

Conestoga Title Insurance Co.

WAGONLODE

A Land Title Update

2018 First Quarter

Conestoga Title Insurance
Upcoming Seminars in 2018

Virginia—April 10th at The Waterford at Fair Oaks in Fairfax, VA

Maryland—May 8th at Turf Valley in Ellicott City, MD

For agenda and registration information email csheerin@conestogatile.com

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A Positive Reflection on 2017

Now in our 45th year of writing title insurance policies, our Management Team at Conestoga Title Insurance Co. is proud of our past success and excited about our future plans. Reflecting back on 2017, the Company experienced its most profitable year in operations since 2003. Thanks to the support of our network of agents and approved attorneys, we experienced continued premium growth and a decrease



in claims expenditures. In addition, we maintained our “A Prime, Unsurpassed” rating from Demotech, Inc., the nation’s leading independent analyst of title insurance underwriters.

Quality Agents and Approved Attorneys

Our accomplishments are a reflection of the quality network of agents and approved attorneys with whom we are associated. Conestoga Title continues to be selective with regard to the agents and approved attorneys that we appoint. It is our belief that our conservative management style and focus on providing quality customer service are key attractions to our customers. At Conestoga, direct access to decision-makers is the standard. Unlike many underwriters, we are focused on supporting the independent agency system, not competing with our agents.

Supporting Your Growth

Looking ahead, we are committed to providing effective underwriting support, premier continuing education opportunities, timely legislative and industry related updates and overall superior customer service. We are enthusiastic about the healthy economy, vibrant real estate market and opportunities that arise as a result.

Thank you!

On behalf of our Management Team, thank you for your trust and confidence. Together with you, we look forward to serving our policyholders and seeking new opportunities in 2018.

John M. Nikolaus, CLTP

President, Conestoga Title Insurance Co.

We're the CFPB and We Are Not Dead Yet

By: William J. Parker, Esq.
Vice President of Claims & Underwriting

Like the town folk in Monty Python's Holy Grail, the Consumer Financial Protection Bureau (CFPB) is still singing along. In October 2017 when the DC Court of Appeals declared the structure of the bureau unconstitutional, many title folks let out a small cheer.



But just like those pesky town folk it seems the CFPB has new life. [PHH CORP. v. Consumer Financial Protection Bureau, 839 F.3d 1-Court of Appeals, Dist. of Columbia Circuit 2016].

On January 31, 2018 the "En Banc" court stunningly reversed itself and found that CFPB as it presently exists was constitutional after all.

You will recall that this all started when then Director Richard Cordray increased a \$6 million dollar fine against PHH to \$108 million when PHH fought the original citing. The fine was levied because the Bureau alleged that PHH had violated RESPA by illegally referring consumers to title insurers in return for kickbacks.

In the shifting sand that is Washington DC, the teams have exchanged players. The original White House administration was amicus for CFPB. That changed in 2017 along with White House administration as the Department of Justice filed an amicus asking that it be declared unconstitutional. The National Association of Realtors and mortgage bankers, of course, sided with PHH.

The court however, did rule that Cordray's interpretation of RESPA was incorrect and it vacated \$103 million of the original \$108 million. In its initial reaction to the ruling, PHH said that they were pleased with the RESPA ruling but did not indicate if they would pursue the constitutional issue any further.

Yet another CBPB issue remains contentious. This same court is also tasked with deciding the leadership of the embattled agency. Leandra English was Corday's choice to lead after he left. However, just before he did, the Trump administration named Mick Mulvaney as the Director. English has appealed the initial ruling and it is now before the Court of Appeal on expedited review.

Stay tuned....the CFPB is not yet dead, but it is still searching for that elusive shrubbery.

Click link below to read the opinion . Or copy and paste into your browser.

[https://www.cadc.uscourts.gov/internet/opinions.nsf/B7623651686D60D585258226005405AC/\\$file/15-1177.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/B7623651686D60D585258226005405AC/$file/15-1177.pdf)

Avoiding Check Fraud



By Jon Markel, Conestoga Title Regional Agency Representative

Identity theft, financial fraud and other cyber-crimes are on the rise in the title insurance industry. As title agents, it is vital to be up to date on all of these different threats and put the correct measures in place to protect not only your company but your clients as well. Nothing seems safe anymore. You are probably very vigilant answering emails and phone calls because of scams. Now you may have to be careful of what you put in the public mailbox.



Conestoga recently received an email from one of our PA agents describing a **"NEW" attack they**

had experienced. Our agent had several fraudulent checks trying to be processed through their escrow account. Each occurrence was promptly reported to the local police department. One of the fraudulent checks was for \$99,000. Due to the amount and the type of account, the Pennsylvania State Police and FBI got involved and have made the first arrest. Investigators determined the scheme **was initiated by "fishing" the agent's mail** out of a public mail box. This type of crime, also reported via news outlets in PA and NY, involves a fraudster using an object covered in a sticky substance (such as a glue mousetrap or bottle with glue smeared on it), attached to fishing line or a string, and then dropped in a mail box in order to fish out envelopes

with checks. The fraudster will then try to duplicate or wash part of the check in order to cash or sell it.

Fortunately, our agent complies with Best Practices and has the appropriate measures in place to reject fraudulent checks. The agent utilizes positive pay with their bank and as a backup, uses positive pay through Rynoh Live. (See WagonLode article in this issue regarding positive pay.)

We applaud and are thankful that our agent handled this situation correctly and shared his or her story as a lesson learned. Again the importance of having positive pay in this particular case certainly saved the agent a lot of potential headaches and a large loss. Because of this incident, our agent has implemented some new guidelines regarding outgoing mail. Staff will either hand deliver the mail to the mail carrier, or hand deliver it to a counter postal worker at the local post office. You may wish to consider implementing these practices for your title agency or law firm.

A Tool to Avoid Check Fraud

By Doug Rauchut—Agency Audit Manager

Do you have procedures in place to catch fraudulent checks in a timely fashion?

With chips now being added to consumer's credit/debit cards, fraudster's are turning to an easier path of obtaining quick money, check fraud. So let me ask you this, what would you do if an escrow check cleared your escrow account for \$5,102.39 that was never issued by your company? Or better yet, how about taking that same amount for \$5,102.39 and multiply it by 15 separate checks that are being presented for payment, because chances are the fraudster is not going to just make one check, they will try multiple times to succeed.

Within this month's Wagonlode, there is a scenario of this situation provided to us by an agent that Jonathan Markel with CTIC discusses in his article, where they became a victim of check fraud. The agent was notified through the use of their Positive Pay system exception report that a check was being presented to their financial institution that did not match the records of what the agent had issued from their escrow accounting software. The agent was able to quickly deny payment of this check without losing any funds out of their escrow account.

What is "Positive Pay"? It is a fraud detection tool provided by most banks through their cash management department. The service matches the account number, check number, and dollar amount of each check presented for payment against a list of checks issued by your company. There are two types of positive pay: standard and reverse.

Standard Positive Pay is one method where your escrow accounting software issues a data file to the bank. The bank will then use this data file to verify any check that is presented for payment to the list that your agency has provided. When information does not match your list with what is being presented to the bank, then an exception report is issued to your company to either approve manually or deny payment.

Reverse Positive Pay the bank will supply your company with a list of checks being presented for you to review and process for payment authorization. The downside to this method is if you do not review this information in a timely fashion, the bank will be forced to make payment on the check that is being presented.



Positive Pay should be something your company considers as an added protection to your account. Most businesses cannot afford to lose a large sum of money to check fraud. And remember, one bad check could create a negative balance in your escrow account, causing all other good checks to bounce.

Standing Out Above Your Competition

By: Doug Riggin, VP Sales

A strong digital presence is an essential piece of the puzzle in your business marketing plan. The key is keeping it simple and **creative while reflecting your agency's place in the local market.**

Mobile Website Design: The mobile friendly website design has become the new standard. Studies show that most clients will access your site via a smart phone. Mobile friendly design for smaller handheld display includes simple graphics and touch screen interface capability.

Accurate Data: Member and/or employee pictures and bios must be up to date. Direct contact information for members and employees needs to be current.

Easy Access: Have a link for directions to your office or post a map of the surrounding area and your location.

The Human Element: Have a tab with photos on your site and change them monthly or quarterly. If you're involved with a non-profit organization, volunteer, or coach a team—these images can go a long way toward cultivating a positive impression of yourself and your business to new clients.

Educate Clients: Provide useful easy to understand information to potential clients visiting your website. What is title insurance? Why do I need an Owner's and Lender's policy? What do I need to bring to closing?

Expectations and Processes: Explain what you do for your clients from the moment the order comes in up to and through the closing process. Be transparent and clients will see your agency as organized and capable.

Encourage Interaction: Have a page set aside just for questions, comments, or for the client to submit a posting on a great experience they had in your office.

FINCEN AND GTOs: ACRONYMS YOU SHOULD KNOW

Mitchell J. Thoreson, Esq. Underwriting Counsel, Conestoga Title Insurance Co.

The Background:

The Financial Crimes Enforcement Network (FinCEN) is a bureau of the U.S. Department of the Treasury, whose mission is “to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.” Of particular importance to the title industry, FinCEN has issued Geographic Targeting Orders (GTOs) over the last few years requiring U.S. title insurance companies to identify the natural persons behind shell companies used to pay for high-end residential real estate in various metropolitan areas across the country – the primary concern being tracking and preventing money laundering and related crimes pertaining to real estate transactions in those areas.

Which Transactions Apply:

As expected, Conestoga Title Insurance Co. was included in these communications. Most recently in August of 2017, the Director of FinCEN issued a GTO requiring Conestoga to collect and report information about persons involved in certain residential real estate transactions. For purposes of Conestoga’s footprint, the GTO applies to transactions in which:

- ◆ A corporation, limited liability company, partnership or other similar business entity, whether formed under state or foreign laws; purchases residential real property for a total purchase price of:
 - ◆ \$1,500,000 or more in the Boroughs of Brooklyn, Queens, Bronx, or Staten Island in New York City, New York; or
 - ◆ \$3,000,000 or more in the Borough of Manhattan in New York City, New York;
- ◆ Such purchase is made without a bank loan or similar form of external financing; and
- ◆ Such purchase is made, at least in part, using currency or a cashier’s check, a certified check, a traveler’s check, a personal check, a business check, or a money order in any form, or a funds transfer.
- ◆ We fully expect FinCEN to expand this into other areas in 2018.

WHAT IT MEANS FOR AGENTS AND ATTORNEYS:

Conestoga Agents operating in the above markets should be aware of the GTO and comply with its terms if handling transactions falling within its purview, including:

Reporting the transaction to FinCEN by filing FinCEN Form 8300 within 30 days of the closing; and

Complying with records retention provisions described in the GTO.

We are happy to provide a copy of the most recent GTO to any Agents operating in these target areas. We also encourage any Agents who are not directly affected by the current FinCEN GTO to keep abreast of updates provided by Conestoga or various news sources and stay alert for expansions of GTOs into areas in which such Agents may be operating.

This subject also serves as a friendly reminder for all of our Agents to actively learn about your transactions and do your best to become aware of any potential criminal activity in connection therewith.

Has Civility Bitten the Dust in the Title Claim Process?

By: Brian H. Smith, Esquire—JSDC Law Claims Counsel for Conestoga Title Insurance Co.

It is ironic that the required courses taken by first year law students include courses in “civil procedure,” but not any required classes in making “procedure civil.” While the “good old days” were as full of over-adversarial, take-no-prisoners practitioners as today, what is missing is an awareness of one’s audience, together with a consideration of what really is common sense to move a matter forward.

Those of us practicing in mortgage foreclosure and title insurance defense, learned quite quickly that the same players tend to pop up over and over again. Whether they were the foreclosure attorneys or paralegals making claims under lender’s title policies, the claims administrators serving as “gatekeepers” for claims made to the various underwriters, or the in-house claims counsel working to resolve such claims, over time, both working and friendly relationships developed, which helped tremendously on all sides to get one’s job done.

The key to these relationships was that all parties saw each other as part of a cooperative process working toward a goal or goals...the resolution of a title claim so that a lender-insured could proceed to either foreclose or to confirm the validity of its foreclosure. In other words, civility.

With increased regulatory pressure on lenders, perhaps foreclosure counsel thought to try to pass on the impact of that to their friendly neighborhood title insurers. The formerly harmonious dynamic between the soldiers of foreclosure and their allies in the title insurance industry deteriorated into just another vehicle for excess “adversarialness.”

To understand more fully, consider a typical pre-Great Recession notice of title insurance claim. A letter would specifically indicate that: (a) the claimant was an insured (with a copy of the policy included); (b) there was an issue interfering with the interest being insured; and (c) the claimant looked forward to the title insurer resolving the claim as soon as possible.

Now I see more notices of claim as “less information provided, more posturing.” About the only item today’s notices of claim seem to share with yesteryear’s is identification of an insured. But there is frequently no copy of a policy included with today’s notices of claim, nor anything else to identify the insured. Often missing are copies of any “backup” to help identify the nature of the claim (e.g. title searches performed in anticipation of foreclosure). Indeed, many of today’s claim notices seem to be form-based, of the fill-in-the blank sort.

What, you may ask, is provided in today’s notice of claim? We see demands for policy limits from the title insurer if the claim is not promptly resolved, or else the title insurer will be on the receiving end of a lawsuit!

With all of the above in mind, imagine yourself to be a claims administrator or in-house claims counsel taking a first look at a notice of claim of today. Would you feel inclined to work toward resolving the claim expeditiously, or would you just feel inclined to put the notice on the bottom of the pile on your desk?

What, if anything, can bring things back to the way they were in the claims process? Once again, the answer is civility. Claimant-attorneys must learn to “rein in” adversarialness before the fact—your client is not going to be impressed if your initial bravado to the title insurer does nothing but delay the administration of the claim. Instead, if words are carefully chosen and support is provided at the outset of a claim, your client will be pleasantly surprised and pleased at how fast the claim proceeds.

It is extremely important to consider that, no matter who is in the claims process, we’re all in it together. Standing on ceremony precludes togetherness and the expeditious resolution of claims; civility, on the other hand, encourages these.

National and State Updates

Pennsylvania—Conestoga agents and attorneys should now all be using the new(ish) 2016 Commitment Form for transactions; see Conestoga Memo 18PA01 for more information.

New York—Regulation 206 (relating to agents, affiliated relationships & required disclosures) and Regulation 208 (relating to insurance rates, expenses and charges) went into effect on February 1, 2018; see Conestoga Memo 17NY01 for more information.

New Jersey—**In January, New Jersey’s bulk sales requirements were amended** when Governor Christie signed S-2839 into law, providing for certain exemptions from bulk sales notification requirements.

Indiana—In February, the Indiana General Assembly passed legislation to allow for state notaries to participate in online notarizations across the country (joining VA, TX and NV).

Ohio—Efforts to abolish dower continue via HB 407; stay alert for updates.

Maryland—SB 376, eliminating certificate of preparation requirement for mortgages, deeds of trust and assignments (and releases of same), became effective October 1, 2017.

NATIONAL— OCWEN Financial Corp. appears to be back on the upswing and has reached a deal to acquire PHH Mortgage Corp. This will set OCWEN back a cool \$360 million in cash and, at least according to OCWEN, provide them with certain strategic and financial benefits.

Conestoga College 2018 Wrap Up

Thanks to all the agents and attorneys that helped to make our annual Conestoga College a great success. This two day event , sponsored by the Pennsylvania Land Title Institute, was held in Lancaster, PA in January. Over 150 attendees enjoyed a variety of speakers and had a chance to catch up with colleagues. Nine hours of CE and CLE were provided to eligible participants.

Meet Eric Borgia, Conestoga Title's Newest Member of the Underwriting Team

Eric M. Borgia serves as Underwriting Counsel for Conestoga Title Insurance Co. in Lancaster, Pennsylvania. Eric, a native of Erie, Pennsylvania, comes to us most recently from Florida and joined Conestoga in March 2018. Prior to relocating to Florida, Eric was Staff Attorney at Penn Attorneys Title Insurance Co. in Erie. While in Florida, Eric spent 22 years in general legal practice, focusing primarily in the areas of commercial and residential real property law and real estate closings as a licensed title insurance agent and Florida Bar Board Certified Real Estate Attorney. Eric is a graduate of Penn State University with a B.A. in English, and received his J.D. from Duquesne University School of Law. Eric holds Bar licenses in both Pennsylvania and Florida.



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