



GOOSE NEWS

Mortgage Modifications

The Legal Corner: By Teri K. Callen, Esq.

Mortgage Modifications – Not Modi-vacations!

With the turmoil in the lending market, many firms are getting requests to “modify” a mortgage. Sometimes, the lenders want to file an actual modification, other times they call it a modification but give you another mortgage to file. Usually, the reason they are modifying the mortgage is to add collateral, extend the term or change the interest rate. That all seems well and good, but considering recent “alerts” from the S.C. Bankruptcy court, these seemingly benign requests may end up voiding a transaction or impairing our insured mortgage.

Often, through the modification, the bank is trying to improve their position because the borrower is in a financial bind. Don’t assume that just because they haven’t filed bankruptcy yet, that things are OK. If the borrower subsequently files bankruptcy despite the help the modification gave (as they are doing fairly frequently), the trustee has two years to “look back” to figure out if the change or modification was to the detriment of other creditors, i.e. a preference.

The trustee also looks to see if the modification is truly a “continuation” of the debt or if it is a “novation.” A continuation of the debt would insure the priority of the original mortgage but if the original debt is replaced with a new debt, a novation has occurred and the original lien priority would be lost for the entire indebtedness.

That is why we require the ALTA 11 Mortgage Modification endorsement to insure mortgage modifications. The ALTA 11 endorsement insures the lender against loss or damage from the invalidity of the insured mortgage due to the modification of the mortgage. To issue this endorsement, you must:

1. Verify the current parties in possession;
2. Verify taxes are current;
3. Execute a satisfactory, notarized Affidavit Regarding Liens, if applicable; AND
4. If there are any intervening matters discovered during the title search between the date of policy and the date of the ALTA 11 endorsement, these matters must be excepted under paragraph 2 of the ALTA 11 endorsement.

If your update indicates there are intervening junior lienholders, getting a subordination from that lienholder is a key way to assure priority. Sometimes the borrower is already in bankruptcy when the bank seeks a modification and there are even situations, as in the case of Debtors in Possession (DIP) loans, where loans are made to insolvent borrowers. If your transaction includes one of these, call the SC Office for help with the special underwriting requirements.

And don’t forget the always popular “Deed in Lieu of Foreclosure.” If the borrower decides to give the property back to the bank with a Deed in Lieu of Foreclosure before they file bankruptcy, the trustee can use his “avoiding powers” to recapture the property and void the transfer. See the General Underwriting Principles Manual online at www.invtile.com/library/upload/general-underwriting-principles/gup.pdf or call the SC Office for the special underwriting requirements for Deeds in Lieu.

You might think you need a vacation after all this but rest assured the SC Office can help you make it a day at the beach!

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Investors Title
2009
SC Annual
Seminar

Register Now!



RISKY BUSINESS

Claims Corner

- If the seller/owner on your transaction is a builder/developer, check the Disapproved Builder List at <http://invtitle.com/library/upload/builder/disapproved-builders-list/disapproved-builders-list.pdf>. If they are on the disapproved list, call the SC Office to determine what the "next steps" are.
- BEWARE of Mental Health liens. They do not expire until 1 year after death and are not always indexed with other liens. Make sure your abstractor knows where to look for these because the State is collecting on these with a vengeance now - and they are often six-figure liens!
- If the majority of a business' assets are transferred, a lien arises against the assets under Code §12-54-124. Be sure to get a Transferor Affidavit or Certificate of Tax Compliance to protect the purchaser!

Useful SC BAR Links

The SC Bar Real Estate Section Forum link: <http://forum.sctitle.org/realestate/login.asp?target=default.asp>

SC RE Law List Serve: <http://groups.google.com/group/screlistserve?hl=en>

Please see the attached
Memorandum
 From
W. Morris Fine,
President and COO



Be sure to check out the two new additions to the South Carolina page at www.sc.invtitle.com!

The screenshot shows the website header with the logo and tagline "SOUTH CAROLINA © Investors Title Insurance Company INNOVATIVE BY INSTINCT". Below the header is a navigation menu with the following items: Home, About Us, Contact Us, Training Courses, Online OTL/Reinsurance, Resource Center, Agent & Branch Login, and ITC Corporate Site. To the right of the menu is a large image of a goose in flight over water, with the word "INVESTORS" at the bottom.

The **Online OTL/Reinsurance** link allows you to electronically submit your Over The Limits requests and Reinsurance Approvals directly to the South Carolina Office using the easy two-page form.

Click on **Training Courses** to find course information and direct links to the recorded webinars for each course listed.



4th Quarter 2009 Training Calendar

Course	CLE/CE Hours	Scheduled Times	Location	Dates Offered
Title I	4	10am-3pm	State Office	October 22
Title II	4	10am-3pm	State Office	November 12
Title 1	4	10am-3pm	State Office	December 3
Endorsements	3	10am-2pm	State Office	December 17

Title Talks:

Search Standards (expires 12-01-09):

<https://www1.gotomeeting.com/register/323196917>

What's in a Name? (expires 11-01-09):

<https://www1.gotomeeting.com/register/767009979>

Estates (expires 02-16-10):

<https://www1.gotomeeting.com/register/484891654>

Legal Descriptions (Part 1) (expires 02-01-10):

<https://www1.gotomeeting.com/register/422944696>

Trusts (expires 2-27-2010)

<https://www1.gotomeeting.com/register/934638673>

Deeds (expires 4-3-2010)

<https://www1.gotomeeting.com/register/282084049>

Easements (expires 5-01-2010)

<https://www1.gotomeeting.com/register/370804032>

Modifications (expires 5-20-2010)

<https://www1.gotomeeting.com/register/736362672>

Survey Coverage (expires 7-3-2010)

<https://www1.gotomeeting.com/register/871705264>

Foreclosure (expires 8-3-2010)

<https://www1.gotomeeting.com/register/229706944>

Estates (9-9-2010)

<https://www1.gotomeeting.com/register/157045504>

SC Bar CLE's - Distance Learning:

2008 Real Estate Ethics Panel - ITIC 2009 Annual Seminar - 1.5 hrs CLE (1.5 ethics)

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

Sidebar SC: Real Estate Update 2008 - Teri Callen Stomski -1.0 hrs CLE

Other Trainings of Interest:

"Troubleshooting Title and Title Insurance Problems"

December 11, 2009 Embassy Suites Hotel National Business Institute www.nbi-sems.com 6.0 hrs. CLE



**2009 SC TITLE INSURANCE SEMINAR
October 16, 2009**

Buck Ridge Plantation

**231 Gundog Trail
Neeses, South Carolina 29107
1-803-531-8408**

Register Now!

And join us for a day of learning and sharing industry knowledge.

The morning session will be focusing on ethics, the state of the market and RESPA Reform. In the afternoon, we will provide three breakout topics in three different learning paths: Underwriting Path, Business Development Path and Paralegal Path.

6 Hour CLE, 1 hour Ethics

**Online registration is available at
sc.invtitle.com**

Click on Resource

Center / Seminars / Registration

Activities may also be booked individually through Buck Ridge Plantation.

1-803-531-8408

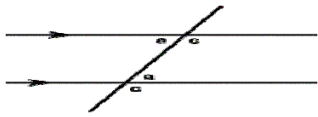
Skeet Shooting, Horseback Riding,
DeerHunting

Fishing is available at your leisure,
Catch and Release

For additional facility information,
access the following link:

<http://www.buckridge.com/>





The Audit Angle

Thanks to all of you who have provided the desktop review documentation in such a timely manner. If you are still working on pulling that together, we do need that information as soon as possible. You can fax, email or mail it to 919-942-9323, kpollock@invtitle.com or 121 North Columbia Street, Chapel Hill, NC 27514, Attn. Kirsten Pollock. If you have any questions, please do not hesitate to contact me via email or at 919-522-6698.

Investors Title Exchange Corporation Same Day Turnaround 1031s

For an exchange coordinator, call
800-724-8791
or visit
exchanges@invtitle.com

iTRACS is a fast and reliable reconciliation service provided to attorneys to help manage client funds properly.

Please contact the South Carolina Branch at 800-732-8005 to sign up today!



Legislative Update

Landscape Service.

Act 40 Adding § 29-5-26 to allow certain landscape services to have a mechanics' lien on the real estate where the landscape services were provided

"South Carolina Mortgage Lending Act" Act 67

- *Effective January 1, 2010, (except that the definition of 'mortgage loan originator' does not include an individual servicing a mortgage loan as that term is defined in § 37-22-110(22) and § 40-58-20(20) until July 31, 2011.*
- Requires licensing of a mortgage lender, loan originator, or someone acting as a mortgage lender

Property Tax Exemptions.

Act 76 (R88, H3018) amends § 12-37-220, as amended, Code of Laws of South Carolina, 1976, relating to property tax exemptions, so as to exempt from property tax the value of improvements to real property consisting of a newly constructed detached single family home through the earlier of the property tax in which the home is sold or otherwise occupied, or the sixth property tax year ending December thirty-first after the home is completed.

**SOUTH CAROLINA
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COMPANY**

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Investors Title Company
INNOVATIVE BY INSTINCT

We are on the web!
www.sc.invtitle.com

Survey Affidavits

On August 26, 2009, Gene Dinkins, Chairman of the Board of Registration for Professional Engineers and Surveyors (BRPES), wrote a letter to the Real Estate Practice Section of the SC Bar, asking that SC Bar members immediately discontinue the practice of allowing non-licensed surveyors to sign survey affidavits, like the SC-308 "Owner's Affidavit (Survey Coverage)." While BRPES recognized that it was not the unlicensed practice of surveying to sign the affidavit, it did find that the title industry's practice of accepting survey affidavits from property owners "is not in the best interest of public health, safety, and welfare of the people of South Carolina and may violate South Carolina law."

This letter was discussed at the most recent PLTA meeting and all of the underwriters present agreed that there have been no changes to any underwriting with regard to the acceptance of Owner's Survey Affidavits. ITIC has not changed its underwriting with regard to the acceptance of these affidavits: if the survey is less than 5 years old and the Owner executes the SC-308, indicating no material change, full survey coverage can be given to the Owner.

From the Goose's Beak



- Please remember to submit a No Remittance form if you have no policies to remit for the month.
- RESPA GFE/HUD changes coming soon. Are you ready?
- New RESPA FAQ's Link:
<http://www.hud.gov/offices/hsg/ramh/res/resparulefaqs.pdf>
- Reminder: Please hit Remit button on iJacket Manager.



MEMORANDUM

DATE: August 25, 2009
TO: Investors Title Agents and Affiliates
FROM: W. Morris Fine, President and COO
RE: Title Insurance Industry and Investors Title Insurance Company
Performance Overview and Update

The Industry

Despite aggressive resizing to match post credit crunch transaction levels, the national title insurance companies' operating results continue to suffer from declining transaction volumes as well as declining transaction sizes and therefore policy premium amounts. Commercial activity, particularly larger transactions, has slowed dramatically and home prices continue to decline. Increased claims expense, driven largely by elevated foreclosure activity, continues to impact profits adversely while reminding lenders and owners of the value of securing title insurance coverage.

Please see the attached summary of "Net Income By Company" which shows second quarter and six month 2009 earnings for Investors Title and three leading national competitors. With the exception of Stewart Title, the national companies' results were profitable in the second quarter and for the six months ended June 30, 2009. The national companies have successfully implemented cost control measures including consolidation of underwriter brands, closing offices, reducing commission splits paid to agents or eliminating unprofitable agency relationships, and reorganizing state and regional management and support personnel. On the revenue side, efforts to increase rates are under way in several states. All of these "back to basics" changes to enhance profits will continue for some time as modifying legacy business models involves making difficult process and cultural changes.

Over the last year, the industry has continued to experience consolidation. Notably, Fidelity acquired both Lawyers Title and Commonwealth in the wake of the difficulties experienced by the historically Richmond, VA based, and now bankrupt, LandAmerica Group. The title insurance industry has not been immune to failures during this downturn. Not unlike the FDIC takeovers increasingly seen in the banking industry, a couple of smaller title insurance companies have been forced to cease operations and enter insurance department supervised wind downs. The largest company forced to cease issuing new policies due to a substantial decline in its statutory surplus, Attorneys' Title Insurance Fund, Inc. (FL), was one of the industry's regional players with strong Florida market share and over \$200 million in premiums written in 2008. The broader industry, however, remains well reserved and capitalized.

Investors Title Company

We are pleased with the performance of our title insurance business in 2009. After a difficult 2008 where we posted a loss in the fourth quarter and for the year, we bounced back in the first and second quarters of 2009 posting consecutive profitable quarters. Profit improvement was largely driven by writing premiums just slightly behind same period 2008, reducing payroll and overhead expenses and avoiding jumbo claims like the ones incurred in the fourth quarter of 2008.

The vast majority of our branch and agent distribution has performed very well in 2009. In fact, our National Markets and Investors Title Management Services managed agents posted record revenues through the first six months of 2009 due to continued improvement in penetration levels coupled with a significant uptick in refinance activity and the cumulative impact of continuing to add agency affiliates. So far, in 2009, 17 new banks have joined our national markets agency program bringing our number of participating partners to 320, representing well over 400 bank charters and other real estate industry companies and affiliates.

We are pleased that our branch and agent distribution is profitable and that we have remained true to our relationship criteria leading up to and after the credit crisis. We focus on building customer and agent relationships with partners we like and trust, and we establish business relationships that are mutually beneficial, profitable and positioned for long-term growth. In short, we have made a concerted effort to carefully evaluate growth opportunities and build our distribution on solid footing. Our continued focus on nurturing and supporting the affiliated agent channel has helped grow our market share in several markets and offset the overall decline in real estate and lending activity levels.

Lastly, we remain very pleased with the strength of our policyholder surplus and financial stability ratings. Our balance sheet has no goodwill or debt, and we continue to be recognized for our excellent financial stability.

In Closing

The lending and real estate markets continue to be unsettled and adversely impacted by the declining economic environment. We are thankful for the brisk refinance market that has helped offset the loss of purchase money activity. We are mindful, however, that new construction, commercial and purchase money lending continue to languish. The unpredictable economic environment coupled with the constantly and quickly evolving political and regulatory environment makes planning difficult. The fourth quarter storms from 2008 have passed and much progress has been made in 2009, but we remain watchful during what we believe will continue to be a difficult real estate environment.

We are thankful for the financial condition and market position Investors Title enjoys. We remain committed to our core operating and investment philosophies and relationship parameters. We believe we are well positioned for the future whatever it may hold.

We appreciate the loyalty and support of our agents, partners and customers and look forward to continuing to build on the success we have enjoyed together and expanding our mutually beneficial relationship into the future.

Net Income By Company
(Rounded to the nearest thousand)

	<u>2nd Q 2009</u>	<u>6 mos 2009</u>	<u>YE - 12/31/08</u>	<u>YE - 12/31/07</u>
Stewart Title	(\$20,600)	(\$58,200)	(\$241,860)	(\$40,220)
First American	\$70,272	\$106,297	(\$26,320)	(\$3,119)
Investors Title	\$2,115	\$3,550	(\$1,183)	\$8,402
Fidelity	\$91,943	\$79,545	(\$179,016)	\$129,769

	<u>52 Week Stock Price Range</u>	<u>Current Price</u>	<u>Market Capitalization</u>
Stewart Title	\$5.64 - \$33.09	\$14.27	\$260.23 million
First American	\$14.27 - \$33.98	\$31.81	\$2.97 billion
Investors Title	\$17.14 - \$49.50	\$33.75	\$77.52 million
Fidelity	\$6.66 - \$22.85	\$15.25	\$3.48 billion