

Date: August 5, 2008
From: Stewart Legal Services
To: All Issuing Offices

SLS2008009

RE: FDIC Requirements for "Pass-through" Deposit Insurance for Escrow Accounts

Dear Associates:

The Federal Deposit Insurance Corporation (FDIC) insures deposit accounts in an insured institution up to a maximum of \$100,000 for each depositor. For escrow accounts and other types of fiduciary accounts, deposits are held in the name of the escrow agent but actually belong to others. FDIC rules will permit the insurance to "pass-through" the escrow agent to the true owner(s) of the funds **if** certain requirements are met, as follows:

1. The fiduciary status of the accountholder must be clearly stated in the account records of the depository institution. To satisfy this requirement each escrow account opened at a bank (or other insured institution) must be named in the bank's records as "_____ Title Company, as Escrow Agent" or "_____ Title Company Escrow Account", or the like, which makes clear the named company is acting as a fiduciary for others who are actual owners of the account funds. To the extent applicable include the names of the actual owners of the account or a reference to the particular file number.
2. The identity of the actual owners of the account funds, and their respective interests in the funds, must be ascertainable either from the bank's account records or from records maintained by the escrow agent in its regular course of business. To satisfy this requirement, the escrow agent must keep its records as to each escrow account meticulously up-to-date with the owners' names and the amount of account funds belonging to each.
3. The account funds must actually belong to the owners named in the escrow agent's records. This is a factual requirement that depends upon the specific facts and circumstances of the transaction for which the particular escrow account was established.

With the recent failure of IndyMac Bank and its takeover by the FDIC, and the possibility of additional bank failures to come, all Associates need to focus on properly naming each of their escrow accounts and maintaining their records so as to maximize FDIC deposit insurance coverage for their customers. All existing accounts need to be reviewed **and confirmed with your bank** (and updated as needed) to be sure the above requirements are met.

There are various independent rating services such as LACE Financial Corp that provide financial information on banking institutions. You should regularly check the ratings provided for the banks with which you do business. Certainly, if you are concerned or become concerned about the stability of the bank or financial institutions in which you

are currently doing business, it is prudent to move escrow and other accounts to another financial institution.

REMEMBER: Escrow functions, including the escrow accounts, are the responsibility of each Associate, not that of the title insurer.

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Note: Copy and distribute this bulletin to your escrow officers, title examiners, title officers, searchers and anyone else that you feel should know about it.

References

Bulletins Replaced:

None.

Related Bulletins:

None.

Underwriting Manual:

None.

Exceptions Manual:

None.

Forms :

None.