Conestoga Quarterly

2022 Third Quarter

Committed to providing exceptional personal service for our independent agents and approved attorneys

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A Message from the President

A Changing Marketplace

Seasoned title professionals have experienced numerous market transitions throughout their careers and understand the cyclical nature of the business. We have seen mortgage interest rates double during 2022. Refinance transactions have withered and housing affordability has become challenging. How can we put the current economic conditions into perspective and how should we adjust our business planning accordingly?

Remember 2008 when we experienced a dismal real estate market? One big difference now is that the lending industry has upheld more stringent lending requirements since then and it has not engaged in sub-prime loans as it did in the years leading up to the Great Recession. We are currently experiencing low unemployment and low mortgage delinquency levels. As a result, we are not seeing high foreclosure rates and, in turn, we have not seen any increase in new claim activity. The Federal Government had all good intentions when it pumped massive amounts of stimulus money into the economy but it had the unintended consequence of fueling inflation. The Federal Reserve now needs to curb inflation and increasing the funds rate is their tool to do so. As we are all aware, the Fed has increased rates numerous times thus far in 2022 and it is expected to continue to increase the funds rate until it has accomplished its goal of taming inflation. As a country, we cannot continue to sustain such an aggressive inflation rate. We have already seen gas prices come down and the hope is that overall inflation will decelerate as we conclude 2022.

Total mortgage loan originations in 2022 are expected to be the fifth best year out of the last 20 years. Modest economic growth is expected in the fourth quarter of the year. Unemployment is currently at 3.5% but is projected to increase to over 4% in 2023. A modest recession is forecasted by economists as the labor market softens and the effects of tighter monetary policy are felt. In Conestoga Title's geographic footprint, residential real estate sales continue to be strong but lackluster inventory continues to be an issue. It will take additional time for the supply of residential properties to build and meet demand. Commercial activity remains relatively strong.

Recognizing the transition in the real estate market is key to your business planning. While the market may be slowing, market share growth can be achieved. Performing a self-evaluation is a good place to start. Are you focusing enough of your efforts on residential sale business? Do you seek to attract commercial and investor business? Are you engaging networking opportunities with prospective clients? What processes and technologies have you put in place to deliver quality service? What strategies have you put in place to promote how your business will deliver an exceptional customer experience? While the transition in the title business continues in the year ahead, reflecting on your strengths and focusing on the opportunities that exist will help your title business continue to flourish in a changing marketplace.

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

Florida Real Estate Scam Spreading

Rick Hecker, Esq., Senior Underwriting Counsel

If you have ever heard William Parker (a member of our Underwriting Service Team) speak, I am confident that you have heard him say: “About the time we build a better mouse trap, the fraudsters have built a better mouse.”

While there are no mice involved, there is a new version of an old real estate scam spreading from its point of origin in Florida. The scam involves the sale of unencumbered, vacant land whose true owner(s) reside abroad. The fraudster will pose as the legitimate owner and will forge a deed to your proposed insured owner. In most cases, the deed presented by the fraudster will have been executed and notarized abroad, (allegedly executed at a United States Embassy) and the original deed will be delivered by mail. The difficult aspect of this scam is that in addition to the Seller’s signature, the notary blocks are also likely a forgery.

To help identify this scam, here are a list of the five most common elements:

1. Vacant land owned by foreign nationals or out of state parties.
2. Land not owner occupied.
3. Mail away closing with notarization at a US Embassy or another state not connected with the transaction. (Note: Some have involved PA, DE, and NY forged notaries).
4. Proceeds wired to a bank or person out of state or in a foreign country.
5. All communications are via email.

Any transaction involving a couple of the above, should be approached with caution. The difficult part of this scam is there are forged notary blocks from legitimate notaries. This means that the notaries themselves are not involved, but their identity and signatures have been stolen and used for the purposes of the scam. Below is a list of known, legitimate notaries that have had their information forged.

Notary	Location of Acknowledgment
Alison Dilworth	Dubai
Ellen Wong	United Kingdom
Eric Guadiosi	Germany
Fabian Ikenna Ajogwu	South Africa
Fabio Saturni	South Africa
Joseph McCallum	South Africa
Marc Nelson	Sweden
Philip Reeker	United Kingdom
Robert Rowse	South Africa
Stephen Jacques	Vietnam
Stephen Thomson	South Africa
Virginia Blaser	South Africa
Carol Taylor	Lehigh, Pennsylvania
Fairweather, Lesmine	Bronx, New York
Noofan Menwar	Bronx, New York
Richardo Henry	Miami, Florida
Stephen Foster	Miami, Florida

As always, if you are faced with a transaction and have concerns that fraud could be afoot, please contact the Underwriting Service Team immediately. We stand ready to help you and your clients in the fight against fraudulent transactions.

*The information contained herein should not be construed in any way as a

Maintaining Revenue with Fewer Refinance Transactions

Douglas Riggin, VP Sales

According to the data released recently from the Mortgage Bankers Association in 2021 refinance residential transactions made up for 58% of the residential market share. Thus far in 2022 the refinance market share is at 30% decreasing slightly in each quarter of 2022. **Click here** to view the current MBA Mortgage Finance Forecast.

Here are a few tips to help your title agency maintain a healthy bottom-line.

Present and offer the enhanced home owner's policy: Every residential home buyer should be made aware of the advantages of purchasing an enhanced home owner's policy. The enhanced home owner's policy as you know provides added value and protection to the home buyer and at the same time provides your agency with 10-20% more title premium per transaction.

Research and identify new business opportunities. The previous 2 years were so vibrant for most title offices which left no time for outside marketing and research. Since 2020 there are new Realtors, new Real Estate Brokers and investors in your targeted market area and now's the time to research, identify and schedule in person meetings with these new potential business opportunities.

Host an event in your office. Social or educational and invite new potential targeted clients, past clients you haven't seen in a while and your current valued clients. This type of setting will provide an opportunity to showcase your office and your valued team of employees.

Review and update your current office website as a means to generate traffic to your office. Consider the following: Is your website user friendly to navigate for new and existing clients to be able to communicate with your office and staff? Is the information on your website useful to the average residential homebuyer? Should you have a rate calculator on the website and a brief explanation of the closing cost fees for potential clients to review as a resource?

Consider hiring a dedicated Sales Representative: If your office is like so many offices you and your current staff may not have the time to solicit new business opportunities on a regularly basis. The right dedicated sales person will provide results and generate additional revenue for your title office.

As always please free feel to reach out to the Conestoga marketing department to assist you with your marketing needs.

Conestoga Title Insurance Co. is now fully integrated with both Qualia and SoftPro.

Agent's using these title software platforms can issue CPLs and commitment and policy jackets within their software without having to leave the platform. Conestoga also offers a residential title search product which can be imported into your title software directly onto a title commitment eliminating the need for re-typing.

UPDATES

SoftPro Releases New Integration with Conestoga Title Insurance Co.

SOFTPRO

Read More

Conestoga Title Staff in Ocean City, MD

Conestoga Title's VP Sales, Doug Riggin and Lisa Fischer, Conestoga's Senior Agency Auditor and Chapter Chair of the South Central Pennsylvania Land Title Association recently attended the annual Maryland Land Title Association convention. Lisa helped to register attendees and Conestoga staff had an opportunity to support the MLTA and connect with our agents.

Pictured from left to right: Justin Gooderham, Dalton Digital, Doug Riggin, Conestoga Title and Lisa Fischer, Conestoga Title

Connecting with colleagues at PLTA's annual convention

Conestoga Title was proud to support the 101st PA Land Title Association annual conference and enjoyed several days in educational sessions with our current and future agents.

Jonathan Markel, VP Marketing for Conestoga Title Insurance Co. available to meet with agents and staff attending the convention.

Untangling Private Roads in Pennsylvania: Who Has the Responsibility to Repair & How to Calculate?

Anna Marie Sossong, Esq. Underwriting Counsel

We acknowledge that the following article was written for the benefit of Pennsylvania agents and attorneys. While references to PA law are cited, the issue of private roads exists in all territories. Please feel free to contact Conestoga Title's underwriting department if you have any questions or issues concerning private roads in your state.

According to the Federal Highway Administration, Pennsylvania has over 250,000 miles of publicly maintained roadways — more than any other eastern state, including New York. But Pennsylvania also has many private roads, and Pennsylvania attorneys have been dealing with issues relating to private roadways since the beginning of the commonwealth. The state is crisscrossed with old logging roads, abandoned rail lines, old coal roads and settlor trails that used to traverse the wilderness that have, over the last several hundred years, become shared driveways or private roads providing access to private property. There are also uncounted thousands of miles of private roadways, including undedicated roads in subdivisions, condominium developments, cooperatives and planned unit developments.

Notwithstanding that private roads are common in Pennsylvania, the financing of a home accessed by a private road can present difficulties, especially for the lender. In today's lending environment, where banks routinely sell their loans on the secondary market, it is important to make sure that the borrower will have continued access to the property and will be able to afford the expense of his/her contributory share of the maintenance and upkeep. The right of access is generally addressed through recorded subdivision plans that show the private road, which creates the recorded right of access. Maintenance and upkeep are a different matter. Condominium and similar housing developments address the issue through recorded declarations enforced by homeowners' associations. Private farm roads, country lanes and informal subdivisions do not have such mechanisms. It is the instances of unrecorded maintenance arrangements that present issues for lenders in evaluating a borrower for purchase of a property on a private road.

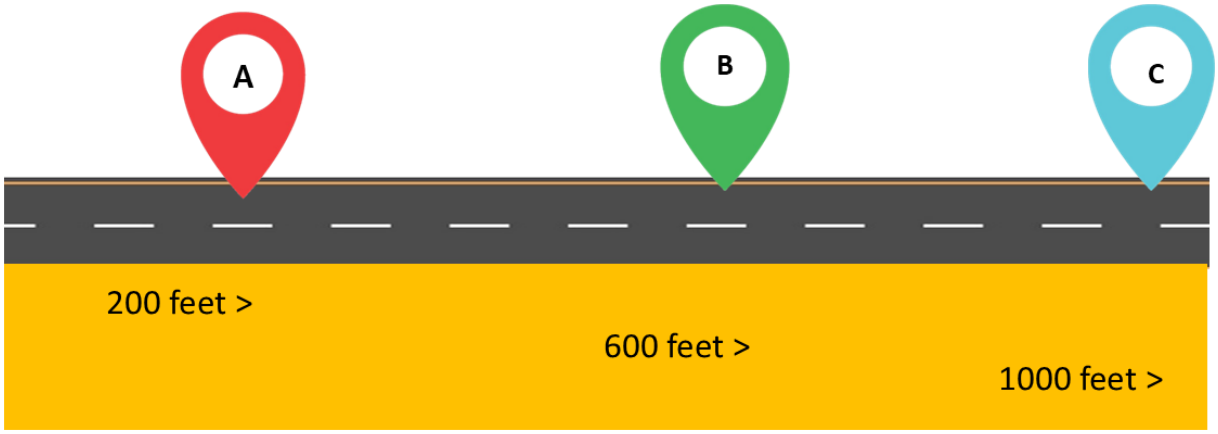
The Private Roads Act (36 P.S., Chap. 7), one of Pennsylvania's older surviving pieces of legislation — originally created in 1836 — provides landowners of landlocked parcels with a mechanism to petition for the creation of an access road to the parcel. The act's rationale is that it is to the benefit of the commonwealth to insure that all its land is able to be used for the common good — therefore access is required. There have been hundreds of cases since 1836 challenging various aspects of the process outlined in the act for the petition and creation of a private road across another landowner's property. Most of the cases addressed the determination of a board of view as to the necessity of the proposed private road, its location, its size and its price.

However, once the private road was established, either through the mechanism outlined in the Private Road Act, by a landowner creating a private road as part of a subdivision, or through development of a parcel on which the private road already exists, the continuing obligation of maintenance was not always clear. Section 2735 of the act addresses repair of private roads and was amended on Oct. 7, 2021 (effective Dec. 6, 2021) to address some concerns from recent court cases and to attempt to add a bit of certainty as to the determination of maintenance obligations.

This new revised legislation provides lenders with more clarity as to how to evaluate the proposed purchase and financing of a parcel that either contains a private road used by others or where access is dependent on a private road where there is no other maintenance agreement. Generally, lenders require that any loan transaction involving a private road also include a recorded maintenance agreement that clearly outlines the continuing obligations of the landowner and roadway users for all future maintenance expenses. If there is no existing maintenance agreement and the various landowners aren't willing to enter into one, this lender requirement can kill the proposed purchase/sale.

Section 2735 of the Private Road Act has always provided that the person who requested the private road is responsible for its continuing repair (§2735(a)). Section (b) then continues, "Each property owner that shares a common benefit from a private road shall contribute in proportion to the amount of the private road utilized to the cost of maintaining the private road at the current level of improvement and shall have the right to bring a civil action to enforce the requirement of this section." This is a slight revision from the original, which mandated that the obligation for shared maintenance was created whenever "more than one person enjoys a common benefit" without restricting the maintenance to property owners only. Now, only property owners are obligated to participate in maintenance.

While the new language does clearly impose the maintenance obligation on property owners, how to determine the cost sharing is not clear — other than the reference to "proportion to the amount of the private road utilized." In the past, attempts were made to argue that certain property owners were heavier users of the private road and should, therefore, pay more of the maintenance costs. Under this revised language, the only determination is the proportion of private road used by the various contributing property owners. The calculation of proportionate share isn't as clear as it may appear. Consider the below:



1,000-foot private road

In this example, the overall length of the private road is 1,000 feet. The distance from the beginning of the private road to the center of the driveway to parcel A is 200 feet. The distance from the beginning of the private road to the center of the driveway to parcel B is 600 feet. Parcel C uses the entire private roadway to access the parcel. Each of the parcels that use the private road are a different size and create different amounts and types of traffic.

The most obvious calculation that you might employ as a way to determine proportionality is to calculate what percent of the private road length each parcel uses, as follows:

Parcel A – 200′/1,000′ private road length = 20%

Parcel B – 400′/1,000′ private road length = 40% (400 feet is the length of the private road after the Parcel A drive)

Parcel C – 400′/1,000′ private road length = 40% (400 feet is the length of the private road after the Parcel B drive)

This, however, doesn't consider each parcel's usage. Remember, Parcels B and C both cross over the 200 feet of private road related to Parcel A, and Parcel C also uses Parcel B's section of private road. This calculation results in a heavier maintenance obligation for Parcels A and B and isn't truly a "proportionate share" as required by the statute.

In order to accurately assess maintenance and repair costs the formula must include all of the various private road distances and must recognize that some property owners use overlaps with others. To determine overall proportionality, the first step is to determine the total distance and usage to be maintained. Here, Parcel A has a 200-foot drive, B's drive is 600 feet and C has a 1,000-foot drive. Both B and C should expect to pay some portion of the expenses associated with the first 200 feet (A's entire driveway length) and C should also expect to pay some part of the cost of that part of the road the leads to B's driveway. Because of the usage overlap, simply determining the percentage of length as in the previous example, overstates the obligation of A and B and understates C's maintenance obligation. The calculation must recognize the overlap to fairly allocate the expense.

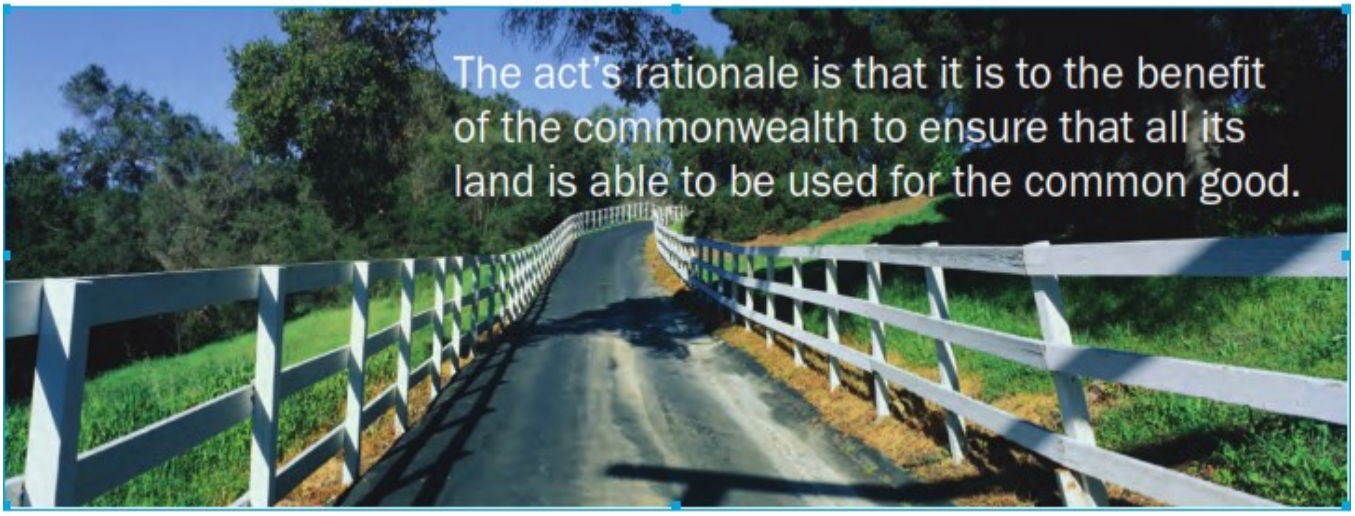
To do so, determine the total length of all parcels' private road access distances = 200′+600′+1,000′ = 1,800′ (Ignore the fact that the actual private road is only 1,000 feet long.) This calculation is to determine proportional cost and recognize the overlap in usage. Using the above private road lengths, the proportional maintenance costs for each parcel are as follows:

Parcel A – 200′/1,800′ = 11.1% of overall maintenance expense

Parcel B – 600′/1,800′ = 33.3% of overall maintenance expense

Parcel C – 1,000′/1,800′ = 55.5% of overall maintenance expense

This method accurately represents the proportionate share of maintenance costs for each user of the private road because it includes within each parcel owner that portion of the private road that is jointly used by others. In other words, it recognizes the overlap.



Section 2735 also provides that all the users of the private road have the independent right to enforce the maintenance obligation via civil action. However, there is no discussion within the Private Road Act as to how to address any change in use of the private road, increase in traffic along the road, commercial vs. residential use or any improvements to the private road that a user may desire (paving, grading, etc.) Based on the language of the act, these issues would only result in a change in maintenance expense, not any change in the proportionality formula — which is only based on length of road and not volume of traffic. So, while the recent revisions are helpful in that the maintenance obligation is clearly allocated to the property owners (regardless of whether or not they use the private road for access), which should give lenders a bit more comfort than the prior language, there are still issues not addressed that have historically proven contentious for users of a private road.

Notwithstanding that this maintenance provision is included in the Private Road Act, which provides a method to judicially acquire access across property to a landlocked parcel, the provision will apply to all instances of private roadways, regardless of how the roadway was created — except for those that already are covered by a private maintenance agreement, roads within a common interest ownership community or private roads established by a governmental entity. So, the next time that your lender balks at financing a transaction with a private road that does not have a maintenance agreement, refer them to 36 P.S. §2735. Or, when your client calls and presents a disagreement with a neighbor about their private access road or driveway, this provision can be invoked to attempt to resolve the neighborhood dispute.

This revision to the Private Roads Act isn't earthshattering, nor does it completely clear up the many issues with private roads in Pennsylvania, but it does help neighbors understand their obligations to the others that join in their use of private roads abutting their property.

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Conestoga College In Person Seminar

A six credit seminar featuring a variety of speakers and time to connect with colleagues

January 16, 2023 Lancaster, PA

Registration will open in November

Webinar Update

Click Here to Register

10-18-2022 "Ethics in the Title Industry"

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