

Conestoga Title Insurance Co.

WAGONLODE

A Land Title Update

2020 Third Quarter

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As summer comes to an end, the nights are starting to get cooler, and autumn is just around the corner. I am reminded of a meme that someone recently sent to me on social media, that said, "Someone asked me if I had plans for the fall and it took me a moment to realize that they meant 'autumn,' and not the fall of civilization." I chuckled, but then almost immediately thought to myself, the person who wrote that certainly does not work in the title insurance industry. In spite of COVID-19, and perhaps in some ways because of it, the title insurance industry has been experiencing tremendous transaction volume throughout the summer. This explosion in activity is positioned to continue into the months ahead, and we at Conestoga Title Insurance Co. look forward to assisting our agents and approved attorneys every step of the way. As the old proverb says, "make hay when the sun shines!"

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A MESSAGE FROM THE PRESIDENT

Reflecting upon the past several months, title agents and approved attorneys have been on the forefront of helping the American dream come true. Their dedication has helped customers purchase new homes and refinance mortgages while taking advantage of record low mortgage interest rates. However, to make that dream come true, numerous issues have made the process more challenging than ever before. Besides overcoming all of the issues with court house closures and searching obstacles, personal interactions needed to be reevaluated. Let's face it, while technology is making it possible to close transactions remotely in some jurisdictions, the vast majority of closings continue to occur in-person. New procedures have been developed by title professionals to ensure that closings are performed in a safe manner. Besides processing each file to prepare for settlement, closers routinely disinfect surfaces, make hand sanitizers available, provide new pens for each customer, and plan on how to navigate social distancing challenges. All of these new procedures have been established during a time when demand for our services has surged.

At Conestoga Title, we have seen a spike in demand for underwriting and operational support. The need for our assistance is a reflection of the volume of transactions being handled by our talented network.

Looking forward, the title industry will continue to monitor the pandemic and modify operational plans as required. One thing is certain; title professionals will continue to assist consumers in accomplishing their goals.

As summer comes to a close, all of us look forward to some sense of normalcy returning to our daily lives. However, we all realize a return to "normal" will take some time. Just as the lyrics go in Steve Miller Band's song, "Jet Airliner", we've "got to keep on keepin' on." The American public is relying on us to help them to reach their dreams and we will be here to help them attain their goals!

John M. Nikolaus, CLTP

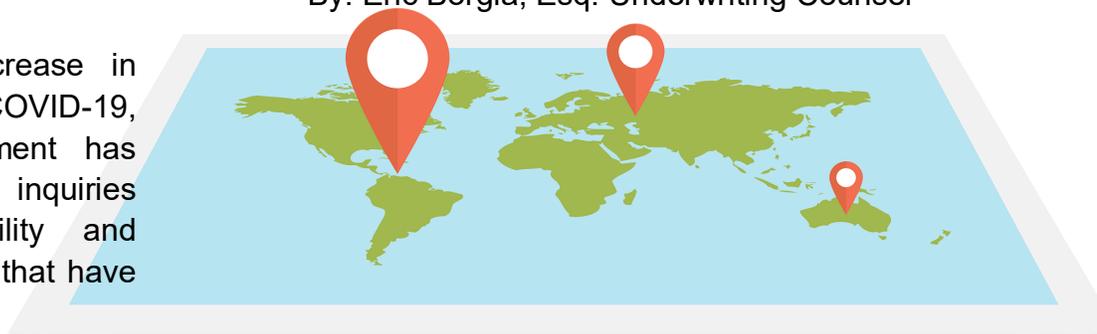
President, Conestoga Title Insurance Co.



Getting Documents Notarized Overseas

By: Eric Borgia, Esq. Underwriting Counsel

As a result of the decrease in overseas travel due to COVID-19, the Underwriting Department has seen an increase in inquiries regarding the acceptability and recordability of documents that have been notarized overseas.



Essentially, there are two options.

The first option is to have the document notarized abroad at a U.S. Embassy or Consulate's Office. These Offices can perform notary functions similar to those performed by notaries located in the United States. These Offices can perform notary services overseas for both U.S. citizens and non-U.S. citizens, as long as the document is being used in the U.S.

The second option is to have the document notarized abroad by a local foreign notary and then have the document "authenticated" by a U.S. Embassy or Consulate's Office. An authentication is the placing of the consular seal over the seal of a foreign authority whose seal and signature is on file with the American Embassy or Consulate. A consular authentication in no way attests to the authenticity of the contents of a document but merely to the seal and signature of the issuing authority. In countries that are party with the U.S. to the Hague Convention, authentication is a simplified process. An "Apostille," or authentication certification provided for under the Hague Apostille Convention, is attached to the notarized document.

Similar to domestic notaries, notarizing officers at U.S. Embassies and Consulates must verify the identity and mental competence of the signer, but in addition to these tasks, must be satisfied that the act does not come within the purview of the regulatory bases for refusal to provide the notarial service set forth under federal law. This requires that the notarizing officer be generally familiar with the laws of the foreign country, U.S. law, and treaty obligations, or consult the Department of State when a matter is in doubt. In addition to the usual functions of notaries related to oaths, affidavits and acknowledgments, most notarizing officers may authenticate documents, a governmental act which is not performed by notaries in the United States. Note that not all notarizing officers are authorized to authenticate documents.

There is a \$50.00 fee for each notarization and each authentication performed by a U.S. Embassy or Consulate's Office.

The bottom line is, in the event you are involved in a transaction that includes a party living or executing documents overseas, you should act early to provide the party with this information and have them contact the nearest U.S. Embassy or Consulate's Office as soon as possible. It may take time to obtain an appointment, so the earlier the process is started, the better for all involved.

The information provided herein has been obtained from the U.S. Department of State, Bureau of Consular Affairs. See travel.state.gov for more information.

Who Is the Insured?

Rebecca Breault, Paralegal, Underwriting Dept. Administrator



As the title insurance industry transitions to a new normal, agents and underwriters are likely to face changes in the claims landscape. In many states, temporary measures have been implemented to curb foreclosures and evictions, but as those measures come to an end, foreclosures are likely to rise. As we saw during the previous foreclosure crisis, when foreclosure numbers rise, so do claim numbers. Of course, it is difficult to predict the future claims landscape, but now is a good time to understand claims better and specifically to understand **who** is the “Insured” under the title insurance Policy.

As with any type of insurance, when the claims department at Conestoga receives a claim one of the first issues to be determined is whether or not the party making the claim is an Insured as defined by the title insurance Policy. If the claim is being made on behalf of an Insured then sufficient documentation needs to be obtained to determine if the party making the claim has authority to do so. That documentation is different for an owner than a lender or lender representative.

The title insurance Policy provides coverage to the Insured as stated in Schedule A. The definition of Insured as well as Continuation of Coverage definitions can be found in the Policy jacket under Conditions and Stipulations Definition of Terms. Conestoga receives claims under both the 1992 and 2006 versions of the ALTA Policies; therefore we will address the differences in the definitions between the 1992 and 2006 Policies.

Beware an Owner Transfer Can Terminate Coverage

The definition of Insured was expanded in the 2006 Owner Policy to allow for coverage to continue under certain types of transfers of the property, but the original Insured must still retain a *wholly-owned* interest in the property. That means that a transfer to an LLC or other entity that has members or shareholders that are different than or in addition to the Insured will terminate the policy. The 2006 Policy also allows for coverage to continue when the property is transferred to a trust for estate planning purposes whereas the 1992 Policy does not. The Continuation of Coverage definition goes hand in hand with the definition of the Insured. In the 1992 and 2006 Owner Policies the language is very similar. The difference is that in the 2006 Policy, the language regarding a warranty transfer is easier to understand. This allows for limited coverage to continue when the Insured sells the property based on the type of warranty they give to the buyer in the deed.

If an owner transfers the property and then files a claim, the type of transfer must meet the definition requirements under the Policy for both the Insured and Continuation of Coverage. Conestoga recently denied a claim because the owner transferred the property to a trust for estate planning purposes. This particular owner made a claim under a 1992 Owner policy. Under the 1992 Policy that type of transfer terminates the Policy, but under the 2006 Policy it would not.

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Lender Insured Can Be Complicated

The definition of the Insured in the Lender Policy is quite different than an Owner Policy in light of the fact that lenders frequently buy and sell loans. The definition in the 2006 Policy was expanded to include successors in ownership, trustees and other fiduciaries including parties like MERS and other servicers. This makes assignments of mortgages and servicing agreements very important. In some cases this requires that the lender provide proof it purchased the loan from the Insured. If a party files a claim on behalf of a servicing agent or lender via a power of attorney both the servicing agreement and the power of attorney must give them authority to file title insurance claims, not just perform loan duties.

Since lenders sell and buy loans and enter into agreements with servicing agents, and foreclosure counsel files claims on behalf of lenders and servicing agents, the Continuation of Coverage definition plays an important part in determining if the party presenting the claim or claiming to represent the Insured is in fact the Insured and/or has authority on the Insured's behalf to file a title insurance claim. Both the 1992 and 2006 Lender Policies provide the same coverage, but with some new language added to the 2006 Policy for ease of understanding. A Lender Policy continues in effect upon proper foreclosure of the insured mortgage and the current Insured's acquisition of the property at foreclosure sale or upon the Insured's acquisition of title by deed in lieu of foreclosure. As a result Conestoga does not issue letters of indemnification to lenders who are accepting a deed in lieu or foreclosing as the title insurance Policy provides indemnification. Once the Insured has a bona fide purchaser for value at an REO sale indemnification may be given to the new underwriter if there is an issue that can be resolved with an indemnification letter.

The majority of title insurance claims come from lenders or their representatives, therefore we require privity which by definition means a relationship between the parties recognized by law. The privity provided must also meet the definition of Insured as defined by the Policy. As the insurance company we require a proper chain of assignments, a power of attorney and/or servicing agreement that provides the powers necessary to file title insurance claims. We may, for example, receive a claim from "XYZ Servicing on behalf of ABC, as attorney-in-fact for MNO as trustee for the et. al. trust series 20-20." As a result we would require a chain of assignments from the original lender to MNO, a power of attorney between MNO and ABC and a servicing agreement between XYZ and ABC. Depending on how many times the loan was sold or serviced, this can get quite complicated.

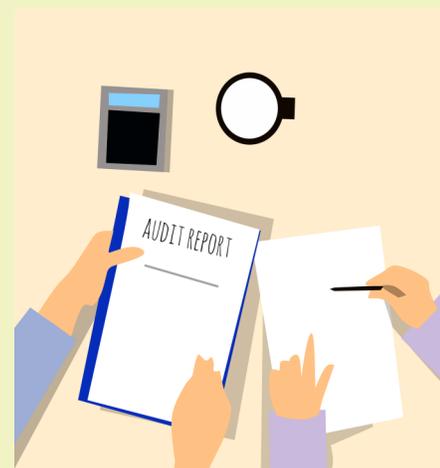
Claims and the Insured

As part of any investigation into a new claim filed by any party, Conestoga must first conduct due diligence in determining if the party filing the claim has standing under the Policy as stated above and if so, if that coverage is still in effect. After we have determined that, we move forward with determining if the issue presented is a covered matter and if so, what we can do to resolve it. **If you are contacted by a property owner regarding transfer of title to their trust, or to an entity (such as an LLC) in which they have an ownership interest, be aware that the transfer could inadvertently terminate coverage under the Policy.**

Remote Audits: Tips to make the process go smoothly

Don Delgado, VP Agency Administration

Since onsite agency audits had to be suspended due to State restrictions and safety concerns due to the pandemic, Doug Rauchut, Agency Audit Manager and Joel Angelo, Agency Auditor had to quickly adapt to create remote agency audit procedures. They have done a tremendous job keeping the agency audit program moving and we appreciate the cooperation of the agents who have undergone remotes audits. The objective of remote auditing is to perform audits that are just as comprehensive as onsite audits. The challenge is how to accomplish this in an efficient manner for the agent and the auditor. It requires planning and preparedness by both. Future agency audits may be onsite, remote or a hybrid. Following are tips on how to plan and prepare for a remote audit. It is important that you follow these tips to make the remote audit process go smoothly.



- Make sure that you are reconciling your accounts within ten days of the bank statement ending dates.
- Upon completion of the reconciliation reports each month, scan or store them electronically with complete copies of the corresponding bank statements. You will need to upload these to a secure ShareFile portal.
- The pandemic has accelerated the use of technology and the use electronic documents. You likely have some hardcopy documents with wet signatures and some electronic documents for each file. Be sure to scan all hardcopy documents within each file and store the scanned copies with any electronic documents from the file. Ideally, you want to be able to upload a single .pdf file for each file selected by the auditor.
- When scanning and storing documents electronically, make sure the chronological order of the documents is the same for each file. Documents should not be in a haphazard or random order.
- Most importantly, make sure that you upload all requested items by the due dates provided in the confirmation email. In order for remote audits to be successful, you must strictly adhere to due dates.

Qualia Users

If you are a Qualia user and you are using the software to its full capacity (i.e. - completing reconciliations within Qualia every month in a timely fashion and storing all documents electronically), your audit can be conducted directly within Qualia with very little effort on your part. You will receive a notification that an audit is being initiated and that certain bank statements and reconciliations need to be shared. You will need to navigate to your "Compliance" tab to view the request and accept the audit. As long as you have been completing your reconciliations each and every month in a timely fashion like you should be, the system will automatically import them into the audit system and all you need to do is click on a button to submit the accounting package. The auditor will review the accounting and documents from certain orders. You will then receive a request for an Order Audit to upload documents that could not be located. After you submit the order documents, the auditor will finalize the audit and issue a report. We encourage Qualia users to make sure you are using the software to its fullest capacity. For those who are, audits will be a good experience with little disruption

With a little planning and preparation, remote audits can be efficient and painless. We appreciate your efforts to comply with these tips. Please contact [Doug Rauchut](#) if you have any questions about an upcoming audit.

Wire Fraud Prevention for your Office and your Customers

Rick J. Hecker, Esq. Underwriting Counsel

Many of you may recall that on August 13, 2020, Conestoga issued a Memorandum adopting ALTA's recent amendments to Pillar 2 of the ALTA Best Practices which specifically addresses wire fraud prevention. In particular, that Memorandum required our agents and approved attorneys to adopt written wire transfer procedures, if they do not already have them in place. (A full copy of that Memorandum can be obtained by emailing uwrequests@conestogatile.com .) The Memorandum also highlighted Conestoga's commitment to help fight the ongoing threat of wire fraud in our industry. In light of that commitment and in response to feedback from our agents and approved attorneys, it seems prudent to take a moment to compile a list of resources that may help individuals prevent and address wire fraud.

Educate your Clients with short easy-to-follow messages

In compiling this list, the first website that deserves mention is <https://stopwirefraud.org/> . This website was put together by The Coalition to Stop Real Estate Wire Fraud and includes steps to help consumers fight wire fraud before and after it happens. It also has some educational videos that help raise awareness concerning various fraud schemes in the industry. This website is a good landing site for various kinds of information geared toward the consumer.

Speaking of resources geared toward consumers, ALTA has produced an excellent two minute video available on YouTube. [Protect Your Money from Wire Fraud Schemes When Buying a Home](#) can be used to educate your customers on this issue. Share the link with them early in the closing process.



Remind your Office Staff to continually safeguard against wire fraud

A helpful checklist for employees when sending an out-bound wire is the [ALTA Outgoing Wire Preparation Checklist](#) . When Conestoga is called on to handle the escrow funds, I personally use this checklist for transactions. It is an excellent tool to document the steps to be taken prior to and after sending a wire.

In the vein of general guidance, it is always helpful to review ALTA's Best Practices (particularly Pillar 2). If you could use a refresher, go to this website: <https://www.alta.org/best-practices/> .

Nevertheless, education and preventative measures can only go so far. If you have not looked at [ALTA's Rapid Response Plan for Wire Fraud Incidents](#) , then you should check it out. This response plan is an incredible step-by-step guide on what actions to take if you or your agency become the victim of a wire fraud scheme. I highly recommend having a printed copy of this plan in an accessible location. If it is ever needed, minutes count and knowing how to respond is key.

Finally, as a shameless plug, read the WagonLode Articles. Conestoga has been publishing resources on common wire fraud schemes, best practices, and articles with tips to prevent wire fraud for several years now. If you would like to read some past issues, they are on our website at [Conestoga Title WagonLode](#) .

The Evolving Exposures of Cyber Crime & How to Protect Your Business

2020 has been a trying year for us all so far. We've seen an enormous transition in the way we conduct business and communicate with fellow employees and clients. The shift to working remotely addressed the need for social distancing, but also created more opportunity for cyber criminals to strike.

Most home networks are not nearly as secure as those in established, dedicated workspaces. This vulnerability presents several cyber-crime exposures:

- 1) Phishing
- 2) Social Engineering
- 3) Funds Transfer Fraud
- 4) Extortion

Each and every business is susceptible to cyber-crime - title and escrow agencies even more so than most. The nature of handling and disbursing funds innately presents several theft opportunities throughout the process in a variety of ways.

Phishing

Many homebuyers are unfamiliar with the funds transfer process and await instructions from the professionals involved in the transaction. Hackers are able to intercept these communications and provide homebuyers with fraudulent wire instructions, unbeknownst to the realtors or the title agents. Many fraudulent wire instructions are sent well before closing, which gives thieves the opportunity to move the funds internationally before the scheme is discovered, essentially eliminating the opportunity to freeze the wire or recover the funds.

Social Engineering

Another point of vulnerability exists after the closing, when you may receive a call from someone purporting to be the seller or the seller's representative. They may indicate that they would prefer a wire for the proceeds, as opposed to a check, and then provide wire instructions for their account. Of course, these instructions are fraudulent and theft has occurred. Again, depending on the amount of time from the wire origination to the discovery of the scam, funds may or may not be recovered. Many agents are already familiar with this scam, but it's still happening so it's important to stay vigilant.

Funds Transfer Fraud

This type of cyber-crime can occur at any time, to any business, in several ways. One common funds transfer fraud scheme is to request a wire transfer from the bank by purporting to be an authorized party. If the bank doesn't properly vet them, they (the bank) are often held liable for the stolen funds. In another example, a hacker is able to steal login information for the bank account and associated e-mail address. They create the transfer within the online banking system and confirm the transfer via the authorized account holder's e-mail account. Due to the confirmation of the transfer in this case, the bank may not be held liable for the transferred funds.

Extortion

In this form of cyber-crime, a hacker is able to gain access to the system, infect it with a virus (for example, Ransomware), and prevent access by authorized users. They will then demand payment in order to regain access to the system. We have seen an increase in extortion claims over the past few years, and expect the trend to remain the same in the near future.

Protecting Your Business

Unfortunately, no amount of cyber security protocols or checkpoints will guarantee 100% protection. Just as we buy E&O, General Liability and Workers Compensation Insurance, a business insurance portfolio should always include Cyber & Network Security Insurance.

Cyber insurance has the potential to include coverage for data breaches, network security liability, phishing, social engineering, funds transfer fraud, extortion and more. However, many low cost, readily available cyber policies are only meant to cover basic exposures such as a data breach and no two policies are alike.

Cyber-crime represents the most frequent and most severe claims for this line of coverage - causing many carriers to limit or exclude coverage for these exposures. Talk to your insurance broker about these specific exposures and how they can be addressed through a dedicated cyber insurance policy.



610-478-0400

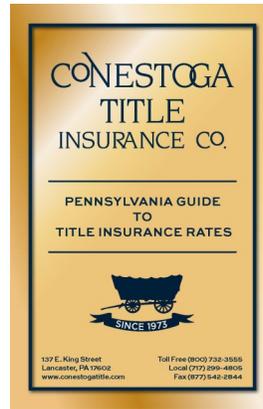
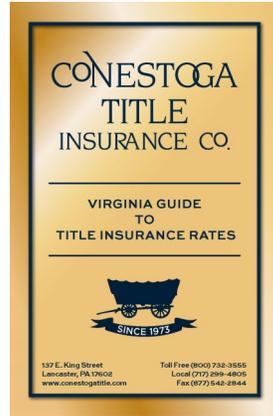
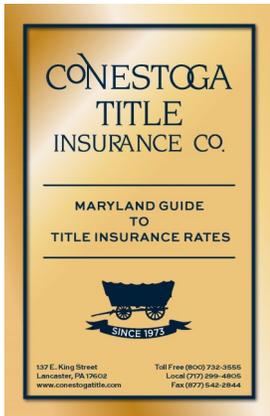
info@titleliability.com

www.titleliability.com

Custom Marketing Materials

Current Rate Guides

PDF or printed-available to all of our agents and approved attorneys for your customers or staff. Contact the Marketing Department for samples. csheerin@conestogatitle.com



AMERICAN LAND TITLE ASSOCIATION & 
INSERT TITLE COMPANY NAME HERE

PROTECT YOUR MONEY WHEN BUYING A HOME FROM WIRE FRAUD SCHEMES

Every day, hackers try to steal your money by emailing fake wire instructions. Criminals will use a similar email address and steal a logo and other info to make it look like the email came from your real estate agent or title company. **You can protect yourself and your money by following these steps:**

BE VIGILANT

- **Call, don't email:** Confirm your wiring instructions by phone using a known number before transferring funds. Don't use phone numbers or links from an email.
- **Be suspicious:** It's uncommon for title companies to change wiring instructions and payment info by email.

PROTECT YOUR MONEY

- **Confirm everything:** Ask your bank to confirm the name on the account before sending a wire.
- **Verify immediately:** Within four to eight hours, call the title company or real estate agent to confirm they received your money.

WHAT TO DO IF YOU'VE BEEN TARGETED

- **Immediately** call your bank and ask them to issue a recall notice for your wire
- **Report** the crime to www.FBI.gov
- **Call** your regional FBI office and police
- **Detecting** that you sent money to the wrong account within 24 hours is the best chance of recovering your money.

For more information about the home closing process, please visit: homeclosing101.org

This is for informational purposes only and should not be considered legal advice.



American Land Title Association
Protect your property rights

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