



On The Move

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Iowa Finance Authority
Title Guaranty Division
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Annual Questionnaire

If you have not yet completed your 2010 questionnaire, now is the time. It is particularly important to update the services you provide as the search engine on the Title Guaranty Web site is based on the questionnaire. Many lenders are looking for providers of specific services such as Rapid Certificate and Closing Protection Letters. When updating your information, there are two options to consider: 1) whether you offer the service and 2) whether you want to be listed on



our website as offering that service. If you offer Rapid Certificate but do not check the box to show the information, you will not appear in search results. So, if you offer a particular service, and want lenders to be able to identify you in conjunction with that service, please also tell us to show that information on the Web.

We will de-activate those participants not completing the questionnaire by February 1, 2010. For more information or questions, please contact Kim Axtell at kim.axtell@iowa.gov.

From the Director

This issue of *On the Move* is the perfect occasion to look back at the accomplishments of 2009 and look forward to the challenges and opportunities to come in 2010.



Loyd Ogle, Director

2009 was a very good year for Title Guaranty. Our volume, revenue and market share increased dramatically over 2008 and the credit must go

to you — our partners. This growth would not be possible without the support of our network of lenders, attorneys, abstractors, independent closers and real estate professionals. It is significant that we've made these gains while we've reduced our staff by 20% over the last five years. The field issue program offers lenders an efficient way to work with local vendors to get their Title Guaranty coverage. Our commercial title volume increased substantially during 2009 and will continue to be a major focus. Working together we will continue to provide quality title services for our ultimate customer — Iowa's homeowners.

The value in maintaining strong relationships within the real estate industry is clear. We may not always agree on the issues involving our business, but if we can establish a framework for open discussion and communication when differences arise, we have a better chance of reaching workable solutions.

Major issues and budget shortfalls facing the state will occupy the coming legislative session, but there

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Title Guaranty On The Move

Legislative Update

Title Guaranty will be working to educate legislators on two bills during the upcoming legislative session. The Banking Superintendent will introduce escrow licensing legislation and the Iowa State Bar Association (ISBA) will offer a bill revising the mechanic's lien statute.

Escrow Licensing

As you may know, Title Guaranty has worked for the past three years on research and drafting an escrow licensing bill. This session the Banking Superintendent will introduce an updated version of the bill which regulates independent

real estate closing companies (escrow agents) in Iowa. Under their proposal, escrow agents, or closers, would be regulated similarly to mortgage originators, and would have similar bonding and auditing requirements. Closings involve the receipt and disbursement of funds from the lender, and managing the actual closing and document signing with the buyer. While closings usually are conducted as requested, sometimes things go wrong. When this happens, final documents may not be provided, the existing lender may not be paid as required, abstractors and attorneys may not be paid for their work and the new lender may not end up in first lien position. In addition, escrow agents serve as a last line of defense against mortgage fraud—they have responsibility to verify the identities of everyone signing the closing documents.

In some states, escrow closers are agents of title insurance underwriters and the states rely on the oversight of the title insurance industry. Others regulate escrow agents independently of title insurance. Here, the escrow closer is completely unregulated. Anyone can set up an escrow operation regardless of their qualifications, education, financial security or criminal history.

Iowa is not immune from fraudulent acts by escrow closers causing harm to homeowners and lenders alike. Sometimes, the closer exits the business with

Title Guaranty has worked for the past three years on research and drafting an escrow licensing bill.

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Legislative Update *continued from page 1*

unfinished files and bills unpaid. There is no easy way to track people down and hold them accountable when this happens. In other situations, there are examples of outright fraud — escrow agents actually diverting funds for their own use, causing additional expense to lenders, buyers, sellers and others in the real estate industry.

Under the proposed legislation the division of banking will administer the program by issuing licenses and conducting necessary investigations.

We believe that the proposed legislation will create a fair and efficient mechanism to regulate entities specializing in closing real estate transac-

tions. This proposal to license and regulate escrow agents will certainly not eliminate all fraudulent transactions, but will provide a level of protection not currently available to Iowa homeowners and their mortgage lenders. Under the proposed legislation the division of banking will administer the program by issuing licenses and conducting necessary investigations.

Mechanic's Liens

This is the second year that Title Guaranty has worked with the Iowa State Bar Association to develop legislation that will replace Iowa's confusing and cumbersome mechanic's lien law with a straightforward and effective system.

We have been working diligently with industry groups to develop a process where those providing labor and materials are more likely to be paid as they deserve while protecting home buyers and lenders from surprise liens filed days or weeks after closing.

Last year was noteworthy due to the collapse of several high profile builders and the stress it caused homeowners who paid their general contractor in good faith and still had mechanic's liens filed against their property. It seems unfair to ask buyers to pay twice for the same work, and yet that is what happened.

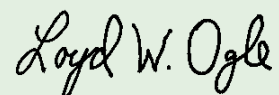
Lenders and closing companies will benefit from a revised regulatory scheme. Additional paperwork from general contractors has been necessary for closing agents to

assure that the necessary parties receive payment. This "assurance" is costly and sometimes impossible. Many subcontractors actually subcontract some of their work to others and it becomes extremely difficult to try to identify everyone that may have provided labor and or materials to a particular property. The proposal will clarify and streamline the new construction process. From our discussion with various interested parties, we understand that there are reservations about this change. Nevertheless, we believe it will prove superior to the current unworkable system. We think the ISBA's proposal will reduce the transaction costs of residential new construction, make it easier to close transactions, and provide lenders security. Additionally, the new legislation provides greater protection to contractors and subcontractors, while still maintaining the legislative intent to protect Iowa's homeowners.

From the Director *continued from page 1*

are some bills impacting the real estate industry that will be introduced. Bills that propose changes to the Mechanic's Lien statute, licensing of escrow companies and abstractors and modifications of homestead rights are likely. These proposals are summarized elsewhere in this issue.

I would like to personally thank you for a successful 2009. I look forward to working with you in the coming years, and appreciate your continued comments and feedback about the Title Guaranty program. With all that we have just experienced, I believe that the real estate industry in Iowa will emerge from this experience stronger and better prepared to serve our homebuyers and sellers. I am proud that Title Guaranty is an integral part of the system, and that we have been able to take a balanced approach to underwriting and risk management so that we can continue to offer the best possible title coverage at a fair price. We look forward to working with you, our customers in the coming year. My best wishes for a successful 2010.



Loyd Ogle, Director.

A Little Grace

Guest Commentary by *Tim Gartin, Esq., Hastings & Gartin, LLP*

Title Guaranty seminars and newsletters necessarily focus on the “technical” side of examining abstracts, adapting to new case law or statutes, preparing settlement statements, closing loans, and complying with ever-changing banking regulations. There’s a lot to keep up on. Today I take up a subject that does not receive much air time — grace. All of us like to receive grace from others, but sometimes it is good to be reminded of ways that we can creatively give grace to others. The following thoughts are offered for those who examine abstracts and close loans.

For examining attorneys

It may seem counter intuitive that an attorney sitting alone at his or her desk examining an abstract (perhaps late at night) would have any opportunity to provide grace to others. Here are two ways:

1. Avoid embarrassing others. Title examiners are to diligently identify defects in title. This can be done either with a harsh sword or with humility and tact. For example, when you find that an abstractor has made a mistake, whenever possible, call the abstractor to discuss the matter without anyone else knowing. All of us appreciate it when someone helps us to save face in front of our peers. If the error can be resolved behind the scenes, we have accomplished the goal of passing clean title without the unnecessary public blood letting. Besides, abstractors have the capacity to return the favor by catching our mistakes behind the scenes.

Similarly, if you believe that a prior examining attorney has passed title in error (especially if it is this examining attorney), then give the benefit of the doubt and simply call the attorney to ask for his or her thought process when passing title. It usually takes only a phone call to find out who examined the abstract for the prior conveyance. Two possible outcomes. The prior examining attorney may have recognized something that you have not and you will be saved the embarrassment of raising an incorrect objection. If the attorney did miss something, he or she will likely appreciate the opportunity to remedy the situation.

2. Be generous with advice of how to resolve title defects. In the minority of situations where the objection is beyond the routine judgment or unreleased mortgage,

take a few moments to provide the non-attorneys who are reading the opinion with clear guidance on how to resolve the defect. People appreciate it when you do more than simply identify the objection and then demand in bold type that it must be resolved. It is also good form to occasionally draft the simple curative affidavit or document and provide it at no cost. A pleasant surprise. This kind of value-added service also sets us apart from title insurance companies.

For closing agents

Several years ago, a borrower at the closing table asked me whether I ever find myself bored when closing loans. I replied that every time I step into a closing, I remind myself that this is a unique and large transaction for the borrower. When I bought my first home, nothing was explained to me (perhaps because I am an attorney) and I left with the uneasy feeling of not understanding the important documents that were quickly shuffled before me. A few things to remember about the borrower sitting before you:

1. This is a unique and significant transaction. If you close loans regularly, it can become routine and dry. For you, the next 30-45 minutes will not likely be memorable. The opposite is true for the people sitting across the table. It is amazing how much goes into the process of buying a house. This is a very big event for the borrower. As a result, it helps to communicate that your goal is to make the

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IFA Executive Director to head Department of Economic Development

Governor Chet Culver recently announced Bret Mills, currently the director of the Iowa Finance Authority (IFA), as his choice to lead the Iowa Department of Economic Development (IDED). Mills joined IFA as Chief Financial Officer in 2003, becoming Executive Director in 2005. Replacing Mills at IFA will be Joe O’Hern, who has served as interim deputy director of IDED for the last three months and as deputy director of IFA before that. O’Hern joined IFA in 2007 first as the Director of Housing Iowa and then became the Deputy Director in 2009.

Title Guaranty — Going Paperless

Many years ago, it was predicted that the rise in the use of the computer would soon make the need for paper files obsolete. Someone coined the phrase “paperless society” to describe this inevitable change. Today, “going green” is the popular term for the trend to help preserve and extend the Earth’s resources. But if your desk looks like most of ours, littered with a forest of paper, you realize that we have a long way to go to become truly “paperless.”

In recent years, however Title Guaranty has taken great strides to drastically reduce the need for paper. Here are just a few of the changes we’ve made to help us all go paperless.



1. No appraisal is required — by eliminating the need for a Uniform Residential Appraisal Report in most transactions, ordering a Certificate requires less paper.

2. “Field issued” Commitments and Certificates — by allowing Commitments and Certificates to be issued in the field, Title Guaranty has significantly cut down the amount of paper that needs to be sent to the us. Field issuers retain documents such as title opinions, surveys, Composite Mortgage Affidavits and lien waivers instead of sending to Title Guaranty.

3. Ordering Commitments on-line — there is no longer a need to submit a request for a Commitment through the mail or by fax. Commitment requests may be e-mailed to TGDCommitments@iowa.gov and that’s all it takes — no paper file is necessary.

4. Electronic transmission of Commitments and Certificates — most of our customers have already discovered the ease and convenience of receiving Commitments and Certificates via e-mail. This handy format can even eliminate the need for the customer to print a copy of the Certificate — they can be easily forwarded anywhere electronically.

5. Form E Endorsements — changes to existing Commitments or Certificates may be handled on-line, without the need for paper. A request for a change can be sent by e-mail to the person who issued the Commitment or Certificate, and the change can be returned to your desk within minutes. No waiting for the mail service.

6. Electronic storage of records — Title Guaranty has saved hundreds of dollars in storage and retrieval costs by scanning records and storing them electronically. Up-to-date imaging technology allows us to save all of the documents to a particular file for easy retrieval without having to visit or order records from an off-site storage facility. No more fumbling through boxes to find a file.

7. We’ve also eliminated the expense of postage as well as paper by making three of our quarterly issues of the newsletter *On The Move* electronic. The January issue is the only print edition. If you are not getting the electronic version, we may not have your email address. Please send any additions to Linda.berg2@iowa.gov.

These are just some of the ways Title Guaranty is “going green.” If you have any questions, please contact the HELP Desk at (515) 725-4357.

Save the Date!

The date and location for the **2010 Annual Conference** are set. The conference will be November 9, 2010 at the Coralville Marriott Hotel.

Watch for more information!

Scheduling for the **2010 Regional Academies** is underway — dates and locations will be announced soon.

Marital Status

Marital status and the proper execution of mortgages continue to be an issue across Iowa. In fact, Title Guaranty has seen an increase in claims on transactions where one spouse failed to execute the mortgage. Iowa Code section 561.13 states that a contract to “convey or encumber the homestead” is not valid without a spouse’s signature. The confusion concerning whether a buyer is married or single may originate from poorly filled out loan documents, a misrepresentation to a closing agent, or inadequate language translation.

Title Guaranty has recently litigated a claim where the translator for the buyer conveyed that the buyer was single. Various paperwork including loan and tax documents also listed the buyer as single. However, when the home went into foreclosure it was suddenly revealed that the buyer was separated at the time of the purchase. The homeowner argued for a broad interpretation of section 561.13 and that

the mortgage was void, even though the separated spouse, now divorced, had never even been to the United States, let alone seen the house.

The Court has always “jealously guarded homestead rights” in an attempt to remain consistent with legislative intent. The “homestead statute” was initially enacted to prevent married persons from selling or transferring property that was jointly owned by a married couple without the spouse’s consent. It can be argued that in recent years this consumer protection statute has been abused and at times used more as a sword than a shield.

Another recent case contains several egregious details — the buyer claimed to have not read the closing documents that listed him as single. The buyer’s wife was a mortgage broker and the loan originator knew the couple was

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transaction understandable — not “Sign here, sign here, and out you go.” Borrowers should be encouraged to ask questions so they leave feeling like they understand what they have just done. (Remember that some questions may be best answered by the loan originator or a tax preparer.)

2. Some people react with an edge when nervous or stressed. A large financial transaction can bring out the worst in people when they feel unsure of themselves or they are under pressure. Remind yourself that the borrower is taking on a new financial obligation and may be short on sleep because of the preparations to move. The borrower may have moved a great distance, leaving what is familiar. Don’t take it personally if the borrower seems harsh.

3. Some borrowers come from cultures where there is little trust in government regulation. In the U.S., many people recognize that residential lending is a highly regulated area of our economy. Loan documents are very standardized; we have a sense of safety (perhaps even complacency) because of the government oversight. However, many people come from countries where this level of confidence does not exist. Thus, the borrower may have an understandable reason for insisting upon reading all the

loan documents. Where feasible (and it’s not always feasible), give them the opportunity to do that.

By giving a little grace at the closing, the borrower is more likely to have a positive experience. This increases their likelihood of returning to that lender and you may have earned a new client because you were willing to go the extra mile with them rather than to take a dismissive or inconsiderate posture. Yes, the documents need to be executed correctly. Yes, the closing should not take all day. However, when we remember to give grace and connect with the borrowers on a human level, we will ultimately do a better job of serving as representatives of our lender clients.



Tim Gartin is a partner in the Ames firm of Hastings & Gartin, LLP. He has a general practice that includes, but is not limited to, real estate. He received his B.A. from Iowa Wesleyan College, his M.A. from Iowa State University, and his J.D. from Northern Illinois University. Mr. Gartin is a member of the Story County and Iowa State Bar Associations and recently completed two years as Chair of the Real Estate and Title Law Section Council of the Iowa State Bar Association. He continues to serve on the Council. Mr. Gartin is a frequent speaker on real estate law in Iowa.

Title Guaranty — the Year in Review

2009 was a very good year for Title Guaranty. While the real estate market was relatively soft through the year, we saw a steady increase in market share and revenue. Much of the growth is due to the strong refinance cycle and the revisions we made to our refinance product to make it more efficient and cost effective. This is an example of the need for flexibility in responding to market conditions. We understand the pressures in a refinance transaction and the need to offer an affordable product for lenders, while maintaining clean land title records.

The record flooding of 2008 also had an impact on us this year. Several communities are in the process of buying flood prone properties and converting them to green space. Many of these property owners lost their abstracts to flood waters and could have been required to spend hundreds of dollars to recreate them. Abstractors in Linn and Cerro Gordo counties contacted Title Guaranty about waiving the traditional abstract requirement and allowing the use of a special search product in the affected areas. The Iowa Finance Authority Board granted the waivers, and the transactions are moving forward, allowing the property owners to sell their properties and move forward as well. According to Randee Slings, General Manager of Iowa Title Company in Cedar Rapids, "Recovery after the flood has been a challenging journey for our community. Iowa Title Company is pleased at how our community leaders and Title Guaranty recognized the need for alternative solutions that would help expedite an already long process. By granting the waiver, we are able to provide a product to the community quicker, and at less expense. This simple step will make a huge difference in cost and time, while ensuring the quality and integrity of the title product."

Education and training is a big part of our mission at Title Guaranty. During 2009, we sponsored three Regional Academies, the Settlement Services Conference and our Annual Conference. These events are a great way to provide information on industry and regulatory changes while bringing our participants together in a networking forum. Topics ranged from RESPA compliance to title issues to legislative initiatives.

Webinars are proving to be a popular way to share information and provide training. It is convenient for attendees and



Attendees at 2009 Settlement Conference

those not able to participate in person can link to a taped version on the Title Guaranty Web site. Two webinars are currently posted: the Time of Transfer Septic Inspection as well as the Rapid Certificate Program.

Our training team is also taking advantage of this technology to provide training and refreshers on the use of our Online CAP issuing system. During 2009, we used webinar technology to provide training to hundreds of participating attorneys, abstractors and escrow companies.

Title Guaranty Commercial Services

Title Guaranty's Commercial Services Division saw tremendous growth last year, with a 50% increase in revenue. During 2009, we provided coverage on commercial transactions ranging from \$100,000 to \$30,000,000. Our transaction portfolio includes everything from wetlands to low income housing to commercial office buildings and retail space.

With a full range of services available, local knowledge and expertise, and competitive pricing, we are determined to be the leading provider of commercial title coverage here in Iowa.

As our commercial services continue to expand, we encourage you to consider Title Guaranty for your commercial title needs. For more information, visit our new web site at www.TitleGuarantyCommercial.com or contact Matt Veldey at matthew.veldey@iowa.gov or Becky Petersen at becky.petersen@iowa.gov.

Meet the Title Guaranty Board of Directors

Deborah Petersen, an attorney in Council Bluffs, Iowa. She practices primarily in the areas of real estate law, business law and estate matters. She serves as a Panel Trustee for the U.S. Bankruptcy Court for the Southern District of Iowa. Deborah has been and remains active on many boards and commissions, including the Title Standards Committee of the Iowa State Bar Association and the Iowa Supreme Court Attorney Disciplinary Board. She currently serves as the Chair of the Board of the Council Bluffs Area Chamber of Commerce and is Chair of the Title Guaranty Board.

Tim Reilly is the newest member of the Title Guaranty Board, representing abstractors. President of Black Hawk County Abstract Company in Waterloo, Iowa, he has been an abstractor since 1976, beginning his career in Cedar Rapids. Tim has been an active member of the Iowa Land Title Association serving in various offices including Regional Vice President.

Surasee Rodari, Vice President, Bankers Trust Company, Des Moines, Iowa. Surasee is originally from Thailand, moving to the United States in 1972. He is a graduate of the University of Northern Iowa, and an active participant in the community. He serves on the boards of American Red Cross Iowa Chapter, Community Housing Development Corporation, Highland Park Business Club, Iowa Reading



From Left: Pat Schneider, Timothy Reilly, Surasee Rodari, Deborah Petersen, Loyd Ogle, Mitchell Taylor

Radio Information Systems for the Blind and Handicapped, Title Guaranty and the State Banking Council.

Mitchell Taylor is a partner in the law firm Cray, Goddard, Miller & Taylor, LLP in Burlington, Iowa. In addition to general practice law, Mitch is also a Certified Public Accountant, is Vice President of Abstract & Title Guaranty of Des Moines County and is involved with several residential and commercial real estate development projects in the Burlington area. He served as chair of the Title Guaranty board for several years and currently serves on the Commission of the Unauthorized Practice of Law, Des Moines County Compensation Board, real estate section of the Iowa State Bar Association and lectures at several area colleges. He is a lifetime member of Citizens for Community Improvement.

Pat Schneider is a real estate broker with Ferguson Commercial Real Estate Services in Des Moines. Prior to her career in real estate, Pat served as the head of the United Way Foundation of Iowa, and was with US West Communications for more than 23 years in various sales and marketing capacities. In addition to serving on the Title Guaranty Board, she is actively involved in numerous civic organizations, including Junior League, and is on the Boards of Bras for the Cause, Winefest, Eyerly Ball Mental Health, Des Moines Playhouse, Drake Bulldog Board, Nexus, Planned Parenthood Foundation and the Blank Park Zoo Capital Campaign.

Marital Status *continued from page 1*

married. The closing was conducted in a food court, and the buyers walked away from the closing with \$50,000 and never made a payment on the mortgage. When the house went into foreclosure the couple claimed protection under 561.13, the Courts consistently applied its strict consumer protection interpretation by declaring the mortgage void.

The Real Estate and Title Law Section of the Iowa Bar Association is working with the Family Law Section to ensure that an amendment to section 561.13 adequately protects all parties. The new language is an attempt to return to the original legislative intent to protect spouses in the purchase and conveyance of a home, while tightening the language to eliminate the misuse of the provision.