

# **SIMPLE STEPS TO CLAIMS AVOIDANCE**

Presented by:

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Vice President, Claims Counsel and Associate State Counsel  
Mississippi Valley Title Insurance Company  
Birmingham, AL

# THE DEVIL IS IN THE DETAILS



HOW SMALL MISTAKES  
LEAD TO LARGE CLAIMS

SIMPLE STEPS FOR CLAIMS AVOIDANCE

# Notice of availability



- Required by Section 27-25-7, Ala. Code (1975).
- Must contain the following information:
  - ✓ Address or Legal Description of Property
  - ✓ Disclosure as to availability of owner's title insurance
  - ✓ Premium
  - ✓ Election of purchaser accepting or declining owner's title insurance
  - ✓ Date
  - ✓ Signature of purchaser(s)

**WAIVER/REQUEST FOR OWNER'S TITLE INSURANCE POLICY**

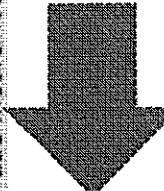
This is to certify that I (we) have received the foregoing notice of my (our) right to purchase owner's title insurance. If I (we) choose not to purchase owner's title insurance, Mississippi Valley Title Insurance Company and Old Republic National Title Insurance Company shall have no responsibility, obligation, or liability to me (us) for the status of the title to the real estate I am (we are) acquiring.

If an ALTA Homeowner's Policy is available, as indicated above, and I (we) decline this type policy I (we) understand that I am (we are) declining additional coverage not included in the standard ALTA Owner's Policy.

I/We do request the ALTA Homeowner's Policy

I/We do request the ALTA Owner's Policy

I/We do not request an owner's policy of title insurance



BUYER: \_\_\_\_\_

BUYER: \_\_\_\_\_

Mississippi Valley Title Insurance Company/  
Old Republic National Title Insurance Company

BY: \_\_\_\_\_

is Authorized Agent or Issuing Office

**WAIVER/REQUEST FOR OWNER'S TITLE INSURANCE POLICY**

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If an ALTA Homeowner's Policy (10/22/03) is available, as indicated above, and I (we) decline this type policy I (we) understand that I am (we are) declining additional coverage not included in the standard ALTA Owner's or Leasehold Owner's Policy (6/17/06).

I/We do request the ALTA Homeowner's Policy (10/22/03)

I/We do request the ALTA Owner's Policy (6/17/06) - (Or Leasehold if applicable)

I/We do not request an owner's policy of title insurance

BUYER: \_\_\_\_\_

BUYER: \_\_\_\_\_

DATE: \_\_\_\_\_

Mississippi Valley Title Company/  
Old Republic National Title Insurance Company

By: \_\_\_\_\_  
Its Authorized Agent or Issuing Office




# Notice of availability



- Section 27-25-7(b) provides that if the Notice is not obtained prior to or at closing, the omission may be cured
  - *at any time after the fact BUY*
  - *prior to actual or constructive notice of a claim or possible claim against the title.*
- Must send Notice to purchaser via Certified Letter, Return Receipt Requested to the last known address of the purchaser.

# Title Commitments



- Should correctly and accurately reflect the transaction.
- Another attorney or agent should be able to pick up the commitment and close loan.
- Do not leave items “unsaid” or “unspoken” or assume they will get done.
- If it needs to happen prior to closing, it needs to appear as a requirement on the commitment.

① Do Title Bonds like this is  
\$100,000.00 on passed  
only

~~Share~~  
Same exceptions as before

② Do Release on passed two fees  
Bk ... P. ... , dated 4-2-77, Akk  
4-9-77 =



# Forms



- You should be using current forms as provided by MVT or as promulgated by Statute.
- Forms should be fully completed.
- Forms should be executed correctly.
- Most forms are available either on ValleyRite or at [www.mvt.com](http://www.mvt.com)

# Acknowledgment Forms

## INDIVIDUAL ACKNOWLEDGMENT

STATE OF Alabama \_\_\_\_\_  
COUNTY OF Tallapoosa \_\_\_\_\_

I, Joe Michael J and Carrie P J

\_\_\_\_\_, a Notary Public in and for said County, in said State, hereby certify that  
\_\_\_\_\_, whose name is signed to the foregoing conveyance and who is known to me,  
acknowledged before me on this day that, being informed of the contents of the conveyance, \_\_\_\_\_  
executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 6th \_\_\_\_\_ day of May, 2009

\_\_\_\_\_  
Notary Public

My Commission expires: 11/12/2009

Section 35-4-29, Ala. Code (1975) sets forth the  
kinds of acknowledgments:  
individual, corporate, representative capacity, etc.

# Closing Forms

## BORROWER'S AFFIDAVIT

It is agreed and understood that although I/we are paying the attorney's' fees and other cost in the closing of this loan that the attorney, \_\_\_\_\_, represents MISSISSIPPI

VALLEY TITLE INSURANCE COMPANY solely and we further agree that there is no conflict of interest in this loan closing.

Dated: OCTOBER 28, 2011

Dear Agent,

In reviewing the documents you provided on the ---- closing, I came across this Borrower's Affidavit. Please stop using this form in its current state effective immediately. This affidavit contains incorrect and misleading information.

During the closing, you do not represent Mississippi Valley Title Insurance Company. Typically, you would be representing the lender.

You are an agent for Mississippi Valley Title for the sole and limited purpose of providing title insurance (the issuance of the binder and final policy).



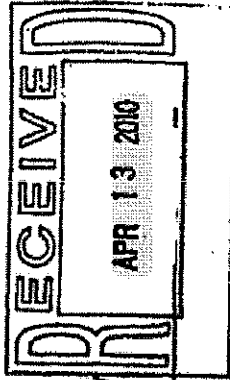
# Title Policies



- Policies should be issued correctly and precisely.



Policy  
Dated  
2007



Mississippi Valley Title Insurance Company  
Old Republic National Title Insurance Company  
124 One Madison Plaza, Suite 2100  
Madison, MS 39110

SCHEDULE A

File Number:  
Loan No:

Policy Number: 1

Amount of Insurance: \$100,000.00

Date of Policy: 05-14-07 at 4:00 pm

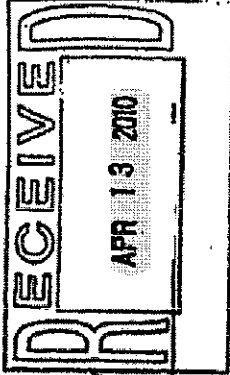
Address Reference: Tifa

typo?

1. Name of Insured: Bank its successors and/or assigns, as their interest may appear
2. The estate or interest in the Land that is insured by the Insured Mortgage is: Fee Simple
3. Title is vested in:
4. The Insured Mortgage and its assignments, if any, are described as follows:

That certain Mortgage dated 07-05-06, executed by [redacted] to [redacted] Bank filed for record in the office of the Probate Judge of LIMESTONE County, ALABAMA on 08-28-06 1:51 pm and recorded in said office in RLPY [redacted] Pat [redacted] securing an indebtedness in the sum of \$100,000.00.

That certain Modification dated 12-16-09, executed by [redacted] to [redacted] Bank filed for record in the Office of the Probate Judge of LIMESTONE County, ALABAMA on 12-29-09 at 3:05 pm changing the mortgagor from [redacted] to [redacted]



Mississippi Valley Title Insurance Company  
Old Republic National Title Insurance Company  
124 One Madison Plaza, Suite 2100  
Madison, MS 39110

Policy Dated 2007

Policy Number: 1

Amount of Insurance: \$100,000.00

Date of Policy: 05-14-07 at 4:00 pm

Address Reference: Tifa

typo?

SCHEDULE A

File Number:

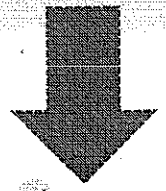
Loan No:

Insuring a mortgage and a 2009 modification

1. Name of insured: Blank its successors and/or assigns, as their interest may appear
2. The estate or interest in the Land that is insured by the Insured Mortgage is: Fee Simple
3. Title is vested in:
4. The Insured Mortgage and its assignments, if any, are described as follows:

That certain Mortgage dated 07-05-06, executed by 1 to 1 Bank filed for record in the office of the Probate Judge of LIMESTONE County, ALABAMA on 08-28-06 1:51 pm and recorded in said office in RLPY Pat securing an indebtedness in the sum of \$100,000.00.

That certain Modification dated 12-16-09 executed by 1 to 1 Bank filed for record in the Office of the Probate Judge of LIMESTONE County, ALABAMA on 12-29-09 at 3:05 pm changing the mortgagor from 1 to 1



Mississippi Valley Title Insurance Company  
Old Republic National Title Insurance Company  
124 One Madison Plaza, Suite 2100  
Madison, MS 39110



Policy  
received  
2010

SCHEDULE A

Policy Number: 1

Amount of Insurance: \$100,000.00

Date of Policy: 05-14-07 at 4:00 pm

Address Reference: n/a

File Number:

Loan No:

Policy  
Dated  
2007

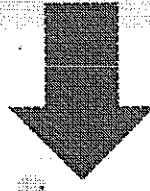
typo?

Insuring a  
mortgage  
and a 2009  
modification

1. Name of insured: Bank its successors and/or assigns, as their interest may appear
2. The estate or interest in the Land that is insured by the Insured Mortgage is: Fee Simple
3. Title is vested in:
4. The Insured Mortgage and its assignments, if any, are described as follows:

That certain Mortgage dated 07-05-06, executed by [redacted] to [redacted] office of the Probate Judge of LIMESTONE County, ALABAMA on 08-28-06 1:51 pm and recorded in said office in RLPY [redacted] Pat [redacted] securing an indebtedness in the sum of \$100,000.00.

That certain Modification dated 12-16-09 executed by [redacted] to [redacted] Bank filed for record in the office of the Probate Judge of LIMESTONE County, ALABAMA on 12-29-06 at 3:05 pm changing the mortgage from [redacted] to [redacted]



# Title Policies



- Policies should be issued timely.
- Section 27-25-4, Alabama Code, provides that “the title agent shall issue to the insured the policy or policies of title insurance for which a premium has been collected within 60 days .. after the satisfaction of all requirements and conditions set out in the commitment ....”
- What happens when a policy is not issued timely...

# Owner's Policy

MAILED

JUL 30 2007

Amount: \$275,000.00

1. Policy Date: September 10, 2003, 11:20 a.m.

SCHEDULE B - 1  
(CONTINUED)

Item 10. 16.5 Foot Public Walkway Easement along the North margin of subject property which is a dedicated easement to County.



# The importance of issuing timely...



- Shortly after purchase, owner begins disputing public's use of walkway.
- Owner files claim.
- Agent issues policy with exception for walkway. An exception *which had also appeared in the commitment*.
- Claim is denied 3 times based upon exception in the policy.
- Owner sues MVT for bad faith.
- Federal Judge mediator finds our failure to issue policy prior to claim a determinative factor. MVT forced into settlement for \$150,000.

# A Case Study



- Kenneth and Susan own a house.
- Kenneth and Susan default on their mortgage.
- Lender forecloses.
- Paul and Angela want to purchase house from lender post-foreclosure.
- Angela's Aunt Betty is going to finance the purchase.
- Aunt Betty wants lender's coverage including affirmative coverage over the Right of Redemption exception.

# Aunt Betty's Title Commitment

File Number: 1

Commitment No: V255692

## SCHEDULE A

1. Effective Date: 09-30-2011 at 08:00 AM
2. Policy or Policies to be issued:
  - a. Loan Policy: Short Form Residential Loan Policy (06-16-07) Amount: \$80,353.00  
Proposed Insured: Betty its successors and/or assigns, as their interest may appear
  - b. Owner's Policy: N/A Amount: N/A  
Proposed Insured: N/A
3. The estate or interest in the Land described or referred to in this Commitment is Fee Simple.
4. Title to the Fee Simple estate or interest in the land is at the Effective Date vested in:  
Fannie Mae aka Federal National Mortgage Association
5. Purchaser: Paul and Angela

## **SCHEDULE B - SECTION I**

### **Requirements**

Showing defects and objections to be removed or eliminated; liens and encumbrances to be satisfied and discharged of record and requirements to be compiled with before policy of title insurance can be issued without exception thereto.

Item 1. Proper instrument creating the interest or estate to be insured must be executed and duly filed for record, to wit:

•  
Execution and recordation without intervening rights of a security instrument by the purchaser (and spouse, when required by law) to the lender, securing an indebtedness in the sum as shown in Schedule "A" hereof.

Item 2. Full consideration for the interest or estate to be insured must be paid to or for the account of grantors or mortgagors.

Item 3. Furnish satisfactory evidence that there are no outstanding mechanics' or materialmen's liens against the property. Examine parties carefully, and attach owners' and contractors' affidavits where there has been construction during the statutory period for liens.

Item 4. Payment of all taxes, charges, assessments, levied and assessed against subject property, which are due and payable.

Item 5. Secure and return executed Notice of Availability of Owner's Insurance.

- No requirement for Purchaser's Disclosure Statement.
- No mention of affirmative coverage over the Right of Redemption exception.



## **SCHEDULE B - SECTION II**

### **Exceptions**

**Note:**

All rights outstanding by reason of statutory right of redemption from the foreclosure of that certain mortgage give by Kenneth and Susan National Bank, recorded in Doc # , said mortgage having subsequently been transferred and assigned to JPMorgan Chase Bank, National Association, by instrument recorded in Book Page in the Probate Office of Chambers County, Alabama; said foreclosure being evidenced by Page in said foreclosure deed to Fannie Mae a/k/a Federal National Mortgage Association, recorded in Book Probate Office. The company does not attempt to set out the names of all the parties entitled to redeem, and by accepting this commitment and/or policy, the insured releases the company and its agent of any such duty or obligation.

**Based upon the title commitment,  
MVT is committing to issue a Lender's Policy with an  
exception for the Right of Redemption.  
BUT...**



AGREEMENT

THIS AGREEMENT is made and entered into this 22nd day of September, 2011, by Fannie Mae ("Seller"), and Paul & Angela L. ("Purchaser") and \_\_\_\_\_ ("Title Company").

WITNESSETH:

WHEREAS, Purchaser and Seller have entered into a Purchase and Sale Agreement dated 9-17, 2011 ("Contract") wherein Purchaser agrees to purchase that certain real property and improvements located at \_\_\_\_\_ ("Property"); and as more particularly described in Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, Seller acquired this Property by foreclosure and the one year right of redemption provided for under the laws of the State of Alabama has not yet run; and

WHEREAS, Title Company has agreed to issue a mortgagee's title insurance policy insuring the lender in this transaction without listing an exemption in the title policy for the one year right of redemption.

Paul and Angela execute an Indemnity Agreement indicating that MVT will provide a mortgagee's policy without exception for the Right of Redemption.



**AGREEMENT**

THIS AGREEMENT is made and entered into this 22th day of September, 2011, by Fannie Mae ("Seller"), Paul A. & Angela L. ("Purchaser") and Mississippi Valley Title Insurance Company ("Title Company").

**WITNESSETH:**

WHEREAS, Purchaser and Seller have entered into a Purchase and Sale Agreement dated September 22, 2011 ("Contract") wherein Purchaser agrees to purchase that certain real property and improvements located at ("Property"); and as more particularly described as;

C  
141

SELLER HEREBY SAYS THAT SHE HAS NO OTHER INTEREST IN THE PROPERTY DESCRIBED ABOVE AND THAT SHE HAS NO OTHER INTEREST IN THE PROPERTY DESCRIBED ABOVE.

Together with all improvements thereon, reference to which is hereby made in aid of and as a part of this description.

WHEREAS, Seller acquired this Property by foreclosure and the one year right of redemption provided for under the laws of the State of Alabama has not yet run; and

WHEREAS, Title Company has agreed to issue a mortgagee's title insurance policy insuring the lender in this transaction listing an exception in the title policy for the one year Right of Redemption, but providing affirmative coverage over the same.

5. The terms and conditions of this Agreement shall be effective upon the date hereof and continue in full force and effect with regard to the indemnification to the Purchaser and Title Company until the occurrence of any of the following events: (i) the Purchaser transfers the Property either voluntarily or involuntarily, (ii) the loan from Lender to Purchaser secured by the Property is paid in full and satisfied of record, or (iii) expiration of one year from the date of the foreclosure. Upon the occurrence of any of items (i), (ii) or (iii) above, this Agreement with regard to any obligations to the Purchaser and Title Company, shall become null and void and all liabilities and obligations of Seller hereunder shall terminate and be of no further force and effect.

Paul and Angela sign not 1,  
but 2 Indemnity  
Agreements so poor Aunt  
Betty can get affirmative  
coverage. Neither is  
properly executed.

Seller

Paul and Angela

Paul and Angela

Purchaser

Paul and Angela

Title Company




## The Coverage Determination is in the Details



- The prior owners redeem. Aunt Betty files a claim under her lender's policy.
- The claim is denied because:
  - The title binder did not require the execution of an Indemnity Agreement regarding affirmative coverage over the right of redemption exception.
  - Exception was made for the right of redemption.
  - Neither MVT nor its agent executed either Indemnity Agreement.

# Get everything in writing



- Document, Document, Document.
- Payoffs must be in writing from the financial institution to whom you are making payment.
- If the mortgage being paid off is an Equity Line, you must have the borrowers sign a letter directing the lender to payoff and CLOSE the Equity Line.

5176

154,844.74 pay 068

2 pnts 1608.83 -

per dim 35.93





MORTGAGE/MORTGAGEE: 012 -

MORGAGOR: \_\_\_\_\_

Instrument Date: \_\_\_\_\_ Recording Date: \_\_\_\_\_ Book: \_\_\_\_\_ Page: ~~300~~ 107

Assignee: \_\_\_\_\_ Book: ~~300~~ 107

MORTGAGE/MORTGAGEE: (ROSEMARY) Adrienne Nyquist

MORGAGOR: James J. Nyquist

Instrument Date: 2/14/07 Recording Date: 6/14/07 Book: 600 Page: 107

Assignee: \_\_\_\_\_ Book: \_\_\_\_\_ Page: \_\_\_\_\_

# Understand the Transaction



- If you are doing a renewal, extension, or modification, does the original mortgage permit those subsequent actions?
- You must review the original mortgage to see if modification is permissible.
- Even if the lender provides you with the documents, such as the mortgage, you must review for accuracy.

# Know how to “handle” a claim



## DO

- Have the claimant notify MVT *in writing*.
- Contact MVT if you have questions.
- Cooperate with any claim investigation.

## DO NOT

- Accept notice of a claim on behalf of MVT.
- Purport to speak for MVT with regard to administration of a claim.
- Purport to provide coverage determinations on behalf of the Company.

**17. NOTICES, WHERE SENT**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 124 One Madison Plaza, Suite 2100 (39110), P.O. Box 2901, Madison, MS 39130-2901.



# Know how to “handle” a claim



- The Agency Agreement specifically states that you, as agent, do not have the authority to administer or adjust any claim.
- Likewise, you do not have authority to make coverage determinations.
- Notice of a claim to you, the agent, is NOT notice of a claim to MVT.

#### 4. LIMITATIONS ON AGENT'S APPOINTMENT AND AUTHORITY

Agent shall not, without written approval from Insurer:

- A. Commit Insurer to a risk in excess of One Million Dollars (\$1,000,000.00);
- B. Commit Insurer to a risk which it has, by its rules, determined to be an extraordinary or unusual risk, or which Agent knows to be based upon a disputed title;
- C. Commit Insurer to a risk which, by its rules, instructions or manuals, requires prior approval by Insurer;
- D. Use Title Insurance Forms other than those supplied or approved by Insurer or alter any Title Insurance Forms supplied or approved by Insurer;
- E. Administer or adjust any claim of loss for which Insurer may become liable;
- F. Accept service of legal process on behalf of Insurer, unless required by state law, in which event Agent shall immediately forward to Insurer all documents served;
- G. Incur bills or debts chargeable to Insurer;
- H. Use, in any of Agent's advertising or as a part of Agent's name, the following: (1) the names or corporate seal for "Mississippi Valley Title Insurance Company", "Mississippi Valley Title", "Old Republic National Title Insurance Company", "Old Republic Title" or any derivative thereof; (2) the signatures of any officers of the Insurer; (3) the service mark "MVT" or "OR" encircled by 13 stars or any derivation thereof. In the event such written approval is obtained, Agent shall cease any and all such use immediately upon termination of this Agreement; or
- I. Issue Title Insurance Forms covering any title in which Agent, its officers, directors, employees, partner or the attorney furnishing an opinion of title, have any interest, direct or indirect.