

Conestoga Title Insurance Co.

WAGONLODE

A Land Title Update

2017, Vol. V, No. 4

Winter 2017

Who is going to be the Grinch of Real Estate this Christmas Season? Taking for granted that we are all Whos down in Whoville, all who set tax policy, financial services' regulations, and FICO scores are potential suspects of being the One Whose Heart Is Two Sizes Too Small. You choose among these contenders: HUD, which has declined to reinstate lower MIP rates for FHA loans (although FHFA has increased FNMA/FHLMC conforming loan amounts perhaps anticipating the retention of the \$ 1M cap on the mortgage interest deduction); CFPB, which chose not to address the errors in title insurance disclosures for simultaneous issue (but it is now under new management that promises to protect consumer's interests – j/k); or Congress with both Houses promising tax relief (but investors may find that their pass-through rates for their LLC or LP entities' income is higher than the 20% rate paid

by real estate investing corporations). We hope events unfold like the part where the Grinch's heart grows three times normal. Hope this Holiday Season brings joy to you, your family, and your business. All here hope this issue brings you some light during these shorter days. – *Ed.*

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***From the President's Desk
Looking Toward 2018
John M. Nikolaus, CLTP***

As 2017 comes to a close, I would like to take this opportunity to thank our agents and approved attorneys for the opportunity to work with you over this past year. Overall premium revenue was up over 2016, an indication of an active real estate market and a sign that our agents and approved attorneys were hard at work accommodating consumers. Not only was business up but claims' expense was down again. The downward trend in claims activity can be viewed as a reflection of our seasoned agency and attorney network, quality underwriting, and efficient operations. Congratulations on a job well done!



Blue Arrow = Premiums (Up!)/Red Arrow = Claims Expenses (Down!)

I am honored to be surrounded by a team of experienced title professionals at Conestoga Title insurance Co. As a member of that team, I look forward to exceeding the expectations of our agents, approved attorneys, and policyholders in the New Year. Looking forward to 2018, we are committed to continuing with our focus on the independent agency system, providing our network with access to the resources needed to give exceptional service to our policyholders.



Happy Holidays! May you and your families enjoy a joyful holiday season and a happy, healthy and prosperous New Year!



Agency Admin and Audit
ALTA Title & Settlement Agent Registry
Don Delgado, Vice President, Agency Administration

The American Land Title Association has launched a new utility known as the ALTA Title & Settlement Agent Registry (ALTA Registry). It is a searchable online database of underwriter-confirmed title agents, underwriter direct offices, and real estate attorneys. It will allow participants in the real estate closing process to identify accurate contact information for the closing office. It will serve as an online phone book for the more than 30,000 title agents and real estate attorneys, while allowing lenders to know that they are working with the correct closing offices. "Mortgage lenders, title insurance agents, real estate attorneys, title insurance underwriters and other participants in the real estate closing process must be able to identify each other and communicate in a timely and consistent manner throughout the mortgage transaction," says Michelle Korsmo, ALTA's CEO.

Any title agent that can be confirmed by an underwriter as well as any attorney who conducts real estate closings is eligible to be listed in the Registry at no charge. An attorney who is a policy issuing agent of an underwriter will be listed as a title agent. An attorney who conducts closings, but is not a policy issuing agent, will be listed as a Real Estate Attorney. Participants will be assigned a unique, permanent seven-digit identifier, the ALTA ID. Organizations with multiple branches will have a separate ID for each branch, which will be connected to the headquarter location (which will be known in the Registry as the Primary Business Location).

The ALTA Registry will be open and free to all who wish to locate contact information for title agents, real estate attorneys, and underwriter direct offices. Lenders and their vendors will be considered customers of the Registry who can subscribe to it in order to obtain access and features not available to public users without a subscription.

The ALTA Registry is **NOT**:

- A verification system: It only confirms that as of the date provided a title agent or real estate attorney maintained a business at the listed address;
- Equivalent to a Closing Protection Letter;
- A confirmation of best practices compliance or optimized risk management procedures

For more information and resources about the ALTA Registry please visit:

www.alta.org/registry/

Dear Conestoga Family: As I am the Conestoga employee who most closely resembles the "Jolly Old Elf," it has fallen upon me to make the holiday toast. So, on behalf of all of us here at Conestoga, we send this Ancient Celtic wish for the holidays.

Bill Parker, Vice President, Claims & Underwriting

*This season may you have...
"Walls for the Wind
And a roof for the rain,
And drinks beside the fire,
Laughter to cheer you,
And those you love near you,
And all that your heart may desire."*



And for your enjoyment of the Winter season, follow this link:

<https://www.youtube.com/watch?v=pNmlb-reJZA>

(You may have to cut and paste to your browser)

Claims Corner
The Property Line Claim
Joseph John Kambic, Vice President, Claims & Recovery*

* Ed. Note: Joe Kambic has obtained an article from a guest writer, who has appeared in these pages before. See, "Not My Mom's Mortgage," Vol. 2, No. 3, pp. 9-10.



FROM: Tex S. Holdum, Title Insurance Investigator

At this time of the year, I am reminded of one of my favorite claims. The claim was presented by



one Kris Kringle, alias Sinterklaas, alias Pelznickel, et al.
Kris is the owner of a few thousand commercially and industrially developed acres at the North Pole.



In 1974, he needed to expand his operations and planned to do so on the southern edge of his



property where he kept his sleigh...



and his reindeer...

...year round, *except for that one evening in December.*

Kris discovered that his neighbor was storing snowmobiles on Kris' side of the property line, in an apparent attempt to establish adverse possession.

Overnight, the elves moved the snowmobiles back on the neighbor's property and erected a larger fence.



The now angry trespassing neighbor declared open season on Kris' reindeer.



But Kris' specially trained Jackalopes were now patrolling that area, keeping the reindeer safe.



So, the neighbor sued Kris in Court for Adverse Possession,



but the Title Company successfully defended Kris.

And the very next Christmas, Kris gave his neighbor a very special gift.



HERE'S WISHING YOU ALL A JOYFUL HOLIDAY SEASON!

Tex

***Tales from the Underwriting Trail
Honus Waggoner***



Honus

Underwriting Topics
Power of Attorney Considerations
Mitchell J. Thoreson, Underwriting Counsel

Powers of Attorney can be very useful mechanisms for closing a transaction, particularly when a signer is out of town or otherwise unavailable to sign the documents physically. But what considerations need to be taken into account when presented with a power of attorney? This article discusses several issues when dealing with powers of attorney, and what you as an agent or attorney need to be aware of when handling these documents.

Every state has statutes dealing with powers of attorney. While there is some caselaw pertaining to powers of attorney, the bulk of the rules and requirements relating to powers of attorney are contained in these state statutes. Read your statutes and become familiar with them. **Important categories to consider** in these statutes are:

- (1) Witness and Notary Requirements – Are one or two witnesses necessary? Is a notary required? Can one of the witnesses be the notary?
- (2) Statutory Forms – Does the statute set forth a sample form or language to use? Is it required or merely a suggestion? There may be some forms or language that are mandatory and some forms or language that are suggested within the same set of statutes.
- (3) Requirements Relating to Real Property or Real Estate Transactions – Usually the power of attorney will set forth specific powers relating to real estate, but if the language is vague, many power of attorney statutes set forth adequate language giving authority to acquire or dispose of real property.
- (4) Requirements for Durability – What language is required for a power of attorney to be durable? Does this language have to be located anywhere in particular in the document?

If you can become familiar with your state statutes dealing with the mentioned categories, you should be able, quickly and easily, to review 90% of the powers of attorney presented to you.



(Unlike the federal tax code, most POA statutes are relatively short and concise.)

A note about durability: Durability is an issue that should always be taken into account when dealing with a power of attorney. Some durable powers of attorney are effective from the time of execution through the principal's incapacity. Others become effective only upon the principal's incapacity (called a "springing" power of attorney). You should always determine if the power of attorney is durable or not. If it is not durable, you will need to ensure the principal is not incapacitated and, in the case of a real estate transaction, obtain a signed affidavit from the agent attesting to the fact that the principal is alive and well at the time of execution.

Many, if not most, state statutes provide that a power of attorney executed in another state is effective if it complies with the power of attorney requirements of the state in which it was executed. In these cases, you will have to become familiar with that state's power of attorney requirements, or contact an attorney in that state to discuss the matter. In many circumstances, underwriting counsel at Conestoga may be helpful in this regard.

One additional item to be aware of is that powers of attorney statutes do change over time, and new requirements may not necessarily apply to old powers of attorney. Be sure to understand your state's power of attorney laws to determine which sets of rules apply to the document sitting before you.

Powers of attorney bring a host of concerns into the mix, which invariably relate to the fact that the principal is not physically present and signing the documents in the transaction. Many of these concerns relate to fraud, duress or undue influence over the principal. The following are **some "red flags" which should raise concern** when they arise in connection with a power of attorney in a transaction:

- (1) Your inability to communicate with the principal or you hear statements by family/friends that they are going to "keep him/her out of things."

- (2) Notification by the agent claiming the powers under the POA that the POA will be used, but there is an inexplicable delay in presenting the power of attorney for review prior to closing.
- (3) Last-minute changes or usages of powers of attorney.

The most important “red flag” is yourself – **trust your gut!** If you have concerns with regard to the power of attorney or are otherwise unsure whether the power of attorney is being used in a proper manner, do not proceed with the transaction. Remember that clients come and go, but your professional license and reputation are not easily restored.



Two final considerations with respect to powers of attorney:

First, always ensure proper execution of the power of attorney, including proper (and full) completion of witness and notary sections. While an incorrectly completed/executed notary block may seem insignificant, it can have unexpected consequences. For example, in many states, powers of attorney must be recorded in connection with conveyance of property through a deed. If a power of attorney contains a minor error in the notary block such that the county recorder's office would refuse to record it, you now have a larger problem than just a “minor error.”

Second, always make sure the power of attorney has not been previously revoked. Most powers of attorney provide that the principal may revoke them under certain conditions. If this has occurred, your power of attorney may no longer be effective. Discussions with the principal or an affidavit from the agent may alleviate concerns regarding this issue.

Special Feature Article
The Risks of Inadequate Cybersecurity Insurance
Kaitlin Kelly, Fran Kelly Professional Liability LLC

Cybercrime and cyber insurance have been hot topics for the past few years. Not only have we seen high profile companies, such as Equifax, suffer data breaches, but cybercrime has also hit closer to home (pun intended). The real estate market has become a major target for cybercrime. In 2016, the FBI Internet Crime Complaint Center (IC3), which monitors cybercrime across the country reported a 480% increase in the number of cybercrime complaints from title companies. (<https://www.ic3.gov/media/2017/170504.aspx>) Title agencies, real estate agencies, attorney offices and, most recently, the home buyers themselves, have caught the eye of cybercriminals.

Vulnerability of Title Agencies

How and why are they doing this? The “why” is pretty simple – the title industry conducts high volume high frequency funds transfers. Not surprisingly, money is the end goal for most cybercriminals. The more difficult question to answer is “how.”

These are the most common types of cybercrime claims we see across the industry (with the top of the list being the most frequent, and, often, the most severe):

1. Social engineering scams (the use of psychological means to manipulate someone into divulging information or performing certain actions) victimizing title agencies
2. Social engineering scams victimizing homebuyers
3. Unauthorized, fraudulent funds transfers directed from a criminal to a financial institution
4. Ransomware (malware that requires the victim to pay a ransom to access encrypted files. Merriam-Webster 2017)
5. Data breach

Real World Examples

1. **Social Engineering Victimizing Title Agents**: ABC Title Company performs a closing on a Thursday afternoon and provides the seller with their proceeds check. The next day, the title agency receives a phone call from someone purporting to be the seller, instructing them that they have not yet cashed their check; they would rather have their funds wired. Further, “the seller” confirms that it is okay to put a stop payment on the check if the funds can be wired out by the end of the day. Because it is the end of the month and the Friday afternoon on a holiday weekend, they want to get this done quickly. The money is wired out. Tuesday afternoon, the title agency receives a call from the actual seller demanding to know why a stop payment was put on their proceeds check. As the smoke clears, the title agency realizes they sent the funds to a criminal. The money is gone.
2. **Social Engineering Victimizing Homebuyers**: Joe, a first-time homebuyer is getting ready to close on his dream home. He has saved his whole life to put a \$200,000 deposit on a \$1M

home. He is excited to close on Thursday and is diligently preparing to avoid any closing delays. Monday morning, he receives an e-mail that appears to come from his realtor, including wire instructions on the title agency's letterhead for his down payment. He wires the \$200,000 according to the "title agency's" instructions and shows up for the closing to sign on the dotted line and get the keys to his new home. When the title agent requests the check for his down payment, Joe is baffled that they did not receive his wire, and it is soon unveiled that the wire instructions he received, and followed, were fraudulent. Three days have passed since Joe wired the money, and the bank informs him the transfer is complete – the money is gone. Joe is absolutely devastated, both emotionally and financially. He immediately hires an attorney to file suit against the realtor and title agency alleging they sent his personal and financial information over an unsecured network and, consequently, allowing the criminal to carry out the scam successfully.



3. **Fraudulent Funds Transfers:** Unbeknownst to Sunshine Title Agency, their computer network was infected with malware a few months ago. The cybercriminal who executed the attack was able to obtain the company's bank account login information, as well as gain control of the company's e-mail accounts. In the early hours of the morning, while all the company employees were fast asleep, the cybercriminal logged into the bank account and created a new bill pay, naming itself as the payee. The cybercriminal also immediately went into the company's e-mail account, confirmed the new bill pay, and deleted any trace of the e-mail message. This allowed it to pay a bill of \$30,000 to itself. The bank denies responsibility for the lost funds because the bank sent the confirmation to the known e-mail account on file. The title agency has no way to recover the funds.
4. **Ransomware:** Sue walks into work one morning and turns on her computer screen. The screen is blacked out but contains a message telling her that the system (along with all of her company's data) is being held for ransom. Unfortunately, the online backup has also been infected. The ransom instructions require her to pay 4 Bitcoin (at the time this article is being written 1 bitcoin = \$7,500 USD) within the next 72 hours. Sue calls the local police, who inform her to talk to a forensic investigator. The investigator determines the threat is legitimate and there is no encryption key available. He assists her with obtaining the bitcoin, negotiating with

the criminal for more time and eventually paying the ransom. Once the ransom has been paid, Sue's company has been publicized on the dark web as an easy target (and one that is willing to pay a ransom). She suffers repeated ransomware attacks in the coming months. Ultimately, the ransom payments and forensic expenses are more than the company can sustain financially.

5. **Data breach:** Anthony was meeting clients for a late lunch and brought his laptop to present a quick demo. After a successful meeting and a few cocktails, Anthony heads home. The next morning, he realizes he left his laptop at the restaurant but, unfortunately, the restaurant has not been able to locate it. The laptop contained employee and client confidential information. The company must now provide notification and credit monitoring to all affected parties.

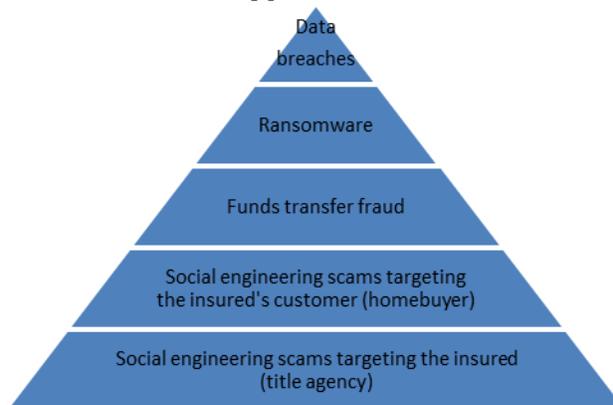
As you can see from these examples, a majority of cybercrimes can be avoided with proper training and awareness campaigns for employees and customers alike. However, as cybercrimes evolve and cybersecurity teams scramble to keep pace, not every type of cybercrime is avoidable. This forces us to take a hard look at our companies and decide how much of this risk are we able to take on?

If you are not willing to risk the life of your business, cyber insurance may be something to consider. However, selecting the right policy cannot be done without careful consideration.

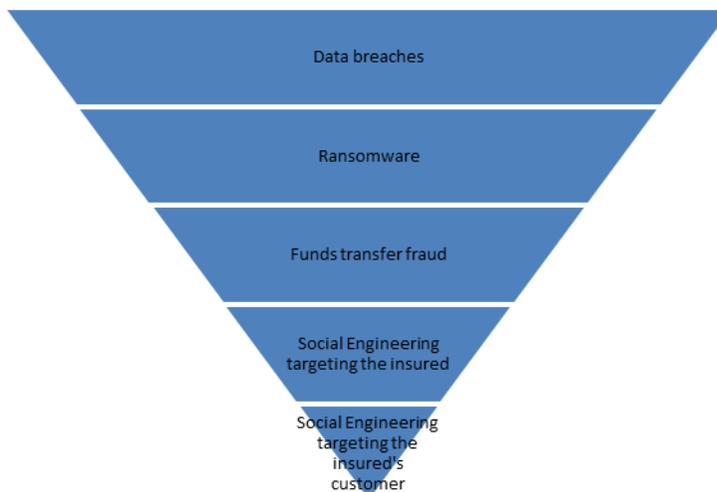
Protecting yourself: Appropriate Coverage

The cyber insurance market is incredibly complex and widely misunderstood. There is a major disconnect between the types of claims insureds are suffering and the availability of that type of coverage in the marketplace.

Most common types of claims:



Most common coverage:



These pyramids are almost perfectly inversed. Where we see the most coverage (*Data breaches*), we see the least amount of claims. Where we see the most claims (*Social engineering scams*), we see the least amount of coverage. Without aligning these pyramids, you'll find yourself paying premium for a policy that does not offer much protection. Fortunately, proper coverage is available, albeit a little more expensive and much more difficult to obtain than your standard cybersecurity policy. Work with a broker who understands this market (and you!) so you can align these pyramids ... And stay in business!

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By: Fran Kelly Professional Liability, LLC

The contents of this publication are intended for general information only and should not be construed as legal advice or a legal opinion on specific facts and circumstances.



Fran Kelly Professional Liability is a family owned and operated, completely independent insurance agency. Our agency has specialized in the insurance needs of the title industry alone for over 20 years. We can assist you with E&O insurance, surety bonds, fidelity/crime, and cyber liability coverage. The Best Practices require you to maintain appropriate levels of these insurances. Having access to over a dozen different carriers gives Fran Kelly Professional Liability the ability to find you the right coverage at the best price available. We pride ourselves in customer service. When you call, you will speak to a knowledgeable member of the family who has the ability to assist you with anything you may need. We make the dreaded E&O process as easy as it can be. You can even submit a competitor's application, along with your declarations page, for a quote without additional paperwork. Please give us a call to see how we can assist you.

Fran Kelly, Owner Emeritus
Alicia Kelly, Member
Kaitlin Kelly, Member

Circling the Wagons Industry News



Trains and Training Go with the Season

Conestoga Title's seminar schedule for 2018 is set. Note your calendars: You have probably heard that the 32nd edition of Conestoga College is right around the corner. Actually, it is being held again at the Eden Resort and Suites in Lancaster, Pennsylvania, on January 15-16, 2018. If you have not received an email about registration for the program, contact Patti Reese (preeese@conestogatile.com) or Colleen Sheerin (csheerin@conestogatile.com) for information. Claims' war stories and title issues with receiverships are among the topics on the Agenda. Seminar dates and venues are set for Virginia, Maryland, and Ohio. Tuesday, April 10, 2018, at the Waterford at Fair Oaks, Fairfax, for Virginia; Tuesday, May 8, 2018, at Turf Valley, Ellicott City, for Maryland; and, Thursday, October 18, 2018, at the Ohio Union, The Ohio State University, Columbus, for Ohio. See you there!

The Holidays are Taxing, Try Not to Stress

Along with silver bells and Christmas cheer, tax reform is in the air. Needless (Needles?) to say, the impact of the competing plans adopted separately by the House and Senate on the real estate industry is of paramount importance to all of us. There has been much discussion on incentives/disincentives for the homebuyer of an increased standard deduction versus possible reduction of the mortgage interest deduction. A bigger long term financial issue for homeowners may be what is done with the partial exemption from capital gains on the sale of a primary residence. While the amount of the exclusion apparently will not be changed, the holding time for it to apply is likely to be extended from the current two of five years residency to five of eight years. What comes out of the House-Senate conference committee is anybody's guess, but there will be a real impact on homeownership; hopefully, a good one.

What about 2018?

There will be regulatory reform: CFPB is under new management with plans to unravel much of the last five years' worth of Dodd-Frank implementation. [Disassembly of regulation does take about as long as assembly. Change or change back will be slow.] Interest rates will rise at least at the Fed. Midterm elections may upset the balance of power in Washington. According to Fitch, however, the title industry is looking at stable profits in the coming year. Profits for 2016 and the first nine months of 2017 have been running 10-11% higher year-over-year. Despite slowing of the refinance mortgage business and a slight dip in new home starts, the resale market with a growing group of millennial buyers is keeping business strong. Also, claims expenses for underwriters continue to be lower than historical norms. Overall, 2018 looks to be a *Happy New Year!*

Employee Spotlight Douglas C. Rauchut

Doug Rauchut is Conestoga’s Agency Audit Manager with primary responsibility for conducting and reporting the results of onboarding and annual audits of title agents. Although he came to Conestoga from Orlando after a stint as head of closing services at The Closing Agent, LLC, Doug is a lifelong resident of Pennsylvania. He obtained an AA in Electronic Engineering/CIS from Harrisburg Community College and took that knowledge to the title industry. From 1997 to the present, Doug has been a title agent, marketing officer, settlement agent, and founder and CEO of title agencies in the Harrisburg--York area. Between 2002 and 2015, he was founder and President/Managing Member of Appalachian Settlement Agency and Keystone Central Settlement Company. Consequently, he brings the agent’s experience with the audit process to his work for Conestoga. Doug and his wife live outside Harrisburg and have a daughter, currently enrolled at the University of Florida.



Conestoga Title Personnel Contact Information

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