

PENN ATTORNEYS

TITLE ALERT

DATE: 10/27/08

RE: Title Alert 2008-19

HONA 255 –Escrow and Sweep Accounts

For your information, here is a special bulletin from First American's Home Office Underwriting Group, authored by Keith Pearson. This bulletin is furthering prior bulletins regarding potential losses in the event of bank failures in 2008-10 and 2008-12 which can be found at:

http://www.pennattorneys.com/printable/title_alerts/2008-10.pdf and
http://www.pennattorneys.com/printable/title_alerts/2008-12.pdf.

This bulletin addresses the practice of sweeping funds from the escrow account into an **interest bearing** account that may not be FDIC insured.

Non-Interest Bearing Accounts:

On October 14, 2008, the FDIC announced new guidelines for the insurance of **non-interest bearing** accounts. The FDIC now fully insures all funds in these accounts which includes **non-interest bearing** escrow trust accounts. This full FDIC deposit insurance provision ends on December 31, 2009. We strongly encourage the use of **non-interest bearing** escrow trust accounts with FDIC insured banks.

Sweep Accounts and Other Interest Bearing Accounts: In some states, it is not uncommon for funds to be swept from your escrow account to another **interest bearing** account (i.e. a "Sweep account") on behalf of one of the parties to an escrow or closing. Please keep in mind that FDIC insurance availability for the swept funds is dependent on the nature of the account that the funds are swept into, and dependent on whether that sweep vehicle is FDIC-insured. For instance, the FDIC does not insure money market funds or funds that invest in stocks, bonds, mutual funds, life insurance policies, annuities, or municipal securities, even if these investments were bought from an insured bank. Further many banks offer "offshore" sweep programs (e.g. Cayman Sweeps, Eurodollar sweeps, etc.) – but if funds are swept off-shore, FDIC insurance may not be available.

Please note that even if the funds are in an FDIC insured account, the limits of FDIC insurance (now \$250,000 per underlying eligible beneficiary) may apply if it is an **interest bearing** account. As such, given the perilous state of the financial markets and the recent bank failures, investment risk and risk of loss of funds in whole or in part may be present for funds swept or held in **interest bearing** accounts. At no time should you sweep funds into a non-FDIC insured account without permission of the owner of those funds and then only with a clear instruction letter that recognizes the risk involved.

Please also read closing and other escrow instructions closely regarding holding of funds on behalf of parties to the transactions you are handling.

Penn Attorneys Title Insurance Co.

900 State Street, Ste 320 Erie, PA 16501
Tel 814-454-8278 or 800-352-2216
FAX 814-453-5983 or 1-800-234-2352

erie@pennattorneys.com