



COMPLIANCE WEBINAR SERIES

BROUGHT TO YOU BY OLD REPUBLIC TITLE INSURANCE CO.



American Land
Title Association

Protect your property rights

Current Claims Trends in the Title Industry – Covid 19 Edition

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

alta.org/webinars | June 17, 2020

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**



American Land
Title Association
Protect your property rights



COVID-19

CORONAVIRUS DISEASE 2019





COVID-19

CORONAVIRUS DISEASE 2019



1. OVERVIEW OF ECONOMIC AND REAL ESTATE CYCLES AND THEIR RELATIONSHIP TO CLAIM TRENDS



American Land
Title Association

Protect your property rights

Title Industry

U.S. Title Insurance Industry Results

(in millions, except for percent data)

For the year ended December 31,	YoY Chg	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Net Premiums Written	3.4%	\$14,617	\$14,133	\$12,964	\$11,156	\$12,569	\$11,246	\$9,249	\$9,438	\$9,286	\$9,916	\$14,054
Title Premiums Earned	3.5%	\$14,461	\$13,976	\$12,787	\$11,389	\$12,490	\$11,233	\$9,364	\$9,403	\$9,468	\$10,226	\$13,857
Loss & LAE Incurred	(8.5%)	\$629	\$687	\$672	\$742	\$825	\$851	\$1,102	\$1,105	\$1,024	\$1,316	\$1,297
Operating Exp. Incurred	5.5%	\$14,089	\$13,357	\$12,163	\$10,659	\$11,919	\$10,881	\$9,300	\$9,597	\$9,693	\$10,226	\$14,015
Net Operating Gain/(Loss)	1.6%	\$885	\$871	\$831	\$799	\$686	\$498	(\$22)	(\$214)	(\$133)	(\$714)	(\$97)
Net Loss Ratio	(0.6) pts	4.3%	4.9%	5.3%	6.5%	6.6%	7.6%	11.8%	11.8%	10.8%	12.9%	9.4%

Title Industry Overview

U.S. Title Insurance Industry Results

(in millions, except for percent)

For the year ended December 31,	YoY Chg	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010
Net Premiums Written	6.9%	\$15,752	\$14,731	\$14,617	\$14,133	\$12,964	\$11,156	\$12,569	\$11,246	\$9,249	\$9,438
Title Premiums Earned	6.3%	\$15,599	\$14,678	\$14,461	\$13,976	\$12,787	\$11,389	\$12,490	\$11,233	\$9,364	\$9,403
Loss & LAE Incurred	(6.0%)	\$605	\$644	\$629	\$687	\$672	\$742	\$825	\$851	\$1,102	\$1,105
Operating Exp. Incurred	6.7%	\$15,090	\$14,137	\$14,089	\$13,357	\$12,163	\$10,659	\$11,919	\$10,881	\$9,300	\$9,597
Net Operating Gain/(Loss)	11.0%	\$1,224	\$1,103	\$885	\$871	\$831	\$799	\$686	\$498	(\$22)	(\$214)
Net Loss Ratio	(0.5) pts	3.9%	4.4%	4.3%	4.9%	5.3%	6.5%	6.6%	7.6%	11.8%	11.8%

2. THE TOP TEN CLAIM TRENDS TO LOOK OUT FOR DURING COVID-19



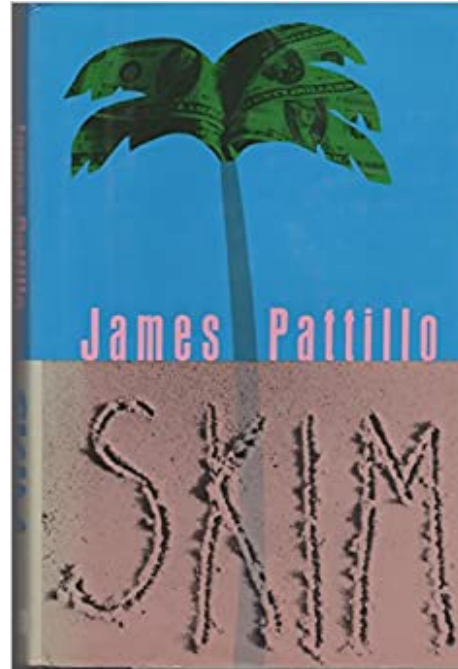
American Land
Title Association

Protect your property rights

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



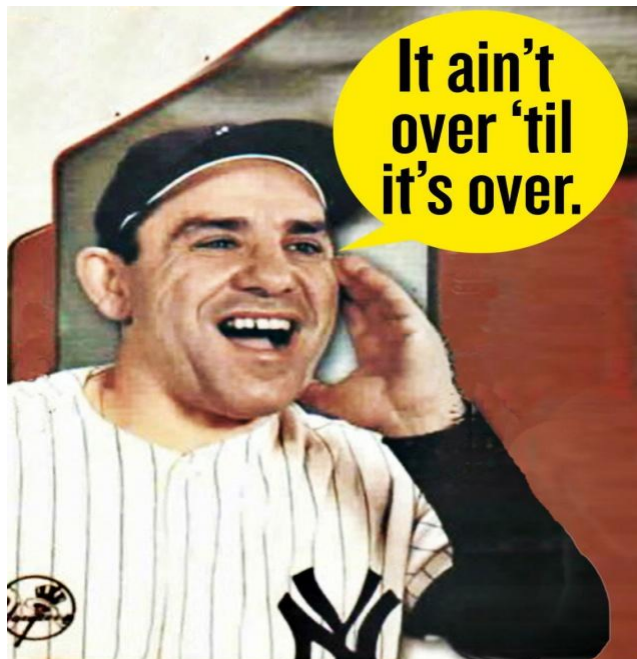
9. Bankruptcy and Other Litigation Risks

- 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 MMgy 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

- Immigration Act of 1990, "Employment Based" 5th category; Investor/Investment based 'Green Card'
- 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



American Land
Title Association

Protect your property rights

5. Mechanic's Liens



American Land
Title Association

Protect your property rights

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

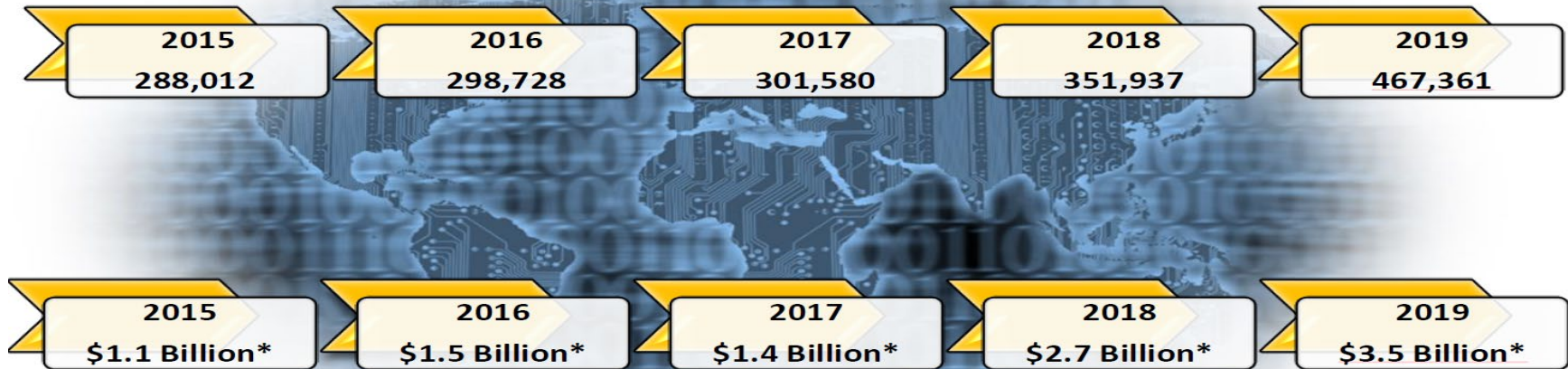


American Land
Title Association

Protect your property rights

FBI 2019 Internet Crime Report - IC3 Statistics

1,707,618 TOTAL COMPLAINTS



*\$10.2 Billion TOTAL LOSSES**

(Rounded to the nearest million)

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



American Land
Title Association

Protect your property rights

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



American Land
Title Association

Protect your property rights

1. Identify the Fraud Red Flags

Power of Attorney

Mail Away closing
RON/RIN

Questionable (or
expired) ID

Seller/Borrower is
Elderly or business
entity

Hiding information
from lenders or
other parties

Suspicious releases
Forged documents



American Land
Title Association

Protect your property rights

1. Identify the Fraud Red Flags

No Consideration
QCDs

Promises of
additional
transactions

Related Parties

Terms change over
course of transaction

Request to prepare
documents not
called for in contract
(Seller second, QCD,
etc.)

Buyer funds
provided by a
different party



American Land
Title Association

Protect your property rights

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

4. QUIZ TIME



American Land
Title Association

Protect your property rights

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

- 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

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
- D. Ensure you have a great notary

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
 - C. A loan slamming attempt**
 - D. A reason to increase prices

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?
 - 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

THANK YOU

Len Prescott, lprescott@firstam.com

Jeremy Yohe, jyohe@alta.org



American Land
Title Association

Protect your property rights

1800 M Street, NW, Suite 300S, Washington, D.C. 20036-5828 | P. 202.296.3671 | E. service@alta.org