


Claims Chronicles


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SERIOUS ABOUT SOLVENCY


Definition of Title Insurance Varies by State

As utilized in the Ohio Revised Code 3953.01, the definition of Title insurance is insuring, guaranteeing, or indemnifying owners of real property or others interested in real property against loss or damage suffered by reason of liens or encumbrances upon, defect in, or the unmarketability of the title to the real property, guaranteeing, warranting, or otherwise insuring by a title insurance company the correctness of searches relating to the title to real property, or doing any business in substance equivalent to any of the foregoing.

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Title insurance rates vary by state. The premium is typically determined based upon a rate per thousand dollars of exposure. The one-time premium covers the parties as long as they have an insurable interest in the real property. A limited number of states have Title insurance rating bureaus. The majority of states do not.

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Escrow and settlement services are defined as part of the Title insurance process in some states and specifically excluded from Title insurance in others. Typically, premiums are regulated by the states but fees and work charges are not regulated.

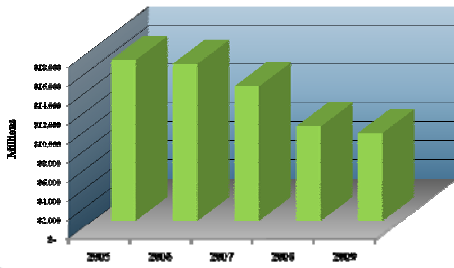
The basic Title insurance products are an Owner's policy or a Loan policy. Although there are approximately thirty endorsements available to expand coverage, in some states there is a premium associated with the endorsements and in other states the endorsements can be requested at no charge.

Policies, forms and endorsements are promulgated but not filed by the American Land Title Association. Each state has a land title association that represents the interests of the local agents and domestic Title underwriters. Licensing requirements including continuing education requirements vary by state.

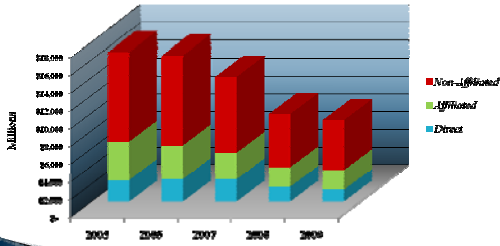
The overwhelming majority of the items that can adversely impact the marketability of Title to real property are discovered, addressed and resolved prior to policy issuance. As Title insurance coverage is retrospective and not prospective, it is my opinion that the financial reporting practices in place today cannot measure the value proposition of Title insurance. From a property and casualty insurance perspective, a Title insurance policy is more like a closed claim file than it is a P&C policy.

In 1994, the Federal National Mortgage Association issued Bulletin 94-13. This bulletin simplified the process for identifying acceptable title insurance companies and to minimize the potential for losses related to the type of coverage or the financial strength of the title insurer. Other participants in the secondary mortgage marketplace imposed similar requirements.

Countrywide Direct Premium Written

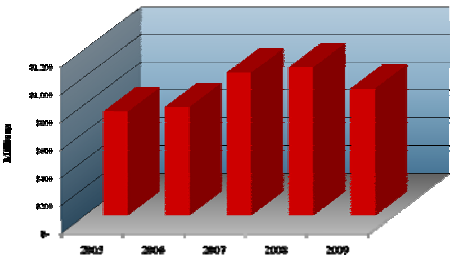


Countrywide Direct Premiums Written By Channel



Demotech, Inc. SERIOUS ABOUT SOLVENCY Source: Demotech Performance of Title Insurance Companies 2006 through 2010 Editions

Countrywide Direct Losses Paid



Demotech, Inc. SERIOUS ABOUT SOLVENCY Source: Demotech Performance of Title Insurance Companies 2006 through 2010 Editions

2009 State Level Industry Results

	Direct Premiums		Loss Ratio
	Written	Incurred Losses	
Alabama	82,906,768	\$ 9,843,679	11.9%
Alaska	38,716,388	\$ 1,344,415	3.5%
Arizona	344,155,618	\$ 37,959,661	11.0%
Arkansas	40,929,038	\$ 6,919,179	16.9%
California	1,503,449,198	\$ 186,540,953	12.4%
Colorado	199,804,798	\$ 25,774,762	12.9%
Connecticut	101,620,538	\$ 10,414,235	10.2%
Delaware	27,867,748	\$ 1,774,314	6.4%
District of Columbia	33,967,858	\$ 8,402,032	24.7%
Florida	609,504,918	\$ 82,190,950	13.5%
Georgia	166,844,808	\$ 22,051,312	13.2%
Hawaii	64,599,178	\$ 6,318,250	9.8%
Idaho	98,650,398	\$ 8,488,032	8.6%
Illinois	223,455,618	\$ 47,305,675	21.2%
Indiana	88,577,188	\$ 9,177,742	10.4%
Iowa	10,106,778	\$ (115,621)	-1.1%
Kansas	41,301,950	\$ 2,313,828	5.6%

Demotech, Inc. SERIOUS ABOUT SOLVENCY Source: Demotech Performance of Title Insurance Companies 2010 Edition

2009 State Level Industry Results

	Direct Premiums Written	Incurred Losses	Loss Ratio
Kentucky	58,220,331	\$ 2,468,676	4.2%
Louisiana	107,331,683	\$ 4,994,839	4.7%
Maine	25,333,641	\$ 2,668,976	10.5%
Maryland	198,726,326	\$ 27,619,425	14.6%
Massachusetts	198,717,394	\$ 14,067,457	7.1%
Michigan	251,468,045	\$ 30,289,135	12.0%
Minnesota	101,786,159	\$ 23,445,714	23.0%
Mississippi	33,316,706	\$ 10,596,146	31.8%
Missouri	53,129,204	\$ 11,705,405	22.0%
Montana	52,292,300	\$ 1,628,873	3.1%
Nebraska	42,024,207	\$ (521,037)	-1.2%
Nevada	167,296,210	\$ 24,735,151	14.8%
New Hampshire	28,910,445	\$ 3,113,059	10.8%
New Jersey	394,207,440	\$ 27,740,078	8.3%
New Mexico	74,896,228	\$ 1,712,822	2.3%
New York	595,373,262	\$ 31,948,498	5.5%
North Carolina	112,604,241	\$ 22,212,654	19.7%

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Source: Demotech Performance of Title Insurance Companies
2010 Edition

2009 State Level Industry Results

	Direct Premiums Written	Incurred Losses	Loss Ratio
North Dakota	\$ 6,997,951	\$ 28,471	0.4%
Ohio	299,297,752	\$ 17,345,549	5.8%
Oklahoma	60,606,072	\$ 4,098,664	6.8%
Oregon	198,757,712	\$ 6,723,715	3.6%
Pennsylvania	446,068,386	\$ 22,740,349	5.1%
Rhode Island	19,465,721	\$ 675,541	3.7%
South Carolina	88,679,635	\$ 7,848,547	8.9%
South Dakota	17,348,575	\$ 203,826	1.2%
Tennessee	115,167,778	\$ 3,312,570	2.9%
Texas	1,017,604,499	\$ 34,516,821	3.4%
Utah	192,387,542	\$ 13,846,288	7.2%
Vermont	12,912,674	\$ (657,272)	-5.1%
Virginia	297,545,145	\$ 13,588,971	4.7%
Washington	248,229,075	\$ 20,529,521	8.3%
West Virginia	19,486,643	\$ 1,102,023	5.7%
Wisconsin	120,441,549	\$ 2,641,027	2.2%
Wyoming	27,128,333	\$ 581,350	2.1%

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Source: Demotech Performance of Title Insurance Companies
2010 Edition

Commercial Loan Policy Stories

Access Denied

This motel was landlocked after a neighbor's foreclosure.

Bumped and Stumped

Was it too much to ask that the mortgage be recorded?

Partnership Pie

The managing partner knew to manage for himself.

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Access Denied
Elk City, OK

Located on Interstate 40 (old Route 66), at midpoint of the long haul between Oklahoma City and Amarillo, is the Highway 8 Motel at Elk City.

For many years business flourished. When the owner was tired of turning away travelers, he bought more land behind the motel and built an addition. Construction was paid for by a new loan secured by a deed of trust against the rear lot.



Access Denied
Continued

The motel's success did not go unnoticed. Others bought land across the interstate, and soon a new Holiday Inn appeared, then an Econo-Lodge.

Business fell off at the old Highway 8. When the owner fell behind in payments, his lenders foreclosed.

The lender on the rear lot was in for unpleasant news. There was no right of access anywhere to connect it with a public road, and the lender on the frontage lot would no longer allow it to be used to access the rear. Who, after all, needs competition?

Following litigation over the true amount of its damages, the insured lender received about \$83,000 from the title company.



Access Denied
Moral

Title insurance includes coverage for a right of access. This coverage is included in all owner, loan and leasehold policies.

Any prospective insured wanting a specific right-of-way should be careful to make sure that the same is expressly insured by the policy to be issued. Otherwise, the insured may be surprised to learn that the desired right-of-way cannot be used, and instead, access is allowed by some less desirable way.

Bumped and Stumped Philadelphia, PA

After closing a \$1.6 million construction loan on this apartment project in South Philly, the closing agent made the most serious of mistakes: he forgot to record the mortgage.

By the time the mistake was discovered, the developer was in serious trouble, with 24 tax and judgment liens filed against him totaling more than \$800,000 in liabilities.

When the insured lender began foreclosure, they learned that because of the recording snafu their priority was bumped from 1st to 25th!



Bumped and Stumped Continued

It only got worse. Before the original mortgage could be located (it was in the agent's file), the developer filed bankruptcy.

Now the trustee in bankruptcy threatened to void the insured mortgage altogether using section 544(a)(3) of the Bankruptcy Code. That section permits a trustee in bankruptcy (or a debtor-in-possession) to avoid any interest in real property which is not perfected (in this case, by recording) as of the date of commencement of bankruptcy.

However, because the mortgage was only partially funded, and thanks to contribution from the agent's errors and omissions insurance carrier, First American's loss was limited to \$55,000.



Bumped and Stumped Moral

Whenever an interest in real property is not perfected by recording, three things can wipe out the interest:

1. The grantor may sell or mortgage the property to another (bona fide purchaser/encumbrancer) without disclosing the unperfected interest;
2. Intervening liens or encumbrances may be recorded, gaining priority; or
3. The grantor may go into bankruptcy, whereupon the trustee avoiding power (Bankruptcy Code section 544 (a)(3)) may be invoked to avoid the interest as against the debtor's real property.

Partnership Pie Malibu, CA

It seemed like a great opportunity, a limited partnership owning this luxury home on a bluff overlooking the Pacific. This property had it all: 11,000 square feet of living space, a swimming pool, tennis courts and panoramic view of Malibu's beaches.

In all, 15 limited partnership shares were offered to investors throughout Los Angeles. After renovation, the home would be put on the market for \$6 million. Who cared if it didn't sell? Sooner or later the market would have to catch up.

So it was one evening as two of the partners watched "Lifestyles of the Rich and Famous" on television. Something Robin Leach was saying, something about "Malibu" and "the man with the Midas touch," caught their attention.

There on screen was their managing partner. "The young multi-millionaire," gushed Leache, "who sees opportunities and seizes them."

But wait! Now on screen was their house, their investment, "his magnificent mansion that serves as international headquarters!" It was unmistakable. "It had all the wood from the old Vanderbilt Mansion on Long Island," bragged the general partner.



Partnership Pie Continued

The partners investigated. Soon they learned that their general partner, using his broad powers under their limited partnership agreement, had deeded the property to himself. Then he borrowed \$2.3 million from an unsuspecting bank, secured by a deed of trust against the property. While some of this money was used to retire partnership debts, the rest (about \$900,000) disappeared in the general partner's personal accounts.

Tricked out of their shoes, the partners got together and filed suit to get the property back and avoid the deed of trust. Their attorneys would claim that the deed of trust was unauthorized, not given for "partnership purpose."

The deed of trust was insured by First American. The Company hired lawyers to represent the lender's interests. Dozens of depositions were taken. After a trial lasting several weeks, the judge ruled in favor of the lender. He concluded the partners had given the general partner such broad authority that the lender was justified in dealing with him solely.

After recouping court-awarded costs, First American paid legal expenses of \$365,280.



Partnership Pie Moral

In every real estate transaction, the title company must be satisfied that parties involved are mentally competent or, where a business entity is involved, legally authorized to act.

Where partnerships are involved, the title examiner should review the partnership agreement to see that the person with whom he or she is dealing has authority to contract on behalf of the partnership, and that this authority is broad enough to include the transaction at hand. Frequently, partnership agreements provide that there be no sale, lease or mortgaging of partnership property without the vote or consent of a majority of partners.

This basic risk of incompetency, incapacity or lack of authority of parties is typically covered by insurance.

Commercial Owner Policy Stories

Access 'To Come'

Please, Mr. Postman – The lament of the landlocked.

First Name First

ABC's of searching records.

NSF

Some bad advice, a bad check and two former partners.

Access 'To Come'

Stockton, CA

Plans called for this retirement and convalescent facility to have two driveways.

Set back from March Lane, a busy thoroughfare, the facility was to have access both to March Lane and to a nearby side street. The neighbor who owned the surrounding property agreed; it was a done deal.

The developer was anxious to get started, but the escrow officer had yet to receive easement deeds from the holder of the neighbor's mortgage, a savings and loan association.

Yielding to the developer's wishes, escrow was closed with easement deeds to be received and recorded later.

The deeds failed to arrive and were eventually forgotten about... Details.



Access 'To Come'

Continued

Meanwhile, the neighbor lost his land through foreclosure, and it was acquired by the foreclosing S&L. Then the foreclosing S&L failed and was taken over by FSLIC.

FSLIC inspected the land and told the developer to forget about getting any easements, even though one concrete driveway was already in place. FSLIC threatened to tear it up.

First American hired a lawyer to represent the insured owner and lender, and peace was made with FSLIC.

The Company paid \$35,000 for confirmation of an easement where the concrete driveway is located, and in the process incurred legal expenses of \$10,000.



Access 'To Come' *Moral*

Real estate transactions are frequently closed with needed documents promised, but not in hand. This is most often the case with releases or 'satisfactions' of paid-off mortgages or liens.

This practice is approved by title companies, and they are willing to insure against paid-off items. When this practice is followed, the escrow or closing officer should have written evidence of the paid-off party's agreement to provide a written release by return mail.

On the other hand, where a promised document directly affects immediate rights of use and possession, such as a deed or easement deed, it is too important to go without. Any death, displacement, disability or bankruptcy of the party giving a verbal promise can render the promise useless.

First Name First *Haddon Heights, NJ*

This tale begins with foreclosure of this retail store space to satisfy an unpaid mortgage.

Four years later, John was served with a lawsuit filed by Joyce, whom John had never heard of, seeking to foreclose a ten year-old mortgage, which also John had never heard of. The unpaid balance of the mortgage was said to be more than \$100,000.

The successful bidder was John, who after the foreclosure wisely obtained an owner's policy of title insurance from an agent of First American. This policy insured the property free and clear of any mortgages or liens. John called the title agent ... here's what we learned.

The property was formerly owned by a corporation named "Anita Lee Gift Shop, Inc." This corporation was owned by William and Joyce, who were husband and wife. When the couple split, William took over the gift shop and promised to pay Joyce \$120,000, in monthly installments of \$1,000 for ten years. This promise was secured by the aforementioned mortgage, in favor of Joyce, which was duly recorded in Camden County land records.



First Name First *Continued*

Later, William gave a second mortgage to a financial institution, which was the same mortgage that was later foreclosed resulting in the ownership of our insured, John.

In searching the records prior to issuing our policy to John, the searcher checked the recorder's alphabetical index for "Lee, Anita" rather than "Anita Lee," and so missed the mortgage in favor of Joyce.

More bad news ... William had made almost none of his mortgage payments, so the balance now due Joyce was equal to the value of the property. This was a total 'failure of title.'

First American paid \$116,875 to satisfy the missed mortgage.



First Name First *Moral*

The protocol for posting, indexing and searching proper names of individuals is "last name first, first name last." This rule doesn't apply to corporations, whose names should be listed under the first letter of the name as registered with the state of incorporation.

This rule is sometimes misunderstood by county employees who do indexing or "posting," and is also misunderstood by title searchers. Experienced searchers know to check every conceivable variation of a name under search.

NSF *Chicago, IL*

The uptown shopping center was owned by the partnership of John and Ron. The managing partner was John.

One January 31st the partnership sent a check for \$385,616 to the county tax assessor for second installment property taxes. This check was drawn on the account of Riverfront Plaza Property Management, a company owned solely by John.

When they received the check, the office of the tax assessor made a record that the taxes had been paid - but then the check bounced ("NSF - Refer to Maker").

Meanwhile, John decided to sell his interest in the partnership. A First American agent was asked to handle the transfer of ownership to a new partnership. The closing officer checked for property taxes and received from the Cook County Clerk a "Certificate of Payment," dated April 1, showing second installment taxes as paid. The transfer of ownership closed a few days later, and a First American owner's policy was issued with no exception for past-due taxes.



NSF *Continued*

After the closing, former partners John and Ron held a post-closing reconciliation meeting in which they settled business matters between themselves and signed mutual releases.

More than a year later, First American was notified that the old "second installment" taxes remained unpaid and now stood as a lien against the property in the amount of \$499,552, including penalties and interest.

When first contacted, neither of the former partners seemed interested in the problem. One put us off for months saying through his lawyer that the taxes had been paid or, perhaps, an account was established somewhere to cover them.

Lawsuits were filed and, after months of wrangling, the former partners settled with John agreeing to pay the taxes. First American continues to pursue John to recover its legal expenses, totaling more than \$340,000.



**NSF
Moral**

Title insurance is your best protection against ineffective payoffs at the time of closing – such as resulting from a bad check.

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. (Defalcation)

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 1099s. 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.

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 was 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, which was 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 drove 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 documents 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. It should 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.

Escrow Closing Stories

Holding the Bag

An old credit line - rises again!

Switcheroo

Paying off the wrong loan.

The Pirated Payoff

When this home was refinanced the owner saw his ship come in.

Holding the Bag *Dublin, OH*

When our title agent was asked to handle a purchase of this home, there was one mortgage to be paid off through closing.

The mortgage secured a bank line of credit, which the seller had mainly to finance his businesses. The credit limit was \$450,000.

Before closing, the seller went to the bank and told them he was selling his home, but wanted to keep his line of credit open and would provide substitute collateral. The bank agreed, and the seller instructed the closing officer to disburse net sale proceeds of \$414,987 to the bank. The closing officer called the bank, getting verbal confirmation the bank would be releasing its mortgage. The transaction closed, the payment was made to the bank and title policies were issued to the new owners and lender including coverage against the 'old' mortgage.



Holding the Bag *Continued*

Two years later, when the new owners applied for a loan, they were told the old mortgage remained "open" - still affecting their home. So they contacted our agent.

The agent contacted the bank, and was told that the credit line now had a balance due of more than \$300,000 - and the seller was delinquent.

Our investigation showed that the seller had offered the bank substitute collateral, but it was turned down. At the same time, the bank continued to allow the seller to draw funds from the original credit line. Now, a new bank officer in charge didn't know anything about a promise to release the mortgage - and they wanted to be paid.

Ultimately, First American paid \$50,000 to the bank for a release of the credit line mortgage.



Holding the Bag *Moral*

In most parts of the country, it's customary to close real estate transactions with releases "to come" for paid-off mortgages and liens.

Where these customs prevail, the risk that a secured credit line will not be closed - but merely paid "down" and later re-accessed by the borrower - is substantial.

Title insurance is your best protection against this risk.

Switcheroo Denver, CO

One risk of buying property is that funds to pay off a prior mortgage may get misallocated.

A First American title agent was asked to handle a purchase of this home on University Boulevard in Denver. The home had an existing mortgage in the original amount of \$138,500. The seller, Charlie, was in the business of buying neglected properties, fixing them up, and re-selling them.

The escrow officer sent a fax to Charlie asking for "payoff info for the house on University." Soon, Charlie called in and provided a loan number. The escrow officer contacted the lender, referenced the loan number, and requested a payoff demand. The lender sent a fax to the escrow officer, referencing the loan number, and giving the payoff figure of \$138,408.



Switcheroo Continued

Unfortunately, no one noticed that this payoff demand also referenced a "Property Address" on "Granby Street."

The transaction closed, the payoff check was mailed, and First American's title policy was issued to the new lender.

Here's the problem: The "old" lender applied the payoff check to satisfy a mortgage against another property owned by Charlie - his residence, actually. When Charlie realized his residence was free and clear, he sold it - pocketing substantial sale proceeds - and moved with his family to San Diego.

We paid \$151,724 for a release of the "old" mortgage against the home on University.

A year and a half and legal expenses later, Charlie agreed to reimburse all but about \$25,000 of our losses.



Switcheroo Moral

There's lots of opportunity for error in handling payoffs. Title insurance protects against the risk that a payoff was not received and properly applied to clear secured debts.

The Pirated Payoff Brick Township, NJ

First American insured a refinancing of this residence for \$107,800.

Weeks before funding the closing agent mailed a request for payoff information to the existing lender. There was no immediate reply.

On the eve of closing a secretary called the lender and took down the following payoff demand: "Per Audrey at Central File \$44,591.81 - payoff as of 7/27 - \$14.57 per diem - (loan number) 50011200017."

After closing, the payoff check was sent with a request that the canceled mortgage be forwarded by return mail.

Months later First American was contacted by its insured lender. It seems the borrower had two mortgages with the prior lender, one against his home and the other against his boat. When the payoff check was received the lender canceled the boat mortgage and sent boat title documents to the borrower.



The Pirated Payoff Continued

The borrower made a few more home mortgage payments, then abruptly moved out of his house, abandoned his business and sailed away on his free-and-clear boat.

First American hired attorneys to file suit for judicial foreclosure, and for a declaration of priority over the prior lender. But the judge ruled for the prior lender, concluding they were without fault and shouldn't bear the loss.

First American paid \$62,927 to satisfy the offending mortgage, plus legal expenses of \$18,032.

The borrower's whereabouts remain unknown.



The Pirated Payoff Moral

Although not a favored practice, real estate transactions are sometimes closed based on verbal instructions or payoff demands.

When this is done, the opportunities for misunderstandings are limitless. The better practice is to get all instructions and demands in writing, with all essential understandings spelled out.

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.

Demonach, Inc.

SERIOUS ABOUT SOLVENCY

A Life Estate

Toano, VA

This home on 37 acres is just north of Colonial Williamsburg.

The owners of record were Bruce and Gracie, who borrowed \$60,000 secured by a deed of trust against the property.

In researching the title, our agent learned that Bruce and Gracie acquired the property six years earlier by gift deed from a Mrs. Graves. There was a first deed of trust for \$7,956 recorded six months earlier, and now the \$60,000 deed of trust would be insured as a second by First American.

More than a year later, the insured deed of trust was in default and the lender hired a local attorney to do a foreclosure. But the attorney reported the property was still occupied by Mrs. Graves, who claimed to own a "life estate." A what?



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A Life Estate

Continued

Many different estates or interests in land were recognized by English common law, which is the main origin of American law. Among these, the most commonly seen today are the free estate (absolute ownership by a person and his heirs and assigns forever), the leasehold estate (a tenancy with the owner of the fee as landlord), and the life estate (an interest akin to ownership for the duration of the life of the holder, or of some other person).

The insured lender made a claim and First American investigated. Sure enough, there in the gift deed from Mrs. Graves to Bruce and Gracie, on page two following all the boilerplate "less and except," "together with" and "subject to" language, there was this:

"There is specifically reserved by the grantor herein the right to reside on, use and occupy the property herein conveyed for the rest of her natural life ..."

So there it was. Because of this, the lender can presently foreclose only the remainder interest of Bruce and Gracie. They can't disturb Mr. Graves' use of the property as long as she lives. We won't reveal her age, but Mrs. Graves reports excellent health and a family history of longevity.

First American paid \$60,664 to purchase the insured deed of trust.



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A Life Estate *Moral*

Interests created by "reservation", buried within a document - and not disclosed by its title, are more frequently missed by title searchers and examiners than are interests created by direct grant.

Blind Spot *Atlanta, GA*

When this home was being refinanced, our attorney agent was told there was only one existing mortgage to be paid off. But the agent's search disclosed two more mortgages, both in favor of Georgia Mortgage Center, which were prior to the existing mortgage and were still "open" - unreleased - in the public records.

The last transaction involving this property had been a refinancing done six months earlier. The agent called the law firm that handled the previous closing, and was told that both Georgia Mortgage Center mortgages had not been received for recording. The law firm provided copies of its settlement statement and cancelled check evidencing the payoffs.

With this evidence in hand, the agent was authorized to insure the pending refinancing without exception for the Georgia Mortgage Center mortgage. At closing, the agent paid off the existing mortgage, disbursed about \$30,000 to the borrower, Herbert, and insured the new "first" mortgage.

Cookie-cutter deal. But this closing would be haunted by the unforeseen.



Blind Spot *Continued*

The Georgia Mortgage Center mortgages had secured one loan in the amount of \$69,000, and a second in the amount of \$81,000. Shortly after these loans were made, the \$81,000 loan (and mortgage) was purchased by an investor. Since no notice of assignment was recorded, there was no way for anyone to know of the investor's purchase of the \$81,000 mortgage from an inspection of the public records.

You can probably see where this is headed. When the property was first refinanced, the law firm was given a payoff figure for the \$69,000 mortgage only. No one told them about the \$81,000 mortgage being owned by an investor, so the information later given to our agent was erroneous. The \$81,000 mortgage remained "open."

Herbert stopped making payments and the \$81,000 mortgage foreclosed, wiping out our insured lender's mortgage.

The lender made a claim, and First American paid \$193,084 to purchase our insured's note and foreclosed-out mortgage.



Blind Spot *Moral*

It frequently happens that open mortgages or deeds of trust have been satisfied, but paid-off lenders do not cooperate by providing release documents for recording. In such cases it's common for title companies to rely on third parties for evidence of payoff, as was done here.

But this practice isn't foolproof. When the unforeseen becomes a problem, title insurance can be an owner or lender's salvation.

Insuring the 'Gap' *Longmont, CO*

When Gary left his employment at the Rocky Flats plutonium plant he received severance pay of \$270,000.

Some of the money was used to buy this home for Gary and his new wife, Diane. The rest may have been used to pay debts from Gary's former marriage. None of it, however, went to the Internal Revenue Service.

Months later, Gary and Diane applied to refinance their home. The new loan amount would be \$98,000. After paying off the existing loan and costs of refinancing, Gary and Diane would receive about \$30,000.

The loan documents were signed on Monday, November 8. The three-day rescission period, provided by federal law, would have expired at midnight on Thursday, November 11. But November 11 was Veterans Day, a holiday, so the rescission period expired at midnight on Friday, November 12.



Insuring the 'Gap' *Continued*

The lender would have funded the loan the next business day, on Monday, November 15, but they had a problem with a local mortgage broker so the loan funded on Tuesday, November 16. The lender's deed of trust recorded November 18.

Meanwhile, on Monday, November 15, the IRS filed a tax lien against Gary and Diane in the amount of \$139,007. This represented the taxable portion of Gary's severance pay, plus penalties and interest.

The First American agent who had handled the closing became aware of the tax lien even before the lender's title policy was issued. Since the tax lien had priority over our to-be insured lender, the Company immediately contacted the IRS to ask for a release.

Because Gary and Diane received only about \$30,000 from the refinancing, the IRS accepted \$30,717 from First American to release its lien.



Residential Owner Policy Stories

Dear John

One ex's answer to who gets what.

Scapegoat

Who would pay for the lawyer's mistake?

Short Sale

A favor to the seller was fateful for the buyers.

Dear John

Dunkap, IL

Returning home from work one day John found this note tacked to the door:

John, sold the place. I filed for divorce. The marriage is over. You have 30 days to get out! Good Bye, Jan.

He didn't know where she'd gone, and after a few weeks he forgot about the note. Then one day while napping on the couch John was awakened by voices. There in his living room were Mr. & Mrs. Schaer, who claimed to be new owners of his home.

When John objected to them moving in, the Schaers retreated to make a claim under their title policy. First American hired an attorney to represent them.



Dear John

Continued

It turned out that Jan had sold the property for \$30,000, and forged John's signature to a deed. Then she moved to a mobile home park in nearby Peoria.

Since the Schaers' deed was hopelessly defective, First American paid them the policy amount of \$30,000. Then the Company made claims for reimbursement against Jan and the hapless notary on the forged signature. This turned out to be an expensive quest.

Ultimately, John agreed to pay for Jan's half interest in the property by giving a note and mortgage to First American (as successor to Jan). Then John filed a chapter 13 bankruptcy and things got complicated again.

Although the Company recovered most of the \$30,000 it had paid, unrecoverable legal expenses totaled more than \$50,000.



Dear John
Moral

After a split-up, exes sometimes leave title to property that was once jointly owned open to question. Of course, Jan overdid it – and she faced criminal charges. Title insurance is great protection against becoming entangled in the personal problems of others.

Scapegoat
Hewlett Bay Park, NY

This stately home on Long Island had to be sold. The owners business had failed and lenders threatened to foreclose. There were five mortgages against the property, three of which were held by one major bank.

The bank referred two of its mortgages to outside counsel, Michael, for foreclosure. Michael was a sole practitioner in Brooklyn.

Meanwhile, Boris and Dora contracted to buy the property and a New York City law firm was asked to handle the closing.

In response to a closing attorney's inquiry, Michael provided two letters containing payoff demands for the bank's loans. Both letters referenced loan account numbers and the address of the property. One demand was for \$289,301, and the other was for \$149,721.

The deal closed and the closing attorney issued payoff checks to the bank in the amounts provided by Michael. First American title policies were issued to the new owners and lender.



Scapegoat
Continued

Within months the new owners were notified that the old first mortgage had not been released, and the bank intended to foreclose.

It seems the payoff figure of \$149,721 had been given in error, since that figure related to yet another loan to the same borrowers secured by a different property in Brooklyn. With the borrowers consent, the bank had gone ahead and credited the \$149,721 payment to this other mortgage, and now wanted another \$309,000 to satisfy its first mortgage against the insured property.

The new owners made a claim, and First American contacted the bank. The bank was adamant. The bank's attorney, Michael, blamed the closing attorney for the mistake since the loan number referenced on his erroneous letter did not match the loan number on the first mortgage. It was "obviously" wrong.

To make matters worse, the borrowers had moved to Florida and would be of no help settling this disagreement. A lawsuit ensued with First American paying for the defense of its insured owners, to prevent foreclosure of the first mortgage.

After wallowing in litigation for more than two years, the bank gave up and released the old mortgage. First American paid legal expenses of \$67,047 in defense of its insureds.



Scapegoat *Mord*

Another example of how the interests of innocent homeowners, and their lender, can be jeopardized by the errors and egos of others.

Short Sale *Milton, MA*

Horst and Inger contracted to buy this duplex from Pete, a local developer. The closing would be handled by David, an attorney.

With the closing date near David realized this would be a short sale. After paying off the existing first mortgage, remaining sale proceeds (\$58,000) would be insufficient to pay the balance due on the second mortgage (\$81,000).

The holder of the second mortgage was a local bank. At Pete's suggestion David called the Senior Vice President of the bank, who told him the bank would release the mortgage without payment since Pete was a good "developer" customer.

David closed the transaction without having received the bank's release. Unfortunately, as he would later explain, this deal closed at a time when his conveyancing practice was starting to grow, and he did not yet have in place procedures to follow up and get the bank's release.

In other words, Oops.



Short Sale *Continued*

Horst and Inger had an owner's policy from First American. When they later went to refinance, the old second mortgage showed up as still unreleased; and since it was unreleased it now appeared as a first mortgage.

Horst and Inger made a claim and First American contacted David to get the release.

But it was too late. Things had changed at the bank. Mainly, the bank had failed and was taken over by the FDIC. So now we couldn't get a release. Worse yet, Pete filed bankruptcy and went out of business.

The Company paid \$80,823 for the elusive release, plus legal expenses of \$9,204. Most of this was later reimbursed by David's professional liability insurance.



Short Sale *Mord*

Title companies are frequently asked by real estate investors and developers to "write-over" an existing mortgage with the promise of a payoff to come from some other transaction.

This is pure risk, and in some states the practice is regulated by law.

Since this risk was not authorized by First American, it was David who ultimately paid for the bank's favor to its "good customer."

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