



GOOSE NEWS

“I CAN’T GET NO SATISFACTION”

The Legal Corner: By Graydon (Gray) V. Olive, III, Esq.



While grammatically incorrect, many of us remember the title as the refrain of an old Rolling Stones tune in the late 1960s. The process of tracking payoffs and obtaining and recording satisfied mortgages is time-consuming and often frustrating. And, prior unsatisfied mortgages continue to be a leading cause of claims.

Here are some tips for tracking payoffs and satisfactions:

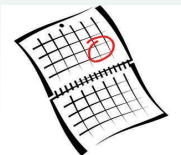
- Review the title work to see if there are any prior mortgages or liens that have not been satisfied. Be sure to address these in your commitment and closing statement.
- Compare your payoff letter(s) to the lender’s name shown on the mortgage you are paying off. Do they match? If not, will you need to record an assignment?
- Confirm the payoff was sent by obtaining Federal Reserve reference numbers from your bank.
- Check your account on-line every few days to be sure the payoff funds were debited from the account.
- Create a tickler system to track satisfactions for each payoff.
- If the satisfaction is not received after 30 days, contact the lender to request satisfaction.
- If the satisfaction is not received after 60 days, consider filing the attorney satisfaction affidavit.
- After 90 days, consider informing the lender of the penalties imposed by SC Code 29-3-320 (1/2 the amount of the debt or \$25,000.00, whichever is less).
- File the attorney satisfaction affidavit.

We hope these tips will be helpful to assist you in tracking payoffs and filing satisfactions.

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**Be Sure
to Check Out
Page 5 of
Goose News
for our
updated Training
Calendar**





I See Dead People....

By: Susan Stewart



It can be quite scary when you run into the ghost of a predeceased titleholder in your chain of title. There is no reason to fear, however, if you have a simple arsenal of ghost-busting weapons at your disposal.

Your hauntings may occur at various times throughout your title examination. Probably the event that most thoroughly causes your hair to stand on end is at the closing table, or just prior to closing, when you are informed that one of the current title holders is no longer among the living. The easiest tool to utilize is the telephone, to call 1-800-732-8005 (loosely translated, Ghost busters!). We will be glad to analyze the particulars of your unique transaction. The first question we will ask is whether or not a probate file has been opened. We will want to explore with you several other key factors as follows:

- In what state did the deceased last reside?
- Did the deceased have a will?
- Has a Personal Representative been appointed?
- Does the Personal Representative have the power to sell real estate?
- Has publication of probate been made?
- Have claims against the estate been filed?

In the event title was held as joint tenants with rights of survivorship, a copy of the death certificate filed with the deed or mortgage may be sufficient.

Section 62-3-910(B) of the South Carolina Code of Laws provides protection for purchasers for value who take title to real property from the Personal Representative of an estate. If deed stamps are paid on the recordation of the deed there is *prima facie* evidence that the transfer was for value.

If the individual died with a valid will that has been admitted to probate in the county where the subject land is located, a Personal Representative has been appointed and has power under the will to sell, we can usually move forward with the closing with an indemnification agreement from the Personal Representative indicating that he or she will complete the probate of the estate in proper form.

There are several other chilling matters related to titleholders in the chain who died while owning real property. While we will always want to review the above questions, we will also need to consider whether or not the estate is still open or has been properly closed. We will need to review the following:

- What is the year of death?
- If the deceased died intestate, has there been a determination of heirs?
- If there is a will of record, who was devised the real property in question?
- What is the value of the estate?
- Have claims been filed?
- Has a deed of distribution been filed?

You may even find bloodcurdling situations in which for a forty year stretch of time all you have are recitals in deeds alleging who all the children and grandchildren of each title holder are and indicating how each begat others and some of them have predeceased, remarried, or fathered illegitimate children. These situations are best handled by gathering the answers to the questions above and giving Gray or Susan a call at the state office. We are here to help you and will work to underwrite these horrors in the most efficient manner with a goal toward making the burden easiest on you while being able to adequately protect and insure your client against something so spine-tingling as a potential claim!

Risky Business Claims Corner

The leading **causes** of claims in the 3rd quarter of 2011, other than the lender failing to receive policies in a timely manner, are prior unsatisfied mortgages or judgments.

The leading **cost** of claims for the 3rd quarter is due to incompetency of a grantor.

Other top causes of claims are as follows:

#2 Error in legal description

#3 Lack of access

#4 Unretired mobile home titles

What steps can you take to decrease risks?

Orders Commitments Policies Remittance Cancelled

Search: Search Reset # Records per page: 10

Agency Profile New File Reports Specimens

Return To Marketing Manager Options

iJacket Manager version: 1.1.0.1

ENHANCED iJACKET MANAGER WEBINAR

iJacket Manager enhancements include preparing ICL/CPL's within your iJacket Manager workspace allowing for quick revisions, auto rate re-calculations, separate lender/owner's endorsement listings, and additional rate methods.

A recorded iJacket Manager webinar is available by clicking below:
<https://www1.gotomeeting.com/register/211088728>

If you have any questions, please contact the South Carolina Office at southcarolina@invtitle.com or 800-732-8005.

AMERICAN
LAND TITLE
ASSOCIATION



Reminder. Agents will be receiving an invoice in December from American Land Title Association, otherwise known as ALTA®, for the annual licensing fee.

All issuing agents are required to pay a licensing fee for the use of ALTA® forms, and will incur penalty fees per issued policy if the fee is not paid by the deadline.

Issuing agents who wrote title insurance on 50 or fewer transactions in the previous calendar year may submit an Occasional Use Waiver to ALTA® to request approval for a License at no cost.

For more information on ALTA® Policy Forms Licensing, click on the following link:

<http://www.alta.org/membership/Intro.cfm>

Fraud Report

Michael W. Aiken
Senior Vice President, Compliance Officer & Senior Counsel

Mortgage fraud continues to be a significant problem for the industry. The Federal Bureau of Investigations recently released its 2010 Mortgage Fraud Report indicating that the number of pending investigations is up 12% from 2009 and 90% from 2008. Interestingly, mortgage fraud involving title and settlement accounted for 14% of opened FBI fraud cases in 2010. At the end of the newsletter is an excerpt from the report highlighting the most common schemes and techniques for fraudsters. It is incumbent on all of us to make sure that we are taking every possible step to avoid becoming a victim of these types of fraudulent activities. The entire FBI Report can be found at: http://www.fbi.gov/news/news_blog/fbi-releases-2010-mortgage-fraud-report



SOUTH CAROLINA INVESTORS TITLE SEARCH STANDARDS

Generally, the rule of thumb is a 40-year search is ordered on residential transactions and a 60-year search is ordered on commercial transactions. However, both the type of policy that is going to be issued and the type of transaction also affect the length of the search. Investors Title allows tacking to a previous title insurance policy, which can be a loan or an owner's policy, as long as the certifying attorney is comfortable with doing so. There are a few exceptions to the common title search standards:

- If an ALTA 2010 Homeowner's Policy is going to be issued, the previous policy being tacked to must be an owner's policy.
- If a commitment or policy is being issued on a foreclosure property, a full search is required.
- If an ALTA 2006 Loan Policy or ALTA 2007 Short Form Loan Policy is being issued on an equity line closing, a current fee owner search is allowed.
- If an ALTA Expanded Coverage Residential Loan Policy is being issued, a prior short form policy cannot be used to tack to.

Investors Title Insurance Company offers four types of loan policies and three types of owner's policies that are available for use in South Carolina.

Loan Policies available are:

- ALTA 2006 Loan Policy
- ALTA 2007 Short Form Policy
- ALTA 2010 Expanded Coverage Residential Loan Policy
- ALTA 2010 Short Form Expanded Coverage Residential Loan Policy.

Owner's Policies available are:

- ALTA 1987 Residential Owner's Policy
- ALTA 2006 Owner's Policy
- ALTA 2010 Homeowner's Policy.

Each policy is identified by the year in which ALTA made their last revisions to that specific policy. The policy jacket type must match the policy schedules that are attached to it.

The Policy name can always be found at the bottom of your schedules and should match the policy name listed on the jacket.

Issued through the office of:

Title Agency, Inc.

This Policy consists of pages labeled as Jacket, Schedule A, Schedule B, and Schedule C. This Policy is of no force and effect unless the jacket and all schedules are included, along with any added pages incorporated herein.

Form No. 110-06-A

ALTA Loan Policy (06-17-06)

***The Criteria for Policy Selection/Search Standards handout is attached
to this newsletter and can be printed for easy reference.***



4th Quarter 2011 & 1st Quarter 2012 Training Calendar

Course	CLE/CE Hours	Scheduled Times	Location	Dates Offered
Underwriting: ITIC Style	4	10am to 3pm	State Office	November 8, 2011
SoftPro	5.5	9am to 4pm	State Office	November 9, 2011
Behind the Scenes: Real Estate Workflow	4	10am to 3pm	State Office	November 10, 2011
Word Merge	-	10am to Noon	State Office	November 15, 2011
SoftPro	5.5	9am to 4pm	State Office	November 16, 2011
Title Examination and Reporting	2	10am to Noon	State Office	December 6, 2011
Underwriting: ITIC Style	4	10am to 3pm	State Office	January 10, 2012
SoftPro	5.5	9am to 4pm	State Office	January 12, 2012
Setting the Commercial Bar	4	10am to 3pm	State Office	January 19, 2012
The New Mutual Indemnification Agreement	1	10am to 11am	Webinar	January 24, 2012
Keeping the Trust	3 (Ethics)	9am to Noon	State Office	February 2, 2012
Endorsements	3	10am to 2pm	State Office	February 7, 2012
Behind the Scenes: Real Estate Workflow	4	10am to 3pm	State Office	February 14, 2012
Matters of Survey	2	10am to Noon	State Office	February 16, 2012
SoftPro	5.5	9am to 4pm	State Office	March 7, 2012
Exploring Expanded Coverages	1	10am to 11am	Webinar	March 13, 2012
Underwriting: ITIC Style	4	10am to 3pm	State Office	March 15, 2012

You can also register and view course descriptions by visiting our Training Registration Page at <http://events.constantcontact.com/register/event?llr=h45vr4eab&oeidk=a07e4pznv86f03b47ad>

Title Talks:

Chain of Title – available until 02-01-2012:

<https://www1.gotomeeting.com/register/400536192>

Short Form Policy and Addendum – available until 03-07-2012:

<https://www1.gotomeeting.com/register/346247680>

Limited Searches – available until 06-23-2012

<https://www1.gotomeeting.com/register/397616801>

Endorsements referenced on the '06 Loan Policy – available until 04-14-2012

<https://www1.gotomeeting.com/register/331856153>

SC Bar CLE's - Distance Learning:

Access & Easements: You CAN Get There From Here -1.0 hrs CLE

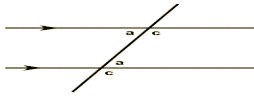
2010 RESPA and Regulatory Update – 1.75 hrs CLE

“Must Haves” for SC Real Estate Documents – 1.5 hrs CLE

Curing Title Problems – 2.0 hrs CLE

Title Insurance Ethics – 0.5 hrs CLE (Ethics)

RESPA Reform: What is it and How Will it Impact You? – 1.8 hrs CLE



The Audit Angle

Real Estate Trust Account – Monthly Recons Mandatory

On September 9, 2011, Rule 417 was amended by the South Carolina Supreme Court specifically requiring monthly reconciliations of all trust accounts. Rule 1.15 of the South Carolina Rules of Professional Conduct outlines how funds are to be maintained, accounted for and distributed.

Investors Title requires a monthly three-way reconciliation of all accounts which is an accounting of:

- the book balance (software account balance)
- the bank balance (balance reflected on bank statement)
- the trial balance (listing of balances for each specific file)

A three-way reconciliation is accomplished by starting with the ending balance from the previous bank statement, matching all software deposits and disbursements to the current bank statement, adding deposits in transit, and subtracting any outstanding checks. The total is referred to as a two-way reconciliation of the book and bank balances. Comparing the total of the file balances/ledgers (trial balance) to the book and balance balances completes the process. A successful three-way reconciliation occurs when the book, bank and trial balances are all three the same.



Agent Guide



- **Step-by-Step iJacket handout**
- **Underwriting Handouts**
- **How-to Handouts**

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PASSWORD
IS REQUIRED TO OPEN***

***[Click here](#)
To Download***

FORMS/REQUIREMENTS & EXCEPTIONS SOFTWARE UPDATE

EFFECTIVE 10/17/2011 - ACTION REQUIRED

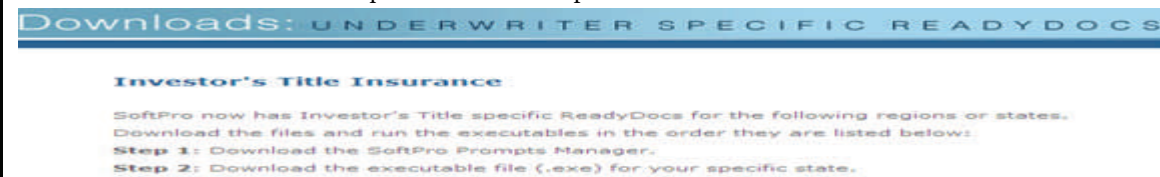
There have been several major changes to our commitment/policy schedules, requirements and exceptions and
updates are now available.

Your software company should be contacted immediately to update your documents.

SoftPro Users

- Download Investor's Title SoftPro ReadyDocs directly from the SoftPro website at www.softprocorp.com. Go to the Underwriter Specific ReadyDocs to download the Investors Title documents.
- Contact SoftPro to have Investor's Title Word Merge documents downloaded.

Contact SoftPro to have the new Requirements and Exceptions downloaded.



Display Soft Users

Contact Display Soft to have updated forms downloaded.

All Other Software Users - TSS, AIM, TitleSmart

TitleExpress, TitleSmart and AIM software companies have been provided with our updated documents. If you currently use one of these software companies, please contact them directly to request documents be completed ASAP.

Details regarding what is included in the documents update:

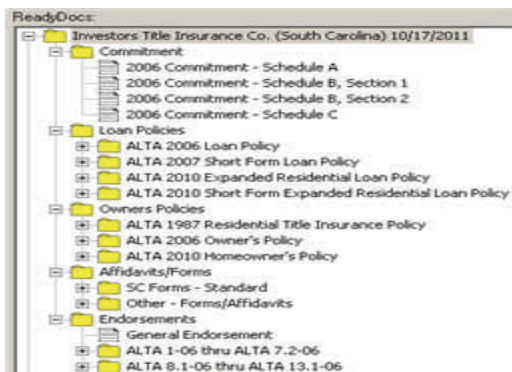
The Investors Title commitment has been revised to include only the following requirements:

1. Mortgagor/Purchaser/Owner Certification, RESPA Acknowledgment and Financial Interest Disclosure (Form No. SC-305), Borrower Acknowledgment Regarding Survey (Form No. SC-312), and Seller/Borrower Affidavit (Form No. SB-1) to be executed prior to the issuance of final policy(ies).
2. If this transaction meets the following criteria, the proposed insured may qualify for a reduced premium:
 - (a) Refinance transactions: Title Insurance has been issued on the same property and the same owner within the last 10 years.
 - (b) Purchase/Sale transactions: Title Insurance has been issued on the same property within the last 10 years. This rate is available only when the new loan is to be a first lien. NOTE: In the case of lot development, this reduced rate is not available to a developer purchasing multiple lots.

If this transaction meets either of these criteria, please contact the issuing Agent.

3. Provide the attached ITC Privacy Statement to the Borrower/Buyer at the time of closing.
4. **Specific requirements for matters found in your title search should be included in each commitment.**

Our commitment and policy exceptions have been revised to include only an exception for the current year's taxes. **Specific exceptions for matters found in your title search should be included in each commitment.**



Your Investor's Title SoftPro ReadyDocs and Word Merge document folders have also been updated. Our document folders are now separated by commitment, loan policies, owner's policies, affidavits and endorsements.

If you have any questions, please contact the South Carolina Office at southcarolina@invtitle.com or 800-732-8005.

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INVESTORS TITLE INSURANCE
COMPANY**

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Investors Title Company
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We are on the web!
www.sc.invtitle.com



ITIC Agent Corner

You Ask....We Answer!

Q: I'm having issues in iJacket. Why does my file information disappear when I go to click Save? I've even gone back into a file I created yesterday, and now the information is not there - am I doing something wrong?

A: If you aren't using Internet Explorer to access iJacket Manager, the program will not work correctly. iJacket Manager should only be accessed in Internet Explorer; however, the newer versions of Internet Explorer, like 8 and 9, tend to create compatibility issues when displaying Investors' websites, including iJacket Manager. If you don't know what version you are using, go to Help on your menu bar in Internet Explorer, then click on About Internet Explorer.

If you are using 8 or 9, then there is a simple fix for the problem. Simply follow your web address bar to the right-hand side of your screen. You should see an icon that looks like a piece of paper torn in half.



Clicking this icon once will turn on your Compatibility View Settings, which will correct the issues you mentioned. When in your File Options page, if you see brackets and text where your jackets and ICL should appear, this is also corrected after the icon is clicked.

If you don't have the icon at the end of your address bar, then go to Tools on your menu bar in Internet Explorer, then go to Compatibility View Settings. If you don't already see our website listed in the box of added websites, then type *invtitle.com* under Add this website and click Add. This will ensure that our websites will be correctly displayed in your browser going forward.

If you corrected the Compatibility View Settings prior to the rollout of the enhanced iJacket Manager system, then you may need to check to verify these settings are still correct.

iTracs®

a service of

Investors Title Management Services, Inc.

Internet-based tool that facilitates continual communication between the bank and trust accounting software.

Provides peace of mind through the following features:

- Automated daily 3-way reconciliation
- Customizable alerts to notify you immediately in the event of any abnormality with your trust account
- Daily reporting of account activity and status delivered through email
- Monthly third-party review and analysis of your trust account

For more information and exclusive pricing please contact the South Carolina office at 800.732.8005 or southcarolina@invtitle.com

"Developing Solutions to Grow Your Bottom Line"



From the Goose's Beak



- If you do not have an ACH block on your trust account, you should. Contact your bank and ask to have one placed on your trust account.
- As always, you are not required to have a copy of the prior policy in order to offer your client the reissue rate. Please contact the SC office for information regarding prior policies.
- Be on the lookout for ITIC 2012 Calendars! They will be delivered by your marketing representative.
- Each iJacket user in your office should have their own login. Emails notifying you of a released file will be sent to the specific email address associated with that login. Please contact the SC office to be set up if you are not already.



Criteria for Policy Selection

Loan Policies

ALTA 2006 Loan Policy

This policy may be issued on the following properties:

- A. Commercial Loan Policies
- B. Residential Loan Policies

ALTA Short Form Residential Loan Policy

Only issue this policy if the following criteria are met:

- A. One-to-four Family Residence or One-to-Four Family Residential Condominium Unit
- B. 25 acres or less
- C. Improved Property in a platted residential subdivision or condo property

ALTA Expanded Residential Loan Policy

Only issue this policy if the following criteria are met:

- A. Improved platted lot in a subdivision or condominium unit
- B. Institutional Lender
- C. First Liens Only
- D. Purchase or Refinance

ALTA Short Form Expanded Residential Loan Policy

Only issue this policy if the following criteria are met:

- A. One-to-four Family Residence or One-to-Four Family Residential Condominium Unit
- B. Improved platted lot in a subdivision or condominium unit
- C. First Liens Only

Owner's Policies

ALTA 2006 Owner's Policy

This policy may be issued on the following properties:

- A. Commercial Property
- B. Residential Property under construction
- C. Residential Property
- D. Vacant Land

ALTA 1987 Residential Owner's Policy

(increases by 10% of the policy amount on each of the first five anniversaries of the policy date)

Only issue this policy if the following criteria are met:

- A. One-to-four Family Residence or One-to-Four Family Residential Condominium Unit
- B. 25 acres or less
- C. Improved Property in a platted residential subdivision or condo property

ALTA Homeowner's Policy

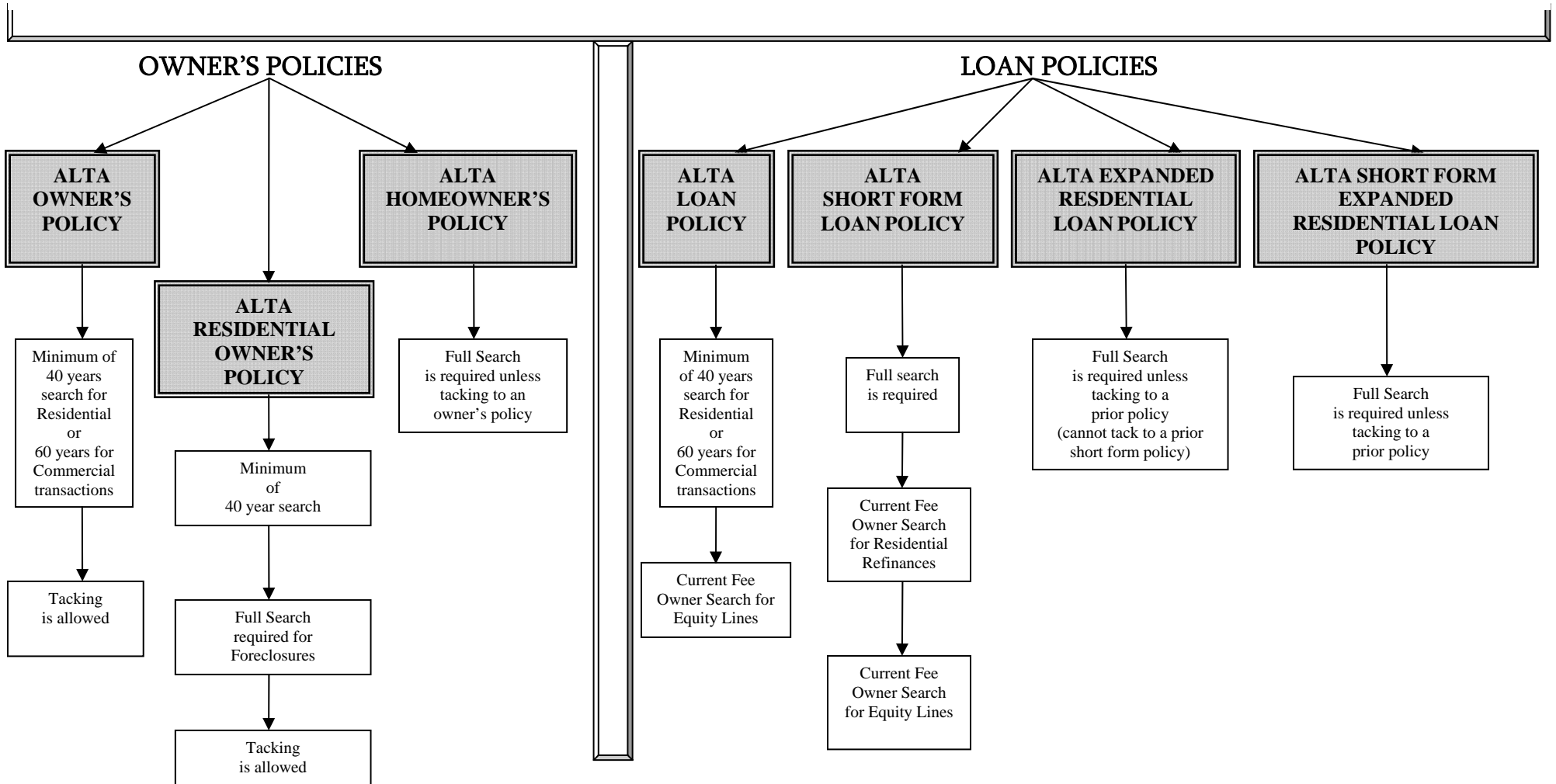
Only issue this policy if the following criteria are met:

- A. Improved One-to-Four Family Residence or One-to-Four Residential Condominium Unit
- B. Insured Owner is a natural person
- C. Property is located in a platted subdivision or condominium unit (no metes and bounds descriptions)

When do you use the ALTA Homeowner's Policy, the 1987 Owner's Policy and the 2006 Owner's policy? Since the 2006 Owner's policy replaces the 1992 version, please utilize the same decision process for issuing the 2006 form versus the 1987 form as you have in the past with the 1992 version. Continue to issue the 1987 Owner's policy as long the criteria for doing so have been met. Make sure that your client is aware of the option to purchase the Homeowner's Policy through the use of the revised SC-305.



Investors Title Insurance Company SOUTH CAROLINA TITLE SEARCH STANDARDS

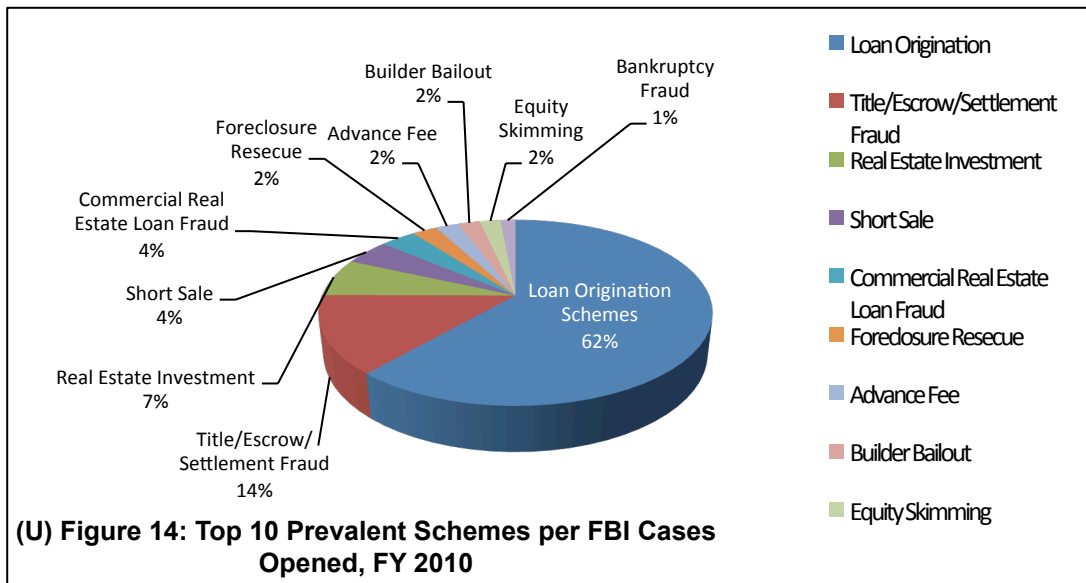


Note: A full search is required for foreclosures.

Note: If tacking to a short form policy, easements and restrictions must be searched.

Current Schemes & Techniques

An analysis of FBI reporting revealed that the most prevalent mortgage fraud schemes identified in FY 2010 included loan origination schemes (to include property flipping), followed by settlement-related schemes (to include kickbacks), real estate investment schemes, short sale schemes, commercial real estate loan frauds, foreclosure rescue schemes, advance fee schemes, builder bailout schemes, equity skimming schemes, and bankruptcy fraud (see Figure 14).



Loan Origination Schemes

Mortgage loan origination fraud is divided into two categories: fraud for property/housing and fraud for profit. Fraud for property/housing entails misrepresentations by the applicant for the purpose of purchasing a property for a primary residence. This scheme usually involves a single loan. Although applicants may embellish income and conceal debt, their intent is to repay the loan. Fraud for profit, however, often involves multiple loans and elaborate schemes perpetrated to gain illicit proceeds from property sales. Gross misrepresentations concerning appraisals and loan documents are common in fraud for profit schemes, and participants are frequently paid for their participation.

Loan origination fraud schemes remain a constant fraud scheme. These schemes involve falsifying a borrower's financial information—such as income, assets, liabilities, employment, rent, and occupancy status—to qualify the buyer, who otherwise would be ineligible, for a mortgage loan. This is done by supplying fictitious bank statements, W-2 forms, and tax return documents to the borrower's favor. Perpetrators may also employ the use of stolen identities. Specific schemes used to falsify information include asset rental, backwards application, and credit enhancement schemes.

Freddie Mac is reporting that the loan origination frauds they are witnessing include false documents, property flips with phantom rehabilitation, fictitious assets, and fabricated payroll documents.⁴⁶ Fraudsters are also using phantom rehabilitations to increase the property values. However, Freddie Mac has been interviewing borrowers and their neighbors to determine if the

rehabilitations are actually occurring. Also, Freddie Mac is reporting that fraudsters continue to use transactional “lenders” such as the “dough for a day” businesses that “loan” potential borrowers money so that underwriters will see they have assets when conducting their “proof of funds” due diligence risk assessment on the loan application.

Backwards Application Scheme

In a backwards application scheme, the mortgage fraud perpetrator fabricates the unqualified borrower’s income and assets to meet the loan’s minimum application requirements. Incomes are inflated or falsified, assets are created, credit reports are altered, and previous residences are altered to qualify the borrower for the loan.

Fraudulently Inflated Appraisals

Mortgage fraud perpetrators fraudulently inflate property appraisals during the mortgage loan origination process to generate false equity that they will later abscond. Perpetrators will either falsify the appraisal document or employ a rogue appraiser as a conspirator in the scheme who will create and attest to the inflated value of the property. Fraudulent appraisals often include overstated comparable properties to increase the value of the subject property.

Illegal Property Flipping

Illegal property flipping is a complex fraud that involves the purchase and subsequent resale of property at greatly inflated prices. The key to this scheme is the fraudulent appraisal, which occurs prior to selling the property. The artificially inflated property value enables the purchaser to obtain a greater loan than would otherwise be possible. Subsequently, a buyer purchases the property at the inflated rate. The difference between what the perpetrator paid for the property and the final purchase price of the home is the perpetrator’s profit.

Traditionally, any exchange of property occurring twice on the same day is considered highly suspect for illegal property flipping and often is accompanied by back-to-back closings where there is a purchase contract and a sales contract that are both presented to the same title company. FBI combined intelligence and case reporting for FY 2010 indicates that property flipping is occurring in 47 out of 56 field office territories. The fraud continues to involve the use of fraudulent bank statements, W-2s, and pay stubs; the use of straw buyer investors to purchase distressed properties for alleged rehabilitation; perpetrators receiving cash-back at closing; and the failure to make the first mortgage payment. This type of fraud often results in foreclosure. FBI information indicates the top 10 states reporting same-day property flips (as recorded by county clerk’s offices throughout the United States) in 2010 were Florida, Ohio, Georgia, Minnesota, Hawaii, Michigan, Tennessee, New York, Maryland, and Washington.

Among other industry sources reporting significant property flipping, Interthinx reports that it is still prevalent and trending upward.⁴⁷ Current property flipping schemes reported by Interthinx involve fraud against servicers; piggybacking on bank accounts to qualify for mortgages; and forgeries. HUD reporting indicates the use of limited liability companies (LLCs) to perpetrate fraudulent property flipping.⁴⁸

Title/Escrow/Settlement Fraud/Non-Satisfaction of Mortgage

A review of FBI cases opened in 2010 indicates that 38 percent of FBI field offices are reporting some form of title/escrow/settlement fraud. The majority of these frauds involve the diversion or embezzlement of funds for uses other than those specified in the lender's closing instructions. Associated schemes include the failure to satisfy/pay off mortgage loans after closings for refinances; the reconveyance or transfer of property without the homeowner's knowledge or consent; the failure to record closing documents such as property deeds; the recording of deeds without title insurance but charging the homeowner and absconding with the money; the use of settlement funds intended to pay subcontractors by general contractors to pay debts on previous projects; the use of dry closings; the delayed recording of loans; the filing of fraudulent liens to receive cash at closing; and the distribution of settlement funds among co-conspirators.

According to a review of FBI investigations opened in FY 2010, title agents and settlement attorneys in at least 21 investigations in 14 field office territories are involved in non-satisfaction of mortgage schemes. They are engaged in misappropriating and embezzling more than \$27 million in settlement funds for their own personal use rather than using those escrowed funds to satisfy/pay off mortgages as directed per lender instructions provided at closing. Perpetrators diverted escrow monies intended for lenders to themselves or to entities that they controlled. In addition to embezzling escrow funds, perpetrators are also falsifying deeds, recording deeds without title insurance, and failing to record deeds and taxes.

Real Estate Investment Schemes

In a real estate investment scheme, mortgage fraud perpetrators persuade investors or borrowers to purchase investment properties generally at fraudulently inflated values. Borrowers are persuaded to purchase rental properties or land under the guise of quick appreciation. Victim borrowers pay artificially inflated prices for these investment properties and, as a result, experience a personal financial loss when the true value is later discovered. Analysis of FBI cases opened in FY 2010 revealed that 43 percent of FBI field offices are reporting this activity with losses exceeding \$76 million.

Short Sale Schemes

A real estate short sale is a type of pre-foreclosure sale in which the lender agrees to sell a property for less than the mortgage owed. Short sale fraud consists of false statements made to loan servicers or lenders that take the form of buyer or seller affirmations of no hidden relationships or agreements in place to resell the property, typically for a period of 90 days. One of the most common forms of a short sale scheme occurs when the subject is alleged to be purchasing foreclosed properties via short sale, but not submitting the "best offer" to the lender and subsequently selling the property in a dual closing the same day or within a short time frame for a significant profit. Reverse staging and comparable shopping techniques are currently being used by fraud perpetrators in the commission of short sale frauds. The fraud primarily occurs in areas of the country that are experiencing high rates of foreclosure or homeowner distress.

Industry participants are reporting that short sale fraud schemes continue to be an increasing threat to the mortgage industry. A recent CoreLogic study indicated that short sale volume has tripled from 2009 to 2010.⁴⁹ In June 2010, Freddie Mac reported that short sale transactions were up 700 percent compared to 2008.

Industry sources report that in the process of committing short sale fraud, fraudsters are manipulating the Broker Price Opinions (BPOs) and MLS; engaging in non-arms-length transactions;⁵⁰ using LLCs to hide their involvement in short sale transactions;⁵¹ failing to record short sale deeds of trust; using back-to-back and multiple real estate agent closings; selling properties to an LLC or trust months before the sale;⁵² selling the property to a family member or other party the fraudsters control and deeding the property back to themselves; engaging in escrow thefts, simultaneous double sales to Fannie Mae and Freddie Mac, and failing to pay off the original loan in a refinance transaction; property flopping;⁵³ bribing brokers and appraisers; refusing to allow the broker or appraiser access to the property unless the fraudster is present; providing their own comparables to the appraiser; taking unflattering photographs of the property and pointing out defects in the property to the appraiser;⁵⁴ providing false estimates of repair, rebuttal of appraisal, and selection of poor comparable properties;⁵⁵ and facilitating the partnership of attorneys with non-attorneys to split fees acquired during short sale negotiations.⁵⁶

Commercial Real Estate Loan Fraud

Commercial real estate loan fraud continues to mirror fraud in the residential mortgage loan market. Law enforcement investigations indicate that perpetrators such as real estate agents, attorneys, appraisers, loan officers, builders, developers, straw buyer investors, title companies, and others are engaged in same-day property flips; the falsification of financial documents, performance data, invoices, tax returns, and zoning letters during origination; the diversion of loan proceeds to personal use; the misrepresentation of assets and employment; the use of inflated appraisals; and money laundering.

FBI reporting indicates that some commercial real estate-driven bank failures may expose insider and accounting fraud in regional and community banks.⁵⁷ According to FBI analysis, these frauds are emerging in addition to the residential mortgage frauds still being found in roughly half of all bank failures investigated by the FBI.⁵⁸ FBI case information and open source financial reporting indicates some executives and loan officers may resort to issuing fraudulent loans, dishonest accounting, or other criminal activity to disguise the poor financial conditions of their institutions. A review of banks that failed due to overexposure to commercial real estate debt during the boom years revealed that a small percentage showed fraudulent commercial real estate activity, attempts to hide bank financial conditions, and insider loan schemes through which executives and other insiders benefited by controlling lending decisions.

The Congressional Oversight Panel examined commercial real estate losses and financial stability in February 2010 and found that poor-performing loans and defaults would affect banks into 2011 and beyond.⁵⁹ Some banks are also extending the terms of some poor-performing commercial real estate loans, pushing the potential loan default dates past 2011.⁶⁰

Foreclosure Rescue

Foreclosure rescue schemes are often used in association with advance fee/loan modification program schemes. The perpetrators convince homeowners that they can save their homes from foreclosure through deed transfers and the payment of up-front fees. This “foreclosure rescue” often involves a manipulated deed process that results in the preparation of forged deeds. In extreme instances, perpetrators may sell the home or secure a second loan without the

homeowners' knowledge, stripping the property's equity for personal enrichment. For example, the perpetrator transfers the property to his name via quit claim deed and promises to make mortgage payments while allowing the former home owner to remain in the home paying rent. The perpetrator profits from the scheme by re-mortgaging the property or pocketing fees paid by desperate homeowners. Often, the original mortgage is not paid off by the perpetrator and foreclosure is only delayed.

Financial industry reporting indicates that foreclosure rescue schemes remain a current threat.⁶¹ Analysis of FBI intelligence reporting indicates that foreclosure rescue schemes were the sixth-highest reported mortgage fraud scheme in FY 2010. According to FBI case analysis, mortgage fraud foreclosure rescue investigations comprised two percent of all mortgage fraud cases opened in FY 2010.

Advance Fee Schemes

Mortgage fraud perpetrators such as rogue loan modification companies, foreclosure rescue operators, and debt elimination companies use advance fee schemes, which involve victims paying up-front fees for services that are never rendered, to acquire thousands of dollars from victim homeowners, and straw buyers.

Builder Bailout Schemes

Builders are employing builder bailout schemes to offset losses and circumvent excessive debt and potential bankruptcy as home sales suffer from escalating foreclosures, rising inventory, and declining demand. Builder bailout schemes are common in any distressed real estate market and typically consist of builders offering excessive incentives to buyers, which are not disclosed on the mortgage loan documents. In a common scenario, the builder has difficulty selling the property and offers an incentive of a mortgage with no down payment. For example, a builder wishes to sell a property for \$200,000. He inflates the value of the property to \$240,000 and finds a buyer. The lender funds a mortgage loan of \$200,000 believing that \$40,000 was paid to the builder, thus creating home equity. However, the lender is actually funding 100 percent of the home's value. The builder acquires \$200,000 from the sale of the home, pays off his building costs, forgives the buyer's \$40,000 down payment, and keeps any profits.

Equity Skimming Schemes

Equity skimming schemes occur when mortgage fraud perpetrators drain all of the equity out of a property. For example, perpetrators charge inflated fees to "help" homeowners profit by refinancing their homes multiple times and thus skimming the equity from their property. A perpetrator will also help a homeowner establish a home equity line on a property. The perpetrator then encourages the homeowner to access these funds for investment in various scams.

Debt Elimination/Reduction Schemes

FBI reporting indicates a continued effort by Sovereign Citizen domestic extremists throughout the United States to perpetrate and train others in the use of debt elimination schemes. Victims pay advance fees to perpetrators espousing themselves as “sovereign citizens” or “tax deniers” who promise to train them in methods to reduce or eliminate their debts. While they also target credit card debt, they are primarily targeting mortgages and commercial loans, unsecured debts, and automobile loans. They are involved in coaching people on how to file fraudulent liens, proof of claim, entitlement orders, and other documents to prevent foreclosure and forfeiture of property.

Legislative Issues

Dodd-Frank Act

The Dodd Frank Act (DFA) was created to address various issues that occurred during the financial crisis. According to MBA, the DFA will establish the Consumer Financial Protection Bureau (CFPB) and set strict standards and regulations for processing mortgage loans.⁶² To protect consumers from fraud, the CFPB will: (1) regulate strict guidelines for appraisers and licensing to appraisal management companies; (2) oversee and have total responsibility for consumer financial protection laws;^d (3) add more layers to disclosures, licensing, and process regulation with loan originators, reverse mortgages, mortgage companies, and advertising practices; and (4) harmonize the TILA and RESPA disclosure.^{63,64}

The new act will prohibit the use of BPOs as the primary benchmark for the value of a property being purchased.⁶⁵ Additionally, the CFPB will oversee consumer protection laws, including TILA and RESPA.⁶⁶ The DFA will require lenders to be accountable for the cost it provides to borrowers during the loan application process.⁶⁷ The legislation will modernize the real estate appraisal regulation by enforcing actions against states and appraisers that do not abide by the new regulation.⁶⁸ Also, there will be a new appraisal standard board and appraisers should follow the new regulations.⁶⁹ The DFA is set to better regulate consumer protection laws and help reform Fannie Mae and Freddie Mac.⁷⁰

Federal Trade Commission’s (FTC) Mortgage Assistance Relief Services (MARS) Rule

The FTC rule on MARS prohibits charging advance fees for loan modification services, but states that attorneys are the exception to the rule and are therefore permitted to charge an advance fee provided some stipulations are met.⁷¹

According to the FTC’s MARS, a company cannot charge an up-front fee for a loan modification until it provides the homeowner a written offer for the modification or other relief from their lender and the homeowner accepts the offer.⁷² The company must also provide the homeowner with a document from its lender showing the changes to the homeowner’s loan if the homeowner decides to move forward with the modification. In addition, the company must clearly disclose the total fee charged for its services. MARS also requires that companies spell out important information in their advertisements and telemarketing calls, such as disclaimers and consequences for securing their services.

^d Including Real Estate Settlement Procedure Act (RESPA), Truth in Lending Act (TILA), Home Ownership and Equity Protection Act (HOEPA), and Home Mortgage Disclosure Act (HMDA).