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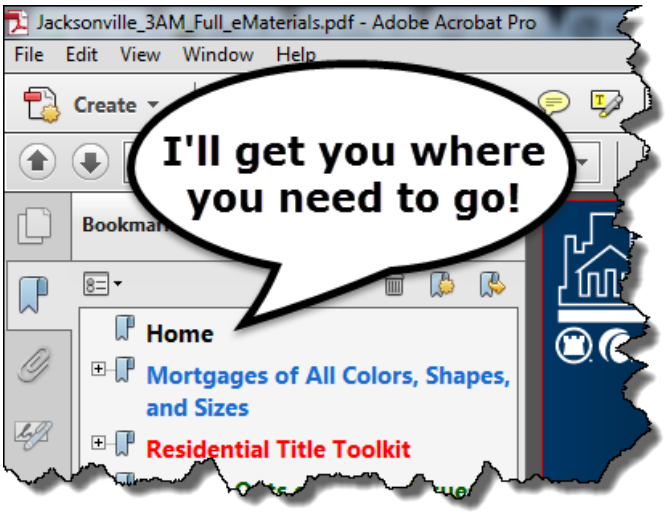

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Mortgages of All Colors, Shapes, and Sizes

Pat Hancock, Esq.

FIDELITY NATIONAL TITLE GROUP Florida Agency

WHO'S WHO **SPEAKER BIO**

Patricia J. Hancock, Esq.

Senior Vice President
Senior State Underwriting Counsel

Patricia J. Hancock is a Senior Vice President and Senior State Underwriting Counsel for Fidelity National Title Group. She is located in the Maitland, Florida state office.

Pat is a native of Orlando, Florida. She received her undergraduate degree from Rollins College in Winter Park, Florida, and her law degree from the University of Florida. Since 1990, she has been in the title insurance industry both as an underwriter and claims counsel with Commonwealth Land Title Insurance Company prior to joining Fidelity National early in 1995. Prior to 1990, Pat specialized in contested divorce and child custody litigation in her private practice located in Orlando.

Pat is board certified in Real Estate Law by The Florida Bar. She is a member of The Florida Bar; the Real Property, Probate and Trust Law Section and its Title Insurance Committee; co-vice chairman of the RPPTL Problems Study Committee; and a Past-President of the Florida Land Title Association. She was a co-editor of Fidelity National's Florida Underwriting Handbook; Fidelity National Title Florida Underwriting Newsletter; editor of Fidelity's Uniform Title Code and Write-up Manual; co-editor of The Florida Bar's ActionLine news magazine, and lectures throughout Florida on issues involving title insurance. Pat is also the recipient of the 2006 Raymond O. Denham Memorial Award for her service to the Florida Land Title Association and to the title industry.

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*This topic was presented in Boca Raton, Florida on February 13, 2017. If you received credit for these hours, you may not receive credit again.

Statutory Definition of Mortgage

Section 697.01, Florida Statutes **Instruments deemed mortgages.—**

(1) All conveyances, obligations conditioned or defeasible, bills of sale or other instruments of writing conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money, whether such instrument be from the debtor to the creditor or from the debtor to some third person in trust for the creditor, shall be deemed and held mortgages, and shall be subject to the same rules of foreclosure and to the same regulations, restraints and forms as are prescribed in relation to mortgages.

Statutory Definition of Balloon Mortgage

Section 697.05, Florida Statutes **Balloon mortgages; scope of law; definition; requirements as to contents; penalties for violations; exemptions.—**

(1) Any conveyance, obligation conditioned or defeasible, bill of sale, or other instrument of writing conveying or selling real property for the purpose or with the intention of securing the payment of money, whether such instrument is from the debtor to the creditor or from the debtor to some third person in trust for the creditor, shall be deemed and held to be a mortgage and shall be subject to the provisions of this section.

(2)(a)1. Every mortgage in which the final payment or the principal balance due and payable upon maturity is greater than twice the amount of the regular monthly or periodic payment of the mortgage shall be deemed a balloon mortgage; and, except as provided in subparagraph 2., there shall be printed or clearly stamped on such mortgage a legend in substantially the following form:

> THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS $, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.

2. In the case of any balloon mortgage securing the payment of an obligation the rate of interest on which is variable or is to be adjusted or renegotiated periodically, where the principal balance due on maturity cannot be calculated with any certainty:

a. The principal balance due upon maturity shall be calculated on the assumption that the initial rate of interest will apply for the entire term of the mortgage;

b. The legend shall disclose that the stated principal balance due upon maturity is an approximate amount based on such assumption; and

c. A legend in substantially the following form suffices to comply with the requirements of this section:

THIS IS A BALLOON MORTGAGE SECURING A VARIABLE (adjustable; renegotiable) RATE OBLIGATION. ASSUMING THAT THE INITIAL RATE OF INTEREST WERE TO APPLY FOR THE ENTIRE TERM OF THE MORTGAGE, THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY WOULD BE APPROXIMATELY $, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE. THE ACTUAL BALANCE DUE UPON MATURITY MAY VARY DEPENDING ON CHANGES IN THE RATE OF INTEREST.

(b) This legend, including the principal balance due upon maturity, shall appear at the top of the first page or face sheet of the mortgage and also shall appear immediately above the place for signature of the mortgagor. The legend shall be conspicuously printed or stamped.

(3) Failure of a mortgagee or creditor or a third party in trust for a mortgagee or creditor to comply with the provisions of this section shall automatically extend the maturity date of such mortgage in the following manner: The mortgagor shall continue to make monthly or periodic payments until the principal and interest which has accrued prior to the time of the balloon payment of the mortgage is paid in full, and the maturity date shall be automatically extended to the date upon which said payments would cause the mortgage debt to be paid in full

assuming such payments are made when due upon such monthly or periodic schedule. The mortgagor shall be entitled to prepay the mortgage without penalty during the extension period.

(4) This section does not apply to the following:

(a) Any mortgage in effect prior to January 1, 1960;

(b) Any first mortgage, excluding a mortgage in favor of a home improvement contractor defined in s. 520.61(13) the execution of which is required solely by the terms of a home improvement contract which is governed by the provisions of ss. 520.60-520.98;

(c) Any mortgage created for a term of 5 years or more, excluding a mortgage in favor of a home improvement contractor defined in s. 520.61(13) the execution of which is required solely by the terms of a home improvement contract which is governed by the provisions of ss. 520.60-520.98;

(d) Any mortgage, the periodic payments on which are to consist of interest payments only, with the entire original principal sum to be payable upon maturity;

(e) Any mortgage securing an extension of credit in excess of $500,000;

(f) Any mortgage granted in a transaction covered by the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., in which each mortgagor thereunder is furnished a Truth in Lending Disclosure Statement that satisfies the requirements of the federal Truth in Lending Act; or

(g) Any mortgage granted by a purchaser to a seller pursuant to a written agreement to buy and sell real property which provides that the final payment of said mortgage debt will exceed the periodic payments thereon.

Agreements for Deed (Contracts for Deed)

An agreement for deed, also commonly referred to as a contract for deed, is an installment contract for the sale and purchase of real property that provides for payments over a period of time. Upon execution of an agreement for deed, the purchaser obtains an equitable interest in the real property and usually has the right of possession. The fee simple owner not only retains fee simple title, but also acquires some of the attributes of a mortgage since the owner receives payments under the terms of the agreement. Upon completed performance under the agreement, the purchaser receives a deed from the fee owner. The seller under an agreement for deed is typically referred to as the "vendor" and the purchaser is typically referred to as the "vendee".

Insuring the Interest of Vendor

The vendor under an agreement for deed may be seen as having two interests – fee simple title and the right to receive payments under the agreement for deed. The fee simple interest may be insured by an owner's policy with an exception being made for the agreement for deed.

The owner's policy should describe the insured interest as a "fee simple" interest. The owner's policy should not describe the estate or interest insured as a "vendor's interest in an agreement for deed" because it would make it appear that the vendor's interest is merely a contractual right to receive payments instead of a fee simple interest in real property.

Assignment of Vendor's Interests

The title agent will sometimes encounter a recorded assignment of the vendor's interest in an agreement for deed. Such an assignment would not convey fee simple title, unless it contained words specifically conveying the real property and was executed with the same formalities as a deed.

Mortgage of Fee Simple Interest by Vendor

A mortgage encumbering a vendor's fee simple interest in real property is insurable. An exception should be placed in the policy for the agreement for deed, unless the vendee executes a subordination agreement that subordinates the vendee's interest to the mortgage. (The subordination should identify the agreement being subordinated, as well as the mortgage that the agreement for deed is being subordinated to. The agreement for deed, as subordinated, should then be shown as a subordinate item on Schedule B, Section II of the loan policy.)

Example of Stamp Tax Computation

When recording an agreement for deed, you must affix documentary stamps on the "deed" aspect at the rate of 70 cents per $100 or fraction of consideration, which is the full purchase price. Then you must affix documentary stamps at the rate of 35 cents per $100 or fraction of indebtedness, plus intangible tax on the indebtedness, just as if this were a mortgage. In order words, you will treat it as a deed and as a mortgage.

Example: Contract Total Sale Price is $75,000.

"Buyer" will pay $1,000 cash at closing, and the remaining $74,000 will be paid out over the life of the agreement for deed.

Documentary stamps on the "deed" aspect:	$525.00
Documentary stamps on the "mortgage" aspect:	$259.00
Intangible stamps:	$148.00

Notice to Purchaser

Florida Administrative Code requires that the purchaser be given a notice of no owner's coverage when only a loan policy will be issued:

Rule 69O-186.002. Approved Form.

Any form of written notice given by the title insurers, agents, members, employees thereof, or by agents, employees, officials of lending or other institutions to the purchaser-mortgagor in substantially the following language shall be deemed in compliance with Section 627.798, Florida Statutes:

NOTICE TO PURCHASER-MORTGAGOR

Pursuant to Section 627.798, Florida Statutes, notice is hereby given by _____ (Name of Title Insurer) to the undersigned purchaser-mortgagor that a mortgagee title insurance policy is to be issued to your mortgagee lender, and that such policy does not provide title insurance protection to you as the owner of the real estate you are purchasing.

The undersigned has read the above notice and understands that such mortgage title insurance policy to be issued to the mortgagee lender does not provide title insurance protection to the undersigned as owner.

Dated this ___ day of ___, 20___.

_____

(Signature of Purchaser)

The Florida Land Title Association has drafted a revised Notice to Purchaser, fashioned after the American Land Title Association form. Although this revision has not been formally adopted in the Florida Administrative Code, it may be used in lieu of the above Notice form. The following is a copy of the revision which is now titled Notice of Availability of Owner's Title Insurance. You may download this form from our website www.fntgflorida.com/underwriting/forms/notice-of-availability-of-owners-title-insurance

NOTICE OF AVAILABILITY OF OWNER'S TITLE INSURANCE

Purchaser – Mortgagor's Name ("You" or "Your"): Date:
Purchaser – Mortgagor's Mailing Address: File No.:
Purchaser – Mortgagor's Email Address:
Address of Property ("Property"):

An ALTA Loan Policy of Title Insurance ("Loan Policy") only insures Your lender's mortgage on the Property You are purchasing. Even though You pay for the Loan Policy, it will not provide title insurance protection to You.

If You want Your own title insurance protection, You must buy Your own ALTA Owner's Policy of Title Insurance ("Owner's Policy").

An Owner's Policy is available with a coverage amount not less than the fair market value of the Property. An Owner's Policy is purchased for a one-time premium and protects You for as long as You own the Property. Possible problems covered by an Owner's Policy can include:

- Someone claims to own Your Property;
- Someone claims a lien on Your Property, including an unpaid lien for real estate taxes, a mortgage, a judgment, or an unpaid owner's association lien; or
- You do not have legal access to Your Property.

Further, Your Owner's Policy will pay the cost of defending You if someone sues You over a covered matter.

A title insurance commitment issued in connection with the Property is an offer to provide title insurance. It is not a representation as to the condition of title. It does not constitute an abstract of title, and does not provide You the protection of an Owner's Policy.

If You would like to review a title insurance commitment for the Property and a sample Owner's Policy jacket, it will be provided to You on request.

If You would like a quote as to the cost for an Owner's Policy, it will be provided to You on request.

If You are uncertain as to whether You should obtain an Owner's Policy, You are urged to seek independent advice.

_____ I/We [Purchaser – Mortgagor] do request an Owner's Policy.
Initial

_____ I/We [Purchaser – Mortgagor] decline an Owner's Policy. I/We [Purchaser – Mortgagor]
Initial understand and agree to accept the risks associated with this decision.

PURCHASER – MORTGAGOR(S)

_____

Signature of Purchaser – Mortgagor

[ADDITIONAL PURCHASER – MORTGAGOR SIGNATURES AS NECESSARY]

Mortgages on Homestead Property

When mortgaging homestead property, joinder of spouse is required if the borrower is married. Two references for this requirement are the Florida Constitution and the Uniform Title Standard 18.1.

Florida Constitutional requirement - Article X, Section 4(c):

> *(c)... The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.*
>
> *Uniform Title Standard 18.1 – Alienation of Homestead property – Joinder of Spouse: Standard: When the owner of homestead property is married, the spouse must join in any conveyance or encumbrance of the property, unless the property is held as tenancy by the entireties and is conveyed to the spouse or is held by one spouse and is conveyed to both spouses as tenants by the entireties.*

Suggested language for the mortgagor clause of a mortgage on homestead property, to effect joinder:

> *JOHN SMITH, a married man, as mortgagor, joined by his wife MARY SMITH....*

Then in the body of the mortgage, add language substantially as follows:

> *This mortgage is executed by MARY SMITH solely to accomplish spousal joinder pursuant to the provisions of the Florida Constitution, and the execution of this mortgage is not an agreement by MARY SMITH to pay or assume the obligation of any indebtedness secured by this mortgage.*

Assignments of Mortgage

The title agent's steps to issue an assignment of mortgage endorsement are:

Review the Mortgage

The title agent must review the mortgage to verify that: (a) it meets the requirements for a valid mortgage; (b) it is held of record by the person or entity that will be assigning the mortgage; and (c) any time limits for enforcing the mortgage have not expired (the appropriate statute of limitations period).

Title Search and Exam

The official records of the county in which the mortgage was recorded must be searched from the time the mortgage was recorded to a current date to verify that no satisfaction, release or other document has been recorded which could affect the validity, enforceability or assignability of the mortgage.

Further, a federal tax lien against a mortgagee attaches to the mortgage. Therefore, if the mortgage has been held by a non-institutional lender, a search of the official records should be done to determine that no federal tax lien is of record against the lender. Federal tax liens are effective for 10 years and 30 days from the date of assessment but may be extended by re-filing. Accordingly, the federal tax lien search against a non-institutional lender should go back for 10 years and 30 days.

Assignment of the Note and Mortgage

An assignment of the mortgage must be properly executed and recorded in the official records of the county in which the mortgage is recorded. If the party signing the assignment is not an institutional lender, the standard signing requirements for that entity must be followed. An assignment of mortgage should be executed and notarized in the same manner as a mortgage. Documentary stamps are not due on the assignment unless the assignment is given as collateral security for a new loan.

The title agent must also require proof that the note secured by the mortgage has been endorsed and delivered to the assignee. Alternatively, the title agent must make an exception for loss or damage which the insured may sustain by reason of failure of the assignor to properly endorse and deliver the note to the insured. Proper endorsement and delivery of the note is necessary because it is well-established in Florida that the lien of the mortgage follows the note. *American Bank of the South v. Rothenberg*, 598 So. 2d 289 (Fla. 5th DCA 1992).

Therefore, the assignee's failure to obtain possession of the original note may hinder its ability to foreclose the mortgage. A lost note affidavit from the assignor is insufficient.

Estoppel Affidavit from Borrower

An estoppel from the borrower is not required if the mortgage being assigned is also being modified. However, if the mortgage is not being modified, the Company will require an estoppel affidavit from the borrower if any of the following circumstances exist:

1. The loan is known to be in default;
2. The loan is more than one year old and the property is commercial (i.e., other than 1-4 family residential); or
3. The assignor is a non-institutional lender.

In such circumstances, the following requirement should be made:

> *A written sworn statement by the record owner of the land, stating that the lien of the mortgage is still good and valid and, in all respects, free from all defenses, both in law and in equity, must be furnished to the Company.*

If the above estoppel certification cannot be obtained, the following exception should appear in the endorsement to the loan policy:

> *Consequences, if any, arising out of any inability to foreclose or delay in foreclosing the insured mortgage based upon the expiration of any statute of limitations, or challenges raised to the priority or enforceability of the insured mortgage based upon the acts or conduct of the original or subsequent lender.*

If the assignor offers an indemnity to cover these consequences, the Company will consider reliance on an indemnity after review of the indemnitor's financial statement. Approval of the Underwriting Department is required to rely on an indemnity.

Mortgage Modifications

When an insured mortgage is subsequently modified, the lender typically requests an endorsement to the loan policy to insure the modification. Where a mortgage modification is being insured, the following questions frequently arise:

- Does the modification cause the mortgage to lose its priority?
- What premium is due?

Priority - When a mortgage is modified, it retains priority over junior interests in the property, except to the extent that the modification is materially prejudicial to the holders of such junior interests. Restatement (Third) of Property: Mortgages § 7.3. Any modification which places an additional burden on the mortgagor so as to increase the likelihood of default would likely be deemed prejudicial. Consequently, a loss of priority of the mortgage may result.

Any of the following changes to a mortgage or the obligation it secures should be treated as creating a loss of priority:

1. Increasing the interest rate
2. Changing the interest rate index or the formula for calculating the interest rate (unless a cap is provided which is less than the cap on the mortgage prior to modification)
3. Increasing the principal amount secured (unless the additional amount is a future advance made pursuant to a future advance clause in the original mortgage which states that additional advances up to a stated amount within 20 years of the mortgage will be secured by the mortgage). If a modification increases the amount secured by the mortgage (but is not a future advance under a future advance clause), the increased amount will be inferior to any interest

recorded between recordation of the mortgage and the modification. *Bowen v. American Arlington Bank*, 325 So. 2d 31 (Fla. 1st DCA 1976)

4. Adding a requirement for the borrower to make additional payments to create a reserve account
5. An amended and restated mortgage, unless it includes the same provisions and no more than the original mortgage
6. Adding cross-collateralization or cross-default provisions providing that the property will stand as collateral for a debt secured by another mortgage and/or that a default under another mortgage will cause a default under the insured mortgage
7. Consolidating the mortgage with another mortgage
8. Any other change which places additional burdens on the mortgagor

For title insurance purposes, the following changes to a mortgage or the obligation it secures would not be considered materially prejudicial:

1. Extending the maturity date (and resulting changes in the payment schedule)
2. Releasing a parcel
3. Reducing the amount secured
4. Lowering the interest rate
5. Releasing or adding mortgagors or borrowers, even if the release or addition follows a conveyance of the mortgaged property to the new mortgagor

Substitution Loan Rates

The substitution loan rate is a discounted rate that may be charged in three circumstances:

1. When the same borrower and the same lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the original loan. Rule 69O-186.003(4), Fla. Admin. Code.
2. In the case of a substitution loan of $250,000 or more, when the same borrower and any lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the previous loan.
3. When endorsing a loan policy to insure a modification of a mortgage where the modification agreement effects any change in the terms, conditions, priority, or security, other than certain enumerated items which would not trigger substitution loan rates.

Substitution loan rates apply when there is an existing loan policy. In contrast, another type of discount, known as reissue rates, applies when the borrower has an existing owner's policy.

"Double dipping" is not authorized by the title insurance regulations. In other words, the regulations do not authorize use of multiple discounts simultaneously for the same coverage. For example, where reissue rates and substitution loan rates could apply, the title agent should charge the rate that results in lower premium. Generally, substitution loan rates will be lower, especially if the loan being refinanced or modified is 3 years of age or under.

Calculation - Substitution loan rates are based on the age of the original loan.

AGE OF LOAN	PREMIUM
3 years or under	30% of original rates
From 3 to 4 years	40% of original rates
From 4 to 5 years	50% of original rates
From 5 to 10 years	60% of original rates
Over 10 years	100% of original rates
Minimum premium	$100

At the time a substitution loan is made, the unpaid principal balance of the previous loan will be considered the amount of insurance in force on which the substitution loan rates shall be calculated. If the amount to be insured exceeds the amount of the unpaid principal balance, the excess amount is calculated at the original rates at the appropriate premium tier.

Eight Mortgage Modifications That Do Not Trigger Substitution Loan Rates:

Rule 69O-186.005(13), Florida Administrative Code, lists the following eight types of modifications that will not trigger substitution loan rates:

1. *An extension of the time for payment of the secured obligation.*
2. *Any decrease in the interest rate of the insured mortgage, provided the "cap" on a variable rate mortgage is not greater than the original "cap" and/or the "cap" is not greater than the original fixed rate.*
3. *Any increase in the interest rate of the insured mortgage, provided the endorsement contains an exception for the loss of priority occasioned by the increase.* {The exception would be worded as follows:

   Any loss of priority of the insured mortgage occasioned by an increase in the interest rate contained in the mortgage modification instrument recorded in Official Records Book _____, Page _____ (or Instrument Number _____).}
4. *Changes in an amortization schedule to extend the term of the insured mortgage.*
5. *A release of a portion of the secured property.*
6. *A correction to either perfect the lien of the insured mortgage or comply with the terms of the lender's original commitment.*
7. Future advances made pursuant to section 697.04, Florida Statutes; provided, however, that the amount of the future advance does not exceed the amount contemplated by the future advance clause contained in the mortgage.

   Note: Premium would still be charged for the future advance.
8. Encumbrances of additional parcels under a revolving construction loan agreement contained in the original mortgage and contemplated by subsection 69O-186.003(8).

   Note: Under 69O-186.003(8), when a mortgage policy is issued to insure a mortgage securing periodic advances of the loan proceeds to finance improvement on real property, an additional risk rate premium shall be charged for the value of each new parcel of real property added to the policy's coverage after its original issuance.

Mortgage Modifications Which Cause a Novation or Loss of Priority

Whether a modification is a novation or otherwise causes the mortgage to lose priority and whether the modification triggers substitution loan rates are two separate, but related issues. Although some correlation exists, the two analyses should not be confused.

Generally, cases regarding a novation involve a court determination of whether a former obligor is relieved of its obligations under the original mortgage, because the modification resulted from an intention to establish a new obligation in the place of an old one, and not a determination whether an intervening lienor was prejudiced by the modification. A novation focuses on whether the parties' intended to extinguish the prior obligation (debt) and replace that prior obligation with an entirely new obligation. Further, a novation causes the mortgage to lose priority.

Even without a novation, a loss of priority occurs where the modification involves a material change that can be viewed as prejudicing a subordinate lienholder. For example, if in connection with the modification, the interest rate is increased, additional funds not contemplated by the original loan are secured, or the loan maturity date is shortened, it may be more difficult for the borrower to make payments. As a result, a default is more likely to occur.

There is a common misconception that payment of substitution loan rates entitles the mortgagee to be insured over a loss of priority, which is not the case. The fact that substitution loan rates are being paid does NOT mean that title insurance is being afforded as to loss of priority. The Company will not insure the priority of a senior mortgage as modified if the modification is arguably prejudicial to the holder of junior interests, regardless of whether substitution loan rates are paid. Any questions concerning whether a modification will affect the priority of a mortgage should be discussed with the Underwriting Department. As the interests that were formerly junior may have gained priority, they must be shown as exceptions to coverage on the endorsement insuring the modification, unless subordination agreements are obtained. Although there are few Florida cases dealing with priority, *Eurovest Limited v. Biscayne Island Terrace Corp.*, 559 So. 2d 1198 (Fla. 3d DCA 1990) is instructive. In *Eurovest*, the court held that the mere extension of the maturity date does not cause a mortgage to lose priority.

Premium Remittance

The split for substitution loan rates is 70/30. Note that calculating remittances can get complicated if substitution loan rates are charged and a different rate is charged for new monies being advanced. The remittance for the substitution loan rates portion will be calculated at a 70/30 split and the split for the advance funds will be calculated at the appropriate tier for either reissue or original loan rates, whichever applies.

Future Advances

Statutory Requirements: Section 697.04. **Future advances may be secured. —**

(1)(a) Any mortgage or other instrument given for the purpose of creating a lien on real property, or on any interest in a leasehold upon real property, may, and when so expressed therein shall, secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or to be made at the option of the lender, or otherwise, as are made within 20 years from the date thereof, to the same extent as if such future advances were made on the date of the execution of such mortgage or other instrument, although there may be no advance made at the time of the execution of such mortgage or other instrument and although there may be no indebtedness outstanding at the time any advance is made. Such lien, as to third persons without actual notice thereof, shall be valid as to all such indebtedness and future advances from the time the mortgage or other instrument is filed for record as provided by law.

(b) The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed a maximum principal amount which must be specified in such mortgage or other instrument, plus interest thereon;....

(2) As against the rights of creditors or subsequent purchasers for a valuable consideration, actual notice or record notice of advances to be made at the option of the lender, under the terms of such mortgage or other instrument, shall be valid only as to such advances as are to be made within 20 years from the date of such mortgage or other instrument;...

Notwithstanding anything in this section to the contrary, future advances made pursuant to the terms of a reverse mortgage loan (as defined in s. 103(bb) of the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq.) shall be secured to the same extent as if such future advances were made on the date of execution of the mortgage, irrespective of the date of any such advance.

(3) Any such mortgage or other instrument shall be prior in dignity to all subsequent encumbrances, including statutory liens, except landlords' liens.

Sample future advance provision in a mortgage:

This mortgage secures not only the proceeds of the loan evidenced by the note, but all advances hereafter as are made by mortgagee to or for the benefit of mortgagor (the "Future Advances"), within 20 years from the date hereof, to the same extent as if such Future Advances were made on the date of execution of this mortgage. The total amount of indebtedness that may be so secured shall not exceed twice the face amount of the note, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the mortgaged property."

ALTA 14-06 ENDORSEMENT

FUTURE ADVANCE - PRIORITY

Attached to Policy No. ____

Issued By: Chicago Title Insurance Company

1. The insurance for Advances added by Sections 2 and 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, except Exclusion 3(d), the provisions of the Conditions, and the exceptions contained in Schedule B.

   a. "Agreement," as used in this endorsement, shall mean the note or loan agreement, the repayment of Advances under which is secured by the Insured Mortgage.

   b. "Advance," as used in this endorsement, shall mean only an advance of principal made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.

   c. “Changes in the rate of interest,” as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage or the Agreement at Date of Policy.

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

   a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.

   b. The lack of priority of the lien of the Insured Mortgage as security for each Advance over any lien or encumbrance on the Title.

   c. The invalidity or unenforceability or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances and unpaid interest resulting from (i) re-Advances and repayments of Indebtedness, (ii) earlier periods of no indebtedness owing during the term of the Insured Mortgage, or (iii) the Insured Mortgage not complying with the requirements of state law of the state in which the Land is located to secure Advances.

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

   a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the Indebtedness.

   b. Lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, including any unpaid interest that was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which lack of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

   a. The invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for any:

      (i) Advance made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor; or

      (ii) Advance made subsequent to 20 years after the date of the Insured Mortgage or after a notice has been recorded in the Public Records limiting the maximum principal amount that may be secured to the extent the advance causes the outstanding principal balance to exceed the amount stated in the notice.

   b. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy;

   c. The lack of priority of the lien of the Insured Mortgage as security for any Advance to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Insured that a federal tax lien was filed against the mortgagor, or (ii) the expiration, after notice of a federal tax lien filed against the mortgagor, of any grace period for making disbursements with priority over the federal tax lien provided in the Internal Revenue Code (26 U.S.C.);

   d. Any federal or state environmental protection lien; or

   e. Usury, or any consumer credit protection or truth-in-lending law.

5. The Indebtedness includes Advances.

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.

Dated: _____

_____

Authorized Signatory

Revolving Construction Loan Mortgage – Adding Parcels

Rule 69O-186.005(13)(h), Florida Administrative Code provides the rate which must be charged for title insurance to insure a modification of a revolving construction loan mortgage to add more parcels. That is, the premium is based on the value of the land being added. Substitution loan rates to do apply. In other words, you would treat this as a future advance, charging only on the added property value as if it were future advance funds.

> *(13) The Substitution Loan Rate provided in subsection (5) of Rule 69O-186.003, F.A.C., shall apply to any endorsement which insures a modification of a mortgage which was insured by an outstanding policy where the modification agreement effects any change in the terms, conditions, priority, or security, other than:*
>
> ……
>
> *(g) Future advances made pursuant to Section 697.04, Florida Statutes; or*
>
> *(h) Encumbrances of additional parcels under a revolving construction loan agreement contained in the original mortgage and contemplated by subsection 69O-186.003(10), F.A.C.*

Satisfactions/Releases of Mortgage

Estoppel Information and Authority

Section 701.04, Florida Statutes, provides that within 14 days after receipt of the written request of a mortgagor…, or any other person lawfully authorized to act on behalf of a mortgagor, the holder of a mortgage shall deliver or cause the servicer of the mortgagee to deliver to the person making the request, an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage.

With institutionally held mortgages, estoppel information may come from a servicer. If the satisfaction or release is signed by the servicer, then it is recommended that the title agent ask for proof of authority (power of attorney or servicing agreement excerpts) for the servicer to sign the satisfaction/release. With other mortgages, the holder of the mortgage should provide the estoppel information and should also be executing the satisfaction/release.

No Witnesses Required

No witnesses are required for a satisfaction or release, but it should be notarized so that it may be recorded in the official records of the county where the mortgage is recorded.

Payment of Agreement for Deed

Once an agreement for deed (contract for deed) is paid, then the seller/vendor should execute a "consummating deed", conveying the fee simple interest to the buyer/vendee. You do not need to record a satisfaction or release of the agreement for deed. Only minimum documentary stamps need be charged when recording the consummating deed since the documentary stamps on the conveyance aspect were affixed to the agreement for deed when it was first recorded.

Foreclosed Mortgage No Longer Exists

If the mortgage has been foreclosed (i.e., after the entry of a final judgment of foreclosure), the mortgage no longer exists. That debt is now in the form of a final judgment. If the debt will be paid, prior to a foreclosure sale, then a satisfaction of the judgment, not the mortgage, is necessary.

Statutory Duty to Execute Satisfaction/Release

Sections 701.03 and 701.04, Florida Statutes, provide that whenever the amount of money due on any mortgage shall be fully paid, the mortgagee or assignee shall within 60 days thereafter cancel the same in the manner provided by law. If a lawsuit should arise for the failure to do so, then the prevailing party is entitled to attorney fees and costs.

Statute of Limitations

If there is no recorded satisfaction or release of the mortgage, when is the mortgage no longer a lien on real estate?

Section 95.281(1)(a), Florida Statutes, provides a 5 year limitation on a mortgage where the maturity date can be ascertained from the recorded mortgage – 5 years passed the maturity date.

Section 95.281(1)(b), Florida Statutes, provides that if there is no maturity date on the face of the mortgage, or you cannot compute the maturity date from the terms on the face of the mortgage, then the mortgage is no longer a lien on real property 20 years after the recording of the mortgage.

Ascertaining the maturity date is not always determined by just looking for a stated date or payment terms in the mortgage. If a mortgage states that it secures obligations of an off-record document, then you should treat the document as having a maturity date of no less than 20 years, even if a maturity date is plainly set out in the mortgage. See *CCM Pathfinder Palm Harbor Management, LLC v. Unknown Heirs of Gendron,* 198 So. 3d 3 (Fla. 2d DCA 2015) (mortgage stated that it secured a note with a stated maturity date, and also the mortgage stated that it secured other loan documents).

Exceptions to the Florida Statute of Limitations

Federal Government Mortgage

A mortgage held by the United States of America or an officer (e.g., Secretary of HUD) or agency of the government, has no statute of limitations. 28 U. S. C. § 2415(c). And, an assignee of a governmental mortgage also enjoys the benefit of the unlimited time to foreclose. Thus, the title agent should always require a satisfaction or release of such a mortgage, and not apply a statute of limitation to ignore it.

Failed Banks

A mortgage in favor of a failed bank which has been taken over by the FDIC is not affected by Florida's statute of limitations (section 95.281), but rather have a 6 year statute of limitations. And, assignees of the FDIC acquire the benefit of the federal 6-year statute of limitations. 12 U.S.C. § 1821(d)(14)(A). *WRH Mortgage, Inc. v. Butler,* 684 So. 2d 325 (Fla. 5th DCA 1996); and *Cadle Co. II, Inc. v. Stamm,* 633 So. 2d 45 (Fla. 1st DCA 1994). The 6 year statute of limitations runs from the date of the appointment of the receiver.

Reverse Mortgages

Reverse mortgages first appeared in 1961, governed by the rules and regulations set by the Federal Housing Administration. The mortgage is known today as the Home Equity Conversion Mortgage ("HECM"). The most current rules/regulations are as follows:

1. Borrower must be 62 years of age or older.
2. Must own his/her own home in the individual's name; or be purchasing the home in the transaction.
3. Must own the home outright, or have a substantial amount of equity.
4. Must live in the home as the primary residence.
5. Must complete a counseling session with a HUD-approved counseling agency.
6. Home must be a single-family home or a 4-unit maximum multiple family home with one unit occupied by the borrower.
7. Borrower must be financially able to pay the property taxes, insurance and home maintenance and any applicable HOA fees.
8. Borrowers have a 3-day right of rescission.

The lender will have its own form of reverse mortgage document. At the closing on the mortgage, the title agent will usually be required to verify that the borrower is at least 62 years of age. You should keep a copy of the photo identification card, with date of birth shown thereon, in your closing file.

Insuring a Reverse Mortgage – Form of Policy

To insure a reverse mortgage, a standard loan policy is issued, or a short form loan policy form can be used if requested by the lender. The Amount of Insurance (coverage) to be shown on Schedule A is amount of insurance specified in the lender's closing instructions as the amount to be insured. If no amount is specified, the amount of insurance should be the maximum principal amount stated on the face of the mortgage.

The name of the insured is the name of the lender "and/or the Secretary of Housing and Urban Development, their successors and/or assigns, as their interests may appear."

The Insured Mortgage is the first mortgage in favor of the lender, not the corresponding mortgage document in favor of HUD. The mortgage in favor of HUD is to be shown as a subordinate lien on Schedule B-II.

Attach an ALTA 14.3-06 Reverse Mortgage Endorsement

You must attach a reverse mortgage endorsement ALTA 14.3-06 form to the loan policy. The premium for this endorsement is $25.00. The agent/underwriter split is 70/30.

The requirements for issuing the ALTA 14.3-06 reverse mortgage endorsement are:

1. The mortgage must state that it secures not only existing indebtedness, but also future advances. Unlike other mortgages, a reverse mortgage may, if it so states, secure future advances made more than 20 years after the mortgage. § 697.04, Fla. Stat.
2. The mortgage must state the maximum principal amount which may be secured.
3. The mortgage must state that it secures a note that contains provisions for changes in the interest rate.

It is important to attach the endorsement to the policy insuring the reverse mortgage which meets the above conditions. First, the endorsement provides the lender affirmative coverage applicable to variable rate mortgages and reverse mortgages. Second, the endorsement imposes certain exceptions from coverage which are necessary when insuring reverse mortgages.

Below is a copy of the ALTA 14.3-06 endorsement.

ALTA 14.3-06 ENDORSEMENT

FUTURE ADVANCE- REVERSE MORTGAGE

Attached to Policy No. ____

Issued By: Chicago Title Insurance Company

1. The insurance for Advances added by Sections 2 and 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions in the Policy, except Exclusion 3(d), the provisions of the Conditions and the exceptions contained in Schedule B.

   a. "Agreement," as used in this endorsement, shall mean the note or loan agreement, repayment of Advances under which is secured by the Insured Mortgage.

   b. "Advance," as used in this endorsement, shall mean only an advance of principal made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Insured Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Insured Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.

   c. "Changes in the rate of interest," as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the Insured Mortgage or the Agreement at Date of Policy.

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

   a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Advance.

   b. The lack of priority of the lien of the Insured Mortgage as security for each Advance over any lien or encumbrance on the Title.

   c. The invalidity or unenforceability or lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, Advances and unpaid interest resulting from (i) re-Advances and repayments of Indebtedness, (ii) earlier periods of no Indebtedness owing during the term of the Insured Mortgage, or (iii) the Insured Mortgage not complying with the requirements of state law of the state in which the Land is located to secure Advances, (iv) failure of the Insured Mortgage to state the term for Advances, or (v) failure of the Insured Mortgage to state the maximum amount secured by the Insured Mortgage.

   d. The invalidity or unenforceability of the lien of the Insured Mortgage because of the failure of the mortgagors to be at least 62 years of age at Date of Policy.

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

   a. The invalidity or unenforceability of the lien of the Insured Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the principal portion of the Indebtedness.

   b. Lack of priority of the lien of the Insured Mortgage as security for the Indebtedness, including any unpaid interest that was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the Insured Mortgage, which lack of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.

   "Interest," as used in this paragraph 3, shall include lawful interest based on appreciated value.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

a. The invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for any:

(i) Advance made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor; or

(ii) Advance made subsequent to 20 years after the date of the Insured Mortgage or after a notice has been recorded in the Public Records limiting the maximum principal amount that may be secured to the extent the advance causes the outstanding principal balance to exceed the amount stated in the notice if the Insured Mortgage does not qualify as a "home equity conversion mortgage" or second mortgage held by the Secretary of Housing and Urban Development under the National Housing Act.

b. The lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Policy;

c. The lack of priority of the lien of the Insured Mortgage as security for any Advance, to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Insured that a federal tax lien was filed against the mortgagor, or (ii) the expiration, after notice of a federal tax lien filed against the mortgagor, of any grace period for making disbursements with priority over the federal tax lien provided in the Internal Revenue Code (26 U.S.C.);

d. Any federal or state environmental protection lien; or

e. Usury, or any consumer credit protection or truth-in-lending law.

5. The Indebtedness includes Advances.

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.

Dated: ____

_____

Authorized Signatory

FIDELITY NATIONAL TITLE GROUP
Florida Agency

CONTINUING EDUCATION
MATERIALS

3 in the Morning
Seminar

Residential Title Toolkit

Patrick Lester, Esq.

FIDELITY NATIONAL TITLE GROUP
Florida Agency

WHO'S WHO **SPEAKER BIO**

Patrick Lester, Esq.

Vice President and Underwriting Counsel

Patrick Lester is Vice President and Underwriting Counsel for Fidelity National Title Group in Maitland, Florida. He started his career with the FNTG family of underwriters in 2000 with American Pioneer Title Insurance Company which changed its name to Ticor Title Insurance Company of Florida and eventually merged into Chicago Title Insurance Company. He served as both claims and underwriting counsel at that time. During his time with Ticor Title Insurance Company of Florida he served as the lead underwriting counsel for Ticor's Timeshare and Commercial Division. He currently serves as underwriting counsel for FNTG and fields numerous underwriting inquiries on residential and commercial transactions throughout the state. In addition, he serves as lead Florida underwriting counsel for FNTG"s National Timeshare Division based in Maitland.

He graduated from the University of Central Florida with a Bachelor of Arts in Political Science and earned his law degree at Nova Southeastern University in Ft. Lauderdale, Florida, where he graduated Cum Laude with a concentration in International Law. He was an associate editor for the ILSA Journal of International Law while at Nova. Patrick is a member of The Florida Bar.

TITLE TOOLKIT

I. Relying On Other Underwriter's Prior Policies

A. Fourth revised mutual indemnity treaty
   1. Conditions
      a. Retain prior policy
      b. Prior policy at least six months old
      c. No exception for potential defect
      d. Prior policy must insure the current seller or mortgagor
      e. Loan policy can only be relied upon following foreclosure or deed in lieu
      f. Limit of $500,000
   2. Potential Defects
      a. Lack of marital status or nonhomestead statement
      b. Prior mortgages
      c. Due process issues arising out of past litigation
      d. Authority to sign
      e. Lack of recorded death certificate
      f. Estate taxes
      g. Witnesses
      h. Incomplete or insufficient acknowledgments
      i. Lack of corporate seals
   3. Procedure for relying on treaty
      a. No special approval is necessary
      b. Not necessary to make exception or exception and affirmative coverage
      c. Underwriting should be consulted if not certain if something is covered

B. When mutual indemnity treaty does not apply
   1. Regular indemnity letter
      a. Does not actually cure title defect
      b. When to accept
   2. Letter of indemnity with undertaking to cure
      a. Underwriter agrees to open a claim and undertaking to cure title defect
      b. When to require undertaking to cure
      c. Instead of deleting it may be necessary to provide exception and affirmative coverage
   3. Information needed to order and how to order
   4. Situations where we may not take a letter of indemnity

II. Relying On FNTG Brand Prior Policy

A. All FNTG underwriters are party to fourth revised mutual indemnity treaty
B. Separate FNTG Family Treaty
   1. Conditions-Same as fourth revised treaty except no time requirement and limit is $1MM instead of $500,000
   2. Potential Defects-Same as fourth revised treaty except mortgage or lien amount of $1MM instead of $500,000
   3. Procedure for relying on treaty-same as fourth revised treaty.
C. Policy with pending claim requires underwriting approval

III. Unrecorded Mortgage Satisfactions

A. 45 day satisfaction requirement - Sec. 701.03, Fla. Stat.
B. Certificates of Release – Sec. 701.041, Fla. Stat.
C. Statutes of Limitation - Sec. 95.281, Fla. Stat.
   1. Maturity date ascertainable
   2. Maturity date unascertainable
   3. Mortgages in favor of the United States its officers or agencies - 28 U.S.C. § 2415(a)
D. MERS mortgages
E. Tracking banks through the FDIC
F. Judicial Determination

IV. Dealing With Judgments (Sec. 55.10, Fla. Stat.)

A. Required elements of a judgment - Sec. 55.10(1), Fla. Stat.
   1. Certification
   2. Address Requirement

B. Distinguishing Judgments
   1. Common names
      a. How we search
   2. Non-Identification/Not Me Affidavits

C. Duration of Judgments
   1. Initial period of 10 years
   2. Extending the period
      a. Re-recordation
      b. Affidavit of current address
   3. 20 year cap - Title Standard 9.2 and Sec. 55.081, Fla. Stat.

D. Judgments in favor of the United States - 28 U.S.C. Sec 3201
   1. 20 years with a 20 year extension
   2. No certification requirement

E. Judgments against one spouse
   1. Tenancy by the entirety
   2. Continuous marriage affidavit
   3. Cannot use for Federal Tax Liens-U.S. v. Craft 122 S. Ct. 1414 (2002)

F. Judgments on Homestead Property – Article X, Section 4, Florida Constitution
   1. Homestead Affidavits
   2. Statutory Notice of Homestead - Sec. 222.01, Fla. Stat.
   3. Court Order of Homestead

THE FLORIDA BAR

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Course Title: 2017 3AM Seminar Course No. 1609378N

- Class Name: **Residential Title Toolkit***
  Maximum Credit: 1.0 General C.L.E.R. credit
  Maximum Certification: 1.0 Real Estate

NOTE: This CLE course was submitted for approval to the Bar as a "package" under "2017 3AM Seminar" so you may see the same CLE course # for different courses. If entering this course individually, you will need to change the number of CLE hours that default to 1 CLE hours. If you enter 3 hours, it will also include the courses titled "Mortgages of All Colors, Shapes, and Sizes" and "Ins and Outs of Escrow Issues".

*This topic was presented in Boca Raton, Florida on February 13, 2017. If you received credit for these hours, you may not receive credit again.

Fourth Revised Florida Mutual Indemnification Agreement ("Treaty")

The Company, along with most major underwriters in Florida, is a signatory to the Fourth Revised Florida Mutual Indemnification Agreement (the "Treaty"). The Treaty is a blanket indemnity whereby each underwriter indemnifies each of the other signatories for loss or damage it may sustain as a result of certain common title objections, referred to as "potential defects". The Treaty permits title agents to insure over certain specified title objections without having to obtain a separate indemnity letter from the title insurer that insured the property owner in the current transaction. By streamlining the indemnity process, the Treaty saves title agents and underwriters time and money.

Conditions

To rely upon the Treaty, the following conditions must be met:

- ***Retain Prior Policy***. The title agent insuring the current transaction must retain in its file a copy of the prior policy issued by one of the Treaty signatories.
- ***Prior Policy at Least Six Months Old***. The prior policy must be at least six months old. If the prior policy was issued within the last six months, a request for a specific indemnity letter must be made so that the prior insurer will have the opportunity to correct the title objection while it is fresh, if it so chooses.
- ***Prior Policy Cannot Except or Exclude Coverage as to the Potential Defect***. The Treaty may not be relied upon if the prior policy contains an exception for the potential defect. Further, the Treaty may not be relied upon to insure over judgments/liens which are against the insured in the prior policy since the prior policy does not insure an insured against his or her own judgments/liens.
- ***Prior Policy Must Insure the Current Seller or Mortgagor***. To rely upon the Treaty, the prior owner's or loan policy, as the case may be, must insure the current seller (transferor) or mortgagor, not some prior owner who is not covered by the prior policy.
- ***Loan Policy Can Only Be Relied Upon Following Foreclosure or Deed in Lieu***. In addition to relying upon a prior owner's policy, a prior loan policy may be relied upon **only if** the insured lender, or its successors or assigns, has acquired title and is now selling (transferring) or mortgaging. Note that it is unnecessary for the current transferor to be the actual insured named in Schedule A of the loan policy. The Treaty applies if the current transferor or mortgagor falls within the definition of insured under the prior loan policy, as would be the case of successors or assignees of the named insured and certain governmental entities.
- ***Limit of $500,000***. Liability under the Treaty is limited to the amount of the prior policy insuring the current owner or $500,000, whichever is less. Therefore, the title agent should not rely upon the Treaty for risks exceeding those amounts.

Potential Defects

The Treaty covers the following ten title objections:

1. ***Homestead.*** Lack of single marital status, joinder of spouse or non-homestead disclaimer on a prior deed or mortgage.
2. ***Judgments and Tax Liens.*** Judgments, federal tax liens or state tax warrants or liens against a possible prior title holder, provided:
   - They are not against the current seller/borrower;
   - Total face amount of liens does not exceed $500,000;
   - No notice of any proceedings or levy to collect appears of record; and
   - They are not child support certificates of delinquency.
3. ***Mortgages.*** Unsatisfied mortgages, provided:
   - No foreclosure proceedings appear of record;
   - They do not exceed the principal amount of $500,000; and

- They do not secure an equity line or revolving credit line.

4. ***Due Process.*** Due process issues arising out of past litigation affecting the property, consisting of:
   - Failure to appoint a guardian ad litem in a probate, foreclosure, quiet title, partition, divorce or other proceeding that has ended in a final judgment affecting title to the Land;
   - Deficiencies in, or absence of, a diligent search affidavit prior to service upon a defendant; or
   - Deficiencies in, or absence of, an affidavit of non-military service filed in a court proceeding.
5. ***Authority to Sign.*** Lack of sufficient proof of the authority of a trustee, attorney in fact or representative of a business entity to execute a mortgage or deed in the chain of title.
   - **Example 1:** No certification of trust recorded.
   - **Example 2:** No power of attorney or attorney in fact affidavit recorded.
   - **Example 3:** A deed from a corporation, limited liability company or partnership failed to show the requisite office or position of the signer.
6. ***Lack of Recorded Death Certificate.*** Doubt as to whether a person in the chain of title, who did not convey his/her interest, is deceased.
   - **Example:** Husband and wife held title as estate by entireties and wife later conveyed alone without recordation of a death certificate for husband.
7. ***Estate Tax Liens.*** Florida and federal estate taxes against a prior owner.
8. ***Witnesses.*** Lack of subscribing witnesses on a prior deed.
9. ***Incomplete or Insufficient Acknowledgments.*** Insufficient or incomplete (but not absent) acknowledgment on a prior deed or mortgage.
10. ***Corporate Seals.*** Failure of a prior deed or mortgage executed by a corporate officer to contain a corporate seal.

Procedure for Relying on Treaty

Title agents are not required to obtain authorization from the Underwriting Department to rely on the Treaty. However, in questionable cases, consultation with the Underwriting Department is recommended. If the Treaty applies, the insurer on the prior policy should not be contacted for a specific indemnity letter or for confirmation that the Treaty applies since that would defeat the purpose of the Treaty, which is to streamline the indemnity process.

When relying on the Treaty, it is NOT necessary to make an exception for the potential defect and to provide affirmative coverage for it on the policies to be issued. This is because all of the potential defects covered by the Treaty are marketability-type title objections as opposed to title objections in which some third person is asserting a claim or interest in the property. Additionally, it should be noted that the insurer under the prior policy has no obligation under the Treaty to correct the title issue. Therefore, corrective action should not be requested as to matters covered by the Treaty.

In situations where the Treaty does not apply, the title agent must request an indemnification letter from the prior underwriter. If the Treaty does not apply, approval from the Underwriting Department is needed to accept an indemnification letter. Please refer to the helpful tips set forth below when requesting an indemnification letter.

Participating Underwriters

The Treaty can only be relied upon if the prior policy was issued by a title insurer who is a signatory to the Treaty.

The following underwriters are currently party to the mutual indemnity treaty:

- **Alliant National Title Insurance Company**
- **Attorney's Title Insurance Fund, Inc.**

- **Chicago Title Insurance Company, including:**
  - American Pioneer Title Insurance Company
  - Security Union Title Insurance Company
  - Ticor Title Insurance Company
  - Ticor Title Insurance Company of Florida
- **Commonwealth Land Title Insurance Company, including:**
  - Industrial Valley Title Insurance Company
  - Title and Trust Company of Florida
  - Transnation Title Insurance Company
- **Fidelity National Title Insurance Company, including:**
  - American Title Insurance Company
  - City Title Guaranty Company
  - City Title Insurance Company
  - Fidelity National Title Insurance Company of New York
  - Lawyers Title Insurance Corporation
  - Life Title Insurance Company of New York
  - Meridian Title Insurance Company
  - National Attorney's Title Insurance Company
  - Nations Title Insurance of New York, Inc.
  - Nations Title, Inc.
  - New York TRW Title Insurance
  - New York TRW Title Insurance, Inc.
  - Security Title and Guaranty Corporation
  - Title USA Insurance Corporation of New York
  - Title USA Insurance of New York, Inc.
  - TRW Title Insurance
  - TRW Title Insurance of New York, Inc.
  - TRW Title, Inc.
  - US Life Title Insurance Company of New York
- **First American Title Insurance Company**
  - Censtar Title Insurance Company
  - First American Title Insurance Company of Texas; and
  - United General Title Insurance Company
- **First National Title Insurance Company**
- **National Title Insurance Company of New York Inc.**
- **North American Title Insurance Company, including:**
  - North American Title Corporation
- **Old Republic National Title Insurance Company, including:**
  - Attorney's Title Insurance Fund, Inc.
  - Minnesota Title Insurance Company
- **Stewart Title Guaranty Company, including:**
  - Alliance Title of America
- **Title Resources Guaranty Company**
- **Westcor Land Title Insurance Company**

- **WFG National Title Insurance Company**
  - WFG Title Insurance Company
  - Transunion Title Insurance Company
  - Transunion National Title Insurance Company
  - Atlantic Title Insurance Company
  - Diversified Title Insurance Company
  - South Carolina Title Insurance Company
  - Northern Counties Title Insurance Company (as to policies issued subsequent to 1/1/90)

An updated list of underwriters that are party to the Treaty can be located on *UGuide* under the "Fourth Revised Florida Mutual Indemnification Agreement Treaty" topic.

When the Treaty Does Not Apply

If there is a title requirement that predates the current owner's title insurance policy and there is no exception on the title policy for the matter on the prior policy but the conditions of the treaty do not apply for your situation it still may be possible to take a letter of indemnity from the underwriter who insured the current owner for the title issue.

Regular Indemnity Letter

A standard letter of indemnity is one in which the underwriter who insured the seller or mortgagor under the title insurance policy expressly indicates that it indemnifies and holds harmless the title insurance underwriter issuing the new policy insuring the buyer and/or lender in the new transaction for a specifically enumerated defect. A letter of indemnity is addressed to the underwriter issuing the new policy "care of" the office that is issuing the policy on behalf of the underwriter. In order to obtain a letter of indemnity, the underwriter who issued the policy must be contacted. Frequently the office that did the prior closing is contacted to coordinate, but it is generally faster to contact the underwriter directly. Keep in mind that a letter of indemnity does not actually cure the title defect but merely provides a basis for which the new underwriter can issue a new title insurance policy without regard to the title defect.

In general, a standard letter of indemnity can be relied upon for those title defects set forth in the Fourth Revised Mutual Indemnity Treaty provided that the title policy does not take exception for the title defect. In those cases prior underwriting department approval is generally not necessary. There have been cases where underwriters have provided letters of indemnity without noticing that the title defect was made an exception on the prior policy and it becomes difficult to force the other underwriter to honor the indemnity letter in the event of a claim. So it is important to double check the prior policy to make sure there is no exception for the title defect even if you receive a letter of indemnity.

Letter of Indemnity with Undertaking to Cure

A letter of indemnity with undertaking to cure is one in which not only does the prior underwriter agree to indemnify and hold harmless the new underwriter but also agrees to open up a claim and take steps to actually undertake to cure the title defect. If requesting an undertaking to cure, it is normally a longer wait time to receive the letter of indemnity as most underwriters want to conduct further research or analysis of the issue prior to agreeing to open up a claim.

Below are some examples of when we may want to require an undertaking to cure:

- Incorrect legal description on a deed in the chain of title;
- Lack of access;
- Lack of satisfaction or release of a prior equity line mortgage on a recent transaction;
- Missing deed.

The question of whether or not to require an undertaking to cure or whether to accept an undertaking to cure for a particular title defect should be done in consultation with the local production office or through the underwriting department.

When accepting an undertaking to cure to dispose of a title insurance requirement, it is generally the case that instead of issuing a policy without exception that the new title insurance policy be issued with an exception but providing affirmative coverage over the title defect, which serves the purpose of disclosing the proposed insured(s) of the issue. An example of suggested language for the exception and affirmative coverage is as follows:

> "Mortgage recorded in Official Records Book __, Page ___. Notwithstanding this exception and in reliance upon that certain letter of indemnity from [INSERT NAME OF PRIOR UNDERWRITER] dated [INSERT DATE OF LETTER OF IDEMNITY] pursuant to Policy No. [INSERT POLICY NUMBER] issued by [INSERT NAME OF PRIOR UNDERWRITER], this policy insures the Insured against loss or damage arising from the enforcement or attempted enforcement of said exception."

Please consult with the underwriting department as to whether or not the exception and affirmative coverage language is necessary whenever accepting a letter of indemnity with undertaking to cure.

Helpful Tips When Requesting An Indemnification Letter:

- Send the request to the underwriter of the prior policy (NOT the prior title agent) immediately after the defect is discovered to prevent unnecessary delays with the closing.
- Include name, address, e-mail and phone numbers of the title agent to whom the Indemnification letter is to be sent.
- Specify the closing date of the transaction. Note: The indemnification letter must be obtained prior to closing.
- Include a copy of the prior owner's policy (or prior loan policy if the insured lender acquired the title to the property via foreclosure or deed in lieu). The copy of the prior policy must show the prior underwriter's name.
- Include a copy of the title commitment for the current transaction (the transaction amount must appear in Schedule A).
- Circle the defect on the commitment or notate the defect in the cover letter.
- Clearly specify if corrective action (referred to as an "undertaking") is necessary.
- Include relevant documentation (i.e., deed without marital status, judgments, etc.).

Relying on FNTG Brand Prior Policy

In addition to the Fourth Revised Mutual Indemnity Treaty, the Fidelity National Title Group brands of underwriters are party to a FNTG Family treaty.

The FNTG underwriting brands consist of the following:

- **Chicago Title Insurance Company, including:**
  - American Pioneer Title Insurance Company
  - Security Union Title Insurance Company
  - Ticor Title Insurance Company
  - Ticor Title Insurance Company of Florida
- **Commonwealth Land Title Insurance Company, including:**
  - Industrial Valley Title Insurance Company
  - Title and Trust Company of Florida
  - Transnation Title Insurance Company
- **Fidelity National Title Insurance Company, including:**
  - American Title Insurance Company
  - City Title Guaranty Company
  - City Title Insurance Company
  - Fidelity National Title Insurance Company of New York

- Lawyers Title Insurance Corporation
- Life Title Insurance Company of New York
- Meridian Title Insurance Company
- National Attorney's Title Insurance Company
- Nations Title Insurance of New York, Inc.
- Nations Title, Inc.
- New York TRW Title Insurance
- New York TRW Title Insurance, Inc.
- Security Title and Guaranty Corporation
- Title USA Insurance Corporation of New York
- Title USA Insurance of New York, Inc.
- TRW Title Insurance
- TRW Title Insurance of New York, Inc.
- TRW Title, Inc.
- US Life Title Insurance Company of New York

Conditions for use of the FNTG Family Treaty are the same as set forth in the Fourth Revised Mutual Indemnity Treaty except that there is no time requirement of six months and the liability limit is $1,000,000 instead of $500,000.

The potential defects covered under the FNTG Family Treaty are the same as the Fourth Revised Mutual Indemnity Treaty except that the mortgage or lien amount cannot exceed $1,000,000 instead of $500,000.

The procedure for relying on the treaty is the same as provided in the Fourth Revised Mutual Indemnity Treaty.

In the event it is discovered that there is a pending claim on a current policy and we are being asked to issue a new title policy insuring a prospective purchaser or lender, specific underwriting approval is necessary to obtain authorization to insure again. This involves consultation between both the claims office and appropriate underwriting counsel.

Unrecorded Mortgage Satisfactions

Title agents are often faced with a requirement for satisfaction of a mortgage when it's obvious that the mortgage should have been satisfied of record previously. This is often caused by either a bureaucratic error, a borrower paying a mortgage off and simply not thinking about having the mortgage released of record. In this section, we'll discuss methods of satisfying the requirement for release and satisfaction of these troublesome mortgages.

The 45 Day Satisfaction Requirement - Sec. 701.03, Fla. Stat.

Sec. 701.03, Fla. Stat. requires that lenders provide mortgage satisfactions within 45 days of receipt of the payoff. As any post-closer can attest, few lenders seem to abide by this rule. But the statute is a good source of authority when pushing a lender that is slow to provide a satisfaction.

Statutes of Limitation/Statues of Repose - Sec. 95.281, Fla. Stat.

The Florida Statutes provide that under certain circumstances, the passage of time can bar foreclosure of mortgages. If a mortgagee fails to file a foreclosure action within a prescribed time, it loses any cause of action it has under the mortgage.

Ascertainable Maturity Date – 5 years

If the maturity date of the mortgage is ascertainable from the recorded mortgage, enforcement of said mortgage is barred 5 years after said maturity date. The most obvious way the maturity date is ascertainable is that it is specifically set out, or defined, in the mortgage. But often, the maturity date is only ascertainable by implication. The mortgage may describe the elements necessary to calculate the amortization, or payment schedule, of the

Note. With that information, the maturity date can be determined. For example, some mortgages will state the loan amount, interest rate, and monthly payment; those facts are enough to calculate the maturity date.

Until 2015, the 5 year statute of repose was applied to mortgages liberally, and without a great deal of scrutiny. However that changed as a result of *CCM Pathfinder Palm Harbor Management, LLC v. Unknown Heirs of Gendron*, Case No. 2D13-5286, 2015 WL 248796 (Fla. 2d DCA 2015). In that case, the mortgage specifically stated a maturity date but also provided that the mortgage secured not only the promissory note, but other off-record collateral loan documents. This is a common occurrence in commercial mortgages. The court held that because of this reference to off-record collateral documents, the maturity date was not ascertainable of record and the 5 year statute of repose was not applicable.

Nonetheless, title agents can rely upon the 5 year time period if:

- The maturity date is ascertainable from the recorded mortgage;
- The mortgage does not state that it secures performance of any obligations or off-record agreements except the promissory note; and
- The face amount of the mortgage never exceeded $1,000,000.00.

CAUTION! The 5 year statute *cannot* be relied upon to eliminate the mortgage if:

- **United States' Mortgages.** A mortgage held by the United States, or an officer (e.g., Secretary of HUD) or agency thereof, has no statute of limitations. 28 U.S.C. § 2415(a).
- **Assignees of United States' Mortgages.** Assignees of mortgages held by the United States (or its officer/agency) acquire the benefit of the federal government's unlimited time to foreclose. LPP Mortgage Ltd. v. Tucker, 48 So. 3d 115 (Fla. 3d DCA 2010).
- **Mortgages held by Failed Banks/FDIC.** A mortgage held by a failed institution which was taken over by the Federal Deposit Insurance Corporation (FDIC) is not subject to section 95.281, Florida Statutes. Under federal law, the FDIC has a 6-year period in which to file suit to foreclose, which period begins to run on the later of the date the FDIC was appointed conservator or receiver or the date the cause of action accrued. 12 U.S.C. § 1821(d)(14); Smith v. FDIC, 61 F.3d 1552 (11th Cir 1995).
- **Assignees of FDIC.** All assignees of a mortgage previously assigned by the FDIC acquire the benefit of the federal 6-year statute of limitations. WRH Mortgage, Inc. v. Butler, 684 So. 2d 325 (Fla. 5th DCA 1996); Cadle Co. II, Inc. v. Stamm, 633 So. 2d 45 (Fla. 1st DCA 1994).
- **Railroad and Public Utility Mortgages.** The statute does not apply if it was executed by a railroad or public corporation. § 95.281(5), Fla. Stat.
- **Mortgages Assumed or Taken "Subject to".** A property owner who assumes a mortgage or acquires title "subject to" a mortgage after the time for enforcing the mortgage has already expired under section 95.281, Florida Statutes, cannot rely on the statute. Irwin v. Grogan-Cole, 590 So. 2d 1102 (Fla. 5th DCA 1991).

No Ascertainable Maturity Date – 20 years

If the maturity date is not ascertainable from the recorded mortgage, the mortgage may be disregarded twenty years after the date of the mortgage.

Tracking Down Lenders

Agents routinely face requirements for the release and satisfaction of mortgages in favor of a defunct, merged, or mystery mortgagee. There are a couple of online sources that can help in finding lenders.

MERS Mortgages

The Mortgage Electronic Registration System tracks any loans within its service network. It maintains a searchable database of all loans within its system. A loan can be searched using a) the MERS Mortgage Identification Number (MIN) which is found on the face of many mortgages; b) the property address; c) borrower details; and d) FHA, VA, and Mortgage Insurance Certificate numbers. This resource can be helpful in tracking down the servicers of a mortgage where there are no recorded assignments of mortgage.

The website is: https://www.mers-servicerid.org/sis/

The FDIC

The Federal Deposit Insurance Corporation is the U.S. government agency tasked with regulating banks. It maintains an excellent database of the banks it regulates including thorough records of all bank mergers and purchases of bank assets (including notes and mortgages). By simply searching a bank name, you can view the history of every U.S. bank and view contact information for the successor institution.

The website is: https://research.fdic.gov/bankfind/

The Last Resort

Finally, if all else fails, there may be no other option other than seeking a judicial determination that a mortgage is no longer in full force an effect. In these cases, it is important to work closely with an underwriter at every stage of the litigation to be certain the final judgment is satisfactory for the removal of the requirement in the commitment.

Dealing with Judgments

Required Elements of a Judgment

Certification

To be a valid lien on real property, a Florida judgment must be certified. § 55.10(1), Fla. Stat. A judgment is certified if it has a notation signed by the clerk or deputy clerk substantially as follows: "Certified a true and correct copy." Typically, this is found at the bottom of the judgment. Very often judgments are recorded without this certification.

Technically an uncertified judgment does not attach to the property, but because of a risk of the recordation of a certified copy in the gap, we review the removal of uncertified judgments very carefully, and you may sometimes see requirements made relative to these uncertified judgments.

Address Requirement

A certified Florida judgment becomes a lien on real property if it contains the address of the creditor (judgment holder) or a separate affidavit is recorded simultaneously with the judgment stating the address of the creditor. § 55.10(1), Fla. Stat. A judgment containing only the address of the creditor's attorney does not impose a lien on real estate. *Hott Interiors, Inc. v. Fostock*, 721 So. 2d 1236 (Fla. 4th DCA 1998). Further, a judgment which only contains the creditor's name followed by "c/o" and the address of the creditor's attorney does not create a lien. *Tomalo v. Kingsley Displays, Inc.*, 862 So. 2d 899 (Fla. 2d DCA 2003).

When a judgment lien is re-recorded to extend its duration, a separate affidavit containing the current address of the judgment holder (creditor) must be simultaneously recorded, even if the name and address were on the certified copy that was originally recorded. § 55.10(2), Fla. Stat.

Similar to uncertified judgments, when otherwise effective judgments fail to properly include an address, we review these very carefully and may require release on a case-by-case basis where the facts warrant a mitigation of risk.

Distinguishing Judgments

A part of every title search is a name search on individuals in the chain of title, as well as the prospective buyer. The search is not just of the full name but variations on that name. For instance, assume a person in title is named James Tiberius Kirk. Examples of the search parameters that would be run could be: James Tiberius Kirk, Jim Tiberius Kirk, James T. Kirk, Jim T. Kirk, J. Kirk, Tiberius Kirk, and T. Kirk. As a result, searches often reveal judgments against these name variations. This is particularly problematic with common names.

The examiner makes every effort to distinguish these judgments from the person in title. But often this is impossible without further information. Title agents should review all judgments, comparing them to the information they have in the closing file in order to affirmatively distinguish these judgments from the party in title.

Failing that, however, the company will generally allow the use of non-identification (or "Not Me") affidavits. These are affidavits given by the record titleholder stating that he/she is not the same person named in the judgment. The affidavit should not only contain an affirmative statement that the record title holder and the debtor are not the same person, but should also indicate additional facts to support that statement if applicable.

Duration of Judgments

Common Judgments

A certified copy of a Florida judgment is a lien on real property for an initial period of ***10 years from the date of recording***. § 55.10, Fla. Stat. Note that this period is from the date of recordation, not the date of the judgment.

The judgment may be extended for an additional period of 10 years by:

1. Re-recording a certified copy of the judgment at any time prior to the expiration of the lien; and
2. Simultaneously recording an affidavit with the current address of the creditor.

However, in no case shall a judgment be a lien for more than 20 years from the date of entry. § 55.081, Fla. Stat. Additionally, even after the expiration of the lien, the judgment may be re-recorded with the address affidavit to create a new judgment lien. *Franklin Financial, Inc. v. White*, 932 So. 2d 434 (Fla. 4th DCA 2006). It is important to note that a judgment re-recorded after it has expired creates a new lien and is not an extension of the original lien. Therefore, the re-rerecorded lien takes priority from the date of the re-recording.

Remember that if a debtor files bankruptcy, the automatic stay will impact the duration of the judgment. Consult with your underwriter under these circumstances

Judgments in favor of the United States

A final judgment in favor of the United States has a duration of **20 years**, and may be renewed for an additional 20 years, pursuant to 28 U.S.C. § 3201. The duration commences with its initial filing in the public records, rather than the date of entry of the judgment by the federal court. It is important to note that a judgment in favor of the United States does not need to be certified. Likewise, the address of the United States *does not* need to be stated on the judgment or a simultaneously recorded affidavit.

Judgments against One Spouse

If the property has been continuously held as a tenancy by the entirety, most certified judgments and liens against one spouse do not attach to the property. A continuous marriage affidavit is the best tool to use to deal with these judgments. The commitment will typically contain the date from which the couple must attest that they have been continuously married. Do not forget that this affidavit must be recorded in the public records.

Once again, the rules change when the federal government is involved. Federal tax liens and federal restitution liens against one spouse *do attach* to entireties property, and the continuous marriage affidavit cannot be relied upon to dispose of those types of liens. See *United States v. Craft*, 535 U.S. 274 (2002).

CAUTION! A continuous marriage affidavit should not be relied upon when a judgment debtor conveys property to a tenancy by the entirety when it appears that the purpose of the conveyance is to circumvent the attachment of a lien or certified judgment. An example of this would be the transfer by a husband to him and his wife to create an estate by the entireties and shortly thereafter a certified judgment is recorded as a result of litigation that was surely in progress when the conveyance was made.

Judgments on Homestead Property

Article X, Section 4 of the Florida Constitution states that no judgment (except those for taxes and assessments and those resulting from obligations incurred in the purchase, improvement or repair of the homestead) shall be a lien on homestead property.

The three methods that can be used to establish that a judgment does not attach to specific real property based on homestead are:

1. Recordation of a Homestead Affidavit.

The Company will rely on a recorded affidavit executed by the owner of real property which recites sufficient facts to establish the homestead nature of the property. In order to determine if a Homestead Affidavit can be used to eliminate a judgment requirement, the Homestead Affidavit Checklist set forth below should be completed. (This Checklist is also available in Word format in our *UGuide* on fntgflorida.com in the "Judgments and Liens" topic.) "Yes" would need to be checked off next to each item in order to use the Homestead Affidavit to clear the judgment.

		Yes	No
1.	The property is a residence on less than ½ acre (21,780 square feet) within the city limits of a municipality, or less than 160 acres outside a municipality.	☐	☐
2.	The certified judgment has been recorded for at least one year. (A creditor is more likely to enforce a recently recorded judgment.)	☐	☐
3.	The property owner has claimed the homestead tax exemption every year since acquiring title or recordation of the judgment, whichever occurred later.	☐	☐
4.	The deed vesting title in the current owner has been of record at least one year.	☐	☐
5.	The property is free of litigation and other attempted collection actions by the judgment holder.	☐	☐
6.	The judgment is against the current seller or borrower (not a prior owner).	☐	☐
7.	The face amount of all judgments does not exceed $50,000 in the aggregate.	☐	☐
8.	The judgment is NOT a: a. Judgment or lien in favor of the United States or any of its agencies; b. Judgment resulting from obligations incurred in the purchase, improvement or repair of the homestead; c. Child support lien or certificate of delinquency; or d. Code enforcement lien.	☐	☐
9.	If a sale transaction, the purchaser is a bona fide purchaser. If a loan transaction, the lender is an institutional lender.	☐	☐
10.	The title agent has no information undermining the credibility of the homestead affidavit.	☐	☐
11.	A homestead affidavit signed by all owners will be recorded.	☐	☐
12.	Neither the title agent nor the debtor has contacted the creditor.	☐	☐
13.	The judgment debtor's Florida driver's license shows the same address as the property.	☐	☐
14.	The title agent has no knowledge that the judgment debtor has vacated the property.	☐	☐

In the event every question cannot be answered with a "yes," a Statutory Notice of Homestead is the next alternative.

2. Recordation of a Statutory Notice of Homestead

Florida law provides a non-judicial procedure for establishing that a judgment has not attached to property because of the homestead status of the property. § 222.01, Fla. Stat. The procedure is done through the Clerk in the county in which the property lies. For title insurance purposes, all of the procedures and guidelines below must be followed:

1. **Judgments Only.** The statute only applies to certified judgment liens (§ 55.10, Fla. Stat.), not for any other liens.
2. **Written Statement Filed With Clerk.** The property owner files a Notice of Homestead in the public records of the county in which the homestead property is located. (The Notice of

Homestead is a statutory form and is available in Word format in our *UGuide* on www.fntgflorida.com in the "Judgments and Liens" topic.)

3. **Intended Sale or Refinance Must be Disclosed/180 Day Timeline.** The Notice must confirm the existence of a contract to sell or receipt of a commitment from a lender for a mortgage on the homestead. The contemplated transaction must occur within 180 days, or the procedure is then of no force or effect.
4. **Clerk Mails Copy to Lienor.** The clerk mails a copy of the Notice of Homestead to the judgment lienor by certified mail, return receipt requested, at the address shown in the most recently recorded judgment or accompanying affidavit, and to any other person designated in the most recently recorded judgment or accompanying affidavit to receive the Notice of Homestead, and shall certify to such service on the face thereof and record the notice. Service is deemed complete upon mailing.
5. **Lienor Fails to File Lawsuit to Enforce Within 45 Days.** Any lienor upon whom the Notice is served must file an action for a declaratory judgment disputing the property's homestead status or file an action to foreclose the judgment lien, together with the filing of a lis pendens in the public records of the county in which the alleged homestead is located, within 45 days after service of the Notice. Otherwise, the judgment is deemed to not attach to the property as to the interest of the buyer or lender, or their successors or assigns, who take under the contract of sale or loan commitment described in the Notice, within 180 days after the filing of the Notice of Homestead in the public records.
6. **Current Transaction Only.** The statutory language indicates that the Notice is only effective for the transaction described therein. If no action by the creditor is taken, then the buyer or lender described in the notice takes free and clear of all liens. However, if the transaction was not timely completed, any new transaction would require a new Notice procedure.
7. **Limit of $500,000.00.** The Company will rely upon a Notice of Homestead to eliminate judgments, the principal amount of which does not exceed $500,000.00.
8. **Judgments and Liens Not Eliminated.** Legally, the Notice of Homestead cannot be used to eliminate liens and judgments for:

   (a) Taxes and assessments;

   (b) Obligations contracted for the purchase of the property; or

   (c) Labor, services or materials furnished to repair or improve the homestead property.

   Additionally, the Company will not rely upon the Notice of Homestead to insure over the following items:

   (a) Child support judgments and certificates of delinquency;

   (b) Federal tax or restitution liens; or

   (c) Obligations to the United States or any of its agencies.

3. Court Order

In circumstances when neither a Homestead Affidavit, nor the Statute Notice of Homestead is available, the final option is obtaining a final, non-appealable court order confirming that the judgment does not attach to the property. If such an order is to be relied on, the underwriting department should be consulted during the pendency of the action to be certain the order will satisfy the requirement in the commitment.

FIDELITY NATIONAL TITLE GROUP
Florida Agency

CONTINUING EDUCATION
MATERIALS

3 in the Morning
Seminar

Ins and Outs of Escrow Issues

Christina Taylor, Esq.

FIDELITY NATIONAL TITLE GROUP
Florida Agency

WHO'S WHO **SPEAKER BIO**

Christina Taylor, Esq.

Speaker and Education Specialist

Christina Taylor is the Speaker and Education Specialist for Fidelity National Title Group based in Maitland, Florida. She currently travels throughout Florida teaching FNTG agents by means of engaging and thought provoking training presentations. She has extensive public speaking experience, specializing in subjects relating to the title industry and real estate law, as well as topics with professional development and motivational themes. Christina's responsibilities also include research, development, and presentation of these presentations. Prior to her training role, she served as Underwriting Counsel, providing underwriting support to agents and working to resolve issues associated with commercial and residential real estate closings. She has been with FNTG since 2000.

Before joining FNTG, Christina practiced real estate law with a prominent law firm in Orlando. She earned her law degree from the University of Florida College of Law and her undergraduate degree from Palm Beach Atlantic University in West Palm Beach, Florida. Christina is currently a member of The Florida Bar. She is certified as an instructor for numerous accrediting agencies in Florida, including The Florida Bar, The Florida Department of Financial Services and The Florida Real Estate Commission. In addition to speaking at FNTG events, Christina gives presentations to numerous title industry associations and organizations throughout Florida.

THE INS AND OUTS OF ESCROW ISSUES

Florida attorneys and licensed title insurance agents have legal and ethical responsibilities when handling escrow funds according to the Florida Statutes, the Florida Administrative Code and Florida case law.

I. The Escrow Agent

A. Duties and Responsibilities – Ethical Considerations
   1. Establishment of new legal relationship to the parties in the transaction, owing fiduciary duties to all parties, *The Florida Bar v. Joy*, 679 So.2d 1165 (Fla. 1996), (disciplinary action against attorney for violations of The Florida Bar Rules)
   2. Fiduciary responsibility to parties, required to exercise reasonable skill and ordinary diligence, may be liable for negligence in acting outside of escrow agreement, *Biadi v. Lawyers Title Ins. Corp.*, 374 So.2d 30, 34 (Fla. 3d DCA 1979)
   3. Title agent authorized to act as escrow agent, holds funds in fiduciary capacity, Section 626.8473, F.S.

B. Limitation of Title Insurer's Liability
   1. Title insurer's limitation of liability for acts of title agent serving in escrow agent capacity, *Cohen v. Chicago Title Ins. Co.*, 53 So.3d 331 (3d DCA 2010)

II. The Escrow Agreement

A. Legal Requirements of the Escrow Agreement
   1. Must be in writing and funds must be delivered to third party, *Smith v. MacBeth*, 119 Fla. 796 (1935)
   2. Must be based on performance of a condition, *Love v. Brown Development Co. of Michigan*, 100 Fla. 1373 (1930)
   3. Agency relationship is established by agreement, *Cradock v. Cooper*, 123 So.2d 256 (Fla. 2d DCA 1960)

B. Receipt and Holding of Escrow Funds
   1. Collected Funds, Section 69O-186.008(1), Fla. Admin. Code, Rules Regulating The Florida Bar Rule 5-1.1(j)
   2. Reconciliation of Escrow Funds, 69O-186.009, Fla. Admin. Code, Rules Regulating The Florida Bar Rule 5-1.2(d)
   3. Third party deposits

C. Proper Release and Disbursement of Escrow Funds
   1. Attorneys:
      a. Rules Regulating The Florida Bar Rule 5-1.1: Trust Accounts
      b. Rules Regulating The Florida Bar Rule 5-1.2: Trust Accounting Records and Procedures
      c. Professional Ethics of The Florida Bar Opinion 02-6
      d. Conduct of nonlawyer in handling escrow funds as a violation of professional rules of conduct, *The Florida Bar v. Hines*, 39 So.3d 1196 (Fla. 2010)
   2. Licensed Title Agents:
      a. Section 626.8473, Fla. Stat. Escrow, Trust Fund
      b. Certification of Disbursement in accordance with transaction and Florida law, 69B-186.008, Fla. Admin. Code
      c. ALTA Best Practices Pillar 2: Escrow Account Controls
         i. In accordance with HUD-1 Settlement Statement
         ii. In compliance with lender's instructions
         iii. Proceeds payable to owner of record
      d. ALTA Best Practices Pillar 4: Disbursement Procedures
   3. Escrow Funds in Dispute – An Ethical Dilemma
      a. Authorization and Release signed by all parties
         i. *Redland Estates Inc. v. Lynn*, 920 So.2d 1218 (Fla. 3d DCA 2006)
         ii. *San Francisco Distribution Center, LLC v. Stonemason Partners, LP*, 183 So.3d 391 (Fla. 3d DCA 2014)
         iii. Discharge of Escrow Agent and Release of Liability
      b. Interpleader, Fla.R.Civ.P. Rule 1.240, allowed as a remedy where agent may be exposed to double liability due to claims from both parties

THE FLORIDA BAR

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2400 Maitland Center Parkway, Ste. 200
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Course Title: 2017 3AM Seminar Course No. 1609378N

- Class Name: **Ins and Outs of Escrow Issues***
  Maximum Credit: 1.0 General C.L.E.R. credit, including 1.0 Ethics credit
  Maximum Certification: 1.0 Real Estate

NOTE: This CLE course was submitted for approval to the Bar as a "package" under "2017 3AM Seminar" so you may see the same CLE course # for different courses. If entering this course individually, you will need to change the number of CLE hours that default to 1 CLE hours. If you enter 3 hours, it will also include the courses titled "Residential Title Toolkit" and "Mortgages of All Colors, Shapes, and Sizes".

*This topic was presented in Boca Raton, Florida on February 13, 2017. If you received credit for these hours, you may not receive credit again.

What is Escrow?

When people use the term "escrow," what does it mean? Is it an event? A person? An agreement? An antiquated doctrine created by common law? A legal conundrum? Before we examine the duties and responsibilities of the escrow agent, the requirements for the escrow agreement, and proper release and disbursement of escrow funds, we must have a foundational understanding of the meaning of the term "escrow."

Black's Law Dictionary defines escrow as "a legal document or property delivered by a promisor to a third party to be held by the third party for a given amount of time or until the occurrence of a condition, at which time the third party is to hand over the document or property to the promisee." *See* Black's Law Dictionary, 2014. According to this definition, escrow involves the delivery of a document or property to a third party until a condition occurs which triggers the release of that document or property. It sounds pretty simple, but what makes escrow complicated, and causes many an ethical dilemma, is that this third party depositary provides a service to two parties with potential or actual adverse interests. *See SMP, Ltd. v. Syprett, Meshad, et al.*, 584 So.2d 1051 (Fla 2d DCA 1991). It is precisely these two adversarial interests that could place you, as the escrow agent, squarely in the middle of a legal and ethical quandary.

Although our definition of escrow includes documents, most of the time a closing agent is asked to hold money in escrow. As such, the focus of these materials will be on funds held in escrow; however, many of the general principles discussed below apply to both money and documents or any other property owned by a third party (for example, Certificates of Deposit, stock or documents).

The Escrow Agent

It is common practice to refer to the person who handles a real estate transaction as the closing agent or settlement agent ("closing agent"). As a closing agent, you are an unbiased, neutral third party charged with closing a transaction in accordance with the written instructions from the principals and the lender. When you agree to take funds into escrow, you additionally become the escrow agent. Regardless of your relationship to the parties in the transaction (the seller, the buyer/borrower), by undertaking to act as an escrow agent, you establish a new legal relationship to the parties. *See The Florida Bar v. Joy*, 679 So.2d 1165 (Fla. 1996) (citing *United American Bank of Central Florida, Inc. v. Seligman*, 599 So.2d 1014 (Fla. 5th DCA 1992). This new relationship gives rise to additional duties and responsibilities, with corresponding potential liability, by way of the escrow agreement and by operation of law.

Duties and Responsibilities Arising from the Escrow Agreement

"The law has struggled to place a reasonable and predictable duty upon the third party who elects to perform this difficult task [as escrow agent] with its inherent potential for conflict." *See SMP, Ltd., id*. Sometimes agents underestimate just how difficult this task may be. By agreeing to act as escrow agent, you assume duties and responsibilities *in addition* to those of a closing agent. Early case law in Florida emphasized the role of escrow agent "as trustee of both parties, charged with the performance of an express trust governed by the escrow agreement." *See SMP, Ltd., id.* The Florida Bar agrees with this line of reasoning by stating "when an attorney is also acting as an escrow agent, the attorney may also have a duty to third parties. An escrow agent is a trustee of both parties…" *See* Professional Ethics of The Florida Bar Opinion 02-6, March 7, 2003, revised August 24, 2011. Florida law also describes the escrow holder as an agent, applying the laws of agency. *See SMP, Ltd., id.* As escrow agent, you become an agent to all the parties and you owe a fiduciary duty to all the parties to the escrow by way of the escrow agreement.[1] *See The Florida Bar v. Joy*, id. And yet other courts clarify that the agency created is as a special or limited agent, i.e., "a third party to who the principal parties to the contract have entrusted certain authority by the escrow agreement. [The agent] must look to that for his powers and duties." *See SMP, Ltd., id.*

[1] As to the escrow agreement, the court further clarified "in the absence of an express agreement, written or oral, the law will imply from the circumstances of the escrow that the agent has undertaken a legal obligation." *See The Florida Bar v. Joy*, id.

Whether considered a trustee or an agent, the courts agree that the duties of the escrow agent include:

- Knowing the provisions and conditions of the escrow agreement; and
- Exercising reasonable skill and ordinary diligence in holding and delivering possession of the escrowed funds in strict accordance with the escrow agreement. *See The Florida Bar v. Joy*, id. and *Biadi v. Lawyers Title Ins. Corp.*, 374 So.2d 30 (Fla. 3d DCA 1979).

Duties and Responsibilities Under Florida Law and Rules Regulating The Florida Bar

In addition to duties and responsibilities arising from the escrow agreement, licensed title agents and attorneys acting as escrow agents are governed by a set of laws and rules based on the same doctrine of fiduciary duty.

Title Agents

As a licensed title agent in Florida, you may act as an escrow agent by holding and disbursing funds in connection with a real estate closing transaction involving the issuance of title insurance binders, commitments and policies. *See* Fla. Stat. §626.8473(1). Under Florida law, those funds are held as trust funds and in a fiduciary capacity.[2] These funds are the property of the party entitled to them and not the escrow agent. *See* Fla. Stat. §626.8473(2). In other words, when you are issuing a title insurance policy as part of a closing and acting as the settlement or closing agent, you are also acting as an escrow agent under Florida law when you hold and disburse funds as part of the transaction.

Attorneys

An attorney is required to "deposit and maintain all funds received in connection with transactions in which the attorney is serving as a title or real estate settlement agent into a separate trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by its title insurers, unless maintaining funds in the separate account for a particular client would violate applicable rules of The Florida Bar." *See* Fla. Stat. §626.8473(8). An attorney may act as escrow agent "so long as his duties do not involve a conflict of interest with, or a violation of, duty to his client as principal." *See Craddock v. Cooper*, 123 So.2d 256 (Fla. 2d DCA 1960). As an attorney licensed in Florida, you must hold in trust, separate from your own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. *See* Rules Regulating The Florida Bar Rule 5-1.1, Trust Accounts. Further, you are required to hold property of others with the care required of a professional fiduciary. *See* Comment Section, Rules Regulating The Florida Bar Rule 5-1.1, Trust Accounts.

Limitation of Title Insurer's Liability

In summary, your duties as an escrow agent are separate and distinct from your duties as a title issuing agent. Therefore, when acting as an escrow agent, you may be subject to liability outside and apart from your agency relationship with your title insurance underwriter.

By way of example, under Florida law, a title insurer (aka the underwriter) is liable for the defalcation, conversion, or misappropriation by a licensed title insurance agent or agency of funds held in trust by the agent or agency.[3] *See* Section 627.792, Fla. Stat. However, when deposits are held in the agent's limited capacity as escrow agent, pursuant to an escrow agreement, those deposits are not "trust funds" as defined in the Florida Statutes. Therefore, if the agent misappropriates those funds, Florida courts hold that the title insurer may not be held liable for the agent's acts under Section 627.792, Fla. Stat. *See Cohen v. Chicago Title Ins. Co.*, 53 So.3d 331 (Fla. 3d DCA 2010), (relying on *Winkler v. Lawyers Title Ins. Corp.*, 41 So.3d 414 (Fla. 3d DCA 2010).

[2] A fiduciary is required to act for the benefit of another person. *See* Black's Law Dictionary, 2014.
[3] Those funds to be disbursed by the title agent in connection with a real estate transaction involving the issuance of title insurance commitments and policies. *See* Section 626.8473, Fla. Stat.

The Escrow Agreement

Legal Requirements

Whether funds placed with a third person are considered to be "in escrow" depends on the intentions of the parties. Of course the best way to know the intentions of the parties is by way of a written agreement. In fact, the language of the escrow agreement is the primary consideration in determining the nature and extent of the agency. *See SMP, Ltd, id.* Florida courts have long held that to "constitute a binding escrow, there must be an instrument embodying conditions mutually beneficial to both parties, agreed to by both parties, and it must be communicated to and deposited with a third party." *See Smith v. MacBeth*, 119 Fla. 796 (1935). Another court focused on the requirement that an escrow agreement must also be kept by the depositary (third party) "until the performance of a condition or the happening of a certain event." *See Love v. Brown Dev. Co. of Michigan*, 100 Fla. 1373 (1930). At all times the escrow agent must act in accordance with the escrow agreement or face liability for any damages suffered by reason of any departure from those terms. *See Tucker v. Dr. P. Phillips Co., Inc.*, 139 F.2d 601 (5th Cir. 1943). However, as an escrow agent, you have discretion as to the obligations to which you agree in an escrow agreement. Florida law clearly permits the parties to agree to limit the escrow agent's responsibilities as part of the escrow agreement. *See Resolution Trust Corp. v. Broad and Cassel, P.A.*, 889 F.Supp. 475 (M.D. Fla. 1995), citing *Craddock, id.* Moreover, the escrow agent always has the option to decline to accept funds in escrow.

Purchase and Sale Agreement v. Escrow Agreement

Many purchase and sale contracts between the buyer and seller are relied upon as escrow instructions. More than establishing the rights and agreement between the parties and providing necessary information relating to the closing, the contract also functions as instructions for escrow. Because contracts are usually a standardized form, these escrow provisions may not contain sufficient information for holding funds in escrow for your particular transaction, especially if those funds are to be held after closing. Common pitfalls of relying on a purchase and sale contracts may include:

- Ambiguous and inconsistent language
- Lack of complete terms or directions
- Uncertainty as to closing agent's obligations
- Unwanted obligations imposed on you as the closing agent

In addition to providing pertinent instructions to the escrow agent, an escrow agreement also provides much more detail as to the parties' intent. Therefore, the preferred practice when asked to hold funds in escrow is for the parties to execute a separate escrow agreement or escrow instructions. An agent should not hold funds or property without a written escrow agreement. If the escrow agreement is part of the purchase and sale agreement, you must carefully review the escrow provisions and confirm that these common pitfalls have been addressed. For an explanation and examples of escrow provisions and instructions, *see* Sample Escrow Provisions and Instructions attached.

Receipt and Holding of Escrow Funds

Prudent business practices require a written escrow agreement before the receipt of escrow funds. Any funds sent to the escrow agent without a written escrow agreement should be refused or returned to the sender in a timely fashion.

Once the escrow agreement has been signed, the next consideration is proper handling of the money.

Collected Funds

If you are a licensed title insurance agent issuing title insurance as part of your closing, you may not place the funds you receive as part of your transaction in an interest bearing account unless you obtain written consent from the buyer and seller. *See* Fla. Admin. Code §69O-186.008(3). Any interest earned on these funds should be addressed in this consent and it should note that the agency may not accept the interest unless both parties have voluntarily released their right to that interest.

Florida law prohibits a title agent from disbursing funds unless the funds are "collected funds," defined as "funds deposited, finally settled and credited to the title insurance agent's or title insurer's trust account." *See* Fla. Admin. Code §69O-186.008(1). The Florida Rules Regulating The Florida Bar have virtually the same requirements for attorneys disbursing only with collected funds. *See* Rule 5-1.1. Specifically, you may disburse if a deposit is made by:

- Certified check, cashier's check or money order;
- Loan proceeds from a federally insured bank;
- A check drawn on a Florida lawyer's trust account, a Florida mortgage broker's account, a Florida title insurer or title agent's escrow trust account; or
- A check issued by the United States Government, the State of Florida or its agency or subdivision; or
- A wire transfer to the escrow agent's trust account that has been cleared and fully credited to that account without the ability of the remitting party to recall the wire.

Reconciliation of Escrow Funds

Each Florida licensed title agent must maintain a monthly escrow reconciliation of every escrow account, which must be reported along with supporting documentation to the underwriter on a monthly basis. *See* Fla. Admin. Code §186.009(1). As for funds received in escrow, licensed title agents are required to maintain a separate ledger card for each closing where funds are received, which must include dates and amounts of monies received and disbursed on that account. *See* Fla. Admin. Code §186.009(1).

Similarly, attorneys licensed by The Florida Bar are also required to adhere to the rules set out in Rule 5-1.2, Trust Accounting Records and Procedures. This rule requires attorneys to reconcile their trust accounts monthly, including a comparison of the reconciled balances and the ledger. *See* Rules Regulating The Florida Bar, Rule 5-1.2(d).

If you need assistance with escrow account reconciliation, you may contact Kenny Yankton, Quality Insurance Manager at Kenneth.Yankton@fnf.com or call 407-670-0776.

Third Party Deposits

On occasion closing agents are asked to accept deposits from a "third party," a person who is not the buyer or seller, but is depositing funds on behalf of either the buyer or seller. The most common situation is a deposit for the credit of the buyer, often described as a gift from a relative or friend to assist in the closing costs or down payment.

When these deposits are accepted into escrow, ***both*** the depositing party ***and*** the party receiving credit (buyer or seller) should be execute Third Party Deposit Escrow Instructions, see attached. By executing this document, the depositing party will fully acknowledge that the funds are to be used in accordance with the instructions of the party so credited and shall not be conditional upon any instructions and more importantly the receipt of documents (i.e. note and deed of trust secured by the property) by the depositing party. In addition, all funds deposited become non-refundable to the depositing party. A copy of this fully executed document should be sent to the lender immediately upon receipt of the funds, which serves as a full disclosure of funds deposited from a party other than the borrower on the new loan. As a reminder, any third party deposits must also be shown on the Closing Disclosure.

As a practical matter, you may be asked to accept a third party check, meaning checks payable to someone other than your agency, with an endorsement on the back. As a best practice, you should not agree to accept these third party checks for three main reasons:

1. Third party checks take longer to clear.
2. Neither you as the agent, nor the bank, can verify the authenticity of the endorsement.
3. If the check fails to clear the bank, you have no recourse against the remitter since the funds were never paid to you.

As a best practice, you should require the payee deposit the check into their own account and either write a new check or wire the funds to you as the closing agent. If you have any unusual requests regarding third party deposits or checks, contact the Underwriting Department.

Proper Release and Disbursement of Escrow Funds

Most of the challenges relating to escrow funds relate to release and disbursement of the funds. We will first review the requirements for proper release of the funds, then we will discuss consider issues related to escrow funds in dispute.

Attorneys

As stated above, as the escrow agent, you have a duty to perform in accordance with the express terms of the escrow agreement. *See* Professional Ethics of The Florida Bar Opinion 02-6, March 2003. The attorney must also comply with The Rules Regulating The Florida Bar, specifically Rules 5-1.1 and 5-1.2 relating to Trust Accounts.

The Florida Bar and Florida courts have issued opinions and rulings on particular issues facing attorneys seeking to disburse escrow funds. For example, The Florida Bar issued an opinion stating that an attorney cannot seek protection for release of trust funds by way of an indemnification agreement.[4] *See* The Florida Bar Opinion 02-6, id. In addition, the Florida Rules Regulating The Florida Bar set forth an attorney's responsibilities regarding non lawyer assistants. *See* Rule 4-5.3 requiring "a person who uses the title of paralegal, legal assistant, or other similar term when offering or providing services to the public must work for or under the direction or supervision of a lawyer or law firm." Attorneys should also be reminded that a violation of these rules can result in serious consequences. In one attorney disciplinary proceeding, the Florida Supreme Court imposed sanctions against an attorney who "abdicated her responsibility as a lawyer and her fiduciary obligation to the parties involved in the closing when she allowed [a nonemployee who was not under her direct supervision] to access funds held in her escrow account."[5] *See The Florida Bar v. Hines*, 39 So.3d 1196 (2010).

Licensed Title Agents

Florida law requires that funds in your escrow trust account be used only in accordance with the terms of the individual, escrow, settlement, or closing instructions under which the funds were accepted. The rules further require that as the settlement agent, you must certify that you have reviewed the forms prepared for the transaction and agree to disburse the escrow funds in accordance with the terms of the transaction and Florida law. As part of your closing, you must certify the trust to the following statement:

> *I have reviewed the Closing Disclosure, the settlement statement, the lender's closing instructions and any and all other forms concerned with the funds held in escrow, including any disclosure of the Florida title insurance premiums being paid, and I agree to disburse the escrow funds in accordance with the terms of this transaction and Florida law.* *See* Rule 69B-186.008(3), Fla. Admin. Code.

All buyers, borrowers and sellers involved in the transaction must provide written approval authorizing the holding of escrow funds and disbursement of escrow funds by the named title agency. *See* Rule 69B-186.008(5), Fla. Admin. Code. As a reminder, any person who converts or misappropriates funds held in escrow commits a misdemeanor or felony (depending on the dollar amount), punishable by criminal penalties. *See* Section 626.8473, Fla. Stat.

[4] The Professional Ethics Committee of The Florida Bar Board of Governors issued this advisory opinion regarding the ethical propriety of an attorney requiring a client, who is the seller of real property, to sign an indemnification agreement before releasing funds held by the attorney as a deposit when the buyer is in default. The Board reached the opinion that to shift the risk of a buyer lawsuit against the attorney for wrongful release of the deposit to the seller was a conflict of interest and thus ethically impermissible. The attorney must either continue to hold the funds or file an interpleader action.

[5] In this case, the nonlawyer was the owner of a lending group who promised closings to the attorney, where the attorney would provide all the title work and conduct the closings. The attorney opened a new escrow account for these closings and allowed the owner to have shared signatory authority over this escrow account. As part of the closing in question, the owner stopped payment on a seller's proceeds check for approximately $120,000. Although the funds were recovered by the attorney and by a claim under the title insurance policy making the client whole again, the attorney still faced disciplinary proceedings for her actions.

ALTA Best Practices

Agents should be familiar with the detailed standards set out in these ALTA Best Practices, which specifically relate to escrow accounts.

ALTA BEST PRACTICES PILLAR 2: ESCROW ACCOUNT CONTROLS
✓ Sample Escrow Account Controls Checklist
✓ Disbursement of Proceeds Guidelines
✓ Sample Escrow File Audit Procedure for Managers - Checklist for Safeguarding of Client Funds

ALTA BEST PRACTICES PILLAR 4: DISBURSEMENT PROCEDURES
✓ Sample Written Settlement Policies
✓ Procedures: Disbursement Procedure

Escrow Funds in Dispute

Authorization and Release Signed by All Parties

"[The escrow agent] finds herself caught in the melee amidst allegations that by disbursing the funds, she is guilty of conversion, breach of fiduciary duty, statutory theft, and deceptive and unfair trade practices." *See Redland Estates v. Lynn*, 920 So.2d 1218 (Fla. 3d DCA 2006). Despite this sobering pronouncement by the court in this case, the claims against the escrow agent that she improperly disbursed escrow funds were dismissed based on the undisputed facts that "*both parties expressly agreed to the release of escrow funds prior to the time each disbursement was made.*"[6] The best practice for release of disputed escrow funds is for both parties to agree in writing to authorize the release of the funds and release the escrow agent from any liability relating to that release and disbursement. The escrow agent should not release the funds unless and until the parties agree in writing do so. *See* Rules Regulating The Florida Bar, Rule 5-1.1(f). Whether or not a party is in breach of contract is not a determination to be made by the closing agent. *See San Francisco Distribution Center, LLC v. Stonemason Partners, LP*, 183 So.3d 391 (Fla. 3d DCA 2014).[7]

Interpleader and Court Order

What if the parties do not agree as to how to release the funds? First, the escrow agent is required to take reasonable action to inform the parties of its refusal to follow escrow instructions of only one party. Even if the escrow agreement does not fully delineate the escrow agent's duties, the escrow agent must at a minimum, respond to one party's instructions to release the funds. *See* SMP, Ltd., id. As a best practice, the escrow agreement should contain a provision allowing the escrow agent, in its sole discretion, to file an action to interplead the funds. *See* Fla.R.Civ.P. Rule 1.240. Another option is a provision in the escrow agreement allowing the escrow agent to withhold disbursement of the funds until receipt of a non-appealable order from a court of competent jurisdiction ordering the disbursement of the funds.

Conclusion

As a title insurance agent or attorney, you are called upon to provide services that reflect the unique nature of real estate transactions. Those services may go beyond acting as the closing agent, to also acting as the escrow agent. Despite those different roles, your singular purpose is to assist the parties in a real estate transaction by insuring that the transfer of property is achieved with maximum efficiency, security and safety. These materials are an effort to assist our agents in understanding the valuable role of an escrow agent and to increase our efforts to minimize conditions under which an escrow loss may occur. FNTG's Underwriting Department, Agency Administration, and Agency Commercial, Escrow and Closing Services welcome any questions you may have.

[6] The court did not express opinion as to the underlying breach of contract dispute between the seller and the buyer which continued in litigation.

[7] The escrow agent released disputed escrow funds to the buyer despite a provision in the contract giving the seller the option of retaining the deposit as liquidated damages or seeking specific performance. The court held the liquidated damages clause to be valid and required the deposit to be paid to the seller.

Sample Escrow Provisions and Instructions

This document was developed by FNTG's Florida Agency Commercial, Escrow and Closing Services Department which has extensive experience in holding earnest money deposits and other monies in escrow. It includes sample provisions and best practices for the escrow agent's consideration. As a best practice, the parties should execute a separate Escrow Agreement. However, due to the complexity of many transactions, there may be a need to incorporate escrow provisions into a real estate contract. In those instances, the language highlighted and in **bold lettering** is essential; while the language highlighted and in *italics* reflects best practices. Please be reminded that acting as escrow agent is separate and distinct from acting as an FNTG title insurance issuing agent, and as such, you should consult your own legal counsel when considering the provisions to be included in your agency's Escrow Agreement.

GENERAL REQUIREMENTS

1. Reliance Language. FNTG must be able to rely on communications from the parties via email or other communications that we have a good faith belief to be legitimate and exculpated from liability for not performing any additional due diligence. *Below is sample language:*

> Reliance on Communications and Documents. **Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statements or assertions contained in such writing or instrument, and may assume that persons purporting to give any writing, notice or instruction in connection with the provisions hereof has been duly authorized to do so.** *Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any written statements or instructions delivered to it. Escrow Agent shall not be liable in any manner for confirming the identity, authority, or rights of any party hereunder. Escrow Agent undertakes to perform only such duties as are expressly set forth herein, and there are no implied duties or obligations of Escrow Agent.*

2. Notices Provisions. Notice is crucial so that parties can be properly identified and contacted. These sections must be properly completed to ensure notices are properly provided when they are desired or required. *See sample language below:*

> **Notices. All notices and demands made hereunder shall be in writing and given to the person(s) to whom the notice is directed, either by: (a) actual delivery at the address(es) stated below, including a national overnight delivery service, which shall be deemed effective at the time of actual delivery; (b) certified mail, return receipt requested, addressed as stated below, posted and deposited with the U.S. Postal Service, which shall be deemed effective three (3) business days after being so deposited; (c) facsimile transmission to the facsimile transmission number stated below, which notice shall be deemed effective upon completion of the facsimile transmission provided the sender has written proof of time, date and successful completion of such electrical transmission; or (d) e-mail transmission to the e-mail address stated below, which notice shall be deemed effective upon completion of the e-mail transmission, provided that any notice given by e-mail transmission shall transmit the notice by a PDF attachment showing all required signatures and the sender has written proof of time, date and successful completion of such electrical transmission. All notices, demands, or other communications hereunder shall be addressed as follows:**

If to Seller:

_____
_____
_____
Attention: _____
Facsimile: _____
E-Mail: _____

With a copy to:

_____
_____
_____
Attention: _____
Facsimile: _____
E-Mail: _____

If to Buyer:

_____
_____
_____
Attention: _____
Facsimile: _____
E-Mail: _____

With a copy to:

_____
_____
_____
Attention: _____
Facsimile: _____
E-Mail: _____

If to Escrow Agent:

_____ Title Insurance Company
13800 NW 14th Street, Suite 190
Sunrise, FL 33323
Attention: _____
Facsimile: _____
E-Mail: _____

With a copy to:

_____ Title Insurance Company
13800 NW 14th Street, Suite 190
Sunrise, FL 33323
Attention: _____
Facsimile: _____
E-Mail: _____

Where two recipients of a party to this Escrow Agreement are shown above, any notice, demand, or other communication hereunder shall be effective when first given to either recipient, provided that both recipients are given such notice, demand, or other communication.

3. Governing Law & Venue. FNTG generally requires that the governing Law of the escrow provisions of the agreement be Florida and the venue should preferably be the county where the Land is located. *See sample language below:*

Governing Law: This Escrow Agreement shall be: (a) governed in accordance with the laws of the State of Florida; (b) amended only by a written instrument signed by Buyer, Seller, and Escrow Agent; and (c) binding upon and enforceable by the parties and their respective successors and assigns. Any legal proceeding relating hereto shall be maintained only in _____ County, Florida.

4. FIRPTA Language. As you know, FIRPTA is a concern for the seller and the closing agent. FNTG has historically and continues to take the position that we will not assume any liability with regard to FIRPTA determinations and require that the parties be placed on notice that we are not responsible for any FIRPTA liability. See *sample language below:*

> Non-resident Alien. *The Foreign Investment in Real Property Tax Act (FIRPTA), Title 26 U.S.C., Section 1445, and the regulations there under, provide in part, that a transferee (buyer) of a U.S. real property interest from a foreign person (non-resident alien) must withhold a tax equal to ten percent (10%) of the amount realized on the disposition, report the transaction and remit the withholding to the Internal Revenue Service within twenty (20) days after the transfer.* **Escrow Agent has not and will not participate in any determination of whether the FIRPTA tax provisions are applicable to the subject transaction, nor act as a Qualified Substitute nor furnish tax advice to any party to the transaction. Escrow Agent is not responsible for determining whether the transaction will qualify for an exception or an exemption and is not responsible for the filing of any tax forms with the Internal Revenue Service as they relate to FIRPTA. Escrow Agent is not the agent for the buyer for the purposes of receiving and analyzing any evidence or documentation that the Seller in the subject transaction is a U.S. citizen or resident alien. The Buyer is advised they must independently make a determination of whether the contemplated transaction is taxable or non-taxable and the applicability of the withholding requirement to the subject transaction, and should seek the advice of their attorney or accountant. Escrow Agent is not responsible for the payment of this tax and/or any penalty and/or interest incurred in connection therewith and such taxes are not a matter covered by the Owner's Policy of Title Insurance to be issued to the Buyer.** *The Buyer is advised they bear full responsibility for compliance with the tax withholding requirement if applicable and/or for payment of any tax, interest, penalties and/or other expenses that may be due on the subject transaction.*

SPECIFIC REQUIREMENTS

5. General Escrow Instruction: FNTG has a well-established banking relationship with Bank of America that ensures the participation of a strong banking institution and processes and procedures that allow for administrative ease of transfers of money. As a result, FNTG will only hold money in escrow with Bank of America. Additionally, FNTG must have General Escrow language that provides instructions that addresses the following:

   a. Deposits by check vs. deposit by wire

   b. Whether funds are to be held in interest bearing vs. non-interest bearing account and the requirements needed to hold in interest bearing account.

Below is sample escrow language:

General Terms of Escrow. *Escrow Agent agrees to act as escrow agent in accordance with the provisions of this Escrow Agreement.* **The Deposit shall be paid to Escrow Agent in the form of a check or by wire transfer. If the Deposit is paid by check: (a) Escrow Agent agrees to deposit the check promptly upon receipt; (b) if the check is not honored upon presentment, Escrow Agent shall provide Buyer and Seller with notice thereof; and (c) the Deposit shall not be deemed made if the check is not honored upon presentment.** *If the Deposit is paid to Escrow Agent by wire transfer, it shall be wired to the following account:*

Name of Bank: Bank of America
Address of Bank 275 Valencia Ave
Brea, CA 92823

ABA Number:
Account Number:
Name of Account: _____ Title Insurance Company Florida Agency Custodial Escrow Account

Address: 13800 NW 14th Street, Suite 190
Sunrise, FL 33323

Attention: _____ (_____@fnf.com)
File Number: _____

Upon receipt of the Deposit, Escrow Agent shall provide Buyer and Seller with notice thereof.

Escrow Agent is hereby directed to deposit the Deposit, upon receipt thereof, in either (place an "X" in front of option A. or B., below, to indicate the type of account in which the Deposit is to be deposited):

____ A. A non-interest bearing account throughout the duration of this escrow;
or

____ B. A non-interest bearing account until such time as the completed and signed original Form W-8 or Form W-9 is received; and (ii) an interest bearing money market account after the completed and signed original Form W-8 or Form W-9 is received. Interest earned on the funds deposited shall be reported by Escrow Agent as accruing to the benefit of the party providing the Form W-8 or Form W-9. Buyer and Seller, respectively, each certifies that it is not subject to backup withholding due to Notified Payee Underreporting as defined in Section

3406(c) of the Internal Revenue Code. Accrued interest shall accumulate and constitute a part of the Deposit.

The party entitled to receive interest shall provide Escrow Agent with a completed and signed original Form W-8 or Form W-9, including its federal taxpayer identification number _____.

Said account shall be maintained at Bank of America in the name of "_____ by _____ Title Insurance Company as escrow agent".

6. Fee Provisions: FNTG requires that fee provisions be explicit regarding fee for our services of holding funds and whom will be responsible for payment of these fees to avoid any confusion in the event of disbursement or a dispute. Please contact the Closing Department with regard to the specific fee amounts. *See below for sample language:*

> Compensation and Reimbursement of Expenses. **Seller and Buyer jointly and severally agree to pay Escrow Agent the sum of _____ dollars ($_____) as compensation for the escrow services Escrow Agent provides hereunder and, further, to reimburse Escrow Agent upon request for all expenses including attorneys' fees, incurred by it in performing its duties hereunder. Escrow Agent may deduct the amount of such fees and expenses from the Deposit held at the time of disbursement made pursuant to the provisions hereof set forth or in a court order.**

7. Hold Harmless Language on the Financial Institution. FNTG must be held harmless regarding the solvency of the accounts and reminding of the limitations to the FDIC protection. *See sample language below:*

> Financial Institutions - Escrow Account. *Notwithstanding the Escrow Agent's acquiescence in the selection of the financial institution at which the escrow account is maintained,* **Escrow Agent shall not be responsible or liable for: (a) the rate of interest and any fluctuation in the rate of interest accruing on the Deposit or other funds deposited; (b) any failures on the part of the financial institution at which the account is maintained; (c) the unavailability of Federal Deposit Insurance Corporation ("FDIC") insurance on all or any portion of the Deposit; (d) penalties, loss of principal or interest, or any delays in the withdrawal of funds, which may be imposed by said financial institution as a result of the making or redeeming of the Deposit pursuant to the Escrow Agent's instructions; (e) any levies by taxing authorities based on the taxpayer identification number used to establish the interest bearing account; or (f) any matters beyond the direct and exclusive control of Escrow Agent.**
>
> **By execution of this Escrow Agreement, the parties acknowledge that they are aware that the FDIC coverage applies only to a cumulative maximum**

amount of $250,000 for each individual depositor for all of depositor's accounts at the same, or related, institution. Buyer and Seller understand and agree that Escrow Agent assumes no responsibility for, nor will be held liable for, any loss arising from the fact that the amount of the above account may cause the aggregate amount of any individual depositors to exceed $250,000 and that any excess amount is not insured by FDIC. Said parties further understand that FDIC insurance is not available on certain types of bank instruments, including, but not limited to, repurchase agreements, letters of credit, and other instruments.

The Escrow Agent shall not be responsible for any loss, diminution in value or failure to achieve a greater profit as a result of the investment of the Deposit. Escrow Agent is not responsible for maintaining the value of any investment or providing investment counseling.

8. Response to Disputes. A particular source of claims has occurred when parties asserted that they were given insufficient time to object or assert any rights they might perceive to have under the terms of any agreement. We must be vigilant to determine what these time frames are. The best practice is always to require all parties to consent to any disbursement of proceeds. *See below for sample language requiring mutual consents to disburse.* However, if the parties will not accept this language, then FNTG will accept a waiting period of 7 calendar days or 5 business days, assuming provisions requiring any unilateral demand for disbursement of proceeds are noticed to all affected parties as long as the Notice provisions are satisfactorily completed.

Buyer's Demand for Deposit. *If at any time Escrow Agent receives written notice from Buyer ("Buyer's Notice") requesting or demanding the return of the Deposit, then Escrow Agent shall promptly deliver a copy of the Buyer's Notice to Seller. Escrow Agent shall not, however, disburse the Deposit or any portion thereof as requested or demanded unless and until such time as Escrow Agent has received written mutual authorizations and instructions signed by Buyer and Seller thereby authorizing the disbursement of the Deposit, setting forth instructions as to the manner in which the disbursement is to be made, and expressly providing that Escrow Agent's delivery of the Deposit in accordance with such authorization and instructions shall constitute the full and complete performance by the Escrow Agent of all of its duties and responsibilities created hereunder or in the Purchase Agreement or both and, further, by execution of said written authorization and instructions, the Buyer and Seller are automatically releasing Escrow Agent from any and all liability created hereunder or under the Purchase Agreement or both without the necessity of executing any further documentation. If Buyer and Seller are unable to mutually agree to the disposition of the Deposit, then the disposition of the Deposit shall be governed by the terms and provisions hereinafter set forth.*

Seller's Demand for Deposit. If at any time Escrow Agent receives written notice from Seller ("Seller's Notice") requesting or demanding the return of the Deposit, then Escrow Agent shall promptly deliver a copy of the Seller's Notice to Buyer.

Escrow Agent shall not, however, disburse the Deposit or any portion thereof as requested or demanded unless and until such time as Escrow Agent has received written mutual authorization, direction and instructions signed by Buyer and Seller thereby authorizing the disbursement of the Deposit, setting forth instructions as to the manner in which the disbursement is to be made, and expressly reciting that Escrow Agent's delivery of the Deposit in accordance with such authorization and instructions shall constitute the full and complete performance by the Escrow Agent of all of its duties and responsibilities created hereunder or in the Purchase Agreement or both and, further, by execution of said written authorization and instructions, the Buyer and Seller automatically release Escrow Agent from any and all liability created hereunder or under the Purchase Agreement or both without the necessity of executing any further documentation. If Buyer and Seller are unable to mutually agree to the disposition of the Deposit, then the disposition of the Deposit shall be governed by the terms and provisions hereinafter set forth.

9. Dispute resolution language. FNTG's largest sources of claims and sources of risk with regard to escrow deposits are instances where the holder of an earnest money or escrow funds receives conflicting instructions. The holder of said funds must have provisions that shield it from being drawn into litigation between the parties. *See below for sample language:*

> Resolution of Disputes. **In the event of any dispute between Buyer and Seller regarding the Deposit or any other funds or documents held by Escrow Agent, or in the event Escrow Agent shall receive conflicting demands or instructions with respect thereto, Escrow Agent may withhold disbursement or delivery of the same to either party until Escrow Agent receives either:**
>
> > **(a) Joint written instructions: (i) signed by Buyer and Seller, (ii) directing the manner in which the Deposit and any other funds and documents are to be disbursed, (iii) acknowledging that the Escrow Agent, upon disbursing and delivering in accordance with the written authorization, has completed all of its duties and responsibilities as created in this Escrow Agreement and the Purchase Agreement , and (iv) releasing Escrow Agent from further liability in connection with the escrow, including all liability arising under this Escrow Agreement, the Purchase Agreement, or both; or**
> >
> > **(b) A non-appealable order from a court of competent jurisdiction that is binding upon Escrow Agent thereby ordering the disbursement of the Deposit or other funds or documents.**

10. Resignation Provisions: As indicated in the previous item, the holder of funds must be able to reserve the right to resign or interplead the funds when there is a present or perceived imminent

dispute. These are separate, but related rights. *See below for sample language on Resignation Provisions.*

> Escrow Agent Resignation: **Escrow Agent, hereunder, may at its sole discretion resign at any time by giving ten (10) business days prior written notice to the Buyer and Seller. In such event, the successor escrow agent shall be selected by the Buyer and approved by the Seller, such approval not to be unreasonably withheld or delayed, as communicated to Escrow Agent in writing by Seller to Buyer. Escrow Agent shall then deliver to successor escrow agent the Deposit, to be held by successor escrow agent pursuant to the terms of this Escrow Agreement. Should successor escrow agent not be appointed and communicated to Escrow Agent within thirty days (30) business days of issuance of Escrow Agent's election to resign then Escrow Agent may Interplead or otherwise place Deposit in a Court of Competent jurisdiction, as provided in this Escrow Agreement.**

11. Interpleader Provisions. These provisions are critical when the parties have shown either an inability or desire to resolve matters amicably. In these instances, the holder of the funds must have the ability to deposit the funds with a court of competent jurisdiction and be able to collect its attorney's fees for such efforts. FNTG has an internal litigation group that can handle these matters, but they must have the right to do so and be able to seek the remedy of our costs and attorney's fees for these efforts. *See below for sample language:*

> Interpleader. **In the event of any dispute or conflicting demands or instructions, or disagreement regarding the interpretation of this Escrow Agreement, or regarding the rights and obligations or the propriety of any action contemplated by Escrow Agent hereunder, Escrow Agent may, at its sole discretion, file an action in interpleader in the Circuit Court in and for _____ County, Florida, or in such other court in said county and state having competent jurisdiction over the matter. If Escrow Agent files an action in interpleader, as aforesaid, or is joined as a party to any judicial or quasi-judicial proceeding as the result of it serving as Escrow Agent hereunder, Buyer and Seller, jointly and severally, agree to indemnify and hold Escrow Agent harmless from any and all liability, costs, expenses, and attorneys' fees, at trial and appellate level, that Escrow Agent incurs in prosecuting or defending any such proceedings. Further, Buyer and Seller agree that Escrow Agent shall be entitled to seek payment of its fees, costs, expenses, and attorneys' fees, including attorneys' fees at both trial and appellate levels, from the Deposit or other funds held in escrow hereunder.**

12. General Release Language. FNTG as holder of escrow funds must have general release language that makes it clear that the holder of escrow funds is **only a stake holder and will only be liable for gross negligence and willful misconduct**. FNTG will not assume liability for simple negligence. *See below for sample language*

Release of Liability. **The Escrow Agent is acting as a stakeholder only with respect to the Deposit. It is agreed that the duties of the Escrow Agent are only as herein specifically provided, and are purely ministerial in nature. Escrow Agent shall not be liable for any mistakes of fact or errors in judgment, or any acts or omissions of any kind, unless caused by its willful misconduct or gross negligence. Buyer and Seller jointly and severally agree to release and indemnify and hold Escrow Agent harmless from any and all claims, demands, causes of action, liability, damages, judgments, including the reasonable costs of defending any action against it, together with any reasonable attorneys' fees incurred therewith, in connection with Escrow Agent's undertaking pursuant to this Escrow Agreement, unless such act or omission is a result solely of the willful misconduct or gross negligence of Escrow Agent, including but not limited to any action in interpleader brought by the Escrow Agent.**

13. Specific Release Language upon Release of Funds. Specific releases are generally stronger than general releases. For this reason, it is preferable and important to have a specific release once funds are finally disbursed to a party under the terms of the agreement.

    Discharge of Escrow Agent. **Escrow Agent shall be discharged of its obligations and liability hereunder upon the disbursement or delivery of the Deposit and any other funds or documents held by it in accordance with the terms of this Escrow Agreement or the Purchase Agreement or both, including any delivery or disbursement pursuant to an interpleader action.**

As discussed above, these are provided as strong guidelines when FNTG is asked to perform the role of escrow agent. Again, any specific questions or concerns should be directed to the Closing Department.

Questions?
Florida Agency Commercial Closing:
Jennifer Cruise 954-308-3494
Mary Cornelius 954-308-3462

THIRD PARTY DEPOSIT ESCROW INSTRUCTIONS

TO: Fidelity National Title Insurance Company Date: _____

Escrow No. _____

____ I hand you herewith my check in the amount of $

Or;

____ I have wired $_____ to your trust account

You are instructed to apply these funds in the above numbered escrow for the benefit of _____, a party to this escrow. You are authorized to use said funds in completing the escrow under instructions given or to be given to you by said party. I hereby waive any present or future interest in said funds.

If these funds are for the benefit of the buyer and the buyer is obtaining a new loan in order to complete the transaction, you are authorized to share the details of this deposit, including the bank account information the funds came from with the buyer's new lender.

I acknowledge and understand the escrow instructions may call for a release of said funds prior to the close thereof, and may contain provisions regarding disbursement of funds in the event this escrow is terminated. Any such payment of these funds in accordance with the instructions of the parties to this escrow is without liability or recourse upon ***Fidelity National Title Insurance Company*** for the return of said money.

In the event this escrow is cancelled or your agency is revoked, any portion of these funds remaining on deposit which are NOT subject to disbursement (payment) instructions of the parties, shall be refunded solely in accordance with the instructions of the parties to this escrow.

Third Party Depositor:

{Name}
{Address}
{City, State Zip}
{Phone}

The undersigned hereby accept and approve said funds for use in the above numbered escrow.

_____ Date: _____

By:

Its:

Florida Agency

COMMERCIAL, ESCROW & CLOSING SERVICES

FIDELITY NATIONAL TITLE GROUP®

Strength. Expertise. Service.™

Commercial Closing Services

We handle anything from an earnest money deposit held in escrow to a full title & closing transaction – we'd be happy to assist you!

- In compliance with current ALTA Best Practices and all accounting standards
- Fully staffed closing department with dedicated underwriting
- Coordination with title order and title fulfillment as required
- Settlement Statement Preparation as required
- Tax Lien / Municipality search coordination
- UCC recording coordination
- Defeasance transactions
- Escrow letters
- Recording
- 1099's

Developer & Condominium Deposit Services

- Accounting program specifically designed to track condo deposits
- Reservations Deposits and Contracts Deposits
- Monthly Reporting (by Unit Name & Unit Number)
- Ten Percent and Special (Excess) accounts for Contracts
- Ten Percent Disbursement under State Approved Alternative Assurances
- Construction Excess Disbursement
- Secure web-based reporting available
- Transfer deposits to closing agent for closing
- Escrow letters

Construction Disbursement Services

Basic Construction Loan Services

- Title Search and Title Endorsement

Full Service Construction Loan Services

- Title Search and Title Endorsement
- Review of Subcontractors and Notice to Owner Release(s)
- Requisition for Construction Loan Advance(s)
- Application and Certificate for Payment (AIA)
- Sworn Statement of Borrower(s)
- Sworn Statement of Contractor(s)

Contact us today!

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Ed Hamann
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Edward.Hamann@fnf.com

AGENCY ADMINISTRATION

Questions? Contact Us: 877-947-5483

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Kenny Yankton Quality Assurance Manager	Kenneth.Yankton@fnf.com	407-670-0776

AGENT SERVICES

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Anne Dubiel Premium AR Research & Resolution | Agency Administration	Anne.Dubiel@fnf.com	407-618-2934
Brigit Fincham Premium AR Research & Resolution	Brigit.Fincham@fnf.com	407-618-5096
Diane Buchanan Central FL, North FL & Timeshare Agency Administration	Diane.Buchanan@fnf.com	407-670-0779
Gino Falzetti Premium Account Analyst | Cancelled Agent Issues	Gino.Falzetti@fnf.com	407-670-0780
Terra Thomas South FL Agency Admin | State of FL Compliance for Insurance, Bonds, Appointment Licensing Renewals | Approved Attorney	Terra.Thomas@fnf.com	407-618-5089

QUALITY ASSURANCE | ESCROW ACCOUNTING SERVICES

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Arlene Pino-Montas Escrow Account Reconciler and Reviewer	Arlene.Pino-Montas@fnf.com	407-618-2959
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Kim Reese All Quality Assurance Functions	Kim.Reese@fnf.com	407-670-0778
Nancy Potter Escrow Account Reconciler and Reviewer	NPotter@fnf.com	407-618-5097
Sunshine Gregory All Quality Assurance Functions	Sunshine.Gregory@fnf.com	407-618-5078

ONLINE PROGRAMS & SUPPORT

TitleWave (Place title order)	www.titlewave.net	877-947-5483
agentTRAX (CPLs and policy jackets)	www.agenttrax.com	800-586-0031
Prior Policy Requests	FLCustomerService@fnf.com	877-947-5483
TitleWave Technical Support	fntgflorida@fnf.com	877-947-5483
FNTG Florida Agency Website	www.fntgflorida.com	877-947-5483
Monthly Escrow Reconciliations	Ops-FLEscrowRecs@fnf.com	877-947-5483
Insurance Renewals	FLInsurance@fnf.com	877-947-5483

PREMIUM PROCESSING

Send Premium & Policies to:
Fidelity National Title Group
Attn: FL Agency Administration
2400 Maitland Center Parkway, Suite 110
Maitland, FL 32751
877-947-5483

SEARCH FEES

Send Search Fees to:
Fidelity National Title Group
Attn: Accounting Department
3801 PGA Boulevard, Suite 605
Palm Beach Gardens, FL 33410
561-686-5574

CORPORATE STRENGTH.
LOCAL SERVICE.

2400 Maitland Center Parkway, Suite 200 | Maitland, FL 32751
Phone: 407-645-1070 | Fax: 321-263-0223 | FLAdmin@fnf.com