DISCLAIMER

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- **Case Law & Legislative Update**
  
  *Presented by:*
  
  **Amelia A. Bower, Esq.** Plunkett Cooney, PC

- **Ethics/Professional Conduct**
  
  *Presented by panel members:*
  
  **Stephen C. Hombach, Esq.**
  **Dean Talaganis, Esq.**, Ohio Real Title Agency, LLC
  **Alvin E. Mathews, Jr., Esq.**, James E. Arnold & Associates, LPA
  **Arthur D. Smialek, Esq.**, Underwriting Counsel, First American Title Insurance Company
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Speaker Biographies

1. **MICHELE GREEN, ESQ.** Senior Vice President and Senior Business Counsel for the First American Title Agency Division, Michele oversees all aspects of the underwriting function within the Division and, in collaboration with the rest of the Agency Leadership team, works to ensure that First American Title develops and maximizes the underwriting resources and attributes that create value for our agents and sustain mutually beneficial relationships between First American Title and its agents. Prior to her current role, in her more than 18 years with First American Title, Michele has been Senior Corporate Underwriting Counsel, National Loss Prevention Counsel, Regional Claims Counsel for New England and State Counsel in Rhode Island. Before joining First American Title, she was in private practice, specializing in real estate and title litigation. Michele is a graduate of The University of Texas (1986) and New England School of Law (1990) and is admitted to practice before all courts of the Commonwealth of Massachusetts and the State of Rhode Island.

2. **JOHN M. HOLLENBECK, ESQ.** Executive Vice President of First American Title Insurance Company, and ALTA President, 2015-2016, John has held various positions of increasing responsibility over his 35-year career with First American Title. He began his career with First American in 1980 working as a title searcher in the Riverside, California office. In 1983, he moved to the Orange County title branch and served as a title officer and production manager. In 1989, John moved to the home office in Santa Ana, Calif., and became assistant senior underwriter. He was named senior underwriter in 1994, and in 1997, he took the newly created position of national title processes director charged with improving efficiencies across all title operations. In 2004, John was named executive vice president of First American Title Insurance Company. In that capacity, he provides corporate oversight of First American’s home office Underwriting Department and various other duties. John holds the National Title Professional (NTP) designation and is the 2015-2016 president of the American Land Title Association.

3. **RUTH A. DILLINGHAM, ESQ.** Senior Underwriting Counsel - Corporate Underwriting, Ruth works with lenders and title agents on issues relating to lending, compliance, regulatory and conveyancing practices. Ruth is highly valued for her ability to transform complex regulatory matters into easily-understood concepts and played an integral role in First American Title’s ability to provide accurate and timely information regarding the TILA-RESPA Integrated Disclosure (TRID) Rule. Prior to joining First American Title, Ruth was in private practice in the Boston, Massachusetts area for 20 years. She is a frequent speaker at continuing education seminars for attorneys, agents and lenders. Ruth graduated, cum laude, from Mount Holyoke College with a Bachelor of Arts in American history and received her Juris Doctor from Boston...
University School of Law. She is a member of the Real Estate Bar Association of Massachusetts (President 1996), the Abstract Club (President 2008-2010), the New England Land Title Association (President 2008), and the Massachusetts Mortgage Bankers Association, (President 2003). Ruth received the First American D. P. Kennedy Circle of Excellence Award in 2010 and 2015 and received numerous accolades from the Massachusetts Mortgage Bankers Association including the 2005 Distinguished Service Award, 2012 New England Mortgage Bankers Hall of Fame Award, and 2014 Lifetime Achievement Award.

4. **MARK FLEMING, PH.D.** Chief Economist for First American Financial Corporation, Mark leads an economics team responsible for analysis, commentary and forecasting trends in the real estate and mortgage markets. Mark’s research interests primarily include real estate and urban economics, applied econometrics and mortgage risk. A trusted and influential voice with 20 years of experience in the mortgage and property information business, Mark is frequently quoted by national news outlets and industry trade publications such as The Wall Street Journal, The New York Times, and Housing Wire and is a regular guest on high-profile broadcast news channels, including CBS, CNBC, Fox Business News and NPR.

Before joining First American, he developed insights and analytical products for CoreLogic™, and property valuation models at Fannie Mae. Mark graduated from the University of Maryland with a master of science and a doctorate in agricultural and resource economics and holds a bachelor of arts in economics from Swarthmore College. He has published research in the American Journal of Agricultural Economics and Geographic Information Sciences. His research has also been published in the book, Advances in Spatial Econometrics. Mark lives and works in the Washington, D.C. area.

5. **ARTHUR D. SMIALEK, ESQ.**, Underwriting Counsel for First American Title Insurance Company, Arthur has over 30 years of experience in the title industry. Prior to joining First American Title in 2013, he worked for a large national title insurance underwriter and several large title insurance agencies with multi-state title insurance business. He began his career in the industry as an examiner with responsibilities in 12 counties. Arthur is a knowledgeable professional and a frequent lecturer at underwriting seminars and community organizations. He has authored articles that have appeared in several publications. Arthur served as Senior Associate Counsel for the Department of the Navy, adjunct faculty at Cuyahoga Community College and has regulatory and general private practice experience. He is an active member of the Ohio Land Title Association, and served as Trustee for 5 years. Arthur received his bachelor’s degree from The Ohio State University and his Juris Doctor from Cleveland State University, Cleveland-Marshall College of Law.
6. **STEPHEN C. HOMBACH, ESQ.** Stephen’s practice includes Ohio insurance agent licensing and enforcement issues with emphasis on regulatory problems regarding title insurance agent and agency licensing, controlled business, inducement, and enforcement issues. Stephen was a staff counsel for the Ohio Department of Insurance from 1989 to 2011, with responsibilities for insurance agent and agency licensing and enforcement issues with a primary focus on title insurance regulatory matters. Stephen drafted rules and bulletins related to title insurance regulation including Ohio Administrative Code sections 3901-7-01 through 3901-7-04, as well as Bulletins 90-2, 92-2, 95-3, 95-4, 2005-1, and 2010-05. He has reviewed title insurance agency applications, enforcement files, prepared cases for administrative action and drafted notices of opportunity for hearing and adjudication orders. Stephen received his Juris Doctor, summa cum laude, from Indiana University Robert H. McKinney School of Law in Indianapolis, Indiana, and his bachelor’s degree from Transylvania College in Lexington, Kentucky. Stephen is a member of the Ohio Land Title Association and the Central Ohio Land Title Association.

7. **ALVIN E. MATHEWS, JR., ESQ.** Alvin practices in the areas of Legal Ethics and Professional Responsibility, and Litigation. He is a former Assistant Disciplinary Counsel for the Supreme Court of Ohio, presenting attorney discipline and judicial discipline cases before the Board of Commissioners on Grievances and Discipline and the Supreme Court of Ohio. Alvin has provided counsel and rendered opinions on hundreds of legal ethics matters, has litigated nearly 100 formal lawyer and judicial discipline cases, and has argued over 20 cases in the Ohio Supreme Court. Alvin received his bachelor’s degree from Miami University in Oxford, Ohio, and his Juris Doctor from Ohio Northern University in Ada, Ohio. He is a member of the Ohio Association of Civil Trial Attorneys, the Chief Justice Thomas J. Moyer American Inn of Court, and the Ohio State and Columbus Bar Associations.

8. **DEAN TALAGANIS, ESQ.** Operations Manager and Underwriting Counsel for Ohio Real Title, Agency, LLC, Dean Talaganis has been serving in this capacity since May of 2015. He is also counsel to Sandhu Law Group, LLC. His responsibilities include managing the operations of five title and closing offices, underwriting, title examination, and the processing of residential and commercial loans and closings. He regularly markets the company’s title services on a local and nationwide basis and is also a speaker on matters related to title insurance and closing issues, foreclosures, and ethics. Formerly, Mr. Talaganis was a partner with the law firm of Morris Schneider Wittstadt, the regional partner for the states of Ohio, Delaware, and Indiana, and the district president for LandCastle Title, LLC, the firm’s Ohio closing operations, from 2005-2015. Before joining Morris Schneider Wittstadt, Mr. Talaganis served as the vice president of business development and client relations for a large title agency, overseeing the states of Ohio.
and Michigan. Mr. Talaganis received a Bachelor of Science in Business Administration with a concentration in industrial marketing from Youngstown State University and his Juris Doctor from the Capital University Law School. A member of the Ohio State Bar Association and the Real Estate Owners and Managers Association (REOMAC®), Mr. Talaganis is a licensed attorney in Ohio and is admitted to practice before the U.S. District Court (Northern and Southern Districts of Ohio) and the United States Claims Court. Mr. Talaganis is rated BV Distinguished by Martindale-Hubbell, is a licensed title insurance agent in Ohio, Michigan, and Indiana and has had articles published by the Ohio Land Title Association, National Foreclosure Professional news magazine, REOMAC monthly newsletter, Servicing Management magazine, and DS News.

9. **AMELIA A. BOWER, ESQ.** Managing partner of the Columbus office of Plunkett Cooney, PC and for more than 25 years, Amelia has practiced in the areas of civil litigation involving real estate. Her practice included bankruptcy cases involving defective deeds and mortgages, mechanic’s liens, lien and mortgage priority disputes, equitable subrogation, dower, deed warranty claims, fraud and forgery in real estate matters, street and road vacations, quiet title and declaratory judgment actions, probate matters including land sale proceedings, guardianships and estates, escrow and title issues, prosecution and defense of title insurance claims, coverage issues regarding title insurance, as well as oil and gas litigation and coverage issues. Amelia has served as an expert in ethics matters as well as real property disputes involving title searchers, notaries, escrow and closing agents and coverage/bad faith issues. She has a bachelor’s degree from Miami University and a Juris Doctor from Cleveland-Marshall College of Law. Amelia is a member of the Ohio State Bar Association Real Property Section as well as the Legal Ethics and Professional Conduct Committee, and a member of the Ohio Land Title Association and the Central Ohio Land Title Association. She is also a contributor to Ohio Real Estate Law and is a frequent lecturer on real estate matters.
## Agenda

**Wednesday, June 22nd**

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
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<tbody>
<tr>
<td>7:30am – 8:30am</td>
<td>Registration</td>
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<tr>
<td>8:25am – 8:30am</td>
<td><strong>Welcome and Introduction</strong></td>
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<tr>
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<td>Kevin Eichner, <em>State Counsel, First American Title</em></td>
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<tr>
<td>8:30am – 9:30am</td>
<td><strong>Loss Prevention for the Ohio Title Agent – Making Waves</strong></td>
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<td>Michele Green, <em>SVP, Senior Business Counsel - Agency, First American Title</em></td>
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<td>9:30am – 10:30am</td>
<td><strong>The Waves of Change</strong></td>
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<td>John Hollenbeck, <em>EVP, First American Title, 2015-2016 ALTA President</em></td>
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<tr>
<td>10:30am – 10:45am</td>
<td><strong>Break</strong></td>
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<tr>
<td>10:45am – 11:45am</td>
<td><strong>Surf’s Up: TRID in Perspective</strong></td>
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<td>Ruth Dillingham, <em>Senior Underwriting Counsel - Corporate, First American Title</em></td>
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<td>11:45am – 12:30pm</td>
<td><strong>Lunch</strong></td>
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<tr>
<td>12:30pm – 1:30pm</td>
<td><strong>Loose Change: Economic Outlook</strong></td>
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<td>Mark Fleming, <em>SVP, Chief Economist, First American Financial Corporation</em></td>
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<td>1:30pm – 2:30pm</td>
<td><strong>Ethics: Compliance Waves</strong></td>
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<td>Arthur Smialek, <em>Underwriting Counsel, First American Title</em></td>
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<td>Alvin Mathews, Jr., <em>James E. Arnold &amp; Associates, LPA</em></td>
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<td>Dean Talaganis, <em>Ohio Real Title Agency, LLC</em></td>
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<td>Stephen Hombach, <em>Ohio Attorney, Specializing in Licensing, Enforcement and Regulatory Issues</em></td>
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<td>2:30pm – 2:45pm</td>
<td><strong>Break</strong></td>
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<tr>
<td>2:45pm – 3:45pm</td>
<td><strong>Case Law &amp; Legislative Update – The Next Wave</strong></td>
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<tr>
<td></td>
<td>Amelia Bower, <em>Plunkett Cooney, PC</em></td>
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**Total Credit Time: 360 minutes**
Loss Prevention for the Ohio Title Agent – Making Waves

a. Claims Statistics and Trends (5 mins)
   i. Industry/First American
   ii. Ohio
b. What Types of Claims are we seeing? (5 mins)
c. What is Causing Claims (5 mins)
   i. A quick look back
   ii. What's happening in 2015
d. Fraud Forgery and ID Theft (10 mins)
   i. The Big Picture
   ii. The Heist
   iii. Avoidance tips
e. Cyber Fraud (15 mins)
   i. Email Hacking
   ii. Wire Instructions
   iii. NPPI Grabs
   iv. Other
   v. Avoidance Tips
f. Authority and Capacity (15 mins) – The close cousins to fraud
g. All The Little Things (5 mins)
The Waves of Change

a. Initial observations (10 Minutes)
   i. The title industry is strong
   ii. Our products and services are valuable
   iii. I am proud of our profession
   iv. Never before in the history of the world has any industry needed each other more than the title industry does now.
      1. Remember that some feel that “Washington DC knows best,” and is “here to help” reshape the real estate and mortgage finance systems.
   v. Remember what Benjamin Franklin said at the signing of the Declaration of Independence:
      1. “We must all hang together, or assuredly we shall all hang separately.”

b. Discuss recent meeting with Director Cordray (10 Minutes)
   i. Implications on TRID / Know Before You Owe
   ii. Implications on ALTA Best Practices and lenders’ third party oversight requirements.
   iii. Weave in discussion on the revamping of ALTA’s governance of the ALTA Best Practices—also talk about certification options
   iv. Discuss the role of the ALTA Registry
   v. Weave in discussion of the future prospects for TRID, etc.
      1. Will the rule be modified? If so, when?
      2. What about enforcement?
   vi. Discuss the importance on educating homebuyers on the value of owners title insurance.

c. Shift gears to Industry Compliance—market conduct (30 Minutes)
   i. Make strong points about who we are in the title industry:
      1. Honest, ethical, trustworthy, hardworking everyday people.
      2. Reiterate that our products are valuable and serve a strong purpose in society.
      3. It’s time that our industry does more than “follow the rules.” We must advocate for regulatory compliance:
         a. A high ideal
         b. Marginalize bad actors
   ii. Read Cordray quotes from MBA annual meeting in San Diego (10/2015):
1. “Protecting consumers must be a priority for everyone in this room.”
2. “We intend for everyone to pay careful attention to what we are saying and act accordingly.”
3. “We want industry to follow the rules—because that is good for consumers, honest businesses, and the economy as a whole.”

iii. Think about the importance of these enforcement actions:
   a. This case involved a sham affiliated business mortgage company between a builder and a bank. The CFPB quickly pointed out various attributes of the arrangement that clearly revealed that it was simply a vehicle to disguise illegal kickbacks.
2. Borders and Borders CFPB Lawsuit (going on for at least a couple of years)
   a. Main issues: Whether joint venture title agencies are essentially shams, and “profit distribution” to real estate agent investors in title agency violate Section 8 of RESPA.
3. Fidelity Mortgage Corporation January 15, 2014
   a. CFPB found that renting space at inflated prices, or at prices tied to the referral of business violated Section 8 of RESPA.
4. Realty South May 24, 2014
   a. CFPB says that Realty South illegally steered consumers to captive title agency through use of non-compliant AfBA disclosures.
5. Stonebridge June 12, 2014
   a. Main issue: CFPB says that commissions paid to non-bona fide employees—so-called Independent Sales People—violate Section 8 of RESPA.
6. Lighthouse Title, Inc. September 25, 2014
   a. Main issue: CFPB holds that marketing agreements violate Section 8 of RESPA. In particular, see finding 20 on page 6.
7. Wells Fargo, JP Morgan Chase and Cohen Genuine Title January 2015
a. CFPB says that leads and other valuable things were provided to loan officers in exchange for the referral of title business.

   a. CFPB held that actions of Newday Financial constituted “unfair, deceptive, or abusive” acts or practices under the Consumer Financial Protection Act, and violated Section 8 of RESPA. Newday solicited veterans for mortgage loans. The solicitations indicated various endorsements by veterans organizations. No disclosure was made to veterans that the endorsements were paid for, and that the veterans organizations were paid for qualified referrals.

9. PHH Mortgage June 2015
   a. PHH and CFPB became embroiled in a legal dispute over whether mortgage insurance reinsurance payments made to an affiliate of PHH constituted an illegal kickback under Section 8 of RESPA. After a lengthy hearing, an administrative law judge held against PHH, ordering the discouragement of $6.5 million in reinsurance premiums. This represents essentially gross profit—the difference between the reinsurance premiums paid, and the amounts paid back to the mortgage insurers once it terminated the program.

10. The enforcement division of CFPB and defendants appealed—to the Director of CFPB.
   a. Director Cordray upped the required disgorgement to $109 million—100% of all reinsurance payments made under the program—no offset for claims paid or commutation payments.

11. Important Points
   a. CFPB is painting the boundaries of permissible conduct.
   b. CFPB looks past the form of a transaction and directly to its substance.
c. In all but one case, these matters are not litigated. Rather, consent decrees are reached. This is likely because of the breathtaking civil penalties available to CFPB under Dodd-Frank. Companies simply cannot risk litigating and losing; if CFPB imposed maximum fines, it could be devastating to a company. Therefore, companies may be likely to settle rather than litigate.

d. Once the CFPB clearly indicates to the market its position on the various issues, it is likely to be less than sympathetic with those it views as violating federal consumer financial laws.

iv. Think about these things, and the effect on the public’s view of our industry:

1. Do you remember the 2007 GAO Report?

   a. Here is a little context:

      i. The regulations that define a Qualified Mortgage—that is, a mortgage that can be sold in the secondary market without the originating lender retaining 5% of the risk—caps the points and fees a lender may charge to 3% if the loan amount.

      ii. Affiliated Businesses don’t like the rule because title insurance and closing fees are included in the cap. They believe this creates an uneven playing field; it makes it hard for affiliated business to compete with non-affiliated title agencies and settlement agents.

2. Various legislative efforts have thus far failed to modify the rule through Congressional action.

3. The debate over this issue in Congress increases the likelihood of another General Accountability Office (GAO) report about title insurance. Lenders with affiliated title companies lobbied for text in a Senate bill that requires the GAO to study the effects, “on the differences in title insurance premiums and ancillary charges low- and moderate income consumers pay when they purchase title insurance from affiliates of
their mortgage lender versus charges for title insurance and ancillary costs when paid to an unaffiliated title agency or attorney in those markets where both affiliated and unaffiliated mortgage lenders compete.”

4. We should be aware of the risks that these types of GAO studies can have on policymakers’ perceptions about title insurance. GAO reports cut both ways. On the one hand, they tend to present a balanced view with the lowest amount of bias possible in a government report. On the other hand, they invite an extraordinary investigation and audit of public policy issues, an incredible amount of credible scrutiny that comes with a government report, not to mention class-action risk.

5. Legislation that threatens our industry isn’t limited to the Senate alone. On April 15, a bill was introduced in the House called the Ensure Fair Prices in Title Insurance Act, (H.R. 1799). The author of the bill is an outspoken industry critic who said the bill, “aims to ensure homebuyers are not overcharged for title insurance. It amends Section 2 of the Real Estate Settlement Procedures Act of 1974 to address this conflicted referral advice by prohibiting any referral source such as a realtor, builder or mortgage broker from receiving a financial benefit for referring home-buying clients to a title insurance firm. It includes a private right of action for competitors and requires firms breaking the law to provide restitution. Finally it extends the statute of limitations from one to three years if the law is broken.” This critic wrote, “While the Consumer Financial Protection Bureau (CFPB) has stepped in and taken action against fraudulent activity in title insurance, the law should explicitly ban all financial referral benefits outright.”

6. Elizabeth Warren has our industry in her crosshairs too. In a committee hearing in April that discussed points and fees, Senator Warren said, “You know, the 3-percent cap is an important step toward fixing the broken, noncompetitive market for title insurance. For other forms of insurance, not title insurance, where there is a competitive market, between 50 and 80 cents
of every premium dollars goes to paying out claims. But for title insurance, according to the GAO, it is 5 cents. One nickel out of every dollar that is collected.”

7. In the House debate on points and fees, Rep. Maxine Waters said, “Title insurance is already an uncompetitive market, and State protections are often weak and, at times, nonexistent. This measure will, ironically, ensure even fewer choices for consumers because consumers rarely know that other options exist.” She went on to say, “The cost of title insurance is opaque. Borrowers are responsible for paying for title insurance, but title insurance pricing is basically negotiated between the lender and the title insurance company. The pricing and sales system is completely nontransparent, making it impossible for borrowers to shop for better prices on title insurance.”

8. On April 29, this headline came out of New York: “Governor Cuomo Announces New Regulations to Crack Down on Kickbacks and Improper Expenses in the Title Insurance Industry.” The new regulations, together with broader reform measures, are expected to reduce title insurance closing costs by up to 20 percent for new home purchases and up to 60 percent for refinancing transactions.

9. On May 12, the New York Times editorial board wrote an editorial titled, “The Title Insurance Scam” that inventoried a list of reasons it believes buyers of title insurance are “sitting ducks” for abuse. The editorial tied the New York regulation to a public corruption case against the majority leader of the New York State Senate, who is alleged to have pressed a real estate executive to send title insurance business to his son. They had a title company pay the son a “commission” of $20,000 for no work — which is another way of inflating the price paid by consumers for title insurance.

d. Shift gears to cyber security and cyber fraud risks (10 Minutes)
   i. Discuss the risks generally
      1. Provide specific examples of occurrences in title industry.
2. Point out that we may be seeing the camel’s nose under the tent.
3. What is the risk to a title agency owner?
4. How can risks be reduced?
   a. Good security system
   b. Adherence to ALTA Best Practices
   c. Insurance
   d. Training of employees
5. ALTA creating CISO committee
   e. Remember what Benjamin Franklin said at the signing of the Declaration of Independence:
      i. “We must all hang together, or assuredly we shall all hang separately.”
   f. Thank you very much!!!!!!!!!!!!!
Surf’s Up: TRID in Perspective

It’s Been Six Months...

TRID in Perspective

June, 2016

Ruth Dilanigham
First American Title Insurance Co.

What have we learned?

You don't need a

To get a CD
Overview

• Some things haven’t changed;
• Some things have;
• Challenges lie ahead
Graham Leach Bliley-1999

- Privacy Protection
  - Buyer CD with more information
  - Seller only CD
  - Real Estate agents in turmoil
  - 'Homemade' releases/consents mar files

Tolerances-2010

- Permitted Changed Circumstances
- If Borrower CANNOT shop
  - Zero tolerance
- Impact on attorney's settlement fee
  - Settlement fee includes?
- Impact of additional fee or disbursement
  - Recording fees
Vendor Management-2012

- Best Practices
  - Defined?
  - Used in Part?
- Other Criteria
- Service Level Agreements
- Closing Instructions set expectations

WHAT HAS CHANGED
Lender and Closing Attorney

- They mean it when they say ‘collaborate’
- Learning the ‘others’ business process
  - Loan Origination Systems
    - Appear not to be fully functional for transaction closing software
  - Lender Closing Process
    - CD before or after Final Clear to Close

Collaboration- some issues

How to explain/account for fees
- Seller credits
  - Itemize
  - Lump sum
- Credits from lender
  - Show type
  - General
- Fee names
Lender Compliance Concerns

- Compliance Mandates and Liability
  - Dodd Frank liability- CFPB penalties
  - TILA liability- regulator enforcement
  - TILA exposure- consumer litigation
  - TILA compliance- investor concerns
    - Making a loan sell-able
    - Secondary market concerns

Guidance, Clarification?

- CFPB will not do FAQs
- Takes questions, but always refers to the section of the rule
- Mortgage Bankers to CFPB:
  - Need to fix/address the issues facing lenders
- Moody’s December Report
  - 90% error rate- many “only technical”
- Marx Sterbcow/Mortgage Bankers:
  - Maybe, but not ‘saleable’ is the issue
Some Issues

- Contact information incomplete
- Investor refusing to purchase if NPI release included
- Fee names not same on LE and CD (even when state custom/law differ)
- Settlement agents file number missing
- Missing the hyphen (Title - )
- Rounding errors
- Text/number boxes – Alignment
– Shading
- No Seller CD

The Seller CD

- Who prepares it?
  – Rule says settlement agent is to ‘provide’
  – Lenders say not us
  – Settlement agents concerned about liability
- Required by Rule
- ALTA settlement statement not enough
Buyer/Seller Transaction

- When to get final prorations
- Getting identification numbers
- Extensions
  - Is the delay TRID? Or Foot dragging?
  - Time is of the essence expectations
- Sharing NPI
- Cash deal with ‘TRID’ language

CHALLENGES LIE AHEAD
Learning about Lender’s Issues

- The Black Hole
  - Sending the CD more than 7 days before closing
  - Impact of a change in fee subject to tolerance
- What amounts have to go on the LE?
  - Where does knowledge come from?
  - How quickly does LE get corrected/updated

Lump Sum or Itemize

- Considerations
  - Practical
    - Alphabetize
    - Correct section of CD
  - May have Finance Charge implications
    - Settlement agent fee
    - In the APR or not?
  - RESPA has not gone away
    - Unearned, duplicative fees
    - Violations of Section 8
Possible Pain Points in the Way

- End of ‘Hold Harmless’ period
  - Clarification from buybacks and failure to fund
- Penalties
  - Assessed by regulators including CFPB and State examiners
- Lawsuits
  - Private rights of action to determine if
    - RESPA (no liability)
    - TILA (civil liability)

QUESTIONS

Thanks for your time!
Loose Change: Economic Outlook
First American Economics

Housing Potential

The Potential for the American Dream

Homeownership Rate (%)

Source: US Census Bureau, Q4 2015
Demographics Drive Building Potential
Single and Multi-family Housing Starts (000's, Units)

Source: US Census Bureau, Federal Reserve Bank of St. Louis, February 2016

RESI Q1-2016 Transaction Expectations
Will Volumes Increase, Decrease, or Remain the Same in the Next 12 Months?

National Sentiment For Purchase Volume by Property Type

National Sentiment For Refinance Volume by Property Type
First American Economics

The Burden of Enlightenment

The Cost of Higher Education
Median Education Debt by Attainment, 2013 Dollars (thousands)

Source: Federal Reserve Board of Governors SCF, 2013
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Ethics: Compliance Waves

a. The Nasty Consequences of Wrong Conduct; Loss of License, Sanctions and Suspension (12 Minutes)
   i. Gov. Bar R. V Disciplinary procedure
   ii. Prof. Cond. Rule 8.3 Reporting professional misconduct
   iii. Prof. Cond. Rule 8.4 Misconduct
   iv. Prof. Cond. Rule 8.5 Disciplinary authority; choice of law
   v. R.C. 3905.14 (B)(17) Suspension or revocation of professional license.

b. Receipt and Handling of Client Trust Funds for Different Transactions (12 Minutes)
   i. Prof. Cond. Rule 1.15 Safekeeping Funds and Property
   ii. R.C. 3953.23 - separate accounts
   iii. R.C. 3953.231 and R.C. 1349.20 - IOTA accounts
   v. Bulletin 2010.05 - IOTA accounts

c. Common violations (24 Minutes)
   i. Prof. Cond. Rule 7.2
   ii. Prof. Cond. Rule 1.7 Conflict of Interest: Current Clients
   iii. Prof Cond. Rule 1.8 Conflict of interest: Current Clients: Specific Rules
   iv. Prof Cond. Rule 1.10 Imputation of Conflicts of Interest: General Rule
   v. Prof. Cond. Rule 5.7 Services disclosures
   vi. R.C. 3905.14 - general agent violations
   vii. R.C. 3933.01 – inducements
   viii. R.C. 3953.21(B) - controlled business
   ix. R. C. 3953.26 – inducements
   x. R.C.3953.27 - splitting commissions and referral fees

d. Bulletin 95-3 – inducements - Competence and Communication with Clients and Third parties (12 minutes)
   i. Prof. Cond. Rule 1.1 Competence
   ii. Prof. Cond. Rule 1.3 Diligence
   iii. Prof. Cond. Rule 1.4 Communication
   iv. Prof. Cond. Rule 4.2 Communication with Person Represented by Counsel
   v. Prof. Cond. Rule 4.3 Dealing with Unrepresented Person
   vi. Prof. Cond. Rule 4.4 Respect of Rights of Third Persons
   vii. R.C. 3905.14(B)(9) – incompetence
Ethics Supreme Court & Legal Case References

All of the following can be found on http://www.supremecourt.ohio.gov/Clerk/ecms/#/search.

**Cuyahoga County Bar Association v. Hunsinger**, 77 Ohio St. 3d 233, Submitted 09/10/1996, Decided 01/15/1997


**Disciplinary Counsel v. Zumstein**, 93 Ohio St. 3d 544, 2001-Ohio-1619, Submitted 06/20/2001, Decided 10/31/2001


**Mahoning County Bar Association v. Helbley**, 141 Ohio St. 3d 156 (Ohio 2014) __ N.E. 2d __, 2014-Ohio-5064, Submitted 04/08/2014


**Cleveland Bar Association v. CompManagement, Inc.**, 111 Ohio St. 3d 444, Submitted 04/11/2006, Decided 12/06/2006

**Cincinnati Bar Association v. Raymond G. Wene, Reliable Land Title Agency, Inc.**, UPL 13-04, 06/27/2013

**Disciplinary Counsel v. McNamee**, 119 Ohio St. 3d 269, Submitted 03/12/2008, Decided 08/07/2008

**Disciplinary Counsel v. Lorenzon**, 133 Ohio St. 3d 332, Submitted 03/07/2012, Decided 10/16/2012

**State of Ohio v. Mitchel Petti**, Case No. CR-535936, 06/21/2012

**State of Ohio v. Donna Sherman**, Case No. CR-547960, 08/30/2012

Ethics Supreme Court Rules & Ohio Revised Code Reference

All of the following can be found on [http://www.supremecourtofohio.gov/](http://www.supremecourtofohio.gov/).

1. Disciplinary Procedures
2. Rule 8.3 Reporting Professional Misconduct
3. Rule 8.4 Misconduct
4. Rule 8.5 Disciplinary Authority; Choice of Law
5. R.C §3905.14 Disciplinary Action
6. Rule 1.15 Safekeeping Funds and Property
7. R.C. § 3953.23 IOTA Accounts
8. R.C. § 3953.231 IOTA Accounts
9. R.C. § 1349.20 IOTA Accounts
10. R.C. § 1349.21 Disbursing from an Escrow Account
11. Rule 7.2 Advertising and Recommendation of Professional Employment
12. Rule 1.7 Conflict of Interest: Current Clients
13. Rule 1.8 Conflict of Interest: Current Clients: Specific Rules
14. Rule 1.10 Imputation of Conflicts of Interest: General Rule
15. R.C. § 3933.01 Prohibition against rebates and advantages in policies
16. R.C. § 3953.21 Certificate of Title Insurance Agents
17. R.C. § 3953.26 Payments for inducement of business
18. R.C. § 3953.27 Division of fees and charges
19. Rule 5.7 Responsibilities regarding law-related services
20. Rule 1.1 Competence
21. Rule 1.3 Diligence
22. Rule 1.4 Communication
23. Rule 4.2 Communication with person represented by counsel
24. Rule 4.3 Dealing with unrepresented person
25. Rule 4.4 Respect for rights of third persons
26. R.C. § 3905.14 Disciplinary actions
27. Opinion 2006-2 Duty to report unprivileged knowledge of misconduct
28. Rule 3901-7-04 Title insurance controlled business arrangements
Ethics Ohio Department of Insurance References

All of the following can be found on https://legacy.insurance.ohio.gov/journalsearch/journalsearch.aspx

Suitability of District Settlement Services NPN 17057765 to be licensed as a business entity title insurance agent in the State of Ohio, 06/10/2015

STATE OF OHIO
DEPARTMENT OF INSURANCE
50 WEST TOWN STREET
3RD FLOOR, SUITE 300
COLUMBUS, OHIO 43215

IN RE: THE SUITABILITY OF DISTRICT SETTLEMENT SERVICES NPN #17057765 TO BE LICENSED AS A BUSINESS ENTITY TITLE INSURANCE AGENT IN THE STATE OF OHIO:

This matter concerns the suitability of District Settlement Services ("District") to be licensed as a nonresident business entity title insurance agent in the State of Ohio.

On June 10, 2015, after conducting an investigation, the Superintendent of Insurance ("Superintendent") issued and mailed a Notice of Opportunity for Hearing ("Notice") to District. The Notice was delivered by certified mail on June 15, 2015. More than thirty days have elapsed from the date of mailing of the Notice and District has not requested a hearing.

After reviewing the Department of Insurance’s records of District’s activities, with particular attention paid to its failure to obtain an annual review of its escrow account, and considering the factors set forth in section 3905.14(E) of the Revised Code, the Superintendent finds that:

1. District is currently licensed in this state as a nonresident business entity title insurance agent.

2. District failed to comply with Revised Code section 3905.14 and Administrative Code section 3903-7-01 by not obtaining an annual review of its escrow account for the review period of September 1, 2013 to August 31, 2014. Pursuant to Revised Code section 3905.14(B)(2), the superintendent may revoke the license of any agent for violating or failing to comply with any insurance law, rule, or subpoena.

IT IS THEREFORE ORDERED that District’s business entity title insurance license be and hereby is suspended for a period of ninety days. If no resolution of the failure to file the annual review is made within the 90-day suspension period, then the insurance license of District will be revoked without further administrative proceedings pursuant to the authority granted in section 3905.14(D) of the Revised Code.

The suspension shall be effective immediately.

This Order is hereby entered in the Journal of the Ohio Department of Insurance.
Any party desiring to appeal shall file a Notice of Appeal with the Department of Insurance, to the attention of Beth Chase, Hearing Administrator, setting forth the order appealed from and stating that the agency’s order is not supported by reliable, probative and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party’s appeal beyond the statement that the agency’s order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal shall also be filed by the appellant with the court. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice. Such notices of appeal shall be filed within fifteen (15) days after the mailing of the notice of the Agency’s Order as provided in Section 119.12 of the Ohio Revised Code.

An order issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, may be appealed to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident. A party who is not a resident of, and has no place of business in, Ohio may appeal to the Court of Common Pleas of Franklin County.

Dated: 7/27/15

Columbus, Ohio

MARY TAYLOR
Lt. Governor/Director

STATE OF OHIO
DEPARTMENT OF INSURANCE
CERTIFICATION

The State of Ohio
County of Franklin, SS

I, the undersigned Attorney for the Department of Insurance hereby certify that the foregoing is a true and exact reproduction of the Original Order of the Department of Insurance entered in its Journal on the 27th day of August, 2015.

Darcy Munilla
Enforcement/Licensing Attorney
Dated: 8/27/15, 2015
Suitability of Continental Title Agency of Central Ohio, Inc. #2953 to be licensed as a business entity in the State of Ohio, 01/15/2011

STATE OF OHIO
DEPARTMENT OF INSURANCE
50 West Town Street
3rd Floor, Suite 300
Columbus, Ohio 43215

IN RE: NOTICE OF OPPORTUNITY
SUITABILITY OF CONTINENTAL TITLE AGENCY FOR HEARING
OF CENTRAL OHIO, INC.
#2953
TO BE LICENSED AS A BUSINESS ENTITY
TITLE INSURANCE AGENT
IN THE STATE OF OHIO

Continental Title Agency of Central Ohio, Inc. ("Continental") currently holds a resident business entity title insurance agent license in the State of Ohio.

The Ohio Department of Insurance ("Department"), on behalf of the Superintendent of Insurance ("Superintendent"), has conducted an investigation of the activities of Continental and, as a result of such investigation, alleges that Continental has committed violations of the laws and regulations of this state and that it is not suitable to be licensed as an insurance agent.

In accordance with Chapter 119 and Title 39 of the Ohio Revised Code ("Revised Code"), Continental is hereby notified that the Superintendent intends to suspend, revoke, or refuse to renew its license as an insurance agent in the state of Ohio and/or impose any other civil forfeiture or penalty, including administrative costs authorized by section 3905.14(D) of the Revised Code. The grounds for such action are alleged below.

COUNT ONE

Continental, through Griffith, president, part-owner, and title agent for Continental and through Karen J. Edwards, vice-president, part-owner, and title agent for Continental, has improperly withheld approximately $33,532.89 in title insurance premium payments due Stewart Title Guaranty Company ("Stewart"), which premiums it had collected on behalf of Stewart in the course of Continental’s insurance business. Pursuant to section 3905.14(B)(4) of the Revised Code, the Superintendent may suspend or revoke the insurance license of an agent who improperly withholds, misappropriates, or converts any money or property received in the course of doing insurance business.
COUNT TWO

The allegations contained in Count One are hereby incorporated herein as if fully rewritten. Continental’s failure to ensure the premium payments were properly paid to Stewart demonstrates incompetence in business in violation of section 5905.14(B)(9) of the Revised Code.

Continental is hereby notified that it may request a hearing pursuant to Chapter 119 of the Revised Code. The request for a hearing must be received by the Department within thirty (30) days of the mailing of this Notice. The request should be in writing and directed to:

Sharon Green  
Hearing Administrator  
Ohio Department of Insurance  
50 West Town Street  
3rd Floor, Suite 300  
Columbus, Ohio 43215  
Telephone: (614) 444-2640  
Facsimile (614) 444-3742  
Email: sharon.green@insurance.ohio.gov

At the hearing, Continental may appear by its attorney, or by such other representative as is permitted to practice before the agency, or it may present its position, arguments or contentions in writing and, at the hearing, it may present evidence and examine witnesses appearing for and against it.

If no hearing is requested, the matter will proceed to the Superintendent for decision where she may impose any sanction allowed by law.

MARY TAYLOR  
Lieutenant Governor and  
Director of Insurance  

DATED:  
Columbus, Ohio  

BY:  

Stephen C. Hombach  
Enforcement/Licensing Attorney

The information contained in this document was prepared by First American Title Insurance Company (“FATICO”) for informational purposes only and does not constitute legal advice. FATICO is not a law firm and this information is not intended to be legal advice. Readers should not act upon this without seeking advice from professional advisers. First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.
IN RE: THE SUITABILITY OF CONTINENTAL TITLE AGENCY OF CENTRAL OHIO, INC. 
TO BE LICENSED AS A BUSINESS ENTITY TITLE INSURANCE AGENT IN THE STATE OF OHIO

FINDINGS, ORDER AND JOURNAL ENTRY

This matter concerns the suitability of Continental Title Agency of Central Ohio, Inc. ("Continental") to be licensed as a resident insurance agent in the State of Ohio.

On January 19, 2011 after conducting an investigation, the Superintendent of Insurance ("Superintendent") issued and mailed a Notice of Opportunity for Hearing ("Notice") to Continental. The Notice was served on Continental by certified mail on January 24, 2011. More than thirty days have elapsed from the date of mailing of the Notice and Continental has not requested a hearing.

After reviewing the Department of Insurance's records of Continental's activities, with particular attention paid to its improper withholding of premium payments and considering the factors set forth in section 3905.14(E) of the Revised Code, the Superintendent finds that:

1. Continental is a licensed business entity title insurance agent in the State of Ohio.

2. Continental, through Cheryl K. Griffith, president, part-owner, and title agent for Continental and through Karen J. Edwards, vice-president, part-owner, and title agent for Continental, has improperly withheld approximately $33,532.89 in title insurance premium payments due Stewart Title Guaranty Company ("Stewart"), which premiums it had collected on behalf of Stewart in the course of Continental's insurance business.

3. Pursuant to section 3905.14(B)(4) of the Revised Code, the Superintendent may suspend or revoke the insurance license of an agent who improperly withholds, misappropriates, or converts any money or property received in the course of doing insurance business.
IT IS THEREFORE ORDERED that Continental's license as a business entity title insurance agent in the State of Ohio be and hereby is revoked pursuant to the authority granted in section 3905.14(D) of the Revised Code. The revocation shall be effective immediately.

This Order is hereby entered in the Journal of the Ohio Department of Insurance.

Any party desiring to appeal shall file the Notice of Appeal with the Department of Insurance, to the attention of Sharon Green, Hearing Administrator, setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal shall also be filed by the appellant with the court. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice. Such notices of appeal shall be filed with fifteen (15) days after the mailing of the notice of the Agency's Order as provided in Section 119.12 of the Ohio Revised Code.

An order issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, may be appealed to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident. A party who is not a resident of, and has no place of business in, Ohio may appeal to the Court of Common Pleas of Franklin County.

Dated: 5.12.11
Columbus, Ohio

MARY TAYLOR
Lt. Governor/Director
By Cathy Geyer, Deputy Director
Authorized Pursuant to Revised Code 3901.05
Suitability of Rockwell Title Agency, Inc. IRS 341672706 to be licensed as an insurance agency in the State of Ohio, 06/11/1996

STATE OF OHIO
DEPARTMENT OF INSURANCE
2100 Stella Court
Columbus, Ohio 43215-1067

IN RE: SUITABILITY OF ROCKWELL TITLE AGENCY, INC., IRS #341672706, TO BE LICENSED AS AN INSURANCE AGENCY IN THE STATE OF OHIO

Rockwell Title Agency, Inc. ("Rockwell") currently holds an insurance agency license in the state of Ohio.

The Superintendent has conducted an investigation of the insurance activities of Rockwell and, as a result of such investigation, alleges that Rockwell has committed violations of the insurance laws and regulations of this state and that it is not suitable to be an insurance agent.

In accordance with Chapter 119 and Title 39 of the Ohio Revised Code, Rockwell is hereby notified that the Superintendent of Insurance intends to suspend, revoke, or refuse to continue or renew its license as an insurance agency in the state of Ohio and to refuse to issue any license to Rockwell. The grounds for such action are described below.

COUNT ONE

During the calendar year 1995, Rockwell gave Arrick Ball, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT TWO

During the calendar year 1995, Rockwell gave Kelly Ballard, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.
COUNT THREE

During the calendar year 1996, Rockwell gave Kelly Ballard, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT FOUR

During the calendar year 1995, Rockwell gave Lou Barbee, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT FIVE

During the calendar year 1996, Rockwell gave Lou Barbee, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT SIX

During the calendar year 1996, Rockwell gave Sandy Bauman, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT SEVEN

During the calendar year 1996, Rockwell gave Rick Bender, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT EIGHT

During the calendar year 1995, Rockwell gave Otis Bevel, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.
COUNT NINE

During the calendar year 1996, Rockwell gave Jan Callander, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT TEN

During the calendar year 1996, Rockwell gave Julius Cartwright, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT ELEVEN

During the calendar year 1995, Rockwell gave Charmaine Coldwell, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT TWELVE

During the calendar year 1995, Rockwell gave Jim Fixler, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT THIRTEEN

During the calendar year 1996, Rockwell gave Jim Fixler, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT FOURTEEN

During the calendar year 1995, Rockwell gave Abby Ford, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.
COUNT FIFTEEN

During the calendar year 1996, Rockwell gave Patricia Frederick, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT SIXTEEN

During the calendar year 1995, Rockwell gave Barb Gibbons, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT SEVENTEEN

During the calendar year 1995, Rockwell gave Irene Hammond, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT EIGHTEEN

During the calendar year 1995, Rockwell gave Cathie James, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT NINETEEN

During the calendar year 1996, Rockwell gave Curtis Johnson, Jr., a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT TWENTY

During the calendar year 1996, Rockwell gave Nancy Jonke, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.
COUNT TWENTY-ONE
During the calendar year 1996, Rockwell gave Jim Judge, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT TWENTY-TWO
During the calendar year 1996, Rockwell gave Carol Judge, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT TWENTY-THREE
During the calendar year 1995, Rockwell gave Adam Kaufman, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT TWENTY-FOUR
During the calendar year 1996, Rockwell gave Jerry Lorenz, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT TWENTY-FIVE
During the calendar year 1996, Rockwell gave Harry Marro, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT TWENTY-SIX
During the calendar year 1996, Rockwell gave Carolyn Marro, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.
COUNT TWENTY-SEVEN

During the calendar year 1995, Rockwell gave Tom McDowell, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT TWENTY-EIGHT

During the calendar year 1996, Rockwell gave Tom McDowell, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT TWENTY-NINE

During the calendar year 1995, Rockwell gave Chuck Mikol, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT THIRTY

During the calendar year 1995, Rockwell gave Judy Nupp, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT THIRTY-ONE

During the calendar year 1996, Rockwell gave Judy Nupp, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT THIRTY-TWO

During the calendar year 1996, Rockwell gave Sherri F. Svec, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.
COUNT THIRTY-THREE

During the calendar year 1996, Rockwell gave Mona Tornala, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT THIRTY-FOUR

During the calendar year 1996, Rockwell gave Clifford Wals, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT THIRTY-FIVE

During the calendar year 1996, Rockwell gave Loretta Walts, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT THIRTY-SIX

During the calendar year 1996, Rockwell gave Greg Willis, a real estate agent, advertising material having a total fair market value in excess of fifty dollars as an inducement for title insurance business. Such conduct is in violation of Section 3953.26 of the Revised Code.

COUNT THIRTY-SEVEN

On or about February 12, 1996, Rockwell offered to Carlton Design Group a "Seller Only" title exam fee rate which was less than its customary street rate as a direct or indirect inducement to title insurance. Such conduct is in violation of Section 3933.01 of the Revised Code.

Rockwell is hereby notified that it may request a hearing pursuant to Ohio Revised Code Chapter 119. The request for a hearing must be made to the Department within thirty (30) days of the mailing of this Notice. The request should be in writing and directed to:

ROCKWELL, CA
Sharon Green
Hearing Clerk
Ohio Department of Insurance
2100 Stella Court
Columbus, Ohio 43215-1067

At the hearing, Rockwell may appear in person, by its attorney, or by such other representative as is permitted to practice before the agency, or it may present its position, arguments or contentions in writing and, at the hearing, it may present evidence and examine witnesses appearing for or against it.

If Rockwell does not timely request a hearing, an order suspending revoking or refusing to issue or continue its licenses shall be issued.

HAROLD T. DURIEE
Superintendent of Insurance

DATED: July 17, 1996  BY: Stephen C. Hombach
Staff Counsel
IN RE:  
SUITABILITY OF ROCKWELL TITLE AGENCY, INC.:  
IRS #34-1672706:  
TO BE LICENSED AS AN INSURANCE AGENCY IN THE STATE OF OHIO:  

CONSENT AGREEMENT

Rockwell Title Agency, Inc. ("Rockwell") is licensed as an insurance agency in the state of Ohio pursuant to Section 3905.01 of the Ohio Revised Code. Edward D. Hayman ("Hayman") is licensed as an insurance agent in the state of Ohio pursuant to Section 3905.01 of the Ohio Revised Code. That section authorizes the Superintendent of Insurance to determine the suitability of insurance agents and agencies to be licensed in the state of Ohio.

It is alleged that during calendar year 1995 Rockwell gave advertising material having a total fair market value in excess of fifty dollars to each of fourteen real estate agents. It is further alleged that during calendar year 1996 Rockwell gave advertising material having fair market value in excess of fifty dollars to each of twenty-two real estate agents. It is further alleged that during 1996 Rockwell offered to Carlton Design Group a "Seller Only" title exam fee rate which was less than its customary street rate as a direct or indirect inducement to title insurance.

Rockwell neither admits nor denies that it committed violations of R.C. 3933.01 and 3953.26.

To resolve this matter, the Superintendent and Rockwell hereby agree to the following:

rockcon.sch
1. Rockwell has been advised that, under Chapter 119 of the Ohio Revised Code, it has a right to a hearing before the Superintendent may impose any sanctions or penalties; that, at a hearing, it would be entitled to appear in person, to be represented by an attorney or other representative who is permitted to practice before the agency, to present its position, arguments or contentions in writing and to present evidence and examine witnesses appearing for or against it. Rockwell hereby waives all such rights.

2. Rockwell shall immediately cease and desist from engaging in the activities herein described.

3. Rockwell hereby consents to a suspension of its insurance licenses for a period of fifteen (15) days. The suspension period shall commence on September 15, 1996.

4. During the period Rockwell’s licenses are suspended, it shall not engage in any activities which require an insurance license in Ohio, including, but not limited to, soliciting insurance, taking applications for insurance, delivering contracts of insurance or disseminating any information as to insurance coverage or rates. Rockwell is therefore prohibited during this period from soliciting for or accepting orders which require title insurance, signing title insurance policies or binders, or conducting the title insurance portion of closings. No closing shall be conducted on Rockwell’s premises where title insurance has been issued on the property being transferred and the buyer and/or seller are present. Rockwell shall not receive commissions nor may it withhold commissions for insurance products during the period its licenses are suspended.

5. Upon completion of the license suspension period, Rockwell’s insurance agent licenses will not be automatically reinstated. At that time, any insurance company that desires to employ or retain Rockwell as an agent must submit a license requisition form to the Department. The fact that a suspension occurred shall not act as a bar to the issuance of future licenses.

6. Hayman hereby consents to a suspension of his insurance licenses for a period of fifteen (15) days. The suspension period shall commence on September 15, 1996.

7. During the period Hayman’s licenses are suspended, he shall not engage in any activities which require an insurance license in Ohio, including, but not limited to, soliciting insurance, taking applications for insurance, delivering contracts of insurance or disseminating any information as to insurance coverage or rates. Hayman is therefore prohibited during this period from
soliciting for or accepting orders which require title insurance, signing title insurance policies or binders, or conducting the title insurance portion of closings. No closing shall be conducted on Hayman’s premises where title insurance has been issued on the property being transferred and the buyer and/or seller are present. Hayman shall not receive commissions nor may he withhold commissions for insurance products during the period his licenses are suspended.

8. Upon completion of the license suspension period, Hayman’s insurance agent licenses will not be automatically reinstated. At that time, any insurance company that desires to employ or retain him as an agent must submit a license requisition form to the Department. The fact that a suspension occurred shall not act as a bar to the issuance of future licenses.

9. Rockwell agrees to pay a fine of Thirty Thousand Dollars ($30,000.00) by cashier’s check or money order made payable to the Department of Insurance by September 15, 1996.

10. It is agreed that Fifteen Thousand Dollars ($15,000.00) of the fine imposed by Paragraph Nine shall be suspended for a period of three calendar years from the date the Superintendent executes this Agreement. If, at the end of that period, Rockwell is in full compliance with all terms of this Agreement and if Rockwell has not admitted to or has not been found by the Superintendent, excluding any appeal, to have engaged in any new violation of Ohio insurance laws or regulations, that portion of the fine shall be waived. For purposes of this Paragraph “new violation” shall mean any violation engaged in by Rockwell on or after the date of execution of this Agreement. The Department reserves the right to impose sanctions of any new violation separately from payment of the suspended portion of the fine.

11. Rockwell shall provide to the Department, within thirty days of the execution of this Agreement by the Superintendent, a list of all its unlicensed sales representatives, if any. Rockwell agrees that it shall take immediate steps to have such sales representatives licensed by all such companies and that all such sales representatives will be licensed not later than one calendar year from the date the Superintendent executes this Agreement. Rockwell further agrees that it will license all sales representatives hired after the date of execution of this Agreement.

12. This Consent Agreement shall be entered in the Journal of the Ohio Department of Insurance.
13. The insurance companies with which Rockwell is licensed shall be advised of
the suspension of its licenses.

14. The Department agrees to waive any cause of action against Rockwell and/or
Hayman or any cause of action which may be imputed to Rockwell and/or
Hayman for alleged or actual violations of R.C. 3933.01 or 3953.26 which
occurred prior to the date the Superintendent executed this Consent
Agreement.

15. Rockwell waives any and all causes of action, claims or rights, known and
unknown, which it may have against the Department of Insurance, and any
employees, agents, consultants, contractors or officials of the Department, in
their individual and official capacities, as a result of any acts or omissions on
the part of such persons or firms.

16. Rockwell agrees that this Consent Agreement shall have the full force and
effect of an order of the Department of Insurance. Rockwell further agrees
that if it fails to comply with the terms of this Agreement, such failure shall
constitute a violation of a lawful order of the Superintendent as provided in
O.R.C. 3905.49(A)(3).

DATED: 9-5-96

BY: Edward D. Hayman

DATED: 9-5-96

BY: Edward D. Hayman

DATED: 9-11-96

Columbus, Ohio

HAROLD T. DURVEE
Superintendent of Insurance

ROCKWELL TITLE AGENCY, INC.
STATE OF OHIO
DEPARTMENT OF INSURANCE
50 WEST TOWN STREET
3RD FLOOR, SUITE 300
Columbus, Ohio 43215

IN RE:
SUITABILITY OF DONNA SHERMAN
DOB: 03/30/1977
TO BE LICENSED AS A TITLE INSURANCE AGENT IN THE STATE OF OHIO

NOTICE OF OPPORTUNITY FOR HEARING

Donna Sherman ("Sherman") currently holds a resident title insurance agent license in the State of Ohio.

The Ohio Department of Insurance ("Department"), on behalf of the Superintendent of Insurance ("Superintendent"), has conducted an investigation of the activities of Sherman, and as a result of such investigation, alleges that Sherman has committed violations of the laws and regulations of this state and that she is not suitable to be licensed as a title insurance agent.

In accordance with Chapter 119 and Title 39 of the Ohio Revised Code ("Revised Code"), Sherman is hereby notified that the Superintendent intends to suspend, revoke, or refuse to renew Sherman’s license as a title insurance agent in the state of Ohio and/or impose any other sanction authorized by section 3905.14(D) of the Revised Code, including civil penalties and/or administrative costs. The grounds for such action are alleged below.

COUNT ONE

On or about January 6, 2012, in the Cuyahoga County Court of Common Pleas, Sherman was convicted of Engaging in a Pattern of Corruption, a felony of the first degree; Theft by Deception, a felony of the second degree; Additional Money Laundering Prohibitions, a felony of the third degree; twelve counts of Tampering with Records, all felonies of the third degree; and eight counts of Telecommunications Fraud, all felonies of the third degree. Pursuant to Section 3905.14(B)(6) of the Revised Code, the Superintendent may revoke an agent’s license for having been convicted of a felony.

COUNT TWO

Sherman, while appointed with Fidelity National Title Insurance Company, ("Fidelity") failed to remit premiums in the amount of approximately $7,766.22 collected on title insurance policies due to Fidelity pursuant to the terms and conditions of the Agency Agreement dated on or about July 7, 2004. Pursuant to section 3905.14(H)(4) of the Revised Code, the Superintendent may revoke an agent’s license for improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.
COUNT THREE:

The allegations contained in Count One are hereby incorporated as if fully rewritten herein. Pursuant to section 3965.14(3)(9) of the Revised Code, the Superintendent may revoke an agent’s license for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

Sherman is hereby notified that she may request a hearing pursuant to Chapter 119 of the Revised Code. The request for a hearing must be received by the Department within thirty (30) days of the mailing of this Notice. The request should be in writing and directed to:

Sharon Green
Hearing Administrator
Ohio Department of Insurance
50 West Town Street
3rd Floor, Suite 300
Columbus, Ohio 43215
Telephone: (614) 466-7849
Facsimile: (614) 466-3742
Email: sharon.green@insurance.ohio.gov

At the hearing, Sherman may appear in person, by her attorney, or by such other representative as is permitted to practice before the agency, or she may present her positions, arguments or contentions in writing and, at the hearing, she may present evidence and examine witnesses appearing for and against her.

If no hearing is requested, the matter will proceed to the Superintendent for decision where she may impose any sanction allowed by law.

MARY TAYLOR
Lt. Governor/Director

DATED: ___/___/20___

BY: ___________________________

Darcy R. Martin
Enforcement/Licensing Attorney
STATE OF OHIO  
DEPARTMENT OF INSURANCE  
50 WEST TOWN STREET  
3RD FLOOR, SUITE 300  
COLUMBUS, OHIO 43215

IN RE:  
SUITABILITY OF DONNA SHERMAN  
DOB 03/30/1977  
TO BE LICENSED AS A  
TITLE INSURANCE AGENT  
IN THE STATE OF OHIO

FININDINGS, ORDER AND JOURNAL ENTRY

This matter concerns the suitability of Donna Sherman ("Sherman") to be licensed as a resident title insurance agent in the State of Ohio.

On March 13, 2012 after conducting an investigation, the Superintendent of Insurance ("Superintendent") issued and mailed a Notice of Opportunity for Hearing ("Notice") to Sherman. The Notice was served on Sherman by certified mail on March 15, 2012. More than thirty days have elapsed from the issuance of the Notice and Sherman has not requested a hearing within the thirty days.

After reviewing the Department of Insurance’s records of Sherman’s activities, with particular attention paid to her criminal convictions, and considering the factors set forth in section 3905.14(E) of the Revised Code, the Superintendent finds that:

1. Sherman is currently licensed in this state as a resident title insurance agent. On or about January 6, 2012, in the Cuyahoga County Court of Common Pleas, Sherman was convicted of Engaging in a Pattern of Corrupt Activity, a felony of the first degree, Theft by Deception, a felony of the second degree, Additional Money Laundering Prohibitions, a felony of the third degree, twelve counts of Tampering with Records, all felonies of the third degree, and eight counts of Telecommunications Fraud, all felonies of the third degree. Pursuant to section 3905.14 (B)(6) of the Revised Code, the Superintendent may revoke an agent’s license for having been convicted of a felony.

2. Sherman, while appointed with Fidelity National Title Insurance Company, ("Fidelity") failed to remit premiums in the amount of approximately $7,706.22 collected on title insurance policies due to Fidelity pursuant to the terms and conditions of the Agency Agreement dated on or about July 7, 2004. Pursuant to section 3905.14(B)(4) of the Revised Code, the Superintendent may revoke an agent’s license for improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

3. Pursuant to section 3905.14(B)(9) of the Revised Code, the Superintendent may revoke an agent’s license for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
IT IS THEREFORE ORDERED that Sherman’s license as a title insurance agent in the State of Ohio be and hereby is revoked pursuant to the authority granted in section 3905.14(D) of the Revised Code. The revocation shall be effective immediately.

This Order is hereby entered in the Journal of the Ohio Department of Insurance.

Any party desiring to appeal shall file a Notice of Appeal with the Department of Insurance, to the attention of Sharon Green, Hearing Administrator, setting forth the order appealed from and stating that the agency’s order is not supported by reliable, probative and substantial evidence and is not in accordance with law. The notice of appeal may, but need not set forth the specific grounds of the party’s appeal beyond the statement that the agency’s order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal shall also be filed by the appellant with the court. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice. Such notices of appeal shall be filed within fifteen (15) days after the mailing of the notice of the Agency’s Order as provided in Section 119.12 of the Ohio Revised Code.

An order issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, may be appealed to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident. A party who is not a resident of, and has no place of business in, Ohio may appeal to the Court of Common Pleas of Franklin County.

Dated: 4/6/12
Columbus, Ohio

Mary Taylor
Lt. Governor/Director
By Jillian Fronett, Deputy Director
Authorized Pursuant to Revised Code 3901.05
Suitability of Clarissa B. Foster DOB: 08/08/1973 to be licensed as an insurance agent in the State of Ohio, 03/13/2009

STATE OF OHIO
DEPARTMENT OF INSURANCE
50 West Town Street
3rd Floor, Suite 300
COLUMBUS, OHIO 43215

IN RE: THE SUITABILITY OF CLARISSA B. FOSTER DOB: 8/4/1973 TO BE LICENSED AS AN INSURANCE AGENT IN THE STATE OF OHIO

This matter concerns the suitability of Clarissa B. Foster ("Foster") to be licensed as a resident insurance agent in the State of Ohio.

On January 27, 2009, after conducting an investigation, the Superintendent of Insurance ("Superintendent") issued and mailed a Notice of Opportunity for Hearing ("Notice") to Foster. The Notice was served on Foster by certified mail on January 30, 2009. More than thirty days have elapsed from the date of mailing of the Notice and Foster has not requested a hearing.

After reviewing the Department of Insurance’s records of Foster’s activities, with particular attention paid to her criminal convictions, and considering the factors set forth in section 3905.14(E) of the Revised Code, the Superintendent finds that:

1. On or about August 18, 2008, in the Cuyahoga Court of Common Pleas, Foster was convicted of nine counts of Securing Records by Deception, nine counts of Receiving Stolen Property, and two counts of Aggravated Theft, all convictions being felonies.

2. Pursuant to section 3905.14(B)(6) of the Revised Code, the Superintendent may suspend or revoke the license of a person convicted of a felony.

IT IS THEREFORE ORDERED that Foster’s license as an insurance agent in the State of Ohio be and hereby is revoked pursuant to the authority granted in section 3905.14(D) of the Revised Code. The revocation shall be effective immediately.

This Order is hereby entered in the Journal of the Ohio Department of Insurance.

Any party desiring to appeal shall file the original Notice of Appeal with the Department of Insurance, to the attention of Sharon Green, Hearing Administrator, setting forth the order appealed from and the grounds of the party’s appeal. A copy of such Notice of Appeal shall also

foster clarissa b. jnl-6 cpt
be filed by the appellant with the appropriate court of common pleas. Such notices of appeal shall be filed within fifteen (15) days after the mailing of the notice of the Agency's Order as provided in Section 3119.12 of the Ohio Revised Code.

An order issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, may be appealed to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident. A party who is not a resident of, and has no place of business in, Ohio may appeal to the Court of Common Pleas of Franklin County.

Dated: March 19, 2009

Columbus, Ohio

MARY JO HUBBON
Superintendent of Insurance
IN RE:  
SU宜ABILITY OF CLARISSA B. FOSTER  
DOB 09/04/1983  
TO BE LICENSED AS A TITLE INSURANCE  
AGENT IN THE STATE OF OHIO  

Clarissa B. Foster ("Foster") currently holds a resident title insurance agent license in the State of Ohio.

The Ohio Department of Insurance ("Department"), on behalf of the Superintendent of Insurance ("Superintendent"), has conducted an investigation of the activities of Foster and, as a result of such investigation, alleges that Foster has committed violations of the laws and regulations of this state and that Foster is not suitable to be licensed as a title insurance agent.

In accordance with Chapter 119 and Title 39 of the Ohio Revised Code ("Revised Code"), Foster is hereby notified that the Superintendent intends to suspend, revoke or refuse to renew her license as a title insurance agent in the State of Ohio and/or impose any other sanction authorized by section 3905.14(D) of the Revised Code, including civil penalties and/or administrative costs. The grounds for such action are alleged below:

COUNT ONE

On or about August 18, 2008, in the Cuyahoga County Court of Common Pleas, Foster was convicted of nine counts of Securing Records By Deception, nine counts of Receiving Stolen Property, and two counts of Aggravated Theft, all counts being felonies. Pursuant to section 3905.14(B)(6) of the Revised Code, the Superintendent may suspend or revoke the insurance license of a person convicted of a felony.

Foster is hereby notified that she may request a hearing pursuant to Chapter 119 of the Revised Code. The request for a hearing must be received by the Department within thirty (30) days of the mailing of this Notice. The request should be in writing and directed to:

Sharon Green  
Hearing Administrator  
Ohio Department of Insurance  
2100 State Court
At the hearing, Foster may appear in person, by her attorney, or by such other representative as is permitted to practice before the agency, or she may present her position, arguments or contentions in writing and, at the hearing, she may present evidence and examine witnesses appearing for and against her.

If no hearing is requested, the matter will proceed to the Superintendent for decision where she may impose any sanction allowed by law.

MARY JO HUDSON
Superintendent of Insurance

DATED:  1/27/2009
Columbus/Ohio

By:  Stephen C. Hombach
Enforcement/Licensing Attorney
Ohio – 2016 Waves of Change, Oceans of Opportunity | Reference Material

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Ethics Ohio Department of Insurance Bulletins

All of the following can be found on:

ODI Bulletin 2005.1 IOTA Accounts

### Bulletin No. 2005-1

**Guidelines Governing Title Insurance Agents And Interest On Trust Accounts**

(Effective November 1, 2005)

The purpose of this bulletin is to provide guidance to title insurance agents with respect to “interest on trust accounts” (“IOTA accounts”) and the use of escrow accounts in the title insurance business. IOTA accounts are required under section 3953.231 of the Ohio Revised Code.

**IOTA Accounts**

The law requires each title insurance agent and title insurance company to establish and maintain an interest-bearing trust account for the deposit of “all non-directed escrow funds that meet the requirements of sections 1349.20 to 1349.22 of the Revised Code.” It has come to the Superintendent’s attention that some title insurance agents may have adopted a business practice that causes consumers to sign documents specifying that funds otherwise considered “non-directed escrow funds” be deposited in an account for the benefit of the title insurance agent or company, or that interest earned on such funds be paid to the agent or company. This practice circumvents and is contrary to the IOTA requirement, which was enacted to provide funding for the legal aid fund established under section 120.52 of the Ohio Revised Code. Section 3953.231(C)(3) of the Revised Code specifically prohibits payment of interest on IOTA accounts from non-directed funds to a title insurance agent or company.

Therefore, title insurance agents and companies may not cause, or request, parties to a real property transaction to direct that funds typically considered “non-directed escrow funds” be deposited in an account for the benefit of the title insurance agent or company, or that interest earned on such funds be paid to the agent or company. This prohibition also prohibits directing funds into an interest-bearing account where the title agent or company receives interest or uses the interest credits earned on the account to pay for expenses incurred not related to the account.

**Fees**

Section 3953.231(C)(3) of the Revised Code provides that all interest earned on IOTA accounts “net of service charges and other related charges, shall be transmitted to the treasurer of state for deposit in the legal aid fund....” The statute also states that none of the interest earned shall be paid to the title insurance agent or company. For purposes of this statute, “service charges and other related charges” include the maintenance, deposit and withdrawal fees applied on accounts, and wire transfer fees. “Service charges and other related charges” do not include check printing or sorting charges, stop payment orders, NSF charges, or charges for copies of checks if the actual checks are not returned.

When multiple IOTA accounts exist at a financial institution for the purpose of safety and fraud prevention in conjunction with wire transfers and electronic funds transfer...
transactions, the service charges and other related charges on all IOTA accounts may be aggregated and then deducted before interest is remitted.

In the event a title insurance agent uses interest earned on an IOTA account to pay "service charges or other related charges," the title insurance agent shall not charge or seek reimbursement from anyone, including the consumer, with respect to such charges.

**Duty To Register IOTA Accounts**

Every title insurance agent and company must register their IOTA account information with the Superintendent. Every change in the account number, name on the account, and location of the financial institution must also be filed with the Superintendent. An individual title insurance agent may use the IOTA account of a business entity that is licensed as a title insurance agency but must register separately. Effective November 1, 2005, the Department will initiate an electronic registration system that may be accessed from the Department’s website. Every licensed title insurance agent and company will be sent registration instructions and a User ID and Password to the agent’s address on file with the Department. Title insurance agents and companies are responsible for keeping their addresses current. Failure to respond to register the IOTA account may result in administrative action.

**Lawyers and IOLTA accounts**

A title insurance agent who is also an attorney must maintain a separate IOTA account. IOTA accounts and “interest on lawyer’s trust accounts,” also known as IOLTA accounts, must be separate accounts.

Ann H. Womer Benjamin
Director of Insurance
It has come to the Superintendent's attention that some title insurance agents continue to engage in a practice prohibited by state law and clarified in the Ohio Department of Insurance Bulletin titled *Guidelines Governing Title Insurance Agents And Interest On Trust Accounts* (2005-1), dated November 1, 2005. Specifically, the prohibited practice involves either placing client escrow funds in a non-interest-bearing account or placing client escrow funds in an interest-bearing account for the benefit of the agent or agency. Bulletin 2005-1 clearly states that this practice is not permissible.

In practice, a title insurance agent has only two options when engaged in the business of handling escrows of residential real property transactions: 1) deposit client funds into their IOTA account, which is a pooled-client, interest-bearing account established for the benefit of the legal aid fund; or 2) deposit client funds into separate, interest-bearing accounts for the benefit of each individual client (i.e., the buyer whose funds are being held in escrow during the closing process) or a third-party beneficiary of that client. As noted in Bulletin 2005-1, in no circumstance shall the agent, agency, or company benefit from the interest earned on either account. The first option is the default option, and should be used when the funds being held are nominal in amount or are to be held for a short period of time and thus not reasonably capable of generating net income for the client.

IOTA accounts may be established for use by a single agent or for use by multiple agents within a single agency or company. The second option requires the agent to obtain authorization from the client to deposit the funds into such an account – the client authorization "directs" the agent to deposit the funds into an interest-bearing account for the benefit of the client. Ohio law does not provide for any exceptions or permissible alternatives to these two options.
When a title insurance agent receives escrow funds related to a residential real property transaction through the use of electronic funds transfer (e.g., wire transfer), the agent may use a non-interest bearing, non-IOTA account to “receive” the transfer of funds in order to ensure the security of such funds provided the funds are automatically and immediately transferred to the agent’s IOTA account after they are received. The funds shall remain in the IOTA account until disbursed pursuant to closing instructions, court order, or otherwise in accordance with law, or until the funds escheat to the State as unclaimed.

If at any time the Superintendent determines that an agent has failed to comply with statutory requirements for handling escrows of residential real property transactions, the Superintendent may suspend, revoke, or refuse to issue or renew the license of a title insurance agent, assess a civil penalty, or impose any other sanction or sanctions pursuant to section 3905.14 of the Revised Code, subject to review as provided for in Chapter 119. of the Revised Code. The Superintendent may also provide notice of any IOTA-related violations to the Ohio Legal Assistance Foundation.

Mary Jo Hudson  
Superintendent of Insurance
ODI Bulletin 95-3 Title insurance agents, title insurance agencies and title insurance companies providing goods or services to real estate agents, real estate brokerage offices, banks, thrifts, mortgage originators and other entities

State Of Ohio
Department of Insurance
2100 Stelzer Court Columbus, Ohio 43226-6556

George V. Voinovich
Governor
Harold T. Duryee
Director

BULLETIN 95-3
August 1, 1995

To: All Title Insurance Agents, Title Insurance Agencies, and Title Insurance Companies

From: Harold T. Duryee

Re: Title insurance agents, title insurance agencies, and title insurance companies providing goods or services to real estate agents, real estate brokerage offices, banks, thrifts, mortgage originators and other entities

Ohio Revised Code Section 3933.01 provides, in pertinent part:
No corporation, association, or partnership engaged in this state or in the guaranty, bonding, surety, or insurance business, other than life insurance, nor any officer, agent, solicitor, employee, or representative thereof, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, any inducements to insurance, and no person shall knowingly receive an inducement to insurance, any rebate of premium payable on the policy or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind, or any special advantage in the date of the policy or date of its issue, or any valuable consideration or inducement not plainly specified in the policy or contract of insurance or agreement of indemnity, or give, receive, sell, or purchase, or offer to give, receive, sell, or purchase, as inducements to insurance or in connection therewith, any stock, bonds, or other obligations of an insurance company or other corporation, association, partnership, or individual.

Ohio Revised Code Section 3953.26 prohibits a title insurance company or title insurance agent from paying or giving to certain specified persons, either directly or indirectly, any commission or any part of its fees or charges, or any other consideration or valuable thing, as an inducement for or compensation for any title insurance business.

The Department of Insurance recognizes that the providing of goods and/or services of nominal value for advertising or promotional purposes is legitimate practice and may not be an inducement for or compensation for title insurance business. The purpose of this bulletin is to provide title agents and

Accredited by the National Association of Insurance Commissioners (NAIC)
title insurance companies with guidelines which will assist them in complying with RC 3933.01 and 3953.26 when engaged in marketing functions.

For the purposes of this bulletin:

1. "Person" includes any individual (natural person), corporation, association, agency, partnership, or any other legal entity, or any employee(s) thereof described in Section 3953.25 of the Ohio Revised Code.

2. "Indirectly" means by or through any employee, independent contractor, or affiliate of a title insurance company or title insurance agent regardless of such employee's, independent contractor's, or affiliate's status as an individual licensee.

3. "Affiliate" of a specific person means a person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the person specified.

4. "Business office" means the physical space in which a majority of the day-to-day business activity of a title agent or agency is conducted. "Business Office" does not include a temporary facility, pavilion, tent, hotel suite, lodge, logo, sky box, or other place of entertainment.

5. "Valuable thing" includes, but is not limited to, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock dividends, distributions of partnership profits, credits representing monies that may be paid at a future date, special bank deposits or accounts, banking terms, special loan or loan guarantee terms, services of all types at special or free rates, and sales or rentals at special prices or rates.

6. "Fair market value" means the amount for which the thing would sell on the open market by a willing seller to a willing buyer in an arms-length transaction where the seller sells the goods or services in question during the normal course of his business.

7. "Nominal value" means the total fair market value of all goods and services provided for advertising, or promotional purposes to any one person does not exceed fifty dollars ($50.00) per calendar year.

The providing of goods or services of nominal value for advertising, promotional purposes is not prohibited. Such purposes may may include, but are not limited to, door prizes, tickets to sporting or entertainment events, golf, trips, receptions provided by a title company or agency, and seminars.
on title and real estate matters. Activities which involve the defraying of expenses that would otherwise be incurred by a defined person are likewise not prohibited so long as the expenses defrayed are of nominal value. However, goods, services or contributions received by other persons (i.e. employees of the person) may not be aggregated or combined to support any one event, occasion, or gathering (social or professional) of any such person (i.e. employer) as defined herein.

Title insurance companies and title insurance agents who give goods or services of nominal value, for promotional or advertising purposes are advised to keep records of such transactions which clearly indicate the person to whom the goods are given or the services provided, the date, and the fair market value of the gift. The records should be available to the Department upon request. Undocumented transactions or transactions which exceed nominal value will be considered acts of inducement or compensation in violation of Revised Code Sections 3933.01 and 3953.26.

A valuable thing provided to a person in exchange for payment, whether such payment is in the form of goods, services, or money, will not be considered an inducement so long as the payment bears a reasonable relationship to the fair market value of the thing. To the extent that the fair market value of the thing is in excess of the goods or services provided or the monies paid to the person, such excess will be considered an inducement.

Notwithstanding the above, the Department will consider the following practices not subject to the provisions of O.R.C. 3933.01 and 3953.26 or any record keeping requirements where such activities are conducted during the normal course of business:

1. The providing of goods or services at no cost or at reduced cost to non-profit organizations.
2. The providing of a business meal, subject to all of the following:
   (a) such meal is not a direct payment of a specific title order(s);
   (b) the purpose of such meal is to discuss business issues with the title agent/representative;
   (c) the meal is not combined with or associated with any promotional or advertising event;
   (d) the number of persons present at such meal is reasonably related to the scope of the business issues under discussion. For this purpose, the title agent and up to six
additional persons shall be considered a rebuttable presumption of reasonableness; and

(a) such meal falls within the definitions set forth in the Internal Revenue Code of 1986, as amended, or the regulations promulgated thereunder, when deductible for income tax purposes.

3. Food, beverage, entertainment, and parking costs directly related to hospitality events held at a title agent's or title insurer's business office, subject to a maximum of two such events per office per calendar year.

Any gifts, door prizes or other things of value given at a hospitality event are subject to the nominal value guidelines and should be recorded.

4. The providing of any information which may be found in public records, regardless of the form in which such information is compiled and provided. Title examinations and/or title searches are excluded from this exception; any promotion or advertising relating to title searches or examinations must be recorded and is subject to the nominal value requirements.

Title insurance companies, agents and their representatives licensed in Ohio are hereby cautioned that the Department will investigate complaints alleging violations of RC 3933.01 and 3953.26. The substance as well the form of any particular transaction will be scrutinized. Any market conduct investigation and/or audit of an agent, agency, or company will be at the expense of that entity should a violation be found. Ohio Administrative Code Rule 3901-1-40(B)(9) regulates the general activity of an insurance agent and provides that a license may be revoked or not renewed after notice and hearing wherein it is shown that the agent has given or offered any form of compensation to an entity prohibited from receiving such compensation under the rules or statutes of the state of Ohio. Furthermore, RC 3933.01 provides that the Superintendent of Insurance, upon the conviction of any agent for violation of Section 3933.01, shall revoke the license of such agent and no license shall be granted such agent for a period of three years after said revocation.

This bulletin supersedes Bulletin 92-2.

Harold T. Duryee
Superintendent
ODI Bulletin 2009-13 Guidance governing the giving of promotional or advertising items

State of Ohio  
Department of Insurance  
50 West Towa Street, 3rd Floor, Suite 300  
Columbus, Ohio 43215

BULLETIN NO. 2009-13

GUIDANCE GOVERNING THE GIVING OF PROMOTIONAL OR ADVERTISING ITEMS

Effective Date: October 1, 2009

The purpose of this bulletin is to provide guidance to insurance agents and insurance companies who wish to give promotional or advertising items to potential insureds in exchange for the opportunity to market insurance products. Ohio law generally prohibits the giving of something of value as an inducement to purchase insurance. Specifically, Revised Code section 3911.20 prohibits life insurance companies and their agents from giving any rebate of premium payable on the policy or any valuable consideration or inducement as an inducement to purchase insurance, while Revised Code section 3933.01 prohibits other than life companies and their agents from giving any rebate of premium on the policy or any valuable consideration or inducement not plainly specified in the insurance policy.

The Superintendent has determined that a promotional or advertising item or meal with a fair market value of fifty dollars or less is not a valuable consideration when the item or meal is given to induce an insured individual or a potential insured individual to obtain a policy quote or general insurance information and is not tied to the purchase of an insurance policy. Therefore, sections 3911.20 and 3933.01 of the Revised Code do not prohibit the giving of such items. “Fair market value” means the price for which a single comparable item of like kind and quality could be purchased in a retail transaction.

Agents and companies are reminded that any promotion must comply with all existing Ohio laws.

Mary Jo Hudson  
Superintendent of Insurance
Ohio Revised Code

Criminal Code References

1315.55. Money laundering, forbids a person from conducting a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the purpose of...furthering the commission of the corrupt activity.

2913.02 (A) Theft,” ... no person with purpose to deprive the owner of property...shall knowingly obtain or exert control over the property by deception.”

2913.43 (A) Securing writings by deception “... no person by deception, shall cause another to execute any writing that disposes of property or by which a pecuniary obligation is incurred.”

2913.51(A) Receiving stolen property “... no person shall receive, retain or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense.”

2913.42 (A) Tampering with records, “...no person knowing that the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud shall ...(1)Falsify...any writing...(2) Utter any writing...knowing it to have been tampered with....”
Case Law and Legislative Update

The Next Wave

ATTORNEYS & COUNSELORS AT LAW

Amelia A. Bower abower@plunkettcooney.com
Direct: 614.629.3004

300 East Broad Street Suite 590
Columbus, Ohio 43215

June, 2016
JOINT AND SURVIVORSHIP

• **R.C. § 5302.20(B)**

*Rinaldi v. Rinaldi*, No. 12CA41, 2015-Ohio-2852, 2015 WL 4386300 (4th Dist. 2015) Holding an “interest” in real estate does not necessarily mean “ownership”. Distinguishes equitable and legal interests. Case follows the long held view (for non-real property ownership of joint and survivorship assets) that anyone that is a mere gratuitous “owner” is not the true owner of the asset (in this case three rental properties).

• **R.C. § 5302.20(C)**


Husband and wife held title in survivorship. Wife signed a note for a mortgage loan. Husband signed the mortgage solely to release dower. Wife died after a foreclosure was started. The Court held that the mortgage did not encumber the husband’s half interest and did not survive the death of the wife because survivorship is the unity of ownership with 100% interest held by each survivorship tenant. The grant of the mortgage by the wife did not sever the survivorship. Result is in direct conflict with *Fannie Mae v. Winding*, 10 N. E. 3d 799, 2014-Ohio-1698 (12th Dist. 2014).

ACKNOWLEDGMENTS

*Miller v. Stuckey*, 42 N.E. 3d 304, 2015-Ohio-3819, 2015 WL 5522095 (3rd Dist. 2015) Deed executed in Florida did not comply with Florida law that required two witnesses. Court held that the deed was valid under Ohio law, which was controlling, since the property is located in Ohio.


Defective acknowledgement under Statute of Conveyances did not invalidate oil and gas lease assigned by lessee, whether or not actual development and production of oil or gas had commenced; lessors admitted freely entering leases, and nothing indicated fraud.
BOARD OF REVISION


Seller did not disclose that it had filed an appeal of a Board of Revision. Agent used the tax numbers based upon the decision of the BOR to prorate taxes at closing. One year after the closing the BOR increased the value of the property which added additional taxes to the tax duplicate. New owner then appealed to the Ohio Supreme Court (having not participated in the BOR appeal). Ohio Supreme Court rejected the new owners contention that it should have been notified of the proceedings (court said it was the buyer's duty to discover the BOR appeal). Court refused to find the title agent was negligent stating that BOR records are not public records for purposes of a search citing the OSBA title standards (agent also had an expert testify on the issue). Title insurer was also not liable for loss on a policy issued to the new owner because there were no unpaid taxes at the time the policy was issued.

**HOA LIENS – PLANNED COMMUNITIES (R.C. § 5312)**

- **R.C. § 5312.12**


The filing of a Declaration does not perfect a lien on property. The HOA was required to file a separate document that would provide notice to *bona fide* purchasers of the lien.

**2006 DORMANT MINERALS ACT**

- **R.C. 5301.56(H)(1)(a)**


This case involves the 2006 DOMA, not the 1989 version. The 2006 DOMA provides for notice before mineral rights can be abandoned (surface owner must serve a notice of abandonment on the mineral rights holder) and then file a notice of abandonment. The mineral owner can then submit a claim to preserve or file an affidavit describing a savings event that would preserve their mineral rights. Croskey did not file an Affidavit showing a savings event that would preserve his rights. However he did file an affidavit that met the requirements of R.C. 5301.56(H)(1)(a) after receiving the notice that his rights were being challenged.
DORMANT MINERALS ACT – TITLE TRANSACTION

- R.C. 5301.56(B)(3)(a)

*Chesapeake Exploration, LLC v Buell*, 144 Ohio St. 3d 490, 45 N.E. 3d 185 (2015)

A recorded oil and gas lease is a title transaction under R.C. 5301.56(B)(3)(a).

MORTGAGES

*Severing v. Severing*, No. 15AP-8, 2015-Ohio-5236 (10th Dist. 2015)

Husband of deceased mortgagor could not invalidate mortgage when the husband “guided his wife’s hand” when the mortgage was signed and then claimed that the wife did not sign the mortgage.

FRAUDULENT MORTGAGE RELEASES


FORECLOSURE – STANDING


A plaintiff is not required to prove standing at the time a foreclosure action is filed; rather, although the plaintiff in a foreclosure action must have standing at the time suit is commenced, proof of standing may be submitted subsequent to the filing of the complaint.

FORECLOSURE-LEGAL DESCRIPTIONS


The lack of a legal description on a second mortgage did not prevent landowner's mortgagee from having notice of that second mortgage, and thus landowner's mortgagee was not a bona fide purchaser and mortgagee's first mortgage did not take priority over second mortgage, which was not released when mortgagor purchased the property, where mortgagee's title examiner located the property with ease, and title examiner notified the mortgagee's agent of the prior encumbrance.

Upon examining a mortgage for sufficiency of the legal description, the issue of the sufficiency of the property description is framed from the perspective of a subsequent purchaser or lien holder and whether the description in the mortgage is sufficient to put a third party on notice of the encumbrance. Mortgage that contained an incorrect legal description encompassing four parcels rather than residential parcel was subject to reformation rather than void; mortgagors applied to refinance prior mortgage to reduce security interest from four parcels to residential parcel, mortgage correctly identified property's mailing address, mortgagors never indicated that description was incorrect, mortgagors made payments on loan until they filed bankruptcy, and mortgagors were seeking to avoid their obligations in spite of receiving benefit of loan.


Recorded mortgage that contained correct parcel number and street address, but an incorrect legal description, was sufficient to give notice of mortgage to third parties, including alleged judgment lienholder.

**SHORT SALE – STATUTE OF FRAUDS**

_U.S. Bank v. Stewart, 2015-Ohio-5469, 2015 WL 958141 (7th Dist. 2015)._ An oral modification to a short sale contract was subject to the statute of frauds, regardless of attempts by the short sale purchaser and short sale lender to re-label the short sale contract as a settlement agreement, because it involved a written term upon which the loan servicer agreed to release mortgagors, specifically, the deadline for closing on short sale. The deadline for the short sale closing was an essential or material term of a written contract for the sale of real property required to be in writing by the statute of frauds, and thus, a subsequent oral agreement purporting to modify the closing date was invalid and unenforceable.

**BANKRUPTCY – CONSTRUCTIVE NOTICE – STATE LIEN PRIORITY**

- **R.C. § 1301.401 and 317.08**

_In re Messer, No. 2014-2036, 2016-Ohio-510 (2016)_

R.C. § 1301.401 applies to all recorded mortgages in Ohio.

R.C. § 1301.401 acts to provide constructive notice to the world of a recorded mortgage that was deficiently executed under O.R.C. § 5301.01.
DISCIPLINARY CASES

Warren County Bar Association v. Vardiman, 2016-Ohio-352 (February 3, 2016). Attorney forged signatures on child support documents, a will and power of attorney. Sanction was one year suspension with six months stayed.

PENDING LEGISLATION

• SB 257: Certain real property instruments raise a rebuttable presumption that the instrument is enforceable. Reduces from 21 to 4 years the time period to be cured. Eliminates the 21 year curative period. The curable defects are faulty witnessing, lack of or a defective acknowledgement, missing name in the granting clause.

• SB 232: Terminates a transfer on death designation if there has been a divorce, dissolution of annulment.

• HB 226: Planned community and condo liens have priority over other liens.