



TITLE TALK | A publication of Old Republic Title Florida

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Ownership & Encumbrances Reports – Now Called: Property Information Reports

By: James C. Russick, Esq.

The Governor recently signed CS/HB 358. It altered the statutes relating to Ownership and Encumbrance (“O&E”) Reports. It will now be in the form of and known as **“Property Information Reports”**

The key changes to Section 627.7843, Florida Statutes are as follows:

- **Name Change** – The “Owner and Encumbrance” Report is now known as “Property Information Report” (“PIR”)
- **Limitation of Liability** – The issuer’s liability is limited to the named recipient of the report, and maximum liability was changed from \$1000 to the amount paid for the PIR. Old Republic highly recommends that the agent provide the name of the consumer for whom the product is being produced when ordering a PIR.

Required language – Any form of PIR must contain the following recitation of liability on the face, as follows:

“This report is not title insurance. Pursuant to § 627.7843, Florida Statutes, the maximum liability of the issuer of this property information report for errors or omissions in this property information report is limited to the amount paid for this property information report, and is further limited to the person(s) expressly identified by name in the property information report as the recipients(s) of the property information report.”

- **Issuer** – Any title agent or underwriter may issue their own PIR and the form does not need approval for use by the Office of Insurance Regulation
- **Not a form of title insurance** – Nothing contained in the report may directly or indirectly constitute “Title Insurance” as defined in § 624.608, F. S. or simply any opinion, warranty, guarantee, insurance or assurance of the status of title

Within the same Bill, the following provisions were also changed as they relate to the new Property Information report:

- **177.041, F. S.** – This provision of the Platting Statute previously required a title opinion of an attorney licensed in Florida or a certification by an abstractor or title company regarding title ownership of and any open mortgages on a property submitted for platting. A PIR is now an alternative to the title opinion.
- **197.502, F. S.** - This provision relating to tax deeds previously required an O&E Report. The PIR will be the required format going forward for the Tax Collector to perform their responsibilities. We anticipate that the implementation of these amendments to the statutes will go forward with little difficulty; however, please contact Underwriting 800-342-5957 should you have any questions.

Hackers are Working Nights and Weekends

By: Lina Athanasiou, Esq.

In our previous Bulletins and Alerts we have warned that hackers find numerous ways to probe into entire email systems in order to determine the inner workings of a business or agency. Once into the internal workings of a business, the hackers watch for an opportunity which leaves bank accounts and banking systems vulnerable to cyber-attack. Below is a situation which recently happened to one of our agents (Note: we have edited it for clarity purposes). While we can't confirm how the hackers gained access to our agent's internal systems, somehow the fraudsters were able to glean which bank accounts had added confirmatory protections and which did not, using the unprotected accounts to gain access to the protected accounts. The hack, although caught quickly, could have potentially cost the agent tens of thousands of dollars.

Our banking profile appears to have been hacked! It seems that fraudsters had gleaned enough internal information to request a "look

up" function on our banking website, and subsequently requested a new "Online ID". Similarly, they reset a password once the Online ID was provided by the bank. Fortunately, our escrow account was protected by a positive pay function, but unfortunately our operating account was not. Somehow the fraudsters knew that. Since both of our accounts were linked to the same banking profile, fraudsters used the new Online ID to transfer money from the protected escrow account into the unprotected operating account and started writing checks on our operating account, cashing them all throughout the State of Florida.

We were able to stop the fraud very early and had several of the low-level criminals arrested, but tens of thousands of dollars were lost. We determined that the fraud was undertaken by a group out of Miami. This group change emails, phone numbers and duplicated our checks from copies displayed on the bank's website. The whole fraud took less than 24 hours.

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Passwords and Log-ins were changed at 5:00 pm one day, and by 9:00 am the next day, people started showing up at banking branches all over

In the aftermath, we learned several key things we wish to share

the state to cash “our” checks. The level of sophistication for the lead fraudsters must have been high, working after hours and all night putting the hack into place. Unfortunately, they have not yet been apprehended.

In the aftermath, we learned several key things we wish to share: (1) Do not allow any inter-bank transfers between accounts within your banking profile; (2) Text message and email alerts and confirmations should be set up for instances where there are changes to any log-in or password information; (3) Switch your banking profile to a more sophisticated level of online

access – usually reserved for large corporations with multiple levels of security and access; (4) Un-link your escrow account from your operating account; and (5) Set up positive pay for ALL accounts, not just escrow accounts.

Please forward our experience onto your agents and personnel. Perhaps in this way, similar situations can be avoided.

As much as we like the ease of automation and online banking, these experiences are shared in order to urge our agents to maintain human oversight for all accounts on a daily basis. Moreover, these cautions are not only being provided to increase awareness in the title industry, but in all areas of a real-estate transaction. Below you will find a similar cautionary alert that has been going out to realtors.

Wire Fraud Prevention Notice

Brokerage Name: _____

Never trust wiring instructions via email

Criminals/hackers are targeting email accounts of various parties involved in real estate transactions (e.g., lawyers, title agents, mortgage brokers, real estate agents). These emails are convincing and sophisticated. Among other concerns, this has led to fraudulent wiring instructions being used to divert funds to the criminal’s bank account. These emails may look like legitimate emails from the proper party. If you receive an email regarding instructions that contains any suspicious information, do not click on any links that may be in the email and do not reply.

Broker strongly recommends that Buyer, Seller and their respective attorneys and others working on a transaction, refrain from placing any sensitive personal and financial information in an email, directly or through an email attachment. When there is a need to share Social Security number, bank accounts, credit card numbers, wiring instructions or similar sensitive information, broker strongly recommends using more secure means, such as providing the information in person, over the phone, or thorough secure mail or package services, whenever possible. In addition, before Buyer or Seller wires any funds to any party (including Buyer or Seller’s attorney, title agent, mortgage broker, or real estate broker) personally call them to confirm the information is legitimate (i.e., confirm the ABA routing number or SWIFT code and credit account number). Buyer and Seller should call them at the number that is independently obtained (e.g., from this Contract, the recipient’s website, etc.) and not use the number in the email to be sure that the contact is a legitimate party.

Buyer/Seller Name (Print): _____

Buyer/Seller Signature: _____

Date: _____

Notices of Commencement

Business is booming and with this comes the opportunity to build, improve, remodel and/or repair homes or buildings. These are the signs of a good economy, but when there is construction, so too is there an opportunity for liens to arise from construction projects which would affect our ability to insure clear title. Below we have set out the very basics of the mechanics' lien law (F.S. 713) to assist in your analysis for clearing title when there is evidence of construction.

A Notice of Commencement (NOC) is valid for **1 year** from the date of recording, unless another date is specified or it is subsequently extended. (Note: the statute does not discuss a shortening of the period of time an NOC is effective, only the extension of time, however, a shorter date is often considered.)

- Claims of Lien filed under an **active Notice of Commencement** attach as of the date of filing the NOC.
- Work continued **after the expiration** of the Notice of Commencement or work **that does not require** that an NOC be filed may result in liens being filed which attach as of the **date of filing of the Claim of Lien**.
 - Liens will not attach if filed **more than 90 days** after completion of work.

Liens

- In order to be perfected, a Claim of Lien must be recorded by those purporting to have provided goods, services, and materials.
- A Claim of Lien is effective for **1 year** following the date of recording.
 - The claimant must file a suit to foreclose its lien within this time-period, else it is barred upon expiration.
- Liens for professional services and for subdivision improvements attach at the **time the claim of lien is recorded**.
 - The exception here is when a Notice of Commencement is filed. **With the filing of the NOC and liens arising from the subdivision improvements relate back to the filing of the Notice of Commencement.**
- Liens of persons not in privity with the owner, but under a Notice of Commencement, and who gave statutory Notice to Owner attach from the **date of recording of the Notice of Commencement**.
 - A lienor providing Notice to Owner must have it served before commencing work, but no later than **45 days** after commencing, **but in no event** may it be served before final payment is made by the owner in reliance on the final contractors' affidavit.
- A Claim of Lien must be served on the owner no later than **15 days** after recording.
- A Claim of Lien may be recorded at any time during the progress of the work but no later than **90 days** after the final furnishing of services or materials by the lienor.
- Liens of persons not in privity with the owner, but under a Notice of Commencement, and who did not give statutory Notice to Owner, attach from the **date of recording of the lien**.
- Liens of persons in direct privity with owner attach from **the first date of providing goods, services and/or materials**.

Shortening the time for a lien

A Notice of Contest of Lien may be recording. The lienor must then commence litigation to foreclose on its lien within **60 days** of recording, else the claim is barred by statute.

Notice of termination

A Notice of Termination is effective **30 days after recording**.

- The Termination must include both the termination and a Contractor's Final Payment Affidavit.
- During this 30-days anyone claiming under the NOC may do so.

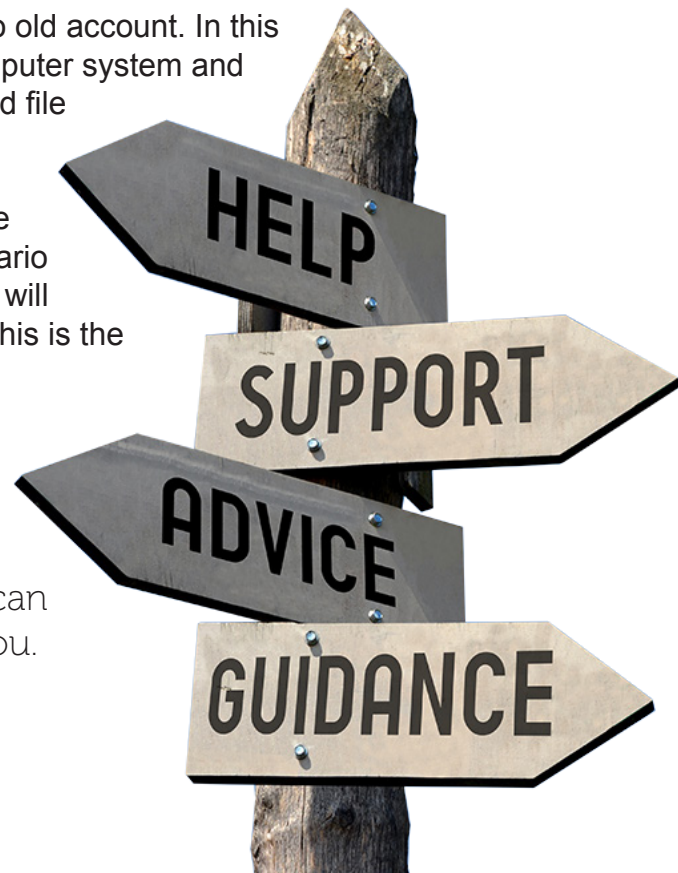
Should you have any questions regarding a construction project, please do not hesitate to contact Underwriting.

We are here to assist you.

As most of you are aware, check fraud and wire fraud are running rampant in our industry. When this occurs, banks typically insist that the account experiencing the fraud be closed and a new account be opened. Please be aware that there are several scenarios that can occur.

1. Bank closes old account but allows checks written on the old account to clear the new account. When this happens, you DO NOT need to open a new database in your closing software. Essentially the funds in the new account are the same funds as in the old account. Continue to post to your software as if the account has not changed. In fact, it hasn't – it just has a new account NUMBER.
2. Bank closes old account but DOES NOT allow old checks to clear the new account. This is much more cumbersome. In this scenario, usually the bank will still allow outstanding checks to clear the old account but will ask that you approve them. Funds in the account other than outstanding checks are usually transferred to a new account. In this scenario, you open a new database in your computer software for use with the new account.
3. Bank closes old account and transfers all funds into the new account. Bank does not allow any further activity relative to old account. In this scenario, you create a new database in your computer system and transfer all data relative to outstanding checks and file balances to the new account by file number. You will probably have checks "bouncing" in your old account and will need to reissue them through the new account. This is the most cumbersome scenario of all. Checks "bouncing" in your old account and will need to reissue them through the new account. This is the most cumbersome scenario of all.

Bottom line, if you experience any type of fraud, please call the audit department for instruction on how to proceed. Perhaps we can help to make it a less stressful situation for you.





YOUR SOURCE FOR UP-TO-DATE 1031 EXCHANGE NEWS

Improper Identification

"Identification" refers to the IRS requirement that taxpayers must identify in writing property they intend to acquire as replacement property in a 1031 tax-deferred exchange.

What is a proper identification? The Treasury Regulations state that replacement property is "identified" only if it is designated in writing, signed by the taxpayer and sent before the end of the 45-day identification period to either the seller of the replacement property or another person involved in the exchange who is not disqualified¹-e.g. seller's broker, escrow officer, or qualified intermediary ("QI").

When must the identification notice be given? The identification notice must be sent to one of the parties noted above on or before midnight of the 45th day of the exchange period.

Who must sign the identification notice? The identification notice must be signed by the taxpayer. For example, if the taxpayer is a corporation or partnership, a person authorized under the corporate bylaws or partnership agreement must sign the identification notice. The Treasury Regulations do not permit an agent – for example, the taxpayer's real estate agent – to sign the identification notice.

What constitutes a "writing"? Any kind of writing – a form, a letter, etc. The contract for the replacement property will satisfy the requirement of a writing, so long as the contract is signed by both the taxpayer and the seller within the 45-day identification period.

Can the identification notice be revoked? Yes, if it is in writing and in the same manner as originally made and it is sent on or before midnight of the 45th day of the exchange period. For example, if the identification notice was a writing given to the QI it must be revoked in a writing given to the QI by the 45th day of the exchange. Likewise, if the identification was made in a written contract, the contract must be amended by the 45th day of the exchange to provide for the revocation. If multiple identification notices are made by the taxpayer without any revocation, those notices will be treated as supplements to the first identification.

How should the identification notice describe the replacement property? Unambiguously. A legal description, street address, or distinguishable name (e.g. Mayfair Apartment Building) along with the city and state will satisfy this requirement.

How many properties can an exchanger identify? Three properties of any value or any number of properties as long as the combined value does not exceed 200% of the value of the relinquished property. If the exchanger identifies more properties than allowed, they will be treated as if they identified nothing and the exchange will fail, unless they actually complete the acquisition of 95% of the value of all identified properties.

Since failure to properly identify replacement property is fatal to an exchange, this area is subject to fraud. For example, in *Dobrich v. Commissioner* (9th Cir 1999) 188 F3d 512, the taxpayer, Mr. Dobrich, backdated his identification notice. The IRS imposed a fraud penalty equal to 75 percent of the underpayment of tax that was due. Mr. Dobrich paid over \$1,000,000 in back taxes, plus a \$774,307 fraud penalty.

¹Disqualified parties are persons who are agents of the taxpayer (i.e. anyone who has acted as the taxpayer's employee, attorney, accountant, investment banker/broker, real estate agent/broker within the two year period ending on the date of the transfer of the relinquished property), as well as family members (mother, father, spouse, brothers and sisters, ancestors and lineal descendants, not in-laws or cousins, unless one of these is also the seller of the replacement property) and corporations, trusts or partnerships in which the taxpayer has a 10% or greater interest.

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