# DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

| | | |
|---|---|---|
| In re: | ) | |
| | ) | Examination No. 0707-10-TLE |
| Old Republic National Title Insurance Company | ) | |
| (NAIC #50520) | ) | |

## ORDER OF DIRECTOR

NOW, on this 21st day of January, 2009, Acting Director Kip Stetzler, after consideration and review of the market conduct examination report of Old Republic National Title Insurance Company. (NAIC #50520), (hereafter referred to as "Old Republic") report numbered 0701-02-TGT, prepared and submitted by the Division of Insurance Market Regulation pursuant to §374.205.3(3)(a), RSMo, and the Stipulation of Settlement and Voluntary Forfeiture ("Stipulation") does hereby adopt such report as filed. After consideration and review of the Stipulation, report, relevant workpapers, and any written submissions or rebuttals, the findings and conclusions of such report is deemed to be the Director's findings and conclusions accompanying this order pursuant to §374.205.3(4), RSMo.

This order, issued pursuant to §§374.205.3(4) and 374.280, RSMo and §374.046.15. RSMo (Cum. Supp. 2006), is in the public interest.

IT IS THEREFORE ORDERED that Old Republic and the Division of Insurance Market Regulation have agreed to the Stipulation and the Director does hereby approve and agree to the Stipulation.

IT IS FURTHER ORDERED that Old Republic shall not engage in any of the violations of law and regulations set forth in the Stipulation and shall implement procedures to place Old Republic in full compliance with the requirements in the Stipulation and the statutes and regulations of the State of Missouri and to maintain those corrective actions at all times.

IT IS FURTHER ORDERED that Old Republic shall pay, and the Department of Insurance, Financial Institutions and Professional Registration, State of Missouri, shall accept, the Voluntary Forfeiture of $77,375.50, payable to the Missouri State School Fund.

IT IS SO ORDERED.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office in Jefferson City, Missouri, this 21st day of January, 2009.

Kip Stetzler
Acting Director

STATE OF MISSOURI

# DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

P.O. Box 690, Jefferson City, Mo. 65102-0690

TO: Office of the President
Old Republic National Title Insurance Company
400 Second Ave. South
Minneapolis, MN 55401-2499

RE: Missouri Market Conduct Examination #0707-10-TLE
Old Republic National Title Insurance Company (NAIC #50520)

## STIPULATION OF SETTLEMENT AND VOLUNTARY FORFEITURE

It is hereby stipulated and agreed by Linda Bohrer, Acting Director of the Missouri Department of Insurance, Financial Institutions, and Professional Registration, hereinafter referred to as "Director," and Old Republic National Title Insurance Company, hereinafter referred to as "Old Republic," as follows:

WHEREAS, Linda Bohrer is the Acting Director of the Department of Insurance, Financial Institutions, and Professional Registration, an agency of the State of Missouri, created and established for administering and enforcing all laws in relation to insurance companies doing business in the State in Missouri; and

WHEREAS, Old Republic has been granted certificate(s) of authority to transact the business of insurance in the State of Missouri; and

WHEREAS, the Director conducted a Market Conduct Examination of Old Republic and prepared report number 0707-10-TLE; and

WHEREAS, the report of the Market Conduct Examination, #0707-10-TLE, alleges the following findings:

1. In some instances, individuals contributed to the process of determining insurability but were not licensed as title insurance agents with the DIFP, in violation of §§381.031.17, .18, and .19, and 381.014.1, RSMo, 20 CSR 700-1.010(3)(B) and 20 CSR 700-1.020(1), and DIFP Bulletin 06-05.

2. In some instances, producers employed by some of Old Republic's agencies failed to timely notify the DIFP of any change to the information provided to the Department in their producer license applications, thereby violating §375.015.4 and .5, RSMo.

3. In some instances, Old Republic used schedules and forms that were not previously filed with the DIFP, as required by §381.211, RSMo.

4. In some instances, some of Old Republic's agencies failed to record the security instrument(s) within three (3) business days after the closing of the transaction, thereby violating §381.412, RSMo.

5. In some instances, Old Republic used risk rates and policy charges that were incorrect, not the actual risk rate charged by the Company, or not previously filed with the Department, thereby violating §§381.031.4 and .14, and 381.181, RSMo, 20 CSR 7.100(1) and (3)(B), and DIFP Bulletin 93-09.

6. In one instance, an agent of Old Republic who is not an attorney improperly charged a fee for deed preparation, thereby violating §§484.010 and 484.020, RSMo.

7. In some instances, Old Republic was unable to provide the examiners sufficient documentation in its files to allow them to readily ascertain the underwriting and claims practices of the company, thereby violating §§374.205 and 381.141, RSMo, and 20 CSR 300-2.200.

8. In some instances, Old Republic failed to conduct an adequate title search and examination to adequately establish marketability of title, show all outstanding, enforceable recorded items, liens, other interests, and exceptions for a known risk to the title to be insured, thus failing to determine insurability in accordance with sound underwriting practices as required by §381.071.1, and .2, RSMo, 20 CSR 500-7.200.

9. In some instances, Old Republic failed to acknowledge claims within 10 working days of its notification of the claims, thereby violating 20 CSR 100-1.010(1)(G) and 20 CSR 100-1.030(1).

10. In some instances, Old Republic failed to timely and adequately respond to claimants, inform them of any delays, complete claim investigations, and fully inform and advise claimants of the coverage offered by the policy, as required by §375.1007(1), (2), (3), and (4), RSMo, 20 CSR

100-1.020(1), 20 CSR 100-1.030(2), 20 CSR 100-1.040, and 20 CSR 100-1.050(1)(C) and (D).

WHEREAS, Old Republic hereby agrees to take remedial action so as to maintain compliance with the statutes and regulations of the State of Missouri at all times and to reasonably assure that the alleged errors noted in the above-referenced market conduct examination reports do not recur;

WHEREAS, Old Republic agrees to file documentation of all remedial actions taken by it to assure compliance with the terms of this Stipulation and to reasonably assure that the alleged errors noted in the examination report do not recur, including explaining the steps taken and the results of such actions, with the Director within 90 days of the entry of a final Order closing this examination;

WHEREAS, Old Republic, after being advised by legal counsel, does hereby voluntarily and knowingly waive any and all rights for procedural requirements, including notice and an opportunity for a hearing, which may have otherwise applied to Market Conduct Examination #0707-10-TLE; and

WHEREAS, Old Republic hereby agrees to the imposition of the ORDER of the Director and as a result of Market Conduct Examination #0707-10-TLE further agrees, voluntarily and knowingly to surrender and forfeit the sum of $77,375.50; and

WHEREAS, the parties hereto agree that neither this instrument nor the agreements, settlement and compromise contemplated herein are to be deemed as an admission of any violation, fault, improper conduct or negligence on the part of Old Republic.

NOW, THEREFORE, in lieu of the institution by the Director of any action for the SUSPENSION or REVOCATION of the Certificate(s) of Authority of Old Republic to transact the business of insurance in the State of Missouri or the imposition of other sanctions, Old Republic does hereby voluntarily and knowingly waive all rights to any hearing, does consent to an ORDER of the Director and does surrender and forfeit the sum of $77,375.50, such sum payable to the Missouri State School Fund, in accordance with §374.280, RSMo.

DATED: 1/19/09

President
Old Republic National Title Insurance Co.

**STATE OF MISSOURI**
**DEPARTMENT OF INSURANCE FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION**

# RESPONSE OF OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY TO MARKET CONDUCT EXAMINATION REPORT # 0707-10-TLE

## July 29, 2008

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## DEFINITIONS

"Old Republic" and "Company" and "ORNTIC" to refer to Old Republic National Title Insurance Company.

"DIFP" and "Department" to refer to the Department of Insurance, Financial Institutions and Professional Registration.

"NAIC" refers to the National Association of Insurance Commissioners.

"Mo.Rev.Stat." refers to the Revised Statutes of Missouri.

"CSR" refers to the Code of State Regulations.

**RESPONSE TO**
**EXAMINATION FINDINGS**

## *I. Sales and Marketing*

### *A. Licensing of Agents and Agencies*

***EXAM FINDING #1***

*ATM Corporation of America failed to maintain the following policy file in a manner permitting the examiner to identify any licensed agent who was involved in the transaction.*

*Reference: Section 381.041.1, RSMo, and 20 CSR 300-1.200(3)(A)1B and, (1)(A)*

*File No.*
*5575033*

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.041(1) and 20 CSR 300-1.200(3)(A)1B and, (1)(A) as alleged. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J33, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

With regard to the question of whether the licensed agent could be ascertained by what was in the file, a review of the regulations cited fail to support the examiner's allegations. The licensed agent who was involved in the transaction was Joseph Funtal. His license is attached for review. He is the person who handled Missouri transactions for this agent. The first regulation which supposedly requires that his name be in the file which is mentioned by the examiner is 20 CSR 300-2.200(1)(A). A look at that section shows that it is the definition of the word "application." This is relevant to the second regulation mentioned by the examiner which is 20 CSR 300-2.200(3)(A)1B. This provision states that Missouri policy records shall include a completed application for each contract with a legible means by which an examiner can identify the insurance producer involved in the transaction.

These provisions fit the P&C world to a tee, but they do not fit into the title insurance world. The title agent does not have an "application" as defined in the regulation. An order for title insurance comes in electronically and the order is processed electronically. This is a very different procedure than going to see John Smith, the State Farm agent and filling in his application for insurance. With title insurance, there is no application. Furthermore, the licensed agent does not become involved until it is time for the examination of title and determination of insurability. Because there is no application in the title insurance world, the requirement to produce the "application" and have it contain the agent's name does not apply to our line of insurance. In addition, we have provided you with the name of the licensed agent pursuant to CSR 300-2.200(3)(A)1B and that should be enough to satisfy this regulation.

For the foregoing reasons, Old Republic denies the allegations of the criticism.

***EXAM FINDING #2***

*Upon review of the following files, it was determined that the following individuals employed by title agents and contributed to the process of determination of insurability but were not licensed as title insurance agents with the DIFP.*

*Reference: Sections 381.031.17,.18, .19, 375.012.1 and 375.014.1, RSMo, and 20 CSR 700-1.010(3)(B), and 20 CSR 700-1.020(1) and DIFP bulletin 06-05.*

| *Agent* | *Agency* | *File No.* |
|---|---|---|
| *Jeffrey Brasier* | *Regional Title , Inc.* | *H6-7049* |
| *Sarah Hesketh,* | *Home Connects* | *5889777* |
| *April Kuritz* | *Home Connects* | *5889777* |
| *Shaun M. Crawford* | *Home Connects* | *5889777* |
| *Scott Miller* | *Chesapeake Appraisal Services* | *5865059* |
| *Steven Lee* | *Chesapeake Appraisal Services* | *5865059* |
| *Lauran Breen* | *Nationwide Appraisal Services* | *20118413* |
| *Tony Dawson* | *Nationwide Appraisal Services* | *20118413* |
| *Stacey Randall Pegram* | *Nationwide Appraisal Services* | *20118413* |
| *J. Puhlman* | *Nationwide Appraisal Services* | *20118413* |
| *D. Hartman* | *Nationwide Appraisal Services* | *20118413* |
| *Gary Holliday* | *Nationwide Appraisal Services* | *20118413* |
| *Janet Bell* | *Nationwide Appraisal Services* | *20118413* |
| *Bridgette Valentine* | *Nationwide Appraisal Services* | *20118413* |
| *Lorna Seidel* | *Nationwide Appraisal Services* | *20118413* |
| *Aaron Huey* | *Nationwide Appraisal Services* | *20118413* |

**RESPONSE:**

Old Republic disputes the Examiner's criticism that the foregoing persons contributed to the process of determination of insurability but were not licensed as title insurance agents with the DIFP.

The persons cited in the Examiner's criticism were employed as or performed following tasks:

Jeffrey Brasier is employed as a searcher by Regional Title Inc.;
Sarah Hesketh and April Kuritz reviewed title documents;
Shaun M. Crawford prepared a HUD-1;
Scott Miller was an abstractor, not an examiner;
Steven Lee is not a person, but part of a street address provided by Scott Miller;
Lauran Breen, Tony Dawson, Stacey Randall Pegram, J. Puhlman, D Hartman, Gary Holliday, Janet Bell, Bridgette Valentine, Lorna Seidel, and Aaron Huey are title employees or closing employees.

None of the above-referenced persons met the definition of a title agent in that none of them acted in the solicitation of, negotiation for, or procurement or making of any title insurance contract as required in Mo.Rev.Stat. § 375.014(1) and defined in Mo.Rev.Stat. §§ 375.012 (12), (15) and (16) and further described in 20 CSR 700-1.010(3)(B) and 1.020(1). To the extent that any of the activities conducted by the above-referenced persons are set forth in the definition of "title insurance business" contained in Mo.Rev.Stat. § 381.031(19) (i.e. searching titles), such activities are not synonymous with those requiring a title agent's license. Finally, to the extent that DIFP bulletin 06-05 (the "Bulletin") asserts that the conduct of the foregoing activities is encompassed in the phrase "determining insurability," the Bulletin's interpretation is incorrect and not controlling law. Should the legislature have desired to enumerate the activities encompassed by the term "determining insurability," it would have; however, in the absence thereof, the aforementioned persons have not engaged in any activity requiring a title agent's license. Therefore, Old Republic has not committed any statutory or regulatory violations. Furthermore, the foregoing allegations were adequately responded to and refuted in Old Republic's Responses to Formal Criticisms J45, J35, J37, and J39 attached hereto.

## Response To Formal Criticism No. J45

The formal criticism alleges that Old Republic's agent, Regional Title, Inc., employed Jeffrey Brasier as a searcher during the exam period and that he was not licensed during the time of the examination. The examiner also states that Mr. Brasier appeared to have direct customer contact with some regularity. This conduct is alleged to be in violaton of several statutes and Bulletin 06-05. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

The examiner's concerns are misplaced. Here is the definition of a title agent from RSMo 381.031.17:

> 1. "Title agent" or "title insurance agent", any authorized agent of a title insurer or representative of the title agent or agency, who acts as a title agent in the solicitation of, negotiation for, or procurement or making of any title insurance contract. The following persons are not title agents or title insurance agents:
>
> 1. Approved attorneys;
>
> 2. Salaried officers or employees of title insurers, title agents or title insurance agencies who do not do any of the following:
>
> a. Establish premiums for policies of title insurance;
>
> b. Determine insurability; or
>
> c. Issue commitments, policies or other contracts of title insurance;

Thus, a title agent must solicit, negotiate for or procure or make the title insurance contract. Searchers do not perform these tasks. Even if an argument is made that they someone perform one of the overbroad functions mentioned in Bulletin 06-05 and actually determine insurability, the fact that they do not negotiate or solicit means they do not need to be licensed.

Looking at the particular employee at issue, Jeffrey Brasier is a searcher. According to the agent, he has no customer contact. He does not establish premiums nor issue commitments or policies. He may or may not determine insurability under the enormous umbrella definition in Bulletin 06-05. This is arguable. However, most importantly, he does not satisfy the threshold requirement of selling, soliciting or negotiating an insurance contract as those terms are defined in RSMo 375.012.1(12), (15) and (16). Without that, the issue of determining insurability doesn't even come into play. He cannot be considered an agent without being involved in that aspect of the business.

In light of the foregoing, Old Republic denies it has violated any statutes as set forth in the allegations of this criticism.

## Response To Formal Criticism No. J35

The formal criticism alleges that Old Republic's agent, Home Connects, employed Sarah Hesketh, April Kuritz and Shaun Crawford as employess who contributed to the process of determining insurability or conducted a closing, but are not licensed agents. This is said to violate several statutes which subject the individual to enforcement actions for unlicensed activities.

Home Connects stated that both Ms. Hesketh and Kuritz reviewed the title documents, but the ultimate review and approval of the title commitment was performed by Laurie Gorodetzer who is licensed as a title agent by the Missouri Department. As to Mr. Crawford, he did prepare the HUD-1. However, negotiating insurance and determining insurability were not performed by Mr. Crawford. Here is the definition of a title agent from RSMo 381.031.17:

> 1. "Title agent" or "title insurance agent", any authorized agent of a title insurer or representative of the title agent or agency, who acts as a title agent in the solicitation of, negotiation for, or procurement or making of any title insurance contract. The following persons are not title agents or title insurance agents:
>
> 1. Approved attorneys;
>
> 2. Salaried officers or employees of title insurers, title agents or title insurance agencies who do not do any of the following:
>
> a. Establish premiums for policies of title insurance;
>
> b. Determine insurability; or
>
> c. Issue commitments, policies or other contracts of title insurance;

The Bulletin cited states that completing a HUD-1 and taking in escrow funds are part of determining insurability and these are activities carried out by closers. However, the closing is not part of the insuring transaction and never has been considered as such. Old Republic's agents are policy-issuing agents and not agents for the purpose of conducting closings. ***That is the reason why closing protection letters exist and their existence is an acknowledgment of the fact that closings are not part of the insuring transaction.*** The interpretation in the Bulletin does not appear to comply either with the language of the statutes or the standards and practice in the industry as acknowledged by the department, the legislature and the courts through the usage of closing protection letters and interpretation of agency law in the title insurance business.

In light of the foregoing, Old Republic denies it has violated any statutes as set forth in the allegations of this criticism.

## Response To Formal Criticism No. J37

The formal criticism alleges that Old Republic's agent, Chesapeake Appraisal and Settlement Services, issued a loan policy without showing the risk rate for he for the policy or the total amount charged. This is said to violate 20 CSR 500-7.100(3)(B). The criticism also alleges that Chesapeake employed Scott Miller and Steven Lee as examiners, but that they were unlicensed during the time of the examination. The examiner also states that Monica Kratz addressed various underwriting issues but was not licensed as a title agent by the department. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

(A) The agent was unable to provide us with information regarding the risk rate, but clearly any violation should be attributed to the agent and not to Old Republic. There is no allegation that an incorrect rate was charged, in any event.

(B) As to the other allegations, Scott Miller was the abstractor and not an examiner. He did not negotiate insurance or determine insurability. It does not appear that he performed any of the activities listed in Bulletin 06-05, nor has the examiner alleged otherwise. As for Steven Lee, that is not an individual, but is part of the name of the street which Scott Miller provided as an address. Thus, there was no such individual working for Chesapeake. As to Monica Kratz, she is a salaried employee of Chesapeake who does not engage in negotiation of insurance or determination of insurability. It does not appear that she performed any of the activities listed in Bulletin 06-05, nor has the examiner alleged otherwise. In view of these facts, it does not appear that Mr. Miller or Ms. Kratz were required to be licensed by the statutes cited, especially because neither "negotiated" insurance as defined in Bulletin 06-05.

In light of the foregoing, Old Republic denies it has violated any statutes as set forth in the allegations of this criticism.

Response To Formal Criticism No. J39

The formal criticism next alleges that Old Republic's agent provided the names of 15 indiciduals who processed the title and closing files for the subject transaction, but that none of the 8 named as title employees or 7 named as closing employees are licensed as title agents by the DIFP. The examiner states that the closer was Elsa Ambrose but that she is not licensed, as well. Lastly, the examiner states that Nationwide Appraisal Services is not licensed as an insurance agency by the DIFP and that it has changed its name to LandAmerica Lender Services/One Stop, which is also not licensed. As a result, the examiner alleges that Old Republic has violated several statutes and Bulletin 06-05. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

First, we fail to see how the definition of the business of title insurance in 381.031.19 is relevant to the discussion. That section does not define who should or should not be licensed as an agent and it does not seem possible that that section was violated in this transaction.

As to the unlicensed title and closing people, they were not required to be licensed. Here is the definition of a title agent from RSMo 381.031.17:

> 1. "Title agent" or "title insurance agent", any authorized agent of a title insurer or representative of the title agent or agency, who acts as a title agent in the solicitation of, negotiation for, or procurement or making of any title insurance contract. The following persons are not title agents or title insurance agents:
>
> 1. Approved attorneys;
>
> 2. Salaried officers or employees of title insurers, title agents or title insurance agencies who do not do any of the following:
>
> a. Establish premiums for policies of title insurance;
>
> b. Determine insurability; or
>
> c. Issue commitments, policies or other contracts of title insurance;

Some of the 15 people mentioned in the criticism might determine insurability or issue commitments or policies, but none of them do the threshold activities required by this statute. In order to be considered a title agent, a person must solicit, negotiate for or procure or make the title insurance contract per the above definition. 375.014.1 RSMo and Bulletin 06-05, cited by the examiner, agrees that a person needs to be licensed only if they sell, solicit or negotiate. The title and closing people involved do NOT sell, solicit or negotiate as those terms are defined in RSMo 375.012.1(12), (15) and (16). This is obvious as to searchers and examiners and confirmed by the agent. The people involved with closing matters did not perform such tasks either, however, since this transaction (and nearly every transaction done by this company) is a refinance. There was no sale of insurance taking place at all by those involved with the closing.

Furthermore, according to the statutes, an officer, director or employee who receives no commission need not be licensed, nor is a license required for those whose job relates to underwriting or loss control or whose activities are "executive, administrative, managerial, clerical or a combination of these activities, and are only indirectly related to the sale, solicitation or negotiation of insurance." RSMo 375.143. More specifically, Elsa Ambrose, listed as the "closer," was a non-employee simply sent out to get signatures on documents. She did not perform the tasks required for licensing either. The only person who touched this transaction who needed to be licensed was Bonita Yogan and her license is attached.

As to the agency itself, the examiner alleges it was not licensed. Attached is a copy of the agency license which was valid during the time period at issue. As for the acquisition of Nationwide Appraisal by LandAmerica, the latter is a competitor of ours. Once the transaction was completed, the agent was cancelled by us. See cancellation letter attached.

In light of the foregoing, Old Republic denies it has violated any statutes as set forth in the allegations of part B of this criticism.

## Response To Formal Criticism No. T46

The formal criticism alleges that Old Republic's agent, Cape Girardeau County Abstract & Title Co., Inc., employed Ruth Jones and Brenda Blattel as searchers and closers during the exam period and that they were not licensed during the time of the examination. The examiner states that continued participation by an employee in negotiating insurance and determining insurability without licensure as a title agent subjects the individual to enforcement actions for unlicensed activities. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

The examiner's concerns are misplaced. Here is the definition of a title agent from RSMo 381.031.17:

> 1. "Title agent" or "title insurance agent", any authorized agent of a title insurer or representative of the title agent or agency, who acts as a title agent in the solicitation of, negotiation for, or procurement or making of any title insurance contract. The following persons are not title agents or title insurance agents:
>
> 1. Approved attorneys;
>
> 2. Salaried officers or employees of title insurers, title agents or title insurance agencies who do not do any of the following:
>
> a. Establish premiums for policies of title insurance;
>
> b. Determine insurability; or
>
> c. Issue commitments, policies or other contracts of title insurance;

Thus, a title agent must solicit, negotiate for or procure or make the title insurance contract. Searchers do not perform these tasks. Even if an argument is made that they someone perform one of the overbroad functions mentioned in Bulletin 06-05 and actually determine insurability, the fact that they do not negotiate or solicit means they do not need to be licensed.

Looking at the particular employees, Ruth Jones is a receptionist who also performs court searches for judgments which she gives to the examiner to examine. She does not establish premiums, determine insurability nor issue commitments or policies. More importantly, she does not satisfy the threshold requirement of selling, soliciting or negotiating an insurance contract as those terms are defined in RSMo 375.012.1(12), (15) and (16). Without that, the issue of determining insurability doesn't even come into play. Similarly, Brenda Blattel is a backup receptionist. She gets notified automatically by computer software that a redate or date down is necessary and then has the software run the date down and hands it to a closer. She makes no determinations of whether a defect has arisen that could be called determining insurability. However, as with Ms. Jones, she does not satisfy the threshold requirement of selling, soliciting or negotiating insurance policies.

We do not understand how the examiner determined that these individuals are closers when the roster (see attached) listing employees for this agency does not list them as closers. Instead, it lists their relevant job functions as already described above.

In light of the foregoing, Old Republic denies it has violated any statutes as set forth in the allegations of this criticism.

***EXAM FINDING #3***

*Upon review of the following Agencies employees, it was determined that the following individuals were employed by title agents and contributed to the process of determination of insurability but are not licensed as title insurance agents with the DIFP.*

*Reference: Sections 381.031.17,.18, .19, 375.012.1 and 375.014.1, RSMo, and 20 CSR 700-1.010(3)(B), and 20 CSR 700-1.020(1) and DIFP bulletin 06-05*

| *Name* | *Agency* | *Position* |
|---|---|---|
| *Ruth Jones* | *Cape Girardeau* | *Closer* |
| *Brenda Blattel* | *Cape Girardeau* | *Closer* |
| *Cindy Stewart* | *The Title Place* | *Closer* |
| *Tina Hazen* | *The Title Place* | *Closer* |
| *Gail Hayes* | *Texas County Title* | *Closer, searcher, title examiner* |

**RESPONSE:**

Old Republic disputes the Examiner's criticism that the foregoing persons contributed to the process of determination of insurability but were not licensed as title insurance agents with the DIFP.

The persons cited in the Examiner's criticism were employed as or performed following tasks:

> Ruth Jones is employed as a receptionist. She also conducts circuit and federal court work, and indexes petitions and judgments in the plant;
> Brenda Blattel is employed as a receptionist. She also conducts circuit and federal court work, and redates land title searches after documents are recorded;
> Cindy Stewart is employed as a closer;
> Tina Hazen is employed as a closer;
> Gail Hayes is employed as a closer, searcher and title examiner;

None of the above-referenced persons met the definition of a title agent in that none of them acted in the solicitation of, negotiation for, or procurement or making of any title insurance contract as required in Mo.Rev.Stat. § 375.014(1) and defined in Mo.Rev.Stat. §§ 375.012 (12), (15) and (16) and further described in 20 CSR 700-1.010(3)(B) and 1.020(1). To the extent that any of the activities conducted by the above-referenced persons are set forth in the definition of "title insurance business" contained in Mo.Rev.Stat. § 381.031(19) (i.e. searching titles), such activities are not synonymous with those requiring a title agent's license. Finally, to the extent that DIFP bulletin 06-05 (the "Bulletin") asserts that the conduct of the foregoing activities is encompassed in the phrase "determining insurability," the Bulletin's interpretation is incorrect and not controlling law. Should the legislature have desired to enumerate the activities

encompassed in the phrase "determining insurability," it would have; however, in the absence thereof, the aforementioned persons have not engaged in any activity requiring a title agent's license. Furthermore, to the extent it is construed that Ms. Stewart, Ms. Hazen, and Ms. Hayes were required to be licensed for the activities conducted, each was in fact licensed at the time. Therefore, Old Republic has not committed any statutory or regulatory violations. Furthermore, the foregoing allegations were adequately responded to and refuted in Old Republic's Responses to Formal Criticisms T46, T37, and T42 attached hereto.

## Response To Formal Criticism No. T37

The formal criticism alleges that Old Republic's agent, The Title Place, employed Cindy Stewart and Tina Hazen as closers, but that they were unlicensed during the time of the examination. The examiner states that continued participation by an employee in negotiating insurance and determining insurability without licensure as a title agent subjects the individual to enforcement actions for unlicensed activities. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

Please see attached the licenses for Cindy Stewart and Tina Hazen. Ms. Hazen was first licensed with a six month license on July 10, 2006. A copy of that license has not been forwarded to send you, but it should be in the records of the state. Furthermore, the owner of the agency was at a seminar where the Director of Insurance said it was not necessary to have a closer licensed and took him at his word. She reviewed the statutes and saw that the statutes do not mention closers. In fact, the activities cited above by the examiner (negotiating insurance and determining insurability) are not performed by closers. Here is the definition of a title agent from RSMo 381.031.17:

> 1. "Title agent" or "title insurance agent", any authorized agent of a title insurer or representative of the title agent or agency, who acts as a title agent in the solicitation of, negotiation for, or procurement or making of any title insurance contract. The following persons are not title agents or title insurance agents:
>
> 1. Approved attorneys;
>
> 2. Salaried officers or employees of title insurers, title agents or title insurance agencies who do not do any of the following:
>
> a. Establish premiums for policies of title insurance;
>
> b. Determine insurability; or
>
> c. Issue commitments, policies or other contracts of title insurance;

The Bulletin cited states that completing a HUD-1 and taking in escrow funds are part of determining insurability and these are activities carried out by closers. However, the closing is not part of the insuring transaction and never has been considered as such. Old Republic's agents are policy-issuing agents and not agents for the purpose of conducting closings. ***That is the reason why closing protection letters exist and their existence is an acknowledgment of the fact that closings are not part of the insuring transaction.*** The interpretation in the Bulletin does not appear to comply either with the language of the statutes or the standards and practice in the industry as acknowledged by the department, the legislature and the courts through the usage of closing protection letters and interpretation of agency law in the title insurance business.

In light of the foregoing, Old Republic denies it has violated any statutes as set forth in the allegations of this criticism.

## Response To Formal Criticism No. T42

The formal criticism alleges that Old Republic's agent, Texas County Title, employed Gail Hayes as a closer, searcher and title examiner, but that she was unlicensed. The examiner states that continued participation by an employee in negotiating insurance and determining insurability without licensure as a title agent subjects the individual to enforcement actions for unlicensed activities. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

Please see attached the license for Gail Hayes dated September 25, 2006. She has been licensed all along. Her first name is really Betty, but she goes by Gail. Thus, there was no violation of the statutes cited by the examiner.

In light of the foregoing, Old Republic denies it has violated any statutes as set forth in the allegations of this criticism.

## *EXAM FINDING #4*

*Title Pros, Inc, a licensed producer, failed to notify the department within 20 working days of the termination of the following insurance producers. The agent has updated the information with the Department since the error was called to their attention.*

*Reference: Section 375.015.4, and .5, RSMo*

| *Agent* | *Agency* |
|---|---|
| *Aydt, Robert K* | *Title Pros* |
| *Cook, Carolyn D* | *Title Pros* |
| *Cooper, Angela L* | *Title Pros* |
| *Feld, Kerry C* | *Title Pros* |
| *Freker, Amber N* | *Title Pros* |
| *Hudson, Jessica L* | *Title Pros* |
| *Knapstein, Erika M* | *Title Pros* |
| *Kneer, Lisa L* | *Title Pros* |
| *Mann, Jeannine N* | *Title Pros* |
| *Norton, Sarah K* | *Title Pros* |
| *Schell, Gwen* | *Title Pros* |
| *Smith Miller, Tiffany L* | *Title Pros* |
| *Thode, Dawn M* | *Title Pros* |
| *Wachter, Veronica* | *Title Pros* |
| *Williams, Susan J* | *Title Pros* |

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. § 375.015(4) in that the referenced section concerns information required to be provided at the time a business entity makes application for licensure. Old Republic admits that the termination of a number of the foregoing individuals was not timely reported as required by Mo.Rev.Stat § 375.015(5); however, in its defense, many of these individuals were not statutorily required to be licensed title agents in the first place as they did not meet the definition of a title agent in that none of them acted in the solicitation of, negotiation for, or procurement or making of any title insurance contract as required in Mo.Rev.Stat. § 375.014(1) and defined in Mo.Rev.Stat. §§ 375.012 (12), (15) and (16) and further described in 20 CSR 700-1.010(3)(B) and 1.020(1). See also, Old Republic's Response to Formal Criticism M9 attached hereto.

Response To Formal Criticism No. 9

The formal criticism alleges that Old Republic's agent, Title Pros, failed to notify the department within 20 working days of ther termination of certain licensed "producers" and the appointment of other licensed "agents." This is alleged to be a violation of 375.015.4 RSMo and 375.015.5 RSMo. Old Republic disagrees that there is any violation of 375.015.4, since the alleged violation has to do with changes to the application and those changes are regulated by 375.105.5. Further, Old Republic disagrees that Title Pros was responsible to report the termination and hiring of all the people listed in the criticism, since many of them did not meet the definition of "title agent" and were not required to be licensed in the first place.

Here is the definition of a title agent from RSMo 381.031.17:

17. "Title agent" or "title insurance agent", any authorized agent of a title insurer or representative of the title agent or agency, who acts as a title agent in the solicitation of, negotiation for, or procurement or making of any title insurance contract. The following persons are not title agents or title insurance agents:

    1. Approved attorneys;

    2. Salaried officers or employees of title insurers, title agents or title insurance agencies who do not do any of the following:

    a. Establish premiums for policies of title insurance;

    b. Determine insurability; or

    c. Issue commitments, policies or other contracts of title insurance;

While some of the people mentioned in the criticism might arguably determine insurability or issue commitments or policies, some of them are not responsible for the threshold activities required by this statute. In order to be considered a title agent, a person must solicit, negotiate for or procure or make the title insurance contract per the above definition. 375.014.1 RSMo and Bulletin 06-05 agree that a person needs to be licensed only if they sell, solicit or negotiate. A group of the people named do NOT sell, solicit or negotiate as those terms are defined in RSMo 375.012.1(12), (15) and (16). However, some of these people were licensed only because the department recommended at the agent's last audit that it license ALL of its employees. The agent agreed in order to be cautious. Yet, this suggestion by the department went beyond what the statute provided and left the agent with a potentially larger issue than it would have had, if the department had only taken the time to clarify which employees ACTUALLY needed to be licensed according to existing law. This applies to the terminated licensees, as well as some of the new licensees.

This is a list of those employees who do not or did not sell, solicit or negotiate and, therefore, do not or did not need to be licensed: John Barnes, Cathleen Hehner, Connie Irvin, Scott Wilks, Tiffany Smith-Miller, Robert Aydt, Angela Cooper, Kerry Feld, Jessica Hudson, Erika Knapstein, Lisa Kneer and Susan Williams.

As to these employees, Old Republic denies its agent has violated any statutes as set forth in the allegations of this criticism. As to the others, the agency has taken steps to license those requiring licensure (see attached).

***EXAM FINDING #5***

*Title Pros, Inc, and Old Republic of Kansas City, licensed producers, failed to notify the department within 20 working days after the change of the following information submitted on the producer's application. Title Pros, Inc. failed to notify the department that the following agents had been hired. The agents have updated the information with the Department since the error was called to their attention.*

*Reference: Section 375.015.4, and .5, RSMo*

| *Agent* | *Agency* |
|---|---|
| *John Barnes* | *Title Pros* |
| *Cathleen Herhner* | *Title Pros* |
| *Tracy Houck* | *Title Pros* |
| *Connie Irvin* | *Title Pros* |
| *Laurie Lewis* | *Title Pros* |
| *Jenny Mertens* | *Title Pros* |
| *Katie Morningtar* | *Title Pros* |
| *Victoria Robic* | *Title Pros* |
| *Jennifer Schatz* | *Title Pros* |
| *Scott Wilks* | *Title Pros* |
| *Hamilton, Delores* | *OR Kansas City* |
| *Morrison, Amber* | *OR Kansas City* |
| *Villers, Mary* | *OR Kansas City* |
| *England, Julie* | *OR Kansas City* |
| *Fivecoat, Betty* | *OR Kansas City* |
| *Krouse, Christina* | *OR Kansas City* |
| *Rezac, Kris* | *OR Kansas City* |

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. § 375.015(4) in that the referenced section concerns information required to be provided at the time a business entity makes application for licensure. Old Republic admits that the appointment of some of the foregoing individuals was not timely reported as required by Mo.Rev.Stat § 375.015(5); however, in its defense, many of these individuals were not statutorily required to be licensed title agents in the first place as they did not meet the definition of a title agent in that none of them acted in the solicitation of, negotiation for, or procurement or making of any title insurance contract as required in Mo.Rev.Stat. § 375.014(1) and defined in Mo.Rev.Stat. §§ 375.012 (12), (15) and (16) and further described in 20 CSR 700-1.010(3)(B) and 1.020(1). See also Old Republic's Responses to Formal Criticisms M9 and T67 attached hereto.

Response To Formal Criticism No. 9

The formal criticism alleges that Old Republic's agent, Title Pros, failed to notify the department within 20 working days of ther termination of certain licensed "producers" and the appointment of other licensed "agents." This is alleged to be a violation of 375.015.4 RSMo and 375.015.5 RSMo. Old Republic disagrees that there is any violation of 375.015.4, since the alleged violation has to do with changes to the application and those changes are regulated by 375.105.5. Further, Old Republic disagrees that Title Pros was responsible to report the termination and hiring of all the people listed in the criticism, since many of them did not meet the definition of "title agent" and were not required to be licensed in the first place.

Here is the definition of a title agent from RSMo 381.031.17:

17. "Title agent" or "title insurance agent", any authorized agent of a title insurer or representative of the title agent or agency, who acts as a title agent in the solicitation of, negotiation for, or procurement or making of any title insurance contract. The following persons are not title agents or title insurance agents:

    1. Approved attorneys;

    2. Salaried officers or employees of title insurers, title agents or title insurance agencies who do not do any of the following:

    a. Establish premiums for policies of title insurance;

    b. Determine insurability; or

    c. Issue commitments, policies or other contracts of title insurance;

While some of the people mentioned in the criticism might arguably determine insurability or issue commitments or policies, some of them are not responsible for the threshold activities required by this statute. In order to be considered a title agent, a person must solicit, negotiate for or procure or make the title insurance contract per the above definition. 375.014.1 RSMo and Bulletin 06-05 agree that a person needs to be licensed only if they sell, solicit or negotiate. A group of the people named do NOT sell, solicit or negotiate as those terms are defined in RSMo 375.012.1(12), (15) and (16). However, some of these people were licensed only because the department recommended at the agent's last audit that it license ALL of its employees. The agent agreed in order to be cautious. Yet, this suggestion by the department went beyond what the statute provided and left the agent with a potentially larger issue than it would have had, if the department had only taken the time to clarify which employees ACTUALLY needed to be licensed according to existing law. This applies to the terminated licensees, as well as some of the new licensees.

This is a list of those employees who do not or did not sell, solicit or negotiate and, therefore, do not or did not need to be licensed: John Barnes, Cathleen Hehner, Connie Irvin, Scott Wilks, Tiffany Smith-Miller, Robert Aydt, Angela Cooper, Kerry Feld, Jessica Hudson, Erika Knapstein, Lisa Kneer and Susan Williams.

As to these employees, Old Republic denies its agent has violated any statutes as set forth in the allegations of this criticism. As to the others, the agency has taken steps to license those requiring licensure (see attached).

Response To Formal Criticism No. T67

The formal criticism alleges that Old Republic's agent employed several different individuals as agents and did not notify the department within 20 working days of when they were terminated. Old Republic disagrees that it has violated any statute or regulation cited by the examiner in some instances and admits in other instances as fully set forth below.

The definition of title agent is found at RSMo 381.031.17:

> 1. "Title agent" or "title insurance agent", any authorized agent of a title insurer or representative of the title agent or agency, who acts as a title agent in the solicitation of, negotiation for, or procurement or making of any title insurance contract. The following persons are not title agents or title insurance agents:
>
> 1. Approved attorneys;
>
> 2. Salaried officers or employees of title insurers, title agents or title insurance agencies who do not do any of the following:
>
> a. Establish premiums for policies of title insurance;
>
> b. Determine insurability; or
>
> c. Issue commitments, policies or other contracts of title insurance;

Thus, a title agent must solicit, negotiate for or procure or make the title insurance contract. Chainers, who gather information from the chain for examiners, do not perform these tasks. Even if an argument is made that they someone perform one of the overbroad functions mentioned in Bulletin 06-05 and actually determine insurability, the fact that they do not negotiate or solicit means they do not need to be licensed. Both Delores Hamilton and Betty Fivecoat were chainers. The agent has no evidence these two ladies were ever licensed, nor did they need to be because of their job duties. Similarly, Amber Morrison was a commercial receptionist and processor. She would cut checks, send documents for recording and do similar duties, but she did not solicit, negotiate or procure the insurance contract and did not need to be licensed. Finally, Mary Villers worked with a lender customer in the back office to make sure recording requirements were met. She was not involved either in soliciting, negotiating or procuring insurance contracts and did not need to be licensed. Her notice of termination was given anyway on November 29, 2007 (see attached), but more than 20 days after termination. In light of the foregoing, Old Republic denies it has violated any statutes set forth in the allegations of this criticism with regard to these four women.

As for the other 3, Julie England was a licensed closer and notification of her termination was given on November 29, 2007 (see attached). This was more than 20 days after she was terminated, however. Kris Rezac did marketing in Missouri and no notification of her termination was sent in. Christina Krouse was a Kansas marketing representative, but could possibly have solicited the sale of insurance in Missouri on at least one occasion. Thus the allegations are admitted as to these three people.

## ***EXAM FINDING #6***

*Location address provided by the agent, Old Republic of Kansas City, at the time of examination is not the same as the information on file with the DIFP. Old Republic Kansas City, a licensed producer, failed to notify DIFP within 20 working days of the change in information provided on the producer application.*

*Reference: Section 375.015.4, and .5, RSMo*

| *Office* | *Provided as a current MO office location* | *Listed as an office location by DIFP* |
|---|---|---|
| *Main Office* | *200 S. Spring St., Independence Mo* | *4405 Noland Road, Independence, MO* |
| *Jackson County Office* | *603 NE Woods Chapel Rd, Lees Summit, MO* | *5604 N. Antioch, Gladstone* |
| *Clay County Office* | *9775 N. Cedar Avenue, KC* | *458 NE M291 Hwy, Lees Summit, MO* |
| *Platte County office* | *6014 N. Highway 9, Parkville, MO* | *809 N. 7 Hwy, Blue Springs, MO* |

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. § 375.015(4) in that the referenced section concerns information required to be provided at the time a business entity makes application for licensure. As to the content of the application, and the requirement that the Department be notified within twenty (20) days of any change in the information submitted on the application, as set forth in Mo.Rev.Stat. § 375.015(5), Old Republic disputes any violation. The application itself does not request information concerning branch office locations. Old Republic timely provided notice of the change in its main business office via facsimile to the Department. Therefore, Old Republic has not committed any statutory violations. Furthermore, the foregoing allegations were adequately responded to and refuted in Old Republic's Response to Formal Criticism T68 attached hereto.

## Response To Formal Criticism No. T68

The formal criticism alleges that Old Republic's agent did not notify the department within 20 working days of change of any information on the application. Specifically, the allegation is that the department was not notified of certain locations of offices. Old Republic disagrees that it has violated any statute cited by the examiner.

The main office moved earlier this year. The date of occupancy was January 7, 2008. The department was notified by fax of the move from 1300 Baltimore Ave. to 200 South Spring Street on January 10, 2008. See attached.

As to the branch offices, 375.015.4 and .5 RSMo are cited by the examiner as having been violated by the agent. The examiner appears to be mistaken in citing 375.015.4, since that provision states that the application shall designate a licensed insurance producer to be responsible for compliance and contain a list of all insurance producers acting on behalf of the company. Since the allegations here have to do with office locations, the reference to what appeared on the application concerning producers seems to be irrelevant.

375.015.5 state, in part: "Within twenty working days after the change of any information submitted on the application or upon termination of any insurance producer, the business entity shall notify the director of the change or termination." With regard to the notification of offices, clearly the examiner is relying on the phrase having to do with "**change of information submitted on the application.**" What is this application? According to 375.015.2, the application is "the uniform business entity application." This is an NAIC form which asks for several pages of information. See attached. Only page 1 asks for the office location and it has space for just one office location. The application itself does not ask for branch office locations. In other words, the information **on the application** does NOT include branch offices. The only place mentioning branch offices is the instructions for resident licensing which contains a checklist of "other requirements." See attached. The other requirements are to be sent in **with** an application but the other requirements are not information **on the application**, which is what the statute says must be updated within 20 days.

In light of the foregoing, Old Republic denies it has violated any statutes set forth in the allegations of this criticism.

### *B. Marketing Practices*

*The examiners reviewed advertising brochures provided by the company. The examiners noted no errors in this review.*

## *II. Underwriting and Rating Practices*

*In this section of the report, the examiners report their findings of the Company's underwriting and rating practices of title insurance. These practices include the use of policy forms, adherence to underwriting guidelines, and premiums charged. Because of the time and cost involved in reviewing each policy file, the examiners use scientific sampling. The most appropriate statistic to measure the company's compliance is the percent of files in error. Errors can include, but are not limited to, any miscalculation of the premium based on file information, failure to timely record a deed of trust, and failure to otherwise observe Missouri statutes or DIFP regulations.*

### *A. Forms and Filings*

*The examiners reviewed ORNTIC's policy forms to determine compliance with filing, approval, and content requirements to assure that the contract language is not ambiguous and is adequate to protect those insured.*

*The following errors were found in this review.*

***EXAM FINDING #7***

*The policies in this file were issued with schedules bearing form number ORT3120. Form ORT 3120 has not been filed with the DIFP. The company indicated that Form ORT3120 is a "Blank" form and it does not believe blank pages are required to be filed with the DIFP. The company further indicates that the schedules to be used on the blank form are the same as schedules filed with the DIFP.*

*Reference: Section 381.211, RSMo*

| *File* | *Form* |
|---|---|
| *070285-12660* | *ORT 3120* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.211. A blank page containing the designation ORT3120 is not a title insurance policy, standard form endorsement or a preliminary report, commitment, binder or any other report issued prior to the issuance of a title insurance policy, required to be filed with the Department pursuant to Mo.Rev.Stat. § 381.211. It is simply sent to the agents as "blank" paper to use when printing policy or commitment schedules. Therefore, Old Republic has not committed any statutory violation. Furthermore, the foregoing allegation was adequately responded to and refuted in Old Republic's Response to Formal Criticism J48 attached hereto.

Response To Formal Criticism No. J48

The criticism first alleges that the policies were issued with schedules bearing form number ORT 3120, but that that form does not appear on the list of forms provided by the company to the Director. This is said to be a violation of the statute requiring that forms be filed with the Director.

It is true that the policy schedules bear the notation "ORT Form 3120" in the lower right hand corner of each page. However, that number is the number imprinted on the **blank paper** sent to agents to use when printing policy or commitment schedules. However, the actual schedules used ***ON*** the blank paper **are the same** as the schedules filed with the Department of Insurance at the time. Old Republic does not believe there is a requirement to file blank pages with the Department, so it did not do so. In fact, RSMo 381.241, cited by the examiner, states that title insurers shall file copies of "1. Title insurance policies; 2. Standard form endorsements; and 3. Preliminary reports, commitments, binders, or any other reports issued prior to the issuance of a title insurance policy." Thus, blank pages do not fall under the requirements of this statute and Old Republic denies the allegations of this portion of the criticism.

## *EXAM FINDING #8*

*The commitment form used in these files include a Schedule B-II that includes pre-printed special exceptions Numbered 1 and 2. These items do not appear as pre-printed special exceptions in any form filed by ORNTIC with the DIFP.*

*Reference: Section 381.211, RSMo*

| *File* | *Form* |
|---|---|
| *KDR-06-29455* | *Commitment Schedule B* |
| *MK-07-39162* | *Commitment Schedule B* |
| *MK-06-28697* | *Commitment Schedule B* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.211. The "pre-printed special exceptions numbered 1 and 2," referred to by the Examiner are not on any form filed with the Department because they are exceptions added pursuant to the underwriting standards of the particular underwriter, and not part of the form itself. Therefore, Old Republic has not committed any statutory violations. Furthermore, the foregoing allegations were adequately responded to and refuted in Old Republic's Responses to Formal Criticisms J84, J95, and J89 attached hereto.

## Response To Formal Criticism No. J84

The formal criticism alleges that Old Republic's agent uses "pre-printed special exceptions numbered 1 and 2"and that "these items do not appear as pre-printed special exceptions in any form filed by Old Republic National Title with the Director." The allegation is that the agent used forms not filed with the Director in violation of Section 381.211 RSMo. Old Republic disagrees that its agent has violated any statute or regulation.

The statute in question reads as follows:

> 381.211. Forms to be used, insurers to file copies with director
>
> Every title insurer shall file with the director copies of the following forms it proposes to use in this state, including:
>
> (1) Title insurance policies;
>
> (2) Standard form endorsements; and
>
> (3) Preliminary reports, commitments, binders, or any other reports issued prior to the issuance of a title insurance policy.

Old Republic complied with the statute by filing its form of commitment with the Director. The commitment form IS the form Old Republic proposed to use and did use in the state. The examiner's criticism seems to confuse the form with underwriting. In order to inform and serve consumers, underwriters are free to create underwriting standards by which their policies are to be written in the state. These underwriting standards include exceptions of various kinds. Simply because each policy discusses the lien of taxes for a particular year, does not make an exception for the lien of taxes part of the form. Rather, it's an exception added pursuant to underwriting standards of the underwriter. For this reason, even the American Land Title Association does not include standard exceptions within the forms it creates. Instead, the underwriters add their own exceptions to the ALTA form.

Working within the underwriting guidelines of each underwriter, agents are free to tailor exceptions which they feel are appropriate to a given situation. Agents may word these exceptions differently and they are permitted to do so within our guidelines. Such exceptions used frequently or always do not become part of the form – they are still exceptions! These exceptions are then disclosed on Schedule B, putting the proposed insured on notice of the matter at issue. Nothing is hidden. There is no requirement that underwriters file a form of commitment listing every exception possible that the underwriter or an agent might use. In fact, such a requirement would be impossible to comply with. The statute only requires that the form be filed and Old Republic has done so.

Previously, the examiners criticized other files because certain exceptions were used that were not as precisely tailored to a file as the examiners thought they should be. Now the examiners seem to be advocating the use of more boilerplate exceptions which would take away an underwriter's creativity and discretion. Old Republic believes it would be inappropriate to promulgate forms with more exceptions which might not apply to all transactions and situations.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J95

The formal criticism alleges that Old Republic's agent uses "pre-printed special exceptions numbered 1 and 2"and that "these items do not appear as pre-printed special exceptions in any form filed by Old Republic National Title with the Director." The allegation is that the agent used forms not filed with the Director in violation of Section 381.211 RSMo. Old Republic disagrees that its agent has violated any statute or regulation.

The statute in question reads as follows:

> 381.211. Forms to be used, insurers to file copies with director
>
> Every title insurer shall file with the director copies of the following forms it proposes to use in this state, including:
>
> (1) Title insurance policies;
>
> (2) Standard form endorsements; and
>
> (3) Preliminary reports, commitments, binders, or any other reports issued prior to the issuance of a title insurance policy.

Old Republic complied with the statute by filing its form of commitment with the Director. The commitment form IS the form Old Republic proposed to use and did use in the state. The examiner's criticism seems to confuse the form with underwriting. In order to inform and serve consumers, underwriters are free to create underwriting standards by which their policies are to be written in the state. These underwriting standards include exceptions of various kinds. Simply because each policy discusses the lien of taxes for a particular year, does not make an exception for the lien of taxes part of the form. Rather, it's an exception added pursuant to underwriting standards of the underwriter. For this reason, even the American Land Title Association does not include standard exceptions within the forms it creates. Instead, the underwriters add their own exceptions to the ALTA form.

Working within the underwriting guidelines of each underwriter, agents are free to tailor exceptions which they feel are appropriate to a given situation. Agents may word these exceptions differently and they are permitted to do so within our guidelines. Such exceptions used frequently or always do not become part of the form – they are still exceptions! These exceptions are then disclosed on Schedule B, putting the proposed insured on notice of the matter at issue. Nothing is hidden. There is no requirement that underwriters file a form of commitment listing every exception possible that the underwriter or an agent might use. In fact, such a requirement would be impossible to comply with. The statute only requires that the form be filed and Old Republic has done so.

Previously, the examiners criticized other files because certain exceptions were used that were not as precisely tailored to a file as the examiners thought they should be. Now the examiners seem to be advocating the use of more boilerplate exceptions which would take away an underwriter's creativity and discretion. Old Republic believes it would be inappropriate to promulgate forms with more exceptions which might not apply to all transactions and situations.

In addition, this agent does not always use the subject exceptions on its commitments. Please see attached a copy of the subject commitment, along with a copy of a commitment from another transaction which does not include said exceptions. This other commitment contradicts the examiner's claim that the exceptions are pre-printed.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J89

The formal criticism alleges that Old Republic's agent uses "pre-printed special exceptions numbered 1 and 2"and that "these items do not appear as pre-printed special exceptions in any form filed by Old Republic National Title with the Director." The allegation is that the agent used forms not filed with the Director in violation of Section 381.211 RSMo. Old Republic disagrees that its agent has violated any statute or regulation.

The statute in question reads as follows:

> 381.211. Forms to be used, insurers to file copies with director
>
> Every title insurer shall file with the director copies of the following forms it proposes to use in this state, including:
>
> (1) Title insurance policies;
>
> (2) Standard form endorsements; and
>
> (3) Preliminary reports, commitments, binders, or any other reports issued prior to the issuance of a title insurance policy.

Old Republic complied with the statute by filing its form of commitment with the Director. The commitment form IS the form Old Republic proposed to use and did use in the state. The examiner's criticism seems to confuse the form with underwriting. In order to inform and serve consumers, underwriters are free to create underwriting standards by which their policies are to be written in the state. These underwriting standards include exceptions of various kinds. Simply because each policy discusses the lien of taxes for a particular year, does not make an exception for the lien of taxes part of the form. Rather, it's an exception added pursuant to underwriting standards of the underwriter. For this reason, even the American Land Title Association does not include standard exceptions within the forms it creates. Instead, the underwriters add their own exceptions to the ALTA form.

Working within the underwriting guidelines of each underwriter, agents are free to tailor exceptions which they feel are appropriate to a given situation. Agents may word these exceptions differently and they are permitted to do so within our guidelines. Such exceptions used frequently or always do not become part of the form – they are still exceptions! These exceptions are then disclosed on Schedule B, putting the proposed insured on notice of the matter at issue. Nothing is hidden. There is no requirement that underwriters file a form of commitment listing every exception possible that the underwriter or an agent might use. In fact, such a requirement would be impossible to comply with. The statute only requires that the form be filed and Old Republic has done so.

Previously, the examiners criticized other files because certain exceptions were used that were not as precisely tailored to a file as the examiners thought they should be. Now the examiners seem to be advocating the use of more boilerplate exceptions which would take away an underwriter's creativity and discretion. Old Republic believes it would be inappropriate to promulgate forms with more exceptions which might not apply to all transactions and situations.

In light of the foregoing, Old Republic denies the allegations of this criticism.

***B. General Practices Underwriting and Rating***

| | |
|---|---|
| *Field Size:* | *62,991* |
| *Sample Size:* | *104* |
| *Type of Sample:* | *Random* |
| *Number of Errors:* | *61* |
| *Error Rate:* | *58.7%* |
| *Within Dept. Guidelines:* | *No* |

*NOTE: A star (*) after a policy number denotes that the policy was cited earlier in the general practices underwriting study for a different error, but was only counted once in the number of errors herein.*

*a. Failure to Timely Record*

***EXAM FINDING #9***

*The agency acted as settlement agent and failed to record the security instrument for the following transactions within three (3) business days.*

*Reference: Section 381.412, RSMo.*

| File No. | Date of Disbursement | Date Recorded | No. Business Days | Agent |
|---|---|---|---|---|
| 07030219 | 3-21-07 | 3-30-07 | 7 | OR St. L |
| 06120427 | 3-28-07 | 4-6-07 | 7 | OR St. L |
| 07020528 | 4-4-07 | 4-10-07 | 4 | OR St. L |
| 06030113 | 5-22-06 | 6-2-06 | 8 | OR St. L |
| 07020071 | 2-22-07 | 3-1-07 | 5 | OR St. L |
| 06020400 | 3-6-06 | 3-23-06 | 13 | OR St. L |
| 06090367 | 10-18-06 | 10-24-06 | 4 | OR St. L |
| 06020744 | 3-16-06 | 3-22-06 | 4 | OR St. L |
| 06050207 | 7-6-06 | 7-13-06 | 5 | OR St. L |
| 06080683 | 11-22-06 | 12-05-06 | 7 | OR St. L |
| 07030435 | 3-29-07 | 4-4-07 | 4 | OR St. L |
| 06110386 | 11-30-06 | 12-7-06 | 5 | OR St. L |
| 07040825 | 5-10-07 | 5-21-07 | 7 | OR St. L |
| TRI060542 | 6-2-06 | 6-9-06 | 5 | Title Resources |
| 5889777 | 10-30-06 | 11-29-06 | 19 | Home Connect |
| 32696 | 12-12-05 | 2-9-06 | 40 | Title Searches |
| MK-07-39162 | 4-18-07 | 4-26-07 | 6 | Title Partners |
| MK-06-28697 | 10-25-06 | 11-1-06 | 5 | Title Pros |
| KDR-06-29455 | 10-31-06 | 11-7-06 | 5 | Title Pros |
| JA-61478 | 4-18-07 | 4-30-07 | 8 | KCT |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.412(1) by not recording the Deeds of Trust within three (3) business days of closing in all but two of the above-referenced transactions. Mo.Rev.Stat.; § 381.412(1) provides as follows:

1. A settlement agent who accepts funds of more than ten thousand dollars, but less than two million dollars, for closing a sale of an interest in real estate shall require a buyer, seller, or lender who is not a financial institution to convey such funds to the settlement agent as certified funds. The settlement agent shall record all security instruments for such real estate closing within three business days of such closing after receipt of such certified funds. A check:

(1) Drawn on an escrow account of a licensed real estate broker, as regulated and described in section 339.105 RSMo;

(2) Drawn on an escrow account of a title insurer or title insurance agency licensed to do business in Missouri;

(3) Drawn on an agency of the United States of America, the state of Missouri or any county or municipality of the state of Missouri; or

(4) Drawn on an account by a financial institution;

shall be exempt from the provisions of this section.

Based on its plain language, the statute applies when: (1) a settlement agent accepts funds of more than ten thousand dollars but less than two million dollars; (2) such funds are accepted for closing a sale of an interest in real estate; and (3) such funds are not in the form of a check drawn on an account exempted from the requirements of the statute.

In nearly every instance cited by the Examiner, the facts of the case indicate that the statute is inapplicable based on the following:

(1) the amount of funds paid by the purchaser does not exceed the sum of ten thousand dollars;

(2) the amount of funds paid by the lender exceeds the sum of ten thousand dollars, but the funds are drawn on an account by a financial institution exempted from the requirements of the statute;

(3) the transaction was a refinance, and therefore not a "sale of an interest in real estate."

Because of the inapplicability of the statute to the referenced transactions, there was no requirement that the Deeds of Trust be recorded within three (3) business days of their closings. Therefore, Old Republic has not committed any statutory violations. Furthermore, the foregoing allegations were adequately responded to and refuted in Old Republic's Responses to Formal Criticisms T21, T25, T28, T33, J24, J26, J29, J28, J23, J31, J20, J21, J22, J36, J53, J97, J90, J86, and J76 attached hereto.

Response To Formal Criticism No. T21

The formal criticism alleges that Old Republic failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the settlement date was March 21, 2007, but that the recording took place seven business days later on March 30, 2007. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds **in certain cases.** ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: Old Republic Title Company of St. Louis, Inc., an agent of Old Republic National Title Insurance Company, closed the transaction on March 21, 2007. As part of the transaction, it received the following funds: a cashier's check in the amount of $2907.26 from the buyer and wired funds in the amount of $62,943.39, constituting the proceeds of the new loan, from CIT Group, a financial institution.

Applying these facts to the statute cited, there are several reasons why the three day recording requirement of Section 381.412.1 is inapplicable to this transaction:

1) The statute only applies when funds of more than $10,000 or less than $2,000,000 are accepted. Therefore, **the funds from the buyer were exempt from this statute**;
2) The larger amount from CIT Group falls within the dollar amounts set forth in the statute, but ***since CIT Group is a financial institution its funds are also exempt from this statute***;
3) The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving those such funds when there is a need, those involving the sale of an interest in real estate and those involving receipt of funds from a lender which is not a financial institution. **ALL** of these situations must exist for the recording requirement of the statute to apply, but in this case, **NOT ALL** of these situations existed as is readily apparent from a review of the file.

Given the incontrovertible facts and the precise language of the statute cited, Old Republic is disappointed that this criticism was presented to it, especially in a way that ignores those facts and the clear intent of the statute. The cited statute is inapplicable to this transaction.

Response To Formal Criticism No. T25

The formal criticism alleges that Old Republic failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the settlement date was March 27, 2007, but that the recording took place eight business days later on April 6, 2007. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds **in certain cases**. ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: Old Republic Title Company of St. Louis, Inc., an agent of Old Republic National Title Insurance Company, closed the transaction on March 27, 2007. As part of the transaction, it received the following funds: a check in the amount of $34,000.00 from the lender, 9200 Corporation (drawn on Bank of America) and a check from the purchaser in the amount of $6,886.96 from the purchaser. 9200 Corporation, the lender, is on information and belief, a financial institution per 381.410 RSMo.

Applying these facts to the statute cited, there are two reasons why the three day recording requirement of Section 381.412.1 is inapplicable to this transaction:

1) The check from the lender falls within the dollar amounts set forth in the statute, but ***since the lender is, on information and belief, a financial institution its funds are exempt from this statute***;
2) The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving such funds when there is a need, those involving the sale of an interest in real estate and those involving receipt of funds from a lender which is ***NOT*** a financial institution. **ALL** of these situations must exist for the recording requirement of the statute to apply, but in this case, **NOT ALL** of these situations existed.

Response To Formal Criticism No. T28

The formal criticism alleges that Old Republic failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the settlement date was April 10, 2007, and that the recording took place four business days later, but also on April 10, 2007. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds **in certain cases**. ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: Old Republic Title Company of St. Louis, Inc., an agent of Old Republic National Title Insurance Company, closed the transaction on April 4, 2007. As part of the transaction, it received the following funds: a wire from the new lender, Coldwell Banker Home Loans, in the amount of $155,206.42 and funds from purchaser in the amount of $1,353.03.

Applying these facts to the statute cited, there are several reasons why the three day recording requirement of Section 381.412.1 is inapplicable to this transaction:

1) The statute only applies when funds of more than $10,000 or less than $2,000,000 are accepted. Therefore, **the funds from the buyer were exempt from this statute**;
2) The larger amount from Coldwell Banker Home Loans falls within the dollar amounts set forth in the statute, but ***since Coldwell Banker Home Loans is a financial institution its funds are also exempt from this statute***;
3) The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving those such funds when there is a need, those involving the sale of an interest in real estate and those involving receipt of funds from a lender which is not a financial institution. **ALL** of these situations must exist for the recording requirement of the statute to apply, but in this case, **NOT ALL** of these situations existed as is readily apparent from a review of the file.

In light of the foregoing, Old Republic denies the allegations of this criticism.

Response To Formal Criticism No. T33

The formal criticism first alleges that Old Republic'agent failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the disbursement date was May 22, 2006, but that the recordings took place eight business days later on June 2, 2006. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds in certain cases. ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: This was a refinance transaction (see HUD-1 attached). The transaction closed May 17, 2006 and funds were disbursed on May 22, 2006. As part of the transaction, the agent received the following funds: a wire in from the new lender, Plaza Mortgage Group, in the amount of $152,300.98. There were no funds from the borrower. Applying these facts to the statute cited, there are several reasons why the three day recording requirement of Section 381.412.1 is inapplicable to this transaction:

1) The statute only applies when "closing a sale of an interest in real estate." ***A refinance transaction is exempt from this statute;***
2) The amount wired by the new lender, Plaza Mortgage Group, falls within the dollar amounts set forth in the statute, but ***since Plaza Mortgage Group*** is, on information and belief, a ***financial institution, its funds are also exempt from this statute***;
3) The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving such funds when there is a need, those involving the sale of an interest in real estate and those involving receipt of funds from a lender which is not a financial institution. **ALL** of these situations must exist for the recording requirement of the statute to apply, but in this case, several of these factors were not present, as is readily apparent from a careful review of the file.

Therefore, it is quite clear that the statute, and the recording requirement specifically, do not apply to this transaction. Given the incontrovertible facts and the precise language of the statute cited, Old Republic is disappointed that this criticism was presented to it, especially in a way that ignores those facts and the clear intent of the statute. .

Response To Formal Criticism No. J26

The formal criticism next alleges that Old Republic failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the settlement date was March 6, 2006, but that the recording took place 13 business days later on March 23, 2006. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds in certain cases. Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000 "for closing a sale of an interest in real estate," the settlement agent "shall require a buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments for such real estate closing within three business days of such closing after receipt of such certified funds." 381.412.2 adds that a title insurance agency shall not make a payment in excess of $10,000 from an escrow account unless a corresponding deposit 1)was made at least ten days prior to such payment, 2) consisted of certified funds or 3) is exempt under section 1.

The facts of this specific transaction are as follows: Old Republic Title Company of St. Louis, Inc., an agent of Old Republic National Title Insurance Company, closed the transaction on March 6, 2006. As part of the transaction, it received the following funds: a wire from ABN-AMRO, a financial institution, in the amount of $147,705.29 (new loan proceeds), a check from purchaser for $5,842.95, an earnest money check for $1,000.00 deposited February 9 and a $36,000 earnest money check deposited February 20.

Applying these facts to the statute cited, there are several reasons why the three day recording requirement of Section 381.412.1 is inapplicable to this transaction:

1) The statute only applies when funds of more than $10,000 or less than $2,000,000 are accepted. Therefore, **the two smaller checks were exempt from this statute;**
2) The larger amount from ABN-AMRO falls within the dollar amounts set forth in the statute, but ***since it is a financial institution its funds are also exempt from this statute;***
3) The $36,000 check was deposited for more than ten days and consisted of collected "good" funds.

The cited statute is inapplicable to this transaction.

Response To Formal Criticism No. J29

The formal criticism first alleges that Old Republic failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the disbursement date was October 18, 2006, but that the recording took place four business days later on October 24, 2006. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds in certain cases. ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: the agent closed the transaction on October 12, 2006, and funds were disbursed on October 17, 2006, as this was a refinance (see HUD-1 attached). As part of the transaction, it received the following funds: a Broker's check in the amount of $1957.66, and wired funds from the lender in the amounts of $32,084.21 and $265,176.27, constituting the proceeds of the new loans, from Plaza Mortgage Group, which is, on information and belief, a financial institution.

Applying these facts to the statute cited, there are several reasons why the three day recording requirement of Section 381.412.1 is inapplicable to this transaction:

1) The statute does not apply to funds drawn from the escrow account of a broker or in amounts less than $10,000. Therefore, **the funds from the broker were exempt from this statute**;
2) The two wires from the new lender, Plaza Mortgage Group, fall within the dollar amounts set forth in the statute, but ***since Plaza Mortgage Group is, on information and belief, a financial institution, its funds are also exempt from this statute***;
3) The statute only applies when "closing a sale of an interest in real estate." ***This was a refinance, and NOT a sale, so the statute does not apply.***
4) The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving such funds when there is a need, those involving the sale of an interest in real estate and those involving receipt of funds from a lender which is not a financial institution. **ALL** of these situations must exist for the recording requirement of the statute to apply, but in this case, several of these factors were not present, as is readily apparent from a careful review of the file.

Given the incontrovertible facts and the precise language of the statute cited, Old Republic is disappointed that this criticism was presented to it, especially in a way that ignores those facts and the clear intent of the statute. The cited statute is inapplicable to this transaction.

Response To Formal Criticism No. J28

The formal criticism alleges that Old Republic failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the settlement date was March 16, 2006, but that the recording took place four business days later on March 22, 2006. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds in certain cases. ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: Certified funds were received from the purchaser in the form of a cashier's check drawn from its account by their bank, a financial institution. The documents were not recorded within three days of receipt of these funds.

Response To Formal Criticism No. J23

The formal criticism alleges that Old Republic failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the funds for the closing were disbursed on July 6, 2006, but that the deeds from the transaction were not recorded until July 13, 2006, five business days later. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds **in certain cases.** ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: Old Republic Title Company of St. Louis, Inc., an agent of Old Republic National Title Insurance Company, received a wire from the lender for the loan amount. The lender was a financial institution, and thus those funds were exempted from the cited transaction by virtue of 381.412.1(4). The remaining funds were in the form of a check from a title insurer, also exempted by reason of 381.412(2).

The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving those funds, those involving the sale of an interest in real estate and those involving receipt of funds from a lender which is not a financial institution. **ALL** of these situations must exist for the recording requirement of the statute to apply, but in this case, **NOT ALL** of these situations existed as is readily apparent from a review of the file. Therefore, the good funds statute was not applicable and the three day recording requirement does not apply to this transaction.

Given the incontrovertible facts and the precise language of the statute cited, Old Republic is disappointed that this criticism was presented to it, especially in a way that ignores those facts and the clear intent of the statute. The cited statute is inapplicable to this transaction.

Response To Formal Criticism No. J31

The formal criticism first alleges that Old Republic'agent failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the disbursement date was November 22, 2006, but that the recordings took place seven business days later on December 5, 2006. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds in certain cases. ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: the funds were disbursed on November 22, 2006. As part of the transaction, the agent received the following funds: a check in the amount of $102,779.26 from the lender on the first Deed of Trust, Pulaski Bank, a financial institution, and a second check in the amount of $25,709.81, also from Pulaski Bank, the lender for the second deed of trust; Cashier's checks from borrower in the amounts of $40.57 and $117.44 and an earnest money personal money order in the amount of $1,000.00.

Applying these facts to the statute cited, there are several reasons why the three day recording requirement of Section 381.412.1 is inapplicable to this transaction:

1) The statute does not apply to funds of less than $10,000. Therefore, **the funds from borrowers were exempt from this statute**;
2) The two checks from the new lender, Pulaski Bank, fall within the dollar amounts set forth in the statute, but ***since Pulaski Bank is*** a ***financial institution, its funds are also exempt from this statute***;
3) The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving such funds when there is a need, those involving the sale of an interest in real estate and those involving receipt of funds from a lender which is not a financial institution. **ALL** of these situations must exist for the recording requirement of the statute to apply, but in this case, several of these factors were not present, as is readily apparent from a careful review of the file.

Given the incontrovertible facts and the precise language of the statute cited, Old Republic is disappointed that this criticism was presented to it, especially in a way that ignores those facts and the clear intent of the statute. The cited statute is inapplicable to this transaction.

## Response To Formal Criticism No. J20

The formal criticism alleges three different violations and Old Republic's responses to them are stated below.

Lastly, the criticism alleges that Old Republic failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that funds were disbursed on May 10, 2007, but the deeds were not recorded until May 21, 2007, "a delay of seven working days." The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds **in certain cases**. ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds.***" (emphasis added)

The facts of this specific transaction are as follows: Funds were received in the form of checks of $1,000.00 from the buyer, $41,066.32 from a title company (ORT check from sale of buyer's property) and a wire from a financial institution in the amount of $163,631.57 representing the proceeds of the new loan.

The three day recording requirement of Section 381.412.1 is inapplicable to this transaction according to the unambiguous provisions of the statute:

1) All of the funds at issue were exempt from the statute. The statute only applies when funds of more than $10,000 or less than $2,000,000 are accepted. The buyers' funds were exempt as falling outside of this range. The funds drawn on the escrow account of the title insurer were exempt pursuant to 381.412.1(2). The funds from the lender, Bank of America, were exempt pursuant to 381.412.1(4), since Bank of America is a financial institution.
2) The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, (see 1 above), those involving settlement agents receiving those funds, those involving the sale of an interest in real estate and those involving receipt of certified funds. **ALL** of these situations must exist for the recording requirement of the statute to apply, but in this case there was no need for certified funds and no receipt of certified funds.

Given the incontrovertible facts and the precise language of the statute cited, Old Republic is disappointed that this criticism was presented to it, especially in a way that ignores those facts and the clear intent of the statute. The cited statute is inapplicable to this transaction.

Response To Formal Criticism No. J21

Next, the formal criticism alleges that Old Republic failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the settlement date was November 30, 2006, but that the recording took place five business days later on December 7, 2006. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds in certain cases. ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: Funds received were in the form of wires from the new lender, Wells Fargo, in the amounts of $98,718.65 and $12,456.00. Wells Fargo is a financial institution. It appears that purchaser sent funds to the settlement agent in the amount of $13,007.52 in the form of an Official Check drawn on National City. Purchaser is shown as the remitter on this check.

The formal criticism next alleges that Old Republic failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the funds for the closing were disbursed on March 29, 2007, but that the recording of the deeds took place four business days later on April 4, 2007. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds in certain cases. ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: Old Republic Title Company of St. Louis, Inc., an agent of Old Republic National Title Insurance Company, received funds for this transaction in the form of a wire from the new lender, Prospect Avenue Lending, in the amount of $19,500.00.

There are two reasons why the three day recording requirement of Section 381.412.1 is inapplicable to this transaction:

1) The money accepted by Old Republic's agent came from ***the lender, Prospect Avenue Lending, which is a financial institution whose funds are exempt from this statute;***
2) The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving those funds, those involving the sale of an interest in real estate and those involving receipt of funds from a lender which is not a financial institution. **ALL** of these situations must exist for the recording requirement of the statute to apply, but in this case, **NOT ALL** of these situations existed as is readily apparent from a review of the file.

Given the incontrovertible facts and the precise language of the statute cited, Old Republic is disappointed that this criticism was presented to it, especially in a way that ignores those facts and the clear intent of the statute. The cited statute is inapplicable to this transaction.

practice to determine whether utility easements directly affect property and thereby allow the insurer to

Response To Formal Criticism No. J36

(A) The formal criticism first alleges that Old Republic's agent failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the funds from the escrow transaction were disbursedd October 30, 2006, but that the deeds were not recorded until November 29, 2006, a delay of 20 working days. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds **in certain cases.** ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: Home Connects performed a refinance closing. The examiner should be aware that is was a refinance, as he mentions the disbursement date, rather than the closing date. In any event, it is quite obvious that it was a refinance transaction based on a review of the file. We are not aware whether the lender was a financial institution, but if it was, good funds are not required and the statute doesn't apply. It doesn't really matter because good funds are only required and the three day recording provision only applies if the transaction was a sale of property. However, as already stated, ***this was a refinance. This means the three day recording requirement of Section 381.412.1 is inapplicable to this transaction.***

The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving such funds when there is a need, those involving the sale of an interest in real estate and those involving receipt of funds from a lender which is ***NOT*** a financial institution. **ALL** of these situations must exist for the recording requirement of the statute to apply, but in this case, **NOT ALL** of these situations existed. Thus, it is quite clear that the statute at issue was not violated.

Response To Formal Criticism No. J53

The formal criticism first alleges that Old Republic's agent failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the funds from the escrow transaction were disbursed December 12, 2005, but that the deeds were not recorded until February 9, 2006, 40 business days later. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days of disbursement. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds in certain cases. ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey ***such*** funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: Title Searches, Inc. performed a closing on a sale of real estate. The lender, Truman Bank, is a financial institution. The statute is clear that settlement agents must collect certified funds (of more than $10,000.00) only from lenders who are NOT financial institutions. Thus, certified funds were NOT required from the lender, Truman Bank. Furthermore, the amount collected from the borrower was only $7,030.00. Since that amount is below the $10,000.00 threshold, that amount was not required to be good funds either and the statute doesn't apply. ***This means the three day recording requirement of Section 381.412.1 is inapplicable to this transaction.***

Despite the position taken by the department, the drafters of this legislation, the Missouri Land Title Association (MLTA), have always had a different understanding of the provisions they themselves drafted. There is no legislative history which would contradict that position. We welcome the department to take testimony from those involved in drafting the bill to ascertain what their understanding of it was. It is interesting after all these years that the department has decided that it means something completely different than it has been interpreted by the industry which drafted the words and completely different than the practice that has been in use for the 15 years that the statute has been in effect.

It is undeniable that the statute at issue is a Good funds statute. It is not a recording statute. The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving such funds when there is a need, those involving the sale of an interest in real estate. While this was a sale of real estate, good funds were not required, as described earlier. Mr. Nickens of the department interprets the phrase "such real estate closings" to refer to all closings for a sale of an interest in real estate. He argues that it doesn't matter whether certified funds are required or not, that the recording requirement applies in all cases of a sale of real estate. However, the statute is unambiguous. The very phrase "such real estate closings" clearly does refer to those involving good funds, since it goes on to say that the recording in "such" cases shall take place within three days "***after receipt of such certified funds***." The wording cannot be more clear. The recording requirement, according to the unambiguous wording of the statute, only applies when good funds or "certified funds" are collected. Thus, the statute at issue was not violated.

Mr. Nickens argued in an email, dated January 18, 2008, that "(i)f the legislature intended to limit the recording to only those sales in which good funds were required, they should have expressly stated in the second sentence that 'Any closing (sic) that requires "certified funds" should be recorded in three days.'" Since the statute actually does state that the recording should be done in three days "after receipt of such certified funds," it appears that the legislature did exactly what Mr. Nickens suggested and clearly demonstrated its intent to limit the recording requirement to situations where good funds are received. The plain language of the statute is quite clear and there is no need for the department to interpret the statute in a different way than it is written and in a different way that it has been used for these 15 years.

Old Republic is certainly not happy that this former agent took such a long time to record the documents and we have no idea why that was the case. However, the good funds statute's recording requirement was

NOT implicated since certified funds were not required and not received by the agent. Therefore, Old Republic denies the allegations of this portion of the criticism.

Response To Formal Criticism No. J97

The formal criticism alleges that Old Republic's agent failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the funds from the escrow transaction were disbursed on April 18, 2007, but that the deeds were not recorded until April 26, 2007, six business days later. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days of disbursement. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds in **certain cases**. Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000 "***for closing a sale of an interest in real estate***," the settlement agent "shall require a ***buyer, seller or lender*** who is not a financial institution to convey ***such*** funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds.***" (emphasis added)

The facts of this specific transaction are as follows: Title Partners, Agency performed a closing on a refinance transaction. See attached HUD-1 statement. Old Republic believes that a refinance is not a "sale of an interest in real estate," and therefore, good funds were not required and ***the three day recording requirement of Section 381.412.1 was inapplicable.***

Old Republic believes the law is unambiguous, and thus, the intent of the drafters should not be relevant. Notwithstanding this position, if the department wishes to explore intent, the drafters of this legislation, the Missouri Land Title Association (MLTA), had and have a different understanding of the provisions they themselves drafted than the Department has. There is no legislative history which would contradict that position.

The statute at issue is a Good Funds statute. It is not a recording statute. The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving such funds when there is a need, those involving the sale of an interest in real estate. Win Nickens, P&C Audit Manager for the department, interprets the phrase "such real estate closings" to refer to all closings for a sale of an interest in real estate. He argues that it doesn't matter whether certified funds are required or not, that the recording requirement applies in all cases of a sale of real estate. In an email, dated January 18, 2008, (see attached) he states that "(i)f the legislature intended to limit the recording to only those sales in which good funds were required, they should have expressly stated in the second sentence that 'Any closing (sic) that requires "certified funds" should be recorded in three days.'" However, the statute does say just what Mr. Nickens recommends. The phrase "such real estate closings" clearly does refer to those involving good funds, since the statute states that the recording in "such" cases shall take place within three days "***after receipt of such certified funds.***" Thus, there is no ambiguity - the legislature did exactly what Mr. Nickens suggested and clearly demonstrated its intent to limit the recording requirement to situations where good funds or "certified funds" are received.

Mr. Nickens, however, believes that it doesn't make sense that the good funds statute would not apply to refinances, even though on its face the law states it applies when an agent collects funds "***for closing a sale of an interest in real estate.***" His position is that a refinance is also a "sale" since mortgages contain words "such as 'grant, bargain, sell, convey, confirm, quit claim.' I argue that this makes it a sale if funds are exchanged." See attached Nickens email to Blitenthal January 18, 2008.

There are numerous problems with the department's position in this regard. First, they ignore the plain language of the statute which states that it applies in the event of a "sale" of an interest in real estate. Second, the department ignores the plain meaning of the word "sale." Missouri common law gives these plain meanings much deference. In State v. Duggar, 806 S.W.2d 407, 408 (Mo. 1991), the Supreme Court stated that "notice and fair warning require that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." Old Republic believes that a

person of ordinary intelligence would consider a sale to be a sale and not a refinance. In fact, there are completely different federal rules for closing a refinance and refinances are NEVER referred to as sales by the federal government. Similarly, no one in the real estate, mortgage or title insurance industries would refer to a refinance as a sale either, and they are the ones who wrote the language of the bill and convinced the legislators to pass it. Furthermore, the Duggar court added that "where a statute uses words which have a definite and well known meaning at common law it will be presumed that the terms are used in the sense in which they were understood at common law, and they will be so construed unless it clearly appears that it was not so intended." *Id.* According to Missouri common law, the word "sale" means "a disposition for any consideration." See State v. Miller, 300 S.W.765 (Mo. 1927) upholding a conviction for the "sale" of moonshine in exchange for a tire.

A third problem with the department's interpretation of the word "sale" in the statute, is that the statute specifically refers to funds coming from a "buyer, seller or lender who is not a financial institution..." Nowhere does the statute refer to a 'borrower,' which is how a person refinancing would be referred to if the statute was meant to apply in to a refinance transaction.

The fourth problem with the state's position that the statute applies to refinances is that such an application would violate federal law. According to Carolyn Kerr, the department's market conduct attorney, the recording obligation "applies to all closings, whether they are for sales of real property or the refinancing of a mortgage." ***It is telling that her own argument, by necessity, distinguishes sales from refinances.*** However, more importantly, federal law prohibits the disbursement of funds on a refinance transaction until 3 business days after a closing takes place. The purpose of the law is to give borrowers who are refinancing a 72 hour right of rescission. The department's position would require title companies to violate that federal law by requiring them to record mortgages from refinance transactions within that 72 hour rescission period. Clearly, that would be illegal. The MLTA and mortgage lenders who collaborated on the legislation were well aware of this 72 hour requirement and certainly would not have required disbursement in violation of federal law. Our company respectfully refuses to violate federal law, especially because it would supersede this Missouri law in the event of a conflict. Since courts do not presume laws to be invalid, the proper interpretation of the Good Funds statute is that it means what it says – it applies to sales and not refinances.

The fifth reason the law does not apply to refinances goes to the heart of the department's position that the granting language equates to a sale of property. At the time of the giving of a mortgage or deed of trust, and at any time prior to default, Missouri is considered a "lien theory" state. This means that the mortgage or deed of trust is a lien only and does NOT convey an ownership interest, as the department argues. In R.L. Sweet Lumber Co. v. E.L. Lane, Inc., 513 S.W.2d 365 (Mo. 1974), the Supreme Court stated that a deed of trust is "a lien and nothing more." Id at 368. The deed of trust is viewed as "neither an estate in land, nor a right to any beneficial interest therein...(i)t is merely the right to have the debt, if not otherwise paid, satisfied out of the land." Id. According to this court, Missouri is a "lien theory" state. The lender is only considered the owner when in possession of the property following a breach of the deed of trust. Id at 369. Even in such a case, the lender's right of entry is limited. See Wheeler v. Community Federal Savings & Loan, 702 S.W.2d 83 (Mo. App. E.D. 1985). The bottom line is that the Missouri Supreme Court does not consider the giving of a mortgage or deed of trust to a lender as a sale of an interest in real estate, but simply the giving of a lien. This is further definitive proof that a refinance is not a sale and the good funds statute does not apply.

The plain language of the statute is quite clear and there is no need for the department to interpret the statute in a different way than it is written and in a different way that it has been used for these 15 years.
Old Republic would certainly like to see its agents record documents as quickly as possible. However, the good funds statute's recording requirement was NOT implicated since certified funds were not required and not received by the agent for this refinance.

Accordingly, Old Republic denies the allegations of the criticism.

Response To Formal Criticism No. J90

The formal criticism alleges that Old Republic's agent failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the funds from the escrow transaction were disbursed on October 25, 2006, but that the deeds were not recorded until November 1, 2006, five business days later. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days of disbursement. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds in certain cases. ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a sale of an interest in real estate," the settlement agent "shall require a ***buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent as certified funds."*** Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: Title Pros, an agent, performed a closing on a sale of property. The buyers had to bring in only $69.66, (see HUD-1 attached), which is less than the $10,000 threshold set out in the statute which necessitates the use of certified funds. The other funds came from the lender, National City Bank, a financial institution, not required under the statute to convey certified funds. Since certified funds were not required from any party to the transaction, ***the three day recording requirement of Section 381.412.1 did not apply.***

Old Republic believes the law is unambiguous, and thus, the intent of the drafters should not be relevant. Notwithstanding this position, if the department wishes to explore intent, the drafters of this legislation, the Missouri Land Title Association (MLTA), had and have a different understanding of the provisions they themselves drafted than the Department has. There is no legislative history which would contradict that position.

The statute at issue is a Good Funds statute. It is not a recording statute. The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving such funds when there is a need, those involving the sale of an interest in real estate. Win Nickens, P&C Audit Manager for the department, interprets the phrase "such real estate closings" to refer to all closings for a sale of an interest in real estate. He argues that it doesn't matter whether certified funds are required or not, that the recording requirement applies in all cases of a sale of real estate. In an email, dated January 18, 2008, (see attached) he states that "(i)f the legislature intended to limit the recording to only those sales in which good funds were required, they should have expressly stated in the second sentence that 'Any closing (sic) that requires "certified funds" should be recorded in three days.'" However, the statute does say just what Mr. Nickens recommends. The phrase "such real estate closings" clearly does refer to those involving good funds, since the statute states that the recording in "such" cases shall take place within three days "***after receipt of such certified funds.***" Thus, there is no ambiguity - the legislature did exactly what Mr. Nickens suggested and clearly demonstrated its intent to limit the recording requirement to situations where good funds or "certified funds" are received.

As discussed previously, good funds were not required in this case from the lender, a financial institution, or from the borrowers, who had to bring in approximately $70.00. If the examiner is taking the position that a single check for less than $10,000.00 must consist of good funds if the aggregate amount of money taken in by the settlement agent from all parties is between ten thousand dollars and two million dollars, his interpretation would be incorrect for the following reasons. First, the plain language of the statute deals with incoming funds in amounts between $10,000 and $2 million. The intent of the statute is that each amount coming in will be looked at from a buyer, from a seller and from a lender which is not a financial institution, to see if the threshold is met in each case. The statute does not require aggregation of the amounts collected from all categories (buyers, sellers and non-financial institution lenders) in order to

determine whether good funds are necessary. Proof of this concept is in the statute itself which states that the agent "shall require a buyers seller OR lender who is not a financial institution to convey such funds to the settlement agent as certified funds." (emphasis added) The statute does not say AND, but OR. This means they are looked at individually. The idea is to make the transaction less risky for the settlement agent by ensuring that large amounts of money coming in from any one source are certified.

Under the department's interpretation of the statute, which appears to be a new interpretation, they look only at the aggregate amount of funds coming into the closing. Therefore, according to the department's view, a situation could exist where a buyer and seller each bring in checks for $7.50 and the department would require them to be certified if there is also a check from a non-financial institution lender totaling $9,985.01 or more. (Apparently, the department would actually take the same position if the check was from a financial institution, as it was in this case). The good funds statute was not meant to hassle consumers in this fashion, but rather to ensure that large checks coming in would not bounce and result in a loss for the title companies. The department's view ignores this intent. Furthermore, the industry, which wrote the provisions of the good funds statute, does not interpret this provision as the department does now. There has been a custom and practice over the last 15 years that the threshold amounts in the statute refer to individual checks, rather than to the aggregate of all checks. This is in accordance with the intent of the language drafted by the MLTA. The department's view is new and unsupported by the statute, regulation or bulletins.

There is no good public policy reason to adopt the department's reinterpretation of a statute whose common interpretation and usage has been a matter of public record for 15 years. There is no reason to inconvenience the tens of thousands or hundreds of thousands Missouri consumers each year that the department proposes to inconvenience based on this new interpretation of the good funds statute. This is NOT what the title companies had in mind when they drafted the legislation and there is no evidence whatsoever that the legislature intended something completely different which would inconvenience consumers and serve no legitimate purpose.

Old Republic would certainly like to see its agents record documents as quickly as possible. However, the good funds statute's recording requirement was NOT implicated since certified funds were not required and not received by the agent.

Accordingly, Old Republic denies the allegations of the criticism.

Response To Formal Criticism No. J86

The formal criticism alleges that Old Republic's agent failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the funds from the escrow transaction were disbursed on October 31, 2006, but that the deeds were not recorded until November 7, 2006, five business days later. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days of disbursement. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds in certain cases. ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a sale of an interest in real estate," the settlement agent "shall require a ***buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent as certified funds."*** Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: Title Pros, an agent, performed a closing on a sale of property. The buyers had to bring in just over $3,000.00, (see HUD-1 attached), which is less than the $10,000 threshold set out in the statute which necessitates the use of certified funds. The other funds came from the lender, Premier Bank, a financial institution not required under the statute to convey certified funds. Since certified funds were not required from any party to the transaction, ***the three day recording requirement of Section 381.412.1 did not apply.***

Old Republic believes the law is unambiguous, and thus, the intent of the drafters should not be relevant. Notwithstanding this position, if the department wishes to explore intent, the drafters of this legislation, the Missouri Land Title Association (MLTA), had and have a different understanding of the provisions they themselves drafted than the Department has. There is no legislative history which would contradict that position.

The statute at issue is a Good Funds statute. It is not a recording statute. The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving such funds when there is a need, those involving the sale of an interest in real estate. Win Nickens, P&C Audit Manager for the department, interprets the phrase "such real estate closings" to refer to all closings for a sale of an interest in real estate. He argues that it doesn't matter whether certified funds are required or not, that the recording requirement applies in all cases of a sale of real estate. In an email, dated January 18, 2008, (see attached) he states that "(i)f the legislature intended to limit the recording to only those sales in which good funds were required, they should have expressly stated in the second sentence that 'Any closing (sic) that requires "certified funds" should be recorded in three days.'" However, the statute does say just what Mr. Nickens recommends. The phrase "such real estate closings" clearly does refer to those involving good funds, since the statute states that the recording in "such" cases shall take place within three days "***after receipt of such certified funds.***" Thus, there is no ambiguity - the legislature did exactly what Mr. Nickens suggested and clearly demonstrated its intent to limit the recording requirement to situations where good funds or "certified funds" are received.

As discussed previously, good funds were not required in this case from the lender, a financial institution, or from the borrower, who had to bring in approximately $3,000.00. If the examiner is taking the position that a single check for less than $10,000.00 must consist of good funds if the aggregate amount of money taken in by the settlement agent from all parties is between ten thousand dollars and two million dollars, his interpretation would be incorrect for the following reasons. First, the plain language of the statute deals with incoming funds in amounts between $10,000 and $2 million. The intent of the statute is that each amount coming in will be looked at from a buyer, from a seller and from a lender which is not a financial institution, to see if the threshold is met in each case. The statute does not require aggregation of the amounts collected from all categories (buyers, sellers and non-financial institution lenders) in order to determine whether good funds are necessary. Proof of this concept is in the statute itself which states that the agent "shall require a buyers seller OR lender who is not a financial institution to convey such funds to

the settlement agent as certified funds." (emphasis added) The statute does not say AND, but OR. This means they are looked at individually. The idea is to make the transaction less risky for the settlement agent by ensuring that large amounts of money coming in from any one source are certified.

Under the department's interpretation of the statute, which appears to be a new interpretation, they look only at the aggregate amount of funds coming into the closing. Therefore, according to the department's view, a situation could exist where a buyer and seller each bring in checks for $7.50 and the department would require them to be certified if there is also a check from a non-financial institution lender totaling $9,985.01 or more. (Apparently, the department would actually take the same position if the check was from a financial institution, as it was in this case). The good funds statute was not meant to hassle consumers in this fashion, but rather to ensure that large checks coming in would not bounce and result in a loss for the title companies. The department's view ignores this intent. Furthermore, the industry, which wrote the provisions of the good funds statute, does not interpret this provision as the department does now. There has been a custom and practice over the last 15 years that the threshold amounts in the statute refer to individual checks, rather than to the aggregate of all checks. This is in accordance with the intent of the language drafted by the MLTA. The department's view is new and unsupported by the statute, regulation or bulletins.

There is no good public policy reason to adopt the department's reinterpretation of a statute whose common interpretation and usage has been a matter of public record for 15 years. There is no reason to inconvenience the tens of thousands or hundreds of thousands Missouri consumers each year that the department proposes to inconvenience based on this new interpretation of the good funds statute. This is NOT what the title companies had in mind when they drafted the legislation and there is no evidence whatsoever that the legislature intended something completely different which would inconvenience consumers and serve no legitimate purpose.

Old Republic would certainly like to see its agents record documents as quickly as possible. However, the good funds statute's recording requirement was NOT implicated since certified funds were not required and not received by the agent.

Accordingly, Old Republic denies the allegations of the criticism.

Response To Formal Criticism No. J76

The formal criticism alleges that Old Republic's agent failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the funds from the escrow transaction were disbursed April 18, 2007, but that the deeds were not recorded until April 30, 2007, 8 business days later. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days of disbursement. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds in certain cases. Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000 "for closing a sale of an interest in real estate," the settlement agent "shall require a buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments for such real estate closing within three business days of such closing after receipt of such certified funds."

In this case, good funds were required and collected from the buyer, so ordinarily the recording requirement would be in place. However, the circumstances of this closing result in this statute conflicting with another, cited many times by the examiners, which requires insurance companies to use sound underwriting practices. (See 381.071 RSMo). It would be illogical for the legislature and the department to require recording within 3 business days if that would result in Deeds of Trust being recorded outside the chain of title. Such would have been the case here.

The statutes and the department allow the use of "split closings" in Missouri. Therefore, there are times when two different title companies represent the buyer and seller in a transaction. Such was the case here. Chicago Title represented the seller and controlled the recording of the Trustee's Deed conveying title to the Buyer. Our agent represented the buyer and was responsible for recording the Deeds of Trust. However, the Deeds of Trust could not be recorded until the deed to the buyers, or else they would be outside the chain of title. Unfortunately, Chicago Title failed to record the deed from the seller in a timely manner. In fact, the deed was not recorded until April 27, 2007. See attached. Our agent recorded the Deeds of Trust on the NEXT BUSINESS DAY. This assured that the liens would be within the chain of title. Due to the unusual circumstance of this transaction, Old Republic believes its agent followed proper procedure and was not subject to the three day recording requirement prior to the recording of the deed conveying title to the buyers.

Accordingly, Old Republic denies the allegations of the second portion of the criticism.

*b. Incorrect Risk Rate*

***EXAM FINDING #10***

*The agent reported an incorrect risk rate on the following 37 policies. The agent is required to use risk rates filed with the DIFP.*

*Reference: Section 381.181, RSMo, and 20 CSR 500-7.100(3)(B)*

| File No. | Policy | Amount Listed on Policy | Filed Risk Rate | Agent |
|---|---|---|---|---|
| 06010750 | 451178 | $21.00 | $52.50 | OR St. L |
| 07030219* | 2102616 | $85.60 | $54.75 | OR St. L |
| 06040759 | 95337 | $32.40 | $25.65 | OR St. L |
| 06120427* | 102901 | $56.00 | $35.91 | OR St. L |
| 06020321 | 93198 | $314.00 | $204.67 | OR St. L |
| 06030113* | 927099 | $47.84 | $111.12 | OR St. L |
| 07040825* | Not on Policy | $213.20 | $137.62 | OR St. L |
| 07040825* | Not on Policy | $2.25 | $3.00 | OR St. L |
| 06020400* | SV00091497 | $198.00 | $127.55 | OR St. L |
| 07010538 | MM00103809 | $21.00 | $48.75 | OR St. L |
| 06010179 | SV00088658 | $342.50 | $371.30 | OR St. L |
| 06010179* | MM00088657 | $2.25 | $3.00 | OR St. L |
| 06090367* | Not available | $101.61 | $167.30 | OR St. L |
| 06090367* | MM00098959 | $23.10 | $29.70 | OR St. L |
| L20235 | MM6278400 | $88.33 | $125.70 | Mid-West |
| 06203067 | MM6091660 | $121.52 | $145.20 | Cape Girardeau |
| 0716729 | SV44721506 | $87.60 | $157.80 | Boone Central |
| PL-55679 | SV04673617 | $197.68 | $151.68 | KC Title |
| JA-61478* | MM06435037 | $23.80 | $30.60 | KC Title |
| CA-54955 | MM6434305 | $69.91 | $188.50 | KC Title |
| CA-54955* | MM06434472 | $39.95 | $82.50 | KC Title |
| 32696* | MM06266448 | $51.30 | $10.05 | Title Searches Inc |
| 52833 | SV04711020 | $118.80 | $198.00 | Cole County |
| 051436-9436 | SV4718982 | $44.88 | $57.84 | Tri-County |
| MK-06-28697* | SV04638042 | $109.00 | $95.70 | Title Pros |
| 06050461 | SB0046981 | $251.87 | $75.57 | OR KC |
| 06050461* | MM00046988 | $7.50 | $3.00 | OR KC |
| 06080049 | MM00047683 | $150.00 | $45.00 | OR KC |
| 06050339 | SB0046583 | $400.00 | $135.50 | OR KC |
| 06050339* | MM0046583 | $7.50 | $3.00 | OR KC |
| 05110458 | SB00043874 | $351.00 | $58.75 | OR KC |
| 05110458* | LTSF00042072 | $7.50 | $3.00 | OR KC |
| 06080259 | MM00047087 | 410.90 | 152.46 | OR KC |
| 06110251 | LTSF00049528 | $335.20 | $100.74 | OR KC |

| File No. | Policy | Amount Listed on Policy | Filed Risk Rate | Agent |
|---|---|---|---|---|
| 06110401 | LTSF00050420 | $323.56 | $96.58 | OR KC |
| 07040486 | LTSF00051728 | $192.50 | $57.75 | OR KC |
| 07010199 | LTSF00050806 | $162.50 | $48.75 | OR KC |

**RESPONSE:**

Old Republic admits that it reported an incorrect risk rate in thirty-four (34) of the thirty-seven (37) above-referenced files. Old Republic denies incorrect reporting in three (3) file involving reinsurance. In its defense, Old Republic points out that in numerous instances, the Examiner also calculated the incorrect risk rate of the policy, evidence of the difficulty of calculating the proper risk rate. Moreover, in those instances where the risk rate calculated by Old Republic was greater than the correct risk rate, it did not result in an overcharge to the consumer, but instead only an increase in premium taxes paid by Old Republic. The "risk rate" is simply a portion of the total charges to the consumer. The amount ultimately calculated as the risk rate does not affect the total charges to the consumer, therefore, an incorrect calculation of risk rate in no way negatively impacts the consumer. See also, Old Republic's Responses to Formal Criticisms T16, T20, T22, T27, T29, T32, J20, J26, J46, J25, J29, T35, T47, J93, T56, T57, T59, T60, T60, T63, T64, T65, and T66 attached hereto.

Response To Formal Criticism No. J20

The formal criticism alleges three different violations and Old Republic's responses to them are stated below.

(A) It is alleged that the risk rate was charged incorrectly. This is admitted, although it should be pointed out that this did not result in an overcharge of the insured, but did result in an overpayment of taxes.

Response To Formal Criticism No. J26

(A) The formal criticism first alleges that the risk rate was improperly calculated. This is admitted.

Response To Formal Criticism No. J46

(A) The formal criticism first alleges that Old Republic's agent showed an incorrect risk rate for the subject transaction. That allegation is admitted.

## Response To Formal Criticism No. J25

(B) Admitted.

(B) The formal criticism next alleges that the risk rate was reported incorrectly. Once again, we disagree with the examiner's calculations. This shows the difficulty of these calculations, especially when made under stress.. However, it is correct that the reported risk rates were incorrect. They should have been $167.30 and $20.79.

Response to T35:

The agent's file contains a previous owner's policy in the amount of $104,900.00. Pursuant to Filed Rate Manual B Section (3)(a) the reissue risk rate will apply for the owner's insurance in an amount up to the face of such former policy.

The risk rate was properly calculated as follows:

(50 * .84 = 42) + (50 * .72 = 36) + (5 * .48 = 2.4) + (46 * .8 = 36.8) = $117.20

Agent did report a risk rate of $88.33.

Agree.

Response To Formal Criticism No. T47

The formal criticism alleges that Old Republic's agent reported the risk rate incorrectly. The risk rate was reported as $121.52 and the examiner states that the correct rate was $161.42. Old Republic disagrees with this criticism since the examiner has ignored the evidence that a reissue rate was applicable to this transaction and the rate was properly calculated.

The agent's file contains a declaration page for the owner's and lender's policies which states:

**Old Policy Information**

| | |
|---|---|
| Prior Policy Number | MM2672971 |
| Prior Policy Year | 1997 |
| Reissue Liability | $76,000.00 |
| Reissue Credit | $101.20 |

Pursuant to Filed Rate Manual B Section (3)(c) the reissue risk rate will apply up to the amount of the balance due on the mortgage insured under the outstanding mortgage policy.

Risk rate was properly calculated as follows:

(50 * .84 = 42) + (26 * .72 = 18.72) + (24 * 1.2 = 28.80) + (40 * .8 = 32) = $121.52

Therefore, we disagree with the criticism and deny that there was any error made by the agent. Old Republic is disappointed to have to respond to a criticism such as this where a thorough review of the file would have shown the examiner that the rate was properly calculated.

***EXAM FINDING #11***

*In the following files, the agency agreement between the underwriter and the agent, Title Pros, specifies that the agency is to pay the company 15% of the total amount of its charges for each policy issued. The agency's total charges for issuance of the policy include, but are not the same as, the risk rate filed with the Department. The risk rate filed with the Department is to include any commission paid to the agent for the issuance of the policy. The underwriter must charge the risk rate filed with the DIFP. In these instances, the amount charged as the risk rate was not the same as that filed with the DIFP.*

*Reference: Section 381.181, RSMo, and 20 CSR 500-7.100*

| File No | Amount Remitted to Company | Premium calculated with Filed Risk Rate |
|---|---|---|
| MK0628697 | 14.25 | 3.00 |
| KD0629455 | 14.25 | 3.00 |
| MK0739162 | 91.20 | |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.181 or 20 CSR 500-7.100. The total charges upon which the commission is based include both the risk rate and other charges. The Examiner assumes that the commission is based on the risk rate alone, but that is not the case. The Examiner has made no allegation that the incorrect risk rate was charged to the consumer. Therefore, Old Republic has not committed any statutory or regulatory violations. Furthermore, the foregoing allegations were adequately responded to and refuted in Old Republic's Responses to Formal Criticisms J88, J92, and J96 attached hereto.

Response To Formal Criticism No. J88

The formal criticism states that Old Republic's agent is to pay Old Republic 15% of the total amount of its charges for each policy issued per our agency agreement. These charges include, but are not generally the sames as, the risk rate. The risk rate filed with the Director is to include a commission paid to the agent for policy issuance. The examiner states the underwriter must charge the risk rate filed with the director, then states that the agent's calculation showed that it was going to pay the underwriter too much for the loan policy. The examiner claims this violates a statute and regulation.

Old Republic denies that it or its agent violated any statute or regulation. Mo.Rev.Stat. 381.181 requires title insurers to file premium schedules and use only those rates filed with the director. The examiner never alleges that anything but the filed rate was charged to the consumer. The agent's calculation as to what they had to remit was based on 15% of the total amount of the charges for the policy, per the agency agreement, which includes the risk rate and other charges. As long as the risk rate used was correct, there is no statutory violation. In this case, there is no allegation that the wrong rate was charged to the consumer. The examiner states the underwriter must charge the filed rate and that is what the consumer paid.

Similarly, 20 CSR 500-7.100 discusses the filing and use of title insurance risk rates. Again, there is no proof or allegation that the wrong rate was used and the statute and regulation cited herein say nothing about how agency agreements should structure remittances. Old Republic does not understand how either the statute or regulation could have been violated according to the facts alleged by the examiner.

There is one other issue and that revolves around the examiner's statement that "The underwriter is obliged to charge as its premium for the policy the risk rate filed with the Director." This seems to suggest that the underwriter must collect the entire risk rate from the agent. While every underwriter in the State of Missouri would be pleased if that was the law, it clearly is not.

For these reasons, Old Republic denies the allegations of the criticism.

Response To Formal Criticism No. J92

The formal criticism states that Old Republic's agent is to pay Old Republic 15% of the total amount of its charges for each policy issued per our agency agreement. These charges include, but are not generally the sames as, the risk rate. The risk rate filed with the Director is to include a commission paid to the agent for policy issuance. The examiner states the underwriter must charge the risk rate filed with the director, then states that the agent's calculation showed that it was going to pay the underwriter too much for the loan policy. The examiner claims this violates a statute and regulation.

Old Republic denies that it or its agent violated any statute or regulation. Mo.Rev.Stat. 381.181 requires title insurers to file premium schedules and use only those rates filed with the director. The examiner never alleges that anything but the filed rate was charged to the consumer. The agent's calculation as to what they had to remit was based on 15% of the total amount of the charges for the policy, per the agency agreement, which includes the risk rate and other charges. As long as the risk rate used was correct, there is no statutory violation. In this case, there is no allegation that the wrong rate was charged to the consumer. The examiner states the underwriter must charge the filed rate and that is what the consumer paid.

The examiner is incorrect, however, that the risk rate was $3.00 for the simultaneous loan file. Since the amount of the loan policy exceeded the amount of the owner's policy, the risk rate was actually $20.25. The $14.25 remitted to Old Republic (15% of the total charge for the policy of $95.00) does not exceed the risk rate for the loan, which the examiner seems to think is important. In any case, the statute is not implicated.

Similarly, 20 CSR 500-7.100 discusses the filing and use of title insurance risk rates. Again, there is no proof or allegation that the wrong rate was charged to the consumer and the statute and regulation cited herein say nothing about how agency agreements should structure remittances. Old Republic does not understand how either the statute or regulation could have been violated according to the facts alleged by the examiner.

There is one other issue and that revolves around the examiner's statement that "The underwriter is obliged to charge as its premium for the policy the risk rate filed with the Director." This seems to suggest that the underwriter must collect the entire risk rate from the agent. While every underwriter in the State of Missouri would be pleased if that was the law, it clearly is not.

For these reasons, Old Republic denies the allegations of the criticism.

Response To Formal Criticism No. J96

The formal criticism states that Old Republic's agent is to pay Old Republic 15% of the total amount of its charges for each policy issued per our agency agreement. These charges include, but are not generally the sames as, the risk rate. The risk rate filed with the Director is to include a commission paid to the agent for policy issuance. The examiner states the underwriter must charge the risk rate filed with the director, but fails to explain how that did not happen in this transaction or why he believes it did not happen. However, the examiner claims a statute and regulation were violated.

Old Republic denies that it or its agent violated any statute or regulation. Mo.Rev.Stat. 381.181 requires title insurers to file premium schedules and use only those rates filed with the director. The examiner never alleges that anything but the filed rate was charged to the consumer. The agent's calculation as to what they had to remit was based on 15% of the total amount of the charges for the policy, per the agency agreement, which includes the risk rate and other charges. As long as the risk rate used was correct, there is no statutory violation. In this case, there is no allegation that the wrong rate was charged to the consumer. The examiner states the underwriter must charge the filed rate and that is what the consumer paid.

Similarly, 20 CSR 500-7.100 discusses the filing and use of title insurance risk rates. Again, there is no proof or allegation that the wrong rate was used and the statute and regulation cited herein say nothing about how agency agreements should structure remittances. Old Republic does not understand how either the statute or regulation could have been violated according to the facts alleged by the examiner.

There is one other issue and that revolves around the examiner's statement that "The underwriter is obliged to charge as its premium for the policy the risk rate filed with the Director." This seems to suggest that the underwriter must collect the entire risk rate from the agent. While every underwriter in the State of Missouri would be pleased if that was the law, it clearly is not.

For these reasons, Old Republic denies the allegations of the criticism.

*c. Total Charges*

***EXAM FINDING #12***

*No policy, standard form endorsement, or simultaneous instrument which provides title insurance coverage shall be issued unless it contains the total amount paid for the issuance of the policy and the risk rate. Charges include, but are not limited to, fees for document preparation, fees for the handling of escrows, settlements or closing. In the following 24 files, the agency's charges listed on the policy were different from the correct charges as defined by statute.*

*Reference: Sections 381.181, 381.031.4 &14, RSMo, and 20 CSR 500-7.100(3)(B), 20 CSR 500-7.100(1)(B)*

| File No. | Policy | Total Charges on Policy | Correct Total Charges | Agent |
|---|---|---|---|---|
| 5889777* | MPMM06499791 | $330.70 | $420.70 | Home Connects |
| 5865059 | MPMM08084 | Not Shown | $389.50 | Chesapeake |
| 20118413 | MPMM08098692 | Not Shown | $419.50 | Nationwide |
| CL-64631* | MPMM06625396 | $500.00 | $225.00 | KC Title |
| 32696* | OPSV04293418<br>MPMM06266448 | $150.00<br>$150.00 | $125.00<br>$25.00 | Title Searches |
| CA54955* | MPMM6434305 | $470.00 | $215.00 | KC Title |
| JA61478* | MPMM6435036<br>MPMM06435037 | $470.00<br>$125.00 | $215.00<br>$0 | KC Title |
| PL55679* | OPSV04673617<br>MPMM06419184 | $591.00<br>$470.00 | $441.00<br>$215.00 | KC Title |
| PL46789 | OPSV04569300 | $495.00 | $345.00 | KC Title |
| CA45114 | MPMM06240606<br>OPSV04537971 | $460.00 | $205.00 | KC Title |
| CL60135 | OPSV04675898<br>MPMM06434697 | $495.00<br>$470.00 | $345.00<br>$215.00 | KC Title |
| CL53981 | OPSV04673770<br>MPMM06419231 | $831.00 | $681.00 | KC Title |
| CL55164 | MPMM06418851<br>OPSV04632546 | $470.00 | $215.00 | KC Title |
| CL45275 | OPSV04537619<br>MPMM06240788 | $539.00<br>$460.00 | $389.00<br>$205.00 | KC Title |
| CL49903 | OPSV04592166<br>MPMM06324345 | $777.00<br>$310.00 | $447.00<br>$205.00 | KC Title |
| JA55433 | OPSV04673579<br>MPMM06418830 | $735.00<br>$470.00 | $405.00<br>$215.00 | KC Title |
| | | Total | Correct | |

| *File No.* | *Policy* | *Charges on Policy* | *Total Charges* | *Agent* |
|---|---|---|---|---|
| *JA59837* | *OPSV04675714*<br>*MPMM06434379* | *$615.00*<br>*$470.00* | *$465.00*<br>*$215.00* | *KC Title* |
| *KC50758* | *OPSV04630691*<br>*MPMM06360333* | *$495.00*<br>*$470.00* | *$345.00*<br>*$215.00* | *KC Title* |
| *JA62938* | *OPSV04756165* | *$681.00* | *$531.00* | *KC Title* |
| *IN44716* | *OPSV04537589* | *$609.00* | *$459.00* | *KC Title* |
| *IN50722* | *OPSV04630766*<br>*MPMM06360466* | *$651.00*<br>*$460.00* | *$501.00*<br>*$205.00* | *KC Title* |
| *IN51906* | *MPMM06417660* | *$470.00* | *$215.00* | *KC Title* |
| *IN53817* | *OPSV04632461*<br>*MPMM06418451* | *$555.00*<br>*$470.00* | *$405.00*<br>*$215.00* | *KC Title* |

**RESPONSE:**

Old Republic admits that in two (2) instances, the total charges and risk rates for the policies were not included thereon. In one (1) instance, Old Republic was advised that a title search fee was overstated on the HUD-1. With regard to the remaining twenty-one (21) files cited by the Examiner in which it is alleged that "the agency's charges listed on the policy were different from the correct charges as defined by statute," Old Republic disputes that it violated Mo.Rev.Stat. § 381.181 or 20 CSR 500-7.100(3)(B).

Mo.Rev.Stat. §§ 381.181 concerns the filing of premium schedules with the Department and proper charges to consumers. There is no allegation that Old Republic charged the improper premium in any of the cited files. With regard to "correct charges as defined by statute," Mo.Rev.Stat. § 381.031(4) defines a "charge" as "any fee billed by a title agent, agency or title insurer for the performance of services other than fees that fall within the definition of premium in this section..." Subsection (14) of the statute defines "premium" as "risk rates charged to the insured." Finally, 20 CSR 500-7.100(3)(B) provides that "[n]o policy . . . which provides title insurance coverage shall be issued unless it contains . . . total amount to be paid for the issuance of the policy . . . and risk rate for the policy." Charges and "total amount to be paid for the issuance of the policy" are not synonymous, as the Examiner asserts. Therefore, there has been no violation of 20 CSR 500-7.100(3)(B). Old Republic has not committed any statutory or regulatory violations. Furthermore, the foregoing allegations were adequately responded to and refuted in Old Republic's Responses to Formal Criticisms J37, J39, J67, J52, J56, J57, J77, J66, J81, J82, J63, J64, J60, J61, J73, J74, J75, J78, J79, J68, J69, J70, and J71 attached hereto.

## Response To Formal Criticism No. J37

The formal criticism alleges that Old Republic's agent, Chesapeake Appraisal and Settlement Services, issued a loan policy without showing the risk rate for he for the policy or the total amount charged. This is said to violate 20 CSR 500-7.100(3)(B).

The agent was unable to provide us with information regarding the risk rate, but clearly any violation should be attributed to the agent and not to Old Republic. There is no allegation that an incorrect rate was charged, in any event.

## Response To Formal Criticism No. J39

The formal criticism alleges that Old Republic's agent issued a policy which does not reflect the r rate premium charged and does not reflect the total amount charged for issuance of the policy. Admitted.

## Response To Formal Criticism No. J67

The examiner also alleges that the loan policy issued showed a "total charge" of $500.00. The examiner stated in other criticisms, but does not do so here, that the agent included the escrow closing fee in calculating the total amount charged for the policy. Old Republic denies that its agent violated either the statute or regulation referenced.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. This statute is not applicable to the question of whether the "total amount charged" was properly shown on the policy. Rather, it is related to the question posed in Section B of the criticism only. Thus, Old Republic's agent did not violate the aforesaid statute with regard to showing the proper total amount charged.

Next, 20 CSR 500-7.100(3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee (as was done here) as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this part of the criticism.

Response To Formal Criticism No. J56

A) The examiner first alleges that the first loan policy issued showed a "total charge" which included the escrow closing fee. He then states that the second mortgage policy showed a total charge of $75.00, but states that the actual "total amount charged for the policy" was $0.00. The examiner believes the agent included the escrow closing fee in calculating the total amount charged on the second loan policy, as well. Old Republic denies that its agent violated either the statute or regulation referenced.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. This statute is not applicable to the question of whether the "total amount charged" was properly shown on the policy. Rather, it is related to the question posed in Section B of the criticism only. Thus, Old Republic's agent did not violate the aforesaid statute with regard to showing the proper total amount charged.

Next, 20 CSR 500-7.100(3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee (as was done on the first loan) as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In addition, on this particular file, the examiner is mistaken with regard to the "total amount" paid for the issuance of the second loan policy on the HUD-1. The Statement of Settlement Fees (see attached) shows a charge of $75.00 for the policy on Line 1109, which is the proper line for showing title charges. Despite what the examiner asserts, there was no closing fee charged for the second mortgage transaction.

In light of the foregoing, Old Republic denies the allegations of the first part of the criticism.

B. Next, the examiner cites the same statute and regulation and states that the risk rate for the first loan policy was $188.50, although the policy itself only shows a risk rate of $69.91. The examiner is correct that the risk rate was shown incorrectly. He also states that the risk rate for the second loan policy was $82.50, not $39.95 as shown on the policy. Furthermore, he maintains, as mentioned earlier, that $0.00 was the total amount charged for the policy and the total amount does not include the risk rate. The examiner is incorrect in this case. The proper risk rate for a second mortgage is 70% of the normal risk rate, meaning that the correct risk rate was $57.75. Both the examiner and the agent were off in their calculations. However, since $75.00 was the total amount charged, it DID include the amount of the risk rate. Although the risk rates were incorrectly shown, this did not result in an overcharge to the consumer. The only effect was that Old Republic overpaid premium taxes on the transaction as a whole.

## Response To Formal Criticism No. J57

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the mortgage policy showed a "total charge of $460.00," while the actual "total amount charged for the policy was $205.00." The examiner notes that the agent included the escrow closing fee of $255 in calculating the total amount charged. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

Response To Formal Criticism No. J77

A) The examiner first alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on the second loan policy, but does not repeat that statement as to the first loan policy, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. This statute is not applicable to the question of whether the total amount charged was properly shown on the policy. Rather, it is related to the question posed in Section B of the criticism only. Thus, Old Republic's agent did not violate the aforesaid statute with regard to showing the proper total amount charged.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In addition, on this particular file, it appears that the closer failed to break down the "total amount" paid for the issuance of the second loan policy on the HUD-1. The examiner assumes that the risk rate was not collected. However, the risk rate was part of that total charge of $125.00 that was listed on the HUD-1 as the settlement or closing fee. A portion of this fee should have been shown as the cost for lender's coverage. While the failure to breakdown the amount was incorrect, the total amount WAS shown on the policy and the statute and regulation cited were not violated.

In light of the foregoing, Old Republic denies the allegations of the first part of the criticism.

B. Next, the examiner cites the same statute and regulation and states that the risk rate for the second loan policy was $30.60, not $23.80 as shown on the policy. The examiner is incorrect as to the risk rate. The proper risk rate for a second mortgage is 70% of the normal risk rate, meaning that the correct risk rate was $21.42. Both the examiner and the agent were off in their calculations. Therefore, this part of the criticism is admitted. Although the risk rate was incorrect, this did not result in an overcharge to the consumer. The only effect was that Old Republic overpaid premium taxes.

## Response To Formal Criticism No. J66

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J81

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J82

A) The examiner alleges that the owners and loan policies issued each showed an incorrect "total charge." Although he doesn't mention it in this criticism, he did say in other criticisms that the total amount charged included the escrow closing fee. The examiner lists a statute and a regulation as having been violated as a result of this alleged activity. Old Republic denies that its agent violated either the statute or regulation referenced.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. This statute is not applicable to the question of whether the "total amount charged" was properly shown on the policy. Rather, it is related to the question posed in Section B of the criticism only. Thus, Old Republic's agent did not violate the aforesaid statute with regard to showing the proper total amount charged.

Next, 20 CSR 500-7.100(3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee (as was done here) as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of the first part of the criticism.

B. Next, the examiner cites the same statute and regulation and states that the risk rate for the owner's policy was $151.68 due to a reissue discount, while the policy itself shows a risk rate of $197.68. The examiner is correct that the risk rate was shown incorrectly. The discount was given to the customer, although the risk rate was incorrectly shown on the policy. Thus, the only effect was that Old Republic overpaid premium taxes on the transaction as a whole.

## Response To Formal Criticism No. J63

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J64

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J60

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

Response To Formal Criticism No. J61

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J73

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J74

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J75

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J78

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

Response To Formal Criticism No. J79

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J68

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J69

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

Response To Formal Criticism No. J70

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J71

The examiner alleges violations of 381.181 RSMo and 20 CSR 500-7.100. Specifically, the examiner complains that the issued policy or policies showed a "total charge" in excess of the "total amount charged for the policy." The examiner noted that the agent included the escrow closing fee in calculating the total amount charged on a previous criticism, but does not repeat that statement here, although that is what occurred. Old Republic denies that its agent violated either of the referenced sections.

First, 381.181 RSMo requires that title insurers file premium schedules with the department and that they only collect premiums in accordance with what has been filed. Yet, there is no allegation made by the examiner that Old Republic failed to file rates or that it charged a premium that was not filed. Rather, the sole allegation is that the "total charge" or "total amount charged" **shown on the policy** was incorrect. Old Republic's agent did not charge an amount that was unfiled. In fact, the examiner acknowledges that the cost of the closing was added to the cost of the policy and that is what was shown. Thus, Old Republic's agent did not violate the aforesaid statute.

Next, 20 CSR 500-7.100 (3)(B)(1) requires that title insurance policies may not be issued unless they contain the "total amount to be paid for the issuance of the policy." However, while the word "charge" is defined in the regulations to include any fee paid "for the performance of title-related services other than the risk rate charged for title insurance," (see 20 CSR 500-7.100 (1)(A)), nowhere is the term "total amount" paid for the issuance of the policy defined. Charges include "fees for abstracts, title search and examination, handling of escrows, settlements or closings." See 20 CSR 500-7.100 (1)(A). Since the total "charge" for title-related services includes, by rule, the cost of the closing, it cannot be contrary to the plain language of the rule for the agent to include the closing fee as part of the "total amount" paid for the issuance of the policy, where that term is not defined separately from the definition of the term "charge" and the terms appear to be used interchangeably by the examiner, as well.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## *EXAM FINDING #13*

*d. Improper Fees*

*In the following file, the company satisfied two mortgages as part of the escrow transaction and collected recording fees of $60.00, for deeds of release. Each of the lenders involved collected release recording fees as a part of the amount collected for satisfaction of the loans. As a result, the consumer paid twice for the recording of the deeds of release.*

*Reference: Section 59.310, RSMo*

| File No | Overcharge | Agent |
|---|---|---|
| 07040825* | $60.00 | OR St L |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 59.310 and that the consumer paid twice for the recording of the Deeds of Release. The Examiner assumes that the fees charged by Beneficial to the consumer for Reconveyance/Releasing Fees were for the recording of the releases; however, the title company is responsible for such recordings. The fees charged by Beneficial were service fees for the preparation of the satisfactions. Such preparation fees do not implicate the referenced statute. Therefore, Old Republic has not committed any statutory violation. Furthermore, the foregoing allegation was adequately responded to and refuted in Old Republic's Response to Formal Criticism J20 attached hereto.

## Response To Formal Criticism No. J20

Two Deeds of Trust were satisfied at the closing and the examiner alleges that Old Republic collected recording fees in excess of the amounts permissible in RSMo 59.310, et seq., in order to record the satisfactions. In part, it is alleged that this was a result of the lenders being paid off collecting recording fees as part of the loan satisfaction amount. The examiner then asks us to provide a copy of the check refunding the "overcharge" along with a copy of the cover letter which must use specified language. We disagree with this analysis and the need for any refund for the following reasons:

With regard to the fees collected by the paid-off lenders, there is a charge on each payoff letter from Beneficial of $27.00 for a "Reconveyance/Releasing Fee." See attached. The examiner assumes that this is a recording charge. However, it is the title company that is responsible for recording the releases, not Beneficial. Furthermore, it has become quite common in the lending industry for lenders whose loans are being satisfied to charge a reconveyance or release fee ***for the work they do to prepare the actual satisfaction***. This has been quite typical for many years now. Thus, these $27.00 fees are not duplicate recording fees, but allowable work charges by Beneficial to recoup their administrative costs for preparing a release document.

The HUD-1 settlement statement (see attached) sets out recording fees as "Recording Service Fees." The fees for recording are for both the actual recording charge ***as well as*** the processing of said recording by Old Republic. The latter includes, but is not limited to, delivery of documents to be recorded to the recorder of deeds, pick-up of documents, and delivery of documents to the insured. The 8th Circuit has issued opinions allowing such "service fees." Thus, it cannot be said that Old Republic charged more to the consumer for actual recording charges than is permitted under the statute cited. For these reasons, there is no recording fee overcharge.

***EXAM FINDING #14***

*The company satisfied a mortgage as part of the escrow transactions and collected a recording fee of $28.00 for a deed of release, even though the lender involved had already collected the release recording fee as a part of the amount collected for satisfaction of the loan.*

*Reference Section 59.310, RSMo*

| *File No* | *Overcharge* | *Agent* |
|---|---|---|
| *07010538** | *$28.00* | *OR St L* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 59.310 and that the consumer paid twice for the recording of the Deed of Release. The Examiner assumes that the $28.00 fee charged by Citifinancial to the consumer for a "Release Fee" was for the recording of the release; however, the title company is responsible for such recording. The fee charged by Citifinancial was a service fees for the preparation of the satisfaction. Such preparation fees do not implicate the referenced statute. Therefore, Old Republic has not committed any statutory violation. Furthermore, the foregoing allegation was adequately responded to and refuted in Old Republic's Response to Formal Criticism J4620 attached hereto.

Next, the formal criticism alleges that a Deed of Trust was satisfied as part of the closing transaction and that Old Republic's agent collected a recording fee of $28.00. The examiner states that the lender also collected a release recording fee as part of the amount collected for satisfaction of the loan. The examiner then asks Old Republic to provide a copy of the check refunding the "overcharge" along with a copy of the cover letter which must use specified language. Old Republic disagrees with this analysis and the need for any refund for the following reasons:

With regard to the fees collected by the paid-off lender, there is a charge on the payoff letter from Citifinancial of $27.00 for a "Release Fee." See attached. The examiner assumes that this is a recording charge. However, it is the title company that is responsible for recording the release, not Citifinancial. Furthermore, it has become quite common in the lending industry for lenders whose loans are being satisfied to charge a reconveyance or release fee ***for the work they do to prepare the actual satisfaction.*** This has been quite typical for many years now. Thus, these $27.00 fees are not duplicate recording fees, but allowable work charges by Citifinancial to recoup their administrative costs for preparing a release document.

The HUD-1 settlement statement (see attached) sets out recording fees as "Recording Service Fees." The fees for recording are for both the actual recording charge ***as well as*** the processing of said recording by Old Republic. The latter includes, but is not limited to, delivery of documents to be recorded to the recorder of deeds, pick-up of documents, and delivery of documents to the insured. The 8th Circuit has issued opinions allowing such "service fees." Thus, it cannot be said that the agent charged more to the consumer for actual recording charges than is permitted under the statute cited. For these reasons, there is no recording fee overcharge.

In light of the foregoing, Old Republic denies the allegations of this portion of the criticism.

## ***EXAM FINDING #15***

*In the following file, the agent, who is not an attorney, charged a fee for deed preparation. Only attorneys may charge fees for deed preparation in Missouri.*

*Reference: Eisel v. Midwest Bankcentre, 230 S.W.3d 335, (Mo., 2007)*

| *File No* | *Agent* |
|---|---|
| *20118413** | *Nationwide appraisal Services* |

**RESPONSE:**

Old Republic admits that the agent, who was not an attorney, charged a fee for deed preparation, contrary to *Eisel v. Midwest Bankcentre*, 230 S.W.3d 335 (Mo. 2007). In its defense, Old Republic states that the referenced decision was handed down August 21, 2007, and the agent has indicated that it was unaware of the decision at the time of the transaction, only a few months later. See also, Old Republic's Response to Formal Criticism J41 attached hereto.

Response To Formal Criticism No. J41

The formal criticism first alleges that the agent charged a fee for deed preparation. According to the examiner, who cites a Supreme Court case dated August 21, 2007, only attorneys may charge fees for deed preparation in Missouri. The agent states they were unaware of this caselaw at the time of the transaction. Admit.

*e. Miscellaneous*

***EXAM FINDING #16***

*The policy in the following file contains an exception which states "Terms, conditions, easements, restrictions and other criteria as shown on the Plat referred to in Schedule A hereof." There is no chain of title from any source in the file. There is no indication that the agent examined the plat of the subdivision. The description of the land indicates that the property is within a subdivision that is part of a larger development. The contract to sell the property included acknowledgement by the seller that the property was affected by subdivision restrictions and the authority of trustees to levy assessments. The agent verified that the property is subject to annual trustee assessments of $100.00 and adjusted for the assessments at closing. The agent failed to identify or recite the separate recorded instruments establishing regulations for use of the property within the subdivision and authorizing the levy of periodic assessments. The agent omitted known exceptions to title. It is not sound underwriting to omit exceptions for a known matter.*

*Reference: Sections 381.071.1(2), and 2, RSMo*

| *File No.* | *Agent* |
|---|---|
| *KDR-06-29455** | *Title Pros* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1) and (2) by failing to make a determination of insurability of title in accordance with sound underwriting practices or knowingly issuing a title policy without showing all outstanding recorded liens or other interests. The Examiner, in making such allegations, engaged in assumption and speculation unsupported by the facts and circumstances of the underlying transaction. The foregoing allegations were adequately responded to and refuted in Old Republic's Response to Formal Criticism J85 attached hereto.

Response To Formal Criticism No. J85

The formal criticism states that Old Republic's agent engaged in unsound underwriting practices. The first allegation is that the agent used an exception reading "Terms, conditions, easement, restrictions, and other criteria as shown on the Plat referred to in Schedule A hereof." The examiner states that the file contains no chain of title and that there is no indication that the agent examined the plat of subdivision. The examiner believes the subdivision is within a larger development and there are "likely a series of plats containing easements and other provisions affecting the interests insured but only one such plat is referenced." Lastly, the contract of sale included an acknowledgment by the seller that the property was affected by subdivision restrictions and authority of trustees to levy assessments. The agent verified a $100 per year assessment, but failed to identify or recite the recorded instruments establishing said restrictions or authorizing periodic assessments. The examiner concludes that the agent omitted known exceptions to title.

Mo.Rev.Stat. 381.071 provides, in relevant part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.
>
> 2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. Old Republic is confident that others in the title insurance industry would agree that sound underwriting practices were used in this transaction.

First, with regard to the chain of title, it could have been lost in the imaging process or when the agent's server "crashed." A chain of title is always examined when the agent prepares a commitment. The presence in the file of a commitment worksheet, check out sheet and copies of deeds all indicate that a chain of title must have been reviewed and examined. These items are sufficient evidence retained in the file to prove compliance with 381.071.1.2. There is nothing in the statute that requires the chain itself to be retained in the file. At most, the absence of the actual chain in the file was an oversight and not the usual practice of the agent. It certainly was not a violation of the statute cited.

Next, with regard to the review of the plat, the examiner is engaged in speculation. He states that, based on his reading of the legal description, "there are likely a series of plats" containing easements and other restrictions, but only one plat is referenced. The legal description (see policy attached) reads as follows: "Lot 212 of The Crossing Village 'C' Plat One, a subdivision in St. Charles County, Missouri, according to the plat thereof recorded in Plat Book 36 Pages 130-131 of the St. Charles County Records." Looking at this legal description, the examiner really can have no idea whether other plats exist or whether such plats would affect this property. It's possible there may be a series of plats, each one being its own subdivision. Or, there could have been an intent, never followed up, to file other plats affecting other property. The legal description gives no indication of any larger plat encompassing this and other subdivisions. In fact, there was not an underlying plat – the property was platted out of acreage. Plat Book 36, pages 100-101 is the only plat filed on the property and therefore proper exception was made pursuant to Special Exception #4 and there are no other plats in existence to add as an exception.

Lastly, with regard to the subdivision restrictions and assessments, the statute says no agent "shall knowingly issue any owner's title insurance policy or commitment to insure without showing all

outstanding, enforceable recorded liens or other interests against the title which is to be insured." There is no evidence given by the examiner that the agent failed to comply with the statute. The facts are that a special exception is included for the assessment which is said to be levied by the trustees of the subdivision. Another exception discusses the restrictions in the plat. The plat itself is a plat of the subdivision. It seems that by specific reference to the plat and subdivision in the special exceptions, the agent covered the necessary ground to describe the plat of subdivision as both the source of the restrictions and the assessment. Therefore, Old Republic maintains that this part of the allegations is also incorrect.

Thus, it is Old Republic's position that in all the matters alleged by the examiner, the agent did, in fact, use sound underwriting practices. In addition, there were no known and recorded matters affecting the property which the agent failed to except from title. For these reasons, Old Republic denies the allegations of the criticism.

***EXAM FINDING #17***

*Schedule B-I of the following policy includes an exception for community property, dower, courtesy, survivorship, or homestead rights "of any spouse of the parties herein." Missouri is not a community property state and, dower and courtesy have not existed in Missouri since 1956. The vested owner is a tenancy by the entirety, of which both members are named as grantors in and executed the deed of trust. In the context of the policy the phrase "parties herein" as used in the exception is confusing. The exception is not appropriate.*

*Schedule B-I of the policy contains the following exception: "This policy specifically excepts any loss or damage the insured may sustain arising from the type of tenancy as stated herein, or as said tenancy may actually be stated in the public records." A loss might arise by reason of an incorrect interpretation of the effects of a particular tenancy but would not arise from the "type" of tenancy. This exception is confusing, is not based on the state of the title itself, and is not specific to the transaction.*

*It is not sound underwriting to include exceptions in the policy that are not clear and specific.*

*Reference: Section 381.071.1(2), RSMo.*

| *File No.* | *Policy No.* | *Agent* | *Criticism* | *UW Exhibit* |
|---|---|---|---|---|
| *20118413** | *MM08098692* | *Nationwide* | *J41* | *J15* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1) by drafting exceptions that were inappropriate, not clear or specific. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J41, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violation.

Response To Formal Criticism No. J41

The formal criticism next discusses two exceptions in Schedule B-1 of the policy. The first covered community property, dower, courtesy, survivorship, or homestead rights "of any spouse of the parties herein." The examiner states that Missouri is not a community property state and that dower and courtesy were outlawed in 1956. The ownership was held in tenancy by the entireties and both members executed the deed of trust as grantors. The examiner does not understand the meaning of the phrase "parties herein" as used in the exception and alleges the exception is not appropriate.

Another exception discussed by the examiner reads: "This policy specifically excepts any loss or damage the insured may sustain arising from the type of tenancy as stated herein, or as said tenancy may actually be stated in the public records." The examiner believes a loss could arise by reason of an incorrect interpretation of the effects of a particular tenancy, but would not arise "from the type of tenancy." "The examiner is unable to discern the meaning of the exception." He states that the exception does not appear to be based on the state of the title itself and does not appear to be transaction related. He alleges it is inappropriate. According to the examiner, it is not a sound underwriting practice to draft exceptions that are not clear and specific. It is alleged that this is a violation of 381.071.1.2 RSMo. Old Republic disagrees with these conclusions.

Mo.Rev.Stat. 381.071 provides, in part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. It is incorrect to say that the determination of insurability was not made through the use of sound underwriting practices. The determination of insurability involved quite a bit more than these two exceptions. To ignore the searches, the exams and all the other underwriting that went into insuring the subject transaction is unreasonable and inequitable.

However, even if we focus on the two exceptions at issue, there is no evidence that the agent failed to use sound underwriting practices. The first exception noted by the examiner is a general, standard exception used by the agent nationally. Some of the concepts it mentions are present in Missouri and some are not. The inclusion of such concepts as community property and dower and courtesy which have no legal effect in Missouri do not put the insurance company at greater risk of loss, nor do they adversely affect any rights of the insureds. There is no harm resulting from the use of such a general exception whatsoever. Given these circumstances, calling the use of this general exception "unsound" seems to be without foundation.

Similarly, with regard to the ownership of the property, the examiner states that "(t)he vested owner is a tenancy by the entireties, of which both members are named as grantors in and executed the deed of trust." Technically, the owner of the property is the entireties itself. The examiner also says he doesn't understand the use of the phrase "of any spouse of the parties herein" in conjunction with the exception discussed in the preceding paragraph and says the exception is "not appropriate." Without doubt, the "parties herein" refers to the married parties who compose the entireties. The married owners, who by definition are spouses, have rights in the property, including survivorship and homestead rights as set forth in the exception, which might affect the interest of the lender. Therefore, Old Republic believes it is highly appropriate to take

exception in a loan policy for the marital rights of the owners of the policy. This is true whether they hold title as tenants by the entireties or by any other means.

As for the language of the second exception, it does not appear to be inappropriate either. It may not be the most artfully drawn exception, but the meaning appears clear enough to understand. A review of the criticism leads us to believe that the examiner understands the basic point of the exception, but might have lost track of the actual language used therein.

The examiner states that a loss might arise by reason of an incorrect interpretation of the effects of a particular tenancy but would not arise from the type of tenancy. He is correct in the first portion of this statement and has properly identified the reason for the exception. However, the second part of the statement is where he forgot the actual wording used by the agent. The exception does not address loss "from the type of tenancy," as the examiner says, but "**from the type of tenancy *as stated herein*, or as said tenancy *may actually be stated in the public records*.**" (Emphasis added). In other words, as the examiner initially noted, someone might incorrectly interpret what the tenancy is. The exception lets the insured know that should that happen, the policy does not cover any loss having to do with how that tenancy is described in the policy or in the public records. This is a perfectly reasonable exception for the agent to use.

Based on the facts described, Old Republic denies the allegations of this portion of the criticism.

## *EXAM FINDING #18*

*The company issued a policy of title insurance without first performing an appropriate search of title and without determining insurability of title in accordance with sound underwriting practices.*

*Reference: Sections 381.071.1(1), and (2), RSMo*

| *File No.* | *Agent* |
|---|---|
| *5575033* | *ATM-Residential Essentials* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1) and (2) by failing to make a determination of insurability of title in accordance with sound underwriting practices. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J33, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

Response To Formal Criticism No. J33

The formal criticism alleges that Old Republic's failed to maintain any evidence of examination of title in the file. He infers from his conclusion that a title policy was issued without first performing an appropriate search of title and without determining insurability in accordance with sound underwriting practices. These issues are said to violate sections 381.071.3, 381.071.1.1 and 381.071.1.2 RSMo. Lastly, the examiner alleges that agent failed to maintain the policy file in a manner permitting the examiner to identify an license agent who was involved in the transaction. This is said to have violated 20 CSR 300-2.200(1)(A) and 20 CSR 300-2.200(3)(A)1B. Old Republic disagrees with the examiner's conclusions.

Mo.Rev.Stat. 381.071 provides, in part, that a title insurance policy cannot be written without a search of the title being made, as well as a determination of insurability. Evidence of same has to be preserved for 15 years and the evidence can be retained through a process which can reproduce the contents of the original documentation

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. It is incorrect to say that the determination of insurability was not made through the use of sound underwriting practices. The agent uses technology called "EAbstract". This program allows the abstractor providing the search of the property to access the agent's (ATM's) "Vision System" via the internet and enter data. Thus, the data is entered electronically, rather than being provided to the agent on paper. This data automatically populates the search information directly into the specific order and into the appropriate fields for the title commitment. Thus, the search information is provided to the examiner to review and he or she can then revise the information and select what is to appear in the title commitment. The evidence that the information was inputted is attached. Other evidence of the search is within the order or commitment itself, since everything is done electronically. Therefore, it is incorrect to say that a search was not done, a determination of insurability not made and the evidence of these not retained.

With regard to the question of whether the licensed agent could be ascertained by what was in the file, a review of the regulations cited fail to support the examiner's allegations. The licensed agent who was involved in the transaction was Joseph Funtal. His license is attached for review. He is the person who handled Missouri transactions for this agent. The first regulation which supposedly requires that his name be in the file which is mentioned by the examiner is 20 CSR 300-2.200(1)(A). A look at that section shows that it is the definition of the word "application." This is relevant to the second regulation mentioned by the examiner which is 20 CSR 300-2.200(3)(A)1B. This provision states that Missouri policy records shall include a completed application for each contract with a legible means by which an examiner can identify the insurance producer involved in the transaction.

These provisions fit the P&C world to a tee, but they do not fit into the title insurance world. The title agent does not have an "application" as defined in the regulation. An order for title insurance comes in electronically and the order is processed electronically. This is a very different procedure than going to see John Smith, the State Farm agent and filling in his application for insurance. With title insurance, there is no application. Furthermore, the licensed agent does not become involved until it is time for the examination of title and determination of insurability. Because there is no application in the title insurance world, the requirement to produce the "application" and have it contain the agent's name does not apply to our line of insurance. In addition, we have provided you with the name of the licensed agent pursuant to CSR 300-2.200(3)(A)1B and that should be enough to satisfy this regulation.

For the foregoing reasons, Old Republic denies the allegations of the criticism.

## *EXAM FINDING #19*

*The insured owner acquired and held title in its capacity as facilitator in an IRC tax free exchange and in no other capacity. All equitable rights in the property are defined by the exchange documents, at least some of which were supplied to the company. However, the policy includes no exceptions for these matters.*

*The property was subjected to a leasehold interest in favor of the proposed purchaser in the tax free exchange and a copy of the lease was supplied to the company, but the policy contains no exception for this matter. By its terms, the lease is superior to the interests of the lender in the insured deed of trust, but the lease is not shown as an exception in the loan policy.*

*The survey performed for the transaction shows that the property is subject to a building line and to an existing easement, but these matters are not exceptions in the policy. The surveyor likely discovered these matters by review of the recorded plat, but the company made no exception for any matters disclosed by the recorded plat. The company failed to insure in accordance with sound underwriting practices by failing to report all known and recorded matters affecting title when issuing an owner's policy of title insurance.*

*Reference: Sections 381.071.1(2), and 2, RSMo*

| *File No.* | *Agent* |
|---|---|
| *06010179** | *OR St L* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1)(2) and (2) by failing to make a determination of insurability of title in accordance with sound underwriting practices or that it knowingly failed to report all matters affecting title in insuring an owner's policy of title insurance. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J25, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

Response To Formal Criticism No. J25

The formal criticism initially states that the insured owner held title solely in the capacity of a facilitator for a tax free exchange. He states that the equitable rights in the property are defined by the exchange documents but that the policy contains no exceptions for these matters. The examiner also states that the leasehold interest of the proposed purchaser was not excepted in the policy, even though "by its terms the lease is superior to the interests of the lender in the insured deed of trust." Finally the examiner notes that the survey shows a building line and existing easement, but that the policy contains no exceptions for these matters. Overall, it is alleged that the agent failed to determine insurability in accordance with sounds underwriting practices and failed to report all known matters affecting titleas set forth in 381.071.1.2 RSMo and 381.071.2 RSMo. Old Republic disagrees with the examiner's conclusions.

Mo.Rev.Stat. 381.071 provides, in part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.
>
> 2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. It is incorrect to say that the determination of insurability was not made through the use of sound underwriting practices. The following describes how this file was underwritten. Old Republic is confident anyone familiar with the title insurance industry would agree that sound underwriting practices were used in this transaction.

First, the examiner is incorrect that an exception for the exchange documents was required. The commitment is supposed to show those interests recorded in the public land records. Even the statute he cited states that the commitment should show "all ***outstanding, enforceable recorded liens or other interests against the title*** which is to be insured." The Qualified Exchange Accommodation Agreement is an ***unrecorded contract*** between the Exchangers and the Exchange Accommodation Title holder ("EAT"). ***It does not affect the title to the property.*** The agreement does not affect the priority of the insured deed of trust, nor would it be a surprise to any of the parties to the transaction. Furthermore, the EAT is considered the owner of the property for all purposes. It is not the custom to show any exception for the rights of the taxpayer in such a situation.

Next, the examiner is incorrect when he stated that the leasehold interest of the proposed purchaser "is superior to the interests of the lender in the insured deed of trust." Section 13 of the Lease title "**SUBORDINATION**" states:

> This lease shall be fully subordinate to that certain Deed of Trust and Security Agreement in favor of **Andrew V. Mannino, Sr. and Patsye**

**Mannino** dated January 27, 2006 (the "Deed of Trust"). Upon foreclosure of the lien of the Deed of Trust, this Lease shall be extinguished and of no further force and effect.

The "Deed of Trust and Security Agreement in favor of **Andrew V. Mannino, Sr. and Patsye Mannino** dated January 27, 2006" is subordinate to the insured deed of trust. Therefore, the Lease is clearly subordinate to the insured deed of trust, as well.

As to the building line, Missouri courts do not enforce building line violations after the violation has been in place for more than two years. The improvements have been present for greater than two years as evidenced by the Commercial Lease dated January 30, 1989. Therefore there is no reason to take exception for the building line violation on a mortgage policy. The violation WAS excepted on the owner's policy, however. As to the easement, it appears not to have been taken as an exception, as stated by the examiner. This was not the result of any unsound practice however, as it appears to be a simple oversight.

***EXAM FINDING #20***

*The transaction closed in escrow on 2-22-07. The last commitment in the file shows a revision date of 2-22-07 and an effective date of 2-9-07, but the chain of title at time of closing was complete only to 1-29-07. Dating the commitment to a date later than the known date for record title is not a sound underwriting practice.*

*The agent prepared the initial commitment based on minimal title information obtained on 1-30-07 and posted to 1-10-07. The information used in the examination included only the last recorded deed of conveyance, which was recorded in 1970. The company did not examine four earlier deeds of conveyance among members of the same family dating back to at least 1948. The company failed to check for judgments and probate estates under the name of at least one vestee. The search and examination of title were not adequate to assure a proper determination of insurability. Because of the inadequate examination of title, the Company did not examine two adjacent parcels of land included in the sale and did not learn of the death of a vestee more than three years earlier, or of the death of the second vestee more than two years earlier, or of the opening of a probate estate more than one half year earlier.*

*The Company later added the two missing parcels to the commitment to insure but did so in reliance upon information copied from the commitment of another title insurance agency and without confirming the information in that commitment.*

*The Company re-wrote the description of a right of way described as being within the boundaries of the third parcel in this transaction but did so without basis and in a manner that now places the described right of way outside the boundaries of the land.*

*The Company included acreage references in the description of each of the insured parcels. The acreage recitals were not necessary elements to the integrity of the descriptions. Inclusion of the acreage recitals represents an extra hazard and the practices are contrary to the underwriting standards of the Company.*

*The Company failed to determine insurability in accordance with sound underwriting practices.*

*Reference: Sections 381.071.1(2) and 381.412.1, RSMo*

| *File No.* | *Agent* |
|---|---|
| *JEF-07020071** | *OR St. L* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. §§ 381.071.1(2) and 381.412.1. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J24, which said Response is attached hereto and

incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

Response To Formal Criticism No. J24

(A) The formal criticism first discusses the last commitment in the file and alleges that it was revised February 22, 2007 with an effective date of February 9, but that the chain of title was complete only to January 29. The examiner alleges that this was not a sound underwriting practice. The Criticism states that the initial commitment in the file was based on "minimal information" including "only" the last deed of conveyance from 1970. It faults the company for not examining for earlier deeds dating back to 1948. The examiner also states that Old Republic's agent failed to check for judgments and probate estates for one vestee who was deceased. According to the criticism, the search and exam was inadequate to assure a proper determination of insurability. As a result, the examiner claims the agent did not examine two additional parcels or learn of the death of two vestees or the opening of a probate estate for one of them. The examiner admits that the agent later added the two additional parcels, but faults them for relying on the prior commitment of another agency. In addition, the examiner complains that the agent rewrote the description of a right of way "without basis" and in a manner that puts it outside the bounds of the insured property. Lastly, it is said that the agent included acreage references which create an extra hazard and are contrary to the underwriting standards fo the company. Overall, it is alleged that the agent failed to determine insurability in accordance with sounds underwriting practices as set forth in 381.071.1.2 RSMo and 381.071.2 RSMo. Old Republic disagrees with the examiner's conclusions.

Mo.Rev.Stat. 381.071 provides, in part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.
>
> 2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. It is incorrect to say that the determination of insurability was not made through the use of sound underwriting practices. The following describes how this file was underwritten. Old Republic is confident anyone familiar with the title insurance industry would agree that sound underwriting practices were used in this transaction. First, the examiner is incorrect that the chain of title for the last commitment was only complete to January 29. The checkout was updated to February 9, 2007, the effective date of the commitment, per the examiner's notation on the checkout sheet (see attached). "R 2-9" means that the examiner ran the property to February 9 sometime after it was run to January 29. The notation has been circled for your reference.

Next, the examiner admits that the 1970 deed was examined, but complains that other, older deeds should have been reviewed. That deed was recorded 37 years prior to the transaction at issue. 37 years is a very long time in the title insurance world. While title claims have a long tail, it is highly unusual for there to be claims on matters that old. Furthermore, the chain of title on this property was run back to ***1863!!*** The examiner somehow considers this "minimal title information." It is correct that the 1970 deed was the only deed examined, but given the age of that deed and the incredible length of the chain, that procedure was, without question, the practice of sound underwriting. Arguably, it went beyond that standard. ***The statute cited by the examiner requires "sound underwriting practices." It doesn't require that the search go back to government patent or even that it go back 60 years to review older deeds.*** There is a place at which going further and further back becomes an irrational and wasteful practice. Such practices would result in premiums for insureds way more expensive than economically justifiable, since the further back you go, the less likely you are to find something unknown that could affect the title. These would ***NOT*** be sound practices, nor would we wish to burden the citizens of

Missouri with such wasteful, expensive practices. Most importantly, neither the legislature nor the Department of Insurance has mandated such inefficient practices in Missouri.

With regard to the allegation that the agent failed to search for possible judgments or a probate estate for the vestee-husband who passed away a few years before the insured closing, the criticism is particularly disappointing and shows a lack of understanding of probate law and property rights in Missouri. The property was held as husband and wife. The husband predeceased the wife. Since Missouri is a tenancy by the entireties state, the husband's interest in the property automatically transferred to the wife upon his death. The deceased spouse had no right to transfer his tenancy interest by will or otherwise. Furthermore, a Judgment lien holder only has one year from the date of the debtor's death to bring a claim and that time had long passed according to examiner who states that three years had gone by. Therefore, there was no need to search the husband's name for judgments or a probate estate. A search WAS done on the name of the wife which did not yield the filing of the estate when it was done initially. Thus, the underwriting practices were wholly proper and sound. Moreover, by the time the final commitment was prepared, the wife's estate had been learned of, examined and added to the commitment.

Next, the examiner faults the agent for failing to examine two parcels included in the sale, but not included in the initial commitment. This original commitment only included one parcel because of a miscommunication ***by the real estate agents***. It had nothing whatsoever to do with a supposed inadequate examination. The two parcels were later added as a result of a description of a US Title commitment supplied to the agent by US Title. The commitment was used solely as a starter by the agent and the information was brought forward to the new commitment date. It is not an unusual or unsound practice to use a commitment from another company as a starter where there is no old policy available and where our agent knows the other company to be generally reliable. The agent knows many of the examiners of US Title personally and believes them to be a trustworthy source with an experienced examining staff.

With regard to the right of way, the agent's examiner, who has 30 years of experience, made clerical corrections to the legal description which he believed were necessary. It was quite clear to him that the previous legal description was incorrect and did not show the proper right of way. In fact, he determined that the right of way was ***unlocatable*** using the legal description given to us. He was correct in his assessment and made two changes to the legal description for the right of way. One was correct and one, unfortunately, appears to have been in error. The legal description and policy are being amended, accordingly. A correct survey with a proper legal description would have shown the true location of the right of way, but a survey was not ordered at the request of the purchaser.

Finally, while ORT generally does not include acreage in the legal description, in certain instances it is beneficial in Jefferson County to include acreage due to the historically poor locating system within the assessment and taxation divisions of the county. The Jefferson County Assessor still references and locates by acreage for a number of properties. The inclusion of acreage does not pose an "extra hazard." The policy jacket makes it clear that the land described in Schedule A is what is insured. The legal description is what controls and any reference to a shortfall or excess in actual acreage has nothing to do with the actual land insured nor would it create a valid claim.

Despite the right of way error, it seems clear that sound underwriting practices were used in this case. Thus, we do not understand how the agent could be accused of "knowingly issuing an owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured." What liens or interests did the agent know of that were not included in the commitment? The criticism does not tell us – it simply includes an allegation that the statute was violated. We maintain that the allegations are incorrect.

## *EXAM FINDING #21*

*The agent failed to make an affidavit specifying the evidence used for examination of title in the following file. In addition, the company had not posted an affidavit filed with the DIFP specifying the evidence used for examination in instances where the method employed is always the same.*

*Reference: 20 CSR 500-7.200*

| *File No.* | *Agent* |
|---|---|
| *32696** | *Title Searches, Inc.* |

**RESPONSE:**

Old Republic is unable to obtain the file of this former agent or other sufficient information to make a determination as to whether or not it violated 20 CSR 500-7.200. See Old Republic's Response to Formal Request J54, attached hereto.

## *EXAM FINDING #22*

*The agent searched the title in the following file to a date in 1977. It appears that all of the recorded conveyances up to the insured transaction recorded in 2006 were by quit claim deed or a trustee's deed in foreclosure. The agent did not search title to a transaction representing acquisition by a bona fide purchaser for value.*

*The individual whose title was foreclosed in 2005 had been married in 1997.There is no indication of divorce in the file. The 2001 mortgage that was foreclosed in 2005 apparently was not executed by a spouse. The agent did not search for judgments or miscellaneous matters under the name of the foreclosed prior owner or his former spouse.*

*The agent issued the owner's policy with an exception for "Building lines, easements conditions and restrictions of record," which is not an acceptable form of exception in an owner's policy of title insurance.*

*The examination of title was not adequate to establish marketability of title. The examination was not in accordance with sound underwriting practices. The examination was not sufficient to assure that all recorded and known matters affecting title would be reported in the owner's policy of title insurance.*

*Reference: Sections 381.071.1(2), and 2, RSMo*

| *File No.* | *Agent* |
|---|---|
| *32696** | *Title Searches, Inc.* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1)(2) and (2) by failing to make a determination of insurability of title in accordance with sound underwriting practices or that it knowingly failed to report all matters affecting title in insuring an owner's policy of title insurance. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J51, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

Response To Formal Criticism No. J51

The formal criticism states that Old Republic's agent engaged in unsound underwriting practices. The first allegation is that the agent searched back to 1977, but that all the transactions since then were quit claim or trustees' deeds in foreclosure, so that "the agent did not search title to a transaction representing acquisition by a bona fide purchaser for value." Next, the examiner states that the party in title foreclosed on in 2005 was married but that that spouse did not sign off on the mortgage foreclosed on. He states that the agent did not search for judgments or miscellaneous matters under the name of this owner or his former spouse. Next, the agent states that a general exception for building lines, easements and conditions and restrictions of record is not an appropriate form of exception. He concludes that the examination was not sufficient to establish "marketability of title," not done in accordance with sound underwriting practices or sufficient to "assure" that all recorded and known matters would be reported. Lastly, he says it is an unsound practice to fail to account for the interests of parties participating in an escrow transaction, but without any further explanation as to whom he is referring.

Mo.Rev.Stat. 381.071 provides, in relevant part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.
>
> 2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. Old Republic is confident that others in the title insurance industry would agree that sound underwriting practices were used in this transaction.

First, with regard to the search back to 1977, the agent should be commended for the length of the search. Instead, the examiner alleges that the agent did not search back to a "bona fide purchaser for value" because the deeds during that period were either quit claim deeds or Trustee's deeds from foreclosure actions. The examiner has misstated the law. First of all, it is possible to be a good faith purchaser for value under a quit claim deed, even though such a purchaser only obtains what his grantor possessed at the time he conveyed the deed. See Pankins v. Jackson, 891 S.W. 2d 845 (Mo. App. 1995). In addition, you can be a bona fide purchaser for value if you purchase at a trustee's sale. See 38 Mo. Practice, Missouri Foreclosure Manual Section 4.19 (2007). These sources prove that the premise and the criticism are incorrect.

Next, with regard to the question of searching the spouse's name, we have not had access to the files as the examiner had. The agent is a former agent who has only provided us with extremely limited responses to the criticisms which contain no detail as to what names were searched or what records existed. We have been given no facts or information to refute the criticism. It does seem, however, that the failure to search the name of the wife is NOT an unsound practice, given that she had no interest in the property. Any marital interest in Missouri is in the form of Fraud of the Marital Rights which arises as a challenge in probate. No marital interest would have arisen out of any divorce. Therefore, the only way the wife could have claimed an interest in the subject property, arguably creating a title issue, was if the husband had died prior to the foreclosure. It is a common practice to have the non-titled spouse sign the deed of trust at closing to avoid the possibility of this happening, but from what we have learned, the husband was NOT dead prior to foreclosure, so the wife had no interest in the property. Therefore, there was no need to search the wife's name and any judgments in her name would not have affected title to the property since she had no ownership in it.

It is a common practice to search for prior judgments just in case a judgment senior to the foreclosed deed of trust exists. However, the risk of not doing such a search is very small, since any commercial lender would have received title insurance for its deed of trust. In addition, it would be very unlikely that a lien senior to the foreclosed deed of trust would exist, since it would have been discovered by the prior title company at the time the foreclosed lien was created. In the unlikely event such a lien was not discovered, it is quite common for a lien holder to find out there is title insurance on a new deed of trust and come out of the woodwork to make a claim against the policy. This did not occur either. Thus, all in all, a very small risk was involved in not doing the search, so small that it could NOT reasonably be considered an unsound practice to skip the search.

Third, the examiner's allegation that the exception for "Building lines, easements, conditions and restrictions of record" is "not an acceptable form of exception" for the owner's policy is incorrect. This is a standard survey exception. On most transactions under $10,000,000.00, Old Republic's agents will issue survey coverage to a lender without a survey. It is common practice to leave the exception in the owner's policy when no survey is received. Such an exception is normally shown in the commitment and there is nothing in the commitment which suggests the exception will be automatically deleted in the owner's policy. Neither is there any statute or regulation which suggests such an exception is improper. Therefore, Old Republic strongly disagrees with this allegation.

Lastly, the examiner makes some broad statements which lack specificity. To the extent any have to do with the interest of the former wife, we would strongly disagree, based on the facts already cited. As to the allegations as a whole, we disagree in the strongest terms that the title is not marketable, that unsound underwriting practices were used and that the examination was not sufficient to assure that all recorded and known matters would be reported. There is no reason why title could be considered unmarketable, as the searches and examination were completely proper and sound. Nor has there been any claim made that title is unmarketable. There is no reason to think this exam missed any recorded or known matters and the examiner does not state how that might have occurred. Finally, with regard to known matters, the statute says no agent "shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured." There is no evidence given by the examiner that the agent KNOWINGLY issued the policy without showing all "outstanding, enforceable RECORDED liens and interests." If any such recorded liens or interests exist, the examiner, who has seen the file, has not disclosed what they are and has not given us an opportunity to examine any such specific examples. Old Republic maintains that this part of the allegations is also incorrect.

Thus, it is Old Republic's position that in all the matters alleged by the examiner, the agent did, in fact, use sound underwriting practices. In addition, there were no known and recorded matters affecting the property which the agent failed to except from title. For these reasons, Old Republic denies the allegations of the criticism.

## ***EXAM FINDING #23***

*The policy in the following file describes two parcels of land. The first description includes an acreage recital, and the policy contains an exception for the acreage specification. The acreage exception may be ineffective because it may create an ambiguity in the policy. The acreage recital should be omitted. Its recital is an unsound underwriting practice.*

*The policy insures an easement for right of way but also includes an exaction for "title to that portion (sic) of the premises in question within the bounds of any public or private roadway." An easement t hat clearly does not affect the property is not a valid consideration in determining insurability. It is not a sound underwriting practice to except the matter insured.*

*The policy includes an exception for an easement granted to Missouri Edison Company recorded in Book 285 Page 1820. That easement does not affect the property. It is not a sound underwriting practice to insert exceptions for matters not affecting the property.*

*The policy makes no exception for the two easements reserved by the deed recorded in Book 291 Page 1131. One of the easements reserved affects the first described parcel, and both easements affect the second described parcel. The policy makes no exception for the easements and limited rights of possession granted by Book 1785 Page 493, which affect the second described parcel. It is not a sound underwriting practice to omit exceptions for known matters.*

*Reference Sections 381.071.1(2), and .2, RSMo*

| *File No.* | *Agent* |
|---|---|
| *070285-12660* | *Tri-county* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1)(2) and (2) by failing to make a determination of insurability of title in accordance with sound underwriting practices or that it knowingly failed to report all matters affecting title in insuring an owner's policy of title insurance. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J49, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

Response To Formal Criticism No. J49

The formal criticism states that Old Republic's agent engaged in unsound underwriting practices. The first practice cited involved the inclusion of an acreage recital and an exception for an acreage specification. Next, the policy insures a right of way easement, but also includes an exception for "Title to that Portion of the premises in question within the bounds of any public or private roadway." The examiner believes this is an example of excepting coverage for a matter insured. Third, the examiner states that an exception is included for an easement that does not affect the property. Finally, the examiner claims that several easements and rights of possession were omitted as exceptions on the policy. These actions are said to violate 381.071 RSMo. Old Republic disagrees with these allegations.

Mo.Rev.Stat. 381.071 provides, in relevant part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.
>
> 2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. Old Republic is confident anyone familiar with the title insurance industry would agree that sound underwriting practices were used in this transaction.

First, as was made clear before, Old Republic's agents generally do not include acreage in the legal description. In this situation, however, it is actually an integral part of the legal description. The subject property is approximately five acres from a larger 26 acre parcel. The land has been conveyed with the legal description set forth, the beginning of which includes an acreage amount (see policy attached). It's not as if there is a separate legal description and then a recital at the end of it saying how much acreage is contained in the legal description. What the examiner may not have appreciated is that, in this case, it would constitute a change to the metes and bounds legal description to remove the acreage recitation. The examiner's advice would result in inconsistent legal descriptions in the chain of title, making subsequent transactions and recordings difficult to index and making future searches and exams very difficult.

In addition, the acreage exception is completely effective for its purpose. As such, Old Republic disagrees with the examiner's claim that it "may be ineffective." The exception makes clear that the acreage amount referred to "is for informational purposes only and no certification is made hereto as to the accuracy thereof." Considering the acreage amount is part of the legal description, this exception ensures it is nothing else – it is NOT an accurate representation of the amount of acreage and it may not be relied on for that purpose. It is Old Republic's view, therefore, that this is an example of sound underwriting practices when faced with a legal description which contains an acreage amount. The agent should be commended for: 1) Keeping the legal description as is to avoid future indexing issues and 2) Removing any doubt that the acreage amount is for information only and is NOT insured.

Next, the examiner discusses the right of way issue mentioned earlier. He maintains that the policy insures an easement for right of way but also includes an exception for the very matter insured. He calls this an unsound underwriting practice. What the examiner may not have appreciated is that the second insured parcel, a 50.00 foot wide easement described in Schedule C, is NOT the same as the matter referred to in

the exception noted. The exception noted was for "title to that portion of the premises in question within the bounds of any public or private roadway." This exception to title logically deals with any OTHER public or private roadways which may cross or touch the subject property. In Old republic's view this exception does not affect the easement which is insured as a second parcel for access to the property. Old Republic is confident that other experienced title examiners reviewing the policy would concur with its view.

The third issue cited involves an exception for an easement granted to Missouri Edison Company. The examiner states that the easement does not affect the property and its inclusion is an unsound underwriting practice. The reason the agent included the easement is because the front page of the easement contains the legal description of the entire 26 acre parcel from which the 5 acre subject property was carved out. The statute cited by the examiner does not preclude showing matters that may not affect the property. The standard practice to determine whether utility easements directly affect property, and thereby enable the insurer to remove them from title, is presentation of a survey. On most transactions under $1,000,000.00, Old Republic's agents will issue survey coverage to a lender without a survey. Therefore, it is standard practice for utility easements filed on a larger parcel to be shown, as was the case here, when no survey was presented.

Finally, the examiner states that no exception was made for the two easements reserved by the deed recorded in Book 291, Page 1131. He states that one easement affects the first parcel and both affect the second (access easement) parcel. Also, he states that the policy does not take exception for an easement granted at Book 1233, Page 19 affecting the second parcel and another at Book 1785, Page 493, also affecting the second parcel. Omitting known exceptions is said to be an unsound underwriting practice.

Beginning with the first matter, the exception for the easement at Book 790 Page 7 deals with the same easement found at Book 291, Page 1131. That's why the latter Book and Page are not referred to. The easement at Book 1233, Page 19 is not included because Parcel 1 of the subject property does not front the highway where the easement is located, nor does it affect Parcel 2, the access easement. Rather, the Book 1233, Page 19 easement is located west of the easement for access. The easement at Book 1785, Page 493 is not included because it is for a billboard easement along the highway. Again, Parcel 1 does not front the highway and cannot be subject to such easement. As to Parcel 2, the easement for access, the examiner is incorrect. The easement document (see attached) includes a legal description of the billboard easement, along with a survey of the billboard easement. It also shows a portion of the access easement. A careful review of these documents shows that the 74 foot billboard easement does NOT affect the access easement. While the billboard people have access to the billboard site from the access easement, that does not affect the insured's use and enjoyment of the access easement. Nor is the billboard itself located on the access easement. Therefore, the examiner is mistaken that the billboard easement affects Parcel 2 and there was no reason for the policy to except the document creating the billboard easement. In our view, this was another example of good judgment on the agent's part and sound underwriting, as well.

Thus, it is Old Republic's position that in all the matters alleged by the examiner, the agent did, in fact, use sound underwriting practices. In addition, there were no known matters affecting the property which the agent failed to except from title. For these reasons, Old Republic denies the allegations of the criticism.

## ***EXAM FINDING #24***

*The search of title in this file was extended to the time of the seller's acquisition of title in 1952. The Company made use of a commitment to insure issued in a "sister" file for additional information and copied several exceptions from that commitment. The exceptions copied include three sewer easements and a restriction document. One of the sewer easements reported is within the period of the chain of title used in this examination but does not appear within the chain. The property described in the "sister" file is located on the opposite side of the street from the subject property. There is no basis in this file for a conclusion that any of the reported easements in the "sister" file affect the subject property, nor that the excepted restrictions are applicable to this particular lot. The examiner is aware that many properties in this subdivision are encumbered by easements for sewers but the examination in this file was not sufficient to identify which, if any, such easements affect this property. The company failed to conduct a search of title sufficient to assure that all matters recorded and affecting title were reported.*

*Reference: Sections 318.071.1(2), and .2, RSMO*

| *File No.* | *Agent* |
|---|---|
| *07030435** | *OR St. L* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1)(2) and (2) by failing to make a determination of insurability of title in accordance with sound underwriting practices or that it knowingly failed to report all matters affecting title in insuring an owner's policy of title insurance. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J22, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

Response To Formal Criticism No. J22

The formal criticism first states that Old Republic's agent searched the title back to 1952 when seller acquired the property. The criticism also states that a "sister file" was used for additional information and that several exceptions were added based on its contents. These exceptions included three sewer easements and a restriction, one of which is not shown in the chain of title. The examiner notes that the property for the sister file was across the street from the subject property and that there is no basis to believe the easement or restriction noted affect the subject property. The examiner alleges that the agent failed to conduct a sufficient examination to establish which of these easements encumber the property and also states that the search was insufficient to assure that all matters recorded and affecting title could be reported. He believes these actions violate 381.071 RSMo. Old Republic disagrees with the examiner's conclusions.

Mo.Rev.Stat. 381.071 provides, in relevant part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.
>
> 2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. The following paragraphs describe how this file was underwritten. Old Republic is confident anyone familiar with the title insurance industry would agree that sound underwriting practices were used in this transaction and, after all, it is sound underwriting practices that are required by the statute cited by the examiner.

The examiner admits that the property was searched back 55 years in order to determine if any encumbrances were placed on the property or suffered by the seller. The comment does not indicate whether or not that search for encumbrances is sufficient in his view, but that is considered a very lengthy time period to search in the title insurance industry. This is certainly evidence of a sound underwriting practice.

In addition, the unusual length of the search was not sufficient for Old Republic's agent. Rather, the agent also examined a sister file from the same subdivision to see if additional title defects might encumber the property. Instead of considering this extra care used by the agent to be a sound underwriting practice, the examiner alleges that the agent failed to use such practices. He specifically complains that the use of the sister file was insufficient to determine which matters affected title to the subject property and that the search failed to "assure that all matters recorded and affecting title could be reported."

The examiner seems to be misapplying the statute at hand. Use of a sister file is a standard and sound underwriting practice and the examiner has failed to demonstrate anything to the contrary. Moreover, use of a sister file will disclose any encumbrances that may affect the property. The statute section referenced only prohibits a title agent from ***knowingly*** issuing a policy or commitment ***without showing*** all "outstanding, enforceable recorded liens or other interests against the title which is to be insured." The intention of the statute is to limit the risk of the insurer by requiring that encumbrances it is aware of be shown. There is no indication whatsoever that Old Republic's agent ***knowingly*** issued this policy without showing all enforceable recorded liens or interests. The examiner is making the ***opposite*** complaint – that too much was shown, but ***the statute does not preclude showing liens that may not affect the property.*** The standard practice to determine whether utility easements directly affect property and thereby allow the insurer to

remove them from title is presentation of a survey. On most transactions under $1,000,000.00 Old Republic will issue survey coverage to a lender without a survey. Therefore, it is standard practice for utility easements filed on a subdivision to be shown, as was the case here.

Old Republic is disappointed to have to respond to such a criticism when the facts overwhelmingly demonstrate compliance with the clear wording and intent of the statute.

## *EXAM FINDING #25*

*The search of title in this file was extended to the time of the seller's acquisition of title in 2002. There is no indication that any earlier deed was examined. The chain of title in this file extends to 1973 and lists earlier conveyance deeds recorded in 1973, 1980, 1983, 1988, 1992, and 1998, but none of them were examined. The company failed to conduct an examination of title sufficient to establish marketable title. The company failed to conduct a search of title sufficient to assure that all matters recorded and affecting title could be reported.*

*Reference: Sections 381.071.1(2) and .2, RSMo*

| *File No.* | *Agent* |
|---|---|
| *06110386-8** | *OR St. L* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1)(2) and (2) by failing to make a determination of insurability of title in accordance with sound underwriting practices or that it knowingly failed to report all matters affecting title in insuring an owner's policy of title insurance. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J21, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

Response To Formal Criticism No. J21

The formal criticism first alleges that Old Republic's agent searched the title back to 2002 when seller acquired the property and that there is no indication that any earlier deeds were reviewed. The examiner also states that the chain of title extends to 1973 in the file and lists earlier deeds which he believes were not examined. As a result, he alleges that the agent failed to conduct a sufficient search or examination to establish marketable title or to assure that all matters recorded affecting title could be reported. Old Republic disagrees with the examiner's conclusions.

Mo.Rev.Stat. 381.071 provides, in part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.
>
> 2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. It is incorrect to say that the determination of insurability was not made through the use of sound underwriting practices. The following describes how this file was underwritten. Old Republic is confident anyone familiar with the title insurance industry would agree that sound underwriting practices were used in this transaction. First, the conveyances from 1998, 2002 and 2005 ***were*** examined. The deeds are examined on an electronic database and not always printed. The chain of title, going back more than 30 years to 1973, is in the file, as noted by the examiner. That's quite a long chain. Furthermore, ***the statute only speaks to "sound underwriting practices." It doesn't require that the search go back to government patent.*** There is a place at which going further and further back becomes an irrational and wasteful practice. Such practices would result in premiums for insureds way more expensive than economically justifiable, since the further back you go, the less likely you are to find something unknown that could affect the title. These would ***NOT*** be sound practices, nor would we wish to burden the citizens of Missouri with such wasteful, expensive practices. Most importantly, neither the legislature nor the Department of Insurance has mandated such practices in Missouri. Examining deeds electronically and examining the last three conveyance deeds are standard practices in the industry and sound underwriting practices.

However, there was even more that was done to underwrite this file. In addition to what has already been described, a sister file was used in order to search for encumbrances. The subdivision plat is more than 100 years old. Therefore the search extended for a period of greater than 100 years. Use of a sister file is a standard and sound underwriting practice. Use of a sister file should disclose any encumbrances that may affect the property. The referenced statute section only prohibits that the title agent ***knowingly*** issue a policy or commitment without showing all "outstanding, enforceable recorded liens or other interests against the title which is to be insured." The intention of the statute is to limit the risk of the insurer by requiring that encumbrances it is aware of be shown. There is no indication whatsoever that Old Republic's agent ***knowingly*** issued this policy without showing all enforceable recorded liens or interests. If there was such an interest outstanding, and knowingly ignored, it is not mentioned by the examiner – simply the allegation that the statute was violated.

Finally, the examiner's conclusions are not consistent with the wording of the statute. First, that the examination was insufficient to establish marketable title. The statute says nothing about marketable title. As already mentioned, it requires the use of "sound underwriting practices" and prohibits "knowingly" failing to show all encumbrances. It has been demonstrated that sound underwriting practices were used and it has not been shown by the examiner that any encumbrance was knowingly left off the commitment or

policy. Neither has a claim been made by the insured that the property is unmarketable. Such an allegation is in direct contradiction to the standard of care used in this file and to all available evidence that has been presented. Old Republic is disappointed to have to respond to such a criticism when the facts overwhelmingly demonstrate compliance with the wording of the statute.

## *EXAM FINDING #26*

*In the following file, the southern boundary of the property is the center line of a private right of way. The recorded plat recites that the right of way is to remain private. The recoded plat references a roadway maintenance agreement recorded at Book 9236 Page 1911. The chain of title includes a recorded display house plat. The policies do not include an exception for the easement of the private right of way. There is no information in the file indicating the method of creation of a private right of way that provides access to the property. The policies contain no exception for the roadway maintenance agreement, nor any exception for the display house plat. The agent did not perform a search of title sufficient to identify the means of creation of the private right of way providing access to the property. The agent did not examine the roadway maintenance agreement that appears in the chain of title and is referenced on the recorded plat. The agent did not examine the display house plat that appears in the chain of title. The agency has omitted certain known exceptions to title. The agency's examination of title was not sufficient to assure that all known and recorded exceptions to tile would be reported when issuing an owner's policy of title insurance.*

*Reference: Sections 381.071.1(2) and .2, RSMo*

| *File No.* | *Agent* |
|---|---|
| *06040405* | *OR St. L* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1)(2) and (2) by failing to make a determination of insurability of title in accordance with sound underwriting practices or that it knowingly failed to report all matters affecting title in insuring an owner's policy of title insurance. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J43, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

Response To Formal Criticism No. J43

The criticism alleges that Old Republic's agent violated underwriting standards in the issuance of a policy to the insured. The statute at issue reads, in part, as follows:

Mo.Rev.Stat. 381.071 provides, in part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.
>
> 2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

(A) The formal criticism first alleges that the agent committed an error by charging the correct risk rate for an owner's policy of $735,360.00, (the mortgage amount), but issuing a policy for the owner in the amount of $265,000.00. The examiner alleges that the agent's "error" has left the owner underinsured and states that this is "not a sound underwriting practice." Further, the examiner "notes that the Company's underwriting and rating standards require that the owner's policy be written for full insurable value."

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. It is incorrect to say that the determination of insurability was not made through the use of sound underwriting practices. The answer to the examiner's complaint is quite academic and is easily found in the facts he recites. The property was purchased for $265,000.00 and a policy issued for that amount of money to the owner. The loan covered not just acquisition of the property, but construction costs, as well. These are things admitted by the examiner. It seems that the examiner wanted Old Republic to issue an owner's policy for nearly three times the value of the property at the time of acquisition. If the property is worth $265,000.00 at acquisition, THAT is the "full, insurable value of the property." To give an owner's policy for nearly three times that amount, as suggested by the examiner, would be an irresponsible, unsupportable business and insurance practice which Old Republic and the people tasked with regulating it would never countenance. The mortgage policy itself is only worth the full amount as the funds are disbursed and become part of the value of the property through the ongoing construction of the improvements. To suggest that a company should insure something for three times its value simply because someone plans to build on it, would be an extremely unsound practice, the exercise of which could wind up putting a title insurance company and its insureds at great risk. We are sure the examiner must not be suggesting that Old Republic instruct its agents to insure properties in amounts far in excess of their actual value.

In light of the foregoing, Old Republic denies the initial allegations of the criticism.

(B) The formal criticism next discusses a right of way which is said to form the southern boundary of the property. The examiner states that the right of way appears on a plat which also references a roadway maintenance agreement. The chain of title includes a "recorded display house plat." The examiner notes that the policy does not include an exception for the easement of the right of way which provides access to the property. He adds that the maintenance agreement and house plat are also not excepted from coverage and these matters are said to evidence an insufficient search or examination of title. The examiner states the agent should have identified the means of creation of the right of way and examined the maintenance agreement and house plat. He states that these exceptions to title should have been added so that all known and recorded exceptions would be reported.

Old Republic is confident anyone familiar with the title insurance industry would agree that sound underwriting practices were used in this transaction. A little history is in order here. This section addresses

the southern boundary of the subject property as a center line of a private right of way. Old Republic Title searched this particularly tract of ground forwards and backwards, well into the early 1900's, looking for the document that actually created "Studer Lane". No conclusive evidence of a recorded document creating this "easement for private right of way" was found and therefore no special exception was made. However, as mentioned below, the easements shown on the plat were excepted from title, the plat did disclose this right of way and the policy disclosed the Book and page number of the plat.

The roadway maintenance agreement recorded in Book 9236 page 1911 is referenced on the plat. An exception is taken for the "Building line(s) and easements according to plat recorded in Plat Book 353 Page 749 and 750." A review of the plat would disclose the roadway maintenance agreement. However, a thorough review by the examiner of the file led him to conclude that a specific exception for the agreement was improper. According to his review, it does not appear that any predecessor in title to the subject property executed said agreement, and therefore, by its own terms, the subject property would not be subject to the agreement.

Finally, the display house plat was not shown as an exception on the policy for two reasons. First, the display house plat was voided upon recording of the record plat. Second, the exception for a display house plat would only apply if, in fact, the property was a display house. To the contrary, this property is ***not*** a display house. Clearly, sound underwriting practices dictated that an exception ***not*** be made for the display house plat.

Therefore, it stands to reason that Old Republic "showed all outstanding, enforceable recorded liens or other interests against the title" to be insured. It also exercised sound underwriting practices by reviewing approximately 100 years of records to determine what exceptions should properly be included on the title policy.

Accordingly, Old Republic denies the allegations of the criticism.

***EXAM FINDING #27***

*The policy includes exceptions in addition to the standard exceptions which are not appropriate in a policy already containing all the company's standard exceptions, in that they create ambiguities in the coverage offered by the policy.*

*Reference: Sections 381.071.1(2), RSMo*

| *File No.* | *Agent* |
|---|---|
| *H6-70049* | *Regional Title* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1)(2) by failing to make a determination of insurability of title in accordance with sound underwriting practices. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J44, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violation.

Response To Formal Criticism No. J44

The formal criticism states that the title policy included the following exceptions:

> Rights of the public, the state of Missouri, the County and City, as applicable, and private rights of others entitled thereto, in and to the use of any portion of subject property lying within the bounds of the public roads or highways.
>
> Any conflicts with, or claims of, adjoining land owners as result of errors in the legal description and just what is contained within its actual boundaries of the land and apparent boundaries as indcatted by fences, plantings or other improvements.

The examiner states that he cannot discern a clear meaning from the second of these exceptions and believes that neither is appropriate in a policy containing all of the standard exceptions. He believes that "raising more than one exception for a single issue may create ambiguities in the coverage offered by the policy" and that it is not a sound underwriting practice to issue policies with ambiguous exceptions. It is alleged that this is a violation of 381.071.1.2 RSMo. Old Republic disagrees with these conclusions.

Mo.Rev.Stat. 381.071 provides, in part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. It is incorrect to say that the determination of insurability was not made through the use of sound underwriting practices. The determination of insurability involved quite a bit more than these two exceptions. To ignore the searches, the exams and all the other underwriting that went into insuring the subject transaction is unreasonable and inequitable.

However, even if we focus on the two exceptions at issue, there is no evidence that the agent failed to use sound underwriting practices. The special exceptions added to the policy are not identical to the general exceptions found in the policy. The first three general exceptions cover 1)Rights or claims of parties in possession not shown by the public records; 2)Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises; and 3) Easements or claims of easements not shown by the public records. Note that none of these preprinted exceptions are as specific as the special exceptions added by the agent.

Rather than being ambiguous, the two added exceptions add a level of detail that the preprinted exceptions do not contain. It is clear that the agent ***DID*** make a careful determination of insurability, because the agent felt these additional exceptions were needed to more appropriately deal with this particular property, an undivided parcel (as opposed to a subdivision) which was described by metes and bounds. It is typical to see exceptions like this in situations where there may be an inconsistency with the legal description of an adjoining parcel that cannot be resolved without a survey. Neither of the exceptions contradicts anything in the general exceptions. Both exceptions are "standard" exceptions used in Missouri which normally stay in place when no closing affidavit is provided and no survey is provided, respectively. There is not a closing statement in the file and it is a refinance, which typically indicates that the closing took place at the bank and would explain the lack of a survey and closing affidavit. ***The agent*** clearly felt, absent a survey and closing affidavit stating that no parties had the right to use the land, that the risk was not warranted and therefore ***followed sound underwriting practices by including the exceptions.***

Therefore, it turns out that the very "issue" used by the examiner to allege unsound underwriting practices proves, instead, that such practices were used. As for the language of the second exception, it does not

appear to be ambiguous. It may not be the most artfully drawn exception, but the meaning appears clear enough to understand its import.

Accordingly, Old Republic denies the allegations of the criticism.

## ***EXAM FINDING #28***

*In the following policy general exceptions numbered 1 and 2 in Schedule B of the owner's policy of title insurance are not the same as any exception appearing in the commitment to insure. The company is not free to add an exception to the policy unless the exception is created after the date of the commitment. It is not a sound underwriting practice to add exception to the policy not previously disclosed or approved by the insured.*

*Reference: Section 381.071.2, RSMo*

| *File No.* | *Agent* |
|---|---|
| *070285-12660** | *Tri-county* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(2) by knowingly failing to report all matters affecting title in insuring an owner's policy of title insurance. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J48, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violation.

Response To Formal Criticism No. J48

The criticism next alleges that Old Republic's agent violated underwriting standards in the issuance of a policy to the insured. The statute at issue reads, in part, as follows:

Mo.Rev.Stat. 381.071 provides, in part:

2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

The formal criticism alleges that the agent added two general exceptions to the policy which were not the same as any exceptions on the title commitment. The examiner states that exceptions may not be added to the policy unless the exception was created after the date of the commitment. He adds that this was an unsound underwriting practice.

The criticism made by the examiner is quite surprising. First, it is difficult to understand what outstanding liens or interests Old Republic's agent failed to show in the policy. The examiner does not explain what was missed. Second, the exceptions numbered 1 and 2 in Schedule B of the owner's policy are not materially different than the standard exceptions for survey. A copy of the policy is attached. The exceptions in question read as follows:

1. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
2. Facts which would be disclosed by a comprehensive survey of the herein described.

The general exception referring to survey issues on a commitment normally reads as follows:

2. Encroachments, overlaps, boundary line disputes, and any matters which would be disclosed by an accurate survey and inspection of the premises

It is hard to understand why the examiner believes the exceptions appearing in the policy were not taken into account by the general exception, especially because it refers to "any matters which would be disclosed by an accurate survey and inspection of the premises." "Any matters" is quite broad – broad enough to encompass the language in the two exceptions used.

Accordingly, Old Republic denies the allegations of the criticism.

## ***EXAM FINDING #29***

*In the following transaction, the lender was GMAC Mortgage LLC., which was an affiliated company with the agent, Home Connects Lending Services, at the time of this transaction. The commitment to insure required that an affiliated business arrangement disclosure be obtained. The agent failed to disclose an existing affiliated business arrangement to the borrower paying its fees.*

*Reference: Section 381.141.3, RSMo, and R.E.S.P.A. 24 CFR Sec. 3500.15.*

| *File No.* | *Agent* |
|---|---|
| *5889777** | *Home Connects* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.141(3) or R.E.S.P.A. 24 CFR Sec. 3500.15. Specifically, the statute does not require the retention of any such writing disclosing an affiliated business arrangement. Furthermore, R.E.S.P.A. provides that such relationship may be disclosed by the affiliated lender. GMAC routinely provides each borrower with an Affiliated Business Arrangement Disclosure. Therefore, Old Republic has not committed any statutory or regulatory violations. Furthermore, the foregoing allegations were adequately responded to and refuted in Old Republic's Response to Formal Criticism J35 attached hereto.

## Response To Formal Criticism No. J35

Home Connects is affiliated with GMAC. The statute cited for Missouri requires that the purchaser be "made aware in writing of the relationship." It does not require that any document be in the file. See 381.141.3 RSMo. Furthermore, the federal regulation cited 24 CFR3500.15 states that the affiliated lender may make this disclosure. According to Home Connects, GMAC routinely provides each borrower with an Affiliated Business Arrangement disclosure that reveals the relationship between GMAC and Home Connects and provides the range of charges for title services, as well. This is done as a matter of course by GMAC and satisfies the statute and regulation cited by the examiner. It is not necessary that a copy of same be entered in the title file.

In light of the foregoing, Old Republic denies it has violated any statutes as set forth in the allegations of this criticism.

## *EXAM FINDING #30*

*In the following transaction, the lender was CitiMortgage, Inc. which was an affiliated company with the agent ATM Corporation of America at the time of this transaction. There is no evidence this information was disclosed to the borrower. The agent failed to disclose an existing affiliated business arrangement to the borrower paying its fees.*

*Reference: Section 381.141.3, RSMo, and R.E.S.P.A. 24 CFR Sec. 3500.15.*

| *File No.* | *Agent* |
|---|---|
| *5575033** | *ATM* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.141(3) or R.E.S.P.A. 24 CFR Sec. 3500.15. Specifically, the facts do not support a finding that ATM Corporation was an affiliated business for purposes of R.E.S.P.A. or the Missouri statute. Therefore, Old Republic has not committed any statutory or regulatory violations. Furthermore, the foregoing allegations were adequately responded to and refuted in Old Republic's Response to Formal Criticism J34 attached hereto.

Response To Formal Criticism No. J34

The formal criticism alleges that the examiners specifically inquired regarding any affiliated business arrangements the agent might have with any of its customers and that the agent provided no information regarding any affiliated business arrangements. The examiner then mentions that the agent's web site touts its expertise in custom design of vendor management subsidiaries enabling participation in profits generated from the purchase of title, closing, appraisal and flood services. The information on the web site also credits the agent with assisting Citigroup in forming a vendor management subsidiary. The lender in this transaction was CitiMortgage, Inc. CitiMortgage is headquartered in Missouri and is a subsidiary of Citigroup. He concludes that the agent failed to disclose an existing affiliated business arrangement to borrower paying fees and cites a Missouri statute and a federal regulation governing RESPA. Old Republic disagrees with the examiner's conclusions.

The agent did not fail to provide the information requested. Moreover, the agent does not now, nor at the time of the transaction did it have an affiliated business relationship with Citimortgage or Citigroup. This criticism demonstrates a significant misunderstanding about what an affiliated business arrangement is. According to RESPA,

> (7) the term ``affiliated business arrangement'' means an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider (12 USC 2602(7))

The fact that the agent designs vendor management subsidiaries for customers does NOT mean that it has an affiliated relationship with any of those customers or the entities they design for them. Looking at the RESPA definition above, ATM does NOT have "either an affiliate relationship with or a direct or beneficial ownership interest of more than 1% in a provider of settlement services" related to Citimortgage or Citigroup. As the examiner notes, ATM performed the service of setting up a vendor management subsidiary for Citigroup. It performed a service and was compensated for it. ATM has no interest in that vendor manager nor is it affiliated with it in any way – it was Citigroup's company.

Given the incontrovertible facts as stated by the examiner himself and the precise language of the statute cited, Old Republic is disappointed that this criticism was presented to it, especially in a way that ignores those facts and the clear language of the statute.

## *EXAM FINDING #31*

*The title agency acted as settlement agent in this transaction and the agent received a total of $47,984.66 into its escrow accounts and disbursed that same amount on 12-12-05. The agent did not record the deed from the transaction until 2-9-06, a delay of 40 business days. The agent received and deposited a check in the amount of $7,030.00 drawn on the account of RXXX HXXXXXX, LC. There is no indication that the check for $7,030.00 was exempt under the provisions of Section 381.412.1, RSMo. The agent failed to assure that all funds delivered to the escrow account were in certified form.*

*Reference: Sections 381.412.1, and .2, RSMo*

| *File No.* | *Agent* |
|---|---|
| *32696** | *Title Searches, Inc.* |

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. §§ 381.412(1) or (2) in the above-referenced transaction. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J53, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

Response To Formal Criticism No. J53

(A) The formal criticism first alleges that Old Republic's agent failed to record a Deed of Trust in a timely manner. Specifically, the examiner states that the funds from the escrow transaction were disbursed December 12, 2005, but that the deeds were not recorded until February 9, 2006, 40 business days later. The examiner alleges that this was a violation of RSMo 381.412.1, which he reads as requiring recordation of the Deed of Trust for this transaction within three business days of disbursement. Old Republic disagrees with the examiner's conclusions.

RSMo 381.412.1 is commonly known as a "good funds" statute which requires the use of certified funds **in certain cases.** ***Where a settlement agent accepts funds of more than $10,000, but less than $2,000,000*** "for closing a ***sale*** of an interest in real estate," the settlement agent "shall require a buyer, seller or ***lender who is not a financial institution*** to convey ***such*** funds to the settlement agent as certified funds." Furthermore, "(t)he settlement agent shall record all security instruments ***for such real estate closing within three business days of such closing after receipt of such certified funds."*** (emphasis added)

The facts of this specific transaction are as follows: Title Searches, Inc. performed a closing on a sale of real estate. The lender, Truman Bank, is a financial institution. The statute is clear that settlement agents must collect certified funds (of more than $10,000.00) only from lenders who are NOT financial institutions. Thus, certified funds were NOT required from the lender, Truman Bank. Furthermore, the amount collected from the borrower was only $7,030.00. Since that amount is below the $10,000.00 threshold, that amount was not required to be good funds either and the statute doesn't apply. ***This means the three day recording requirement of Section 381.412.1 is inapplicable to this transaction.***

Despite the position taken by the department, the drafters of this legislation, the Missouri Land Title Association (MLTA), have always had a different understanding of the provisions they themselves drafted. There is no legislative history which would contradict that position. We welcome the department to take testimony from those involved in drafting the bill to ascertain what their understanding of it was. It is interesting after all these years that the department has decided that it means something completely different than it has been interpreted by the industry which drafted the words and completely different than the practice that has been in use for the 15 years that the statute has been in effect.

It is undeniable that the statute at issue is a Good funds statute. It is not a recording statute. The three day recording requirement only applies to "such real estate closings," i.e., those involving the need for certified funds, those involving settlement agents receiving such funds when there is a need, those involving the sale of an interest in real estate. While this was a sale of real estate, good funds were not required, as described earlier. Mr. Nickens of the department interprets the phrase "such real estate closings" to refer to all closings for a sale of an interest in real estate. He argues that it doesn't matter whether certified funds are required or not, that the recording requirement applies in all cases of a sale of real estate. However, the statute is unambiguous. The very phrase "such real estate closings" clearly does refer to those involving good funds, since it goes on to say that the recording in "such" cases shall take place within three days "***after receipt of such certified funds.***" The wording cannot be more clear. The recording requirement, according to the unambiguous wording of the statute, only applies when good funds or "certified funds" are collected. Thus, the statute at issue was not violated.

Mr. Nickens argued in an email, dated January 18, 2008, that "(i)f the legislature intended to limit the recording to only those sales in which good funds were required, they should have expressly stated in the second sentence that 'Any closing (sic) that requires "certified funds" should be recorded in three days.'" Since the statute actually does state that the recording should be done in three days "after receipt of such certified funds," it appears that the legislature did exactly what Mr. Nickens suggested and clearly demonstrated its intent to limit the recording requirement to situations where good funds are received. The plain language of the statute is quite clear and there is no need for the department to interpret the statute in a different way than it is written and in a different way that it has been used for these 15 years.
Old Republic is certainly not happy that this former agent took such a long time to record the documents and we have no idea why that was the case. However, the good funds statute's recording requirement was

NOT implicated since certified funds were not required and not received by the agent. Therefore, Old Republic denies the allegations of this portion of the criticism.

(B) Next it is alleged that the agent acting as settlement agent received a total of $47,984.66 into its escrow accounts and disbursed that same amount on December 12, 2005. Part of this amount was a check for $7,030.00 drawn on the account of Rick Houseman, LC. The examiner states that "(t)here is no indication that the check for $7,030.00 was exempt under the provisions of Section 381.412.1 RSMo." He believes the agent failed to assure that all funds were in certified form, exempt, or on deposit for at least ten days and this is said to violate 381.412.1 and 381.412.2 RSMo. Old Republic disagrees with the examiner's conclusion.

As discussed previously, good funds were not required in this case from the lender, a financial institution, or from the borrower, who had to bring in only $7,030.00. The examiner is taking the position that a single check for less than $10,000.00 must consist of good funds if the aggregate amount of money taken in by the settlement agent from all parties is between ten thousand dollars and two million dollars. This interpretation is incorrect for the following reasons. First, the plain language of the statute deals with incoming funds in amounts between $10,000 and $2 million. The intent of the statute is that each amount coming in will be looked at from a buyer, from a seller and from a lender which is not a financial institution, to see if the threshold is met in each case. The statute does not require aggregation of the amounts collected from all categories (buyers, sellers and non-financial institution lenders) in order to determine whether good funds are necessary. The idea is to make the transaction less risky for the settlement agent by ensuring that large amounts of money coming in from any one source are certified.

Under the department's interpretation of the statute, which appears to be a new interpretation, they look only at the aggregate amount of funds coming into the closing. Therefore, according to the department's view, a situation could exist where a buyer and seller each bring in checks for $7.50 and the department would require them to be certified if there is also a check from a non-financial institution lender totaling $9,985.01 or more. (Apparently, the department would actually take the same position if the check was from a financial institution, as it was in this case). The good funds statute was not meant to hassle consumers in this fashion, but rather to ensure that large checks coming in would not bounce and result in a loss for the title companies. The department's view ignores this intent. Furthermore, the industry, which wrote the provisions of the good funds statute, does not interpret this provision as the department does now. There has been a custom and practice over the last 15 years that the threshold amounts in the statute refer to individual checks, rather than to the aggregate of all checks. This is in accordance with the intent of the language drafted by the MLTA. The department's view is new and unsupported by the statute, regulation or bulletins. Interestingly, this is also the first time the examiners have used this criticism during this exam, as well.

There is no good public policy reason to adopt the department's reinterpretation of a statute whose common interpretation and usage has been a matter of public record for 15 years. There is no reason to inconvenience the tens of thousands or hundreds of thousands Missouri consumers each year that the department proposes to inconvenience based on this new interpretation of the good funds statute. This is NOT what the title companies had in mind when they drafted the legislation and there is no evidence whatsoever that the legislature intended something completely different which would inconvenience consumers and serve no legitimate purpose.

Accordingly, Old Republic denies the allegations of the second portion of the criticism.

***EXAM FINDING #32***

*In the following file, the agent charged a premium for an owner's policy with a face amount of $735,360.00, the correct amount. However, the agent issued a policy with the incorrect face amount of $265,000. The agent's error results in the owner being insured for an amount that is significantly less than the amount of loss that may reasonably be anticipated under the terms of the policy. It is not sound underwriting to issue a policy of title insurance for an amount substantially less than the amount of loss that may reasonably be anticipated. The company's underwriting and rating standards require that the owner's policy be written for full insurable value.*

*Reference: Section 381.071.1(2), RSMo*

| *File No.* | *Agent* |
|---|---|
| *06040405** | *OR St. L* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1)(2). Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J43, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violation.

Response To Formal Criticism No. J43

The criticism alleges that Old Republic's agent violated underwriting standards in the issuance of a policy to the insured. The statute at issue reads, in part, as follows:

Mo.Rev.Stat. 381.071 provides, in part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.
>
> 2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

The formal criticism first alleges that the agent committed an error by charging the correct risk rate for an owner's policy of $735,360.00, (the mortgage amount), but issuing a policy for the owner in the amount of $265,000.00. The examiner alleges that the agent's "error" has left the owner underinsured and states that this is "not a sound underwriting practice." Further, the examiner "notes that the Company's underwriting and rating standards require that the owner's policy be written for full insurable value."

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. It is incorrect to say that the determination of insurability was not made through the use of sound underwriting practices. The answer to the examiner's complaint is quite academic and is easily found in the facts he recites. The property was purchased for $265,000.00 and a policy issued for that amount of money to the owner. The loan covered not just acquisition of the property, but construction costs, as well. These are things admitted by the examiner. It seems that the examiner wanted Old Republic to issue an owner's policy for nearly three times the value of the property at the time of acquisition. If the property is worth $265,000.00 at acquisition, THAT is the "full, insurable value of the property." To give an owner's policy for nearly three times that amount, as suggested by the examiner, would be an irresponsible, unsupportable business and insurance practice which Old Republic and the people tasked with regulating it would never countenance. The mortgage policy itself is only worth the full amount as the funds are disbursed and become part of the value of the property through the ongoing construction of the improvements. To suggest that a company should insure something for three times its value simply because someone plans to build on it, would be an extremely unsound practice, the exercise of which could wind up putting a title insurance company and its insureds at great risk. We are sure the examiner must not be suggesting that Old Republic instruct its agents to insure properties in amounts far in excess of their actual value.

In light of the foregoing, Old Republic denies the initial allegations of the criticism.

## ***EXAM FINDING #33***

*The loan to the borrower in this transaction included certain funds intended to be used for construction or remodeling purposes. The agency issued a loan policy that includes mechanic's lien coverage and did so without making an exception for the mechanic's lien risk. The file contains no indication of any analysis of the risk of mechanic's liens in this transaction. It is not sound underwriting practice to assume a mechanic's lien risk in the absence of some reasonable risk analysis.*

*Reference: Section 381.071.1(2), RSMo.*

| *File No.* | *Agent* |
|---|---|
| *MK-06-28697** | *Title Pros* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1)(2) by failing to make a determination of insurability of title in accordance with sound underwriting practices. Old Republic denies that it assumed mechanic's lien risk in the absence of some reasonable risk analysis. In the transaction at issue, the lender withheld $21,164.00 from the loan proceeds in order to insure payment of construction costs. Had the lender failed to secure the necessary mechanic's lien waivers, it would have been subject to a defense to coverage based on Policy Exclusion 3a. Therefore, Old Republic has not committed any statutory violation. Furthermore, the foregoing allegation was adequately responded to and refuted in Old Republic's Response to Formal Criticism J94 attached hereto.

Response To Formal Criticism No. J94

The formal criticism states that Old Republic's agent engaged in an unsound underwriting practices by assuming a mechanic's lien risk in the absence of some reasonable risk analysis. According to the examiner, the loan included funds to be used for construction or remodeling and the loan policy contained "mechanics lien coverage and did so without making an exception for the mechanic's lien risk." Old Republic denies that our agent failed to use sound underwriting practices.

Mo.Rev.Stat. 381.071 provides, in relevant part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. Old Republic is confident that others in the title insurance industry would agree that sound underwriting practices were used in this transaction.

The examiner states that he could find no analysis of mechanics lien risk. Yet, it is clear from the HUD-1 that the lender held $21,164.00 back from the loan proceeds in order to ensure payment of construction costs. See attached. The lender itself was responsible for securing waivers prior to release of these funds and, had they failed to properly secure waivers, would have been subject to a defense to coverage based on matters "created, suffered, assumed or agreed to by the insured claimant." (Policy Exclusion 3a). Given this fact, it is difficult to understand how the examiner can claim the risk was not properly underwritten. Having funds held back by the lender to pay construction costs with the lender being responsible for proper disbursement is a very good way to mitigate or eliminate the risk of mechanics lien losses.

Thus, it is Old Republic's position that the agent did, in fact, use sound underwriting practices. For these reasons, Old Republic denies the allegations of the criticism.

## *EXAM FINDING #34*

*The following file contains a deed with an inaccurate legal description. It is not sound underwriting practice to adopt a land description that creates confusion as to the boundaries of the land described.*

*Reference: Section 381.071.1(2), RSMo*

| *File No.* | *Agent* |
|---|---|
| *CA-45114** | *KC Title* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1)(2) by failing to make a determination of insurability of title in accordance with sound underwriting practices. In the transaction at issue, the legal description was changed in both the Deed of Trust and Warranty Deed through re-recording. The omission from the title policy of a reference to a survey not required to be recorded in Cass County and which is outside the chain of title would tend to reduce any confusion rather than increase it. Therefore, Old Republic has not committed any statutory violation. Furthermore, the foregoing allegation was adequately responded to and refuted in Old Republic's Responses to Formal Criticism J58 attached hereto.

Response To Formal Criticism No. J58

The formal criticism states that Old Republic's agent engaged in unsound underwriting practices. Specifically, the examiner states that the agent used the wrong legal description in a two lot subdivision and made no reference to the recorded survey depicting the division of the Lot into two parcels. He goes on to say that the survey was not executed by the owner, likely not indexed under that name and probably not in the chain of title. Despite these facts, he faults the agent for failing to reference the survey and says such practice is "confusing." He also states that the deed of trust fails to reference the survey and says it has been re-recorded to correct the legal description. However, he believes the agent has taken no steps to correct the legal description in the recorded deed of conveyance. These actions are said to violate 381.071 RSMo. Old Republic disagrees with these allegations.

Mo.Rev.Stat. 381.071 provides, in relevant part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. Old Republic is confident anyone familiar with the title insurance industry would agree that sound underwriting practices were used in this transaction.

First, while the agent used an incorrect legal description initially, the legal description was changed. The examiner, as noted, admits it was changed on the Deed of Trust. It was also changed on the Warranty Deed through a re-recording which contained an explanation of the problem. See attached.

Next, as to the survey, what the examiner may not have appreciated is that there is no requirement to record a survey of this kind and no need to reference it either in Cass County. Especially if the survey is outside the chain of title, as stated by the examiner, there is no purpose served in mentioning the survey in the policy. Instead of the **omission** being confusing, it seems rather that **including** a reference to a survey outside the chain of title is what would be "confusing," in the examiner's words. There is no substance to the allegation that unsound underwriting practices were used with regard to this file.

Thus, it is Old Republic's position that the agent did, in fact, use sound underwriting practices. For this reason, Old Republic denies the allegations of the criticism.

***EXAM FINDING #35***

*In the following transaction, the purchaser was identified as TXX PoXXX or his assigns. The purchase price specified by the contract was $525,000.00. Title at closing was conveyed to GXXXX BXXX and Cxxxxxx Bxxxxx, husband and wife, as to an undivided ½ interest, and TXX PoXXX and Lxxx PoXXX, husband and wife as to an undivided ½ interest. The agent accepted escrow deposits for the transaction in the amount of $5,000.00 drawn on an account of PoXXX Excavating. This company was established as a Missouri limited liability company about one month after the closing of this transaction. The agent accepted additional escrow deposits in the amount of $122,464.50 drawn from an account of an asphalt corporation. The interests of these entities are not accounted for or specified in the title or the escrow transaction. Additionally, these interests are not accounted for in the policy of title insurance. It is an unsound underwriting practice to fail to account for the interests of parties participating in an escrow transaction.*

*Reference: Sections 381.071.1(2), RSMo*

| *File No.* | *Agent* |
|---|---|
| *0702085-12660** | *Tri-county* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1)(2). Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J50, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violation.

Response To Formal Criticism No. J50

The formal criticism states that Old Republic's agent performed a closing where the purchasers were Blackmore and Pogrelis, each as to an undivided ½ interest. Escrow depostis were accepted from Pogrelis Excavating and Mid River Asphalt and the examiner believes the "interest" of these companies should have been "accounted for or specified in the title or the escrow transaction." According to the examiner, the failure to do so was an unsound underwriting practice which violates 381.071.1.2 RSMo. Old Republic disagrees with the examiner's conclusions.

Mo.Rev.Stat. 381.071 provides, in relevant part:

> 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has: ...
> (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.

Old Republic is known to have the most conservative underwriting practices among the major title insurance underwriters. These standards are passed down to our agents. Old Republic is confident anyone familiar with the title insurance industry would agree that sound underwriting practices were used in this transaction. First, it is unfair to discount all the underwriting that went into this transaction – the careful search and examination of title and the underwriting determination of what should appear in the commitment and policy. To focus on just this one issue and ignore everything else that was done lessens the value of the concept of "sound underwriting".

Be that as it may, the examiner's focus on the source of funds is completely misplaced. The source of escrow funds is irrelevant in a commercial transaction as long as those funds are good funds. The examiner attached the annual registration from Mid River Asphalt and the Articles of Organization for Pogrelis Excavating LLC, so he is aware that the officers and directors of Mid River Asphalt are Greg Blackmore and Tim Pogrelis and that these men are also the organizers for Pogrelis Excavating LLC. With their wives, these were the people who purchased the property, clearly using money from a business they owned. Regardless, it is unnecessary and of no consequence that these funds came from the businesses. The businesses have no interest in the property whatsoever.

The $5,000.00 check referenced in the criticism is drawn on the account of "Pogrelis Excavating." The check makes no reference of LLC and, as the examiner notes, was issued prior to the establishment of an LLC. The check cleared well prior to closing. There is nothing in the law of the State of Missouri prohibiting the use of a d/b/a. As to any potential claims of creditors of the businesses, that the funds were used for ultra vires purposes, there is a creditor's rights exclusion. Even if there wasn't an exclusion, we would not have given creditor's rights coverage in such a case. Old Republic does not understand any other reason why the examiner might have thought the source of the funds was relevant, nor what interest he believed was created by their providing the funds or why. Again, the source of funds is irrelevant as long as the funds were good.

As to the examiner's claim that it is an unsound practice to fail to account for the interests of parties participating in an escrow transaction, Old Republic would maintain that the interests of the ***parties*** to the escrow certainly were taken into account. The businesses mentioned were NOT parties to the escrow.

Old Republic is disappointed to have to respond to such a criticism when the facts known to the examiner demonstrate its adherence to sound underwriting and proper industry standards.

## ***EXAM FINDING #36***

*In the following file, the agent omitted an open mortgage from a revised version of the commitment to insure, on the basis of a credit report showing a zero balance for the loan. Information from a credit report is not a sound basis for omission of a recorded encumbrance on the title.*

*Reference: Section 381.071.1(2), RSMo*

| *File No.* | *Agent* |
|---|---|
| *5865059** | *Chesapeake* |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1)(2) by failing to make a determination of insurability of title in accordance with sound underwriting practices. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J38, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violation.

## Response To Formal Criticism No. J38

The formal criticism alleges that Old Republic's agent, Chesapeake Appraisal and Settlement Services, issued a loan policy after omitting an open mortgage from a revised version of the commitment on the basis of a credit report showing a zero balance for the loan. This is alleges to be an unsound basis for omission of an encumbrance and a violation of RSMo 381.071.1.2.

Old Republic is known to have the most conservative underwriting standards among the national underwriters. Pursuant to Section G. Acceptable Documentation to Clear Unreleased Mortgages or Deeds of Trust of the Addendum to Agency Agreement for Appointment of Policy Issuing Agent for Old Republic National Title Insurance Company, Chesapeake was permitted to remove "any mortgage, deed of trust, judgment lien or tax lien that pre-dates the first mortgage that is being paid off in connection with the refinance and is showing as open and unreleased of record..." "...based upon said mortgage, deed of trust, judgment lien or tax lien being shown as a zero balance, closed or satisfied in a current triple merged credit report..." See Addendum attached. This is NOT considered to be an unsound underwriting practice, as the first Deed of Trust being paid off would not have been insured in first position without the prior mortgage being considered. In fact, many lenders do not issue releases of liens that are paid off and it is a common and accepted practice to insure over old Deeds of Trust in Missouri and nationwide. The fact that the credit report was used to VERIFY that the old Deed of Trust was not a threat was an ADDITIONAL safeguard for which Old Republic should be commended, not criticized.

***C. Failure to issue policy in a timely manner***

***EXAM FINDING #37***

*This practice is considered not in the best interest of the Consumer. This is not a violation of any statute or regulation. However, the delay may not be in the best interest of consumers. The underwriter is not aware of reportable premium until the policy is issued and may be unable to promptly pay premium taxes when due. The Company has not fully complied with record maintenance obligations until the policy has been issued. In addition, the insured does not receive notice of how to file a claim or the address and phone number of the underwriter until the policy is issued.*

*Note: SB 66, Section 381.038.3, RSMo, eff. 1-01-08, and Emergency Rule 20 CSR 500-7.090, eff. 1-28-08 will require insurers to issue their policy within 45 days after completion of all requirements of the commitment for insurance.*

| File No. | Policy Number | Date co. had enough info. to Issue | Date Issued | No. of Days to Issue | Agency |
|---|---|---|---|---|---|
| ST. L-060407598 | OPSV00095337 MPMM00095337 | 5-9-06 | 9-22-06 | 136 | OR St. L |
| STC-06020321 | OPSV00093198 MPMM00093197 | 03-01-2006 | 07-01-2006 | 122 | OR St. L |
| JEF-06030113-T | MPMM00092709 | 6-2-06 | 4-1-07 | 303 | OR St. L |
| L-20235 | MPMM6278400 | 03-27-2006 | 07-31-2006 | 126 | Mid-West |
| 06-599 | OPSV665120 MPMM6495229 | 7-17-06 | 01-02-07 | 169 | Mo Central |
| 06-814 | OPSV4665087 MPMM6495169 | 10-11-06 | 1-2-07 | 83 | Mo Central |
| 0706-800 | OPSV4637472 | 8-31-06 | 02-01-07 | 154 | County Wide Abstract |
| 103397 | OPSV4471518 MPMM6207887 | 08-03-2006 | 12-06-2006 | 125 | Hillsboro Title |
| 060757388 | OPSV4471425 MPMM6207744 | 06-28-2006 | 10-12-2006 | 106 | Hillsboro Title |
| ST. L-06110386-8 | OPSV00100221 MPMM00100220 | 12-07-06 | 02-07-2007 | 62 | OR St. L |
| 06090367 | MM00098959 | 10-14-2006 | 01-08-2007 | 76 | OR St. L |
| 06020400 | OPSV00091497 MPMM00091496 | 03-23-2006 | 06-07-2006 | 76 | OR St. L |
| 06040405 | OPSV00095172 MPMM00095171 | 05-11-2006 | 09-21-2006 | 133 | OR St. L |
| CL-55164 | OPSV04632546 MPMM06418851 | 10-13-2006 | 01-02-2007 | 81 | KC Title |

| File No. | Policy Number | Date Co had Enough Info. to Issue | Date Issued | No. of Days to Issue | Agency |
|---|---|---|---|---|---|
| CL-53981 | OPSV04673770 MPMM06419231 | 11-08-2006 | 01-15-2007 | 68 | KC Title |
| CA-45114 | OPSV04537971 MPMM06240606 | 3-3-2006 | 01-30-2007 | 333 | KC Title |
| JA-55433 | OPSV04673579 MPMM06418830 | 10-10-2006 | 01-02-2007 | 84 | KC Title |
| KC-50758 | OPSV04630691 MPMM06360333 | 06-21-2006 | 08-22-2006 | 62 | KC Title |
| PL-55679 | OPSV04673617 MPMM06419184 | 10-30-2006 | 01-02-2007 | 64 | KC Title |
| MK-06-28697 | OPSV04638042 MPLTSF01293269 | 11-1-2006 | 02-05-2007 | 96 | Title Pros |
| KDR-06-29455 | OPSV04638117 MPLTSF01339496 | 11-7-2006 | 02-21-2007 | 106 | Title Pros |
| 051436-9436 | OPSV4718982 MPMM06375263 | 03-13-2006 | 01-09-2007 | 302 | OR St. L |
| 20118413 | MPMM08098692 | 6-19-2006 | 02-01-2007 | 227 | Nationwide |
| 52833 | OPSV04711020 MPLTSF01025798 | 11-1-2006 | 02-05-2007 | 96 | Cole County |
| 06020744 | OPSV00092702 MPMM00092701 | 03-22-2006 | 06-27-2007 | 97 | OR St. L |
| 06050339 | OPSB00046582 MM00046583 | 5-30-06 | 8-4-06 | 66 | OR KC |

**RESPONSE:**

Old Republic has not violated any statute or regulation with regard to the above-referenced files, as conceded by the Department. It is noteworthy that in many of the Examiner's Formal Criticisms, it is incorrectly stated that Mo.Rev.Stat § 381.031(3) included in SB 66 is effective August 28, 2007 rather than January 1, 2008, the actual effective date. That being said, Old Republic strives to have its agents promptly issue policies and will comply with the new statute. See also, Old Republic's Responses to Formal Criticisms T23, T30, T31, T34, T41, T44, T48, T51, T52, J21, J30, J27, J42, J65, J62, J59, J2, J80, J83, J91, J87, J47, J40, J32, J28, and T58 attached hereto.

## Response To Formal Criticism No. T23

The formal criticism alleges that Old Republic unreasonably delayed in issuing its policy. For some unexplained reason, it is alleged that the company failed to maintain its policy records as described in 20 CSR 300-2.200(3)(A)(2), as well. The examiner also states that a statute effective August 28, 2007 will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

20 CSR 300-2.200(3)(A)(2) requires the retention of declaration pages, the insurance contract, endorsements and any correspondence with the insured pertaining to coverage. Old Republic cannot understand how a delay in issuing the policy violates this regulation. This section has no bearing on the length of time between closing and policy issuance. There is no specific allegation that Old Republic failed to retain proper records. This seems nothing more than an attempt to find a statute or regulation which addresses a delay in issuing a policy, something that no statute or regulation will address until January 1, 2008.

As alluded to above, Senate Bill 66's Section 381.038.3 will not be effective until January 1, 2008, not August 28, 2007, as stated by the examiner. In either case, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. This forty-five day period will commence "after compliance with the requirements of the commitment for insurance." While it is our goal to have our agents comply with the new statute, it does not apply in this instance. Nor do any current statutes or regulations address the length of time it took to issue the policy.

In light of the foregoing, Old Republic denies the allegations of this criticism

Response To Formal Criticism No. T30

The formal criticism alleges that Old Republic unreasonably delayed in issuing its policy. For some unexplained reason, it is alleged that the company failed to maintain its policy records as described in 20 CSR 300-2.200(3)(A)(2), as well. The examiner also states that a statute effective August 28, 2007 will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

First, as to the facts of this particular transaction, there was no delay in policy issuance. Schedule B-1 #11 of the commitment states:

> Note: This Company will not insure the Proposed Insured against any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records until such time as all construction funds are properly disbursed through a disbursing agent acceptable to the Company.

Construction funds were disbursed by the agent. The last disbursement was made January 10, 2007. All of the requirements of the commitment were not met until that date. Therefore we were not obligated to issue policy prior to January 10th, 2007 and the examiner agrees the policy was issued in 2006.

Next, 20 CSR 300-2.200(3)(A)(2) requires the retention of declaration pages, the insurance contract, endorsements and any correspondence with the insured pertaining to coverage. Old Republic cannot understand how a delay (even if there was one) in issuing the policy violates this regulation. This section has no bearing on the length of time between closing and policy issuance. There is no specific allegation that Old Republic failed to retain proper records. This seems nothing more than an attempt to find a statute or regulation which addresses a delay in issuing a policy, something that no statute or regulation will address until January 1, 2008.

Finally, Senate Bill 66's Section 381.038.3 will not be effective until January 1, 2008, not August 28, 2007, as stated by the examiner. In either case, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. This forty-five day period will commence "after compliance with the requirements of the commitment for insurance." On this file, as mentioned previously, there was no delay in policy issuance. Thus, the 45 day period, had this statute been in effect, would not have begun to run at the time the policy was issued and the agent would easily have been in compliance with its terms.

In light of the foregoing, Old Republic denies the allegations of this criticism

## Response To Formal Criticism No. T31

The formal criticism alleges that Old Republic unreasonably delayed in issuing its policy. For some unexplained reason, it is alleged that the company failed to maintain its policy records as described in 20 CSR 300-2.200(3)(A)(2), as well. The examiner also states that a statute effective August 28, 2007 will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

First, 20 CSR 300-2.200(3)(A)(2) requires the retention of declaration pages, the insurance contract, endorsements and any correspondence with the insured pertaining to coverage. Old Republic cannot understand how a delay in issuing the policy violates this regulation. This section has no bearing on the length of time between closing and policy issuance. There is no specific allegation that Old Republic failed to retain proper records. This seems nothing more than an attempt to find a statute or regulation which addresses a delay in issuing a policy, something that no statute or regulation will address until January 1, 2008.

Next, there was no violation of any statute or regulation. Senate Bill 66's Section 381.038.3 will not be effective until January 1, 2008, not August 28, 2007, as stated by the examiner. In either case, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. Moreover, this forty-five day period will only commence "after compliance with the requirements of the commitment for insurance." On this file, a release of the Deed of Trust required on B-1 of the Commitment was recorded July 17, 2006. This was the date from which the policy could have been issued, rather than May 22, as cited by the examiner. Still, the policy was not issued until some months later, for which we have no explanation. While Old Republic strives to have its agents issue policies quickly and certainly wants them to comply with the new statute, that statue was not in effect and not applicable to this transaction.

In light of the foregoing, Old Republic denies the allegations of this criticism

## Response To Formal Criticism No. T34

The formal criticism alleges that Old Republic unreasonably delayed in issuing its policy. For some unexplained reason, it is alleged that the company failed to maintain its policy records as described in 20 CSR 300-2.200(3)(A)(2), as well. The examiner also states that a statute effective August 28, 2007 will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

First, 20 CSR 300-2.200(3)(A)(2) requires the retention of declaration pages, the insurance contract, endorsements and any correspondence with the insured pertaining to coverage. Old Republic cannot understand how a delay in issuing the policy violates this regulation. This section has no bearing on the length of time between closing and policy issuance. There is no specific allegation that Old Republic failed to retain proper records. This seems nothing more than an attempt to find a statute or regulation which addresses a delay in issuing a policy, something that no statute or regulation will address until January 1, 2008.

The examiner mentions the new statute passed as Senate Bill 66. However, Section 381.038.3 from that bill will not be effective until January 1, 2008, not August 28, 2007, as stated by the examiner. In either case, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. Moreover, this forty-five day period will only commence "after compliance with the requirements of the commitment for insurance." On this file, a release of the Deed of Trust required on B-1 of the Commitment was recorded April 14, 2006. This was the date from which the policy could have been issued, rather than March 27, as cited by the examiner. Three months still passed before the policy was issued, but that did not violate any statute or regulation. While Old Republic strives to have its agents issue policies quickly, and certainly wants them to comply with the new statute, that statute was not in effect and not applicable to this transaction.

In light of the foregoing, Old Republic denies the allegations of this criticism.

Response To Formal Criticism No. T41

The formal criticism alleges that Old Republic unreasonably delayed in issuing its policy. For some unexplained reason, it is alleged that the company failed to maintain its policy records as described in 20 CSR 300-2.200(3)(A)(2), as well. The examiner also states that a statute effective August 28, 2007 will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

First, 20 CSR 300-2.200(3)(A)(2) requires the retention of declaration pages, the insurance contract, endorsements and any correspondence with the insured pertaining to coverage. Old Republic cannot understand how a delay in issuing the policy violates this regulation. This section has no bearing on the length of time between closing and policy issuance. There is no specific allegation that Old Republic failed to retain proper records. This seems nothing more than an attempt to find a statute or regulation which addresses a delay in issuing a policy, something that no statute or regulation will address until January 1, 2008.

The examiner mentions the new statute passed as Senate Bill 66. However, Section 381.038.3 from that bill will not be effective until January 1, 2008, not August 28, 2007, as stated by the examiner. In either case, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. Moreover, this forty-five day period will only commence "after compliance with the requirements of the commitment for insurance." On this file, a release of the Deed of Trust required on B-1 of the Commitment was recorded August 25, 2006. This was the date from which the policy could have been issued, rather than July 16, as cited by the examiner. Four months still passed before the policy was issued by our agent, but that did not violate any statute or regulation. While Old Republic strives to have its agents issue policies quickly, and certainly wants them to comply with the new statute, that statute was not in effect and not applicable to this transaction.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. T44

The formal criticism alleges that Old Republic unreasonably delayed in issuing its policy. For some unexplained reason, it is alleged that the company failed to maintain its policy records as described in 20 CSR 300-2.200(3)(A)(2), as well. The examiner also states that a statute effective August 28, 2007 will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

First, 20 CSR 300-2.200(3)(A)(2) requires the retention of declaration pages, the insurance contract, endorsements and any correspondence with the insured pertaining to coverage. Old Republic cannot understand how a delay in issuing the policy violates this regulation. This section has no bearing on the length of time between closing and policy issuance. There is no specific allegation that Old Republic failed to retain proper records. This seems nothing more than an attempt to find a statute or regulation which addresses a delay in issuing a policy, something that no statute or regulation will address until January 1, 2008.

The examiner mentions the new statute passed as Senate Bill 66. However, Section 381.038.3 from that bill will not be effective until January 1, 2008, not August 28, 2007, as stated by the examiner. In either case, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. Moreover, this forty-five day period will only commence "after compliance with the requirements of the commitment for insurance." On this file, a release of the Deed of Trust required on B-1 of the Commitment was recorded October 19, 2006. This was the date from which the policy could have been issued, rather than October 11, as cited by the examiner. 74 days still passed before the policy was issued by our agent, but that did not violate any statute or regulation. While Old Republic strives to have its agents issue policies quickly, and certainly wants them to comply with the new statute, that statute was not in effect and not applicable to this transaction.

In light of the foregoing, Old Republic denies the allegations of this criticism.

Response To Formal Criticism No. T48

The formal criticism alleges that Old Republic's agent unreasonably delayed in issuing its policy. For some unexplained reason, it is alleged that the company failed to maintain its policy records as described in 20 CSR 300-2.200(3)(A)(2), as well. The examiner also states that a statute effective January 1, 2008 will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

20 CSR 300-2.200(3)(A)(2) requires the retention of declaration pages, the insurance contract, endorsements and any correspondence with the insured pertaining to coverage. Old Republic cannot understand how a delay in issuing the policy violates this regulation. This section has no bearing on the length of time between closing and policy issuance. There is no specific allegation that Old Republic failed to retain proper records. This seems nothing more than an attempt to find a statute or regulation which addresses a delay in issuing a policy, something that no statute or regulation will address until January 1, 2008.

As alluded to above, Senate Bill 66's Section 381.038.3 will not be effective until January 1, 2008. In any case, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. This forty-five day period will commence "after compliance with the requirements of the commitment for insurance." While it is our goal to have our agents comply with the new statute, it does not apply in this instance. Nor do any current statutes or regulations address the length of time it took to issue the policy.

In light of the foregoing, Old Republic denies the allegations of this criticism

## Response To Formal Criticism No. T51

The formal criticism alleges that Old Republic's agent unreasonably delayed in issuing its policy. The examiner references 20 CSR 300-2.200(3)(A)(2) in this regard, which discusses maintenance of policy records. The examiner also states that a statute effective January 1, 2008, requires issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

20 CSR 300-2.200(3)(A)(2) requires the retention of declaration pages, the insurance contract, endorsements and any correspondence with the insured pertaining to coverage. Old Republic does not believe a delay in issuing the policy violates this regulation. This section does not address the length of time between closing and policy issuance. The examiner made no specific allegation that Old Republic failed to retain proper records. No statute or regulation addressed a delay in issuing a policy until January 1, 2008.

As alluded to above, Senate Bill 66's Section 381.038.3 became effective January 1, 2008. It was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. This forty-five day period commences "after compliance with the requirements of the commitment for insurance." Thus, the time period would not have begun to run until after the Deed of Trust was released in September 2006. This shortens the timeframe mentioned by the examiner, but it still exceeds 45 days. Nevertheless, while it is our goal to have our agents comply with the new statute, it did not apply in this instance. Nor are we aware of any other statutes which speak to the issue.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. T52

The formal criticism alleges that Old Republic's agent unreasonably delayed in issuing its policy. The examiner references 20 CSR 300-2.200(3)(A)(2) in this regard, which discusses maintenance of policy records. The examiner also states that a statute effective January 1, 2008, requires issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

20 CSR 300-2.200(3)(A)(2) requires the retention of declaration pages, the insurance contract, endorsements and any correspondence with the insured pertaining to coverage. Old Republic does not believe a delay in issuing the policy violates this regulation. This section does not address the length of time between closing and policy issuance. The examiner made no specific allegation that Old Republic failed to retain proper records. No statute or regulation addressed a delay in issuing a policy until January 1, 2008.

As alluded to above, Senate Bill 66's Section 381.038.3 became effective January 1, 2008. It was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. This forty-five day period commences "after compliance with the requirements of the commitment for insurance." Thus, the time period would not have begun to run until after the Deed of Trust was released in September 2006. This shortens the timeframe mentioned by the examiner, but it still exceeds 45 days. Nevertheless, while it is our goal to have our agents comply with the new statute, it did not apply in this instance. Nor are we aware of any other statutes which speak to the issue.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J21

The formal criticism lastly alleges that Old Republic unreasonably delayed in issuing its policy. The examiner also states that a statute effective August 28, 2007 will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

As the examiner states, the closing took place on November 30, 2006 and the policy was issued on February 7, 2007. The examiner concludes that there was a long delay in the issuance of the policy. He cites a new law stating that a policy should be issued within 45 days after completion of all requirements of the commitment for insurance. However, Senate Bill 66's Section 381.038.3 will not be effective until January 1, 2008, not August 28, 2007, as stated by the examiner. In either case, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. Moreover, this forty-five day period will only commence "after compliance with the requirements of the commitment for insurance." On this file, the requirements of the commitment were not satisfied until December 26, 2006 when B-1 Requirement #7 was satisfied with a recorded deed of release. Therefore the actual delay was 43 days, within the future 45 day requirement. In light of the foregoing, Old Republic denies the allegations of this portion of the criticism.

Response To Formal Criticism No. J30

The formal criticism alleges that Old Republic unreasonably delayed in issuing its policy. The examiner also states that a statute effective August 28, 2007 will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

As the examiner states, funds were disbursed on October 18, 2006, the deeds recorded October 24, 2006 and the policies issued on January 8, 2007. The examiner concludes that there was a delay of 76 calendar days in the issuance of the policies. He cites a new law stating that a policy should be issued within 45 days after completion of all requirements of the commitment for insurance. However, Senate Bill 66's Section 381.038.3 will not be effective until January 1, 2008, not August 28, 2007, as stated by the examiner. In either case, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days.

Moreover, this forty-five day period will only commence "after compliance with the requirements of the commitment for insurance." On this file, the requirements of the commitment were satisfied when the Deed of Trust of record was released on November 14, 2006. Therefore the actual delay was 55 days in the midst of the holiday season and the busiest time of year for the title industry. While Old Republic strives to have its agents issue policies quickly and certainly wants them to comply with the new statute, that statue was not in effect and not applicable to this transaction. In light of the foregoing, Old Republic denies the allegations of this portion of the criticism.

Response To Formal Criticism No. J27

The formal criticism alleges that Old Republic unreasonably delayed in issuing its policy. The examiner also states that a statute effective August 28, 2007 will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

As the examiner states, the closing took place on March 6, 2006 and the policies were issued on June 7, 2006. The examiner concludes that there was a long delay in the issuance of the policy. He cites a new law stating that a policy should be issued within 45 days after completion of all requirements of the commitment for insurance. However, Senate Bill 66's Section 381.038.3 will not be effective until January 1, 2008, not August 28, 2007, as stated by the examiner. In either case, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days.

Moreover, this forty-five day period will only commence "after compliance with the requirements of the commitment for insurance." On this file, the requirements of the commitment were not satisfied until a Deed of Trust of record was released. This Deed was recorded a few days after the policies were issued and, therefore, there was no delay in issuance of the policy anyway. In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J42

The formal criticism alleges that Old Republic's agent unreasonably delayed in issuing its policy. The examiner also states that a statute effective January 1, 2008, will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

The examiner mentions the new statute passed as Senate Bill 66. However, Section 381.038.3 from that bill will not be effective until January 1, 2008, as stated by the examiner. Obviously, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. Moreover, this forty-five day period will only commence "after compliance with the requirements of the commitment for insurance." On this file, a release of the Deed of Trust required on B-1 of the Commitment was recorded Deed of release recorded June 16, 2006. This was the date from which the policy could have been issued, rather than May 5, as cited by the examiner. Even so, three months did pass before the policy was issued, but it is important to point out that this timeframe did not violate any statute or regulation. While Old Republic strives to have its agents issue policies quickly, and certainly wants them to comply with the new statute, that statute was not in effect and not applicable to this transaction.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J65

The formal criticism alleges that Old Republic's agent unreasonably delayed in issuing its policy. The examiner states that a statute effective January 1, 2008, requires issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation.

As alluded to above, Senate Bill 66's Section 381.038.3 became effective January 1, 2008. It was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. In fact, no statute or regulation addressed a delay in issuing a policy until January 1, 2008. The forty-five day period in the new statute commences "after compliance with the requirements of the commitment for insurance." Thus, had the statute been in effect, the time period would not have begun to run until after the Deed of Trust was released on December 12, 2006. See attached. This means the policy was issued within only 21 days "after completion of all requirements of the commitment for insurance." This is well within the 45 day time frame set forth in the statute.

In addition, as stated already, there was no requirement to issue a policy within any particular timeframe at the time that this file was closed.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J62

The formal criticism alleges that Old Republic's agent unreasonably delayed in issuing its policy. The examiner states that a statute effective January 1, 2008, requires issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation.

As alluded to above, Senate Bill 66's Section 381.038.3 became effective January 1, 2008. It was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. In fact, no statute or regulation addressed a delay in issuing a policy until January 1, 2008. The forty-five day period in the new statute commences "after compliance with the requirements of the commitment for insurance." Thus, had the statute been in effect, the time period would not have begun to run until after the Deed of Trust was released on December 26, 2006. See attached. This means the policy was issued within 20 days "after completion of all requirements of the commitment for insurance." This is well within the 45 day time frame set forth in the statute.

In addition, as stated already, there was no requirement to issue a policy within any particular timeframe at the time that this file was closed.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J59

The formal criticism alleges that Old Republic's agent unreasonably delayed in issuing its policy. The examiner states that a statute effective January 1, 2008, requires issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation.

As alluded to above, Senate Bill 66's Section 381.038.3 became effective January 1, 2008. It was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. In fact, no statute or regulation addressed a delay in issuing a policy until January 1, 2008. The forty-five day period in the new statute commences "after compliance with the requirements of the commitment for insurance." Thus, had the statute been in effect, the time period would not have begun to run until after the Deed of Trust and mortgage were rerecorded on June 15, 2006. See attached. This was still a long time prior to issuance of the policy, but not nearly as long as the examiner alleges.

While Old Republic desires that its agents record policies on a timely basis and it is to our advantage that they do so, there was no requirement to issue a policy within any particular timeframe at the time that this file was closed.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J72

The formal criticism alleges that Old Republic's agent unreasonably delayed in issuing its policy. The examiner states that a statute effective January 1, 2008, requires issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation.

As alluded to above, Senate Bill 66's Section 381.038.3 became effective January 1, 2008. It was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. In fact, no statute or regulation addressed a delay in issuing a policy until January 1, 2008. The forty-five day period in the new statute commences "after compliance with the requirements of the commitment for insurance." Thus, had the statute been in effect, the time period would not have begun to run until after the Deed of Trust was released on October 26, 2006. This was 68 days before the issuance of the policy.

While Old Republic desires that its agents record policies on a timely basis and it is to our advantage that they do so, there was no requirement to issue a policy within any particular timeframe at the time that this file was closed.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J80

The formal criticism alleges that Old Republic's agent unreasonably delayed in issuing its policy. The examiner states that a statute effective January 1, 2008, requires issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation.

As alluded to above, Senate Bill 66's Section 381.038.3 became effective January 1, 2008. It was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. In fact, no statute or regulation addressed a delay in issuing a policy until January 1, 2008. The forty-five day period in the new statute commences "after compliance with the requirements of the commitment for insurance." Thus, had the statute been in effect, the time period would not have begun to run until after the Deed of Trust was released on July 7, 2006. See attached. This was 46 days before the issuance of the policy, not the 62 days alleged by the examiner.

While Old Republic desires that its agents record policies on a timely basis and it is to our advantage that they do so, there was no requirement to issue a policy within any particular timeframe at the time that this file was closed.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J83

The formal criticism alleges that Old Republic's agent unreasonably delayed in issuing its policy. The examiner states that a statute effective January 1, 2008, requires issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation.

As alluded to above, Senate Bill 66's Section 381.038.3 became effective January 1, 2008. It was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. In fact, no statute or regulation addressed a delay in issuing a policy until January 1, 2008. The forty-five day period in the new statute commences "after compliance with the requirements of the commitment for insurance." Thus, had the statute been in effect, the time period would not have begun to run until after the Deed of Trust was released on December 5, 2006. See attached. This means the policy was issued within just 28 days "after completion of all requirements of the commitment for insurance." This is well within the 45 day time frame set forth in the statute.

In addition, as stated already, there was no requirement to issue a policy within any particular timeframe at the time that this file was closed.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J91

The formal criticism alleges that Old Republic's agent unreasonably delayed in issuing its policy. The examiner states that a statute effective January 1, 2008, requires issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that its agent has violated any statute or regulation.

As alluded to above, Senate Bill 66's Section 381.038.3 became effective January 1, 2008. It was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. In fact, NO statute or regulation addressed a delay in issuing a policy until January 1, 2008. Pursuant to the new law, the forty-five day period in the statute commences "after compliance with the requirements of the commitment for insurance." Thus, had the statute been in effect, the 45 day time period would not have begun to run until after the last Deed of Trust was released on November 9, 2006. See attached. Since the policy was not issued until following February 5, 2007, the 45 day time period would have been implicated had the statute been in place at the time. However, as has been made clear numerous times, the statute was not yet in effect at this time.

While Old Republic desires that its agents record policies on a timely basis and it is to our advantage that they do so, there was no requirement to issue a policy within any particular timeframe at the time that this file was closed.

One other curious thing is that the examiner referenced 381.412.1, a portion of the Good funds statute, as having something to do with the delayed policy. Old Republic sees no link whatsoever between this statutory cite and the time of issuance of the policy and denies that its agent violated that statute by virtue of the allegations herein.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J87

The formal criticism alleges that Old Republic's agent unreasonably delayed in issuing its policy. The examiner states that a statute effective January 1, 2008, requires issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that its agent has violated any statute or regulation.

As alluded to above, Senate Bill 66's Section 381.038.3 became effective January 1, 2008. It was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. In fact, NO statute or regulation addressed a delay in issuing a policy until January 1, 2008. Pursuant to the new law, the forty-five day period in the statute commences "after compliance with the requirements of the commitment for insurance." Thus, had the statute been in effect, the 45 day time period would not have begun to run until after the last Deed of Trust was released on February 27, 2007. See attached. Yet, as stated by the examiner, the policy was issued on February 21, 2007, ***6 days before*** the 45 day time period would have commenced had the statute been in place at the time. As a result, the agent would have easily complied with the time requirement for policy issuance under the new statute.

While Old Republic desires that its agents record policies on a timely basis and it is to our advantage that they do so, there was no requirement to issue a policy within any particular timeframe at the time that this file was closed.

One other curious thing is that the examiner referenced 381.412.1, a portion of the Good funds statute, as having something to do with the delayed policy. Old Republic sees no link whatsoever between this statutory cite and the time of issuance of the policy and denies that its agent violated that statute by virtue of the allegations herein.

In light of the foregoing, Old Republic denies the allegations of this criticism.

Response To Formal Criticism No. J47

The formal criticism next alleges that Old Republic's agent delayed more than 300 days in issuing its policy. The examiner also states that a statute effective January 1, 2008, will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that there was a delay and disagrees that it has violated any statute or regulation cited by the examiner.

The examiner mentions the new statute passed as Senate Bill 66. However, Section 381.038.3 from that bill will not be effective until January 1, 2008, as stated by the examiner. Obviously, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. Moreover, this forty-five day period will only commence "after compliance with the requirements of the commitment for insurance." On this file, more than one Deed of Trust needed to be released, as required by the commitment for insurance. The last was finally recorded on February 26, 2007. Since the policy was issued January 9, 2007, the 45 day period, had the statute been in effect, would not have begun to run before policy issuance. Thus, even had this statute been in effect, Old Republic would easily be in compliance with its terms.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## Response To Formal Criticism No. J40

The formal criticism next alleges that Old Republic's agent delayed more than 200 days in issuing its policy. The examiner also states that a statute effective January 1, 2008, will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

The examiner mentions the new statute passed as Senate Bill 66. However, Section 381.038.3 from that bill only became effective on January 1, 2008, as stated by the examiner. Obviously, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. Moreover, this 45 day period only commences "after compliance with the requirements of the commitment for insurance." On this file, a Deed of Trust needed to be released, as required by the commitment for insurance. We were unable to ascertain when this occurred, but this accounts for some of the time lag. The 45 day period, had the statute been in effect, would not have begun to run until that time. Old Republic's goal is to have its agents comply with the provisions of the new statute, but at the time of the transaction, the statute was not in effect.

In light of the foregoing, Old Republic denies the allegations of this criticism.

Response To Formal Criticism No. J32

The formal criticism next alleges that Old Republic's agent unreasonably delayed in issuing its policy. The examiner also states that a statute effective August 28, 2007 will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

As the examiner states, funds were disbursed on October 31, 2006, the deeds recorded November 1, 2006 and the policies issued on February 5, 2007. The examiner concludes that there was a delay of 96 calendar days in the issuance of the policies. He cites a new law stating that a policy should be issued within 45 days after completion of all requirements of the commitment for insurance. However, Senate Bill 66's Section 381.038.3 will not be effective until January 1, 2008, not August 28, 2007, as stated by the examiner. In either case, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days.

Moreover, this forty-five day period will only commence "after compliance with the requirements of the commitment for insurance." On this file, the requirements of the commitment were satisfied when the second Deed of Trust of record was released on December 5, 2006. Therefore the actual delay was 61 days (not 96 as alleged by the examiner) in the midst of the holiday season and the busiest time of year for the title industry. While Old Republic strives to have its agents issue policies quickly and certainly wants them to comply with the new statute, that statue was not in effect and not applicable to this transaction. In light of the foregoing, Old Republic denies the allegations of this portion of the criticism.

## Response To Formal Criticism No. J28

The formal criticism next alleges that Old Republic unreasonably delayed in issuing its policy. The examiner also states that a statute effective August 28, 2007 will require issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

As the examiner states, funds were disbursed on March 16, 2006 and the policy was issued June 27, 2006 (not 2007, as stated by the examiner). The examiner concludes that there was a long delay in the issuance of the policy. He cites a new law stating that a policy should be issued within 45 days after completion of all requirements of the commitment for insurance. However, Senate Bill 66's Section 381.038.3 will not be effective until January 1, 2008, not August 28, 2007, as stated by the examiner. In either case, it was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. Moreover, this forty-five day period will only commence "after compliance with the requirements of the commitment for insurance." On this file, the requirements of the commitment were satisfied when the Deed of Trust of record was released on April 20, 2006. Therefore the actual delay was 68 days. While Old Republic strives to have its agents issue policies quickly and certainly wants them to comply with the new statute, that statue was not in effect and not applicable to this transaction. In light of the foregoing, Old Republic denies the allegations of this portion of the criticism.

## Response To Formal Criticism No. T58

The formal criticism alleges that Old Republic's agent unreasonably delayed in issuing its policy. The examiner references 20 CSR 300-2.200(3)(A)(2) in this regard, which discusses maintenance of policy records. The examiner also states that a statute effective January 1, 2008, requires issuance of a policy within 45 days after completion of all requirements of the commitment for insurance. Old Republic disagrees that it has violated any statute or regulation cited by the examiner.

20 CSR 300-2.200(3)(A)(2) requires the retention of declaration pages, the insurance contract, endorsements and any correspondence with the insured pertaining to coverage. Old Republic does not believe a delay in issuing the policy violates this regulation. This section does not address the length of time between closing and policy issuance. The examiner made no specific allegation that Old Republic failed to retain proper records. No statute or regulation addressed a delay in issuing a policy until January 1, 2008.

As alluded to above, Senate Bill 66's Section 381.038.3 became effective January 1, 2008. It was not effective when the policy was issued and, therefore, no requirement existed that the policy be issued within 45 days. This forty-five day period commences "after compliance with the requirements of the commitment for insurance." Thus, the time period would not have begun to run until after the Deed of Trust was released on June 21, 2006. See attached. This means the policy was issued within 43 days "after completion of all requirements of the commitment for insurance." Forty-Three days is within the 45 day time frame set forth in the statute.

In light of the foregoing, Old Republic denies the allegations of this criticism.

## III. Claims Practices

*In this section, examiners review claims practices of the Company to determine efficiency of handling, accuracy of payment, adherence to contract provisions, and compliance with Missouri statutes and department regulations. A claim file, as a sampling unit, is an individual demand for payment or action under an insurance contract for benefits that may or may not be payable. The most appropriate statistic to measure compliance with the law is the percent of files in error. An error can include, but is not limited to, any unreasonable delay in the acknowledgment, investigation, payment, or denial of a claim. Errors also include the failure to calculate benefits correctly or to comply with Missouri laws regarding claim settlement practices.*

*ORNTIC provided their claim data in the three categories, active, closed without payment, and closed with payment. Separate samples were reviewed for each category.*

### *A. Claim Time Studies*

*In determining efficiency, examiners look at the duration of time the Company used to acknowledge the receipt of the claim, the time for investigation of the claim, and the time to make payment or provide a written denial. DIFP regulations define the reasonable duration of time for claim handling as follows: (1) payment or denial of claim within 15 working days after the Company completes investigation, (2) settlement of the claim within 30 days of the receipt of all necessary documentation to determine liability. When the Company fails to meet these standards, examiners criticize files for noncompliance with Missouri laws or regulations.*

#### *1. Active*

| | |
|---|---|
| *Field Size:* | *139* |
| *Sample Size:* | *50* |
| *Type of Sample:* | *Systematic* |

*The following are the results of the time studies.*

***Acknowledgement Time-Active***

| | |
|---|---|
| *Number of Errors:* | *10* |
| *Error Rate:* | *20%* |
| *Within Dept. Guidelines:* | *No* |

*The examiners noted the following errors in this review.*

***EXAM FINDING #38***

*The Company failed to acknowledge the following claims within 10 working days of notification of the claim. The claim is received when the agent is notified.*

*Reference: 20 CSR 100-1.010(1)(G), and 20 CSR 100-1.030 (1)*

| *Claim* | *Received Notice of Claim* | *Date Acknowledged* | *Days* |
|---|---|---|---|
| *93919* | *1-17-05* | *2-4-05* | *12* |
| *104137* | *4-24-06* | *None* | |
| *110077* | *12-14-06* | *1-5-07* | *15* |
| *113903* | *4-25-07* | *5-23-07* | *19* |
| *114834* | *6-8-07* | *None* | |
| *105143* | *6-8-06* | *6-26-06* | *12* |
| *77389* | *1-20-04* | *2-6-04* | *13* |
| *105594* | *6-15-06* | *7-17-06* | *21* |
| *113458* | *11-16-04* | *5-9-07* | *877* |

**RESPONSE:**

Old Republic disputes that it has violated 20 CSR 100-1.010(1)(G), and 20 CSR 100-1.030 (1) in the above-referenced files. In several instances there is evidence that calls were made to the insured acknowledging the claim prior to that dated in the written correspondence in the file. Additionally, the policies issued direct the insured to contact Old Republic directly with regard to claims issues so that the Company may timely acknowledge any such claims. Therefore, Old Republic has not committed any regulatory violations. Furthermore, the foregoing allegations were adequately responded to and refuted in Old Republic's Responses to Formal Criticisms T5, T6, J1, J6, M4, and J15 attached hereto.

Response To Formal Criticism No. T5

The Formal Criticism alleges that Old Republic violated RSMo 375.1007(2), "failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies" and 20 CSR 100-1.030(1), which requires acknowledgment of a claim within ten working days after receiving notification of the claim. We disagree with this conclusion.

Old Republic takes pride in its ability to handle claims fairly and as expeditiously as possible for its insureds. This claim was successfully resolved by clearing the title defect for the insured lender. It has been nearly three years since this claim was opened, but the claims administrator believes there could have been a phone call made acknowledging the claim prior to the acknowledgment phone call with the insured referenced in the correspondence.

Response To Formal Criticism No. T6

The Formal Criticism alleges that Old Republic failed to acknowledge a claim, thus violating RSMo 375.1007(2), "failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies" and 20 CSR 100-1.030(1), which requires acknowledgment of a claim within ten working days after receiving notification of the claim. We disagree with this conclusion.

On May 12, 2006, Old Republic received an email from Heather McPike of Millsap and Singer referring to a claim which they said had been submitted to Old Republic on April 24. On May 15, the next business day, Larry Gordon of Old Republic sent an email response (see attached) confirming a prior conversation in which Old Republic agreed to retain the claimant's firm to cure the title defect. This was an extremely prompt response to the email of May 12 and proves that the claim was, in fact, acknowledged.

There is some conflict as to the date the claim was received. Since our original claim file was lost, we do not have a copy of the date-stamped letter submitting the claim. Millsap & Singer's (attorneys for the insured) invoice number 162830, which Old Republic paid in full as part of the aforementioned agreement, indicates that their file was opened only four days prior to the Mr. Gordon's email:

"Date: 5/11/2006 Reviewed new file referral for determination of title issues to be resolved and necessary judicial action to cure same."

It is clear from the dates on the invoice that Millsap and Singer had not reviewed this file for title issues until 5/11/2006, and therefore our response to them on 5/15/2006 is well within the guidelines for timely acknowledgment of claims. Though the discrepancy in the dates provided by Millsap and Singer – 4/24/06 vs. 5/11/06 – creates some doubt as to the veracity of any of the dates in their communications, clearly the law firm had a profit motive to show all the work they did on a particular file from the beginning.

It does appear that Old Republic not only acknowledged the claim, but also proposed a course of action and retained counsel, within a reasonable amount of time after the claim was made.

Response To Formal Criticism No. J1

The Formal Criticism admits that Old Republic acknowledged the claim one day after receiving notice of it from the title agent. Therefore, it is clear that Old Republic, which could not have been more prompt, did not violate RSMo 375.1007(2), which deals with "failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies." Moreover, Old Republic did not violate 20 CSR 100-1.030(1), which requires acknowledgment of a claim within ten working days after "receiving notification of the claim." Old Republic did not RECEIVE notification of the claim until May 22 and the acknowledgment was sent one day later, as noted already. 20 CSR 100-1.010(G) defines "notification of claim," and states that notification can be made to an insurer or its insurance producer. However, nowhere is the term "receipt of notification of claim" defined and the two concepts are not identical. The regulations do not say that receipt of notification by an agent equates to receipt by the insurer.

Furthermore, agents in Missouri are told that whenever they are notified of a potential claim, they should request the insured notify Old Republic pursuant to the terms of the policy. The agents are always instructed not to handle claims. In addition, the policy itself states that notice should be given to the insurer and not to the agent:

> Conditions and Stipulations
> * * * *
> 17. Notices. Where Sent.
> All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to its Home Office: 400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111.

The whole purpose of including Old Republic's address for notice is so that the Company can comply with state laws and regulations such as Missouri's. The fact that the insured did not follow the proper procedure for sending notice to Old Republic and the fact that the agent did not follow proper procedure, should not be held against Old Republic. Old Republic could not have responded sooner than it received the notice from the agent because it was unaware of the claim. Once it became aware of (received) the claim, Old Republic's acknowledgement was almost immediate. The notification to the agent, defective as it was, did not "reasonably apprise the insurer of the facts pertinent to the claim" as set forth in 20 CSR 100-1.010(G).

Response To Formal Criticism No. J6.

The Formal Criticism alleges that Old Republic violated RSMo 375.1007(2), "failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies" and 20 CSR 100-1.030(1), which requires acknowledgment of a claim within ten working days after receiving notification of the claim. We disagree with this conclusion.

The insured lender originally put us on notice of a "potential" claim at the end of July 2003. A letter in the file (see both letters attached) indicates that communication took place and, by virtue of the communication, Old Republic acknowledged the claim at that time. The letter from the insured advising that litigation had ensued arrived at Old Republic on January 20, 2004 (not February 20, as noted in the Criticism). This letter may have been verbally acknowledged on a timely basis, but that would have been the second acknowledgment on this claim.

Response To Formal Criticism No. 4

The insured under this policy is the United States of America acting by and through, USDA, Secretary of Agriculture. A letter of inquiry concerning the validity of a "warranty easement deed" was sent to the agent on June 15, 2006, not by the insured, but by the attorney for a grantor named in the deed. This party was not an insured and was not even a "third party claimant" as defined in 20 CSR 100-1.010(1)(H), since no claim was ever asserted against the insured. According to 20 CSR 100-1.010(1)(B), "claim" is "a request or demand for payment of loss which may be included within the terms of coverage of an insurance policy" or "a request or demand for any other payment under the policy..." The letter from the attorney did not request or demand payment and was not a claim at all, but rather an inquiry with respect to the validity of a warranty easement deed. Nor did the inquiry ever ripen into a claim against the insured regarding the validity of the easement deed. The third-party claimant never made a demand for payment or brought suit against the insured to set aside the allegedly fraudulent deed.

Old Republic did not receive notice of the letter of inquiry until July 5, 2006. On July 17, 2006, Old Republic acknowledged the letter of inquiry within 10 working days of receiving it, even though no claim was asserted and no obligation to acknowledge within 10 working days was triggered. . The administrator also contacted the insured to advise them of the potential title issue. Therefore, there was no violation of 20 CSR 100-1.030(1). Rather, Old Republic went above and beyond its duties under the regulation.

Moreover, even if a claim HAD been made, Old Republic would not have violated 20 CSR 100-1.030(1), which requires acknowledgment of a claim within ten working days after "receiving notification of the claim." Old Republic did not RECEIVE notification of the inquiry until July 5 and the acknowledgment was sent within ten working days, as noted already. 20 CSR 100-1.010(1)(G) defines "notification of claim," and states that notification can be made to an insurer or its insurance producer. However, nowhere is the term "receipt of notification of claim" defined and the two concepts are not identical. The regulations do not say that "receipt" of notification by an agent equates to "receipt" by the insurer. Furthermore, agents in Missouri are told that whenever they are notified of a potential claim, they should request the claimant notify Old Republic pursuant to the terms of the policy. The agents are always instructed not to handle claims. The fact that the agent did not send the inquiry immediately to Old Republic should not be held against the Company. Old Republic could not have responded prior to receiving the letter of inquiry from the agent because it was unaware of the inquiry. Once it became aware of (received) the inquiry, Old Republic's acknowledgement was swift.

In addition, had it been a claim, the means of notification would have been problematic. Agents in Missouri are told that whenever they are notified of a potential claim, they should request the insured notify Old Republic pursuant to the terms of the policy. The agents are always instructed not to handle claims. The policy itself states that notice should be given to the insurer and not to the agent:

> Conditions and Stipulations
> * * * *
> 17. Notices. Where Sent.
> All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to its Home Office: 400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111.

The whole purpose of including Old Republic's address for notice is so that the Company can comply with state laws and regulations such as Missouri's. The fact that the insured did not follow the proper procedure for sending notice to Old Republic and the fact that the agent did not follow proper procedure, should not be held against Old Republic. Old Republic could not have responded sooner than it received the notice from the agent because it was unaware of the inquiry. Once it became aware of (received) the inquiry, Old Republic's acknowledgement was timely. The notification to the agent, defective as it was, did not "reasonably apprise the insurer of the facts pertinent to the claim" as set forth in 20 CSR 100-1.010(G).

As stated earlier, the inquiry never became a claim against the insured. The party never made a demand for payment or brought suit against the insured to set aside the alleged defective deed. Therefore, the standard described in 20 CSR 100-1.050(1)(C), requiring notification every 45 days to a claimant of the need for more time to investigate to determine whether to accept or deny a claim, never became relevant. Similarly, nor do any of Old Republic's actions herein indicate a failure "to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies." Those standards are adopted and implemented, but this particular matter was not a claim.

Response To Formal Criticism No. J15

The Formal Criticism alleges that Old Republic failed to acknowledge a claim within ten working days which was sent to its agent on November 16, 2004. According to the criticism, Old Republic did not acknowledge the claim until May 9, 2007, a delay of 877 calendar days. The examiner states that this violates RSMo 375.1007(2), which addresses "failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies." This criticism also alleges a violation of 20 CSR 100-1.030(1), which requires acknowledgment of a claim within ten working days after "receiving notification of the claim." We disagree with these conclusions.

As the examiner knows, the sophisticated lender who was our insured did not send its claim to Old Republic as required by the policy. The insured communicated only with the agent, ATM Corporation. Old Republic did not actually **receive** notice of any problem until it received a complaint from Gerald Michitsch of the Department of Insurance which arrived on March 27, 2007. (See attached). Mr. Michitsch's letter provided a deadline for response by April 16, 2007. Prior to the response deadline, Old Republic's Albert Boyce sent a letter to Mr. Michitsch, dated April 12, 2007, accepting liability and agreeing to pay the claim, subject to confirmation that the claimant was in fact the holder of the insured mortgage. See attached. We do not understand how the department concluded that the claim was not acknowledged until May 9, 2007. If the department was looking for a written response of some kind prior to April 16, it should not have used that date in its letter which led Old Republic to think it had until that date to respond.

Further developing this idea, it is undisputed that Old Republic did not RECEIVE notification of the claim until March 27, 2007 and it responded within the length of time set forth in the Department's letter. 20 CSR 100-1.010(1)(G) defines "notification of claim," and states that notification can be made to an insurer or its insurance producer. However, nowhere is the term "receipt of notification of claim" defined and the two concepts are not identical. The regulations do not say that receipt of notification by an agent equates to receipt by the insurer. Moreover, 20 CSR 100-1.030(1) states that the requirement to acknowledge is triggered by the receipt of notification.

Furthermore, Old Republic instructs its agents in Missouri that whenever they are notified of a potential claim, they should request the insured notify Old Republic pursuant to the terms of the policy. The agents are instructed not to handle claims. In addition, the policy itself states that notice should be given to the insurer and not to the agent:

> Conditions and Stipulations
> * * * *
> 17. Notices. Where Sent.
> All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to its Home Office: 400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111.

The whole purpose of including Old Republic's address for notice is so that the Company can comply with state laws and regulations such as Missouri's. The fact that the sophisticated counsel for the insured lender sent these letters to the agent, rather than to Old Republic, and the

fact that the agent did not forward them to Old Republic should not be held against Old Republic. Even if the insured did not have a copy of the policy, it certainly was aware of the requirement in all ALTA policies to make a claim with the insurer and also, certainly, had the ability to find out Old Republic's address.

Furthermore, "Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies" can only be a violation of 375.1007(2) if committed in violation of section 375.1005. By promptly responding to and resolving the claim once it became aware of it, Old Republic did precisely what the statute requires of it. In addition, a violation of 375.1005 cannot occur unless the insurer consciously disregards sections 375.1000 to 375.1018 or commits such a claims practice with such frequency as to indicate a general business practice to engage in such conduct. It was impossible for Old Republic to have consciously disregarded the statute, since it was unaware a claim had been made. Also, Old Republic clearly does not have a general business practice of disregarding claims and thus neither standard applies.

The examiner also alleges that Old Republic failed to investigate the claim within 30 calendar days after notification of claim per 20 CSR 100-1.040. This is incorrect. The examiner fails to note the second half of the regulation which makes an exception when "the investigation cannot reasonably be completed within this time." As stated earlier, Old Republic only received notification of the problem on March 27, 2007. It is unreasonable to expect an investigation to be completed before receipt of a notification. Moreover, once the Company received the Complaint, it responded promptly as set forth above.

Similarly, the allegation that Old Republic violated RSM 375.1007(3) is misplaced. This statute concerns the failure to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies. Old Republic's actions once it learned of the claim prove the allegation is incorrect. It investigated, responded and accepted liability promptly. The fact that its policies tell the insureds to make a claim directly with Old Republic and that agents are instructed to advise Old Republic of claims made also are evidence that reasonable standards are in place.

Finally, the examiner alleges violations of 20 CSR 1.050(1)(C), which deals with the insurer needing more time to complete its investigation to determine whether it should accept or deny a claim and RSMo 375.1007(4), which deals with insurers "not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear." These standards were not violated by Old Republic. To the contrary, once Old Republic received the claim, it resolved it in a fast, expedited fashion. Old Republic accepted the claim within less than fifteen working days of receiving it and within the time frame established by the Department letter. Therefore, there was never a need to inform the insured lender that more time was needed for the investigation and no need to send out a notice every 45 days.

Moreover, as with the other statutory provision mentioned earlier, an action fitting 375.1007(4) is only a problem if committed in violation of section 375.1005. Because it was unaware of the existence of the claim until March 2007, Old Republic could not have used bad faith to avoid settling a claim in which liability was "reasonably clear." Bad faith requires knowledge and clarity of liability requires knowledge, as well. Once Old Republic became aware of the claim, it did precisely what the statute requires of it. In the same vein, a violation of 375.1005 cannot occur unless the insurer consciously disregards sections 375.1000 to 375.1018 or commits such a

claims practice with such frequency as to indicate a general business practice to engage in such conduct. It was impossible for Old Republic to have consciously disregarded the statute, since it was unaware a claim had been made. Finally, Old Republic clearly does not have a general business practice of using bad faith to avoid payment of claims where liability has become reasonably clear. Neither standard applies in this case.

In conclusion, this claim was handled in a timely fashion by Old Republic once we learned of it and then settled to the satisfaction of the insured by paying the insured the full amount of its loss. Old Republic believes it did not violate any of the provisions cited by the examiner.

***EXAM FINDING #39***

*The Company failed to respond within 10 working days to several communications from the claimant which suggested a response was expected. The insured's representative sent e-mail requests for updates of the status of the claim on 7-24-07, 8-6-07, 8-17-07 and 8-24-07, none of these requests for an update were responded to within 10 business days.*

*Reference: Section 375.1007(2), RSMo, and 20 CSR 100-1.030(2)*

*Claim*
*114426*

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. § 375.1007(2) and 20 CSR 100-1.030(2) in the above-referenced file. In this instance, the claim administrator believes that it contacted the representative of the insured to advise of the status of the claim in response to the email requests for updates. Therefore, Old Republic has not committed any statutory or regulatory violations. Furthermore, the foregoing allegations were adequately responded to and refuted in Old Republic's Response to Formal Criticism J14 attached hereto.

## Response To Formal Criticism No. J14

The Criticism also alleges that Old Republic failed to respond within ten working days to several communications from the claimant in violation of 20 CSR 100-1.030(2) and RSMo 375.1007(2). The insured's representative sent email requests for updates of the status of the claim. Although no written response was made to these inquiries, the claim administrator believes that she may have had telephone discussions with insured's representative during this time.

***Determination Time-Active***

| | |
|---|---|
| *Number of Errors:* | *2* |
| *Error Rate:* | *4%* |
| *Within Dept. Guidelines* | *Yes* |

*The examiners noted the following error in this review.*

***EXAM FINDING #40***

*The Company failed to accept or deny the following claims within 15 days after all forms necessary to establish the nature and extent of the claim. The Company's agent had all the documents necessary to establish the nature and extent of the claims on the day the claims were received but failed to do so.*

*Reference: 20 CSR 100-1.040, and 20 CSR 100-1.050(1)(A)*

| *Claim* | *All Docs Received* | *Date Accepted* | *Calendar Days* |
|---|---|---|---|
| *114834* | *6-8-07* | *Not Accepted* | |
| *105143* | *6-21-06* | *9-25-06* | *59* |

**RESPONSE:**

Old Republic disputes that it has violated 20 CSR 100-1.040, and 20 CSR 100-050(1)(A). Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Responses to Formal Criticisms J2 and J4, which said Responses are attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Responses were dispositive of the alleged violations.

Response To Formal Criticism J2

20 CSR 1.050(1)(A) requires that the insurer accept or deny a claim within 15 days. The insured, a sophisticated lender, was aware that Old Republic was accepting the claim because it had already committed itself to liability for loss arising out of the deed of trust which had priority over the insured mortgage when it issued an indemnity letter to First American Title Insurance Company on December 20, 2006. See the indemnity letter, as well as the email of August 9 to insured's counsel attached. The claims administrator was operating under the assumption all along that the indemnity letter bound Old Republic to cover the claim.

Response To Formal Criticism No. J4

Old Republic takes pride in its ability to handle claims fairly and as expeditiously as possible for its insureds. This claim was successfully resolved by clearing the title defect that was brought to our attention. The claims administrator who successfully handled this claim is no longer with the company. It's possible that there were communications between the claims administrator and the insured which were later papered by the letters sent out by the administrator acknowledging and accepting the claim, but he is not available for us to inquire.

***Investigation Time-Active***

| | |
|---|---|
| *Number of Errors:* | *6* |
| *Error Rate:* | *12%* |
| *Within Dept. Guidelines* | *No* |

*NOTE: A star (*) after a policy number denotes this policy was cited earlier in the same error ratio for a different error, but was only counted once in the number of errors.*

*The examiners noted the following errors in this review.*

## *EXAM FINDING #41*

*The Company failed to complete the following investigations within 30 days of the initial notification of the claim. There is no indication that the investigations could not be completed in 30 days.*

*Reference: Section 375.1007(3), RSMo, and 20 CSR 100-1.040*

| *Claim* | *Claim Received* | *Investigation Complete* | *Days* |
|---|---|---|---|
| *105594* | *6-15-06* | *No* | |
| *113458* | *11-16-04* | *5-9-07* | *861* |
| *114426* | *6-11-07* | *No* | |
| *109031* | *11-21-06* | *No* | |

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 375.1007(3) and 20 CSR 100-1.040 in the above-referenced files. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Responses to Formal Criticisms M4, J15, J14, and J68, which said Responses are attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Responses werer dispositive of the alleged violations.

Response To Formal Criticism No. 4

The insured under this policy is the United States of America acting by and through, USDA, Secretary of Agriculture. A letter of inquiry concerning the validity of a "warranty easement deed" was sent to the agent on June 15, 2006, not by the insured, but by the attorney for a grantor named in the deed. This party was not an insured and was not even a "third party claimant" as defined in 20 CSR 100-1.010(1)(H), since no claim was ever asserted against the insured. According to 20 CSR 100-1.010(1)(B), "claim" is "a request or demand for payment of loss which may be included within the terms of coverage of an insurance policy" or "a request or demand for any other payment under the policy..." The letter from the attorney did not request or demand payment and was not a claim at all, but rather an inquiry with respect to the validity of a warranty easement deed. Nor did the inquiry ever ripen into a claim against the insured regarding the validity of the easement deed. The third-party claimant never made a demand for payment or brought suit against the insured to set aside the allegedly fraudulent deed.

Old Republic did not receive notice of the letter of inquiry until July 5, 2006. On July 17, 2006, Old Republic acknowledged the letter of inquiry within 10 working days of receiving it, even though no claim was asserted and no obligation to acknowledge within 10 working days was triggered. . The administrator also contacted the insured to advise them of the potential title issue. Therefore, there was no violation of 20 CSR 100-1.030(1). Rather, Old Republic went above and beyond its duties under the regulation.

Moreover, even if a claim HAD been made, Old Republic would not have violated 20 CSR 100-1.030(1), which requires acknowledgment of a claim within ten working days after "receiving notification of the claim." Old Republic did not RECEIVE notification of the inquiry until July 5 and the acknowledgment was sent within ten working days, as noted already. 20 CSR 100-1.010(1)(G) defines "notification of claim," and states that notification can be made to an insurer or its insurance producer. However, nowhere is the term "receipt of notification of claim" defined and the two concepts are not identical. The regulations do not say that "receipt" of notification by an agent equates to "receipt" by the insurer. Furthermore, agents in Missouri are told that whenever they are notified of a potential claim, they should request the claimant notify Old Republic pursuant to the terms of the policy. The agents are always instructed not to handle claims. The fact that the agent did not send the inquiry immediately to Old Republic should not be held against the Company. Old Republic could not have responded prior to receiving the letter of inquiry from the agent because it was unaware of the inquiry. Once it became aware of (received) the inquiry, Old Republic's acknowledgement was swift.

In addition, had it been a claim, the means of notification would have been problematic. Agents in Missouri are told that whenever they are notified of a potential claim, they should request the insured notify Old Republic pursuant to the terms of the policy. The agents are always instructed not to handle claims. The policy itself states that notice should be given to the insurer and not to the agent:

> Conditions and Stipulations
> * * * *
> 17. Notices. Where Sent.
> All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to its Home Office: 400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111.

The whole purpose of including Old Republic's address for notice is so that the Company can comply with state laws and regulations such as Missouri's. The fact that the insured did not follow the proper procedure for sending notice to Old Republic and the fact that the agent did not follow proper procedure, should not be held against Old Republic. Old Republic could not have responded sooner than it received the notice from the agent because it was unaware of the inquiry. Once it became aware of (received) the inquiry, Old Republic's acknowledgement was timely. The notification to the agent, defective as it was, did not "reasonably apprise the insurer of the facts pertinent to the claim" as set forth in 20 CSR 100-1.010(G).

As stated earlier, the inquiry never became a claim against the insured. The party never made a demand for payment or brought suit against the insured to set aside the alleged defective deed. Therefore, the standard described in 20 CSR 100-1.050(1)(C), requiring notification every 45 days to a claimant of the need for more time to investigate to determine whether to accept or deny a claim, never became relevant. Similarly, nor do any of Old Republic's actions herein indicate a failure "to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies." Those standards are adopted and implemented, but this particular matter was not a claim.

Finally, the examiner alleges violations of 20 CSR 1.050(1)(C), which deals with the insurer needing more time to complete its investigation to determine whether it should accept or deny a claim and RSMo 375.1007(4), which deals with insurers "not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear." These standards were not violated by Old Republic. To the contrary, once Old Republic received the claim, it resolved it in a fast, expedited fashion. Old Republic accepted the claim within less than fifteen working days of receiving it and within the time frame established by the Department letter. Therefore, there was never a need to inform the insured lender that more time was needed for the investigation and no need to send out a notice every 45 days.

Response To Formal Criticism No. J14

The Formal Criticism notes that Old Republic acknowledged and accepted the claim in a timely manner. The examiner then lists a series of statues and regulations it claims were violated by Old Republic. Old Republic respectfully disagrees with this Criticism.

First, the examiner maintains that Old Republic failed to complete its investigation of the claim within 30 days of notification in violation of 20 CSR 100-1.040 and RSMo 375.1007(3). While the regulation cited does require investigations to be completed within 30 days, Old Republic maintains that that was, in fact, accomplished. The purpose of the investigation is so that the insurer can decide whether it must accept or deny the claim. That is made clear in 20 CSR 100-1.050(1)(C), which tells an insurer what to do if it needs more time to accept or deny a claim, and then continues with what the insurer should do afterwards "if the investigation remains incomplete." The accuracy of this response is further supported by the definition of "investigation" found in 20 CSR 100-1.010(1)(F), which defines investigation as "all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy." The examiner already agreed that Old Republic accepted the claim on a timely basis. According to the regulations' own words, the investigation was completed at that time. Similarly, to say that Old Republic has failed to adopt and implement reasonable standards for prompt investigation of claims is incorrect. Those standards are not only in place, but the prompt investigation in this case is evidence of that.

Response To Formal Criticism No. J6

On November 21, 2006, Old Republic received a claim letter from Lonna Cross of Saxon Mortgage. On November 28, Old Republic sent a letter of acknowledgment to the claimant and also left a voice-mail message for Ms. Cross requesting clarification of the issue, since the claim letter included a number of vague statements such as "[the borrower] claims to have nothing to do with this house" that failed to adequately convey the nature of the problem. Also, since the claim letter mentioned that the insured had already initiated a judicial foreclosure action against the borrower and had received an Answer to the complaint, our claims administrator requested documentation of those pleadings and the status of the case. The claimant never responded to this request. As a result, Old Republic attempted to ascertain the nature of the problem by contacting the title agent. However, the agent had received no notice of any problems and was unable to answer any questions about the claim. Follow-up messages were left for the claimant on 3/5/07 and 6/5/07, and an email was sent to them on 7/31/07.

To date, Old Republic has never received any response from the claimant to clarify this matter. The only communication received was an email to another claims administrator who is not handling this claim asking for status. That occurred on July 31 of this year. The claimant's behavior seems to suggest that they have found satisfaction through other means, but Old Republic has maintained an open claim file and has continued to attempt to contact the claimant on the chance that we may still be of assistance.

RSMo 375.1007(3) deals with companies "failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies." Old Republic did not violate this standard since Old Republic has such standards in place and they are implemented. In addition, Old Republic did promptly investigate this particular claim. Unfortunately, the insured did not cooperate by reasonably informing Old Republic of the nature of the claim, despite several communications asking them to do so.

For similar reasons, Old Republic did not violate 20 CSR 100-1.040, which requires insurers to complete an investigation of a claim "within thirty (30) days after notification of the claim, unless the investigation cannot reasonably be completed within this time." First, "notification of the claim" never occurred, as defined in 20 CSR 100-1.010, because the insured did not give notice "which reasonably apprises the insurer of the facts pertinent to a claim." Despite repeated requests by Old Republic for more information and clarification, the insured has never "reasonably apprised" us of the relevant facts we need to know in order to understand the claim. Second, this regulation does not require an investigation to be completed within 30 days if it "cannot be reasonably completed within this time." Such is the case here, where Old Republic has not been given the necessary facts or the cooperation of the insured required to complete the investigation.

## ***EXAM FINDING #42***

*The company failed to inform the insured within 45 days of receipt of the initial claim of the cause of any delay in its investigation of the following claims.*

*References: Section 375.1007(4), RSMo, and 20 CSR 100-1.050(1)(C)*

| *Claim* | *Claim Received* | *Missed 45 day letters* |
|---|---|---|
| *114426** | *6-11-07* | *7-26-07, 9-9-07, 10-24-07* |
| *111830* | *2-26-07* | *4-12-07*<br>*5-27-07*<br>*6-12-07* |
| *107529* | *9-15-06* | *8-30-06,*<br>*10-15-06,*<br>*11-30-06,*<br>*1-15-07,*<br>*3-2-07,*<br>*4-17-07,*<br>*6-2-07,*<br>*11-21-06,*<br>*1-5-07,*<br>*2-19-07,*<br>*4-5-07,*<br>*5-20-07,*<br>*7-4-07,*<br>*8-18-07,*<br>*10-2-07,*<br>*11-16-07,* |
| *109031** | *11-21-06* | *12-31-07,* |

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. § 375.1007(4) and 20 CSR 100-1.050(1)(C) as alleged. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Responses to Formal Criticisms J14, J5, M3, and J6, which said Responses are attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Responses were dispositive of the alleged violations.

Response To Formal Criticism No. J14

In addition, the alleged violation of 20 CSR 100-1.050(1)(C), for failure to send a 45 day notice regarding an incomplete investigation, is incorrect due to the reasons stated in the preceding paragraph. Once the investigation was complete and the claim accepted in June 2007, there was no need to send any 45 day notices. The allegation that RSMo 375.1007(4) was also violated – that Old Republic didn't attempt to act in good faith to effectuate settlement "in which liability has become reasonably clear," is also without basis. Old Republic has attempted to effectuate a prompt settlement, but there has been a subsequent delay in establishing title as insured, partially due to our agent, Netco, not providing us with its file when it was requested. The claim involved a legal description error as well as an outstanding interest of an individual in the chain of title. Our initial view of the claim was that the prior owner may have died and his interest may have passed by operation of law to the borrower. We expected that our agent's underwriting file would have documentation addressing this issue. Old Republic's claim administrator, Lisa Snowden, believes that she was in contact via telephone with insured's representative regarding the delay, but there may not be notes of these conversations in the file. Old Republic communicated to the insured's representative via email on 09/13/2007 that delay was due to difficulties in obtaining our agent's file. Again, these were not delays in investigating the claim – the investigation culminating in the acceptance of the claim had long since been completed. Thus, the cited violations did not occur.

In addition, at the time this claim came in, it was not a ripened claim under the policy. The insured had merely been contacted by the adverse party's attorney who asserted a right to a prescriptive easement. There was no suit against the insured to defend and no real "claim" at that time to accept or deny. Thus, the assertion that Old Republic violated 20 CSR 100-1.050(1)(A) (failure to accept or deny within fifteen business days ) and 1.050(1)(C) (failure to update the insured with the status of the claim every 45 days) is incorrect. Old Republic took affirmative steps to contact the insured to check the status of the matter and, to its credit, even wound up accepting the "claim" and prosecuting a suit for the insured before the matter had ripened into a claim. By doing so, Old Republic went above and beyond its duties to the insured.

Response To Formal Criticism No. 3

The company has adopted and implemented reasonable standards for the prompt investigation and settlement of claims arising under its policies as required by 375.1007(3). These standards are generally followed by claims examiners and Old Republic has a reputation for promptly and properly administering claims. In addition, it should be pointed out that claims practices listed in RSMo 375.1007 can only be improper if they violate RSMo 375.1005, which requires the insurer to consciously disregard sections 375.1000 to 375.1018 or to commit such a claims practice with such frequency as to indicate a general business practice to engage in such conduct. Neither standard applies in this case. As for the issue concerning the 45 day notice for additional time needed to investigate a claim, as set forth in 20 CSR 100-1.050(1)(C), the claims administrator is no longer employed by Old Republic, so he cannot be consulted, but it is possible that communications was sent, but accidentally misfiled, as happens occasionally.

Response To Formal Criticism No. J6

The Formal Criticism alleges that Old Republic violated RSMo 375.1007(2), "failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies" and 20 CSR 100-1.030(1), which requires acknowledgment of a claim within ten working days after receiving notification of the claim. We disagree with this conclusion.

The insured lender originally put us on notice of a "potential" claim at the end of July 2003. A letter in the file (see both letters attached) indicates that communication took place and, by virtue of the communication, Old Republic acknowledged the claim at that time. The letter from the insured advising that litigation had ensued arrived at Old Republic on January 20, 2004 (not February 20, as noted in the Criticism). This letter may have been verbally acknowledged on a timely basis, but that would have been the second acknowledgment on this claim.

*2. **Closed Without Payment***

| | |
|---|---|
| *Field Size:* | *164* |
| *Sample Size:* | *50* |
| *Type of Sample:* | *Systematic* |

*The following are the results of the time studies.*

***Acknowledgement Time-Closed Without Payment***

| | |
|---|---|
| *Number of Errors:* | *3* |
| *Error Rate:* | *6%* |
| *Within Dept. Guidelines* | *Yes* |

*The examiners noted the following errors in this review.*

## *EXAM FINDING #43*

*The Company failed to acknowledge the following claims within 10 working days of notification of the claim. The claim is received when the agent is notified.*

*Reference: 20 CSR 100-1.010(1)(G), and 20 CSR 100-1.030 (1)*

| *Claim* | *Received Notice of Claim* | *Date Accepted* | *Days* |
|---|---|---|---|
| *101477* | *1-19-06* | *2-8-06* | *14* |
| *10254* | *3-6-06* | *4-5-06* | *22* |

**RESPONSE:**

Old Republic disputes that it has violated 20 CSR 100-1.010(1)(G), and 20 CSR 100-1.030(1) as alleged. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Responses to Formal Criticisms J16 and J12, which said Responses are attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Responses were dispositive of the alleged violations.

Response To Formal Criticism No. J16

The Formal Criticism alleges that Old Republic failed to acknowledge a claim within ten working days which was sent to its agent on January 19, 2006. According to the criticism, Old Republic did not acknowledge the claim until February 8, 2006, fourteen working days after "receipt" of the claim. The examiner states that this violates RSMo 375.1007(2), which addresses "failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies." This criticism also alleges a violation of 20 CSR 100-1.030(1), which requires acknowledgment of a claim within ten working days after "receiving notification of the claim." We disagree with these conclusions.

The insured lender made a "claim" against the closing protection letter, rather than the policy, asking for the issuance of its lender's title insurance policy. (See attached). By February 8, 2006, the policy was forwarded to the insured lender, only 20 business days after Old Republic became aware of the problem. See attached.

Old Republic maintains that the letter from the lender requesting a title insurance policy did not constitute a "claim" which triggered application of either the statute or regulation cited above. Calling the request a "claim" does not make it so for the purposes of the law. This fact is unambiguously set forth in the regulations themselves which state in 20 CSR 100-1.010:

> (1) Definitions. As used in the Unfair Claims Settlement Practices Act at sections 375.1000 to 375.1018, RSMo and in the regulations promulgated pursuant thereto...(B)Claim means - 1. A request or demand for payment of a loss which may be included within the terms of coverage of an insurance policy; or 2. A request or demand for any other payment under the policy, such as for the return of unearned premium or nonforfeiture benefits."

According to this definition and the limiting language contained in the regulations, the request for a policy was not a claim under the cited statute or regulation since it did not request or demand payment of a loss or any other payment under the policy. Thus, the 10 day period set forth in the regulation and the "reasonable promptness" standard of the statute were not applicable to this matter. This was not a "claim" - the insured simply wanted its policy to be issued. As already stated, this was done in an expedited fashion once Old Republic became aware of the problem.

For the foregoing reasons, Old Republic believes it did not violate either of the provisions cited by the examiner.

Response To Formal Criticism No. J12

Old Republic takes pride in its ability to handle claims fairly and as expeditiously as possible for its insureds. This claim was successfully resolved by issuing a letter of indemnity insuring over the title defect that was brought to our attention. We also secured a release of the Deed of Trust. All this occurred within 30 days of our receiving the claim. Thus, the claim was resolved very quickly and to the complete satisfaction of our insured.

The claims administrator in our home office who started with the claim and successfully located the release deed is no longer with the company. It's possible that there were communications between this claims administrator in Minnesota and the insured prior to the opening of the claim file at our national agency claims office in Maryland. These communications might have acknowledged the claim, but never made it into the claim file in Maryland. Unfortunately, this former administrator is not available for us to make an inquiry.

***EXAM FINDING #44***

*The Company failed to response within 10 working days to two communications from the claimant which suggested a response was expected.*

*Reference: Section 375.1007(2), RSMo, and 20 CSR 100-1.030(2)*

*Claim*
*108089*

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. § 375.1007(2) and 20 CSR 100-1.030(2) in the above-referenced file. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J11, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

## Response To Formal Criticism No. J11

The third criticism alleges violations of 20 CSR 100-1.030(2) and RSMo 375.1007(2) These have to do with acknowledging pertinent communications with respect to claims within 10 working days (or with reasonable promptness) if a response is reasonably expected. Specifically, the criticism concerns letters from the insured's counsel to the claims administrator on May 17 and May 18. The first letter requested a copy of the Title Commitment and Schedules, as well as the Policy Jacket. It is believed that this information was provided by the claims administrator, even though at this point the insured's counsel had been advised that they had no claim under the policy. The second letter was received by fax on May 18, indicating that the matter could be resolved for One Hundred Thousand Dollars ($100,000.00). It is possible that the administrator, who is no longer with the company, may have had discussion with insured's counsel concerning this faxed letter. In any event, this fax would not have necessarily required a reply from Old Republic, since it had previously advised Mr. Bermudez that the policy did not cover the fourth tract and that there was no claim to be made.

***Determination Time-Closed Without Payment***

| | |
|---|---|
| *Number of Errors:* | *3* |
| *Error Rate:* | *6%* |
| *Within Dept. Guidelines* | *Yes* |

*The examiners noted the following errors in this review.*

***EXAM FINDING #45***

*The Company failed to pay or deny the following claims within 15 days after all forms necessary to establish the nature and extent of the claim. The Company's agent had all the documents necessary to establish the nature and extent of each claim on the day the claim was received but failed to do so.*

*Reference: 20 CSR 100-1.040, and 20 CSR 100-1.050(1)(A)*

| *Claim* | *All Docs Received* | *Date Accepted or Denied* |
|---|---|---|
| *113244* | *5-18-0* | *Not accepted or denied* |
| *110992* | *3-2-07* | *Not accepted or denied* |
| *108089* | *5-13-05* | *Not accepted or denied* |

**RESPONSE:**

Old Republic disputes that it has violated 20 CSR 100-1.040, and 20 CSR 100-1.050(1)(A) as alleged. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Responses to Formal Criticisms J9, J7 and J11, which said Responses are attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Responses were dispositive of the alleged violations.

Response To Formal Criticism No. J9

Claimant submitted a claim based on a mistaken belief that the Deed of Trust which secured its mortgage and the vesting deed had not been recorded. The examiner notes that Old Republic acknowledged the claim on the same day it was received. The examiner also notes that Old Republic was obligated to complete its investigation by May 18, 2007. There is nothing to indicate that this failed to occur. The examiner alleges that Old Republic failed to accept or deny the claim within 15 business days of May 18 (by June 9) and that the claim file was closed on June 22 without advising the insured of its decision. Such a course of action would have been quite illogical. Old Republic disagrees with this allegation and its position is supported by the documents in the claim file.

This file began with one claims administrator who left Old Republic within a short time after the claim was made. When the new administrator inherited the file, she quickly determined that the deed and Deed of Trust HAD been recorded. On May 30, the claims administrator corresponded with the claimant by email, implying to the sophisticated lender that Old Republic was going to make sure the documents were or would be recorded. See email attached. This was the crux of the claim and if the documents were recorded, then obviously the claim would be resolved. By any definition, this should be seen as an acceptance of the claim. Then on the following day, May 31, the claims administrator secured a copy of the recorded documents and immediately forwarded them to the claimant. Thus, the claim was resolved on May 31 in a very timely fashion and to the satisfaction of the insured. Subsequently, the claim file was closed. The claimant has since verified that she did receive these documents. (see emails and notes attached).

The aforesaid correspondence indicates that 20 CSR 100-1.040 was not violated. That regulation requires that an investigation be completed within 30 days after notification of a claim, unless it cannot be reasonably completed in that time. It is quite possible that the first claims administrator had completed his investigation but took no action prior to his leaving Old Republic. However, even if he did not, it is quite reasonable when a new claims administrator becomes responsible for a file, (in fact, for many files), that this person would need additional time to complete her investigation. The regulation allows for such reasonable extra time.

The examiner also alleged a violation of RSMo 375.1007(3), which deals with companies "failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies." Old Republic did not violate this standard since Old Republic has such standards in place and they are implemented. In addition, Old Republic did promptly investigate and resolve this particular claim. For these reasons, Old Republic did not violate 20 CSR 100-1.050 either.

"Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear" can be an improper claims practice according to RSMo 375.1007(4), if committed in violation of section 375.1005. By promptly resolving the claim, Old Republic did precisely what the statute requires of it. Therefore, Old Republic could not have violated the aforesaid statute. Furthermore, a violation of 375.1005 cannot occur unless the insurer consciously disregards sections 375.1000 to 375.1018 or commits such a claims practice with such frequency as to indicate a general business practice to engage in such conduct. Neither standard applies in this case.

Response To Formal Criticism No. J7

Claimant submitted a claim based on a perception that the legal description of the insured property was incorrect. Old Republic acknowledged the claim within three business days of receiving it and commenced its investigation. The examiner alleges that Old Republic failed to accept or deny its claim by March 23. This is incorrect. On March 19, 2007, the claims administrator sent correspondence to the claimant that set out a potential course of action to resolve the claim, making it obvious in the process that the claim was accepted for coverage. (see attached). The sophisticated law firm the administrator was dealing with understood that the claim was accepted. On or near April 10, the claims administrator provided the claimant with a copy of a survey and purchase agreement found in the closing file that illustrated what specific property was intended to be encumbered. By email correspondence dated June19, insured's counsel said that the prior claims adminstrator at Old Republic had previously sent "a survey showing a legal that matched what was on the DOT" (deed of trust). Their client "accepted that as evidence that the legal used was what was intended and proceeded to sale non-judicially." (see attached) Thus, since Old Republic acknowledged, accepted and resolved the claim in a timely fashion, the insured was satisfied and the claim file was subsequently closed.

Response To Formal Criticism No. J11

The second criticism is based again on 20 CSR 100-1.050(1)(A), as well as RSMo 375.1007(4) and 375.1007(7). As to the regulation, the examiner alleges that the claim file was closed without advising the insured of a claims decision and that a denial because of a policy provision must be in written form. As discussed earlier, the fact that the claim was being denied was conveyed to the insured, along with the reason, that the parcel of land at issue was not insured under the policy. Thus the denial was NOT due to a policy provision, but because the property at issue was not insured. As discussed earlier, there should be no violation of 375.1007(4) either because liability was not clear at all – the parcel was not insured. Finally, we submit that no violation of 375.1007(7) took place either. Old Republic did not fail to affirm or deny coverage within a reasonable time. Nor was the alleged conduct a frequent business practice of Old Republic (see above discussion).

***Investigation Time-Closed Without Payment***

| | |
|---|---|
| *Number of Errors:* | *0* |
| *Error Rate:* | *0%* |
| *Within Dept. Guidelines* | *Yes* |

*The examiners noted no errors in this review.*

***3. Closed With Payment***

| | |
|---|---|
| *Field Size:* | *101* |
| *Sample Size:* | *50* |
| *Type of Sample:* | *Systematic* |

*NOTE: A star (*) after a policy number denotes this policy was cited earlier in this review for a different error, but was only counted once in the number of errors.*

*The following are the results of the time studies.*

***Acknowledgement Time-Closed With Payment***

| | |
|---|---|
| *Number of Errors:* | *6* |
| *Error Rate:* | *12%* |
| *Within Dept. Guidelines* | *No* |

*The examiners noted the following errors in this review.*

***EXAM FINDING #46***

*The Company failed to acknowledge the following claims within 10 working days of notification of the claim. The claim is received when the agent is notified.*

*Reference: 20 CSR 100-1.010(1)(G), and 20 CSR 100-1.030 (1)*

| *Claim* | *Received Notice of Claim* | *Date Accepted* | *Days* |
|---|---|---|---|
| *90630* | *11-1-04* | *1-28-05* | *57* |
| *90497* | *12-9-04* | *1-27-05* | *26* |
| *97600* | *6-7-05* | *9-15-05* | *70* |
| *104878* | *5-23-06* | *6-13-06* | *14* |
| *104856* | *5-9-06* | *6-13-06* | *24* |
| *95935* | *5-9-05* | *8-1-05* | *58* |

**RESPONSE:**

Old Republic disputes that it has violated 20 CSR 100-1.010(1)(G), and 20 CSR 100-1.030(1) as alleged. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Responses to Formal Criticisms M6, J17, M1, J8, J10, and T2, which said Responses are attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Responses were dispositive of the alleged violations.

Response To Formal Criticism No. 6

Old Republic takes pride in its ability to handle claims fairly and as expeditiously as possible for its insureds. This claim was successfully resolved by clearing the adverse claim of title (a Quiet Title suit against our insured lender) by settling that litigation with the adverse claimant. The insured's letter of October 24, 2004, (see attached) memorializes a phone conversation between Old Republic and the insured during which time Old Republic's counsel must have acknowledged the claim of the insured which they were discussing. Therefore, we do not agree that Old Republic failed to acknowledge the claim in a timely manner.

Response To Formal Criticism No. J17

The Formal Criticism alleges that Old Republic failed to acknowledge a claim within ten working days which was sent to its agent on December 9, 2004. According to the criticism, Old Republic did not acknowledge the claim until January 27, 2005, 26 working days after "receipt" of the claim by the agent figured to be December 20, 2004. The examiner claims that this violates RSMo 375.1007(2), which addresses "failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies." This criticism also alleges a violation of 20 CSR 100-1.030(1), which requires acknowledgment of a claim within ten working days after "receiving notification of the claim." We disagree with these conclusions.

The sophisticated lender who was our insured did not send its communication to Old Republic as required by the policy. The insured sent its claim instead to the agent, Hillsboro Title. Old Republic did not actually **receive** notice until January 24, 2005. Just three days later, Old Republic accepted this claim by letter to attorney for the insured on January 27, 2005 (see all communications attached). Competent counsel was immediately hired and settlement was entered into resolving this matter on or around July 12, 2005.

Further developing this idea, it is undisputed that Old Republic did not RECEIVE notification of the issue until January 24, 2005. 20 CSR 100-1.010(1)(G) defines "notification of claim," and states that notification can be made to an insurer or its insurance producer. However, nowhere is the term "receipt of notification of claim" defined and the two concepts are not identical. The regulations do not say that receipt of notification by an agent equates to receipt by the insurer. Moreover, 20 CSR 100-1.030(1) states that the requirement to acknowledge is triggered by the **receipt** of notification.

Furthermore, Old Republic instructs its agents in Missouri that whenever they are notified of a potential claim, they should request the insured notify Old Republic pursuant to the terms of the policy. The agents are instructed not to handle claims. In addition, the policy itself states that notice should be given to the insurer and not to the agent:

> Conditions and Stipulations
> * * * *
> 17. Notices. Where Sent.
> All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to its Home Office: 400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111.

The whole purpose of including Old Republic's address for notice is so that the Company can comply with state laws and regulations such as Missouri's. The fact that the sophisticated insured lender communicated with the agent, rather than to Old Republic, and the fact that the agent did not forward the communication immediately to Old Republic should not be held against Old Republic.

Furthermore, "Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies" can only be a violation of 375.1007(2) if committed in violation of section 375.1005. By promptly responding to and accepting the claim promptly once it became aware of it, Old Republic did precisely what the statute requires of it. In addition, a violation of 375.1005 cannot occur unless the insurer consciously disregards sections 375.1000 to 375.1018 or commits such a claims practice with such frequency as to indicate a general business practice to engage in such conduct. It was impossible for Old Republic to have consciously disregarded the statute, since it was unaware of the insured's communication until January 24. Also, Old Republic clearly does not have a general business practice of disregarding claims and thus neither standard applies.

For the foregoing reasons, Old Republic believes it did not violate either of the provisions cited by the examiner.

Response To Formal Criticism No. 1

This claim arose because the seller of the property, Mr. Desirray Williamson, transferred title to the property into an LLC in the "gap" period prior to closing. The commitment properly showed Mr. Williamson as the title holder and the deed was prepared with Mr. Williamson as the grantor to Ms. Maurnice Tipton, since Mr. Williamson did not inform anyone that he had previously transferred the property. Thus, the conveyance was outside the chain of title and Ms. Tipton, our insured, did not acquire title to the property at the closing.

Ms. Tipton learned of the problem and contacted Stephen Bolla of Old Republic by phone on June 7, 2005. During that conversation, Mr. Bolla verbally acknowledged the claim directly to the insured and immediately let her know that Old Republic accepted liability for the claim, as it was clear Ms. Tipton, our insured, was not in title. While the file does not contain correspondence to Ms. Tipton from June 7, 2005, Old Republic properly and timely acknowledged and accepted liability for the claim and Ms. Tipton was aware of the acknowledgement and acceptance. The regulations do not preclude verbal acknowledgements and acceptances.

The immediate action taken by Mr. Bolla on June 7 noted by the examiner (the email) and the certified mail sent to Mr. Williamson on June 9 are written, dated evidence in the claim file that the claim was accepted and work had begun immediately on trying to resolve the claim as of June 7. This satisfies the requirement of 20 CSR 100-1.030(1) to provide a dated notation in the claim file. 20 CSR 100-1.010(1)(G) was not violated, since that is only a definition as to when a claim is received. Old Republic further contends that this information in the claim file provided sufficient detail to reconstruct the acknowledgement and acceptance of liability. Thus, 20 CSR 300-2.100 and 2.200(2) requiring maintenance of claim files in a manner to allow reconstruction of pertinent dates were satisfied. The immediate action taken by Mr. Bolla is further evidence that Old Republic had reasonable standards in place to promptly investigate and settle the claim, in accordance with RSMo 375.1007(3). Furthermore, since the claim was investigated and accepted immediately, as evidenced by the letter to Mr. Williamson, there was no need to send a letter to the insured within 45 days requesting additional time to complete the investigation as set forth in 20 CSR 100-1.050(1)(C).

Therefore, it is Old Republic's position that the regulations cited by the examiner were complied with in substance and in spirit. Most importantly, the insured was aware of the acceptance of the claim via telephone and that Old Republic was going to do something to rectify the situation. This Old Republic began to do immediately, as shown by the letter from Mr. Bolla to Mr. Williamson. Ms. Tipton became upset with Old Republic not due to a lack of diligence on its part, but because Mr. Williamson failed to answer correspondence and failed to cooperate in resolving the matter. Old Republic then hired the law firm of Blitz, Bardgett & Deutsch, L.C., who were able to track down Mr. Williamson and have the proper documents executed. Old Republic did resolve the matter satisfactorily within a reasonable period of time for a claim of this type where the party at fault is non-cooperative.

Response To Formal Criticism No. J8

When the Company received notice of this claim from the Insured owner via their attorney on May 23, 2006, the claim letter did not state the nature of the claim. The letter merely states that the Commitment and Owner's Policy are attached. The claims administrator who handled this claim is no longer with the Company and is unable to verify this, but it seems likely from the contents of the file that he contacted the claimant attorney in order to clarify the nature of the claim. Evidence of this communication can be derived from the existence of blue handwriting on the letter that arrived on May 23 (see attached) that describes the issue in shorthand fashion. The claims administrator would have acknowledged the claim by the act of gathering information on the nature of the claim, during this phone conversation.

20 CSR 100-1.030(1) allows acknowledgment by means other than in writing if the appropriate notation is made in the claim file. The handwriting on the claim letter received May 23 and the fact that the claim was opened May 23 are presumptive evidence that this claim was properly acknowledged. The claims administrator appears to have followed up with another phone conversation on June 13, and a letter (see attached) dated the same day referencing the phone call and indicating indirectly that coverage was accepted and requesting assistance in developing a strategy to resolve the claim.

Response To Formal Criticism No. J10

The Formal Criticism alleges that Old Republic received a claim on May 9, 2006, (through notice to its agent) and then failed to acknowledge it until June 13, 2006. According to the criticism, this violates RSMo 375.1007(2), which addresses "failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies." Furthermore, the criticism also alleges a violation of 20 CSR 100-1.030(1), which requires acknowledgment of a claim within ten working days after "receiving notification of the claim." In addition, the Criticism alleges violations of RSMo 375.1007(4) and 20 CSR 100-1.050(1)(A). We disagree with these conclusions.

Failure to acknowledge claim with reasonable promptness (within ten working days).

1. On 5/9/2006 the insured owners learned of an easement over their property which was not disclosed in their title commitment.
2. On that same date, the insured received a verbal acknowledgment of their claim from Bill Johnson of Ozark Mountain Title Company. This conversation was dated and notated in the letter submitted later that day by the insured, a copy of which is was in the claim file and is attached hereto.

As is stated in CSR 100-1.030, "If an acknowledgment is made by means other than writing, an appropriate notation of this acknowledgment shall be made in the claim file of the insurer and dated." A copy of a dated letter citing the timely verbal acknowledgment, unambiguously displayed in the claim file, demonstrates Old Republic's compliance with this requirement. This acknowledgment also satisfies 375.1007(2) which requires acknowledging communications with "reasonable promptness."

Response To Formal Criticism No. T2

The Formal Criticism alleges that Old Republic violated RSMo 375.1007(2), "failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies" and 20 CSR 100-1.030(1), which requires acknowledgment of a claim within ten working days after receiving notification of the claim. We disagree with this conclusion.

The examiner states that Old Republic acknowledged the claim by letter on August 1, 2005. Actually that letter (see attached) sent a check in settlement of the claim as of that date, timely and fairly resolving the claim to the benefit of the insured. Clearly, there had been communications between Old Republic and the insured prior to that time regarding the settlement. The claims administrator is no longer with the company and is not available to describe details of the file. However, in addition, it is clear from an email sent by the agent involved on May 17 (see attached) that the claim was acknowledged on behalf of Old Republic by the agent within ten working days of its receipt.

***Determination Time-Closed With Payment***

| | |
|---|---|
| *Number of Errors:* | *1* |
| *Error Rate:* | *2%* |
| *Within Dept. Guidelines* | *Yes* |

*The examiners noted the following error in this review.*

## *EXAM FINDING #47*

*The Company failed to accept or deny the following claim within 15 days after receipt of all forms necessary to establish the nature and extent of the claim. The Company had all the documents necessary to establish the nature and extent of the claim on the day the claim was received.*

*Reference: Section 375.1007(2), RSMo, and 20 CSR 100-1.040, and 20 CSR 100-1.050(1)(A)*

| *Claim* | *All Docs Received* | *Date Accepted* | *Days* |
|---|---|---|---|
| *104856* | *6-5-06* | *8-1-06* | *35* |

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. § 375.1007(2), 20 CSR 100-1.040 and 20 CSR 100-1.050(1)(A). Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J10, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

Response To Formal Criticism No. J10

The Formal Criticism alleges that Old Republic received a claim on May 9, 2006, (through notice to its agent) and then failed to acknowledge it until June 13, 2006. According to the criticism, this violates RSMo 375.1007(2), which addresses "failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies." Furthermore, the criticism also alleges a violation of 20 CSR 100-1.030(1), which requires acknowledgment of a claim within ten working days after "receiving notification of the claim." In addition, the Criticism alleges violations of RSMo 375.1007(4) and 20 CSR 100-1.050(1)(A). We disagree with these conclusions.

Failure to acknowledge claim with reasonable promptness (within ten working days).

1. On 5/9/2006 the insured owners learned of an easement over their property which was not disclosed in their title commitment.
2. On that same date, the insured received a verbal acknowledgment of their claim from Bill Johnson of Ozark Mountain Title Company. This conversation was dated and notated in the letter submitted later that day by the insured, a copy of which is was in the claim file and is attached hereto.

As is stated in CSR 100-1.030, "If an acknowledgment is made by means other than writing, an appropriate notation of this acknowledgment shall be made in the claim file of the insurer and dated." A copy of a dated letter citing the timely verbal acknowledgment, unambiguously displayed in the claim file, demonstrates Old Republic's compliance with this requirement. This acknowledgment also satisfies 375.1007(2) which requires acknowledging communications with "reasonable promptness."

***Investigation Time-Closed With Payment***

| | |
|---|---|
| *Number of Errors:* | *0* |
| *Error Rate:* | *0%* |
| *Within Dept. Guidelines* | *yes* |

*The examiners noted no errors in this review.*

## *B. General handling practices*

*In addition to the Claims Time Studies, examiners reviewed the Company's claims handling processes to determine adherence to unfair claims statutes and regulations and to contract provisions.*

### *1. Active*

| | |
|---|---|
| *Field Size:* | *139* |
| *Sample Size:* | *50* |
| *Type of Sample:* | *Systematic* |
| *Number of Errors:* | *6* |
| *Error Rate:* | *12%* |
| *Within Dept Guidelines:* | *No* |

*NOTE: A star (*) after a policy number denotes this policy was cited earlier in the same error ratio for a different error, but was only counted once in the number of errors.*

## ***EXAM FINDING #48***

*In the following files the company failed to maintain its books, records, documents and other business records in a manner so that the examiner could readily ascertain claims handling practices as applied in this file.*

*Reference: 20 CSR 300-2.200(2), and (3)(B)*

*Claim Number*
*113643*
*103055*
*111788*

**RESPONSE:**

Old Republic disputes that it has violated 20 CSR 300-2.200(2), and (3)(B). Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Responses to Formal Criticisms J18, M7, and M5, which said Responses are attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Responses were dispositive of the alleged violations.

Response To Formal Criticism No. J18

The formal criticism alleges that Old Republic failed to maintain books, records documents and other business records in a manner so that the practices of the insurer can be readily ascertained. Specifically, the examiner states that the documentation in the subject claim file is not sufficient to allow examiner do determine how or when the Company becamse aware of the claim, what the nature of the problem was or how it was corrected. This alleged failure is said to violate 20 CSR 300-2.200(2) and 20 CSR 300-2.200(3)(B), the latter which requires a claim file to show the inception, handling and disposition of each claim. Old Republic disagrees with the examiner's conclusions.

Ms. Angie Coke contacted Stephen Bolla on May 10, 2007, as evidenced by the Old Republic claim entered date. At that time she informed Mr. Bolla that when her employer, Phillip Bradley, Jr., closed the purchase of 3163-3165 California, a portion of the property was not transferred. There was also a problem with some delinquent taxes. Old Republic immediately accepted the claim as evidenced by letter sent to Ms. Angie Coke on May 10, 2007 (see attached). While the letter might not say "per our conversation," it is clear from looking at the letter that Mr. Bolla had been notified of this problem and was responding. This was the inception of the claim. It is not fair to penalize Old Republic because we accepted a claim verbally. It was an emergency situation that had to be handled promptly, given that taxes on the property were about to be sold. To Old Republic's credit, we did just that.

In addition, it should be noted that Old Republic's insured is Phillip Bradley, Jr. After closing, Mr. Bradley transferred the property to a related entity, P & D Realties, LLC. Even though Old Republic could have denied the claim on the basis of the transfer, Old Republic immediately accepted liability for all penalties and interest for the delinquent taxes owed on the property. This is the ultimate in good faith claims handling.

Old Republic has also undertaken and has continued to undertake the correction of the legal description issue. This property has passed through the hands of three entities with incorrect conveyances. Due to the number of people involved, correction of the legal descriptions has been time consuming. We have been waiting for a corrected deed from the insured for some time now. Apparently, insured's wife's schedule has made it difficult for her to get her signature notarized. Upon receipt of the corrected deed from the insured, we will record it and endorse the policy accordingly.

Since this matter is still ongoing, it is a bit harsh to say that the file should have shown how everything was handled and the disposition of each matter. The problems were still being addressed when the file was given to the examiners, so they could not show everything. In fact, according to our claims administrator, he believes part of the file was on his assistant's desk and not in the file when it was given to the examiners, because she was working on resolving same. I have attached a copy of the documents at issue and you can see they date back to June.

Based on the foregoing, Old Republic maintains that its records are properly kept. This claim file includes the necessary information to explain how the claim arrived and how it is being handled and the problem cured. Thus, Old Republic did not violate the statute or regulation as alleged.

Response To Formal Criticism No. 7

20 CSR 300-2.100 – file shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and dates can be reconstructed

20 CSR 300-2.200(2) – business records shall be maintained in such a manner as the claims handling and payment, complaint handling, termination, rating, underwriting and marketing can be readily ascertained during market conduct examinations

This file does contain the complete documentation of the claim. It is evident that the bulk of the communication between the insured and the insurer took place through telephone communications. The original claims administrator is no longer with the company so we cannot verify the telephonic correspondence with the insured. The insured did not send in a claim letter but rather contacted the closing agent by telephone on March 28, 2006. There are written notes in the file documenting this phone call as well as subsequent phone calls. The insured, through the surveyor, sent a fax depicting the 3-inch discrepancy in the vesting deed, which is the crux of the claim. The legal description was used within the chain of title as both "westerly 84.5 feet of Lot 5" and "west ½ of Lot 5." The survey indicated the dimensions of the lot are 84.75 feet by 60 feet and not 84.5 feet by 60 feet. The closing agent and claims administrator undertook the claim by investigating the chain of title and retaining counsel to either procure a quitclaim deed from the current title holders or file a quiet title action as to the 3-inch gap. That process is clearly documented in the file. Also, it is evident from the file that the insured knew that steps were being taken to cure the title defect. Ultimately, a quitclaim deed was executed and recorded therein clearing the title defect. A copy of the recorded deed was sent to the insured.

Response To Formal Criticism No. 5

RSMo 375.1007(3) deals with companies "failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies." Old Republic did not violate this standard since Old Republic has such standards in place and they are implemented. In addition, Old Republic did promptly investigate and settle this particular claim. Moreover, this was NOT a claim "arising under (our) policy," as set forth in the statute, but a claim arising out of an escrow matter where two checks had inadvertently been sent to pay a tax bill. One of these checks had been sent by the claimant, who should not have sent a check in the first place. The claimant was reimbursed by Old Republic, but no title defect was ever present and no provision of the policy was implicated by this claim.

For similar reasons, Old Republic did not violate 20 CSR 100-1.050(C), which requires a notice in writing within 45 days from the initial notification if the insurer needs more time to investigate whether to accept or deny a claim made against its insurance policy. As stated previously, this was NOT a claim under any provision of a insurance policy, but rather an escrow claim caused by the claimant's double payment of an installment of taxes. Thus, the money to reimburse the claimant came from the escrow file and was not a payment on the claim itself. The matter was resolved months ago, as indicated in the electronic notes from the claim which are attached.

The reimbursement check #136629 was issued 5/23/07 out of the Escrow Account in the amount of $1,114.66 made payable to Litton Loan Servicing. The check was cashed 6/8/07. See attached.

***EXAM FINDING #49***

*The company failed to adopt and implement reasonable standards for the settlement of the following claim. Having accepted the claim, the Company has the option to establish the title insured in order to prevent or reduce loss, or the Company may settle the claim as otherwise permitted by the terms of the policy. In this case the company has taken no action.*

*Reference: Section 375.1007(3), RSMo*

*Claim Number*
*114426*

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. § 375.1007(3) as alleged. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J14, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violation.

## Response To Formal Criticism No. J14

Finally, the examiner alleges a violation of RSMo 375.1007(3), which requires adoption and implementation of reasonable standards for the prompt investigation and settlement of claims arising under its policies. It is alleged that the Company has to date taken no action to resolve the claim. Old Republic has standards in place and those standards for investigating were evident in this case. As for the settlement of claims, those standards were clearly evident in other files the examiners have seen. It is due to delays in attaining the agent file that we have not been able to take more action to date. However, since Old Republic provided the Department with a copy of the file for review on September 13, 2007, we have retained outside counsel to resolve the issues affecting title (a legal description error and missing partial interest). Counsel has agent's file and is working towards curing the defects.

## ***EXAM FINDING #50***

*The agent failed to fully advise the insurer of the status of the title insured which caused the insurer to fail to fully disclose to a first party claimant all of the coverage offered by the policy under which the claim was presented.*

*Reference: Section 375.1007(1), RSMo, and 20 CSR 100-1.020(1)*

*Claim Number*
*106477*
*100803*

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. § 375.1007(1) and 20 CSR 100-1.020(1) as alleged. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J19, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

Response To Formal Criticism No. J19

The formal criticism initially alleges that Old Republic failed to fully disclose to the insured all pertinent benefits, coverages or other provision of the insurance policy. This alleged failure is said to have violated 20 CSR 100-1.020(1) and RSMo 375.1007(1). Old Republic disagrees with these allegations.

20 CSR 100-1.020(1) states that "no insurer shall fail to fully disclose to first-party claimants all pertinent benefits, coverages or other provisions of an insurance policy under which a claim is presented." However, there does not appear to have been direct communication between Old Republic and the insured in October 2005, so there was no opportunity to disclose, nor, apparently, was Old Republic asked to discuss coverages in the policy with the insured. Nor are we aware of any affirmative duty to sit with the insured and discuss the policy line by line. The policy speaks for itself and is inclusive of all of its terms. Each benefit, coverage and provision is described in the policy and the policy was provided to the insured, a lender, according to the notes made by the examiner. Furthermore, when the claim against the policy was made in January, Old Republic did not deny the claim, despite the bluster in the claims administrator's notes and correspondence with the agent. When push came to shove, Old Republic settled the claim and did so on a very prompt and timely basis, according to the facts set out in the criticism, and in a manner approved by the insured.

As to the alleged violation of RSMo 375.1007(1), which makes it an improper claim practice to "misrepresent to claimants and insureds relevant facts or policy provisions relating to coverages at issue," it is important to reiterate that Old Republic did not directly communicate with the insured in October 2005, (at a time when the policy hadn't even been issued yet) and there is no evidence that any misrepresentation was made to the insured. At the time of the second claim file being opened, Old Republic worked out a settlement of the claim on fair terms. There is no evidence that any facts or policy provisions were ever misrepresented at either occasion to the insured. In addition, 375.1007(1) can only be violated if the act is committed in violation of section 375.1005. A violation of 375.1005 occurs when the insurer consciously disregards sections 375.1000 to 375.1018 or commits such a claims practice with such frequency as to indicate a general business practice to engage in such conduct. In the instant case, the claims administrator did not consciously disregard the statutes, since he made no misrepresentations to the insured in October. When the claim file was opened in January, Old Republic responded to the claim and made sure it got settled very quickly. Again, there was no evidence of any misrepresentation – only a prompt settlement. Also, there is no evidence that Old Republic has a general business practice of misrepresentation regarding policy provisions to insureds. Thus neither standard for a violation applies.

***EXAM FINDING #51***

*The Company failed to initially settle the following claim on the basis that responsibility for payment should be assumed by others.*

*Reference: 375.1007(4), RSMo, and 20 CSR 100-1.050(1)(D)*

*Claim Number*
*100803**

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. § 375.1007(4) and 20 CSR 100-1.050(1)(D) as alleged. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J19, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

## Response To Formal Criticism No. J19

Next, the examiner alleges that Old Republic initially failed to settle the claim on the basis that responsibility for payment should be assumed by others. This is said to violate RSMo 375.1007(4), which addresses "not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear." Furthermore, the criticism alleges a violation of 20 CSR 100-1.050(1)(D), which states that "no insurer shall fail to settle any first-party claim on the basis that responsibility for payment should be assumed by others except as otherwise may be provided by policy provisions."

Looking at these allegations, it is unclear how this claim could have been handled much more promptly, fairly and equitably than it was. This was a difficult situation involving several parties and with more at stake than just policy liability. As the insured's counsel stated in his letter of October 3, 2005, (see attached), it seems clear that he was aware of the coverage limitations of the policy and that he was going to hold the agent responsible for negligence damages above and beyond policy liability. It was in the best interests of the insured to achieve a universal settlement, whereby all of its damages could be considered, not just those arising under the policy. Old Republic contributed to the settlement which was in the interest of and approved by the insured. It is unlikely that Old Republic could have satisfied the insured simply by paying policy limits – it was the global settlement of all damages that was to insured's advantage. Not only did the insured get this global settlement, they also got it quite promptly, considering the multiple parties and issues involved.

Even if Old Republic had acted in bad faith, RSMo 375.1007(4) can only be violated if 375.1005 is violated. Please see the analysis on the previous page. The Company maintains that the promptly completed settlement agreement is evidence that there was no conscious disregard of the statute and further, there is no evidence that bad faith claims handling is a general business practice of Old Republic. Thus, we cannot agree with the allegations.

Specifically with regard to the regulation cited, there is no evidence that Old Republic failed to settle this claim on the basis that responsibility should be assumed by others. As mentioned already, this was a complicated case which included liability for negligence above and beyond policy liability. This liability was the agent's alone. The claim was settled with a good result for the insured because it included all aspects of insured's damages and was not limited to policy liability. This was to the insured's advantage.

For the foregoing reasons, Old Republic believes this claim was settled in a prompt, timely fashion in a way which satisfied the insured. Old Republic believes it did not violate any of the provisions cited by the examiner.

*2. **Closed Without Payment***

| | |
|---|---|
| *Field Size:* | *164* |
| *Sample Size:* | *50* |
| *Type of Sample:* | *Systematic* |
| *Number of Errors:* | *2* |
| *Error Rate:* | *4%* |
| *Within Dept Guidelines:* | *Yes* |

*NOTE: A star (*) after a policy number denotes this policy was cited earlier in the same error ratio for a different error, but was only counted once in the number of errors.*

*The following errors were found in this review.*

## ***EXAM FINDING #52***

*The following claim file does not contain sufficient notes and work papers in sufficient detail that pertinent claim dates can be reconstructed. ORNTIC received a fax dated 10-5-05 indicating a loan payment had been overlooked. There is no indication the claim was investigated or acknowledged until a letter dated 12-13-05 demand and on the seller to pay the balance of the loan. It is also unclear if the file has been closed without payment, or if it has been reopened. There is no clear date that the company accepted or denied the claim and no record of correspondence between the insured and Old Republic.*

*Reference: 20 CSR 300-2.100, and 20 CSR 300-2.200(2)*

*Claim Number*
*100124*

**RESPONSE:**

Old Republic disputes that it has violated 20 CSR 300-2.100, and 20 CSR 300-2.200(2) as alleged. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism M2, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

Response To Formal Criticism No. 2

On October 5, 2005, St. Johns Bank and Trust contacted Old Republic to inform us that the seller had a loan which was not paid off at closing. This fact is evidenced by a fax dated October 5, 2005, and mentioned in the criticism. St. Johns was NOT an insured of Old Republic, but rather the mortgagee on the unpaid loan. St. Johns, therefore, was not making a claim on any Old Republic policy, nor did Old Republic's insureds make any claim on the policy. In such a situation, where no claim has been made, Old Republic may undertake to resolve the matter if it believes there is a potential threat to its insureds. In this particular case, the sellers continued to make payments on the unsatisfied loan and there was no imminent danger of foreclosure.

Nevertheless, despite no claim having been made by an insured and despite the lack of an immediate threat, Old Republic took it upon itself to verify the St. Johns Bank and Trust deed of trust securing the loan. Upon verification of said deed of trust, Old Republic contacted Mr. and Mrs. Yost, the sellers, requesting that they satisfy the deed of trust. The sellers were not cooperative, at first, but later agreed to refinance in order to pay off the loan. As a result of the refinance, the deed of trust was satisfied and on March 2, 2006, a Deed of Release was recorded.

Since no claim was ever made, there was never any communication with the insured. Old Republic was able to resolve this POTENTIAL claim without burdening the insured. The fact that there was never a claim also explains the lack of detail in the file and the reason why the cited regulations were not violated.

***EXAM FINDING #53***

*In the following claim file, the company failed to notify the claimant of the denial in writing and failed to specify the policy provision under which the claim was denied.*

*Reference: Section 375.1007(4), and (7), and 20 CSR 100-1.050(1)(A)*

*Claim Number*
*108089*

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. §§ 375.1007(4), and (7), and 20 CSR 100-1.050(1)(A) in the above-referenced file. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J11, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

## Response To Formal Criticism No. III

The second criticism is based again on 20 CSR 100-1.050(1)(A), as well as RSMo 375.1007(4) and 375.1007(7). As to the regulation, the examiner alleges that the claim file was closed without advising the insured of a claims decision and that a denial because of a policy provision must be in written form. As discussed earlier, the fact that the claim was being denied was conveyed to the insured, along with the reason, that the parcel of land at issue was not insured under the policy. Thus the denial was NOT due to a policy provision, but because the property at issue was not insured. As discussed earlier, there should be no violation of 375.1007(4) either because liability was not clear at all – the parcel was not insured. Finally, we submit that no violation of 375.1007(7) took place either. Old Republic did not fail to affirm or deny coverage within a reasonable time. Nor was the alleged conduct a frequent business practice of Old Republic (see above discussion).

***EXAM FINDING #54***

*In the following claim, the insurer denied coverage because the policy did not provide coverage for survey matters, when in fact it did. The claim was very likely covered by the policy. The assertion by the insurer that the policy did not provide coverage for survey matters is a failure by the insurer to fully disclose to the insured all pertinent benefits, coverage or other provisions of the insurance policy.*

*(D) Reference: Section 375.1007 (1), RSMo, and 20 CSR 100 - 1.020 (1)*

*Claim Number*
*108089**

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. § 375.1007(1) and 20 CSR 100 - 1.020(1) as alleged. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J11, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

## Response To Formal Criticism No. J11

The next criticism deals with alleged violations of 20 CSR 100-1.020(1) and RSMo 375.1007(1). The criticism cites the statements of Old Republic's in-house counsel to Old Republic's outside counsel in a confidential memo written to explain the claim to this outside litigator who represents Old Republic. The memo appears to have been mistaken about the survey coverage, but this was not a misrepresentation to any claimant or insured regarding relevant facts or policy provisions, as set forth in 375.1007(1). Even if this had been a misrepresentation to the insured, it certainly did not meet the requirements of a violation of 375.1005 (and hence 375.1007) discussed above. Either way, this privileged memo did not violate the statute. Furthermore, the regulation at issue faults insurers which "fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions..." As with the statute, this memo was NOT a communication to the insured and the facts do not fit the behavior the regulation seeks to address. Furthermore, even the examiner noted that the claims administrator provided a copy of the title policy to the insured's counsel on May 5, 2005, so it is clear that nothing regarding survey coverage was hidden from the insured.

***EXAM FINDING #55***

*The company failed to settle this claim on the basis that responsibility for payment should be assumed by others.*

*Reference: Section 375.1007 (4), RSMo, and 20 CSR 100-1.050 (1) (D)*

*Claim Number*
*108089**

**RESPONSE:**

Old Republic disputes that it has violated Mo.Rev.Stat. § 375.1007(4) and 20 CSR 100-1.050(1)(D). Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism J11, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

## Response To Formal Criticism No. J11

Finally, the last criticism faults Old Republic for advising the insured that it's "beef was with Abstar, the closing agent." The examiner alleges this was a failure to settle a claim on the basis that responsibility for payment should be assumed by others. See 20 CSR 100-1.050(1)(D). The claims administrator denied the claim based on the policy not covering the omitted parcel, not because responsibility for payment should have been assumed by others, such as Abstar Title. In addition, the examiner again alleges a violation of RSMo 375.1007(4) based on this comment, but it has already been discussed in this response that liability was not reasonably clear since the policy omitted that parcel.

It is worth noting that Old Republic will soon be meeting in a settlement conference to attempt to settle the litigation mentioned by the examiner. We have recently increased our loss reserve to reflect a potential settlement in an amount that approximates what was paid by the original insured.

***EXAM FINDING #56***

*The following claim file contained an underwriting violation. Therefore, this error is not included in the error ratio. In this file, the company insured the lender without a legal description on the deed of trust. The company is in violation of sound underwriting practices by insuring without a legal description on the deed of trust. A title is not marketable and cannot be conveyed when omitting the legal descriptions from the deed of trust. No title insurance policy shall be written unless and until the title insurer, title agent or agency has made a determination of insurability of title in accordance with sound underwriting practices.*

*Reference: Section 381.071.1(2), RSMo*

*Claim Number*
*105968**

**RESPONSE:**

Old Republic disputes that it violated Mo.Rev.Stat. § 381.071(1)(2) by failing to make a determination of insurability of title in accordance with sound underwriting practices. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism T7, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violation.

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Response To Formal Criticism No. T7

The Formal Criticism alleges that Old Republic violated sound underwriting practices by insuring a Deed of Trust which had no legal description attached. According to the criticism, this violates RSMo 381.071.1(2), which requires that a determination of insurability of title be made in accordance with sound underwriting practices prior to writing a title insurance policy. Furthermore, the criticism states that the title is not marketable and cannot be conveyed. We disagree with these conclusions.

A determination of insurability in accordance with sound underwriting practices includes a search of the title to the property, a judgment search of the proposed mortgagors, a tax search of the property and an examination of the search to see what exceptions to title should appear on a title commitment. Once the commitment has been issued, the determination of insurability has been made and the title insurance company is bound to issue a policy subject to the provisions in the commitment. Old Republic's agent made the determination of insurability and it was done in accord with sound underwriting practices. A copy of the search and examination of title are attached hereto.

The examiner argues that the missing legal description amounts to a failure to properly determine insurability. As stated already, that determination had already been made prior to the closing. Furthermore, the lack of a legal description is nothing more than a clerical error or mishap that had nothing to do with the determination of insurability. Perhaps the legal description was attached to the Deed of Trust and fell off prior to recording. We cannot be sure, but it does not mean that Old Republic failed to exercise due diligence. Once the closing occurred, Old Republic was bound to issue the policy. The fact that the policy was issued does not indicate a lack of sound underwriting, but rather, adherence to an existing contract to insure that you would expect from a title insurance company.

We also disagree with the examiner's conclusion that title to the Deed of Trust is not marketable. First, courts construing Missouri law explain that recorded instruments can be valid without proper legal descriptions, especially if there is other information on the instrument identifying the property and the intent of the parties is clear, as was the situation in this instance. This is a longstanding rule with a great deal of caselaw behind it, including two recent cases this year. See Gresham v. America's Servicing Company, 373 B.R. 914 (Bankruptcy Court, Western District of Missouri 2007) and In re: Clement v. Ameriquest Mortgage Co., Adv. No. 06-04200 (Bankruptcy Court, Western District of Missouri, 2007), both attached hereto. Furthermore, the lender was able to institute foreclosure proceedings based on the Deed of Trust that was recorded. If the Deed of Trust was ineffective to give the lender a lien, it would not have been able to foreclose its interest in December 2006.

The insured was satisfied with the result – issuance of a letter of indemnity to the new title insurer which facilitated the foreclosure of the Deed of Trust.

*3. **Closed With Payment***

| | |
|---|---|
| *Field Size:* | *101* |
| *Sample Size:* | *50* |
| *Type of Sample:* | *Systematic* |
| *Number of Errors:* | *1* |
| *Error Rate:* | *2%* |
| *Within Dept Guidelines:* | *Yes* |

*The examiners found the following error in this review.*

***EXAM FINDING #57***

*The following claim file does not contain sufficient notes and work papers in sufficient detail that pertinent claim dates can be reconstructed. There is no indication that the claim was ever acknowledged or that investigation letters were ever sent to the consumer in question. The claimant filed a complaint with the Better Business Bureau on July 15, 2005.*

*Reference: 20 CSR 300-2.100, and 20 CSR 300-2.200(2)*

*Claim Number*
*97600*

**RESPONSE:**

Old Republic disputes that it violated 20 CSR 300-2.100, and 20 CSR 300-2.200(2) as alleged. Old Republic fully and adequately addressed and refuted the foregoing finding in its earlier Response to Formal Criticism M1, which said Response is attached hereto and incorporated herein by reference. No further explanation or response is necessary inasmuch as Old Republic's Response was dispositive of the alleged violations.

Response To Formal Criticism No. 1

This claim arose because the seller of the property, Mr. Desirray Williamson, transferred title to the property into an LLC in the "gap" period prior to closing. The commitment properly showed Mr. Williamson as the title holder and the deed was prepared with Mr. Williamson as the grantor to Ms. Maurnice Tipton, since Mr. Williamson did not inform anyone that he had previously transferred the property. Thus, the conveyance was outside the chain of title and Ms. Tipton, our insured, did not acquire title to the property at the closing.

Ms. Tipton learned of the problem and contacted Stephen Bolla of Old Republic by phone on June 7, 2005. During that conversation, Mr. Bolla verbally acknowledged the claim directly to the insured and immediately let her know that Old Republic accepted liability for the claim, as it was clear Ms. Tipton, our insured, was not in title. While the file does not contain correspondence to Ms. Tipton from June 7, 2005, Old Republic properly and timely acknowledged and accepted liability for the claim and Ms. Tipton was aware of the acknowledgement and acceptance. The regulations do not preclude verbal acknowledgements and acceptances.

The immediate action taken by Mr. Bolla on June 7 noted by the examiner (the email) and the certified mail sent to Mr. Williamson on June 9 are written, dated evidence in the claim file that the claim was accepted and work had begun immediately on trying to resolve the claim as of June 7. This satisfies the requirement of 20 CSR 100-1.030(1) to provide a dated notation in the claim file. 20 CSR 100-1.010(1)(G) was not violated, since that is only a definition as to when a claim is received. Old Republic further contends that this information in the claim file provided sufficient detail to reconstruct the acknowledgement and acceptance of liability. Thus, 20 CSR 300-2.100 and 2.200(2) requiring maintenance of claim files in a manner to allow reconstruction of pertinent dates were satisfied. The immediate action taken by Mr. Bolla is further evidence that Old Republic had reasonable standards in place to promptly investigate and settle the claim, in accordance with RSMo 375.1007(3). Furthermore, since the claim was investigated and accepted immediately, as evidenced by the letter to Mr. Williamson, there was no need to send a letter to the insured within 45 days requesting additional time to complete the investigation as set forth in 20 CSR 100-1.050(1)(C).

Therefore, it is Old Republic's position that the regulations cited by the examiner were complied with in substance and in spirit. Most importantly, the insured was aware of the acceptance of the claim via telephone and that Old Republic was going to do something to rectify the situation. This Old Republic began to do immediately, as shown by the letter from Mr. Bolla to Mr. Williamson. Ms. Tipton became upset with Old Republic not due to a lack of diligence on its part, but because Mr. Williamson failed to answer correspondence and failed to cooperate in resolving the matter. Old Republic then hired the law firm of Blitz, Bardgett & Deutsch, L.C., who were able to track down Mr. Williamson and have the proper documents executed. Old Republic did resolve the matter satisfactorily within a reasonable period of time for a claim of this type where the party at fault is non-cooperative.

## IV. Consumer Complaints

This section of the report is designed to provide a review of the company's complaint handling practices. Examiners reviewed how the company handles complaints to ensure it was performing according to its own guidelines and Missouri statutes and regulations.

The company is required to maintain a registry of all written complaints received for the last three years by Section 375.936(3), RSMo. The registry is to include all Missouri complaints including those sent to the DIFP and those sent directly to the company. The examiners requested the complaint registry.

Old Republic had five complaints on their registry for the time period reviewed. The examiners noted no errors in the company's handling of complaints.

## V. Unclaimed Property

The examiners conducted a review of the ORNIC's procedures for recording and reporting unclaimed property to determine compliance with Missouri's Uniform Disposition of Unclaimed Property Act, Section 447.500 et seq., RSMo.

The company provided their unclaimed property reports for 2004, 2005 and 2006. The company indicated they file their report in Minnesota and the Missouri unclaimed property is contained in that filing. The company indicated Missouri and Minnesota have a reciprocity agreement which allows them to file in Minnesota. The only Missouri Property reported was in the 2004 report in the amount of $225.00 belonging to Search Express in St. Charles Missouri.

## VI. Formal Requests and Criticisms Time Study

This study is based upon the time required by the Company to provide the examiners with the requested material or to respond to criticisms.

### A. Criticism time study

| Calendar Days | Number of Criticisms | Percentage |
|---|---|---|
| 0 to 10 | 84 | 100% |

References: Section 374.205.2(2), RSMo and 20 CSR 300-2.200(5)(6)

## B. Formal request time study

| Calendar Days | Number of Requests | Percentage |
|---|---|---|
| 0 to 10 | 10 | 100.0% |

References: Section 374.205.2(2), RSMo and 20 CSR 300-2.200(5)(6)

The Company responded to all the examiners' criticisms and requests within the requisite time frame.