

MLTA 2018 Fall Education Seminar

Claims: Tales of Woe

Course Description

During this presentation, we will be covering how Claims is an important topic for everyone in our industry. This course covers that whether it is the unwatchful eye, fraud, typographical error or any other number of missteps that leads to a claim, it never hurts to review instances so we can learn from our mistakes in hope of getting better at what we do. This course also reminds us that claims show our customers the value of our title products and that title insurance can mitigate many risks inherent to selling, buying and encumbering real estate.

Outline

1. Introduction

- A. Description

- B. Review instances to learn from past mistakes

- C. Show customers value of title products

- D. Title insurance can mitigate risks

2. About Our Tales

- A. Instances where the claim could have been avoided

- B. Schemes that couldn't have been avoided at all

3. What's in a Name?

- A. Insure against loss by reason of fraud

- B. Failure of an entity to authorize a transaction
 - 1) Covered Risk 2

 - 2) Covered Risk 9

- C. Company formed and purchased a large residential property in Nevada for \$2 million
 - 1) Four years later company officially abandons original name

 - 2) Rightful owner of the property failed to make any changes in the public records

- D. Investor forming a company and performed research on available names and public records
 - 1) Finds the vacated name and revives and makes himself the sole managing member

 - 2) Posed as the owner of the property

 - 3) Obtained a \$1.5M loan from a hard money lender

E. Red flags

- 1) Abandonment of the limited liability name
- 2) A revivor with a different managing member
- 3) Deal with the correct members of limited liability company
- 4) Ensure the entity is in good standing
- 5) Require certified copies of the LLC's formation documents filed with the state

4. Fundamentally Wrong

A. Importance of fundamental details in any transaction

- 1) Opening an order with correct information
- 2) Searching and examining the correct property
- 3) Reviewing legal descriptions and recordable documents
- 4) Paying off correct parties
- 5) Recording documents

B. 2006 - Purchase of home and we issued a loan policy to his lender

C. 2009 - Refinance property

- 1) Title search showed issue with the legal description
- 2) Recorded mortgage had attached legal description for unrelated property

D. Execute a revised mortgage with a corrected legal description

E. 2011 - Purchased a second property

- 1) Financed by a mortgage and secured by both 2006 and most recent property
- 2) Took exception to the 2006 Lender mortgage notating incorrect legal description

F. 2013 - Sell his property bought in 2006

- 1) Issued an owner's policy to buyer and loan policy to lender
- 2) Title search failed to show 2006 mortgage and was not disclose
- 3) Successor to 2006 Lender filed a claim

G. Take time to attach correct legal description

5. Sign of the Times

A. Survey not properly read

B. Significance of survey coverage for insured

C. 2006 transaction involving the sale of shopping center

1) Issued an owner's policy and a loan policy in amount of \$27 million

D. 2016, shopping center owner defaulted and "Bank" foreclosed taking ownership

E. Lender received notification that the shopping mall sign needed to be removed

1) Could prevent critical access to the utility company's gas pipeline

2) Sign in the middle of a recorded easement for a gas pipeline in favor of the utility company

3) Easement shown as an exception in policies and included on a 2006 survey

a. Survey disclosed existence of sign showed sign encroaching onto gas pipeline easement

4) Neglected to place an exception for encroachment in either owner's or the loan policy

5) Loan policy included the current-at-the-time ALTA 9 Endorsement (not the ALTA 9-06 Endorsement)

F. Utility company offered to remove the sign at no cost 1) Tenants may have lease provisions related to the signage that could lead to defaults

G. Proper survey reading important

6. Jack of All Trades

A. Rehab project on foreclosed property

1) Project just about ready when offered to find a buyer

2) Agreed property was worth about \$1 million

B. Required seller sign a grant deed and a set of escrow instructions

C. Seller filled in own LLC's name as the buyer and had the document notarized

1) Notary was spouse

D. Seller sought financing for \$550,000 based on the actual property value

E. Seller/buyer obtain a title policy for LLC and lender

F. Seller also owns escrow company

7. Give an Inch, Take a Mile

A. 2014 we insured the buyer of a commercial building

B. Insured purchased property (Parcel A) for \$25 million

C. Same buyer purchased another commercial building (Parcel B) and we also insured the buyer

1) Insured paid \$17 million for second property.

D. Development prompted Insured to request contiguity endorsement

1) Issued Owner's Policy for Parcel B with state-specific contiguity endorsement form

E. Received notification from Insured about potential claim

- 1) 3-inch strip of land in between Parcels A and B had its own tax identification number
- 2) Strip acquired by city through a tax foreclosure in 1951
- 3) Sold lot in 1956, but no deed was ever recorded

F. No survey depicted both lots in entirety

- 1) Two separate surveys; one for each transaction
- 2) Neither survey called out the 3-inch strip
 - a. Survey and metes and bounds legal description for Parcel A 29 feet 9 inches
 - b. Survey and metes and bounds legal description for Parcel B 30

G. Able to locate the successors and heirs of the owner of the 3-inch strip

- 1) Agreed to execute deeds to Insured for nominal settlement amount
- 2) Also able to get replacement deed from city for 1956 sale

H. What Was Learned

- 1) Know your deal
- 2) Additional care should be taken
- 3) Proceed with caution when legal descriptions involve metes and bounds descriptions with different points of beginning
- 4) Use precise language when describing common boundary lines
- 5) Follow the issuing guidelines for endorsements

8. Don't Hack My Architect

A. Wire fraud in commercial transactions

B. Need to have heightened awareness for fraud risk

C. Compromised Email

- 1) Construction loan to a small, low-income housing developer
- 2) Initial disbursement of funds paid certain investors
- 3) \$65,000 disbursement to the architecture firm
 - a. Hackers compromised architecture firm's email system
 - b. Produced fraudulent authorization letter on firm's
 - c. Emailed it to developer, who in forwarded it to escrow team with instructions to pay
 - d. Seven days later, developer notified that architecture firm had not received the \$65,000

D. Recognize the method and format fraudsters will exploit

1) Potential mechanics' liens issues

E. All but \$1,700 recovered

F. Review key points of deal

9. Service Anyone?

A. Property in question is a 8,400 square foot warehouse

B. Extreme financial dire straits forcing to shut down business in 2013

1) Resulted in an abandoned warehouse and 2003 mortgage in default

C. 2014, bank filed suit in Federal Court for breach of the promissory note and guaranty

1) Judicial foreclosure of the 2003 mortgage

2) Court appointed a receiver

D. Receiver opened a new order

1) Commitment reflected multiple state and federal tax liens (between 2010 and 2014)

2) Agreed to issue a policy omitting these liens if

a. State and federal government named as parties to the lawsuit

D. Sale by the receiver was completed pursuant to a satisfactory court order

E. Bank's counsel filed and court approved motion to add the state and United States as defendants

1) Bank's counsel never served the United States

2) Bank's counsel did serve state's treasury department with regard to the state's tax liens

10. Keep in Mind

A. We should be thorough

B. Take care with every transaction

C. When dealing with surveys, take the time to review the information and match it to the legal description

D. Be careful for any transaction in terms of wire fraud

11. Conclusion