MARYLAND TITLE INSURANCE PRE-LICENSING COURSE

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This course presented by:
Maryland Title Licensing Education (MTLE) and the
Academy of Maryland Title Insurance
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INTRODUCTION

The State of Maryland requires persons who sell title insurance, perform insured real estate closings, direct the payment of trust account funds, or engage in certain other functions within a title insurance agency to be licensed as a "title insurance producer."

Maryland Title Licensing Education (MTLE) and the Academy of Maryland Title Insurance, LLC, are operated by experienced Maryland title insurance industry executives. Our Maryland Title Insurance Pre-Licensing Course is approved for credit by the Maryland Insurance Administration (MIA), so that you can prepare for and sit for the state title insurance producer licensing examination.

MTLE distinguishes itself in the Maryland title insurance education marketplace in the following ways:

- Our materials are direct and to-the-point.
- Our materials are updated frequently!
- We offer title insurance education for a reasonable price.
- Only the finest instructors present our courses. Our instructors have 20+ years of title insurance experience in the title insurance industry, and are recognized by the industry for their local expertise.

In short, we do the best job in Maryland to make sure that you pass your title insurance producer licensing exam. We look forward to you becoming an active member of the title insurance industry!

SYLLABUS of In-class Instruction (16 Total Hours)

Module 1:	7 hrs.	- Introduction to title insurance
		- Basic title insurance concepts
		- Quiz
Module 2:	3 hrs.	- Functions within a title company
		- Quiz
Module 3:	3 hrs.	- Title commitments, policies, endorsements, and rate calculations
		- Quiz

Module 4: 3 hrs.

- State laws and regulations
- Federal laws and regulations
- Quiz

A QUICK OVERVIEW OF THIS COURSE

Dear Student:

Unless you are currently employed in the title insurance industry, you probably haven't heard much about this vital but very obscure type of insurance. This is especially true if you have never bought real estate before.

All of that will change for you by taking this course. As you will discover, knowledge of a large number of topics is required to pass the Maryland title insurance producer's exam. Practitioners must develop their skills over many years to qualify as "experts" in this field.

However, it may help to keep the following in mind as you learn the basics of title insurance:

1. Title insurance is only sold to two types of persons/entities:

(a) An "owner's policy" guarantees the buyer that he/she/it is in title to (owns) the property; and

(b) A "loan policy" guarantees the lender that their loan is in "first lien" position, meaning that the lender will either get the property back in a foreclosure, or they will be paid the balance of the loan amount if the property is sold to a higher bidder at the foreclosure sale.

2. Title insurance is only issued for two types of transactions:

(a) The purchase and sale of property (insurance can be sold to a buyer or a lender or both); and

(b) Refinances of property (meaning the property is already owned by somebody who needs a new mortgage loan).

In other words, in order to issue insurance to either a buyer or borrower of real property, a title insurance company needs to answer a not-so-simple question: who owns the property in question?

Unfortunately, determining who owns real property, whether it be a residential house, farm, factory, or skyscraper in downtown Baltimore City, isn't as easy as looking up a vehicle identification number for a car on a title document from the Maryland Motor Vehicles Administration. In fact, the basic skills for determining ownership interests in real property will take almost half of the course that follows.

Let's jump right into this topic and figure things out!

Ned Livornese
Attorney at Law

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MODULE #1: INTRODUCTION TO TITLE INSURANCE:

I. OWNERSHIP OF REAL PROPERTY

1. Based on British law

The first European settlement in Maryland occurred in 1634. Maryland was one of the original 13 colonies, and its inhabitants crossed the Atlantic armed with the laws of Great Britain.

Land ownership and transfer methods in Great Britain trace their origins back to the "feudal system," which is more than 1,000 years old. Originally, only the king and his lords could own real property.
There was a large group of non-land owning tenants who were granted protection by the king in exchange for taxes, army service, and a share of the bounty of the land.

We still use terms such as "landlord," "tenant," and "fee simple" (fealty or fidelity to the lord) in our real estate transactions today. A modern real estate attorney would have no problem understanding the terms of a conveyance deed written in the year 1250!

2. Title searches and examinations

i. Race-Notice Statute

In Maryland, there is no central registry indicating who owns any particular parcel of real estate (see discussion of the Torrens Land Registration System below, which is not used in Maryland).

Instead, Maryland depends upon a system of land records based on its “race-notice” statute found here:

MD Real Property §3–203.
Every recorded deed or other instrument takes effect from its effective date as against the grantee of any deed executed and delivered subsequent to the effective date, unless the grantee of the subsequent deed has:
(1) Accepted delivery of the deed or other instrument:
(i) In good faith;
(ii) Without constructive notice under § 3-202; and
(iii) For a good and valuable consideration; and
(2) Recorded the deed first

Because of its race-notice statute, the first person to record a deed for valuable consideration, without notice of a claim of ownership by a third party, will have the most valid claim of ownership of the property. This statute provides “constructive notice” that documents related to real property have been recorded at the local courthouse. “Actual notice” of a legal document need not be sent to parties having a legal interest in the property.

ii. Property Search Requirements in Maryland:

It is necessary to search and review each and every recorded document that might affect the title to a particular parcel of land, in order to determine who currently owns the property. In order to properly search title in Maryland, the following databases of information are usually checked by the abstractor:

- The land records of the county (or City of Baltimore) in which the property is located;
- The court records of the county in which the property is located;
- A PACER search for federal records, including bankruptcy records for the jurisdiction in which the property is located.

(Note that abstractors in Maryland do not require a title insurance license.)

In Maryland, a 60-year search is the standard for examining marketable title. See Coe *v* Hayes, 105 Md. App. 778, 785 (1995). A search even further back in time may be required, according to the circumstances of each transaction (*e.g.*, the last deed into the property was in the 1940s). See Dept of Natural Resources *v* Welsh, 308 Md. 54, 57 (1986).

Documents are recorded in Maryland in recording "books" with a "page" number assigned to each document. Book and page numbers are also called "liber" and "folio" numbers, depending upon the county, using Latin terminology. These days, books and pages are kept electronically, but before the age of computers, physical books and pages actually had to be searched at the courthouse. Documents are indexed by grantor and grantee names in the Land Records.

Some title insurers may permit searches for lesser periods of time, depending upon the circumstances. Examples might include:

- A two-owner search for refinance loans (back to arms-length first deed of trust);
- No requirement to search before a new platted subdivision.
- If you have an existing owner's policy for the same property.

However, be aware that these are risk decisions taken by individual insurers, and are not "standard" to all insurers. Check with your underwriter to verify its position on length of search matters.

iii. Abstractor Terminology

Terminology:

- An abstractor looks at the land and related records to find documents relevant to the chain of title;
- An abstract is a compilation of title documents that must be reviewed by someone at the title company to determine who owns rights to the property;
- A chain of title is a list of deeds affecting tile to the property.

iv. Off-Record Title Defects:

A defect in title to real property that is not apparent from an examination of the public records is called an off-record title defect. Certain issues such as fraud, forgery, impersonation of a seller, etc. may have a direct effect on the ability to insure title.

As a general rule, title insurance does not cover matters that are not recorded in documents in the public records. Certain off-record matters are covered in a standard owner's and lender's policy, however. More on this can be found later in these materials.

v. Fee simple title

In English law, fee simple title or "fee simple absolute" is the highest form of "freehold" ownership. Someone with fee simple title owns the maximum possible rights in a parcel of real estate.

vi. The Torrens Land Registration System:

This method for identifying who owns property is not used in Maryland, but is included in this section for testing purposes on the state title insurance exam. The Torrens System operates on the principle of "title by registration" which does away with the need for proving a chain of title (i.e., tracing title back in time through a series of documents). Instead, the state or county guarantees the chain of title. This is a common method of determining title to real property used in many English-speaking nations abroad, but has not been adopted widely in the United States.

3. Leaseholds and ground rents

A leasehold is an estate in land by which the fee simple owner gives a third party the right to occupy or use the land for a period of time. When the lease expires, ownership of the property reverts back to the owner.

An estimated 115,000 Maryland properties (located primarily in Baltimore City and Baltimore County) are subject to a special type of lease called a "ground lease" or "ground rent lease." The terms may be used interchangeably.

A "ground lease" is created when the owner of property in fee simple leases the property by means of a specially-drafted 99-year lease with a perpetual renewal clause. The effect of this is to create two estates, with two separate chains of title:

- The leasehold estate, held by the "ground lease tenant" (the lessee); and
- The ground lease estate, held by the "ground lease holder" (the lessor). The ground lease holder is deemed to hold the "reversionary interest" in the property.

Since 2007, new residential ground leases can no longer be created. As more and more ground leases are redeemed or extinguished (see below), residential ground leases could eventually

become a thing of the past.

The ground lease tenant's interest is fully and freely transferable and assignable, and there are no restrictions on selling the leasehold estate or encumbering it with a deed of trust or mortgage. The reversionary estate is also freely transferable.

Both of these interests, as well as any deed of trust or mortgage placed against the leasehold interest by the ground lease tenant, may be insured by a title insurance policy.

In 2007, Maryland enacted legislation requiring properties subject to ground leases to be registered with the State Department of Assessments and Taxation (SDAT). Originally, the law decreed that ground rents not registered with SDAT by October 1, 2010, would be extinguished automatically.
However, in a law suit entitled Charles Muskin, Trustee *v*. State Department of Assessments and Taxation, decided by the Maryland Court of Appeals on October 25, 2011, the justices held that it was unconstitutional to extinguish ground leases based solely upon the failure to register them with SDAT.

In the follow-on case of State of Maryland *v*. Stanley Goldberg, decided on February 26, 2014, the Court of Appeals determined that the 2007 statute's attempt to extinguish the traditional remedy of "ejectment" for ground lease holders was invalid. In other words, instead of requiring the ground lease holder to place a lien on the property and foreclose for lack of ground lease payments, the former remedy of ejectment, *i.e*., eviction, would still apply.

Per statute, only 3 years of past-due ground rents may be demanded by the ground lease owner. Further, Maryland statutes permit title agencies to withhold $650, plus 3 years of ground rent, when the lessor cannot be identified. MD Real Property sec. 8-87(d)(3) states:

> If authorized under the ground lease, a ground lease holder may be reimbursed for reasonable late fees, interest, collection costs, and expenses not exceeding $650, including:
>
> (i) Title abstract and examination fees;
> (ii) Judgment report costs;
> (iii) Photocopying and postage fees; and
> (iv) Attorneys' fees.

Maryland statutes include a method to convert most residential ground rent leaseholds into fee simple property once again. This is accomplished by means of a ground rent merger deed. Upon payment of the statutorily-required amount to redeem the reversionary interest from the ground rent landlord, the landlord must sign a deed merging title and conveying fee simple to the owner of the leasehold interest. The merger deed is then recorded in the land records of the appropriate jurisdiction.

**** Note that certain ground rents prior to 1884 may not be redeemable.**

**** Note also that commercial ground rents are not redeemable.**

If the landlord has not registered his reversionary interest with SDAT, and therefore cannot be identified by the leasehold tenant, SDAT also provides a method merging title to ground rent property. The process takes about 6 months to complete, and still requires the leasehold tenant to pay the statutory fees to SDAT in order to complete this process.

4. Life estates

In simple terms, the holder of a life estate (also called the life estate tenant) has the current right to possess real property. Unlike non-freehold estates such as leases, a life estate conveys a freehold estate by which ownership of the property is granted for life. At the end of that life, the estate will either transfer back to the grantor (or the grantor's heirs, if the grantor is deceased) by "reversion," or to a third party by a "remainder."

Depending upon how the life estate is structured, the life used to measure a life estate can be that of the life estate tenant, or of a third party. The latter is called a life estate "*pur autre vie*," a French term meaning "for the life of another."

> Example: I, John Anderson, convey a life estate to Susan Miller, for the life of Bob Carson, remainder to Karen Cooper.

Life estates are usually created in a will or deed for estate planning purposes. A life estate permits the grantor to avoid probate and to ensure that his/her intended heirs receive title to the property. There also may be tax advantages for doing so.

The simplest form of a life estate involves a grantor who owns the property in fee simple absolute. The grantor wishes to remain in the property until his/her death, and then convey the property to one or more persons. In such a case, a new deed conveying the property might read as follows:

> "Mary Jones, grantor, to Mary Jones, for life, remainder to my son, Joe Smith."

In this case, Mary Jones has taken a fee simple property and conveyed it to herself for life, with ownership going to Joe Smith in fee simple upon Mary Jones' death. Mary Jones is the life estate tenant; Joe Smith is the remainderman. Joe Smith is said to have a "vested future interest" in the real estate. Should Mary Jones wish to sell or mortgage the property in the future, she will need Joe Smith to sign all documents related to the proposed transaction.

However, Maryland also recognizes a concept called a "life estate with powers." In the example above, Mary Jones could have conveyed her original, fee simple interest to herself for life, remainder to Joe Smith, ."..but retaining the sole right to sell, mortgage, or convey the property" without regard to Joe Smith, the remainderman. Such language allows Mary Jones to act on her own, and Joe Smith's signature will not be required to convey a fee simply interest by Mary to a third party of her liking.

Problems with Life Estates:

i. Death of a Remainderman:

Most life estates are drafted with the assumption that the life estate tenant will die first. Where the remainderman dies first, the obvious question is: "Who now owns the remainderman's interest?"

Many title practitioners mistakenly believe that the remainderman's interest automatically reverts to the life estate tenant. In fact, the remainderman's interest passes to the remainderman's heirs, assuming the original granting document does not state otherwise. In a worst-case scenario, an unwitting life estate tenant could have a difficult time conveying the property to a third party, if the remaindermen are not open to signing a new deed.

ii. Multiple Remaindermen:

There is nothing to prevent a grantor from naming multiple remaindermen in a life estate conveyance. In such cases, it is necessary to specify the type of estate taken by the remaindermen, *i.e.*, as joint tenants, tenants in common, or tenants by the entireties. Upon the death of the life estate tenant, fee simple title will transfer according to the standard rules relating to each type of joint ownership.

Example: Mary Jones conveys the property to herself, as life estate tenant, remainder to Joe Smith and his wife, Ann Smith, as tenants by the entireties. Ann Smith dies before Mary Jones does. Joe Smith owns the property in fee simple upon the death of Mary Jones.

iii. No remainderman is named:

On rare occasions, only a life estate tenant is named in the conveyance deed. In such cases, upon the death of the life tenant, the property reverts back to the original owner, or his/her heirs if the original owner is deceased.

iv. Committing Waste:

Unless otherwise stated in the document creating the life estate, the life estate tenant cannot commit "waste" on the property. This includes the legal duty to maintain the property and pay the taxes. If the property is mortgaged, the life estate tenant is responsible for paying any interest, while the remainderman is responsible for the principal.

Example: Mary Jones conveys property to herself, as life estate tenant without powers, remainder to Joe Smith. The property includes 100 acres of harvestable trees that can be sold to a paper-making mill. During her life, Mary sells the rights to harvest 50 acres of trees to the paper mill. Joe Smith may sue Mary Jones to enjoin her from creating waste on the property.

v. Remaindermen do not sign a deed/mortgage/deed of trust or closing documents:

As stated earlier, a life estate tenant without powers (also called a "bare life estate") does not have the right to sell or mortgage the property without the written consent of the remainderman. Some title agencies, not recognizing this fact, only require the life estate agent to sign the deed, mortgage, deed of trust, or other closing documents.

Such conveyances do not terminate the remainderman's rights in the property. Upon the death of the life estate holder, the remainderman will still obtain fee simple title to the property. The practical effect of this is as follows:

- If mortgaged, the lender will lose its mortgage upon the death of the life estate tenant, and have no claim against the remainderman;
- If the property is sold, it will be sold subject to the remainderman's interest, which vests fee simple title upon the death of the original life estate tenant.

vi. Liens or Judgments Filed Against the Property

A lien or judgment may be filed against a life estate tenant or a remainderman. This leads to the following scenarios:

i. A lien or judgment is filed against a life estate tenant, with or without the power to convey: this lien will disappear upon the death of the life estate tenant, and will not affect the remainderman.

ii. The life estate tenant does not retain any powers, and a lien or judgment is filed against the remainderman only: since the remainderman has a "vested interest", this will affect the entire property in the event the property is sold or mortgaged. The life estate tenant cannot ignore the lien or judgment when the property is conveyed.

iii. The life estate tenants retains powers, and a lien or judgment is filed against the remainderman only: since the remainderman's interest in the property is contingent upon the life estate tenant's failure to sell or convey his/her interest, the lien or judgment does not attach to the life estate tenant's interest in the property. The life estate tenant may convey the property without regard to the lien or judgment.

5. Co-tenancy

Maryland has unique laws on the concurrent ownership of real property, *i.e.*, the effects of holding property by more than one individual. This especially manifests itself in the area of liens or judgments, and specifically whether a lien or judgment must be paid off or satisfied as part of a real estate settlement (NOTE: See section 3.a., Liens and Judgments, below, for additional information on the treatment of liens or judgments in Maryland).

There are three types of co-tenancy recognized in Maryland:

i. Tenancy in Common:

Maryland Real Property §2–117 states the following:

No deed, will, or other written instrument which affects land or personal property, creates an estate in joint tenancy, unless the deed, will, or other written instrument expressly provides that the property granted is to be held in joint tenancy.

In other words, tenancy in common, which does not create joint tenancy, is the "default" method of holding concurrent title Maryland, unless specific language is used in a deed, will, or other written instrument.

Tenancy in common is the concurrent ownership of property by two or more related or unrelated persons, in either equal or unequal shares. Each tenant holds an undivided interest in the property, and has an equal right, along with all the other tenant(s), to use and possess the property. Each tenant has the right of alienation (*i.e*., the right to sell the property, convey it, mortgage it, *etc*.) without the consent of the other(s). There is no right of survivorship, *i.e*., upon the death of a tenant in common, that person's interest in the property vests in his/her personal representative, and passes through a will or the laws of intestacy.

How tenancy in common is created:

- Tenancy in common exists when the deed explicitly conveys property to the grantees as "tenants in common."
- Tenancy in common is presumed where no form of tenancy is stated in the deed, and the deed does not indicate that the grantees are married.
- Tenancy in common results when a joint tenancy or tenancy by the entireties is severed (see below regarding severance).
- Any deed that professes to convey property to joint tenants in unequal shares, creates a tenancy in common.

- Effects of Tenancy in Common on Judgments and Tax Liens:

Judgments and tax liens of all kinds, (including State of Maryland and federal), filed in the Circuit Court of the county in which the real property is located (or in the District Court for Baltimore City) attach to real property owned as tenants in common. This is true regardless of whether the judgment or lien is filed against one or all tenants in common. Any such judgments or tax liens must be paid in full and released of record when the property is sold or refinanced.

ii. Joint tenancy with the right of survivorship

Joint tenancy with the right of survivorship is the concurrent ownership of property by two or more related or unrelated persons, in equal shares. Each tenant holds an undivided interest in the property, and has an equal right, along with all other joint tenants, to use and possess the property. Each tenant has the right of alienation, without the consent of the other(s).

The right of survivorship is a principal characteristic of joint tenancy. Young *v*. Young, 37 Md. App. 211, 376 A.2d 1151, cert. denied, 281 MD 746 (1977). Unlike tenancy in common, upon the death of one joint tenant, that person's interest in the property vests in the surviving joint tenant(s), in equal shares. In other words, joint tenancy property passes automatically (by operation of law), and without regard to the laws of testacy or intestacy. For example, if three joint tenants own the property, each starts with an undivided 1/3 interest in the property. If one joint tenant dies, the remaining two joint tenants each own an undivided ½ interest.

- How created:

In order to create a joint tenancy in Maryland, it must be so clearly expressed as to have no doubt of the intention of the parties. Register of Wills v. Madine, 242 Md. 437, 219 A.2d 245 (1966).

The entire phrase "joint tenancy with the right of survivorship, and not as tenants in common" need not be included in the deed. A conveyance to two or more persons "… as joint tenants" suffices to create a joint tenancy with the right of survivorship in Maryland. Downing *v.* Downing, 326 Md. 468, 606 A.2d 208 (1992).

In order to create a joint tenancy, the "four unities" of title must exist. Alexander *v*. Boyer, 253 Md. 511, 253 A.2d 359 (1969). These include:

- Unity of time: all joint tenants must obtain their interest in the property at the same time.
- Unity of title: all joint tenants must acquire the property from the same source and in the same deed.
- Unity of possession: each joint tenant has the right to possess the entire property with the other joint tenants.
- Unity of interest: each joint tenant must have the same interest in the property.

  As mentioned previously, real property may be owned as joint tenants by related or unrelated persons, including spouses. However, spouses usually own property as tenants by the entireties (see below).

A deed that purports to convey property to two persons, as tenants by the entireties, but the persons are actually unmarried, creates a joint tenancy. McManus *v*. Summers, 290 Md. 408, 430 A.2d 80 (1981).

- Severing a Joint Tenancy:

The following events (among others) sever a joint tenancy:

- A voluntary conveyance of the property by one joint tenant , *e.g*., a contract to sell the property, a deed from one joint tenant to a third party, a mortgage/deed of trust signed by only one joint tenant, or a lease: *Id*., and Alexander *v.* Boyer, 253 Md. 511, 253 A.2d 359 (1969).
- If one joint tenant files a Chapter 7 bankruptcy: See Feldman *v*. Panholzer, 36 B.R. 647 (Bankr. Md. 1984), which holds that the filing of a Chapter 7 bankruptcy by a joint tenant converted the joint tenancy to a tenancy in common.
- Death of a joint tenant: if there are only two joint tenants, the deceased joint tenant's

interest in the property is terminated, and the survivor owns the entire property. If there are two or more surviving joint tenants, their interests shall continue in proportion to their respective ownership of the property.

- Joint tenancy is also severed when a judgment creditor proceeds to enforce its judgment lien against the property. Note that this applies to joint tenancy between unmarried persons only, and not to tenants by the entireties.

- Effects of Joint Tenancy on Judgments and Tax Liens:
Judgments and tax liens (including State of Maryland and Federal), against all joint tenants, attach to real estate, and must be paid in full and released of record when the property is sold or refinanced.

As a general rule, judgments, and tax liens, including those from the State of Maryland, which are filed against a single joint tenant, do not attach to real property, and do not have to be paid in full or released when the property is sold or refinanced. However, if the individual against whose property a judgment or tax lien attaches dies before any of the other joint tenants, then the judgment or tax lien ceases to attach to the property. If the same individual is the last survivor of the joint tenants, then the judgment or tax lien attaches to the entire property.

Exceptions exist for federal tax liens and federal judgments, as follow:

- Federal Tax Liens: Per Internal Revenue Manual Part 5, Chapter 17, Section 2.5.2.2, dated December 12, 2014,"… where only one of the joint tenant owes taxes, the lien attaches to the taxpayer's property interest and the entire property may be sold pursuant to judicial sale under IRC §7403, although the non-liable joint tenant must be compensated from the sale proceeds." If the individual against whose property a federal lien attaches dies before any of the other joint tenants, then the lien ceases to attach to the property. However, if the same individual is the last survivor of the joint tenants, the tax lien then attaches to the entire property.
- Federal judgments: there is some debate as to whether federal judgments attach to property when the judgment is against only one joint tenant. Please submit all questions regarding federal judgments to a Maryland underwriter when they occur.

iii. Tenancy by the entireties (also called tenancy by the entirety):

A tenancy by the entireties is essentially a joint tenancy. However, in addition to the four unities (see section II.b. above), the parties must be married. McManus *v*. Summers, 290 Md. 408, 430 A.2d 80 (1981); Schilbach *v*. Schilbach, 171 Md. 405, 189 A.432 (1937). Marriage is sometimes called the "fifth unity."

Since January 1, 2013, persons of the same sex may legally be married in Maryland, and may also own property as tenants by the entireties.

- How created:
The following language creates a tenancy by the entireties in a deed:

From grantor to "(grantees) as tenants by the entireties." From grantor to "(grantees) as tenants by the entirety." From grantor to "(grantees) as husband

and wife."
From grantor to "(grantees) as persons married to each other."
From grantor to "(husband's name) and wife."
From grantor to "(wife's name) and husband."

- Severing a Tenancy by the Entireties:
The following events sever a joint tenancy:

- Death of one spouse
- Divorce (final decree of divorce)
- A joint conveyance of the property

Note that one spouse does not have the power to sever a tenancy by the entireties by voluntarily conveying the property to a third party.

In a recent Maryland case of first impression in the Federal 4th Circuit Court of Appeals, it was decided that a Chapter 13 bankruptcy filed by a single tenant by the entirety does not sever tenancy by the entireties status. Alvarez *v*. HSBC Bank USA, National Association, U.S. Court of Appeals, Fourth Circuit, No. 12-1156, decided October 23, 2013. See also Birney *v*. Smith, U.S. Court of Appeals, Fourth Circuit, published on December 29, 1999, which held that, in the context of a Chapter 7 bankruptcy of a single spouse, property held as tenants by the entireties cannot be taken by creditors to satisfy the individual debts of either the husband or the wife (citing Watterson *v*. Edgerly, 388A.2d 934 (Md. App. 1978)).

- Effects of T/E on Judgments and Tax Liens:
Judgments and tax liens (including State of Maryland and Federal) against all tenants by the entireties attach to real estate and must be paid in full and released of record when the property is sold or refinanced.

As a general rule, judgments, and tax liens, including those from the State of Maryland, which are filed against a single tenant by the entireties, do not attach to real property, and do not have to be paid in full or released when the property is sold or refinanced. However, if the individual against whose property a judgment or tax lien attaches dies before his/her spouse does, then the judgment or tax lien ceases to attach to the property. If the same individual is the last survivor of the two spouses, then the judgment or tax lien attaches to the entire property.

Exceptions apply to federal tax liens and federal judgments, as follow:

- Federal Tax Liens: The U.S. Supreme Court decision in United States v. Craft, 535 U.S. 274 (2002) holds that a federal tax lien arising under Section 6321 of the IRS Code attaches to the rights of a single taxpayer in tenancy by the entireties property, even though state law may insulate such property from the claims of creditors of only one spouse.
- Federal judgments: as with joint tenancy, there is some debate as to whether federal judgments attach to property when the judgment is against only one tenant by the entireties. Please submit all questions regarding federal judgments to a Maryland underwriter when they occur.

6. Property ownership by trusts, decedent's estates, and business entities

Ownership of real property is not limited to individuals. Legal entities such as LLCs, corporations and trusts commonly take title to real property in Maryland.

They key to examining title and preparing a settlement for a legal entity is to establish the legal authority for particular individuals to sign on behalf of the entity. After all, at least one human being must always have the authority to act on behalf of a legal entity. If the authority of the human being cannot be established, it is possible that the entity will later be declared to have acted without authority. This can lead to title insurance claims against the property, including a complete failure of title!

What follow are the recommended procedures for establishing legal authority for entities:

i. Trusts:

A trust is a fiduciary relationship, usually created at the direction of an individual (the "Settlor", also called a "Trustor" or a "Grantor"), in which one or more persons (the "Trustees") hold the individual's property (the "Trust Assets") subject to certain duties to use and protect it for the benefit of others (the "Beneficiaries"). The Trustee holds "legal title" to the property, and the beneficiaries hold "equitable title."

Although many people think of trusts as separate legal entities, the trust itself is not a legal entity that can hold property. It is simply a term specifying a legal relationship between the Settlor and the Trustee.

- Why are Trusts Used?

The primary purpose of a trust is to avoid probate. Beneficiaries may gain access to trust assets more quickly than if they were transferred by a will. Other benefits may include:

- Control: A Settlor may also be the Trustee of a revocable trust while he/she is alive. This allows the Settlor to be in full control of the trust's assets during the Settlor's lifetime.
- Privacy: Probate proceedings are public documents; trust documents are not.
- Savings on court fees: Although it may cost money to set up a trust, the costs of probate, which can be significant, are entirely avoided.
- Tax Savings: there can be tax advantages to using irrevocable trusts, which separate all incidents of ownership from the Settlor, effectively removing such assets from the Settlor's taxable estate.

- Creation of Trusts:

Under MD Estates & Trusts §14.5-401, a trust may be created by transferring property to another person during the lifetime of the settlor, or it may be established by a will upon the death of a settlor (the latter is sometimes called a "testamentary trust").

§14.5-402 states that the settlor must have the capacity to create a trust, and must indicate an intention to create a trust. Further, there must be a definite beneficiary, as well as duties for the trustee to perform. Trusts may be created only for lawful purposes that are possible to achieve. §14.5– 404.

A trust that is validly created under the laws of another state is also valid in Maryland. §14.5–403. Oral trusts (*i.e*., trusts that are not set forth in a written instrument) are valid if the terms may be established by clear and convincing evidence. §14.5–406.

- Revocable *v*. Irrevocable Trusts:
Here are some primary differences between irrevocable trusts and revocable trusts:

Irrevocable Trust:

- The property belongs to the trust, and not to the Settlor;
- These agreements generally cannot be modified by the Settlor;
- Trust property is not taxed at the time of the Settlor's death;
- Trust property is out of the reach of the Settlor's creditors;
- The Trustee should be an independent person chosen by the Settlor, so that it is clear that the Settlor is not exercising control over the trust assets;
- The trust usually has its own tax id number (EIN).

Revocable Trust:

- The property may be conveyed into and out of the trust by the Trustee;
- The trust agreement may be modified at the Settlor's sole discretion;
- For estate tax purposes, the Settlor still owns the property until the time of death;
- Trust property is not protected from the Settlor's creditors;
- The Settlor often serves as the Trustee, in order to oversee the trust assets;
- The trust usually does not have its own EIN, since the Settlor files everything on his/her 1040 form.

- Conveyances into and out of trusts:
Generally speaking, property should never be conveyed out of an irrevocable trust without the approval of an underwriter, since the property no longer belongs to, or is under the control of, the Settlor. This may create negative tax consequences for the Settlor, or other legal issues. Please consult with an underwriter if this request is made of you.

As for revocable trusts, note that all property should be titled in the name of the Trustee(s) only. For example, the grantee of a deed conveying the property from John Smith to the John Smith Revocable Family Trust dated August 1, 2012, should be:

John Smith, as Trustee of the John Smith Revocable Family Trust dated August 1, 2002.

Do not convey property to the trust itself. The trust is not a separate legal entity, so the trustee(s) should always be the grantee(s). Similarly, conveyances out of a revocable trust should be in the name(s) of the Trustee(s) only.

Maryland statutory law recognizes this distinction. See Maryland Real Property §2-122(b)(1) and (b)(2):

(1) A grant of property by deed to a grantee designated in the deed as a trust has the same effect as if the grantor had granted the property to the trustee or trustees appointed and acting for the trust on the effective date of the deed.

(2) If executed by the trustee or trustees appointed and acting for the trust on the effective date of the deed, a grant of property by deed from a grantor designated in the deed as a trust

has the same effect as if the grantee had received the property from the trustee or trustees appointed and acting for the trust on the effective date of the deed.

- Certifications of Trust:

Sometimes people who create or are benefitted by trusts are reluctant to provide full copies of their trust to third parties, including title insurance companies. Maryland law allows the trustee(s) of a trust to provide a document called a Certification of Trust to the title insurance company instead or providing a copy of the entire trust document. The Certification of Trust will include the important terms of the trust for title insurance purposes (such as the authority to act on behalf of the trust), without disclosing other confidential information about the trust or its beneficiaries.

- The Garn–St. Germain Depository Institutions Act of 1982:

On occasion, a mortgage investor may require real property to be conveyed from the Trustee of a revocable trust back to the original Settlor, in order for it to be refinanced with that investor. This should not be necessary, since, where the Settlor is one and the same person as the Trustee, the Trustee has full power to mortgage or sell the property (assuming the trust permits this), without a signature from the Settlor as an individual.

Mortgage lenders also should be aware that conveying property into a revocable trust does not trigger the "due-on-sale" provisions of a mortgage or deed of trust, which permit lenders to foreclose upon collateral that has been conveyed to a third party. This is addressed by §1701j-3(d)(8) of The Garn-St. Germain Depository Institutions Act of 1982.

- Requirement to Review Trust Documents**:**

For Maryland title agencies, obtaining information about a particular Maryland trust is an important part of any file review. Asking for a complete copy of the trust instrument is always the best option. Some individuals may resist providing a full copy of their trust document, due to privacy concerns. However, the law permits this request by title insurance producers, as a condition of issuing title insurance. MD Estates and Trusts §14.5–910(h).

Instead of furnishing a copy of the entire trust agreement, MD Estates and Trusts §14.5–910(a) permits the use of a Certification of Trust, which includes the following information:

1) That the trust exists and the date the trust instrument was executed;
2) The identity of the settlor;
3) The identity and address of the currently acting trustee;
4) The powers of the trustee in the pending transaction;
5) The revocability or irrevocability of the trust and the identity of a person holding a

power to revoke the trust;
6) The authority of co-trustees to sign or otherwise authenticate and whether the authentication of all or fewer than all of the co-trustees is required in order to exercise powers of the trustee;
7) The taxpayer identification number of the trust, unless the taxpayer identification number is also the Social Security number of a settlor; and
8) The manner and name in which title to trust property may be taken.

A certification of trust may be signed or otherwise authenticated by a Trustee. It must state that the trust has not been revoked, modified, or amended in a manner that would cause the representations contained in the certification of trust to be incorrect.

The recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument, and later amendments that designate the Trustee and confer on the trustee the power to act in the pending transaction.

If a person acts reasonably in reliance on a certification of trust without knowledge that the representations contained in the certification are incorrect, they are not liable for their acts. Further, while acting reasonably under the circumstances, a person who enters into a transaction in reliance on a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

ii. Estates:

In Maryland, upon a person's death, title to all of his assets vests in his personal representative. MD Estates & Trusts §1-301.

Estates are probated in Maryland in the Orphan's Court, which is a county court. The court has the powers of a county court, including the power to call witnesses and determine facts for any controversy brought before the court.

A person who dies with a will is said to have died "testate." A person who dies without a will is said to have died "intestate." Regardless of whether one dies testate or intestate, the estate must be probated.

When a person dies testate, for the most part, the court will honor the wishes of the deceased person as to who gets what part of his estate. However, for example, it is not possible to entirely disinherit a surviving spouse. MD Estates & Trusts §3-208. When a person dies intestate, the law will determine who is entitled to the deceased person's estate.

When reviewing title, it is necessary to determine whether the deceased person's estate has been probated, and who the personal representative is. It is also necessary to determine whether the real property was left to specific individuals as a "specific devise." If the property is specifically devised, the signatures of the personal representative and the specific devisees may be required on any deed to new buyer.

One of the primary purposes of probate is to make sure that claims by creditors against the estate are satisfied. Creditor claims must be filed within 6 months after death, or 2 months after the personal representative delivers actual notice to the creditor. MD Estates & Trusts §8-103.

Sales to *bona fide* purchasers are protected under Maryland law. MD Estates & Trusts §9-106. Therefore, it is permissible to sell the property during the creditor claim period to a *bona fide* purchaser for value, so long as the funds from the sale are paid directly to the personal representative in his capacity as P.R. of the estate.

iii. Corporations:

A corporation is a legal entity that is owned by stockholders. Corporations are created by filing articles of incorporation with the State Department of Assessments and Taxation (SDAT). Corporations are operated in accordance with their by-laws, which are created after the corporation is formed.

The by-laws should state who has authority to sign for any corporation. Title underwriters usually require a recently-signed corporate resolution in order to determine who has authority to sign for the corporation.

Although Maryland corporations should be registered with SDAT and be in good standing in order to buy or sell real property, it is not necessary for foreign corporations (*i.e.*, corporations created in other states) to be registered with SDAT in order to buy or sell real property. However, the failure to register with SDAT may subject the foreign corporation to withholding taxes upon the sale of the property.

iv. LLCs:

An LLC is another form of business entity that is owned by its members. LLCs are created by filing articles of organization with the State Department of Assessments and Taxation (SDAT). LLCs are operated in accordance with an operating agreement made between its members.

The operating agreement should state who has authority to sign for any LLC. As with corporations, title underwriters usually require a recently-signed LLC resolution in order to determine who has authority to sign for the LLC

Similar to corporations, Maryland LLCs should be registered with SDAT and be in good standing in order to buy or sell real property. It is not necessary for foreign LLCs to be registered with SDAT in order to buy or sell real property. However, the failure to register with SDAT may subject the foreign LLC to withholding taxes upon the sale of the property.

v. General Partnerships

A general partnership is defined as an arrangement between two or more persons to enter into

business for profit. Note that all general partners are jointly and severally liable for all of the firm's obligations. Each partner can take an active role in the firm's management, and each partner may bind the company.

It is not usually necessary to register a general partnership in Maryland, unless the general partnership is operating under a trade name.

From an underwriting perspective, a title search should be run on each partner of a general partnership when property is being sold.

vi. Limited Partnerships

Limited partnerships include at least one "general partner" who has authority to bind the partnership in contractual matters, and at least one "limited partner" who have no management authority and are not liable for the debts of the partnership. Limited partners are general investors who do not play a part in the day-to-day operations of the partnership, and who do not have personal liability for the actions of the partnership.

vii. Fictitious Names

Business entities or individuals may operate under fictitious names (also known as a "trade name") in Maryland. Example: John Smith may want to register his trade name as "John the Handyman".

Trade names must be registered with the Stated Department of Assessments and Taxation (SDAT). They are sometimes called a D/B/A, "doing business as" name.

II. RIGHTS AND INTERESTS:

1. Liens

A lien is a claim against real property to secure payment of a debt or the satisfaction of an obligation.

Liens can be voluntary, as in the case of a deed of trust or mortgage, or involuntary. Examples of involuntary liens include:

- State tax liens: these are imposed by the county (or City of Baltimore) when real property taxes are not paid;
- Federal tax liens: these are imposed by the federal government when income taxes remain unpaid;
- Mechanic's liens: these may be obtained following a court proceeding in Maryland, when work has been done or materials have been delivered to improve real estate, and are not paid for;
- HOA/Condo liens: these are imposed by homeowner's associations or condo associations

for non-payment of HOA or condo dues, and can be enforced under Maryland's Contract Lien Act, MD Real Property, §14-201 *et seq.*;

- Attorney's liens: Under MD Rule 2-652, an attorney may retain the papers of a client until payment for his claim for legal services has been satisfied;
- Liens for front-foot benefits: Certain properties in Maryland are benefitted by water and sewer services imposed by private companies. Covenants require the payment for water and sewer services for 20-40 years. Failure to pay these fees can result in a lien filed under the Maryland Contract Lien Act.

When a lien is found in a title search, it is necessary to make sure that an Order of Satisfaction of the lien is obtained from the creditor.

2. Judgments:

A money judgment is a court order directing one party to pay cash to another party. A judgment can come from a state or federal court, and can include amounts in addition the original judgment in order to cover continuing interest and attorney's fees.

Some judgments are not for money. They may consist of court orders directing a party to do something or refrain from doing something (*i.e.*, injunctions). These orders can be temporary or permanent.

3. Judgment and Lien Chart

MARYLAND LIENS AND JUDGMENTS FOR TITLE INSURANCE PRODUCERS

TYPE:	DURATION:	APPLICABLE LAW:	WHERE TO RECORD:	HOW TO TERMINATE THIS LIEN OR JUDGMENT:
I. FEDERAL LIENS OR JUDGMENTS				
Federal tax Liens	10 years from date of assessment + 30 days to refile.	28 U.S.C. §6502	Circuit Court.	Satisfaction of lien.
Judgments in favor of the federal government	20 years from date of filing, can be refiled for an additional 20 year period.	28 U.S.C. §3201(c).	Circuit Court.	Satisfaction of judgment.

Federal estate taxes	10 years from date of death.	26 U.S.C. §6324.	Arises automatically upon death. Recording is not required.	IRS release or letter discharging the tax.
II. STATE OF MARYLAND LIENS OR JUDGMENTS				
Maryland tax liens	20 years	MD Tax-General §13-806(a).	Circuit Court.	Release of lien.
Judgments in favor of the State of Maryland	No expiration date.	MD Courts and Judicial Proceedings §5-102(c).	Circuit Court.	Satisfaction of judgment.
MD estate tax liens	No expiration date.	MD Tax-General §13-806(b).	Circuit Court.	Release of lien.
MD inheritance tax liens	20 years	MD Tax-General §13-806(b).	Circuit Court.	Release of lien.
III. PRIVATE PARTY LIENS OR JUDGMENTS				
Money judgments	12 years from date of entry, but can be renewed.	**MD Courts and Judicial Proceedings, §5-102(a)(3),**		Satisfaction of judgment.

Money judgments, con't.		**MD Rule 2-625.**		
Mortgages and deeds of trust	Are presumed to have been paid if: (a) 12 years have elapsed since the last payment date and no continuation statement has been filed. (b) If no payment date can be ascertained, 40 years after recording date of the document if no continuation statement has been filed. (c) If a continuation statement has been recorded and 12 years have elapsed from recording date of last continuation statement.	MD Real Property §7-106(c)(1)	Land records of relevant county	Satisfaction of mortgage or deed of trust.
Condo and HOA Liens	12 years following recordation of lien. Additional rules apply for liens recorded before 10/1/2008 or mortgages/DOTs recorded after 10/1/2011 (super-priority lien). Contact MD underwriter for assistance.	MD Real Property §14-204(c).	Land records of relevant county. Note that liens can also be converted into judgments, find these in the court records.	Release of lien.
Uniform Commercial Code (UCC)-1 Financing Statements	5 years from date of recording, but may be renewed within the 6 months prior to expiration.	MD Commercial Law §9-515(a) & §9-515 (d).	Land records of relevant county.	UCC -3 Termination Statement.
Mechanic's liens	This lien must be enforced within 1 year after petition to establish the lien was first filed.	MD Real Property §9-109.	Circuit Court	Discharged by filing a bond with the Circuit Court.

Notes:
- Maryland has 24 primary jurisdictions (23 counties and the City of Baltimore, which is not in any county). Money judgments recorded in the Circuit Court of any county constitutes a lien from the date of entry on the defendant's real property located in that county. MD Rule 2-621. However, in Baltimore City, money judgments recorded in either the district court or the circuit court constitute a lien on the defendant's real property located in the City of Baltimore. MD Rule 3-621(b).
- Federal judgments are not wiped out by a non-judicial deed of trust foreclosure, even with notice to the federal government. A court foreclosure is required.

- Federal tax liens require a 120 redemption period for the I.R.S. in the event of a foreclosure.

4. Easements, conditions, and restrictions

1. Easements and rights of way:

An easement is the right to use real property by someone other than its owner. Easements can exist for many purposes, including driveways, utilities, construction, and maintenance.

There are two types of easements:

(a) Easement appurtenant: can only exist between adjoining properties. One of the properties (the "dominant tenement") has easement rights with respect to the other property (the "servient tenement"). For example, if I have the right to use your driveway, my property has the dominant tenement, and your property has the servient tenement.

(b) Easement in gross: this permits use of the property by an individual, without the need to own any adjoining property. For example, I may have an easement to come into your property to pick 10 bushels of peaches per year.

A right-of-way permits people to cross over your property. It is not limited to a single person like an easement in gross is.

2. Covenants, conditions, and restrictions:

Also called CC&Rs, covenants, conditions, and restrictions are written rules that usually are enforced by a homeowner's association for the subdivisoin, and which restrict the use of your property. For example, they may require your house to have at least 2,000 sq.ft. above ground, and an in-ground swimming pool. They may tell you what colors your house can be, and the type and height of any fence you may build.

Properties purchased in an area where recorded CC&Rs exist are purchased subject to the terms of the CC&Rs. Technically, you agree to abide by the CC&Rs simply by buying property in that subdivision.

5. Adverse possession

Adverse possession is sometimes known as "squatter's rights." It is a legal doctrine by which someone can claim ownership of somebody else's land by possessing or occupying it for at least 20 years in Maryland.

To acquire title by adverse possession, a claimant must demonstrate that his occupation of the land has been:

- Actual: Possession of the property must actually take place;
- Hostile: This doesn't mean criminal hostility. It means actions that are hostile to the ownership rights of the party in legal title to the land;
- Open and Notorious: The occupation of the land isn't being kept a secret -- it is open for all to see;
- Exclusive: Occupation of the property is done by the same person(s) over the 20 year period, except that the time of possession of prior owners may be "tacked on" under Maryland law,
- Continuous or uninterrupted for twenty years: Possession must remain unbroken for the full 20 years. Occasional breaks from occupation start the 20 year period all over again.

In determining whether the claimant's acts of dominion constitute adverse possession, the court is to consider the character of the land and the uses and purposes to which it is adapted because "the type of possessory acts necessary to constitute actual possession in one case may not be essential in another." Blickenstaff *v*. Bromley, 243 Md. at 171, 220 A.2d 558.

Contrary to popular belief, simply meeting the tests above does not make the adverse possessor the automatic owner of the property. He will still have to file a "quiet title" action in Maryland courts to prove his claim. This may require testimony of neighbors and a land surveyor to prove the case. Additionally, photographs and/or historical images of the land may be necessary to prove continuous possession for the 20-year period.

III. LEGAL DESCRIPTIONS

A “legal description” is a formal, detailed description of a specific parcel of real property obtained by one of the various means of surveying (see below), which is complete enough that it can be located and identified for legal purposes.

1. Definition of Real Property:

The classical definition of the term “real property” means the land, anything attached to the land like a house, an apartment building, etc. (these are usually called the “improvements), fixtures (personal property that becomes attached to the improvements, such as a tub, an HVAC unit, or roofing shingles, and includes rights to the air above the real property and “subsurface rights” such as minerals or oil underneath the ground and theoretically to the center to the earth.

Note that air rights or subsurface rights to property can be conveyed (deeded or mortgages) separately from the land itself, by usually by documents recorded in the land records.

2. Common Types of Residential Real Property:

i. Single Family Residence

This means a building that is used as a single dwelling unit, and shares no walls with any other dwelling unit. It includes ownership of air and subsurface rights, unless otherwise reserved in recorded documents. A homeowner's association (HOA) may impose yearly, quarterly or monthly dues on single family homes if the covenants provide for this.

ii. Townhouse:

This is a housing unit that is part of a row of houses joined by common sidewalls that are sometimes called "party walls". Property owners on each side of a party wall have the right to use the wall as a support for his structure,and sometimes for chimneys, water pipes, etc. The townhouse owner owns half-way through any common walls, as well as the remainder of the structure and the land on which the house is affixed. An HOA may also exist for townhouse subdivisions.

iii. Condominium:

A condominium is a building or a complex in which individual units are owned by individuals, but "common areas" (also sometimes called "general common elements") such as the ground upon which the units are built, swimming pools, clubhouses, etc., are owned collectively by the unit owners. A "limited common element" refers to part of the general common elements that are assigned to a particular unit, such as parking spaces, storage spaces, boat docks, etc.

For example, a deed to a condominium may be worded as follows:

> "Condominium Unit 3-A in Lincoln Heights Condominiums, along with a .025% interest in the general common elements, and the right to use Parking Space No. #13 and storage unit No. 72".

Condominium unit owners do not own the land underneath the building upon which their condominium is located. Instead, they typically just own the "air space" that makes up their unit. In other words, they do not own the interior or exterior walls of their units, or anything above, below, or to the sides of them.

<u>Condominiums are sold as fee simple property</u>, and can be insured by an owner's policy or a loan policy. A condominium association is usually formed for the benefit of the condominium unit owners in order to enforce a condominium declaration. The condominium declaration governs the use and maintenance of condominium properties, and most often imposes monthly or yearly fees on each condominium unit. If these fees are not timely paid by the condominium owners, the condominium association can impose an automatic lien on the property, and convert this to a judgment against the property at a later time.

3. Methods of Obtaining a Legal Description:

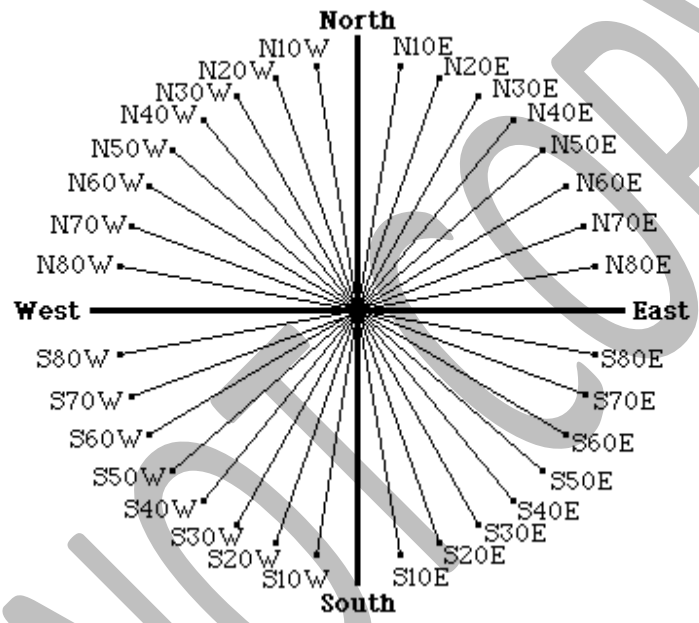
i. Metes and bounds

The terms "metes" and "bounds" mean:

- Metes: a measurement of a straight run, with a starting and ending point, an orientation, and a direction;
- Bounds: a more general description, such as along a stone wall, a river, or a building.

The metes and bounds surveying system was brought to the original colonies from England, and is still commonly used in many states to measure irregular parcels of land.

Property or survey lines are identified with a direction (called a "bearing" or a "heading") and a distance. Directions are often made with reference to points on a compass, based on the following illustration:



For example, N 45° E, 500 feet would mean that the measured point is 500 feet from the center of the illustration above, and at a 45° angle on the top right quadrant of the illustration.

Note that each of the 360 degrees in this illustration can be further divided into minutes (each minute is 1/60th of a degree) and seconds (each seconds is 1/60th of a minute). This means that there are 3600 seconds in each degree (*i.e.*, 60 minutes x 60 seconds), and 1,296,000 seconds in a 360 degree circle (360 degrees times 3600 seconds per degree).

Distances in the U.S. are generally made in feet, with each foot being divided into 1/100ths.

In all cases, the goal is to provide a survey description that starts at a certain point that easily can be identified, and end up in a closed loop at the "point of beginning." Here is an example of a typical metes and bounds legal description that describes a rectangular parcel of land:

Beginning at the large oak tree at the southwest intersection of Route 130 and Jones Road;

then E 90^0 0’ 00”, 250.00 feet; thence S 90^0 0’ 00”, 432.87 feet; then W 90^0 0’ 00”, 250.00 feet; thence N 90^0 0’ 00”, 432.87 feet to the point of beginning.

Note that references are commonly made in metes and bounds legal descriptions to things such as pre-existing survey markers (sometimes called “survey monuments”), natural landmarks, or man-made structures.

ii. Lot and block

The lot and block survey system is used extensively in the United States and Canada to describe land, especially for residential areas in densely-populated metropolitan areas or their suburbs.

Developers start with a large tract of land. The land is divided into parcels called "lots," which are found on blocks on which can exist dozens or even hundreds of homes. Each lot is identified on a recorded subdivision plat, usually by means of a metes and bounds legal description.

Finding a particular parcel of land is as easy as knowing its block and lot number, and making reference to the recorded subdivision plat. Once a property has been subdivided into a lot and block number, it is not usually necessary in Maryland to refer to its metes and bounds legal description any more.

** Note that when a legal description includes a term such as the following: “Lots 1 through 12, inclusive”, that means all 12 lots including and between lots 1 and 12.

iii. Maryland coordinate system

Maryland has its own surveying system as established in MD Real Property §14–405. This follows the “Geodetic Reference System of 1980,” and is based upon standard parallels and meridians to which reference can be made for exact starting or ending points in legal descriptions.

iv. Quality of Surveys:

Location Drawing:

Not all surveys are the same. If a buyer chooses to purchase a survey on a standard residential purchase transaction (it is not usually required by a lender), they usually pay for a something called a "Location Drawing". A surveyor may visit the property, but will not mark or set any property lines while there. Their only purpose is to draw, measure and locate all improvements (structures) located at the property, and to do so as quickly as possible. This type of survey is of very low quality and cost (a couple of hundred dollars), and can be used for permits for things like decks or sheds.

Boundary Survey:

Boundary surveys are more complete than location drawings, and also quite a bit more expensive, i.e., potentially thousands of dollars, even for a residential property in the suburbs. Precise measurements of the boundaries of the land are taken and verified, including placing stakes in the ground, if necessary. A boundary survey may be necessary under the following circumstances:

- If no prior survey records exist on the property (this is rare, but can be the case for properties that are held multi-generationally)
- If existing survey records are old or out of date
- If you suspect a neighbor is encroaching on your land
- If a neighbor accuses you of encroaching on his/her property
- If there are any doubts as to easement rights (for example, if you're unsure whether a utility company has the right to run pipes or wires across your land)
- Anytime you need peace of mind as to your actual property boundaries

ALTA Survey:
An ALTA (American Land Title Association) Survey, sometimes called an ALTA.ACSM survey, is one of the most detailed and expensive land surveys available. These are usually reserved for commercial transactions, and include a detailed listing of the following features:

- Location and elevation of all structural improvements on the property (i.e., buildings, fences, walkways, roads, etc.)
- Location of water features and/or water boundaries
- Zoning setbacks for the property
- Public road access
- Information on property easements and their ramifications
- Information on neighboring property owners
- Information on possible encroachments
- Evidence of cemeteries that might have once existed on the land

Measuring Acreage:
An acre includes 43,560 square feet. Although an acre can look like a square, that rarely occurs. You should avoid using the term "square acres", since that is not used commonly to describe real property.

IV. METHODS OF TRANSFER

1. Conveyance Deeds

A conveyance deed transfers title to real estate from one party to another. A deed has a grantor (the current owner/seller) and a grantee (the new owner/buyer). As a general rule:

- Deeds are only signed by the grantor (seller) and not by the grantee (buyer).
- The grantor's signature must be acknowledged.
- Unrecorded deeds are effective as between the grantor and the grantee only.
- A deed must be recorded to be effective as against the claims of 3rd parties.

Conveyance deeds come with various warranties of title, including:

i. General warranty deed

A general warranty deed provides the greatest level of protection to a buyer. General warranty

deeds include the following "covenants of title," which are sometimes called the "English Covenants of Title," and extent backwards in time for the entire history of the property:

- ✓ Covenant of seisin: a covenant that the grantor owns the estate that is being conveyed to the grantee;
- ✓ Covenant of right to convey: the grantor has the right to convey the property to the grantee;
- ✓ Covenant against encumbrances: there are no encumbrances against title that haven't been previously disclosed to the grantee;
- ✓ Covenant of quiet enjoyment: grantor guarantees the grantee that they may use the property without fear of being evicted from the land or deprived of its possession;
- ✓ Covenant of warranty: the grantor agrees to protect the grantee in the future against anyone who claims title to the property;
- ✓ Covenant of further assurances: grantor will take affirmative steps to cure any defects in the grantee's title.

Note that general warranty deeds are very rarely used in Maryland, although their use is commonplace elsewhere in the United States. Most Virginia deeds, for example, are made with English covenants of warranty.

iii. Special warranty deed

Special warranty deeds provide all of the warranties associated with general warranty deeds, but only starting from the date the seller acquired ownership of the property. This makes the seller liable only for title issues (such as debts) arising from his ownership of the property.

For historical reasons, special warranty deeds are the most common form of deeds in Maryland. In other states, they are used more for commercial transactions, or for sales of foreclosed or repossessed properties, wherein the seller acquired the property without warranties of any kind.

iv. Quit claim deed

A quit-claim deed (mistakenly called "quick-claim" deeds by real estate novices), means exactly what it says: the seller quits all of his claims to the property, which is then conveyed to the buyer.

Quit claim deeds do not include any covenants other than, "The rights that I, the seller, have in this property, I hereby convey to you." In short, if the seller owns fee simple title without any liens or judgments, the buyer will own the same estate in land. However, if the seller has no legal interests in the real property, neither will the buyer. In a famous example of this, law schools routinely teach about the seller who quit-claims the Brooklyn Bridge to a third party for $100. In this case, the quit-claim deed isn't worth the paper it is written on!

Because quit-claim deeds carry no warranties, title insurers in Maryland are reluctant to insure transactions where the buyer obtained title via a "QCD." However, these are often recorded in the land records in Maryland, especially in transactions between family members or in "for sale by owner"

transactions.

2. Deed types

Deeds come with various titles, depending upon who the grantor is, and what the purpose of the deed is. Here are some examples:

- **Deed of assignment**: Used for conveyances of leasehold (*i.e*., ground rent) properties. The grantor is the owner of the property, *i.e*., the leasehold owner.
- **Ground rent merger deed**: Used to convey the leasehold reversion to the current owner of the leasehold interest in order to combine title to the property once again in fee simple. The grantor is the ground rent landlord, and the grantee is the ground rent leasehold owner.
- **Personal representative's deed**: Used to convey real property from the P.R. of an estate. The grantor is the personal representative of the estate (as approved by the Register of Wills), and may also include one or more heirs to the estate if they were given a specific devise of the property in the will.
- **Trustee's deed**: Used by the trustee of a trust (such as a revocable family trust). The grantor is the trustee (or substitute trustee) under the trust.
- **Foreclosure deed**: The most common type of foreclosure in Maryland is a residential deed of trust foreclosure. Following ratification of the foreclosure sale, a deed is signed by the foreclosure trustee (or the "substitute trustee"), who is usually an attorney working on behalf of the foreclosing lender, or REO company.
- **Corporation or LLC deed**: Deeds conveying real property from corporations are typically signed by a corporate officer, who is given authority in a corporate resolution kept on file by the title company. LLC deeds are signed by the manager or a member of the LLC, and require an LLC resolution.
- **General partnership deed**: General partnership deeds should be signed by all general partners.
- **Tax sale deed**: These deeds are signed by the Collector of Taxes, and are done only after a tax sale foreclosure has taken place and the homeowner fails to redeem any delinquent taxes.
- **Corrective deed**: Used to correct errors in a previously-recorded deed. They should primarily be used for minor typographical errors. Consult with an underwriter where more substantial errors exist, such as incorrect grantor or grantee names or incorrect legal descriptions.
- **Confirmatory deed**: Also used to correct certain defects in title. For example, where a signature was omitted from a deed 2 years ago, a confirmatory deed can be used to add the missing person's signature to the chain of title.
- **Assumption deed**: Sometimes deeds of trust or mortgages are assumable, i.e., can be taken over by the buyer of the property if they meet certain qualifications with the existing lender. In such cases, a “deed of assumption” may be signed by the seller permitting the existing loan to be taken over by the buyer of the property.

3. Powers of attorney (POA)

A "power of attorney" means a writing or other record that grants authority to an agent in the place of a principal, whether or not the term "power of attorney" is used. MD Estates & Trusts §17-101(d). The principal is the person who grants authority; the agent (sometimes also called the attorney-in-fact, or "AIF") is the person who is granted the authority by the principal. §17-101(e) and §17-101(b).

i. Creation of a POA

To create a POA, the individual must:

- Be at least 18 years old;
- Intend to grant power to an agent on his/her behalf; and
- Be mentally competent as of the time the POA was created, with an understanding about which powers are being granted and which property is being affected.

Any POA executed on or after October 1, 2010, shall be:

- in writing;
- signed by the principal or some other person for the principal, in the presence of the principal, and at the express direction of the principal (*e.g.*, for visually impaired persons);
- Attested and signed by two or more adult witnesses who sign in the presence of the principal and in the presence of each other. The Notary Public also may serve as one of the witnesses. §17-110.

If a principal designates one or more coagents (*i.e.*, two or more AIFs), all coagents shall act together unanimously unless the POA states otherwise. §17-108(d)(2).

ii. Powers of the Agent

The POA should detail the powers of the agent. An agent is a fiduciary to the principal, and must act with the best interests of the principal in mind. This means meeting the principal's reasonable expectations, to the extent the agent knows what they are. §17-113.

iii. Effective Dates of a POA

A POA is effective when executed, unless the principal provides in the POA that it becomes effective at a future date or on the occurrence of a future event or contingency. §17-111(a). All POA forms are presumed to be durable, *i.e.*, exercisable by the agent notwithstanding the principal's subsequent disability or incapacity. §17-105.

The death, disability, or incompetence of a principal who has executed a POA in writing does not automatically revoke or terminate the agency granted by a POA, so long as the agent acts without actual knowledge of the death, disability, or incompetence of the principal and acts in good faith. §17-106(a)(1).

iv. POA Termination

A POA terminates when:

- The principal dies;
- The principal becomes incapacitated, if the POA is not durable;
- The principal revokes the POA;
- The POA provides that it terminates (*e.g*., 6 months after the date of execution):
- The purpose and power of the POA is accomplished; or
- The agent dies, becomes incapacitated, or resigns, and the principal does not name another agent to act under the POA.
  §17-112(a).

v. Incapacity

Incapacity" means the inability of an individual to manage property or business affairs because he/she:

- has a mental or physical disability or disease;
- is habitually drunk;
- is addicted to drugs;
- is missing;
- is detained, including incarcerated in a penal system; and
- is outside of the United States and unable to return.
  MD Estates & Trusts §13-201 and §17-101(c).

vi. General *vs.* Limited/Specific POA

Powers of attorney:

a. Can grant general authority to act for the principal in all of their business and personal matters (a general POA); or

b. May be limited to specific matters only (a limited/specific POA). Note that title companies prefer recently-dated, limited powers of attorney.

vii. Maryland Statutory POA Forms

Maryland passed the Maryland General and Limited Power of Attorney Act in 2010. It creates two new POA forms: the statutory general power of attorney found in MD Estates & Trusts §17-202, and the statutory limited power of attorney found in MD Estates & Trusts §17-203. A POA that is substantially the same as one of these two forms may also be considered a statutory POA. §17-201.

The significance of a statutory MD POA form is this: a person may not require an additional or different POA form for a Maryland transaction. §17-104(a). Further, should someone refuse to accept a statutory MD POA, they will be liable for any court order mandating acceptance of the POA, including reasonable attorney's fees and costs incurred. §17-104(b).

POA Forms From Other States:

A POA executed in another state is valid and enforceable in Maryland, so long as the laws of the other state were complied with when the POA was created. §17-108.

viii. Military POA Forms

Military POA forms executed under the authority of 10 U.S.C. §1044b are exempt from any requirement of form, substance, formality, or recording that is provided for powers of attorney under the laws of any State, including Maryland.

ix. Requirement to Record POA Forms

Every power of attorney executed by any person authorizing an agent or attorney to sell and grant any property shall be recorded, according the provisions of MD Real Property §4-107.

4. Foreclosures:

i. Residential deed of trust foreclosures

Maryland loans on residential real estate are primarily secured by deeds of trust that designate private trustees to conduct the foreclosure. Trustees must be human beings in order to bring a foreclosure, and are usually attorneys working for the foreclosing lender. Substitute trustees may be appointed by the secured party prior to initiating the foreclosure, as evidenced by a "Substitution of Trustee" document recorded in the land records.

Maryland statutes set forth a hybrid deed of trust foreclosure procedure, as described in MD Real Property §7-105, *et seq*. and MD Rules of Procedure §14-201, *et seq*. A civil action must be filed in the circuit court of the jurisdiction in which the property is located. However, court involvement is usually minimal until the property is sold and the foreclosure is ratified, *i.e*., given approval by the court.

Since there is little court involvement in most deed of trust foreclosures, it is expected that Maryland title practitioners will carefully review the actions of the foreclosure trustee. It is not usually necessary to review foreclosure files that are older than the date of ratification plus 3 years, since the right of the property owner and subordinate lien holders to contest how the foreclosure was conducted expire after that time. See MD Real Property §§7-105.2(e) and 7-105.3(f).

The essential timeline of a Maryland residential deed of trust foreclosure is as follows:

- Following a missed payment, the lender begins contacting the homeowner, and sends one or more delinquency notices;
- A Notice of Intent (NOI) to Foreclose letter may be mailed to the homeowner, which may include an offer for pre-file (*i.e*., pre-foreclosure filing) mediation if the foreclosed property is the borrower's principal residence;
- If a NOI is sent to the homeowner with personal service on the homeowner, and pre-file mediation is not requested by the homeowner, an Order to Docket (OTD) the foreclosure case may be filed after 45 days with the circuit court. If no NOI was sent to the homeowner, the lender may foreclose 90 days after the homeowner's default;
- After the OTD is filed, any owner of a principal residence that has not elected for pre-file

mediation may elect to mediate within 25 days with the Office of Administrative Hearings. It mediation takes place, the remainder of the foreclosure may be delayed or ultimately terminated if an agreement is reached;

- If mediation isn't successful, within 15 days following the termination of mediation or 45 days after the OTD is filed, the property can be sold at the courthouse;
- At least 30 days after the sale, the court may ratify (and finalize) the sale of the property, except possibly for the accounting of funds, which would not delay the further sale of the property.
- At least 45 days after the sale, the tenant must vacate the property, or face further action by the foreclosing lender to evict him from the property.

Since there is little court involvement in most deed of trust foreclosures, it is expected that Maryland title practitioners will carefully review the actions of the foreclosure trustee. It is not usually necessary to review foreclosure files that are older than the date of ratification plus 3 years, since the right of the property owner and subordinate lien holders to contest how the foreclosure was conducted expire after that time. See MD Real Property §§7-105.2(e) and 7-105.3(f).

The bottom line is that Maryland foreclosures can get very complicated. Most of your concern, when reviewing a foreclosure file, should center on due process and other basic legal issues, such as:

- Were the property owner and any tenants given proper notice of the foreclosure, and did they have the opportunity to respond?
- Were all junior lien holders given notice of the foreclosure?
- Were any objections made to the foreclosure by any party, or has an appeal been filed?
- Did the property owners file a bankruptcy before or during the pendency of the foreclosure?

Although a foreclosure may be cured up to one day prior to the foreclosure sale, homeowners do not have rights of redemption following the foreclosure sale in Maryland. In other words, once the property is sold at the courthouse, the foreclosed owner no longer has any legal right to get the property back. A secured party may file a motion for a deficiency judgment if the proceeds of the sale are insufficient to satisfy the debt and accrued interest. This is done by following the requirements of MD Real Property §7-105.13 and the MD Rules of Procedure.

Note: You should never insure a foreclosure prior to ratification without the written consent of your underwriter.

ii. Mortgage foreclosures

Mortgage foreclosures require an attorney to file a lawsuit in the circuit court, and to follow the requirements of any other circuit court proceeding including the filing of motions and providing the court with suggested orders to the signed.

Mortgage foreclosures are also require adherence to Maryland's foreclosure statute as found in MD Real Property §7-105, *et seq*.

iii. UCC financing statements

The Uniform Commercial Code (UCC), is found in MD Commercial Law, §1-101, *et seq*. Although the UCC has many parts to it, the parts relevant to title insurance practitioners are those dealing with secured transactions, and specifically secured transactions involving personal property that has become "attached" or a "fixture" upon the real property. These are found in MD Commercial Law, §9- 101., *et seq*.

In order to create a security interest in fixtures, a UCC-1 Financing Statement can be filed in the land records of the appropriate jurisdiction if it affects real property. MD Commercial Law, §9-101., *et seq*. This document should describe the property (for example, a new furnace system or windows installed in a residence), and include the legal description and address of the property. A UCC 3 - Termination form is used to end a lender's interest in the collateral.

It is common for a recorded deed of trust or mortgage to be accompanied by a UCC-1 financing statement. For example, a mortgage used to construct a restaurant, with funds made available to buy restaurant equipment, might require the lender to use both types of documents.

UCC foreclosures require the lender to reduce its claim to a judgment in circuit court. The judgment can then be executed on by levying against the property and having the property sold.

iv. Tax sale foreclosures

Tax sales are used by local governments to foreclose on delinquent real property taxes. Tax bills are sent to homeowners before July 1 of each year. Homeowners have two options for paying their taxes, as follow:

- The entire tax amount can be paid by September 30 of that same year; or
- Half of the taxes can be paid by September 30, and the remaining half must be paid by December 31 of that same year (a small premium is added to the tax amount if taxes are paid in two payments).

The Tax Collector of each county must give the property owner a thirty-day notice of their delinquent taxes. After thirty days, a listing of properties with past-due taxes must be published for once a week for four successive weeks. The advertisement includes a time and place of a proposed sale of the property, its assessed value, and the tax sale amount.

The property is sold at auction to the highest bidder, but the price must be at least the advertised price, which includes additional fees levied by the foreclosing jurisdiction. A "certificate of sale" is sent the tax sale purchaser within 6 months. These certificates can be freely assigned to third parties.

The certificate holder may foreclose on the property any time after six months from the date of the sale by filing a complaint in the circuit court. However, any foreclosure action must be filed within two

years after the tax sale, or the certificate becomes null and void.

The delinquent homeowner has the right to redeem the property (*i.e.*, bring the taxes current) until the right of redemption has been foreclosed by an order of the court. The homeowner can ask the Tax Collector to give them a written amount necessary for redemption.

If a redemption doesn't occur, and assuming all parties with an interest in the real property have been given notice of the tax sale foreclosure, the holder of the tax sale certificate will become the owner of the property.

Please note, however, that tax sales are fraught with potential constitutional issues, and some title insurers may have difficulty insuring these properties for several years after the tax sale has occurred. Consult with your underwriter before insuring a property with title obtained from a tax sale.

v. Baltimore city condemnation sales

Section 121 of the Baltimore City Building, Fire and Related Codes includes a method by which "unsafe vacant structures" may be rehabilitated, demolished, or sold to a qualified buyer. The "Building Official" may petition the circuit court to appoint a "receiver" for these purposes.

The petition to appoint a receiver must also be served upon the owner of the property and any lien holders of record. The property can then be sold at a public auction pursuant to the Rule 3-722 and Title 14, Chapter 300 of the Maryland Rules. Sales proceeds are used to pay outstanding taxes, the receiver's costs and expenses, and the remainder paid to lienholders in their order of recording priority.

5. Bankruptcy

Bankruptcy (hereinafter abbreviated as "BK") is a general term for a federal court procedure that helps individuals and businesses restructure their debts or rid themselves of some debts entirely.

The BK Clause of the U.S. Constitution is found in Article I, Section 8, which states:

> **"The Congress shall have Power to …establish…uniform Laws on the subject of Bankruptcies throughout the United States…"**

i. The Maryland Homestead Exemption

In a bankruptcy, homeowners are protected for up to $22,975 of the value of their property (note: this amount varies in every state). In other words, if the homeowner has more than that amount in equity in their property, i.e., the difference between the property value and the amount owed to creditors, the Bankruptcy Court cannot sell the property and use the money to pay creditors.

Do not confuse the MD Bankruptcy exemption with the Maryland Homestead Tax Credit, which limits the amount of assessment increase on which a homeowner will pay property taxes in that tax year on the one property actually used as the owner's principal residence. See Section 9-105 Tax-Property Article of the Maryland Code.

Types of Bankruptcy:

The most common types of bankruptcy that will be encountered by a title professional include:

ii. Chapter 7 bankruptcy

This, sometimes called a “liquidation BK” or a “straight BK”, is most commonly used by individual debtors (note: partnerships and corporations are also eligible). An individual is appointed by the Bankruptcy Court called the bankruptcy "trustee.” The trustee gathers and sells the debtor's assets and uses the proceeds of such assets to pay holders of claims (creditors) in accordance with the provisions of the Bankruptcy Code. Per state law, some of the debtor’s assets may be considered “exempt,” *i.e*., property not subject to being taken by the Trustee.

Generally speaking, unsecured debts (*i.e*., debts without collateral, such as credit cards) are discharged by the BK Court, which means that they are no longer owed by the debtor.

However, even a Chapter 7 case does not wipe out all debts. For example, secured debts such as mortgages and car loans are not discharged unless the debtor surrenders the collateral to the creditor. A debtor may keep secured property by agreeing to make payments for the secured item, despite the BK. This is accomplished by a “reaffirmation agreement” with the creditor.

Nor does a Chapter 7 discharge all categories of unsecured debts. Child support, alimony, most student loans, and many tax debts are not dischargeable.

Most Chapter 7 BKs are considered “no asset” cases. If all of the debtor’s assets are exempt or subject to valid liens, the Trustee will normally file a "no asset" report with the court, and there will be no distribution to unsecured creditors. If there are non-exempt assets, unsecured creditors must file a claim with the court within 90 days after the first date set for a meeting of creditors. Under §726 of the Bankruptcy Code there are six classes of claims. Each class must be paid in full before the next lower class is paid anything. The debtor is only paid if all other classes of claims have been paid in full.

Not all debtors are eligible to file a Chapter 7 bankruptcy. Each state has a maximum income amount, as determined by median income amount for one’s household size. For 2015, those amounts for a Maryland debtor are calculated as follows:

1 Member Household - $58,202.00
2 Member Household - $75,992.00
3 Member Household - $86,655.00
4 Member Household - $105,685.00

If a debtor’s income exceeds these amounts, a separate “means test” is used to determine eligibility. Average household income is determined by reference to the debtor’s monthly income over the last six

calendar months.

Married persons may file a joint BK, or as individuals. A certificate of credit counseling and a debt repayment plan from an approved counseling service are also required.

ii. Chapter 11 bankruptcy

Chapter 11 bankruptcies are available to individuals, corporations, and partnerships. Title professionals should think of a Chapter 11 BK as a proceeding that gives the debtor time to get its business affairs in order.

A BK Trustee rarely is appointed to take over the debtor's estate in a Chapter 11 BK. Instead, a reorganization plan is submitted by the debtor to the BK Court for approval. The debtor (who is called the "debtor in possession") is then authorized to implement the approved plan over a period of time, acting as a fiduciary for the creditors.

The debtor is permitted to operate its business and perform its functions "in the ordinary course of business." However, the Court still maintains control over major business decisions, which must still be approved by the Court, including:

- the sale of assets, including real property;
- entering into mortgages or deeds of trust;
- shutting down operations, *etc*.

A Chapter 11 is probably the most flexible of all types of bankruptcy, but this freedom usually results in much higher legal fees as a result. It is the only bankruptcy option for individual business debtors who want to reorganize but owe too much money to file a Chapter 7 or Chapter 13.

iii. Chapter 13 Bankruptcy

A Chapter 13 BK is a wage earner's plan of reorganization. It includes a repayment plan that usually lasts between 3 and 5 years. The repayment plan can be imposed upon creditors, which must stop the accumulation of interest on credit card and other debt. At the end of the plan, the unpaid balance of dischargeable debts is discharged.

You must be an individual to file a Chapter 13. You also must have regular income that is greater than your reasonable living expenses. Further, you cannot have unsecured debts that exceed $383,175.00, nor secured debts that exceed $1,149,525.00 (as of 2015).

Since a Chapter 13 BK requires monthly payments for up to 5 years, most debtors would prefer to do a Chapter 7 BK. But if their incomes are too high, or they have excessive non-exempt property, a Chapter 13 BK may be the only resort.

iv. How are bankruptcies filed?

Most personal bankruptcies are filed voluntarily. A petition is a legal document filed in the Bankruptcy Court to initiate a BK. It includes statements and "schedules" listing assets and liabilities of the debtor. Here are the relevant schedules for a Chapter 7 bankruptcy filing:

B 106 Summary of Your Assets and Liabilities and Certain Statistical Information
B 106A/B Schedule A/B: Property
B 106C Schedule C: The Property You Claim as Exempt
B 106D Schedule D: Creditors Who Hold Claims Secured by Property
B 106E/F Schedule E/F: Creditors Who Have Unsecured Claims
B 106G Schedule G:Executory Contracts and Unexpired Leases
B 106H Schedule H: Your Codebtors
B 106I Schedule I: Your Income
B 106J Schedule J: Your Expenses

Generally speaking, the assistance of an attorney is necessary before filing any BK.

v. The bankruptcy estate

Under §541 of the BK Code, the commencement of a case creates an "estate," which is comprised of all of the property of the debtor, subject to a few exceptions, such as:

- Social security payments, either past or present;
- Property in your possession that belongs to someone else;
- Property you buy or receive after your filing date (with a few exceptions – see discussion on after-acquired property in section III, below);
- Property that is exempt under state law.

Even property you own but don't possess at the time of the BK is part of the estate. Property you are entitled to receive (*e.g.*, you just won the lottery but don't get paid for 3 months) is also included. The significance of property not being considered part of the BK estate is that it is not subject to the BK court's jurisdiction. That means it cannot be taken to pay creditors under any circumstances.

vi. Automatic Stay

§362 of the BK Code creates an automatic injunction that prevents creditors (with certain exceptions) from taking actions to collect debts from a debtor who has declared bankruptcy. The stay begins at the exact moment the BK petition is filed.

Creditor actions that are prohibited include:

- Beginning or continuing judicial, administrative, or other legal proceedings against the debtor;

- Enforcement of judgments against the debtor or property of the estate;
- Actions to create, perfect, or enforce a lien against a debtor's property;
- The setoff of any debt owing to the debtor that arose before the BK was filed.

The automatic stay provisions of §362 do not operate as a stay of the following actions or proceedings:

- to establish paternity;
- to establish or modify domestic support obligations (*i.e*., alimony);
- to determine child support or visitation;
- related to dissolution of marriage, except to the extent such proceedings determine the division of property of the estate;
- related to domestic violence.

vii. Lift of stay

Under §362(c), the automatic stay continues until the affected property is no longer considered to be property of the estate. In most cases, that means:

- ✓ At the time the case is closed;
- ✓ At the time the case is dismissed; or
- ✓ In the event of a Chapter 7 case concerning and individual, or a case under Chapters 11 and 13 of the BK Code, at the time a discharge is granted or denied.

Further, a "party in interest" may request that the BK Court grant relief from the automatic stay under the following circumstances:

- ✓ Where there is a lack of "adequate protection" for property of the party in interest;
- ✓ Where the debtor doesn't have equity in the property;
- ✓ Where the property isn't necessary to an effective reorganization (Chapters 11 and 13).

With respect to real estate, in particular, a secured party must request relief from the automatic stay within 90 days after the BK is filed.

viii. Avoiding the Lien of a Judgment

When reviewing a title search, title professionals may discover that the property owner has been involved in a bankruptcy that was discharged and closed prior to the refinance or sale transaction. Often, these bankruptcies were preceded by the entry of judgments against the homeowner, which were direct factors leading to the homeowner's bankruptcy.

It isn't uncommon to be faced with a homeowner demand that one or more pre-bankruptcy judgments be disregarded for purposes of the current transaction. The conversation usually goes like this:

> **Homeowner**: "I filed a Chapter 7 BK 4 years ago, and the judgment you are asking about was listed on my BK petition and has been discharged."
> **Title company**: "Was the judgment avoided?"
> **Homeowner**: "I don't know what that means, but my lawyer says I don't owe the money anymore and I'm not going to pay it now."

§524(a)(1) says that a discharge of a case:

> "… voids any judgment to the extent that such judgment is a determination of the personal liability of the debtor with respect to any [pre-petition] debt discharged under…this title."

Because of this language, title practitioners with limited knowledge of BK matters may assume that the lack of a personal debt by the homeowner means that the lien of any judgment also has disappeared.

Unfortunately, that is not the case. In Johnson *v*. Homestate Bank, 501 U.S. 78, 82-83, 11 S. Ct. 2150, 115 L.Ed 2nd 66, 73-74 (1991), the U.S. Supreme Court held that a creditor's right to foreclose on a lien survives the bankruptcy proceedings, notwithstanding the discharge of personal liability of the debtor pursuant to §524(a). In other words, a BK discharge does not mean that the lien of the judgment cannot still be foreclosed against the property by the judgment or lien creditor.

Therefore, further action is required in order for the lien of a judgment to be released from the property in question:

- ✓ Sale of the property "free and clear of the judgment lien under §363(f): See Section II, above, for more details.
- ✓ Avoidance of a judgment lien by a motion to the court and resulting court order;
- ✓ "Stripping" of the lien pursuant to a confirmed BK plan: this is available in Chapter 13 BKs, and in a few states for Chapters 7s. For example, the BK Court can determine that a 2nd mortgage has no equity, and is "wholly unsecured." Therefore, the lien is stripped in the BK and the 2nd mortgage holder gets nothing.

After-acquired property:
As a general rule, bankruptcy doesn't affect property acquired by the former debtor after the bankruptcy has been discharged and the case is closed. However, §1306 of the Code states that property of the estate includes all property that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a Chapter 7, 11, or 13.

So, for example if a debtor in an uncompleted Chapter 13 BK contracts to buy real estate, the property could inadvertently become part of the BK estate!

ix. Property not listed in the schedules
Property of the debtor vests in the BK estate regardless of whether it is listed on the petition schedules, and regardless of whether schedules are actually filed. If the property is not scheduled and the BK case is closed, and the property is not otherwise administered or abandoned, then it remains subject to the jurisdiction of the BK Court.

BK Section 727(e) allows a revocation of discharge within 1 year after the discharge for fraud, or 1 year after the later of the discharge or closing of a case (for fraudulent concealment of property). These

time limits do not prevent the Trustee from later reopening a case to administer assets that were fraudulently concealed.

In short, the automatic stay doesn't terminate upon closing of the BK case for unscheduled property!

x. Pending Bankruptcies

The bottom line is that, if an active BK is currently pending, the automatic stay provisions of the BK Code are in effect, and the debtor is no longer in control of his real estate assets. The property cannot be sold or insured absent a non-appealable BK Court order permitting the sale.

In certain Chapter 11 proceedings, the debtor-in-possession may sell property "in the ordinary course of business" without notice or a court order, assuming such sale was part of an approved plan. However, these transactions shouldn't be insured without pre-approval of a state underwriter.

Section §362(c) provides that an individual injured by any willful violation of a stay shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

Further, some courts consider violations of the automatic stay to be voidable, and others consider violations to be void ab initio (*i.e.*, automatically ineffective as to the debtor).

xi. Foreclosures

It is not uncommon for a debtor to file a BK as a means of delaying the effects of a foreclosure. The automatic stay prevents the mortgage holder from pursuing any collection activities, until a court order lifting the stay has been obtained from the BK Court. This can buy the debtor a few months of free living at the property, during which mortgage payments need not be made. Ultimately, however, the property will be foreclosed if the payments are not brought current.

A bankruptcy will discharge any remaining mortgage debt. In certain states (including Maryland), the lender can sue a foreclosed property owner for any "deficiency" on the foreclosed mortgage, *i.e.*, the difference between what the property sold for at the foreclosure sale and the balance of the mortgage at the time of the sale. But a bankruptcy will wipe out the deficiency debt.

xii. Preferences

Under §547(b) of the BK Code, a Trustee may "avoid" the transfer of an interest of the debtor in property:

(1) to or for the benefit of a creditor;
(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
(3) made while the debtor was solvent; and

(4) made on or before 90 days before the date of the filing of the petition, or between 90 days and one year before the filing of the petition, if the creditor was an "insider."

In short, if the property owner knows he's about to file a BK and transfers money or property to 3rd parties of his choice within the 90 days prior to the BK filing, the BK Court can recoup these funds from the creditors after the BK is filed.

xiii. Unsigned Mortgages or Deeds of Trust

§544(a) of the BK Code states the following:

> The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by . . . (3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a *bona fide* purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

Trustees consider themselves to be *bona fide* purchasers. As such, a Chapter 7 trustee is highly likely to file a motion with the court that an unsigned deed of trust is of no effect, or that it is inferior to the trustee's status as a BFP. In short, many a BK Trustee has declared unsigned mortgages or deeds of trust to be void, and have won on court by taking that position.

xiv. Unrecorded documents

Title professionals are urged to record their deeds and mortgages immediately following any settlement. In a 2007 case entitled *In re* Lazarus, Civ. No. 06-1982, 2007 U.S. App. LEXIS 388 (1st Cir. Jan. 9, 2007), the First Circuit Court of Appeals ruled that a lender who takes more than 30 days to perfect a mortgage interest in real property may have that interest avoided in a mortgagor's BK case if the perfection occurred within the 90 days preceding the BK filing of the mortgagor.

xv. Chapter7 BK Filing by One Co-Tenant Severs Joint Tenancy

The filing of a Chapter 7 BK by one joint tenant converts the joint tenancy to a tenancy in common. See Feldman *v.* Panholzer, 36 B.R. 647 (Bankr. Md. 1984), which held as follows:

> "The conclusion is inescapable, that if a joint tenancy is terminated "if one of the cotenants conveys his interest to a third person," that upon the filing of a voluntary Chapter 7 petition by a cotenant, he has similarly effected a conveyance that severs the tenancy. A comprehensive conveyance by the debtor to the Chapter 7 trustee takes place with the commencement of the proceeding and the creation of the bankruptcy estate under § 541(a). *See generally, Collier on Bankruptcy,* ¶ 541.01, 15th ed. (1983)."

xvi. Bankruptcy by One Co-Tenant Does Not Sever Tenancy by the Entireties

In a somewhat recent Maryland case of first impression in the Federal 4th Circuit Court of Appeals, it was decided that a Chapter 13 bankruptcy filed by a single tenant by the entirety does not sever tenancy by the entireties status. Alvarez *v.* HSBC Bank USA, National Association, U.S. Court of Appeals, Fourth Circuit, No. 12-1156, decided October 23, 2013.

See also Birney *v.* Smith, U.S. Court of Appeals, Fourth Circuit, published on December 29, 1999, which held that, in the context of a Chapter 7 bankruptcy of a single spouse, property held as tenants by the entireties cannot be taken by creditors to satisfy the individual debts of either the husband or the wife (citing Watterson *v*. Edgerly, 388A.2d 934 (Md. App. 1978)).

V. CREATING AND RELEASING SECURITY INTERESTS

i. What is a security interest?

A security interest is an enforceable claim created by a security agreement that backs up the repayment of funds agreed to in a promissory note. In simple English, the promissory note creates the obligation to repay money; the security agreement takes collateral in property until the funds are repaid.

There are two primary types of security agreements for real estate, deeds of trust and mortgages. The primary differences between the two include:

1. Who the parties to the transaction are; and
2. How the instrument is foreclosed.

ii. Mortgages

Mortgages are rarely seen in Maryland residential transactions. They are sometimes used in commercial transactions, although deeds of trust are also prevalent in that arena.

A mortgage is a two-party transaction. There is a lender and a borrower. Mortgages are foreclosed in a court of law by attorneys hired by the foreclosing lender. Foreclosures of mortgages can be costly and time-consuming. This is the main reason that mortgages are not used as often in Maryland as are deeds of trust.

iii. Deeds of trust

A deed of trust is a three-party instrument. It names the lender, the borrower, and a third party called the "trustee." The named trustee is usually an attorney who works for the lender. If another trustee is named initially, the lender can appoint a "substitute trustee" prior to foreclosing on the property.

Deeds of trust in Maryland are foreclosed in a mostly non-judicial process. The trustee/substitute trustee initiates the foreclosure by starting a foreclosure law suit in the circuit court of the applicable

county (or in the City of Baltimore). For the most part, the remainder of the foreclosure takes part without the court's interference. The court must "ratify" the foreclosure at the end of the process, however, in order to terminate the proceedings. The court also audits the file to make sure that the foreclosed funds are distributed appropriately.

The primary advantage of a deed of trust foreclosure is the time required to complete the proceeding. It can take weeks or months less than going to court, since the court system has to prioritize court time heavily in favor or the criminal docket for constitutional reasons.

iv. Indemnity deeds of trust:

Indemnity deeds of trust (IDOTs) are special creatures of Maryland law, and are not found in other states. They exist because of peculiarities in Maryland recordation tax law, *i.e.*, taxes that are paid upon recording a new deed of trust.

IDOTs are the same as regular deeds of trust, except that the borrower and the person/entity owning the secured real property are not one and the same. For example:

- Lender lends money to Joe Jones;
- Joe Jones signs a promissory note;
- The IDOT is recorded against property owned by Joe Jones, Inc., a wholly-owned corporation whose sole stock holder is Joe Jones.

Joe Jones, Inc. is only a guarantor of the promissory note. In other words, the corporation's obligation to pay the promissory note doesn't arise unless Joe Jones, as an individual, defaults under the note.

For many decades, the Maryland Attorney General's office was of the opinion that, since the owner of the property didn't have a direct obligation to pay the debt of the promissory note, recordation taxes on the IDOT were not due and payable until such time, if any, that the obligor under the promissory note defaulted on his obligation. Essentially, IDOTs allowed investors a means of avoiding recordation taxes on loans of any dollar amount, including for multi-million dollar transactions. This favored persons and entities who financed large commercial transactions.

However, starting in 2013, the Maryland Legislature changed the law so that only IDOTs securing loans under $3 million are given preferential recordation tax treatment. IDOTs over $3 million are subject to recordation taxes, just like any other deed of trust in Maryland.

v. Purchase money deeds of trust

What is a purchase money deed of trust?

Simply stated, a purchase money deed of trust is a special category of deeds of trust used to secure finance which is used to purchase real property.

What are the advantages of a purchase money deed of trust?

Purchase money deeds of trust are afforded legal protections in terms of lien priority compared to non-purchase money deeds of trust. See below:

> MD Real Property §7-104, Priority of purchase money mortgage or deed of trust
> If property is sold and granted, and as part of the same transaction the purchaser gives a mortgage or deed of trust to secure total or partial repayment of the purchase money, the mortgage or deed of trust shall be preferred to any previous judgment or decree for the payment of money that is obtained against the purchaser if it recites that the sum received is all or part of the purchase money of the property or otherwise recited that it is a purchase money mortgage or deed of trust. This section is applicable regardless of whether the mortgage or deed of trust is given to the vendor of the property or to a third party who advances all or part of the purchase money.
>
> MD Tax-Property §12-108(i), Mortgages.-
> (1) In this subsection, "purchase money mortgage" or "purchase money deed of trust" means a mortgage or deed of trust that:
> (i) is given by the transferee of real property with respect to the property purchased;
> (ii) is delivered as part of the same transaction as the instrument of writing that transfers the property purchased and that is subject to the recordation tax;
> (iii) recites on its face that it secures, in whole or in part, the purchase money for the property or otherwise recites on its face that it is a purchase money mortgage or purchase money deed of trust;
> (iv) is fully executed within 30 days of the date that the instrument of writing transferring the property is fully executed; and
> (v) is recorded no later than 30 days after the date that the instrument of writing transferring the property is duly recorded.
> (2) For the purpose of this subsection, the date that an instrument is fully executed is the later of:
> (i) the date of the last acknowledgment; or
> (ii) the date on the instrument of writing.

Further, a purchase money mortgage or a purchase money deed of trust is not subject to recordation tax. This is because the recordation tax is based upon the amount of the purchase price of the property, and not on the loan amount(s).

vi. Non-purchase money deeds of trust

Refinance deed of trust
When an existing loan is replaced by a new loan of any amount, the resulting deed of trust is called a refinance deed of trust. The term "refinance" is also sometimes used when there are no existing deeds of trust against title, and a new loan is secured by a deed of trust.

Second deed of trust
A second deed of trust is a deed of trust recorded after an existing deed of trust, or that has subordinated to a new deed of trust (see subordinations, below).

Construction or rehabilitation deeds of trust

Construction and rehabilitation loans are made for a short term, and for a particular purpose, *i.e.*, the funds are to be used to construct or improve the property. Money from these loans can be lent in a lump sum, but are more commonly taken out in the form of draws that are closely monitored by the lender. The lender may not lend the full amount stated in the deed of trust, if funds previously drawn are not put to good use.

The intent is that construction or rehabilitation loans be refinanced into permanent financing (*i.e.*, a regular 15 or 30 year loan) when the project has been completed.

Lenders require construction loan policies (which are essentially a regular loan policy with updates as loan draws are made) to protect their interest in the property.

HELOC deed of trust

A "HELOC" is a "home equity line of credit." These loans are secured by means of a HELOC deed of trust.

A HELOC loan is similar to using a credit card, in that the borrower can borrower can draw out loan funds up to the maximum loan amount during the period stated in the loan documents, *e.g.*, for the first 10 years of the loan. The loan also can be repaid and even paid off, without affecting the borrower's ability to take new draws at a future time. They are often used as an emergency source of cash for the homeowner.

HELOC loans must be treated very carefully by the title company, since merely paying off the loan amount does not shut down the line of credit. Unless the title company sends written instructions signed by the homeowner demanding that the line of credit also be shut down, the HELOC can potentially be used by the same borrower even after the property has been sold or refinanced.

In short, when paying off a HELOC loan, the title company must take the following actions:

- Send in funds adequate to fully pay off the HELOC line of credit;
- Send written instructions, signed by the borrowers, to permanently close the HELOC line of credit;
- Follow up diligently with the lender, after closing, to make sure the HELOC line of credit has been closed and a satisfaction of deed of trust has been issued on a timely basis.

vi. Priorities

First to record

In a race-notice state like Maryland, the first document recorded usually has priority in the event of a foreclosure. That includes deeds of trust. A deed of trust with priority is called a first deed of trust. A deed of trust that is in second or lower position is subordinate to the first deed of trust, and will be nullified in the event of a foreclosure on the first deed of trust, assuming foreclosure procedures are properly followed.

It isn't uncommon for borrowers to have two (or more) deeds of trust recorded against their title at any given time. In many cases, the second deed of trust is for a line of credit, and the borrower may wish to refinance only the existing first deed of trust. This creates a situation in which a first deed of trust may actually be in second recording position. In such cases, the existing line of credit deed of trust will have to be subordinated to the new deed of trust.

Written subordinations

Deeds of trust may be subordinated with a written agreement between the holder of an already- recorded deed of trust and the new lender. The holder of the existing deed of trust will usually permit itself to be subordinated, so long as it doesn't feel as if doing so will put it in a worse position with respect to the collateral than it already has.

Example #1: An existing deed of trust for $100,000 is being refinanced for a new deed of trust for $100,000. The property appraises for $175,000. ABC, the holder of a HELOC deed of trust against the property for $25,000, will probably agree to be subordinated to the new deed of trust.

Example #1: An existing deed of trust for $100,000 is being refinanced for a new deed of trust for $170,000. ABC, the holder of a HELOC deed of trust against the property for $25,000, may not agree to be subordinated to the new deed of trust, if the property only appraises for only $175,000.

Note that deeds of trust and mortgages are not the only security instruments that can be subordinated. Judgments, liens, and UCC filings can also agree to take a lower recording priority.

Maryland's automatic subordination statute:

Effective October 1, 2013, amendments were made to Maryland Real Property §7-112 to allow for the automatic subordination of junior liens. If the terms of this statute are adhered to, a written subordination agreement will not be required from the existing junior lien holder. This new law is very similar to Virginia's automatic subordination law, as codified in §55-58.3, Code of Virginia.

Maryland Real Property §7-112 applies only to mortgages, deeds of trust, or other security instruments that are subordinate in priority to an existing first mortgage or deed of trust. Note: judgment liens or liens filed under the Maryland Contract Lien Act (Maryland Real Property §§ 14-201 through 14-206) may not be subordinated under Maryland Real Property §7-112.

Junior liens may be subordinated automatically under the following circumstances:

1. The property secured by the new loan must be residential property improved by four or fewer single family dwelling units that are designed principally and are intended for human habitation;
2. The borrower must refinance the full amount of the debt secured by the existing first lien;
3. The interest rate on the new loan must be lower than the interest rate secured by the refinanced loan;
4. The principal amount secured by the junior lien does not exceed $150,000;
5. The principal amount secured by the refinance mortgage does not exceed the unpaid outstanding principal balance secured by the first mortgage or deed of trust plus an amount not exceeding $5,000 to pay closing costs and escrow costs; and
6. A refinance mortgage or deed of trust shall have, at the time of recordation, the same lien priority as the first mortgage or deed of trust that the refinance mortgage or deed of trust replaces.

Last but not least, the new mortgage or deed of trust must include the following printed language in bold or capitalized letters:

"This is a refinance of a deed of trust/mortgage/other security instrument recorded among

the land records of_____county/city, Maryland in liber no._____, folio_____, in the original principal amount of_____, and with the unpaid outstanding principal balance of_____. The interest rate provided for in the evidence of indebtedness secured by this refinance mortgage is lower than the applicable interest rate provided for in the evidence of indebtedness secured by the deed of trust/mortgage/other security instrument being refinanced."

All junior deeds of trust should be listed in Schedule B-2 with the notation, "subordinate to the lien of the deed of trust insured hereunder by virtue of Maryland Real Property §7-112."

vii. Creating and Releasing Security Interests:
The term "security interest" means that a creditor has the right to repossess property that is taken as collateral for a loan. In the world of real property, a security interest might involve any of the following instruments:

- a deed of trust, including indemnity deeds of trust;
- a mortgage;
- a UCC-1 Financing Statement
- a money judgment entered into the circuit court of any Maryland county, or in the district or circuit courts of Baltimore City.

Deeds of trust and mortgages are voluntary security instruments signed by a borrower in order to secure financing for real property. In other words, the borrower agrees that the property can be sold in a foreclosure if the loan isn't repaid. These documents are recorded in the land records of the appropriate county or of the City of Baltimore.

UCC-1 Financing Statements are documents voluntarily signed by the borrower that allow the lender to take collateral in personal property. They are filed with SDAT, the State Department of Assessments and Taxation (SDAT). The only time that title companies should be concerned about UCC-1 Financing Statements is when they mention the location of the assets which become attached to real property, and the UCC is also filed in the Land Records.

For example, if a UCC-1 Financing Statements notes that a new heater or air conditioner was installed at 4275 Main Street in Ellicott City, MD, the title company should make it a requirement to release or subordinate that document in any new closing.UCC-1 Financing Statements are commonly used anytime financing is provided for solar panels, kitchen or bath upgrades new roofing, HVAC systems, etc.

In order to property release a UCC-1 Financing statement that is less that 5 years old, a UCC-3 Termination Statement should be recorded in the Land Records.

Money judgments are involuntary, and are created when a judge determines that one person owes money to another person. If the money judgment is then recorded in the circuit court of any of Maryland's 23 counties, or in the district court in Baltimore City, it liens the property and must be paid off or otherwise satisfied when the property is sold.

viii. How exactly do I release a Security Interest?

Since deeds of trust and mortgages are created by recording a document in the land records, they are usually released by recording a separate document in the land records called a "satisfaction of deed of trust" or a "satisfaction of mortgage". Once a deed of trust or mortgage has been recorded in the land records, it cannot be "unrecorded". Instead, the satisfaction document will be recorded that references the original document being satisfied or released, and which states that the original document no longer has any force or effect.

Deeds of trust and mortgages are also considered to be released by operation of law based on the 12 year/40 year rules found here in MD Real Property sec. 7-106(c):

(1) If a mortgage or deed of trust remains unreleased of record, the mortgagor or grantor or any interested party is entitled to a presumption that it has been paid if:
(i) 12 years have elapsed since the last payment date called for in the instrument or the maturity date as set forth in the instrument or any amendment or modification to the instrument and no continuation statement has been filed;
(ii) The last payment date or maturity date cannot be ascertained from the record, 40 years have elapsed since the date of record of the instrument, and no continuation statement has been filed; or
(iii) One or more continuation statements relating to the instrument have been recorded and 12 years have elapsed since the recordation of the last continuation statement.

UCC-1 Financing Statements may be considered released after five years if no continuation statement has been filed, or they may be released by filing a UCC-3 Termination Statement with SDAT.

Money judgments expire after 12 years, unless renewed by the creditor. They also can be released by filing a satisfaction of judgment with the court where the money judgment originated.

MODULE #2: FUNCTIONS WITHIN A TITLE INSURANCE COMPANY

1. Pre-Closing Activities

i. Setting up the initial order

Orders for title insurance are typically received from the following sources:

- Lenders (refinances and HELOCs);
- Real estate agents;
- For sale by owner buyers or sellers;
- Attorneys (real estate lawyers, trust and estate lawyers, *etc*.);
- Referrals from your underwriter or another title agency.

A file number will be assigned to the new order, and the following information will have to be collected and entered into the title company's settlement software:

- Full names of the property owner, seller, and buyer, plus phone number, address, and email of all parties to the transaction;
- Loan officer and lender name, address, phone number, and email address;
- Loan amount, and sales price of the property, if applicable;
- Real estate agent name, address, phone number, and email address;
- Address of property being sold or refinanced;
- Type of financing: cash, assumption, new loan, and type of new loan;
- Homeowner's association or condominium association contact information and website;
- Ground rent information (amount, GR landlord information, if any);
- Front-foot benefit contact information, if any.

ii. Ordering and reviewing the title search and abstract

Having set up the initial order, the title agency will need to know who has legal rights to the property. This information is necessary to create a title commitment that sets forth the status of title for each property.

Some title agencies use internal personnel to search real estate titles. However, most title searches are done by independent contractors known as "abstractors." Abstractors do not require a title insurance license in Maryland.

A proper title search involves doing a grantor/grantee search of the property owner (and sometimes, the buyer) in the following informational databases:

- Land records in which the county is located (online at https://mdlandrec.net)
- Legal cases in Maryland Judiciary website (online at www. casesearch.courts.state.md.us)
- For deceased persons, the Maryland Register of Wills (www. registers.maryland.gov)
- For bankruptcies and federal cases, the PACER website (www. pacer.gov/pcl.html)
- Tax records (State Department of Assessments and Taxation and property tax records)

If documents are found to affect the property from any of these databases, copies are made. Once all documents have been assembled (the "title search"), a summary the documents is added to the file. This is called the "title abstract."

iii. Reviewing the abstract

Although a good abstractor should alert the title agency to any unusual documents that may affect title to the property in question, it is not the job of the abstractor to provide legal advice or provide conclusions to the agency.

Title agencies must designate at least one person to review title abstracts and, among other things, make the following determinations:

- How each document affects title to the property;
- Who is in title to the property;
- How is title held (sole or multiple owners, type of co-tenancy, in the name of a trust, *etc*.);
- Whether there are any voluntary liens against the property (mortgages or deeds of trust, HOA/condo dues, front foot benefits, *etc*.);
- Whether there are any involuntary liens against the property, such as liens or judgments;
- Whether the buyer or seller is in foreclosure or bankruptcy;
- Whether title is currently "marketable," or can be made marketable by the title of the settlement/closing.

Some title agencies rely upon an in-house or independent attorney to review their abstracts or conduct their title searches. However, Maryland law does not require an attorney to handle this function, and it is commonly done by non-attorneys at most title companies.

iv. Preparing the title commitment

Having reviewed the abstract, the next step is to prepare the title commitment for each file. See Part III of this Manual for detailed information about title commitments and policies.

You can think of a title commitment as a "snapshot" of the status of title to the property as of the "effective date" set forth in the commitment. A commitment includes 3 parts:

Schedule A: states clearly who the property owner is, who the new lender is (if any), and who may be buying the property. It should also state the dollar amounts of the refinance, loan, or sale.

Schedule B-1, Requirements: includes thing that must be done before the property can go to closing. For example, it may be necessary to satisfy one or more deeds of trust before putting new financing against the property. The property could be in foreclosure, and the foreclosure might need to be withdrawn or ratified before the new title can be insured. There are countless issues that may need to be addressed on each file.

Schedule B-2, Exceptions: these are items that affect title, but cannot be cleared by the title company. In other words, the buyer, owner, or lender cannot turn to the title company to solve problems related to these issues. Examples include protective covenants, easements, real estate taxes, continuing HOA/condominium dues, or front-foot benefits.

The title commitment processor will need to gather additional information in order to prepare the title commitment. Examples include:

- Checking with SDAT to find out what the tax parcel number of the property is, and whether the property has been registered as a ground rent property with SDAT.
- In a purchase/sale transaction, inquiring about whether the seller is a Maryland and/or U.S. citizen, and if not, whether they lack green card or other status that might result in the need to withhold state or federal taxes at the closing.
- Some buyers or lenders may want a survey done on the property. Survey results may lead to additional requirements or exceptions being added to the title commitment.

In a purchase/sale transaction, a copy of the title commitment must be provided to the buyer or their real estate agent prior to closing. Many title agencies wait until the date of closing to do so, but a better practice might be to distribute the title commitment at an earlier date so that no problems present themselves at the closing table.

iv. Clearing title and setting the closing date

In general:

Although proposed closing dates are often established at the time the initial title order is taken, the reality is that a closing cannot take place until information or documents necessary to clear title have been obtained. For most files, this means that the following information must be gathered:

- Payoff or satisfaction information for each deed of trust or mortgage presently affecting the property;
- Letter of indemnity for unreleased prior owner deed of trust or mortgage;
- Obtaining payoffs or releases for any judgments;
- Determining what may be required to release the property from foreclosure proceedings (*e.g.*, deed of trust foreclosure, tax sale, *etc*.)

It isn't usually necessary to actually clear title prior to the closing, so long as the necessary things happen at the closing to permit title to be cleared after the closing occurs.

Example: The seller owes $132,987 secured by one deed of trust against the property. This deed of trust doesn't need to be satisfied prior to closing, so long as the closing will yield enough funds to pay off the loan balance immediately after the closing occurs. The lender can record a release of deed of trust after its loan has been paid off.

Releasing deeds of trust, mortgages, liens or judgments:
Here are the steps required to clear title prior to closing on any transaction:

1. Determine whether a satisfaction of the instrument has been filed in the land records or in the court records, whichever is applicable (remember that MD court judgments must be released in the court records only).

2. Determine if the deed of trust/mortgage, lien or judgment is too old to matter anymore. Refer to the timelines on the chart on pages 27-28 of the course materials; know the 12 year/40 year rule for clearing deeds of trust or mortgages;

3. Determine whether the property is protected by joint tenancy or tenancy by the entirety rules. Remember that federal liens are not cleared by J/T or T by E rules).

4. If none of the above apply, and you suspect that the debt has already been paid by the property owner or by another title company, obtain a copy of the Owners Policy of Title Insurance, and request a letter of indemnity from the title company that insured the purchase of the current owner's property;

5. If this issue is covered by the Maryland Mutual Indemnity Agreement, a copy of the owner's policy of title insurance may clear this issue with your underwriter's approval.

6. If none of the above apply, you will have to obtain a written satisfaction of the deed of trust, mortgage, lien or judgment in order to insure this property.

*** Remember that for a HELOC deed of trust, you must also have the borrower sign a document asking that the line of credit be shut down.

v. Other Possible Problem Areas in Clearing Title:

Access: A property that cannot be accessed by its owner, either legally (the legal right to get to it, even if physical access may be restricted) or actual access via a road or pathway, is of little use to its owner. Title insurance always guarantees either legal or physical access to the property, depending upon the type of policy purchased.

Mobile Homes: When purchased, mobile homes are given vehicle identification numbers and are treated as personal property, much like automobiles. When a mobile home is permanently affixed to real property, title can be converted from personal property to real property. Specific Maryland legal procedures are required in order for this to occur.

Lis Pendens: A lis pendens is a filed notice in the public records that litigation is pending against the property noted therein. It is a notice to potential buyers and lenders that title is encumbered by a possible judgment that has not yet been obtained against the defendant. In Maryland, merely filing a law suit that affects the real property may also act as a lis pendens. These items must be resolved before a clean title can be insured.

Mechanic's Liens: A mechanic's lien is a lien obtained by someone who furnishes labor or materials for a construction project in Maryland. If they aren't paid, a mechanic's lien can be obtained after filing a petition with the Circuit Court in the relevant county. All contractors must file a law suit within 180 days of the last work done on the property. Once a lien has been established, it must be executed against the property within 12 months.

Riparian Rights: Riparian rights apply to properties that front a waterway. A waterfront owner does not own the water, and does not own the land underneath the water (both of these are owned by the State of Maryland), but does own access to the water. Encroachment unto these rights by a neighbor or a community association can lead to a law suit regarding the relative rights of waterfront owners. Riparian rights must be clearly addressed or taken exception to when waterfront properties are insured.

Letters of Indemnification and the Maryland Mutual Indemnity Treaty: At times, an owner's policy of title insurance will be issued for properties which fail to take exception to liens, judgments, mortgages or deeds of trust that are still unreleased in the public records. A letter of indemnification, or "LOI", is an indemnity agreement between two title insurance underwriters wherein one underwriter agrees to indemnify the other for any claim that may arise out of a particular title defect on a particular piece of property. Effective April 1, 2020, most title insurers in Maryland signed a Mutual Indemnity Treat that covers a variety of defects with a value under $500,000, wherein individual letters of indemnity are no longer required if a valid owner's policy can be produced by the title agent insuring the transaction.

vi. Determine whether parties are on Patriot Act watch list

See Module IV of this Manual as to Patriot Act procedures for identifying the parties to any transaction.

vii. Closing protection letters

Most lenders request a closing protection letter (CPL) as a pre-requisite to closing.

A closing protection letter is a direct obligation from the title insurer to the new lender (and very rarely, to a seller or buyer if they request one) to reimburse that entity for actual losses which may result from the following actions of the title agent or approved attorney:

- Failure of the agent or attorney to comply with the lender's written closing instructions; and
- Fraud or dishonest on the part of the title agent or attorney in handling funds or documents

related to the closing.

As of the time of this writing, a CPL is not considered to be title insurance in Maryland. Instead, it is a way of assuring the lender that the title agent or attorney is approved with the lender and in good standing to conduct the closing in a non-fraudulent way.

Note that CPLS do not protect against a bank failure, insolvency or suspension, unless the lender requested the funds to be deposited with a specific bank. Nor can the terms of a CPL be altered by the title agent or approved attorney without permission of the title insurer.

viii. Loan closing instructions

Where a new loan is involved, the title agent or attorney will be given specific instructions by the lender which must be fulfilled in order to settle on the loan correctly. Loan instructions will usually include the following things:

- Terms of the loan, including: loan type, loan amount, address and homeowner or buyer names;
- If a purchase/sale, the price of the property;
- Lender requirements, such as:
  - property insurance naming lender as beneficiary;
  - a copy of the buyers' HUD-1 from the sale of their prior property;
  - signatures by buyer on lender affidavits; *etc*.

- A list of all lender fees and charges required to be stated on the HUD-1 or CD, including lender escrows for taxes and insurance;
- A requirement that a loan funding number be obtained prior to disbursing the lender's funds.
- A requirement to return all loan documents to the lender in a stated period of time.

The importance of following the lender's closing instructions cannot be overstated. Although the title company acts in a neutral capacity and doesn't officially represent any of the parties to the closing like an attorney or real estate agent does, the title company has an implied contact with the lender to follow its instructions. In the worst case, the failure to follow loan instructions faithfully can result in the lender demanding that the title agency purchase the loan, since it cannot be further assigned by the originating lender to a third party.

It is crucial for the person conducting the closing (the "settlement agent") to understand that all closing instructions should be in writing, and cannot be unilaterally changed by the settlement agent. It isn't uncommon for a settlement agent who performs a closing to figure out that the loan documents were prepared incorrectly. Examples may include:

- A spouse's name needs to be added to the closing documents;
- Correction of misspellings on the documents;
- Charges need to be added to the settlement statement, etc.

If this should occur, the closing should be paused until the lender communicates the change, in writing, to the settlement agent.

2. Closings

i. Definition:

As far as most title company clients are concerned, the closing (also called a "settlement") is the most important service offered by the title company or closing attorney. Depending upon whether a refinance closing or a purchase/sale closing is involved, the following things happen at a typical closing:

- Identification of all persons signing documents is taken;
- New loan documents are signed;
- Title company documents and disclosures are signed;
- The property is conveyed from the seller to the buyer by means of a deed or ground rent assignment (purchase/sale closings only);
- Money is exchanged, if necessary (this usually isn't necessary with refinance closings);
- Keys to the property are given by the seller to the buyer (purchase/sale closings only).

ii. Types of closings

Refinance Closings

If someone already owns real estate, they will either own the property free and clear of any financing, or will have one or more existing loans against the property. Regardless, the homeowner may wish to obtain a new loan.

The new loan may be in any of the following forms, or a combination thereof:

- Refinance loan: a new loan is made to the property owner, and a new deed of trust or mortgage is recorded in the land records. If there is an existing loan to be paid off, funds from the new loan may be used to pay off the old loan.
- A home equity line of credit loan (HELOC) can be added to the property. These are usually second deeds of trust, with a credit line that can be paid down and used again for the time period stated in the HELOC loan documents.
- Construction loan: these are relatively short-term loans for the purpose of financing improvements to the property. The lender can disburse funds all at once, or in draws over time. The intent is that constructions loans eventually will be refinanced with permanent financing.

The most important documents signed at a refinance closing are the promissory note (the I.O.U. from the borrower to the lender which creates the debt), and the deed of trust or mortgage, which gives the lender a security interest (*i.e.*, collateral) in the borrower's real property until the debt is repaid.

Parties to a refinance loan typically include the following persons:

- The borrower;
- The title company closing agent (either an employee of the title company or a TIPIC, does not

have to be a Maryland attorney);

- The loan officer (however, loan officers do not attend all refinance closings).

Refinance loan closings usually take only 30-60 minutes to complete. Most of the documents signed by the borrower come from the lender, and can be 50-100+ pages long. The title company will have 10-20 pages of affidavits and other forms to be signed.

Purchase/sale closings

When real property is bought and sold, the following parties usually attend the closing:
The seller(s);
The buyer(s);
Real estate agents either or both of the above parties;
The title company closing agent.
The loan officer (loan officers do not attend all refinance closings)

The most important documents signed at a purchase/sale closing are the deed from the seller to the buyer, and a promissory note and deed of trust in the event new financing is obtained by the buyer.

Commercial closings

Although this Manual is not the place for a thorough analysis of commercial closings, suffice it to say that commercial transactions handled by title companies can take the form of refinances or purchases/sales.

The primary differences between commercial closings and residential closings include:

- There are usually larger dollar amounts involved per transaction;
- A greater likelihood that attorneys will be representing the parties, including on refinance transactions;
- Use of non-standard contracts and closing forms;
- Requirement for many more ALTA endorsements;
- Non-applicability of many federal laws, *e.g.*, RESPA, section 8 and use of the TRID closing disclosure form. See Module IV of this Manual for more information about these federal laws and regulations.

iii. Closing documents and Procedures

This section describes the documents that can be expected at a typical purchase/sale closing in Maryland. Note that in refinance closings, the loan documents will be very similar to those signed below:

- **When and where can closings held?** In the past, title closings took place almost exclusively at the offices of the title company. There were (and still are!) many good reasons for doing so, including:
    - Access to the entire closing file;
    - Access to computers, fax machines, and email services;
    - Access to the human beings who processed the file prior to the closing.

Quick access to these resources makes for a more efficient closing in the event last-minute problems arise. Further, performing closings during regular business hours is the best way to make sure that a lender's representative is available in order to make changes to the closing instructions or otherwise solve problems with the loan.

Over the past 10-15 years, however, there has been a remarkable transformation in the willingness of most title companies to perform closings at almost any location, and at almost any time (including evening and weekend closings!). Much of this is in response to the typical consumer's difficulty in getting time off to attend a closing, and the general business trend to accommodate consumer demands. Closing at real estate offices, in-home closings, closings at work, or closings in neighboring jurisdictions (*i.e*., performing a closing for a Maryland transaction at the consumer's workplace in the District of Columbia) are commonplace.

Note that, for junior mortgages, Maryland law hasn't caught up with these developments. MD Financial Institutions §11–204(c) states:

(2) Except as provided in item (3) of this subsection, the loan closing shall be conducted at:
(i) The lender's licensed location;
(ii) The office of an attorney representing the licensee, the borrower, the title company, or title insurer in connection with the loan; or
(iii) The office of the title insurer or title agency performing closing services in connection with the loan; and
(3) A licensee may conduct the loan closing at another location at the written request of the borrower or the borrower's designee to accommodate the borrower because of the borrower's sickness.

A similar provision is found in MD Financial Institutions §11–505: (e)
(1) A licensee may not allow any note, or loan contract, mortgage, or evidence of indebtedness secured by a secondary mortgage or deed of trust on a dwelling or residential real estate to be signed or executed at any place for which the person does not have a license, except at the office of:
(i) The attorney for the borrower or for the licensee; or
(ii) A title insurance company, a title company, or an attorney for a title insurance company or a title company.
(2) Notwithstanding paragraph (1) of this subsection, a licensee may conduct the loan closing at another location at the written request of the borrower or the borrower's designee to accommodate the borrower because of the borrower's sickness.

- **Identify the parties**: At the beginning of any closing, the seller and buyer will be will be required to produce proof of identification which meets the requirements of the underwriter and the Patriot Act. That usually means a valid driver's license or passport. Photographs are taken of identification documents and kept by the title company after closing.

HUD-1 Settlement Statement or Closing Disclosure:
These documents set forth a statement of final loan terms and closing costs.

Prior to October of 2015, HUD-1 Settlement statements were required for "federally-related mortgage loans." This encompasses the vast majority of new loans made in the United States. HUD-1 forms set forth credits and debits for each buyer, seller, or borrower. They still may be used for reverse mortgages, HELOC loans, and commercial transactions

After October of 2015 and implementation of the TRID regulation (see Module IV of this manual for more details), the HUD-1 settlement statement was replaced by the 5-page "Closing Disclosure," or CD form. It sets forth all costs and expenses that are associated with the transaction, and should be compared with another form, the Loan Estimate, which is given to the borrower shortly after applying for his/her mortgage loan.

The CD has some significant changes from the HUD-1 form, including:

- ✓ Much more detailed information on the type of loan on the first page of the CD;
- ✓ A much clearer statement of the borrower's loan amount, interest rate, principal and interest amounts, projected payment amounts, and closing costs;
- ✓ All charges to the borrower are set forth in alphabetical order, with clear subject headings;
- ✓ Disclosures are made to the borrower about other important loan terms, such as assumption terms, demand features, late payments, partial payments, possible negative amortization features, *etc*.
- ✓ Contact information, including names, addresses, email addresses, and license numbers, are included for the lender, mortgage broker, real estate brokers, and settlement agent.
- ✓ Contact information is given to the borrower for filing a possible complaint with the Consumer Financial Protection Bureau.

- **Good funds requirement:** "Good funds" are required in Maryland for purchase/sale transactions, in accordance with MD Real Property §7–109:

(b)

(1) In any consumer loan transaction in which the loan is secured by a purchase money mortgage or deed of trust on real property located in this State, on or before the day of settlement, the lender shall disburse the loan proceeds in accordance with the loan documents to the agent responsible for settlement as provided in subsections (c) and (d) of this section.

(2) In any consumer loan transaction in which the loan is secured by a secondary deed of trust or mortgage on real property located in this State, on or before the day of funding the agent responsible for settlement may require the lender to disburse the loan proceeds as provided in paragraph (1) of this subsection.

(c) Except as provided in subsection (d) of this section, the lender shall disburse the loan proceeds in the form of:

(1) Cash;
(2) Wired funds;
(3) A certified check;
(4) A check issued by a political subdivision or on behalf of a governmental entity;

(5) A teller's check issued by a depository institution and drawn on another depository institution; or

(6) A cashier's check.

(d) In addition to the methods of loan disbursement provided in subsection (c) of this section, the loan proceeds may be disbursed in the form of a check drawn on a financial institution insured by the Federal Deposit Insurance Corporation and located in the 5th Federal Reserve District if the lender is:

(1) An affiliate or subsidiary of a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Share Insurance Program; or

(2) A mortgage company approved by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(e) If a loan subject to this section is not disbursed as provided in subsection (c) of this section, the lender may not charge interest on the loan for the first 30 days following the date of closing.

As a practical matter, title companies prefer to send and receive wired funds. Cashier's check can easily be counterfeited with new printer technology. Cash amounts greater than $2,000 may have to be reported to the government. Regular checks from a buyer or borrower's checking account may take more than a week to clear.

All title companies should exercise caution in providing wiring instructions to their clients, and from sending wires based upon email instructions. There is a substantial cottage industry of international hackers who love to misdirect title company wires into their own bank accounts. Despite all of the efforts of state and national law enforcement to stop these practices, the best thing to do is to contact your clients directly and take sensitive information by telephone.

iv. Loan documents are signed

A typical loan package will include many of the following documents:

- **Borrower's affidavit and certification:**

These include borrower representations that they have disclosed everything to the lender that might affect its decision to make the loan, that no false statements have been made (subject to penalties under federal law), and that the borrower isn't in the process of a divorce or bankruptcy, and further, that borrower hasn't taken out any new debt that might affect their ability to repay the new mortgage loan.

- Borrower Information:

Includes a confirmation of the borrower's address, phone numbers, email address, *etc*.

- Certificate of VA Eligibility:

If a VA loan is involved, this document is signed by the borrower to confirm that they are entitled to a VA-guaranteed loan.

- Compliance Agreement:

This is an optional document provided by the lender which allows the lender and/or title company to correct minor errors in the documents after closing. The lender cannot use this form to change the loan interest rate, change the loan amount, *etc*.

- Affiliated business disclosure:

This disclosure is made for the purposes of compliance with RESPA Section 8 (See Module IV of

the Manual as to federal law). It discloses whether the lender has an ownership or referral relationship with any third party, including real estate professionals or title companies.

- Promissory Note:

The promissory note (sometimes just called the "note") is the legally-enforceable, written promise of the borrower to repay the lender the amount of money lent to him/her at the closing.

- Deed of Trust/Mortgage/Riders:

A deed of trust or mortgage is a "security instrument" signed by the borrower. It permits the lender to take real property as collateral until the sums agreed to in the promissory note have been repaid. These documents are recorded in the county land records. Deeds of trust and mortgages often are accompanied by riders which modify the terms of the security instrument to note special circumstances relating to the loan, such as:

- ✓ The loan is for a 2nd residence;
- ✓ The property is located in a planned unit development and might have HOA dues;
- ✓ Condominium rider
- ✓ Adjustable rate mortgage rider
- ✓ Balloon loans
- ✓ 1-4 family rider

Most deeds of trust and riders are printed in standard formats. For example, state-by-state deed of trust forms may be found at the Fannie Mae website at https://www.fanniemae.com/singlefamily/security-instruments.

- Equal Credit Opportunity Act (ECOA) Disclosure:

Federal law requires creditors to make credit equally available without discrimination based on race, color, religion, national origin, age, sex, marital status, or receipt of income from public assistance programs.

- Escrow Account Disclosure:

Lenders collect funds (sometimes called an "impound account") to collect for future expenses related to the loan. Taxes and homeowner's insurance escrows are common on most new mortgage loans.

First Payment Letter:

- This document notifies the borrower when his/her first payment is due, and how much it will be.

Loan Application, 1003 form:

- This is the initial loan application form, a version of which is signed at the closing as well.

Loan Servicing Disclosure:

- The lender will inform the borrower whether the loan has or may be sold, and who the borrower will have to make their initial loan payments to.

- Occupancy affidavit:

Many loans are made on the basis that the borrower will occupy the property, at least for the first year, as their principal residence. The borrower is asked to reaffirm this at the closing table.

- Privacy Disclosure:

Lenders have their own privacy statement under the Gramm Leach Bliley Act.

- IRS Form (4506):

One of these forms is required for each borrower. It permits the lender to obtain a transcript of taxes for each borrower.

- IRS W-9 Form:

Each borrower fills out this form, which states what their taxpayer identification number is (usually the borrower's social security number). This is used by the lender to prepare 1099 forms for the

borrower, which indicate mortgage interest amounts paid for the calendar year. **Signature Affidavit:**

- The borrower is asked to provide samples of their signature and name variations to the lender.

Maryland Notice of Option to Pay Taxes Semiannually:

- Allows the borrower to elect whether escrow funds for taxes are paid in one sum, or in two installments.

v. A deed is signed

The deed conveys ownership of the property from the seller to the buyer. They come in many varieties, all of which are discussed in greater detail in Module I of this Manual.

vii. Maryland Intake Sheet (MIS)

These forms must accompany any deed, deed of trust, mortgage, assignment deed, easement agreement, or right of way agreement when such documents are presented for recording. The documents will be rejected if no MIS is included, or if the MIS is improperly filled out. The MIS serves to notify the county about whether recordation or transfer taxes should apply to the transaction, and includes detailed information describing the property and the grantor and grantee names.

viii. Title company forms are signed:

- **Owner's affidavit:**

The owner's affidavit includes various representations by the seller which, among other things, assist in clearing the standard exceptions in the title commitment. Issues addressed include:

- ✓ Bankruptcy status;
- ✓ Marital status;
- ✓ No new judgments or liens;
- ✓ Mechanic's liens;
- ✓ No outstanding contracts;
- ✓ Building code violations and permits;
- ✓ Who is in possession of the property;
- ✓ Encroachments;
- ✓ Taxes, water and sewer assessments;
- ✓ Hazardous materials;
- ✓ Access to the property;

- **Certification for No Information Reporting on the Sale or Exchange of Principal Residence**: There is a 4-part test used by IRS to determine whether the property qualifies as a principal residence for the seller. This test includes:
Whether the seller owned and used the property as their principal residence for at least 2 out of the past 5 years;
Whether the seller has sold another principal residence in the last 2 years;
Whether the seller has used any portion of the property for business or rental purposes after May 6 of 1997; and
If the seller is unmarried and the sales price of the property is $250,000 or less; or if the seller is married, and the sales price of the property is for $500,000 or less.

Non-foreign affidavit:
The seller must declare whether they are U.S. citizens, have a green card, or have other status to reside in the United States
Affidavit of consideration (see Module IV of this Manual)

Affidavit of disbursement (see Module IV of this Manual)
Maryland withholding form (see Module IV of this Manual)
First-time Maryland homebuyer statement (see Module IV of this Manual)
Notice to purchase owner's policy of title insurance (see Module IV of this Manual)
FIRPTA notice (see Module IV of this Manual)
GLBA privacy notices (see Module IV of this Manual)

ix. Handling funds/escrow duties

- **Fiduciary Duties:**

  As a general rule, title companies do not "represent" the seller, buyer, or homeowner in as their agent, in the same way that an attorney, a real estate broker, or an accountant does. Title producers should play a neutral role when it comes to disputes between the parties as to contract terms, disbursing disputed earnest money funds, *etc*.

  The role of the title company with respect to lenders differs from the above. Lenders provide title agents with written closing instructions as to how the closing is to be conducted, requirements for disbursing funds, *etc*. Although there may be some argument about whether the acceptance of written closing instructions creates an agency relationship between the lender and the title agency, there is no doubt that it creates contractual obligations that must be adhered to by the agency. In the worst case, the title agency can become obligated to the lender for the full amount of the new loan for failing to follow the precise requirements of the closing instructions.

  One aspect of a title company's function cannot be disputed, however, when it comes to caring for the funds of any party to the transaction held in an escrow account by the title company, the title company owes that party "fiduciary duties" under Maryland Law. This includes the duties of:

  - ✓ Loyalty
  - ✓ Honesty
  - ✓ Confidentiality
  - ✓ Obedience
  - ✓ Compliance
  - ✓ Transparency
  - ✓ Trustworthiness

  In simple terms, the agent is required to act in the best interest of the client where other people's money is concerned!

x. Trust/escrow accounts

Per MD Insurance §22–105, “Trust money” means a deposit, payment, or other money that a person entrusts to a title insurer or its agent to hold for the benefit of a buyer in a real estate transaction or for a beneficial owner, in connection with an escrow, settlement, closing, or title indemnification. In other words, trust funds are funds that do not belong to the title company.

Title companies may pool trust funds from different individuals into one or more trust accounts. For example, Maryland Affordable Housing Trust (MAHT) account funds may be placed into one trust account, and non-MAHT account funds may be placed into another (see Module IV of this Manual as to MAHT account requirements). For non-MAHT account funds, trust funds may also be placed in "any other deposit or investment vehicle" as agreed to by the client and the title company. MD Insurance §22–105(f).

Trust funds in Maryland may only be deposited with a Maryland financial institution, or a financial institution in another state subject to the approval of Maryland's Commissioner of Financial Regulation. MD Insurance §22–105(d).

xi. Operating accounts:

An operating account is a bank account use to fund the title company's core business activities. Funds earned from closings (and ultimately paid from the trust account, once all other trust account funds have been accounted for) may be paid into the operating account to pay for rent, utilities, employee payroll expenses, taxes, *etc*. In other words, the cash flow of the company is accounted for in one or more of its operating accounts.

Prohibition against commingling and defalcations

The term "commingling" means mixing trust funds with operating account or other funds. This makes it difficult to determine which funds belong to the title company and which belong to clients. As such, commingling is a breach of the title company's fiduciary duties.

Maryland Insurance regulations prohibit commingling. COMAR 31-03-02(B)(1) states:

(1) Title insurance producers may not commingle trust money as defined in the Insurance Article, §10-121(a), Annotated Code of Maryland.

According to *Black's Law Dictionary*, "defalcation" is defined as an:

> ."... act of embezzling; failure to meet an obligation; misappropriation of trust funds or money held in any fiduciary capacity; failure to properly account for such funds

In the title insurance industry, there are many, unfortunate examples of individuals who have dipped into trust account funds in order to fund title company operations, or for the personal purposes of the embezzler. This leads to the inability to pay back clients with their own funds, and the almost-certain shut down of the title company by insurance regulators and/or the insurer.

All title professionals should be aware that tampering with client funds can lead to civil and criminal penalties imposed by the Federal Bureau of Investigation and the Maryland Attorney General's office. **Such acts include a very high probability of incarceration and the requirement for restitution.**

xii. Penalties for violation of trust accounting laws and regulations:

Section 10-132 of the insurance law statutes, which deals with violations of trust account laws, says that a title insurance producer that willfully or knowingly violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50,000 or imprisonment not exceeding 1 year or both.

xiii. Escheatment of Funds

Occasionally, money that is held in a trust account is not claimed by its owner(s). This often takes the form of uncashed checks.

In general, property valued at $100 or more is presumed abandoned if the depositor has been given notice by first class mail to their last known mailing address stating that the property will be abandoned if there is no response within 30 days to the notification. Title insurance companies are required to file an annual report by April 30 of each year, detailing the existence of abandoned property for a reporting period equal to January 1 through December 31 of the previous year.

After 3 years, all funds need to be turned over to the Maryland Comptroller's Abandoned Property Office, which will then engage in efforts to find the property's lawful owner(s).

3. Post-Closing Requirements

Although the term "closing" would seem to indicate the end of any requirements for the title company as to any particular property, there are many post-closing functions that still need to take place for most files. These include, among other things:

- Correction of any mistakes in the closing file, including the possible need to redraft the HUD-1 or CD or other documents;
- Sending closing documents back to lender: The lender will require their documents to be overnighted or otherwise sent immediately to them;
- Sending out payoffs: Lenders paid off as part of a closing accumulate interest until their payoff funds are received;
- Send checks to any other parties who did not attend the closing: Examples include payments for a home warranty, appraisal, home inspector, *etc*.;
- MAHT reporting: A yearly MAHT report must be filed with the MIA. See part IV of this Manual for additional details;
- There is a legal obligation under Maryland law to make sure that loans secured by mortgages or deeds of trust that are paid off by the title company are properly released by the lender.
- In a purchase/sale closing, the title company is required to prepare and distribute I.R.S. 1099-S forms on or before January 31 of the year after closing, unless a Certification for No Information Reporting on the Sale or Exchange of Principal Residence is property filled out by the seller.
- Make withholding payments and proper reports to the Maryland Comptroller's office and the I.R.S., if applicable.
- Perhaps the final obligation of the post-closing function is to issue title policies to the owner and/or

lender, assuming short-form policies were not issued at the closing table.

4.Unauthorized Practice of Law in Maryland

What is considered the practice of law in Maryland?

Maryland Business Occupations and Professions, Sec. 10-101(h):

(1) "Practice law" means to engage in any of the following activities:

(i) giving legal advice;

(ii) representing another person before a unit of the State government or of a political subdivision; or

(iii) performing any other service that the Court of Appeals defines as practicing law

(2) "Practice law" includes:

(i) advising in the administration of probate of estate of decedents in an orphans' court of the state

(ii) preparing an instrument that affects title to real estate

(iii) preparing or helping in the preparation of any form or document that is filed in a court or affects a case that is or may be filed in a court; or

(iv) giving advice about a case that is or may be filed in a court.

Note that, by statute, certain deeds may only by prepared by a licensed Maryland attorney, and require an attorney certification in order to be recorded:

MD Real Property §3–104(f)(1):

(ii) A deed other than a mortgage, deed of trust, or an assignment or release of a mortgage or deed of trust may not be recorded unless it bears:

1. The certification of an attorney admitted to the Bar of this State that the instrument has been prepared by the attorney or under the attorney's supervision; or

2. A certification by a party named in the instrument that the instrument was prepared by that party.

(iii) A mortgage, deed of trust, or an assignment or release of a mortgage or deed of trust prepared by any attorney or one of the parties named in the instrument may be recorded without the certification required under subparagraph (ii) of this paragraph.

Title producers who are not licensed attorneys should act with great care to avoid the following:

- Drafting documents which are not a standard part of their usual closing package, such as escrow agreements, ground rent opinion letters, trust opinion letters, pre or post-closing rental agreements, contract amendments, *etc*.;
- Providing advice as to how co-tenants should hold title;
- Dispensing tax advice, bankruptcy advice, estate advice, etc.

Note that it is acceptable for a non-attorney, licensed title producer or TIPIC to conduct real estate

settlements in Maryland.

Comparison to other states:

- Delaware:
  Attorneys are required to be present at real estate settlements, and to review the settlement documents. Determining the legal description of a property and explaining the terms of many legal documents, including the note, mortgage, Planned Unit Development Rider, the Truth-in- Lending Disclosure, and first payment letter also require an attorney. In *re* Mid-Atlantic Settlement Servs., 755 A.2d 389, 2000.
- Georgia:
  A Georgia statute defines "the practice of law" to include conveyancing, preparing legal instruments of all kinds "whereby a legal right is secured," and rendering opinions on the validity of titles to real or personal property. Ga. Code Ann. § 15-19-50. The execution of a deed of conveyance by a non-attorney represents the unauthorized practice of law. In *re* UPL Advisory Opinion 2003-2, 588 S.E.2d 741 (Ga. 2003); UPL Advisory Opinion 2003-02 (2003). It is ethically improper for an attorney to participate in a real estate closing from a remote site by telephone. The Georgia Supreme Court has held that "the lawyer must be in control of the closing process from beginning to end. The supervision of the paralegal must be direct and constant." Formal Advisory Op. No. 00-3 (Feb. 11, 2000).

- Colorado:
  Under Conway-Bogue Realty Inv. Co. *v*. Denver Bar Association, 312 P.2d 998 (1957), it was held that the "preparation of receipts and options, deeds, promissory notes, deeds of trust, mortgages, releases of encumbrances, leases, notice terminating tenancies, demands to pay rent or vacate by completing standard and approved printed forms, coupled with the giving of explanation or advice as to the legal effect thereof…" constitutes the practice of law. However, the Colorado Supreme Court agreed that the use of standardized forms by real estate licensees is acceptable practice in the state. As a practical matter, attorneys are neither present at, draft documents for, nor conduct closings for most closings in Colorado.

MODULE #3: TITLE INSURANCE COMMITMENTS, POLICIES, ENDORSEMENTS, AND RATE CALCULATIONS

1. What is title Insurance?

i. Retroactive contract of indemnity

Title insurance is a contractual relationship between the title insurance underwriter and the public. It is a form of indemnity insurance which protects against financial loss or damage from defects in title to real property because of liens, encumbrances, or defects in the title to the property. It is a retroactive policy of insurance, *i.e*., it insures backwards in time.

Here is the Maryland Insurance Administration's (MIA's) definition of title insurance:

> Title insurance protects real estate purchasers and/or lenders from losses that arise after a real estate settlement, but result from unknown liens, encumbrances or other defects upon the title that existed prior to settlement. Examples of title defects include outstanding property taxes not paid by a previous owner, fraud or forgery of a prior deed or transfer, or a spouse or unknown heir who steps forward to make a claim against the title. If a claim were made, defending the claim could cost thousands of dollars in attorney fees and, if the claim were valid, could even cause you to lose the property itself. A title insurance policy provides coverage for legal defense, as well as the coverage amount listed in the policy, which usually equals the purchase price of the real property.
>
> **Source:**
> ***A Consumer Guide to Title Insurance, Maryland Insurance Administration***

ii. Types of title insurance

There are two primary types of title insurance:

- Owner's Policy of Title Insurance: these protect buyers of residential and commercial property. The insurance contract is between the underwriter and the purchaser.
- Loan Policy of Title Insurance: these protect entities that lend money and take a security interest in real estate through a deed of trust or mortgage. The insurance contract is between the underwriter and the lender.

iii. Comparison to other types of insurance

Title insurance is unique in the following ways:

- Title insurance covers events that have already occurred, and doesn't usually cover events that will happen in the future; and

- Title insurance premiums are paid for only once.

iv. Underwriters and agencies (insurers and producers)

There are 4 large national underwriters that control the vast majority of the title insurance marketplace:

- Fidelity National Title Insurance Company (includes Chicago Title, Ticor Title, Lawyer's Title, Commonwealth Title, Alamo Title, Service Link, *etc*.)
- First American Title Insurance Company
- Old Republic National Title Insurance Group
- Stewart Title Guaranty Co.

About a dozen other national and regional title underwriters make up the remaining 20% of the title insurance marketplace, including, but not limited to:

- WFG National Title Insurance Company
- Attorney's Title
- Westcor Land Title Company
- North American Title Insurance Company
- Title Resources Guaranty Company
- AmTrust Title Insurance Company
- Conestoga Title Insurance Company
- Security Title Guarantee Corporation of Baltimore
- Investors Title Insurance Company

In Maryland, a title underwriter is licensed as a "title insurer," and title agents, whether individuals or companies, are licensed as "title insurance producers." Title insurers can either sell title insurance policies on their own, or appoint local agents to sell and issue insurance policies for them.

v. Agency Agreements:

Title insurance underwriters appoint title insurance agencies by means of an agency agreement. These agreements usually include provisions similar to the following:

- Which states the agent is authorized to do business in;
- The dollar amounts the agent can issue policies on behalf of the underwriter for, without additional permission from the underwriter (e.g., up to $1 million per transaction);
- How to obtain CPLs;
- That the agent is responsible for its own escrow accounts and money-handling related to closings or settlements.

2. ALTA FORMS AND FILED RATES

In Maryland, all insurance companies must possess a certificate of authority from the MIA to conduct insurance business lawfully in the state. Title insurance companies are subject to laws that require them to submit their policy forms and rates for approval by the MIA prior to issuing a policy in

the state.

The title insurance forms permitted for use in Maryland are issued by the American Land Title Association, or ALTA. This includes title commitment forms, owner and loan policies, and title insurance endorsement forms.

Some new title insurance forms were approved by ALTA with an effective date of August 1, 2016. Most other title insurance forms are original or amended 2006 ALTA forms.

Title insurance rates are also filed by insurers with the MIA. New rates cannot be used until formally approved by the MIA.

3. TITLE COMMITMENTS

i. What is a title commitment?

A title commitment (also called a title binder) is an offer to issue one or more title insurance policies. It is a document issued in the pre-closing phase of the transaction by the title company, and sets forth the terms and conditions upon which the polic(ies) will be issued.

In response to a 2013 decision of the MD Court of Appeals in 100 Investment Partnership, *et al*., *v*. Columbia Town Center Title Company, *et al*., Maryland issued new legislation, effective October 1, 2014, which requires that a title commitment must contain the following, printed statement:

> **THIS DOCUMENT CONSTITUTES A STATEMENT OF THE TERMS AND CONDITIONS ON WHICH A TITLE INSURER IS WILLING TO ISSUE A POLICY OF TITLE INSURANCE IF THE TITLE INSURER ACCEPTS THE PREMIUM FOR THE POLICY. IT IS NOT A REPRESENTATION AS TO THE STATE OF TITLE AND IT DOES NOT CONSTITUTE AN ABSTRACT OF TITLE.**

Note that title insurance commitments expire within 6 months in Maryland, unless a closing occurs, or the expiration date has been extended by the title company.

ii. Parts of a title commitment

An ALTA title commitment is made up of various components that make it easier to understand, and provides a uniform method for comparing coverages from different insurers:

Notice or Preamble:
This section states that the commitment is an offer to issue an insurance policy, and that any obligation it creates is made to the proposed insured party only. The commitment is effective only when the names of the proposed insured persons or entities are printed in Schedule A of the title commitment, and the obligation expires 6 months thereafter.

Conditions:
The conditions section starts with definitions of terms, including the following:
Knowledge: means actual or imputed knowledge;
Land: includes land and improvements as described in Schedule A that constitute real property only (personal property is not insured);
Mortgage: includes a mortgage or deed of trust;

Policy: a contract of title insurance;
Policy amount: as stated in Schedule A of the commitment.
This section also notes that the commitment requirements must be met within the 6-month period after issuing the title commitment, and that the company has the right to amend the commitment, if necessary.

The conditions section also notes the obvious: only the "proposed insured" person or entity may make a claim under the commitment. Once the policy is issued, the insurer's obligation ends, and the insurer's only obligation to the insured person is found in the title insurance policy.

Schedule A
Schedule A includes the following provisions:

Part 1: The effective date: This is the date before which the information in the title commitment is valid. Events that occur, and documents filed after this date, are not addressed in the title commitment[
Part 2: Policies to be issued: States the name(s) of the proposed insured(s), and the dollar amount(s) of coverage that is offered to each party;
Part 3: Vesting: Lets you know who owns the property now;
Part 4: Description of the land: Precisely identifies the property, which includes a legal description and the jurisdiction where the property is located.
Schedule B, Section 1, Requirements

Schedule B, Section 1, Requirements

The "Requirements" section lists things that need to be completed, prior to closing, in order for the insurer to become obligated to issue a title policy. Some standard requirements might include:

The release and satisfaction of one or more mortgages or deeds of trust;
Recordation of a new deed to convey title from seller(s) to buyer(s) in a purchase/sale transaction;
Execution and recordation of one or more mortgages or deeds of trust, with special instructions on how to close out a HELOC loan (the account must be shut down and the lien must be satisfied);
Proof of identity must be obtained for all parties signing documents;
Pro-ration and payment of real property or other taxes;
Pro-ration and payment of HOA/condominium dues, if applicable;
Pro-ration and payment of front foot benefit charges, if applicable;
Confirmation of Maryland residency; *etc.*

If there are unusual circumstances surrounding the transaction, the title company may set forth additional requirements. Examples of unusual circumstances might include:

Deed of trust foreclosure;
Mortgage foreclosure;
Divorce;
When personal representatives of an estate are involved;
Transactions involving corporations, LLCs, or other business entities;
Transactions involving trusts;
Where one or more parties has filed a bankruptcy.

Schedule B, Section 2, Exceptions

Exceptions to title are things for which no insurance coverage is provided by the title insurer. In other words, title is taken "subject to" the existence of the exceptions listed in this part of the title commitment.

Exceptions listed in the title commitment will also be listed in the title policy, unless the insurer agrees to a method in which they can be deleted. Examples of common title exceptions include:

Recorded easements or rights of way;
Recorded covenants, conditions and restrictions;
Recorded agreements with utility providers (phone, water, sewer, gas, *etc*.)

There are an infinite number of possible exceptions that may be recorded against title to any given property.

There are also some "standard exceptions" that are often pre-printed in Schedule B-2, most of which can be deleted from the final policy if the property owner/seller signs an "owner's affidavit" at the time of closing. These include:

Real property tax exception: These are a continuing lien on the property, and are usually superior to any other lien;
Mechanic's lien exception: Persons who provide labor or materials that benefit real property may have the legal right to file a lien against the property if they are not paid;
Survey exception: This exception is to encroachments, easements, or violations of building setbacks. Upon receipt of a signed owner's affidavit, the exception can usually be deleted on lot-and-block legal description real property for the lender, either with or without a survey being done. However, many insurers are hesitant to delete this exception for buyers without a boundary survey, and you may still require underwriter approval even where a boundary survey exists. Whether for an owner's policy or a lender's policy, all known survey problems should be listed as separate exceptions in Schedule B-2.
Exception for parties in possession: this exception speaks to the possibility that tenants or squatters may occupy the property. The owner must verify in the owner's affidavit that this is not the case in order to delete this exception in the final policy.
Unrecorded roadways, streams, or easements: This only applies to roads, streams, or easements that are not shown in the public records. Once again, this exception can be deleted upon the receipt of a proper owner's affidavit.

4. TYPES OF TITLE INSURANCE POLICIES

i. A Comparison Between Owner's Policies and Loan Policies:

- Owner's policy:
  - This policy only protects the property owner;
  - It is a contract between the property owner and the title insurer;
  - It is paid for by the owner once at the time of closing;
  - As a rule, the policy cannot be transferred to another person or entity;
  - The policy amount will be the sales price of the property;
  - Assures the owner that he/she/it owns the property, and that title to the property is merchantable;
  - The cost is established by filed rates with the MIA; different rates may not be charged;
  - So long as property values have not dropped since the policy was written, the amount of liability to the title insurer remains the same, *i.e*., the amount of the policy.
- Loan policies:
  - Protects persons or entities that loan money on the property by assuring them that their lien will be in "first position;"

- It is a contract between the insurer and the lender;
- It is paid for once by the owner at the time of closing;
- The cost is established by filed rates with the MIA. Different rates may not be charged;
- The amount of insurance is usually the new loan amount;
- The amount of insurance liability to the insurer drops over time, as the loan amount gets paid down.
- The insured party can change every time the loan is assigned or transferred to another entity, without causing the policy to terminate.

ii. Fee simple *v.* leasehold policies

Maryland has more than 100,000 leasehold (*i.e.*, ground rent) properties.

Although most owner's and lender's policies are for fee simple property, it is possible to obtain title insurance for leasehold properties, both for a lender and for a buyer. These are commonly known as "leasehold policies." As with fee simple properties, leasehold owner's policies can be insured for the value of the leasehold assignment, and loan policies can be issued for the value of the new mortgage or deed of trust.

Unfortunately, not all lenders understand Maryland ground rents. It may take some effort to explain this to a non-Maryland lender over the course of your title insurance career.

iii. Short-form policies

Short form policies exit for both owner's policies and loan policies. However, they are mostly used for the latter, and only for residential properties.

The need for short-form policies came about because lenders needed a way to speed up the process of obtaining loan policies. This is because, in order to issue a standard title insurance policy, it is necessary to wait until the appropriate documents (*i.e.*, the deed, deed of trust, and/or the mortgage) have been recorded. Depending upon the Maryland jurisdiction involved, this could take several weeks or months to occur.

A short-form policy shortens the delivery process because short form policies can be issued at the closing table. Short-form policies include pre-printed exceptions acceptable to most lenders, and has blanks that can be checked off in order to issue the most commonly-requested title endorsements.

More importantly, a short-form policy's effective date can be the date of the closing, or the date of the insured mortgage, whichever is later. This provision allows the lender to get a policy immediately, and lets them transfer the loan without waiting for several weeks or months for the title policy to arrive.

Short-form policies do not require an added premium in Maryland.

iv. An Analysis of a Standard Owner's Policy for Title Insurance

The ALTA owner's policy of title insurance includes the following sections:

- Preamble
- Covered Risks
- Exclusions from Coverage
- Conditions
- Exclusions
- Schedule A
- Schedule B

Each section is discussed below.

Preamble:

The preamble lets the insured know who the title insurer is, includes the effective date of the policy, and shows the dollar limits of the policy. Most importantly, it states that the insured party must establish an actual loss under the policy.

Covered risks:

Here are the risks covered by a standard owner's policy of title insurance:

1. Title being vested other than as stated in Schedule A.

Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from

2. A defect in the Title caused by
   - forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
   -failure of any person or Entity to have authorized a transfer or conveyance;
   a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
   - failure to perform those acts necessary to create a document by electronic means authorized by law;
   - a document executed under a falsified, expired, or otherwise invalid power of attorney;
   - a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
   - a defective judicial or administrative proceeding.

The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.

Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

3. Unmarketable Title.

4. No right of access to and from the land.

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
the occupancy, use, or enjoyment of the Land;
the character, dimensions, or location of any improvement erected on the Land;
the subdivision of land; or
environmental protection if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

9. Title being vested other than as stated in Schedule A or being defective as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records to be timely, or to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company also will pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

These most important covered risks can be summarized as follows:

Title being vested in the wrong person or entity;
Unexpected liens or encumbrances affecting title;
Unmarketable title;
Inability to access the land.

As for item #3, "marketable title" is a requirement in most residential real estate contracts. It is not a requirement that title be free and clear of all liens and encumbrances. It does mean, however, that the purchaser is entitled to purchase and hold the property in peace, and, when he wishes to sell it, no flaw in title shall disturb its market value. As stated in the Zulver Realty Co. *v*. Snyder case, 191 Md.374, 62 A.2d 276 (1948):

Objections based on frivolous and captious niceties are not sufficient. In other words, a marketable title is one which a reasonable purchaser, who is well informed as to the facts and their legal bearings, and ready

and willing to perform his contract, would be willing to accept in the exercise of that prudence which business men ordinarily use in such transactions.

As for item #4, note that physical access to the property is not required. Instead, a legal right to access the property will usually suffice (this is determined on a case-by-case basis). Under certain circumstances, access by waterway may be sufficient to meet this requirement.

Exclusions from coverage:
Owner's policy exclusions are things for which insurance coverage is not available. In other words, the insurer has no liability for these things. Exclusions in the standard owner's policy of title insurance include:

1. Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
the occupancy, use, or enjoyment of the Land;
the character, dimensions, or location of any improvement erected on the Land;
the subdivision of land; or
environmental protection;
or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters
created, suffered, assumed, or agreed to by the Insured Claimant;
not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
resulting in no loss or damage to the Insured Claimant;
attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
a fraudulent conveyance or fraudulent transfer; or
a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date

Of all of the exclusions listed in the owner's policy of title insurance, items 3(a), 3(b), 3(c) and 3(e) are probably the most important:

Exclusion 3(a): The title insurer has no liability to the insured party for title problems (defects, liens, encumbrances, adverse claims, or other matters) caused by the insured person(s) or entities. An example of this exclusion would be a judgment against the insured that existed prior to purchasing the property. The insured cannot realistically expect the title insurer to protect the insured from himself.
Exclusion 3(b): If the insured knew there was a problem with the transaction, and failed to disclose it to the

underwriter, in writing, the matter will be excluded from coverage. For example, if the buyer of a property knew that a deed in the chain of title was forged, the buyer will have no remedy for this problem at a later date.
Exclusion 3(c): Ultimately, there must be a loss to the insured party in order for a claim to succeed under the policy. For example, assume the property owner obtained survey coverage in his policy, and later discovers that his neighbor's fence crosses his property line by 12 inches along a strip 50 feet long. If the property owner cannot establish, by means of an appraisal, that his property has lost value as a result of this encroachment, there will be no remedy for the improper fence line.
Exclusion 3(e): The failure to pay value for the property can lead to loss or damage to the property, for which the insurer may not be liable. This is a reference to "*bona fide* purchaser" status in Maryland, which may protect a buyer who doesn't have knowledge of certain defects, liens, or encumbrances from third party claims.

4. Conditions:
The conditions section of an ALTA owner's policy can be found starting on page__of this workbook. Here are important parts of this section:

Definitions of terms used in the policy: Of all of the terms defined, the term "Insured" is one of the most important. As a general rule, owner's policies are no longer valid when the property is conveyed to someone else. The term "Insured" includes:
successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
successors to an Insured by its conversion to another kind of Entity;
a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
if the stock, shares, memberships, or other equity interests of the grantee are wholly- owned by the named Insured,
if the grantee wholly owns the named Insured,
if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
Continuation of insurance: states that the policy remains in effect as long as the insured owns the land.
Notice of claim to be given by insured claimant: There is a duty on the insured party to let the insurer know, in a prompt fashion, about any possible claims that might affect title. Delays in reporting possible claims can increase the claim amount to the insurer, who has a right to reject coverage as a result.
Proof of Loss: If the insurer cannot determine the amount of loss or damage to the insured party, it may require the insured party to furnish a signed proof of loss form, including a method of calculating the loss.
Defense and Prosecution of Actions: Upon a request by the insured, the insurer may initiate and pursue litigation in order to clear title. This includes the right to appeal a lower court decision.
Duty of Insured Claimant to Cooperate: The insured is obligated under the owner's policy to cooperate with the insurer and provide reasonable aid in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. The insurer is obligated to pay expenses to the insured for all of the above.
Options to pay of otherwise settle claims: termination of liability: It is very important to understand that the insurer has two options under the owner's policy of title insurance, in the event of a valid claim:
To pay the insured the amount of insurance under the policy, including costs and attorney's fees; or
To pay or settle the claim in the name of the insured, including any costs and attorney's fees incurred by the insured that were authorized by the insurer.
In other words, title insurance is a retroactive policy of indemnity, and not a guarantee that you will get to keep the property.

Limitation of Liability: The insurer's obligation under the contract is either to remove the defect, lien, or encumbrance, or to litigate the matter through all appeals. If the insured attempts to settle the claim itself, the insurer has no liability to the insured.

Reduction of insurance; Reduction or termination of liability: All payments made by the insurer under the owner's policy, except for costs, attorney's fees, and expenses, reduce the amount of insurance remaining under the policy.

Payment of loss: The insurer is obligated to make payment of any losses within 30 days of when they occur.

Rights of recover upon payment or settlement: The insurer has rights of subrogation (the ability to pursue claims in the name of the insured party) in the event of a payout to the insured.

Notices, where sent: Tells the insured where claims should be sent.

5. Schedule A:

Schedule A in the owner's policy of title insurance serves essentially the same purpose as Schedule A in the title commitment, except for the following:

A policy number is included;

The final amount of insurance is clearly stated;

The date of the policy (which is the date the deed and/or deed of trust or mortgage was recorded) replaces the date of the title commitment, which is the date the search was valid through.

6. Schedule B:

Unlike title commitments, which include a separate Schedule B, Section 1, Requirements, and Schedule B, Section 2, Exceptions, there is only a single Schedule B in an owner's policy of title insurance, which includes all exceptions to title.

v. Analysis of ALTA Loan policy of title insurance

The ALTA loan policy of title insurance includes the following sections:

Preamble
Covered Risks
Exclusions from Coverage
Conditions
Exclusions
Schedule A
Schedule B

Preamble:

The preamble lets the insured know who the title insurer is, includes the effective date of the policy, and shows what the dollar limits of the policy . Most importantly, it states that the insured party must establish an actual loss under the policy.

Covered risks:

Covered risks #1 through #9 of the loan policy of title insurance are identical to Covered risks #1 through #9 in the owner's policy of title insurance. The remaining covered risks, as set forth below, are different because the insured party is a lender and not the owner of the property. Here are the covered risks that are unique to a loan policy of title insurance:

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.

11. The lack of priority of the lien of the Insured Mortgage upon the Title

(a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either

(i) contracted for or commenced on or before Date of Policy; or

(ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and

(b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.

13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title

(a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

(b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

(i) to be timely, or

(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

Note that the primary concern of lenders is that their new deed of trust or mortgage take priority over any other lien or encumbrance. That is the reason covered risks #10 - #14 read differently on a loan policy than on an owner's policy.

Exclusions from coverage:

Many of the exclusions from coverage in a loan policy are identical to those found in an Owner's policy. Specifically, loan policy exclusions 1, 2, 3, and 7 are the same as owner's policy exclusions 1, 2, 3, and 5.

Specific exclusions for the loan policy include the following:

Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.

Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.

Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is

a fraudulent conveyance or fraudulent transfer, or

a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.

These exclusions deal with the lender not being licensed to do business in the state in which the property is

located, and lenders who charge usurious rates.

Conditions:
The conditions section of an ALTA loan policy can be found starting on page_____of this workbook.

Section 1 of the conditions section includes one of the most important portions of the loan policy of title insurance, i.e., the definition of the term "Insured." It reads as follows:

(e)"Insured": The Insured named in Schedule A.
(i)The term "Insured" also includes
(A)the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;
(B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
(C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
(D) successors to an Insured by its conversion to another kind of Entity;
(E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly- owned by the named Insured,
(2) if the grantee wholly owns the named Insured, or
(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;
(F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;
(ii) With regard to (A), (B), (C), (D) , and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

It is crucial to understand that, unlike owners' policies, which terminate in most cases when the property is transferred to a third party, loan policies specifically remain active when the loan is transferred to "each successor in ownership of the indebtedness."

Since the U.S. mortgage market depends upon the free transferability of mortgage indebtedness, loan policies have recognized this fundamental fact of the marketplace.

The remaining conditions in a loan policy closely parallel those in an owner's policy of title insurance.

Schedule A:
Schedule A of the loan policy of title insurance includes all of the components found in Schedule A of the owner's policy, but includes the following provisions:

4. The Insured Mortgage and its assignments, if any, are described as follows:

The priority of the new loan as the primary concern of a loan policy is demonstrated here.

Schedule B:
Schedule B of the loan policy serves the same purpose as Schedule B in an owner's policy, except that includes a Schedule B, Part II, which reads as follows:

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:

This language is included in the loan policy to recognize the possibility that junior financing is in place against the property. This can occur where the buyer or borrower takes out a 1st and 2nd deed of trust or mortgage, or where one of the borrower's existing deeds of trust or mortgage has been subordinated.

vi. Enhanced *v.* standard title insurance policies

Enhanced title insurance policies exist for owners and for lenders, and there are ALTA forms for each. However, it is far more common for most title producers to interact with enhanced owner's policies. Note that it is optional for either a buyer or a lender to obtain an enhanced policy, and that additional premiums apply.

The original enhanced owner's policy was created in 1997 by First American Title Insurance Company, and was called the "Eagle Policy." It provided more coverages than the standard owner's policy of title insurance.

Sensing the success of the Eagle Policy, the American Land Title Association (ALTA) introduced the ALTA Homeowner's Policy of Title Insurance in 1998. Most Maryland title insurers now offer the ALTA Homeowner's policies. Some of the highlights of an ALTA Homeowner's policy include:

- It insures for certain events that happen after the date of the policy;
- Insurance for the buyer lasts forever, even if the borrower isn't in title to the property;
- It covers certain transferees of the property when the property is conveyed to them after the date of the policy;
- The policy increases in value after closing;
- It covers unrecorded easements;
- It insures that there is actual vehicular and pedestrian access to the property, based upon a legal right (and not just legal access to the property).

Due to the increased coverages provided, as well as the additional premium received by title companies, Homeowner's policies are now commonplace in the marketplace, and often make up the majority of owner's insurance policies issued in many parts of Maryland.

5. ENDORSEMENTS

i. What are endorsements?

Endorsements are documents (usually 1-2 pages long) that amend an insurance policy. The amendments can modify the policy in one of the following ways:

- Eliminate exceptions;
- Extend coverages provided to the insured;
- Provide affirmative coverage for unique issues such as lot line adjustments, etc.

Maryland title insurers file endorsements with MIA, and these must be approved for use. ALTA has forms for dozens of situations which occur routinely in residential and commercial real property transactions. Some endorsements are meant for owners or lenders only; others may be provided to both.

Leeway is also provided to title insurers to draft endorsements on a case-by-case basis, where the ALTA forms may not apply. There can be additional charges to the insured where this is necessary.

Otherwise, most Maryland title insurers do not charge for standard ALTA endorsements.

ii. Common residential endorsements:

- ALTA 4-06, Condominium: Insures that the unit described in Schedule A and its common elements are part of a condominium;
- ALTA 5-06, PUD: Insures against present violations of any restrictive covenants;
- ALTA 8.1-06 or 8.2-06, Environmental Liens:
- ALTA 13-06, Leasehold: This protects lenders against losses by reason of lack of priority of the insured mortgage over environmental protection liens.
- ALTA 32-06 and 33-06, Construction Loans: These endorsements protect a lender during the loan construction process against mechanic's liens that may be filed against the property. They insure that the new loan takes priority over any lien for unfinished work or materials that have been used on the project.

iii. Commercial endorsements:

There are dozens of commercial endorsements, which cover everything from zoning to construction loan issues, specialized financing, surveys, and usury. A complete list of ALTA endorsement forms can be found here:

https://www.alta.org/policy-forms/

iv. Mineral Rights:

Although not common in metropolitan areas in Maryland, the right to drill for or explore sub-surface areas of the property for gas or minerals may be retained by a prior owner of the property. This is especially true with the new fracking technology in more mountainous areas of western Maryland.

Endorsements may be purchased by a buyer and a lender to the property to cover against the risks associated with reservations of mineral rights in any particular parcel of land.

6. TITLE INSURANCE RATES

i. How rates are filed:

The costs of title insurance premiums are regulated in Maryland. Insurers must obtain approval, in advance, for their title insurance premiums. Each insurer can file its own premiums, which vary from those of other underwriters who also do business in Maryland. These premiums are published in the form of "rate manuals" that can be used by agents and the public to determine costs of title insurance.

In actual practice, rates filed by title insurers in Maryland tend to be very similar, and within a few percent of each other.

Although it seems to go against common sense, the MIA wants Maryland insurers to file rates that include a reasonable margin for profit and contingencies. As a rule, however, rates may not discriminate unfairly between risks and involve essentially to the same hazards and expense elements: Here is the statute on Maryland rates:

§11–402.

(a) All title insurance rates shall be made in accordance with this section

(b) Rates shall be reasonable and adequate for the class of risks to which they apply.

(c) Rates may not discriminate unfairly between risks that involve essentially the same hazards and expense elements.

(d) Due consideration shall be given to:

(1) past and prospective loss experience within and outside the State;
(2) a reasonable margin for profit and contingencies;
(3) the cost of participating insurance;
(4) the percentage to be allocated to reserve;
(5) operating expenses; and
(6) all other relevant factors fairly attributable to the business of title insurance.

(e) (1) Guarantees may be grouped by classifications for the establishment of rates and minimum premiums.

(2) A special or unusual guarantee that is more hazardous to the title insurer than ordinary title guarantees because of an alleged irregularity or a difference in interpretation or application of law that might affect marketability of title, may be classified individually and separately according to the circumstances peculiar to each case.

ii. Closing costs are not regulated:

Unlike title insurance premiums, the costs of performing closings, and other title company charges that may be charged to a buyer, seller, or borrower, are not directly regulated. This includes charges such as:

- abstracts;
- attorney fees;
- surveys;
- title examinations;
- preparing documents;
- obtaining payoffs, *etc*.

This is a different approach from that in many other states, which regulate premiums charged and all other charges related to the closing. Examples of such states include Pennsylvania and Colorado.

iii. How rates are calculated:

NOTE OF CAUTION: ALL RATES QUOTED BELOW ARE FICTITIOUS, AND DO NOT REPRESENT THE ACTUAL RATES OF ANY TITLE INSURER. THEY ARE PROVIDED FOR EDUCATIONAL PURPOSES ONLY!

There are various methods of calculating title insurance rates.

i. Standard rates:

Standard rates apply to the ALTA Owner's Policy of Title Insurance, the ALTA Loan Policy of Title Insurance, and any applicable title insurance endorsements. For buyers, the rate will usually be based upon the purchase price of the property. For borrowers, the rate will be based upon the new loan amount.

Separate rates are filed for owner's policies and loan policies. For each type of policy, there will be a minimum charge stated, depending upon the dollar amount of insurance desired.

Most insurers file rates with a minimum charge per transaction (*e.g*., $150.00), but thereafter calculated by "X dollars per thousand."

Example: Owner's policy of title insurance
Minimum charge of $150.00
Up to $250,000 of liability written, $2.50 per thousand
Over $250,000 and up to $500,000, add $2.00 per thousand,
add Over $500,000 and up to $750,000, add $1.80 per
thousand, Over $750,000, add $1.60 per thousand.

In this example, a new house being purchased for cash for $652,000 would require a premium calculated as follows:

- $625.00 for the cost between $0 and $250,000 of coverage;
- $500.00 for the cost between $251,000 and $500,000 of coverage;
- $273.60 for the cost between $501,000 and $652,000 of coverage

Total cost for this owner's policy: $1,398.60.

Note that rates for loan policies tend to cost less than for owner's policies. Although there is no hard and fast rule to compare charges between the two, it would not be uncommon for a loan policy to cost 25% less than an owner's policy for the same amount of coverage. The reason for this is simple: the risks taken on an owner's policy far exceed those taken for a lender.

iv. Simultaneous issue rates

For purchase transactions, it may be necessary to issue an owner's policy to the buyer, and a lender's policy for the lender. In such cases, the lender's policy will be deeply discounted as a result of something called a "simultaneous rate," *i.e*., issuance of an owner's policy and a loan policy from the same transaction and at the same time.

Let's take the example of the $652,000 house purchased above. Assume that the lender has given the borrower a new loan for $550,000. Assume also that the loan policy premium for the loan only would have been $886.00. However, the lender in this example has filed a simultaneous loan rate of $200.00. Therefore, the total title premiums charged by the title company would be:

- Owner's policy: $1,398.60
- Lender's policy: $200.00 Total: $1,598.60

That results in a savings to the buyer (who usually pays all title premiums on a purchase in Maryland) of $686.00.

v. Enhanced rates

Most title insurers offer rates for an ALTA Homeowner's Policy of Title Insurance for an additional premium of approximately 20% of the "basic rate" charged for a standard owner's policy of title insurance.

Example: - A standard owner's policy of title insurance for a $652,000 costs $1,399.60.

- A Homeowner's policy of title insurance for $652,000 for the same property costs $1,679.63.

vi. Reissue rates

A "reissue rate" is a discounted rate for property that was either:

- Previously insured by the new title company; or
- Previously insured by another title company, but accepted by the new title company

The precise terms of the reissue rate will be set forth in each insurer's rate manual. Some title

insurers limit the availability of reissue rates to certain types of tile insurance (refinances only, etc.), and for certain periods of time:

Example: A discount of 40% from the standard loan insurance premium shall be given to any property with an insured first mortgage less than 10 years old.

Note that reissue rates are the only "legal" discount that may be given on title insurance in the State of Maryland.

vii. Rates for mortgage modifications and extensions

Most lenders have a special rate when a loan that they have already insured is modified or extended. These rates take into account whether the policy date is extended, and whether the insured loan amount is increased.

Example: An original $1,000,000 loan with a policy date of June 1, 2017 is issued. The lender modifies the loan to $1,500,000, and wants the policy date to be brought current. The lender is charged a rate based upon the $500,000 increase in loan amount, and is charged an additional $1,000 for extending the policy date to June 1, 2018.

7. CONCEPTS FOR TEST REVIEW:

The newest State of MD title insurance exam tests heavily on basic title insurance concepts. You will be asked, in particular, what sorts of claims are covered under a title insurance policy, and for a list things that a title insurance policy will not cover.

i. CLAIMS THAT ARE COVERED UNDER A STANDARD OWNERS POLICY OF TITLE INSURANCE AND A STANDARD LOAN POLICY OF TITLE INSURANCE:

a. General items:
1. Title being vested other than in the expected owner of the property;
2. Forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation
3. Failure of a person or entity to have authority to convey the property;
4. Documents that are not properly created, executed (signed), witnessed, sealed, acknowledged, notarized or delivered;
5. Documents signed under a falsified, expired, or otherwise invalid power of attorney;
6. Documents that are not properly filed, recorded, or indexed in the public records;
7. A defective judicial or administrative proceeding
8. Taxes that are due and payable, but have been left unpaid by the title company;
9. Encroachments, that could have been disclosed by an accurate survey (this means a survey was done for the property and was done incorrectly);

b. Unmarketable title

c. No right of access to and from the land

d. Violation of any enforcement of any law, permit or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:

- The occupancy, use or enjoyment of the land;

- The character, dimensions, or location of any improvement erected on the land;
- The subdivision of the land;
- Environmental protection (if a notice has been recorded setting forth the violation or intention to enforce it)

But only if a notice relating to the items in d. above is recorded in the public records.

e. Police powers, if an enforcement action has been recorded in the public records;

f. Eminent domain, if a notice has been recorded in the public records;

ii. ADDITIONAL CLAIMS THAT ARE COVERED UNDER A LOAN POLICY ONLY:

a. Invalidity or unenforceability of the mortgage upon title to the property;
b. Lack of priority of the mortgage over any other lien or encumbrance (i.e., the mortgage is in "first lien position")

c. Lack of priority of the mortgage over mechanic's liens;

d. Invalidity or unenforceabilty of an assignment of the mortgage

iii. EXCLUSIONS FROM COVERAGE UNDER A TITLE INSURANCE POLICY:

Note: you must know the difference between claims that are completely **excluded from coverage** under a title insurance policy (i.e., generic categories of items that are not covered under the policy), and things that are known to the title company and are disclosed to you as **exceptions to coverage**. Examples of common exceptions are taxes charged after the date of the policy, easements, and covenants, conditions and restrictions.

Excluded items:

a. Any law, ordinance, permit, or government regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to:
- The occupancy, use or enjoyment of the land;
- The character, dimensions, or location of any improvement erected on the land;
- The subdivision of the land;
- Environmental protection (if a notice has been recorded setting forth the violation or intention to enforce it)

b. Any governmental police power;

c. Rights of eminent domain;

d. Defects, liens, encumbrances, adverse claims, or other matters created, suffered, assumed or agreed to by the policy holder (e.g., the policy holder make these things happen).

NOTE: The difference between what I mention in section II.d., e. and f. above and those items listed in section III.a., b. and c. above is that notice was given in the public record for the Section II items, and not for the Section III items

Remember that, as a general rule, title insurance doesn't cover claims for things that aren't recorded in the public records. The exception are those items such as forgery, fraud, incompetency, incapacity, etc. found in section I.a. above.

iv. SOME COMMON THINGS TITLE INSURANCE DOES NOT PROVIDE COVERAGE FOR, UNLESS YOU GET AN ENDORSEMENT OR PAY FOR ADDED COVERAGE FOR THESE SPECIFIC THINGS:

1. How a property is zoned and the purposes for which the property can be used (e.g., residential, industrial, agricultural etc.)
2. Square footage of the property;
3. Whether the property fits within its boundary lines;
4. Actual access to the property (remember that a standard policy only guarantees legal access to the property);
5. Property taxes which are not due after the date of the policy;
6. Claims for things that happen after the date of the policy;
7. Fence line problems or encroachments (unless you purchase a survey and the survey exception is deleted from your policy).

MODULE #4: STATE LAWS AND REGULATIONS

PART I: Maryland Laws:

1. ROLE OF THE MARYLAND INSURANCE ADMINISTRATION (MIA)

i. What is title insurance?

Maryland Insurance §1–101

(qq) "Title insurance" means insurance of owners of property or other persons that have an interest in the property against loss by encumbrance, defective title, invalidity of title, or adverse claim to title.

ii. Title insurance is a regulated business

The insurance industry (of which title insurance is a part), is a regulated industry in Maryland. This means that licensing is required for certain persons and entities who engage in the title insurance business.

The Maryland Insurance Administration (MIA) oversees Maryland's title insurance industry. The primary goal of the MIA is to protect consumers by enforcing laws and regulations pertaining to title insurance. Since title insurance providers collect and disburse funds from the purchase and sale of real property, there is a special emphasis on auditing the financial aspects of real estate transactions to make sure everything is done in accordance with the law. Unfortunately, there has been a history of bad actors occasionally embezzling from trust account funds in Maryland.

The MIA is headed by the Maryland Insurance Commissioner, who is appointed by the Governor. The Commissioner can impose fines and other punishments for violations of Maryland insurance law.

MD Insurance §2–101.

a)
(1) There is a Maryland Insurance Administration.
(2) The Administration is an independent unit of the State government.

(b) The head of the Administration is the Maryland Insurance Commissioner.

(c) The Commissioner shall control and supervise the Administration.

For the past 20+ years, business entities and individuals with certain job functions have been required to obtain a "title insurance producer" license in order to do business in Maryland. Bonding requirements also apply (see below for bonding details).

Further, Maryland law requires "title insurers" (the term used for title insurance underwriters) to appoint, oversee and audit their agents, and report possible violations of insurance law to the MIA. Here is the portion of the statute which requires a yearly audit by the title insurer:

Maryland Insurance §10–121

(k)(1)

(i) Except as provided in paragraph (5) of this subsection, the title insurer shall during each calendar year conduct an on–site review of the underwriting, claims, and escrow practices of each title insurance producer appointed by the insurer as a principal agent as designated in the title insurance agency contract between the insurer and the producer.

(ii) The on–site review shall include a review of the title insurance producer's or agency's policy blank inventory and processing operations.

(iii) If the title insurance producer or agency does not maintain separate bank or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance producer or agency.

(iv) Subject to the requirement under paragraph (3) of this subsection to report suspected violations that the title insurer has reasonable cause to believe have occurred, if the title insurance producer or title agency holds an appointment with more than one title insurer, the title insurer may limit its review to files, separately held accounts, and written documentation relating to its title insurance policies.

(2) A written report setting forth the results of the on–site review shall be prepared by the title insurer and is subject to examination under § 2–205 of this article.

(3) If, as a result of the examination, a title insurer has reasonable cause to believe that a title insurance producer or agency has engaged in any of the prohibited activities set forth in § 10–126 of this subtitle, the title insurer shall report in writing the suspected violation to the Commissioner and submit a copy of the examination.

(4) The examination required under this section is in addition to any examination conducted by the Commissioner to determine compliance with the accounts maintained for the benefit of the Maryland Affordable Housing Trust under § 22–105 of this article.

(5) The title insurer is not required to perform the on–site review of a title insurance producer for the calendar year during which the title insurance producer is initially appointed if the appointment is made on or after June 30 of that calendar year.

iii. Underwriter Reserve Requirements

Title insurance underwriters that do business in Maryland must maintain adequate "reserves" to pay claims. This is especially true to make sure that in the event of a catastrophic event where a large percentage of policyholders are affected, there would be enough money to pay all claims. To determine reserve requirements, each state considers factors such as the number of policyholders in the state, the amount of their potential benefits and the amount of revenue generated. Reserve requirements in the ballpark of 10% of total premiums earned in the state is about the national average, although it can be higher or lower.

2. TITLE INSURANCE LICENSING REQUIREMENTS

i. Individuals and entitles both require licensing:

Individuals:

MD Insurance §10–103(c):

Except as otherwise provided in this article, before a person acts as an insurance producer in the State, the person must obtain:

(3) a license in the kind or subdivision of insurance for which the person intends to act

as an insurance producer; and

(4) if acting for an insurer, an appointment from the insurer.

Entities:

MD Insurance §10–103(e):

Before a business entity may accept in its own name compensation for acting as an insurance producer in the State, the business entity must obtain:

(1) a license in the kind or subdivision of insurance for which the business entity intends to act as an insurance producer; and

(2) an appointment for the kind or subdivision of insurance for which it intends to act as an insurance producer on behalf of an insurer

ii. Who is eligible to obtain and keep a title insurance license?

General requirements:

MD Insurance §10–104:

(b) To qualify for a license to which this section applies, an individual applicant must meet the requirements of this section.

(c) An applicant must be of good character and trustworthy based on the standards of § 10-126 of this subtitle.

(d) An applicant must be at least 18 years of age.

(e) An applicant may not have committed any act that the Commissioner finds would warrant denial of a license under § 10-126 of this subtitle.

- **Factors that may make you ineligible for obtaining or keeping a title insurance license:**

MD Insurance §10–126:

(a) The Commissioner may deny a license to an applicant under §§ 2210 through 2214 of this article, or suspend, revoke, or refuse to renew or reinstate a license after notice and opportunity for hearing under §§ 2210 through 2214 of this article if the applicant or holder of the license:

(1) has willfully violated this article or another law of the State that relates to insurance;

(2) has intentionally misrepresented or concealed a material fact in the application for a license;

(3) has obtained or attempted to obtain a license by misrepresentation, concealment, or other fraud;

(4) has misappropriated, converted, or unlawfully withheld money belonging to an insurer, insurance producer, beneficiary, or insured;

(5) has willfully and materially misrepresented the provisions of a policy;

(6) has committed fraudulent or dishonest practices in the insurance business;

(7) has participated, with or without the knowledge of an insurer, in selling motor vehicle insurance without an actual intent to sell the insurance, as evidenced by a persistent pattern of filing certificates of insurance together with or closely followed by cancellation notices for the insurance;

(8) has been convicted by final judgment in any state or federal court of a felony or crime involving moral turpitude;

(9) has knowingly participated in writing or issuing substantial overinsurance of property

insurance risks;

(10) has failed an examination required by this subtitle;

(11) has willfully failed to comply with or has willfully violated a proper order, subpoena, or regulation of the Commissioner or the insurance regulatory authority of another state;

(12) has failed or refused to pay over on demand money that belongs to an insurer, insurance producer, or other person entitled to the money;

(13) has otherwise shown a lack of trustworthiness or competence to act as an insurance producer;

(14) is not or does not intend to carry on business in good faith and represent to the public that the person is an insurance producer;

(15) has been denied a license or certificate in another state or has had a license or certificate suspended or revoked in another state;

(16) has intentionally or willfully made or issued, or caused to be made or issued, a statement that materially misrepresents or makes incomplete comparisons about the terms or conditions of a policy or contract issued by an authorized insurer, for the purpose of inducing or attempting to induce the owner of the policy or contract to forfeit or surrender it or allow it to lapse in order to replace it with another;

(17) has transacted insurance business that was directed to the applicant or holder for consideration by a person whose license or certificate to engage in the insurance business at the time was suspended or revoked, and the applicant or holder knew or should have known of the suspension or revocation;

(18) has solicited, procured, or negotiated insurance contracts for an unauthorized insurer, including contracts for nonprofit health service plans, dental plan organizations, and health maintenance organizations;

(19) has knowingly employed or knowingly continued to employ an individual acting in a fiduciary capacity who has been convicted of a felony or crime of moral turpitude within the preceding 10 years;

(20) has forged another's name to an application for insurance or to any document related to an insurance transaction;

(21) has improperly used notes or any other reference material to complete an examination for a license;

(22) has failed to pay income tax or related interest or penalty under: (i) an assessment under the Tax General Article that is final and no longer subject to review by the tax court; or (ii) an order of the tax court that is final and no longer subject to judicial review; or

(23) in providing information under § 10-118 of this subtitle regarding the termination of an appointment with an insurer, has made an inaccurate statement with actual malice(b)(1) The Commissioner may deny a license to an applicant business entity under §§ 2210 through 2214 of this article, or suspend, revoke, or refuse to renew or reinstate a license of a business entity after notice and opportunity for hearing under §§ 2210 through 2214 of this article, if an individual listed in paragraph (2) of this subsection has:

(i) violated any provision of this subtitle;

(ii) been convicted of a felony, a crime of moral turpitude, or any criminal offense involving dishonesty or breach of trust; or

(iii) had any professional license suspended or revoked for a fraudulent or dishonest practice.

(2) This subsection applies in any case that involves a business entity if the violation was committed by an individual who is:

(i) an insurance producer;

(ii) 1. in the case of a limited liability company, an officer, director, member, or manager;

2. in the case of a partnership, a partner; and

3. in the case of a corporation, a director, officer, or owner; or (iii) an individual with direct control over the fiscal management of the business entity.

(c) Instead of or in addition to suspending or revoking the license, the Commissioner may impose on the holder of the license a penalty of not less than $100 but not exceeding $500 for each violation of this article.

(d) Instead of or in addition to suspending or revoking the license, the Commissioner may require that restitution be made to any citizen who has suffered financial injury because of the violation of this article.

(e) If the license is suspended under this section, the Commissioner may require the individual to pass an examination and file a new application before the suspension is lifted.

f) Within 30 days after the final disposition of the matter, an insurance producer shall report to the Commissioner any adverse administrative action taken against the insurance producer:

(i) in another jurisdiction; or

(ii) by another governmental unit in this State.

(2) The report shall include a copy of the order, consent order, and any other relevant legal documents.

(g) (1) (i) In this subsection, the term "charging document" means a written accusation alleging that a defendant has committed an offense.

(ii) In this subsection, the term "charging document" includes:

1. a citation;
2. an indictment;
3. an information; and
4. a statement of charges.

(2) This subsection does not apply to a misdemeanor violation of the Maryland Vehicle Law or the vehicle law of another jurisdiction.

(3) If an insurance producer is prosecuted for a crime in any jurisdiction, the insurance producer shall report the prosecution to the Commissioner within 30 days after the insurance producer's initial appearance before a court, including an appearance before:

(i) a judicial officer of the District Court due to an arrest;

(ii) the District Court in response to a summons;

(iii) the circuit court due to execution of a warrant; or

(iv) the circuit court in person or by written notice of counsel in response to a summons.

(4) The report shall include a copy of: (i) the charging document; (ii) any order issued by a court; and (iii) any other relevant legal documents.

(g) An individual is subject to denial or suspension of a license under § 10-119.3 of the Family Law Article if the individual:

(1) is in arrears in the payment of child support amounting to more than 120 days under the most recent order; or

(2) has failed to comply with a subpoena issued by the Child Support Enforcement Administration under § 10108.6 of the Family Law Article.

(i) Maryland Insurance sec. 10-126 deals with requirements to qualify for or maintain a title insurance license. Violations of this section can lead to fines of between $100 and $500 for each violation.

iii. Fines for Violations of Requirements to Qualify for or Maintain a Title Insurance License:

MD Insurance sec. 10-126 provides that violations of the requirements to qualify for or maintain a title insurance license are established at between $100 and $500 for each violation of this part of the insurance law.

iv. Which activities require a title producer's license?

Solicitation of insurance contracts:

MD Insurance §10–101(l):

(5) "Title insurance producer" means a person that, for compensation, solicits, procures, or negotiates title insurance contracts.

(6) "Title insurance producer" includes a person that provides escrow, closing, or settlement services that may result in the issuance of a title insurance contract.

(7) "Title insurance producer" does not include:

(i) individuals employed and used by title insurance producers for the performance of clerical and similar office duties;

(ii) a financial institution as defined in § 1–101(i) of the Financial Institutions Article that does not solicit, procure, or negotiate title insurance contracts for compensation; or

(iii) a title insurance insurer that is licensed under this article.

- **Employees with control over trust money:**

MD Insurance §10–121(a):

(1) In this subsection, "trust money" means a deposit, payment, or other money that a person entrusts to a licensed title insurance producer in connection with the provision of escrow, closing, or real estate settlement services.

(2) Except as provided in paragraph (3) of this subsection, only a licensed title insurance producer may exercise control over trust money.

(3) This subsection does not apply to trust money that is entrusted to:

(i) a law firm as defined in § 10–125 of this subtitle; or

(ii) a title insurer.

- **Partnerships, Corporations and LLCs:**

MD Insurance §10–121(c) (1):

If an applicant for a license is a partnership, each partner must hold a license to act as a title insurance producer and, if applicable, an appointment with a title insurer.

MD Insurance §10–121 (c)(2)(i):

If an applicant for a license is a corporation, each controlling owner and each officer must hold a license to act as a title insurance producer and, if applicable, an appointment with a title insurer.

MD Insurance §10–121(c)(3):

If an applicant for a license is a limited liability company, each individual who has direct control over its fiscal management and each manager and officer must hold a license to act as a title insurance producer and, if applicable, an appointment with a title insurer.

- **Persons who perform settlements:**

MD Insurance §10–101(h)(ii) states that a title insurance producer includes a person who provides escrow, closing, or settlement services that may result in the issuance of a title insurance contract. This applies to employees of title insurance agencies, as well as to independent closers, called TIPICs in Maryland.

- **Title Insurance Producer Independent Contractor:**

MD Insurance §10–101(m):

"Title insurance producer independent contractor" means a person that:

(1) is licensed to act as a title insurance producer;

(2) provides escrow, closing, or settlement services that may result in the issuance of a title insurance contract as an independent contractor for, or on behalf of, a licensed and appointed title insurance producer; and

(3) is not an employee of the licensed and appointed title insurance producer.

MD Insurance 10–121.1:

(a) A title insurance producer may not use or accept the services of a title insurance producer independent contractor unless the title insurance producer independent contractor:

(1) holds an appointment with the title insurer with which the contract of title insurance may be placed; and

(2) is covered under the title insurance producer's
(i) blanket fidelity bond; and
(ii) blanket surety bond or letter of credit.

(b) (1) A title insurance producer that uses the services of a title insurance producer independent contractor is:

(i) the legal principal of the title insurance producer independent contractor; and

(ii) liable for all actions of the title insurance producer independent contractor, including unintentional conduct, that occurs within the scope of the title insurance producer's independent contractor's employment.

(2) When a mortgage or deed of trust is executed in a transaction in which a title insurance producer independent contractor is acting for or on behalf of a title insurance producer, there shall be included on or with the recorded mortgage or deed of trust the name, address, and license number of the title insurance producer independent contractor and the title insurance producer for which the title insurance producer independent contractor is acting.

Additional information for TIPICs:

- A TIPIC must be a commissioned notary in order to witness documents.
- It is the title insurer's responsibility to see that all appointed TIPs and TIPICs are appropriately licensed.
- TIPICs must be appointed by the title insurer. A title insurance producer may not use or accept the services of a TIPIC unless the TIPIC holds an appointment with the title insurer with which the contract of title insurance may be placed.
- When submitting an application for a title insurance producer's license or an application to renew a TIP license, the person must indicate if the person will act as a TIP or TIPIC. This is done by completing an affidavit.
- **The title insurance producer is liable for all actions of the TIPIC that occur within the scope of the TIPIC's engagement with the TIP.**
- It is the title insurance producer's responsibility to verify that the TIPIC is licensed in Maryland and has been appointed by the title insurer.
- It is the responsibility of the TIPIC to verify that the title insurance producer has the appropriate license to conduct business in Maryland and maintains bonds that cover the actions of the TIPIC.
- It is a violation of Maryland law for a title insurance producer to use a TIPIC unless the title insurance producer's bonds cover the TIPIC or the TIPIC maintains a separate bond. It is the responsibility of the title insurance producer to be sure the title insurance producer's bond covers the TIPIC or the TIPIC has its own bond.
- If the title insurance producer's bond does not cover the TIPIC and the TIPIC does not have its own bond, the MIA will hold the title insurance producer and the TIPIC responsible for this violation of Maryland law.
- The name, address and license number of the TIP and, if applicable, the TIPIC must be recorded with the mortgage or deed of trust. It is the responsibility of the TIP to ensure this information is recorded.

- **Attorneys:**

  Under MD Insurance §10–125(c), attorneys who solicit, procure, or negotiate title insurance contracts must be licensed. Bonding requirements apply to attorneys who own, operate or share an interest in a title agency, or to an employee who is employed by a title agency as a title insurance producer. MD Insurance §10–125(d)(2).

  If a law firm solicits, procures or negotiates title insurance contracts only as an "incident to the practice of law", an insurance license is not required. MD Insurance §10–125.

  Under MD Insurance §10–125(d), education, experience, and examination requirements relating to title insurance producers do not apply to law firms or to attorneys.

v. Persons Who Do Not Requre a Title Insurance License

MD Insurance §10–101:

"Title insurance producer" does not include:

(i) individuals employed and used by title insurance producers for the performance of clerical and similar office duties;

(ii) a financial institution as defined in § 1-101(i) of the Financial Institutions Article that does not solicit, procure, or negotiate title insurance contracts for compensation; or

(iii) a title insurance insurer that is licensed under this article.

e. Bonding

Other than attorneys licensed to practice law in the State of Maryland, a licensed individual or company with employees who perform services that require a license as a title insurance producer must file a blanket fidelity bond in the amount of $150,000 covering all such employees and all TIPCs used by the individual or company. Title insurance producers with no employees are exempt from obtaining a fidelity bond so long as they file an Affidavit for Waiver of Fidelity Bond for Sole Proprietors, or Affidavit for Waiver of Fidelity Bond for Corporations.

A sole proprietor, LLC, partnership, or corporation that is a TIP, other than self-employed attorneys and law firms licensed to practice law in the State of Maryland, must file a blanket surety bond or letter of credit in the amount of $150,000. Here is the statutory reference:

Maryland Insurance §10–121.

(e) (1) In addition to meeting any of the applicable requirements for a license to act as an insurance producer under this subtitle, a business entity applicant for a license as a title insurance producer shall file with the Commissioner:

(i) a blanket fidelity bond covering appropriate employees and title insurance producer independent contractors; and

(ii) 1. a blanket surety bond, or

2. a letter of credit.

(2) Unless the Commissioner approves a lesser amount, each bond or letter of credit shall be for $150,000.

f. Referral fees:

MD Insurance §10–130(a) prohibits the payment of commissions, fees, rewards, rebates, or other consideration to persons who are not licensed title producers.

More importantly, in Revised Bulletin 15-24, the MIA made clear that the payment of a referral fee, split of a commission, or offer of other valuable consideration to other title producers is prohibited.

3. EDUCATION AND EXAMINATION REQUIREMENTS

i. Initial licensing for non-attorneys:

Per the MIA's website:

- All resident individuals requesting a title insurance producer license are required to complete pre-licensing education and pass the Maryland exam. PSI is the MIA's current vendor for Pre-Licensing and Examination services.

- Individual producer licenses expire every other year on the last day of the producer's birth month. Business Entity licenses expire two (2) years from the date of issuance.

30 hours of course instruction and an examination are required in order to obtain an individual title producer's license in Maryland

ii. Licensing for attorneys

Under MD Insurance §10–125(c), attorneys who solicit, procure, or negotiate title insurance contracts must be licensed. Bonding requirements apply to attorneys who own, operate or share an interest in a title agency, or to an employee who is employed by a title agency as a title insurance producer. MD Insurance §10–125(d)(2).

If a law firm solicits, procures or negotiates title insurance contracts only as an "incident to the practice of law," an insurance license is not required. MD Insurance §10–125.

iii. License Renewals

MD Insurance §10–115

(a) (1) Licenses expire every other year on the date stated on the license unless renewed as provided in this section.

(2) If a license expires under paragraph (1) of this subsection, the appointments held by the insurance producer shall be terminated as of the day of the expiration of the license.

(b) At least 1 month before a license expires, the Commissioner shall send to the holder of the license, at the last known address or electronic mail address of the holder on record a notice that states:

(1) the process for renewing the license;

(2) the date by which the Commissioner must receive the renewal application; and

(3) the amount of the renewal fee.

(c) Subject to subsection (g) of this section, before a license expires, the holder of the license may renew it for an additional 2–year term, if the holder;

(1) otherwise is entitled to a license;

(2) files with the Commissioner a renewal application:
(i) on the form that the Commissioner provides; or
(ii) in an electronic format that the Commissioner approves;
(3) completes the continuing education requirements established under § 10–116 of this subtitle; and
(4) pays to the Commissioner the renewal fee required by § 2–112 of this article.
(d) A license renewed under this section shall have an expiration date that is the last day of the month in which the holder of the license was born.

MD Insurance §10–116
(a) (1) Subject to subsections (b) and (c) of this section, the Commissioner shall require an insurance producer to receive continuing education as a condition of renewing the license of the insurance producer;
(2)
(ii) If the individual holds a title insurance producer license, the Commissioner may not require the insurance producer to receive more than 16 hours of continuing education per renewal period.
(v) Of the required hours of continuing education per renewal period required under subparagraphs (i), (ii), (iii), and (iv) of this paragraph, at least 3 hours shall relate directly to ethics.

See also COMAR 31.03.02.03:
Licensed title producers require 16 hours of CE during every 2-year license renewal period, of which 3 hours must be in ethics.

Note that a maximum of 3 hours of ethics may apply towards the 16 hours of renewal CEs.

iv. Licensing of non-resident applicants

Non-Reciprocal States: Certain states do not have reciprocal license status with the State of Maryland. As of June of 2019, these include:
Alabama, Alaska, Arkansas, Arizona, California, Connecticut, Delaware, Florida, Iowa, Idaho, Kentucky, Massachusetts, New Mexico, Nevada, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Washington, and West Virginia.

Applicants from these states are required to complete a prelicensing course and pass the Maryland title insurance exam. Once licensed, out of state title producers are subject to the same CE requirements as other Maryland licensees.

Reciprocal States: Nonresidents must be currently licensed and in good standing as a Title Insurance Producer in their resident state.

IV. Changes to License Status:

Changes, additions to, or deletions from licenses require the title insurance producer to file a form with the Insurance Commissioner as follows:

a. A licensee shall file with the Commissioner by a means acceptable to the Commissioner a change in legal name, trade name, electronic mail address, or address within 30 days of the change.
b. If a licensee fails to timely file with the Commissioner a change in legal name, electronic email address, or address, the licensee is in violation of sec. 10-126(a)(1) of the Insurance Article.

4. TITLE INSURANCE RATES AND FILINGS

i. Title Insurance rates must be filed and approved

MD Insurance §11-401, *et seq*., addresses title insurance rates. All title insurance rates should be "reasonable and adequate for the class of risks to which they apply. They cannot discriminate unfairly between risks that involve essentially the same hazards and expense elements."

Under MD Insurance §11-403(a), all rates, forms, and policies that the insurer proposes to use shall be filed with the Insurance Commissioner. Only filed rates may be charged by the title insurer and its agents. If a filing isn't disapproved by the Insurance Commissioner within 15 days after the date of filing, the filing is deemed approved. MD Insurance §11-404(b)(2), and the effective date of the filing is the end of the 15-day period.

ii. Use of ALTA forms

Maryland has approved the use of ALTA forms for title commitments, policies, and endorsements.

5. MARYLAND-SPECIFIC FORMS AND PRACTICES

i. MAHT accounts

Since 1992, when the Maryland Affordable Housing Trust (MAHT) was created by the Maryland legislature, title companies have been required to deposit certain trust funds (*i.e*., funds held by a title company on behalf of a third person) from Maryland closings into a special trust account called a MAHT account. The purpose of a MAHT account is to is to pay interest on MAHT funds in order to fund MAHT.

Deposits into a MAHT account are required only for accounts related to real estate closings that would generate $50 or less in interest. Deposits that generate more than $50 in interest may be deposited into a regular trust account, and the interest may be paid to the settlement company.

An annual report must be filed with the MIA, which oversees MAHT reporting. Substantial fines can be imposed for non-compliance.

In Bulletin 18-04, issued in February of 2018, MIA also determined that earnest money deposits from the purchase and sale or real property in Maryland are considered trust funds. MAHT will apply in most cases to earnest money deposits, due to the low dollar amount of these deposits.

ii. Statutory notice to buyer

Maryland Real Property §22–103.

(a) Except as provided in subsection (d) of this section, when, in connection with a real estate transaction that involves a purchase money mortgage or deed of trust on land in the State, a title insurer accepts a premium for a policy that insures the title to the property or the title insurer, its agent, or employee accepts a premium for mortgagee title insurance, the person first accepting the premium:

(1) shall insert the name of each insured in the title insurance commitment for the title insurance; and

(2) immediately on receipt of the premium, shall deliver to the buyer or agent or attorney of the buyer written notice:

(i) of the name of each insured under the policy;

(ii) of the face amount of the policy;

(iii) of the buyer's right and opportunity to obtain simultaneous title insurance in the buyer's favor;

(iv) of the additional premium that will be required for purchase of simultaneous title insurance in the buyer's favor;

(v) that the buyer's title insurance will be subject only to the contingencies and conditions contained in the title insurance commitment and policy;

(vi) of the buyer's right to review the title insurance commitment or a sample of the form of policy in which the contingencies and conditions will be inserted;

(vii) that contains a clear statement of the contingencies that must be satisfied to make the buyer's policy effective, if the buyer's policy is not effective on payment of the premium; and

(viii) that the title insurance commitment or sample of the form of policy into which the contingencies and conditions for insuring will be inserted:

1. does constitute a statement of the terms and conditions on which the title insurer is willing to issue its policy of title insurance if the title insurer accepts a premium for the policy;

2. is not a representation as to the state of title; and

3. does not constitute an abstract of title.

(b) Before disbursing any funds, the person required to give notice under subsection (a) of this section shall obtain from the buyer, at the time the person delivers the notice, a statement in writing that the buyer has received the notice described in subsection (a) of this section and that the buyer wants or does not want owner's title insurance.

(c)

(1) The person required to give notice under subsection (a) of this section shall retain the original signed statement of receipt required by subsection (b) of this section and a copy of the notice required by subsection (a) of this section for 3 years.

(2) The statement of receipt and notice shall be available for inspection by the Commissioner on request.

(d) This section does not apply to a real estate transaction involving a mortgage or deed of trust securing an extension of credit made:

(1) solely to acquire an interest in or to carry on a business or commercial enterprise; or

(2) to any business or commercial organization.

iii. MD privacy notice

Under COMAR 31.16.08.01, *et seq*., Maryland licensees are required to provide a clear and conspicuous notice that accurately reflects its privacy policies and practices for nonpublic financial information to:

(1) An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in §E of this regulation; and

(2) A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party.

iv. First-time Maryland homebuyer

§14–104.

(c) In this section, "first-time Maryland home buyer" means an individual who has never owned in the State residential real property that has been the individual's principal residence.

(d) Except as provided in subsection (c) of this section, in every written or oral agreement for the sale or other disposition of property, it is presumed in the absence of a contrary provision in the agreement or the law, that the parties to the agreement intended that the cost of any recordation tax or any State or local transfer tax shall be shared equally between the grantor and grantee. This section does not apply to mortgages or deeds of trust.

(e) (1) The entire amount of recordation tax and local transfer tax shall be paid by the seller of improved, residential real property that is sold to a first-time Maryland home buyer who will occupy the property as a principal residence, unless there is an express agreement between the parties to the agreement that the recordation tax and local transfer tax will not be paid entirely by the seller.

(2) The entire amount of State transfer tax shall be paid by the seller of improved, residential real property that is sold to a first-time Maryland home buyer who will occupy the property as a principal residence.

(3) This subsection does not apply to tax sales of property under Title 14, Subtitle 8 of the Tax - Property Article.

(4) If there are two or more grantees, this subsection does not apply unless each grantee is a first-time Maryland home buyer or a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of the Tax - Property Article for the property and the co-maker or guarantor will not occupy the residence as the co-maker's or guarantor's principal residence.

(5) Paragraphs (1) and (2) of this subsection apply only if each grantee or an agent of the grantee provides a statement that is signed under oath by the grantee or agent of the grantee stating that:

(i) 1. The grantee is a first-time Maryland home buyer as defined under subsection (a) of this section; and

2. The residence will be occupied by the grantee as the grantee's principal residence; or

(ii 1. The grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of the Tax - Property Article for the property; and

2. The grantee will not occupy the residence as the co-maker's

or guarantor's principal residence.

(6) A statement under paragraph (5) of this subsection by an agent of a grantee shall state that the statement:

(i) Is based on a diligent inquiry made by the agent with respect to the facts set forth in the statement; and

(ii) Is true to the best of the knowledge, information, and belief of the agent.

v. Maryland intake sheet (MIS)

An MIS must accompany any deed, deed of trust, mortgage, assignment deed, easement agreement, or right of way agreement when such documents are presented for recording. The documents will be rejected if no MIS is included, or if the MIS is improperly filled out. The MIS serves to notify the county about whether recordation or transfer taxes should apply to the transaction, and includes detailed information describing the property and the grantor and grantee names.

vi. Maryland Tax Withholding Law

MD Tax-General § 10-912 was enacted in 2003 to mandate income tax withholding on certain sales and transfers of Maryland real property.

An excellent publication that every Maryland title producer should have at his/her fingertips can be found on the Maryland Comptroller's website:

http://taxes.marylandtaxes.gov/Business_Taxes/Business_Tax_Types/Income_Tax/Employer_Withholding/Withholding_Information/Withholding_for_Nonresident_Sale_of_Property.shtml

Overview:

Whenever Maryland real property is owned by a nonresident individual or nonresident entity, and the property is sold or transferred, the deed or other document of transfer will not be accepted for recording by the Clerk of the Circuit Court (Clerk), nor may it be filed with the Maryland Department of Assessments and Taxation (SDAT), unless payment is made in the amount of 8% of the net proceeds of the transaction for an individual, or 8.25% for an entity.

The individual or company conducting the closing is responsible for ensuring that sufficient funds are withheld, and for paying the withheld funds to the Clerk or to SDAT. Payment must be accompanied by Form MW506NRS, found on the Comptroller's website.

Definition of Resident:

a. For Individuals:

The seller/transferor must provide a written certification, at closing, that the property is a principal residence. This can be stated in the deed or document of transfer, or in a separate document recorded with the same. Further, the property must be the principal residence of the seller/transferor for purposes of the I.R.S. Code, and it must be listed as a principal residence with SDAT.

b. For Entities:

Resident entities must be formed under the laws of Maryland more than 90 days before the date of the sale of the property, or, if formed under the laws of another state, qualified by or

registered with SDAT to do business in Maryland more than 90 days before the date the property is sold.

Required Amount to Collect:

Form MW506NRS explains how the withholding tax is calculated. First, the following amounts are deducted from the gross sales price of the property:

- Liens secured by mortgages/deeds of trust, or other liens that are being paid off at the closing; and
- Other expenses (including real estate commissions) arising out of the sale or exchange of the property, and disclosed on a settlement statement used at the closing.
- Note that elective amounts paid at a closing, e.g., credit card bills, etc., cannot be deducted from the gross sales price.

The resulting "net proceeds" amount is subject to the 8% or 8.25% calculation, in order to determine the required withholding amount.

If there are multiple owners, a Form MW506NRS should be filled out for each non-resident owner, calculated upon their percentage of ownership interest in the property.

How is the amount collected credited to the seller?

Keep in mind that the amounts paid to the Clerk or SDAT are for tax withholding only. They are not a final determination about the amount of taxes actually due, nor are they a determination that any taxes may be due at all.

Withheld funds are paid to the Clerk or SDAT in anticipation of the taxpayer filing an income tax return in the year following the closing. Generally speaking, the withheld amount is reported as an estimated payment on an income tax return.

Other Exemptions:

MD Tax-General § 10-912 includes additional exemptions from any withholding requirement:
- The property is transferred pursuant to a foreclosure or a deed-in-lieu of foreclosure;
- The property is transferred by the United States, the State of Maryland, or a political subdivision of the State;
- The property is transferred pursuant to a deed or other instrument that includes a statement of zero consideration, as required by MD Tax-Property § 12-104; or
- A Form MW506E is issued by the MD Comptroller stating that:

a. No tax is due from the transferor in connection with the sale or exchange of property;

b. A reduced amount of tax is due in connection with the sale or exchange, and stating the reduced amount that should be collected by the Clerk or SDAT before recordation or filing.

Appealing a Decision to Withhold:

- If the property is no longer listed as the principal residence in SDAT, but is still being claimed as a principal residence by the seller/transferor, Form MW506AE may be filed at least 21 days prior to closing, in order to request an exemption from withholding.
    - If the amount paid to the Clerk or SDAT exceeds the amount of income tax due, Form MW506R, Application for Tentative Refund of Withholding on Sales of Real Property by Nonresidents, may be filed in the year the withholding payment was made. This must be

filed within 60 days after the date the tax is paid to the Clerk or to SDAT, but not if the transfer or closing occurs after November 1 of that year.
If zero taxes are due, or a reduced tax is due in connection with the sale or exchange of property, Form MW506AE may be filed with the Comptroller at least 21 days prior to closing. The Comptroller will issue a Certificate of Full or Partial Exemption (Form MW506E).

- If seller/transferor is engaging in an I.R.S. §1031 tax-free exchange, Form MW506AE may be filed at least 21 days prior to the closing, in order to obtain a Certificate of Full or Partial Exemption (Form MW506E).
-

Practice Tips:

In order to prevent surprises at closing and any negative consequences that may result from this, you should take the following steps upon receipt of any new transaction to sell or transfer Maryland real property:

1. If the property is not listed as the seller/transferor's principal residence on SDAT, and the seller/transferor wishes to claim the property as their principal residence for tax purposes, have the seller/transferor file Form MW506AE at least 21 days prior to closing with the MD Comptroller.

2. If zero taxes are due from the sale/transfer (*i.e.*, there is no expected capital gain on the sale of the property), have the seller/transferor file Form MW506AE at least 21 days prior to closing with the MD Comptroller.

3. If the seller/transferor is engaging in an I.R.S. §1031 tax-free exchange, have the seller/transferor file Form MW506AE at least 21 days prior to closing with the MD Comptroller.

   In all of these cases, if the seller/transferor can provide a Form MW506E from the Comptroller at the time of closing, the transaction will be exempt from withholding.

4. If the seller/transferor is considered a Maryland resident, or meets another exemption in Section V, above, no withholding is required.

vii. Good Funds

§7–109.

(f) (1) In this section the following words have the meanings indicated.

(2) "Affiliate" means any association, corporation, business trust, statutory trust, or other similar organization that controls, is controlled by, or is under common control with, a financial institution, as defined in § 1–101 of the Financial Institutions Article.

(3) "Settlement" means the process of executing and delivering to the lender or the agent responsible for settlement, legally binding documents evidencing or securing a loan secured by a deed of trust or mortgage encumbering real property in this State.

(g) (1) In any consumer loan transaction in which the loan is secured by a purchase money mortgage or deed of trust on real property located in this State, on or before the day of settlement, the lender shall disburse the loan proceeds in accordance with the loan documents to the agent responsible for settlement as provided in subsections (c) and (d) of this section.

(2) In any consumer loan transaction in which the loan is secured by a secondary deed of trust or mortgage on real property located in this State, on or before the day of funding the agent responsible for settlement may require the lender to disburse the loan proceeds as provided in paragraph (1) of this subsection.

(h) Except as provided in subsection (d) of this section, the lender shall disburse the loan proceeds in the form of:

(1) Cash;

(2) Wired funds;

(3) A certified check;

(4) A check issued by a political subdivision or on behalf of a governmental entity;

(5) A teller's check issued by a depository institution and drawn on another depository institution; or

(6) A cashier's check.

(i) In addition to the methods of loan disbursement provided in subsection (c) of this section, the loan proceeds may be disbursed in the form of a check drawn on a financial institution insured by the Federal Deposit Insurance Corporation and located in the 5th Federal Reserve District if the lender is:

(1) An affiliate or subsidiary of a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Share Insurance Program; or

(2) A mortgage company approved by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(j) If a loan subject to this section is not disbursed as provided in subsection (c) of this section, the lender may not charge interest on the loan for the first 30 days following the date of closing.

viii. Affidavit of consideration

MD Real Property §4–106.

(k) No mortgage or deed of trust is valid except as between the parties to it, unless there is contained in, endorsed on, or attached to it an oath or affirmation of the mortgagee or the party secured by a deed of trust that the consideration recited in the mortgage or deed of trust is true and *bona fide* as set forth.

ix. Affidavit of disbursement

§4–106.

(l) (1) No purchase-money mortgage or deed of trust involving land, any part of which is located in the State, is valid either as between the parties or as to any third party unless the mortgage or deed of trust contains or has endorsed on, or attached to it at a time

prior to recordation, the oath or affirmation of the party secured by the mortgage or deed of trust stating that the actual sum of money advanced at the closing transaction by the secured party was paid over and disbursed by the party secured by the mortgage or deed of trust to either the borrower or the person responsible for disbursement of funds in the closing transaction or their respective agent at a time no later than the execution and delivery of the mortgage or deed of trust by the borrower. However, this subsection does not apply where a mortgage or deed of trust is given to a vendor in a transaction in order to secure payment to him of all or part of the purchase price of the property. The affidavit required by this subsection is required for only that part of the loan that is purchase money and, if the requirements of this subsection are not satisfied, the mortgage or deed of trust is invalid only to the extent of the part of the loan that is purchase money.

x. Required notice in title commitments:

MD Insurance §22–104.

(a) A title insurance commitment or sample of the form of policy into which the contingencies and conditions for insuring will be inserted:

(1) constitutes a statement of the terms and conditions on which a title insurer is willing to issue a policy of title insurance if the title insurer accepts the premium for the policy;

(2) is not a representation as to the state of title; and

(3) does not constitute an abstract of title.

(b) The rights, duties, and responsibilities applicable to the preparation or issuance of an abstract of title do not apply to the issuance of a title insurance commitment or sample of the form of policy into which the contingencies and conditions for insuring will be inserted.

(c) A title insurance commitment or sample of the form of policy into which the contingencies and conditions for insuring will be inserted shall contain the following statement:

(d)

"THIS DOCUMENT CONSTITUTES A STATEMENT OF THE TERMS AND CONDITIONS ON WHICH A TITLE INSURER IS WILLING TO ISSUE A POLICY OF TITLE INSURANCE IF THE TITLE INSURER ACCEPTS THE PREMIUM FOR THE POLICY. IT IS NOT A REPRESENTATION AS TO THE STATE OF TITLE AND DOES NOT CONSTITUTE AN ABSTRACT OF TITLE."

xi. Certificate of preparation for deeds MD Real Property §3–104(f)(1)(ii):

A deed other than a mortgage, deed of trust, or an assignment or release of a mortgage or deed of trust may not be recorded unless it bears:

1. The certification of an attorney admitted to the Bar of this State that the instrument has been prepared by the attorney or under the attorney's supervision; or

2. A certification by a party named in the instrument that the instrument was prepared by that party.

Note that the law was changed in 2017, such that attorney certifications documents other than conveyance deeds are no longer required. Example of attorney certification:

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

_____

John A. Jones, Attorney

xii. Recordation and transfer taxes

- A **recordation tax** is an excise tax imposed by the State of Maryland for the privilege of recording an instrument in the Land Records. It is generally collected by each clerk or county fiscal office and goes to the county's treasury, although in some jurisdictions the clerk retains a percentage of the tax to pay for those services. Recordation taxes may be charged by the State of Maryland on purchase/sale transactions, and also on refinance transactions based on the difference between a borrower's original loan amount and his new loan amount.

- A **transfer tax** is an excise tax imposed by the State of Maryland for the privilege of recording an instrument in the Land Records which conveys title to, or a leasehold interest in, real property. The state transfer tax of 0.5% of the consideration payable for each instrument of writing (as required by MD Tax-Property § 13-203(a)) is collected by Clerks of the Circuit Courts, then remitted to the Maryland Comptroller for deposit into a special fund. Note that transfer taxes do not apply to mortgages, deeds of trust, or other documents that create an encumbrance on real property.

- **Recording fees** are charges imposed for the process of physically adding documents to the Land Records. These fees vary by jurisdiction and should be verified for each transaction.

COUNTY	STATE TRANSFER TAX %	COUNTY TRANSFER TAX %	STATE RECORDATION TAX/$1,000	COMMENTS
Allegheny	0.5	0.50	$ 7.00	First $50,000 of purchase price is exempt from county transfer tax for owner-occupied property.
Anne Arundel	0.5	1.00	$ 7.00	
Baltimore City	0.5	1.50	$ 10.00	First $22,000 of purchase price is exempt from state recordation tax if owner occupied. If sales price is <$250,000, exempt from City transfer tax if owner-occupied.
Baltimore County	0.5	1.50	$ 5.00	First $22,000 of owner-occupied property is exempt from county transfer tax.
Calvert	0.5	0.00	$ 10.00	
Caroline	0.5	0.50	$ 10.00	First $25,000 of owner-occupied property is exempt from county transfer tax.
Carroll	0.5	0.00	$ 10.00	
Cecil	0.5	0.50	$ 8.20	County transfer fee for first time home buyers shall be 0.00% of the consideration payable for the instrument of writing with the transfer fee to be paid entirely by the seller.
Charles	0.5	0.50	$ 10.00	First-time home buyers are exempt from paying the tax on the first $50,000 of the purchase price of property that has a dwelling unit, provided that the purchaser occupies the property as their primary residence.
Dorchester	0.5	0.75	$ 10.00	The first $30,000 of the consideration is exempt if the buyer is an owner occupant.
Frederick	0.5	0.00	$ 12.00	
Garrett	0.5	1.00	$ 7.00	County transfer tax is only charged after first $50,000 of consideration.
Harford	0.5	1.00	$ 6.60	First $30,000 of owner-occupied property is exempt from county transfer tax.
Howard	0.5	1.00	$ 5.00	
Kent	0.5	0.50	$ 6.60	
Montgomery	0.5	1.00	$ 6.90	Expedited Bill No. 15-16, Effective 9/1/2016: Tax rate is $4.45 for each $500 of consideration payable on the secured debt, including mortgages or deeds of trust assumed by the grantee. If the consideration payable or principal amount of the debit is over $500,000, the tax rate increases to $6.75 for each $500 over $500,000. The first $100,000 paid on any owner-occupied property is exempt from recordation tax if property used as principal residence for 7 out of the first 12 months.
Prince George's	0.5	1.40	$ 5.50	
Queen Anne's	0.5	0.50	$ 9.90	
St. Mary's	0.5	1.00	$ 8.00	
Somerset	0.5	0.00	$ 6.60	
Talbot	0.5	1.00	$ 12.00	First $50,000 of owner-occupied property is exempt from county transfer tax.
Washington	0.5	0.50	$ 7.60	The first $50,000 of consideration on any instrument is exempt from the county transfer tax. On remaining consideration, the tax is one half of 1% (0.5%), except that the rate is one fourth of 1% (0.25%) for a first-time Washington County home buyer
Wicomico	0.5	0.00	$ 7.00	
Worcester	0.5	0.50	$ 6.60	First $50,000 of owner-occupied property is exempt from county transfer tax. If you pay agricultural tax, the county tax does not apply to that portion of the property.
NOTE: for first-time Maryland homebuyers, total transfer tax is 0.25%, and can only be paid by the seller.				

I. MARYLAND RECORDATION TAX EXEMPTIONS:

§12–108(f): DOCUMENTS RECORDED IN ANOTHER COUNTY:	No tax if the instrument or a counterpart is recorded in the same county or in another county.
§12–108(g): REFINANCE OF A MORTGAGE OR DEED OF TRUST:	No recordation tax if the transfers are for no consideration. Minor exceptions apply.
§12–108(i): PURCHASE MONEY MORTGAGE/DEED OF TRUST:	These are not subject to recordation tax if recorded within 30 days of the deed.
§12–108(j), (k), (l), (m) and (n): ASSIGNMENTS, SECURITY AGREEMENTS, JUDGMENTS, RELEASES, ORDERS OF SATISFACTION:	None of these documents is subject to a recordation tax.
§12–108(p): TRANSFERS BETWEEN PARENT COMPANY/SUBSIDIARY OR SUBSIDIARY/PARENT COMPANY OR BETWEEN SUBSIDIARIES:	No recordation tax if the transfers are for no consideration. Minor exceptions apply.
§12–108(q): TRANSFER OF REAL PROPERTY FROM A CORPORATION, LLC OR PARTNERSHIP UPON ITS LIQUIDATION, DISSOLUTION OR TERMINATION:	As a rule, the transferee must be an original stockholder, partner, or LLC member for this exception to apply.
§12–108(r), (s), (t) : INSTALLMENT LAND CONTRACTS, OPTION AGREEMENTS, DEEDS FOR WHICH TAX WAS PREVIOUSLY PAID:	No recordation taxes are due.
§12–108(u): A LEASE FOR 7 YEARS OR LESS:	No recordation tax, so long as the lease not required to be recorded under MD Real Property §3-101.
§12–108(bb): FROM A REAL ESTATE ENTERPRISE TO AN LLC:	No recordation tax if: • No consideration; • Members of the LLC are identical to the members of the enterprise; • Allocations of profits and losses amongst members of each entity are identical; • The real estate enterprise is discontinued; All property of the real estate enterprise is conveyed to the LLC.
§12–108(dd): TRANSFER OF REAL PROPERTY FROM AN ESTATE:	No recordation tax if the transfer is made pursuant to §9–105(c) MD Estates and Trusts.
§12–108(ee): TRANSFER OF REAL PROPERTY TO A TRUST OR FROM A TRUST TO ITS BENEFICIARIES:	No recordation tax as to persons specified in § 14.5–1001 MD Estates and Trusts.
§12–105(f)(1) AND §12–105(f)(7)(iii)(2): IDOTs:	Exempts IDOTs securing a guarantee of repayment of a loan or a series of loans that are part of a transaction for less than $3,000,000. **See Virtual Underwriter Bulletin MD2015008.**

§ 12-117: TRANSFERS OF OWNERSHIP INTERESTS IN A BUSINESSES:	Recordation tax applies in the following event: • conveyance of real property that constitutes at least 80% of the value of the assets of a corporation, partnership, association, LLC, LLP or other unincorporated form of business; and • the real property has an aggregate value of at least $1,000,000. • Note: a report of the sale must be filed with SDAT even if the 80% and $1,000,000 figures are not reached, and a claim for exemption from recordation taxes is made. See also Stewart Bulletin MD 2016001: http://www.vuwriter.com/en/bulletins/2016-4/md2016001.html

II. MARYLAND RECORDATION TAX EXEMPTIONS:

STATUTE (MARYLAND TAX-PROPERTY)	AFFECTS:
§13–207(a)	Exempts almost all transactions from transfer taxes that are exempt from recordation taxes in MD Tax-Property §12-108.
§ 13-203(b)	Provides for a reduction of the state transfer tax rate from 0.5% to 0.25% for "first-time Maryland home buyers." This tax must be paid entirely by the seller, as per MD Real Property § 14-104(c)(2). A special affidavit is required, and each grantee must state under oath that: • the grantee is an individual who has never owned in the State residential real property that has been the individual's principal residence; and • the residence will be occupied by the grantee as the grantee's principal residence; or • the grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in § 12-108(i) of this article for the property; and • the grantee will not occupy the residence as the co-maker's or guarantor's principal residence.
§13-103(e): TRANSFERS OF OWNERSHIP INTERESTS IN A BUSINESSES:	If no recordation is imposed under MD Tax-Property § 12-117 (see above), then no transfer taxes are charged under MD Tax-Property § 13-103(e).

xiii. Front Foot Benefits

Front foot benefits (FFBs) are fees assessed against real property by private developers who pay for and install water and sewer infrastructure for new housing developments. FFBs affect many, but not all, Maryland housing developments created in the last few decades.

FFB developers impose their fees by means of an agreement with a local government or water/sanitary district that permits them to charge an annual assessment against each affected property until their development costs are repaid. In the event a property owner does not pay the annual assessment, a lien may be imposed upon the property.

Typically, a developer will record a Declaration that sets forth the exact annual assessment for each property, as well as the length of time for which the assessment will be charged. Twenty to forty-year repayment terms are common, and charges can amount to $400 per year, or more, per property.

Until recently, there was no standard declaration language or legal guidance as to exactly how FFB liens could be imposed and collected. Some FFB declarations provide that liens for unpaid FFBs automatically arise from the wording of the declaration itself, and are superior to subsequent mortgages or deeds of trust. Other declarations have been interpreted to create liens which follow the procedures of the Maryland Contact Lien Act (MCLA), as found in MD Real Property § 14-201, *et seq*. Note: The MCLA is the same law used to impose and collect liens for homeowners associations and condominium associations.

Fortunately, there is new case law concerning FFBs. In Select Portfolio Servicing, Inc. *v*. Saddlebrook West Utility Company, LLC, et al., No. 71, September Term 2016 (filed on August 16, 2017), the Maryland Court of Appeals held that a party seeking to establish and enforce an FFB lien must follow procedures set forth in the MCLA. The resulting FFB lien has priority as of the date a statement of lien is recorded in the land records. The Select Portfolio Servicing case is important because it puts to rest any argument that FFB liens are superior to new mortgages or deeds of trust.

6. PROHIBITED PRACTICES

What follows is a list of prohibited practices in the arena of title insurance. If the Insurance Commissioner determines that any of these practices (amongst others) has occurred, the cease and desist order can be issued to immediately stop that act or practice.

i. Rebates, discounts, inducements, and discrimination

Maryland Insurance §27–212(b)

(a) This section does not apply to life insurance, health insurance, and annuities.

(b) Except to the extent provided for in an applicable filing with the Commissioner as provided by law, an insurer, employee or representative of an insurer or insurance producer may not pay, allow, give, or offer to pay, allow, or give directly or indirectly as an inducement to insurance or after insurance has become effective:

(1) a rebate, discount, abatement, credit, or reduction of the premium stated in the policy;

(2) a special favor or advantage in the dividends or other benefits to accrue on the policy; or

(3) any valuable consideration or other inducement not specified in the policy.

(c) An insured named in a policy or an employee of the insured may not knowingly receive or accept directly or indirectly a rebate, discount, abatement, credit, reduction of premium, special favor, advantage, valuable consideration, or inducement described in subsection (b) of this section.

(d) Except as otherwise provided by law, a person may not knowingly offer, promise, or give any valuable consideration not specified in the policy, except for educational materials, promotional materials, or articles of merchandise that cost no more than $25, regardless of whether a policy is purchased.

(e)

(1) An insurer may not make or allow unfair discrimination between insureds or properties having like insuring or risk characteristics in:

(i) the premium or rates charged for insurance;

(ii) the dividends or other benefits payable on the insurance; or(iii) any of the other terms or conditions of the insurance.

(2) Notwithstanding any other provision of this section, an insurer may not make or allow a differential in ratings, premium payments, or dividends for a reason based on the sex, physical handicap, or disability of an applicant or policyholder unless there is actuarial justification for the differential.

(f) This section does not prohibit an insurer from:

(1) paying commissions or other compensation to licensed insurance producers; or

(2) allowing or returning to its participating policyholders, members, or subscribers lawful dividends, savings, or unabsorbed premium deposits.

On December 18, 2017, the MIA issued Bulletin No. 17-16, which addresses rebates, discounts, and Inducements. Among other things, it states that paying for free home warranties or home inspections as "thank you" gifts to consumers is prohibited by Maryland insurance law.

ii. Twisting

"Twisting" means to misrepresent the terms, conditions, and/or benefits of an insurance policy in order to sell insurance. For example, if a title insurance producer tells someone that title insurance will "guarantee that you will keep this property, no matter what, in the event a claim is filed," that would be considered twisting. In the worst case, title insurance only guarantees payment of the stated sum in the insurance policy.

MD Insurance §27–213.

A person may not make, issue, or cause to be made or issued an oral or written statement that misrepresents or makes incomplete comparisons about the terms, conditions, or benefits contained in a policy for the purpose of inducing or attempting or tending to induce the policyholder to forfeit, surrender, retain, exchange, or convert a policy or allow a policy to lapse

iii. Unfair claims settlement practices

When claims are filed against a title insurance company, the claimant should be treated fairly. Requirements for claims handling are found in here:

MD Insurance §27–304.

It is an unfair claim settlement practice and a violation of this subtitle for an insurer, nonprofit health service plan, or health maintenance organization, when committed with the frequency to indicate a general business practice, to:

(1) misrepresent pertinent facts or policy provisions that relate to the claim or coverage at issue;

(2) fail to acknowledge and act with reasonable promptness on communications about claims that arise under policies;

(3) fail to adopt and implement reasonable standards for the prompt investigation of claims that arise under policies

(4) refuse to pay a claim without conducting a reasonable investigation based on all available information;

(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) fail to make a prompt, fair, and equitable good faith attempt, to settle claims for which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under policies by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable person would expect to be entitled after studying written or printed advertising material accompanying, or made part of, an application;

(9) attempt to settle a claim based on an application that is altered without notice to, or the knowledge or consent of, the insured;

(10) fail to include with each claim paid to an insured or beneficiary a statement of the coverage under which the payment is being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in order to compel insureds or claimants to accept a settlement or compromise less than the amount awarded in arbitration;

(12) delay an investigation or payment of a claim by requiring a claimant or a claimant's licensed health care provider to submit a preliminary claim report and subsequently to submit formal proof of loss forms that contain substantially the same information;

(13) fail to settle a claim promptly whenever liability is reasonably clear under one part of a policy, in order to influence settlements under other parts of the policy;

(14) fail to provide promptly a reasonable explanation of the basis for denial of a claim or the offer of a compromise settlement;

(15) refuse to pay a claim for an arbitrary or capricious reason based on all available information;

(16) fail to meet the requirements of Title 15, Subtitle 10B of this article for preauthorization for a health care service;

(17) fail to comply with the provisions of Title 15, Subtitle 10A of this article; or

(18) fail to act in good faith, as defined under § 27–1001 of this title, in settling a first–party claim under a policy of property and casualty insurance

To summarize, most unfair claims practices consist of the following:

1. Misrepresenting policy provisions;
2. Failing to communicate with the insured party with reasonable promptness;
3. Failure to promptly investigate a claim;
4. Refusing to pay a valid claim;
5. Failure to affirm or deny coverage under a policy in a reasonable time period;
6. Failure to settle claims when liability by the insurance company is clear;
7. Offering to settle the claim for less than the real value of the claim, and forcing the claimant to file a lawsuit to get what the policy promised them;
8. Failure to explain the basis of denial of any claim
9. Failure to pay a claim for arbitrary reasons.

iv. Consumers may choose their own title company

In a document published online entitled "A Consumer's Guide to Title Insurance, the MIA included a "Consumer's Bill of Rights." The first right is the right of the consumer to choose the settlement agent and title insurer.

v. Kickbacks and affiliated businesses

Although prohibitions against kickbacks and the need to follow affiliated business rules are primarily federal in nature, Maryland has its own provisions that closely track federal laws on these topics. Maryland's statute, found below, allows it to impose its own criminal penalties and fines for improper behavior:

Maryland Real Property §14–127.

(a)

(1) In this section the following words have the meanings indicated.

(2) "Consideration" includes:

(i) A fee;

(ii) Compensation;

(iii) A gift, except promotional or advertising materials for general distribution;

(iv) A thing of value;

(v) A rebate;

(vi) A loan; or

(vii) An advancement of a commission or deposit money.

(3) "License" has the meaning stated in § 10–101 of the Insurance Article.

(4) "Residential real estate transaction" means a transaction involving a federally related mortgage loan as defined in 12 U.S.C. § 2602 and 12 C.F.R. § 1024.2.

(5) "Title insurance producer" has the meaning stated in § 10–101 of the Insurance Article.

(b) This section does not prohibit:

(1) The payment of a commission to a title insurance producer who has a license; or

(1) The referral of a real estate settlement business or a professional fee arrangement

between attorneys, if the referral or professional fee arrangement does not violate § 17– 605 of the Business Occupations and Professions Article. person who has a connection with the settlement of real estate transactions involving land in the State may not pay to or receive from another any consideration to solicit, obtain, retain, or arrange real estate settlement business.

(2) A person may not be considered to be in violation of paragraph (1) of this subsection solely because that person is a participant in an affiliated business arrangement, as defined in 12 U.S.C. § 2602, and receives consideration as a result of that participation as long as that person complies with 12 U.S.C. § 2607(c)(4), 12 C.F.R. § 1024.15, and Appendix D to 12 C.F.R. Part 1024.

(d) A person who offers settlement services in connection with residential real estate transactions involving land in the State shall comply with 12 U.S.C. § 2607(c)(4), 12 C.F.R. § 1024.15, and Appendix D to 12 C.F.R. Part 1024, as applicable, regarding disclosures of affiliated business arrangements, as defined in 12 U.S.C. § 2602.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 6 months or a fine not exceeding $1,000 or both.

(f) Each violation of this section is a separate violation.

vi. Boycotts

As a rule, title producers should avoid recommending that its clients avoid doing business with its competitors or avoid doing business with target individuals or companies. This may be an illegal boycott, especially if the group of competitors working together has market power.

PART II: Federal Laws and Regulations:

1. THE CFPB -- THERE'S A NEW SHERIFF IN TOWN!

i. Dodd Frank Act and creation of the CFPB:

- Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which became law on July 21, 2010.
- Title X of the Dodd-Frank Act established the Consumer Financial Protection Bureau (CFPB).
- The purpose of the CFPB is to " ... give consumers the information they need to understand the terms of their agreements with financial companies."
- In January of 2012, the President appointed Richard Corday to be the first Director of the CFPB. He recently resigned, and the leadership of the CFPB is in flux.

ii. The CFPB generally exercises authority over the following entities or transactions:

- Banks and credit unions;
- Certain debt collection agencies;
- Certain consumer reporting agencies;
- Non-bank entitles that provide origination, brokerage or servicing of residential mortgages (Note: this includes title insurance companies);

- Private Education Loans;
- Payday loans;
- Any entity (other than depository institutions) that provides financial services if it "poses a risk" to consumers.

iii. The CFPB Consolidates Laws Found in Various Other Agencies

The CFPB was designed to consolidate responsibilities originally assigned to other federal regulatory bodies, including the Federal Reserve, the Federal Trade Commission, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Department of Housing and Urban Development.

Of particular interest to practitioners in the mortgage and title insurance industries, the CFPB has oversight authority over the following laws/regulations:

The Truth in Lending Act:

- The Truth in Lending Act, also known as TILA, 15 U.S.C. 1601, *et seq*., is a federal statute originally enacted on May 29, 1968. It is implemented in 12 C.F.R. 1026 (also known as "Regulation Z"), which became effective on July 1, 1969.
- TILA is directed at lenders.
- TILA requires that a "Truth in Lending Disclosure" be provided to borrowers at various points in the loan application and closing process.
- For our purposes, the biggest effect of TILA is:
    - Requirement to disclose Annual percentage rate (APR), finance charges, amount financed, total payments, *etc*.

Real Estate Settlement Procedures Act:

- The Real Estate Settlement Procedures Act (RESPA) is a federal statute originally enacted in 1974 and codified in 12 U.S. Code Chapter 27, § 2601 *et seq*. It is implemented in 12 C.F.R. 1024 (also known as "Regulation X").
- RESPA is an extensive statute that covers loans secured by a mortgage placed on a one-to-four family residential property. Among other things, RESPA addresses the following things:
    - Section 4: Requires HUD to develop a uniform settlement statement to show the actual settlement costs of the loan transaction (*i.e*., the HUD-1 Settlement Statement).
    - Section 5: Requires lenders to provide borrowers with a Good Faith Estimate of Costs.
    - Section 6: Lenders must provide a Mortgage Servicing Disclosure Statement, which informs borrowers whether the servicing of their loan may be assigned, sold or transferred during the life of the loan.
    - Section 8: See Section 2 below: Kickbacks and Fee Splitting
    - Section 9: The seller may not require a buyer, as a condition of the sale, to purchase title insurance from any particular title company. Note: if seller buys title insurance, Section

9 doesn't apply.

- Section 10: loan services must provide initial and annual escrow statements itemizing estimated taxes and insurance premiums, plus any required cushion. The cushion can only be 1/6 of the required annual escrow costs. Each escrow account must be analyzed yearly, and overages above $50 returned to the borrowers.

iv. The TILA-RESPA Integrated Disclosure Rule:

- Although originally issued for comments on July 9, 2012, CFPB published the 1,888-page TRID Final Rule on November, 2013.
- TRID combines the current GFE, TIL and HUD-1 into two new forms:
  - The Loan Estimate Form (instead of the initial TIL and initial GFE);
  - The Closing Disclosure Form (instead of the final GFE and HUD-1).
- TRID creates entirely new vocabulary and mandatory timelines for performing settlements involving most new loans.
- The new integrated disclosures must be provided by a lender or mortgage broker that receives an application from a borrower for a closed-end credit transaction secured by real property on or after August 1, 2015.
- Lenders and settlement agents are required to use the current GFE, HUD-1, and Truth in Lending forms for applications received prior to August 1, 2015. Once all of these loans have been completed, withdrawn or cancelled, the current forms are no longer authorized for use.
- Note that the current forms may still be used after August 1, 2015 for loans that are not covered by the TRID. See Part VII below for applicability.

v. Transactions Covered by TRID:

- TRID applies to most closed-end consumer credit transactions secured by real property. It also applies to:
  - Construction-only loans;
  - Loans secured by vacant land or by 25 or more acres.
- TRID does not apply to:
  - HELOCs;
  - Reverse mortgages;
  - Chattel-dwelling loans, such as loans secured by a mobile home or by a dwelling that is not attached to the land;
  - Loans made by creditors who do fewer than 5 mortgages a year;
  - Commercial loans.
- Note: you may continue to use the existing HUD-1 for HELOC and reverse mortgages.

vi. TRID Terminology

TRID introduces various new terms of art, including:

- A "lender" is now a "creditor";

- The "borrower" is now the "consumer";
- "Date of Consummation" is the date when the consumer becomes liable on the loan;
- The "Loan Estimate" is a combination of the initial Truth In Lending Disclosure (currently, a TILA requirement) and Good Faith Estimate of Costs (currently, a RESPA requirement);
- The "Closing Disclosure" combines the old HUD-1 Settlement Statement, final Truth in Lending Disclosure, and the Good Faith Estimate of Costs into a single document.
- "Early Disclosures" include the Loan Estimate and the Written List of Providers;
- "Written List of Providers" is a form provided by the creditor to the consumer which identifies at least one available provider for services the consumer can shop for;
- An "Application" includes 6 requirements; it triggers the requirement for delivery of a Loan Estimate.

vii. The Basic Transaction Timeline Under TRID:

As a general rule:

- A Loan Estimate must be delivered or placed in the mail within three business days following receipt by the Creditor of an Application from a Consumer.
- The Loan Estimate must also be delivered or placed in the mail no later than the seven business days before consummation of the transaction. Note that the seven-day period may be waived by the consumer in order to meet a bona-fide personal financial emergency that necessitates consummation prior to the end of the waiting period. There is no specific form for this purpose.
- A Closing Disclosure must be delivered to the Consumer at least three days prior to consummation. Note that the three-day period may be waived by the consumer in order to meet a *bona fide* personal financial emergency that necessitates consummation prior to the end of the waiting period. There is no specific form for this purpose.

2. RESPA Section 8 - Kickbacks and Fee Splitting

i. RESPA primary prohibitions

Section 8(a): Kickbacks

> " No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a **real estate settlement service** involving a federally related mortgage loan shall be referred to any person. "

Section 8(b): Fee Splitting

> " No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a **real estate settlement service** in connection with a transaction involving a federally related mortgage loan other than for services actually performed."

- Definition of a "real estate settlement service":

12 U.S. Code Chapter 27, § 2602 defines "Settlement Service" as including the following:

* title searches
* title examinations
* the provision of title certificates
* title insurance
* services rendered by an attorney
* the preparation of documents
* property surveys
* the rendering of credit reports or appraisals
* pest and fungus inspections
* services rendered by a real estate agent or broker
* the origination of a federally related mortgage loan, including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans; and
* the handling of the processing, and
* closing or settlement

c. In short, RESPA Section 8(a) and 8(b) apply to title companies, real estate agents/brokers, mortgage loan providers, appraisers, surveyors, and home inspectors, among others!

ii. RESPA Section 8(c): Exceptions

RESPA permits the payment of a fee:

* to attorneys at law for services actually rendered
* by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance
* by a lender to its duly appointed agent for services actually performed in the making of a loan
* the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed
* payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers
* affiliated business arrangements, **<u>as long as</u>**
    - a disclosure is made of the existence of such an arrangement to the person being referred, and
    - in connection with such referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred, and
    - the customer is permitted to reject the referral.

iii. The Affiliated Business Arrangement (AfBA) "Safe Harbor":

What is an AfBA? It is an arrangement in which:

> 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;

The term "associate" means one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business.

Note: it is not necessary to have a formal business arrangement in order for an AfBA to exist.

Example: John Dough owns a mortgage company. His wife owns no part of the mortgage company, but owns a title insurance agency. John Dough refers all of his mortgages to wife's title company. Result: wife is an "associate" of John Dough, and an unwritten affiliated business arrangement therefore exists.

iv. Requirements for a proper affiliated business relationship:

In 1996, HUD issued a policy statement to provide guidance as to its interpretation of anti-kickback rules related to AfBA's. This included a 10-part test for AfBA's:

(1) Does the new entity have sufficient initial capital and net worth, typical in the industry?
(2) Is the new entity staffed with its own employees to perform the services it provides? Or does it have "loaned" employees from one of its owners?
(3) Does the new entity manage its own business affairs? Or is an entity that helped create the new entity running the new entity for the parent provider making the referrals?
(4) Does the new entity have an office for business which is separate from one of the parent providers?
(5) Is the new entity providing substantial services, i.e., the essential functions of the real estate settlement service, for which the entity receives a fee?
(6) Does the new entity perform all of the substantial services itself? Or does it contract out part of the work?
(7) If the new entity contracts out some of its essential functions, does it contract services from an independent third party? Or are the services contracted from a parent, affiliated provider or an entity that helped create the controlled entity?
(8) If the new entity contracts out work to another party, is the party performing any contracted services receiving a payment for services or facilities provided that bears a reasonable relationship to the value of the services or goods received?
(9) Is the new entity actively competing in the market place for business?
(10) Is the new entity sending business exclusively to one of the settlement service providers that created it (such as the title application for a title policy to a title insurance underwriter or a loan package to a lender)? Or does the new entity send business to a number of entities, which may include one of the providers that created it?

Although HUD (and now the CFPB) have consistently held onto the 10-part AfBA rule as being a valid interpretation of Congressional intent, there is recent case law in the U.S. Sixth Circuit (Carter v. Welles-Bowen, Inc.,) that challenges this test. The 6th Circuit includes Michigan, Kentucky, Ohio, and

Tennessee.

In addition to all of the above, compensation to the owners of an AfBA should not be directly tied to the amount of business referred to the AfBA. Instead, compensation should be in the in the form of *bona fide* dividends or other capital distributions based upon the ownership interest of each party in the AfBA.

> Example: Title Company X is owned 30% by Real Estate Brokerage Y and 70% by Mortgage Company Z. In August, 2014,Y refers 50% of X's total business, and Y refers the other 50%. Y can only be compensated for 30% of the net profits of X, based upon its 30% ownership interest in X, despite sending more referrals to X in August than Z does.

3. Gramm-Leach Bliley Act (GLBA)

The Gramm-Leach-Bliley Act (GLBA) requires financial institutions – companies that offer consumers financial products or services like loans, financial or investment advice, or insurance – to explain their information-sharing practices to their customers and to safeguard sensitive data. Title insurance producers fall under this definition.

Per published guidance from the Federal Trade Commission:

> The privacy notice must be a clear, conspicuous, and accurate statement of the company's privacy practices; it should include what information the company collects about its consumers and customers, with whom it shares the information, and how it protects or safeguards the information. The notice applies to the "nonpublic personal information" (NPI) the company gathers and discloses about its consumers and customers; in practice, that may be most - or all - of the information a company has about them. For example, nonpublic personal information could be information that a consumer or customer puts on an application; information about the individual from another source, such as a credit bureau; or information about transactions between the individual and the company, such as an account balance. Indeed, even the fact that an individual is a consumer or customer of a particular financial institution is nonpublic personal information. But information that the company has reason to believe is lawfully public - such as mortgage loan information in a jurisdiction where that information is publicly recorded - is not restricted by the GLB Act.

Although the GLBA was enacted in 1999 and has technically been in effect since that time, the issue of consumer privacy has taken on added importance since the implementation of TRID starting October 3, 2015. All title insurance producers should be aware that providing "nonpublic personal information" (NPI) to other parties at the closing table, including real estate agents, requires permission of the party from whom the NPI flows.

3. Patriot Act

i. When did it become law?

The USA Patriot Act is federal legislation signed into law on October 26, 2011, just 45 days after the World Trade Center attacks. It stands for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001."

The Act was extended in May of 2011 for an additional 4 years, and expired on June 1, 2015 following Congressional inaction. However, it was extended through 2019 with passage of the USA Freedom Act on June 2, 2015, with new restrictions related to NSA phone data collection.

ii. What does it do?

The Act is a conglomeration of various other Acts and executive orders with the purpose of deterring and punishing terrorist acts in the United States and around the world, by using these techniques:

- Prevent, detect and prosecute international money laundering and financing of terrorism;
- Specially scrutinize international financial institutions and transactions that can be used for criminal abuse;
- Require financial institutions to report potential money laundering;
- Prevent use of the US financial system for personal gain by corrupt foreign officials; and
- Facilitate repatriation of stolen assets to citizens of countries to whom such assets belong.

"Money laundering" is the process of disguising illegally-obtained money so that the funds appear to come from legitimate sources or activities. Money laundering occurs in connection with a wide variety of crimes including illegal arms sales, drug trafficking, robbery, fraud, racketeering (dishonest and fraudulent business dealings), and terrorism.

iii. How does this affect title companies?

Title III of The Patriot Act applies to "Financial Institutions", which are defined in Section 352 to include "…persons engaged in real estate closings and settlements." In other words, title companies and their employees are subject to the Act.

There are four essential duties that title companies must perform:

1. Customer identity verification;
2. Due diligence procedures for account and escrow officers;
3. Record-keeping and documentation requirements;
4. Reporting information to the authorities.

iv. Identity Verification

Title companies are required to record the full identity of their customers on every transaction.

There is great flexibility under the Act as to the procedures that may be used and the types of documents that may be required to confirm a customer's identity. However, many title insurers require the following documents to be obtained:

- For U.S. individuals, you must obtain at least two forms of ID, of which at least one must be a picture ID. A person's name, date of birth, address and document identification number are required;
- For foreign individuals, a passport, alien identification card number, or other foreign government-issued document bearing a photograph;
- For someone acting in a representative capacity, identify each representative, agent, and attorney-in-fact in the same manner;
- For business entities, you must obtain corporate, partnership, LLC or trust documents on all entities and persons involved. This means, for example:
    - articles of incorporation
    - a government-issued business license
    - partnership agreement
    - trust documents or certification of trust
    - evidence of good standing with the appropriate state agency

- For children, the person opening the account is considered the customer (and thus, subject to the individual requirement above), and you should also require the child's passport, birth certificate, and/or social security number.

v. The SDN List

Executive Order 13224 blocks transactions with persons who commit, threaten to commit or support terrorism. Assets of such persons must be frozen.

A list of those persons is the Specialty Designated Nationals and Blocked Persons List (the SDN List), maintained by the Office of Foreign Assets Control (OFAC) of the U.S. Treasury Department. A link to that website is found here: https://sanctionssearch.ofac.treas.gov/

If you get a "hit" on the OFAC website, do the following:

- Compare it with the exact name of the party to the transaction and their address, identification numbers, and date of birth.
- You may not have a "match" if all identifying information is not the same.
- If an exact match is found, contact a Maryland underwriter, who will assist you with directing your inquiry to the proper person at your underwriter who will contact the appropriate U.S. authorities and provide you with additional instructions.

b.Record keeping and privacy considerations:

- You must keep records on customer identification (copies of identification documents like driver's licenses, passports, identity cards, account files, business correspondence, corporate records, *etc*.) for the period required in your state. In Maryland that is at least 5 years from the date of your last yearly audit.

- Records must allow for the complete reconstruction of individual transactions, including the amounts and types of currency involved, if any.
- Keep records of any wiring instructions used to transfer money, especially the source bank and corresponding bank of the wire, wire receipts, *etc*.

Note that some or all such information may be considered "nonpublic personal information" or "NPI" under the Graham-Leach-Bliley Act, and should be protected in accordance with that Act. See this Federal Trade Commission website for additional information: https://www.ftc.gov/tips-advice/business-center/guidance/how-comply-privacy-consumer-financial-information-rule-gramm

c. Reportable transactions:

As a rule, you are not required to report everyday transactions to the government. However, sections of the Bank Secrecy Act do require transactions over a certain dollar amount to be reported to the Financial Crimes Enforcement Network (FinCEN) or to your bank. Examples of such transactions include:

- Any transaction over $2,000 if your title company is suspicious that terrorist or criminal activity might be involved. The company must file a Suspicious Activity Report (SAR).
- All cash-in or cash-out transactions over $10,000 with the same customer in the same day. The company must file a Cash Transaction Report (CTR).
- Money orders or travelers checks of $3,000 to $10,000 from the same customer in the same day.

In addition, you should watch out for the following "red flags" in any of your transactions:

- Cash – Actual Currency Transactions
- Land Flips – multiple transactions involving the same property
- "Straw Man" transactions – corporate shells and trusts
- Third-party depositors
- Escrow deposit refund schemes
- Use of General Powers of Attorney
- Use of Shell Banks/Banks in OFAC listed countries
- Use of numerous deposits under $10,000 each

As always, contact your underwriter if you have any concerns.

d. Internal programs:

As part of your USA Patriot Act compliance duties, you should maintain an internal program against money laundering. Much of what you are required to do is already covered by ALTA Best Practices guidelines. The program should include, as a minimum:

- Designated Compliance Officers at management level;
- Employee background checks to ensure high standards when hiring employees;

- Ongoing Employee Training Program;
- Audit function - test the system – pull a file periodically.

4. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)

i. What is FIRPTA?

The Foreign Investment in Real Property Tax Act (FIRPTA) is a federal law enacted in 1980. It imposes income tax withholding requirements on foreign persons conveying U.S. real property interests (USRPIs).

ii. Property subject to FIRPTA:

- An interest in property is any direct equity interest in the property, such as a fee simple ownership, but does not include interests solely as a creditor. Thus, co-owners of property each hold an interest in the property, but a bank holding a mortgage does not.
- Real property is land, buildings, and land improvements. Generally, whether property is or is not real property is determined under U.S. tax law, and not under state law.
- USRPIs include shares of a U.S. real property holding corporation (USRPHC). A USRPHC includes any U.S. corporation if more than 50% of such corporation's assets were USRPIs at any testing date.

iii. How are "Foreign Persons" defined?

Foreign persons, as defined by the Act, include the following:

- Non-resident aliens (even with a social security number).
- Foreign corporations that have not elected to be treated as domestic corporations.
- Foreign partnerships, trusts or estates.
- Disregarded entities (*i.e.*, sole member LLC) unless the LLC elected to be treated as a partnership or corporation.
- For a U.S. property interest owned jointly by a foreign and non-foreign person, first allocate the sales price among the transferors based upon capital contribution, then aggregate the amount allocated to any foreign person. NOTE: the IRS treats a husband and wife as each having contributed 50% of the property's value.

However, a resident alien (*i.e.*, an alien with a green card) is not considered a foreign person, and FIRPTA does not apply to conveyances by such persons.

In addition, certain foreign persons who meet the "substantial presence test" under Internal Revenue Code section 7701(b) are considered exempt from the application of FIRPTA. Amongst other things, such individuals (usually visa holders) must be present in the United States for at least 31 days during the calendar year, and 183 days during the last 2 years. Please consult with a Maryland underwriter if the substantial presence test is used to determine residency for tax purposes.

NOTE: the test as to a "foreign person" under FIRPTA is different that tests used to determine whether someone is a foreign person for immigration purposes. FIRPTA is not concerned with the latter.

iv. What are the withholding requirements and dollar amounts?

IRS requires that the buyer of a real property interest be considered the "statutory withholding agent", responsible for determining whether FIRPTA applies and also for remitting required funds to IRS.

Unless an exception applies, a percentage of the amount realized by the transferor must be withheld and remitted to the IRS within 20 days of closing, using IRS Forms 8288 and 8288-A. Generally, the amount realized (or gross sales price) for purposes of withholding is the sales or contract price. The amount withheld is merely a deposit that is applied to any actual tax liability the seller may have.

For all closings prior to February 16, 2016, 10% of the amount realized must be withheld, unless an exception applies.

For most closings on and after February 16, 2016, 15% of the amount realized must be withheld, unless an exception applies. However, the withholding rate is 10% if the sale involves property which is acquired by the buyer for use by the buyer as a residence, and if the amount realized is $1,000,000.00 or less.

v. Exceptions from withholding:

These are the most common exceptions to the FIRPTA withholding requirements:

- You (the transferee) acquire the property for use as a home and the amount realized (generally sales price) is not more than $300,000. You or a member of your family must have definite plans to reside at the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. When counting the number of days the property is used, do not count the days the property will be vacant.
- The transferor gives you a certification stating, under penalties of perjury, that the transferor is not a foreign person and containing the transferor's name, U.S. taxpayer identification number, and home address (or office address, in the case of an entity). NOTE: Non-Foreign Certifications are not effective if you have actual knowledge otherwise, or receive notice that they are false.
- You receive a withholding certificate from the Internal Revenue Service that excuses withholding.
- The transferor gives you written notice that no recognition of any gain or loss on the transfer is required because of a nonrecognition provision in the Internal Revenue Code or a provision in a U.S. tax treaty. You must file a copy of the notice by the 20th day after the date of transfer with the:
  Internal Revenue Service Center
  P.O. Box 409101
  Ogden, UT 84409.

- The amount the transferor realizes on the transfer of a U.S. real property interest is zero.

Other exemptions exist under FIRPTA. Please consult with a Maryland underwriter if one is presented to you by the parties to the transaction.

vi. FIRPTA and Short Sales:

Although there are usually no proceeds flowing to a seller in a short sale transaction, the withholding requirement nevertheless applies. Therefore, it becomes crucial to identify a FIRPTA transaction as soon as the contract is submitted for processing. Since it takes months if not longer from contract to closing a short sale transaction, the seller may have sufficient time to apply and receive a Withholding Certificate from the IRS prior to closing.

STUDY TIPS FOR THE STATE EXAM

Upon passing your quizzes and the final exam in this course, you will receive instructions from Margaret Webb about how to sign up for and sit for the state title insurance licensing exam (hereinafter the "Exam"). The Exam is offered through a company called Prometric, which is a contractor that administers the Exam for the Maryland Insurance Administration (MIA).

NOTE: Schools that teach students to study for the Exam are not given the actual Exam questions for review. Schools are only given a list of topics that will be asked on the Exam, which is used as a basis for writing the course materials. Further, all students who take the Exam will sign a confidentiality agreement with the exam provider, preventing you from disclosing exact information from the Exam to third parties.

The Exam is made up of two parts:

- Part #1 with 25 questions about state and federal laws and regulations which affect title insurance, with the following sub-sections:

  Agents and General Rules of Agency
  Federal Regulation
  Licensing
  Maryland Insurance Laws, Rules & Regulations (Other Than Insurance)
  State Regulation

- Part #2, with 85 questions about general title insurance concepts, with the following sub-sections:

  Real Property
  Title Exceptions and Procedures for Clearing Title
  Title Insurance

You have 2 hours to complete both portions of the Exam.

Keep in mind that out of the 110 total questions on Exam, only 100 questions count towards your final grade. The MIA includes 10 extra questions that it is considering to use for future Exams, and are thus included on a trial basis only. You will not be told which questions are trial questions and which questions are "real" questions that go towards your final Exam score.

Students can pass both parts of the Exam the first time, neither part, or just one of the two parts. If you pass one part, you do not need to take that part again. You must wait at least 4 days before taking any part of the Exam over. You must also pass both parts of the Exam within 6 months of finishing this course.

Prometric has several versions of the Exam, so the questions may not be the same if you retake either part of the Exam.

All questions are offered in a multiple choice format. Do not be fooled into thinking this is an easy Exam simply because the correct answer will certainly be one of the four choices for each question. You should remember that two questions will probably be likely answers, one of the remaining 4 answers will be absolutely wrong, and the other will also be somewhat less wrong.

YOU SHOULD READ EACH QUESTION CAREFULLY BEFORE ANSWERING! Test-writers use many techniques to trick students with multiple choice questions. One of them is to ask a question in a different way than you expected, hoping you will look at the answers first and answer with the first thing you recognize. Here is a good explanation of how to take multiple choice exams:

https://content.wisestep.com/answering-multiple-choice-questions/

In terms of preparing based upon the content of this course, please remember the following:

- Module #1 will likely cover about ½ of the 85 questions in the first part of your Exam. A good general knowledge of each concept is crucial to understanding these questions.

- Module #2 questions, many of which have to do with how closings are performed, are not covered heavily on the exam. The sections related to clearing liens and judgments and handling trust account funds are heavily tested.

- Module #3 has become the "make it or break it" portion of the Exam (see below).

- Module #4 is, for most students, the easiest part of the exam.

OUR BEST ADVICE FOR STUDING FOR THE EXAM:

1. Study your course quizzes (100 total questions) and final exam (100 questions) very carefully, and make sure you understand them completely. You should know not only why the correct answers are correct, but why the incorrect answers are wrong.

2. We have included an additional 150+ sample questions for you to study. Take the time to go through all questions offered in this course, not just the bare minimum number to pass this course.

3. The easiest part of the Exam for most students is Part #1, state and federal laws and regulations. Learn the acronyms for the federal laws, like CFPB, TILA, RESPA, GLBA, FIRPTA, etc., and know what they mean instantly if you are asked about them on the stat exam.

4. The hardest part of the Exam is Module #3, title insurance concepts. This is the part of the Exam that separates the students who will pass the Exam and those that will fail. **WE STRONGLY RECOMMEND LISTENING TO RECORDED MODULE #3 AT LEAST TWICE. TAKE METICULOUS NOTES ABOUT MODULE #3, AND LISTEN TO EXACTLY WHAT NED LIVORNESE POINTS OUT IN THIS MODULE!**

5. Be as calm as you can, and have confidence that this course covers all of the concepts you will be asked about on the Exam!

GOOD LUCK!

4TH Edition Quiz Questions

Module #1 Quiz

1. Title Insurance is primarily issued for only two types of transactions:
a. Purchases and sales
b. Commercial and residential
c. Business and agricultural
d. Purchases/sales and refinances

2. Which type of recording statute does Maryland use:
a. Notice
b. Race-notice
c. Race only
d. None of the above

3. What does "constructive notice" mean?:
a. A document must be mailed to the intended recipient
b. It is notice about a construction project
c. It means that by recording a document, you are presumed to know about the document even if you did not receive actual notice of it
d. It is the same as actual notice

4. A proper search Maryland requires the person searching title to search back:
a. At least 60 years in all cases
b. There is no search requirement for property located in a new, platted subdivision
c. At least 30 years, since that is how long most mortgages or deeds of trust last
d. 60 years, unless your underwriter has standards that permit a search for a lesser amount of time

5. Documents in Maryland are recorded with a:
a. Book and page number
b. Social security number
c. Liber and folio number
d. a. and c. only

6. An example of where an underwriter might permit a search of less than 60 years includes:
a. A two-owner search for refinance loans
b. Starting from a platted subdivision
c. If you have an existing owner's policy for the same property
d. All of the above

7. All underwriters in Maryland have the same requirements for searching titles to real property:
a. Yes
b. No
c. Each underwriter can set its own standards for searching titles
d. b. and c. only

8. An off-record title defect means:
a. A defect in title to real property that is not apparent from the public records
b. May include issues such as fraud, forgery, impersonation of a seller, etc.
c. As a general rule, title insurance does not cover issues that are not recorded in the public records
d. All of the above

9. The Torrens System:
a. Is not used in Maryland
b. Is used in certain foreign nations
c. Is used in a few U.S. states
d. All of the above

10. Which ground rent leases in Maryland are redeemable:
a. Only for commercial properties
b. Only ground rents that were created prior to 1884
c. Only ground rents that are registered with SDAT
d. Most residential ground rents

11. Life estates are usually created in a:
a. Will
b. Deed
c. Protective covenants
d. a. and b. only

12. A deed for property held in a trust should be signed by:
a. The beneficiary of the trust
b. The trustor of the trust
c. The trustee of the trust
d. None of the above

13. A certification of trust:
a. Can be submitted to the title company instead of providing a copy of the entire trust
b. Is signed by the trustee
c. Helps keep the terms of the trust confidential, except for information to establish authority to sign for the trust
d. All of the above

14. Regardless of whether you die testate or intestate, your estate will have to be probated:
a. True
b. False
c. Only if you were born before 1960
d. Only for estates probated after 1980

15. In a limited partnership:
a. There are limited partners and at least one general partner
b. Limited partners have no management authority
c. Limited partners are investors who don't have personal liability
d. All of the above

16. A fictitious name:
a. Is also known as a trade name
b. Must be registered with SDAT
c. Are sometimes called a "D/B/A" (doing business as) name
d. All of the above

17. What is the difference between a lien and a money judgment?
a. A money judgment is a court order to pay someone money, a lien is not
b. A lien and a judgment are really the same thing
c. Liens are always voluntary
d. Judgments can be ignored in Maryland after 6 years, liens last 12 years

18. Maryland tax liens:
a. Expire after 20 years
b. Last longer than federal tax liens
c. Have the same statute of limitations as MD inheritance tax liens
d. All of the above

19. The following persons can file a mechanics lien:
a. A roofing company
b. A landscaping company that supplies mulch and paving stones to your property
c. An architect who drafts plans for a new addition to your home
d. All of the above

20. If you occupy someone else's land for at least 20 years in Maryland, it automatically belongs to you:
a. True
b. False
c. It depends on whether it is residential, commercial, or agricultural property
d. Only if there are photographs or historical images of the property to show a judge

21. The term "real property" includes:
a. The land itself and any fixtures on the land
b. Air rights
c. Sub-surface rights
d. All of the above

22. Subsurface rights:
a. Can be conveyed by a deed, lease, or other instrument
b. Are owned by the fee simple owner unless they have been conveyed to a third party in a recorded document
c. Usually concern the ownership of minerals
d. All of the above

23. With a townhouse:
a. You own the ground underneath your house
b. You own half of any common walls
c. You may have an association that charges dues
d. All of the above

24. With a condominium, you own:
a. The air space within your unit
b. A portion of the general common elements and any assigned limited common elements
c. The land underneath your unit
d. a. and b. only

25. Condominiums are sold as _____ property, and a _____ governs the use and maintenance of condominium properties:
a. Leasehold, homeowner's association
b. Vacation, condominium association
c. Fee simple, condominium declaration
d. None of the above

26. Condominiums may be insured by:
a. A fee simple owner's policy or loan policy
b. A freehold policy
c. A leasehold owner's or loan policy
d. A life estate policy

27. The term "Lots 34 through 38, inclusive" includes how many lots?
a. 1
b. 4
c. 5
d. 6

28. An acre includes:
a. 35,604 square feet
b. 43,560 square feet
c. 60,435 square feet
d. 56043 square feet

29. For evidence in a boundary dispute in court, you should obtain at least the following type of survey
a. Location drawing
b. Boundary survey
c. ALTA survey
d. None of the above

30. What is an assumption deed?
a. It is a deed where you assume someone owns the property, although you are not clear about who actually does
b. A deed for a property that has an existing loan that will be transferred to the new buyer
c. You should assume there are no loans on this property
d. None of the above

31. A deed that conveys fee simple title to a ground rent tenant from the ground rent landlord is called:
a. Ground rent assumption deed
b. Ground rent merger deed
c. Ground rent corrective or confirmatory deed
d. Deed of assignment

32. A power of attorney is effective:
a. 24 hours after it is signed
b. When executed, unless it has a future effective date noted in the POA
c. Only for as long as the principal is alive
d. b. can c. only

33. A homestead exemption:
a. May only be used for a principal residence
b. Protects the bankruptcy debtor in Maryland from losing $22,975 of equity in their property
c. Is different from the Maryland Homestead Tax Credit
d. All of the above

34. As a general rule, bankruptcy does not wipe out secured debts like:
a. A mortgage, judgment, deed of trust or UCC
b. HOA dues
c. Credit cards
d. Personal loans

35. As a general rule, bankruptcy does not wipe out the following types of debts:
a. Student loans
b. Child support
c. Secured debts
d. All of the above

36. What is unique about a Chapter 13 bankruptcy:
a. It requires a repayment plan
b. It can take years to obtain a discharge in bankruptcy
c. It is only for individual human beings with a regular income
d. None of the above

37. A _____ is required for a property to be sold after a bankruptcy has been filed by the owner of the property:
a. Court order lifting the automatic stay
b. Discharge in bankruptcy
c. Foreclosure
d. Payment of at least $1,000 to the Bankruptcy Court

38. Even though a bankruptcy voids personal liability for the debtor for a _____, the lien of the judgment remains unless the judgment is _____.
a. Foreclosure, refiled
b. Judgment, avoided
c. Chapter, dismissed
d. None of the above

39. If the seller has a pending bankruptcy, the title company will require a/an _____ from the BK judge in order to conduct the closing.
a. Verbal agreement
b. Preference
c. Unsigned mortgage or deed of trust
d. Written order

40. Documents that create a security interest include:
a. Mortgage
b. Deed of trust
c. UCC-1
d. All of the above

41. What is special about a purchase money deed of trust?
a. It gives the lender's new mortgage or deed of trust priority over any previous judgment against the buyer
b. It can be used for purchase or refinance closings
c. It is subject to transfer taxes
d. It is subject to recordation taxes

42. HELOC deeds of trust are a huge problem because:
a. The title company needs to make sure the account has been shut down
b. The title company needs to make sure the account has a zero balance
c. Lenders sometimes solicit the former owner of the property to take draws from these loans
d. All of the above

Module #2 Quiz

43. Title companies may rely upon the conclusions in an abstract without further reviewing the abstract
a. True
b. False
c. Only if the abstractor has an abstractor's license
d. None of the above

44. Some techniques for clearing title include:
a. Investigate whether the statute of limitations has expired
b. See if a satisfaction/release has been recorded for the document in question
c. Obtain a written letter of indemnification
d. All of the above

45. Additional techniques for clearing title include:
a. The 12 year/40 year "ancient mortgage" rule
b. Obtaining a copy of the current owner's title insurance policy to see if the lien, judgment or encumbrance qualifies under the Maryland Mutual Indemnity Agreement
c. Determine whether the property is protected under joint tenancy or tenancy by the entirety rules
d. All of the above

46. When do mobile homes become real property?
a. When they are permanently attached to the ground
b. When title is converted from personal property to real property
c. It happens just by taking the wheels off of the mobile home
d. a. and b. only

47. A lis pendens
a. Is a warning to the world that litigation may be pending against this property
b. Usually prevents the title company from insuring the property until it is released
c. Means a law suit has already been filed against the property
d. a. and b. only

48. The term "access" in a standard policy of title insurance:
a. Means legal access to the property
b. Is one of the covered claims
c. Does not include actual access to the property
d. All of the above

49. Riparian rights:
a. Means rights to property that fronts a waterway
b. Means the property owner owns part of the land underneath the water
c. Means that the property owner can pump as much water out of the waterway as he/she wants
d. Are not common in Maryland

50. Loan closing instructions:
a. Are not a concern for a TIPIC
b. Must be followed, or you can be fined or lose your title insurance producer's license
c. Are different for every new loan
d. b. and c. only

51. Loan closing instructions may include the following:
a. Terms of the loan, including loan type, loan amount, address and homeowner or buyer names;
b. The price of the property if it is being sold
c. What color of roof is required for the property
d. a. and b. only

52. Red flags a TIPIC should watch out for at a purchase and sale closing include:
a. The funds for closing are not in the trust account yet
b. There are two grantees on the deed, but only one buyer's name is on the loan documents
c. The buyers' last names are misspelled
d. All of the above

53. Maryland law permits a closing at _____ only if it is done at the ____ request to accommodate their _____.
a. title company's office, seller's request, inconvenience
b. buyer's place of work, loan officer's request, laziness
c. buyer's home, buyer's request, sickness
d. lender's office, seller's request, imprisonment

54. A closing disclosure:
a. Is used for most new consumer loans
b. Is not required for HELOC loans
c. Is not required for reverse mortgages
d. All of the above

55. Good funds include:
a. Paypal
b. A wire
c. Apple Pay
d. Bit Coin

56. The most important documents signed at a purchase/sale closing include:
a. Building code permit, seller's affidavit, certification of taxes
b. Promissory note, deed of trust, and deed
c. Occupancy affidavit, privacy disclosure, IRS W-9 form
d. First payment letter, 1033 form, borrower's affidavit

57. A title company owes fiduciary duties with respect to closing funds to:
a. The buyer
b. The lender only
c. The seller
d. All of the above

58. A title company is a neutral party to any closing, although it is required to follow the ___.
a. Lender's closing instructions
b. Rules set by the Realtors
c. Rules of the road
d. U.S. Constitition

59. Penalties for violating MD trust accounting laws and regulations may include:
a. A misdemeanor conviction
b. $50,000 fine per incident
c. A jail term of up to 1 year per incident
d. All of the above

60. Escheatment is required:
a. When funds are still in the title company's trust account after 3 years
b. The title company has tried for at least 15 days to respond to a letter
c. Only after the title company has undergone an exhaustive search to find the owner of the funds
d. None of the above

61. Where do escheated funds go:
a. To the Maryland Secretary of State
b. To the State Department of Assessments and Taxation
c. To the MD State Treasurer
d. To the MD Comptroller

62. Title companies are required to file an annual report on abandoned funds:
a. Once a year
b. Once every two years
c. Once every three years
d. Never

63. Post-closing activities include:
a. Issuing title insurance policies
b. Yearly MAHT reporting
c. Issuing a title commitment
d. a. and b. only

64. The unauthorized practice of law in Maryland includes:
a. Performing closings
b. Drafting deeds without an attorney's certification
c. Preparing title commitments
d. Issuing title insurance policies

65. Defalcation means:
a. Other people's money (OPM) is missing from the trust account
b. Someone may have committed embezzlement
c. Your title company has a very good chance of being visited by state regulators, the FBI, or your underwriter asking questions about what happened
d. All of the above

66. Title insurance is unique, because:
a. You pay for it only once
b. It insures you backwards in time
c. It is a contract
d. a. and b. only

67. What terms are included in an agency contract?
a. The agent is responsible for its own escrow accounts
b. A list of states where the agent may issue title insurance
c. The maximum dollar amount of each transaction before written underwriter approval is required
d. All of the above

68. Common requirements in a title commitment include:
a. Pay off and obtain satisfactions for any existing deed of trust
b. Pay off liens and judgments
c. Shut down a HELOC line of credit
d. All of the above

69. These are the most common exceptions to an owner's title policy for residential property:
a. Taxes for the current year
b. The deed of trust signed at the closing
c. Covenants and easements
d. All of the above

70. Additional requirements may be added to a title commitment as a result of:
a. A divorce
b. When someone has died
c. For a foreclosure
d. All of the above

71. As a general rule, an owner's policy:
a. Protects the buyer of the property or his/her heirs and spouse
b. Terminates when the property is sold
c. Can be priced at pretty much what the market will bear by the title insurance agent
d. a. and b. only

72. As a general rule, an owner's policy:
a. Will be issued for the purchase price of the property
b. Goes up in value over time
c. Will cost about twice as much as a loan policy
d. None of the above

73. A short-form loan policy
a. Costs a lot more than a regular loan policy
b. Is illegal to issue in Maryland
c. Shortens the time it takes for the lender to get a loan policy after closing
d. Is used extensively for commercial closings

74. Covered risks always include:
a. Zoning laws
b. Documents which are improperly created, executed, sealed and notarized
c. Any survey-related problem
d. Problems created by the buyer of the property

75. The following issues are covered under a standard policy only if a document or notice has been recorded in the public records prior to closing:
a. Eminent domain
b. Exercise of government police powers
c. A violation of environmental protection laws
d. All of the above

76. An enhanced policy:
a. Costs about 20% more than a standard policy
b. May cover certain events that happen after the date of the policy
c. May increase in value after closing
d. All of the above

77. What is the purpose of a title insurance endorsement?
a. To add earthquake insurance to a title policy
b. To add coverage for things not covered in the standard title policy
c. To charge more money to the consumer
d. None of the above

78. _____ are _____.
a. Title premiums, not regulated
b. Endorsements, not regulated
c. Closing costs, not regulated
d. Closing costs, regulated

79. _____ are usually filed with the MIA in _____.
a. Title insurance rates, tiers
b. Closing costs, advance
c. Endorsements, tears
d. Minimum charges, title commitments

80. A simultaneous loan rate means:
a. A commercial property is involved
b. An owner's policy and a loan policy are being issued for the same transaction
c. The title company can charge twice as much as for a single title insurance policy
d. None of the above

81. A reissue rate:
a. Is a discounted rate
b. Can be used for a policy issued by another title company
c. Can be used for a policy issued by the current title company
d. All of the above

82. What does "Title vested other than in the expected owner of the property" mean?
a. It means someone who isn't named in the title insurance policy owns the property
b. It is a valid basis for a claim under any title insurance policy
c. It may require litigation to solve this problem
d. All of the above

83. Examples of unmarketable title may include:
a. Zoning violations
b. Unpaid liens or judgments that the seller cannot pay at the time of closing
c. Encroachments of a neighbor's fence onto your property
d. All of the above

84. Additional examples of unmarketable title include:
a. A known violation of restrictive covenants
b. Columbia Association covenants
c. Condominium delarations
d. None of the above

Module #4 Quiz

85. The following persons are subject to RESPA kickback rules:
a. Title insurance agents
b. Attorneys
c. Appraisers
d. All of the above

86. Who may examine the records of a title insurance agency in Maryland?
a. Your underwriter
b. The MIA
c. The IRS
d. All of the above

87. What is an underwriter reserve requirement?
a. Money set aside from premiums to pay claims
b. They can amount to 10% or more of total premiums earned in the state
c. This is not required in Maryland
d. a. and b. only

88. Penalties for failure to adhere to title insurance licensing regulations include:
a. Suspension of a license
b. Forfeiture or revocation of a license
c. A fine of between $100 to $500 per violation
d. All of the above

89. In order to conduct real estate closings and acknowledge or notarize documents, a TIPIC:
a. Must be a licensed Maryland notary public
b. Must obtain a title insurance producer – individual license
c. Must be appointed by the title insurer
d. All of the above

90. TIPICS must obtain their own surety and fidelity bonds:
a. TIPICS do not require bonding
b. They are always covered by the title agency's bonds
c. Only if they are not covered by the title agency's bonds
d. None of the above

91. Maryland attorneys:
a. Are not required to take a title insurance prelicensing class
b. Are not required to take title insurance continuing education classes
c. Do not ever require a title insurance license
d. a. and b. only

92. Prohibited practices in Maryland include:
a. Payment of referral fees by a title company to any third party
b. Commission splits
c. Kickbacks or fee splitting
d. All of the above

93. To obtain a title insurance license in a non-reciprocal state:
a. You must take a prelicensing course in that state, if it is required
b. You must take that state's licensing exam
c. You must pay all relevant fees for out of state title insurance producers
d. All of the above

94. To obtain a license in a reciprocal state:
a. You must be in good standing in the state where you are currently licensed;
b. You must pass that state's licensing exam
c. You need not take continuing education classes in the other state
d. You must be a licensed attorney

95. Changes to licensee status (e.g., legal name, trade name, email address, addresses, etc.) must be reported to the Maryland Insurance Administration:
a. Within 10 days
b. Within 14 days
c. Within 30 days
d. Within 60 days

96. Since a first time Maryland homebuyer is prohibited from paying state transfer taxes, who pays transfer taxes at the closing?
a. The seller
b. The Realtor
c. The lender
d. The buyer

97. A refinance loan may result in the imposition of _____.
a. Transfer taxes
b. Recordation taxes
c. Recording fees
d. Real estate taxes

98. Prohibited practices in Maryland include:
a. Making defamatory statements about your competitors
b. Twisting
c. Discriminating against your clients on the basis of race, national origin, or sex
d. All of the above

99. Examples of unfair claims settlement practices include:
a. Failing to return phone calls
b. Refusing to pay a claim within a reasonable time period
c. Offering substantially less money than the claim is worth
d. All of the above

100. Boycotting means:

a. Recommending to a client that they not do business with a competitor
b. It is illegal in Maryland
c. It can cause you to lose your title insurance license
d. All of the above