

ESCROW CLOSINGS
POLICIES
IN
SHORT SALE AND DOUBLE SALE TRANSACTIONS
AND OTHER
HIGH RISK TRANSACTIONS

A WHITE PAPER
BY
IDAHO LAND TITLE ASSOCIATION

MARCH 16, 2010

1. Issue. High risk transactions.

a. The Department of Insurance has expressed concerns to the Idaho Land Title Association ("ILTA") relating to high risk or potentially fraudulent transactions. Particular concern to the Department of Insurance are transactions involving a combination of a short sale and a double sale (as defined below) in which full disclosure of the double sale or the value of the property was not made to all parties. Such transactions, like other high-risk or potentially fraudulent transactions, have traditionally been more prevalent in bad economic times and create risk to the buyers, the sellers, the lender and the title company. The Department of Insurance has established rules and regulations relating to title insurance companies acting as escrow agents, and all title insurance companies and title insurance agents have internal policies and procedures to protect their customers and themselves from risks associated with potentially fraudulent transactions. While the duties of an escrow agent are limited to complying with the escrow instructions, it is essential to the industry that title insurance companies and title insurance agents maintain a high degree of integrity and confidence both when issuing title insurance or assurance products and when acting as an escrow agent.

2. Definitions.

a. Short Sale: A short sale is a sale transaction in which the value of the property is less than the balance owing under an obligation secured by the lien of a deed of trust or mortgage on that property, and in which the holder of the deed of trust or mortgage agrees to release its lien for payment roughly equal to the property value. Short sales are legitimate transactions provided there is full disclosure to all parties and the lien holder has made an informed decision to accept less than the full amount due as consideration for releasing its lien. Such transactions can benefit both the owner and the lender by allowing a sale of the property prior to a foreclosure and saving the lender the cost of foreclosure and marketing the property.

b. Double Sale. A double sale or "flip" is a transaction in which the initial buyer (the "investor") does not intend to acquire the property for its own use but for the purpose of immediate or quick resale, presumably for a profit. Double sale transactions are legitimate with full disclosure. The traditional investor transaction is one in which the investor purchases the property for a reasonable value and is able to resell the property for a profit either through making improvements or market appreciation.

3. Role of the Escrow Agent.

a. An escrow is created by delivering a deed, money or other property by a grantor into the hands of another to be held until the happening of a contingency or performance of a condition, and then delivered to the grantee. The role of an escrow agent is to perform its duties assigned by all parties according to the terms of the written escrow instructions.

b. Idaho law describes the relationship of an escrow agent as a "limited agent". The Idaho Supreme Court has described the relationship of an escrow agent as follows:

... the deposit of instruments in escrow cannot be made with one who is the agent of either of the parties to the instrument . . . for if the depository is the agent for the grantor, the instrument is retained by him; if the agent of the grantee, there is a delivery of the instrument. To the extent the term agent is applicable; it is a limited agency, with duties and powers limited to the terms of the escrow agreement. . . . [Citations omitted].

See also 19 Am.Jur., Escrow, sec. 13, p. 430, wherein it is stated:

In a broad sense, every depository of an escrow is the agent of both parties. For the purpose of making delivery upon performance of the conditions, he is no less the agent of the grantee than the agent of the grantor. He is empowered to aid neither, being merely the conduit used in the transaction for convenience and safety. He may, therefore, be looked upon as a special agent of both parties, with powers limited only to those stipulated in the escrow agreement. . . . When the depository knows the terms of the agreement so that he may understand his duties, he acts by virtue of his own powers, and not as the agent of anybody. . . . [Emphasis added].

c. The concept of an escrow agent being a "conduit" of the transaction for convenience and safety traditionally has meant that the escrow agent provides a mechanism by which the buyer or lender can deposit funds and the seller or borrower can deposit documents with assurance that the documents and funds will not be disbursed or delivered until certain conditions have been satisfied. Fulfilling that obligation requires instructions from all parties to the transaction which must be consistent and not in conflict. An escrow agent should also keep the information relating to the transaction confidential and disclose only to parties to the escrow.

d. The escrow agent is to remain neutral in the transaction. Favoritism to one party may be a breach of a duty to another party. While the ILTA is aware of no Idaho appellate decisions defining the neutrality of an escrow agent, we can take some guidance from the Oregon Supreme Court which described the neutrality of an escrow agent as follows:

...[A]ny duty that the escrow agent owed the plaintiffs "cannot be based upon defendant's role as an escrow agent or as a provider of title insurance. An escrow holder, by definition, is a neutral third party with no obligations to either party to the transaction except to carry out the terms of the escrow instructions. They owe no duty to advise the parties of their legal rights...[and] they have no reason to protect the rights of one party against another.

e. It is clear that the duties of an escrow agent are limited to terms of the escrow agreement or escrow instructions. Actions by the escrow agent which exceed the duties

laid out in the escrow instructions may be a breach of its duties. Reporting or disclosing information to one party without instructions may be a breach of its duties to the other party and reporting or disclosing to a third party without instructions may create liability or cause damage to both the parties to the escrow and the escrow agent.

f. Notwithstanding the limitation of its duties, it is in the best interest of the escrow agent and its customers for the escrow agent to not be a party to fraudulent or high-risk transactions.

4. Actions and Recommendations by the ILTA.

a. Title insurance companies and agents, when acting as escrow agents, are subject to the rules and regulations promulgated by the Department of Insurance. In addition, all have policies and procedures to help discover those transactions which may be fraudulent or which may pose excessive risk to the company or its customers. Most, if not all, title insurance companies and agents have specific policies and procedures relating to double sales and short sales, including affidavits from the parties and disclosure requirements. The ILTA suggests that all title companies and agents review the rules and regulations promulgated by the Department of Insurance, as well as the policies and procedures established by the agents and their underwriters. Company policies and procedures, including disclosure requirements for double sales and short sales should be re-visited and updated as necessary.

b. While as of the date of this white paper, the Department of Insurance has informed the ILTA that no complaints have been filed with the Department of Insurance, the ILTA believes it is prudent to bring this issue to the attention of its members in order to maintain the integrity of the industry and protect its customers. Because an escrow agent is a neutral depository charged with fulfilling the conditions set forth in its instructions with no fiduciary duties in the traditional sense, there are limits as to what an escrow agent can do to protect itself and its customers against fraudulent transactions. However, escrow agents can refuse to be part of transactions in which it perceives a risk to itself or its customers.

c. In an effort to maintain the integrity of the title and escrow industry, the ILTA traditionally stressed education of its members on a variety of topics, including issues arising out of changes in regulations, and legislative issues and issues arising out of changes in practices by the title industry; governmental entities and its customers, including issues arising out of changing economic conditions. In recent years, such education has emphasized awareness of mortgage fraud, including risks with short sales and double sales. The 2009 and 2010 educational seminar agendas and the 2009 convention agenda attached hereto are illustrative of those efforts.

d. The ILTA recognizes that short sale and double sale transactions exist, many of which are legitimate transactions. The ILTA encourages all title companies and agents to educate their employees regarding potentially fraudulent transactions, high risk transactions and the concerns and potential issues relating to short sale transactions. In the event a title company or agent perceives a high-risk or potentially fraudulent transaction or encounters a transaction in which one or more of the parties objects to complying with policies and

procedures to protect the company and its customers, the ILTA recommends that the company refuse to act as the escrow agent for such transaction.

e. The ILTA stands ready to cooperate with realtors, lenders, and all branches of government, including the Department of Insurance, Department of Finance, Idaho Real Estate Commission and the legislature, to review appropriate policies and procedures to reduce the risk of potentially fraudulent transactions.

Dated this 16th day of March, 2010

IDAHO LAND TITLE ASSOCIATION


By: Ric Eborall, President

2010 Pacific Northwest Land Title Convention Agenda

Thursday August 5th

8:00-2:00 Optional Agent meetings

2:00-6:00 Registration

2:00-3:15 Individual State Business Meetings/
General Membership Meetings/Board Meetings

3:15-3:30 Break

3:30-5:00 Continuation of State Business Meetings/
General Membership Meetings/Board Meetings

5:00-7:00 Ice Breaker Reception with the Vendors

7:00 Agent/Underwriter Dinners

Friday August 6th

7:00-8:25 Registration, Cont. Breakfast
with Vendors

8:25-8:30 **Welcome** by Ric Eborall, ILTA President

8:30-9:45 Ted C. Jones, PhD Chief Economist
Stewart Title Guaranty Company "New Business
Model For the 2010 Economy, Adapt, Mutate,
Migrate or Die"

.... An Economic and Real Estate Forecast

9:45-10:00 Break

10:00-11:00 Mark Winter, ALTA President "ALTA Is
Working to Protect the Interests of the
Title Industry"

11:00-12:00 Underwriter Panel Discussion

12:00-1:30 Strolling lunch with Vendors

1:30—5:00 Underwriter/Vendor Breakout Classes — 18 Topics offered 6 per hour segment

1:30-2:30 Underwriter Breakout Classes
— 6 Different topics

- 1) Schemes, Scams and Other Questionable Practices
- 2) Risky Business — An escrow perspective on unusual transactions, Part 1
- 3) Lawsuits Against Agents — Trends You Need To Be Aware Of
- 4) Strategies and Recipes for Successful Change in the New Marketplace including Going Green
- 5) "We Buy Ugly Homes" — Today's Short Sales
- 6) Drive for Show

2:30-2:45 Break

Friday August 6th (Continued)

2:45-3:45 Underwriter Breakout Classes
— 6 Different topics

- 1) Deeds in Lieu and Creditor's Rights
- 2) Risky Business — An escrow perspective on unusual transactions, Part 2
- 3) Spot Scams and Phonies Before They Affect Your Business
- 4) The Benefits of E-Recording
- 5) Fraud For Fun and Profit
- 6) The Short Game is Not To Blame

3:45-4:00 Break

4:00-5:00 Underwriter Breakout Classes
— 6 Different topics

- 1) Claims Chronicles
- 2) Risky Business — An escrow perspective on unusual transactions, Part 3
- 3) Transfer Fees, Issues and Problems
- 4) Defuse The "F" Bomb — The War on Fraud — Case Examples and Understanding the Collateral Damage
- 5) Foreclosures - Preserving The Investor's Dream
- 6) Putt For Dough

5:30-7:00 Presidents' Reception

7:00-10:00 PAC Auction; individual state recognition of past members/honorary members; Banquet; Installation of Officers; Key-Note speaker — Don Yaeger, *New York Times* best-selling author - "What Makes the Great Ones Great?"

Saturday August 7th

7:00-8:00 Breakfast with Stoney Brown,
PGA on Ethics

8:30 Shot Gun Start Golf
Hemingway Tour
Hike to Baldy
Skeet Shooting

1:30 Reception at the Golf Course

The afternoon and Dinner on your own

Dusk Optional Dinner and Ice Show
(Ticket Required)

Attire: Business Casual. Banquet—Coat and Tie.

Resort Accommodations: To make reservations, call 1(800) 786-8259 and ask for the Idaho Land Title group rate. There are a variety of accommodations available to suit your needs.

Idaho Land Title Association Education Seminar
Thursday and Friday March 4th and 5th, 2010
Red Lion Down Towner – Boise, Idaho
PROGRAM AGENDA

Thursday – March 4th Continental Breakfast Provided

- 7:30 A.M. Registration
- 8:15 A.M. Welcome from Ric Eborall, ILTA President
- 8:30 A.M. Water resources and the impact on real property – Dave Tuthill- President
Idaho Water Engineering
- 9:30 A.M. How to handle short sales/concurrent closings – Suzie Colbry- Sr. Vice President -Alliance Title
- 10:30 A.M. Morning Break**
- 10:45 A.M. Foreclosures – timelines – **Jesse Hamilton**-General Counsel, Pioneer Title Company
Vice President, Pioneer 1031 Company
- 11:30 A.M. Kris Ellis, Benton Ellis and Associates
Idaho Legislative Updates
- 12:00 P.M. Hosted Lunch**
- 1:00 P.M. Mortgage Fraud from the FBI and Dept of Finance perspective – Anthony Polidori with
the Dept of Finance and Dominic Venturi – Special Agent with the FBI
- 2:30 P.M. Afternoon Break**
- 2:45 P.M. New RESPA regs – Jeff Wiener - Old Republic
- 3:45 P.M. Review of REG 56/ Q & A with the DOI – Dale Freeman
- 4:30 P.M. Judiciary Committee update
- 5:00 P.M. Adjourn
- 5:30 P.M. Legislative Reception – Shige’s Japanese Cuisine 100 N 8th Ste 215

Friday – March 5th Coffee Provided

- 8:00 A.M. Escrow Liability Issues - Richard Mollerup – Meuleman and Mollerup LLP
- 9:00 A.M. Break/Checkout**
- 9:30 A.M. E-recording – The Title Agent’s Competitive Advantage – Vicki DiPasquale – National Sales
Manager - Simplifile
- 10:30 A.M. IPAC & TIPAC Update - Chris Bramwell - First American Title
- 10:45 A.M. Claims Chronicles - Steve Hardesty – Attorney - Hawley Troxell Ennis and Hawley
- 12:00 P.M. Adjourn

Idaho Land Title Association Education Seminar
Thursday and Friday March 5th and 6th, 2009
Red Lion DownTowner – Boise, Idaho
PROGRAM AGENDA

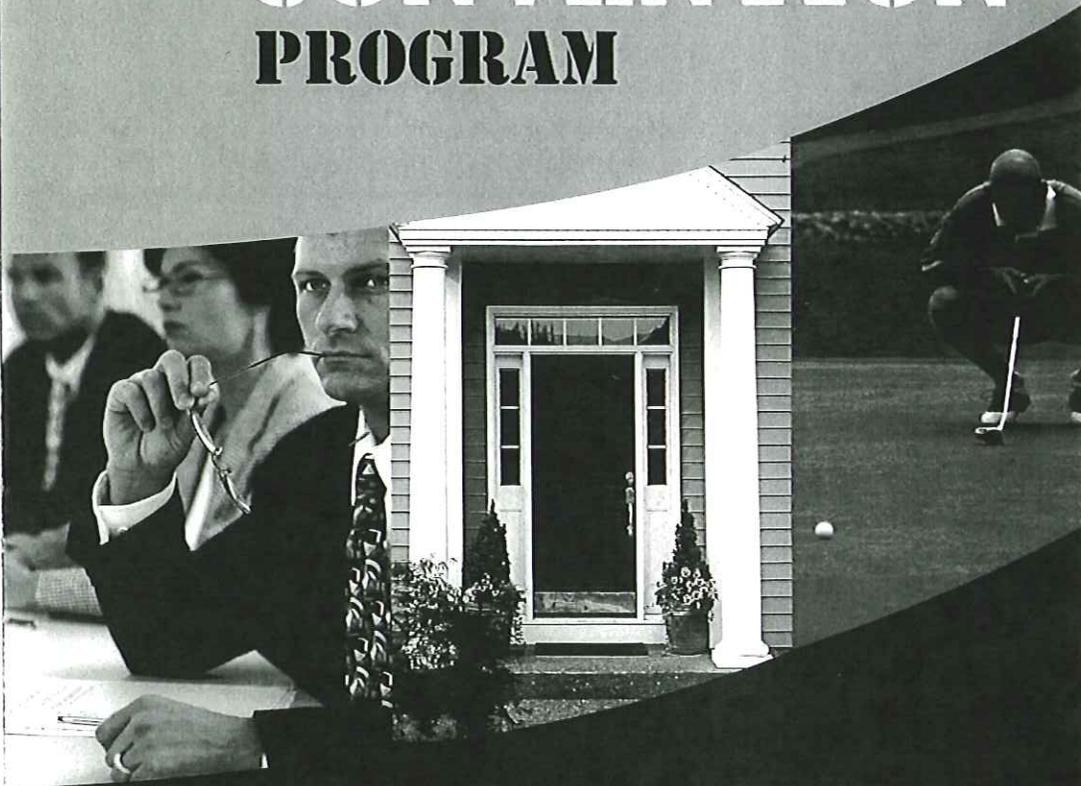
Thursday – March 5th Continental Breakfast Provided

- 8:00 A.M. Registration
- 8:30 A.M. Joshua D. Johnson Esq., Racine, Olson, Nye Budge and Bailey
Current Escrow Claim Trends, Cause and Prevention
- 9:30 A.M. Eric L Olsen, Esq., Racine, Olson, Nye Budge and Bailey
New Power of Attorney Act; A Legal Perspective of Requirements and Statutory Form
- 10:30 A.M. **Morning Break**
- 10:45 A.M. Guendy Kaupins – Boise State University
How to inspire employees in a down market
- 11:30 A.M. Kris Ellis, Benton Ellis and Associates
Idaho Legislative Updates
- 12:00 P.M. **Hosted Lunch**
- 1:00 P.M. Richard J. Hagar, SRA, Hagar Institute
Identifying and Preventing Real Estate Fraud; “Confronting” Customer Pressure
- 2:30 P.M. **Afternoon Break**
- 2:45 P.M. Richard J. Hagar, continued
- 5:00 P.M. Adjourn
- 5:30 P.M. Legislative Reception – Grove Hotel in the Evergreen Room

Friday – March 6th Coffee Provided

- 8:00 A.M. Richard W. Flory, V.P., Divisional Agency Director, First American Title Insurance Company
Topic To Be Determined
- 9:00 A.M. **Break/Checkout**
- 9:30 A.M. Bob Rice, Esq., Associate Underwriting Counsel, LandAmerica Financial Group, Inc.
Miscellaneous Underwriting Issues in Everyday Transactions
- 10:30 A.M. Jesse Hamilton, General Counsel, Pioneer Title Company
Vice President, Pioneer 1031 Company
Professional Standards; Making Ethics Personal; ALTA Principals of Fair Conduct
- 12:00 P.M. Adjourn

2009
**TRI-STATE
LAND TITLE
CONVENTION
PROGRAM**



AUGUST 9-11
Tulalip Resort, Tulalip WA

Idaho Land Title
Oregon Land Title
Washington Land Title





SUNDAY, AUGUST 9

- 3 - 5pm State Business/Board/Agent Meetings
 Washington - Evergreen Room
 Idaho - Birch Room
 Oregon - Cedar Room
- 3- 5pm Exhibitor Set up - Orca 1
- 4 - 6pm Registration Open - Orca Foyer
- 6 - 8pm Welcome Reception with Light Hors D' Oeuvres
 and cash bar

MONDAY, AUGUST 10

- 7- 10am Registration Open - Orca Foyer
- 7- 8am Continental Breakfast - Orca 1
- 8am - Noon** **General Session - Orca 1**
- 8 - 8:15am *Opening Remarks- Chuck Trafton, WLTA President
 and Mike Pryor, 2009 ALTA President*
- 8:15 - 9:15am *Regional Economic Forecast
 with Michael Parks*
- 9:30- 10:30am *Good Writing for Good Business
 - Julie Miller, Business Writing that Counts*
- 10:45 - Noon *Fraud - A Forensic Accounting Perspective
 with Case Examples
 - Les Lake, EideBailly*
- GOLF - Cedarcrest Golf Course, Marysville**
- 9:15am - Clubs picked up at Resort and delivered to Course
 ahead of arrival
- 12:30pm - Shuttle to Course (15 min drive)
- 12:45pm - Lunch/practice
- 1:30pm - Modified Shotgun
- 6:30 - 7:30pm Reception and PAC Silent Auction - Orca 1
- 8 - 9:30pm Installation/Awards Dinner - Orca 1

TUESDAY, AUGUST 11

- 7 - 8 am Continental Breakfast - Orca 1
- 8am - Noon** **General Session - Orca 1**
- 8 - 9am *Opening/ALTA Remarks
 - Mike Pryor, 2009 ALTA President*
- 9:10 - 10am *Fraud Awareness
 - Dwight Bickel, Rainier Title*
- 10:15 - 11:30am *A Proactive Approach to RESPA Reform -
 - Mary Schuster, RamQuest Director of Operations*

Convention Ends

Noon-2:00pm Exhibitor Break down