




Claims Avoidance

MLTA Spring Seminar 2022

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May 12, 2022



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A Wire Fraud Story

- **\$850,000 Residential Sale**
- **Property is subject to:**
 - DOT 1
 - DOT 2
 - Judgment 1 (\$86,000)
 - Judgment 2
- **Payoffs already received from all Lenders and Creditors. Seller's Net Proceeds will be approximately \$142,000**

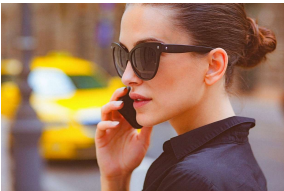
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A Wire Fraud Story, Cont'd

- **Seller tells Escrow that he is negotiating a reduced payoff on the \$86,000 judgment**
- **Seller provides \$50,000 payoff demand on eve of closing**
- **Escrow calls number on revised payoff to obtain wiring instructions**




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A Wire Fraud Story, Cont'd

- Creditor's Attorney called the next day to ask about payoff
- "You sent the wire where?!?"
- Wire Fraud reported to the FBI



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A Wire Fraud Story, Postscript

- Agent purchases Assignment of Judgment from creditor and records in neighboring county and in California where Seller also owns property
- Seller admits fraud(!) but refuses to pay. Files title claim, threatens bankruptcy
- Property in neighboring county recently sold and agent is repaid in full
- FBI and Secret Service now investigating seller for wire fraud

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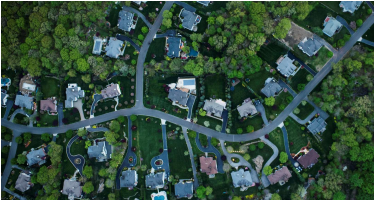
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Wire Fraud Story – A Good Save!


- Residential Refinance for approximately \$135,000
- Existing lender faxes Payoff Statement dated November 8, 2021



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Wire Fraud Story – A Good Save!

- Email from Existing Lender: “Can I have a copy of the payoff statement? I would like to review it before funding. Please also confirm what day you will be funding.”
- Closer: “Here you go!”
- Existing Lender: “What day are you funding?”
- Closer: “We are funding on November 30th.”

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Wire Fraud Story – A Good Save!


- Lender: “I discovered a minor mistake on the payoff statement. We will be faxing an updated payoff statement later today. The change will not alter the figures on your CD. Please confirm receipt.”
- Closer: “Ok, I will watch for the updated payoff.”
- Lender: “Attached is an updated payoff statement. Please add it to the file and retract the old one with a note to use the updated payoff statement. Please confirm receipt.”



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Wire Fraud Story – A Good Save!

- Revised Payoff Statement
 - Wiring Instructions changed
 - Arrived via email rather than fax
 - Projected Payoff Date changed
 - Per Diem Interest Rate changed
 - Lender address changed



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New Claim Trend: Vacant Property with Absentee Owner(s)

- Involves the attempted sale of vacant land for \$50,000 or less although some prices may be higher
- Trend started with property owned by parties located/living outside of the United States but has expanded to include domestic owners
- No personal relationship or contact between purported owner and real estate agent/title company

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New Claim Trend: Vacant Property with Absentee Owner(s), Cont'd

- Other Red Flags include:
 - Free and clear property
 - Seller in a rush to close
 - Sale documents are emailed to Seller
 - Multiple locations/countries for the Seller


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New Claim Trend: Vacant Property with Absentee Owner(s), Cont'd




- Combat this scheme through use of a Confirmation/Thank You Letter sent to Seller at address shown in the County Tax Records
- Alternatively, request documentation (i.e., Settlement Statement or Owner's Policy) from original purchase of the property

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Variation Involving Imposter Entities

- Entity with exact same name but formed in a different State
- Secretary of State records do not match or recently changed
- Entity documents do not match
 - Documents may also contain grammatical errors, spelling mistakes, typos, etc.

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Affirmatively Insured Easement Claim


COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company"), insures as of the Date of Policy and, to the extent stated in Covered Risks 9 and 10, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Title being vested other than as stated in Schedule A.

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Affirmatively Insured Easement Claim, Cont'd

- Historical legal description of property included access easement over neighbor's property to the North
- At some unknown time in the past, a new county road was built which directly abuts southern boundary of property. Owners at the time constructed new driveway to access county road
- Buyer requests insurance for historical easement after at least one other title company declines to insure

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Affirmatively Insured Easement Claim, Cont'd

- Buyer's attempt to subdivide the property results in litigation
- Evidence introduced at trial shows many years of non-use of the historical easement
- Neighbor installed locked gate and parked broken down cars in the easement area


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Affirmatively Insured Easement Claim, Cont'd

- **Holding:** Easement was extinguished by abandonment
- **Question:** What is the measure of damages for the Insured?



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Historical Sources of Claims: The Duty to Defend

DEFENSE OF COVERED CLAIMS


The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

5. DEFENSE AND PROSECUTION OF ACTIONS

a. Upon written request by the Insured and subject to the options contained in Condition 7, the Company, at its own cost and without unreasonable delay, will provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company has the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those covered causes of action. The Company is not liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of any cause of action that alleges matters not insured against by this policy.

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Example of a Duty to Defend Claim

- Chain of title reflects multiple “Agreements” and at least three faulty/defective Deeds recorded between 2017 and 2018
- Pending sale in February 2020. Issuing office requires Quitclaim Deed from grantee in faulty/defective deeds in order to clear any interest that may have been created
- Seller claims grantee has left town and she is no longer in contact with them. Unable to obtain required Quitclaim Deed.

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Example of a Duty to Defend Claim, Cont'd


- Closed in reliance on an Identified Risk Indemnity from the Seller
- Approximately 60 days after closing, the grantee reappears and takes possession of the property
- Title Company obligated to defend Insured Owner against adverse claims



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Historical Sources of Claims: Power of Attorney

COVERED RISKS


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2. Any defect in or lien or encumbrance on the Title. Covered Risk 2 includes, but is not limited to, insurance against loss from:
 - a. a defect in the Title caused by:
 - v. a document executed under a falsified, expired, or otherwise invalid power of attorney;

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Example of a POA Claim

- Mom and Dad execute POA naming Son-in-Law as agent before leaving for an extended trip out of the country
- POA was never revoked after Mom and Dad returned
- Son-in-Law uses POA to take out multiple unauthorized loans secured by Mom and Dad's free and clear properties
- Title company must defend validity of all loan documents executed via POA

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Questions to Ask with a POA

- Why is the POA being used? Why can't the Principal sign?
- Is the Principal aware of the transaction? How do we know?
- Is the Principal competent? Is POA Durable?
- Does the POA authorize this particular transaction?
- Relationship of Principal and Agent? Is the family aware?


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Escrow Claims: Where to disburse funds?

- Agents are generally only "agents" for purposes of issuing title insurance policies
- Title policy may not provide coverage for escrow related claims and therefore issuing office is responsible



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Escrow Claims: Red Flags

- Disbursements to parties other than record owner
- Trust Property / Probate Property
- Payoffs supplied by seller/borrower
- Escrow fraud scams based on escrow account "float"

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Escrow Claims: Escrowing Funds at Closing

- "No good deed goes unpunished"
- Written Escrow Agreement
 - Limited timeframe
 - Detailed instructions (account for all possible outcomes)
 - Both parties to indemnify escrow holder (including for attorney's fees and court costs)

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Example of an Escrow Claim: Post-Closing Repairs

- Sale set to close in November of 2020. Inspection reveals asbestos which requires remediation work
- Seller agrees to withhold \$7,500 from sales proceeds to pay for work.
- Buyer responsible for completing work on or before December 31, 2020

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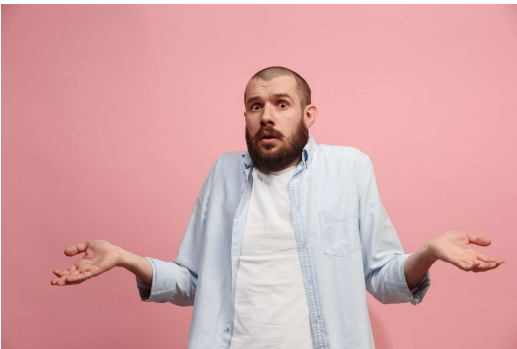
Example of an Escrow Claim: Post-Closing Repairs, Cont'd

- If work is not completed on time, Buyer may submit invoices for work done up to that time and be reimbursed out of escrowed funds with balance released to Seller
- February 2021, Escrow contacts Buyer: "Is work completed?"
- Buyer's Attorney: "Yes"
- Escrow releases entire \$7,500 to Seller

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A New Fraud Scheme?

- Buyer presents themselves as the beneficiary of a Blind Trust
- Offer is for 10% over asking price
- Offer is accompanied by a Declaration from an Attorney who swears under penalty of perjury that they have spoken on the telephone with the Trustee to verify the assets in the Blind Trust are sufficient to cover purchase price, closing costs, etc.


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A New Fraud Scheme, Cont'd

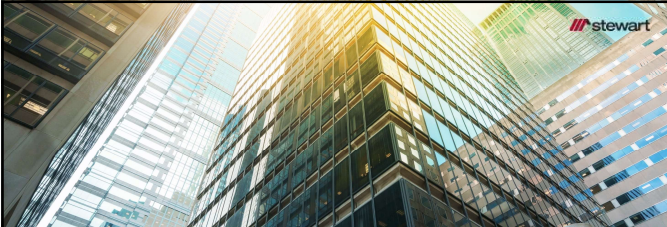
- Buyer asks Title Company to fill out and sign various IRS forms including 1099-A, 1099 OID, 1096 and 8888
- Appears to be a variation on older scams involving "Redemption Theory" or "Commercial Redemption"
- May be referred to as "Secured Party Creditor Transaction"




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Questions?

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