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UNDERWRITING MEMORANDUM 07-10

To: All South Carolina Agents
From: South Carolina State Office
Date: August 20, 2007
Re: Failing Lenders

Because of the increasing number of lenders experiencing liquidity problems, it has become important that we caution our attorney agents again to close only on collected funds coming from lenders. We are told that, on a national level, several offices and agents have suffered from mortgage lenders dishonoring their checks in recent weeks. One has even had a lender attempt to recall a wire. These problems may be the result of a lender who is about to become insolvent or is merely experiencing a temporary shortage in a credit line. Regardless, closing attorneys can become liable for shortages in their escrow accounts based on these actions by failing lenders. We realize that Rule 1.15 SCARC allows attorneys, from an ethics standpoint, to consider as collected funds cashier's checks, certified checks and checks drawn on a bank. We feel at this time that it is necessary to advise closing attorneys to be even more cautious than usual.

We have been told that some lenders are using Automatic Clearing House (ACH) accounts which allow funds to be pulled out, even seconds before closings. For this reason, closing attorneys should protect themselves by taking one of these approaches: (1) require your bank to notify you of any ACH deposit into your account; (2) automatically move funds from the account into which they are wired to a separate escrow account because a recall cannot occur if the funds are not in the account to which they were wired; or (3) require your bank to obtain your consent to any recall.

We do not intend to continue to send out memoranda about each lender that fails. Instead, we are, by this memorandum, cautioning agents to close on only collected funds in all transactions. The following websites may be useful in searching information on failed lenders:

1. www.marketwatch.com
2. www.ml-implode.com
3. www.mortgagedaily.com