

## From the President's Desk

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History is being made this very minute. Somehow and somewhere, the course of someone's life is being charted and forever changed.

Perhaps not with the same magnitude as with the latest earthquake or flood or with as long lasting an impact as September 11th of a decade ago; but the events of today are shaping our history.

As a matter of fact, together, we are living, making, and defining history. Despite the ongoing economic slump, our Approved Attorneys are closing real estate transactions every day.

At Penn Attorneys, our winning moments come when a job is done well, a deadline is met and a settlement is saved.

However, Penn Attorneys is not defined solely by our winning moments. It is also our constant **determination** to serve our customers, our **persistence** to resolve their problems, and our **perseverance** to push through the setbacks that makes what we do significant.

You see, what *you do* as an Approved Attorney and settlement agent and what *we do* as a title insurer are an integral part of our nation's economic recovery.

Will we survive the crisis?  
Yes, we will...one settlement at a time.  
What we *both do* is important to the survival of the real estate industry. *Together, we are making history.*

What will be your winning moment?

Josie Lubiejewski

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### Can We Help You?

We realize that recent flooding may have personally affected you.

If your operation has been disrupted or your office damaged by the flooding, let us know if we can help you with reconstructing your file, final paperwork or getting a policy to a lender.



# TITLE TRAINER

Beef up your title know-how. Consider us your personal trainer. We recommend best practices for title insurance and help you stay competitive.

## It's Business, Not Personal: Evidence of Personal Service

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When an action is commenced in any federal or state judicial proceeding, service of process must be made on the parties that provides those parties with the opportunity to be heard. The 5th and 14th Amendments to the U.S. Constitution, state constitutions, case law and court rules, all uphold this principle.

The method of service may vary based on the interest of the party and the jurisdiction of the action. For instance, service on a defendant in a civil action usually must be personal in nature, meaning that the pleading is handed to the defendant. Other means of service may include certified mail / return receipt requested, registered mail, regular mail, service by publication as specified by Special Order of the Court.

Service of process rules are detailed in the 400 series of the PA Rules of Civil Procedure. The rules distinguish between original process, meaning the document commencing the action, i.e. the complaint, and service of all types of legal papers.



Generally speaking, the sheriff serves process on any in-state defendants in the Commonwealth of Pennsylvania.

Pennsylvania actions in equity, for partition, to prevent waste, for declaratory judgments, and all actions in Philadelphia County allow for service by any competent, non-party, unrelated adult.

Service of original process on the defendant is made by handing a copy of the document to the defendant or to an adult family member or person in charge of the defendant's residence or business.

Service of legal papers other than original process can be made by handing, mailing or faxing a copy to the party's attorney or—if there is no attorney—by handing, mailing or faxing a copy to the party.

Rule 410 sets forth more regulations on service for real property actions, including mortgage foreclosures, when service must also be made on any party in possession of the subject real estate.

When personal service cannot be made by service rules, Rule 430 allows plaintiffs to petition the court for a special order directing the method of alternative service.

For title insurance purposes, where a judicial sale exists in the chain of title, proof that the plaintiff personally served process on the defendant owner must be provided.

*Continued on page 3*

In most cases, we are seeking evidence of personal service of original process, such as the complaint in a mortgage foreclosure action or the notice of claim of delinquent taxes in an upset tax sale.

Sometimes, we will also want personal service of other legal papers, like the notice of sale in a mortgage foreclosure action or a rule to show cause why property should not be sold free and clear of all liens in a judicial tax sale.

At all times, but especially in this difficult economic climate, without personal service, the risk is extremely high that the defendant who lost the property at judicial sale will petition the court to set the sale aside...and win!

Courts will sympathize with defendants who never had the chance to tell their story, even if they clearly failed to pay their obligations. A defendant's right to due process is superior to a creditor's right to sue to collect a debt.

This is why we require evidence of personal service of process on the defendant owner in those transactions in which the chain of title contains transfers pursuant to judicial proceedings. Without such evidence, we must decline to insure.

Ask your searcher to provide you with copies of the affidavit of service, the sheriff's return of service, the signed return receipt slip, or the order granting alternate service, the sheriff's return of service, the signed return receipt slip or the order granting alternate service (along with proof that the plaintiff complied).

Note: Proof of personal service may be just one of several requirements necessary to insure these types of sales. ■

## Forms of Personal Service

Here is a list of common judicial proceedings and the type of service of process acceptable in your examination of title. The methods of service in all of these types of judicial sales must be personal, by certified mail/return receipt requested, or in accordance with a special order of court.

**Please contact us if you have questions on specific transactions.**

### Mortgage Foreclosure (Sheriff's or Marshal's Sale)

- Complaint
- Notice of Sale

### Upset Tax Sale

- Notice of Claim of Delinquent Taxes

### Judicial Tax Sale

- Rule to Show Cause Why Property Should Not be Sold Free and Clear of All Liens
- Notice of Sale

### Forfeiture Sale

- Rule to Show Cause Why Property Should Not be Forfeited

### Action to Quiet Title

- Complaint



# CLAIMS CORNER

We take a look at current claims issues that may impact your real estate practice and recommend actions & remedies to help you avoid title pitfalls.

## Tax Sale Set Aside, Despite Personal Service Rendered

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Even in cases where the defendant received personal service, risks still exist in insuring transactions involving distressed property sales.

Picture this: a two-story brick office building and nearby home in Narberth, PA, a prosperous town on the Main Line just outside of Philadelphia. Both premises were owned by a local resident and notable tax protestor, and had been in her family for over 30 years.

They were unencumbered by any liens, other than real property tax delinquencies (\$13,018 was due on her residence and \$17,329 was due on the office building).

As a result, in July 1999, the tax claim bureau issued notices of public tax sale covering both properties, and set September 13, 1999 as the sale date.

Successful bidders at the sale acquired both premises for a total of \$30,000.

2000, the tax sale deeds into the successful bidders were recorded.

Subsequently, the new owners obtained a title insurance policy without exception for any matters relating to the tax sale from First American covering the office building in the amount of \$750,000, which was its fair market value. (Together, the two properties totaled \$1.4 million.)

However, the tax sale defendant had the case re-opened and petitioned to set aside the sale on the basis that she thought the notice showed the sale date as the 15th, not the 13th, and had intended to pay the taxes the day of the sale.

The insureds filed a claim, and First American Title Insurance Company hired outside counsel to defend the title. First American settled with its insureds, but the insureds continued to litigate with the tax sale defendant, who ultimately prevailed.

Sometimes even where personal service was provided, the court may set aside the sale. Insuring these types of transactions for greater than the actual consideration can be problematic.

Please contact us if you are asked to do so or if you have any questions regarding the personal service that was rendered. ■



The defendant filed exceptions, but failed to file a supporting brief within the appropriate time frame. As a result in April of

# HUD-1 Settlement Statement: Better than Fine(d)

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The HUD-1 form is supposed to provide consistency with the process and be easy for the consumer to understand. The rules which govern the form may be found at HUD's Real Estate Settlement Procedures Act ([RESPA website](#)).

Because the PA Insurance Department requires that we keep a copy of the HUD-1 Settlement Statement for every transaction we insure, we review a lot of HUD-1s!

We understand that every transaction is unique and that this is reflected on the HUD-1 Settlement Statement.

When a lender demands changes to the HUD-1 that are inconsistent with the HUD Rules the matter is out of your control. We just remind you to document the lenders' written directives and your response.

Nevertheless, we are still seeing a pattern of errors on the settlement statements that must be addressed. These particular errors are those that the PA Insurance Dept. have taken issue with in the past



Hands-down, the worst offense is the reporting of Attorney fees as an All-inclusive Agent's Rate.

Ohio Bar Title in Pennsylvania operates under the Approved Attorney system, with our rates filed with the PA Insurance Dept. So, representing Attorney fees as Agents/All-inclusive rates is not correct.

## **What NOT to do on the HUD-1?**

- **Do Not:** Represent your fees and PA/Ohio Bar Title's premium as an All-inclusive Rate.

- **Do Not:** Report your fees under Line 1107, as "Agent's Portion".
- **Do Not:** Report an all-inclusive rate on line 1108, under "Underwriter's Portion".

## **How to accurately represent your Attorney fees & Ohio Bar Title's rates:**

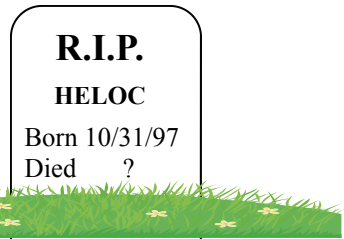
- Charges should not be bundled as a line item with attorney fees and our premium together. If instructed by the lender to do so, follow the procedure: Educate, Document, Save and Close. Refer to page 3 of [Title Talk 2010-1](#).
- Line 1107: Agent's Portion should read 0 (zero) or N/A .
- Line 1108: Should be our total invoice premium subtracting the \$75 fee for the Closing Protection Letter.

## **Other common problems to avoid:**

- Including CPL fee with premium. (Should be listed as a separate line item.)
- Combining the Owner's Policy fee with the Loan Policy fee. (OP fee is listed in Line 1103 under Borrower's column.)
- Leaving lines blank for Lender's and/or Owner's Policy limit amount. (List the respective policy amount along with endorsement numbers.)
- Using our former name. (Use "Penn Attorneys/OBT" or "PA/Ohio Bar Title" as the title insurer on the HUD-1.)

If you have any questions on the HUD-1, please contact us at 1-800-352-2216. ■

# Zombie Home Equity Lines of Credit (Or the Mortgages That Won't Die)



Paying off mortgages provides very little drama for the average settlement agent. Except of course, when the payment leaves an “unsatisfied Home Equity Line of Credit, which could result in future access of funds.

It has been commonplace for a lender to issue multiple mortgages for one transaction, usually involving at least one home equity line of credit (HELOC).

A full payoff of the HELOC does not extinguish the lien securing the repayment obligation—nor does it prevent a borrower from drawing additional funds from the credit line. And unless very particular procedures are followed to close the HELOC, it will remain senior to our insured lender or owner.

Because of this, our Company and our Approved Attorneys continue to suffer losses because of HELOCs that are not being satisfied, despite having been paid through a disbursement at settlement based on a payoff letter from the HELOC lender.

As the closing attorney, you need to make sure that these open-end mortgages are completely terminated. Review our [Title Alert 2009-01](#) for more detail on handling these open-end mortgages.

The process begins with getting detailed information—or copies of the mortgages—from your searcher. Then completing your Preliminary Report indicating whether the mortgages are standard or open-ended .

If you report any open-end mortgages, you will need to submit a [HELOC Certification](#) with your Final Report.

Additionally, for each open-end mortgage that you report to us, you will be required to submit a copy of the:

- [Payoff Request](#)
- [Borrower Acknowledgement](#),  
**AND**
- [Borrower Authorization](#).

You may use our forms or other payoff letters and authorization and acknowledgment forms. However, **they must contain the specific statements and demands that appear in our forms.**

If the lender is requiring you to use their payoff forms, please compare same with our forms. If they do not contain all the key language necessary to ensure the HELOC was extinguished—and to be able to defend against a claim should one occur—you may need to use one or more of our forms in conjunction with theirs.

If you have questions about HELOCs or our requirements or if you are questioning the adequacy of the lenders forms to completely extinguish the HELOC, please contact us.

Note: If you do not indicate on your Preliminary Report that the mortgages are open-end or standard, we will automatically raise a requirement on your Commitment or Instant Policy Letter and you will need to submit a HELOC certification for the file.

If the mortgages are all standard and you indicate so on your Preliminary Report—we will not raise the additional HELOC requirement on your Commitment or Instant Policy letter. ■

# Steps to Extinguish Open-end Mortgages

(A brief "To-do" list.)

## Get the Payoff: Contact/Notify Borrowers\*

If not your clients, contact sellers' counsel or realtor before the settlement. You may need assistance to get payoff & documentation signed.

Have the borrowers Acknowledge and Authorize in writing the intent to freeze, payoff & close the account.

## Report to Penn Attorneys/Ohio Bar Title

Use the Preliminary application to report which mortgages are open-ended or standard.

## Notify the Lender\* (and keep proof of delivery in your file)

Send Payoff Request and ask that the account be frozen.

Send lender a copy of the Borrower's Acknowledgment & Authorization with your payoff.

## Send Copies to Penn Attorneys/Ohio Bar Title\*

HELOC certification

Payoff Request

Borrower's Acknowledgement

Borrower's Authorization

## Monitor the Satisfaction of open-end mortgages.

**\*You will need to provide documentation for each open-end mortgage.**

## CPLs: Loan Numbers Required

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We are being overwhelmed with requests to revise existing Closing Protection Letters (CPLs) to include a Loan Number. It appears that most lenders are now requiring the Loan Number to appear on the CPL.

In order to be more responsive to you and the requirements of the lenders, we have a request.

**Would you please provide the loan number on every original CPL request that you submit to Penn Attorneys?**

You may not always be able to get it. However, if you can provide it to us up front, it will save us the revision time—and save you the time (and the aggravation) of getting this changed just before your closing.

A Closing Protection Letter Request form is available in Adobe Reader at [www.pennattorneys.com](http://www.pennattorneys.com).

If you would prefer to have the form in Microsoft Word, please email either:

Mike [mweber@firstam.com](mailto:mweber@firstam.com)

Jennifer [jmacgregor@firstam.com](mailto:jmacgregor@firstam.com)

## FDIC Approves Interim Final Rule

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The FDIC recently approved an Interim Final Rule that would require an insured depository institution with \$50 billion or more in total assets to submit periodic contingency plans to the FDIC for resolution in the event of the financial institution's failure.

To read the Interim Final Rule, [click here](#).

## PNC Demands Policies

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Effective immediately, PNC Mortgage, a division of PNC Bank, N.A., has instituted a new policy:

**PNC must receive the Lender's Policy within 6 months of the loan closing or the recordation of the security instrument, whichever occurs later.**

If the Lender's Policy is not received within this time frame, a demand letter will be sent to the underwriter (PA/Ohio Bar Title). If there is no policy in hand within 30 days, PNC will obtain a replacement policy from another vendor and seek reimbursement from us for this cost.

It has always been important for you to send in your complete final paperwork and for Penn Attorneys to issue Policies in a timely fashion. Now, it is even more critical that we work together.

You can speed the process along by complying with all the requirements listed in Schedule B of the Commitment and by obtaining signatures on all required Affidavits and Certifications at the settlement. If you have a problem that will cause a delay in finalizing the paperwork, we ask that you notify us as soon as possible.

Your diligence will safeguard your ability to close future PNC transactions. ■



**Penn Attorneys  
will be closed:**

**Thur & Fri, Nov 24-25**      **Thanksgiving**  
**Mon, Dec 26**                      **Christmas**  
**Mon, Jan 2**                              **New Year's**