

SOUTHERN TITLE **INSURANCE CORP.**

“BLURBSS”

Basic Little Underwriting and Research Bulletin, Southern Style

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A NEW TWIST ON 1099-S

Of course it is not news that it's that time of year again; tax time, and more specifically, time to do your 1099-S reporting to the IRS. That reporting is due in to Uncle Sam by the end of February. For an in-depth discussion of 1099-S reporting, please review our previous article in the 2003 August BLURBSS.

As we noted in that Article, there are many transactions where this information does NOT need to be reported to the IRS. Corporate sellers and those selling their principal residence do not require you to report via a 1099-S. This year, the IRS added a new “assurance” to the Certification for no Information Reporting on the Sale or Exchange of a Principal Residence, that must be checked as true or false in order to document your file that you did not need to report the transaction. In Internal Revenue Bulletin 2007-4, the IRS sets forth these new assurances in Rev. Proc. 2007-12. You can find this Revenue Bulletin at www.irs.gov/irb/2007-04_IRB/ar09.html. **IMPORTANT!** This Bulletin also contains a revised Certification that you should begin using immediately, if you have not already.

What this bulletin tells us is that the seller must now also certify that he or she did not acquire the personal residence in a Section 1031 Exchange within the last five years (in new assurance #5), and that if the seller's basis in the residence is determined by someone else who acquired the property in a Section 1031 Exchange, then that Exchange occurred more than five years earlier (in new assurance #6). In layman's terms, assurance #6 will typically cover the

situation where the seller inherited the property which had been acquired by his predecessor in title in a Section 1031 exchange, and that it's been at least five years since that Exchange.

SECTION 1031 SERVICES AVAILABLE!

Since we are talking about Section 1031 Exchanges in the context of revised IRS 1099-S reporting requirements, now is probably as good a time as any to publicize Southern's ability to act as a Qualified Intermediary on a standard deferred exchange. If someone in your sale transaction mentions a “1031 Exchange” and you have any questions, please do not hesitate to give us a call!

CLAIMS (AND WHO SHOULD BE WORRIED ABOUT THEM)

Bet that title got your attention! Fear not, however. Every once in a while (thankfully it is not that often!) we get a phone call from an agent describing a problem or other situation where the agent is dealing with an insured owner or lender over a matter that might be, or is, a claim. Perhaps the new owner has been approached by his new neighbor, and told over the fence that in fact the neighbor owns ten feet into the yard on the owner's side. Or maybe a tax bill in a nasty red envelope shows up a few months after the new owners move in, threatening to sell the property in front of the courthouse in three weeks. Both situations, and many more

like them, will get the attention of the new property owner very quickly.

The first thing those property owners usually do is call up the closing agency/title agent and expect that office to fix the problem. That's completely understandable; it's the rare owner who goes straight to his or her owner's title insurance policy and writes a clear, understandable claim notification letter straight to Richmond. It's also understandable that you, as a conscientious businessperson, would want to respond substantively to the problem this person brought to you.

Before you get too involved, however, remember that most basic of claims procedure-let the Underwriter deal with it! Many are the times we have had to calm a stressed out agent who has been struggling with a problem for some time and without success, and who finally learns after calling us that all their worry was for nothing, because the problem should have been turned over to us to begin with. It may take some diplomacy on your part to advise the insured to make a claim pursuant to the policy provisions (and you can always help with that part), but when it comes time to address a claim or potential claim, it is a job for the Underwriter.

PROPERTY DESCRIPTION ERRORS

Requirements to constitute an insurable legal description of real property vary from state to state. In general, the legal description must be adequate to identify the particular property such that a third party relying on the public records is placed on notice of the exact property that is the subject of the deed or deed of trust/mortgage.

Claims experience identifies five frequent errors arising out of property descriptions:

1. The most frequent error is a scrivener's error in one or more calls or a mis-identification of the plat book/page or lot, block or subdivision name. In many cases

this type of error, when examined in light of the title chain and verification that it was simply a scrivener's error, can be insured by correction filed by the party who made the error. The "rule of thumb" is that a scrivener can correct his/her own mistake provided that the grantor did not have the capability(i.e. not in title) to convey the erroneous description and where it is apparent from the record title that a scrivener's error was made AND it is clear from the record what was intended to be conveyed.

2. The legal description has no beginning point. An essential element of any metes and bounds description is a very specific beginning point that can be located by a surveyor from that legal description without input from any other source.

3. The legal description does not identify the county and state where the property is located. The description of the property on the instrument and in the title policy must identify the county state and, where applicable, the political subdivision, such as the district, where the property is located. It is necessary to the processing of a policy that the underwriter know the county and state.

4. Failure to reference an attached description. When a description is attached, the deed and the attachment must match. Example: If the deed says the description is on Exhibit C, the description page must be entitled "Exhibit C Property Description."

5. Failure to record the legal description as part of the deed/deed of trust/mortgage. Recordation without the description is equivalent to not recording at all and can cause substantial losses.

WEBSITE OF THE MONTH

Ever need to get an idea of the fair market value of a piece of property? We find this website very useful when questions about market value arise:

www.zillow.com.