



 GOOSE NEWS 

The Legal Corner: By Teri K. Callen, Esq. Hide and Go Seek...The Lien



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These days it seems that just about every closing has property plagued with liens you have to resolve before you can even hope to get it to the closing table. The liens of record can be hard enough to deal with, but the sneaky ones can be even more troubling.

One such sly lien is the Majority of Business Assets Transfer Tax Lien pursuant to §12-54-124. This tax lien is placed on an asset when it is sold- if it represents a majority of the assets of a business- for tax liabilities that were generated by the seller prior to the sale. This lien can prohibit the purchaser from getting a business license or revoke an existing one until all taxes owed are paid. How can you protect your purchaser client? Have the seller provide a Certificate of Compliance from the SCDOR or a Transferor Affidavit from the seller stating that all tax returns have been filed and all taxes generated by the business have been paid. They are both valid if the closing takes place within thirty days of the date of the certificate/affidavit. (See Revenue Ruling 04-02 for an example of the Affidavit.)

Another shifty one is a deficiency judgment from a prior foreclosure. Some assume that because there isn't a stand alone deficiency judgment order, there is no deficiency judgment. However, if the original order of foreclosure references the deficiency demand, states a sum specific and reduces it to a personal judgment, no additional order is required. If you find a previous foreclosure where a deficiency was demanded, the SC Office can help you determine if the deficiency judgment has attached to your subject property.

HOA assessments can be tricky, too. Case law tells us that these liens arise when the assessments become past due, so be sure to check with the HOA and get written verification that all assessments – including special assessments – are not past due. Even more devious are those municipal liens we discussed recently in *Goose News*. Check the municipality where your property is located to confirm there are no liens assessed but not of record.

And no article on liens would be complete without mentioning those always interesting equitable interests in property a/k/a bond for title or installment sales contracts. These interests are subject to child support liens, federal tax liens, and mechanic's liens, so check for these crafty liens against the vendee.

The Legal Corner Cont:

Liens aren't the only things that can sneak up on you, so don't forget these wily rascals:

- Fed's right of redemption – 1 year, unless a tax lien and then 180 days

Purchase from foreign persons – FIRPTA & Disregarded Entities:

A disregarded entity may not certify that it is the transferor of a U.S. real property interest. As such an entity is disregarded for U.S. tax purposes, the owner of the disregarded entity is treated as the transferor of the U.S. real property interest and must provide a certificate of non-foreign status to avoid withholding under section 1445. The disregarded entity itself may not provide such a certificate.

How do you protect your client and comply with the FIRPTA regs?

- Require the transferor to execute a Certificate of Non-Foreign Status Individual Transferor or Certificate of Non-Foreign Status Entity Transferor;
- Provide a notice to the transferee summarizing the transferee's potential obligation to withhold pursuant to FIRPTA;
- If needed, immediately provide a Notice of False Certification to the transferee and the IRS; and
- Retain the Certificate and notices for five tax years after the tax year in which the transaction occurs.
- In all closings where the seller is a foreign individual or entity, require a U.S. taxpayer identification number to be supplied by the seller (and by the buyer, foreign or domestic) at the time of filing any form, notice or election under the regs. This may cause delays or difficulties in closings, since many foreign owners of U.S. real estate do not have TINs and it may take substantial time to obtain one.

These tips should help you avoid the tricky tricks of our trade and save your clients from being saddled with liens not their own!



New and Improved M.I.A.

After requests by its membership, the Palmetto Land Title Association (PLTA) through its Board Member (and our very own) Teri Callen Stomski, drafted the First Amended and Restated Mutual Indemnification Agreement, which will go into effect on January 1, 2010 and will replace the original MIA. Companies that were part of the original MIA but do not sign the revised MIA will no longer be able to indemnify through the MIA and third parties will instead have to get letters of indemnification from those underwriters.

To date, the following companies have signed the revised MIA and third parties will be able to use the MIA for their indemnification as of 01-01-2010:

Investors Title Insurance Company

Fidelity National Title Insurance Company

First American Title Insurance Company

Lawyers Title Insurance Company

Commonwealth Land Title Insurance Company

The original MIA was enacted in November 2006 and was signed by ten SC title insurance companies. It covered certain defects, including outstanding mortgages and judgments, so long as the prior policy (owner's or if following a foreclosure, lender's) was at least one year old and the amount of the liability was less than \$500,000.

The revised MIA will now cover additional matters, subject to certain criteria, such as:

- The failure of the instrument to affirmatively state the date of execution of the instrument, the expiration date of the notary's commission and the date of said acknowledgment or probate on the instrument.

Recorded UCC(s) or Assignment(s) of Rents and Leases contemporaneous with a mortgage cancelled of record.

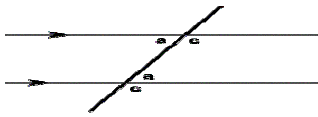
Certain setback line violations.

The revised MIA further clarified the following:

- Mental health liens are specifically NOT covered by the MIA.
- It is the sole discretion of the Indemnitee to accept that the defect is covered by the Agreement.

Nothing in the Agreement prevents a Title Insurer from requiring separate letters of indemnity or requesting the Indemnitor acknowledge coverage under the Agreement.

For a complete copy of the First Amended and Restated MIA, please contact the SC Office.



The Audit Angle

Please submit any final desktop audit documentation by **December 31, 2009**. You can fax it to 919-942-9323, email it to kpollack@invtitle.com, or mail it to 121 North Columbia Street, Chapel Hill, NC 27514, Attn. Kirsten Pollock. If you have any questions, please contact Kirsten via email or at 919-522-6698.

Do you have your new rates?

Contact your vendors at the numbers below

SoftPro Users: 800-848-0413

PropertyInfo/ AIM Users: 877-800-3132

TitleSmart Users: 864-292-3711

TSS/TitleExpress Users: 443-321-5600

Display Soft Users: 863-763-5555

ALTA Forms Licensing Initiative

All Non-ALTA members were mailed a free ALTA membership that began October 1, 2009, along with a license to use ALTA's forms for the remainder of 2009. ALTA also invited you to rejoin ALTA in 2010 as full dues paying members. Those who elect not to join will be billed for a license. The license to use ALTA's Policy Forms is a \$195 annual fee, regardless of volume. However, ALTA offers an "occasional use" license waiver for those agencies and attorneys who generate very little each year in title premiums. Agents who wish to apply for this waiver must provide documentation on the volume of their annual title premiums.

The license to use the forms is included in the benefits ALTA members receive with a membership. If you are not sure if you are a member, you can check <http://www.alta.org/search> or contact ALTA at membership@alta.org or 202-261-2944.

Under RESPA, the license to use ALTA Policy Forms is a thing of value, which underwriters are prohibited from providing agents and therefore, Investors cannot pay this on your behalf. Further, because your agency is not more than 50% owned by Investors, you are not considered a member of ALTA through Investors' membership.

For more information, please contact ALTA at 202-296-3671 or email them at service@alta.org. Additional information is also available at these links to ALTA's website at <http://www.alta.org/membership/intro.cfm> and <http://www.alta.org/images/PDF/20091014%20PFL%20FAQs.pdf>



1st Quarter 2010 Training Calendar

Course	CLE/CE Hours	Scheduled Times	Location	Dates Offered
Title I	4	10am-3pm	SC Office	January 6
ITEC	1.5 Ethics	9am-10:30am	Charleston	January 12
ITEC	1.5 Ethics	9am-10:30am	Columbia	January 13
ITEC	1.5 Ethics	9am-10:30am	Greenville	January 14
Title I	4	10am-3pm	SC Office	February 3
Title II	4	10am-3pm	SC Office	February 10
Endorsements	3	10am-2pm	SC Office	February 17
Title I	4	10am-3pm	SC Office	March 2
Title II	4	10am-3pm	SC Office	March 10

Title Talks:

Legal Descriptions (Part 1) (expires 02-01-2010):

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

Trusts (expires 03-23-2010)

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

Deeds (expires 04-03-2010)

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

Easements (expires 05-01-2010)

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

Modifications (expires 05-21-2010)

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

Survey Coverage (expires 06-26-2010)

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

Foreclosures (expires 07-30-2010)

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

Estates (expires 09-08-2010)

<https://www1.gotomeeting.com/register/836924241>

Back to Basics (expires 10-05-2010)

<https://www1.gotomeeting.com/register/908089793>

Digging Deeper to Reduce the Risk (expires 11-04-2010)

<https://www1.gotomeeting.com/register/402199705>

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



The Form 8300

If your firm receives cash for a closing in excess of \$10,000 in one transaction, or two or more *related* transactions, per IRS regulations, you must file a Form 8300 within 15 days of receipt of the reportable cash.

The IRS defines "cash" (beyond the obvious) as certain monetary instruments, including a cashier's check, bank draft, traveler's check, or money order, if it has a *face amount of \$10,000 or less* and it is received in:

1. A "designated reporting transaction" - generally, a retail sale of a consumer durable, a collectible, a travel or entertainment activity;

OR

2. The recipient knew or should have known that the payer was trying to avoid the reporting of the transaction.

Generally, since attorneys are not involved in the retail sale of consumer durables, collectibles or travel and entertainment, reporting of monetary instruments is not required (although there is no general exception from the reporting requirements of IRC 6050I for attorneys). *However, if the attorney knew or should have known that the use of the monetary instrument(s) was for the purpose of avoiding the filing of the Form 8300*, such becomes reportable. (Treas. Regs. 1.6050I-1(c)(1)(ii)(B)(2).)

A wire transfer does not constitute cash for Form 8300 reporting and a cashier's check, bank draft, traveler's check, or money order with a face amount of *more than \$10,000* is not treated as cash and a business does not have to file Form 8300 when it receives them. These items are not defined as cash because, if they were bought with currency, the bank or other financial institution that issued them must file a report.

If you file a required Form 8300, you must also furnish a written statement to each person identified on Form 8300 by January 31 of the succeeding calendar year. A copy of each filed Form 8300 must be retained for five years by the reporting business.

For more information on the IRS Form 8300 and the requirements for filing and notice, additional information can be found at the following IRS website links:

http://www.irs.gov/irm/part4/irm_04-026-012.html#d0e29

<http://www.irs.gov/businesses/small/article/0,,id=148821.00.html>



- Installed new rates.**
- Ready for RESPA REFORM.**
- Offering Expanded Coverage to Clients.**
- Hitting the Remit Button.**
- Submitting your policies and remittances to:**

Attn: Kim Cecil
 Investors Title
 SC Agent Remittance- USU
 308 West Rosemary Street
 Suite 106
 Chapel Hill, NC 27516



Have you checked our rating?

Investors Title boasts excellent financial stability.

There is no debt and no goodwill on the Company's balance sheet.

**SOUTH CAROLINA
INVESTORS TITLE INSURANCE
COMPANY**

2711 Middleburg Drive
Suite 214

Phone: 800-732-8005
Fax: 866-719-3504
E-mail: southcarolina@invtitle.com



Investors Title Company
INNOVATIVE BY INSTINCT

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



Your friends in the SC Office have been making our lists and checking them twice and have made it very clear what we want Santa to bring us for Christmas. Unfortunately, we are thinking that he has other plans. We have a sneaky suspicion that our present, tied up with a beautiful HUD bow will be RESPA Reform. Most of you are on that same list!

While this reform will bring certain challenges, we will all weather it as we have any other change that has come our way. We are confident that our Investors agents are the most educated on this topic and are well prepared to implement the reform as needed. One only needs to look at the number of attorney agents and paralegals that attended Investors Title's 5 City RESPA Tour or took advantage of the RESPA Reform webinar to understand and admire the level of dedication exhibited by our family of agents. At the end of the day, we will make the necessary changes, find solutions to workflow and take advantage of the marketing opportunities that this reform may provide.

We look forward to 2010 and the opportunity to continue serving as your underwriter, providing CLE and other valuable educational resources. We are enthusiastic about exploring technological enhancements and are eager in our commitment to finding solutions for growth.

We want to express our sincere appreciation to you for your continued support of Investors. We are happy to have worked with you in the past year and we look forward to continuing to provide new resources and tools to enhance your business. Thank you for being a part of the Investors Title family!

We wish you and your families a happy holiday and a prosperous New Year!

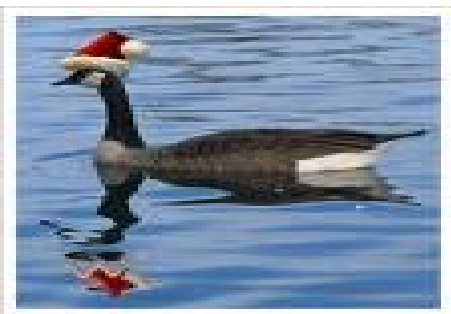
Do not fear the winds of adversity. Remember: A kite rises against the wind rather than with it. -Unknown Author

From the Goose's Beak



- As you are working on files in iJacket Manager that closed prior to the new rates effective date of December 1st, you may find the premium recalculated to reflect the new rate, especially if you change the coverage amounts. In order to produce a correct remittance report, you will need to manually override the premium calculated in iJacket Manager. The system will calculate the agent/underwriter split based on the premium you enter.

- Reminder: Once your lender has been added to the ICL Generator with the ISAOA/ATIMA language, there is no need to check the box to request the addition of this language. If you don't see your lender in the drop-down list with the language, send the South Carolina Office a request to add it. Doing this means your letter is produced quicker and there's no more waiting for it to be released!
- Need new rate sheets? Email the South Carolina Office at southcarolina@invtitle.com or call at 800-732-8005 to request new laminated rate sheets for your office.
- RESPA Reform webinar is still available for viewing at your convenience. You can access the webinar by clicking on the following link: <https://www1.gotomeeting.com/register/192367336>





SoftPro Rate Codes and Descriptions

Code	Description
ITSC-LP	Standard Loan Policy, if there is a prior it is a Standard Loan Policy
ITSC-LPXL	Standard Loan Policy, if there is a prior it is a Expanded Loan Policy
ITSC-OP	Standard Owner's Policy, if there is a prior it is a Standard Owner's Policy
ITSC-OPXO	Standard Owner's Policy, if there is a prior it is a Homeowner's Policy
ITSC-SI	Simultaneous Issue of a Standard Owner's and a Standard Loan Policy, if there is a prior it is a Standard Owner's Policy
ITSC-SIXO	Simultaneous Issue of a Standard Owner's and a Standard Loan Policy, if there is a prior it is a Homeowner's Policy
ITSC-SIOEX	Simultaneous Issue of a Standard Owner's and a Expanded Loan Policy, if there is a prior it is a Standard Owner's Policy
ITSC-OELXO	Simultaneous Issue of a Standard Owner's and a Expanded Loan Policy, if there is a prior it is a Homeowner's Policy
ITSC-ELP	Expanded Loan Policy, if there is a prior it is a Standard Loan Policy
ITSC-ELPXL	Expanded Loan Policy, if there is a prior it is a Expanded Loan Policy
ITSC-HOP	Homeowner's Policy, if there is a prior it is a Standard Owner's Policy
ITSC-HOPXO	Homeowner's Policy, if there is a prior it is a Homeowner's Policy
ITSC-SHELP	Simultaneous Issue of a Homeowner's and a Expanded Loan Policy, if there is a prior it is a Standard Owner's Policy
ITSC-SHEXO	Simultaneous Issue of a Homeowner's and a Expanded Loan Policy, if there is a prior it is a Homeowner's Policy
ITSC-SIHLP	Simultaneous Issue of a Homeowner's and a Standard Loan Policy, if there is a prior it is a Standard Owner's Policy
ITSC-SHOXO	Simultaneous Issue of a Homeowner's and a Standard Loan Policy, if there is a prior it is a Homeowner's Policy