Current Claims Trends in the Title Industry – Covid 19 Edition

Len Prescott | Vice President and Regional Underwriting Director
First American Title Insurance Company
Disclaimer

• These materials are not intended to and do not provide legal advice. The materials are not a substitute for consultation with qualified legal counsel regarding the manner in which the laws and regulations referenced herein may be interpreted and applied to particular facts or to particular business models. These materials are for informational and educational purposes only, and are not a solicitation and should not be construed as such.
Today’s Topics

1. OVERVIEW OF ECONOMIC AND REAL ESTATE CYCLES AND THEIR RELATIONSHIP TO CLAIM TRENDS
2. THE TOP TEN CLAIM TRENDS TO LOOK OUT FOR DURING COVID-19
3. THE FIVE KEY STEPS YOU NEED TO BE TAKING NOW TO COUNTER THESE TRENDS AND STAY IN BUSINESS
4. QUIZ TIME
1. OVERVIEW OF ECONOMIC AND REAL ESTATE CYCLES AND THEIR RELATIONSHIP TO CLAIM TRENDS
## Title Industry

### U.S. Title Insurance Industry Results

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### Title Industry Overview

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TOP TEN CLAIM TRENDS TO WATCH OUT FOR DURING COVID-19

10. Defalcations
9. Bankruptcy and other Litigation Risks
8. Alternative Purchaser or Lender Schemes
7. Foreclosure Fraud
6. Search and Exam Errors
5. Mechanic’s Liens
4. Lack of Authority/Capacity and Financial Abuse of the Elderly
3. Wire Fraud
2. Mortgage Fraud
1. Closing Process Liability
10. Defalcations
9. Bankruptcy and Other Litigation Risks

- Avoid “Abengoa” and look out for “But for” Claims - lawsuits against your agency even before a notice of claim or with no notice of claim.
- Anticipate Bankruptcy Court action including preference and claw back claims and lien stripping for technical defects.
- Do NOT insure over pending litigation even when it seems certain.

The 88 MWgy Abengoa ethanol plant in Madison, Ill., was built before a second Abengoa plant in Colwich, Kan., due to a mistake by a title company.
PHOTO: ABENGOA BIOENERGY
9. Pending Litigation/Bankruptcy

• Pending litigation / pending bankruptcy
• Customer looking for ‘outcome’ insurance for an unsettled matter
  • Not title insurance
  • Title insurance premiums do not take into account pending litigation risks
• Example
  • Relied on trial court judgment to issue policies without allowing the appeal period to expire
  • *Lost on appeal**
  • Missed $365,000 purchase option turned into $multi-million potential loss
8. Alternative Purchaser and Lender Schemes

PURCHASE MONEY PROMISSORY NOTE

US $7,600,000.00

January ___, 2018

FOR VALUE RECEIVED, the undersigned ABC, LLC, having an address at ____________________________, Orlando, Florida ("Borrower"), promises to pay to the order of N.E Body, as Agent for the individual loan participants identified in Exhibit A attached hereto and made a part hereof, having an address at 9999 Hilltop Drive, Suite 99, Reston, Virginia ("Lender"), the principal sum of SEVEN MILLION SIX HUNDRED THOUSAND and 00/100 DOLLARS, with interest at the rate set forth below (the "Loan").
8. Alternative Purchaser and Lender Schemes

TIC Schemes, EB-5 lending, Crowdfunding, Multiple-beneficiary Mortgages

- 10,000 visas annually
- Invest $1,000,000 to employ 10 workers in Targeted Employment Area (TEA) or Invest individually/through larger investment pool

Risks

- Violation of securities laws [Securities and Exchange Commission v. W. J. Howey Co., 328 U.S. 293 (1946)]
- Unsophisticated parties - Inadequate loan underwriting, funding and construction lien risks
- Authority and Agency Relationship Fraud
7. Foreclosure Fraud

What will be the affect of the Federal and many State moratoriums on Foreclosures and evictions?

Will we see Robosigning again?

Beware of defects in foreclosure proceedings – lack of standing, failure to properly join necessary parties, defective notices, and defects in legal descriptions

Will REO Fraud be back?

Foreclosure Rescue Scams
- Mortgage Modification Scams
- Fake payoffs & satisfactions
- Phony deeds

Foreclosure Hijacking
- Mortgage closings with different lenders and different title agents in a short period of time

Phony REO Deeds and Reconveyances Recorded shortly before closing
6. Search and Exam Errors
5. Mechanic’s Liens
4. Lack of Authority/Capacity and Financial Abuse of the Elderly
4. Lack of Authority – Powers of Attorney

• Ask questions:
  – Why can’t they attend closing?
  – Does the explanation make sense?
  – Have you spoken to the principal?
  – Have you found their contact information on your own?

• Consider use of mobile closer or courtesy closing at a nearby office

• RON/RIN Concerns?
4. Lack of Authority – The Terrible Typo

• Can you Spot the difference?

ABC Service Groups, LLC
ABC Services Group, LLC
3. Wire Fraud
FBI 2019 Internet Crime Report - IC3 Statistics

1,707,618 TOTAL COMPLAINTS

2015: $1.1 Billion*
2016: $1.5 Billion*
2017: $1.4 Billion*
2018: $2.7 Billion*
2019: $3.5 Billion*

$10.2 Billion TOTAL LOSSES* *(Rounded to the nearest million)*

Confirmed Real Estate Losses: 2018 $150MM grew to $221MM in 2019
2. Mortgage Fraud - Forgery/ID Theft

• Quit Claim Deeds
• Forged from free & clear owner
• Forged from REO
• Forged Dismissal of Litigation
• Improper Notarization/Witnessing
• Loan Slamming

• Identity Theft is on fire during Covid-19!
2. Mortgage Fraud - The Silent Second

Down payment from Seller
Or other Third Party

Second mortgage
Not disclosed
May not be recorded
May be recorded several weeks
after transaction

Mortgagee may be related
to Seller
2. Mortgage Fraud - Illegal Flipping

49% of mortgage fraud involves flipping

57% involves falsified appraisals

Watch for

No disclosure
Purchases at or above market; often distressed
Quickly sold, often to straw buyer or stolen identity
Kickbacks
2. Mortgage Fraud - Illegal Flopping

PROPERTY OWNER IN DISTRESS OWES $400,000

“FLOPPER” ARRANGES SHORT SALE FOR $200,000

“FLOPPER” SELLS THE PROPERTY FOR $260,000, AND WALKS AWAY WITH A $60,000 PROFIT.

FUNDS FROM 2ND SALE FUND 1ST SALE

PROPERTY OWNER’S BANK DOES NOT KNOW ABOUT 2ND TRANSACTION AND FLOPPER PROFIT
2. Mortgage Fraud - Short Sale Fraud

- Misrepresentations
- Related parties not disclosed
- Property value
- Terms of the transaction
- Third party payments
- Payments to subordinate lien holders
1. Closing Process Liability

1. Closing Instructions/letters GAP & First Lien
2. Payoff Issues HAMP and Forbearance
3. Document Preparation/Collection/Review
4. Electronic Closings
5. Identification of Suspicious Documents/Persons/Events while working remotely or social distancing
6. Recording
3. THE 5 KEY STEPS YOU NEED TO BE TAKING NOW TO COUNTER THESE TRENDS AND STAY IN BUSINESS
1. Identify the Fraud Red Flags

- Power of Attorney
- Mail Away closing
- Questionable (or expired) ID
- Seller/Borrower is Elderly or business entity
- Hiding information from lenders or other parties
- Suspicious releases Forged documents
1. Identify the Fraud Red Flags

- No Consideration
- Promises of additional transactions
- Related Parties
- QCDs
- Request to prepare documents not called for in contract (Seller second, QCD, etc.)
- Terms change over course of transaction
- Buyer funds provided by a different party
2. Beware of Unrecorded Instruments

1. Ask questions – why was instrument not recorded?
2. Check against other documents signed by grantor
3. Contact grantor*
3. Eliminate “Abengoa” Type Risk

• **The Risk:** Customer treats a property information report like a title policy.
  - Information Report – Information from public records search; not a filed title insurance product or an offer of terms on which an insurance product will issue. e.g., chains of title, radius reports, O&E reports, title certifications, etc.
  - Historically, used to facilitate due diligence of liability under environmental laws but now . . .
  - Beware of Closing Instructions and any ancillary services
3. Eliminate “Abengoa” Type Risk - IMPORTANCE OF THE COMMITMENT

• 2016 Commitment - An offer to issue one or more Title Insurance Policies for specific amounts to specific proposed insureds.

• Condition (3) must include the full Commitment “jacket” – the Notice, the Commitment to Issue Policy, and the Commitment Conditions – in addition to Schedules A, B-I, and B-II that are regularly provided.
4. Prevent Wire Fraud – Fast Growing Cybercrime

- Include disbursement instructions in opening package
- Provide hard copy wire instructions and try wet signature instructions
- Always confirm wire instructions via verified phone number in file
- Advise customers that wire instructions will not change and to verbally verify by phone if instructions revised
- Watch for Email red flags and any change in instructions
- Ensure E&O or Cyber Liability coverage for BEC, social engineering, & wired funds
5. Perform Title Updates and Recording

- Update title as close to closing as possible
- Record your documents as quickly as possible
- Update title post-recording

American Land Title Association
Protect your property rights
4. QUIZ TIME
Question 1

Which of the following is not a requirement for a valid Power of Attorney?

A. The Principal must know the Agent
B. The Principal must be capable of performing the delegated activity
C. The authorized activity must be capable of being delegated
D. The Agent must be capable of acting
Answer 1

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Question 2

• Whenever you encounter alternative lender Financing, _________________.

A. Review with a senior underwriter
B. Rely on the lender instructions
C. Trust the borrower
D. Ensure you have a great notary
Answer 2

• Whenever you encounter alternative lender Financing, ________________.

A. Review with a senior underwriter  
B. Rely on the lender instructions  
C. Trust the borrower  
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Question 3

• Many title orders requested on a property could be an indication of ________________.

A. New lender involvement
B. Escrow involvement
C. A loan slamming attempt
D. A reason to increase prices
Answer 3

• Many title orders requested on a property could be an indication of ________________.

A. New lender involvement
B. Escrow involvement
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Question 4

• What is a known fraudster strategy to bypass questions related to the sufficiency of a probate order?

A. Use an independent escrow company
B. Attend probate court in person
C. Provide the decree of distribution
D. Create a photocopy of the order
Answer 4

• What is a known fraudster strategy to bypass questions related to the sufficiency of a probate order?

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B. Attend probate court in person
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THANK YOU

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Jeremy Yohe, jyohe@alta.org