

Conestoga Title Insurance Co.

WAGONLODE

A Land Title Update

2019 Second Quarter

As we publish this edition of the WagonLode, spring is in full bloom, and the first days of summer are just around the corner. It's the season of warm weather, picnics and family vacations...a favorite time of the year for many.

It is also a great time to look back on the successes of the first half of the year, and to make solid plans to increase your business opportunities, avoid pitfalls, and improve your business operations in the last half of the year. With those goals in mind, the articles in this edition of the WagonLode include valuable information on ExtraNet enhancements, fraud prevention, and marketing strategies.

And speaking of making plans, planning is underway for our 2020 Conestoga College, taking place in Lancaster, PA on January 20-21, 2020. Please plan to attend!

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Message from the President



Continuing education is important for all of us regardless of our age or profession. We all have a need to gain knowledge, whether in our personal or professional lives. On a personal level, it is important to stay current on issues such as health care and financial planning. On a professional level, keeping current with changes and trends in your particular profession can be critical in your firm's ongoing success.

Conestoga Title takes great pride in our tradition of providing valuable information to our network of agents and Approved Attorneys. In May, we held a successful seminar in Ellicott City, MD, providing continuing education for Maryland and Virginia agents. Agency owners, managers and key staff members are encouraged to attend our events. We are now planning our fall Ohio seminar. Also of high importance is our routine issuance of underwriting bulletins, memos and this newsletter, the WagonLode. Our publications contain vital communications and I advocate that the information be disseminated to your entire staff for reading and reflection.

In early June, I had the pleasure and privilege of attending the Pennsylvania Land Title Association's 98th annual convention in Hershey, PA. As usual, the event provided opportunities to obtain continuing education credits while networking with other title industry professionals. Discussions involving information security were at the forefront of the seminar. Updates were provided concerning how recent security breaches within the offices of the City of Baltimore, Philadelphia and Luzerne County, PA have impacted the title industry and have interrupted our ability to process transactions in those areas. Attendees of the convention were on edge as other examples of cyber-crimes were provided which have led to skyrocketing annual losses across the country with annual losses now in the billions of dollars. A representative from the American Land Title Association (ALTA) reviewed various types of threats to the title business. Attendees were urged to visit ALTA's website, www.alta.org to obtain a flyer that **advises the consumer** how to be vigilant and avoid wire fraud attempts. The flyer is entitled "Wire Fraud Rack Card" and ALTA members can find it in **ALTA Prints** under the **Business Tools** tab of ALTA's website. In the unfortunate circumstance that your office experiences an incident, ALTA has created a Rapid Response Plan for Wire Fraud Incidents that can be found under the **Business Tools** tab of their website and by clicking **Information Security**. It is important to be familiar with the plan so that you can immediately go into action if necessary as time will be of the essence. ALTA's article on the Rapid Response Plan for Wire Fraud Incidents was republished in the 2018 Third Quarter issue of the WagonLode. We have included an excerpt of that article on Page 9 in this issue.

To conclude, knowledge is powerful. Take advantage of the resources made available to you by Conestoga Title as well as your state land title association and ALTA as a means of staying current and avoiding the potential pitfalls in our industry.

May you and your family enjoy a safe, happy and healthy summer!

John M. Nikolaus, CLTP

President, Conestoga Title Insurance Co.



AGENT EXTRANET ENHANCEMENTS

Conestoga is committed to investing in technology to help improve operational efficiencies for agents and staff. Enhancements are being made to the Agent Extranet which will allow us to take advantage of the latest technology including integration with settlement software. The following enhancements to the Agent Extranet were deployed on June 1, 2019:

A new and improved **Rate Calculator**

A new and improved **Monthly Premium Report tool**

A **Location Dropdown List** on the Create\Print CPL screen for offices with multiple locations

An **Approved Attorney Dropdown List** on the Create\Print CPL screen for agents who issue commitments and policies for Approved Attorneys. NOTE: If there are any Approved Attorneys that you wish to remove from your dropdown list; please send an email to extranetadmin@conestogatitle.com.

In addition to the above visible enhancements, we now have the ability to assign individual user credentials (instead of a single set of credentials for your entire office). If you are interested in converting to individual credentials, please send an email to extranetadmin@conestogatitle.com.

Future enhancements are being planned which include:

Integration with one or more settlement software vendors to allow generation of commitment jackets, CPLs and policy jackets without leaving the settlement software

Underwriting Resource Center – rate manuals, forms, underwriting guidelines and other useful underwriting tools will be available in the Agent Extranet

We hope that you find the enhancements helpful as we continue our efforts to improve operational efficiencies.

PLEASE NOTE: It is recommended that you use Google Chrome internet browser when accessing the Agent Extranet for optimal user experience.

PUBLIC RATE CALCULATOR

If you haven't visited conestogatitle.com lately please check it out. You'll notice a new Rate Calculator link on the Home Page and the About Title Insurance page. Please let all of your customers know about this new tool for use by the public .

Loose Lips, Sink...Title Insurance Agencies?

Rick Hecker, Esq. Underwriting Counsel

It has long been the law that an insurance agent has a duty to not misrepresent the coverage being procured. See *Al's Cafe, Inc. v. Sanders Ins. Agency*, 820 A.2d 745, 749 (PA Super. 2003). Specifically, where an insurance agent promises, or gives some affirmative assurance, that he will procure a policy of insurance under such circumstances as to lull the proposed insured into the belief that such insurance has been affected, the law will impose upon the agent the obligation to perform the duty which he has thus assumed. See *Luther v. Coal Operators Casualty Co.*, 108 A.2d 691, 692 (PA 1954).

Put another way, a client acquires a cause of action against the agent where the agent neglects to procure insurance, does not follow instructions, or the policy is materially defective through the agent's fault. In these cases, the agent may be liable for both negligence and breach of fiduciary duty for failure to properly procure insurance. 1 Leo P. Martinez, et. al., *New Appleman Insurance Law Practice Guide* §2.12[1] (2019).

In this vein, the Superior Court of Delaware in the case of *Fansler v. North American Title Insurance Company* 2019 WL 1281432 was recently called upon to examine a title agent's potential liability under theories of professional negligence. *Fansler v. N. Am. Title Ins. Co.*, 2019 WL 1281432 (Del. Super. Ct. Mar. 19, 2019). The facts as the Court considered them are as follows:

Mark Fansler and Linda Goldstein, the plaintiffs in the case, purchased a landlocked plot of land and retained Global Title to obtain appropriate title insurance for the property. *Id.* at 1. A survey of the property was conducted, which survey indicated that the property was landlocked. *Id.* Despite this, Global Title told the plaintiffs that the property had an easement which serviced the property and accordingly issued a title insurance policy for the property. *Id.*



Loose Lips, Sink...Title Insurance Agencies?

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A few months after settlement, the plaintiffs learned that the easement, which had been included in the deed, did not actually exist. *Id.* at 2. The plaintiffs, through an attorney, negotiated a new easement with a neighboring property owner and thereafter, Global Title prepared a corrected deed which referenced the new easement, but did not provide an amended policy which included the new easement. *Id.*

To complicate matters further, the new easement contained deficiencies, which ultimately caused the plaintiffs to file a lawsuit in a court of equity, where they obtained an appropriate access and utility easement to the property. *Id.*

The Court noted that a case for professional negligence could not be sustained under the foregoing facts, because a fiduciary relationship did not exist between the plaintiffs and the title agent. Nevertheless, the Court suggested that as a general rule, a title agent who undertakes to procure insurance on the property of another, but fails to do so with reasonable diligence or procures a defective policy may be personally liable to his client for any damages resulting therefrom. The Court continued by noting that this is not a professional malpractice claim, but rather a claim for negligent procurement of insurance coverage.

The litigation in the foregoing case is still continuing, but whatever the ultimate outcome of this case, it highlights the consequences of ill-advised representations which may be made at the settlement table or promises of insurability which may arise in the conducting of a closing. In the end, loose lips, may indeed, sink title agencies.



Maryland/Virginia 2019 Title Insurance Seminar

Held May 7, 2019 in Ellicott City, MD Conestoga Title Insurance Co. welcomed over 70 agents and attorneys to an informative seminar and the opportunity to earn five Virginia and Maryland CE credits and hours of CLE in Virginia. Bill Parker of Conestoga pictured at left is leading the first presentation of the day. In addition to other Conestoga staff, attendees were able to hear from three guest speakers.



Mark G. McCreary, CIPP/US of the law firm of Fox Rothschild, LLP, spoke to the group in his capacity as the firm's Chief Privacy Officer and co-chair of the firm's Privacy and Data Security Practice. One of the best reviewed presentations of the day, Mark spoke on "Privacy and Security Training." He is also the author of the *Privacy Desk Reference*, a concise set of guidelines for protecting your business from existing and future privacy threats.

Beiramee Law Group's **Bizhan Beiramee** presented "Maryland, Virginia and DC Foreclosure Overview." This included a description of the foreclosure process in these three jurisdictions as well geographically specific case examples. Bizhan also spoke on Assignments of Deeds, Bankruptcy Issues in Foreclosures and the Discharging of Federal Tax Liens.

A third outside speaker provided the Ethics credit presentation approved in our seminar. Attorney **Walter Weinschenk** brought the group back to basic principles with his presentation "Title Insurance Business Ethics." Walter shared his experiences using examples from his years of experience as underwriting counsel, and also as an owner of his own title agency.



Seminar attendees were able to meet with several Conestoga sponsors at breaks and during the luncheon held at the Turf Valley Resort. Here is Ms. Arley Nevar of Qualia enjoying a short break between sessions with Conestoga Title Insurance Co.'s own Doug Riffin, VP Sales and with Julie Turner, far right, Conestoga Title's Virginia Agency Representative.

Dirty Deeds: House Stealing

Eric Borgia, Esq. Conestoga Title Insurance Co.

The FBI asks, “What do you get when you combine identity theft and mortgage fraud? A totally new kind of crime: house stealing.”

The headlines read, “After allegedly stealing nearly two dozen properties in Philadelphia, three foreign nationals appear to have fled the country with their profits....”

What exactly is going on here? The term “house stealing” is a bit of a misnomer. Homes are not actually vanishing in the dark of night. Rather, fraudsters are employing a variety of schemes to line their pockets by exploiting the value of real property owned by others.

A few variations on the crime are as follows:

The Self Deal: the fraudster selects a house to exploit, creates fake identification in the name of the true owner, deeds the property to himself, records the deed in the public records, then resells the property to an unsuspecting buyer.

The Open House: the fraudster identifies a vacant home (could be a vacation home or a rental property), assumes the true owner’s identity, places the home on the market, and sells the home to an unsuspecting buyer.

Philly Style: the fraudster identifies a property in a “hot” neighborhood titled in the name of a deceased person, and (often with the assistance of a compliant notary) sells the property by forging the dead person’s name on the deed.

Equity Theft: the fraudster identifies a property unencumbered by a mortgage, assumes the identity of the true owner, and then obtains a cash out refinance loan against the property.

Other variations on this scam exist, and new ones are bound to appear in the future. The negative impact is far-reaching. Obviously, direct victims are affected immediately, but when forged deeds and other fraudulent information enter the public records, they cause collateral damage as well. Numerous people and organizations rely on public information every day to conduct business, and these scams undermine the integrity of those public records.

The question is: what can be done to prevent such crimes? Unfortunately, the only current method of deterrence is vigilance. Frequently check the available records for your property through the county tax office and recorder of deeds. If anything changes, or you see filings you do not recognize, investigate immediately. If you receive a mortgage statement in the mail that you do not recognize, whether it is addressed to you or not, investigate immediately. If you uncover evidence of a crime, report it to law enforcement immediately. Spread the word about this ever growing threat. The home you save (or rather, the value of it) may belong to a client, a family member, or even you.

Using Settlement Time to your Advantage

Jon Markel, Agency Representative

As a title agent, you are always on the lookout for new referral partners and new ways to attract more business. However, there are sometimes circumstances that prohibit you from effectively prospecting for new referral sources. Maybe there is another area of law upon which you are more focused. Maybe you do not have the time or the staff you once had to actively pursue real estate agents and loan officers. Whatever the case may be, one simple yet overlooked marketing tool that many title agents and attorneys neglect is asking for referrals *at the settlement table*.

There are always loan officers and real estate agents (such as the listing agent) who are involved in the settlement but who are not responsible for directing the current transaction to the title agent. They are prime targets to pursue because they are sitting right in front of you at settlement. Even if you already know the person (which makes it that much easier to get a referral), you should still make a strong effort to connect with these people and simply ask for a referral.

Of course, it all starts by providing a quality settlement experience for all parties involved in the transaction. By conducting a quality settlement, the various parties involved in the transaction will see firsthand the superior service you offer and will be more likely to send business your way.



Be ready to highlight one strong aspect of your business that addresses their needs. Exchange business cards; this provides the opportunity to follow up with a simple phone call or email. Then be ready to ask questions about their work and link solutions for them with what your agency or firm can provide. Demonstrate how your competitive advantages can address their needs.

There is no better opportunity to reach a prospect than the one that is right in front of you. Take a few minutes and find some common ground with these individuals. After establishing that connection and listening to their needs, make sure you follow up with the prospect and continue to explore how you might work together.

ALTA Rapid Response Plan for Wire Fraud Incidents

Step 1: Alert company management and your internal wire fraud response team.

Contact every member of your team according to a pre-arranged plan (group email; group text):

Step 2: Report Fraudulent Wire Transfers to the Sending and Receiving Banks.

- Contact the sending bank's fraud department and request that a recall of the wire be sent to the receiving bank because of fraud. Provide the details for the wire.
- Ask the sending bank to initiate the [FBI's Financial Fraud Kill Chain](#) if the amount of the wire transfer is \$50,000 or above; the wire transfer is international; a [SWIFT](#) recall notice has been initiated; and the wire transfer has occurred within the last 72 hours.
- Also call the receiving bank's fraud department to notify them that you have requested a recall of the wire because of fraud. Provide the details for the wire and request that the account be frozen.
- If a client or consumer was a victim and your bank/accounts were not directly involved, your client or customer will need to contact the bank themselves but you may have helpful information to share, too. Coordinate quickly!

Step 3: Report Fraudulent Wire Transfers and Attempts to Law Enforcement.

Local Police/Sheriff: <https://www.policeone.com/law-enforcement-directory/>

FBI Field Office: <https://www.fbi.gov/contact-us/field-offices>

Secret Service: <https://www.secretservice.gov/contact/field-offices/>

Step 4: Call the sending bank again to confirm that the recall request has been processed.

Step 5: Inform the parties to the transaction (buyer, seller, real estate agents, broker, attorneys, underwriter, notary, etc.) using known, trusted, phone numbers for verbal verification.

Step 6: Review your Incident Response Plan to determine if you need to update passwords, secure hardware, and review email logs to determine how and when email accounts were accessed.

Step 7: Consider contacting your insurance carrier(s) and outside legal counsel.

Step 8: If funds were wired out of the U.S., hire an attorney in that country to help recover funds.

Step 9: Document your response using a Response Worksheet such as - [ALTA Rapid Response Plan for Wire Fraud Incidents](#)

Step 10: File a complaint with the FBI's Internet Crime Complaint Center (IC3).

Visit www.ic3.gov and provide the following information:

- Victim's name, address, telephone, and email
- Financial transaction information (e.g., account information, transaction date and amount, who received the money)
- Subject's name, address, telephone, email, website, and IP address
- Specific details on how you were victimized
- For Business Email Compromise (BEC) events, copy email header(s) – [Learn how](#)
- Any other relevant information that is necessary to support the claimant

Excerpts reprinted with permission from ALTA for Conestoga Title Insurance Co. in WagonLode 2018 Third Quarter.

Welcome our new Title Department Officer



Ethan Trowbridge recently joined the staff at Conestoga Title Insurance Co. as a Title Department Officer processing title work for the Approved Attorneys with Conestoga. Ethan, who has a degree in Paralegal Studies, comes to us from the Lancaster law firm of Clymer Bodene, PC. As a Paralegal in its real estate department, he handled settlements from start to finish. Working with buyers, sellers and lending institutions, Ethan supported the attorneys in the title work at the firm. He is also a PA Notary Public. When not at the office, Ethan relaxes with his favorite video games and he and his wife enjoy time with family and friends in the Lancaster area.

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