

# Title Insurance Loss Reserving

## *Historical Results and Emerging Trends*

*Casualty Loss Reserve Seminar*  
*Session LOB-12*

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# 1998 Countrywide Market Share

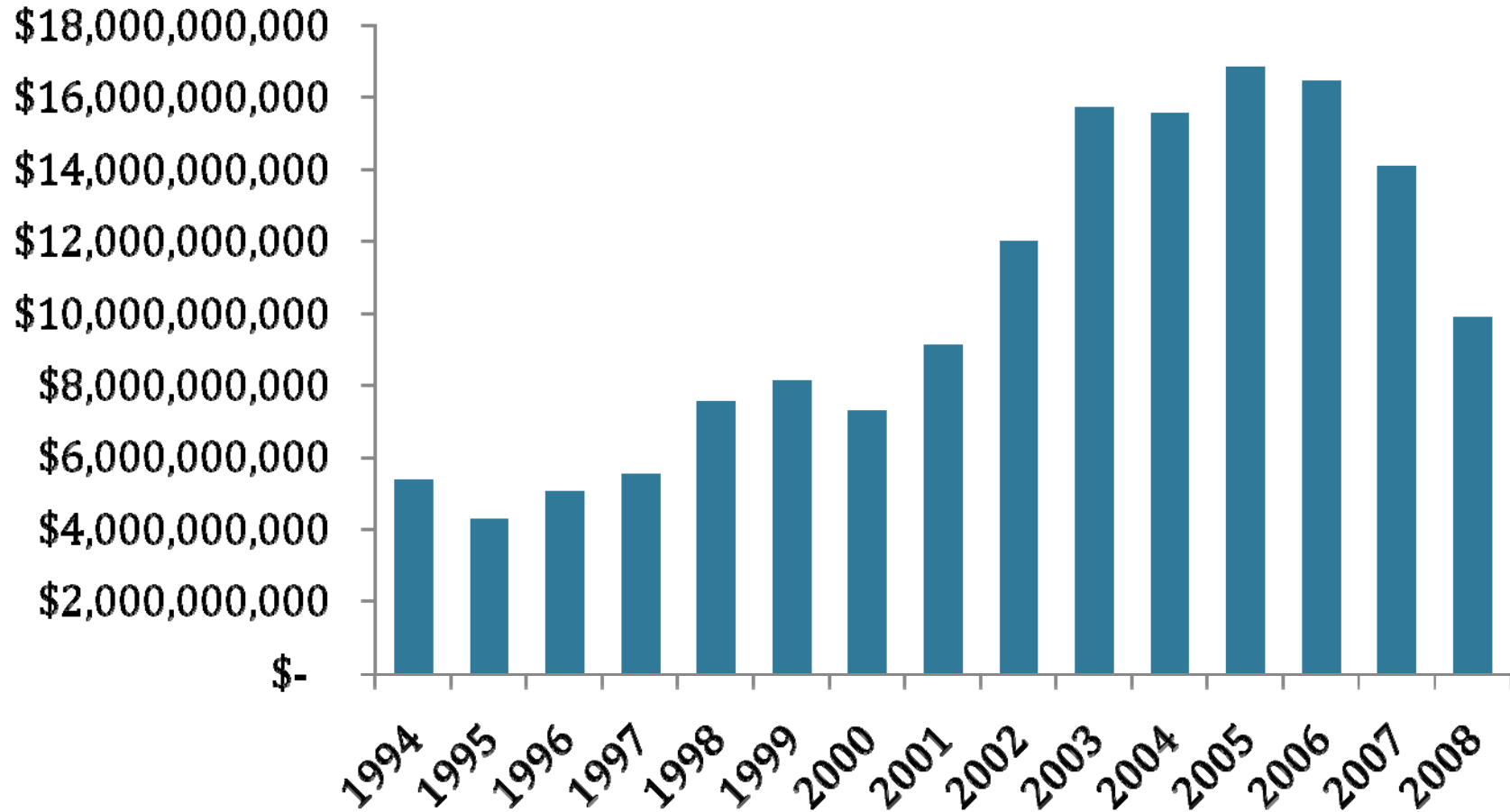
	Company	DPW	Share
1	Chicago Title Insurance Company	\$ 1,068,015,223	14.2 %
2	First American Title Insurance Company	\$ 912,915,200	12.1 %
3	Commonwealth Land Title Insurance Company	\$ 720,223,826	9.6 %
4	Stewart Title Guaranty Company	\$ 694,476,706	9.2 %
5	Lawyers Title Insurance Corporation	\$ 648,268,696	8.6 %
6	Fidelity National Title Insurance Company	\$ 486,862,981	6.5 %
7	Old Republic National Title Insurance Company	\$ 457,429,543	6.1 %
8	Fidelity National Title Insurance Company New York	\$ 303,338,649	4.0 %
9	Ticor Title Insurance Company	\$ 216,772,957	2.9 %
10	Transnation Title Insurance Company	\$ 185,993,942	2.5 %
	All Other Underwriters	\$ 1,838,041,916	24.3 %
	<b>Countrywide Total</b>	<b>\$ 7,532,339,639</b>	

# 2008 Countrywide Market Share

	Company	DPW	Share
1	First American Title Insurance Company	\$ 2,317,808,547	23.5%
2	Chicago Title Insurance Company	\$ 1,284,376,804	13.0%
3	Stewart Title Guaranty Company	\$ 1,100,221,467	11.1%
4	Lawyers Title Insurance Corporation	\$ 1,073,099,587	10.9%
5	Fidelity National Title Insurance Company	\$ 872,595,734	8.8%
6	Commonwealth Land Title Insurance Company	\$ 804,960,935	8.1%
7	Old Republic National Title Insurance Company	\$ 542,465,020	5.5%
8	Ticor Title Insurance Company	\$ 252,823,435	2.6%
9	Attorneys' Title Insurance Fund, Inc. (FL)	\$ 200,299,784	2.0%
10	First American Title Insurance Company of New York	\$ 149,931,574	1.5%
	All Other Underwriters	\$ 1,285,300,880	13.0%
	<b>Countrywide Total</b>	<b>\$ 9,883,883,767</b>	

# Direct Premiums Written

## Countrywide



# The Title Insurance Process

- ▶ Real estate transaction goes to contract
- ▶ Deposit placed into escrow account
- ▶ Title search of public records
- ▶ Documents examined to understand impact on title
- ▶ Title commitment (evidence) prepared & compared
- ▶ Inspections performed; surveys examined
- ▶ Any problems are corrected
- ▶ HUD-1 form prepared
- ▶ Closing - prior liens and mortgages paid off; documents executed; title changes hands
- ▶ Documents recorded at Clerk's Office, etc.

# Types of Title Insurance Policies

## a) Purchase Mortgages

- i. Loan Policy – based on loan amount
- ii. Owner Policy – based on purchase amount
- iii. Simultaneous Issue Policy

## b) Refinance Mortgages

- i. Lender (actually, secondary market) requires new loan policy
- ii. Original owners policy still in force

## c) Other – aircraft, vessels, automobiles

# Issues Unique to Title Insurance

- a) Title insurance is mono-line
- b) Goal = loss prevention
- c) Low loss ratios (< 10%)
- d) High expense ratios (90%+)
  - i. Maintain title plants
  - ii. Search and examination
  - iii. Cost to resolve problems

## Unique Issues (continued)

- e) Loss is “incurred” prior to effective date
- f) No stated expiration date
  - i. Expires when home is sold or when a mortgage expires or is refinanced
  - ii. How to earn premium?
    - i. GAAP – earned immediately when written
    - ii. Statutory – pattern specified by statute
  - iii. Title insurers do not know whether policies are still in-force!
- g) Premium = one time; non-refundable
- h) Home buyer pays for both Owners and Lenders policies



# Title Insurance Coverage - Covered Risks

- ▶ Mistakes in recording public documents
- ▶ Incomplete public records
- ▶ Forgery and fraud
- ▶ Errors in title search, abstract, examination or opinion
- ▶ Missed prior mortgages and liens
- ▶ Improper closing/escrow procedures
- ▶ Detailed examples on the following slides...

## Typical Language in a P&C Insurance Policy States:

In Consideration of the Provisions and Stipulations herein, the Property and Casualty Insurance Company, for the term of this date at 12:01 a.m. to one year later at 12:01 a.m. at the location of the property involved, does insure...

## Typical Language in a Title Insurance Policy States:

Subject to the exclusions from coverage, the exceptions from coverage contained in Schedule B and the conditions and stipulations, the Title insurance company, insurer, as of the *Date of Policy* shown in Schedule A, against loss or damage...

# What We've Got Here is a Failure to Communicate

While Title insurance coverage looks backward from a certain date, P&C insurance coverage looks forward, utilizing a finite future period, to evaluate liability. The timeframe of coverage and cost containment activities are a fundamental difference between Title and P&C coverages.

This distinction for Title underwriters has not been properly reflected in financial reporting requirements.

# Unallocated Loss Adjustment Expense

- ▶ An expense pertaining to handling claims that cannot be specifically attributable to a specific claim.
- ▶ Entire preliminary investigation?

# Allocated Loss Adjustment Expense

- ▶ An expense directly allocated to a particular claim.
- ▶ Addressing specific defects and matters in Schedule B?

# Property & Casualty Loss and LAE Reserves

- ▶ Case reserve
- ▶ Development on known claims
- ▶ Reopened claims
- ▶ Claims in transit
- ▶ Claims incurred but not reported

Title insurance has same components but the only claims reported as 'Loss' are those identified subsequent to policy issuance. Financial reporting needs to capture data on incidents identified prior to date of policy.

# Crime Stories

## Breach of Trust

*Money to pay off mortgages was missing.*

## Masquerade

*When he tried to take possession, the buyer got a surprise.*

## Power of Attorney

*Title “stolen” through fake authority.*



# Breach of Trust

## *Alexandria, VA*

Thomas M. Dameron was a successful attorney with a hand in several companies offering title and settlement services in Northern Virginia. One of these companies, Mid-Atlantic Title & Escrow Services, was an authorized agent of First American.

Dameron got interested in developing a shopping center and waste treatment plant at Inwood, West Virginia. Rather than borrowing money to finance these projects, he began diverting funds provided to pay off mortgages in connection with property sales and refinancings handled by his Virginia-based companies.

To conceal these diversions Dameron continued monthly payments on mortgages which should have been paid off, and he routinely issued title policies to new owners and lenders as if the old mortgages were released.

Obviously, this sort of thing can get out of hand. Every month Dameron had to take more and more money to keep things quiet.

But that wasn't what stopped him.



# Breach of Trust

## *Continued*

Things started to unravel around January when lenders mailed IRS 1099 forms to Dameron's clients, showing their mortgage interest payments for the past year. Several clients were surprised at the numbers on their 1099's. They investigated and wrote letters to the State Bar. Dameron was caught.

He was arrested and pleaded guilty to federal charges of bank years. His seven-month spree saw misappropriations totaling about \$4 million.

With Dameron in the pokey, mortgage payments stopped and lenders began to foreclose. In all, 24 homeowners made claims under First American policies or commitments, and the Company paid a total of \$2,564,304 to clear up their titles. The Company also paid accounting and legal expenses of \$491,296.



# Breach of Trust

## *Moral*

First American offers title insurance through thousands of independent company and attorney agents throughout the United States. The Company's goal is to affiliate only with the most competent and ethical agents in the business. And, First American has a large staff of agency representatives trained to do field audits and spot problems and help agents avoid trouble.

But occasionally an agent can go wrong. When it happens, the homeowner's best protection is an owner's policy of title insurance.

Another caution: When things fell apart, several of Dameron's clients were left holding commitments that did not identify the title insurance underwriter whose policy was proposed to be issued. None of Dameron's underwriters accepted responsibility for these "generic" commitments. Only commitments identifying the underwriter were honored.

# Masquerade

## *Phoenix, AZ*

When First American handled the sale of this property, insuring a new owner and lender, there were clues that something was wrong.

First, the sale was for a bargain price – and to be “confidential” so not to upset the tenants in six rentals on the property.

Second, in checking public records the examiner encountered an eleven year-old probate opened for a decedent whose name was identical to the name of our seller, Anna “X.” Even though the name was uncommon, the examiner disregarded the probate – and didn’t bother to review the courthouse file – assuming it a “coincidence.”

Third, when our seller appeared to sign the deed she had no identification in the name of Anna X. Instead, her driver’s license bore the name “Patricia Anna McGinnis.” She explained that since acquiring the property seventeen years earlier she went through a divorce and changed her name. The escrow officer believed her, and notarized the deed signed by Patricia as “Anna X.”



# Masquerade

## *Continued*

When the insured owner tried to take possession of the property, he was turned away by the angry son of Anna X, who claimed to be the true owner under his mother's Will, still in probate.

Then the escrow officer mailed her a check for sale proceeds of \$90,448, payable to Dean Witter, "Credit of: Patricia Anna McGinnis."

It turned out the real Anna X had died twelve years earlier, leaving the property to her son. However, Anna must have been concerned about the son's management of his finances, for she directed by her Will that the property be held in trust, for his benefit, until he reached the age of 45, at which time it would be transferred to his name. This is called a "Spendthrift Trust." The son was now 44.

So, the "seller" was an impostor. First American paid the loan policy amount of \$150,000, which was slightly greater than the purchase price, and hired a private investigator to find the impostor.

The investigator concluded that the impostor was the son's ex-wife, whom he had divorced around the time his mother died. Her trail led to Port Isabel, Texas, where she was last seen driving a champagne-colored Cadillac.



# Masquerade

## *Moral*

Obviously, anyone knowing of all these clues would have checked the probate file, and prevented the forgery. But the escrow officer didn't talk to the examiner about the identification issue, and the examiner didn't talk to the escrow officer about the probate – so no one put the pieces together.



# Power of Attorney

## *McLean, VA*

A power of attorney is a legal document by which a person (“the grantor”) authorizes another (the “attorney-in-fact”) to make decisions or contract for the grantor.

This home is a suburb of Washington, D.C. was owned by a mother and daughter who were Korean citizens living in Japan. The home was occupied by Sung-Joon (also known as “Alex”), a son and brother of the owners.

When Alex’s business investments soured he arranged, through a mortgage broker, to borrow \$40,000 secured by a third deed of trust against the home.

To enable himself to sign loan doc’s without his mother or sister’s knowledge, Alex forged powers of attorney containing their falsified signatures making him their attorney-in-fact. He next signed a deed from his mother and sister into his mother, sister and himself (relying on the forged powers of attorney) – and then signed the \$40,000 deed of trust on behalf of his mother and sister (again relying on the forged powers of attorney) as well as himself.

All of this paperwork must have looked pretty impressive, but in truth it wasn’t worth the price of postage to mail it across the street.



# Power of Attorney

## *Continued*

The \$40,000 deed of trust was insured by an agent of First American. Apparently the agent was satisfied with the explanation that powers of attorney were used because Alex's co-owners were in Japan.

When the loan fell delinquent, the lender got a letter from an attorney for the mother and sister claiming the insured deed of trust was a fraud.

First American hired lawyers to investigate – and the forgeries were confirmed. The Company paid its insured lender \$40,000, and incurred legal expenses topping \$17,000.

Meanwhile, Alex was arrested and he named an accomplice. The two of them faced criminal charges, with Alex looking at deportation in the bargain.

First American was not the biggest loser here. It turned out there was a second deed of trust, for \$239,000, made using the same scheme. A different lender, perhaps insured by some other title company, faced that loss.





# Power of Attorney

## *Moral*

Lots of lessons here:

First, title examiners are cautioned against relying too heavily on power of attorney where the attorney-in-fact is benefitted by use of the power. It's a built-in conflict of interest – enough to cause the examiner to give the transaction careful scrutiny.

Second, an examiner should always want to know why a power of attorney is being used. Why is the grantor unavailable? If the grantor is in another state or a foreign country, it may be better to have documents signed there and notarized by an out-of-state notary or at a U.S. Embassy.

Third, if the reason given for the power of attorney is that the grantor is sick or incapacitated, the examiner should look to see whether the power of attorney is of the “durable” type – that is, whether it authorizes the attorney-in-fact to act while the grantor is incapacitated. And, the examiner should also be satisfied the grantor was mentally competent at the time the power was signed.

Finally, if the grantor is deceased, a power of attorney shouldn't be relied on. Any real property in a grantor's estate after death should pass through probate.

# Residential Loan Policy Stories

## A Life Estate

*Foreclosure on hold, indefinitely.*

## Blind Spot

*Unreleased mortgages were thought paid off.*

## Insuring the 'Gap'

*Owners cash out equity, just ahead of the IRS.*