

# THE NEWS IN GENERAL

"Can Trust The General"



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## PREDATORY LENDING BILL SIGNED BY GOVERNOR TAFT

The Ohio Homebuyer's Protection Act (S.B. 185) was signed by Governor Taft on Monday, June 19, 2006. Although targeted primarily at sub-prime lenders, mortgage brokers, appraisers and other real estate professionals, S.B. 185 does make major changes for title agents. Effective January 1, 2007, the new bill will require the following of title agents:

1. Title insurance agents shall be required to notify purchasers of the availability of owner's title insurance when issuing lender's title insurance in conjunction with a residential mortgage loan (O.R.C. §3953.30);
2. Title insurance agents and any subcontractors performing a title search shall be required to maintain an errors and omissions policy that includes coverage for the agent's delegation of any function. (O.R.C. §3953.23);
3. Title insurance agents



4. shall issue closing or settlement protection to lender, borrower and seller of the property, and to any applicant for title insurance, except when the lender, borrower, seller or applicant has signed a written document declining the protection (O.R.C. §3953.32);
5. Title insurance agents shall be required to offer closing or settlement protection to the lender, borrower, and seller of the property, and to any applicant for title insurance, which shall indemnify those parties against the loss of settlement funds resulting from certain specific acts (O.R.C. §3953.32);
4. Title insurance agents that handle escrow, settlement, closing or security deposit accounts shall be required to maintain records of those accounts and shall be required to have an annual independent review made

- of those accounts, and those agents shall allow the Superintendent of Insurance and title insurers reasonable access to those accounts (O.R.C. §3953.33);
- In addition to the title-specific provisions in the bill, the new law makes real estate flipping illegal under O.R.C. §1349.41. "Flipping" is defined as making a consumer home

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## PREDATORY LENDING BILL SIGNED BY GOVERNOR TAFT

### (continued from page 1)

loan that refinances an existing consumer home loan when the new loan does not have a reasonable, tangible net benefit to the borrower.

Noticeably absent from the new bill is the provision which prohibited mortgage brokers from owning interests in title companies. During the negotiations between House members and Senators, this provision of the bill was dropped. Regardless of this decision, federal law (RESPA Section 8(a)) and certain existing provisions of state law still govern this area and dictate the rules regarding co-ownership.

#### WHAT DOES THE NEW LAW MEAN?

Enclosed please find a sample Notice of Availability of Owner's Title Insurance, this form will need to be provided to all prospective purchasers at the time of the title commitment (not at closing) to advise consumers of the availability of owner's title insurance. The form must be kept by the title agent with the agent's file for a period of no less than ten (10) years. This form will assure compliance with the new mandate regarding advising customers of the availability of owner's insurance. **REMEMBER: this bill does not become law until January 1, 2007.** However, it is a good practice to incorporate these changes with your staff as soon as possible.

Also, as the new law suggests, there will be a premium charge for the issuance of closing protection letters (CPLs) most likely starting at the beginning of next year. The rates for the CPLs have not yet been filed. However, last year the Ohio Title Insurance Rating Bureau attempted to establish a rate of \$50.00 fee (for lender only) and \$75.00 fee for combo issuance (lender & seller, lender & buyer, or lender, seller & buyer). There will be more information on this as we get closer to the end of the year. I would suspect that the Rating Bureau

will quickly act to establish a rate and a methodology for who gets what from the fee. As that information is learned, we will certainly share it with you.

As noted in the new law, all agents are advised to contact their outside title examiners to advise them of the fact that the new law will require each examiner to carry his or her own errors and omissions insurance policy. Ohio law after January 1, 2007, will require any outside examiner to carry this insurance. Another good idea would be to inquire with some of your larger outside examiner accounts to see if they would be willing to add your agency as additional insureds on their errors and omissions policies. That way, in case of a claim involving examiner negligence, you can make a direct claim to the insurer and seek damages for any losses. This practice reduces the likelihood of interference on the part of the

examiner in obtaining quick remedies on claims losses.

Finally, the new law requires agents to maintain accounting records of their escrow accounts and make same available to the Department of Insurance and underwriters, upon request. Our agency agreement already requires this provision. However, the new law requires each agent to have an independent audit of their escrow accounts within 90 days after the close of the fiscal year and to report the findings of that audit to their underwriter. The Department of Insurance has yet to establish the guidelines for the audit and will likely do so in the near future. More information will be forthcoming on this measure as the Department acts.

*Another good idea would be to inquire with some of your larger outside examiner accounts to see if they would be willing to add your agency as additional insureds on their errors and omissions policies. That way, in case of a claim involving examiner negligence, you can make a direct claim to the insurer and seek damages for any losses. This practice reduces the likelihood of interference on the part of the examiner in obtaining quick remedies on claims losses.*



## New AfBA Case Filed in Toledo, Ohio

Ohio's streak of RESPA cases continued this month with a new case filed June 8 in the Northern District Court, Western Division.

The plaintiff, Jaineey Cairns, filed the complaint against Midwest Financial and Mortgage Services, a Columbus-based mortgage broker; Paul Blackburn, a senior loan officer with Midwest Financial based in Toledo; nBank, NA, a Cincinnati-based lender; Federated Land Title Agency, LLC, a Cincinnati-based title company; and First American Title Insurance Co. of Columbus.

In the complaint, Cairns stated that the Toledo branch of Midwest Financial—and specifically Blackburn—had approached her about refinancing her home in Howell, Mich. in early 2005.

Blackburn sent her mortgage application to nBank for processing and loan approval, but Cairns claimed that they failed to deliver a good faith estimate to her within three days after her application was received. In fact, Cairns claimed they did not provide a GFE at all, and alleged violations of RESPA, Reg X and TILA.

Further, Cairns said that for the lender's title policy and closing services, Blackburn and Midwest contacted Federated Land Title, their affiliated title company, and noted that Federated maintained an office in Midwest's Toledo branch.

The complaint alleged that the title fees charged by Federated as an agent for First American "were in excess of the

amounts permitted by the laws of the State of Michigan" and that "the maximum rate to be charged by First American through its agent Federated... was approximately one-half the premium actually charged to and paid by plaintiff Cairns."



Cairns first cause of action in the complaint claimed that "as mortgage brokers, defendants Blackburn and Midwest owed plaintiff Cairns fiduciary duty" under the Ohio laws that governed their duties.

"First American, Federated, nBank, Blackburn and Midwest, jointly and/or severally, knew and/or should have known that the fees charged to Ms.

Cairns ... were in excess of that permitted by applicable law," the complaint stated, alleging that the defendants "breached the fiduciary duty they owed to plaintiff Cairns by failing to disclose and/or misrepresenting to her the applicable fees related to the current refinancing allowed by law."

The second cause of action stated the

defendants acted "in concert with an actual intent to defraud plaintiff Cairns by failing to timely provide the good faith estimate and/or truth in lending disclosure and/or in overcharging her for services ... in violation of federal and state laws."

The third cause of action alleged violations of RESPA's kickback prohibition, stating that "the fees paid and/or profits split between Midwest and Federated ... constitute illegal kickbacks and/or payment of honor fees incident to or as a part of a real estate settlement service."

Further, the complaint alleged that "First American was at all times material herein privy to and directly financially benefited by the affiliated business arrangement between its agent Federated and Midwest," and added that "First American, Federated and Midwest, jointly and/or any combination of them, acted in concert with an actual intent to defraud plaintiff Cairns by engaging in a scheme of illegal payment of unearned fees and/or illegal kickbacks."

For each cause of action, Cairns is seeking damages and attorney fees in excess of \$75,000.

The case has been assigned to Judge Jack Zouhary.

### Ohio case connections

One of the attorneys representing Cairns, John Huffman of Toledo-based Mickel & Huffman, is also representing the plaintiffs in the Ohio sham AfBA case of [Carter v. Wells-Bowen Realty, et al.](#)

Huffman has previously gone on the record to voice his concerns over the

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## New AfBA Case Filed in Toledo, Ohio (continued from page 3)

number of sham AfBAs cropping up in the marketplace.

In mid-May of 2005, it was reported that several independent title agencies in the Toledo area were organizing a coalition to oppose joint ventures that they believed represented a conflict of interest. The coalition was reportedly a response to the captive reinsurance investigations going on at that time, and the agencies expressed concern about the competitive disadvantages stemming from JVs between large underwriters and Realtors, lenders and homebuilders.

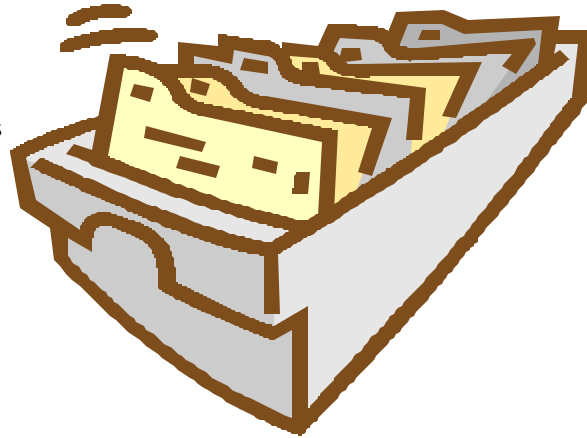
The *Carter* case is still proceeding, although Fidelity National Title has been dropped as a defendant. A hearing on a motion for class certification is sched-

uled for Jan. 22, 2007.

Meanwhile, the relationship between First American and another of their Ohio title agents, Tower City Title, is under dispute in [Shahan v. Tower City Title](#), which on June 21, 2006, was referred to mediation through alternative dispute resolution by Judge Dan A. Polster, who ordered that the process be completed within 45 days.

For more informa-

tion on these events, please contact the legal department at (800) 344-7445.



## OIL AND GAS LEASES & H.B. NO. 288

The rising cost of energy across the nation has forced the Ohio General Assembly into action. More and more oil and gas wells are being drilled in Ohio and those formerly dormant wells are being uncapped and tapped for production. As a result of the rise in mineral speculation, the Dormant Mineral Act (O.R.C. §5301.56) has been modified effective June 30, 2006. According to H.B. No. 288, **title agents will no longer be able to simply file an affidavit under this section to terminate oil and gas leases.** Instead, the Company and all other national title insurance underwriters are adjusting their policies to fit the new rules.

### A. BACKGROUND:

When you come across an oil and gas lease, you will need to determine the following:

1. Is the property in question residential? Does it involve the sale of a farm or commercial property? Is the property part of a commercial

refinance? Is the property new construction? If any of the above, then follow the instructions in Part B for each condition.

2. When was the oil and gas lease executed and filed?
3. What was the primary term of the lease?
4. Is the lessee allowed to delay drilling so long as a "delay rental" is paid?
5. Has the Ohio Department of Natural Resources issued a drilling permit?
6. If a permit was issued, was it a dry hole, has the well been plugged or is it an operating well?
7. Has the well been converted to a storage well? If the well has been converted to a storage well, then show the lease and its amendment on the policy and issue a CLTA endorsement 100.23 on the loan policy. A copy of the endorsement is attached. There is no premium for

this endorsement.

### B. CONDITIONS OF ISSUANCE

#### 1. Residential property (one to four family)

##### Platted lot in a subdivision

- If the lease is over ten years old and no drilling permit issued, delete the lease from the policy.
- If the lease is over ten years old with a drilling permit or less than ten years old, show the lease as an exception on both the owner's policy and loan policies and give the CLTA 100.23 endorsement attached hereto with the loan policy.
- Obtain a mortgage location survey and request the surveyor to show any wellhead and/or any access easement by which an offsite well is serviced.

# OIL AND GAS LEASES & H.B. NO. 288

(continued from page 4)

**Unplatted acreage (1-10 acres). \*If the property is over ten acres, then treat as a commercial transaction.**

- If the lease is over ten years old and no drilling permit has been issued, a loan policy may be done showing the lease and giving the lender a CLTA 100.23. In order to remove the lease from an owner's policy you must locate the lessee and get a release or bring an action under O.R.C. §5301.332.
  - If the lease is over ten years old with a drilling permit or is less than ten years old you must contact the lessee and either obtain a release of the lease or have the lessee waive surface access over the insured premises.
  - If the lease is released it can be deleted from the policy. If surface rights are waived then show the lease on Schedule B and give a CLTA 100.23 endorsement with the loan policy and a CLTA 100.29 endorsement attached herein with the owner's policy.
  - Obtain a mortgage location survey and request that the surveyor show any wellhead and/or access easement by which a well is serviced.
- 2. Farm Property and Commercial Property Sales**
- Attempt to obtain a release if there is no open well permit provided by the ODNR.
  - If no release can be obtained and there is no open drilling permit, then the property owner needs to bring an action for forfeiture of the lease using O.R.C § 5301.332.
  - If the lease is pooled with others to form a drilling unit and the lessee executes a waiver of surface rights as to the subject property, then a CLTA 100.29 can be issued with the owner's policy and a CLTA 100.23 endorsement can be issued

with the loan policy.

- If there is a well in place, on the premises, there is no way of deleting the exception from the policy or giving affirmative insurance. If the lessee will enter into an agreement modifying surface access the title policy exception may be modified to reflect this.
- 3. Commercial Refinance**
- If the lease is over ten years old with no drilling permit issued by ODNR, you may issue a loan policy showing the oil and gas lease and give a CLTA 100.23.
  - If the lease is less than ten years old or has an open drilling permit, then contact the lessee and get a release or waiver of surface entry. If you have difficulty finding the lessee, contact the legal department.
  - If the lease is released then it may be deleted from the commitment and policy
  - If surface rights are waived, a CLTA 100.23 endorsement may be issued with the policy.
- 4. Development and New Construction**
- These types of leases should be released or the lessee should waive or restrict surface entry. This can be done by contacting the lessee and obtaining a release or waiver. If there is no open permit for a well and the driller cannot be contacted or is uncooperative then the procedure outlined in O.R.C. §5301.332 should be used to terminate the lease.

## C. RESEARCHING OIL AND GAS WELLS

To find out if there is a well drilled pursuant to the lease in question, please

contact the Ohio Department of Natural Resources at:

Ohio Department of Natural Resources

1855 Fountain Square Court, Building H2, H3

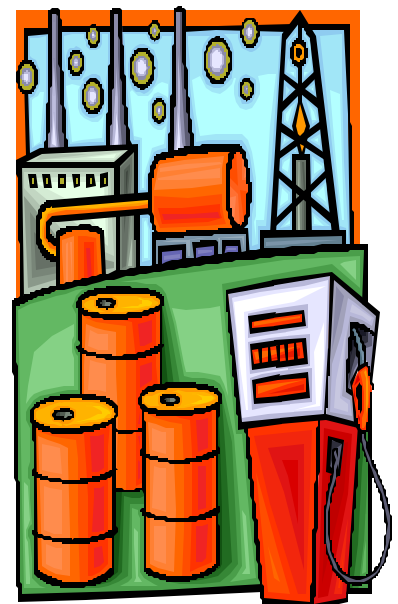
Columbus, Ohio 43224

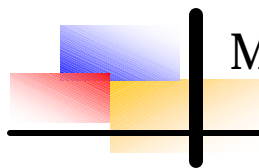
(614) 265-6633

Fax (614) 265-7998 or (614) 265-7999

[www.ohiodnr.com](http://www.ohiodnr.com) (select mineral resources)

If there is an active well permit, the address and phone number of the permit holder can be obtained from the ODNR website. If there is no open permit or ODNR does not show the address of the lessee, then check with the Ohio Secretary of State. If the lease was assigned to an out-of-state entity, then check with that home state's secretary of state and department of natural resources for contact information.

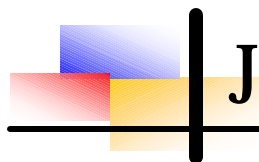




# May 2006

*Employee Celebrations*

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			



# June 2006

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

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