



*A Division of Ohio Bar Title Insurance Company  
A First American Company*

# TITLE ALERT

**Title Alert 2014-03**

**April 18, 2014**

**EB-5 Financing**

**Purpose:** To provide you with information and guidance regarding EB-5 financing arrangements.

**Background:** In 1990, Congress created the “EB-5 immigrant investor” program under the Immigration and Nationality Act, found at 8 U.S.C. § 1153(b)(5). The EB-5 program has several variants, but in its most common form it provides that certain qualified foreign nationals may obtain a “green card” permitting lawful entry into and permanent residence in the United States in exchange for an investment of at least \$500,000 in a qualified project that will promote development in an economically-distressed area. The \$500,000 minimum investment has not been indexed for inflation and therefore has not changed since 1990, and due to global economic and political conditions, the EB-5 program has become extremely attractive to both foreign investors seeking to permanently relocate to the United States and domestic developers seeking sources of funds for their projects. For further information, please see the EB-5 law cited above and its related regulations, found at 8 C.F.R. §§ 204.6 and 216.6.

While the EB-5 program has become very popular, it has also generated controversy in the press. Some critics have alleged that some developers are misusing the EB-5 program by “gerrymandering” economically-distressed pockets within highly affluent areas of the country, thereby subverting the fundamental purpose of the EB-5 program. Further, other critics have alleged that overseas promoters have made promises to immigrant investors that are inconsistent with the basic tenets of the EB-5 program, and have further alleged that such promises may be violations of the United States securities laws. Further still, other critics charge that the United States Citizenship and Immigration Service (USCIS) is struggling to timely and properly review projects and immigrant-investor applications due in part to the large number of applications from both immigrant investors and developers alike.

Against this background, the Company has received requests for title insurance regarding projects funded by EB-5 investments. The Company has also received requests regarding the escrow of EB-5 investor funds. In many ways, the issues arising from the EB-5 program are similar to the issues arising from classic securities-law and multi-beneficiary construction loan problems.

**Standard/Guideline:** In any transaction in which EB-5 immigrant investor funds will be part of the capital sources used to fund the acquisition and/or development of the Land which will be the subject of a title insurance policy, you must disclose this fact to Penn Attorneys. The Company does not have a blanket policy regarding insurability of projects funded using EB-5 in whole or in part, and the Company will evaluate the insurability of each such transaction on its individual facts. However, the Company considers EB-5 transactions to be unusual risks, and you must obtain underwriting approval before ordering title insurance on such a transaction.

In addition, the Company will not hold EB-5 immigrant investor funds in its escrow accounts, whether pending approval of such investors' EB-5 applications by USCIS or otherwise.

If you have any questions, please feel free to contact us.

**Note:** Under the Approved Attorney system, the scope of our relationship is limited to the functions of underwriting and the issuance of title insurance policies on your behalf and does not include closing or escrow services. We sometimes provide information and recommendations with regard to your closing or escrow business as a courtesy to you. Moreover, some communications, depending on whether noncompliance could impact on liability under our policies or closing protection letters, should be considered directives. This Advisory is being provided to you with those considerations in mind.

**WARNING: This Underwriting Communication is intended solely for the employees of Penn Attorneys/Ohio Bar Title Insurance Company and its Approved Attorneys, and is not to be distributed to third parties, and any reliance by any other person or entity is unauthorized. This Underwriting Communication is intended solely for the purpose of underwriting policies of Ohio Bar Title Insurance Company.**

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