

Conestoga Quarterly



2021 Third Quarter

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A Message from the President

Title Industry Staffing Shortage

Business has been vibrant in the title insurance industry over the past two years. The volume of work has prompted title agencies to seek qualified employees to help handle the volume. However, the pool of talent is limited. Attracting a seasoned title insurance professional to join your firm is not an easy task. Compounding the staffing shortage issue, there exists a considerable amount of the talent pool in the title industry who have either reached retirement age or will soon reach that age. It is inevitable that we need to attract and train new talent in our industry.

As any industry veteran is aware, it takes years to fully train new employees to have a thorough comprehension of the business in order that new hires are fully cross-trained in every aspect of the operation. It takes patience and mentoring, focusing on one aspect of the business at a time.

At Conestoga Title, we frequently are notified of vacancies at our agent's offices. We often make referrals of resources to help agents on a temporary basis. The long-term answer to the staffing shortage is to attract new talent and carefully train them to process files in a manner that will not produce errors that may result in title claims. To complement our agent's efforts, our company offers ongoing guidance and training from our underwriting, agency administration and marketing departments. Our underwriting department routinely reviews agent commitments for accuracy. Our agency department provides guidance on operations and accounting and our marketing department assists with premium calculations and marketing tactics. Whenever there is a staff training issue, we invite agents to consult with us and utilize us as a resource to brainstorm solutions.

Further staff training is available through state land title associations and through the American Land Title Association's Land Title Institute. While in-person seminars are available, webinars, training videos and various on-line courses can provide remote instruction for the beginner. ALTA has a New Title Agent Educational Kit available for new hires with little or no prior title experience. Visit ALTA's web site at www.alta.org and look under the Education tab for a full listing of ALTA's resources for training title agents. As mentioned in my last quarterly message, Conestoga Title is committed to providing continuing educational opportunities through our own webinars and seminars. If you do not currently receive monthly webinar invitations or if you have questions about any of Conestoga's educational events, please contact Colleen Sheerin who serves as our events coordinator at csheerin@conestogatitle.com.

Looking forward, it will be essential to attract and train new talent in our industry. To complement the resources within your own agency offices and at the state and national land title associations, I encourage our agents to reach out to us to discuss how we may be of assistance.

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

Areas Of Concern in Foreclosures

Rick J. Hecker, Esq., VP General Counsel

While it may be too early to know for sure, it looks like the title insurance industry will start to see the return of titles coming out of recent foreclosures. In case you are a little rusty, given the recent reprieve, it seems an appropriate time to revisit some of the common follies that our Underwriting Service Team sees on a routine basis.

As you well know, Conestoga's underwriting procedures require agents to submit their title files for underwriting review, if there was a foreclosure proceeding within the last five years. This requirement is particularly important given the various federal, state, and local COVID-19 moratoriums or limitations on foreclosures that have been imposed.

Prior to submitting these files for review, here are some areas of concern that you will want to be aware of in your examinations:

In Pennsylvania look out for:

- Lender's failure to provide Act 91 and/or Act 6 Notices of Intent to foreclose.
- Lender's failure to obtain service of the foreclosure complaint on all of the defendants.
- Lender's failure to notify every interested party in the 3129 Affidavit.
- Failure of the legal description in the foreclosure complaint to match the Sheriff's Deed.

In Maryland look out for:

- Lender's failure to obtain personal service of the Order to Docket/Complaint to Foreclose.
- Missing proof that the Notice of Sale was given to all junior or subordinate lien holders or judgment creditors.
- Missing order of ratification.

In Ohio look out for:

- Lender's failure to include a necessary party (i.e. property owner(s), their heirs, mortgagor(s), junior (or senior) lien holders, the County Treasurer, and any other stake holder with an interest other than that which specifically runs with the land and pre-dates the interest of the plaintiff.)
- Lender's failure to obtain service of the foreclosure complaint on all of the defendants.
- Lender's failure to obtain the Confirmation of Sale pursuant to O.R.C. 2329.31.

In all States look out for:

- Any foreclosures initiated after March 1, 2020. These files may have specific issues with regard to CARES Act Compliance.
- Any Real Estate Owned (REO) property which is not presently vacant.

Many of the foregoing items are things that we naturally presume occur in a foreclosure proceeding, but I have been surprised with the frequency with which some of these basic items have been missed or omitted from the foreclosure proceedings. I trust it goes without saying that the foregoing list of foreclosure follies is not intended to be comprehensive, but merely to illustrate those areas which can be taken for granted when reviewing a foreclosure.

If you see any of these areas of concern, kindly point them out to our Underwriting Service Team when submitting your foreclosure files for our review.

Support your Customers & Attract Prospects

Doug Riggin, Vice President Sales

Looking for solutions to support customers and attract prospects? Actively listening to the needs of current and potential customers allows you to propose solutions that are matched to your clients' needs. Here are some ideas to consider.

Divide your time:

Support existing clients and help them grow their business. While it is essential to cast a wide net for new prospects, be sure to take care of the ones already on board. There is likely your time and expense involved in landing a new customer. Retaining good customers is of great value to your business.

Offer a great customer experience:

To keep your existing Realtors, investors and loan originators coming back, it's important you offer excellent customer service. Immediate responses to emails and phone calls are of primary importance. Even if you can't answer requests right away, let the customer know you got the message and when you can get back to them.

Ask what you can do to improve service for them. Train all of your staff to listen and respond to requests, even if the answer is, "I don't know but I will find out." Complaints or criticism are an opportunity to show you are willing to do what you can to make things right.

Make the most of your network and social gatherings:

I think sometimes we equate networking with selling. It's not about selling, it's about what you can do to help people. Engage in your local and regional community. Showing up online or in person tells others that you are interested in their work and their business and you are willing to put in the time to be involved.

Look for partnerships with other businesses:

Many of your clients may already have relationships with other businesses and this offers a great opportunity. By partnering with other firms which offer complementary services, you can not only reach new audiences, but also potentially offer more to your customers.

Make use of social media

Social media is a quick way for customers and businesses to share information. From your company website you can support online customer service and use social media to get to your targeted audience. There are excellent opportunities for businesses to stay current via Facebook, Twitter, LinkedIn and other networks.

Play to your strengths:

What are your company's strengths? Not sure... do a SWOT analysis (Strengths, Weaknesses, Opportunities, and Threats). Examples of possible strengths: location, parking, office hours of operation, technology, your team's experience in the industry, bilingual speakers in your office, just to name a few. Take advantage of your strengths and market your strengths to prospects and clients.

Adapt to changes in your local market:

Where are opportunities growing or shrinking? Consider a variety of plans to respond in the short and long term. Keep trying new way to reach out and don't automatically reject things that might not have worked in the past.

Track what works for your office:

Be sure to objectively monitor your efforts and take advantage of those offering the most value.

Showcase your expertise:

There are a number of ways that you can get in front of potential new clients in order to pique their interest about your business. Participate as a speaker at conferences, educational facilities, bar association meetings, or trades shows that cover your industry and you will get in front of people who are already engaged and interested.

Conestoga Title can help you evaluate ways to grow your business. Contact [Doug Riggin](#) or [Jonathan Markel](#) for further information.



Webinar Series: [Sign up](#) now for our **October 12th "E&O, Cyber, Surety & Fidelity"** webinar at 12:00PM. This 1 credit course will be available for CE & CLE.

November 9th 12:00PM—Ethics Webinar 1 credit CE & CLE

In Person Seminar: A six credit PA CE CLE course offering is planned for 01-17-2022. Agenda and registration information will be emailed to all CTIC agents and attorneys as soon as it is available. Mark your calendars now!

Conestoga College Classroom Jan. 17, 2022

In Person Seminar The Eden Resort in Lancaster, PA

Monthly Escrow/Trust Account Maintenance

Don Delgado, VP Agency Administration

The higher than normal volume of real estate closings over the last eighteen months has title agents handling higher than normal levels of escrow/trust funds each month. Everyone understands the importance of handling those funds in a fiduciary capacity and the importance of completing monthly three-way reconciliations. Completing the monthly reconciliation is only one part of properly maintaining an escrow/trust account. Agency management should review the bank statement and reconciliation reports each month and take the following measures:

First and foremost, make sure that the **Book Balance = Adjusted Statement Balance = Trial Balance Total**. If these three balances are not the same, your reconciliation is not correct and you need to identify and fix the cause of the discrepancy.

Review the **outstanding deposits/deposits in transit report**. This report should not be lengthy. It should only have a few files listed that closed at the very end of the month. All files on the report should be investigated. Determine if the funds are in your possession. Deposit them immediately if they are. If the funds are not in your possession, obtain them from the party who owes them immediately and deposit them. If you are not able to obtain them from the owing party within three days, you should deposit funds from your operating account and then seek reimbursement from the owing party.

Review the **trial balance/unbalanced files report**. This report should not be lengthy. All files with a negative balance should be investigated immediately. Determine if the funds are in your possession. Deposit them immediately if they are. If the funds are not in your possession, obtain them from the party who owes them immediately and deposit them. If you are not able to obtain them from the owing party within three days, you should deposit funds from your operating account and then seek reimbursement from the owing party.

All files with a positive balance are files that have funds to be disbursed or files for which funds are being held in escrow. You should know the reason for the positive balance for each file on the report and you should take measures to disburse the funds. If the funds are not being held in accordance with an escrow agreement, they need to be disbursed to the appropriate parties.

Monthly Escrow/Trust Account Maintenance continued

Review the **outstanding checks/disbursements report** for the following:

- Mortgage payoff checks that over 10 days old

- Document recording checks that are over 30 days old

- Real Estate tax checks that are over 30 days old

- Checks for other lien able items (i.e.- tax liens, municipal charges, judgments, HOA fees, etc.) that are over 30 days old

- Premium checks to Conestoga that are over 30 days old

- Homeowner's Insurance checks that are over 30 days old

Follow up on any such items found on the report to ensure the checks have been sent out; that the payees are in receipt of the checks and that they will be cashing them.

If any funds on the outstanding checks/disbursements report are eligible for escheatment (unclaimed and reportable to the State) segregate them into a separate ledger to be sent to the State. NOTE: You can visit your State's Treasury Department website to learn how and when to escheat unclaimed funds.

Bank charges incurred during the month should be funded from the operating account within three days of the statement ending date.

It is more important than ever for agency management to follow the simple steps outlined above to make sure the escrow/trust accounts are properly maintained and to demonstrate that the fiduciary obligation of handling the funds is being fulfilled.



Bugged by Lantern Flies?

The spotted lanternfly resembles a moth when it jumps or flies, but in reality, it is neither a fly nor a moth. It is a type of planthopper that will feed on a wide range of trees, fruits, and even grape vines. It actually poses a **major** threat to agriculture. Lantern flies, native to China can feed on more many plant species, including a wide range of fruits and trees. All of this feeding can make plants vulnerable to disease and attacks from other insects.

The spotted lantern flies can be spread long distances by people who move infested material or items containing egg masses. Eggs are typically laid in September and resemble mud. Outdoor items need checked for egg masses before moving items such as vehicles, firewood, outdoor furniture, picnic tables, boats, and children's toys. The egg masses can be scraped off surfaces using a knife or a thin plastic card. The egg masses should be sealed in a plastic bag or placed directly into hand sanitizer or alcohol to kill them before they are disposed of.

Place equal parts of water and Pine Sol with 2 packets of sugar in a dish on your porch or in your garden to attract the adult flies and kill them instantly.

LAND GRANTS, RESTORATION & THE "ORIGINAL" PENNSYLVANIA

William Parker, Esq., VP Claims & Underwriting

Several times in the last two years I have received questions or concerns about title that predate modern record keeping. Southeast and south central Pennsylvania have many title that predate the U.S. as we know it. There was the church property in York, PA that was granted its warrant directly from the Penn family. Then there was a substantial piece of land on the York Lancaster border that the 1900 era deed recited the history of the property starting before the French & Indian War. It came with colorful stories of who was abducted and who chose to remain with the Native Americans. With the Pennsylvania Land Title Association about to deservedly celebrate its Centennial, I felt this was a good time to revisit my history lesson for a little historical perspective.

In 1663, three years after he was restored to his father's throne, England's Charles II made several grants of vast territory in North America called a Restoration Colony. It was one of a number of land grants given by the English King in the latter half of the 17th century, ostensibly as a reward to his supporters in the Stuart Restoration. The two major Restoration Colonies were the Province of Pennsylvania and the Province of Carolina.

King Charles II owed William Penn £ 16,000 (today, approx. \$ 80,000.00), money which his late father, Admiral Sir Wm. Penn had lent him. Consequently, on June 24, 1680, Penn asked King Charles II for a charter for land in America. The only available tract in eastern North America lay west of New Jersey, north of Maryland, and south of New York. The King signed the Charter of Pennsylvania on March 4, 1681, and it was officially proclaimed a Proprietary Colony on April 2. It was to include the land between the 39th and 42nd degrees of north latitude and from the Delaware River westward for five degrees of longitude. In 1682 the Duke of York also deeded to Penn his claim to the three lower counties on the Delaware, which are now the state of Delaware. Why King Charles provided Penn with such a potentially valuable area at a time when he was attempting to tighten control of his American colonies has been debated by historians. However, the quick explanation is that the King owed Penn a large amount of money, and the King likely saw it as a way for Penn and the "Friends," whom some in England considered religious "fanatics," to leave and go far away to America.

The Proprietary colonies as established in North America were owned by an individual proprietor or by a group of proprietors under a direct charter from the English monarch. The Pennsylvania charter established William Penn as the Proprietary Governor or Lord Proprietor. These men had vast powers as landlords or overseers which powers ranged from establishing land grants and purchases to recouping their investments in the colonies by collecting yearly land fees from the settlers who had purchased land within the colony. These farm-fees were called *quitrents*. They could create courts and make laws and issue decrees. They could also hear appeals and pardon offenders. They also established towns and ports and ordered the construction of public buildings. Most importantly to the establishment of Pennsylvania however, was that they could establish churches.

LAND GRANTS, RESTORATION & THE "ORIGINAL" PENNSYLVANIA

continued

In April 1681, Penn made his cousin William Markham deputy governor of the province and sent him to take control. Meanwhile back in England, Penn drew up the *First Frame of Government*, his proposed constitution for Pennsylvania. Penn's preface to *First Frame of Government* has become famous as a summation of his high governmental ideals.



Later, in October 1682, the Proprietor himself arrived in Pennsylvania on the ship *Welcome*. He visited Philadelphia, which was just laid out as the provincial capital city and created the three original counties. Lastly he summoned a First General Assembly to Chester, which then also united the Delaware counties with Pennsylvania.

With the exception of the border disputes with both Connecticut and Maryland over northern and southern borders, the Penn's, their Proprietors, the Quaker-dominated Assembly, and the populace proceeded with minimal friction. Until the French and Indian war Pennsylvania had no military, few taxes and no public debt. It also encouraged the rapid growth of both the original counties and the hinterlands, where German (or "Deutsch") religions and political refugees prospered on the fertile soil and spirit of cultural creativity.

By 1770, the Province of Pennsylvania had become the third largest English colony in America (though next to the last to be founded). Philadelphia had become the largest English-speaking city in the world next to London. There were originally only three counties: Philadelphia, Chester, and Bucks, but by 1773 there were eleven. Westmoreland, the last new county to be created before the Revolution, was also the first county located entirely west of the Allegheny Mountains.





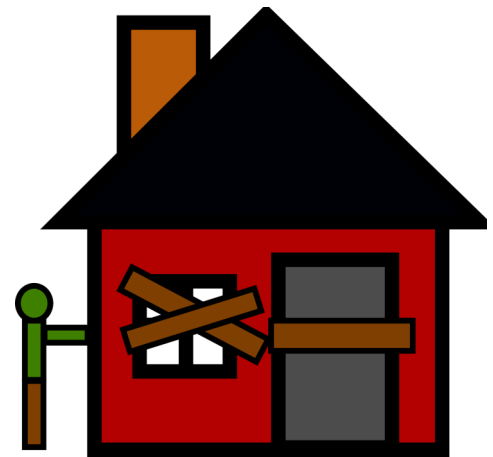
Is a Claims Crisis on the Horizon?

Joseph John Kambic, VP Claims & Recovery

In 2008, there was a housing financial crisis. There have been law makers in Washington that have argued that the financial crisis was caused by some flawed aspects of the federal housing policies in existence at that time. I am of the opinion that unbridled mortgage practices greatly fueled the 2008 financial crisis; particularly the predatory subprime loans.

As the multitude of foreclosures rapidly increased, title searches were revealing more and more title claims. Agent error was consistently the leading factor for increased title claims during that time. The high volume of work coming through the front door was the catalyst for agent errors; errors such as the failure to even record Deeds/Mortgages, failure to make sure that prior mortgages were Released of Record, and shoddy document review/preparation/execution.

After starting 2008 with 75 active claims in January of that year, we then closed the year with 374 active claims, paying out more than we could have imagined when the year started. After 2008, we saw a decrease in annual monies paid and year end active claims. Although extraordinary worldwide conditions occurred in 2020, we nonetheless closed out that year with 16 active claims.



Most title claims had come into our office at that time because they were discovered in a title search associated with foreclosure activity. Twelve to sixteen months ago, discussions were had about the need to prepare for increased claims resulting from an open floodgate of foreclosures.

In the 2008, mortgage delinquencies and foreclosures were occurring at an alarmingly high rate. In 2020, delinquencies and foreclosures started to rise with the increased unemployment brought on by the pandemic. But, these delinquencies and foreclosures didn't rise to or remain at nearly the level seen in 2008. And, I do not expect that they will.

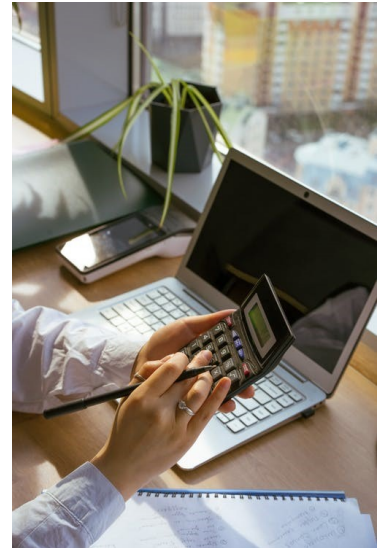
A main difference between today and 2008 is that lenders have not been promoting the higher-risk loans seen before the 2008 housing crisis. Another explanation offered by industry analysts is that there is greater equity in today's homes, sufficient to enable the unemployed, or part-time employed, owner to sell the home and avoid a bank foreclosure. And, loan modifications can't be ruled out for the part-time and full-time employed home owner.

Foreclosures are expected to rise in numbers in 2022; but, not to the levels associated with 2008. And I have faith that our very busy agents have maintained a level of quality in their work, sufficient to minimize those mistakes that led to increased title insurance claims in 2008. In conclusion, I see an increasing number of claims, not a claims crisis, on the horizon.

Positive Pay & Reverse Positive Pay

Lisa Fischer, Sr. Agency Auditor

As an agency auditor, part of my job is to review agency escrow account bank statements and reconciliations for discrepancies and potential fraudulent transactions. With pandemic disruptions still causing issues with day to day operations, fraud seems to be on the rise as well. I recently completed an agency audit where check fraud occurred in February 2021. An unknown person was able to produce duplicate checks and attempted to cash them at the agent's bank. Luckily, the agent had positive pay and the checks were caught immediately and no monetary loss occurred. However, I still see many agents that are not enlisting these services through their bank and I feel it is very important to review exactly what they are and why these services are so important.



Positive Pay is a fraud prevention tool utilized by businesses to protect against check and ACH fraud. It helps detect suspicious transactions, reducing the risk of financial loss and safeguarding the reputation of your business.

Positive Pay provides the opportunity to communicate with the bank, usually electronically to pre-approve any check that will be presented for payment. The bank then reviews every check against the pre-approved list to match the dollar amount of each check, the check number and the account number that is presented for payment against checks that have been previously authorized and issued by the business. If these components do not match up, the check is not processed and the title agent is notified immediately.

Whereas Positive Pay is a fraud prevention tool, Reverse Positive Pay is a fraud detection tool.

Reverse Positive Pay allows the title agent early detection of fraudulent, altered, or counterfeit checks by allowing them to review all prior day checks that were presented for payment. If any of the checks don't match the issued checks, the agent can investigate further by viewing an image of the check. While Reverse Positive Pay will not prevent fraud, it will detect potentially fraudulent checks. If reports are reviewed daily, and the bank is notified immediately of any suspicious activity, an agent may be in a position to recover the missing funds.

Positive Pay and Reverse Positive Pay are essential tools for managing your escrow account. Both tools assist in reducing the risk that the bank honors a fraudulent disbursement against your escrow account. Positive Pay should be something considered as an added protection for accounts. Agents cannot afford to lose money due to fraudulent checks. One bad check could create a negative balance in the escrow account, which could cause other good checks to bounce.

If you have any questions about how these services work contact me at lfischer@conestogatile.com or reach out to your bank for more information.



Congratulations to Bill Parker, VP Claims & Underwriting with Conestoga Title Insurance Co., for his recent appointment as a **Certified Land Title Professional (CLTP)** by the Pennsylvania Land Title Association (PLTA).

The CLTP designation is the highest professional designation level awarded by the PLTA. Education, experience and professional participation are among the requisites for sitting for the CLTP examination.

Bill is now formally recognized for what we all know him for – his professionalism, knowledge of and service to the title insurance industry. His practice of law has included being a sole practitioner and title agent as well as assistant district attorney and solicitor for PA county agencies. Bill is an approved CE and CLE instructor in PA, MD, VA, OH and NY and serves on the legislative committee for the PA Land Title Association. Congratulations Bill!

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