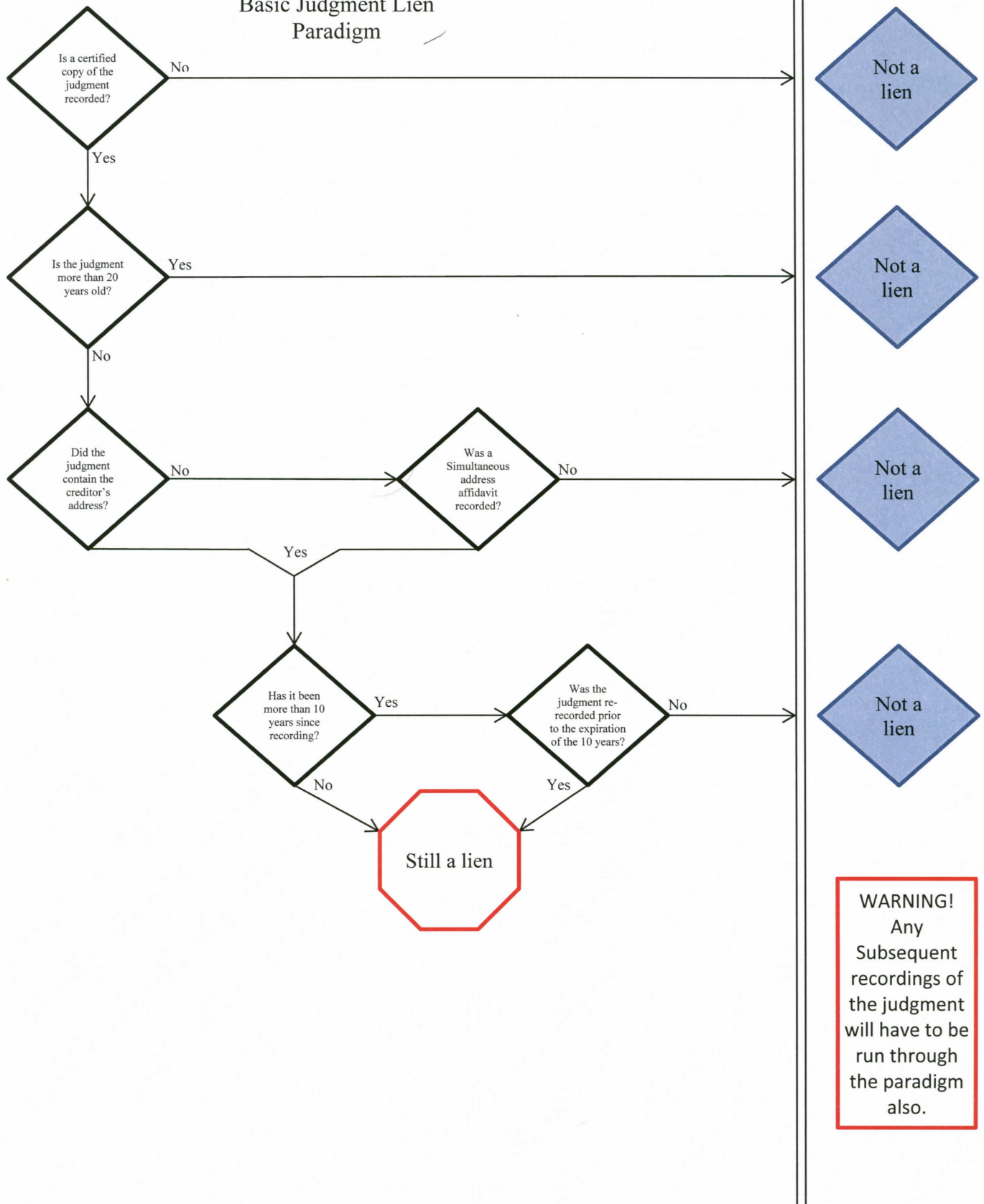
The basic paradigm is based on the following assumptions:

- 1) It deals only with case law as it exists on January 1, 2008. The user must stay current on statutory and case law changes.
- 2) It deals solely with Florida judgments. No effort has been made to factor in the various domestication processes for judgments of other jurisdictions.
- 3) It assumes that the debtor owns non-exempt real property that is subject to levy, i.e. the basic paradigm does not address issues of homestead, entireties, bankruptcy, etc.
- 4) The word "After" in the paradigm means "on or after". Because the recording of a certified copy is an absolute requirement for a judgment lien, where the words "recorded", "recording", or "re-recorded" are used in connection with a judgment, it means a certified copy.

WARNING: Each recording of a judgment must be reviewed independently to determine if a lien has been created. Just because the initial recording of a judgment contains a defect that prevents it from being a lien does not preclude a later recording that complies with the requirements to create a lien. *Hott Interiors, Inc. v. Fostock*, 721 So. 2d 1236 (Fla 4th DCA 1998) (where a judgment lacks creditor's address, lien is created with recording of a simultaneous address affidavit). In addition, any judgment that has been re-recorded after the initial 7 or 10 year expiration but prior to the expiration of 20 years from the initial recording, should be treated as a new judgment that must be run through the paradigm as of the date of its subsequent recording. *Franklin Financial v. White*, 932 So. 2d 434 (Fla. 4th DCA 2006).

Knox's Basic Judgment Lien Paradigm

F.S. 55.081



WARNING!
Any
Subsequent
recordings of
the judgment
will have to be
run through
the paradigm
also.

ALTA ENDORSEMENT 4.1-06 CONDOMINIUM

(With Florida Modifications)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. _____ To Policy No. _____

The Company insures against loss or damage sustained by the Insured by reason of:

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 3, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
4. Any charges or assessments provided for in the condominium statutes and condominium documents due and unpaid at Date of Policy.
5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements that exist at Date of Policy because of any present encroachments.
7. The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements which was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Name of Agent

Agent No.

Agent's Signature

Old Republic National Title Insurance Company
By **Carolyn Monroe**
President

ALTA ENDORSEMENT 5.1-06 PLANNED UNIT DEVELOPMENT

(With Florida Modifications)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. _____ To Policy No. _____

The Company insures against loss or damage sustained by the Insured by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
2. Any charges or assessments in favor of any association of homeowners, that are provided for in any document referred to in Schedule B, due and unpaid at Date of Policy.
3. The enforced removal of any structure existing at Date of Policy on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Name of Agent

Agent No.

Agent's Signature

Old Republic National Title Insurance Company
By Carolyn Monroe
President

ALTA ENDORSEMENT 8.1-06 ENVIRONMENTAL PROTECTION LIEN
(With Florida Modifications)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. _____ To Policy No. _____

The Company insures against loss or damage sustained by the Insured by reason of lack of priority of the lien of the Insured Mortgage over:

- (a) any environmental protection lien that, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge, or is filed in the records of the clerk of the United States district court for the district in which the Land is located, except as set forth in Schedule B; or
- (b) any environmental protection lien provided by any state statute in effect at Date of Policy, except environmental protection liens provided by the following state statutes:

None.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Name of Agent

Agent No.

Agent's Signature

Old Republic National Title Insurance Company
By Carolyn Monroe
President

(With Florida Modifications)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. _____ To Policy No. _____

The insurance provided by this endorsement is subject to the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

The company insures the owner of the Indebtedness secured by the Insured Mortgage against loss or damage sustained by reason of:

1. Any incorrectness in the assurance that, at Date of Policy:

- (a) There are no covenants, conditions or restrictions under which the lien of the Mortgage referred to in Schedule A can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired.
- (b) Unless expressly excepted in Schedule B:

(1) There are no present violations on the Land of any enforceable covenants, conditions or restrictions, nor do any existing improvements on the land violate building setback lines shown on a plat of subdivision recorded or filed in the Public records.

(2) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land does not, in addition, (i) establish an easement on the Land; (ii) provide a lien for liquidated damages; (iii) provide for a private charge or assessment; (iv) provide for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant.

(3) There is no encroachment of existing improvements located on the Land onto adjoining land, nor any encroachment onto the Land of existing improvements located on adjoining land.

(4) There is no encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.

(5) There are no notices of violation of covenants, conditions and restrictions relating to environmental protection recorded in the Public Records.

2. Any future violation on the Land of an existing covenant, condition or restriction occurring prior to the acquisition of title to the estate or interest in the Land, provided the violation results in:

- (a) invalidity, loss of priority or unenforceability of the lien of the Insured Mortgage; or
- (b) loss of Title to the estate or interest in the Land if the Insured shall acquire Title in satisfaction of the Indebtedness secured by the Insured Mortgage.

3. Damage to existing improvements (excluding lawns, shrubbery or trees):

- (a) which are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved; or
- (b) which results from the future exercise of any right to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

4. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment excepted in Schedule B.

5. Any final court order or judgment denying the right to maintain any existing improvement on the Land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in paragraph 1(b)(1) and 5, the words "covenants, conditions or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

The failure to expressly except any matter delineated in paragraphs 1(b)(1), 1(b)(2) or 1(b)(5) of this endorsement constitutes the Company's agreement to indemnify against loss or damage resulting from any matters delineated in paragraphs 1(b)(1), 1(b)(2) or 1(b)(5) only and provides no coverage for any other matters set forth in the covenants, conditions and restrictions.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Name of Agent_____
Agent No._____
Agent's Signature

By

Old Republic National Title Insurance Company**Carolyn Monroe**

40

President

ALTA ENDORSEMENT 9.2-06 RESTRICTIONS, ENCROACHMENTS, MINERALS
OWNER'S POLICY - IMPROVED LAND
(With Florida Modifications)

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. _____ To Policy No. _____

The insurance provided by this endorsement is subject to the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

The Company insures the Insured against loss or damage sustained by reason of:

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:
 - (a) Present violations on the Land of any enforceable covenants, conditions, or restrictions, or any existing improvements on the Land which violate any building setback lines shown on a plat of subdivision recorded or filed in the Public Records.
 - (b) Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land which, in addition, (i) establishes an easement on the Land; (ii) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant; or (iii) provides a right of re-entry, possibility of reverter, or right of forfeiture because of violations on the Land of any enforceable covenants, conditions, or restrictions.
 - (c) Any encroachment of existing improvements located on the Land onto adjoining land, or any encroachment onto the Land of existing improvements located on adjoining land.
 - (d) Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.
 - (e) Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.
2. Damage to existing buildings at Date of Policy:
 - (a) Which are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;
 - (b) Resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.
3. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment, other than fences, landscaping, or driveways, excepted in Schedule B.
4. Any final court order or judgment denying the right to maintain any existing building on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy.

Wherever in this endorsement the words "covenants, conditions, or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1(a) and 4, the words "covenants, conditions, or restrictions" shall not be deemed to refer to or include any covenants, conditions or limitations relating to environmental protection.

The failure to expressly except any matter delineated in paragraphs 1(a), (b) or (e) of this endorsement constitutes the Company's agreement to indemnify against actual monetary loss or damage resulting from any matters delineated in paragraphs 1(a), (b) or (e) only and provides no coverage for any other matters set forth in the covenants, conditions and restrictions.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Name of Agent

Agent No.

Agent's Signature

By **Old Republic National Title Insurance Company**
Carolyn Monroe

591 So.2d 170, 16 Fla. L. Weekly S770
(Cite as: 591 So.2d 170)

C

Supreme Court of Florida.
THE FLORIDA BAR, Complainant,
v.
Walter J. BELLEVILLE, Respondent.

No. 75116.
Dec. 5, 1991.

In attorney discipline case, the Supreme Court held that: (1) attorney representing purchaser in real estate transaction should harbor suspicions about documents he is preparing when they on their face establish transaction so one-sided as to put attorney on notice of likelihood of unconscionability, and assuming that vendor has agreed to pay purchaser's attorney fees, attorney breaches duty to avoid appearance of simultaneously representing adverse interests, where he does not explain to unrepresented vendor that he is representing adverse interest and does not explain material terms of documents attorney has drafted for purchaser so that opposing party fully understands their actual effect; (2) when transaction in which attorney represents one party and other party is unrepresented is one-sided, counsel preparing documents for transaction is under ethical duty to make sure that unrepresented party understands possible detrimental effect of transaction and fact that attorney's loyalty lies with his client alone; and (3) 30-day suspension is warranted by attorney's breach of duty in light of prior discipline for ethical violation.

Ordered accordingly.

West Headnotes

[1] Attorney and Client 45 ⚔️38

45 Attorney and Client

45I The Office of Attorney

45I(C) Discipline

45k37 Grounds for Discipline

45k38 k. Character and Conduct. Most

Cited Cases

Attorney representing purchaser in real estate transaction should harbor suspicions about documents he is preparing when they on their face establish transaction so one-sided as to put attorney on notice of likelihood of unconscionability, and assuming that vendor has agreed to pay purchaser's attorney fees, attorney breaches duty to avoid appearance of simultaneously representing adverse interests, where he does not explain to unrepresented vendor that he is representing adverse interest and does not explain material terms of documents attorney has drafted for purchaser so that opposing party fully understands their actual effect. [West's F.S.A. Bar Rule 4-1.7.](#)

[2] Attorney and Client 45 ⚔️21.10

45 Attorney and Client

45I The Office of Attorney

45I(B) Privileges, Disabilities, and Liabilities

45k20 Representing Adverse Interests

45k21.10 k. Disclosure, Waiver, or Consent. Most Cited Cases

When transaction in which attorney represents one party and other party is unrepresented is one-sided, counsel preparing documents for transaction is under ethical duty to make sure that unrepresented party understands possible detrimental effect of transaction and fact that attorney's loyalty lies with his client alone. [West's F.S.A. Bar Rule 4-1.7.](#)

[3] Attorney and Client 45 ⚔️32(7)

45 Attorney and Client

45I The Office of Attorney

45I(B) Privileges, Disabilities, and Liabilities

45k32 Regulation of Professional Conduct, in General

45k32(7) k. Miscellaneous Particular Acts or Omissions. Most Cited Cases

Attorney who has prepared documents for real estate closing is not required to always be present at closing to explain documents to parties.

[4] Attorney and Client 45 ⚔️38

45 Attorney and Client

45I The Office of Attorney

45I(C) Discipline

45k37 Grounds for Discipline

45k38 k. Character and Conduct. Most

Cited Cases

Attorney must avoid appearance of simultaneously representing adverse interests, especially where opposing party may be unfairly induced to rely on attorney's advice or skill in preparing legal documents. [West's F.S.A. Bar Rule 4-1.7](#).

[5] Attorney and Client 45 ⚔️59.13(3)

45 Attorney and Client

45I The Office of Attorney

45I(C) Discipline

45k59.1 Punishment; Disposition

45k59.13 Suspension

45k59.13(2) Definite Suspension

45k59.13(3) k. In General. Most

Cited Cases

(Formerly 45k58)

Attorney's breach of duty to avoid appearance of simultaneously representing adverse interests, including interests of vendor who had allegedly agreed to pay purchaser's attorney fees, warrants 30-day suspension, where attorney has previously been disciplined for ethical violation. [West's F.S.A. Bar Rule 4-1.7](#).

***171 John F. Harkness, Jr.**, Executive Director and **John T. Berry**, Staff Counsel, Tallahassee, and Jan Wichrowski, Bar Counsel, Orlando, for complainant.

[Dennis F. Fountain](#), Longwood, for respondent.

PER CURIAM.

We have this case on complaint of The Florida Bar for review of a referee's report recommending that Walter J. Belleville, an attorney licensed in Florida, be found not guilty of alleged ethical violations. We have jurisdiction. [Art. V, § 15, Fla. Const](#)

In the summer of 1988, Belleville was retained as counsel for Bradley M. Bloch. Bloch had entered into an agreement with James F. Cowan to purchase property owned by the latter. Cowan was an elderly man, eighty-three years of age, who had a third-grade education. While the evidence showed that Cowan had substantial prior experience in selling real estate when he was younger, neither party to this cause disputes that the various written documents alleged to constitute the agreement overwhelmingly favored the buyer, Mr. Bloch. Cowan, in fact, has subsequently disputed that he ever agreed to some of the terms embodied in these documents.^{FN1}

FN1. The Florida Bar has not charged Belleville with any fraud-related violation, and we accordingly express no opinion as to whether such a violation occurred.

Although Cowan and Bloch had negotiated only for the sale of an apartment building, the documents stated that Cowan was selling both the apartment building *and his residence*, which was located across the street from the apartments. The referee specifically found that Cowan had no intention of selling his residence and did not know that it was included in the sale. The record substantially supports this finding, which accordingly must be accepted as fact by this Court. [The Fla. Bar v. Bajoczky](#), 558 So.2d 1022 (Fla.1990).

It is unclear whether Belleville knowingly participated in his client's activities or merely followed the client's instructions without question. Whatever the case, Belleville drafted the relevant documents to include the legal description of Cowan's house in the instruments of sale. Cowan then apparently signed the documents without realizing he was transferring title to his house. No one at the closing explained the significance of the legal description to him. Belleville only sent a paralegal to the closing and did not attend it himself. In fact, he had never met Cowan to this point in time.

In exchange for the apartment and his residence, Cowan received only a promissory note, not a mortgage. The loan thus was unsecured. This note provided for ten percent interest amortized over twenty-five years. However, the first payment was deferred for four months with no apparent provision for interest to accumulate during this time, and the note by its own terms will become unenforceable upon Cowan's death. Finally, the documents called for Cowan to pay the closing costs, which Bloch and Belleville construed as including Belleville's attorney fee of \$625.

When Cowan received the promissory note and closing documents, he realized that their terms varied from the agreement he thought he had entered. Cowan contacted an attorney, who wrote a letter to Belleville explaining the points of disagreement. The next day, Bloch attempted to evict Cowan from his home.

The referee recommended no discipline based on his conclusion that Belleville owed no attorney-client obligation to Cowan. The Board of Governors of The Florida Bar voted to appeal this decision, and the Bar now seeks a thirty-day suspension.

While it is true that the factual findings of a referee may not be disturbed unless clearly and convincingly wrong, *Bajoczky*, we do not find that the present case turns on a dispute about the facts. The essential facts are not in question; and Belleville himself concedes with some understatement that "Mr. Cowan did not have a particularly good deal as a result of his negotiations with Mr. Bloch." Rather, the disagreement in this case is over Belleville's guilt and the appropriate discipline, if any. *172 This is a question entirely of law that we must decide. As former Chief Justice Ehrlich has noted, a referee's recommendation "is a recommendation and nothing more. It does not carry the authority or weight of a finding of fact by the referee." *Bajoczky*, 558 So.2d at 1025.

[1] Based on the facts, we cannot accept the referee's recommendation about guilt and punish-

ment. The referee's factual findings established that Cowan had negotiated to sell the apartment, that he did not intend to sell anything other than the apartment, and that he did not know that the documents of sale would result in the loss of his residence. It also is clear Belleville should have harbored suspicions about the documents he was preparing, because the documents established on their face a transaction so one-sided as to put Belleville on notice of the likelihood of their unconscionability.

[2][3] When faced with this factual scenario, we believe an attorney is under an ethical obligation to do two things. First, the attorney must explain to the unrepresented opposing party the fact that the attorney is representing an adverse interest. Second, the attorney must explain the material terms of the documents that the attorney has drafted for the client so that the opposing party fully understands their actual effect.^{FN2} When the transaction is as one-sided as that in the present case, counsel preparing the documents is under an ethical duty to make sure that an unrepresented party understands the possible detrimental effect of the transaction and the fact that the attorney's loyalty lies with the client alone. *R. Regulating Fla.Bar 4-1.7*.

FN2. We limit this holding to the facts of this case. We have no intent to mandate that an attorney who has prepared documents for a real estate closing always must be present at the closing to explain the documents to the respective parties.

We recognize that The Florida Bar relies on *The Florida Bar v. Teitelman*, 261 So.2d 140 (Fla.1972), which is somewhat distinguishable from the present case. *Teitelman* dealt with those situations in which an attorney, while representing one party, also directly bills the other party a fee for preparing legal documents. In the present case, the parties themselves contractually agreed that one would pay the other's attorney's fee.^{FN3}

FN3. We do not imply that such an agreement existed here in an enforceable form.

591 So.2d 170, 16 Fla. L. Weekly S770
(Cite as: 591 So.2d 170)

Cowan has disputed many of the terms of the alleged agreement. We assume solely for resolving the ethical issues of this case that Cowan had agreed to pay Bloch's attorney fees.

[4] We do not believe *Teitelman* stands for the proposition that an agreement by one party to pay the other party's attorney fee always makes the payor a client of the attorney, provided dual representation has not occurred and provided the payor either is represented by counsel or is given the warnings required in this opinion if the payor is relying on legal statements or documents prepared by the attorney for the client. However, *Teitelman* does stand for the proposition that an attorney must avoid the appearance of simultaneously representing adverse interests, especially where the opposing party may be unfairly induced to rely on the attorney's advice or skill in preparing legal documents. Here, Belleville breached that duty. [R. Regulating Fla.Bar 4-1.7.](#)

[5] For the foregoing reasons, we adopt the referee's findings of fact but reject the recommendations regarding guilt and discipline. The violation Belleville committed is a serious one in light of the fact that he previously has been disciplined for an ethical violation. *The Fla. Bar v. Belleville*, 529 So.2d 1109 (Fla.1988). Accordingly, we grant the request of The Florida Bar. Walter J. Belleville is hereby suspended from the practice of law for a period of thirty days, commencing on January 6, 1992. Belleville shall take all steps necessary to protect his present clients' interests and shall provide them with notice of his suspension, as required by the Rules Regulating The Florida Bar. He shall accept no new business from the date this opinion is issued. Judgment for costs in the amount of \$1,220.30 is entered against Belleville in *173 favor of The Florida Bar, for which sum let execution issue.

It is so ordered.

[SHAW](#), C.J., and OVERTON, McDONALD, BAR-

KETT, GRIMES, [KOGAN](#) and [HARDING](#), JJ.,
concur.

Fla.,1991.
The Florida Bar v. Belleville
591 So.2d 170, 16 Fla. L. Weekly S770

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994 So.2d 435, 33 Fla. L. Weekly S2547
(Cite as: 994 So.2d 435)

H

District Court of Appeal of Florida,
Third District.
Jossy MANSUR and Serge Mansur, as Personal
Representative of the Estate of Alex Mansur, Ap-
pellants,
v.
PODHURST ORSECK, P.A., Katherine W. Ezell
and Robert C. Josefsberg, Appellees.

No. 3D07-1723.
Oct. 29, 2008.

Background: Client and three of his brothers brought legal malpractice action against law firm and some of its partners, arising out of the brothers' failure to collect any proceeds from the sale of a property in which each held a one-eighth interest. The Circuit Court, Miami-Dade County, [Michael A. Genden](#), J., awarded summary judgment to law firm and partners against the brothers. Brothers appealed, although one brother later dismissed his appeal.

Holding: The District Court of Appeal, [Salter](#), J., held that triable issue existed as to whether brothers were also clients of law firm.

Reversed and remanded.

West Headnotes

[1] Attorney and Client 45 ⚔️64

45 Attorney and Client

45II Retainer and Authority

45k64 k. What Constitutes a Retainer. [Most Cited Cases](#)

Establishment of an attorney-client relationship, and thus the attachment of the concomitant rights and duties of each side to the relationship, does not require a written agreement or evidence that fees have been paid or agreed upon.

[2] Attorney and Client 45 ⚔️64

45 Attorney and Client

45II Retainer and Authority

45k64 k. What Constitutes a Retainer. [Most Cited Cases](#)

For a purported client's subjective belief that he is consulting a lawyer in the capacity to suffice to create an attorney-client relationship, this subjective belief must be a reasonable one.

[3] Judgment 228 ⚔️181(16)

228 Judgment

228V On Motion or Summary Proceeding

228k181 Grounds for Summary Judgment

228k181(15) Particular Cases

228k181(16) k. Attorneys, Cases Involving. [Most Cited Cases](#)

Genuine issue of material fact as to whether brothers of law firm's client were also clients of law firm precluded summary judgment in legal malpractice action brought by client and brothers.

*435 Koch & Trushin and [Bradley H. Trushin](#) and [Daniel L. Koch](#), Fort Lauderdale, for appellants.

Josephs Jack and [Susan S. Lerner](#) and [Nicole I. Sieb](#), Miami, for appellees.

Before [GERSTEN](#), C.J., and [COPE](#) and [SALTER](#), JJ.

*436 [SALTER](#), J.

Jossy Mansur and Serge Mansur, as Personal Representative of the Estate of Alex Mansur, ^{FN1} appeal a final summary judgment denying their legal malpractice claims against Podhurst Orseck, P.A., Katherine Ezell, and Robert Josefsberg. The question presented below and here is whether the appellants were at any time "clients" of the law firm and its partners. We conclude that genuine issues of fact were shown to exist regarding that

question, and thus that the summary judgment should not have been entered.

FN1. One of the three co-plaintiffs below, Miguel Mansur, voluntarily dismissed his appeal here. Alex Mansur, another co-plaintiff below, passed away before this appeal began. References to “Alex Mansur” in this opinion are to his estate, when appropriate.

Background

Ruben Mansur retained Podhurst Orseck to protect his interest, and the interest of three of his brothers (including the two appellants, Jossy and Alex Mansur), in certain Miami-Dade County real estate. The retention as counsel, fee arrangement, and scope of the engagement were not reduced to writing. Podhurst Orseck and its lawyers (collectively, “firm”) had represented several members of the Mansur family over a course of some twenty years.

Through a network of offshore and local companies and a trust, the members of the Mansur family controlled a multi-million dollar piece of property on Dodge Island. Ruben and the three brothers for whom he spoke each had (through the intermediary entities) a one-eighth undivided interest in the property, and so did four other Mansur siblings who were estranged from Ruben's group. The latter group, however, was in control of the entity holding title to the real estate in question, so that Ruben and his group were essentially outsiders looking in. Initially, Ruben Mansur asked the firm to investigate a rumored sale of the property.

On April 14, 2003, the firm wrote to the property manager to request information about the sale. The letter began, “This firm represents Ruben Mansur,” but also stated “I have also been advised that Messrs. Alex, Jossey [sic] and Miguel Mansur, each of whom similarly have 1/8th beneficial interests in the property, are also desirous of receiving this information.”

The firm then found that the property was in foreclosure by a foreign bank, Interbank Aruba. The firm prepared a May 2003 memorandum for Ruben discussing legal options to address his desire “to be certain that he and his brothers Alex, Jossy and Miguel all receive their respective one-eighth shares of any proceeds of such sale.” After consultation with Ruben, the firm filed a motion seeking leave for Ruben Mansur to intervene and a proposed cross-claim in the Interbank Aruba foreclosure action. The motion and proposed cross-claim stated that Ruben was acting “on behalf of himself and three brothers,” but he did not designate appellants Alex or Jossy Mansur as movants, proposed intervenors, or cross-plaintiffs. Ruben Mansur's supporting affidavit stated that he was “authorized to represent my brothers Alex Elias Mansur, Jossy M. Mansur, and Miguel Jose Mansur, each of whom also are ultimate beneficiaries of one-eighth interests in the subject property.” It is undisputed that Ruben Mansur had actual authority to represent the brothers.

In October 2003 a second foreclosure action was commenced against the Dodge Island property by TotalBank. TotalBank named Ruben Mansur, Alex Mansur, Jossy Mansur, and others as defendants,^{**FN2**} and *437 served summonses on Ruben, Alex, Jossy, and Miguel in care of their “authorized agent,” a firm attorney. The firm promptly advised counsel for TotalBank in a letter:

FN2. TotalBank's pre-foreclosure title report picked up the recorded lis pendens filed by Ruben Mansur for himself and “on behalf of” the appellants, so TotalBank joined all of them.

I can and do accept service for Ruben. Alex is recently deceased and I have no authority from his estate, nor do I know who his representatives are. While my client, Ruben Mansur, had verbal authority from his brothers to seek to intervene in the Interbank matter, it does not at this point extend to our representation in the TotalBank foreclosure action.

At Ruben's request, the firm prepared a memo which he could distribute to his three brothers to explain the options in both foreclosure cases. The memo summarized the status of the Interbank Aruba and TotalBank foreclosure cases, and it recited that Ruben Mansur had asked the firm to "write something that [Ruben] could send to Jossy, Miguel, and Alex's sons to explain the status of each case and the options available to **us**." (Emphasis added). Other parts of the memo clearly reflect communications to the appellants:

Counsel for TotalBank called to tell me that the title insurance company had picked up on the record of our motion to intervene in the Interbank suit and that for that reason they are requiring that TotalBank serve **each of you** with the complaint. She asked if we could accept service on your behalf.

Consequently, Ruben has given us permission to accept service on his behalf. We can do that for **each of you** or we can decline and leave them to try to serve you in Aruba.

After you have had an opportunity to review this and talk about it **among yourselves**, [we] will be happy to discuss it with you further if it would be helpful.

(Emphasis added).

At some point, the firm spoke with Alex Mansur by telephone about the litigation "to explain to him that in conjunction with Ruben after looking at all of the alternatives, we felt that the course of action we were taking was the best we could do and offered the best chance at seeing that there was-that there were funds left from which they might ultimately recover their claimed interests."

By March of 2004, the corporate owner of the property was nearing a sale transaction that would satisfy both of the foreclosing lenders and produce additional proceeds. Interbank prepared a stipula-

tion providing for the entry of an agreed form of final judgment of foreclosure if the sale did not eventuate by a deadline. The stipulation, which was sent to the firm for review, included a special consent provision, joinder, and signature lines for Ruben, Alex, Jossy, and Miguel Mansur. It stated:

Ruben Mansur, Alex Elias Mansur, Jossy Mansur and Miguel Jose Mansur (collectively, "the Mansurs") hereby join in this stipulation and expressly consent to its terms. The Mansurs acknowledge and stipulate that they have no claims or defenses against Interbank relating to the Mortgage, the Property, the Judgment, or this stipulation. The Mansurs further acknowledge and stipulate that the Mortgage is valid and that they have no claim individually to the Property.

The document also provided that all notices to the four brothers would be care of the law firm. Ruben and his three brothers*438 signed on their respective signature lines.

When the firm returned the stipulation to Interbank's attorney, the attorney acknowledged receipt in a letter that began, "I have received a copy of the stipulation executed by your Mansur clients." And finally, in June 2004, the corporate owner of the property closed the sale and paid off the Interbank and TotalBank mortgages without providing notice to the firm. A firm attorney sent a letter to the attorney for the corporate owner expressing concern that the corporate owner "does not intend to live up to its obligations **to the four Mansur brothers we represent**." (Emphasis added).

When efforts in Florida to collect any surplus proceeds from the sale failed, the appellants (and Ruben and Miguel Mansur) filed the circuit court action alleging professional negligence by the appellees.

Analysis

[1][2] Establishment of the attorney-client relationship-and thus the attachment of the concomitant rights and duties of each side to the relationship-

does not require a written agreement or evidence that fees have been paid or agreed upon.^{FN3} The Florida Supreme Court has said that the test for an attorney-client relationship “is a subjective one and hinges upon the client's belief that he is consulting a lawyer in that capacity and his manifested intention is to seek professional legal advice. However, this subjective belief must ... be a reasonable one.” *The Fla. Bar v. Beach*, 675 So.2d 106, 109 (Fla.1996) (citation and internal quotation marks omitted). See also *Gonzalez v. Chillura*, 892 So.2d 1075, 1077 (Fla. 2d DCA 2004); *Dean v. Dean*, 607 So.2d 494, 497 (Fla. 4th DCA 1992).

FN3. *Jackson v. BellSouth Telecomm.*, 372 F.3d 1250, 1281 (11th Cir.2004); *Eggers v. Eggers*, 776 So.2d 1096 (Fla. 5th DCA 2001).

As summarized by the *Restatement (Third) of the Law Governing Lawyers* (2000):

§ 14. Formation Of A Client-Lawyer Relationship

A relationship of client and lawyer arises when:

(1) a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either

(a) the lawyer manifests to the person consent to do so; or

(b) the lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services; or

(2) a tribunal with power to do so appoints the lawyer to provide the services.

Because this is an appeal from a summary judgment, we read the summary judgment record in the light most favorable to the appellants, as the nonmoving parties. See *Moore v. Morris*, 475 So.2d 666, 668 (Fla.1985).

In this case, the firm initially filed pleadings in the Interbank Aruba case on behalf of Ruben Mansur, stating that he was authorized to represent the interests of his three brothers in the matter. The firm then sent a memorandum describing the status of the two foreclosure cases in October 2003 and certain steps that might affect the interests of all four brothers in those cases (accepting service on their behalf, for example, so that they would become active defendants in the TotalBank case; or withdrawing the motion to intervene in the Interbank Aruba case, so that TotalBank would drop the appellants as *439 defendants). A few months later, the firm sent out the stipulation for settlement with provisions for the consent and joinder of the appellants, and providing that notices for the brothers would be sent to the firm. The appellants' belief that they were clients receiving legal advice is also corroborated by the letter from the firm to counsel for the property owner referring to that entity's “obligations to the four Mansur brothers we represent.” That belief was also shared by the attorney for Interbank Aruba, who returned the document executed by “your Mansur clients” to the appellees.

[3] Based on these facts in the circuit court record, the motion for summary judgment should not have been granted. The firm's own correspondence referred to “the four Mansur brothers we represent.” Viewed in their totality, the documents support a conclusion that the test for the attorney-client relationship was satisfied, and that the firm undertook the representation of Ruben Mansur both on his own behalf and on behalf of the brothers he had the authority to represent.

Another way to consider the issue is to ask this question: would a court have sustained a claim of attorney-client privilege asserted by Alex or Jossy Mansur if they had been subpoenaed to produce a copy of the October 16, 2003, memo? Although the memo was addressed to Ruben Mansur, it was expressly written as something he “could send to Jossy, Miguel and Alex's sons to explain the status of each case and the options available to us.” The

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memo invited each of the four Mansurs to make a decision to authorize or decline the acceptance of service, and the last paragraph anticipated that each of the brothers would review it, talk about it among themselves, and then call the appellees with any further questions. It seems clear that a claim of attorney-client privilege by Alex or Jossy Mansur would have been sustained as to that memorandum. See *Samuel v. Shands Teaching Hosp. & Clinics, Inc.*, 984 So.2d 627, 628 (Fla. 1st DCA 2008).

We express no opinion regarding the merit, or lack of merit, of the appellants' claims of professional negligence. But on the narrow question considered below, whether or not the appellants have created a genuine issue regarding a material fact, we are required to reverse as to these two appellants. *Moore*, 475 So.2d at 668; *Berkow v. Isaevna*, 983 So.2d 1242 (Fla. 3d DCA 2008); Model Rules of Prof'l Conduct Scope ¶ 17 (2004) ("Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.").

Reversed and remanded for further proceedings.

Fla.App. 3 Dist., 2008.

Mansur v. Podhurst Orseck, P.A.

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6 So.3d 681, 34 Fla. L. Weekly D585
(Cite as: 6 So.3d 681)

H

District Court of Appeal of Florida,
Second District.
JP MORGAN CHASE, as Trustee for Residential
Funding Corporation, Appellant,
v.
NEW MILLENNIAL, LC; Branch Banking & Trust
Company, Successor by merger to Republic Bank;
Ross W. Jahren; Unknown Tenant No. 1; Unknown
Tenant No. 2; and All Unknown Parties Claiming
Interests by, Through, under or against a named de-
fendant to this action, or having or claiming to have
any right, title, or interest in the property herein de-
scribed, Appellees.

No. 2D07-5937.
March 18, 2009.

Background: Mortgage assignee brought action to foreclose two mortgages. The Circuit Court, Pinellas County, [W. Douglas Baird, J.](#), entered summary judgment in favor of subsequent purchaser and creditor of properties, and assignee appealed.

Holdings: The District Court of Appeal, [Villanti, J.](#), held that:

- (1) in an issue of first impression, subsequent purchaser and purchaser's creditor were not bona fide purchaser or bona fide creditor and could not avoid mortgage, and
- (2) subsequent purchaser and creditor did not follow procedures requiring them to make a written request for an estoppel letter.

Reversed.

West Headnotes

[1] Mortgages 266 ⚡154(4)

266 Mortgages

266III Construction and Operation

266III(D) Lien and Priority

266k152 Mortgages as Bona Fide Pur-

chasers

266k154 Notice

266k154(4) k. Record as Notice.

Most Cited Cases

Mortgages 266 ⚡254

266 Mortgages

266V Assignment of Mortgage or Debt

266k254 k. Rights of Assignee as Against Third Persons. Most Cited Cases

Vendor and Purchaser 400 ⚡231(17)

400 Vendor and Purchaser

400V Rights and Liabilities of Parties

400V(C) Bona Fide Purchasers

400k225 Notice

400k231 Records

400k231(16) Particular Instruments or Proceedings

400k231(17) k. Mortgages and Other Liens or Incumbrances. Most Cited Cases

Subsequent purchaser and purchaser's creditor were not bona fide purchaser and bona fide creditor for value and thus could not avoid mortgages, even though mortgages had been assigned and the mortgage assignment was not recorded, where mortgages were duly recorded and no satisfaction was entered on the public record, and purchaser and creditor had actual knowledge of the recorded mortgages, and that mortgages had not been satisfied. [F.S.2004, § 701.02.](#)

[2] Mortgages 266 ⚡244(3)

266 Mortgages

266V Assignment of Mortgage or Debt

266k244 Priorities

266k244(3) k. Effect of Failure to Record.

Most Cited Cases

Statute that provides no assignment of a mortgage upon real property shall be good against creditors or subsequent purchasers, only applies to estop an earlier purchaser/assignee of a mortgagee, the

person or entity that loaned the money involved in the mortgage and obtained a security interest on the piece of property, from claiming priority in the same mortgage chain as against a subsequent assignee of the same mortgage when the earlier mortgagee fails to record the earlier assignment of the mortgage. [F.S.2004, § 701.02\(1\)](#).

[3] Statutes 361 ⚡181(1)

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k181 In General

361k181(1) k. In General. [Most](#)

Cited Cases

When interpreting a statute and attempting to discern legislative intent, courts must first look at the actual language used in the statute.

[4] Mortgages 266 ⚡154(4)

266 Mortgages

266III Construction and Operation

266III(D) Lien and Priority

266k152 Mortgagees as Bona Fide Purchasers

266k154 Notice

266k154(4) k. Record as Notice.

Most Cited Cases

Mortgages 266 ⚡254

266 Mortgages

266V Assignment of Mortgage or Debt

266k254 k. Rights of Assignee as Against Third Persons. [Most Cited Cases](#)

Vendor and Purchaser 400 ⚡231(17)

400 Vendor and Purchaser

400V Rights and Liabilities of Parties

400V(C) Bona Fide Purchasers

400k225 Notice

400k231 Records

400k231(16) Particular Instruments

or Proceedings

[400k231\(17\)](#) k. Mortgages and Other Liens or Incumbrances. [Most Cited Cases](#)

Obtaining a computer printout for two mortgages, which reflected that the loans had a “close date” and a current balance of \$0 and which stated “PD OFF,” did not satisfy the requirements of statute requiring a written request for an estoppel letter, and thus, subsequent purchaser and creditor were not bona fide purchaser and creditor for value, in foreclosure action brought by assignee of mortgages; at best, the computer printouts raised questions regarding whether the mortgages were satisfied or “closed out” because they were transferred to a third party, and thus, under any interpretation of the undisputed facts, the continued existence and validity of the mortgages and notes was never explained away. [F.S.2004, § 701.04](#).

*[682 Roy A. Diaz](#) of Smith, Hiatt & Diaz, P.A., Fort Lauderdale, for Appellant.

[A. Christopher Kasten](#) and [Karen Cox](#) of Bush Ross, P.A., Tampa, for Appellees New Millennial, LC, and Branch Banking & Trust Company.

No appearance for remaining Appellees.

[VILLANTI](#), Judge.

JP Morgan Chase (JP Morgan) appeals an order granting summary judgment in favor of New Millennial, L.C., and Branch Banking & Trust (BB & T). The appeal arises from a mortgage foreclosure action filed by JP Morgan against New Millennial and BB & T. JP Morgan sought to foreclose two mortgages which originated in favor of AmSouth Bank and which were subsequently assigned to JP Morgan. Because the assignments from AmSouth to JP Morgan were not recorded, the trial court granted summary judgment against *[683](#) JP Morgan and in favor of New Millennial and BB & T, finding that New Millennial was a subsequent purchaser and BB & T was a subsequent creditor for valuable consideration without notice of the assignments to JP Morgan. Because the trial court erred in so hold-

ing under the facts of this case, we reverse.

FACTS

In 2000, Ross W. Jahren obtained two mortgages from AmSouth in connection with the purchase of real property located in Pinellas County. The two mortgages in favor of AmSouth were recorded in the public records of Pinellas County. In 2004, AmSouth assigned the mortgages to JP Morgan, but this assignment was not recorded in the public records.

In 2006, Jahren entered into an agreement to sell the property to New Millennial. BB & T financed New Millennial's purchase. As part of the sales process, New Millennial's closing agent performed a title search on the property and discovered the two recorded AmSouth mortgages, which were reflected as still outstanding. Chicago Title Insurance Company then issued a Commitment for Title Insurance indicating that it would issue title insurance upon receipt of the "cancelled note[s] and satisfaction[s] or release[s]" for the two mortgages executed by Jahren in favor of AmSouth. New Millennial's closing agent failed to obtain the cancelled notes and satisfactions or releases requested by Chicago Title. Instead, the closing agent contacted AmSouth by telephone and was allegedly told by an unidentified ^{FN1} AmSouth representative that the loans were paid off and that written confirmation of this fact would be provided. On April 24, 2006, someone on behalf of AmSouth faxed to the closing agent two computer screen printouts styled "Installment Loan Account Profile," which reflected that the loans had a "close date" of June 30, 2004, and had a current balance of \$0. The documents also stated " *PD OFF." Jahren and New Millennial finalized the sale of the property without obtaining the cancelled notes and satisfactions or releases specifically requested by Chicago Title.

^{FN1}. The closing agent did not obtain the name of the AmSouth representative who provided this information.

The AmSouth mortgages were never satisfied,

and JP Morgan began foreclosure proceedings as AmSouth's assignee. Importantly, New Millennial and BB & T did not defend by arguing that the two notes had been paid off and the mortgages satisfied. ^{FN2} Rather, they defended by arguing that the mortgages were ineffective and unenforceable against them because JP Morgan had not recorded the assignments received from AmSouth, as required by [section 701.02, Florida Statutes \(2004\)](#). Both sides filed motions for summary judgment. On September 11, 2007, the trial court denied JP Morgan's motion for summary judgment and granted New Millennial and BB & T's motion, finding:

^{FN2}. Although Jahren is a nominal party to this appeal and did not file an appearance, we note that his defenses below did not create a disputed issue of material fact as to whether the two AmSouth notes had been paid off and the mortgages satisfied. He did not attach proof of payment, such as checks showing that the two AmSouth notes had been paid off and the mortgages satisfied. Rather, he filed copies of the same two computer screen printouts discussed above. As discussed herein, these documents did not demonstrate that the mortgages had been satisfied.

1. AmSouth Bank assigned the two mortgages at issue in this case to JP Morgan Chase ("Assignments"). The Assignments were not recorded in accordance with [§ 701.02, Florida Statutes](#).

***684** 2. New Millennial is a subsequent purchaser for valuable consideration, *was without notice of the Assignments*, and is protected by [§ 701.02, Florida Statutes](#).

3. BB & T is a subsequent creditor for valuable consideration, *was without notice of the Assignments*, and is protected by [§ 701.02, Florida Statutes](#).

4. The mortgages being foreclosed by JP Morgan Chase in this case are ineffective and unen-

forceable against New Millennial and BB & T[.]

(Underline emphasis added.) The court subsequently denied JP Morgan's motion for rehearing or reconsideration, stating:

Moreover, the Court finds that the Defendant New Millennial was a subsequent purchaser for valuable consideration, who *had no knowledge or notice of the mortgages at issue here*. Rather, New Millennial made a diligent inquiry to determine whether any amounts were due on the AmSouth mortgage and they were advised that the loan in question was paid in full. Moreover Defendant BB & T is a subsequent creditor for valuable consideration with *no knowledge or notice of the mortgages at issue*. Accordingly, pursuant to [section 701.02, Florida Statutes](#), the mortgages at issue are not effective or enforceable against New Millennial or BB & T.

(Underline emphasis added.) This appeal followed.

ANALYSIS

We review de novo an order granting summary judgment. [Knowles v. JPMorgan Chase Bank, N.A.](#), 994 So.2d 1218, 1219 (Fla. 2d DCA 2008). Summary judgment should be granted “only if (1) no genuine issue of material fact exists, viewing every possible inference in favor of the party against whom summary judgment has been entered, and (2) the moving party is entitled to a judgment as a matter of law.” *Id.* (citations omitted).

Chapter 701, Florida Statutes (2004), is entitled “**ASSIGNMENT AND CANCELLATION OF MORTGAGES.**” Section 701.01 states:

Assignment.-Any mortgagee may assign and transfer any mortgage made to her or him, and the person to whom any mortgage may be assigned or transferred may also assign and transfer it, and that person or her or his assigns or subsequent assignees may lawfully have, *take and pursue the same means and remedies which the mortgagee may lawfully have, take or pursue for*

the foreclosure of a mortgage and for the recovery of the money secured thereby.

(Underline emphasis added.) [Section 701.02](#) provides, in relevant part:

Assignment not effectual against creditors unless recorded and indicated in title of document.-

(1) No assignment of a mortgage upon real property or of any interest therein, shall be good or effectual in law or equity, against creditors or subsequent purchasers, for a valuable consideration, *and without notice*, unless the assignment is contained in a document which, in its title, indicates an assignment of mortgage and is recorded according to law.

(2) The provisions of this section shall also extend to assignments of mortgages resulting from transfers of all or any part or parts of the debt, note or notes secured by mortgage, and none of same shall be effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration without notice, unless a duly executed assignment be recorded according to law.

(Underline emphasis added.)

[1][2] JP Morgan first argues that the trial court misapplied [section 701.02](#) when *685 it held that New Millennial was a subsequent purchaser and BB & T was a subsequent creditor for valuable consideration and without notice of the assignments. JP Morgan's position is that [section 701.02\(1\)](#) only applies to estop an earlier purchaser/assignee of a *mortgagee*-the person or entity that loaned the money involved in the mortgage and obtained a security interest on the piece of property-from claiming priority in the same mortgage chain as against a subsequent assignee of the same mortgage when the earlier *mortgagee* fails to record the earlier assignment of the mortgage. In other words, if the original mortgagee assigns the mortgage to Entity A and Entity A fails to record that assignment, Entity A cannot claim priority over a latter assignee of the

same mortgage (Entity B). We agree with JP Morgan's interpretation of the statute.

Although this is an issue of first impression in this district, we are guided in its resolution by *Kapila v. Atlantic Mortgage & Investment Corp. (In re Halabi)*, 184 F.3d 1335 (11th Cir.1999). In that case, Mr. Halabi gave Republic Savings Bank a mortgage on real property. *Id.* at 1336. Although Republic Savings Bank recorded the mortgage, that mortgage was later assigned several times and the entity to which the mortgage was last assigned failed to record its assignment. *Id.* When the bankruptcy trustee, standing in the shoes of mortgagor Halabi, tried to avoid the mortgage debt based on the last assignee's failure to record the assignment, the bankruptcy court held that section "701.02's recording requirement is applicable only to (and enforceable by) competing creditors or subsequent *bona fide* purchasers of the mortgagee, not by the mortgagor." *Id.* at 1338 (underline emphasis added). The court concluded that the statute does not protect the mortgagor, nor anyone "claiming under a mortgagor." *Id.* We agree with the reasoning of *In re Halabi* because its interpretation of the statute makes sense.

[3] First, "[w]hen interpreting a statute and attempting to discern legislative intent, courts must first look at the actual language used in the statute." *Joshua v. City of Gainesville*, 768 So.2d 432, 435 (Fla.2000). Here, the title of chapter 701-Assignment and Cancellation of Mortgages-bears out the obvious: it applies to purchasers of mortgages, not to purchasers of real property or their lenders.

Furthermore, as noted in *In re Halabi*:

The recording requirement is not intended to protect one claiming under a mortgagor-against whose property there is already a perfected mortgage-with respect to subsequent assignments of the mortgage. The mortgagor has actual notice of the original mortgage, and *anyone claiming under the mortgagor has constructive notice if the*

mortgage is recorded. From the point of view of the mortgagor or someone standing in his shoes, *a subsequent assignment of the mortgagee's interest-whether recorded or not-does not change the nature of the interest of the mortgagor or someone claiming under him*. Nor should a failure to record any subsequent assignment afford the mortgagor or [anyone] standing in his shoes an opportunity to avoid the mortgage.

184 F.3d at 1338 (emphasis added). Because the mortgagor's successor "had constructive notice of a mortgage *by whomever held*, he cannot assume the status of a *bona fide* purchaser without notice." *Id.* at 1338 n. 1 (underline emphasis added). Any other interpretation of section 701.02 would turn well-established secured transaction principles on their heads: a buyer could effectively ignore a recorded mortgage simply because the mortgage/note *686 has been sold in the aftermarket to a different financial institution which has failed to record the assignment. Like the court in *In re Halabi*, we find that "[w]hile each subsequent assignment had a bearing on the rights of the mortgagees *inter se*, it did not affect the rights or interests of the debtor or the debtor's [successor]...." *Id.* at 1339.

As pointed out in *In re Halabi*, in *Bradley v. Forbs*, 116 Fla. 350, 156 So. 716 (1934), the Florida Supreme Court held that the predecessor of section 701.02 applied only to creditors or subsequent purchasers of a mortgagee. *In re Halabi*, 184 F.3d at 1338 n. 1. The court in *Bradley* explained:

[W]hen the original mortgage was recorded and no satisfaction thereof entered upon the record, in the absence of other definite proof to the contrary, it must be assumed that the mortgage is still in full force and effect in the hands of some one and a subsequent purchaser or mortgagee has the right to require the production of the mortgage and note which it is given to secure, or a satisfaction on record.

156 So. at 718; see also *Huntington Nat'l Bank v. Merrill Lynch Credit Corp.*, 779 So.2d 396, 398

(Fla. 2d DCA 2000) (“As long as the debt remained and the mortgage was unsatisfied of record, there was no right to presume that it had been satisfied or extinguished.”).

The fact of the matter is that, in this case, the original mortgages on the property were duly recorded and no satisfaction was entered on the public record. New Millennial and BB & T had actual knowledge of the existence of the two recorded mortgages and also had actual knowledge that the public records reflected that those mortgages had not been satisfied. Therefore, until they received satisfactions on record, New Millennial and BB & T should have assumed that the mortgages were still in full force and effect in someone's hands. Their title insurance agent, Chicago Title, specifically requested “production of the cancelled note[s] and satisfaction[s] or release[s]” of the recorded mortgages executed by Jahren to AmSouth. Nevertheless, New Millennial and BB & T failed to obtain those documents which would have eliminated any doubt that the debt had been satisfied or which would have alerted them to the fact that they needed to withhold monies at the closing to satisfy the notes and mortgages. By failing to do so, they cannot be considered a bona fide purchaser and a bona fide creditor without notice and cannot consequently avoid the mortgages assigned to JP Morgan. Accordingly, the trial court erred in concluding that New Millennial and BB & T could avoid the mortgages just because JP Morgan had failed to record the assignments.^{FN3}

^{FN3}. Our opinion should not be viewed as condoning JP Morgan's failure to record the assignment. Rather, we simply conclude that the failure to record the assignment here was not fatal to JP Morgan's right as a matter of law to pursue the remedy of foreclosure. Obviously, a large part of the underlying litigation would have been avoided if the assignment had been duly recorded, as is typically done.

[4] Next, New Millennial and BB & T posit

that even if this court agrees with the reasoning and holding of *In re Halabi*, that case is inapplicable here because their representatives followed the procedures set forth in section 701.04 by obtaining a computer printout furnished by AmSouth indicating that the recorded debt had been satisfied. Therefore, their argument follows, they had no notice of the assignment, and they reasonably believed the original mortgages had been paid off. The trial court adopted this argument, finding that New Millennial was a bona fide purchaser *687 without notice because it had “diligently” inquired about the AmSouth mortgages and had been advised that they had been paid in full. We reject New Millennial and BB & T's argument because the procedures outlined in section 701.04 were *not* followed in this case.

Section 701.04 provides, in relevant part:

Cancellation of mortgages, liens, and judgments.-

(1) Within 14 days after receipt of *the written request of a mortgagor*, the holder of a mortgage shall deliver to the mortgagor at a place designated in the written request *an estoppel letter* setting forth the unpaid principal balance, interest due, and the per diem rate. Whenever the amount of money due on any mortgage, lien, or judgment shall be fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom such payment shall have been made, *shall execute in writing an instrument acknowledging satisfaction of said mortgage, lien, or judgment and have the same acknowledged, or proven, and duly entered of record in the book provided by law for such purposes in the proper county. Within 60 days of the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall send or cause to be sent the recorded satisfaction to the person who has made the full payment. In the case of a civil action arising out of the provisions of this section, the prevailing party*

shall be entitled to attorney's fees and costs.

(Underline emphasis added.) The plain effect of the above provision is to enable the closing agent to timely obtain a satisfaction of mortgage if it remits to the mortgagee the amount set forth in an estoppel letter. In this case, the title search reflected two recorded mortgages on the property. In an affidavit signed by Jahren on May 8, 2006, before closing on the transaction, he stated that the property was free and clear of all encumbrances, *except* those which were shown on the Title Insurance Commitment issued by Chicago Title. By so qualifying his affidavit, Jahren thereby acknowledged the debt with AmSouth was still outstanding as of that date. Yet, neither Jahren nor New Millennial nor its agents made a *written* request for an estoppel letter related to the two recorded mortgages, as required by [section 701.04\(1\)](#). Instead, they proceeded to closing even though there was no recorded “instrument acknowledging satisfaction of [the] mortgage, lien, or judgment ... *duly entered of record in the book provided by law for such purposes in the proper county.*” [§ 701.04\(1\)](#) (emphasis added). The computer printouts faxed by AmSouth to the closing agent pursuant to a telephone inquiry were, at best, a red flag that raised the questions: (1) Did the printouts mean that the mortgages and notes were satisfied *two years prior* or were the notes “closed out” because they and the mortgages were transferred to or purchased by a third party?; [FN4](#) and (2) Given that section 701.03 requires that the mortgagee cancel a fully paid mortgage “within 60 days” of payment, why was there no satisfaction of the mortgages on record *two years* after the debt was allegedly***688** satisfied? Thus, the printout screens obtained by New Millennial and BB & T could not be viewed as an estoppel letter, nor could they serve as substitute for duly recorded satisfactions of mortgage documents. Under any interpretation of the undisputed facts, the continued existence and validity of the mortgages and notes was never explained away so as to establish New Millennial's and BB & T's status as bona fide purchaser and creditor for value.

[FN4](#). In opposition to New Millennial and BB & T's motion for summary judgment, JP Morgan filed the affidavit of Brian Buzbee, Assistant Vice President of Regions Bank. Regions Bank is the successor to AmSouth. Mr. Buzbee's affidavit stated that the type of screen printout obtained by New Millennial's closing agent would show a zero balance on a loan either when a loan is legitimately paid off in full *or* when the loan was transferred, assigned, or sold.

CONCLUSION

“[I]t is the debt and not the mere evidence of it which is secured.” [Drake Lumber Co. v. Semple](#), 100 Fla. 1757, 130 So. 577, 581 (1930). Under the circumstances of this case, in the absence of cancelled notes or recorded satisfactions of the two mortgages, the trial court could not legally declare the loans “ineffective and unenforceable” as against New Millennial and BB & T. To do so deprived JP Morgan of its right to pursue the means and remedies of foreclosure, which are legal attributes of the mortgages it purchased. Hence, we reverse the summary judgment. Because the record is clear that JP Morgan's priority was not impugned vis-à-vis the Appellees, we remand for the trial court to vacate the summary judgment and reinstate the foreclosure proceedings with the priority status established as set forth in this opinion. [FN5](#)

[FN5](#). Although this opinion likely precludes New Millennial and BB & T from obtaining relief from JP Morgan, nothing herein should be construed to preclude them from pursuing any other remedies that may be available to them against any other party involved in this transaction.

Reversed and remanded with directions.

[ALTENBERND](#) and [DAVIS](#), JJ., Concur.

Fla.App. 2 Dist., 2009.

JP Morgan Chase v. New Millennial, LC

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39 So.3d 1196, 35 Fla. L. Weekly S337
(Cite as: 39 So.3d 1196)

H

Supreme Court of Florida.
THE FLORIDA BAR, Complainant,
v.
Shari Nicole HINES, Respondent.

No. SC08-2297.
June 10, 2010.

Background: In attorney disciplinary proceeding the referee recommended finding the attorney not guilty of professional misconduct. Bar sought review.

Holding: The Supreme Court held that attorney's conduct in allowing a nonlawyer, whom the attorney neither employed, supervised, nor controlled, to have signatory authority over an escrow account the attorney opened to handle real estate closings, resulting in misappropriation of funds held in trust in the escrow account, violated the attorney professional conduct rule providing that a lawyer must make reasonable efforts to ensure that the conduct of a nonlawyer associated with the lawyer is compatible with the professional obligations of the lawyer.

Referee's recommendation approved in part and disapproved in part; remanded.

Lewis, J., concurred in result.

West Headnotes

[1] Attorney and Client 45 ⚡57

45 Attorney and Client

45I The Office of Attorney

45I(C) Discipline

45k47 Proceedings

45k57 k. Review. [Most Cited Cases](#)

Referee's recommendation that the Supreme Court find attorney not guilty of violating profes-

sional conduct rules would be reviewed by the Supreme Court de novo, where the attorney and the Bar had stipulated to the material facts, which the referee had adopted in her report.

[2] Attorney and Client 45 ⚡44(2)

45 Attorney and Client

45I The Office of Attorney

45I(C) Discipline

45k37 Grounds for Discipline

45k44 Misconduct as to Client

45k44(2) k. Misappropriation and failure to account. [Most Cited Cases](#)

Attorney's conduct in allowing the nonlawyer employer of a nonlawyer title processor, whom the attorney neither employed, supervised, nor controlled, to have signatory authority over an escrow account the attorney opened to handle real estate closings, resulting in misappropriation by the nonlawyer employer and/or the title processor of funds held in trust in the escrow account, did not violate the attorney professional conduct rules requiring competent representation, requiring a lawyer to review and be responsible for work product of paralegals and legal assistants, prohibiting a lawyer from violating professional conduct rules through the actions of others, and prohibiting a lawyer from engaging in conduct in connection with practice of law that is prejudicial to administration of justice. [West's F.S.A. Bar Rules 4-1.1, 4-5.3\(c\), 4-8.4\(a, d\).](#)

[3] Attorney and Client 45 ⚡44(2)

45 Attorney and Client

45I The Office of Attorney

45I(C) Discipline

45k37 Grounds for Discipline

45k44 Misconduct as to Client

45k44(2) k. Misappropriation and failure to account. [Most Cited Cases](#)

Attorney's conduct in allowing the nonlawyer employer of a nonlawyer title processor, whom the attorney neither employed, supervised, nor con-

trolled, to have signatory authority over an escrow account the attorney opened to handle real estate closings, resulting in misappropriation by the nonlawyer employer and/or the title processor of funds held in trust in the escrow account, violated the attorney professional conduct rule providing that a lawyer must make reasonable efforts to ensure that the conduct of a nonlawyer associated with the lawyer is compatible with the professional obligations of the lawyer. [West's F.S.A. Bar Rule 4-5.3\(b\)](#).

[4] Deposits and Escrows 122A 13

122A Deposits and Escrows

122AII Conditional Deposits or Escrows

122Ak13 k. Depositaries. [Most Cited Cases](#)

Absent an express agreement, the law implies from the circumstances that an escrow agent undertakes a legal obligation: (1) to know the provisions and conditions of the principals' agreement concerning the escrowed property, and (2) to exercise reasonable skill and ordinary diligence in holding and delivering possession of the escrowed property, i.e., to disburse the escrowed funds, in strict accordance with the principals' agreement.

[5] Deposits and Escrows 122A 13

122A Deposits and Escrows

122AII Conditional Deposits or Escrows

122Ak13 k. Depositaries. [Most Cited Cases](#)

A closing agent for a real estate transaction has a duty to supervise the closing in a reasonably prudent manner.

[6] Attorney and Client 45 44(2)

45 Attorney and Client

45I The Office of Attorney

45I(C) Discipline

45k37 Grounds for Discipline

45k44 Misconduct as to Client

45k44(2) k. Misappropriation and failure to account. [Most Cited Cases](#)

With respect to funds held in trust by a lawyer, a lawyer may permit a nonlawyer to have authority

or control over such funds, without violating the attorney professional conduct rule governing a lawyer's responsibilities regarding nonlawyer assistants, only if that nonlawyer is employed by or under the direct supervision and control of the lawyer. [West's F.S.A. Bar Rule 4-5.3](#).

*1197 [John F. Harkness, Jr.](#), Executive Director, and [Kenneth Lawrence Marvin](#), Staff Counsel, The Florida Bar, Tallahassee, FL, and [Lorraine Christine Hoffman](#), Bar Counsel, The Florida Bar, Sunrise, FL, for Complainant.

[Kevin P. Tynan](#) of Richardson and Tynan, P.L.C., Tamarac, FL, for Respondent.

PER CURIAM.

We have for review a referee's report recommending that respondent, Shari Nicole Hines, be found not guilty of professional misconduct. The Bar seeks review and asserts that Hines should be subject to a rehabilitative suspension. We have jurisdiction. *See* [art. V, § 15, Fla. Const.](#)

As more fully explained below, we disapprove the referee's recommendation that Hines be found not guilty of violating [Rule Regulating the Florida Bar 4-5.3\(b\)](#), governing a lawyer's responsibilities with respect to nonlawyers associated with a lawyer. That rule provides that the lawyer must make reasonable efforts to ensure that the conduct of a nonlawyer associated with a lawyer is compatible with the professional obligations of the lawyer. We conclude that Hines violated this rule by allowing a nonlawyer, whom she neither employed, supervised, nor controlled, to have signatory authority over an escrow account she opened to handle real estate closings, resulting in misappropriation by that nonlawyer of funds held in trust in the escrow account. We accordingly remand this matter to the referee for a recommendation as to the appropriate discipline. ^{FN1}

^{FN1}. We approve the referee's findings of fact and her recommendation that Hines be

found not guilty of violating [rules 4-1.1](#) (lawyer shall provide competent representation); 4-1.15 (lawyer shall comply with trust account rules); 4-5.3(a) (paralegals and legal assistants must work under direction or supervision of lawyer); 4-5.3(c) (lawyer shall review and be responsible for work product of paralegals and legal assistants); 4-8.4(a) (lawyer shall not violate rules, assist or induce another to do so, or do so through actions of another); and 4-8.4(d) (lawyer shall not engage in conduct in connection with practice of law that is prejudicial to administration of justice).

STATEMENT OF CASE AND FACTS

On December 10, 2008, The Florida Bar filed a complaint against Hines, alleging that in the course of acting as attorney and closing agent in a real estate transaction involving Paramount Lending Group (Paramount), Hines failed to appropriately supervise a nonlawyer title processor, Ida Ocasio, and the nonlawyer principal of Paramount, John Mohan, and improperly permitted Mohan to have signatory authority over the escrow account she opened to handle all closings she transacted through Paramount. The complaint further alleged that as a result of Hines' actions, Ocasio, Mohan, or both were able to steal the proceeds of a residential real estate transaction, resulting in harm to the parties involved.

***1198** Before the referee, the parties stipulated to the following facts. Prior to November 2007, part of Hines' law practice included real estate transactions, and she was introduced to Paramount Lending Group and its principal, Mohan. In late November 2007, Hines began accepting potential real estate closings from Paramount. During the course of this business relationship, Hines assumed responsibility for two closings that were generated by Paramount, the second of which was a residential real estate transaction between Alyce and Frederick Droege, the sellers, and George Melendez, the buyer. Prior to the closings, Hines relocated her law of-

fice to the same building as Paramount and became a tenant of Paramount, and she opened a new escrow account for all transactions with Paramount. Hines allowed Mohan shared signatory authority over this escrow account. However, because she recognized the inherent danger of allowing a nonlawyer access to an escrow account maintained in her name as an escrow agent and Florida lawyer, she placed caps on the amounts of money that Mohan could access or control in the escrow account.

On or about December 17, 2007, Hines was contacted by Ocasio and was advised that the Droege transaction needed to close that day in Orlando, Florida, pursuant to the closing instructions provided by the lender. As a result of this conversation, Hines forwarded, via Federal Express, ten blank, signed escrow account checks to Ocasio to be used for the closing. The closing was conducted by Ocasio on December 18, 2007, with all parties executing the required closing documents. Hines did not attend the closing and did not see, review, or approve the closing documents before the closing. The HUD-1 closing statement executed by all parties to the closing indicated that the Droege's mortgage on the property in the amount of \$34,714.10 was to be satisfied and that the Droege's were to be paid the sum of \$128,802.68 as their proceeds from the sale. After executing their closing documents, the Droege's were given, by Ocasio, an escrow account check drawn in their favor in the amount of \$128,802.68. The Droege's deposited this check into their account at SunTrust. They were advised that there would be a ten-day hold on the check but that \$10,000 would be credited immediately and available for their use. The Droege's wrote checks against this \$10,000. On December 24, 2007, the bank advised the Droege's that the check was being dishonored because a stop payment order had been issued. It was subsequently determined that Mohan had placed the stop payment order and that he had misappropriated the Droege's sale proceeds, as well as the required mortgage payoff to his own use by electronically transferring these funds to his own bank account. Hines was made

aware of the stop payment order on or about December 27, 2007, and was able to recover the sum of \$45,000 from Mohan and wire this sum to the Droeges on or about January 2, 2008. After discovering that Mohan had misappropriated the funds, Hines reported the matter to the criminal authorities, who initiated a successful criminal action against Mohan. Hines also reported the problem with the Droege transaction to her underwriter, Attorney's Title Insurance Fund. On February 28, 2008, the Fund satisfied the Droeges' mortgage and sent them a check in the amount of \$83,802.68. This check, when coupled with the \$45,000 previously wired to them by Hines, completed the restitution owed to the Droeges as a result of the theft of the proceeds from their original escrow check.

Undisputed testimony at the final hearing also established the following. At the time of the Droege closing, Hines had ***1199** nearly ten years of experience as a lawyer and, in fact, she ran her own title agency from 2002 until 2005. Hines and Mohan had agreed that Mohan would provide Hines with all of Paramount's title work and that Hines would conduct closings for Paramount. Hines was to receive \$300 per closing and Mohan promised about thirty closings a month—an annual income of approximately \$108,000. As to her role as escrow agent, Hines testified that she opened the escrow account at issue “specifically for the Paramount transactions” and that she kept the checks for this account in her office, which was locked.

Based on the evidence presented and the stipulation of the parties, the referee concluded that the Bar failed to present clear and convincing evidence that Hines had violated the rules as alleged in the complaint. The referee stated:

At the core of the Bar's presentation was the fact that the Respondent had placed a non-lawyer on her escrow account as a signatory and that this decision ultimately provided the vehicle by which Mr. Mohan engaged in criminal conduct. The referee was presented with no evidence or case law indicating that it was unethical for an attorney to

have a non-lawyer signatory on an escrow account. In fact, the Respondent pointed to a Florida Bar Ethics Opinion that specifically sanctioned such action. *See Fla. Ethics Opinion 64-40*. Furthermore, the referee finds that at the time of Respondent's decision to make Mr. Mohan a signatory on the account, she had no reason not to trust him and there were no warning signs that he might engage in criminal activity until he had stolen the money.

Having recommended that Hines be found not guilty of any rule violations, the referee recommended that no discipline be imposed and that each party bear its own costs. The Bar seeks review of the referee's findings and recommendations as to guilt and her recommendation as to discipline and costs.

ANALYSIS

Although the Bar contends that the referee erred in making various factual findings, we find no merit to these challenges. Additionally, as noted, the material facts were stipulated, and the referee adopted the stipulated facts in her report. Accordingly, we approve the referee's findings of fact.

[1] The Bar also challenges the referee's recommendations that Hines be found not guilty of violating [rules 4-1.1, 4-5.3\(b\) and \(c\)](#), and [4-8.4\(a\) and \(d\)](#).^{FN2} Given the stipulated material facts, our review of the referee's recommendations in this regard is de novo. *See Fla. Bar v. Pape*, 918 So.2d 240, 243 (Fla.2005) (stating that where there are no genuine issues of material fact and the only disagreement is whether the undisputed facts constitute unethical conduct, the referee's findings present a question of law that the Court reviews de novo); *Fla. Bar v. Cosnow*, 797 So.2d 1255, 1258 (Fla.2001) (stating that whether the attorney's admitted actions constitute unethical conduct is a question of law).

FN2. The Bar does not specifically challenge the referee's recommendation that Hines be found not guilty of violating rules

4-1.15 (lawyer shall comply with trust account rules) and 4-5.3(a) (paralegals and legal assistants must work under direction or supervision of lawyer). Thus, the referee's recommendation of not guilty as to those rules is approved.

[2] Despite the Bar's arguments to the contrary, we conclude that although Hines' conduct in this case reflected poor judgment in several respects, it did not constitute a violation of [rules 4-1.1](#) (lawyer shall *1200 provide competent representation); 4-5.3(c) (lawyer shall review and be responsible for work product of paralegals and legal assistants); 4-8.4(a) (lawyer shall not violate rules, assist or induce another to do so, or do so through actions of another); or 4-8.4(d) (lawyer shall not engage in conduct in connection with practice of law that is prejudicial to administration of justice). However, we disapprove the referee's recommendation that Hines be found not guilty of violating [rule 4-5.3\(b\)](#) (with respect to nonlawyers associated with lawyer, lawyer must make reasonable efforts to ensure that nonlawyer's conduct is compatible with professional obligations of lawyer).

[3][4][5] In this case, Hines' role in the transaction was as a title attorney, a closing agent, and an escrow agent. She was providing legal services and, as closing and escrow agent, owed a fiduciary duty to all of the principal parties involved. *See Fla. Bar v. Joy*, 679 So.2d 1165, 1167 (Fla.1996). This Court has stated that absent an express agreement, the law implies from the circumstances that an escrow agent undertakes "a legal obligation (1) to know the provisions and conditions of the principal agreement concerning the escrowed property, and (2) to exercise reasonable skill and ordinary diligence in holding and delivering possession of the escrowed property (i.e., to disburse the escrowed funds) in strict accordance with the principals' agreement." *Id.* Additionally, a closing agent has a duty to supervise the closing in a "reasonably prudent manner." *Askew v. Allstate Title & Abstract Co.*, 603 So.2d 29, 31 (Fla. 2d DCA 1992) (quoting

Fla. S. Abstract & Title Co. v. Bjellos, 346 So.2d 635, 636 (Fla. 2d DCA 1977)) (stating that a title insurance company acting as a closing agent has a duty to supervise a closing in a reasonably prudent manner).

[6] [Rule 4-5.3\(b\)\(1\)](#) provides:

(b) Supervisory Responsibility. With respect to a nonlawyer employed or retained by or associated with a lawyer or an authorized business entity as defined elsewhere in these Rules Regulating The Florida Bar:

(1) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer....

In this case, Hines' professional obligations as a lawyer included holding and delivering possession of the escrowed funds in strict accordance with the principals' agreement and supervising the closing in a reasonably prudent manner. By allowing Mohan, a nonlawyer whom she neither employed, supervised, nor controlled, essentially unfettered access to the funds held in the escrow account, Hines failed in her responsibility to ensure that she had "in effect measures giving reasonable assurance" that Mohan's conduct would be compatible with those professional obligations. In fact, when it comes to the area of funds held in trust by a lawyer, we conclude that a reading of [rule 4-5.3](#) in its entirety leads to only one reasonable conclusion. A lawyer may permit a nonlawyer to have authority or control over such funds *only* if that nonlawyer is employed by or under the direct supervision and control of the lawyer.

The Florida Bar ethics advisory opinion relied upon by the referee does not support the broad conclusion that it is not unethical for an attorney to have a nonlawyer signatory on an escrow account.

Both *1201 the 1964 and the revised 1987 advisory opinions are predicated upon facts involving non-lawyer employees of the lawyer. The 1964 opinion approved the practice of a law firm office manager drawing checks on the firm's trust account, and the revised 1987 version clarified that "properly authorized and supervised nonlawyer employees" may be signatories on lawyers' trust accounts. *See* Fla. Bar Comm. on Prof'l Ethics, Op. 64-40 (1964); Fla. Bar Comm. on Prof'l Ethics, Op. 64-40 (reconsideration) (1987). We do not read these opinions as authorizing a lawyer to permit a non-lawyer, nonemployee to have essentially unfettered access to funds held in trust by the attorney, whether in an IOTA trust account or an escrow account in the attorney's name. There is a critical distinction between an attorney's office manager and a person who is neither employed by, responsible to, nor otherwise under the supervision and control of the lawyer as here.

Although the ethics opinions of The Florida Bar are not binding on this Court, nevertheless the intent of the ethics opinion for lawyers is clear:

The Committee continues to be of the view that is permissible for a *trusted nonlawyer employee* to draw checks on the trust account upon proper authorization and under appropriate supervision. Attorneys are cautioned, however, that they remain ultimately responsible for compliance with all rules relating to trust accounts and client funds, and that they are subject to discipline for an employee's misconduct involving client funds.

Fla. Bar Comm. on Prof'l Ethics, Op. 64-40 (reconsideration) (1987) (emphasis added). In this case, Hines stipulated that she recognized the "inherent danger" of allowing Mohan signatory authority on the account. Hines abdicated her responsibility as a lawyer and her fiduciary obligation to the parties involved in this closing when she allowed Mohan access to the funds held in the account. This failure provided Mohan, whom she neither employed, supervised, nor controlled, with the opportunity to misappropriate client funds,

which were held in trust in the escrow account.

Accordingly, while we approve the referee's recommendations regarding the other rule violations charged, we disapprove the referee's recommendation as to [rule 4-5.3\(b\)](#). Because the referee did not reach the issue of sanctions, we remand this case to the referee for a hearing and recommendation as to the appropriate sanction, including consideration of a rehabilitative suspension.

It is so ordered.

QUINCE, C.J., and [PARIENTE](#), [CANADY](#), [POLSTON](#), [LABARGA](#), and [PERRY](#), JJ., concur.
[LEWIS](#), J., concurs in result.

Fla., 2010.

The Florida Bar v. Hines

39 So.3d 1196, 35 Fla. L. Weekly S337

END OF DOCUMENT

A+ BEST PRACTICES

Do Not Find Yourself Fronting

By Peggy Williams, Fund Risk Manager

You have heard speakers at the Fund Assembly and other seminars talk about “fronting” and how it is something that is not permitted, but do you really know what “fronting” means? When people in the title insurance industry refer to “fronting,” they are referring to a business model where a licensed agent or attorney allows an unlicensed person or agency to close transactions where a title insurance policy will be issued. Many times the licensed agent or attorney is merely paid a fee for his or her policy signing services.

If you have not figured it out by now, fronting, in all of its forms, is not tolerated by THE FUND. Quite a few of our former Fund Member Agents became “former” because they were participating in business models that were merely fronting arrangements.

Fronting can take many shapes. The most obvious form of fronting is where the Fund Member Agent allows an unlicensed person to run an unlicensed, unappointed title agency and handle closings on which the Fund Member Agent will allow Fund policies to be issued. The Fund Member Agent does not supervise the closings, title examination, policy preparation, or any other aspect of the transaction. In some cases, the Fund Member Agent does not even sign the policy, but instead, allows the unlicensed person to have a signature stamp for the policies and signing rights on the trust account. Fronting can also occur when the unlicensed person is an actual employee of the Fund Member Agent. THE FUND has found situations where the attorney has no idea what is going on in his office, and the employee is running an unlicensed title agency without the knowledge of the attorney.

Whatever form fronting takes, it is extremely dangerous for the Fund Member

Agent involved. Generally, when an unlicensed person needs someone to front for her (or him), it is because she cannot or does not want to be licensed. People who will use a Fund attorney as a front are usually up to no good. In almost all of the fronting cases THE FUND has uncovered, we have found that the unlicensed person is committing mortgage fraud or identity theft, failing to pay off mortgages, handling illegal land flips, or stealing from the escrow account. As you might expect, this type of activity usually has devastating results for the Fund Member Agent involved.

If you want to avoid being caught up in a fronting situation, there are a few simple things to keep in mind.

First, never agree to insure transactions that you do not personally handle. Never agree to let someone else bring the deals, do the work, and handle the closings, and have you issue the policies. You should be aware of every transaction that is handled by your office or by your employees.

Second, do not hold yourself out to be a title agency unless and until your agency has been licensed by the Florida Department of Financial Services and appointed to one or more underwriters. This practice is prohibited by both the Florida Department of Financial Services and THE FUND.

Third, never share your Fund forms, software, or passwords with anyone who is not employed by you. Instruct your employees that these items are not to be shared as well.

Finally, be diligent about reconciling your trust account and reviewing the reconciliations each month. You will be able to tell if someone is closing transactions that you do not know about or if checks are being cut to a title agency you have not authorized.

By diligently controlling who you do business with and the transactions brought to your office and checking your trust account reconciliations regularly, you will be able to avoid participating in intentional or unintentional fronting.

67 So.3d 260, 35 Fla. L. Weekly D2518
(Cite as: 67 So.3d 260)

C

District Court of Appeal of Florida,
Second District.
ALL REAL ESTATE TITLE SERVICES, INC., a
Florida corporation, and Michelle Ann Boyd, Ap-
pellants,
v.
MINQH QUANG VUU and Hanh Luu Vuu, Ap-
pellees.

No. 2D09-1196.
Nov. 17, 2010.

Background: Owners of promissory note secured by a mortgage brought negligence action against title agent and title agency arising out of agent's mistaken preparation of a satisfaction of mortgage that owners signed. The Circuit Court, Pinellas County, [Amy Williams, J.](#), entered judgment in favor of owners. Agent and agency appealed.

Holding: The District Court of Appeal, [Kelly, J.](#), held that owners were not injured by agent's mistaken preparation of the satisfaction of mortgage.

Reversed and remanded.

West Headnotes

[1] Bills and Notes 56 🔑3438

56 Bills and Notes

56X Payment and Discharge

56k436 Discharge

56k438 k. Cancellation or surrender of instrument. [Most Cited Cases](#)

Secured Transactions 349A 🔑205

349A Secured Transactions

349AVI Discharge and Satisfaction

349Ak205 k. Release of collateral. [Most Cited Cases](#)

Cancellation or renunciation of a promissory

note and release of security is ineffective if it is unintentional or procured by mistake. [West's F.S.A. § 673.6041](#).

[2] Mortgages 266 🔑316

266 Mortgages

266VII Payment or Performance of Condition, Release, and Satisfaction

266k316 k. Reinstatement of mortgage. [Most Cited Cases](#)

A court may apply equitable principles to reverse the cancellation of a mortgage satisfaction when that satisfaction is the result of mistake or inadvertence. [West's F.S.A. § 673.6041](#).

[3] Mortgages 266 🔑216

266 Mortgages

266IV Rights and Liabilities of Parties

266k215 Actions for Damages

266k216 k. Between parties to mortgage or their privies. [Most Cited Cases](#)

Mortgages 266 🔑315(1)

266 Mortgages

266VII Payment or Performance of Condition, Release, and Satisfaction

266k315 Effect of Release or Satisfaction

266k315(1) k. In general. [Most Cited Cases](#)

Mortgages 266 🔑316

266 Mortgages

266VII Payment or Performance of Condition, Release, and Satisfaction

266k316 k. Reinstatement of mortgage. [Most Cited Cases](#)

Reformation of Instruments 328 🔑17(1)

328 Reformation of Instruments

328I Right of Action and Defenses

[328k15](#) Grounds for Reformation

[328k17](#) Mistake of Fact

[328k17\(1\)](#) k. In general. [Most Cited](#)

Cases

Owners of promissory note secured by a mortgage were not injured by title agent's mistaken preparation of a satisfaction of mortgage that owners signed and, thus, could not maintain a negligence claim against title agent and title agency; mistaken satisfaction of the mortgage was subject to rescission and reformation, such that owners never lost the ability to collect on the note. [West's F.S.A. § 673.6041](#).

***261** [Scott A. Cole](#) and [Alejandro Perez](#) of Cole Scott & Kissane, P.A., Miami, for Appellants.

[Samuel J. Heller](#) and [Terry L. Hirsch](#) of Englander & Fischer, P.A., St. Petersburg, for Appellees.

[KELLY](#), Judge.

Appellants, All Real Estate Title Services, Inc., and Michelle Ann Boyd, challenge a final judgment entered in favor of Minh Quang and Hanh Luu Vu finding appellants negligent in mistakenly preparing a satisfaction of a mortgage that the Vuus contended extinguished their ability to recover money owed to them under a note. We reverse.

The Vuus were the owners and holders of a note executed by John Bodziak as president of 1900 Coach House Partner's, Inc. The note was secured by a purchase money mortgage on property Coach House had replatted into Lots 1, 2, and 3. Coach House sold Lots 1 and 2, and the purchaser of Lot 2 later sold it. During this series of transactions, Boyd and All Real Estate prepared a variety of documents including a satisfaction of mortgage that had the effect of satisfying the original note and mortgage even though Coach House was still obligated on the note and that obligation was supposed to have been secured by Lot 3.

Approximately a year after the Vuus signed the satisfaction of mortgage, Bodziak stopped making

payments on the Coach House note, and the Vuus sued to collect on the note, to rescind the satisfaction of mortgage, or in the alternative, to foreclose on the property. Coach House and Bodziak raised the affirmative defense of accord and satisfaction, claiming that the satisfaction of mortgage Boyd prepared extinguished the Vuus' entitlement to payment. The Vuus then brought this action against Boyd and All Real Estate alleging that Boyd had negligently prepared the satisfaction of mortgage and that as a result, they had lost the ability to ***262** recover the amount due them under the note. Ultimately, the trial court ruled in favor of the Vuus concluding that Boyd was negligent, that the erroneous inclusion of the language satisfying the note caused the Vuus to "lose their cause of action" on the note, and that the Vuus were damaged in the amount of the unpaid balance.

In this appeal, Boyd and All Real Estate argue that the court should have entered judgment in their favor because even if Boyd had been negligent when she prepared the satisfaction of mortgage, the Vuus were not damaged because, contrary to the trial court's conclusion, that negligence did not extinguish their claim against Coach House and Bodziak for the balance due on the note. They contend that because the Vuus never intended to extinguish Coach House and Bodziak's obligations under the note, the mistaken satisfaction of the mortgage is subject to rescission and reformation and thus the Vuus never lost the ability to collect on the note. We agree.

[\[1\]\[2\]](#) Cancellation or renunciation of a promissory note and release of security is ineffective if it is unintentional or procured by mistake. [Gover v. Home & City Sav. Bank](#), 574 So.2d 306 (Fla. 1st DCA 1991); *see also* [§ 673.6041](#), Fla. Stat. (2001). A court may apply equitable principles to reverse the cancellation of a mortgage satisfaction when that satisfaction is the result of mistake or inadvertence. [United Serv. Corp. v. Vi-An Constr. Corp.](#), 77 So.2d 800, 803 (Fla.1955); [First Family Mortg. Corp. of Fla. v. White](#), 549 So.2d 1049, 1050 (Fla.

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 (Cite as: 67 So.3d 260)

3d DCA 1989). Thus, the Vuus' unintentional renunciation of the note by way of the mistaken satisfaction of mortgage did not, and could not, have extinguished their rights under the note.

[3] To support a negligence claim, the Vuus were required to show (a) the existence of a duty recognized by law requiring Boyd and All Real Estate to conform to a certain standard of conduct for the protection of others, including the Vuus; (b) a failure on the part of Boyd and All Real Estate to perform the duty; and (c) injury or damage proximately caused by such failure. *See Lisanti v. City of Port Richey*, 787 So.2d 36, 37 (Fla. 2d DCA 2001); *Landrum v. John Doe Pit Digger*, 696 So.2d 926, 928 (Fla. 2d DCA 1997). Because the Vuus' right to recover under the note has not been extinguished, they have failed to carry their burden of showing that they have suffered any injury from the preparation of the satisfaction of the mortgage. Accordingly, we reverse the judgment in favor of the Vuus and remand for the entry of a judgment in favor of Boyd and All Real Estate.

Reversed and remanded.

DAVIS, J., and RAIDEN, MICHAEL E., Associate Judge, Concur.

Fla.App. 2 Dist., 2010.

All Real Estate Title Services, Inc. v. Minh Quang Vu

67 So.3d 260, 35 Fla. L. Weekly D2518

END OF DOCUMENT

Aff-78 Mortgage — Revolving Credit Mortgage — by Mortgagor
(TN 22.05.16, SCC GR-3.7.2)

Affidavit

[Mortgage — Revolving Credit Mortgage — by Mortgagor]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant”), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

[insert legal description of real property a/k/a address of property]

2. Affiant is the mortgagor under that certain mortgage (the “Mortgage”) in favor of _____ under loan number _____ recorded _____ in Official Records Book _____, at Page _____, and/or Instrument No. _____, of the Public Records of _____ County, Florida, which Mortgage encumbers the property described above.
3. Attached hereto as Exhibit A is a true and correct copy of the estoppel letter issued by the mortgagee, showing the total amount due under the account as \$ _____.
4. In connection with said account, Affiant acknowledges the following:
 - a. There have been no advances or withdrawals of funds within the last 30 days, and Affiant will not make any withdrawals subsequent to making this affidavit;
 - b. There has been no activity on the line of credit within the last 30 days, and Affiant will not do anything to cause any activity on the line of credit subsequent to making this affidavit;
 - c. The account has been closed and the mortgagee has been provided with instructions from Affiant to close said account;
 - d. All credit devices, including, but not limited to numbered checks, credit cards and ATM cards, which may be used to access the credit line, have been destroyed or surrendered to _____, the Old Republic National Title Company closing agent.
5. Affiant makes this affidavit to induce **Old Republic National Title Insurance Company** (the “Title Insurer”) to insure to the Subject Property, and to induce _____ to purchase said property, and agrees to indemnify said parties, and hold them harmless, from any loss or damage resulting from its reliance on the matters set forth in this Affidavit.

(Affiant)
Print Name: _____

Affidavit

[Continuous Marriage Affidavit — by Spouses]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiants”), who depose(s) and say under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

[insert legal description of real property]

2. Affiants are the fee simple owners of the property described in item 1 above.
3. Affiants hereby affirm that the property described in item 1 above was acquired by them during their marriage and that they have remained married to each other without interruption through the date hereof.
4. This affidavit is made to induce **Old Republic National Title Insurance Company** (“Title Insurer”) to insure title to the real property described in item 1 above. Affiant agrees to indemnify **Title Insurer** and hold it harmless from any loss or damage resulting from its reliance on the matters set forth in this affidavit.

(Affiant)

Print Name: _____

(Affiant)

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 20____, by _____ who ☐ is personally known or ☐ has produced _____ as identification.

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

STATE OF _____
COUNTY OF _____

Sworn to, affirmed, and subscribed before me this ____ day of _____, 201____, by _____,
who is/are personally known to me or who has/have produced _____ as identification.

Notary Signature: _____
Print Name: _____
Notary Public, State of _____
My Commission Expires: _____
[PLACE NOTARIAL SEAL]

Affidavit

[Survey — No Additional Improvements]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant”), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

[insert legal description of real property]

2. Affiant is the fee simple owner of the real property described under item 1 above (“Property”).
3. Affiant has reviewed the survey of the Property prepared by _____, dated _____ under Job No. _____.
4. There are no improvements currently located on the Property that are not shown on the previous survey and no improvements have been added to the adjoining land that would encroach onto the Property.
5. This affidavit is made to induce **Old Republic National Title Insurance Company** (“Title Insurer”) to insure title to the real property described in item 1 above. Affiant agrees to indemnify **Title Insurer** and hold them harmless from any loss or damage resulting from its reliance on the matters set forth in this affidavit.

(Affiant)

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [☐] physical presence or [☐] online notarization this ____ day of _____, 20____, by _____ who [☐] is personally known or [☐] has produced _____ as identification.

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

Aff-60 Liens — Non-Identity (TN 18.02.01, SCC GR-4.3)

Affidavit

[Liens — Non-Identity]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant”), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

[insert legal description of real property]

2. Affiant is the fee simple owner of the property described in item 1 above.
3. Affiant is aware of and has reviewed in detail the following judgments *[state where applicable “and other instruments”]* against a person with the same or similar name as Affiant:

[insert type of instrument and recording information]

4. Affiant is not one and the same as the persons described in the instruments under item 3 above.
5. This affidavit is made to induce **Old Republic National Title Insurance Company** (“Title Insurer”) to insure title to the real property described in item 1 above. Affiant agrees to indemnify **Title Insurer** and hold it harmless from any loss or damage resulting from its reliance on the matters set forth in this affidavit.

(Affiant)
Print Name: _____

STATE OF _____
COUNTY OF _____

Sworn to, affirmed, and subscribed before me this ____ day of _____, 201__, by _____, who is/are personally known to me or who has/have produced _____ as identification.

Notary Signature: _____

Print Name: _____

Notary Public, State of _____

My Commission Expires: _____

[PLACE NOTARIAL SEAL]

Closing Affidavit

Seller

Residential/Commercial

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant” or “Seller”), who depose(s) and say(s) under penalties of perjury that:

(When used, “Affiant”, “Seller” and “Buyer”, include singular or plural as context so requires or admits.)

1. Property. Affiant is the owner of certain real property (the “Property”) described as:

[insert legal description]

2. No Lien. There have been no improvements, alterations or repairs to the Property during the last ninety (90) days, for which the cost thereof remains unpaid *[Insert, if applicable: “except for” and state any exceptions or state “None”]*.

3. Possession. *Initial as applicable:*

_____ Affiant is in full, exclusive, open, peaceful and undisputed possession of the Property, and there are no tenants, guests, licensees or other parties in or on any part of the Property.

_____ Affiant is in full, exclusive, open, peaceful and undisputed possession of the Property, and there are no tenants, guests, licensees or other parties in or on any part of the Property except for those tenants (the “Tenants”) listed on the rent roll set forth in Exhibit ___, attached hereto and made a part hereof, none of whose lease includes provisions for a right of first refusal or an option to purchase all or any portion of the Property.

4. Personal Property. *Initial as applicable:*

_____ The personal property contained in the improvements on the Property, or on the premises, if any, is being sold free and clear of all liens, encumbrances, claims and demands whatsoever.

5. Restrictive Covenants. *Initial as applicable:*

_____ There are no violations of any restrictive covenants and all payments for maintenance, special assessments, if any, and other charges as required or authorized by the recorded documents encumbering the Property are current.

6. Gap. There are no matters pending against Affiant that would give rise to a lien which would attach to the Property between *[insert date and time]*, the Commitment Date of **Old Republic National Title Insurance Company** (“**Title Insurer**”) Title Commitment under Fund File No. _____, (the “Title Commitment”) and the recording of the interest to be insured on the Owner’s/Loan Policy to be issued pursuant to the Title Commitment. Except as expressly stated in the Title Commitment, Affiant has not and will not execute any instruments that would adversely affect the interest to be insured and Affiant has not taken any action preceding the Commitment Date of the Commitment which would result in any lien attaching to the Property prior to the date of the recording of the instrument to be insured.

7. Survey. The survey referenced in the Title Commitment (the “Survey”) *[insert preparer, date and job number]* constitutes an accurate depiction of the Property and reveals all improvements and structures located thereon, if any. With the exception of Tenants, if any, Affiant has been in continuous and exclusive possession of the Property since the date of the Survey (the “Survey Date”) and no structures or improvements, including, but not limited to buildings, roads or fences, have been constructed on the Property since the Survey Date, nor have there been any alterations to existing structures and improvements, if any, since the Survey Date, which would make the Survey inaccurate. To the best of Affiant’s knowledge, since the Survey Date, no structures or improvements, including, but not limited to, buildings, roads or fences have been placed, erected or constructed on adjoining lands which might encroach onto the Property. Affiant has no knowledge of any claim made by anyone to the ownership or use of the Property whether with or without permission of Affiant (other than Tenants), nor has there arisen any dispute over the legal right of access to and from the Property or to the location of any boundary or to any claim that any structures or improvements

actually exist within an easement or upon adjoining land, or that any structure or improvement owned by an adjoining land owner actually exists within the Property.

8. Unrecorded Easements. There are no unrecorded easements, claims of easements or rights of way affecting all or any portion of the property.
9. Legal Disabilities. Affiant is of legal age, under no legal disabilities and has never been known by any name other than as shown above. *[insert, if applicable: "except" and state any other alias]* Affiant's marital status as reflected in this affidavit and other closing documents is true and correct.
10. Pending Actions. There are no violations of Municipal or County Ordinances affecting the Property and there are no actions or proceedings now pending in any State or Federal Court to which the Seller is a party, including, but not limited to, proceedings in bankruptcy, receivership or insolvency. Affiant has received no notice of any public hearing regarding assessment for improvements or changes in applicable zoning laws concerning said property now pending.
11. Title Exceptions. There are no judgments, mortgages, encumbrances or liens of any nature affecting the Property other than those shown on the Title Commitment.
12. Tax Re-Proration. Seller agrees that in the event the current real estate property taxes vary in amount from the figures used in making the tax proration used in closing the transfer and conveyance of the Property, a new proration and a correct and proper proration will be made upon demand.
13. FIRPTA. Seller understands that Section 1445 of the Internal Revenue Code provides that a Buyer of a United States real property interest must withhold tax if the Seller is a foreign person. To inform the Buyer that withholding of tax is not required upon purchase of the above described property, Seller certifies the following:
 - a. Seller is not a nonresident alien individual, foreign corporation, foreign partnership, foreign trust or foreign estate for purposes of United States federal income taxation.
 - b. Seller's U.S. Taxpayer Identification Number is: _____.
 - c. Seller's address is: _____.
 - d. No other persons or entities have an ownership interest in the above described property.Seller understands the Buyer of the described property intends to rely on the foregoing representations in connection with the United States Foreign Investment in Real Property Tax Act (FIRPTA). Seller understands this certification may be disclosed to the Internal Revenue Service by the Buyer and that any false statements contained in this certification may be punished by fine, imprisonment or both. Seller has the authority to sign this affidavit as either individual Seller or on behalf of an entity Seller. Under penalties of perjury, Seller states that this declaration was carefully read and is true and correct.
14. This affidavit is given for the purpose of clearing any possible question or objection to the title to the above referenced property and, for the purpose of inducing *[agent]* and **Title Insurer** to issue title insurance on the subject property, with the knowledge that said title companies are relying upon the statements set forth herein. Affiant hereby holds *[agent]* and **Title Insurer** harmless and fully indemnifies same (including but not limited to attorneys' fees, whether suit be brought or not, and at trial and all appellate levels, and court costs and other litigation expenses) with respect to the matters set forth herein. Affiant further states that he/she is familiar with the nature of an oath and with the penalties as provided by the laws of the United States and the State of Florida for falsely swearing to statements made in an instrument of this nature. Affiant further certifies that he/she has read, or heard read, the full facts of this Affidavit and understands its context.

Under penalties of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.

(Affiant)
Print Name: _____

(Affiant)
Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of ☐ physical presence or
☐ online notarization this ____ day of _____, 20____, by _____ who ☐ is personally known or ☐
has produced _____ as identification.

[Notary Seal]

Notary Public
Printed Name: _____
My Commission Expires: _____

Pending municipal assessment liens for public improvements, notice of which is contained in Resolution(s) (or Ordinance) No. (Nos.) The amount of the assessment or levy, if any, has not been determined.

B. A special assessment lien for municipal improvements was recorded. For issuing a title policy, may the lien be ignored since it is more than 20 years old?

No. Municipal liens may have status coequal with taxes and, therefore, the lien may have unlimited duration.

TN 25.03.06 Surveys — Requirements (Rev. 12/11)

A. When used for waiving or omitting the survey exception in a title policy, the survey should comply with the minimum requirements adopted by the Florida Department of Professional Regulation, Board of Professional Surveyors and Mappers. See Rule 5J-17, F.A.C. A certificate of the surveyor is not necessary to evidence compliance with the standards of practice of the Florida Administrative Code. See Rule 5J-17.051, F.A.C.

For issuing a title policy, the surveys should also be checked for the following:

1. The survey was made by a Florida Registered Surveyor and Mapper.
2. The drawing of the survey is signed and dated. If the date is not a recent date, the drawing of the survey should be recertified to a recent date. The seal of the surveyor must be affixed as required by Sec. 472.025, F.S.
3. The drawing of the survey contains an adequate and accurate legal description which agrees with that in the deed or mortgage. If the survey is of acreage, the drawing should tie to at least one identifiable real property corner such as a section or quarter corner. See Rule 5J-17.052 (2)(a)8a., F.A.C. If the survey is of a recorded subdivision, the drawing shall show lot and block number or other designations, including adjoining lots and measured directions and distances to the nearest street intersection. See Rule 5J-17.052(2)(a) 7.a. and c., F.A.C.
4. For visible boundary lines, locations and dimensions of improvements, locations of utilities, easements, rights-of-way, and natural and manufactured objects affecting the property. The location of non-visible easements of record, other than those on recorded plats will not be shown on the drawing unless that information was furnished to the surveyor.
5. For any encroachments or discrepancies between the description in the recorded instrument and any markers on the ground designating the boundary as actually used and occupied.

B. When a loan policy is issued in a refinance, The Fund will waive the requirement for a current survey (within 90 days of closing) and rely on an older survey if there have

been no changes since the date of the survey and an affidavit is obtained from the owner of the property attesting to that fact. The affidavit must accurately state that: (1) no improvements have been constructed on the subject property since the date of the survey, (2) no improvements to adjoining land have been constructed that would encroach on to the subject property, and (3) the affidavit must state that it is given to induce the named title insurance underwriter to rely on the described survey.

If the real property is a platted, single-family residential lot The Fund will not require either a current or an older survey to insure a refinance if the title agent is provided with a prior owner's or mortgagee policy on the property in which the standard survey exception has been deleted. Any Schedule B exceptions on the prior policy must be carried forward to the new loan policy. The mortgagor must provide an affidavit accurately stating that no improvements have been constructed on the insured property or adjoining the property that would encroach onto the insured property since the date of the prior policy. The affidavit must also state that it is given to induce the named title insurance underwriter to issue a policy.

C. When issuing an Owner's Policy, The Fund will waive the requirement for a current survey (within 90 days of closing) and rely upon an older survey, subject to the following conditions:

1. The subject property must be platted, single family residential; and
2. The title agent must be furnished with a satisfactory, prior survey of the subject property that shows the boundaries of the platted land and the location of all improvements situated upon the land; and
3. To be relied upon, the prior survey must be certified by the surveyor to any prior or current owner, mortgage lender or title insurer; and
4. The seller must furnish a satisfactory affidavit setting forth the following facts that must be based upon the personal knowledge of the affiant:
 - a) There are no improvements currently located on the subject property that are not shown on the survey.
 - b) There are no improvements to adjoining lands that encroach upon the subject property.
 - c) The affiant must state that the affidavit is being given to induce the named title insurance underwriter to rely on the described survey.

The guidelines set forth in paragraphs B and C above also apply to issuing the ALTA Form 9 Endorsements (9-06, 9.1-06, and 9.2-06).

Approval from a Fund Underwriting Counsel should be obtained before relying on older surveys for waiving the general survey exception in policies, when the transactions to be insured are other than those described above.

Appendix B — Meandered Lakes in Florida

Provided by the Department of Environmental Protection (Rev. 12/76)

	<u>COUNTY</u>	<u>TWSHP & RNGE</u>
Adaho, Lake	Putnam	9 S, 23 E
Adelaide, Lake	Highlands	33 S, 28 E
Alligator Lake	Osceola	26 S, 31 E
Altho, Lake	Alachua	8 S, 21 & 22 E
Ammonia Lake	Calhoun	2 & 3 S, 8 & 9 W
Angelo, Lake	Highlands	33 S, 28 & 29 E
Annie, Lake	Highlands	37 & 38 S, 30 E
Annie, Lake	Polk	28 & 29 S, 27 E
Apopka, Lake	Lake & Orange	21 & 22 S, 26, 27 & 28 E
Apthorp, Lake	Highlands	36 S, 29 & 30 E
Arbuckle, Lake	Polk	32 S, 29 & 30 E
Ariana, Lake	Polk	27 & 28 S, 25 E
Ashby, Lake	Volusia	18 S, 32 E
Ashley Lake	Putnam	9 S, 23 E
Banana Lake	Polk	29 S, 24 E
Beauclair Lake	Lake & Orange	20 S, 26 & 27 E
Beresford, Lake	Volusia	17 S, 29 & 30 E
Bethel, Lake	Volusia	19 S, 31 E
Blue, Lake	Highlands	36 S, 30 E
Blue, Lake	Polk	30 S, 27 E
Bonny, Lake	Polk	28 S, 24 E
Boyd's Lake	Putnam	9 S, 24 E
Bradley Lake	Citrus	20 S, 20 E
Brantley Lake	Putnam	9 S, 23 & 24 E
Broward, Lake	Putnam	11 S, 27 E
Bryant, Lake	Marion	15 & 16 S, 24 & 25 E
Buffum, Lake	Polk	31 S, 26 & 27 E
Butler, Lake	Orange	23 S, 27 & 28 E
Cannon, Lake	Polk	28 S, 26 E
Caraway Lake	Volusia	15 S, 30 E
Carlton, Lake	Lake	20 S, 26 & 27 E
Carrie, Lake	Highlands	36 S, 29 E
Center Lake Nellie	Highlands	36 S, 29 E
Charlotte, Lake	Highlands	35 S, 29 E
Chase, Lake	Orange	23 S, 28 E
Clarke, Lake	Palm Beach	44 S, 43 E
Clay, Lake	Highlands	36 S, 30 E
Clearwater, Lake	Putnam	9 S, 24 E

	<u>COUNTY</u>	<u>TWSHP & RNGE</u>
Clinch, Lake	Polk	31 & 32 S, 28 E
Conine, Lake	Polk	28 S, 26 E
Conway, Lake	Orange	23 S, 29 & 30 E
Cowpens, Lake	Putnam	10 S, 23 E
Crescent Lake	Flagler, Putnam & Volusia	11, 12 & 13 S, 27 & 28 E
Crews Lake	Highlands	36 & 37 S, 29 E
Crooked Lake	Polk	30 & 31 S, 27 & 28 E
Crosby Lake	Bradford	6 S, 21 E
Damon, Lake	Highlands	33 S, 28 E
Davis Lake	Volusia	13 S, 28 E
Dead Lake	Flagler	12 & 13 S, 28 E
Dead Lakes	Calhoun & Gulf	3 & 4 S, 9 & 10 W
Deer Lake	Walton	3 S, 18 W
Dexter, Lake	Lake & Volusia	16 S, 28 E
Dinner Lake	Highlands	34 S, 29 E
Disston, Lake	Flagler	14 S, 29 E
Doctors Lake	Clay	4 & 5 S, 25 & 26 E
Dora, Lake	Lake	19 & 20 S, 26 & 27 E
Dorr, Lake	Lake	17 S, 27 E
Eagle Lake	Polk	28 & 29 S, 25 & 26 E
East Lake Tohopekaliga	Osceola	25 & 26 S, 30 & 31 E
Eastern Lake	Walton	3 S, 18 W
Easy, Lake	Polk	30 S, 27 & 28 E
Ella, Lake	Lake	17 & 18 S, 26 E
Eloise, Lake	Polk	28 & 29 S, 26 E
Eustis, Lake	Lake	18 & 19 S, 25 & 26 E
Fannie, Lake	Polk	28 S, 26 E
Francis, Lake	Highlands	36 S, 29 E
Garfield, Lake	Polk	29 & 30 S, 26 E
Geneva, Lake	Clay	8 S, 22 & 23 E
Gentry, Lake	Osceola	27 S, 30 & 31 E
George, Lake	Lake & Volusia	13, 14 & 15 S, 26, 27 & 28 E
George's Lake	Putnam	8 S, 24 & 25 E
Gertrude, Lake	Lake	19 S, 26 & 27 E
Gibson, Lake	Polk	27 S, 23 E
Goodson, Lake	Putnam	9 S, 23 E
Goose Lake	Putnam	9 S, 23 E
Gordon, Lake	Polk	30 S, 27 E
Grandin, Lake	Putnam	9 S, 24 E
Grassy Lake	Highlands	37 S, 30 E
Grassy Lake	Lake	22 S, 26 E
Griffin, Lake	Lake	18 & 19 S, 24 & 25 E
Halfmoon Lake	Marion	15 S, 25 E
Hamilton, Lake	Polk	28 S, 26 & 27 E

	<u>COUNTY</u>	<u>TWSHP & RNGE</u>
Hampton, Lake	Bradford	7 S, 21 E
Hancock, Lake	Polk	28 & 29 S, 24 & 25 E
Harney, Lake	Volusia & Seminole	19 & 20 S, 32 & 33 E
Harris, Lake	Lake	19 & 20 S, 24 & 25 E
Hart, Lake	Orange	24 S, 31 E
Hartridge, Lake	Polk	28 S, 26 E
Hatchineha, Lake	Osceola	28 S, 28 & 29 E
Henry, Lake	Highlands	36 S, 29 E
Hickory Lake	Polk	32 S, 28 E
Hill, Lake	Highlands	36 S, 29 E
Hollingsworth, Lake	Polk	28 S, 24 E
Howard, Lake	Polk	28 S, 26 E
Huntley, Lake	Highlands	36 & 37 S, 30 E
Iamonia, Lake	Leon	3 N, 1 E & 1 W
Istokpoga, Lake	Highlands	35 & 36 S, 30 & 31 E
Jackson, Lake	Highlands	34 S, 28 & 29 E
Jackson, Lake	Leon	1 & 2 N, 1 W
Jackson, Lake	Osceola	29 & 30 S, 31 & 32 E
Jackson, Lake	Walton	6 N, 21 W
Jessup, Lake	Seminole	20 S, 30 & 31 E
Joanna, Lake	Lake	19 S, 27 E
Joel, Lake	Osceola	25 S, 31 & 32 E
John's Lake	Lake & Orange	22 & 23 S, 26 & 27 E
Josephine, Lake	Highlands	35 S, 29 E
June-in-Winter, Lake	Highlands	36 & 37 S, 29 & 30 E
Kerr, Lake	Marion	13 S, 25 & 26 E
Keystone Lake	Hillsborough	27 S, 17 E
Kissimmee, Lake	Polk & Osceola	29, 30 & 31 S, 30 & 31 E
Ledwith, Lake	Alachua & Marion	11 & 12 S, 19 & 20 E
Lee, Lake	Polk	29 S, 27 E
Lelia, Lake	Highlands	33 S, 28 E
Lenore, Lake	Polk	31 S, 28 E
Letta, Lake	Highlands	33 & 34 S, 28 & 29 E
Levy Lake	Alachua	11 S, 19 & 20 E
Levy's Prairie Lake	Putnam	10 S, 23 E
Little Lake Conway	Orange	23 S, 30 E
Little Lake George	Putnam	12 S, 26 E
Little Lake Hamilton	Polk	28 S, 27 E
Little Lake Harris	Lake	20 & 21 S, 25 & 26 E
Little Lake Weir	Marion	17 S, 23 E
Little Santa Fe Lake	Alachua	8 S, 22 E
Little Red Water Lake	Highlands	36 S, 29 E
Livingston, Lake	Polk	32 S, 28 E
Lizzie, Lake	Osceola	26 S, 31 E
Lochloosa Lake	Alachua	11 S, 21 & 22 E

	<u>COUNTY</u>	<u>TWSHP & RNGE</u>
Lons Lake	Putnam	9 S, 23 E
Lotela, Lake	Highlands	33 S, 28 E
Louisa, Lake	Lake	23 S, 25 & 26 E
Louise, Lake	Orange	23 S, 28 E
Lower Lake Louise	Volusia	13 S, 28 E
Lulu, Lake	Polk	28 & 29 S, 26 E
Mangonia, Lake	Palm Beach	43 S, 43 E
Marian, Lake	Osceola	30 S, 32 & 33 E
Marion, Lake	Polk	27 & 28 S, 28 E
McCoy, Lake	Highlands	37 S, 30 E
McLeod, Lake	Polk	29 S, 25 & 26 E
Miccosukee, Lake	Jefferson & Leon	2 & 3 N, 3 & 4 E
Middle Lake Hamilton	Polk	28 S, 27 E
Milldam Lake	Marion	15 S, 25 E
Mill Pond	Madison	3 N, 8 E
Minnehaha, Lake	Lake	22 & 23 S, 25 & 26 E
Minneola, Lake	Lake	22 S, 25 & 26 E
Miona, Lake	Sumter	18 S, 23 E
Mirror Lake	Highlands	37 S, 30 E
Monroe, Lake	Seminole & Volusia	19 S, 30 & 31 E
Moody, Lake	Polk	31 S, 28 E
Mullet Lake	Seminole	19 & 20 S, 32 E
Myrtle, Lake	Polk	29 S, 27 E
Myrtle, Lake	Osceola	25 S, 31 & 32 E
Newnans Lake	Alachua	9 & 10 S, 21 E
Norris, Lake	Lake	18 S, 28 E
North West Lake Nellie	Highlands	36 S, 29 E
North Lake	Marion	15 S, 24 E
Ocean Pond	Baker	3 S, 19 E
Ocheesee Pond	Jackson	3 & 4 N, 7 & 8 W
Okeechobee, Lake	Glades, Hendry, Martin, Okee- chobee & Palm Beach	37 thru 44 S, 32 thru 37 E
Ola, Lake	Orange	20 S, 27 E
Orange Lake	Alachua & Marion	11 & 12 S, 21 & 22 E
Orange Grove Lake	Putnam	9 S, 24 E
Osborne, Lake	Palm Beach	44 & 45 S, 43 E
Oyster Lake	Walton	3 S, 20 W
Palmer, Lake	Orange	23 S, 28 E
Panasoffkee, Lake	Sumter	19 & 20 S, 22 E
Parker, Lake	Polk	27 & 28 S, 24 E
Pearl, Lake	Highlands	37 S, 30 E
Persimmon, Lake	Highlands	36 S, 29 E
Pickett, Lake	Orange & Seminole	21 & 22 S, 32 E

	<u>COUNTY</u>	<u>TWSHP & RNGE</u>
Pierce, Lake	Polk	28 & 29 S, 28 E
Placid, Lake	Highlands	37 S, 29 & 30 E
Powell, Lake	Bay & Walton	2 & 3 S, 17 & 18 W
Preston, Lake	Osceola	25 S, 32 E
Pythias, Lake	Highlands	33 S, 28 E
Red Beach Lake	Highlands	35 S, 29 E
Red Water Lake	Highlands	36 S, 29 E
Reedy Lake	Polk	31 & 32 S, 28 E
Rochelle, Lake	Polk	28 S, 26 E
Rowan, Lake	Putnam	9 S, 23 E
Rowell, Lake	Bradford	6 & 7 S, 21 E
Ruby, Lake	Polk	29 S, 26 & 27 E
Runnymede Lake	Osceola	25 & 26 S, 30 & 31 E
Ruth Lake	Highlands	35 S, 29 E
Saddlebags, Lake	Highlands	36 & 37 S, 30 E
Sampson, Lake	Bradford	6 & 7 S, 21 E
Sanitary, Lake	Polk	27 & 28 S, 25 & 26 E
Santa Fe Lake	Alachua	8 & 9 S, 22 E
Saunders, Lake	Lake	19 S, 26 E
Scott, Lake	Polk	29 S, 24 E
Sebring, Lake	Highlands	34 S, 28 E
Shipp, Lake	Polk	28 S, 26 E
Silver, Lake	Lake	19 S, 25 E
Silver Lake	Polk	32 S, 28 E
Simmons, Lake	Highlands	36 S, 29 E
Sirena, Lake	Highlands	37 S, 29 & 30 E
Smart, Lake	Polk	28 S, 26 E
Smith, Lake	Marion	16 S, 23 E
South East Lake Nellie	Highlands	36 S, 29 E
Spring Garden Lake	Volusia	16 S, 29 E
Stalworth Lake	Walton	3 S, 20 W
Streety, Lake	Polk	32 S, 27 E
Suggs, Lake	Putnam	9 S, 23 E
Surveyors Lake	Polk	30 S, 26 E
Swan Lake	Putnam	9 S, 23 E
Tsala Apopka, Lake	Citrus	18, 19 & 20 S, 19, 20 & 21 E
Tarpon, Lake	Pinellas	27 & 28 S, 16 E
Thonotosassa Lake	Hillsborough	28 S, 20 E
Tibet Butler, Lake	Orange	23 S, 28 E
Tiger, Lake	Polk	29 & 30 S, 29 & 30 E
Tohopekaliga, Lake	Osceola	25, 26 & 27 S, 29 & 30 E
Tracy, Lake	Lake	17 & 18 S, 28 E
Trask, Lake	Polk	28 S, 27 E
Trout Lake	Osceola	25 & 26 S, 31 & 32 E
Trout Lake	Polk	32 S, 28 E
Tulane, Lake	Highlands	33 S, 28 E
Umatilla, Lake	Lake	18 S, 26 & 27 E
Upper Lake Louise	Volusia	13 S, 28 E

	<u>COUNTY</u>	<u>TWSHP & RNGE</u>
Viola	Highlands	33 S, 28 E
Wales, Lake	Polk	30 S, 27 & 28 E
Wall Lake	Putnam	9 S, 23 E
Washington, Lake	Brevard	26, 27 & 28 S, 35 & 36 E
Webster, Lake	Palm Beach	45 S, 43 E
Weohyakapka, Lake	Polk	30 & 31 S, 29 E
Weir, Lake	Marion	17 S, 23 & 24 E
Wells Pond	Marion	16 S, 25 E
Wimico, Lake	Gulf	7 & 8 S, 9 W
Winder, Lake	Brevard	25 & 26 S, 35 E
Winona, Lake	Volusia	15 S, 29 & 30 E
Winterset, Lake	Polk	29 S, 26 E
Yale, Lake	Lake	18 S, 25 & 26 E

Chapter 3 — Access

SC 3.01 Policies and Access

TN 3.01.01 Prior and Current Policies

All current commitments and Owner's and Loan policy forms include, among other insuring provisions, insurance against loss or damage by reason of lack of a right of access to and from the land. Many earlier commitments and policies did not. See [TN 25.01.03](#).

TN 3.01.02 Fund Members Must Determine Access (Rev. 12/05)

The Fund Member is responsible for determining that a right of access exists as to the land being insured. If the Fund Member is using a prior policy as a base, the Member must determine whether the prior policy insured access. Unless otherwise indicated, a Fund Member may rely on a prior Owner's Policy for the existence of legal access as of the effective date of that policy, but not as of the current date. He may not rely on an OP, OG or MP without examining the policy jacket to ascertain if access was insured. Copies of jackets are not available from The Fund; only Schedules A and B were microfilmed.

TN 3.01.03 Access Checklist (12/95)

Although an owner may be able to access the land, this does not necessarily mean that there is a legal right to do so. The following checklist should assist the Fund Member in determining whether there is legal access to and from the insured land.

1. **Plat:** Does the plat show the roads on the plat tying into the public road system? Does the plat contain an offer to dedicate and was the dedication accepted? [TN 3.02.02 D](#).
2. **Survey:** Does the survey show the land abutting a public road?
3. **Unpaved Road:** If the land is on an unpaved road, the Fund Member should determine who owns it, whether it has been dedicated to the public, or whether the insured has a private easement. [TN 3.02.01](#); [TN 3.02.02 E.1](#).
4. **Governmental Maps:** If there is a public road, it should show on county or state right-of-way maps. [TN 3.02.01](#); [TN 3.02.02 E.1](#).
5. **Documents:** Do any of the conveyances in the chain of title provide for an easement or is there a separately recorded easement? [TN 3.02.03 A](#).
6. **Limitations:** If there is a recorded easement does it contain limitations, such as what the easement can be used for and the number of people who can use it? If so, an exception should be placed in Schedule B for the limitations on the

easement use.

7. **Gates:** Is it necessary to open a gate to access the property? If the gate is on the insured land it would not present a problem, but gates often open into access lanes that are not part of the land being insured.
8. **Inquiry of the Parties:** If the parties indicate that access to the property is over a lane that has not been searched, the Fund Member should do so.
9. **Unadjudicated Access:** For insuring purposes, unadjudicated access such as prescriptive easements, common law ways of necessity or statutory ways of necessity do not provide legal access until there is a court adjudication. [TN 3.02.03 B](#).
10. **Railroad Crossings:** If a railroad crossing is being relied on for access to and from the insured land, Schedule B should specifically limit the access being insured to that provided in the crossing agreement. [TN 3.02.04](#).
11. **Prior Policies:** The Fund Member should be careful in using older policies as a title base. Some of the older forms did not insure against lack of access. [TN 3.01.01](#).

SC 3.02 Determination of Access

TN 3.02.01 Access to a Public Road

The right of access insured is the right of access to a public road. Before a title policy is issued, a determination should be made that the Land abuts a public road, access to which is not limited or restricted, or that there appears of record a private easement for access to the Land from a public road. Right-of-way maps for the four road systems are filed in the office of the clerk of the circuit court of the appropriate county. See Secs. 335.02 (2), 336.02 (1) (b) and 337.2735, F.S. Information is also available at the state, county or municipal levels.

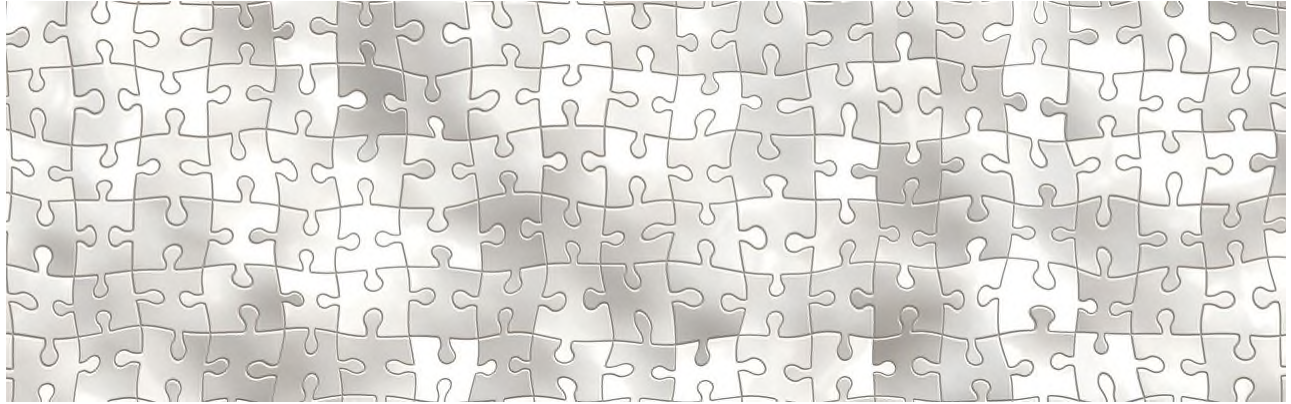
TN 3.02.02 Public Roads (Rev. 12/05)

A. Statutory Definitions

The Florida Legislature has designated as public roads, “[a]ll roads which are open and available for use by the public and dedicated to the public use, according to law or by prescription, are hereby declared to be, and are established as, public roads.” See Sec. 335.01, F.S. Florida public roads are divided into four systems by Sec. 335.01, F.S., as follows:

- a) The state highway system,
- b) The state park road system,

Meeting Commitment Requirements & Deleting Exceptions

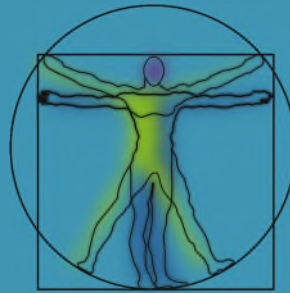


Presented by: John B. "Jay" St. Lawrence,
Fund Legal Education Attorney
©2023 Attorneys Title Fund Services

Overview

- Anatomy of a Commitment
- Relevant Contract Provisions
- Base Title
- Title Search Report
- Commitment Schedule A
- Commitment Schedule B-I Meeting Requirements
- Lender's Insured Interest
- Mortgage Satisfaction
- Satisfying Revolving Credit Mortgages
- Meeting Lien Requirements
- Special Requirements
- Commitment Schedule B-II Deleting Exceptions
- Insuring the Gap
- Taxes and Special Assessments
- Parties in Possession
- Survey
- Unrecorded Easements
- Construction Liens
- Sovereignty Lands
- Specific Exceptions
- Access
- Closing
- Common Endorsements

Anatomy of a Commitment



The Fund[®]

Title Insurance Commitment

- Discloses status of title
- Obligates underwriter to issue a final policy upon closing of transaction
- Signed by agent
- Expires 6 months from issuance

The Fund[®]

AMERICAN LAND TITLE ASSOCIATION
OWNER'S POLICY OF TITLE INSURANCE
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Condition 17.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, Old Republic National Title Insurance Company, a Florida corporation (the "Company"), insures as of the Date of Policy and, to the extent stated in Covered Risks I and II, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the insured by reason of:

- I. The Title being vested other than as stated in Schedule A.
- II. Any defect in or lien or encumbrance on the Title. Covered Risk II includes, but is not limited to, insurance against loss from:
 - a. a defect in the Title caused by:
 - i. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - ii. the failure of a person or Entity to have authorized a transfer or conveyance;
 - iii. a document affecting the Title not properly authorized, created, executed, witnessed, sealed, acknowledged, recorded (including by remote online notarization), or delivered;
 - iv. a failure to perform those acts necessary to create a document by electronic means authorized by law;
 - v. a document executed under a willful, expired, or otherwise invalid power of attorney;
 - vi. a document not properly filed, recorded, or indexed in the Public Records, including the failure to have performed those acts by electronic means authorized by law;
 - vii. a defective judicial or administrative proceeding; or
 - viii. the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.
 - b. the lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - c. the effect on the Title of an encroachment, violation, variation, adverse circumstance, boundary line overlap, or encroachment (including an encroachment of an improvement across the boundary lines of the Land), but only if the encroachment, violation, variation, adverse circumstance, boundary line overlap, or encroachment would have been disclosed by an accurate and complete land title survey of the Land.

continued on next page

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Direct Company
1400 West Broadway Blvd., Suite 900, Tampa, FL 33607
(813) 375-1111

By C. Monroe President
and Daniel Wild Secretary

SERIAL 021 - 8065801

Parts of the Commitment

- Jacket
 - Provides underwriter will insure when
 - Premium paid and
 - Schedule B-I requirements met
 - Subject to Schedule B-II exceptions
- Schedule A
- Schedule B-I
- Schedule B-II



AMERICAN LAND TITLE ASSOCIATION
OWNER'S POLICY OF TITLE INSURANCE
(With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Condition F.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, Old Republic National Title Insurance Company, a Florida corporation (the "Company"), insures as of the Date of Policy and, to the extent stated in Covered Risks I and II, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

- The Title being vested other than as stated in Schedule A.
- Any defect in or lien or encumbrance on the Title. Covered Risk 2 includes, but is not limited to, insurance against loss from:
 - a defect in the Title caused by:
 - forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - the failure of a person or Entity to have authorized a transfer or conveyance;
 - a document affecting the Title not properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;
 - a failure to perform those acts necessary to create a document by electronic means authorized by law;
 - a document executed under a judicial, arbitral, or otherwise invalid power of attorney;
 - a document not properly filed, recorded, or indexed in the Public Records, including the failure to have performed those acts by electronic means authorized by law;
 - a defective judicial or administrative proceeding; or
 - the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law;
 - the loss of real estate taxes or assessments imposed on the Title by a governmental authority due to payroll, but unpaid;
 - the effect on the Title of an encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment (including an encroachment of an improvement across the boundary lines of the Land), but only if the encroachment, violation, variation, adverse circumstance, boundary line overlap, or encroachment would have been disclosed by an accurate and complete land title survey of the Land.

continued on next page

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
1408 Westshore Blvd., Suite 900, Tampa, FL 33607
(813) 371-1111

By Wally Amos Secretary
By Danial Ward Attorney

SERIAL 021 - 8065001

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Schedule A

- Property status after transaction
 - New owner
 - New mortgagee
 - Amounts of coverage
- Current status of property
 - Current owner
 - Legal description
- Date and time title search completed

AMERICAN LAND TITLE ASSOCIATION COMMITMENT (With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Commitment Number: Chopra to Black	Revision Number: None	Issuing Office File Number: Chopra to Black	Issuing Agent: 5555
Property Address: 2059 Tillman Avenue Winter Garden, FL 34787	Loan ID Number: 61638695	Issuing Office's ALTA® Registry ID: 0112233	Issuing Office: Keebler, Nabisco & Amos, P.A.

SCHEDULE A

- Commitment Date: May 13, 2023 @ 11:00 PM
- Policy to be issued:

<ol style="list-style-type: none"> OWNER'S: 2021 ALTA® Owner's Policy with Florida Modifications Proposed Insured: Edward F. Black and Pamela M. Black The estate or interest to be insured: Fee Simple MORTGAGEE: 2021 ALTA® Loan Policy with Florida Modifications Proposed Insured: Nutter Butter Bank, its successors and/or assigns as their interests may appear The estate or interest to be insured: Fee Simple MORTGAGEE: 2021 ALTA® Loan Policy with Florida Modifications Proposed Insured: (enter text here) The estate or interest to be insured: (enter text here) 	Proposed Amount of Insurance: \$550,000.00 \$410,000.00
---	---
- The estate or interest in the Land at the Commitment Date is: (Identify each estate or interest covered, i.e., fee, leasehold, etc.) Fee Simple
- The Title is, at the Commitment Date, vested in: (Identify vesting for each estate or interest identified in Item 3 above) Sonia Chopra and Rahul B. Chopra, wife and husband and, as disclosed in the Public Records, has been since (Date) April 12, 2007.
- The Land is described as follows: Lot 86, BRONSON'S LANDINGS, according to the Plat thereof, recorded in Plat Book 66, Page 139, of the Public Records of Orange County, Florida.

Old Republic National Title Insurance Company
1408 Westshore Blvd., Suite 900, Tampa, Florida, 33607, (813) 371-1111

Wally Amos

AUTHORIZED SIGNATORY
Wally Amos, Attorney at Law

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Schedule A

- Transaction ID data fields (8 items)
- Commitment Number
- Revision Number
- Issuing Office File Number
- Issuing Office
- Property Address
- Loan ID Number
- ALTA Universal ID
- Issuing Agent
- Must be completed by Fund Member



AMERICAN LAND TITLE ASSOCIATION COMMITMENT (With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Commitment Number: <i>Chopra to Black</i>	Revision Number: <i>None</i>	Issuing Office File Number: <i>Chopra to Black</i>	Issuing Agent: <i>5555</i>
Property Address: <i>2059 Tillman Avenue Winter Garden, FL 34787</i>	Loan ID Number: <i>61638695</i>	Issuing Office's ALTA® Registry ID: <i>0112233</i>	Issuing Office: <i>Keebler, Nabisco & Amos, P.A.</i>

SCHEDULE A

- Commitment Date: May 13, 2023 @ 11:00 PM
- Policy to be issued:
 - OWNER'S: 2021 ALTA® Owner's Policy with Florida Modifications
Proposed Insured: Edward F. Black and Pamela M. Black
The estate or interest to be insured: Fee Simple
Proposed Amount of Insurance: \$550,000.00
 - MORTGAGEE: 2021 ALTA® Loan Policy with Florida Modifications
Proposed Insured: Nutter Butter Bank, its successors and/or assigns as their interests may appear
The estate or interest to be insured: Fee Simple
\$410,000.00
 - MORTGAGEE: 2021 ALTA® Loan Policy with Florida Modifications
Proposed Insured: (enter text here)
The estate or interest to be insured: (enter text here)
\$(enter text here)
- The estate or interest in the Land at the Commitment Date is: (Identify each estate or interest covered, i.e., fee, leasehold, etc.) Fee Simple
- The Title is, at the Commitment Date, vested in: (Identify vesting for each estate or interest identified in Item 3 above) Sonia Chopra and Rahul B. Chopra, wife and husband and, as disclosed in the Public Records, has been since (Date) April 12, 2007.
- The Land is described as follows: Lot 86, BRONSON'S LANDINGS, according to the Plat thereof, recorded in Plat Book 66, Page 139, of the Public Records of Orange County, Florida.

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Schedule A

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Commitment Number: <i>Chopra to Black</i>	Revision Number: <i>None</i>	Issuing Office File Number: <i>Chopra to Black</i>	Issuing Agent: <i>5555</i>
Property Address: <i>2059 Tillman Avenue Winter Garden, FL 34787</i>	Loan ID Number: <i>61638695</i>	Issuing Office's ALTA® Registry ID: <i>0112233</i>	Issuing Office: <i>Keebler, Nabisco & Amos, P.A.</i>

- Transaction ID data fields
 - Commitment Number
 - Fund File Number (for Branch Products)
 - Fund Member's Internal File Number (products prepared by Fund Member)



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Schedule A

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Commitment Number: <i>Chopra to Black</i>	Revision Number: <i>None</i>	Issuing Office File Number: <i>Chopra to Black</i>	Issuing Agent: <i>5555</i>
Property Address: <i>2059 Tillman Avenue Winter Garden, FL 34787</i>	Loan ID Number: <i>61638695</i>	Issuing Office's ALTA® Registry ID: <i>0112233</i>	Issuing Office: <i>Keebler, Nabisco & Amos, P.A.</i>

- Transaction ID data fields
 - Revision Number
 - None, or
 - 1,2,3, etc.
 - Not "version" number



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Schedule A

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Commitment Number: <i>Chopra to Black</i>	Revision Number: <i>None</i>	Issuing Office File Number: <i>Chopra to Black</i>	Issuing Agent: <i>5555</i>
Property Address: <i>2059 Tillman Avenue Winter Garden, FL 34787</i>	Loan ID Number: <i>61638695</i>	Issuing Office's ALTA® Registry ID: <i>0112233</i>	Issuing Office: <i>Keebler, Nabisco & Amos, P.A.</i>

- Issuing Office File Number
 - Your file number
 - Numbers or letters okay



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Schedule A

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Commitment Number:
Chopra to Black

Revision Number:
None

Issuing Office File Number:
Chopra to Black

Issuing Agent:
5555

Property Address:
*2059 Tillman Avenue
Winter Garden, FL 34787*

Loan ID Number:
61638695

**Issuing Office's ALTA®
Registry ID:**
0112233

Issuing Office:
Keebler, Nabisco & Amos, P.A.

- Issuing Office
 - Fund Member Number
- Property Address
 - If none (unassigned, etc.) then “none”
- Loan ID Number
 - If none yet assigned “none”



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Schedule A

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

Commitment Number:
Chopra to Black

Revision Number:
None

Issuing Office File Number:
Chopra to Black

Issuing Agent:
5555

Property Address:
*2059 Tillman Avenue
Winter Garden, FL 34787*

Loan ID Number:
61638695

**Issuing Office's ALTA®
Registry ID:**
0112233

Issuing Office:
Keebler, Nabisco & Amos, P.A.

- ALTA Universal ID
 - ALTA members use their ALTA ID number
 - If not determined yet, then “none”
- Issuing agent
 - If no room for address, put below “authorized signatory”



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Schedule B-I

- Requirements to insure
- Functions as “To do” list
- Completed at or prior to closing
- Incomplete items
 - Become exceptions to coverage OR
 - Policies will not be issued



**AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
(With Florida Modifications)**
ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Schedule B-I

REQUIREMENTS

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
 - (1) Warranty Deed from Sonia Chopra and Rahul B. Chopra, wife and husband, to Edward F. Black and Pamela M. Black, husband and wife.
 - (2) Mortgage from Edward F. Black and Pamela M. Black, husband and wife, to Nutter Butter Bank in the amount of \$410,000.00.

Page 4797, Public Records of Orange County, Florida. Said mortgage must be closed to future draws prior to closing, the payoff amount must be verified the day of closing, and owner must give an affidavit that owner has no checks or credit or debit cards facilitating draws from the account. Confirm that the Satisfaction of Mortgage is recorded post-closing.

8. Record satisfaction or affidavit of non-identity containing the legal description of the real property to be insured and sufficiently establishing that the affiant is not the same person named in the federal tax lien recorded under the following Official Records: Instrument No. 2019-543912 and Instrument No. 2020-4000741, Public Records of Orange County, Florida.
9. The official records show one or more certified judgments or state tax liens against Rahul Chopra, individually, or a similarly named person. Since it appears title was taken and may have been continuously held as tenants by the entirety, these judgments or tax liens have not been listed. It is necessary for you to evaluate how title was taken and has been held to date. If you determine that such liens may have attached to the property covered herein, this product will be modified, at your request to list and provide copies of these instruments. See T.N. 18.03.05 and 30.06.
10. Execution of closing affidavit by appropriate parties representing possession and no adverse matters, including actions taken by owner or others that would give rise to litigation or lien.
11. Closing funds are to be disbursed by or at the direction of the Title Agent issuing this policy.
12. Homeowner's Association estoppel letter must be furnished showing that all assessments are current and that there are no unpaid special assessments.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by Old Republic National Title Insurance Company. This Commitment is not valid without the Notice, the Commitment to Issue Policy, the Commitment Conditions, Schedule A, Schedule B, Part I—Requirements, and Schedule B, Part II—Exceptions, and a counter-signature by the Company or its issuing agent that may be in electronic form.

Form C21 - Schedule B-I - ALTA Commitment 2021 v. 91.00 (with Florida Modifications)

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Schedule B-II

- Exceptions (to coverage)
 - “Standard” and “Specific”
 - Best practice
 - Elimination or limitation
- Some B-I items required in order to delete B-II exceptions



**AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
(With Florida Modifications)**

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Schedule B-II

Issuing Office File Number: Chopra to Black

EXCEPTIONS FROM COVERAGE

SOME HISTORICAL LAND RECORDS CONTAIN DISCRIMINATORY COVENANTS THAT ARE ILLEGAL AND UNENFORCEABLE BY LAW. THIS COMMITMENT AND THE POLICY TREAT ANY DISCRIMINATORY COVENANT IN A DOCUMENT REFERENCED IN SCHEDULE B AS IF EACH DISCRIMINATORY COVENANT IS REDACTED, REPUDIATED, REMOVED, AND NOT REPUBLISHED OR RECIRCULATED. ONLY THE REMAINING PROVISIONS OF THE DOCUMENT WILL BE EXCEPTED FROM COVERAGE.

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I Requirements are met.
2.
 - a. General or special taxes and assessments required to be paid in the year 2023 and subsequent years.
 - b. Rights or claims of parties in possession not recorded in the Public Records.
 - c. Any encroachment, encumbrance, violation, variation or adverse circumstance that would be disclosed by an inspection or an accurate and complete land survey of the Land and inspection of the Land.
 - d. Easements or claims of easements not recorded in the Public Records.
 - e. Any lien, or right to a lien, for services, labor or material furnished, imposed by law and not recorded in the Public Records.
 - a. Five foot drainage and utility easement along the north lot line of subject property.
 - b. Ten foot drainage easement along the east lot line of subject property.
 - c. Five foot drainage and utility easement along the south lot line of subject property.
 - d. Twelve foot utility easement along the west line of subject property which is encroached upon by a drive.
5. All matters contained on the Plat of Bronson's Landings, as recorded in Plat Book 66, Page 139, Public Records of Orange County, Florida.

6. Surveyor's Affidavit recorded in Official Records Book 9361, Page 4281, Public Records of Orange County, Florida.

This page is only a part of a 2021 ALTA Commitment for Title Insurance issued by Old Republic National Title Insurance Company. This Commitment is not valid without the Notice, the Commitment to Issue Policy, the Commitment Conditions, Schedule A, Schedule B, Part I—Requirements, and Schedule B, Part II—Exceptions, and a counter-signature by the Company or its issuing agent that may be in electronic form.

Form C21 - Schedule B-II - ALTA Commitment 2021 v. 91.00 (with Florida Modifications)

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Policy Coverage

- ALTA – 2021 adopted in FL with revisions Oct. 3, 2022
- Owner's Policy
 - Indemnifies owner against loss if interest not as insured
- Lender's Policy
 - Indemnifies lender against loss if mortgage not a valid lien of specified priority
- Subject to insuring provisions, conditions, exceptions, and endorsements
- BIG PRINT GIVETH; little print taketh away



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Relevant Contract Provisions



The Contract

- Party names
- Street address
- Legal description
- Purchase price
- Finance amount



Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR

PARTIES: Rahul B. Chopra and Sonia Chopra, husband and wife ("Seller")

PARTIES: Rahul B. Chopra and Sonia Chopra, husband and wife and Edward F. Black and Pamela M. Black, husband and wife

(a) Street address, city, zip: 2059 Tillman Avenue, Winter Garden, FL 34787
(b) Located in: Orange County, Florida, Property Tax ID #: 02-23-27-08-05-0060

2059 Tillman Avenue, Winter Garden, FL 34787
Bronson's Landings, 66/139, Lot 86

(d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items which are owned by Seller and existing on the Property as of the date of the initial offer are included in the purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), light fixture(s), drapery rods and draperies, blinds, window treatments, smoke detector(s), garage door opener(s), thermostat(s), doorbell(s), television wall mount(s) and television mounting hardware, security gate and other access devices, mailbox keys, and storm shutters/storm protection items and hardware ("Personal Property").
Other Personal Property items included in this purchase are: microwave oven, spa with heater, pool heater, summer kitchen including built-in grill, wine refrigerator, gazebo and outdoor ceiling fan.
Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.
(e) The following items are excluded from the purchase:

PURCHASE PRICE AND CLOSING

2. PURCHASE PRICE (U.S. currency): **\$ 550,000.00**

(a) Initial deposit to be held in escrow in the amount of (checks subject to Collection):
The initial deposit made payable and delivered to "Escrow Agent" named below
(CHECK ONE): (i) ☒ if companies offer or (ii) ☐ is to be made within _____ (if left blank, then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN
OPTION (ii) SHALL BE DEEMED SELECTED.

Escrow Agent Name: Homefinders Realty Company
Address: 5234 Nilla Lane, Orlando, FL
Phone: (407) 333-6363
Email: rbaker@homefinders.com
Fax: (407) 333-6366

(b) Additional deposit to be delivered to Escrow Agent within _____ (if left blank, then 10) days after Effective Date. \$ 40,000.00
(All deposits paid or agreed to be paid, are collectively referred to as the "Deposit").

(c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 4. **410,000.00**

(d) Other: _____
(e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire transfer or other Collected funds (See STANDARD 5): \$ 90,000.00

3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:
(a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before May 21, 2023, this offer shall be deemed withdrawn and the Deposit, if any, shall be returned to Buyer. Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the counter-offer is delivered.

(b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or initialed and delivered this offer or final counter-offer ("Effective Date").

4. CLOSING; CLOSING DATE: The closing of this transaction shall occur when all funds required for closing are received by Closing Agent and Collected pursuant to STANDARD 5 and all closing documents required to be furnished by each party pursuant to this Contract are delivered ("Closing"). Unless modified by other provisions of

Buyer's Initials: *EVB* *PMB* Page 1 of 14 Seller's Initials: *ASB* *SP*
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Commitment-related Contract Provisions

- Paragraph 9(c)
 - Time for delivery of Commitment and instruments to buyer
 - Time for delivery of prior policy to buyer
 - Title must conform to Standard A of FR/Bar Standards section

(c) **TITLE EVIDENCE AND INSURANCE:** At least 15 (if left blank, then 15, or if Paragraph 8(a) is checked, then 5) days prior to Closing Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, Seller shall furnish a copy to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below. The title insurance premium charges for the owner's policy and any lender's policy will be calculated and allocated in accordance with Florida law, but may be reported differently on certain federally mandated closing disclosures and other closing documents. For purposes of this Contract "municipal lien search" means a search of records necessary for the owner's policy of title insurance to be issued without exception for unrecorded liens imposed pursuant to Chapters 153, 159 or 170, F.S., in favor of any governmental body, authority or agency.



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Commitment-related Contract Provisions

- Paragraph 18(A)(i)
 - Marketable title
 - Subject to certain matters
 - Acceptable title matters may not prevent Residential use

18. STANDARDS:

A. TITLE:

(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **RESIDENTIAL PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.



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Base Title



Base Title

- Point in the past to begin search and examination of title for insuring purposes.
- Determined by available resources, typically a prior title policy or other instrument
- Locating a base title done by *whoever creates the Commitment*
 - Examiner or
 - Agent
- For hypo, we have the seller's prior policy



Attorneys' Title Insurance Fund, Inc.

OWNER'S POLICY

Schedule A

Policy or
Guarantee No.:
OPM-2979915

Effective Date:
April 12, 2007 @ 02:07PM

Agent's File Reference
07-1052

Amount of Insurance:
\$577,870.00

1. Name of Insured:
SONIA CHOPRA and RAHUL CHOPRA
2. The estate or interest in the land described herein and which is covered by this policy or guarantee is a **Fee Simple** and is, at the effective date hereof, vested in the named insured as shown by:

Instrument recorded in Official Records Book 09209, Page 1395, of the Public Records of ORANGE County, Florida.
3. The land referred to in this Policy is situate in the County of ORANGE, State of Florida, and described as follows:

Lot 86, BRONSON'S LANDINGS, according to the map or plat thereof as recorded in Plat Book 66, Page(s) 139-149, Public Records of Orange County, Florida.

I, the undersigned agent, hereby certify that

- the transaction herein is governed by RESPA
- if Yes to the above, I have performed all "core title agent services"

Yes ☒ No ☐
Yes ☒ No ☐

ISSUED BY
RELIANCE TITLE COMPANY

16457
AGENT NO. ATTORNEY-MEMBER'S SIGNATURE
LARRY A. ROTHENBERG

815 CORAL RIDGE DRIVE, CORAL SPRINGS, FL 33071

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Title Search Report



Title Search Report

- “Unexamined” Branch Product
- Base title determined by Fund
- Provides organized title documents
 - From base title to present
- Fund member examines title documents
 - To determine ownership
 - To locate applicable restrictions and exceptions
- If used to create a Commitment/Policy exceptions and restrictions must be shown on Schedules B-I/B-II
 - Unless cleared by member’s examination



TITLE SEARCH REPORT

Fund File Number: 07-2012-100000

The information contained in this title search is being furnished by Attorneys' Title Fund Services, LLC. If this report is to be used by a title insurance agent for evaluation and determination of insurability by the agent prior to the issuance of title insurance, then the agent shall have liability for such work.

Provided For: The Fund *Agent's File Reference:* Chopra - Black

After an examination of this search the Agent must:

- Evaluate all instruments, plats and documents contained in the report.*
- Include in the Commitment under Schedule B, any additional requirements and/or exceptions you find necessary from your analysis of the surveys, prior title evidence or other relevant information from the transaction.*
- Verify the status of corporations and limited partnerships and other business entities with the appropriate governmental agency or other authority.*
- Determine whether the property has legal access.*
- Determine if any unpaid municipal taxes or assessments exist, which are not recorded in the Official Records Books of the county.*
- Determine whether any portion of the property is submerged or artificially filled, if the property borders a body of water, and if riparian or littoral rights exist.*
- The information provided herein does not include a search of federal liens and judgment liens filed with the Florida Department of State pursuant to Sec. 713.901, et seq., F.S., and Sec. 55.201, et seq., F.S., respectively, which designate the Florida Department of State as the place for filing federal liens and judgment liens against personal property. For insuring purposes:*
 - Pursuant to Sec. 713.901, et seq., F.S., personal property includes, but is not limited to, mortgages, leaseholds, mortgages on leaseholds, interests in cooperative associations, vendees' interests, and options when those interests are held by a partnership, corporation, trust or decedent's estate; and*
 - Pursuant to Sec. 55.201, et seq., F.S., personal property includes, but is not limited to, leaseholds, interests in cooperative associations, vendees' interests, and options regardless of the type of entity holding such interests, including individuals. (Note: Mortgages have been specifically excluded from the personal property interests in which a judgment lien may be acquired under the provisions of Sec. 55.201, et seq., F.S.)*

Prepared this 22nd day of May, 2012. *Attorneys' Title Fund Services, LLC*

Prepared by: Pamela A. Blake, Product and Service Manager
Phone Number: 800-683-0392

Rev. 12/10

Page 1 of 5

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Title Search Report

- Fund File No.
- Effective date of base title
- Effective date of search
- Apparent owner
- Legal description
- Muniments of title
- Mortgages, Assignments and Modifications



TITLE SEARCH REPORT

Fund File Number: 07-2012-100000

Effective Date of approved base title information: September 18, 2006

Effective Date of Search: May 13, 2012 at 11:00 PM

Apparent Title Vested in:
 Sonia Chopra and Rahul B. Chopra

Description of real property to be insured/foreclosed situated in Orange County, Florida.
 Lot 86, BRONSON'S LANDINGS, according to the map or plat thereof as recorded in Plat Book 66 Page(s) 139 through 149, Public Records of Orange County, Florida.

Muniments of Title, including bankruptcy, foreclosure, quiet title, probate, guardianship and incompetency proceedings, if any, recorded in the Official Records Books of the county:

- Warranty Deed from Centerline Homes at Bronson's Landing, LLC, a Florida limited liability company to Sonia Chopra and Rahul Chopra, wife and husband, recorded April 12, 2007, in O.R. Book 9209, Page 1395, Public Records of Orange County, Florida.
- Quit Claim Deed from Sonia Chopra and Rahul Chopra, wife and husband to Sonia Chopra and Rahul B. Chopra, wife and husband, recorded May 17, 2007, in O.R. Book 9263, Page 3540, Public Records of Orange County, Florida.

Mortgages, Assignments and Modifications:

- Mortgage to Bank of America, N.A., mortgagee(s), recorded under O.R. Book 9209, Page 1399, Public Records of Orange County, Florida.
- Mortgage to Bank of America, N.A., mortgagee(s), recorded under O.R. Book 9266, Page 4797, Public Records of Orange County, Florida. Note: Legal description contains incorrect name for subdivision and only Sonia Chopra signed. There was no joinder by Rahul.

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Title Search Report

- Other liens
- Restrictions/easements
- Other encumbrances
- These items lead to either Schedule B-I requirements or B-II exceptions
- Dec of Covenants become both



TITLE SEARCH REPORT

Fund File Number: 07-2012-100000

Other Property Liens:

1. Subject to all assessments levied by the Condominium/Homeowner Association.
2. Taxes for the year 2011 which have been paid under receipt number 40-612965, on November 24, 2011, Account Number 0025881-4, the gross amount being \$ 8,826.17.
3. Any lien or claim of lien for services, labor or materials which may take priority over the estate or interest insured by reason of that certain Notice of Commencement recorded March 22, 2012, under O.R. Book 10350, Page 5869, of the Public Records of Orange County, Florida.

Restrictions/Easements:

1. All matters contained on the Plat of Bronson's Landings, as recorded in Plat Book 66, Page(s) 139 through 149, Surveyor's Affidavit recorded in O.R. Book 9361, Page 4281, Public Records of Orange County, Florida.
2. Covenants, conditions, and restrictions recorded in O.R. Book 8865, Page 1636, Public Records of Orange County, Florida, which contain provisions creating easements and/or assessments.
3. Development Agreement recorded in O.R. Book 6560, Page 9077, Public Records of Orange County, Florida.
4. Use Agreement recorded in O.R. Book 8539, Page 4387, Public Records of Orange County, Florida.
5. Restrictions, reservations, conditions, declarations and easements as set forth in deed recorded in O.R. Book 9209, Page 1395, Public Records of Orange County, Florida.
6. Survey prepared by American Surveying and Mapping dated February 23, 2007 indicates a 5 Foot Drainage & Utility Easement along the North Lot Line of subject property, a 10 Foot Drainage Easement along the East Lot Line of subject property, a 5 Foot Drainage & Utility Easement along the South Lot Line of subject property and a 12 Foot Utility Easement along the West Lot Line of subject property which is encroached upon by a Drive.

Other Encumbrances:

1. Federal tax liens against Sonja Chopra recorded in O.R. Book 10154, Page 3673, and O.R. Book 10324, Page 7964, Public Records of Orange County, Florida.

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Title Search Report

- 8 will be Schedule B-II exception unless ...
 - municipal lien search clear
- Not a bankruptcy search
- Foreclosure tip
- Close gap after recording!
- Where no policy issued liability limit \$1,000



TITLE SEARCH REPORT

Fund File Number: 07-2012-100000

(b) Pursuant to Sec. 55.201, et seq., F.S., personal property includes, but is not limited to, leaseholds, interests in cooperative associations, vendees' interests, and options regardless of the type of entity holding such interests, including individuals. (Note: Mortgages have been specifically excluded from the personal property interests in which a judgment lien may be acquired under the provisions of Sec. 55.201, et seq., F.S.)

8. Any lien provided by County Ordinance or by Chapter 159, Florida Statutes, in favor of any city, town, village or port authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.

The report does not cover bankruptcies or other matters filed in the Federal District Courts of Florida.

In foreclosure proceedings, title should be examined between the effective date of this report and the recording of the lis pendens to assure that all necessary and proper parties are joined. Consideration should be given to joining as defendants any persons in possession, other than the record owner, and any parties, other than those named herein, known to the plaintiff or the plaintiff's attorney and having or claiming an interest in the property.

Prior to issuance of any policy of title insurance underwritten by Old Republic National Title Insurance Company, the agent must obtain and evaluate a title search for the period between the effective date of this Title Search Report and the recording date(s) of the instrument(s) on which the policy is based.

If this product is not used for the purpose of issuing a policy, then the maximum liability for incorrect information is \$1,000.

Note: The Agent is responsible for obtaining underwriting approval on any commitment prepared from this product in the amount of \$1,000,000.00 or more.

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Commitment Schedule A



Commitment Schedule A

- Commitment Date based on title search
- Owner's Policy amt/named insured
 - Note: No coverage until "TBD" replaced
- Mortgagee Policy amt/named insured
- Interest in the land
- Current owner based on title search
- Legal description based on title search



AMERICAN LAND TITLE ASSOCIATION COMMITMENT (With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e:

Commitment Number: <i>Chopra to Black</i>	Revision Number: <i>None</i>	Issuing Office File Number: <i>Chopra to Black</i>	Issuing Agent: <i>5555</i>
Property Address: <i>2059 Tillman Avenue Winter Garden, FL 34787</i>	Loan ID Number: <i>61638695</i>	Issuing Office's ALTA® Registry ID: <i>0112233</i>	Issuing Office: <i>Keebler, Nabisco & Amos, P.A.</i>

SCHEDULE A

1. Commitment Date:	May 13, 2023 @ 11:00 PM
2. Policy to be issued:	Proposed Amount of Insurance:
a. OWNER'S: 2021 ALTA® Owner's Policy with Florida Modifications	\$550,000.00
Proposed Insured: Edward F. Black and Pamela M. Black	
The estate or interest to be insured: Fee Simple	
b. MORTGAGEE: 2021 ALTA® Loan Policy with Florida Modifications	\$410,000.00
Proposed Insured: Nutter Butter Bank, its successors and/or assigns as their interests may appear	
The estate or interest to be insured: Fee Simple	
c. MORTGAGEE: 2021 ALTA® Loan Policy with Florida Modifications	\$(enter text here)
Proposed Insured: (enter text here)	
The estate or interest to be insured: (enter text here)	
3. The estate or interest in the Land at the Commitment Date is: (Identify each estate or interest covered, i.e., fee, leasehold, etc.) Fee Simple	
4. The Title is, at the Commitment Date, vested in: (Identify vesting for each estate or interest identified in Item 3 above) Sonia Chopra and Rahul B. Chopra, wife and husband and, as disclosed in the Public Records, has been since (Date) April 12, 2007.	
5. The Land is described as follows: Lot 86, BRONSON'S LANDINGS, according to the Plat thereof, recorded in Plat Book 66, Page 139, of the Public Records of Orange County, Florida.	

Commitment Schedule B-I Meeting Requirements



Commitment Schedule B-I

- 1-3 Self-explanatory

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.

Old Republic National Title Insurance Company

AMERICAN LAND TITLE ASSOCIATION COMMITMENT Schedule B-I

Issuing Office File Number: Chexes to Black

Requirements

All of the following requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.

prior to closing, the payoff amount must be verified the day of closing, and owner must give an affidavit that owner has no checks or credit or debit cards facilitating draws from the account. Confirm that the Satisfaction of Mortgage is recorded post-closing.

8. Record satisfaction or affidavit of non-identity containing the legal description of the real property to be insured and sufficiently establishing that the affiant is not the same person named in the federal tax lien recorded under the following Official Records: Instrument No. 2019-01-03912 and Instrument No. 2020-000741, Public Records of Orange County, Florida.

9. The official records show one or more certified judgments or state tax liens against Rafael Chexes, individually, or a similarly named person. Since it appears title was taken and may have been continuously held as tenants by the entirety, these judgments or tax liens have not been listed. It is necessary for you to evaluate how title was taken and has been held to date. If you determine that such liens may have attached to the property covered herein, this product will be modified, at your request to list and provide copies of these instruments. See T.N. 18.03.01 and 10.06.

10. Execution of closing affidavit by appropriate parties representing possession and no adverse matters, including actions taken by owner or others that would give rise to litigation or loss.

11. Closing funds are to be disbursed by or at the direction of the Title Agent issuing this policy.

12. Homeowner's Association estoppel letter must be furnished showing that all assessments are current and that there are no unpaid special assessments.



Commitment Schedule B-I

• 4 Instruments

- Prepare or examine conforming deed
- Accept executed deed
 - Be prepared to record

4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
- (1) Warranty Deed from Sonia Chopra and Rahul B. Chopra, wife and husband, to Edward F. Black and Pamela M. Black, husband and wife.
 - (2) Mortgage from Edward F. Black and Pamela M. Black, husband and wife, to Nutter Butter Bank in the amount of \$410,000.00.

Old Republic National Title Insurance Company
AMERICAN LAND TITLE ASSOCIATION
COMMITMENT
Schedule B-I

Issuing Office File Number: Chopra to Black

Requirements

All of the following requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
 - A. Warranty Deed from Sonia Chopra and Rahul B. Chopra, wife and husband, to Edward F. Black and Pamela M. Black, husband and wife.
 - B. Mortgage from Edward F. Black and Pamela M. Black, husband and wife, to Nutter Butter Bank in the amount of \$410,000.00.
5. The official records show one or more certified judgments or state tax liens against Rahul Chopra, individually, or a similarly named person. Since it appears title was taken and may have been continuously held as tenants by the entirety, these judgments or tax liens have not been listed. It is necessary for you to evaluate how title was taken and has been held to date. If you determine that such liens may have attached to the property covered herein, this product will be modified, at your request to list and provide copies of these instruments. See T.N. 18.03.01 and 10.08.
10. Execution of closing affidavit by appropriate parties representing possession of no adverse matters, including actions taken by owner or others that would give rise to litigation or lien.
11. Closing funds are to be disbursed by or at the direction of the Title Agent issuing this policy.
12. Homeowner's Association retrogress letter must be furnished showing that all assessments are current and that there are no unpaid special assessments.

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Form of Deed

- The type of deed is dictated by a Commitment requirement
- But how does the Commitment preparer determine which form to require?



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Form of Deed

- Step 1:
 - FR/Bar contract spells out the options
 - Warranty deed
 - Trustee's deed
 - PR's deed
 - Guardian's deed

H. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

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Form of Deed

- Step 2:
 - Who's the seller?
 - Back to the FR/Bar Standards
 - "As appropriate to the status of the seller"

H. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

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Form of Deed – Warranty Deeds

- Step 3:
 - Know your deeds
 - Sec. 689.02, F.S. provides language for creating a warranty deed

689.02 Form of warranty deed prescribed.—

(1) Warranty deeds of conveyance to land may be in the following form, viz.:

"This indenture, made this ____ day of ____, A.D., between ____, of the County of ____ in the State of ____, party of the first part, and ____, of the County of ____, in the State of ____, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of ____ dollars, to her or him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, her or his heirs and assigns forever, the following described land, to wit:

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever."

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Form of Deed – Trustee's Deed

- SCC and Title Notes clarify deed requirements
 - Ex) Trustee of a specific trust

DD034

Specific Trust - As Trustee of Specific Trust - Trustees Deed C0006 / I-5.2



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If title is held under a specific trust (i.e., the trust is identified of record), the language would be:

Trustee's Deed from ____, as trustee under ____ to the proposed insured purchaser(s).

If the real property was not properly devised, then the probate court should enter an ordernaming the heirs at law under Part I of Ch. 732, F.S., as modified by Sec. 732.401(1), F.S. Conveyances must be required from those entitled to the homestead property.

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Form of Deed – Trustee’s Deed

- SCC and Title Notes clarify deed requirements
 - Ex) Trustee of “undiscovered” trust

DD037

Trust Not Discovered - As Trustee - Warranty Deed - TN 31.04.01 C0005 / I-5.1

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When title is held by an individual described simply “as trustee” and the trust is not discovered, Schedule B, Part I, item 2 (a), must be modified to read:

Warranty Deed from ___, individually and as trustee, joined by spouse, if married, or nonhomestead language, to the proposed insured purchaser(s).

If the trustee who is also a beneficiary is executing a mortgage as trustee and individually but the trust property is residential property that is not the principal residence of the trustee and/or trustee’s family, Fund Underwriting Counsel approval is required prior to adding nonhomestead language in lieu of joinder of spouse.



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“Joined by Spouse”

- If joinder not required
 - Include supporting language in deed for benefit of future examiners
 - “Sonia Chopra, an unmarried woman, as grantor” or
 - Married person who individually owns non-homestead property
 - “NOTE: Property is not the homestead property, nor adjacent to the homestead property of Grantor or any member of Grantor’s family. Grantor resides at 123 Oak Lane, Orlando, Florida.”
- Keep in mind
 - Marital status and homestead status can change (and change back!) at any time
 - Do not rely on recitation in deed into seller for homestead status

4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

A. Warranty Deed from Sonia Chopra and Rahul B. Chopra, wife and husband, to Edward F. Black and Pamela M. Black, husband and wife.

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Lender's Insured Interest



The Lender's Insured Interest

- Contract may indicate a loan
 - Financing paragraph may show loan contemplated
 - However even a “cash deal” may include a lender
 - Most mortgage lenders require borrower to buy loan policy

FINANCING

8. FINANCING:

- ☐ (a) This is a cash transaction with no financing contingency.
- ☐ (b) This Contract is contingent upon, within _____ (if left blank, then 30) days after Effective Date (“Loan Approval Period”): (1) Buyer obtaining approval of a ☐ conventional ☐ FHA ☐ VA or ☐ other _____ (describe) mortgage loan for purchase of the Property for a **(CHECK ONE)**: ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed _____ % (if left blank, then prevailing rate based upon Buyer’s creditworthiness), and for a term of _____ (if left blank, then 30) years (“Financing”); and (2) Buyer’s mortgage broker or lender having received an appraisal or alternative valuation of the Property satisfactory to lender, if either is required by lender, which is sufficient to meet the terms required for lender to provide Financing for Buyer and proceed to Closing (“Appraisal”).



The Lender's Insured Interest

- Requirements will include
 - Deed to borrowers
 - Mortgage from borrowers

4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
- (1) Warranty Deed from Sonia Chopra and Rahul B. Chopra, wife and husband, to Edward F. Black and Pamela M. Black, husband and wife.
 - (2) Mortgage from Edward F. Black and Pamela M. Black, husband and wife, to Nutter Butter Bank in the amount of \$410,000.00.



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What the Lender Requires

- Lenders also typically require
 - Clear title
 - Copy of the Commitment
 - May request Commitment include other specific information
 - Status of real property taxes
 - Parcel identification number
 - List of endorsements to be issued



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Mortgage Satisfaction



Mortgage Satisfaction

- Obtain payoff letter from lender and follow instructions
 - Add a few days of per diem to payoff for processing time
 - Cannot calculate payoff after estoppel date by adding per diem amounts (get update)
- Institutional lenders typically record their own satisfactions
 - Smaller lenders may deliver to closing agent's office
- Sec. 701.04, F.S. requires lender to record satisfaction within 60 days
 - See "The Importance of Getting a Release," 43 *Fund Concept* 40 (May 2011)

6. Record satisfaction of the mortgage from Sonia Chopra and Rahul Chopra to Bank of America, N.A., dated April 2, 2007, and recorded in O.R. Book 9209, Page 1399, Public Records of Orange County, Florida.
7. Satisfaction of the revolving credit mortgage in favor of Bank of America, N.A., recorded May 21, 2007, in O.R. Book 9266, Page 4797, Public Records of Orange County, Florida. Said mortgage must be closed to future draws prior to closing, the payoff amount must be verified the day of closing, and owner must give an affidavit that owner has no checks or credit or debit cards facilitating draws from the account. Confirm that the Satisfaction of Mortgage is recorded post-closing.

Satisfactions – What Can Go Wrong?

- Title search reveals seller mortgage from 2000 held by AmSouth Bank
- In 2006 title agent calls AmSouth and is told loan is paid off
- AmSouth faxes computer printout to title agent showing loan is “*PD OFF,” with a close date of June 30, 2004, and has an outstanding balance of \$0
- Agent closes without payoff to AmSouth based on printout
- Mortgage in fact been assigned to JP Morgan (not recorded)



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Satisfactions – What Can Go Wrong (cont'd)

Estoppel Requests

- *JP Morgan Chase v. New Millennial, LC*, 6 So. 3d 681 (Fla. 2d DCA 2009)
- Sec. 701.04, F.S. requires
 - Estoppel request to be in writing
 - Estoppel letter within 14 days of written request
 - Lienholder must record satisfaction within 60 days of receipt of payment
- Phone call insufficient
- Computer printout is not an estoppel letter
- Title agent should have questioned why no recorded satisfaction 2 years after “close date”



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PART II



Satisfying Revolving Credit Mortgages



What is a Revolving Credit Mortgage?

HELOCs

- Also known as “Home Equity Line of Credit” (HELOC)
- Essentially a line of credit secured by real property
- Within a set limit, borrowers pay down; borrow more
 - Similar to credit card
- Sellers may not understand HELOCs are mortgages (or they might!)
- HELOCs must be **frozen, paid off and shut down**



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Spotting a HELOC

- Must look at the language of the mortgage
 - “Revolving?”
 - “Home Equity Line of Credit?”
- Branch-prepared Commitment will note HELOC requirements
- NOTE: A Title Search Report (TSR) will not specify revolving vs. conventional



7. Satisfaction of the revolving credit mortgage in favor of Bank of America, N.A., recorded May 21, 2007, in O.R. Book 9266, Page 4797, Public Records of Orange County, Florida. Said mortgage must be closed to future draws prior to closing, the payoff amount must be verified the day of closing, and owner must give an affidavit that owner has no checks or credit or debit cards facilitating draws from the account. Confirm that the Satisfaction of Mortgage is recorded post-closing.



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HELOC Requirements

7. Satisfaction of the revolving credit mortgage in favor of Bank of America, N.A., recorded May 21, 2007, in O.R. Book 9266, Page 4797, Public Records of Orange County, Florida. Said mortgage must be closed to future draws prior to closing, the payoff amount must be verified the day of closing, and owner must give an affidavit that owner has no checks or credit or debit cards facilitating draws from the account. Confirm that the Satisfaction of Mortgage is recorded post-closing.

- Must be processed and closed to future draws beginning weeks prior to closing (30+ days)
 - “Freeze request”
- Borrowers must sign lender-specific form requesting closure
 - May include freeze request
- Verify payoff in writing on day of closing to guard against late draws
- Owner must give affidavit as to shutdown, no recent withdrawals; surrender of instruments
- See TN 22.05.16

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HELOC Affidavit

7. Satisfaction of the revolving credit mortgage in favor of Bank of America, N.A., recorded May 21, 2007, in O.R. Book 9266, Page 4797, Public Records of Orange County, Florida. Said mortgage must be closed to future draws prior to closing, the payoff amount must be verified the day of closing, and owner must give an affidavit that owner has no checks or credit or debit cards facilitating draws from the account. Confirm that the Satisfaction of Mortgage is recorded post-closing.

- Required for where HELOC to be satisfied



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The Fund

HELOC Affidavit

Fund Title Notes

[Fund Title Notes](#) > [Title Note Chapters](#)

TN 22.05.16

Satisfaction of Revolving Credit Mortgages

Revision Date: 12/2014

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Often sale and refinance transactions necessitate the payoff and satisfaction of revolving lines of credit (equity lines). These mortgages are loans secured by the debtor's real property which generally allow the borrower to access the equity in their property utilizing credit devices including checks, ATM cards and credit cards. The ease by which these accounts may be accessed, drawing up the outstanding principal balance right before, or after, the closing, may leave Fund Members and the underwriter vulnerable to claims.

Based upon the risk identified above and adverse claims experience, The Fund's underwriting position concerning satisfying equity lines, and insuring without exception, are as follows:

- Affidavit form downloadable from Fund website
- Linked to TN 22.05.16/GR-3.7 on Fund Resources page
- Editable format

Related Documents

[Aff-78 Mortgage - Revolving Credit Mortgage - by Mortgagor](#)

[GR-3.7 Satisfaction of Revolving Credit Mortgage](#)



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HELOC Affidavit

- Affidavit 78 in Affidavit Practice Manual
- No withdrawals within past 30 days or to be made in the future
- No activity within last 30 days
- Lender has closed account per borrowers' instructions
- All credit devices destroyed or surrendered

MCR 69

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Affidavit
[Mortgage — Revolving Credit Mortgage — by Mortgagor]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant”), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:
[insert legal description of real property a/k/a address of property]
2. Affiant is the mortgagor under that certain mortgage (the “Mortgage”) in favor of _____ under loan number _____ recorded _____ in Official Records Book _____, at Page _____, and/or Instrument No. _____ of the Public Records of _____ County, Florida, which Mortgage encumbers the property described above.
3. Attached hereto as Exhibit A is a true and correct copy of the estoppel letter issued by the mortgagee, showing the total amount due under the account as \$ _____.
4. In connection with said account, Affiant acknowledges the following:

a. There have been no advances or withdrawals of funds within the last 30 days, and Affiant will not make any withdrawals subsequent to making this affidavit;

b. There has been no activity on the line of credit within the last 30 days, and Affiant will not do anything to cause any activity on the line of credit subsequent to making this affidavit;

c. The account has been closed and the mortgagee has been provided with instructions from Affiant to close said account;

d. All credit devices, including, but not limited to numbered checks, credit cards and ATM cards, which may be used to access the credit line, have been destroyed or surrendered to _____, the Old Republic National Title Company closing agent.
5. Affiant makes this affidavit to induce **Old Republic National Title Insurance Company** (the “Title Insurer”) to insure to the Subject Property, and to induce _____ to purchase said property, and agrees to indemnify said parties, and hold them harmless, from any loss or damage resulting from its reliance on the matters set forth in this Affidavit.

(Affiant)
Print Name: _____

HELOC Satisfaction Wrap-up

- Verify payoff in writing on closing date
- If payoff changed will need new estoppel letter
 - May change closing date
- As with all institutional mortgages, satisfaction may not be available at closing
 - May rely on
 - Estoppel letter and proof of payoff
 - Sec. 701.04, F.S. requires lender to record satisfaction within 60 days
- Follow up searches to confirm satisfaction recorded



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Meeting Lien Requirements



Meeting Lien Requirements – Tenancy by the Entireties

- B-1 Requirements

- 9. Calls for clearing judgments against only one of the married sellers

9. The official records show one or more certified judgments or state tax liens against Rahul Chopra, individually, or a similarly named person. Since it appears title was taken and may have been continuously held as tenants by the entirety, these judgments or tax liens have not been listed. It is necessary for you to evaluate how title was taken and has been held to date. If you determine that such liens may have attached to the property covered herein, this product will be modified, at your request to list and provide copies of these instruments. See T.N. 18.03.05 and 30.06.

- Requirement notes Tenancy by the Entireties may resolve

- Judgment against one spouse cannot be a lien on property when
 - Obtained and held as tenancy by the entireties and
 - So held for entire period of ownership subsequent to judgment
 - See TN 30.02.07

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Meeting Lien Requirements – Tenancy by the Entireties

- B-1 Requirements

- 9. Calls for clearing judgments against only one of the married sellers

9. The official records show one or more certified judgments or state tax liens against Rahul Chopra, individually, or a similarly named person. Since it appears title was taken and may have been continuously held as tenants by the entirety, these judgments or tax liens have not been listed. It is necessary for you to evaluate how title was taken and has been held to date. If you determine that such liens may have attached to the property covered herein, this product will be modified, at your request to list and provide copies of these instruments. See T.N. 18.03.05 and 30.06.

- “Evaluate how title was taken and has been held”

- To rely on tenants by the entireties to clear judgment against one
 - Record a Continuous Marriage Affidavit
 - Affidavits 28 – 32 in Affidavit Practice Manual

- NOTE: does NOT apply to federal tax liens

- *United States v. Craft*, 122 S. Ct. 1414 (2002)

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Meeting Lien Requirements – Tenancy by the Entireties

- Locate Affidavit Practice Manual under Resources on Fund Website
- Select, download, and modify appropriate form

[Aff-28 Continuous Marriage — by Surviving Spouse](#)

[Aff-29 Continuous Marriage — by Family Member](#)

[Aff-30 Continuous Marriage Affidavit — by Spouses](#)

[Aff-31 Continuous Marriage — Through Divorce](#)

[Aff-32 Continuous Marriage — Mortgage — by Surviving Spouse](#)



Affidavit

[Continuous Marriage Affidavit — by Spouses]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiants”), who depose(s) and say under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

[insert legal description of real property]

2. Affiants are the fee simple owners of the property described in item 1 above.

3. Affiants hereby affirm that the property described in item 1 above was acquired by them during their marriage and that they have remained married to each other without interruption through the date hereof.

4. This affidavit is made to induce **Old Republic National Title Insurance Company** (“Title Insurer”) to insure title to the real property described in item 1 above. Affiant agrees to indemnify **Title Insurer** and hold it harmless from any loss or damage resulting from its reliance on the matters set forth in this affidavit.

(Affiant)
Print Name: _____

(Affiant)
Print Name: _____

STATE OF _____
COUNTY OF _____
The foregoing instrument was sworn to and subscribed before me by means of [] physical presence of [] online notarization this ____ day of _____, 20____, by _____ who [] is personally known or [] has produced _____ as identification.

[Notary Seal]

Notary Public
Printed Name: _____
My Commission Expires: _____

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Meeting Lien Requirements – Lien Debtor ID

- B-1 Requirements
 - 8. Calls for clearing a federal tax lien appearing to name seller
- 8. Record satisfaction or affidavit of non-identity containing the legal description of the real property to be insured and sufficiently establishing that the affiant is not the same person named in the federal tax lien recorded under the following Official Records: Instrument No. 2019-543912 and Instrument No. 2020-0000741, Public Records of Orange County, Florida.
- Recall: Tenancy by the entireties not helpful for federal tax lien
 - Neither is homestead
- Next question – Is the seller the person named in the lien/judgment?
 - “Not me” not good enough



Meeting Lien Requirements – Lien Debtor ID

- Closing agent must be satisfied seller is not named debtor
 - Seek proof
 - Ask relevant questions
 - Know/did business with lien creditor?
 - Lived at address(s) indicated?
 - Middle initial?
 - SS# (last 4 digits) may be shown on tax lien
- Seller must sign “Affidavit of Non-Identity”
 - Affidavit 60 in APM
 - Affidavit must be “beefy”
 - Includes details from questions answered



Affidavit
[Liens — Non-Identity]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant”), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:
[insert legal description of real property]
2. Affiant is the fee simple owner of the property described in item 1 above.
3. Affiant is aware of and has reviewed in detail the following judgments [state where applicable “and other instruments”] against a person with the same or similar name as Affiant:
[insert type of instrument and recording information]
4. Affiant is not one and the same as the persons described in the instruments under item 3 above.
5. This affidavit is made to induce Old Republic National Title Insurance Company (“Title Insurer”) to insure title to the real property described in item 1 above. Affiant agrees to indemnify Title Insurer and hold it harmless from any loss or damage resulting from its reliance on the matters set forth in this affidavit.

(Affiant)

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [] physical presence or [] online notarization this ____ day of ____, 20____, by _____ who [] is personally known or [] has produced _____ as identification.

[Notary Seal]

Notary Public
Printed Name: _____
My Commission Expires: _____

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Meeting Lien Requirements – Lien Debtor ID

“Not me!” A True Claims Hazard Story

- Seller with distinctive name, e.g. “Pontificus Hairbrush Gleepglorp, III” comes to agent to sell individually held non-homestead property
- Title search shows \$300,000 perfected judgment vs. Pontificus Hairbrush Gleepglorp, III
- Pontificus Hairbrush Gleepglorp, III offers to sign affidavit attesting “not me”
 - No “beefy” details such as middle initial, SS# etc. offered
- In reliance on affidavit, agent closes without paying judgment
- \$300,000 claim ensues



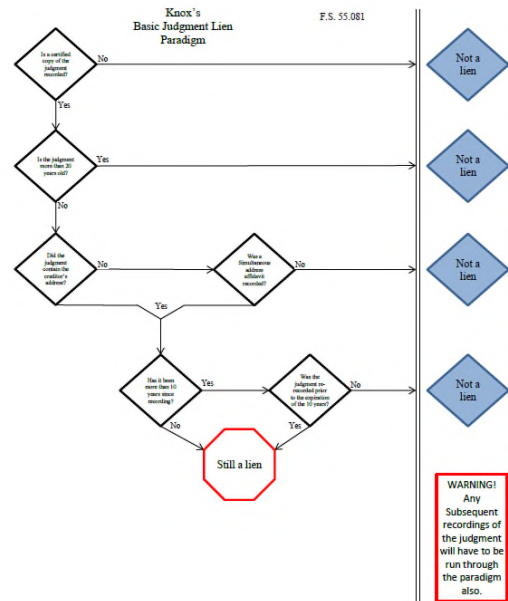
Moral: Affidavits do not cure liens. Rather, when credible and based on facts, they may be evidence a potential lien does not impact specific property.



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Meeting Lien Requirements – Other Considerations

- Recorded judgment may not be certified copy
- Address information may be missing
- Lien may have expired
- Knox's Judgment Lien Paradigm available on Fund website



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Meeting Lien Requirements – Other Considerations

See TN Chapter 18

- Recorded Judgment/Lien Not Certified Copy or Missing Address **MCR 28**
 - Recorded > 1 year from date of search - May be ignored
 - Recorded < 1 year from date of search
 - Requirement will call for full amount of judgment to be escrowed at closing
 - Pending confirmation no certified/corrected copy recorded prior to deed and mortgage
- Expired Judgment
 - May be ignored
 - Exception for Commitments for any Policy Over \$1 Million
 - Underwriting MUST review requirements
 - See "New Guidelines for Handling Uncertified, Expired, & Otherwise Unperfected Judgment Liens," 40 *The Fund Concept* 33 (Apr. 2008)
 - NOTE: Threshold for underwriting review now \$1M, not the higher amount stated in the April 2008 Concept article



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Special Requirements



Limiting Fraud

Quitclaim Deeds – Question if other factors present

- Need Underwriting approval if quitclaim deed in chain less than 1 yr old and
- Has characteristics set forth under TN 10.03.09 :
 - Doesn't appear to be for the typical use of a Quitclaim deed
 - Clearing defects
 - Marital settlement
 - Deed in lieu of foreclosure, etc.
 - Handwritten
 - Minimal doc stamps (indicating a gratuitous conveyance) if not between family
 - No indication of who prepared the deed or if the grantee prepared the deed
 - Delay in recording after purported execution or worse not recorded at all
 - Approval should appear as Schedule B-I requirement



Unencumbered property / “Naked satisfaction”

- If a mortgage appears to have been satisfied without corresponding sale or refi, confirm through independent sources mortgage was in fact paid off

Miami-Dade Considerations

Certificate of Re-Occupancy for residential transactions

- Certificate of Re-Occupancy required for all single-family residentially zoned properties
 - Village of El Portal
 - City of Hialeah
 - City of Miami Gardens
 - Miami Shores Village
 - City of Miami Springs
 - City of North Miami
- Certificate of Use for REO sales
 - Miami-Dade County



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Commitment Schedule B- II Deleting Exceptions



Why Delete Exceptions?

- Settlement agents have a duty to give insureds more protection by deleting exceptions where possible or required
- But Members should make exceptions for any issue of which they are aware that could lead to a title claim



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Standard v. Specific Exceptions

Standard Exceptions

- Commitment B-II 1-3
1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I Requirements are met.
 2.
 - a. General or special taxes and assessments required to be paid in the year 2023 and subsequent years.
 - b. Rights or claims of parties in possession not recorded in the Public Records.
 - c. Any encroachment, encumbrance, violation, variation or adverse circumstance that would be disclosed by an inspection or an accurate and complete land survey of the Land and inspection of the Land.
 - d. Easements or claims of easements not recorded in the Public Records.
 - e. Any lien, or right to a lien, for services, labor or material furnished, imposed by law and not recorded in the Public Records.
 3. Any Owner's Policy issued pursuant hereto will contain under Schedule B the following exception: *Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the Land insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.*

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Standard v. Specific Exceptions

Specific Exceptions

- All other B-II exceptions

4. This policy does not insure against loss or damage by reason of the following exceptions:
Any rights, easements, interests or claims which may exist by reason of, or reflected by, the following facts shown on the survey prepared by American Surveying and mapping dated February 23, 2007:
 - a. Five foot drainage and utility easement along the north lot line of subject property.
 - b. Ten foot drainage easement along the east lot line of subject property.
 - c. Five foot drainage and utility easement along the south lot line of subject property.
 - d. Twelve foot utility easement along the west lot line of subject property which is encroached upon by a drive.
5. All matters contained on the Plat of Bronson's Landings, as recorded in Plat Book 66, Page 139, Public Records of Orange County, Florida.
6. Surveyor's Affidavit recorded in Official Records Book 9361, Page 4281, Public Records of Orange County, Florida.
7. Development Agreement recorded July 8, 2002, in Official Records Book 6560, Page 9077, Public Records of Orange County, Florida (hereinafter "Development Agreement"). Such Development Agreement may establish and provide without limitation for restrictions regarding land use and development.

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Insuring the Gap



What is the “Gap?”

1. Commitment Date: May 13, 2023 @ 11:00 PM

- Commitment reflects “effective date” when 1st search conducted
- Insured deed and mortgage will be recorded after closing
- Anything recorded in between will have superior priority



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Insuring the Gap – What Could Go Wrong?

- Seller records deed to someone else before closing (yes this happens)
 - Owner to be insured cannot take title
 - Lender’s insured mortgage invalid
- Judgment or other lien recorded
 - New owner’s insured interest now subject to lien
 - Mortgage to be insured suddenly inferior to another interest
- Notice of Commencement recorded
 - Can be converted to a lien superior to new deed and mortgage



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The Gap Exception

B-II

- 1st standard exception is the “gap exception”

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I Requirements are met.

- But Sec. 627.7841, F.S. requires the gap be covered

627.7841 Insurance against adverse matters or defects in the title.—If a title insurer issuing a commitment or policy of title insurance upon an estate, lien, or interest in property located in this state through its officers, employees, agents, or agencies disburses settlement or closing funds, the title insurer shall insure against the possible existence of adverse matters or defects in the title which are recorded during the period of time between the effective date of the commitment and the date of recording of the document creating the estate or interest to be insured, except as to matters of which the insured has knowledge.

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Deleting The Gap Exception

- Gap must be insured by law when
 - Commitment or policy has been issued, and
 - Member disburses closing funds
- Gap remains uncovered as to matters of which insured has knowledge
- Gap exception nearly always deleted from final policies
 - Narrow exception if someone other than title agent disbursing
 - Exception serves as a reminder to “close the gap”



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Closing the Gap

How to protect against claims due to interests recorded in the gap?

- **Update title search** prior to but as close to closing as possible
 - Day of closing or day before
 - Not days or weeks prior
 - Fund ATIDS quickest and easiest way
- Record promptly
- B-I requires Seller's Closing Affidavit
 - Includes attestations as to potential gap matters

10. Execution of closing affidavit by appropriate parties representing possession and no adverse matters, including actions taken by owner or others that would give rise to litigation or lien.



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Update Search

What if an adverse matter (ex. newly recorded lien) appears in the update search?

- Will generate new requirement
 - Focus is on fixing new issue
 - For parties' use can formally
 - Update Commitment revision or
 - Use Form E Endorsement to modify



ENDORSEMENT

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Endorsement No. _____ to Policy No.: _____

Name of Original Insured: _____

Original Effective Date: _____

Original Amount of Insurance: \$ _____ Agent's File Reference: _____

Current Amount of Insurance: \$ _____

The policy is hereby amended as follows:

The following item is added to Schedule B-I

14. Satisfaction of that certain [name of instrument] against [name of party] recorded in O.R. Book XXX, Page XX of the Public Records of Orange County, FL

(Continue text of endorsement on separate continuation sheet if necessary.)

but in all other respects remains unchanged.

Name of Agent

Date

Agent No.

Agent's Signature

By **Old Republic National Title Insurance Company**
Carolyn Monroe
President

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Taxes and Special Assessments



**The
Fund**

B-II Exception for Future Taxes

2. a. General or special taxes and assessments required to be paid in the year 2023 and subsequent years.

- Ad valorem taxes for year of closing
- Non-ad valorem taxes
- Special assessments for year of closing



Ad Valorem Taxes

- FL tax year Jan. 1 – Dec. 31
- Taxes a lien Jan. 1
 - But not payable until Nov. 1
- If closing Nov. 1 or after determine whether
 - Taxes have been paid
 - No delinquent unpaid taxes
- If current year taxes paid, replace exception with
 - “Taxes for the year of the effective date of this policy have been paid as evidenced by receipt no. __, dated __.”
- If closing prior to Nov. 1 exception cannot be deleted or modified



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Non-Ad Valorem Taxes

- Appearing on tax bill
 - Stormwater control districts
 - Fire – rescue services
 - Solid waste authorities
- Will be paid with ad valorem taxes
 - May not be assessed on calendar year basis, so watch prorations
 - Call agency to confirm how and when assessed



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Municipal Liens and Special Assessments

- Not to be confused with HOA/Condo assessments
- Typically gov't services or infrastructure projects assessed to local property owners
- Municipal liens for services provided, e.g.,
 - Water
 - Sewer
 - Gas services
- Special assessments for improvements, e.g. sidewalk installation, road paving, etc.
- Other liens covered by local ordinances



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Municipal Liens

- May be recorded
 - Payment will appear as Schedule B-I requirement
- Often unrecorded
- Become familiar with local ordinances, resolutions, and codes for possible assessments
- Contact county, municipality, and service districts about outstanding bills
- Order a municipal lien search
 - Typically 3d party vendor

MCR 24



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Municipal Liens – Deleting the Exception

If search shows no unrecorded Ch. 159 liens, delete specific Ch. 159 exception

10. ~~Any lien provided by County Ordinance or by Ch. 159, F.S., in favor of any city, town, village or port authority, for unpaid service charges for services by any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.~~

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Municipal Liens – Deleting the Exception

MCR 24

“Taxes & Non-Record Special Assessments – Deletion of the Standard Exception,” 38 *The Fund Concept* 151 (Nov. 2006)



The Fund[®] CONCEPT

November 2006, Volume 38

Taxes and Non-Record Special Assessments – Deletion of the Standard Exception

By Melissa S. Scaletta, Fund Senior Underwriting Counsel

At the closing of a real estate transaction insured by title insurance, a commitment is issued. The exclusive form of title insurance commitment issued in Florida is the American Land Title Association, hereinafter “ALTA,” 1966 revision. The commitment binds the title insurance underwriter to issue a title insurance policy or policies in accordance with the terms of Schedules A, B and C, and the commitment jacket. While schedules of a policy vary greatly from transaction to transaction, the jacket is an approved form which is not subject to change. The jacket contains certain standard exceptions. This article focuses on the standard exception for taxes and non-record special assessments. The relevant portion of the standard exceptions is as follows:

The owner's policy will be subject to the mortgage, if any, noted under item two of Section I of Schedule B hereof. All policies will be subject to the following exceptions: (1) taxes for the year of the effective date of this Commitment and taxes or special assessments which are not shown as existing liens by the public records...

Standard exceptions may be omitted from the final policy, provided the insuring Fund Member Agent complies with essential underwriting guidelines to minimize the risk associated with each of those exceptions. Most institutional lenders will require that the standard exceptions be omitted from the final mortgage policy. For

this reason, Schedule B of the mortgage policy does not contain preprinted standard exceptions. The standard exceptions are preprinted in Schedule B of the owner's policy; however, the standard exceptions may be deleted from the owner's policy by applying the same underwriting techniques as those used for issuing the mortgage policy without standard exceptions. See TN 25.03.01 for underwriting guidelines for deleting the standard exceptions and TN 25.03.06 for deleting the standard survey exception.

The standard exception for taxes and non-record special assessments encompasses liens for real property taxes and various governmental liens. Florida real property taxes are due and payable on Nov. 1 of each year. These taxes, if not discharged, become a first lien on the real property beginning on Jan. 1 of that year. See: 197.122 and 333, F.S. See “Insuring Clerks’ Tax Deeds,” 32 *Fund Concept* 169 (Nov. 2000). Fund Member Agents are permitted to modify

(Continued on page 157)

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Parties in Possession



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Parties in Possession

2.

b. Rights or claims of parties in possession not recorded in the Public Records.

- Standard exception as to possessory interests not conveyed by seller
 - Tenants
 - Squatters



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Parties in Possession – When Exception Deleted

- When seller gives affidavit attesting no parties in possession
 - Standard exception deleted
 - If evidence to the contrary, contact Underwriting

627.7842 Policy exceptions.—

(1)(a) If a survey meeting the standards of practice for surveying required by the Department of Agriculture and Consumer Services and certified to the title insurer by a registered Florida surveyor has been completed on the property within 90 days before the date of closing, the title policy may only except from coverage the encroachments, overlays, boundary line disputes, and other matters which are actually shown on the survey.

(b) If at closing the seller signs an affidavit swearing that there is no person in possession of the property or with a claim of possession to the property except the seller, the title policy may not exclude from coverage rights or claims of parties in possession not shown by the public records.



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Recall: Schedule B-I Requires Seller's Closing Affidavit

10. Execution of closing affidavit by appropriate parties representing possession and no adverse matters, including actions taken by owner or others that would give rise to litigation or lien.

- Affidavit from property owner or
- Affidavit from “some other person having actual knowledge”
- Note: Institutional sellers
 - Individual signing affidavit must have *actual knowledge*



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Parties in Possession – Seller’s Standard Closing Affidavit

3. Possession. *Initial as applicable:*

_____ Affiant is in full, exclusive, open, peaceful and undisputed possession of the Property, and there are no tenants, guests, licensees or other parties in or on any part of the Property.

_____ Affiant is in full, exclusive, open, peaceful and undisputed possession of the Property, and there are no tenants, guests, licensees or other parties in or on any part of the Property except for those tenants (the “Tenants”) listed on the rent roll set forth in Exhibit ____, attached hereto and made a part hereof, none of whose lease includes provisions for a right of first refusal or an option to purchase all or any portion of the Property.



Closing Affidavit
Seller
Residential/Commercial

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant” or “Seller”), who depose(s) and say(s) under penalties of perjury that: (When used, “Affiant”, “Seller” and “Buyer”, include singular or plural as context so requires or admits.)

- Property. Affiant is the owner of certain real property (the “Property”) described as:
[insert legal description]
- No Lien. There have been no improvements, alterations or repairs to the Property during the last ninety (90) days, for which the cost thereof remains unpaid [insert, if applicable: “except for” and state any exceptions or state “None”].

_____ of the Property, and there
_____ of the Property, and there
except for those tenants (the
de a part hereof, none of
se all or any portion of the
_____, or on the premises, if
whatsoever.
_____, for maintenance, special
documents encumbering the
_____, which would attach to the
Company (“Title Insurer”) Title Commitment under Fund File No. _____ (the “Title
Commitment”) and the recording of the interest to be insured on the Owner’s Loan Policy to be issued
pursuant to the Title Commitment. Except as expressly stated in the Title Commitment, Affiant has not and
will not execute any instruments that would adversely affect the interest to be insured and Affiant has not
taken any action preceding the Commitment Date of the Commitment which would result in any lien
attaching to the Property prior to the date of the recording of the instrument to be insured.

- Survey. The survey referenced in the Title Commitment (the “Survey”) [insert preparer, date and job
number] constitutes an accurate depiction of the Property and reveals all improvements and structures
located thereon, if any. With the exception of Tenants, if any, Affiant has been in continuous and exclusive
possession of the Property since the date of the Survey (the “Survey Date”) and no structures or
improvements, including, but not limited to buildings, roads or fences, have been constructed on the Property
since the Survey Date, nor have there been any alterations to existing structures and improvements, if any,
since the Survey Date, which would make the Survey inaccurate. To the best of Affiant’s knowledge, since
the Survey Date, no structures or improvements, including, but not limited to, buildings, roads or fences have
been placed, erected or constructed on adjoining lands which might encroach onto the Property. Affiant has
no knowledge of any claim made by anyone to the ownership or use of the Property whether with or without
permission of Affiant (other than Tenants), nor has there arisen any dispute over the legal right of access to
and from the Property or to the location of any boundary or to any claim that any structures or improvements

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What if parties are in possession?

3. Possession. *Initial as applicable:*

_____ Affiant is in full, exclusive, open, peaceful and undisputed possession of the Property, and there are no tenants, guests, licensees or other parties in or on any part of the Property.

RC/SC Affiant is in full, exclusive, open, peaceful and undisputed possession of the Property, and there are no tenants, guests, licensees or other parties in or on any part of the Property except for those tenants (the “Tenants”) listed on the rent roll set forth in Exhibit A, attached hereto and made a part hereof, none of whose lease includes provisions for a right of first refusal or an option to purchase all or any portion of the Property.

- And make a specific exception in Schedule B of final policy



Closing Affidavit
Seller
Residential/Commercial

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant” or “Seller”), who depose(s) and say(s) under penalties of perjury that: (When used, “Affiant”, “Seller” and “Buyer”, include singular or plural as context so requires or admits.)

- Property. Affiant is the owner of certain real property (the “Property”) described as:
[insert legal description]
- No Lien. There have been no improvements, alterations or repairs to the Property during the last ninety (90) days, for which the cost thereof remains unpaid [insert, if applicable: “except for” and state any exceptions or state “None”].

_____ of the Property, and there
_____ of the Property, and there
except for those tenants (the
de a part hereof, none of
se all or any portion of the
_____, or on the premises, if
whatsoever.
_____, for maintenance, special
documents encumbering the
_____, which would attach to the
Company (“Title Insurer”) Title Commitment under Fund File No. _____ (the “Title
Commitment”) and the recording of the interest to be insured on the Owner’s Loan Policy to be issued
pursuant to the Title Commitment. Except as expressly stated in the Title Commitment, Affiant has not and
will not execute any instruments that would adversely affect the interest to be insured and Affiant has not
taken any action preceding the Commitment Date of the Commitment which would result in any lien
attaching to the Property prior to the date of the recording of the instrument to be insured.

- Survey. The survey referenced in the Title Commitment (the “Survey”) [insert preparer, date and job
number] constitutes an accurate depiction of the Property and reveals all improvements and structures
located thereon, if any. With the exception of Tenants, if any, Affiant has been in continuous and exclusive
possession of the Property since the date of the Survey (the “Survey Date”) and no structures or
improvements, including, but not limited to buildings, roads or fences, have been constructed on the Property
since the Survey Date, nor have there been any alterations to existing structures and improvements, if any,
since the Survey Date, which would make the Survey inaccurate. To the best of Affiant’s knowledge, since
the Survey Date, no structures or improvements, including, but not limited to, buildings, roads or fences have
been placed, erected or constructed on adjoining lands which might encroach onto the Property. Affiant has
no knowledge of any claim made by anyone to the ownership or use of the Property whether with or without
permission of Affiant (other than Tenants), nor has there arisen any dispute over the legal right of access to
and from the Property or to the location of any boundary or to any claim that any structures or improvements

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Parties in Possession – Tips

- Ask seller and realtor about possible possession issues well in advance of closing
- Examine any written lease agreements for rights of first refusal or other restrictions
- Obtain tenant estoppel certificate from tenant
- Ensure seller initials next to appropriate “Possession” item on closing affidavit



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PART III





Survey Requirements

EX003

Removal of Standard Exceptions - Survey C0058 / GR-2.5



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To delete the standard exception for survey and unrecorded claims of easements, the following requirement should be made:

A survey meeting the Company's requirements and an affidavit of the owner, or other person with actual knowledge, establishing that there are no unrecorded easements or claims of easements in existence, must be furnished. If the survey reveals any encroachments, encumbrances, violations, variations, or adverse circumstances, including but not limited to easements, they will appear as exceptions in the policy.

Survey Exception

TN 25.03.06 Surveys – Requirements

- Signed, dated and sealed by a FL Registered Surveyor, recertified to a recent date as needed
- Contains an adequate, accurate legal description agreeing with deed or mortgage
- If acreage, should tie to at least 1 identifiable corner such as a section or 1/4 corner. See Rule 5J-17.052(6)(b), F.A.C.
- If recorded subdivision, drawing shall show lot and block number or other designations, including adjoining lots. See Rule 5J-17.052(1)(f), F.A.C.
- Shows visible boundary lines, improvements, utilities, easements, rights-of-way, and objects affecting property
- Non-visible easements of record, if not on plat, not shown unless furnished to the surveyor
- Notes explain encroachments or discrepancies between description in recorded instrument and markers or other indicators, designating the boundary as actually used and occupied

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The Standard Survey Exception

B-II

2.

c. Any encroachment, encumbrance, violation, variation or adverse circumstance that would be disclosed by an inspection or an accurate and complete land survey of the Land and inspection of the Land.

- Excepts from coverage matters which would be disclosed by a survey
 - Encroachments on property by improvements from neighboring property
 - Encroachments by property's improvements on neighboring land
 - Encroachments by property's improvements into easements and setbacks
- Based on the assumption no survey carried out

98



Deleting (and replacing) the Standard Survey Exception

- Sec. 627.7842, F.S. requires standard survey exception deleted where
 - Survey conducted that
 - Meets Standards of Practice
 - Is certified to underwriter by registered Florida surveyor
 - Is completed within 90 days prior to closing
 - See TN 25.03.07
 - BUT can be replaced with specific survey exceptions for encroachments, overlays, boundary line disputes, and other matters shown on survey

627.7842 Policy exceptions.—

(1)(a) If a survey meeting the standards of practice for surveying required by the Department of Agriculture and Consumer Services and certified to the title insurer by a registered Florida surveyor has been completed on the property within 90 days before the date of closing, the title policy may only except from coverage the encroachments, overlays, boundary line disputes, and other matters which are actually shown on the survey.

99



Standards of Practice

Chapter 5J-17, Florida Administrative Code

Validity

- Type of survey
- Name of surveyor
- Surveyor's license number
- Address of business entity issuing survey
- Date field work performed and date of all revisions
- Validity statement
- Surveyor's seal and signature

Substance

- Boundary inconsistencies
- Overlapping descriptions or hiatuses
- Area excess or deficiency
- Conflicting boundary lines or monuments
- Doubt related to survey lines/property rights
- Open and notorious evidence and dimensions
- Apparent physical use related to adjoining property
- Platted easements

100



Replacing The Standard Survey Exception

SRV02

Replacing Standard Survey Exception with General Survey Exception C0224 / E-3.1

General Survey Exception can be used

- When acceptable survey available
- If no ALTA 9 endorsement sought, and
- Reason not to use specific exception
- Otherwise specific exception preferred



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When deleting the standard survey exception, if no ALTA 9-06, 9.1-06 or 9.2-06 is given, the following general survey exception may replace it if there is cause not to use the specific survey exception. The use of a specific survey exception is always preferred as follows:

Encroachments, encumbrances, violations, variations, or adverse circumstances, if any, actually shown on the survey prepared by ____ dated ____, bearing Job # ____.



101

Replacing The Standard Survey Exception

SRV03

Replacing Standard Survey Exception When Providing 9-06, 9.1-06 and 9.2-06 Coverage - TN 25.03.07 C0227 / E-3.2

Specific Survey Exception Preferred

- When acceptable survey available
- If ALTA 9 endorsement sought or
- No cause not to use it
- Add specific matters in “bullet list”



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When deleting the standard survey exception, the preferred practice is to replace it with the specific survey exception rather than the general survey exception (SRV02). If an ALTA Endorsement 9-06, 9.1-06 or 9.2-06 is given, the specific survey exception is required:

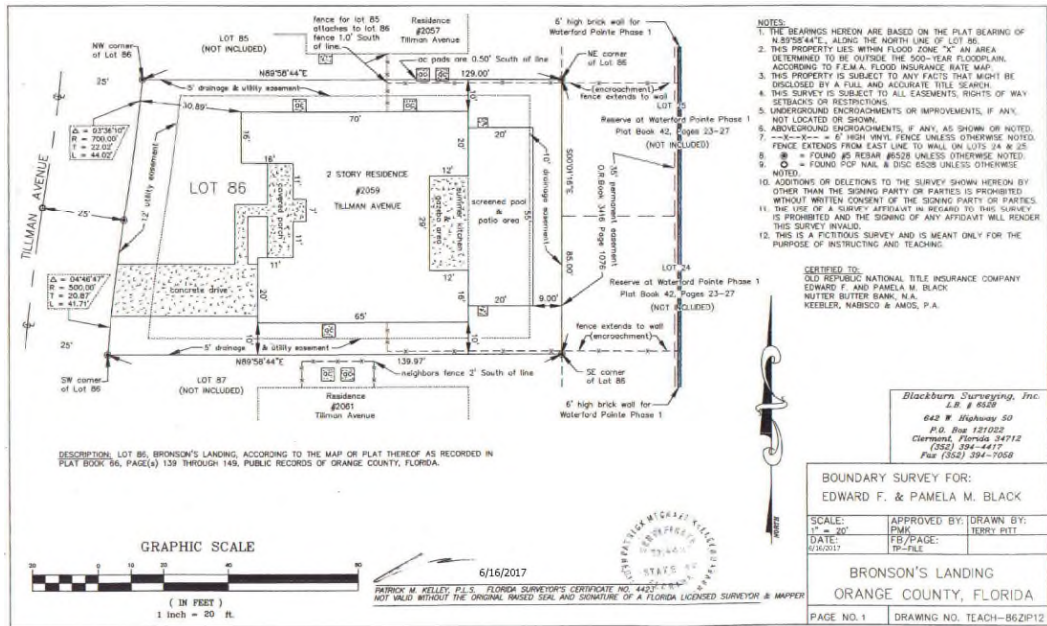
Encroachments, encumbrances, violations, variations, or adverse circumstances, if any, actually shown on the survey prepared by ____, dated ____, bearing Job # ____:

- [itemize specific survey matter]
- [itemize specific survey matter]
- [itemize specific survey matter]



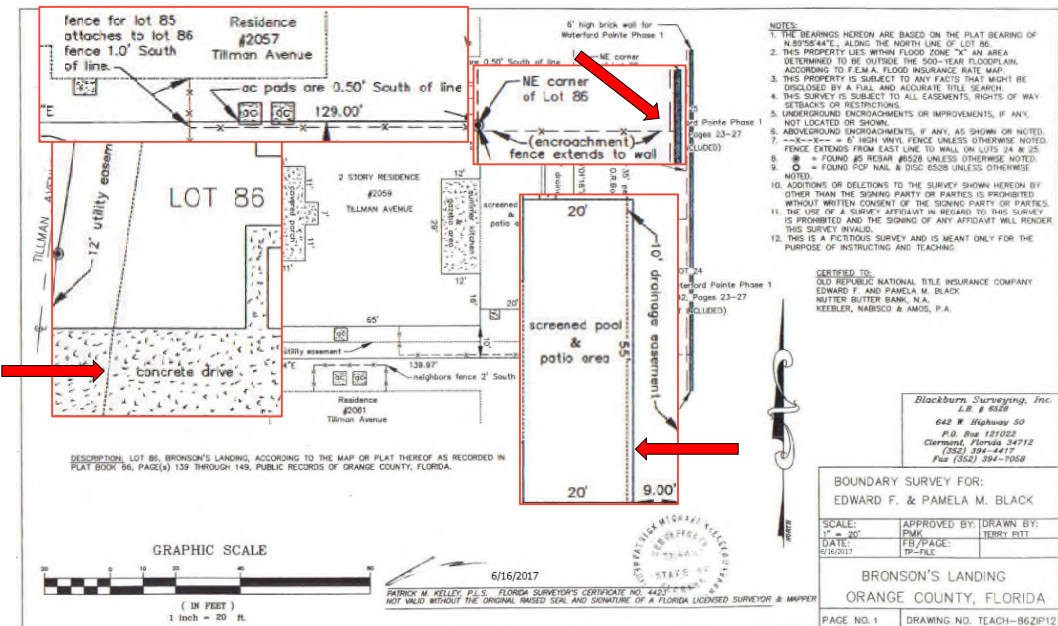
102

The Specific Survey Exception



103

The Specific Survey Exception



104

The Specific Survey Exception

- Specific survey exception describes each issue found
 - Best practice: Insured owner initials by each item
 - Large issues: May need to be addressed before transaction can continue
 - Ex) Building or pool crosses boundary

4. This policy does not insure against loss or damage by reason of the following exceptions:

Any rights, easements, interests or claims which may exist by reason of, or reflected by, the following facts shown on the survey prepared by American Surveying and mapping dated February 23, 2007:

- Five foot drainage and utility easement along the north lot line of subject property.
- Ten foot drainage easement along the east lot line of subject property.
- Five foot drainage and utility easement along the south lot line of subject property.
- Twelve foot utility easement along the west lot line of subject property which is encroached upon by a drive.



105

Surveys Older than 90 Days Before Closing

TN 25.03.06 C

Owner's policies

- Prior survey older than 90 days may be acceptable
- Single-family residential property only
- Prior survey shows boundaries/improvements
- Certified to prior/current owner, lender or title insurer
- Seller gives affidavit upon personal knowledge
 - No improvements not shown on prior survey
 - No improvements on adjoining lands which encroach
 - Inducing underwriter to rely upon survey

Affidavit
[Survey — No Additional Improvements]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ ("Affiant"), who depose(s) and say(s) under penalties of perjury that:

- This affidavit is made with regard to the following described property:
[insert legal description of real property]
- Affiant is the fee simple owner of the real property described under item 1 above ("Property").

- There are no improvements currently located on the Property that are not shown on the previous survey and no improvements have been added to the adjoining land that would encroach onto the Property.
- This affidavit is made to induce **Old Republic National Title Insurance Company** ("Title Insurer") to insure title to the real property described in item 1 above. Affiant agrees to indemnify **Title Insurer** and hold them harmless from any loss or damage resulting from its reliance on the matters set forth in this affidavit.

(Affiant)

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [] physical presence or [] online notarization this ____ day of ____, 20__, by _____ who [] is personally known or [] has produced _____ as identification.

Notary Public

[Notary Seal] Printed Name: _____

My Commission Expires: _____



Surveys Older than 90 Days Before Closing

TN 25.03.06 B

- If property is platted single-family residential
 - No survey required where
 - Prior owner's or mortgagee policy in shown in which survey exception deleted
 - Schedule B exceptions on prior policy must be carried forward to new loan policy
 - Mortgagor provides affidavit no encroaching improvements on property or adjoining property
 - Affidavit given to induce Old Republic National Title Insurance Company to issue a policy
- If ALTA 9-06 endorsement issued, specific survey exception must appear in the prior policy and is carried forward to the new loan policy

Loan policies in a refinance

- Prior survey older than 90 days may be acceptable as above even if not single family residential

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Unrecorded Easements



Unrecorded Easements – Standard Exception

B-II Standard Exception

d. Easements or claims of easements not recorded in the Public Records.

- Unrecorded easements, or claims of easements, are excluded from coverage
 - Access to neighboring land over property
 - Billboards or other signs
 - Electric or other utility lines
- Delete exception if possible where
 - No evidence on survey
 - Provide title search to surveyor
 - Seller's Closing Affidavit



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Unrecorded Easements – Seller's Closing Affidavit

8. Unrecorded Easements. There are no unrecorded easements, claims of easements or rights of way affecting all or any portion of the property.

Closing Affidavit
Seller
Residential/Commercial

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ ("Affiant" or "Seller"), who depose(s) and say(s) under penalties of perjury that:

(When used, "Affiant", "Seller" and "Buyer", include singular or plural as context so requires or admits.)

1. Property. Affiant is the owner of certain real property (the "Property") described as:
[insert legal description]
2. No Lien. There have been no improvements, alterations or repairs to the Property during the last ninety (90) days, for which the cost thereof remains unpaid [insert, if applicable: "except for" and state any exceptions as follows]:

Affiant is in full, exclusive, open, peaceful and undisputed possession of the Property, and there are no tenants, guests, licensees or other parties in or on any part of the Property except for those tenants (the "Tenants") listed on the rent roll set forth in Exhibit _____, attached hereto and made a part hereof, none of whose lease includes provisions for a right of first refusal or an option to purchase all or any portion of the Property.

4. Personal Property. Initial as applicable:
The personal property contained in the improvements on the Property, or on the premises, if any, is being sold free and clear of all liens, encumbrances, claims and demands whatsoever.
5. Restrictive Covenants. Initial as applicable:
There are no violations of any restrictive covenants and all payments for maintenance, special assessments, if any, and other charges as required or authorized by the recorded documents encumbering the Property are current.
6. Gap. There are no matters pending against Affiant that would give rise to a lien which would attach to the Property between [insert date and time], the Commitment Date of **Old Republic National Title Insurance Company ("Title Insurer")** Title Commitment under Fund File No. _____ (the "Title Commitment") and the recording of the interest to be insured on the Owner's Loan Policy to be issued pursuant to the Title Commitment. Except as expressly stated in the Title Commitment, Affiant has not and will not execute any instruments that would adversely affect the interest to be insured and Affiant has not taken any action preceding the Commitment Date of the Commitment which would result in any lien attaching to the Property prior to the date of the recording of the instrument to be insured.
7. Survey. The survey referenced in the Title Commitment (the "Survey") [insert preparer, date and job number] constitutes an accurate depiction of the Property and reveals all improvements and structures located thereon, if any. With the exception of Tenants, if any, Affiant has been in continuous and exclusive possession of the Property since the date of the Survey (the "Survey Date") and no structures or improvements, including, but not limited to buildings, roads or fences, have been constructed on the Property since the Survey Date, nor have there been any alterations to existing structures and improvements, if any, since the Survey Date, which would make the Survey inaccurate. To the best of Affiant's knowledge, since the Survey Date, no structures or improvements, including, but not limited to, buildings, roads or fences have been placed, erected or constructed on adjoining lands which might encroach onto the Property. Affiant has no knowledge of any claim made by anyone to the ownership or use of the Property whether with or without permission of Affiant (other than Tenants), nor has there arisen any dispute over the legal right of access to and from the Property or to the location of any boundary or to any claim that any structures or improvements



110

Standard Seller's Closing Affidavit

What if there is an Unrecorded Easement?

- Note unrecorded easement in Seller's Closing Affidavit

7. Unrecorded Easements. There are no unrecorded easements, claims of easements, or rights of way affecting all or any portion of the property other than that certain **[DESCRIPTION OF EASEMENT USED IN SURVEY EXCEPTION]**.

- Include in Schedule B-II specific survey exception
- Examples
 - 10' unrecorded utility easement running along the northerly property line
 - 5' unrecorded access easement running through southerly half of property
 - Note unrecorded easement in affidavit
- List as an Exception on B-II of the policy

111



Construction Liens



Construction Liens

B-II Standard Exception

e. Any lien, or right to a lien, for services, labor or material furnished, imposed by law and not recorded in the Public Records.

- Unrecorded construction-related liens are excluded from coverage but
- Notice of Commencement (NOC) indicates lien could be recorded ahead of insured interests
- If active NOC recorded
 - Generally, cannot delete exception, see TN 21.03.01(A)
 - If no active NOC and no construction at, or materials supplied to, property within 90 days prior to closing, we can typically delete this standard exception



113

When Construction Lien Exception Must Be Deleted

- Sec. 627.7842 requires deletion of standard exception when Seller signs affidavit that no improvements made in 90 days prior to closing not paid in full

627.7842 Policy exceptions.—

(1)(a) If a survey meeting the standards of practice for surveying required by the Department of Agriculture and Consumer Services and certified to the title insurer by a registered Florida surveyor has been completed on the property within 90 days before the date of closing, the title policy may only except from coverage the encroachments, overlays, boundary line disputes, and other matters which are actually shown on the survey.

(b) If at closing the seller signs an affidavit swearing that there is no person in possession of the property or with a claim of possession to the property except the seller, the title policy may not exclude from coverage rights or claims of parties in possession not shown by the public records.

(c) If at closing the seller signs an affidavit swearing that no improvements have been made to the property within the past 90 days for which payment has not been made in full, the title policy may not except from coverage any lien or right to a lien for services, labor, or material furnished which is imposed by law and not shown by the public record.



114

Role of B-I Requirements

20. Affidavit from a reliable person must be furnished establishing that more than 90 days has elapsed since the completion of all improvements for which payment has not been made in full.

- B-I typically requires affidavit from a reliable person that more than 90 days has elapsed from completion of all improvements not already paid in full
- Sec. 713.08(5), F.S.
- Deadline for filing Claim of Lien 90 days after final furnishing of labor, services, or materials

(5) The claim of lien may be recorded at any time during the progress of the work or thereafter but not later than 90 days after the final furnishing of the labor or services or materials by the lienor. However, if the original contract is terminated under s. 713.07(4), a claim for a lien attaching prior to such termination may not be recorded after 90 days following the date of such termination or 90 days after the final furnishing of labor, services, or materials by the lienor, whichever occurs first. The claim of lien shall be recorded in the clerk's office. If such real property is situated in two or more counties, the claim of lien shall be recorded in the clerk's office in each of such counties. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The validity of the lien and the right to record a claim therefor shall not be affected by the insolvency, bankruptcy, or death of the owner before the claim of lien is recorded.



115

Construction Liens – Seller's Closing Affidavit

2. No Lien. There have been no improvements, alterations or repairs to the Property during the last ninety (90) days, for which the cost thereof remains unpaid [Insert, if applicable: "except for" and state any exceptions or state "None"].

Closing Affidavit Seller

Residential/Commercial

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ ("Affiant" or "Seller"), who depose(s) and say(s) under penalties of perjury that:

(When used, "Affiant", "Seller" and "Buyer", include singular or plural as context so requires or admits.)

1. Property. Affiant is the owner of certain real property (the "Property") described as:

[Insert legal description]

2. No Lien. There have been no improvements, alterations or repairs to the Property during the last ninety (90) days, for which the cost thereof remains unpaid [Insert, if applicable: "except for" and state any exceptions or state "None"].

the Property, and there

the Property, and there

for those tenants (the

"Tenants") listed on the rent roll set forth in Exhibit _____, attached hereto and made a part hereof, none of whose lease includes provisions for a right of first refusal or an option to purchase all or any portion of the Property.

4. Personal Property. Initial as applicable:

The personal property contained in the improvements on the Property, or on the premises, if any, is being sold free and clear of all liens, encumbrances, claims and demands whatsoever.

5. Restrictive Covenants. Initial as applicable:

There are no violations of any restrictive covenants and all payments for maintenance, special assessments, if any, and other charges as required or authorized by the recorded documents encumbering the Property are current.

6. Gap. There are no matters pending against Affiant that would give rise to a lien which would attach to the Property between [insert date and time], the Commitment Date of Old Republic National Title Insurance Company ("Title Insurer") Title Commitment under Fund File No. _____ (the "Title Commitment") and the recording of the interest to be insured on the Owner's Loan Policy to be issued pursuant to the Title Commitment. Except as expressly stated in the Title Commitment, Affiant has not and will not execute any instruments that would adversely affect the interest to be insured and Affiant has not taken any action preceding the Commitment Date of the Commitment which would result in any lien attaching to the Property prior to the date of the recording of the instrument to be insured.

7. Survey. The survey referenced in the Title Commitment (the "Survey") [insert preparer, date and job number] constitutes an accurate depiction of the Property and reveals all improvements and structures located thereon, if any. With the exception of Tenants, if any, Affiant has been in continuous and exclusive possession of the Property since the date of the Survey (the "Survey Date") and no structures or improvements, including, but not limited to buildings, roads or fences, have been constructed on the Property since the Survey Date, nor have there been any alterations to existing structures and improvements, if any, since the Survey Date, which would make the Survey inaccurate. To the best of Affiant's knowledge, since the Survey Date, no structures or improvements, including, but not limited to, buildings, roads or fences have been placed, erected or constructed on adjoining lands which might encroach onto the Property. Affiant has no knowledge of any claim made by anyone to the ownership or use of the Property whether with or without permission of Affiant (other than Tenants), nor has there arisen any dispute over the legal right of access to and from the Property or to the location of any boundary or to any claim that any structures or improvements



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Standard Seller's Closing Affidavit

Unpaid Improvements

- Insert applicable language in affidavit
 - Unpaid improvements are shown
 - If no unpaid improvements, insert “None”
- If unpaid improvements exist
 - Do not delete standard construction lien exception
 - Contact Underwriting



117

The Fund

Hypothetical – Notice of Commencement

Hypo contemplates “live” Notice of Commencement for new construction

- May be possible to eliminate exception by obtaining an owner’s affidavit
 - Identifying all parties serving notice
 - Confirming improvements completed
 - Stating all persons serving notice and in privity with owner have been paid in full
 - Best to contact Underwriting

(1) Obtain an owner’s affidavit which contains the following:

- (a) names and addresses of all persons serving notice to owner pursuant to Sec. 713.06(2), F.S., (or if none received, the affidavit should so state),
- (b) a statement that a personal inspection of the property was made to determine whether persons posted a notice to owner on the property,
- (c) the names and addresses of all persons having privity of contract with the owner under Sec. 713.05, F.S.,
- (d) a statement that the improvement described in the notice of commencement has been completed, (identifying the notice by book and page where recorded),
- (e) a statement that the owner has obtained the affidavit required by Sec. 713.06(3)(d)(1), F.S., from all parties having privity of contract with the owner under Sec. 713.05, F.S., and
- (f) a statement that all persons serving notice to owner, and all persons having privity of contract with the owner under Sec. 713.05, F.S., have been paid in full.

118

The Fund

Construction Lien Tips

- Ask seller and real estate agent about existing and potential matters well in advance of closing
- Is major work being performed in anticipation of sale
 - New roof
 - Electrical
 - Plumbing
 - Remodeled bathroom or kitchen?
- Confirm no such issues close to closing date
- Look for signs of recent repairs or built items on survey, building inspection, appraisal, etc.
- Have seller initial next to “No Lien” item on closing affidavit



119

**The
Fund**

Sovereignty Lands



**The
Fund**

General Sovereignty Lands Exception

3. Any Owner's Policy issued pursuant hereto will contain under Schedule B the following exception: *Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the Land insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.*

- B-II of Commitment provides:
 - Owner's Policy will contain "General Sovereignty Lands Exception" ("GSL")
- This exception can be limited or deleted in its entirety under some circumstances
- Exception not preprinted on Loan Policy form unless examined Branch Product ordered
- *How to Address Sovereignty Lands Issues in Florida* available on-demand from Fund Education Library

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To Delete General Sovereignty Lands Exception

- Answer "NO" to each of the following:
 - Is property proximate to a tidally influenced water body?
 - From survey or personal knowledge
 - Do non-tidally influenced rivers, lakes or streams abut or traverse the subject property?
 - From survey
 - Is the property within the meander line of a nearby lake?
 - From survey or personal knowledge; list of meander lakes in TN Appendix

MCR 77



122



Tidally Influenced Lands

- Lands influenced by ebb and flow of tide up to
 - Mean high water line or
 - Erosion control line
- Lands abutting salt water bodies generally assumed tidally influenced
- Lands abutting freshwater lakes and streams generally assumed NOT to be tidally influenced
- Tip: www.usharbors.com



123

Tidally Influenced Waterbody

- When insuring land in the vicinity of salt or brackish waterbody
 - Replace General Sovereignty Lands Exception with
- Any portion of the Land lying waterward of the mean high water line of ____, and lands accreted thereto.*
- If a deed conveying submerged lands from Trustees of Internal Improvement Trust Fund ("TIIF") is located
 - Call Underwriting to discuss specifics of deleting above exception
 - See TN 32.01.02



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Erosion Control Line

- In counties where
 - Erosion control line established AND
 - Property abuts Atlantic Ocean or Gulf of Mexico
- Replace General Sovereignty Lands exception with

*Any portion of the Land lying waterward of the Erosion Control Line identified in ____,
Public Records of ____ County, Florida, and lands accreted thereto.*



125

Filled Lands

- Unsubmerged property near tidally influenced water may be “filled lands”
 - Lands filled prior to July 1, 1975
 - Exception may be deleted
 - Subject to restrictions in Sec. 253.12(9) and (10), F.S.
 - Lands filled after July 1, 1975
 - Exception may not be deleted



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Filled Lands

- When any portion of the property being insured is artificially filled land formerly submerged under navigable water, and is now privately owned, make an exception for the federal government's right to regulate said lands in the interest of navigation and commerce.
- Delete the General Sovereignty Lands and insert the following:

The right of the United States Government, in the interest of navigation and commerce, to regulate any portion of the Land that was formerly submerged by navigable waters.



127

Meandered Lakes

- List of meandered lakes in Appendix B of Title Notes
 - Determine if any part of property is waterward of meander line of lake
 - Refer to meander line designated on original government survey
- If any part is waterward, can investigate obtaining deed to land from TIIF
- Otherwise, replace General Sovereignty Lands Exception with

Any portion of the Land lying waterward of the ordinary high water mark of ____, and lands accreted thereto.

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Non-Meandered Lakes

- If property abuts non-meandered freshwater lake, replace General Sovereignty Lands exception with (again)

Any portion of the Land lying waterward of the ordinary high water mark of ____, and lands accreted thereto.



129

Rivers

- If property borders non-tidally influenced river segment, replace General Sovereignty Lands exception with

Any portion of the Land lying waterward of the ordinary high water mark of ____, and lands accreted thereto.

- If property borders tidally influenced river segment, replace General Sovereignty Lands exception with

Any portion of the Land lying waterward of the mean high water line of ____, and lands accreted thereto.



130

Streams and Creeks

- Replace General Sovereignty Lands exception with

Any portion of the Land lying waterward of the ordinary high water mark of ____, and lands accreted thereto.



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Artificially Exposed Land

- Do not delete General Sovereignty Lands exception unless TIIF* deed obtained and recorded
 - *Florida Board of Trustees of the Internal Improvement Trust Fund

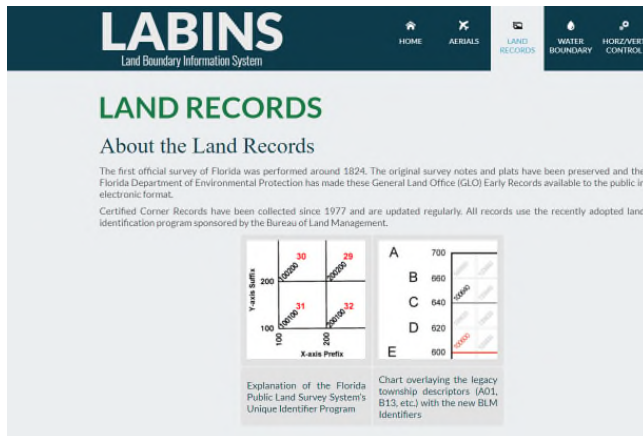


132



Sovereignty Lands Additional Resources

- Bureau of Land Management Land Boundary Information System

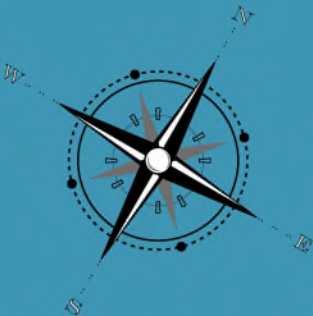


https://www.labins.org/survey_data/landrecords/landrecords.cfm

133



Specific Exceptions



Specific Exceptions

- Documents recorded in Official Records relating to the property and
- Issues carried forward from prior policy
- Can only be deleted if no longer affect property
 - Survey shows issue does not burden property
 - Document expirations date shows not applicable
 - Expired based on Marketable Record Title Act



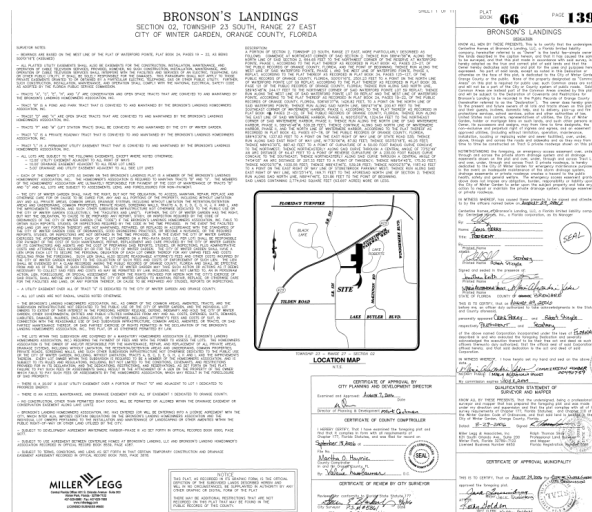
135



Matters of Plat

5. All matters contained on the Plat of Bronson's Landings, as recorded in Plat Book 66, Page 139, Public Records of Orange County, Florida.

- Plats generally do not expire
- Examine for troublesome conditions to make buyer aware
 - Ex) Setbacks; easements

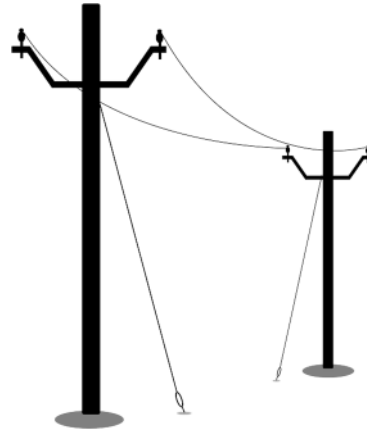


136



Easements

- Examine easement document
 - Ex) Easement contained in deed
- Has it expired?
- Examine survey
- Does easement affect the property?
- What if easement is not located on survey?
- What about Marketable Record Title Act?



137

Marketable Record Title Act

- Sec. 712, F.S.
- Identify “root of title”
 - A title transaction which
 - Describes the land and
 - Has been of record at least 30 years
- Exception can be deleted if
 - Recorded document containing easement not re-recorded or
 - Referenced in chain, and
 - If an easement it is not in use,
- NOTE: Many statutory exceptions to application of MRTA
 - Ex) Easements in use, government lands



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Root of Title

- Example: Easement in Warranty Deed recorded 1916
- Begin 30 years ago today
 - Ex) February __, 1991
- Find muniment of title
 - Ex Deed recorded Jun. 13, 1975
- Search for reference to 1916 easement from Jun. 13, 1975 forward



139

Community Associations

- Estoppel Letters
 - HOA:

Homeowners' Association estoppel letter must be furnished showing that the assessments are current and that there are no unpaid special assessments.

- Condominium:

Condominium estoppel letter must be furnished showing that the assessments are current and that there are no unpaid special assessments.



140

Access



Legal Access is Insured

- Commitments and policies both contemplate insuring access
- Legal access to and from property
 - Ability to get from property to public roadway without trespass
- Unless access is excepted from coverage
- Survey may reveal an issue
- Width and use limitations may apply
- Quality/particular access not insured



Access Checklist

TN .01.03

- Look for uninterrupted connection to the public road system
 - Plat, survey, other maps
 - Public records
 - Ownership
 - Easement (read and evaluate)
 - Restrictions
- Is access physically restricted?
- Railroad crossings require crossing agreements
 - Often are not transferable on sale
- Do not automatically rely on a prior policy



143

What if No Access Exists?

- Add as an exception to Schedule B of the policy

Notwithstanding Covered Risk number 4 of the jacket of this policy, this policy does not insure any right of access to and from said land.



144



Closing



At Closing

- “Marked-Up Commitment”
 - Lenders may request
 - Sometimes ask for “Pro Forma Policy” instead
- Owners can rely on until final policy issued
 - Can issue final policies “at the closing table”



AMERICAN LAND TITLE ASSOCIATION COMMITMENT (With Florida Modifications)

ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Schedule B-1

Issuing Office File Number: Chopra to Black

REQUIREMENTS

All of the following Requirements must be met:

- W/* 1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
- W/* 2. Pay the agreed amount for the estate or interest to be insured.
- W/* 3. Pay the premiums, fees, and charges for the Policy to the Company.
- W/* 4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records:
- W/* (1) – Warranty Deed from Sonia Chopra and Rahul B. Chopra, wife and husband, to Edward F. Black and Pamela M. Black, husband and wife.
- W/* (2) – Mortgage from Edward F. Black and Pamela M. Black, husband and wife, to Nutter Butter Bank in the amount of \$410,000.00.
- W/* 5. An update of the title search must be completed just prior to the closing and the commitment must be endorsed to require clearance of, or take exception for, any additional title defects or adverse matters found.
- W/* 6. Record satisfaction of the mortgage from Sonia Chopra and Rahul Chopra to Bank of America, N.A., dated April 2, 2007, and recorded in O.R. Book 9209, Page 1309, Public Records of Orange County, Florida.
- W/* 7. Satisfaction of the revolving credit mortgage in favor of Bank of America, N.A., recorded May 21, 2007, in O.R. Book 9266, Page 4792, Public Records of Orange County, Florida. Said mortgage must be closed to future draws prior to closing; the payoff amount must be verified the day of closing, and owner must give an affidavit that owner has no checks or credit or debit cards facilitating draws from the account. Confirm that the Satisfaction of Mortgage is recorded post-closing.
- W/* 8. Record satisfaction or affidavit of non-identity containing the legal description of the real property to be insured and sufficiently establishing that the affiant is not the same person named in the federal tax lien recorded under the following Official Records: Instrument No. 2019-543912 and Instrument No. 2020-0000741, Public Records of Orange County, Florida.
- W/* 9. The official records show one or more certified judgments or state tax liens against Rahul Chopra, individually, or a similarly named person. Since it appears title was taken and may have been continuously held as tenants by the entirety, these judgments or tax liens have not been listed. It is necessary for you to evaluate how title was taken and has been held to date. If you determine that such liens may have attached to the property covered herein, this product will be modified, at your request to list and provide copies of these instruments. See T.N. 18.03.05 and 30.06.
- W/* 10. Execution of closing affidavit by appropriate parties representing possession and no adverse matters, including actions taken by owner or others that would give rise to litigation or lien.
- W/* 11. Closing funds are to be disbursed by or at the direction of the Title Agent issuing this policy.
- W/* 12. Homeowner's Association escrowed letter must be furnished showing that all assessments are current and that there are no unpaid special assessments.

Policy Issuance

- Issue final policy at closing!



AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (With Florida Modifications) ISSUED BY OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Transaction Identification Data, for which the Company assumes no liability as set forth in Condition 9.d.:

Issuing Office File Number Chopra to Black	Issuing Office's ALTA® Registry ID: 0112233	Issuing Agent 5555
Property Address: 2039 Tillman Avenue, Winter Garden, FL 34787		Issuing Office: Keebler, Nabisco & Amos, P.A.

SCHEDULE A

Name and Address of Title Insurance Company: Old Republic National Title Insurance Company
1408 Westshore Blvd., Suite 900
Tampa, Florida, 33607

Policy Number: 021-8065001

Amount of Insurance: \$ 550,000.00

Date of Policy: June 26, 2023 @ 12:00 A.M.

1. The Insured is: Edward F. Black and Pamela M. Black
2. The estate or interest in the Land insured by this policy is: Fee Simple as shown by Deed from Sonia Chopra and Rahul B. Chopra, wife and husband, grantor(s), to Edward F. Black and Pamela M. Black, husband and wife, grantee(s) dated 6/26/2023 to be recorded in the Public Records of Orange County, Florida, which conveys the Land.
3. The Title is vested in: Edward F. Black and Pamela M. Black
4. The Land is described as follows: Lot 86, BRONSON'S LANDINGS, according to the Plat thereof, recorded in Plat Book 66, Page 139, of the Public Records of Orange County, Florida.

Old Republic National Title Insurance Company

1408 Westshore Blvd., Suite 900, Tampa, Florida, 33607, (813) 371-1111

Keebler, Nabisco & Amos, P.A.	5555	Wafly Amos
ISSUING AGENT	AGENT NO.	AGENT SIGNATURE
123 Milano Way	Orlando	Florida, 32822
MAILING ADDRESS	CITY	ZIP

Form 021 - Schedule A - ALTA Owner's Policy 2011 v 01.00 (with Florida Modifications)
07/03/2021

1 of 2

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Common Endorsements



The Fund

What is an Endorsement?

- “An endorsement is a writing added or attached to a policy which either expands or restricts the insurance in the policy”



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Common Endorsements

- ALTA 4.1-06 – Condominium
- ALTA 5.1-06 – Planned Unit Development
- ALTA 8.1-06 – Environmental Protection Lien
- ALTA 9-06 – Restrictions, Easements, Minerals (lender only)
- ALTA 9.2-06 – Restrictions, Easements, Minerals (Owner’s Policy: Improved Land)

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Form Endorsements

- Improper to issue a form endorsement with the commitment. Commit to issuing the endorsement upon compliance with Schedule B-I requirements
- “The _____ endorsement shall be issued together with the 2006 ALTA loan policy to be based upon this commitment, provided all underwriting requirements pertaining to the issuance thereof are satisfied.”
- Can attach blank copy to commitment to indicate what form will look like
- If a form endorsement must be modified, do so in Schedule B of the final policy

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Form Endorsements

MTG22

ALTA Endorsement Form 9-06 C0305 / ML-8.1



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Lenders occasionally request that various endorsements be issued with the title insurance commitment, as well as with the final loan policy. Technically, it is improper to give the ALTA Endorsement 9-06 (or any other form endorsement) with a commitment, since there is not yet any "indebtedness secured by the Insured Mortgage." Furthermore, the survey and other necessary documentation are rarely available at the time the commitment is issued.

One way to satisfy a lender in this situation is to indicate, under Part II of Schedule B of the commitment, the following:

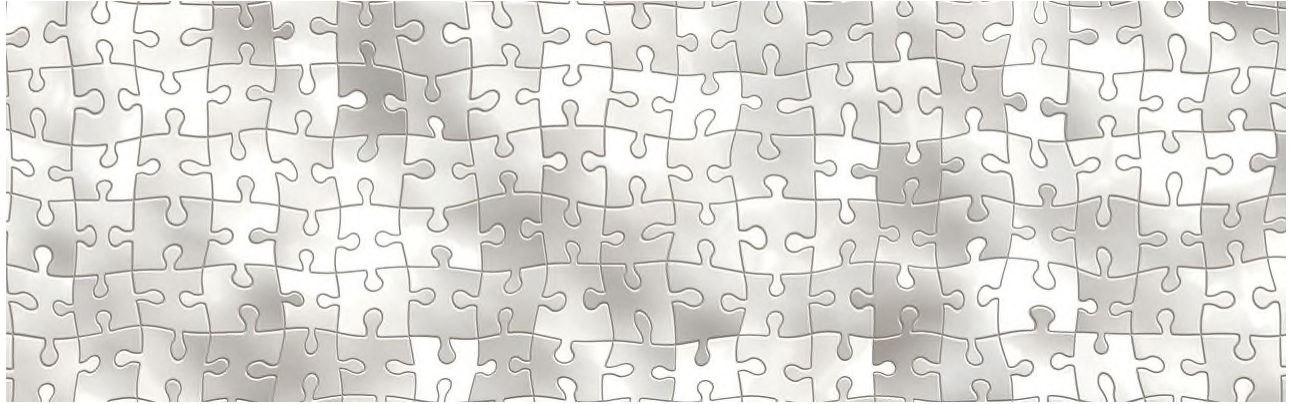
The ALTA Endorsement 9-06 shall be issued together with the loan policy to be based upon this commitment, provided that all underwriting requirements pertaining to the issuance thereof are satisfied.

If desired, a sample of the ALTA Endorsement 9-06 may be attached as an exhibit to the commitment.

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Meeting Commitment Requirements & Deleting Exceptions



Presented by: John B. "Jay" St. Lawrence,
Fund Education Attorney
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The End
Thank you for coming!



CERTIFICATE OF ATTENDANCE

Certified Paralegals are required to record evidence of 50 hours of continuing legal education hours to renew the CP credential every 5 years. CLE hours are recorded in CPs' accounts through the [NALA online portal](https://www.nala.org/certification/certtest2view). Of the 50 hours, 5 hours must be in legal ethics, and no more than 10 hours may be recorded in non-substantive areas. If attending a non-NALA sponsored educational event, this certificate may be used to obtain verification of attendance. Please be sure to obtain the required signatures for verification of attendance. The requirements to maintain the CP credential are available from NALA's web site at <https://www.nala.org/certification/certtest2view>. Please keep this certificate in the event of a CLE audit or further information is needed.

PLEASE COMPLETE THE SPACES BELOW AND ATTACH A PROGRAM

Session Length In Hours	Session Topics (Description and Speakers)	Validation of Attendance
3.0 Substantive	Meeting Commitment Requirements & Deleting Exceptions/ John St. Lawrence	<i>John St. Lawrence</i>

Name of CP (Please Print)			NALA Account Number (On Mailing Label)		
			149113		
Signature of CP			Name of Seminar/Program Sponsor		
			Meeting Commitment Requirements/ ATFS, LLC		
Address			Authorized Signature of Sponsor Representative		
			<i>John St. Lawrence</i>		
			Date of Educational Event:		
City:		State (XX):			
Preferred e-mail address			Location:		
			Recorded Webinar		

For Office Use Only	
Substantive hours	
Non-substantive hours	
Ethics	



The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.FLORIDABAR.org

Certificate of Accreditation for Continuing Legal Education

256131
Attorney's Title Fund Services
John St. Lawrence
PO Box 628600
Orlando, FL 32862-8600

Jan. 19, 2024

Reference Number: 2400765N

Title: Meeting Commitment Requirements & Deleting Exceptions

Level: Intermediate

Approval Period: 05/01/2024 - 11/30/2025

CLE Credits

General	3.5
Ethics	0.5

Certification Credits

Real Estate	3.5
Wills Trusts and Estates	3.5