Title Chat

Volume 3, January 2002

Last year NATIC began issuing a monthly letter called *Claims Chat*. Beginning with this issue the name of the newsletter has been changed to *Title Chat.* *Title Chat* will be distributed to agents of NATIC and their customers as a manner of disseminating information regarding current happenings in the title conveyancing and closing areas. We hope that it will be of benefit to you.

Our friends at North American Title Company and North American Title Insurance Company in California issue a monthly paper entitled "Claims Corner". Their excellent January 2002 edition is entitled *Caveats of the "Right of Rescission"*. We at North American Title Insurance Corporation are sure that our agents and customers in Florida and Texas will benefit from the information it contains and accordingly adopt its message and am distributing it as North American Title Insurance Corporation's *January 2002 Title Chat.*

Please note that in California the word "escrow" is used with the same meaning as we give to "closing" in Texas and Florida and that "deed of trust" is the same as a "mortgage" in Florida.

If you wish to be placed on our distribution list, please call Floyd Krause or Sunny Akins at 305-559-5656; or send a fax to 305-229-6540; or an email to Fkrause@nat.com or Sakins@nat.com.

Happy New Year!

Title Chat is published monthly by North American Title Insurance Corporation, a member of the North American Title Group of companies for distribution to North American Title Group's employees and customers. Topics will include closing issues, title and title insurance issues and title insurance business issues; and are intended to make the reader aware of the issues discussed.

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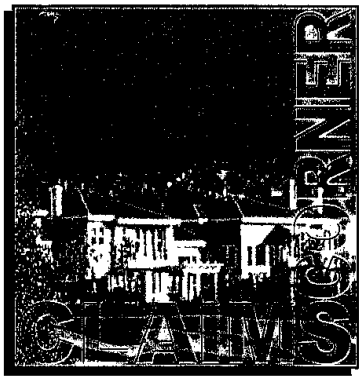

Claims Corner

January 2002

CAVEATS OF THE "*RIGHT OF RESCISSION*"

We frequently encounter inquiries for clarification of the transactions in which escrow must ensure that the borrower has received proper notice of the "3-day right of rescission" prior to closing. Under federal law (15 USCA Section 1635), a borrower has an unconditional right to rescind a loan, **until midnight of the third business day following the closing**, in the following situations:

1) refinance of an existing deed of trust which is to encumber the principal residence of the borrower; or
2) a new loan secured by a deed of trust which is to encumber property already owned by the borrower and which is the principal residence of the borrower.

Certain credit transactions are **exempt** from this federal mandate, and the "3-day right of rescission" notice is **not** required to be given the borrower if:

1) the loan is obtained for the purchase of property and the property is encumbered by the deed of trust (whether the principal dwelling of the borrower or not), i.e., a purchase money loan:
2) the deed of trust does not encumber the principal dwelling of the borrower;
3) the new loan is a refinance of an existing loan, and
   (a) is for an amount equal to or less that the original loan (including any accrued and unpaid finance charges); **and**
   (b) is made by the same lender and is secured by the same property.

BE SURE TO GIVE THE BORROWER PROPER NOTICE OF THE RIGHT TO RESCIND.

It is the responsibility of the lender to provide the borrower with the 3-day right of rescission notice, along with other loan documentation. Frequently, the lender will instruct escrow, as the neutral third party depository, to deliver the notice to the borrower. The requisite form of the 3-day right of rescission notice is best stated by quoting the applicable Truth in Lending Regulations, Regulation Z, Section 226.15(b), as follows:

> "In any transaction or occurrence subject to rescission, a creditor shall deliver 2 copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall identify the transaction or occurrence and **clearly and conspicuously disclose** the following:
>
> (1) The retention or acquisition of a security interest in the consumer's principal dwelling.
> (2) The consumer's right to rescind . . .
> (3) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.
> (4) The effects of rescission, as described in paragraph (d) of this section.
> (5) The date the rescission period expires." (emphasis added)

Claims Corner is brought to you by your North American Title Company and North American Title Insurance Company Claims Counsel. It is intended as a learning tool, and its content does not necessarily arise out of actual claims tendered to the Company.

The consequences of failing to give the borrower proper notice as specified in this regulation are dire: a borrower who claims lack of proper notice has a right to rescind the loan, up to three years from the date of closing, by simply tendering the principal (without interest) of the loan to the lender. Therefore, it is essential for escrow to make sure the 3-day notice **clearly and conspicuously discloses** the required information when instructed by the lender to provide the notice to the borrower. For example, does the notice specify the date on which the 3-day period commences and the date on which the 3-day period expires? Have you included in the borrower's packet of copied documents a completed and signed copy of the 3-day right of rescission?

It is the policy of the Company to decline to close a transaction prior to the expiration of any rescission right afforded under federal law. If a lender has asked you to close a transaction before the expiration of the 3-day period, or if you have any questions concerning the applicability of any possible rescission right, the matter should be referred to Escrow Administration, Corporate Underwriting or Claims Counsel for assistance.