



**Escrow Technical Memorandum & Bulletin
(Revised Agency Version for Guidance)**

Date: October 7, 2005
From: Underwriting Counsel (Internal Reference 2005-RC-04A)
Subject: **Avoidance of Escrow Claims & Guidance for Execution of Documents**

OVERVIEW OF PROBLEM

A prior (internal) Bulletin (2005-RC-03) attempted to address the ongoing fraud problem through new guidelines for the use of outside notaries. After further analysis and comments from the field it has been determined that specific underwriting guidelines and specific guidelines for the execution of documents in general are needed to address some common escrow claims. Attached is (internal) Bulletin 2005-RC-04A which sets forth these revised recommended guidelines.

SPECIFIC ISSUES

The Company has noted an increase in escrow claims resulting from forged reconveyances of deeds of trust or releases of mortgages and forged deeds. These claims often involve either (1) the use of a recently recorded quit claim deed; (2) deeds of trusts/mortgages which have just recently been released of record or (3) unreleased mortgages where the seller, buyer or a third party presents a fraudulent unrecorded release at or prior to closing.

The fraudulent acts in these claims occur in two basic forms:

- a. A third party forges a release and then forges a deed conveying the property to another party; or
- b. The current owner forges a reconveyances/release and then attempts to sell or mortgage the property as if it were unencumbered.

Basic steps can and must be taken to protect the Company and its title policy issuing agents from escrow claims attributable to this type of fraud. The most important step is the verification of the identity of persons executing documents upon which the Company is basing a title product. For policy issuing agents, it is their responsibility to take reasonable steps to verify identification. Compliance with the recommendations set forth in the attached bulletin will be deemed to meet that requirement. Standard title work can eliminate recently forged instruments in the chain of title from being used to effectuate the fraud. However, the prevention of fraud in current transactions requires careful monitoring of the documents being executed.

Claims resulting from forged or fraudulent documents in transactions WHERE THESE PROCEDURES WERE NOT FOLLOWED will be deemed escrow claims and processed accordingly.



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Subject: **Fraud Prevention – Loan Releases and Document Execution**

I. UNDERWRITING GUIDELINES – Effective Immediately

Since it is unusual for most properties to be unencumbered, a recent release of any loan on the property should be investigated. Accordingly, the following safeguards, in addition to any others you are already using, must be implemented prior to closing a transaction where an outstanding loan in your chain of title has been satisfied outside your closing:

1. If a property is free and clear of any loan and the owner has owned it for less than 10 years, contact the Legal Department responsible for your area for a determination of insurability.
2. If a loan has been canceled of record without a corresponding sale or refinance, you must contact the lender for confirmation that the mortgage has been released. A "corresponding sale or refinance" would involve a conveyance of the land for value with an accompanying deed of trust/mortgage or a refinance deed of trust/mortgage. In either event, the new deed of trust/mortgage must be in an amount sufficient to satisfy the released deed of trust/mortgage.
3. If the seller, buyer or third party presents to you at or prior to closing a release for an uncanceled loan, you must contact the lender for confirmation that the loan has been released. Use independent means to obtain the lender's telephone number. Do not rely upon a number supplied by the parties to the transaction.
4. Any time a recent quit claim is found in your chain of title, you must conduct appropriate due diligence to determine its validity (call the grantor, check with the notary, etc.)

As always, any situation that is outside of the norm requires special attention and the local Underwriting Counsel should be contacted.

II. DOCUMENT EXECUTION GUIDELINES

Subject to requirements and limitations of applicable State and Local Law, our direct operations must adhere to one of the following procedures for all documents upon which a Company title product is based in all transactions other than the listed exceptions:

1. All documents' signings must be conducted in the presence of an authorized employee of the Company or title policy issuing agent (collectively "Company representative") regardless of who performs the actual notarization. The Company Representative must require the production of proper identification and personally examine it to verify the identity of the executing parties. Even if the notary is not an employee of the Company or the title policy issuing agent, it is the responsibility of the Company Representative to insure that the notary follows industry standards in conducting the signing; or
2. The document signings must be conducted through Bancserv (or comparable or approved vendor), a brand neutral FNF company which is covered by a \$15 million E&O policy that extends to all of the notaries that it retains. (Information on Bancserv can be obtained from its website at www.bancserv.net or 800-721-5558; your favorite notary may sign up with Bancserv and continue to work with you.); or
3. The document signings must be conducted by a notary or signing service that maintains E&O insurance of \$100,000 or higher and is approved in writing by a Company Regional Manager. (E&O coverage is available for inexpensive premiums through the National Association of Notaries, www.nationalnotary.org.); or
4. The document signings must be conducted under the supervision of attorneys actively licensed in the state where the document signings take place; or
5. The document signings must be conducted in accordance with a procedure approved in writing by a Company Regional Manager (this option allows for local custom and practice to be followed).

Exempted Transactions

1. Documents executed in accordance with existing guidelines for foreign individuals and entities and military personnel.
2. Documents executed directly with the insured lender (not the mortgage broker).
3. Documents provided by independent escrows or closing services approved by the Company Regional Manager or their designee.
4. Documents executed for commercial transactions in an amount of three million or greater (\$3,000,000).