Draft: 8/18/23

Title Insurance (C) Task Force
Seattle, Washington
August 14, 2023

The Title Insurance (C) Task Force met in Seattle, WA, Aug. 14, 2023. The following Task Force members participated: Eric Dunning, Chair (NE); Kevin Gaffney, Vice Chair (VT); Mark Fowler represented by Erick Wright (AL); Karima M. Woods represented by Angela King (DC); Michael Yaworsky represented by Anoush Brangaccio, Jeffrey Joseph, and Bradley Trim (FL); Vicki Schmidt represented by Julie Holmes (KS); James J. Donelon represented by Chuck Myers (LA); Kathleen A. Birrane represented by Mary Kwei (MD); Grace Arnold represented by Paul Hanson (MN); Troy Downing (MT); Mike Causey represented by Tracy Biehn (NC); Judith L. French represented by Tom Botsko and Maureen Motter (OH); Glen Mulready represented by Erin Wainner and Diane Carter (OK); Michael Humphreys represented by Michael McKenney (PA); Elizabeth Kelleher Dwyer represented by Patrick Smock (RI); Michael Wise represented by Will Davis and Rachel Moore (SC); and Larry D. Deiter represented by Tony Dorschner (SD).

1. Adopted its Spring National Meeting Minutes

Commissioner Gaffney made a motion, seconded by Botsko, to adopt the Task Force's March 23 minutes (*see NAIC Proceedings – Summer 2023, Title Insurance (C) Task Force*). The motion passed unanimously.

2. Heard an Update on the Administration of the *Survey of State Insurance Laws Regarding Title Data and Title Matters*

Director Dunning stated that after investigating various survey administrative tools, NAIC staff have decided that using Microsoft Forms for the survey questions would make the most sense. The survey is anticipated to be administered to states shortly following the Summer National Meeting.

3. Heard an Update on the Compiling of Consumer Complaint Data Related to the Title Industry

Myers stated that the Task Force is charged this year with "obtaining information on consumer complaints submitted to states regarding title insurance to determine if updates are needed to insurance regulatory best practices or standards." He leads the subsequently formed drafting group. Other drafting members include Montana; Nebraska; Ohio; Pennsylvania; Rhode Island; Washington, DC.

A draft survey of questions to send to states to collect title-related complaint information was drafted. The survey was not sent to states, as the drafting group became aware of the NAIC Complaints Database System (CDS) maintained by the NAIC's Market Regulation Department. NAIC staff were then directed to obtain the title-related complaint data from the CDS and compile it for analysis. Myers and NAIC staff then met with NAIC Market Regulation staff to better understand the submission process and how data is captured in the CDS. Additionally, Myers investigated how the Louisiana Department of Insurance (DOI) tracks and reports title-related complaints.

The drafting group met May 22 to review the draft survey of questions and four years of title complaint information compiled from the NAIC CDS. The drafting group found that more than 50% of complaint reasons were coded as "state-specific" for each year. Complaint dispositions can also be coded as "state-specific." As this does not provide much information for analysis, NAIC staff were instructed to reach out to states reporting a significant number of complaint dispositions and reasons as "state-specific" for additional detail. Requests for additional information were sent to California, Florida, Missouri, and Texas.

© 2023 National Association of Insurance Commissioners

California responded that all of its “state-specific” coded reasons for complaints were for escrow handling. Florida responded that more than half of its reasons for complaints came from agent handling, failure to disburse funds, and premium refunds. Texas reported that over half of its “state-specific” reasons were for closing, contract disputes, and earnest money. Texas also reported that over half of its “state-specific” dispositions were for contract language, information furnished, and questions of fact. Missouri declined to provide information citing the task as being too laborious.

The drafting group plans to meet again following the Summer National Meeting to discuss if additional detail is needed to identify trends. As part of its discussions, it will contemplate how reporting to the NAIC CDS could be enhanced to allow for more transparency on title-related complaints. Currently, title is captured under the CDS’s miscellaneous category, which does not offer the same coding options as those that have their own category.

4. Heard a Presentation on Issues with NTRAPS

Sylvia Smith-Turk (Stewart Title) stated that Non-Title Recorded Agreements for Personal Services (NTRAPS) are agreements that obligate the current owner to use the other party’s services in the future and further attempt to bind successor owners by purporting to create a real property interest. Failure to comply with these agreements may give rise to a lien against the property to secure liquidated damages. How these agreements are marketed to property owners and the terms, duration, and enforcement of these agreements are concerning. There are no regulatory disclosure requirements regarding these agreements. Consumers may not fully understand the implications of these agreements. The act of recording NTRAPS in property records can create a long-term barrier to the sale or refinancing of real estate or hamper estate administration. The practice of submitting NTRAPS for inclusion in property records characterized as liens, covenants, encumbrances, or security interests in exchange for money recently emerged throughout the country.

Smith-Turk stated that these agreements are harmful to consumers because they obligate current and future property owners to utilize the service providers for up to 40 years. Consumers do not have the expertise of real estate professionals or attorneys. They may not have the benefit of legal counsel and may not fully understand the agreement or the long-term implications of the ability to transfer or finance their property. Elderly homeowners or those in need of the financial incentives being offered are particularly at risk, and NTRAPS can result in a significant monetary loss when transferring or financing their home. Additionally, NTRAPS provisions allow the listing agreement to be assigned without notice to the property owner.

The American Land Title Association (ALTA) supports efforts to protect consumers by prohibiting the filing of unfair real estate fee agreements in property records, a practice that creates impediments and increases the cost and complexity of selling, refinancing, or transferring real estate. ALTA advocates for state laws and regulations preventing the enforcement of NTRAPS. ALTA’s model legislative bill: 1) makes agreements unenforceable; 2) prohibits the recording of these agreements in property records; 3) creates penalties for recording these agreements in property records; and 4) provides for the recovery of damages and the removal of agreements from property records. The proposed legislation protects consumers and provides state insurance regulators with the ability and authority to assist consumers in seeking damages caused by NTRAPS. There have been over 30 bills introduced in 21 states and 15 laws passed. Attorneys General from Florida, Massachusetts, New Jersey, North Carolina, Ohio, and Pennsylvania have filed complaints stating that NTRAPS being used in the marketplace are deceptive, unfair, and unconscionable business practices.

5. Heard a Presentation on Current Fraud Trends in the Title Space, Including Seller Impersonation Fraud

Thomas Cronkright (CertifID) stated that business email compromise (BEC) losses have increased four-fold over the past five years. BEC is a scam targeting businesses and individuals performing wire transfers of funds. Legitimate email accounts are compromised through social engineering and computer intrusion to conduct unauthorized wire transfers. Cryptocurrency has enabled accelerated funds movement, and compromises have evolved to include spoofed phone calls, videos, and websites. Open source of information, Multiple Listing Service (MLS) data syndication, and multiple transactional parties make real estate a top target. The pandemic led to rapid growth in digital closings without creating a safety net. Emerging technologies and expanded personal digital footprints create a growing divide between businesses that protect their customers and those that do not. Vulnerable businesses are reliant on the belief in trusted communications, focus on the manual detection of suspicious behavior, and believe they are too small to be a target. Protected businesses verify identities before sharing sensitive information, leverage technology to inspect every case thoroughly, and recognize that everyone is a target.

New technologies have led to advanced social engineering. SpoofCard is an application that offers users the ability to change what someone else sees on their caller ID display when they receive a phone call. A current practice in the industry to confirm identity has been to call someone and reach them live over the phone, which is known as the "call-back" procedure. Some errors and omissions insurance policies even require a call back before funds are initiated, or coverage may be denied if a loss occurs. The challenge is, you often cannot get a hold of someone in real-time, so they need to call you back. As an example, a hacker could spoof a title company and call the buyer when it is time to wire funds to close. Likewise, a fraudster could impersonate a seller and call the title company and provide them fraudulent wiring information for net proceeds to be transferred after closing.

Deepfakes—artificial intelligence (AI) voice replication—can impersonate real estate professionals to gain access to sensitive information about clients and defraud them. All it requires is a short voice sample of the human voice you want to replicate for the AI to learn it instantly. Fake AI-generated property tours online could deceive buyers and agents about property conditions. Influence Bots—open-source intelligence—use social media to influence users of social platforms. SIM swap—SS7 Network—is a type of account takeover fraud that generally targets a weakness in two-factor authentication and two-step verification, in which the second factor or step is a text message (SMS) or a call placed to a mobile telephone. AI-generated attack emails use ChatGPT AI text-generating interfaces to create malicious messages designed to spear phish, scam, harass, and spread fake news. These AI-based systems can also be used for BEC scams.

Seller impersonation fraud is a new type of scam hitting the real estate industry due to fewer opportunities for other fraud techniques from a decline in home sales. Fraudsters are impersonating an owner to sell unoccupied property, including vacant lots, they do not own. A fraudster will identify vacant lots using public records. Posing as the seller, the scammer contacts a real estate agent to list the property for below market value. The scammer quickly accepts the offer, with a preference for cash sales and then requests a remote notary signing and impersonates the notary. The funds are transferred to the scammer and not discovered until later. Florida and Texas have the highest percentage of vacant land sales as a percentage of total sales. The U.S. Secret Service and CertifID issued a joint bulletin recently advising of the rise in vacant land fraud.

Fraud attempts on mortgage payoffs increased by five times in the second quarter versus the prior three months. Payoff fraud is when fraudsters impersonate a lender or another title company to receive the funds from disbursement after the settlement process, either from refinancing or the sale of a property. Fraudsters use common tactics found in other wire fraud scams to send a falsified payoff statement with wiring instructions to the targeted settlement agent. Shifts in deposit relations stemming from the three high-profile bank failures opened the door for fraudsters.

The CertifID Fraud Recovery Services (FRS) team received an unprecedented number of reports of wire fraud in 2022. Cases increased by 145% year-over-year, with a $158,000 average loss reported per case. Average wire fraud loss for businesses and consumer cases were $295,000 and $107,000, respectively. A layered protection process of education and engagement, technology, insurance coverage, and incidence response planning are needed to mitigate the impact.

Having no further business, the Title Insurance (C) Task Force adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/C CMTE/2023/TITLE/08-TitleTF.docx