
2015, Vol. III, No. 4

## Fourth Quarter 2015

This may be the Chinese Year of the Wood Sheep, but, certainly, in the title business, it has been the CFPB Year of the TRID. What will next year be? Some are predicting the CFPB Year of the Rollback (as in, rollback the regs, rollback Dodd-Frank, etc.) Others are saying it will be the CFPB Year of the AfBA, as the regulator moves on to other targets of kickbacks and marketing services agreements. Whatever zodiacal sign CFPB may designate 2016 to be, we here at Conestoga Title Insurance anticipate a year of growth even with statutory and regulatory challenges. This issue of the *WagonLode* will be a review of this past year (of the TRID) and a look toward next year. Among our usual articles, we present another guest offering. This one comes from RynohLive and is its White Paper on electronic reconciliation of escrow accounts. We hope you will find the included TRID/Best Practices FAQs helpful in your daily business. And don't forget that Conestoga College is right around the New Year's corner. If you have not seen the initial e-mail about the program, please contact anyone here and it will be sent to you. And, to you, my personal wishes for a Happy Holiday and a prosperous New Year. *Ed.*

**Table of Contents**

# *From the President's Desk*
# *Looking Back and Looking Ahead*
### *John M. Nikolaus, ALTP*

As we approach the end of 2015, we can reflect on a positive year in the title business. It was, however, also a year full of challenges. With TRID came a change in forms and procedures. Ongoing communication with lenders was, and continues to be, of the utmost importance. Title agents and Approved Attorneys have benefitted from informing lenders that they are prepared for the changes by investing in the appropriate personnel training and software upgrades. The transition and learning curve are still in process; however, as an industry, we are meeting the challenge. While TRID has dominated title industry headlines, Best Practices compliance will be an increasingly important issue as we move forward. Numerous lenders have already required the submission of title agents' Best Practices manuals and it is expected that many other lenders will do so in the future, although lenders in Conestoga Title's geographical footprint have not yet required certification to our knowledge. Whether lenders begin to require certification in the future remains to be seen. We will stay tuned to industry news on this issue and keep you advised. In the meantime, we plan to include certification as an item on the agenda of each of our seminars planned in 2016 in order that agents and Approved Attorneys may understand the certification process. In addition, we will have certification vendors available at our seminars for consultation. By the way, 2016 will mark our 30th annual session of "Conestoga College", our day and a half seminar to be held in January in Lancaster, Pennsylvania. We are proud of this tradition. Continuing education sessions are also being planned for Ohio, Maryland and Virginia. We will be sure to disseminate information about each seminar in order that you may take advantage of the opportunity to build your title knowledge and gain CE and/or CLE credits.


Business levels in 2015 were healthy and above 2014 levels. Market conditions remain positive with excellent interest rates and an active sales market. Market analysts project the continuation of a positive sales market in 2016, while the refinance market is expected to decline. We look forward to an overall positive year in the title business in 2016.


As we close the year, Conestoga Title's Management would like to thank our agent and Approved Attorney customers. We appreciate your business and are grateful for the opportunity to issue our policies to owners and lenders with your assistance. May you and your families enjoy a happy holiday season and healthy and prosperous New Year!

## *Tales from the Underwriting Trail*
## *Predicting 2016*
### *Honus Waggoner*

H. G. Wells, creator of the famous time machine, said that "Human history becomes more and more a race between education and catastrophe," and, not satisfied with that insightful thought, that one must "adapt or perish, now as ever, (that) is nature's inexorable imperative." This last year has been burdened with change, adaptation, and education. What is coming in 2016? Here is what some industry soothsayers are saying less than soothingly.

*Honus looks on as Samuel Morse primes the future with the telegraph, ca. 1845, probably with local real estate market reports*

As reported by *HousingWire.com*, Trulia had three predictions for next year. First, markets on the East and West Coasts would cool, which would be good news for the Bargain Belt (the second idea). Finally, "buying still beats renting." CoreLogic offered five solid thoughts:

- Interest rates will increase;
- Household formations will add significantly to housing demands;
- Rental homes will continue to be in high demand;
- Home sales and home prices will likely increase;
- The dollar volume of single family mortgage originations will fall around ten percent.

Brian Collins, who writes on compliance matters for *National Mortgage News*, made some not-so-bold forecasts for regulatory matters that will affect lenders in 2016:

- TRID Part II – what comes after CFPB's informal grace period;
- Return of HMDA – the Home Mortgage Disclosure Act (not a concern for title industry, but there will be lender demands for data);
- New servicing rule – one is not enough;
- Loan certification regulation – Best Practices for lender's (?);
- Condominium rule changes – not the super-priority issue but FHA project approval rules;
- Working overtime – loan officers as non-exempt FLSA workers.

*Honus attends Alexander Graham Bell's call to his loan broker, ca. 1880, still hearing the voice of the future*

The recently posted (but long expected) Federal Reserve interest rate hike will probably affect first time homebuyers more seriously than mature borrowers (borrowers of a certain age). While Honus is just speculating here, this impact is likely due to the newness of and/or lack of financial assets in the hands of younger borrowers; that is, it has nothing to do with a presumed bias against use of credit.

We shall see ... soon.

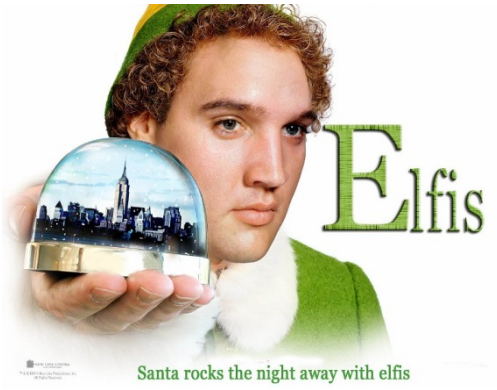
*Honus and the extended family watch the real estate report on an early B & W TV in the 1950s (Honus is nothing if not long-lived)*

# *Underwriting Corner*
# *Underwriting ... as Told in the Classics*
## *Legally Correct Season's Greetings*

**To All *WagonLode* Readers: Sorry for the delay...our Legal Department just approved the following Holiday Greeting:**

## Happy Solstice, Happy Hanukkah, Merry Christmas, Happy Kwanza and Happy Festivus

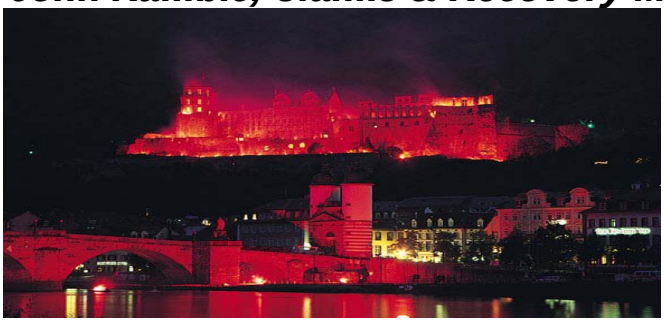
Please accept with no obligation, implied or implicit our best wishes for an environmentally conscious, socially responsible, low stress, non-addictive, gender neutral, celebration of the winter solstice holiday(tm), practiced within the most enjoyable traditions of the religious persuasion of your choice, or secular practices of your choice, with respect for the religious/secular persuasions and/or traditions of others, or their choice not to practice religious or secular traditions at all . . . and a fiscally successful, personally fulfilling, and medically uncomplicated recognition of the onset of the generally accepted calendar year 2016, but not without due respect for the calendars of choice of other cultures whose contributions to society have helped make America great, (not to imply that America is necessarily greater than any other country or is the only "AMERICA" in the western hemisphere), and without regard to the race, creed, color, age, physical ability, religious faith, choice of computer platform, or sexual orientation of the wishee.



Santa rocks the night away with elfis

**By accepting this greeting, you are accepting these terms:** This greeting is subject to clarification or withdrawal. It is freely transferable with no alteration to the original greeting. It implies no promise by the wisher to actually implement any of the wishes for herself/himself or others, and is void where prohibited by law, and is revocable at the sole discretion of the wisher. This wish is warranted to perform as expected within the usual application of good tidings for a period of one year, or until the issuance of a subsequent holiday greeting, whichever comes first, and warranty is limited to replacement of this wish or issuance of a new wish at the sole discretion of the wisher.

# *Claims Corner*
# *A Few Title Claims Received in 2015*
## *Joseph John Kambic, Claims & Recovery Manager*



**Text to Homeowner: "Your castle is burning!" Note: Not a title claim**

If you have attended Conestoga College any time after 2008, you most likely have heard me discuss random claim statistics concerning who is responsible for most of the claims that we receive and the nature of those claims.

To refresh your memory or to bring information to you anew, on average over one-half of all claims received in this office have been caused by Agent error. We have seen claims generated by Title Searchers, Lenders and Notaries. We have even been presented with Notices of Claims that upon investigation were determined not to be a title claim at all. While these "non-claim claims" have increased from around 15% to over 35%, Agent error still averages around 52% of the title claims that come across my desk.

The top five Agent Errors that we have been seeing, in no particular order, are 1) improper review, preparation and execution of documents; 2) unrecorded Deed, Mortgage or Deed of Trust; 3) unrecorded Release or Satisfaction for a Mortgage or Deed of Trust; 4) improper sequence when documents are recorded; and 5) late recording of a Deed, Mortgage or Deed of Trust.

Since my focus at the 2016 Conestoga College will be on Fraud and Owner Title Policy claims, I will touch upon some of the other Claims that we saw in in 2015.

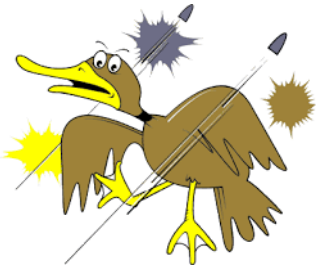

In January we received a claim out of Silver Spring, Maryland from a foreclosing Bank where the Deed of Trust did NOT contain the signature of the wife. The property was titled in the husband and the wife and a third party single male as Joint Tenants. The recorded Deed of Trust was from the Husband and third party male to the Bank. As such, the Bank was lacking a security interest in the wife's interest in the property. The Bank, in its closing instructions, to the Agent required the non-borrowing wife to sign the Deed of Trust. The Deed of Trust was prepared by the Bank and listed only the husband and the third party male as the Borrowers. Nonetheless, the Agent, who is to assure the Lender of a first lien position as insured, should have reached out to the Bank to advise it of its error in preparing the Deed

of Trust, which was contrary to its own Closing Instructions, and discuss how the Bank wanted to fix the error. When you determine who is on title to the property, make sure that ALL title holders execute the Deed of Trust/Mortgage.

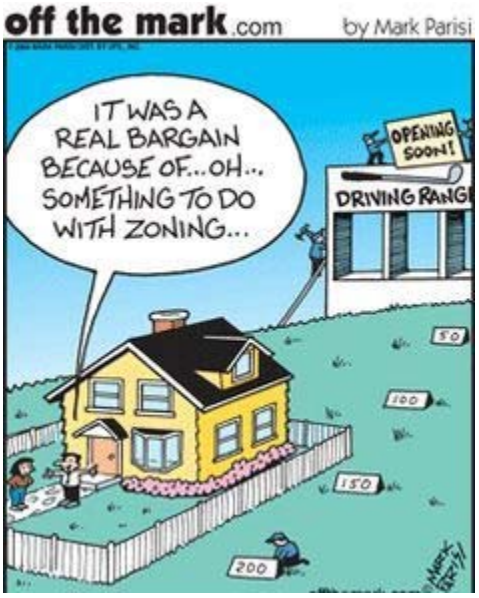
The following is NOT one of the top five Agent Errors, but I feel that there is value in including it in this article. It emphasizes the importance of conducting a bring-down title search before recording. The Agent issued a Commitment in early October of 2007, but settlement is not held until January the following year. In December of 2007, another Lender's Mortgage is recorded at the Courthouse. When our Insured Lender wants to foreclose on the property in 2015, its title search uncovers the December 2007 Mortgage. The Lender presented a title claim this past January.

Out of Indiana we received a claim from a foreclosing Lender of a prior mortgage on record, standing in lien priority over our Insured Lender's mortgage. Our investigation revealed that the mortgage appeared on the prior HUD 1. What the title Agent failed to do was to maintain a diary to make sure that the prior mortgage was released. We retained the services of reQuire to get the Satisfaction recorded. ReQuire provides a similar service for Title Agents. See: http://www.titletracking.com/services/release-tracking

The Agent prepares a Commitment for the refinance of 2 parcels of property. The Mortgage recorded by the title Agent identifies only one of the parcels. Two months after the Mortgage is recorded, someone re-records it after typing in the legal description for the second parcel. Also typed onto the Mortgage is "Said Mortgage is being re-recorded to add Parcel II to the description." Initially, the property owners contested the validity of the re-recorded mortgage without them having re-signed the Mortgage before a Notary. But as fate would have it, in our favor this time, we learned that the property owners are going through a Divorce and want to hand over the property to the Bank. We certainly dodged a bullet in this case.



A New York claim that we received involves a situation where the Title Agent failed to record the Mortgage. There is also an issue with a prior mortgage on the property not being paid and remaining of record. Notice of these claims received by Conestoga came from the foreclosing Lender. Because of the unique laws in New York requiring the Lender to retain an attorney (not the title agent) to hold settlement and disburse funds, we denied the title issue related to the unpaid prior mortgage. Upon instructions from the Lender, we retained counsel to get Court approval to record the unrecorded mortgage.



# *Special Feature Article*
# *Electronic Reconciliation of Escrow Accounts*
## *Dick Reass, RynohLive*

When the American Land Title Association (ALTA) published its Best Practices for title insurance and settlement companies, it indicated that the seven pillars were meant to be guidelines to help the industry meet market requirements and protect consumers. Although these guidelines are voluntary, many in the real estate settlement service industry are meeting and exceeding these benchmarks in order to ensure compliance with regulatory and industry standards.

One of ALTA's most critical best practice standards is Pillar No. 2:

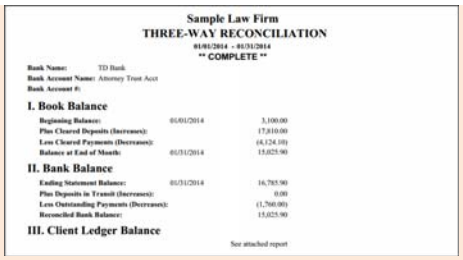
> "Adopt and maintain appropriate written procedures and controls for Escrow Trust Accounts allowing for electronic verification of reconciliation."

Something you may not realize is that the key words contained in Pillar No. 2 are "electronic verification of reconciliation." The focus of this pillar is that it is absolutely critical to safeguard client funds. The loss of client funds could mean the closure of your business, and because of the increase in online scams, it is becoming more difficult to protect your accounts. According to ALTA, one of the ways to ensure compliance with Pillar No. 2, and the protection of your clients' funds, is to make certain your escrow trust accounts are reconciled on a daily basis. In addition, a three-way reconciliation should be performed at least once a month. Most importantly, the results of the reconciliations should be accessible for verification electronically.

### LET'S START WITH DEFINING RECONCILIATION.

Reconciliation is a way to compare receipts and disbursements to make sure they are consistent with each other. This is an important way to identify any escrow account problems – whether they are due to an error or other nefarious causes, such as theft, fraud or compliance violations. The idea is similar to balancing your personal checkbook each month – you are looking for errors or problems in your account that need to be fixed. If reconciliation shows that your escrow account is short funds, you then take steps to find out where the funds have gone and why. It is important that the reconciliation of accounts is performed by someone who does not have disbursement authority over the account. This is because escrow account theft is not only conducted by cyber thieves, who have no relationship with the company; it can also be done by employees who have access to accounts. This is why reconciliation is so crucial – theft can come from a variety of places and it is sometimes very difficult to detect. Reconciliation ensures escrow account accuracy and allows for detection of irregularities so that you can rectify them quickly.

Three-way reconciliation is similar but more critical as it compares the bank statement, check book and escrow trial balance to ensure consistency. If, after reconciliation, the numbers do not pan out, you know that you need to investigate and correct the problem, which, again, could be an error, evidence of a security breach, or even fraud.



Sample Law Firm
THREE-WAY RECONCILIATION
01/01/2014 - 01/31/2014
** COMPLETE **

Bank Name: TD Bank
Bank Account Name: Attorney Trust Acct
Bank Account #:

I. Book Balance

| | | |
|---|---|---|
| Beginning Balance: | 01/01/2014 | 3,100.00 |
| Plus Cleared Deposits (Increases): | | 17,810.00 |
| Less Cleared Payments (Decreases): | | (4,124.10) |
| Balance at End of Month: | 01/31/2014 | 15,025.90 |

II. Bank Balance

| | | |
|---|---|---|
| Ending Statement Balance: | 01/31/2014 | 16,785.90 |
| Plus Deposits in Transit (Increases): | | 0.00 |
| Less Outstanding Payments (Decreases): | | (1,760.00) |
| Reconciled Bank Balance: | | 15,025.90 |

III. Client Ledger Balance

See attached report

It is also critical to make sure that evidence of your reconciliation is reliable and accessible electronically. What this means is that the complete reconciliation should be available in an electronic format so that you can verify it, access it, and keep it for your own records.

"Electronic verification of reconciliation is an important element within the recommendations of ALTA's Best Practices Pillar Number Two," Dick Reass, founder and chief executive officer of Rynoh*Live* said. "In fact, I'd argue that it is the most important element. Many times, companies do not understand how critical this element is or why it is so essential, and, unfortunately, electronic verification of reconciliation is frequently misunderstood."

It is often thought that a PDF version of an agent's reconciliation is sufficient to comply with ALTA's Best Practices. However, that is not the case. It is vital that agents provide proof of electronic verification of their reconciliation or proof of the underlying data that comprise the reconciliation.

"Sending a copy of your monthly reconciliation to an underwriter by email is not electronic verification of your reconciliation, nor is it providing electronic access to your underwriter," Reass said. "Emailing is simply sending a piece of paper in electronic format. Only by providing the underwriter access into your accounting system, and the corresponding transactional data processed by your bank, can the underwriter truly electronically verify that the reconciliation being presented is accurate."

"There must be a way for the underwriter to dig into the data, so this means that you need to provide access to the rawest data possible," Steve Gottheim, Legislative and Regulatory Counsel said. "You need to be able to duplicate the data that you are presenting to underwriters."

You are probably wondering why sending a PDF version of the reconciliation is not sufficient.

The concept is best understood by looking at the verification process for passports and visas in the United States. No longer is it a matter of physically reviewing the passport or visa that is being presented. It is now a process of electronically scanning the item and comparing it with the underlying data held by the Department of Homeland Security. You can take a look at the passport/visa program by clicking this link **http://goo.gl/4Glmm3** to get a better understanding of the process.

So, for example, providing a PDF version of the reconciliation for verification is comparable to providing a hard copy of a passport for verification. It provides the surface information but does not get to the underlying data. Scanning the passport allows for access to in-depth information and a more thorough verification. It is the same idea with reconciliations – getting to the underlying data is critical for complete, accurate verification.

Only by providing electronic access into your accounting system and banking transactions will your agency truly be compliant with ALTA Best Practices No. 2.

Another example of electronic verification comes from companies that conduct security and background checks for businesses. These companies conduct verification of a person's identification by utilizing government databases in order to crosscheck background information and search for warning signs that the person is not who he says he is. In other words, an individual can provide you with his identification, resume and past work information, but more is needed for a thorough background check. You need to verify that the information is accurate by searching for more data that can provide you with the individual's full story.

Underwriters are also looking for access to the full story. They need more than just a paper copy of the reconciliation. They need the underlining data in order to complete a true and accurate verification.

Finding a way to provide the correct information to your underwriter does not have to be difficult. In fact, Rynoh*Live* is a great example of an avenue that allows you to easily and accurately get the correct data to your underwriter.

Rynoh*Live*, the industry standard for escrow and financial management software for the settlement industry, exceeds the guidelines set forth in Pillar No. 2. Rynoh is a patented financial management and fraud prevention system that provides daily three-way reconciliation of escrow accounts. Moreover, Rynoh has the ability to verify reconciliation electronically because it integrates the bank data with the agent's escrow accounting software data. More specifically, Rynoh*Live* connects to your banking data (READ ONLY access) and your settlement software in a secure, cloud-based environment and then automatically generates reports that allow you to reconcile your accounts on a daily basis.

Going back to the passport example, it is clear why integrating banking data with the settlement account software is so important– it provides the underwriter with more than an emailed piece of paper. Rynoh*Live* allows for true electronic verification of reconciliation because it assimilates the underlying data.

"With Rynoh*Live*'s patented solution, your underwriter isn't simply getting a PDF reconciliation with superficial information," Reass said. "Only Rynoh can offer true compliance with Pillar Number 2 because we integrate the critical underlying data, which is necessary for accurate electronic verification."

In such a competitive industry, it is important not only to meet, but also to exceed, market standards. It is critical to be at the top of your game, and one way to do that is to ensure you are reconciling and verifying your accounts with accuracy.
To find out more about Rynoh*Live*'s escrow reconciliation process, go to **http://www.rynoh.com/how-it-works/**. Or Click this link **http://www.rynoh.com/contact/** to contact Rynoh for more information.

# *Marketing Minute*
# *ALTA's Homebuyer's Outreach Program (HOP)*
## *Alan Shumate, Regional Agency Representative*

As I am sure many of you are well aware by now that on October 3, 2015, owner's title insurance was now going to be labeled as "optional" on the Loan Estimate and Closing Disclosure as part of the CFPB's TILA-RESPA Integrated Disclosures. And I am also sure many of you are aware of the challenges that this now poses to the attorney and title agent. The fact that this line item in a myriad of line items appears as "optional" on the document, it will more times than not translate to "not necessary" to the affected parties involved in the transaction.

Inherently, in every challenge, there is opportunity. In this case we have the opportunity to speak to the homebuyer and real estate agent directly and explain how title insurance protects their property rights and the difference between a lender's "required" policy and the owners "optional" policy.

Fortunately, the American Land Title Association (ALTA) has provided its members a way to learn how to educate consumers, agents, builders, etc. about the value of title insurance, manage online consumer complaints (and your reputation) and promote your business, ALTA has launched a new series of Homebuyer Outreach Program (HOP) Workshops.

> *"For many consumers, buying a home is the single largest investment they will make in their lifetime and every homebuyer deserves clear information on how to help protect their property rights," said Michelle Korsmo, ALTA's chief executive officer. "We are excited to unveil these new ALTA member-exclusive resources that help easily and clearly communicate the benefits of title insurance to homebuyers."*

The Homebuyer Outreach Program includes customizable templates, a welcome letter to the homebuyer, and PowerPoint presentations for direct homebuyer communication. The Program also includes rack cards, marketing one-pagers, sample ads and blog posts for use immediately by ALTA members.

I had a chance to meet with Myrna Keplinger (past president, Virginia Land Title Association and owner/president of The Settlement Group Inc.) a couple of weeks ago and we were having a discussion on this very matter. Myrna shared an article with me that she often uses in educating real estate professionals and this article speaks LOUDLY to the value of the owner's policy. Admittedly this is on a grand scale, but it does an outstandingly good job of backing up our position: **http://www.mystatesman.com/news/news/local/mortgage-company-sues-owners-of-400-georgetown-hom/npFgb/**

While I think the above link does a great job of speaking to the need of homeowners to obtain a policy to protect their interests, I would also add that there is a need to protect your own. Many agents I have spoken with have either been using or incorporating a "waiver disclosure" for the homebuyer to sign if they abstain from purchasing an owner's policy. This is solely to protect the attorney/agent should a future issue arise and the homeowner, facing the possibility that they will lose their home, states that they were never offered the owner's policy to begin

with. Faced with the concept of losing their home from no perceived wrongdoing of their own, a homeowner can/has/will lawyer up and do whatever is necessary to save their most precious asset and who could blame them for doing so.

In closing, I would implore each of you to accentuate educating all parties in your realm of business as to the merits of procuring the protection homeowners need to protect themselves and their property and the ALTA's Homebuyers Outreach Program is a well thought out and viable vehicle for accomplishing this goal. When you think about the cost versus value of an owner's policy compared to all the other costs associated with a real estate settlement, how could a consumer, properly equipped with the knowledge they should have, refuse?

---

# *Circling the Wagons*
# *Industry News: Abbreviated*

## You, too, Can Be a Seminarian for a Day

With January 2016 next on the calendar, it is time for Conestoga Title's annual agent seminar, Conestoga College. Again this year (now number 30!), the College will be presented over a day and a half with nine hours of CLE and CE credit pending. If you have not received the preliminary registration packet, please contact Patti Reese (**preese@contitle.com**) and hold your seat for January 18-19, 2016. Conestoga is returning to Virginia in the spring. While initial info is still several weeks away, make an early check mark on your calendar for Tuesday, April 10, 2016, at the Waterford at Fair Oaks. As has been the case for the last couple of years, Conestoga is adding another state seminar to its repertoire: Agent training is coming to Turf Valley on Tuesday, May 10, 2016. Mark it down; we look forward to seeing you there. And, expect Conestoga to return to Columbus, Ohio around November first for the agent seminar there.

## *What's the Buzz? Tell Me What's a-Happening…*

There has actually been a lot going on, but say the word "TRID" (not a word, I know) and all the air goes out of the room. In the rest of our world, this is a brief recap of what has been happening. While Congress will fail to pass the formal TRID grace period, it might adopt a budget that includes all the usual tax extenders. If the narrow vote in the House fails, however, important tax tidbits like the mortgage interest deduction and debt forgiveness exclusion may wait until April 15th for passage. FNMA and FHLMC are still in federal receivership and, if anything, seem further removed from being returned to the private marketplace as no single plan for divestment has made a conference committee. Ohio has a new OTIRB manual and Virginia has pending regulations proposing to extend federal rules into the former CRESPA definition. (If you are a Virginia agent and have not seen the proposal, please let me know, **msmith@contitle.com**.) Conestoga has recently implemented internally an e-mail encryption system. In the more things change, the more they stay the same category: Latest from the scam/fraud/embezzlement merry-go-round – Rhode Island (attorney, realtor, originator involved in fraudulent loan apps), Texas (borrower wins overturn of foreclosure due to lender's failure to foreclose properly), California (realtor gets 18 years for mortgage rescue scam), federal court (Franklin American Mortgage to pay $ 70M for False Claims Act violations). And no end of the year would be complete without these snippets: Town of Swett, SD is back on the market; in River Falls, WI, a homeowner is complaining that her neighbors' Christmas lights are keeping her up at night; and real estate agents wonder how much is too much for a closing gift (**www.housingwire.com/articles/print/35816-how-much-is-too-much**).

# *Agency Admin and Audit*
# *ALTA Best Practices FAQs (Updated)*
## *Don Delgado, Vice President, Agency Administration*

**Q: If the borrower is a Corporation, Partnership or other non-natural person entity (LLC, LLP), is a Closing Disclosure required?**
**A:** No Closing Disclosure is required for a transaction involving a Corporation, Partnership or other non-natural person entity. These entities are exempt under 12 CFR § 1026.3(a)(2).

**Q: If a buyer is a Trust and the borrower is the trustee is a Closing Disclosure required?**
**A:** If the borrower is the trustee of a trust, the lender must decide if the loan purpose is business or personal because 12 CFR § 1026.3(a)(1) exempts loans primarily for business, commercial or agricultural purposes. If the loan proceeds will be used for personal, family or household use, then yes, the Closing Disclosure is required (along with adherence to all the rest of the Rule).

**Q: How will private financing (hard money lenders) be handled? Are those individuals who lend money to investors affected by the new Closing Disclosures and do they fall under the new lending rules? Most do lend more than 5 loans per year.**
**A:** Private or hard money lenders will need to see if they are covered by the Truth in Lending Act, and if they are required to be licensed as well as if they need to follow this rule. That determination can be very fact specific, as well as impacted by state law. If in fact the lending is only done to investor purchaser/borrowers such that the loan proceeds are not for personal, family or household use, then the loan transaction is outside of Truth in Lending, but the best advice would be to get a legal opinion on the matter. The best short resource on the role of private lenders as well as a guide to the rule is at the CFPB's website (**www.consumerfinance.gov**) and the Small Entity Guidance that is posted there- both for the Integrated Loan Disclosures rule and the Loan Originator Compensation and Qualification rule.

**Q: Can the Settlement Agent distribute the Buyer's closing disclosure to the Realtor® (or other party) without the Buyer's written consent?**
**A:** Although "the Bureau believes that including on the Closing Disclosure summaries of the consumer's and seller's transactions will effectuate the purposes of TILA and RESPA by promoting the informed use of credit and more effective advance notice to home buyers and sellers of settlement costs, respectively" (see pp. 1065-1066 discussion in the TRID Rule), it recognized that privacy considerations may arise and that "some State laws may prohibit provision of information about the consumer to the seller and about the seller to the consumer." (See p. 1854 re. 12 CFR § 1026.38(j))
Therefore, 12 CFR § 1026.39(t)(5)(v) and (vi) allows the creditor or settlement agent to leave blank or delete "certain information regarding the consumer's transaction from the disclosure provided to a seller or third party."

**Q: Does the Seller have to consent to the fact that the disclosure of their information is being given to the Buyer's lender? Do the privacy rules affect their Closing Disclosure?**
A: Federal regulations require the Seller's information to be furnished to the Buyer's lender. See 12 CFR §1026.19(f)(4)(iv) and Federal Compliance / Privacy / Regulations / Privacy of Consumer Financial Information (16 CFR §313.15(a)(7)(i), dated 01/01/03), issued pursuant to the Gramm-Leach-Bliley Act.

**Q: Does a non-borrower who holds title (and will be signing the security instrument only) need to receive a Closing Disclosure?**
**A:** Yes, if it is a transaction that has a rescission period ('refinance'). The Closing Disclosure must be given to all consumers who have an ownership interest and therefore the right to rescind.

**Q: Is the creditor required to inform the settlement agent if it issued a corrected Closing Disclosure?**

**A:** The creditor is only required to re-issue the Closing Disclosure to the consumer.

**Q: Are changes allowed on the Closing Disclosure on the day of closing?**
**A:** The consumer must be given the opportunity to inspect one day prior, but doesn't have to wait the one day. So, yes, changes can be made day of (unless the change requires a new 3-day waiting period – APR increases above certain thresholds, loan product changes, or prepayment penalty is added). Here is the rule:
§ 1026.19(f)(2) Subsequent changes. Changes before consummation not requiring a new waiting period. Except as provided in paragraph (f)(2)(ii), if the disclosures provided under paragraph (f)(1)(i) of this section become inaccurate before consummation, the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. Notwithstanding the requirement to provide corrected disclosures at or before consummation, the creditor shall permit the consumer to inspect the disclosures provided under this paragraph, completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately preceding consummation, but the creditor may omit from inspection items related only to the seller's transaction.

**Q: What will happen when the amounts on the initial Closing Disclosure change at closing?**
**A:** The settlement agent should consult the lender's closing instructions, but given the information currently available, the lender will expect that the settlement agent will contact the lender for, at a minimum, approval of the changes and probably the creation of a new Closing Disclosure.

**Q: Where do we show the agent/underwriter split of premium on the new disclosures?**
**A:** The agent/underwriter split is not required to be on the Closing Disclosure form

**Q: Where does a credit from the seller to the buyer go on the Closing Disclosure?**
**A:** It can go in one of two places: either for a specific cost on page 2 where it would show as a seller-paid item in section A, B, C, E, F or G; or, if it is a general credit or a credit for an item not on page 2, it would go on page 3 in section L and N.

**Q: How are last-minute changes made to the seller's side of the Closing Disclosure (CD) that do not affect the buyer's numbers?**
A: It depends. If the creditor/lender is inputting the numbers onto the CD and uses the combined buyer-seller form, you will need to ask them to make any and all changes or get permission from them to make changes. Most lenders have indicated that they will be delivering only the borrower's side of the CD and will rely solely on the closing/escrow industry to provide the seller's CD. The Rule specifically tasked the closing/settlement industry with the responsibility of preparing and delivering the seller's side. If the lender is inputting the numbers and uses the buyer-only form, this will allow you to create and use the seller-only form, leaving you the opportunity to make the changes instantaneously. However, most lenders will require you to obtain their authorization prior to making any changes to the seller's side of the CD. Be sure to talk to your lender(s) about this. If we prepare and deliver the seller-only CD, we are required to supply the lender with a copy of the seller-only form. There is no delivery requirement regarding the seller's portion of the CD or the seller-only form prior to consummation. The TRID Rule states that the delivery of the seller's side must be made at the time of consummation.

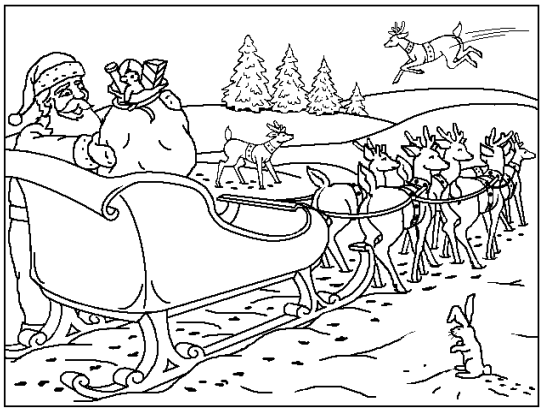
**Q: Does the TILA-RESPA Integrated (TRID) rule require that the lender disclose the basic rate for owner's title insurance (as opposed to quoting the enhanced rate)?**
**A:** As a general rule, you should disclose the basic rate for owner's title insurance. In the Know Before You Owe rule's Official Interpretation to § 1026.36(g)(4), it states, "The amount disclosed for an owner's title insurance premium pursuant to § 1026.37(g)(4) is based on a basic owner's policy rate, and not on an 'enhanced' title insurance policy premium." However, "the creditor may instead disclose the premium for an 'enhanced' policy when the 'enhanced' title insurance policy is required by the real estate sales contract, if such requirement is known to the creditor when issuing the Loan Estimate." Official

Interpretation 37(g)(4)-1. The enhanced rate "should be disclosed as 'Title—Owner's Title Policy (optional),' or in any similar manner that includes the introductory description 'Title - ' at the beginning of the label for the item, the parenthetical description '(optional)' at the end of the label, and clearly indicates the amount of the premium disclosed pursuant to § 1026.37(g)(4) is for the owner's title insurance coverage." ." Official Interpretation 37(g)(4)-1. Given the new definition of "application," it is unlikely that the lender will have a copy of the sales contract available at the time the Loan Estimate is produced. Therefore, it is likely in most cases that lenders will need to disclose the cost of a basic owner's policy. If the buyer later elects to purchase an enhanced policy rather than the basic policy, the lender can update the Loan Estimate and reset tolerances because the decision to purchase the enhanced policy would be a consumer requested change. See § 1026.19(e)(3)(iv)(C) and its accompanying Official Interpretation.

**Q**: It is my understanding that you may not deduct the earnest money from the real estate agent's commission any longer at closing. The real estate agent must bring a check to closing for the earnest money – is this correct?
**A:** There is no prohibition in the rule that prevents the deduction of the earnest money from the real estate agent's commission. That being said, you must disclose the amount of the commission that is paid to the real estate agent, "regardless of the identity of the party holding any earnest money deposit." Official Interpretation 38(g)(4)-4. To comply with this requirement, you should disclose the amount of the commission and the deposit/earnest money.

**Q:** I have a question about recording fees on the CD. It is my understanding that recording fees are required to be "rolled up" so to speak in line E 01 since the only two items that the regulations allow to be itemized are for the deed and mortgage and that we are not permitted to add lines for other recording fees (for example the recording fee for a municipal lien certificate or a discharge of mortgage or an assignment of mortgage). So for example, in the CFPB sample CD for a purchase transaction, if there are other recording fees other than for the deed and mortgage, those fees must be added to the box where the figure $85 is represented in the sample form.

**A:** This is a precise understanding of the rule's requirements on disclosing recording fees. Specifically, the rule requires that all recording fees and other government fees and taxes, outside of transfer taxes, must be added together and labeled "Recording Fees and Other Taxes" under the subheading "Taxes and Other Government Fees." § 1026.37(g)(1)(i). The bureau clearly states within the Official Interpretations of the rule that no lines can be added or deleted under the "Taxes and Other Government Fees" subheading. Official Interpretation 37(g)(1)-6. The bureau has also specifically stated that you cannot use an addendum to itemize fees that are required to be disclosed under the "Taxes and Other Government Fees" subheading. § 1026.37(g)(8). If you are required by state law, or simply would like, to make additional disclosures for recording fees or other government fees or taxes, you may disclose those fees in a separate document, such as the ALTA Settlement Statement.



*Free Santa scene to color!! Enjoy!*

# *Employee Spotlight*
# *Conestoga Title Personnel in Industry Positions*

With this issue of the *WagonLode*, we are doing something a bit different with this feature. We are recognizing several employees who are working on title industry trade organization committees, giving something back and working for your, and our, business interests. For the 2015-2016 year of the American Land Title Association, Vice President and Agency Department Manager, Don Delgado, has been appointed to the ALTA Internal Auditing Committee. This group has a multiplicity of purposes, with the primary focus being the continuous review of financial controls and the entire agency supervision process. Don brings a wealth of experience and talent to the Committee, as each of you will verify by your review of our Best Practices and TRID online resources, webpages that Don worked with the IT people and wrote much of the content.

Michael Smith, Underwriting Counsel, is into his second year with ALTA's Title Forms Committee. The state organizations are well-supported by Conestoga as well. The Pennsylvania Land Title Association has John Nikolaus, Conestoga Title's President, serving on its Executive Committee. PLTA also has Bill Parker, Claims and Underwriting Counsel, on its Legislative Committee, and Joe Kambic, Claims and Recovery Manager, serving as Chairman of the Education Committee of its South Central Chapter. Down in ole Virginia, the VLTA has placed Alan Shumate, Regional Agency Representative, on its Membership Committee and he also works with the Title Action Network group. Michael Smith assists VLTA's *Examiner* magazine as Features Editor.

Please contact Conestoga if you need something within the title industry. We have someone in place to help make a difference for you.

## *Conestoga Title Personnel Contact Information*

| | Position | Direct Dial | Other Direct | E-mail |
|---|---|---|---|---|
| Adam Kossove | Direct Dept. Account Executive | 717-431-2775 | 800-257-9414 | akossove@contitle.com |
| Alan Shumate | Regional Agency Representative | 804-586-3076 | | ashumate@contitle.com |
| Bill Parker | Underwriting & Claims Counsel | 717-735-7083 | 800-861-9414 | wparker@contitle.com |
| Colleen Sheerin | Marketing Assistant | 717-431-2764 | 800-272-6535 | csheerin@contitle.com |
| Don Delgado | Vice President/Agency Admin | 717-431-2752 | 800-724-0935 | ddelgado@contitle.com |
| Doug Riggin | Sales Manager | 717-431-2781 | 800-257-4176 | driggin@contitle.com |
| Jill Funk | Agency Support Administrator | 717-431-2788 | 800-672-2985 | jfunk@contitle.com |
| Joe Kambic | Claims & Recovery Manager | 717-431-2783 | 800-257-5217 | jkambic@contitle.com |
| Joel Angelo | Agency Audit Manager | 717-431-2784 | 800-830-9031 | jangelo@contitle.com |
| John Nikolaus | President | 717-431-2763 | 800-272-3570 | jnikolaus@contitle.com |
| Jonathan Markel | Regional Agency Representative | 717-431-1260 | 844-509-0490 | jmarkel@contitle.com |
| Laura Fadeley | Regional Auditor & Agency Rep | 717-431-2779 | 443-566-3704 | lfadeley@contitle.com |
| Michael Smith | Underwriting Counsel | 717-735-7082 | 800-861-9352 | msmith@contitle.com |
| Patti Reese | Executive Assistant | 717-431-2755 | 877-502-5157 | preese@contitle.com |
| Rebecca Breault | Claims Paralegal | 717-286-2347 | 800-478-8630 | rbreault@contitle.com |
| Robin Wolbert | Treasurer | 717-431-2772 | 800-257-1966 | rwolbert@contitle.com |
| Sheryl Childs | Policy Administrator | 717-431-2785 | 800-257-7921 | schilds@contitle.com |
| Susan Anderson | Paralegal | 717-431-2757 | 877-502-5158 | sanderson@contitle.com |