

Conestoga Title Insurance Co.

WAGONLODE

A Land Title Update

2020 Fourth Quarter

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Happy Holidays

Early on in the pandemic, the title insurance industry was deemed to be an "essential business," and you, our agents and approved attorneys, its "essential workers."

- Due to the dedication, creativity, drive, talent and passion of our amazing agents and approved attorneys, and in spite of the unprecedented challenges we have faced together, 2020 turned out to be a very busy and productive year. We thank you all and look forward to 2021!



A MESSAGE FROM THE PRESIDENT

2020 has been both challenging and rewarding for the title insurance industry. In the early days of the pandemic, in the midst of shutdowns, policymakers quickly recognized the title business as essential. Like many other businesses, our industry was tasked with daily logistical issues. Together we met the challenges and found safe and effective ways to accommodate the demands of the consumer. Agents and approved attorneys were on the front line, assisting those seeking to fulfill the American dream of buying a home and those seeking to lower their monthly mortgage payments by refinancing their properties.

Low interest rates have driven high refinance volume and a surge in demand for residential real estate. The lack of residential real estate inventory has driven up prices and created a competitive buying environment. Home prices have spiked and homeowners' equity has risen significantly. Looking forward, increased homeowner equity will provide the consumer with the strength to endure a future decline in property values. However, there is no indication that prices will decline any time soon. Strong incomes, low inventory and the outlook for continued low interest rates until at least 2023 are all indicators that we should continue to experience a healthy housing market for some time to come.

Foreclosure volume has always been a concern in the title business. Typically a higher level of claims surface during periods of increased foreclosure activity. An unusually high unemployment rate related to the pandemic might give us some concern for what lies ahead in the New Year. However, remember that during the Great Recession ten to twelve years ago we saw many homeowners "under water," having unpaid balances on their mortgages that exceeded the value of their properties. It was not unusual to see homeowners simply walk away from their homes. Now we have an entirely different set of circumstances. Many Americans have entered into forbearance agreements with their lenders. Lenders have offered generous terms for repayment without any harm to credit scores. Homeowners are much less likely to walk away from their homes even if they are unable to make their mortgage payments. Homeowners are in a better position to sell their properties, pay off their loans and capture proceeds from the sale due to increased property values. As a result, title industry analysts expect that any increase in claim volume will be buffered by the healthy real estate market.

At Conestoga, we are grateful for the many long-standing relationships that have been developed over time and for the new customers that have joined our network over the past year. I routinely hear that our employees truly enjoy working for Conestoga Title and enjoy the relationships that we routinely develop with our customers. I would like to thank all of our agents and approved attorneys for their business and for their hard work and dedication over the past year. Our team at Conestoga Title wishes you a wonderful holiday season and we look forward to working with you in the New Year!

John M. Nikolaus, CLTP

President, Conestoga Title Insurance Co.



Changes Coming to ALTA Standard Policy Forms

Don Delgado, VP Agency Administration

Over the years the American Land Title Association (“ALTA”) has revised its policy forms to reflect changes in the marketplace as result of evolving business practices, expectations of insureds, laws, regulations and court decisions. Earlier this year, ALTA announced the adoption of changes to their standard owners and loan policy forms which have been in use since 2006. Two main forces behind the adopted changes were advancements in electronic/remote notarizations and changes in creditor’s rights laws.

The changes are too numerous to outline and explain in this article, but following are just a few worth mentioning:

- Covered Risks 2 and 9 now expressly include a defect in Title caused by a document affecting the Title not properly notarized (including remote online notarization) . Coverage has also been added for the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.
- “Enforcement Notice” is newly defined term and is incorporated into Covered Risks 5, 6 and 7.
- Covered Risk 10 of the loan policy now specifies the components of the Indebtedness that benefit from priority coverage. An endorsement would be required to expand the coverage beyond what is expressly stated.
- Covered Risk 13 of the loan policy and Covered Risk 9 of the owner’s policy have been modified to incorporate the Uniform Voidable Transaction Act as it relates to Creditors’ Rights. The Act has also been incorporated into Exclusions 6 and 4 of the loan and owner’s policies respectively.
- Forfeiture, regulatory, or national security powers have been added to Exclusion 1
- Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land has been added as Exclusions to both policies.
- Language has been added to Condition 8 of both policies to emphasize that the policies are Contracts of Indemnity and nothing more.

If you are interested in all of the detailed changes, redline versions of the policies along with charts comparing the 2006 policies to the newly adopted ones are available for download on [ALTA’s website](#). ALTA is accepting public comments about the changes through December 31, 2020. It is anticipated the new forms will be finalized with an effective date of July 1, 2021. The **most important thing** you need to know at this point is that Conestoga will keep you informed about the adoption of the new policies in

each state and will provide you with everything you’ll need when the time comes to start using the new forms.





Pennsylvania Passes Remote Online Notarization

Eric Borgia, Esq. Underwriting Counsel

On October 29, 2020, Pennsylvania Governor Tom Wolf signed into law HB 2370 (Act 97 of 2020), effective immediately. The new law permits Pennsylvania notaries to perform notarial acts for remotely located individuals via the use of electronic communication technology (a/k/a Remote Online Notarization, or RON). The notary must be located within the Commonwealth. The remote individual may be located anywhere in the world.

With the passage of HB 2370, Pennsylvania joins 27 other states that have passed RON laws.

Prior to initially conducting RON, the notary must notify the Pennsylvania Department of State (DOS) that the notary will be conducting RONs, which notification must identify the particular technology to be used.

As of this writing, the following vendors providing RON technology have been approved (in no particular order):

- DocVerify
- Safedocs
- Pavaso
- SimplySecureSign
- Nexsys Clear Sign

Although the law is effective immediately, regulations governing RON have yet to be established. However, the statute provides that the DOS shall establish regulations for performance of RON, which regulations shall:

- prescribe the means of performing RON;
- establish standards for the technology to be used;
- establish standards for identity proofing;
- prescribe standards for approving RON providers;
- establish standards for record-keeping; and
- promote uniformity.

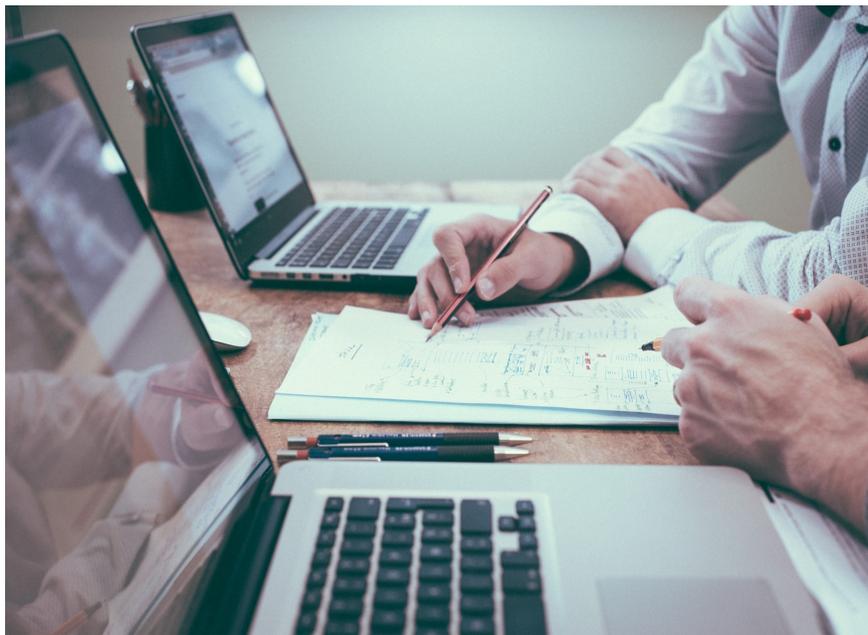
Although regulations have yet to be established, the statute itself does provide some baseline definitions and standards. For example, “communication technology” is defined as an electronic device or process that allows the Pennsylvania notary to communicate audio-visually and in real time with the remotely located individual.

Such communication must be recorded, and the recording must be retained for at least ten years. The technology must make reasonable accommodations for persons with visual, hearing and/or speech impairments. The notarial certificate must contain the following statement: "This notarial act involved the use of communication technology."

With regard to verification of the identity of the individual, the notary must:

- have personal knowledge of the identity of the remotely located individual; or
- have satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary; or
- be able to reasonably identify the remotely located individual by at least two different types of "identity proofing" processes or services.

Identity proofing includes the use of credential analysis (i.e. examination of photo identification), dynamic knowledge-based authentication (i.e., asking questions for which only the remotely located individual would know the answers), biometrics (e.g. fingerprinting and face recognition) and "other means."



With regard to verification of the identity of the document, the notary must be able to reasonably identify a document as the same document in which the remotely located individual made the statement, or on which the remotely located individual executed his signature.

If the remotely located individual is outside the United States, the document being notarized

must: (a) be filed in the U.S. or relate to a matter subject to the jurisdiction of the U.S.; or (b) involve property located in the U.S. Additionally, the act of making the statement or signing the document must not be prohibited where the remote individual is located.

Trust and the Inheritance Tax

Rick Hecker, Esq. Underwriting Counsel

I feel compelled to begin this article by stating that I am not a proponent of using a revocable living trust under most circumstances. They have their role, but I believe they are over-marketed and sold to folks who do not understand them, which can lead to the misuse and abuse of the trust itself.

Despite my misgivings, it is not uncommon for a title agent to have a transaction where the property to be sold or mortgaged is held in a revocable trust. As I am sure our agents are aware, the following is to be used on Schedule B-I, when this occurs:

To be produced and examined:

- A. Trust Agreement and amendments thereto.**
- B. Proof of incumbency of Trustee.**

Possible additional exceptions may be made based upon examination of (A) and (B).

Nevertheless, our examination cannot stop there. Upon receipt of the materials above, we must review them and make any additional exceptions necessary. In Pennsylvania, one of the additional exceptions that may be made upon the examination of items (A) and (B) is a requirement for proof of payment of Pennsylvania inheritance tax when it is noted that the settlor of the trust has retained any life interests in the income or principal of the trust, and is now deceased. In this instance, the Pennsylvania Department of Revenue has been clear that a trust corpus containing Pennsylvania real estate is subject to Pennsylvania inheritance tax where the settlor retained rights over the real estate until death. (See Pennsylvania Inheritance Tax bulletin No. INH-04-011 re-issued December 17, 2009.) Please note that this is also true in cases where the decedent was not a resident of Pennsylvania, but the trust held property located in Pennsylvania.



There is not a complicated answer or analysis in this matter, but rather one that may not be intuitive to the agent and which may be overlooked. In some ways, trusts are seen as being separate entities from the settlor, so it can be counterintuitive that the inheritance tax owed by the settlor's estate would need to be addressed by the trust which is on title to the property. Nevertheless, for the purposes of issuing title insurance, this is the case.

As always, if you come across this type of issue or other concerns with trusts on title and are uncertain how to handle them, please do not hesitate to contact your Underwriting Service Team.

CLAIMS UPDATE 2020

Joseph John Kambic, Esq. VP Claims & Recovery

No crystal ball could have foreseen the impact that COVID-19 had on claims here at Conestoga Title Insurance Co. In the spring, one of our title defense attorneys reported how some of his national underwriting clients were preparing for a large influx of title insurance claims resulting from an anticipated rise in foreclosures due to increased unemployment. No one anticipated the government's COVID financial assistance and moratoriums on foreclosures.

Conestoga Title Insurance Co. experienced a significant drop in new claims in 2020. We started the first quarter of the year with 23 new claims. By comparison, last year we received 41 new claims in the first quarter. Five years ago we had 91 new claims in the first quarter. The first quarter of 2010 saw 118 new claims. I am not surprised by the drop in new claims over the last ten years. But the pandemic skewed the numbers lower than I expected.

	1st QTR	2nd QTR	3rd QTR	4th QTR	TOTAL
2020	23	6	7	6	42
2019	41	36	34	29	140
2016	91	66	63	57	277
2010	118	110	99	90	417

There is the continued school of thought that after foreclosure moratoriums are lifted, foreclosure litigation will skyrocket. I think that there are potential factors what will preclude this from happening here at Conestoga Title Insurance Co. Those factors include:

- What, if anything, the incoming administration will do to keep homeowners in their homes
- Court access/restrictions
- COVID-19 vaccine availability and distribution
- Governmental restrictions to limit our movement in public
- Relatively greater home equity (when compared with 2008), that may tend to favor short sales over foreclosures and
- The superior quality of our active agents and approved attorneys

I close this article with discussion on the last factor listed above. How likely are our currently active agents going to significantly contribute to any rise in post-pandemic new claims? Of our currently active agents, thirty-eight of them have had a claim of any kind associated with their name since January 1, 2013. Four of those thirty-eight agents had claims associated with their names since January, 2013 totaling between 13 – 29. What is significant and doesn't appear in those raw numbers is that an increasing number of claims during that period were what I call non-claims; e.g., the claimant is not our Insured, the "title issue" raised by the lender is technically not an issue in that state, the claimant's title search failed to discover the recorded release of a prior mortgage, etc.

Due to the excellent quality of work produced by our currently active agents, I do not expect to see these professionals significantly contribute to a rise in post-pandemic title insurance claims.



Coming Soon!

Conestoga College 2021 is planned as a series of one credit **webinars** to be developed and broadcast by Conestoga Title underwriting attorneys. Partnering with the Pennsylvania Land Title Institute to kick off our 2021 webinar programming, we will be offering one Pennsylvania CE and CLE credit (pending) with our January webinar—**“Foreign Investment in Real Property Tax (FIRPTA).”** We hope to roll out approved CE courses in MD, OH and VA later in 2021. More information to follow via email.

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