



ENTERPRISING NEWS ©

# A Note from The President



Welcome to our first edition of **Enterprising News** ©. Over the past few years, Enterprise Title has worked with you on a purchase or a refinance, so we know that you are interested in current developments in the real estate industry. We will provide useful information to you about market trends, legal issues, and how Enterprise Title assists you in the closing process.

This will be an interactive dialogue. We want to hear from you, by personal visits to our offices, regular mail, or via e-mail. Give us your input and tell us what else you would like to learn about. If you have an idea for an article, or want to communicate about the current issue, contact us at [Newsletter@enterprise-title.com](mailto:Newsletter@enterprise-title.com).

Donna Straus  
President  
Enterprise Title, Inc.

## WHAT IS MY HOME WORTH??

In today's crazy real estate market, no one can be sure how to answer that question. It seems that the prices are going up every day. Good news for sellers, a little tougher for buyers. Here is what we can offer. Enterprise Title works with the finest real estate agents in South Florida. Go to our website, [www.enterprise-title.com](http://www.enterprise-title.com) (Realtors®), and find someone who can help you evaluate that home. You will be well served.

**Enterprise Title Records Another Electronic Deed and Mortgage!**

**Play Title Tantalizer for a chance to win a \$100.00 Gift Certificate to La Brochette Restaurant**

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# WHAT ROLE DOES A TITLE COMPANY FULFILL IN A REAL ESTATE TRANSACTION?

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In many other jurisdictions, the closing process brings together the title company, the settlement agent and the attorney. Fortunately for our clients, Enterprise Title, Inc. fulfills all of these roles. **Enterprise** is a title company and a closing agent. Additionally, our attorneys examine title, issue title insurance policies, and supervise the entire closing process.

In a mortgage transaction, we must follow the lender's instructions. Our performance is governed by the Florida Department of Insurance and by the underwriting guidelines from our title underwriters: First American Title Insurance Company ([www.firstam.com](http://www.firstam.com)); Attorneys Title Insurance Fund ([www.thefund.com](http://www.thefund.com)); and Stewart Title Insurance Company ([www.stewart.com](http://www.stewart.com)).

Enterprise fulfills eight primary roles in the real estate closing:

- we receive all monies, hold them in **escrow**, and disburse to all parties
- we examine title, clear title defects, then issue **title insurance**
- we prepare the **documents** (between 50-75) for closing
- we conduct the **closing**
- we **record** the Deed and the Mortgage
- we **return signed documents** to the lender
- we **pay off** all outstanding mortgages and liens and.....
- **WE RESOLVE ISSUES AMONG THE BUYERS, SELLERS AND LENDERS TO ENSURE A SMOOTH, SUCCESSFUL TRANSACTION**

## WHY SHOULD YOU CHOOSE ENTERPRISE TITLE, INC.?

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### EXPERIENCE AND PERFORMANCE

- Enterprise Title, Inc. has performed over 40,000 closings
- Staff of 25 full time employees
- Two full time attorneys, each with 20+ years of experience
- Closing Coordinators average 15+ years experience
- Authorized Closing Agent for every national and regional lender
- Closings conducted by principals of Company
- In-house cutting-edge technology staff
- Two offices, electronically integrated and networked
- Ranked in Top 10 First American Title Ins Co.-South Florida agents
- Consistently ranked in Top 25 Attorneys Title Ins. Fund-Statewide
- Satisfaction ratings over 95% from customers
- Considered by the top local real estate agents as the finest title company in South Broward

## LEGAL ISSUE OF THE MONTH: HOW SHOULD YOU HOLD TITLE?

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**Tenants by the entirety:** Most common format for a married couple. Advantages: Creates a right of survivorship; generally protects the property if one spouse is sued (unless the creditor is the IRS). Disadvantage: If second marriage, the property goes to the surviving spouse, not to the children.

**Joint tenants with rights of survivorship:** Unmarried people can own property with others, so that those who survive own the entire property. Advantages: avoids probate; allows property to stay within the family. Disadvantages: property cannot be conveyed unless everyone agrees; combination with non-family members may create disagreements.

**Tenants in Common:** Each party owns a divisible interest in the property. Advantage: each one can convey his/her interest. Disadvantage: an estate must be opened for any owner who dies.

**Life Estate:** One can have the right to enjoy possession of the property until death. Advantages: Avoids probate for the life tenant; can still get homestead tax exemption from County. Disadvantages: life tenant does not "own" the property; remaindermen cannot convey property without the life tenant.

**Ownership by Entity:** Title can be taken in a Subchapter S corporation, a regular C corporation, or a limited liability company. Advantage: when the individuals die, the entity continues to own the property, without interruption. Disadvantages: the entities do not enjoy the several statutory homestead protections available to individual owners; many lenders will not make a loan to an entity.

**Trust:** There are many types of Trusts, e.g. land trust, revocable, qualified personal residence trust. The trust vests title in the trustee, and the trust document gives certain powers to the trustee. Advantages: can provide anonymity; can avoid probate because the trust survives the death of the beneficiary. Disadvantages: somewhat expensive to establish, complicated to create.

Each of these choices must be balanced with other criteria, e.g. estate planning objectives, mortgage financing requirements, tax considerations. This article is not intended to give any individual legal advice. Please check with a real estate attorney to find out which type of ownership is best for you.

**Note: The hiring of a lawyer is an important decision. Nothing contained in this Newsletter shall be considered as individual legal advice. Consult an attorney or a tax professional for individual advice.**

## UPDATE ON RESPA REFORM

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In 1974, Congress enacted the Real Estate Settlement and Procedures Act (RESPA). The intent was to protect consumers by simplifying the residential real estate closing process. Since 1974, the real estate world has changed dramatically, but the law has not been updated. The Secretary of Housing and Urban Development (HUD) is proposing a series of changes to RESPA. Consumer groups and industry groups, such as the Mortgage Bankers Association (MBA), the National Association of Realtors (NAR) and the American Land Title Association (ALTA) have been asked for their input.

At press time, HUD was conducting a series of meetings around the country to obtain viewpoints on the current system, and suggestions on what a new system should look like. One of the hottest topics is sure to be "bundling." If the consumer is guaranteed one set price for all of his costs and fees at the outset of the transactions, would that simplify the process? Would it be fair to all of the industries which participate in the closing or would it create monopolies? Another topic sure to attract attention is the Affiliated Business Arrangement. Should real estate companies, mortgage companies, and title companies continue to have cross-ownership? Do these arrangements benefit the consumer?

We expect lively debate. Each year, there are over six million real estate transactions in the United States. Hundreds of thousands of people are employed by the trades which comprise the real estate industry. These rules will affect all of us. Stay tuned.

## STAFF PROFILE

### SANDY PARRISH



Sandy Parrish is a legend in the South Florida closing industry. She has personally handled over 15,000 closings (and she is only 39!!) Since 1976, Sandy has provided buyers and sellers with a friendly voice, and precision accuracy. She has worked for large firms, small firms, and she has been with Enterprise Title since 1986 (our first employee). "She is the finest Closing Coordinator I have ever met," brags Skip Straus, one of Enterprise's in-house attorneys. "There is not a paralegal or legal secretary in South Florida who can handle the range of closings which Sandy sees every month with such high energy and faultless attention to detail."

Sandy has three children, and three grandchildren. Anyone who has come to our Pembroke Pines office knows that her little Maltese, Sasha, is the office mascot. Sandy's favorite quote is "I love my job, I love my job, I love my job." She says this even when she doesn't receive the loan package! Well, Sandy, the Enterprise Title clients love the way you do your job and we are all glad that you are here!!!

#### Title Tantalizer

**CORRECT ANSWERS WIN A \$100.00 GIFT CERTIFICATE TO  
LA BROCHETTE RESTAURANT**

Eddie Elderly was the sole owner of a house in Pembroke Pines. He lived there with his second wife Emily. Eddie had three children from his first marriage, Eric, Evan, and Elliot, but Elliot died in 2002, leaving 2 children, Ernie and Eva. Eddie died in 2003. He did not have a Will. Emily died in 2004, leaving her two adult children, Esther and Evelyn, as her heirs.

1. What fraction of the house does Esther own?
2. What fraction of the house does Eva own?

If you think you know the answers, submit them in writing and bring them to one of our offices by November 15, 2005. You must come in....no e-mail answers will be considered. Please include your name and contact information. In the event of multiple correct answers, we will draw for the winner, who will be announced in the next issue.

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Fax: 954-431-8999

Weston Office:  
1528 Weston Road  
Weston, Florida 33326  
Phone: 954-349-9400  
Fax: 954-349-9300

Sorry.....no attorneys (and please do not ask one)

## LIST OF E-MAILS

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In today's fast-paced world, our clients expect rapid responses. We have found that e-mail is an excellent tool during the day, when many of us are on the telephone, answering calls from other buyers and sellers. Our staff will respond promptly to your e-mails. Additionally, for those of you who work late hours, our principals, Donna Straus, Michael Eisler, and Skip Straus, will check their e-mails through the evening, and respond promptly.

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Steven Kahn	skahn@enterprise-title.com	Technology/Operations Consultant

## ENTERPRISE TITLE, INC. RECORDS ELECTRONIC DEED AND MORTGAGE

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**Enterprise Title, Inc.** successfully recorded an electronic deed and mortgage on August 2, 2005 in our Weston, Florida office using the technology created by our sister company **eCloz LLC**. The sellers, Lisa and Frank Alvarez, conveyed title electronically to Tom and Louise McGrath (pictured). The McGraths then signed a mortgage in favor of **HomeBanc Mortgage Corp.**. The deed and mortgage were “locked down” by the **eCloz eARM** module (patent pending) to insure the integrity of the documents. **Enterprise Title, Inc.** then sent the original electronic instruments to the Broward

County (FL) Records Division, which indexed them, recorded them, and returned them to Enterprise Title, all within five minutes! The McGraths received their deed and their title policy, issued by **First American Title Ins. Co., (NYSE:FAF)** before they left the closing table. Homebanc received its recorded mortgage and the loan policy immediately after closing.

This is the first ‘Model 3’ closing in Florida,” explained **Peter Hesse**, Chief Technology Officer for **eCloz**. “We complied with the national standards established by county recorders (PRIA), and the mortgage industry (MISMO). This was not the recording of a “scanned” document as has occurred in other venues. The **eCloz** process will allow the Closer to record all of her documents without leaving her desk.”

“It was a great experience for us,” said Tom McGrath, “especially since I have been working on electronic recording for so many years.” McGrath served as the Automations Manager to Sue Baldwin, Director of Broward County Records Division, as Broward became a national pioneer in electronic recordings. He is currently a Vice President with Aptitude Solutions, the vendor which created the electronic interface for the Broward Records Division.

“From a lender’s perspective, we have eliminated the “trailing documents,” added Norb Theisen, Sr. Vice President of HomeBanc. “By receiving the mortgage and the lender’s title policy immediately after closing, we will reduce overhead costs in our post-production areas and create greater efficiencies. We look forward to handling more transactions using the **eCloz** method.” HomeBanc Mortgage, a mortgage banking company that focuses on originating purchase money residential mortgage loans in the southeast United States, is a subsidiary of HomeBanc Corp. ( **NYSE : HMB** ).

**eCloz LLC** is joint venture between **eCloz.com, Inc.** ([www.ecloz.com](http://www.ecloz.com)) and **First American Title Insurance Company** ([www.firstam.com](http://www.firstam.com)). **e-Cloz.com, Inc.** coordinated the country’s first completely paperless purchase and mortgage closing in July, 2000. First American is a subsidiary of **The First American Corporation (NYSE:FAF)**, the nation’s leading provider of business information. **Enterprise Title, Inc.** is one of Florida’s leading title agencies (email: [dwstraus@enterprise-title.com](mailto:dwstraus@enterprise-title.com)) For more information about **HomeBanc Corp.**, HomeBanc Mortgage, or the company’s mortgage products, contact HomeBanc at [www.homebanc.com](http://www.homebanc.com).

# **FOREIGN INVESTMENT REAL PROPERTY TRANSACTION ACT FIRPTA**

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Recent estimates project foreign investment in South Florida above 25% ! If you are a buyer, a seller, lender, or a real estate agent, you must know how to deal with the foreign investment rules. This article will focus on Internal Revenue Code (IRC) Section 1445 which requires that a non-United States Taxpayer pay ten per cent of the purchase price to the IRS upon the sale of real property in the United States.

If you sell real estate in the United States, and make a profit, the IRC imposes a capital gains tax upon the profit. United States taxpayers file annual tax returns and remit the tax. In some cases, their tax may be deferred, or exempt, e.g. the sale of a personal residence if it meets certain criteria. The Internal Revenue Service, however, has no effective method to track the profits of non-U.S. taxpayers. FIRPTA creates such a method.

At closing, if the foreign seller makes any net profit, **the closing agent is** responsible for sending the ten percent of the purchase price—regardless of the size of the profit—to the IRS immediately after closing. Note that the statutory obligation falls upon the buyer, seller, the closing agent, and the real estate agents. Failure to file the tax return and remit the sums due create large penalties. Therefore, at Enterprise Title, Inc., we will advise the seller early in the transaction that we will remit the money at closing unless he meets an exemption or an exception.

The most common exemption is a curious one: it has nothing to do with the seller. If the buyer confirms that he or members of his family intend to use the property for residential purposes for at least one-half of the time the property will be in usage during each of the two following twelve months **AND** the gross sales price is less than \$300,000.00, the transaction is exempt. Note that the seller is still legally obligated to pay his capital gains, but the closing agent does not have to withhold any money from him at closing. An exception to the rule would occur if, prior to the closing, the Seller obtains a Certificate of Reduced Withholding, proving that his taxable liability is less than the ten percent. The closing agent may rely on this certificate.

Enterprise Title, Inc. recommends that the foreign seller seek the advice of a Certified Public Accountant or Tax Attorney who is well-versed in foreign tax issues. Under recently passed laws, it is most likely that the seller will be required to obtain a taxpayer identification number (TIN) prior to applying for any refund or reduced withholding. If you are a real estate agent, it is important for you to identify this situation early so that the closing is not delayed. Finally, remember that a Social Security Number (SSN) is not always the same as a taxpayer identification number, e.g. a college student may get an SSN, but unless she pays taxes, she will be subject to FIRPTA.

**Note: The hiring of a lawyer is an important decision. Nothing contained in this Newsletter shall be considered as individual legal advice. Consult an attorney or a tax professional for individual advice.**

## PRESENT THIS ISSUE AT YOUR NEXT CLOSING TO SAVE MONEY

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Purchase title insurance through Enterprise Title, Inc. by March 31, 2006 and receive a reduction of Enterprise's regular fees by \$150.00.

- **Rule 1:** The addressee must be a party in the transaction.
- **Rule 2:** If the addressee is the purchaser of the title insurance then she will be the sole recipient of the reduction of Enterprise Title's regular fee.
- **Rule 3:** If the addressee is not the purchaser of the title insurance, and the other party in the transaction purchases the title insurance through Enterprise Title, Inc. then both the addressee and the other party will receive the reduction in Enterprise Title's regular fee.
- **Rule 4:** In a refinance, this would be in addition to the re-issue credit
- **Rule 5:** This offer cannot be combined with any other special pricing discounts.

### **In our next issue:**

- *Further discussion about taxation on foreign investors*
- *Update on RESPA Reform*
- *Meet Donna Straus*
- *1031 exchanges are they right for you?*



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