

Conestoga Title Insurance Co.

WAGONLODE

A Land Title Update

2019 First Quarter

SPECIAL ISSUE

SPECIAL ISSUE: **2019 Conestoga College Recap**

Conestoga Title Insurance Co.'s annual seminar featured one of our most comprehensive agendas in recent memory. Agent and attorney attendees have requested we share some of the highlights from this two day event with their staff. In this special issue of the WagonLode, we recap the Conestoga College presentations to share some of the highlights with all of our Conestoga family.

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Message from the President



With 2019 well underway, Conestoga Title is eagerly assisting our network of title agents and approved attorneys with their title businesses. Through routine interaction with our network, our underwriting attorneys and marketing representatives are able to gain feedback on market activity. Agents are reporting that business activity has been modest which is typical for this time of year. It is natural that the first quarter of the year is the slowest quarter of the year for our agents since our network is located in the Northeast and Midwest. Our underwriting team has been assisting our network with a good mix of residential, commercial and investor business. Many agents look forward to the first quarter as the slower season presents an opportunity to get caught up on outstanding policies, researching outstanding checks, business planning and marketing.

While it is difficult to measure, many real estate industry experts believe that business volume in the first quarter was adversely affected by the government shutdown. Some closings were delayed due to processing challenges. The larger issue was the impact on consumer confidence. Economic uncertainty weighs heavily on ordinary Americans and can serve to delay major economic decisions such as whether or not to buy a home.

Looking forward, the Mortgage Bankers Association (MBA) anticipates that the 30-year fixed rate mortgage will level out at 5.1 percent this year. They believe that challenges for the housing market include the lack of inventory and affordability. That being said, the MBA believes that favorable conditions for growth in the home purchase market will exist in 2019 due to the following factors: strong demand for housing, stabilizing mortgage rates, wage growth increase and moderation of home price growth. The MBA concludes that we will see a moderate increase in home purchase mortgage originations and the continued decline in refinance volume.

Commercial activity is expected to be brisk in 2019 according to numerous industry experts. Areas predicted to see sustained investor interest include warehouse/e-commerce supply facilities, multifamily housing, health care properties and retirement communities.

And so you may ask how a title agent or real estate attorney can adapt to the real estate market in 2019. It would make sense to target residential real estate sales and place less emphasis on attracting refinance business. Maintaining and cultivating relationships with residential real estate agents is essential to your business plan. In addition, if commercial business is an area of specialty for your organization, it would be wise to focus some of your energy on targeting commercial real estate agents, lenders, investors and developers who have a niche in the above stated areas. For those title agents who are appointed within the state of Pennsylvania, utilizing Conestoga Title's competitive rate structure for transactions over \$1,000,000 will assist in attracting those transactions.

We look forward to working with our excellent team of title agents and approved attorneys throughout the coming year. Please let us know when we may be of assistance with your business planning, underwriting, marketing or any other areas of your operation. As always, thank you for your business!

John M. Nikolaus, CLTP

President, Conestoga Title Insurance Co.

Conestoga College 2019 Annual Seminar for Agents and Attorneys

Over 150 title agents and real estate attorneys joined us in Lancaster, PA on January 21-22, 2019.

Despite the frigid temperatures, the classroom was filled as these professionals took advantage of the Martin Luther King holiday to earn nine CE and/or CLE credits that were approved in Pennsylvania, New Jersey and Maryland.



In addition to presentations by Conestoga Title staff, 2019 Conestoga College featured four excellent guest speakers. In order of appearance:

1. Conestoga welcomed back returning speaker Michael J. Sikora, Esq. to open our first day. Coming to us from Sikora Law LLC in Columbus, OH, Mike is an Ohio Super Lawyer and past president of the Ohio Land Title Association. Mike spoke on “Making a Difference in the Title Business While Staying out of (Claims) Trouble,” and also included perspectives from his work at Title Counsel for the American Land Title Association. Page 3.
2. As the author of the Title & Escrow Claims Guide published by the American Land Title Association, J. Bushnell Nielsen, Esq. literally wrote the book on the law of title insurance policies, real estate closings and escrow. Bush spoke on “Writing Policy Exceptions” and on “How Claims are Resolved.” We were delighted to host him for two presentations. Page 3.
3. Mark G. McCreary, CIPP/US was welcomed from the law firm of Fox Rothschild, LLP. Mark spoke to us in his capacity as the firm’s Chief Privacy Officer and co-chair of the firm’s Privacy and Data Security Practice. Mark is also the author of the *Privacy Desk Reference*, a concise set of guidelines for protecting your business from existing and future privacy threats. Mark spoke on “Privacy and Security Training.” Page 4.



4. Veronica A. McMillan, RN, Esq., a registered nurse and an attorney, is principal of the Law Offices of Veronica A. McMillan, P.C. Her practice includes real property and title insurance law and litigation, appellate practice and health law. She is affiliated with the American Bar Association Title Insurance Litigation Committee. Veronica’s presentation was aptly named, “Title Claims: I Couldn’t Make These Up.” Page 4.

Guest Speaker Summaries Conestoga College 2019

“How to Make a Difference in the Title Business While Staying out of (Claims) Trouble”

By Michael J. Sikora, Esq.

Although title claims have been on a year after year decline, Mike reported that missed liens continue to be a main source of claims. He stressed the importance of utilizing only the best searchers, noting that many claims originate from the search. He stressed the importance of assuring that title examiners provide ALL of the underlying documents to the agent for a proper examination.

Another common source of claims is execution/acknowledgment errors. Mike stressed the importance of obtaining and retaining in the file clearly discernable and acceptable identification of every signatory. Examine identification carefully at the closing table.

May a corrective deed or affidavit be recorded to cure minor defects? If so, make sure that the corrective deed or affidavit contains a statement of the changes being made and why.

Mike advised agents to be particularly careful with loans to business entities. Be familiar with the mechanic's lien laws in your state. Be careful of construction pre-starts that can occur, especially in commercial transactions. Make certain the borrowing entity's name is spelled correctly on lender's loan documents, including the correct entity designation and state of formation. Lenders often make mistakes in preparing their own documentation, and if not caught by the title agent prior to closing, those mistakes may lead to claims.

“Writing Policy Exceptions” and “How Claims are Resolved According to the Nature of the Claim and The Type of Policy”

By J. Bushnell Nielsen, Esq.

In Bush's first presentation on Writing Policy Exceptions, the topics included tips on writing enforceable exceptions, explaining title insurance to the customer, and the title agent's role when a title claim is made. With regard to writing title exceptions, he stressed that the term “exception” in title insurance parlance is synonymous with the term “exclusion” as used in other forms of insurance, and that exclusions from coverage are narrowly construed to afford the most possible coverage. As such, exception language must be carefully crafted so that it is capable of only one interpretation.

In Bush's second presentation on How Claims are Resolved According to the Nature of the Claim and the Type of Policy, Bush covered topics such as “No Loss Paid if Title is Cleared” and “Measure of Loss Due to Total Failure of Title.” If there is a loss due to a total failure of title, it does not necessarily mean that the Insured receives policy limits. The materials provided by Bush referenced a Court ruling that in case of a total loss, the Lender was entitled to the *least* of the property's value, the amount of indebtedness owed or the policy limit. As for an Insured homeowner, a Court ruled that the measure of damages was the value of the home at the time the title issue was discovered as opposed to the value of the home at the time of purchase.

Guest Speaker Summaries Conestoga College 2019

“Privacy and Security Training: Obligations of Confidentiality and Safekeeping”

By Mark G. McCreary, Esq., CIPP/US

Mark discussed the obligation to maintain the confidentiality of client information, and provided do's and don'ts in this regard. For example, he cautioned to avoid public USB charging ports, like those found in airports, parks and conference centers. Using public ports can result in the theft of data stored on your phone. Hackers can use that same USB connection to upload malware into your electronic device that enables them to capture everything that you type and everything that you view.

To the sound of uncomfortable snickering from the audience, Mark urged us to stop carrying around a laundry list of passwords in our purses and wallets. He strongly advised the use of a good password manager application. Mark identified 1 Password as very good. Another password manager application with an available free version is LastPass. After entering all of your passwords onto the application, the only password you need to remember is the one that logs you onto the app. Mark instructed on how to create safer passwords, and provided an amusing (and bemusing) list of the most used passwords, such as “123456,” “letmein,” and of course the ever-popular “password.”

Mark cautioned that phishing emails are becoming increasingly sophisticated, and he provided a primer on how to identify them, including the technique of hovering over a link without clicking on it to determine its actual origin.

“Title Claims: I Couldn't Make These Up!”

By Veronica A. McMillan, R.N., Esq.

Veronica started our Tuesday session by sharing the following atypical claims for which she has been retained as counsel. Her presentation told “the rest of the story” on these title claim cliffhangers:

1. Husband and paramour commit fraud to mortgage home owned by husband and wife, resulting in wife residing in property mortgage free through 10 years of foreclosure litigation.
2. Dual foreclosure actions in the same courthouse resulting from husband's conveyance of subject property to both ex-wife and brother-in-law, who both mortgaged the property.
3. Owner attempts to stop foreclosure action by alleging co-owner fraudulently used ailing family member's funds to purchase an interest in the property.
4. Who is Sara and why did she provide a power of attorney to Jacob to sign a mortgage on property owned by Jacob and Rachel, as husband and wife?
5. A “tenant” files an unsuccessful pro-se quiet title action against the owner and insured lender after lender files foreclosure action against the owner. Two additional unsuccessful pro-se complaints are also filed. Just when you thought you were out – he pulls you back in!

The Real Estate Investor's "Unique" Issues - an Underwriter's Perspective

Conestoga College presenter: Rick Hecker, Esq. of Conestoga Title Insurance Co.

In my private practice, it was not unusual to receive a signed Agreement of Sale from one of my "good" clients who wanted to settle his cash purchase within four days. In haste, we would order a title search, only to discover upon its receipt that the Seller in the Agreement of Sale was not the record owner. If this sounds familiar to you, then I imagine you too deal with a type of investor I warmly call the *Estate Hounds*.

Estate Hounds are those investors who hunt down estate properties. They have a nose for finding these properties, often prior to the estate having been opened. It is my opinion that Estate Hounds are on the rise. With the oldest members of the Baby Boomer generation beginning to "buy the farm," the opportunities for investors in estate properties are mounting.

Yet Estate Hounds often forget the most fundamental aspect of their transaction by failing to identify the proper Seller. Instead, they frequently have the occupier of the property sign the Agreement of Sale. If this has ever happened to you, then you know closing has just been extended by several weeks as an estate will need to be opened prior to closing the transaction.

In these instances, it seemed that much of my time was dedicated to managing client expectations concerning the probate process in Pennsylvania. At one point, I became so focused on managing these expectations that I put together an hour long presentation and methodically went to each of my clients' real estate meetings with the sole purpose of describing the estate process and highlighting what the real estate investor needed to know about estates. This article is designed to be a re-cap of that presentation and a look at one of the topics I covered at Conestoga College this year.

As I am sure most of you know, when the owner of a property has passed away a legally appointed person is required to sign the agreement of sale and ultimately the deed and settlement statements. The process by which that individual is appointed is called the probate process. In Pennsylvania, the probate process is comparatively simple to that found in other states and this may be one of the reasons that the "Nonprobate Revolution" has not taken the same hold in this state as in others.

In Pennsylvania, the probate process begins with a Petition for Grant of Letters, which is filed with the Register of Wills in the county wherein the decedent was domiciled at the time of death. There are typically two items attached to the petition: the death certificate and the decedent's original last will and testament.

For settlement purposes, this is where delay can begin. If no one can produce a death certificate, obtaining one from the Division of Vital Records can take some time. Additionally, locating the original last will and testament can take some effort, as it may be in a safety deposit box, at an attorney's office, or simply shoved in a drawer of old mail. Wherever the original last will and testament is, it is always worth the time locating it, as the alternative (opening an intestate estate) is fraught with its own tendencies for delays and opportunities for disagreements.

Continued: The Real Estate Investor's "Unique" Issues

Once the estate is opened and an executor or administrator is appointed, the Estate Hounds frequently want to charge forward to settlement without further delay. There is, however, another significant hurdle that must be overcome prior to settlement, of which even an experienced investor may not be fully cognizant: the Estate Recovery Program letter from the Pennsylvania Department of Human Services.

In Pennsylvania, the Department of Human Services has a claim for reimbursement for medical assistance paid on behalf of the decedent during the decedent's lifetime. All estate property is subject to the Department's claim and a purchaser of real estate from an estate is liable to pay the Department's claim to the extent the purchaser did not pay fair market value. Unfortunately, this claim is not filed with the Prothonotary, nor is it recorded with the Recorder of Deeds. Instead, the only way to determine whether the Department has a claim is to ask them. The Department's response, however, typically takes several weeks, which is infuriating to the Estate Hounds who just want to close the transaction.

Nevertheless, without this letter, it is nearly impossible to close the transaction as we can be almost certain the Estate Hound is not paying fair market value for the property. This may sound like a shot at the Estate Hounds, but I assure you it is not; rather, it is a reflection on the realities of the trade.

Once the letter is returned from the Department of Human Services, we are likely ready for settlement. Yet, an hour after settlement has occurred, the Estate Hounds have moved on to finding their next property, but for the Executor the process is far from over. They still have fiduciary duties to complete the full and final administration of the estate. These responsibilities include marshalling the estate assets, paying the debts of the estate, filing appropriate tax returns, and making any disbursements to the beneficiaries.

Often the Executor or Administrator is in for another surprise, in that there will be no check payable to them individually at settlement. At times, this is completely contrary to what the Estate Hound may have promised them. In this vein, I have received my fair share of calls from the Estate Hounds questioning why the "Seller" did not receive a payment as they had been promised.

Invariably, the answer to this question always returns to the same error that this article began with – a failure to correctly identify the Seller. The Seller was the estate, so the estate received a check, but this does not mean that the Executor or whoever initially signed the Agreement of Sale will have received any money from the transaction.

In short, managing the expectations of your Estate Hounds can be the key to developing this type of business and protecting yourself as the title agent. If you run into these types of issues and would like more insight, always feel free to contact the Underwriting Team here at Conestoga Title Insurance Co.

UNDERWRITING YEAR IN REVIEW – NOTABLE QUESTIONS & ANSWERS

Conestoga College presenter: Eric Borgia, Esq. of Conestoga Title Insurance Co.

A platted legal description is fatally flawed if it is missing a reference to the lot number. However, a legal description with a lot number but no block number may not be fatal if the plat has only one block.

If a corrective mortgage is being recorded to add a parcel omitted from the original mortgage legal description, and if other liens have been recorded after the original mortgage but prior to the corrective mortgage, those intervening liens may retain priority over the mortgage as to the omitted parcel.

To address the encroachment of an improvement onto adjoining property, an easement may be granted, which specifies that it terminates automatically in the event the encroaching structure is removed.

Underwriters are more willing to insure over minor encroachments on loan policies than on owner's policies, because with loan policies, lender has a claim only if the encroachment causes loss of priority or invalidity of the mortgage.

New York and Indiana allow judgment liens to be filed against personal property as well as real property. In contrast, Pennsylvania, Maryland, Ohio, Virginia and New Jersey allow judgment liens to be filed only against real property.

A mortgage is a conditional conveyance of an interest in land as security for repayment of a debt. So in form, it is a conveyance (and is, in fact, called a "deed" of trust in some jurisdictions), but in function, it is a lien.

In spite of the fact that married individuals may own non-marital property, the Court in a divorce proceeding may order the sale of such non-marital property in the interests of equitable distribution. This is the reason the Owner's Affidavit contains an acknowledgment that Seller is not separated, nor a party to a pending divorce.

Unless reduced to a judgment, debts owed by a decedent at the time of death do not constitute a lien on estate real property. A purchaser of estate real property takes title free and clear of such debts.

TOP TEN CLAIM ISSUES OF 2018

Conestoga College presenter: William J. Parker, Esq. of Conestoga Title Insurance Co.

No. 10 False impersonation of the previous owner - "I see dead people deeding land!" Please make sure that the parties to the transaction are living actual people/entities.

No. 9 Application of Incorrect Estate and Trust Issues - Trusts are instruments that are not necessarily title instruments. Valid deeds must accompany them. Make sure that all interests are authorized and accounted for. We still continue to see trusts that are invalid, illegal or worded so poorly that they don't carry out the grantor's wishes.

No. 8 Boundary and Survey Issues - This seems to have become a hot topic recently, no doubt due to foreclosures and neglecting to demand some type of survey documentation.

No. 7 Unknown or Newly Discovered Easements - There has been a general rise in claims regarding hunting camps or for "paper roads."

No. 6 Undiscovered Encumbrances - Please continue to review covenants and restrictions for rights of first refusal AND very old covenants/restrictions.

No. 5 Forgeries - We still receive claims based on purported forgeries of mortgages, releases and satisfactions. Please be sure to double check all documentation.

No. 4 Missing Heirs/Interests - This type of claim has arisen usually in the context of some misguided familial transaction or estate planning that has failed to account for everyone involved. Please don't take the deeds in these transactions at face interest.

No. 3 Invalid Deeds - Please remember that POAs affect all documents in the transaction. If a POA is defective so may be your transaction.

No. 2 Unknown Prior liens - PLEASE make sure that ALL open end mortgages in your chain of title have been properly closed!

No. 1 Search/Recording Errors - We continue to receive claims that have incorrect or missing descriptions. The second biggest source is clerical/notary errors. All of these are easily avoided with attention to such details. However, if they arise from failure to abstract or review, you likely have more than just search problems.

PLEASE BE CAREFUL OUT THERE!

Audits Can Lead to Success

Conestoga College presenter: Doug Rauchut, Conestoga Title Insurance Co.

Taking steps for a successful audit will naturally lead to a more successful agency. To recap from Conestoga College, the following steps will improve your audits and increase your chances for success:

ESCROW ACCOUNTING:

Perform reconciliations within 10 days of receipt of the bank statements for all escrow related accounts, including recording, long term escrow, etc. Print and review all of the reconciliation reports monthly (Summary, Cleared Items, Outstanding Items, and Trial Balance Reports).

Review bank statements monthly for any daily negative balances, returned deposits/checks, or other odd activity. Keep any eye open for any outstanding deposits > 3 days old, outstanding checks >30 days old for real estate taxes, mortgage/judgement payoffs, final water/sewer bills, recording checks, and client's proceeds. Review the Trial Balance Report for any monies held from closing in escrow to see if any remaining funds can be disbursed, and look for any negative file balances and disburse remaining funds if possible. Resolve negative file balances monthly.

Retain documentation of all disbursements/checks, including incoming/outgoing wires, and copies of disbursement ledgers in the client's file.

UNDERWRITING—Review and retain for the file copies of the following:

Purchase Agreements and/or requests for title from lender.

Title search and title commitment with all schedules (making sure all fields and items are added to the commitment).

Review the underwriting manual to make sure all requirements and exceptions are added to the commitment.

Patriot Act and child support Lien searches performed on ALL parties.

Executed title affidavits and privacy notices. Are the proper affidavits executed for transactions involving an LLC or Corporation?

Instruments recorded after closing . Make sure to record all documents in a timely fashion.

Copies of B-I requirements – corporate documents, estate documents, payoffs, etc.

Copies of tax certifications, photo identification, policies, vesting deed and releases/satisfactions.

Know your over limit amount which is usually stated in ¶ 4 of your Agency Agreement. Submit to Underwriting for review and approval via uwrequests@conestogatitle.com.

MONTHLY MAINTENANCE:

Send remittances by the 7th of each month to Conestoga.

Send copies of the closing statement along with all copies of the policies issued to Conestoga Title monthly. (If issuing instant policies make sure we receive an endorsement reflecting the recording information on documents recorded, or copies of the recording receipts.)

If any files cancel remember to cancel those files from our Extranet system online. This will keep your status report in neat order.

Correction Reports - If you receive any correction reports on policies reviewed by Conestoga Title, make sure those items are corrected in a timely manner and copies of those corrections are sent in to Conestoga to clear those items.

Variance Reports – review these reports to see if our findings are correct. This report shows any overpayments or underpayments made to Conestoga. Any underpayments may be made when making your monthly remittances to Conestoga to cure those outstanding items.

Persistence Overcomes Resistance

Douglas Riggin, VP Sales

No matter what business you are in today, there will always be strong competition; the title business is no exception. How does one agency grow and remain profitable, while others watch their businesses shrink and profits dwindle? The title insurance business has seen many changes over the years and the successful agencies implement policies and procedures to move in a positive direction. Marketing your agency is one key to success. The following are some suggestions to improve your marketing efforts.

Make at least one employee at your agency responsible for bringing in new business and retaining new and existing clients. First, come up with a plan to target market a group that your agency is lacking. Then, forecast reasonable goals for the year. Once you have a plan and forecast it's time to roll up your sleeves and get to work.

You only get one chance to make a first impression and you want yours to be memorable. Your first contact should be short and to the point. Remember, time is money and you don't want to waste either one. Show your prospect the benefits to working with your agency. Demonstrate that you will do whatever it takes to keep them happy.

Ask them what concerns they have and let them know you're here to help them and their clients. It's very important to involve your prospect in a dialogue and listen for ways your agency can fill their needs. Once they have expressed their concerns (which should be viewed as opportunities), be prepared to answer their questions honestly. Be careful not to make promises you can't keep. Ask for their business, and thank them for the opportunity to work with them.

Now to summarize, you came up with a plan and forecast. You prepared before meeting with the prospect. You gave a professional presentation and answered all her questions. Lastly, you asked for her business. You're done right? Wrong. Your work is just beginning.

Most prospective clients are not going to give you their business because of one presentation. Now what? Follow up, follow up and more follow up. This takes time and commitment, but please don't get discouraged. Be patient; after all they were doing business way before you came along. Keep yourself committed to following up, because this is where most marketers drop the ball. Don't give up now. You already spent the time, so see it through to the end. Your follow up should come from a variety of directions, such as e-mail, personalized cards, letters, phone calls, and just stopping by. I recommend you try them all. If you put in the effort you will see the results over time.

Lastly, I leave you with this wonderful example of persistence overcoming resistance. When a child wants something he or she asks for it. The parent may say "no." The child again asks. The parent again says "no." The child asks again. The parent says "no" again! The child asks again. Some parents may still say "NO," but let's be honest, some say "OK." The child has not been trained to take no for an answer. The child is persistent. A marketing person needs that same mindset, of course in a professional manner. Best Wishes out there!

Welcome a new member of the Sales team at Conestoga



Hal Snyder is our newest addition to Conestoga Title Insurance Co. as a Regional Representative. He has spent over 37 years in the retail field. Hal will be reaching out to new agencies and attorney offices to share with them Conestoga's available support in underwriting title insurance policies. Hal lives in Columbia, PA with his wife of 28 years and their four children reside in or attend school in PA as well. Coaching youth sports over the years and being active in church and community organizations keeps Hal very busy outside of the office.

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