



# GOOSE NEWS

## That Case Said What????

The Legal Corner: By Teri Callen Stomksi, Esq.



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To say there are recent cases that have real estate practitioners scratching their heads is, perhaps, a bit of an understatement. The impact these holdings will have on the way real estate transactions are closed and insured is significant and as a result, underwriting has had to adapt to keep up with ever-changing case law. Here are a few of the biggest game-changers and their corresponding new underwriting guidelines:

*Linda Mc Company v. Shore*, No. 26878 (Re-filed S.C. December 29, 2010):

Despite the expiration of 10 years, a judgment still has “active energy” and can be enforced by the judgment creditor as long as the party (1) takes action to enforce a judgment within the ten-year statutory period of active energy, (2) has complied with the applicable statutes, and (3) is merely waiting on a court’s order regarding execution and levy.

-When searching state judgments, a ten year search is no longer enough. The search must be expanded to include any supplemental proceedings brought within the statutory period, which may not necessarily appear in the index. Be sure to confirm that your abstract includes a sufficient search for these actions.

*King. v. James*, No. 4676 (S.C. Ct. App April 20, 2010):

The two-year statute of limitations in § 12-51-160 did not bar an action commenced nearly seven years after the tax sale because the defaulting taxpayer brought her action within two years of the tax sale purchaser “coming into possession” of the property. The Court also held that the tax sale and resulting tax deed were invalid because the County failed to strictly comply with the statutory notice requirements leading up to the sale.

-Insuring a tax deed continues to require approval by an ITIC attorney but now also calls for confirmation that at least two years have passed since the tax sale purchaser came into possession of the property and that all statutory requirements were met.

*Matrix Financial Services Corporation v. Frazer*, No. 26859 (S.C. August 16, 2010) and *Wachovia Bank, N.A. v. Coffey*, No. 4685 (S.C. Ct. App May 6, 2010):

UPL as we knew it changed dramatically when the Supreme Court and Court of Appeals, in separate decisions, held that those who violate the laws of South Carolina come to Court with unclean hands and are therefore, barred from seeking equitable relief.

-When certifying title, issuing title policies or issuing post-policy endorsements, all caution must be taken to ensure that the five steps identified as involving the practice of law, as set forth in *Doe Law Firm* and its predecessors, will be/have been supervised by a licensed South Carolina attorney. As these steps requiring a S.C. attorney’s supervision could extend beyond the initial mortgage closing, there must be confirmation of such supervision before insuring future advances, mortgage modifications or even deeds in lieu of foreclosure. Failure to verify this could result in an invalidation of the insured mortgage, in addition to other professional responsibility considerations.

*Nationwide Life Insurance Company v. Commonwealth Land Title Insurance Company*, 579 F.3d 304 (2009):

A property encumbered by restrictions, which contained a right of refusal, was taken back by the insured lender and its attempt to sell the property was halted when the right was invoked. The lower court’s grant of Commonwealth’s motion to dismiss was overturned, with the Court holding that the title insurer -not the insured- “bears the burden of detecting the restrictions stated in the [instrument]” and must “list those restrictions explicitly as exceptions to avoid covering loss from them.”

-When issuing the ALTA 9, no general exceptions or exceptions to an instrument without specific exceptions to any options, easements, restrictions, etc. within it should be used. Due to the significant risk, policies over \$500,000 to be issued with an ALTA 9 must meet the ALTA 9 requirement listed in ITIC’s General Underwriting Procedures manual (GUP). Additionally, if the policy is over \$5,000,000 and an ALTA 9 is to be issued, a current survey is needed per the S9 requirement.

There is no doubt we have not heard the last of these issues, as these cases continue to be argued or have prompted proposed legislation to mitigate their consequences. As always, ITIC will be here to keep you current as these developments unfold.

## Welcome, Gray!

### Biography of Graydon V. Olive, III



Gray was admitted to practice in 1975 and served a 4 year active duty tour in the Air Force as a judge advocate from 1976-1979. He returned to Columbia in January of 1980 and entered private practice with emphasis on residential and commercial real estate and title insurance. He was a partner in the firm of Holler, Dennis, Olive, et.al. for 17 years and Special Counsel to McNair Law Firm, P. A. and CEO of Firm Title, Inc, McNair's Title Insurance Agency, from May 1997 until July 2009. From July 2009 until joining Investors, he operated Olive Law Firm LLC where he practiced in areas of commercial and residential real estate and probate law.

Gray began his relationship with Investors Title in 1983 when he became an Investors agent. He was trained by Mary Webster and was exclusively an Investors agent until he became CEO of Firm Title, Inc. in 1997. Throughout his private practice career, he remained an active Investors agent.

Upon leaving active duty, Gray remained affiliated with the Air Force as a reserve judge advocate. He received the Harmon Award for Outstanding Reserve Judge Advocate of the Air Force in 1995. He has served as Senior Reserve Advisor to the Commandant of the Air Force JAG School and Senior Reserve Advisor to the Staff Judge Advocate of Air Reserve Command, retiring in the grade of Colonel in 2005. He has been awarded the Legion of Merit, the Meritorious Service Medal (4), the Air Force Commendation Medal, the Humanitarian Service Medal, the Air Force Reserve Medal and the Air Force Recognition Ribbon.

He is a member of the Real Estate Section of the South Carolina Bar and served as Director of the Palmetto Land Title Association for 11 consecutive years. He has chaired PLTA's Legislative Committee since 2005 and is the 2009 recipient of the J. Lee McDonald Award for Outstanding Service. Gray often speaks on topics of title exams, title insurance and real estate closings at CLEs.

He is an ordained elder at Forest Lake Presbyterian Church in Columbia, chaired its Management Ministry from 1994 – 1997, and periodically teaches adult Sunday School. He also served as President of the Columbia Jaycees from 1983 – 1984. He resides in Columbia with his wife, Rebecca, and their two sons, Graydon (20) and Ryan (18). In his leisure time, Gray enjoys playing tennis, boating, and growing tomatoes in the summer.

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 800-732-8005



## Legislative Update

By: Graydon V. Olive III, Esq.

The South Carolina Legislature is back in session with some new faces, and some not-so-new faces. Members of both the House and Senate pre-filed legislation in December for consideration by the respective bodies. Some of the bills which were considered but not passed last year have been refilled, including bills prohibiting cell phone use or texting while driving, requiring Photo IDs for voting, allowing warrantless arrest of suspected illegals, and requiring more roll call votes for house members.

Proposed legislation that may have an impact on our area of practice include the following:

H. 3089: would require the seller of real property classified as agricultural to provide written notice to purchaser that change of use of property by seller or purchaser could result in imposition of rollback taxes. A specific format for the notice is contained in the bill.

H. 3095: This bill would make transfer covenants and the fees associated therewith non-binding and unenforceable.

H. 3108: This bill would establish a Mandatory Mortgage Foreclosure Mediation Program to be administered by the South Carolina Judicial Department.

H. 3104: Would change the wording of the requirements for execution of a Lost Mortgage Satisfaction to eliminate the term "Probate" and replace it with a requirement that there be an "acknowledgement pursuant to the Uniform Recognition of Acknowledgements Act".

S. 218: Would create the South Carolina Homeowners Association Act which would require annual application containing certain information with the Department of Consumer Affairs. An annual certification issued by the department would be required before an entity could operate as a homeowners association. The bill contains certain requirements concerning notice, voting, and record keeping, as well as other requirements.

S. 234: Would amend the Probate Code to permit the transfer of real property upon death by a "Beneficiary Deed designating a grantee-beneficiary. Delivery to the beneficiary would not be required, and if the owner executes more than one beneficiary deed concerning the same property, **the deed signed last would be the effective deed, regardless of the recording date.** (Scary!)

We will continue to monitor these bills and others as they are introduced and will report any new matters that might affect the practice of real estate law or title insurance underwriting.



With a new year upon us, it is the perfect time to put new safeguards in place to prevent fraud from happening to you.

We all know that we should have a reverse wire block on our escrow and trust accounts, but do you have an international wire block on these accounts as well?

If you don't, contact your bank and ask that they put an international wire block on your accounts to ensure that no international wires can be initiated without verbal authorization from a signor on your account.

Please contact the South Carolina Office at 800-732-8005 or [southcarolina@invtitle.com](mailto:southcarolina@invtitle.com) should you have any questions.

## § 1031 Like-Kind Exchange Qualified Intermediary Services

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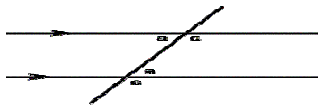
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## The Audit Angle

Please welcome Shauna Searcy to the SC Audit Team. Shauna has been with Investors Title for three years, working in the Claims Department and joining the Audit Department in 2010. She is excited about working with all of our agents and approved attorneys in South Carolina.

Thank you to all of you who participated in the Desktop Audit Process in 2009 and 2010. As we have gone through this process, we have made enhancements based on agent feedback and our own experiences and will continue to use a combination of desktop and on-site audits going forward. One significant change in 2011 is that you will now receive a phone call prior to the request for Audit Documentation. This will give you the opportunity to ask questions and be prepared to provide the information requested. You will also receive a request for your current Errors and Omissions Insurance and completed renewal form with your audit information request. This will reduce the number of requests for documentation you receive annually from Investors Title.

### Defective foreclosures in SC continue to be a problem, despite the lessening concerns about “robo-signers” making foreclosures invalid.



When insuring a property coming out of foreclosure, confirm the following:

- The borrower was properly served.
- All notices as required by applicable law were given to the borrower.
- All junior/subordinate lienholders were properly served (if not, take exception).
- All foreclosure requirements (including a final, non-appealable judgment in a judicial foreclosure) under state and federal law have been met, including HAMP and Servicemen’s Act.
- No litigation has been commenced challenging the foreclosure.
- The foreclosing party is the owner of the mortgage and has the right to foreclose it.
- Any deficiency has been waived or any deficiency judgment is final and non-appealable.
- All foreclosure underwriting guidelines have been met, including exceptions for parties in possession, mechanic’s liens (if SC-311 not executed), and municipal liens.
- If deed in lieu of foreclosure is given instead, meet the specific requirements listed in the GUP.



## South Carolina PLTA Annual Convention

*March 18, 2011*

*8:30am – 5:00pm*

*Columbia Convention Center*

Presenters include:

Teri Callen Stomski, Esq.

ITIC SC State Counsel

Graydon V. Olive, III, Esq.

ITIC SC Underwriting Counsel

Click on the following link to register to attend:

[http://www.scphta.org/calendar\\_of\\_events.html](http://www.scphta.org/calendar_of_events.html)



## 2011 First Quarter Training Calendar

Course	CLE/CE Hours	Scheduled Times	Location	Dates Offered
Escheat	1 (Ethics)	10am to 11am	Webinar	January 19 <sup>th</sup>
SoftPro - rescheduled	5.5	9am to 4pm	State Office	January 20 <sup>th</sup>
Underwriting: ITIC Style	4	10am to 3pm	State Office	February 2 <sup>nd</sup>
Setting the Commercial Bar	4	10am to 3pm	State Office	February 9 <sup>th</sup>
Keeping the Trust	3 (Ethics)	9am to Noon	State Office	February 15 <sup>th</sup>
Underwriting: ITIC Style	4	10am to 3pm	State Office	February 16 <sup>th</sup>
Mutual Indemnification	1	10am to 11am	Webinar	February 17 <sup>th</sup>
Endorsements	3	10am to 2pm	State Office	March 3 <sup>rd</sup>

Please register early by calling the State Office at 800-732-8005 or email [southcarolina@invtitle.com](mailto:southcarolina@invtitle.com).  
Courses are filling up quickly.

### Title Talks:

Fixture Filings (expires 05-17-2011)

<https://www1.gotomeeting.com/register/614767168>

Power of Attorney-available until 1-27-2011:

<https://www1.gotomeeting.com/register/479818888>

Satisfactions-available until 3-29-2011:

<https://www1.gotomeeting.com/register/288488256>

Fixture Filings-available until 5-14-2011:

<https://www1.gotomeeting.com/register/614767168>

Policy Jackets-available until 6-25-2011:

<https://www1.gotomeeting.com/register/724708057>

Deeds of Trust/Mortgage-available until 8-6-2011:

<https://www1.gotomeeting.com/register/789344864>

### SC Bar CLE's - Distance Learning:

*Access & Easements: You CAN Get There From Here* - Teri Callen Stomski- 1.0 hrs CLE

*ALTA Title Insurance Jackets: 2006 and Beyond* - Teri Callen Stomski 1.0 hrs CLE

*Condo Development 101 -ITIC 2009 Annual Seminar* -1.0 hrs CLE

*Curing Title Problems* -Teri Callen Stomski -2.0 hrs CLE

*Real Estate Case Law & Legislative Update* -Teri Callen Stomski -1.0 hrs CLE

*RESPA Reform: What is it and How Will it Impact You?* - Mike Aiken, ITIC - 1.8 hrs. CLE

*2009 Real Estate Ethics Update* - 5hrs Ethics CLE

### Other:

Real Estate Regulatory Update for Paralegals (Including GFE and HUD-1): Where Are We Now? - Teri Callen Stomski

Institute for Paralegal Education Tele-Webinar 55989 held on March 2, 2011 1pm to 2pm

### Course Descriptions

**Underwriting: ITIC Style-** This course was designed with the novice underwriter in mind, and it has proven to be a great refresher for even the most seasoned real estate attorney. This course provides an intermediate understanding of the Title Insurance process and underwriting. CLE Credit Hours 4

**Setting the Commercial Bar** -Commercial transactions can get very complex, yet they can be very beneficial to the success of your practice. Students are provided with information on getting started in commercial transactions, commercial underwriting and endorsements. CLE Credit Hours 4

**Endorsements**-This course will provide a comprehensive understanding of endorsements covering the guidelines for usage; requirement and exception language; and charges. CLE Credit Hours 3

**Mutual Indemnification Agreement**-This course will discuss uses and proper underwriting for Mutual Indemnification Agreements. CLE Credit Hours 1

**SoftPro**-This course is designed for the beginning SoftPro user or those desiring to refresh their skill. ProForm, ProTrust and Pro1099 are covered in this class. CLE Credit Hours 6

**Title Talk Webinars**-Great for a brown bag "lunch and learn" day. Title Talk webinars are one hour trainings resulting from claim activities, current market issues and agent demand. Please contact Investors Title Insurance Company for a list of available Title Talk webinars. Non CLE Credit Hours

**Escheat**-This course will provide an understanding of the escheatment process with regards to real estate transactions.

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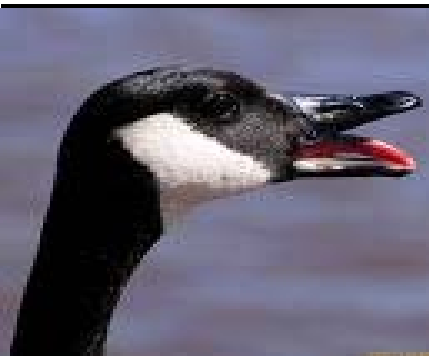
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## ITIC Agent Corner

*You Ask.....We Answer!*

### Question:

Why are Lenders and their underwriters not required to attend title insurance seminars? So many issues prior to closing are a result of underwriters, processors, etc. not understanding exactly what title insurance is or the purpose of the Insured Protection Letter.

### Answer:

Previously, underwriting trainings have not been available to Lenders. ITIC has recently launched our L-Series as part of our iUniversity program and this will allow Investors Title to provide this resource to Lenders.

### Question:

Are reverse mortgages different than a regular mortgage?

### Answer:

Yes, additional requirements and exceptions are added to the commitment specific to reverse mortgage transactions. A sample commitment/policy can be found on Page 80 of the General Underwriting Principles Manual. Contact the SC Office for information on the maximum claim amount, how much can be borrowed or with any other questions.

## From the Goose's Beak

- Missed a step in pulling your jacket from iJacket? **There's a handout for that!** Can't remember which exception to use for a pond versus a lake on a property? **There's a handout for that!** Need a step-by-step guide to keying in your file in SoftPro? **There's a handout for that!** Investors has checklists and handouts for almost everything: from system how-to's to helpful underwriting guides, **Investors Title has you covered!**
- Did you know? Prior issues of **Goose News** and full iUniversity training course descriptions can be accessed on the Training Courses section of the South Carolina webpage – [http://sc.invtitle.com/training\\_courses/index.php](http://sc.invtitle.com/training_courses/index.php)
- It's a new year! Now is the perfect time to review and clean out the files in your iJacket workspace. Cancel any files that didn't close and start the new year off right!
- **Please Note:** An agent in York County has discovered a lost mortgage satisfaction that is probably fraudulent. One of the mortgagors referenced in the document signed and had recorded a Lost Mortgage Satisfaction where he signed as "attorney-in-fact" for the lender bank, and contains a notary date and stamp for a purported North Carolina notary public. This mortgage was initially recorded in 2006. Please be sure to carefully examine all satisfactions that have been recorded in the scope of your searches, particularly those signed by attorneys-in-fact.



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Direct Phone: 919-945-2608

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