

# THE NC CONNECTION

AN INVESTORS TITLE COMPANY PUBLICATION



## Please, I Beg You, Name Your Son Petunia

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Click [here](#) for Marc's bio.

"Hi! My name is Robert Smith and this is my wife Mary. I hope you don't mind, but we brought little Robbie because his Granddad Bob could not watch him. We want to refinance our home." The loan officer asks Robert, who says, "call me Bob" (or was it Rob?) and Mary to fill out the loan application. Later that week, the loan officer orders a search with a local law firm. A few days later the attorney finds that there are 57 judgments against a Mr. Smith. After a closer look, the attorney sees that some of them are against Bob, Rob, Robbie, and Robert. Oh yeah, some are against Senior and some against Junior and one is against Robert III. Of course, Robert Smith the borrower says that none of the 57 judgments are against him. What does the attorney do?

**"The borrower says that none of the 57 judgments are against him."**

Judgments are a serious problem to the closing attorney and the title insurance underwriter. If a judgment constitutes a valid lien on the property, it will take priority over a subsequently recorded deed of trust or mortgage. Furthermore, a buyer will take the property subject to any outstanding judgments. If an examining attorney finds outstanding judgments that attach to the subject property the underwriter will require that they be paid or that the property be released from the judgments. What if the borrower insists that the judgments appearing to be against him/her are really against someone else that happens to have the same name? This presents a problem to everyone involved. Do we believe the borrower and just require that they sign the judgment affidavit, or do we insist that



the judgment be paid? Well, like every other issue with underwriting, it depends. The attorney should try to further determine whether the judgment is in fact against our borrower. This can be done by trying to verify the address referenced in the judgment to see if the borrower has ever lived there. Also, if a social security number is listed we can check to see if it matches our borrower. Another checkpoint is the middle initial. If the borrower is a male, and

*(Continued on page 2)*

## In This Issue:

<b>Please, I Beg You, Name Your Son Petunia</b>	<b>1-2</b>
<b>NC Fun Facts</b>	<b>2</b>
<b>Best Escrow Practices Series</b>	<b>3,5</b>
<b>Investors Trust Company: Nelson v. Brown</b>	<b>5</b>

## Please, I Beg You... continued from page 1

the middle initials don't match, then this is a good indication that the judgment may not be against our borrower. If the borrower is a woman, this issue presents a problem because of maiden names versus married names. Sometimes, when a woman marries, she may keep her maiden name as her new middle name or drop her maiden name and keep her original middle name. We cannot rely solely on the fact that the middle initial is different in determining whether a judgment attaches against a female borrower.

If the attorney does not feel comfortable as to whether the judgment is against our borrower then contact a title attorney. Don't just rely on the borrower and have him sign the "Not Me" affidavit. Together, the title attorney and the certifying attorney can weigh the many factors such as the amount of the judgment, the age, and the likelihood that the judgment is in fact against our borrower to determine the best way to underwrite this issue.

So remember, when you are thinking of names for the little boy on the way, consider the name Petunia. Not only will this make it easier on the real estate attorneys and title insurers of the world—it will make your son tough as nails!



Some additional tidbits that may be helpful when encountering judgments:

- Judgments against Entireties Property: unless it is an IRS lien or a United States judgment lien, a judgment against only one spouse of entireties property does not attach. Note: this rule applies to a North Carolina Department of Revenue lien as well; however, upon divorce the judgment will attach to the named debtor's one-half interest.
- Judgments against Buyers: under the Doctrine of Instantaneous Seizin, a judgment against a buyer does not take priority over a purchase money deed of trust. The buyer must give a purchase money security interest to the seller or lender. The deed to the buyer and the purchase money deed of trust must be recorded simultaneously, or if not simultaneously, clearly as part of the same transaction. Currently, the IRS recognizes the doctrine of instantaneous seizin.

Note: Until the North Carolina courts deal definitively with the issue of judgments and marital interests as to 2nd and 3rd purchase money liens, most underwriters are taking the conservative approach and arguing that the Doctrine of Instantaneous Seizin does not apply.

- Statute of Limitations: a judgment in North Carolina is good for ten years from the date it is docketed. An IRS lien is also good for ten years. A Federal Judgment has a duration of twenty years.



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## NC FUN FACTS

Operation Bumblebee developed and tested US Navy ramjet missiles at the end of World War II. The Applied Physics Lab PTV-N-4 Cobra/BTV (Propulsion Test Vehicle/Burner Test Vehicle) was flown in October 1945, and the program developed the operational RIM-8 Talos missile. In addition to initial tests at the Island Beach, New Jersey, and Fort Miles, Delaware, Camp Davis, North Carolina, was used for Operation Bumblebee from c. June 1, 1946, to July 28, 1948. Topsail Island, North Carolina, became the permanent Bumblebee testing and launch facility in March 1947. The Topsail Historical Society hosts the Missiles and More Museum at the site. Testing was transferred to Naval Air Weapons Station China Lake and then to White Sands Missile Range in 1951 where USS *Desert Ship* (LLS-1) was built as a prototype Talos launch facility.



Photo: [www.topsailbeach.com](http://www.topsailbeach.com)



## Best Escrow Practices Series

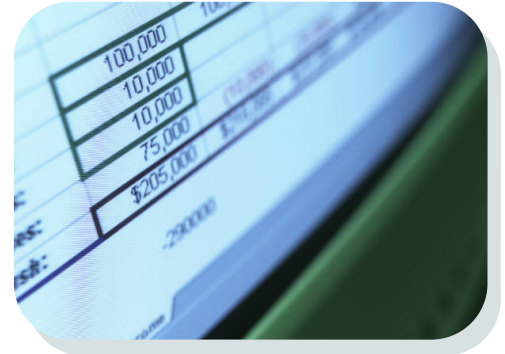
### Volume 1: Controls and Segregation of Duties

By Holly Simmons, Esq.

In this series, we will introduce or reinforce guidelines designed to maintain a secure and clean escrow account. In addition to these guidelines, closing attorneys must ensure they follow applicable state laws and guidelines for the receipt and disbursement of funds, account reconciliation, record retention, and post-closing follow up.

### Controls

One of the basic principles in managing an escrow account is to implement internal controls. Controls are the policies and procedures established by an organization to manage all aspects of a particular workflow which include assigning authority for certain tasks to each employee. In the real estate settlement world, the absence of quality controls makes a settlement provider more susceptible to the two big “Fs” — fraud and forgery. Without proper controls for managing an escrow account and workflow, a settlement agent may become the innocent victim of various types of fraud and identity theft. If you’re not familiar with wire fraud, it’s time to pay close attention. Cyber criminals can extract escrow funds in transit from the agent’s escrow account to the final beneficiary using a program called Zeus Botnet. This program can be purchased for as little as \$3,000 on the internet. Recently, a large Midwestern settlement agent lost approximately \$800,000 due to wire fraud. This problem is prevalent in small agencies, and most of the victims had one thing in common. They didn’t use dual controls or best practices for initiating wire transfers. We’ll discuss best practices for wire controls later in the series.



### Segregation of Duties

One of the key defenses to preventing fraud is segregation of duties. Segregation of duties is the concept of having more than one person required to complete a high risk task. This principle applies to manual and automated systems. Segregating escrow related duties will depend highly on your office size, but here are some ideal guidelines in the order of importance. You’ll be ahead of the game if you can, at a minimum, implement the first two controls.



*(Continued on page 5)*

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**Now Available!**

### How to Prepare the HUD-1 in ProForm

This free course is now available on Investors Title’s NC On-Demand portal ([nc.invtile.com/ondemand](http://nc.invtile.com/ondemand)). This course reviews procedures for preparing a HUD-1 settlement statement in ProForm (see course outline to the right).

Click [here](#) to access the portal.

- I. Introduction
- II. Getting started
  - a. Toolbars
  - b. Searching for an existing file
  - c. Navigation and Shortcut Keys
  - d. Creating a new file
- III. Review of General Tab Screens
  - a. Order Entry
  - b. Accessing Lookup Table
  - c. Notes
  - d. Earnest Money
  - e. Funding
- IV. Review of HUD 1 & Closing Tab
  - a. Tax Screens
  - b. 700s - Commissions
  - c. 800s - Items Payable in Connection with Loan
  - d. 900s - Items Required by Lender to be Paid in Advance
  - e. 1000s - Reserves Deposited with Lender
  - f. 1100s - Title Charges
  - g. 1200s - Gov’t Recording & Transfer Charges
  - h. 1300s - Additional Settlement Charges
  - i. 100s - Gross Amount Due from Borrower
  - j. 200s - Amounts Paid by or in Behalf of Borrower
  - k. 400s - Gross Amount Due to Seller
  - l. 500s - Reductions in Amount Due to Seller
  - m. Comparison of GFE and HUD-1 Charges
- V. Printing the HUD-1



## NC CONTENT ONLY

# Investors Title Insurance Company

## ON-DEMAND EDUCATION

### WHAT IS IT?

An online-based portal through which continuing education (CLE/CPE) credit may be earned.

### HOW DO I CREATE AN ACCOUNT?

Go to [nc.invtitle.com/ondemand](http://nc.invtitle.com/ondemand) and follow the link to the course portal. Select "Register" on the top menu to create an account.

### HOW MUCH DOES IT COST?

Free to create an account. Non-Credit Courses = \$0 (Free)  
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### HOW IS MY CREDIT HANDLED?

Please review the "Credit FAQs" section provided on the portal.

## NC CONTENT ONLY

### Why Investors Title On-Demand?

...because it is quality content ...because it is competitively priced  
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The image displays three screenshots of the Investors Title On-Demand portal. The first screenshot shows the 'Back to Basics - Legal Descriptions' course page, featuring an overview, seminar information (Seminar Date: January 22, 2009; Expiration Date: April 19, 2012 12:00 AM), and navigation tabs for Overview, Topics, Credit, and Preview. The second screenshot shows a category selection page for 'Paralegal Courses for CPE Credit (3 Seminars)'. The third screenshot shows a video player for the course 'How Did It Go Wrong and What Do We Do Now?', with a play button and a 'Products' sidebar listing 'Resourcing' for \$24.00.

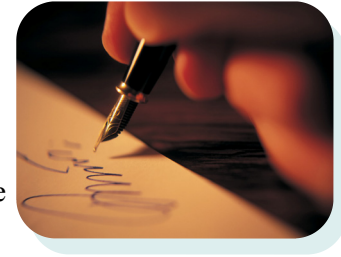
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INNOVATIVE  BY INSTINCT

## Best Escrow Practices Series continued from page 3

1. Ideally, employees preparing checks should not be a signer on the account. At the very least they should not be the sole authorized check signer. You also need to ensure signers are verifying that payees and amounts match the signed settlement statement and client ledger balance.
2. Employees who reconcile the account should not handle receipts, disbursements, or be a signer on the account.
3. Check signers should not be responsible for blank check stock.
4. Employees who receive and log incoming funds should not prepare or make deposits or sign checks.
5. Employees initiating disbursements should not receive funds or record entries in the check ledger.



The next installment of this series will focus on controls for check handling and controls for receipts.

### Investors Trust Company



#### *Nelson v. Brown*

The North Carolina Court of Appeals has ruled that a credit union cannot appeal a partial summary judgment in favor of the opposing party in a case that involved the naming of a beneficiary for a payable on death (POD) account. The case developed when James Nelson called the State Employee Credit Union (SECU) in Boone, N.C., and instructed an employee to transfer \$85,000 from a revocable trust that he maintained to a new POD account, which named his daughter Martha Brown as beneficiary. Nelson had two other children, and his Will specified that all of his assets were to be distributed equally among all three. The SECU officer mailed the appropriate form to Nelson, which he signed and returned. The form specified that, by signing the form, Nelson had “read and received a copy of the Rules and Regulations governing this account... and agreed to adhere to the same.” After Nelson died, Nelson’s two children who were not beneficiaries to the POD account initially sued their

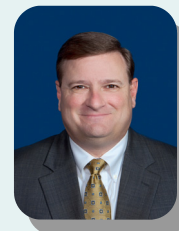
sister alleging undue influence, but then amended the complaint to include the credit union. In suing SECU, the plaintiffs argued that the credit union had violated Section 54-109.57 of the applicable state statute. That Section specifies that a “person establishing an account... shall sign a statement containing language” that outlines various elements about how the account would be administered. That language, according to the plaintiffs, was not present on the form Nelson signed—instead, the form only referenced an accompanying “Rules and Regulations” that would govern the account. The plaintiffs filed a motion for partial summary judgment against SECU, arguing that, because SECU had not followed the statute, it had “failed to create a right of survivorship” in favor of his daughter. The trial court granted the motion, and SECU appealed. The trial court declined, as permitted by Section 54(b) of Civil Procedure, to certify that there was “no just reason to delay the appeal.” Since the trial court declined to certify the appeal, the appellate court said the appeal was filed prematurely—it was interlocutory—and dismissed the case.

--*Nelson v. Brown, No. COA11-535, N.C. Ct. App. 12/6/11*

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