

Conestoga Quarterly



2021 First Quarter

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48 years of
personal service
to our
independent
agents and
approved
attorneys



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A Message from the President

Like many of our agents and approved attorneys, Conestoga Title had one of our busiest years with record sales. Numerous factors contributed to our success including historically low mortgage interest rates, high volume of refinance activity, a healthy level of real estate conveyances, low claim expense, the initiation of key new initiatives, an excellent network of agents and approved attorneys as well as an outstanding team of title insurance professionals at Conestoga. I personally want to thank all of our employees, agents, approved attorneys and other associates who helped make 2020 an incredibly successful year!

2021 is well underway and the company continues to do well as we benefit from many of the same factors that led to our success in 2020. At Conestoga Title, we look forward to the prospects of an exciting year ahead.

Continuing Education Opportunities

For the first time in 35 years, our company did not host “Conestoga College” as an in-person continuing education, multi-day event as the pandemic restricted us from doing so. However, consistent with our commitment to providing continuing education opportunities, we began to offer one-hour webinars for agents and approved attorneys. We first began offering the monthly webinars in Pennsylvania and have now expanded our offering to include Maryland. We plan to further expand our continuing education program to include webinars in Virginia and Ohio as we enhance our technological capabilities and learn the nuances of offering webinars in additional states. Thank you to those who have already participated in our webinars. We will disseminate news concerning upcoming webinars on a monthly basis. Follow our LinkedIn and Facebook pages for the most current webinar information.

Qualia Title and Escrow Platform

We are pleased by the number of agents who are taking advantage of Conestoga’s integration with Qualia’s title and escrow platform. Title agents appointed by our company are increasingly taking advantage of unparalleled efficiencies provided by Qualia. While we will continue to work with agents utilizing all major settlement software platforms, Conestoga’s agents running Qualia software are experiencing full integration, allowing agents to issue policies and CPLs, produce forms and calculate rates, all within the platform. The software automates collection of remittance information, operates monthly reconciliations and integrates audit workflows directly into the agent’s Qualia software platform.

Title Search Product

Approximately one year ago, Conestoga introduced title search products for the benefit of our independent agency network. Conestoga's agents now are able to order title searches directly from our company via the Qualia Marketplace. Utilizing technology, agents now receive completed searches quickly, directly into the agent's platform, avoiding the necessity of re-keying data, saving time, effort and minimizing the risk of errors. Appealing to Conestoga's agents is our retention of liability for errors resulting from defective search products ordered from our company. Title search products are available only for those agents running Qualia's software at this time. However, we continue to work on the expansion of our title search product offerings and will provide further updates as we continue to work on its development.

Congratulations!

Congratulations to Eric Borgia who has been promoted to Vice President – Underwriting and Rick Hecker who has been promoted to Vice President – General Counsel for Conestoga Title. The promotions are well deserved and I hold each of them in high regard. Eric and Rick are valuable members of Conestoga Title's management team. Please see details of the new officer appointments later in this newsletter.

In Appreciation

In acknowledgement of an excellent network of agents and approved attorneys, I would like to extend my personal thanks for your continued loyalty. At Conestoga, we appreciate your business and look forward to working with you in the future.

John M. Nikolaus, CLTP

President, Conestoga Title Insurance Co.

New ALTA/NSPS Standards In Effect as of 2/23/21

William J. Parker, Esq. VP Claims & Underwriting

Every 5 years the American Land Title Association and the National Society of Public Surveyors (NSPS) meet to review and update their joint standards for title. The goal is to have universal easy-to-understand standards for agents and surveyors in preparation and use of surveys of real estate. ALTA and NSPS met late last year and have come up with some new adjustments to the standards. While none of the adjustments will change our underwriting requirements, you should be aware of them when questioned.

The obvious change is that the surveyor certification must be updated to include that it is based on and in accordance with the **2021** “Minimum Standard Detail Requirements for ALTA/NSPS Land title Surveys.”

Probably the most noticeable change is that the standards have changed the grammar throughout, by replacing “may” with “shall.” I know that sounds like a middle school English class lesson but it makes a huge difference here. The regulations used to be written as the agent/surveyor *may* do something. This has been replaced by the words SHALL and MUST do. This makes the standards more objective and eliminates gray areas for both the surveyor and the title agent.

Another important adjustment affects what the title agent must provide to the surveyor. Section 4 of the standards now narrows and specifically defines what must be provided to the surveyor to conduct the survey. Such information can be summarized as follows:

- A. The current legal description of the real property (or, in the case of an original survey, the current description of the parent parcel);
- B. Most recent title commitment;
- C. The following documents from the public records: (i) descriptions of adjoining (except where adjoining are lots in platted, recorded subdivisions); (ii) easements benefitting the property; and (iii) easements, servitudes, or covenants burdening the property; and
- D. At the option of the client, any unrecorded documents affecting the property.

If the surveyor becomes aware of evidence in the process of conducting fieldwork that is not listed in the title evidence, it must be reported to the title agent. Such evidence may be surface features such as roads, paths, water courses, drainage ditches and the like, or evidence of underground features, such as vent pipes, manhole covers and utility markers.

All in all nothing earth shattering for agents or surveyors but they are changes of which you should be aware.

Managing Transition in 2021

Doug Riggan, VP Sales

As the continued covid situation breeds uncertainty, business planning becomes especially challenging. Actually, we probably all need several plans ready to implement depending on which guidelines are in place. During this record setting period for real estate transactions, if you have not yet taken a minute to catch your breath – we understand(!) and encourage you to step back and give yourself time to:

ASSESS

Take an objective look and list your short and long term challenges. Then consider your strengths. Too often in business we focus on the problems, solving the problem of the day. Taking the time to really define and name your strengths might help bolster solutions you design.

LISTEN

Solicit input from employees, trusted outside colleagues, and industry experts in further defining challenges and in brainstorming solutions. You don't have to have all the answers. See if another business has already resolved a challenge you are facing and adapt that plan to your situation.

INVITE

Consider being more inclusive in your strategic planning. If team members know, understand and are involved in decision making, they will feel a sense of ownership toward the vision and will then be able to champion it in the office.

NETWORK

Many title agents are working so hard just to keep up with volume in their offices and meeting customers in a variety of places and using different time schedules that they can become a bit isolated from others in the industry. Without in person gatherings, one more Zoom meeting might be the last thing you want to do. Consider though making that extra effort to stay in touch with colleagues, and to check what competitors are doing. Then, at least once a month, reach out to potential prospects for your services so you can grow with new clients and not just with volume from existing clients.

COMMIT

Name your goals. This can be one of the hardest tasks for a business owner and if not done effectively, then success will only come by accident and/or it may not last. Goals need to be specific, measurable, and attainable. If not you risk your staff becoming frustrated and they won't know when the goals have been reached.

Claims Department Review

Joseph John Kambic, VP Claims & Recovery

Little more than a year has passed since the first reported case of COVID-19 in the U.S. on February 29, 2020. In that short time, the pandemic has monumentally impacted our lives in so many ways. I certainly would not have expected one of those impacts to be an increase in demand within our industry. To the contrary, with the rise in unemployment and with people being furloughed I expected a decrease in demand, and a commensurate increase in foreclosures and the title claims associated with them. As such, it is a bit daunting to predict the status of title insurance claims for 2021 and beyond. However, with a perspective shaped by many years in this industry, here are my thoughts on what I expect.



Due to the [federal government extending moratoriums on foreclosures](#), until September 30, 2021, foreclosures should continue to be non-events for most properties for the time being. In addition, properties facing foreclosures in the near term will generally have greater equity in them, bolstered by increasing home values. Greater equity, coupled with an increasing number of millennials entering the home purchase market, may mean that a home owner facing potential foreclosure in the future may have a better

opportunity to sell the property and walk away with some cash in her pocket. In my experience, although not necessarily directly correlated, fewer foreclosures typically means fewer claims.

I hear you saying that title issues can still be there when a property is sold. True, but the resolution of a title issue outside of litigation/foreclosure is less costly, less time consuming, and less prone to lead to claims.

So what might we see in the way of claims in 2021? For the first half of the year, I have to believe that the numbers will be low. The second half of the year could bring either an uptick in claims or a continued diminution of claims in the event the foreclosure moratorium is extended to the end of 2021.

For the foreseeable future, I expect claims will be of the same nature that we have seen over the last five to seven years, such as:

- Were documents filed out of order?
- Did someone fail to follow-up to assure that a satisfaction piece was recorded for a prior mortgage paid at settlement?
- Did someone fail to proofread a legal description in a mortgage?
- Did someone fail to make legible copies of seller, buyer and property owners' identification?
- Did someone fail to carefully read the entire title search, thereby missing and failing to clear or except for a title issue?

These and other mistakes can easily occur when agents are so busy that things get overlooked, procedures are ignored and checklists are not followed.

Although I believe that the aforesaid title issues may continue to generate claims, additionally I foresee a future of new claims related to the use of virtual settlements and remote online notarization. It is just a matter of time before hackers and fraudsters invest in advanced digital technology to “appear” as the sellers in a virtual settlement. Consider the appearances of “deep fake” videos, which have advanced swiftly over the last two or three years. I believe that it is a matter of time before “deep fake” technology will advance from videos to real time virtual communication.

So, if the hackers and fraudsters will incorporate more advanced technology, what is there to counter the threat? Think Artificial Intelligence (AI) and machine learning for fraud detection.

For a quick read on AI and machine learning, connect to [this article](#) on the FICO blog, and go to [Datavisor.com](#) which has a selection of [webinars on AI](#) being used to fight fraud.

What's in a Warranty?

Rick Hecker, Esq. VP General Counsel

One thing that I find particularly curious in reviewing agents' files from various states in our footprint is the widely varying use of **warranties of title** in deeds. Surprisingly, in some states (or regions of some states) it is still common practice to give a general warranty in a deed, while a special warranty is acceptable in most other places. While I am not entirely certain of the rationale for the differences in practice, it does seem that when the issuance of owner's title policies is the norm, the need for a general warranty deed is diminished from a consumer's perspective.

Whatever the reasons for the differences may be, here is a review of the types of warranties found in deeds and some brief comments on the language needed to invoke those warranties.

General Warranty

This warranty is that, upon the failure of title which the deed purports to convey, the grantor will make compensation for any loss sustained by the grantee. The upshot of this warranty is that the grantor must deliver title free of liens and deliver a deed containing a promise to the grantee that the grantor will defend the title granted against the world.

In Pennsylvania, to create a general warranty, the deed should recite that the grantor "will warrant generally the property hereby conveyed." The effect of this language is the same as if the grantor had stated that he, his heirs, and personal representatives, will forever warrant and defend said property, and every part thereof, unto the grantee and the grantee's heirs and assigns, against the lawful claims and demands of all persons whomsoever.

Special Warranty (Sometimes called a "Limited Warranty")

In comparison to the general warranty, a special warranty is nuanced and limited. The promise to make compensation for a failure of title remains, but what qualifies as a triggering failure of title is limited to only those claims or demands that come from or arise out of the acts of the grantor. This warranty is not against the world, but against the grantor and those claiming by, through, or under him.

In Pennsylvania, to create a special warranty the deed should recite that the grantor "will warrant specially the property hereby conveyed," but even less will do, as it has been held that the simple phrase "grant and convey" implies a special warranty. The effect of this language is the same as if the grantor has stated that he, his heirs, and personal representatives, will forever warrant and defend the said property, and every part thereof, unto the grantee and the grantee's heirs and assigns, against the lawful claims and demands of the grantor, and all persons claiming or to claim by, through, or under him.

Of course, Pennsylvania is not unique in its use of phrases to trigger a specific warranty. In Maryland, the phrase "that he will warrant specially the property hereby granted" implies a special warranty and of course "that he will warrant generally the property hereby granted" implies a general warranty. In Ohio, one only need the phrase "general warranty covenants" to invoke a general warranty or the words "with limited warranty covenants" to invoke a limited warranty.

If it has been a while since you have last reviewed your deed form, perhaps now would be a good time to review the language used and consider the local practice and ponder the rationale and implications of the warranties being invoked for your client. Contact us with any questions at uwrequests@conestogatile.com

Conestoga Title Announces Staff Appointments



Conestoga Title Insurance Co. has promoted Eric M. Borgia, Esquire to Vice President – Underwriting. Borgia, a native of Erie, Pennsylvania joined Conestoga Title in 2018 as Underwriting Counsel. 2021 marks Eric's 32nd year as a real estate attorney and title insurance professional. Eric is a graduate of Penn State University with a B.A. with honors in English, and received his J.D. from Duquesne University School of Law. Eric holds Bar licenses in both Pennsylvania and Florida. Eric joined Conestoga Title from Florida, where he spent 23 years in general legal practice, focusing primarily in the areas of commercial and residential real property law as a real estate attorney and title insurance agent. Eric has been a frequent speaker to the real estate industry on real estate-related legal and title insurance issues. Eric's decades-long experience as a title insurance agent make him a natural-born troubleshooter who understands the real world pressures and complexities involved in handling real estate closings. As Vice President – Underwriting, Eric will devote a majority of his time to the evaluation of underwriting risks.

Conestoga Title Insurance Co. has promoted Rick J. Hecker, Esquire to Vice President – General Counsel. Rick, a native of Lancaster County, joined Conestoga Title in 2018 as Underwriting Counsel. Rick is a graduate of Hillsdale College with a B.A. in History, and received his J.D. from Liberty University School of Law graduating *magna cum laude*. Rick holds Bar licenses in both Pennsylvania and New Jersey. Rick joined Conestoga Title from the law firm of Clymer Bodene PC, where he managed the firm's in-house title department and represented numerous real estate investors in and around Lancaster County, assisting them in transactions involving the purchase and sale of distressed properties, including foreclosure, tax sale, and REO properties. As Vice President – General Counsel, Rick will split his time between the provision of legal services to the company and the continuing evaluation of underwriting risks.





April 13th Webinar

Cyber Claims
and Insurance

The **Conestoga College 2021** monthly webinar series featured these topics broadcast to an average of 85 attendees per webinar.

Jan. Foreign Investment in Real Property Tax

Feb. Underwriting Title Insurance Easements

March Ethics in the Era of Covid-19

Offering PA CE, CLE and MD CE. We hope to offer courses for OH and VA credits later in the year.

Webinars 12:00-1:00PM

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