

Conestoga Quarterly



2024 First Quarter

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over 50 years
of providing
exceptional
personal
service for our
independent
agents and
approved
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A Message from the President

A Reflection on the Real Estate Market

Rising mortgage interest rates and low residential real estate inventory had a significant impact on the volume of real estate transactions during 2023 and it appears that the start of 2024 has been no different. Regardless of the overall declining volume trend, Conestoga Title produced positive financial results. We are most proud of our low loss ratio which can be directly attributed to the quality of our agency network. Our appointed title agents deserve commendation for their diligent efforts in consistently producing high-quality work and demonstrating their commitment to accuracy and thoroughness. Their dedication significantly contributes to minimizing the risk of claims. Moving forward, it is the expectation that mortgage interest rates will somewhat subside during the second half of the year, prompting an uptick in transactional volume. We will be there to support our agents as the market improves.

Continuing Education

Conestoga Title was honored by the presence of Pennsylvania's Insurance Commissioner Michael Humphreys, as he served as the keynote speaker at Conestoga College in January. As a complement to the Commissioner, Steve Gottheim, ALTA's General Counsel, provided an update on the state of the title insurance industry nationally. In addition, Ed Hayes and Mark McCreary of Fox Rothschild provided strategies to help protect against wire fraud. Rounding out the day, Conestoga's in-house counsel, Anna Marie Sossong, Bill Parker and Rick Hecker, each provided one-hour instructional presentations.

Looking forward, Conestoga Title will offer several instructional webinars throughout the balance of 2024. In addition, we will be holding a seminar in Frederick, MD on May 14th during which continuing education credits will be offered to agents and law firms from the states of Maryland, Virginia and Pennsylvania. Details of all upcoming events will be published as the year progresses.

Title Search Product

Approximately four years ago, Conestoga introduced title search products for the benefit of our independent agency network. We continue to work on the expansion of our title search product offerings and will soon be offering an examined title search product, initially for agents utilizing Qualia's settlement software platform. Stay tuned, we will provide further updates as we continue to work on this important initiative. If you believe that your agency would benefit from our examined search product, please contact me at jnikolaus@conestogatile.com.

Welcome!

I am proud to announce that John Papoutsis has joined Conestoga Title as Commercial Counsel. John's name may be familiar to some of our long-time agents as he served as General Counsel for us over 20 years ago. After spending the last 20 years practicing real estate law and serving as a title agent, John has returned to his roots! It is a pleasure working with John again as a colleague and I am confident that he will serve as an excellent resource for our agents, especially in the commercial real estate arena. Further information about John can be found 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.

White House Attack on Title Insurance Offers False Promise of Savings

John Nikolaus, CLTP, President

President Joe Biden announced a new plan to lower housing costs which includes a pilot program that waives the requirement for lender's title insurance on certain refinance transactions, according to the White House. The plan was announced by the president during his 2024 State of the Union address on March 7.

The plan is considered a controversial topic for the title and mortgage industries and it is facing strong resistance. Regulators believe reducing title requirements would cut closing costs, but title and mortgage companies challenge the argument and point to elevated risks.

"My administration is also eliminating title insurance on federally backed mortgages. When you refinance your home, you can save \$1,000 or more as a consequence," Biden said during his State of the Union address.

In a statement released prior to the president's address, the White House revealed that the Federal Housing Finance Agency (FHFA) has endorsed policies and pilot programs aimed at reducing closing costs, including the waiver of lender title requirements.

According to the Federal Housing Finance Agency (FHFA), the pilot program waves the requirement for lender's title insurance or a legal opinion on certain low-risk refinance transactions where there is confidence that the property is free and clear of any prior lien or encumbrance. The FHFA said lenders would retain the option to provide evidence of clear title through title insurance or an attorney opinion letter.

The American Land Title Association called the announcement a purely political gesture offering a false promise of savings for homeowners while exposing consumers, lenders and taxpayers to greater financial risk.

"The approval of this waiver is a hollow attempt by the White House to placate Americans' current economic frustrations," ALTA's statement said. "By announcing this only hours before the State of The Union address, without outreach to, or engagement with, the title insurance industry, the Administration has reduced the crucial role of the industry to nothing more than a politicized talking point."

The waiver program was first reported in early 2023. Since then, the FHFA has faced strong bipartisan opposition. Several members of Congress asked FHFA Director Sandra Thompson about the pilot program during a May 23, 2023, House Financial Services Committee hearing and expressed concern that Fannie Mae would be expanding outside their charter by operating in a primary market business with this pilot program.

"In August 2023, Fannie Mae and FHFA confirmed to ALTA that the title waiver pilot program was abandoned – a decision that was clearly overridden elsewhere in the Administration. The Administration should not be playing politics with the American Dream," ALTA said.

The Mortgage Bankers Association (MBA) also has issues with the plan. "MBA has significant concerns that some of the proposals on closing costs and title insurance could undermine consumer protections, increase risk, and reduce competition," said MBA President and CEO Bob Broeksmit. "In 2015, the industry implemented final rules from the Consumer Financial Protection Bureau making comprehensive reforms to mortgage disclosures to increase clarity and transparency and to help facilitate consumer shopping.

White House Attack on Title Insurance Offers False Promise of Savings continued

In 2020, the CFPB reviewed and praised its own rules. Suggestions that another revamp of these rules is needed depart from the legal regime created by Congress in the Dodd-Frank Act and will only increase regulatory costs and make it untenable for smaller lenders to compete.”

In addition, there is bipartisan support of the Protecting America’s Property Rights Act, which has been introduced in both the Senate and House. The bill would amend the Charter Acts of Fannie Mae and Freddie Mac to require that all loans purchased by the GSEs are protected by a title insurance policy issued by a state licensed and regulated title insurance company. Lead sponsors of H.R. 5837 include U.S. Reps. Andrew Garbarino (R-NY) and Vicente Gonzalez (D-TX), and cosponsors include Young Kim (R-CA), Brad Sherman (D-CA) and Wiley Nickel (D-NC), as well as Del. James Moylan (R-Guam). In the Senate, S. 2687 is sponsored by Sen. John Kennedy (R-LA) and cosponsored by Sen. Katie Britt (R-AL)

In the coming months, the Department of Treasury’s Federal Insurance Office will convene a roundtable of relevant industry stakeholders, including consumer advocates and academics, to discuss the title insurance industry and analyze potential reforms.

This proposal will also be addressed at the upcoming ALTA Advocacy Summit, which will be held May 6-8 in Washington, D.C.



John N. Papoutsis, Esq. has joined Conestoga as Commercial Counsel where he will manage our Commercial Division and also assist with our Legal Department.

Over the past twenty years, John has been a practicing real estate attorney and Conestoga Title agent in the Harrisburg, PA area. As an experienced title agency owner and operator, John has processed and closed a high volume of both residential and commercial transactions.

As you may be aware, John was part of our Conestoga Title Team before he entered private law practice. At Conestoga Title, John was a key member of our Legal Department, Commercial Division and Senior Management and is very familiar with our Company and with the needs of our title agents. John’s experiences as both a title underwriter and a title agent will certainly provide our agents with positive value and unique insights.

John will be available as an experienced resource for our agents – for any questions regarding title underwriting, agency operations and real estate closings. He can especially be helpful in providing assistance with our agents’ complicated commercial transactions.



FLIP TRANSACTIONS- WHO NEEDS TO KNOW WHAT?

**Anna Marie Sossong, Esq.,
Underwriting Counsel**



“Flip” real estate transactions have once again become hot – and a cause for concern. For those new to the title industry, a flip transaction is where the buyer takes title intending to immediately (or quickly) resell the property at a profit. This can happen in several ways– all of which are concerning and some of which have potential financial obligations that you and the final buyer need to be aware of.

The quickest flip is the purchaser who assigns the contract for purchase to another, charging an assignment fee. This results in the seller obtaining the sale price agreed to by the original purchaser and the ultimate buyer paying the intervening seller the assignment fee. In Pennsylvania, this transaction incurs double transfer tax, so review the agreement of sale carefully to make sure that the party paying all the transfer tax understands the increased expense because of the structure of the transaction.

Flip transactions also include the purchaser at short sale, foreclosure sale, sheriff's sale or tax sale who immediately sells the property to another at a profit without making any improvements. If your file includes any short sale, foreclosure sale, tax sale or other sheriff's sale within the last five years in the chain of title, Conestoga needs to review the sale file (as well as the title file) to make sure that the sale was conducted correctly and that there are no outstanding claims (or potential claims) on title. On occasion, the flip transaction may involve a contractor who purchases the property and then undertakes a host of renovations before selling the property to the final purchaser.

Unlike some other title companies, Conestoga will insure these types of transactions, but we require your help to make sure no title claims will arise from these transaction. Even if the policy is small, we still need to review the search, the foredosure filings (if applicable) and the sheriff's file, to include all the notice filings, court orders and final sales materials.

Besides Conestoga's underwriting review, you must review the closing instructions from the lender carefully. Short sale instructions can require that the intended final purchaser understands the nature of the entire transaction and the costs that the final purchaser is paying as a result of the structure. Occasionally, the lender may be unwilling to lend on a flip construction project, which you may not discover until you read the instructions. So, be careful!

As always, if you have any questions or concerns, contact [Conestoga Underwriting](#).

Conestoga College Classroom 2024

Held near corporate headquarters in Lancaster, PA Conestoga Title's annual in-person day long seminar hosted over 150 agency personnel for a day of 6 credits of CE/CLE.



Conestoga Title President, John Nikolaus and Bill Parker, VP Underwriting and Claims welcomed the group and introduced our first session presenters: Ed Hayes, Esq. & Mark McCreary, Esq. both partners at Fox Rothschild sharing the latest in strategies to help protect agents and attorneys from wire fraud.



Anna Marie Sossong, Esq. led an hour session discussing how it is often the little things that make a big difference in clearing title in real estate transactions.

Reviewing important details and how to double check what agents are given prior to and during closing, Anna Marie gave attendees some valuable tips to take back to their agencies.



Other speakers for the day included Steve Gottheim, Esq of ALTA discussing Unregulated Alternatives & Your Business and Conestoga's Rick Hecker, Sr. VP & General Counsel explaining regulations regarding title insurance oversight.



Conestoga was especially pleased to have the Insurance Commissioner for the state of Pennsylvania, Michael Humphreys join our group and address our agents and attorneys on the current perspective on title insurance in the state.



THE STATE OF WIRE FRAUD

By: Nick Lock, Senior Account Executive at CertifID (Special Guest Writer)

From: Conestoga Agency Department

Unless you live under a rock (I am talking to you, Patrick Star), chances are you have heard of wire fraud more times than you can count. Even though it might seem like industry experts are playing the same record repeatedly, they're preaching the importance of proper mitigation methods for good reason.

Cybercrime reported to the FBI has set new records. Business Email Compromise (BEC) continued to be one of the top threats at \$2.7B in losses. Real estate has borne the losses due to increased pressure on buyers, sellers, and title companies caused by low inventory and slow deal flow.

We recently launched our 2024 State of Wire Fraud report, which contains proprietary data on fraud trends observed among customers and data from our Fraud Recovery Services team. The data in the report references key findings from the report and can be accessed for free here: certifid.com/sowf.

In 2023, the risk of real estate wire fraud increased due to technological advances, including:

Artificial Intelligence: This enables more effective impersonation via text, voice, video, and social media communications.

FedNow: The new era of instant payments significantly compresses or eliminates the recovery window for potential fraud recoveries.

Large-scale security breaches: There have been major hits to mortgage lenders Mr. Cooper and LoanDepot, national insurance underwriter breaches, and compromises in customer data.

So, what drives wire fraud in real estate? It's a three-letter acronym: BEC. Business Email Compromise is the scam that ultimately leads to wire fraud, and it is very much a rinse-and-repeat playbook. Once a fraudster has access to the email of any party in the transaction (usually real estate agents), they simply wait for the right time to provide fraudulent wiring instructions to the title company, law firm, or buyer.

With property listing data available on MLS and county records, large sums of money moving (median home sale price \$387,600), and 10+ parties involved in the transaction, real estate is a prime target. The FBI reports that BEC in real estate impacted 2,284 victims in 2022, resulting in \$446M in losses. A smaller independent study by Verafin found real estate to be the second-highest industry in value of attempted wire fraud.

At CertifID, we have solutions to prevent wire fraud and a Fund Recovery Services team to recover wires sent to fraudulent accounts. We also work with a specialized United States Secret Services unit in Washington, D.C. (I am still awaiting my badge). Last year, our team received 463 requests for help from victims, with the vast majority resulting from these three scenarios:

Buyers	Sellers	Title and Law firms
<p>Impersonation of title agency to provide fraudulent bank details to the buyer.</p> <p>Scammer typically reaches out well before payment is required in an average closing process, making it less likely the fraud will be discovered until the buyer is at the closing table.</p>	<p>Impersonation of a property owner in a fraudulent listing. Often called seller impersonation.</p> <p>Scammer typically obtains property and owner identity details from public records, and creates an elaborate backstory to enable a quick remote sale.</p>	<p>Impersonation of lender-provided mortgage payoff instructions during a closing process.</p> <p>Scammer intercepts and replaces payoff instructions to the closing agent. Title professionals miss the fraud because verification processes can be time-consuming and susceptible to manual error.</p>
<p>\$72k median value per incident.</p> <p>43% of cases accepted.</p> <p>28% of funds recovered.</p>	<p>\$70k median value per incident.</p> <p>3% of cases accepted.</p> <p>18% of funds recovered.</p>	<p>\$257k median value per incident.</p> <p>54% of cases accepted.</p> <p>54% of funds recovered.</p>

Our team went further to understand how consumers (home buyers and sellers) perceive the risk of wire fraud and their awareness during the closing process. In November 2023, we surveyed 650 U.S. consumers who bought or sold property in the last three years.

As we discovered in our research, consumers are often unaware of the risks to their transactions. Over half (51%) of the respondents admitted to being underinformed about the dangers of real estate fraud before closing. In addition, only 60% received minimal guidance on fraud prevention from their agent, title agency, or attorney. Consumers aged 65 and older were the least aware demographic, which is especially troubling as they represent the largest segment of cash buyers (a valuable target for fraudsters).

But despite the critical gap in consumer awareness, the responsibility is falling on real estate experts to keep them informed. 71% of consumers expect their agents or legal advisors to educate them on wire fraud risks, claiming it's their advisor's responsibility. Being vocal about consumer fraud risks has never been more critical for the modern title professional.

At CertifiD, we're committed to leading the charge against wire fraud with you, advocating for increased awareness and more robust security measures in real estate transactions. If you want to learn more about how we can help, please reach out (nlock@certifid.com).



Private Mortgages and Satisfaction

Lisa Fischer, Agency Representative & Agent Training Coordinator

In today's market it is not uncommon to come across private mortgages. Very recently, when mortgage interest rates were especially elevated and rates of return on investments were lower, family members found it lucrative to invest in their children by lending them money to help get them started in home ownership while increasing their own financial portfolios in the process.

Many of these mortgages are now being paid off by title agents as they are handling the current settlements. So, what is the most important thing to remember in transactions involving private mortgages?
SATISFACTION PIECES!!

A regular arm's length transaction with a lending institution is a process where a bank receives the mortgage payoff and, then within 30-90 days, forwards the satisfaction piece to the Recorder of Deeds to satisfy the mortgage. The title company then does their due diligence and does a follow up search to make sure this process has been completed, documents their file and everything is finished.



This is not the case with a private mortgage. The party (ies) holding the private mortgage often has no idea what they need to do.....they get their payoff check and they are on the next plane for their vacation! It is VERY important for title companies to be proactive and direct the private lender to have a Satisfaction Piece prepared and presented at closing. If the title company does not act diligently, there is no leverage to ensure the Mortgage holder will diligently cooperate in executing this after the fact. If you have ever had to deal with trying to get a prior open mortgage satisfied years after the fact, you know EXACTLY how much of a pain this process can be, often causing settlements to be delayed.

In conclusion, if you have a transaction with a private mortgage, make sure the mortgage holders execute satisfaction pieces and return them to you **before** you release their funds. This should help alleviate any future title issues regarding the private mortgage.

Conestoga Title Agent Resource Center

Remember to check out Conestoga's **Agent Resource Center**, where you'll find everything from your Agent's Manual and Rate Manual, to extra resources to support your title agency and staff. Many of our agents find it user-friendly and a great source for answers to questions. We are working to keep the site continuously updated and expanded. If you haven't yet signed up, [click here for access](#) and if you have any suggestions for additional information for the site, please let us know.

REPUDIATION OF UNLAWFUL RESTRICTIVE COVENANTS

Anna Marie Sossong, Esq., Underwriting Counsel

The first restrictive covenants that restricted the sale of property on the basis of race or ethnicity appeared in Brookline, MA in 1843.ⁱ The practice became more common after 1926 when the US Supreme Court outlawed the use of racial or ethnic restrictive zoning laws. For many years, the racially restrictive covenants were enforced in state courts, but in 1948, the US Supreme Court ruled that such covenants, while not expressly illegal, could not be enforced through the state court system.ⁱⁱ

In *Shelley v. Kraemer*, the US Supreme Court ruled that any state court that enforced a racial covenant violated the equal protection clause of the 14th Amendment, which prohibits any state from denying a person within its jurisdiction the equal protection of the law. Notwithstanding this ruling, racial covenants were still written into deeds. The practice stopped in 1968 when Title VIII of the Civil Rights Act (otherwise known as the Fair Housing Act) made racial covenants illegal.

While racial and ethnic discriminatory covenants have been specifically outlawed since 1968 throughout the U.S., the continued inclusion of the prohibited language in deeds has continued – even if unenforceable – because of the absence of any state or federal law that permits the transferor to unilaterally remove the condition from the deed of transfer. ALTA addressed this conundrum with the 2021 ALTA policy revisions which now include, in Schedule B-II of the commitment, specific language addressing the illegality and unenforceability of restrictive covenants that may be found in recorded documents. That provision only applies to properties for which Conestoga is providing title insurance. It does not authorize the removal of the restrictive language.

Now the Pennsylvania legislature has provided a way to legally repudiate those restrictive covenants as well.

Act No 54 of 2023, signed December 14, 2023, now makes the law in Pennsylvania clear. Any unlawful restrictive covenants contained in any instrument that affects title to real property, whether or not it is recorded, shall be unenforceable ab initio, without the need for any further action by any person or recorder. This means that the Pennsylvania legislature has made it acceptable to remove the unlawful restrictive covenant from the document.

The new legislation goes a bit further, however. It also permits any landowner, including individual owners, entity owners and homeowners' associations, to repudiate the unlawful covenant. Basically, this permits landowners to affirmatively state that they (or the entity) do not condone and did not create the unlawful restrictive covenants and that it will not be enforced. The Repudiation Form will be provided by the Recorder of Deeds.

In instances where a common interest ownership community wishes to repudiate an existing unlawful restrictive covenant, the HOA must obtain an opinion by independent legal counsel to establish that the restrictive covenant meets the definition of "unlawful restrictive covenant" under the Act. It can then take official action to repudiate the covenant with only a vote of a majority of the members of the Board. No vote by unit owners is required. Upon the Board's vote, the Recorder's Repudiation Form can be completed and recorded.

The form can be filed electronically in those counties that do electronic filing. There is no charge for the recording of the form. The Act took effect 60 days after signing – February 12, 2024. Check your Recorder's forms page for the official form.

To date, Pennsylvania is a leader in our service area in repudiating these restrictive covenants. Should other states in our service area enact similar legislation, we will keep you informed.

ⁱ"Documenting Racially Restrictive Covenants in 20th Century Philadelphia" Larry Santucci, Federal Reserve Bank of Philadelphia, appearing in "Cityscape: A Journal of Policy Development and Research", Vol. 22, Number 3, 2020.

ⁱⁱSee *Shelley v. Kraemer*, 334 US 1 (1948)



Agent CE & Attorney CLE Education Calendar

- **March 19th Webinar- *Implementation of the Corporate Transparency Act/Beneficial Ownership Reporting***
- **April 16th Webinar-*Liens: What They Are and How to Clear Them***
- **May 14th Seminar--In person 4 credit *Title Agent and Attorney Seminar* to be offered in Frederick, MD**

Registration information, when available, will be on our website and emailed to our agents and approved attorneys. To watch recent CE webinar recordings, please visit the [Seminars](#) page on our website.

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