

SOUTHERN TITLE **INSURANCE CORP.**

“BLURBSS”

Basic Little Underwriting and Research Bulletin, Southern Style

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INDUSTRY CRITICISM

Recently, in national and local publications, a number of articles have appeared which are highly critical of title insurance and the insurance companies and agents who provide it. Many of these articles, such as the piece in the upcoming issue of Forbes by Scott Woolley, are one-sided, biased, factually inaccurate and misleading. The common premises of these articles are that title insurance is unnecessary, overpriced and that the industry is corrupt.

UNNECESSARY: Following are some positions taken from these articles.

1. A century ago, homebuyers needed protection from being swindled by crooks, but this protection is far less necessary today because of the rare instances of title fraud.
2. A refinancing lender requires mortgagee title insurance despite the utter absence of any risk.
3. One hundred years ago, people did not have the desire, time or knowledge to search the land records to make their own determination regarding status of titles, but now they do.
4. Transitioning from traditional paper title records to digital title databases will eliminate the need for title insurance.

The idea that instances of fraud are decreasing, that there is no risk to the lender on refinances and that average Americans have the ability to determine the status of title is ridiculous. Usually, these articles fail to even give one sentence of coverage to the primary distinction between title assurance and the other insurance lines. It is the

ASSURANCES of title, as opposed to the INSURANCE of title that is supposed to set us apart and justify our marketplace existence! These articles suggest that the only disaster that can befall a homebuyer is an unpaid lien for a small amount of money. Here, we are somewhat a victim of our own success. Large numbers of homebuyers have NOT LOST THEIR HOMES BECAUSE OF THE LOSS PREVENTION WORK THE INDUSTRY DOES. Risk identification and elimination and curative documents are all provided in the normal course of business by the title agent, usually for no additional charge. These authors' positions reflect a complete lack of understanding and give no mention of the primary purpose of title insurance.

OVERPRICED: These articles point to an industry loss ratio which is very low when compared to home and auto insurance loss ratios. They disclose industry data that reflect a substantial increase in revenues over the past decade. Again, they just don't get it. A small portion of the total premium does go directly to the insured in payments for losses sustained. There is fraud and forgery in the real property conveyance marketplace. Title searchers can and do miss things in their search. Many claims dollars go to pay for losses sustained by homeowners when there has been no fraud or negligence. But a substantial portion of the title insurance premium goes to risk identification and elimination. 100 years ago the title industry could have taken a different road. Pure casualty with annually renewable premiums; no search, no curative documents, just a check when you discover you have lost

your home. Premiums would be much higher, but the loss ratios would be at 95% instead of 10%. Everyone would be happy, except all those people who were forced to exchange the home of their dreams for a check! We get no credit for the solid foundation of home ownership that this country enjoys today.

CORRUPT: Finally, these articles recognize and hit the industry's weak spots: kickbacks and illegal affiliations. The authors write about scam operations, scam reinsurance agreements and opulent entertainment of business referrers. Good shot; the industry deserves that. Those practices are wrong and illegal. HUD needs to dramatically increase enforcement, fines and penalties. While in the other areas of criticism, we are victims of our on success, here we are our worst enemy. Many significant players in our industry are complicit. Others throw up their hands and say, "We can't do anything." We, as an industry, are not policing ourselves. That needs to change.

As the marketplace, our agents, and even our own staff, continue to pressure us to relax our underwriting standards and accept more title risks on a casualty risk bases, we are playing into the hands of those who do not understand the importance of TITLE ASSURANCE in the marketplace and in our culture. The foundation of our industry is one of the primary foundations of our nation, the American home. The industry has done an excellent job of protecting the American home.

In the immortal words of Mack Truck,
"That's just my opinion...ought to be yours."

FORECLOSURE AND FEDERAL TAX LIENS

Generally, we all understand that proper foreclosure of a Mortgage or Deed of Trust extinguishes the liens of subsequently filed matters like subordinate mortgages and judgment liens. Federal tax liens, however,

are different. If you, like most title examiners, get nervous anytime you see Uncle Sam in your chain of title, this is actually one of those situations where you have a right to be that way.

A subordinate federal tax lien against your property will NOT be extinguished by an otherwise proper foreclosure. Under 26 USCS Section 7425, a federal tax lien filed more than thirty days prior to a foreclosure sale will not be "disturbed" if notice of that foreclosure is not made in writing by certified or registered mail, at least twenty five days prior to the sale, to the district director for the Internal Revenue District where the property is located. This statute also provides the IRS with a one hundred and twenty day redemption period. The amount it would pay to exercise this redemptive right will be the price paid at the foreclosure sale by the successful bidder, plus interest and expenses relating thereto.

You are looking for evidence, typically found in the Trustee's Deed from the foreclosure sale, reciting that the IRS was given notice of the foreclosure sale pursuant to IRC Section 7425 and did not object to the sale. If your transaction is taking place within 120 days of the foreclosure sale, you must also either take exception for the IRS' redemption rights, or find out if the IRS has waived those rights (typically by inquiring of the foreclosing firm). From an underwriting perspective, you may rely on recitations in the Trustee's Deed as to notice and waiver of redemption. These situations are typically a good time to give us a call!

OVER-LIMITS AUTHORIZATION

We don't want to nag, but we continue to get policies that should have been submitted for over-the-limits approval *before* they come in with the remittances. The authorization form is on our website, or you can always call and we'll be happy to send one to you, and help you complete it.