



## A Short History of Loans and the Lender's Title Policy

by Chris McIlravey—Corporate Communications Director  
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Lending practices date back as early as the first human civilizations. The roots of modern lending models are found in these ancient forms, and many of the fundamental concepts of these early practices provide valuable insight into today's practices. The lender's title insurance policy fits into this history as a relatively new, yet essential, element of the loan transaction.

Ancient Babylonian clay tablets, some dating as early as 2000 B.C., included pledges such as: "two shekels of silver have been borrowed by [borrower]. He will pay Sun God's interest. At the time of harvest he will pay back the sum and the interest upon it."<sup>1</sup> Note that this basic transaction involves transferring funds with the obligation to repay the funds in addition to interest that is compensation to the lender for the use of the funds.

Egyptian records take this

notion a step further. Some records show the promise of a husband to his wife that, in the event he should take another spouse instead, he will pay a sum of money, or the original spouse may have all of the husband's property. This assurance is one of the first illustrations of the idea of pledging property in support of a promise to fulfill an obligation.<sup>2</sup>

Roman law continued to build on these concepts and introduced a number of models, each varying in how rights to the property and possession were handled. Since the concept of "pledging," as being independent from "ownership," had not been fully developed, early forms of borrowing required the actual transfer of property. The earliest Roman law required the transfer of ownership of property to the lender on the condition the property would be given back once the debt was paid (fiducia).<sup>3</sup> The original owner

had little recourse if the lender did not keep their end of the bargain because ownership had already transferred.

Later came the concept of "pignus" whereby the lender obtained legal possession of the property but could neither "make use of it" nor "dispose of [it] to obtain satisfaction" for the loan.<sup>4</sup> These conditions could be negotiated, however, through additional, agreed-upon terms such as ownership rights being transferred to the lender in the event of default. The last model under Roman law allowed for a pledge to be established by agreement

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**"If opportunity doesn't knock, build a door."**

~Milton Berle

<sup>1,2</sup> qt in Cherrington, Homer V., Phd & Pease, Robert h. M.B.A. Mortgage Banking. McGraw-Hill Book Company, Inc. United States. 1953.

<sup>3,4</sup> <http://www.perseus.tufts.edu>



## Loans and Lender Policies cont. from page 2

transaction. During the Great Depression, the banking system failed. Most home mortgages at the time were “short-term (three to five years), no amortization (payments of principal and interest over time), balloon instruments at loan-to-value ratios below fifty to sixty percent.”<sup>12</sup> Since refinancing was not available, and many borrowers, now unemployed, were unable to make mortgage payments, many homes were foreclosed, causing the housing market to plummet. Because there was little faith in the backing of the US government, few loans were issued and few new homes were purchased.

In 1934, the federal banking system was restructured. The National Housing Act of 1934 created the Federal Housing Administration or FHA (which was eventually merged with the Department of Housing and Urban Development's (HUD) Office of Housing in 1965). The FHA regulated the rate of interest and the terms of mortgages that it insured. These new lending practices increased the number of people who could afford a down payment and monthly amortized payments on a mortgage.

Fannie Mae was created in 1938 in order to buy mortgages from lenders and free up capital that could go to other borrowers.

*Although Fannie Mae began with just \$1 billion in purchasing power, the agency helped usher in a new*

*generation of American home ownership, paving the way for banks to loan money to low- and middle-income buyers who otherwise might not have been considered creditworthy.*<sup>13</sup>

Fannie Mae ensured liquidity in the market and established what is considered as the “secondary market.” With the advent of new types of lending structures and the rapid growth of the secondary mortgage market, title companies provided solutions surrounding researching title, identifying and eliminating title-related matters, and issuing policies which covered title-related losses. Essentially, title insurance companies relieved some of the burden of performing certain functions while contributing to the streamlining of loan transactions.

Just as the modern amortized mortgage is essentially an American invention, so too is title insurance. First introduced in the late 1800s, title insurance came about as the result of a Pennsylvania case (Watson v. Muirhead) which involved a buyer losing his property due to a prior lien that had been identified but erroneously evaluated as being invalid.

The standard loan policy was first introduced in 1929 by the American Title Association (the predecessor to the American Land Title Association (ALTA)).<sup>14</sup> As loans were made more attractive and available to the average American, the

lending industry expanded significantly and title insurance became a requirement of the most lenders beginning in the mid-late 1900s. Policy forms continued to evolve but have retained several basic covered risks.

Regardless of whether the property is located in a title or lien theory state, these covered risks relate to the rights the lender has with respect to the insured property relative to the rights of others.

A standard policy insures loss or damage suffered as a result of the owner being something other than what is represented on the policy, the invalidity of the lien, and claims against the title that are not otherwise set out on the policy. Costs of defending the title with respect to a covered risk are also included.

The policy has several key sections including the covered risks, the exclusions, the conditions, Schedule A, and Schedule B. The covered risks, exclusions, and the conditions are preprinted on the policy jacket whereas the schedules contain transaction-specific information and are inserted at the time of the transaction. Schedule A includes the names of the parties involved, the policy amount, the description of the insured property, and several other items. Schedule B contains the exceptions to coverage which are different from exclusions in that they are transaction-specific. These exceptions are essentially rights that have already been

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<sup>12</sup> Monroe, Albert. “How the Federal Housing Administration Affects Homeownership.” [Harvard University](http://www.harvard.edu) Department of Economics. Cambridge, MA. November 2001.

<sup>13</sup> <http://www.time.com/time/business/article/0,8599,1822766,00.html>

<sup>14</sup> Gosdin, James L. Title Insurance: A Comprehensive Overview. ABA. 2007

## Loans and Lender Policies cont. from page 3

distributed in the property's history and other matters which have an impact on the title including easements, restrictive covenants, outstanding ownership interests, and other liens and encumbrances.

Additional types of coverage are available in many markets through the use of endorsements and "expanded" policy products. Conversely, reduced coverage is also generally available for liens such as equity liens where standard coverage may not be desirable.

The lender's policy is not a guarantee of good title—it is a contract for indemnification for losses related to the specific covered risks. For the lender,

losses cannot be contemplated until a foreclosure is imminent.

It is important that the title company's claims department is notified at the first sign of a potential loss. The title company is able to then evaluate the circumstances and determine a course of action. The title company has the option to file suit to quiet the title and remove the defect, pay the claimed amount to the holder of the adverse interest in exchange for release or waiver of the adverse interest, or pay the insured directly for the losses.

If the insurer elects to pay the insured directly, the policy only requires that payment be in the amount of the actual loss or the

face amount of the policy, whichever is less; therefore, if actual loss is less than the policy amount, the insurer does not pay the face amount of the policy. Instead, the insurer measures the damages as being the extent to which the value of the property is diminished due to the title being other than as insured.

Although the lender's title insurance policy is a relatively new development when compared to the ancient origins of lending practices, the product has become essential to the success of a loan transaction as it has evolved to its current form.

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## Time to Make Doughnuts

by Karl Richardson, Agency Support Rep

During my time at Investors Title, I have found that one of the most difficult questions to answer didn't come from an agency or an attorney but from my fiancé. It wasn't a question about title or property. It was simple and to the point. "What is it that you do?" That seems simple enough. My initial answer, however, wasn't. It was an elaborate narrative of all the things I did in my position supporting agents. From answering questions and reviewing underwriting to assisting Corporate Legal and Underwriting Services with our manual updates and guideline reviews, I had given her a very detailed response. I thought I had covered everything until her

parents asked the same question and she looked over at me and said, "Ask him... I have no idea."

At that point, I decided to rethink how I answered that question in the future and came up with a much simpler approach... "I help mitigate risk for an insurance company. I make informed decisions and give well-thought out answers on questions and scenarios related to insuring real property while attempting to minimize risks. That's easy enough to understand, right?"

I have probably explained my role many times to friends and family and in a variety of fashions. I have overheard the retelling of my position by my

friends and family as everything from "he does something with real estate" to "I think he sells homeowner's insurance" or, my favorite, "I overheard him talking about waterbed rights on the phone the other day and had no idea his job had anything to do with furniture." \*Sigh\*

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## Time to Make Donuts cont. from page 4

It is understandable how anyone might find it difficult to comprehend what we do in the title industry. There are many variables and perspectives involved. It is necessary, for example, to analyze things a little bit differently in certain markets to remain competitive while accepting minimal risks in certain situations by counting on the unlikeliness that the underlying issue will rear its ugly head. These are things done every day at Investors Title—making smart calls while balancing the risks to the company with the needs of agents and finding that middle ground and solution that satisfies all parties. I never

would have thought that it would be easier to answer difficult questions or trudge my way through complex scenarios regarding real estate than answer the question my friends and family have asked again and again... “what is it that you do exactly?” But, as my experience has proven, sometimes the best answers come from outside the box and can be inspired by the most unlikely things (such as treats in the break room). Now, when asked what I do, my reply remains the same, “I support title agents by assisting with underwriting and decision-making that minimizes risk.” When met with a blank

stare that generally reminds me of a high school student in calculus class, I go with option 2: “I make donuts.” Hey, it can’t be any worse than them thinking I insure bedroom furniture.



## Underwriting Q/A

By Rich Erdosy — Agency Ops Coordinator



**Q:** Kringle, Inc. has had to move some of its toy manufacturing operations onshore due to global warming. Santa can’t take the risk of having all of his facilities underwater one of these days. One such operation has been located in the quiet (and they like it that way) town of Nimby, Connecticut. Now, how Santa got his zoning variance, no-one knows. In any event, Santa, always looking to be a good neighbor, wants to install some sound dampening panels in his factory, due to numerous complaints from neighbors regarding loud hammering, excessive jingle belling, and indiscriminate tinkering. So Kringle, Inc. has applied for a credit line mortgage. In conjunction with this, Santa, as authorized signatory on behalf of Kringle, Inc., has filled out the seller/borrower affidavit, with some changes to the wording therein. He has crossed out item two and indicated in the “Note any exceptions” area of the affidavit that Kringle, Inc. is a corporation domesticated in Finland. Are the changes to the seller/borrower affidavit acceptable?

**A:** The changes are not only acceptable but also necessary. The seller/borrower affidavit is a sworn affidavit. If a deponent knowingly swears to false information thereon, said deponent commits perjury. The result of committing perjury could be Kris Kringle ending up in the slammer and a lot of sad boys and girls. We can help keep Santa and others like him out of jail by making sure that they fill out the seller/borrower affidavit accurately.

## Spotlight on Settlement

### Preparing for 2014 1099-S Reporting

#### **IMPORTANT INFORMATION**

**What to Report:** Gross proceeds from the sale or exchange of real estate and certain royalty payments

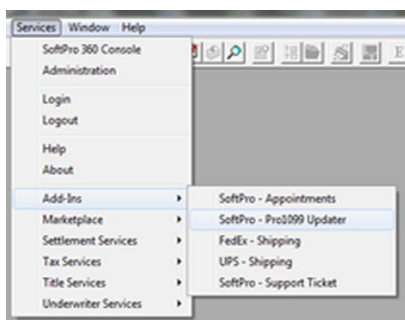
**Amounts to Report:** Generally, \$600 or more

**Due Date to Recipient (Seller):** February 17, 2015

**Due Date to IRS (Electronic Filing Only):** March 31, 2015

It is time once again to begin preparations for 1099-S reporting. On the sale or exchange of certain real estate, it is the responsibility of the closing agent to report the gross proceeds from the transaction to the Internal Revenue Service. The closing agent is also responsible for providing a copy to the Seller for the preparation of their tax return. Below are a few steps you should take now to ensure the filing process goes smoothly.

#### **Step 1 –Install the 2014 IRS Compliant Update (Available after January 1, 2015)**



Login to SoftPro 360 via your ProForm application. Go to the Services menu in your ProForm application. Access the login menu option. Once the login screen appears, enter your email address and password and Sign In. **Note: If you have not yet registered with SoftPro 360 you will need to do so by clicking on the Register New Account link.**

#### **Step 2 - Download the Pro1099 Update via SoftPro 360.**

The Update can be found in the SoftPro 360 Products menu under Services/Add-Ins:

#### **Step 3 - Enter Your TCC Code**

Make sure you have entered your TCC Code in Pro1099. The TCC Code is required to file an electronic return with the IRS. If you don't have a **Transmitter Control Code (TCC)**, you must file IRS Form 4419 to obtain one.

**Note** – IRS Form 4419 along with everything you need to know about electronic and magnetic media filing can be found in IRS Publication 1220.

To enter the TCC code in Pro1099, select **Tools/Transmitter/Payer Information** and enter the code in the TCC field.

#### **Step 3 – Ensure That All Files Subject to 1099-S Filing Have Been Exported to Pro1099**

In ProForm, run the **Files Not Exported to 1099** report to list all closing files for 2014 that involved a purchase transaction and have not yet been exported to Pro1099. This list should be reviewed to determine 1) if the transaction actually closed and 2) if the transaction is subject to 1099-S reporting. Any files that meet these criteria should then be exported to Pro1099.

#### **Step 4 –Run an Exceptions Report**

You should run an **Exceptions** Report in Pro1099 to make sure that all the 1099 records in your database are complete and accurate. You should correct any errors reflected in the report as soon as possible. Once you have confirmed that all errors and omissions have been corrected, you should print and mail a Substitute 1099-S to any Sellers that did not receive one at closing.

## Did You Know?

- **Did you know** that emails from Investors Title may now be encrypted, especially if they contain non-public personal information\*? If Investors Title is able to establish a secure connection to the recipient's email system/provider, they will not notice any change in the way emails are delivered. If Investors Title is not able to establish a secure connection to the email system/provider, they will receive an email with a link to access the secure message and its contents. Usernames or passwords are not required to access the encrypted email and its contents. A hyperlink to a secure website will allow the recipient to view the email and its attachments. Please contact your Investors Title representative with questions.

\*Non-public personal information is NPI stands for Non-Public Personal Information. It is defined as: 1) Any information provided to obtain a financial product or service (for example, name, address, income, Social Security number, or other information on an application); 2) Any information you get from an individual from a transaction involving your financial product(s) or service(s) (for example, identifying the individual is a customer of yours, account numbers, payment history, loan or deposit balances, and credit or debit card purchases; and 3) Any information you obtain about an individual in connection with providing a financial product or service (for example, information from court records, background checks, or consumer credit reports).

## News from the Hill



- On November 29, 2014, Jim Fine, President and Treasurer of Investors Title Company [Nasdaq:ITIC], rang the Nasdaq Stock Market ceremonial Opening Bell. Investors Title Company began trading its shares on the Nasdaq Stock Market in 1986. Click [here](#) for more information.

- The next underwriting/examining training will be held January 12-16, 2015. Please contact David Florio at [dflorio@invtitle.com](mailto:dflorio@invtitle.com) for more information.

## Stop! It's Grammar Time!

### Misplaced and Dangling Modifiers

A modifier is a word or phrase that describes or relates to another word and provides clarification or additional detail. For example, in the phrase, "the teal goose..." the word teal modifies the word goose. In the sentence: "The torn processor's form didn't scan," the modifier incorrectly refers to the processor and not the form. This error is easily corrected by moving the modifier (i.e. "The processor's torn form didn't scan.").

Modifiers can also be entire phrases or clauses such the first part of this sentence: "Walking to the copier, Fred noticed that the toner was low." In the last sentence, the modifier is correctly placed to refer to Fred. It is clear that Fred is doing the action. What if the sentence read: "Walking to the copier, the toner appeared low."? This example is called a dangling modifier—the modifier isn't tied to anything and is confusing. As written, it implies that the toner was walking. The sentence would have to be rewritten to make sense (i.e. "Walking to the copier, Fred noticed the toner appeared low.").

## Internal Library Updates

Click [here](#) for a current listing of Internal Library content updates in 2014.

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## Distinguished for **EXCELLENCE!**

### A.M. Best Rates Investors Title's Financial Stability as **A (Excellent)**

A.M. Best has assigned a financial strength rating of A (Excellent) to **Investors Title Insurance Company** and **National Investors Title Insurance Company**, designating both underwriters as companies with “**excellent ability to meet their ongoing insurance obligations.**”

Investors Title is proud to have earned this significant recognition.



See the [invtitle.com](http://invtitle.com) news banner for a link to the May 23, 2014 press release.

For the latest A.M. Best rating, access [www.ambest.com](http://www.ambest.com)



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– **W. Morris Fine**

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