

# Title Talk

Created for Attorneys by Attorneys

## From the President's desk...

What a difference a day makes! (Okay, maybe a month or two.) Just yesterday we were cryin' the blues...and now we are finally experiencing the seasonal volume we were wishing for. (No complaints about being busy!)

At Penn Attorneys, it's not just the increase in volume that has captured our attention. Significant industry events and issues have kept us occupied as well, including:

- The Public Hearing on PA Title Insurance. (See page 3.)
- The PA Market Conduct Exam. (Results just in! More in the next issue of Title Talk.)
- Unsteady Mortgage Rates.
- Legislation: Expansion of Home Buyer Tax Credit & RESPA Update—NEW GFE & HUD-1 Statement pending for Jan 2010 roll-out.
- LandAmerica turmoil. (See insert.)

Keeping informed about the above issues will be extremely important for anyone involved in a real estate related business. In the next several months you'll be hearing from us about new rules and regulations and how they affect you and the way you handle real estate transactions. Expect some adjustments and changes in procedures...but don't worry! We are currently working on several projects to keep you and you staff well informed.

And as for the future, although we remain cautious about the economy, the summer activity and reasonable interest rates should add some optimism to our outlook. Happy closing, everyone!

Josie Lubiejewski, President

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# \$250,000 FDIC Insurance Coverage Extended

On May 20, 2009, President Barack Obama signed the Helping Families Save Their Homes Act, which extended the temporary increase in the standard maximum deposit insurance amount (SMDIA) to \$250,000 per depositor through December 31, 2013.

This extension of the temporary \$250,000 coverage limit became effective immediately upon the President's signature. The legislation provides that the SMDIA will return to \$100,000 on January 1, 2014.

For the FDIC letter, go to: <http://www.fdic.gov/news/news/financial/2009/fil09022.html>

## Extreme Makeover: Home (Erie, Pa) Edition

The crew from ABC's "Extreme Makeover: Home Edition" came to Erie on June 25th. The nationally renown program chose local builder John Maleno and Maleno Development to lead a team of volunteers to demolish a home and build a new one in seven days.

Clara Ward was chosen as the well-deserved recipient of the project. The Maleno team met with the Ward family before they left to visit Disneyworld.

So, while the family is away, the team will work (not play!) Here's the schedule of events:

- Day 1: Filming of family & crew.
- Day 2: Construction prep.
- Day 3: Demolition of home.
- Day 4: Framing of house.
- Days 5&6: Construction continues with exterior features & landscaping.
- Day 7: Welcome the family home & reveal.

The new season of "Extreme Makeover" Home Edition, will begin airing on Sunday, Sept 27th.

Congratulations to the Maleno Team!



## Mortgage Servicers: A Best Practice Tip

When it comes to getting mortgage payoffs, many payoffs will come from a mortgage servicer instead of the lender listed on the mortgage.

Nothing is filed of record when the lender employs the use of a mortgage servicer and many servicers will assign their contracts to other servicers (again, not of record.)

*So, how can you determine if a mortgage payoff or satisfaction can be accepted without tying the mortgage servicer and lender together?*

As a best practice, the Approved Attorney should obtain some type of documentation from the servicer (a Service Agreement, or Service Letter to

consumer, payment book) which confirms their authority to service the loan. Sometimes this documentation is very difficult to acquire.

In a recent scenario, a mortgage servicer was providing authorization for a short sale and was asked to provide such proof. A copy of the letter from the servicer to the owner/seller at the time the servicer took over their account—showing the mortgage payment stubs—was adequate documentation to show the relationship between the servicer and lender.

This information is important since more and more lenders offset the responsibility of payments and collection to servicers.



## Inheritance Taxes & Attorney Guarantee Letters

On July 1, 2009, Penn Attorneys will adjust its inheritance tax requirements.

Refer to Title Alert 2009-07 which can be accessed on our website: [http://www.pennattorneys.com/info/title\\_alerts.htm](http://www.pennattorneys.com/info/title_alerts.htm).

When it comes to inheritance taxes, our experience tells us that most attorneys don't want to use the word "guarantee" or "indemnify" in their letters because they realize that they are taking personal responsibility for something over which they may have no control or influence.

Therefore, we have changed our procedures to provide you with three options to allow the property to be insured free of the lien for inheritance taxes:

1. Payoff Procedure – Follow the new procedure developed with the PA Department of Revenue to efficiently obtain a payoff statement and lien release –OR–
2. Hold an Escrow –to cover 1 1/2 times the amount of the estimated tax –OR–
3. Submit an [Inheritance Tax Guarantee](#) —Our former Inheritance Tax Certification was renamed and revised to only be accepted from an "Active" Approved Attorney in good standing.

The payoff procedure should be effective to facilitate the issuance of a free and clear title policy and get you off the hook for inheritance tax matters that are out of your hands. Try it when the opportunity presents itself!

## PLTA Speaks Up at Insurance Department Public Hearing on Title Insurance Rates and Practices

PLTA leaders and members turned out in good numbers and strong voice for the May 28 public informational hearing of the Pennsylvania Insurance Department at the Commonwealth Keystone Building in Harrisburg.

The hearing was part of a chain of events that began with the Title Insurance Rating Bureau of Pennsylvania (TIRBOP) making a rate filing with the Department of Insurance.

We will keep you informed regarding the circumstances and progress of the TIRBOP rate filing with the Insurance Department.

For the comments of Jon R. Effner, Esq., CLTP, past president of PLTA, go to: <http://www.plta.org/images/Brochures/effner.doc>

For the comments of PLTA member Holly Keller, go to: <http://www.plta.org/images/Brochures/keller.doc>

To read more go to: <http://www.plta.org/index.php/News-Items/plta-speaks-up-at-insurance-department-public-hearing-on-title-insurance.html>

Penn Attorneys Title Insurance Co. is a member of the Pennsylvania Land Title Association (**PLTA**). This information is being shared with you courtesy of the PLTA.

PLTA is always at work supporting the title industry. If you are not a member of this worthwhile professional organization please consider joining now. Go to: <http://www.plta.org/index.php/Become-a-Member/theres-so-much-to-gain-as-a-plta-member.html> for more information.



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This newsletter is also available at our website  
[www.pennattorneys.com](http://www.pennattorneys.com)



## Penn Attorney's Holiday Schedule



Our office will be closed on:

**Friday, July 3, 2009**      **Independence Day**  
**Monday, Sept 7, 2009**      **Labor Day**

If you will need a Commitment or Instant Policy for a settlement to be held on the above-listed holidays, please be sure to submit your request 2 business days prior to the holiday:



→ Before Noon, Tuesday June 30th  
→ Before Noon, Thursday, Sept, 3rd

For special requests, contact:

Tracy L. Chipoletti, Ops Manager 814-451-8867 or 1-800-352-2216



## LandAmerica 1031 Exchange: A Lesson to be Learned

You may have heard that LandAmerica Financial Group, Inc. and its subsidiary LandAmerica 1031 Exchange Services (LES) filed for bankruptcy protection in November, 2008. As a result, investors who had exchange accounts with LES were unable to access their funds.

Recently, the bankruptcy court issued two rulings which found that the exchange funds held by LES in either a commingled account or a separate sub-account did not belong to the individual Exchangors, but must instead be included in the bankruptcy estate. As a result, these exchange deposits became part of the general pool of money that is available to pay all the creditors of LES.

So what went wrong for the LES clients? How is First American Exchange Company different?

Most importantly, there was a provision in the LES exchange agreement where the clients explicitly gave up all right, title and interest in the exchange funds to LES. Such language is not contained in any of the exchange documents used by First American Exchange Company.

LES held some funds in a master account with sub-accounts used to identify each client's funds. The majority of the funds were held, commingled, in the LES operating account.

At First American Exchange we never commingle client funds, nor do we use a master/sub-account structure. We set up an individual account for each client at an FDIC insured bank, identified with our client's name and tax identification number. Our clients receive all the interest earned on the account as reported on the 1099 issued directly by the bank. Funds are released only after receiving a written direction from our client.

LES invested a large portion of exchange funds in auction rate securities, which had become illiquid.

First American does not invest exchange funds in securities. Client funds are only placed in fully liquid demand deposit accounts in highly rated banks. Deposits are monitored on a daily basis by our corporate treasury department.

Finally, the court held that state law determines whether exchange funds are a part of the bankruptcy estate, and in this case the court looked to Virginia law.

First American's exchange agreement is governed by California law, which provides that exchange funds held by a Qualified Intermediary are not subject to attachment by the intermediary's creditors. This law helps protect exchange funds from outside claims.

# Vesting and 1031 Exchanges: "Same Taxpayer" Rule

In order to qualify for tax deferral treatment under Internal Revenue Code § 1031, the taxpayer who is the seller of the relinquished property must also purchase the replacement property. For example, if Mary Smith as an individual sells her relinquished property, Mary Smith as an individual must also buy the replacement property. This sounds simple enough, but oftentimes investors overlook this important detail.

## General Rule

To comply with the general rule, the investor should confirm how he owns title to the property to be disposed of (the "relinquished property") and plan to acquire the new property (the "replacement property") using the same form of ownership, except for certain limited exceptions described below.

## Disregarded Entities

There is one exception to this general rule. Some entities are considered "disregarded entities" for tax purposes. This means that, although the entities do exist in the "real world," they are completely ignored for tax purposes. Disregarded entities include single member limited liability companies (LLC's) and revocable trusts. If a taxpayer sells investment property that is owned by the taxpayer individually, he can acquire replacement property either in his own name, in the name of an LLC of which he is the sole member or in the name of his revocable trust. If the property is community property, the tax-

payer has one additional option. If he and his spouse own the relinquished property as husband and wife, they may acquire the replacement property in the name of an LLC of which the husband and wife are the only members.

## Partnerships

Investors should pay special attention to vesting issues when holding title in a partnership. (Typically, an LLC with more than one member is considered a partnership for tax purposes.) Section 1031 specifically excludes partnership interests, so it is not possible to defer tax under IRC § 1031 by disposing of or acquiring a partnership interest.

Moreover, because of the "same taxpayer" rule discussed above, if a partnership sells the relinquished property, the partnership must buy the replacement property. Individual partners cannot separately exchange out of property that is owned by a partnership. Although there are some potential solutions to this problem, they generally require planning and legal work.

Investors planning to do a 1031 exchange should pay close attention to the vesting on the property they intend to sell in order to ensure that the same taxpayer is the seller of the relinquished property and the purchaser of the replacement property. Advanced planning will go a long way towards having a smooth closing and a workable 1031 exchange.