

# Conestoga Quarterly



2024 Third Quarter

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137 East King Street  
Lancaster, PA 17602

800-732-3555  
conestogatile.com

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## A Message from the President

As we approach the end of the third quarter, I am pleased to report that our company continues to make significant strides towards our annual goals. Our team's dedication has led to premium growth while maintaining a very low loss ratio. Our growth in premium revenue and low loss ratio are a reflection of our strong agency and approved attorney networks and our devoted team of employees.

While we continue to focus on providing exemplary customer support for our network, our team also strives to enhance the tools that we offer to our agents. As mentioned in my second quarter newsletter article, over the past year we have invested a significant amount of time and monetary resources in the technology necessary to provide an examined search product in a seamless and efficient manner. As planned, we have successfully launched our new examined search product to a select number of title agents on Qualia's settlement software platform. The efficiencies and end result are outstanding! In the immediate future, we will be offering the examined title search product exclusively to agents utilizing Qualia's settlement software platform. We project that our company's market share will increase as a result of our investment in the technology that makes this offering a possibility. This exciting development not only enhances our offerings but also positions us to better meet the evolving needs of our clients and drive future growth. Feel free to contact me at [jnikolaus@conestogatile.com](mailto:jnikolaus@conestogatile.com) if you would like to learn more about how Conestoga Title can enhance your operations through the use of our newly developed examined title search product.

Looking forward, should the Federal Reserve continue to lower interest rates as anticipated, it should have a positive impact on both the real estate and title insurance industries. Reduced rates will likely stimulate increased borrowing and buying activity, potentially boosting demand for properties and, consequently, enhancing the volume of transactions. This uptick could also benefit the title insurance industry by driving higher property values resulting in increased policy amounts and associated premiums. As we prepare for such a possibility, our strategy includes staying agile and ready to capitalize on these opportunities to support growth and deliver value. We remain committed to leverage these potential opportunities to strengthen our position in the market.

As we enter the fourth quarter of the year, we will monitor market opportunities and emerging trends. By continuing to focus on innovation and flexibility, we are confident in our ability to not only navigate market conditions but also to drive sustainable growth. Our commitment to staying current with market dynamics ensures that we continue to provide value and seize opportunities in an evolving environment.

*John M. Nikolaus, CLTP*  
President, Conestoga Title Insurance Co.

# Protect Yourself from Seller Fraud in Your Transactions

Anna Marie Sossong, Esq., Underwriting Counsel

Seller fraud in real estate transactions has become the hot topic for title agents and title agencies. Conestoga Title, ALTA and hosts of others in the real estate business have provided much guidance to assist you in the identification of fraudulent sellers, fraudulent wire instructions, fake identification, fake notaries, etc. However, while the guidance provided is all well and good to help you identify fakes, there are still a few other things that you can incorporate into your office procedures that will help you nip these 'transactions' in the bud.

One method of confirming the identity of the seller is old school – so dust off those old forms letters! Conestoga suggests that you mail (via USMail) the seller at the address on the tax records, property address or grantee address from the current deed on record and request a telephone call so that you can confirm that the recipient is actually selling their property. Do not use any address provided to you at the time you were asked to open the file. Do your own research and come up with the likely addresses for an owner which you've identified independently of those provided by the person contacting you for service. Explain why you are requesting the telephone response – the owner will certainly respond when you explain you are trying to prevent a harm.

While you're doing your own research, try to find a telephone number from an independent source. Don't ask the realtor and don't use the one provided by the seller. See if you can find a telephone number from Google, Lexis, Whitepages, etc. Once you have a phone number (or more) contact the seller directly to confirm the identity, the sale, etc. You can also Google the phone number(s) that you were provided to see if they are identified as spam or marketing numbers – a sign that all is not right with your transaction.

Since you're going to be talking to the actual owner on the telephone with either of these two suggestions, while you have the owner on the phone ask a few conversational questions about the property that aren't readily available in public records. (If you know anything about the neighborhood, ask what their favorite local pizza place is, where the school bus stops, if there was neighborhood damage as a result of the most recent severe weather, etc.) Reaction to these sorts of questions will go far in identifying fraud or confirming a legitimate seller.

If the file comes to you via a Realtor or other referral source, ask if the source has any prior actual knowledge about the seller. Has the referral source personally verified the seller's identity. If so, how? Has the referral source actually met the seller in person or had any prior business dealings with the seller?

And, since this is the age of technology, your office can subscribe to an identity verification service. Frequently these services require the seller to participate in the identify confirmation by asking the seller to provide information on-line. If your seller refuses to participate in an on-line identification service, you may have a problem transaction! Some of these services also provide wire transfer instruction confirmation and bank account confirmation services.

But still, the most important tool in helping to identify fraudulent real estate transaction is your gut instinct! If you think something isn't right, it probably isn't.

# Asking Questions at the Closing-It's OK!

John Papoutsis, Esq. , Commercial Counsel

As some of you may be aware, I was General Counsel to Conestoga Title twenty years ago, before entering private law practice. This past February, I transitioned from private practice and re-joined Conestoga Title. I am very pleased to, once again, be part of the Conestoga Title legal team and I am looking forward to assisting our title agents and approved attorneys in any way that I can.

As part of my law practice, I closed many residential and commercial transactions. During those closings, I found that asking direct questions to the sellers and the buyers helped to prevent post-closing problems. I would typically already know the answers to these questions, but, as a title agent, I liked to verify and hear the answers directly from the parties. It may have seemed redundant, but I was not shy about asking obvious questions. On occasion, the parties gave me answers which were not obvious and which I did not expect – these answers certainly helped to prevent potential future issues.

Here are a few questions which I would ask at closing and which I would encourage title agents and approved attorneys to also ask:

## **IT'S OK to ask buyers if they are married to each other.**



What I mean by this is if two buyers were buying a property together, I would always confirm how they wanted to hold title. Married individuals may want to hold title as tenants by the entirety. Non-married individuals (or even married), have a choice of holding title as either tenants in common or joint tenants with rights of survivorship. In my opinion, it's very important that this is established prior to the deed being recorded because how title is held affects both how the property is later transferred, and also how the property is exposed to subsequent judgments and other liens. Asking buyers whether they are married is a personal question, but it is very relevant to the legalities of their purchase transaction.

## **IT'S OK to ask sellers if they have a mortgage lien against their property.**

If, for example, the title search revealed no recorded mortgages, I would always still ask the sellers whether they have a mortgage loan secured by the subject property. Over twenty years of asking this question only once did I hear an answer which was inconsistent with our title search results. In that specific transaction, our title search revealed no mortgages, but the seller told me that, yes, he did have a mortgage loan and he was assuming that it would be paid at closing. So, based on the seller's response, our office held the seller's funds and two days later, after receiving a written loan payoff, we paid his mortgage loan in full. The subject mortgage had been mis-indexed by the Recorder's Office, so a typical title search would not have found this recorded mortgage. If I had not asked this question, we may have been struggling to collect the seller's proceeds from him post-closing in order to pay and satisfy this mortgage.

### **IT'S OK to ask sellers to confirm their wiring instructions (again).**

With the proliferation and increasing sophistication of wire fraud, I never got tired of verbally verifying wiring instructions. Wire fraud can affect any title agent – no matter how educated or experienced they are. The key is doing everything you can to confirm. So, prior to closing, our office would verbally verify all wiring instructions. Then, at the closing, I would once again ask the sellers to verify their proceeds wiring instructions – whether their funds were being wired to their personal bank account or to another account. No seller ever complained about this double-verification. Also, since I did this in the presence of the buyers and the realtor, many times it inspired conversations and stories from the closing participants about recent wire fraud activity within the real estate community – this, in turn, helped me keep updated on any new local wire fraud innovations and activity.



### **IT'S OK to ask the sellers if they have drawn on their line of credit.**

As you are aware, in most line of credit situations, the borrowers must communicate with their lender that they wish to payoff the balance of the line of credit, and also directly close their account. At closing I would (1) confirm that the sellers understand that their line of credit account was being paid off and closed, and (2) ask them whether they had recently drawn against their line of credit. I did have two situations where the sellers were buying another property that same day and had drawn on their existing line of credit for funds to purchase their new property. In those cases, I delayed closing until receiving an updated written payoff from the sellers' line of credit lender. These updated payoffs certainly prevented some serious post-closing title problems.



I believe that a successful closing involves open and direct communications. Many times the closing day is the first time that the title agent personally meets the sellers and the buyers. This is the time to communicate, to verify, and to give the parties re-assurances which will make their closing a positive experience. By asking questions you try to prevent post-closing issues. You also show the parties that you are focused on their transaction and that, from a title perspective, you are looking out for everyone's best interests.

# Remote Online Notarization: What Do I Need to Know?

Ashley Myers, Agency Auditor

## What is Remote Online Notarization?

In a constantly evolving world of Title Insurance, there are continuous modernizations happening in the realm of technology. One of the newer technological updates of late is Remote Online Notarization (“RON”). Remote Online Notarization occurs when a person appears before a Notary Public via the use of audio visual communication technology.

Many Title Companies, lenders, and Settlement Agents have come to realize that Remote Online Notarization is something that will be beneficial for many as we proceed into the future. The SECURE Notarization Act of 2023 is bipartisan federal legislation that allows a Notary Public commissioned under state law to remotely notarize electronic records and perform notarizations for remotely located individuals. The bill provides technological requirements including the creation and retention of video and audio recordings and the use of communication technologies. Additionally, the bill requires U.S. courts and states to recognize notarizations, including remote notarizations of electronic records and notarizations of remotely-located individuals, that occur in or affect interstate commerce and are performed by a Notary Public commissioned under the laws of other states. The bill also allows a Notary Public to remotely notarize electronic records involving an individual located outside of the United States, subject to certain requirements.

These new laws have made Remote Online Notarization increasingly popular and a new lucrative tool for Title Companies, Settlement Agents, and those alike. This tool helps to ease the stress of in person meetings especially considering our ever-growing demanding schedules.

## How does it work?

During the event of a Remote Online Notarization, the Notary would first confirm the signer’s identity. This can be done by having personal knowledge of the signer, satisfactory evidence of the signer by oath or affirmation from a credible witness that appears before the Notary, or using at least two different types of identity proofing processes or services, typically handled by the technology provider.

Afterward, the Notary then confirms that the signer is aware and willing to sign the document of their own free will. Once confirmed, the signer signs the document via an electronic signature. Then, the Notary reviews the document, electronically signs and places their digital stamp as needed, then fills out the notarial certificate and attaches a digital certificate which contains their electronic signature.

The notarization is then marked complete when the Notary creates a journal entry and saves the audio visual recording of the act.

Remote Notaries are able to notarize for signers in any location as long as the Notary themselves are physically located within the state of the property location at the time of the notarization.

## What are the benefits?

Implementing RON has many operational advantages including the ability to offer flexible closings to your customers while regaining control of your day-to-day workload. Below is a list of the top benefits of Remote Online Notarization.

### **Close transactions from anywhere.**

RON allows title agents to accommodate their customers regardless of location and closing preference. This can help to impact transaction turnaround time, funds disbursement, productivity, employee retention and business growth without sacrificing the customer service experience.

**Better closing experience for all.** Most of the time RON closings can be performed in half the time of an in-person closing transaction. It allows all parties a more flexible, convenient experience as well as preventing scheduling or travel conflicts. Another benefit of RON allows for the elimination of time spent on manual tasks including printing, scanning, and shipping, all the while ensuring a top level of security and compliance.

**Increase identity verification on closing day.** Traditionally a notarization event requires a Notary to identify the signer themselves using a government issued photo ID. An E-closing platform utilizes multi-factor authentication tools including knowledge-based authentication and credential analysis to make a real estate transaction even more secure.

**Eliminate post-closing errors.** When an E-closing is performed on a RON platform missing fields, signatures, checkboxes, initials etc. is less likely to occur because the documents are flagged in the system ahead of the closing allowing the witness closer to take immediate action. A secure RON platform also ensures that documents are stored securely with the proper digital audit trail which eliminates risk of misplacing paper personal and financial documents.

**Re-invest in the people side of your business.** Investing in RON allows you the digital tools needed to strengthen relationships with customers and lighten the load for your staff. This particular benefit may have a smaller impact on the business's bottom line, however relationship building and workplace morale are ever so important, especially in the real estate industry.

## Next Steps

If you or your staff members are interested in becoming a Remote Online Notary, please contact your State Department's Notary Public Division with specific questions and steps, as each State may have different guidelines and requirements.

You can also visit the [National Notary Association Remote Online Notary](#) page for more helpful information.



# What Are You Committing to Insure?

Rebecca A. Breault, Paralegal/Underwriting Department Administrator

When preparing a title insurance commitment, you should be diligent about what you are offering to insure. *The Title and Escrow Claims Guide 2024 Edition* defines a title insurance commitment as, "...an offer to the proposed insured named in Schedule A to insure the title to the property identified in Schedule A (or Schedule C, when used), subject to the matters recited on Schedule B-II (property-specific exclusions to coverage) and upon fulfillment or removal of the requirements and conditions listed on Schedule B-I" (Nielsen, *Title and Escrow Claims Guide 2024 Edition*). The title insurance commitment should be treated as a binding contract for insurance and used as a checklist for all the items that are required to be completed prior to, at, or after closing in order to finalize the commitment being made.

Schedule A of the title insurance commitment indicates what type of policy is to be issued and what type of interest in the land is being insured. If you are committing to insure a **leasehold**, an **easement**, or issuing an **enhanced policy**, then the commitment needs to indicate that. **Stating that you are insuring "fee simple" when you are insuring a leasehold or easement interest, is inaccurate.**

Schedule A or Schedule C, if attached, should contain a metes and bounds legal description. Due diligence is required to be sure that information is accurate and properly identifies the property the commitment is to insure. The legal description should be reviewed for accuracy and typographical errors. Do not rely on cut and paste from prior documents as they may contain errors you will then carry forward. Always proofread a legal description.

A title commitment **does have** an expiration if the conditions contained in it are not met within 180 days, thereby making it null and void. Once this occurs, there is no longer a duty to issue a title insurance policy. **If all the conditions of the commitment are met and the premium is paid, a delay in recording the transaction does not void the commitment. The commitment remains valid as long as the conditions are fulfilled and the insurance premium is paid, therefore in this instance a title insurance policy should be issued.**

Please note that a title insurance commitment is different than a preliminary judicial report, a certification of title or report of title. Those are merely reporting and certifying what has been found of record. There is no binding contract of title insurance issued as a result of these types of reports. Conestoga has no obligation related to the issuance of preliminary judicial reports, certifications of title or reports of title.

It is up to our agents to correctly identify what is to be insured by the policy when it is issued and to correctly prepare the title commitment. That determination is made on Schedule A – to include the proposed owners and lender, the nature of the proposed ownership interest to be insured and the amount of coverage to be provided to the new owner and any lender. A future article will address the role of Schedule B-I in the title commitment and how it can be helpful to you in conducting a smooth closing.



## Welcome New Staff at Conestoga Title



### Amanda Clark

Amanda Clark joins Conestoga Title as a Title & Escrow Specialist. Amanda has been in the title business since 2016 and will be a great asset to the Conestoga team helping with our Commercial Division, approved attorney network and search product.

### Ashley Myers

Welcome to Ashley Myers as a new Title & Escrow Auditor serving our network of agents. Ashley has over 16 years of experience in processing real estate transactions in both the lending and title industries and is a great addition to our team.



### Nancy Fay

Nancy Fay has recently joined Conestoga Title as our Delmarva Agency Representative. Nancy brings a wealth of experience from various roles within the title industry, including marketing and sales, licensed title production, and processing support during critical times.



# Conestoga Title CE CLE News



- **Click here** to hear the recording of our September webinar “Seller Fraud in Real Estate Transactions.” Though this recording is not available for CE credit, course attendees felt the content was very useful.
- Registration is open now for our October 8th live webinar approved for CE CLE credit “Commercial Real Estate Transactions & Title Insurance.”
- Save the Date - November 19th this will be our last webinar in 2024.

## Conestoga Title Insurance Co. Personnel Contact Information

NAME	POSITION	DIRECT DIAL	MAIN PHONE	
			EXTENSION	EMAIL
Amanda Clark	Title & Escrow Specialist	833-815-2382	2519	<a href="mailto:aclark@conestogatile.com">aclark@conestogatile.com</a>
Anna Marie Sossong	Underwriting Counsel	833-470-4012	2511	<a href="mailto:asossong@conestogatile.com">asossong@conestogatile.com</a>
Ashley Myers	Agency Auditor	855-303-4370	2521	<a href="mailto:amyers@conestogatile.com">amyers@conestogatile.com</a>
Bill Parker	VP, Claims & Underwriting	800-861-9414	2503	<a href="mailto:wparker@conestogatile.com">wparker@conestogatile.com</a>
Colleen Sheerin	Marketing Assistant	717-431-2764	2502	<a href="mailto:csheerin@conestogatile.com">csheerin@conestogatile.com</a>
Don Delgado	VP, Agency Administration	800-724-0935	2505	<a href="mailto:ddelgado@conestogatile.com">ddelgado@conestogatile.com</a>
Doug Riggin	VP, Sales	800-257-4176	2506	<a href="mailto:driggin@conestogatile.com">driggin@conestogatile.com</a>
Ethan Trowbridge	Title Dept. Officer	800-257-9414	2501	<a href="mailto:etrowbridge@conestogatile.com">etrowbridge@conestogatile.com</a>
Joel Angelo	Agency Auditor	800-830-9031	2509	<a href="mailto:jangelo@conestogatile.com">jangelo@conestogatile.com</a>
John Nikolaus	President	800-272-3570	2510	<a href="mailto:jnikolaus@conestogatile.com">jnikolaus@conestogatile.com</a>
John Papoutsis	Commercial Counsel	800-257-5217	2508	<a href="mailto:jpapoutsis@conestogatile.com">jpapoutsis@conestogatile.com</a>
Jon Markel	VP, Marketing	717-431-1260	2517	<a href="mailto:jmarkel@conestogatile.com">jmarkel@conestogatile.com</a>
Laurie Ordnung	Paralegal	877-502-5157	2512	<a href="mailto:lordnung@conestogatile.com">lordnung@conestogatile.com</a>
Nancy Fay	Delmarva Agency Representative	800-257-9578	2504	<a href="mailto:nfay@conestogatile.com">nfay@conestogatile.com</a>
Rebecca Breault	Paralegal, UW Administrator	800-478-8630	2513	<a href="mailto:rbreault@conestogatile.com">rbreault@conestogatile.com</a>
Rick Hecker	Senior VP, General Counsel	855-856-0246	2533	<a href="mailto:rhecker@conestogatile.com">rhecker@conestogatile.com</a>
Robin Wolbert	Treasurer	800-257-1966	2514	<a href="mailto:rwolbert@conestogatile.com">rwolbert@conestogatile.com</a>
Sheryl Childs	Policy Administrator	800-257-7921	2515	<a href="mailto:schilds@conestogatile.com">schilds@conestogatile.com</a>
Susan Anderson	Paralegal	877-502-5158	2516	<a href="mailto:sanderson@conestogatile.com">sanderson@conestogatile.com</a>
<b>AGENCY DEPT.</b>		<b>800-732-3555</b>		<b><a href="mailto:agencydept@conestogatile.com">agencydept@conestogatile.com</a></b>
<b>TITLE DEPARTMENT</b>		<b>800-257-9414</b>		<b><a href="mailto:titledept@conestogatile.com">titledept@conestogatile.com</a></b>
<b>UNDERWRITING SERVICE TEAM</b>		<b>800-478-8630</b>		<b><a href="mailto:uwrequests@conestogatile.com">uwrequests@conestogatile.com</a></b>