



# Title Topics



36.15

July 2010

## Revisions to GIT/REP Forms

### Confusion eliminated

We always welcome a change to state required forms that make sense. Such is the case with recent revisions to the GIT/REP forms that must be recorded with a deed. The new GIT/REP 1, 2 and 3 forms have a revision date of 6/10 and can be accessed on line at our website [www.vestedtitle.com](http://www.vestedtitle.com) by clicking on the link to Mansion and Gross Income Tax.

The revision relates to those situations where the form is to be executed by an attorney-in-fact. Before the revision, the Division of Taxation required that a copy of the Power of Attorney be attached to the GIT/REP form regardless of whether or not the Power of Attorney was already recorded or about to be recorded. In some cases, the cost of recording the Power of Attorney with the deed increased recording fees by as much as \$60. Now, if the Power of Attorney is already recorded or will be recorded with the deed, an additional copy of the Power of Attorney does not have to be attached to the GIT/REP form provided you check the following box which has been added to the Seller(s) Declaration at the bottom of the forms:

**“By checking this box  I certify that the Power of Attorney to rep-**

*(Continued on page 2)*

## The Great Misconception Bankruptcy and Judgment Liens

We received a Bulletin from our friends at Stewart Title that reminded me of an often misunderstood subject- the effect of a bankruptcy discharge on a judgment lien.

“A common misconception about bankruptcy is that a discharge wipes the debtor's slate clean. **It does so only as to the personal liability of the debtor on the underlying discharged debt.** In a nutshell, the rule in bankruptcy is that a pre-petition secured lien on real property of the debtor will remain a lien on the property after the bankruptcy is completed unless or until removed by the bankruptcy court.

“Unless the bankruptcy court does something to affirmatively remove an existing lien from real estate, that lien passes through the bankruptcy case unaffected. As such, the lien creditor can enforce its lien against real property.

“Once the bankruptcy case is closed, the automatic stay is lifted, and the lien creditor is then free to enforce its lien through foreclosure or execution. It is likely that the debtor has no personal obligation to pay the debt, but the property remains liable "in rem." This rule creates an undesirable choice of having to lose the property to foreclosure, or settle with the lien creditor on a debt for which the client was discharged. However, local laws may allow for satisfaction of the lien through varying methods.” See, N.J.S.A. 2A:16-49.1.

“Property acquired after the bankruptcy case may not be encumbered by a pre-petition judgment lien if the debt of the judgment creditor is discharged.”

Have a question? Let us know.

## Fighting with the bank over the HUD-1? Here's one solution

**Scenario** – You've prepared the HUD-1 Settlement Statement using that fancy new software you purchased for quite a bit of money. The lender calls and says, "I need you to move your numbers around."

"I can't," you say, "they don't belong there." That's when the golden rule of lending comes in, "he who has the money, makes the rules." And you are told, "make the change or we are not funding."

*(Continued on page 2)*

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**GIT/REP Forms** (Continued from page 1)

**resent the seller(s) has been previously recorded or is being recorded simultaneously with the deed to which this form is attached."**

Please keep in mind that this modification does not change the fact that in those cases where a seller executes a "closing authorization" form or similar letter, that form or letter could not be the basis for execution of a deed. A recorded, formal Power of Attorney would still be required.

There have been some stylistic changes to the forms, too.

In any event, we welcome the change.

**Where have all the title companies gone?** Merger is nothing new in our industry. Now, the field shrinks further as Fidelity National Financial has announced it will trim its 12 operating companies down to five as of July 1, 2010.

So, it's farewell to two long-time NJ title insurers, Ticor Title Insurance Company and Lawyers Title Insurance Corporation.

If you have a need to know who succeeded a particular company, please let us know, we have the list.

**RESPA**(Continued from page 1)

Case in point—the NJ Realty Transfer Fee. Some lenders insist that the RTF be shown in the borrower's column on line 1203. Huh? It's an expense of the seller, you've told them. The only way this works is for you to then go to page one and place the RTF as an amount paid on behalf of borrower and deducted from seller. Your disbursements will balance but the disclosure is fundamentally wrong. There are other instances when lender instructions seem to conflict with the purpose of RESPA—a clear understanding of the costs of a real estate transaction.

According to a memo from Stewart Title, "HUD has verbally suggested a course of action for closing service providers to follow when the Lender's Instructions for preparation of the 2010 HUD-1 are inaccurate or confusing under RESPA regulations or HUD's FAQs. HUD's suggestions are:

- a. **Communicate** with the Lender (in writing) **and educate** the lender as to the statute, regulation and HUD's FAQs on the issue;
- b. **Document your file** with your questions, objections and comments and the Lender's responses;
- c. If the Lender does not change its Instructions, **follow the Lender's written instructions so long as such are not fraudulent.**
- d. **Contact HUD** if the Lender continues to misinterpret the applicable regulations and FAQs."

If you have recurring disagreements or problems with any particular lender, you can contact HUD by calling 202-708-0502, by email [hsg-respa@hud.gov](mailto:hsg-respa@hud.gov), or by mail to:

Director, Office of RESPA and Interstate Land Sales US Department of Housing and Urban Development, Room 9154, 451 7th Street, SW, Washington, DC 20410

**Now the disclaimer – since settlement services are outside the scope of our title insurance policies, we offer this information as a courtesy only and expressly do not constitute legal advice. You may or may not agree with or follow such views and interpretations.**

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Do you have comments on what you see here? Send them to [sflatow@vested.com](mailto:sflatow@vested.com).

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*For 28 years, Vested Title has stood behind its clients. When it comes to resolving title problems with tax collectors, assessors, county clerks and registers, call upon us and we will do all we can to help you get that title closed.*

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## **Vested Title Inc. — Our 28th Year**

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