

# NEWS FROM THE NEST

AMERICAN EAGLE TITLE INSURANCE COMPANY

Local needs. Local professionals. Local solutions.



## NEW CONSTRUCTION: PROCEED WITH CAUTION

By Rebecca Sherwood

Statutory mechanic's and materialmen's liens give rise to an inordinate amount of title claims, especially in tough economic times such as those we face today. Multiple lien filings have recently been made against some of the most reputable and established builders in our communities. For this reason, extra precautions and safeguards must be employed when we are asked to insure title to property on which there has been recent construction.

Mechanics' liens extend extraordinary rights to those unpaid for work performed or materials furnished to construct or repair improvements to land. Generally, a lien may be filed in land records at any time within four (4) months after the date upon which material was last furnished or labor was last performed by the claimant. Once filed, the lien attaches to the land as well as the improvements. Priority of the lien relates back to the first commencement of any construction on the project.

The danger for the title insurer lies in the risk of unfiled liens under a policy to be issued after completion of the improvements and prior to the expiration of the statutory lien filing period. Ideally, to offset this risk, no

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Economic climates change, but one thing remains the same: American Eagle Title Insurance Company has you and your business covered.

title insurance policy would be issued until the completion of the project and expiration of the lien filing period. Alternatively, the title insurer would obtain fully executed releases of lien or waivers by each and every contractor and subcontractor involved in the construction project. Unfortunately, the press of business and our customers' demands dictate otherwise. There are, however, a few things that can be done to mitigate the possibility of mechanics' lien filings that may give rise to a title insurance claim.

- ✓ First, be sure to obtain a gap search prior to closing to be certain that no liens have been filed since the effective date of the commitment.
- ✓ Second, obtain from the general contractor (in the case of a "spec" home) or the general contractor and the property owner (in the case of a "custom" home where the property owner retains title to the land) lien affidavits affirming that the improvements have been fully completed and stating that all bills for labor and materials have been paid. Such affidavit should also include an indemnity to the title insurer for any inaccuracy in these assurances. Please contact Rebecca Sherwood at [rsherwood@ameagletitle.com](mailto:rsherwood@ameagletitle.com) or Briana J. Ross at [bross@ameagletitle.com](mailto:bross@ameagletitle.com) if you would like to obtain appropriate forms in this regard.
- ✓ Finally, prior to closing on any transaction involving recent construction, contact Joe Robinson at (918) 232-6700 or [jrobinson@ameagletitle.com](mailto:jrobinson@ameagletitle.com) for approval to issue the policy with mechanics' lien coverage. We will promptly conduct appropriate research to determine whether the builder has been the subject of other mechanics' lien filings. If so, additional requirements may be made insofar as the lien coverage in the policy.

## FIRST-TIME HOME BUYER TAX CREDIT

By Briana J. Ross

In 2008, Congress enacted a \$7,500 tax credit for first-time homebuyers as part of the American Recovery and Reinvestment Act of 2009 (the "Act"). The purpose of the Act is to stimulate the economy through job creation and tax credits, among other methods. The first-time homebuyer tax credit was implemented as a means of decreasing the high inventory of homes for sale. In 2009, Congress modified the first-time homebuyer tax credit provisions of the Act by increasing the tax credit to \$8,000 and implementing several additional improvements. The modifications apply to purchases made on or after January 1, 2009 and before December 1, 2009.



### I. 2009 Tax Credit Provisions for First-Time Homebuyers

In its original version, the first-time homebuyer tax credit provisions of the Act applied to all qualified purchases of homes made on or after April 9, 2008 and before January 1, 2009. In February 2009, Congress modified and made significant improvements to the first-time homebuyer tax credit provisions of the Act. While some provisions remain the same, the modifications provide additional incentives to first-time homebuyers who make a qualified purchase of a home before December 1, 2009. A home is considered "purchased" when all events have occurred that transfer the title from the seller to the new purchaser. Thus, closings must occur before December 1, 2009 for purchases to be eligible for the credit.

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### **A. *First-Time Homebuyers Only***

The tax credit provisions apply to first-time homebuyers only. A person is considered a first-time homebuyer if he/she has not had any ownership interest in a home in the three years previous to the day of the purchase. For married joint filers, both must meet the first-time homebuyer test to take the credit on a joint return. In other words, each spouse individually must qualify as a first-time homebuyer. An individual is not eligible for the tax credit provisions if: (i) the individual's income exceeds the phase-out range, as discussed infra, (ii) the individual stops using the home as their principal residence, (iii) the individual sells the home before the end of three years, (iv) the individual is a non-resident alien, (v) the home is acquired via gift or inheritance, or (vi) the home is purchased from a related person. A "related person" includes spouses, ancestors (parents, grandparents, etc.), or lineal descendants (children, grandchildren, etc.), a corporation in which the buyer directly or indirectly owns more than 50% in value of the outstanding stock of the corporation, or a partnership in which the buyer directly or indirectly owns more than 50% of the capital interest or profits interest.

### **B. *Amount of Credit***

The amount of the tax credit in 2008 was the lesser of 10 percent of the cost of the home or \$7,500. Congress increased the maximum amount of the credit to \$8,000 for homes purchased on or after February 1, 2009 and before December 1, 2009. In other words, any home that is purchased for \$80,000 or more qualifies for the full \$8,000 amount. If the house costs less than \$80,000, the tax credit will be 10% of the cost of the home. Every dollar of a tax credit reduces income taxes by a dollar. Tax credits are claimed on an individual's income tax return. Once the total tax an individual owes has been computed, tax credits are applied to reduce the total tax bill. For example, if before taking any credits on an income tax return a person has total tax liability of \$10,000, an \$8,000 tax credit would reduce the total amount of income taxes owed to \$2,000 ( $\$10,000 - \$8,000 = \$2,000$ ).



### **C. *Eligible Property***

Any single-family residence used as a principal residence qualifies as eligible property for the tax credit. Generally, a "principal residence" is the home where an individual spends most of his/her time (generally defined as more than 50%). It is also defined as "owner-occupied" housing. The term includes single-family detached housing, condominiums or co-ops, townhouses or any similar type of new or existing dwelling (even some houseboats or manufactured homes can count as principal residences). The home, however, must be located in the United States. Property located outside the United States is not eligible for the credit. Vacation homes and rental properties are also not eligible. For new construction, the move-in date must be before December 1, 2009.

### **D. *Refundable***

The tax credit is also refundable. In other words, the tax credit could reduce or eliminate income tax liability for the year of purchase and any unused amount of tax credit is refunded to the purchaser. Suppose that before taking any credits on an income tax return a person has total tax liability of \$5,000 and is eligible for an \$8,000 tax credit. In this case, the taxpayer will receive a refund check in the amount of \$2,000, or the amount of the difference between the \$8,000 credit amount and the amount of tax liability.

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### ***E. Income Limits***

The first-time homebuyer tax credit provisions contain income restrictions based upon the tax filing status the purchaser claims when filing his/her income tax return. Individuals filing Form 1040 as Single (or Head of Household) are eligible for the credit if their adjusted gross income is no more than \$75,000. Married couples that file a Joint Return may have adjusted gross income of no more than \$150,000. Individuals with an adjusted gross income greater than \$75,000 and less than \$95,000, and married couples with an adjusted gross income greater than \$150,000 and less than \$170,000, are still eligible for a portion of the tax credit. The closer a buyer comes to the maximum phase-out amount, the smaller the credit will be. The act provides a formula to gradually withdraw the credit. The tax credit does not apply to individuals with an adjusted gross income of more than \$95,000 and married couples with an adjusted gross income of more than \$170,000.

### ***F. Repayment and Recapture***

The 2008 tax credit provisions required a portion of the tax credit (6.67 percent of the credit or \$500) to be repaid each year for 15 years, starting with the 2010 tax filing. If the home sold before the 15-year repayment period ended, then the outstanding balance of the repayment amount was recaptured at the time of the sale of the property. The 2008 tax credit was more like an interest-free loan, rather than a true tax credit.

In February 2009, Congress eliminated the repayment provisions for purchases on or after January 1, 2009 and before December 1, 2009. If an individual received the \$7,500 tax credit in 2008, then he/she is still obligated to repay the tax credit over 15 years, starting with the 2010 tax filing. For those homes purchased in 2009, the entire amount of the tax credit is to be recaptured (*i.e.*, repaid) on the sale of the home only if the home is sold within three years of the date of purchase. This provision is designed to prevent flipping homes in order to receive the credit.

The repayment rules are eased for many circumstances. For example, if the homeowner who used the credit dies within the first three years of ownership, there is no recapture. There are also special rules that create adjustments for people who sell homes as part of a divorce settlement and in the case of a home that is part of an involuntary conversion (*i.e.*, property that is destroyed in a natural disaster or subject to condemnation by eminent domain by an authorized agency) within the first three years.

### ***G. Revenue Bond Financing***

The 2008 tax credit provisions did not apply if the home was financed with state/local bond funding. Purchasers were ineligible for the \$7,500 credit if the financing was obtained by means of mortgage revenue bonds, which are tax-exempt bonds issued by a state housing agency. Proceeds from such bonds must be used for below market loans to qualified buyers. Congress modified this provision and the tax credit now applies to homes financed with state/local bond funding. The next page displays a chart highlighting the major features of the first-time homebuyer tax credit provisions as created in July 2008 and as modified in February 2009.

## **II. How to Claim the Tax Credit**

All eligible purchasers simply claim the credit on their IRS Form 1040 tax return. The credit will be reflected on a new Form 5405 that will be attached to the 1040. Form 5405 can be found at [www.irs.gov](http://www.irs.gov). There is

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no pre-purchase authorization, application or similar approval process. Eligible homebuyers who make their purchase between January 1, 2009 and December 1, 2009 can claim the credit for the purchase on their 2009 return, which is due on April 15, 2010, or can treat the purchase as if it had occurred on December 31, 2008. Thus, they can claim the credit on their 2008 tax return that is due on April 15, 2009. There are three filing options for taking the credit in 2008: (1) If the qualified purchase was made between January 1, 2009 and April 15, 2009, the credit could have been claimed on the 2008 return due on April 15, 2009; (2) If the taxpayer filed an extension for their 2008 income taxes, they can file their return as late as

October 15, 2009; (3) If the taxpayer has filed their 2008 return before they purchase the home, they may file an amended 2008 tax return on Form 1040X (available at [www.irs.gov](http://www.irs.gov)).

Congress has made specific provisions in the modifications to the Act providing that there will be no repayment of 2009 credits that are claimed on 2008 returns. Further, eligible purchasers who have already claimed the \$7,500 credit on a 2008 return for a 2009 purchase may file an amended return (IRS Form 1040X) for the 2008 tax year. The amended return will enable these individuals to obtain the additional \$500 credit amount.

### **III. The Tax Credit and Closing Costs**

The tax credit provisions of the Act did not allow the tax credit to be made available at closing for purchase costs such as down payments, closing costs, or interest-rate reductions. Policymakers believed that if such a system could be devised, it would delay closings by several weeks. Despite Congress's prior position on this matter, HUD Secretary Shaun Donovan announced on May 29, 2009 that the Federal Housing Administration (FHA) will allow homebuyers to apply the first-time homebuyer tax credit toward the purchase costs of a FHA-insured home. This move was made as part of an additional effort to stimulate housing sales across the country.

Consistent with existing FHA policy, FHA will permit entities covered by Section 528 of the National Housing Act to use the current authority to offer tax credit advances with second liens in a manner consistent with the requirements of 12 U.S.C. 1709(b)(9). FHA-approved mortgages and FHA-approved nonprofit organizations as well as Federal, state, and local governmental agencies and instrumentalities thereof may also purchase the tax credit anticipated by the homebuyer. The mortgagee will be responsible for following FHA guidelines in regards to these new provisions.

For more information regarding the first-time homebuyer tax credit, visit the following websites:

[www.realtor.org](http://www.realtor.org), [www.hud.gov](http://www.hud.gov), [www.irs.gov](http://www.irs.gov).

FIRST-TIME HOMEBUYER TAX CREDIT  
 As Modified in the American Recovery and Reinvestment Act  
*Major Modifications Italicized*  
 February 2009

| FEATURE                          | CREDIT AS CREATED JULY 2008<br>APPLIES TO ALL QUALIFIED<br>PURCHASES ON OR AFTER APRIL 9,<br>2008   | REVISED CREDIT –<br>EFFECTIVE FOR PURCHASES ON<br>OR AFTER JANUARY 1, 2009 AND<br>BEFORE DECEMBER 1, 2009                                      |
|----------------------------------|---|--|
| <b>Amount of Credit</b>          | Lesser of 10 percent of cost of home or \$7500  | <i>Maximum credit amount increased to \$8000</i>   |
| <b>Eligible Property</b>         | Any single family residence (including condos, co-ops, townhouses) that will be used as a principal residence.  | No change<br>All principal residences eligible.  |
| <b>Refundable</b>                | Yes. Reduces (or can eliminate) income tax liability for the year of purchase. Any unused amount of tax credit refunded to purchaser.   | No change<br>Purchasers will continue to receive refund for unused amount when tax return is filed.  |
| <b>Income Limit</b>              | Yes. Full amount of credit available for individuals with adjusted gross income of no more than \$75,000 (\$150,000 on a joint return). Phases out above those caps (\$95,000 and \$170,000). | No change<br>Same income limits continue to apply.   |
| <b>First-time Homebuyer Only</b> | Yes. Purchaser (and purchaser’s spouse) may not have owned a principal residence in 3 years previous to purchase.   | No change<br>Still available for first-time purchasers only. Three-year rule continues to apply.   |
| <b>Revenue Bond Financing</b>    | No credit allowed if home financed with state/local bond funding.   | <i>Purchasers who utilize revenue bond financing can use credit.</i>   |
| <b>Repayment</b>                 | Yes. Portion (6.67% of credit or \$500) to be repaid each year for 15 years, starting with 2010 tax filing.   | <i>No repayment for purchases on or after January 1, 2009 and before December 1, 2009</i>  |
| <b>Recapture</b>                 | If home sold before 15-year repayment period ends, then outstanding balance of repayment amount recaptured on sale.   | <i>If home is sold within three years of purchase, entire amount of credit is recaptured on sale. Applies only to homes purchased in 2009.</i> |
| <b>Termination</b>               | July 1, 2009<br>(But note program changes for 2009)   | <i>December 1, 2009</i>  |
| <b>Effective Date</b>            | Purchases on or after April 9, 2008 and before January 1, 2009. Repayment to begin for 2010 tax year.   | <i>All revisions are effective as of January 1, 2009</i>   |

## AMERICAN EAGLE AGENCY NETWORK

American Eagle's agency network is expanding! We encourage you to utilize the services of our agency network when placing orders in other counties. Below is a list of American Eagle agents that can help you with your statewide orders.

### Canadian County:

Warranty Title  
108 N. Rock Island Ave.  
El Reno, Oklahoma 73036  
(405) 262-3093

### Cleveland County:

American-First Abstract Company  
111 E. Comanche St.  
Norman, Oklahoma 73069  
(405) 321-7577

Cleveland County Abstract Co.  
2460 Boardwalk  
Norman, Oklahoma 73069  
(405) 321-8680  
[www.ccabstract.com](http://www.ccabstract.com)

Silvertree Title  
1251 Douglas Circle  
Noble, Oklahoma 73068  
(405) 782-0116

### Comanche County:

Community Escrow & Title Co.  
215 W. Gore Blvd.  
Lawton, Oklahoma 73501  
(580) 250-4050  
[www.communityescrow.com](http://www.communityescrow.com)

### Delaware County:

Delaware County Abstract Co.  
P.O. Box 930  
330 S. Whitehead  
Jay, Oklahoma 74346  
(918) 253-4425

### Johnston County:

Buffalo Land Abstract Company  
103 N. Kemp Ave.  
Tishomingo, Oklahoma 73460  
(580) 371-9375  
[www.buffaloland.com](http://www.buffaloland.com)

### Lincoln County:

Landrun Title & Closing Company  
912 East 1<sup>st</sup> Street  
Chandler, Oklahoma 74834  
(405) 258-1125  
[www.landruntitle.com](http://www.landruntitle.com)

### Logan County:

Logan County Abstract Company  
200 Sigma Place  
Guthrie, Oklahoma 73044  
(405) 282-4012

### McClain County:

American Abstract Company  
138 W. Main St.  
Purcell, Oklahoma 73080  
(405) 527-7575

Guaranty Abstract Company  
113 N. 2<sup>nd</sup> Ave.  
Purcell, Oklahoma 73080  
(405) 527-7583

### McIntosh County:

Eufaula Abstract & Title Company  
127 Selmon Road  
Eufaula, Oklahoma 74432  
(918) 689-2241

### Oklahoma County:

Benchmark Title  
2300 S. Broadway  
Edmond, Oklahoma 73013  
(405) 513-5092

Spirit Title  
410 N. Walnut Ave., Suite 100A  
Oklahoma City, Oklahoma 73104  
(405) 341-9500

Support Title Services  
410 N. Walnut Ave., Suite  
Oklahoma City, Oklahoma 73104  
(405) 601-1939

Trinity Title  
4301 NW 63<sup>rd</sup>, Suite 100  
Oklahoma City, Oklahoma 73116  
(405) 767-0202

**Payne County:**

Community Escrow & Title Co.  
623 S. Lewis St.  
Stillwater, Oklahoma 74074  
(405) 780-7196  
[www.communityescrow.com](http://www.communityescrow.com)

**Pittsburg County:**

Liberty Abstract Company  
101 E. Carl Albert Parkway  
McAlester, Oklahoma 74501  
(918) 423-0631

**Pontotoc County:**

Home Title Guaranty Company  
119 S. Broadway Ave.  
Ada, Oklahoma 74820  
(580) 332-0355

**Tulsa County:**

Buffalo Land Abstract Company  
7306 S. Lewis Ave.  
Tulsa, Oklahoma 74136  
(800) 256-5030

Colonial Title Inc.  
5065 S. 79<sup>th</sup> East Ave  
Tulsa, Oklahoma 74145  
(918) 828-0110

Community Closing Services  
7306 S. Lewis Ave.  
Tulsa, Oklahoma 74136  
(918) 492-5700

Eagle Closing & Title Services  
13720 E. 86<sup>th</sup> St. N., Suite 170  
Owasso, Oklahoma 74055  
(918) 609-6010  
[www.eagleclosingservices.com](http://www.eagleclosingservices.com)

Law Associates Inc.  
5800 S. Lewis Ave.  
Tulsa, Oklahoma 74105  
(918) 748-8998

Russell W. Wallace  
2448 E. 81<sup>st</sup> Street, Suite 5900  
Tulsa, Oklahoma 74137  
(918) 298-0298

**Washita County:**

Homestead Title & Closing  
P.O. Box 142  
Cordell, Oklahoma 73632  
(405) 779-5177

Rex Herren, Attorney at Law  
119 E. Main Street  
Cordell, Oklahoma 73632  
(580) 832-3000

Washita County Abstract Company  
200 E. Main Street  
Cordell, Oklahoma 73632  
(580) 832-2262

# Overview of Surveys and Legal Descriptions Workshop

Join us Thursday, **October 15, 2009** from 8:30 a.m. to 11:30 a.m. at The Silo Event Center at Redberry Farm located at 4649 W. 41<sup>st</sup> Street in Tulsa for a FREE workshop entitled "Overview of Surveys and Legal Descriptions." Sign-in begins at 8:00 a.m. and a continental breakfast will be provided to all participants. This hands-on workshop will provide participants with in-depth knowledge of the rectangular survey system, drawing metes and bounds legal descriptions, and conducting survey reviews. For more information or to register, contact Briana Ross at (918) 894-4150 or [bross@ameagletitle.com](mailto:bross@ameagletitle.com). AETIC will seek three (3) hours of continuing education approval from OID, OREC, OBA, and OAB.



The Silo Event Center  
at Redberry Farm  
4649 W. 41<sup>st</sup> Street  
Tulsa, Oklahoma



## American Eagle Title Insurance Company

410 N. Walnut Ave., Suite 100  
Oklahoma City, Oklahoma 73104  
(405) 232-6700

7306 S. Lewis Ave., Suite 105  
Tulsa, Oklahoma 74136  
(918) 894-4150

## MARK YOUR CALENDAR

- July 30, 2009:** Abstractor License Test – Oklahoma City, Oklahoma – Oklahoma Abstractors Board Office, 1:00 p.m. to 3:00 p.m. Contact the OAB Office at (405) 522-5019 for more information.
- October 15, 2009:** Overview of Surveys and Legal Descriptions Workshop – 8:30 a.m. to 11:30 a.m. – The Grange at the Silo Event Center at Redberry Farm at 4649 W. 41<sup>st</sup> Street, Tulsa, Oklahoma. Contact Briana J. Ross at [bross@ameagletitle.com](mailto:bross@ameagletitle.com) or (918) 894-4150 for more information.