

TITLE INSURANCE (C) TASK FORCE

Title Insurance (C) Task Force Aug. 5, 2020, Minutes

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Title Insurance (C) Task Force
Virtual Summer National Meeting
August 5, 2020

The Title Insurance (C) Task Force met via conference call Aug. 5, 2020. The following Task Force members participated: Michael S. Pieciak, Chair, represented by Kevin Gaffney (VT); James J. Donelon, Vice Chair, and Warren Byrd (LA); Elizabeth Perri (AS); Michael Conway represented by Damion Hughes (CO); David Altmaier represented by Anoush Brangaccio (FL); Colin M. Hayashida represented by Paul Yuen (HI); Vicki Schmidt represented by Heather Droge (KS); Kathleen A. Birrane represented by Erica Bailey (MD); Steve Kelley represented by Paul Hanson (MN); Chlora Lindley-Myers represented by Carrie Couch (MO); Mike Causey represented by Fred Fuller (NC); Bruce R. Ramge (NE); Marlene Caride represented by Randall Currier (NJ); Barbara D. Richardson represented by Erin Summers (NV); Jillian Froment represented by Michelle Brugh Rafeld (OH); Jessica K. Altman represented by Shannen Logue and Michael McKenney (PA); Raymond G. Farmer represented by Joe Cregan (SC); Larry D. Deiter represented by Maggie Dell (SD); Scott A. White represented by Mike Beavers (VA). Also participating was Matthew Gendron (RI).

1. Heard a Presentation on Veritable Data Solutions' New Title Fraud Prevention Smartphone App

David Fleck (Veritable Data Solutions) said Veritable Data Solutions created the new smartphone app to help notaries serve as gatekeepers against identity theft, forgery and title fraud. The app, called Veri-Lock, uses blockchain to ensure the authenticity of notarized documents. The first primary vector in title fraud is tricking the notary by using fake identification, which results in no leads for investigators, or using forged signatures on pre-signed deeds. The second primary vector is to skip the notary by using a fake or stolen stamp and forged signatures. The third primary vector is to force or trick the signer by false pretenses or undue pressure. The primary victims of title fraud are elderly homeowners because they tend to have a lot of equity and title insurance. Veri-Lock provides a solution by empowering the 4.4 million notaries to detect fake identifications, prevent forgeries, and preserve evidence. The app works by first verifying the identity and presence of the notary to prevent forged documents. It then verifies the identity and presence of the signer(s) to prevent identification theft. Its final step is to link the notary and signer(s) to signed documents on blockchain permanently and immutably. Blockchain provides decentralized and distributed chains of transactions by notaries and documents by address. It is encrypted end-to-end with permissioned access. In the worst-case scenario of the app not preventing a fraudulent claim, Veritable Data Solutions serves as an additional deep pocket to resolve claims through its liability insurance.

Mr. Gaffney said it is very interesting to see how blockchain is being used in this app to help shield vulnerable homeowners.

Mr. Gendron asked if Veri-Lock uses closed or open blockchain. Mr. Fleck said blockchain is basically the storage system. It is not public, but rather a permissioned blockchain, so various players will have different levels of access. The notaries, for example, will have access to their transaction. Title insurance carriers can have access to public and real estate information. There will also be some data, for example, that is totally private, and these will be permanently stored encrypted on the blockchain. In those rare circumstances when fraud does come up, it is accessible by court order. Mr. Gendron said he believes the app is using blockchain in a safe way. He also said most databases could probably work for such an application.

Mr. Cregan asked via chat who insures the notary for errors and omissions coverage. He also asked what creates liability for title insurers for the errors of the non-employee notary. Mr. Fleck said most states do not require errors and omissions insurance, but most insurance carriers do require it for their signing agent. He also said if the title issue is a title claim, the notary is in the position to stop the fraud that would lead to the title point.

Jeffrey M. Klein (McIntyre & Lemon) asked via chat if the app is secure against being hacked. Mr. Fleck said the app data is saved in the cloud with Amazon, and it services the encrypted blockchain. Worst case scenario, Veritable Data Solutions does have cyber security insurance.

Mr. McKenney said notaries in a lot of states are required to be bonded, and as Mr. Fleck said, state statutes define the business of title insurance and legal liability.

2. Heard a Panel Discussion on the Effectiveness of CPLs

Elizabeth Blosser (American Land Title Association—ALTA) said the pandemic changed the title industry overnight when it struck in March. The title industry is doing more digital transactions and touchless transactions like other industries. ALTA's

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May survey showed that nearly 30% of its members are offering some type of digital closing option, up from 17% in 2019. There are a lot of people who want to take advantage of the historically low interest rates. So, what was once talk about the digital closings of the future, has become the digital closings of the present. ALTA has a multi-pronged approach to growing consumer access to remote closing options. This includes working with state land title associations to get state legislation passed that allows for the use of remote, online notarization. Additionally, ALTA has also been working at the federal level to support the Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020 (SECURE Notarization Act). The SECURE Notarization Act would allow for expanded use of remote online notarization and provide some certainty about its interstate recognition. ALTA has also become very interested in how short-term emergency orders can help facilitate remote closing options.

Ronald J. Blitenthal (Old Republic National Title Insurance Company) said title insurance is an agent centric business, with more than half of all title insurance transactions closed by title insurance agents. Title insurance agents are agents of title insurers for the issuance of title insurance policies, but not for escrow or settlement purposes. Closing protection letters (CPLs) were originally developed decades ago for commercial lending institutions to cover acts of independent title agents or approved attorneys, specifically to protect against misappropriation of funds or failure to follow closing instructions. Most states have monoline restrictions for title insurers, meaning they may not provide errors and omissions or fidelity coverage. For this reason, coverage under the CPL is confined to matters affecting the status of title to the subject property or the priority of the insured mortgage. Due to these regulatory restrictions, CPLs cannot and were never meant to cover every eventuality or loss that could take place resulting from a closing. Basic coverages include: 1) acts of fraud, theft, dishonesty or negligence in handling settlement funds or documents in connection with a closing, but only to the extent that the acts affect status or priority of title in the real estate insured by the title insurance; and 2) failure to comply with written closing instructions by a proposed insured when agreed to by the title agency or title agent relating to title insurance coverage, but only to the extent that the acts affect status or priority of title in real estate insured by the title insurance. There is no coverage under a CPL unless a title insurer has issued a title insurance policy or has legally committed to do so. Coverage under CPLs extends to proposed insureds (e.g., lenders, and borrowers) and, in a few states, to sellers. CPLs are subject to the oversight and regulation of state insurance regulators and title insurance laws. Where title insurance policies are subject to claims and unfair practices statutes, state insurance regulators consistently apply such laws to claims on CPLs. Common claims under a CPL include: 1) theft of settlement funds by title insurance agent/attorney; 2) fraudulent flips; 3) fraudulent down payment undisclosed by title insurance agent; 4) unresolved title defects; and 5) failure to comply with written instructions. A consumer wiring funds to a fraudster without authorization would not be covered. If the lender's conduct solely caused the loss or the lender itself acted fraudulently or illegally, the underwriter is not liable under the CPL. A lender withholding information about a known tax lien from a loan investor would not trigger CPL coverage because the fraud was not connected to any closing instruction. Coverage is tied to the status of the title, and there needs to be a causal relationship between the closer's actions and loss. To prevent loss, there is a lengthy application process, and insurers frequently do background, reputation and credit checks; require current errors and commissions coverage and/or fidelity bonds; verify licensing; and require submission to an examination and/or reconciliation of an agent's escrow accounts. Onboarded agents receive regular audits by the title insurer. In some cases, title insurers have begun to offer centralized escrow disbursement services that bypass agent disbursement services and rely directly on the financial strength of the title insurer.

Diane Evans (Land Title Guarantee Company) said CPLs are used in every market but New York, and they are requested by most lenders and issued automatically, often at the time of order or commitment. Lenders do not distinguish between the agent and underwriter. Rates are collected by agents, but remitted in total to the underwriter, with the cost of issuance and remittance being absorbed by the agent. Now, almost every agent/attorney can issue CPLs, with authorization being reviewed by the underwriter. CPLs allow small agents to compete in markets. ALTA leads the industry to enhance procedures for consumers' protections. Best practices are developed in consultation with technology providers, accountants, auditors, claims attorneys and industry. They encourage standardized training, strict protocols and procedures, and recommendations for additional insurance coverages. There are also certification processes included in the model. Agents follow written closing instructions, which often arrive late or conflict with the contract. Instructions are not uniform and subject to interpretation. Agent defalcations are rare—the loss that sometimes occurs is minimal, such as missed taxes and incorrect homeowner's association (HOA) payments. If theft or misappropriation is intended, a CPL is a loss mitigation tool and not a preventative resource. The pandemic has created an urgency for technology development with title industry and lenders across the nation. Agents were forced to redefined how to safely engage with consumers, and they have been using creative approaches to deliver and execute closing documents. Closing and wire fraud most often involves a third-party hacker who may follow the consumer or realtor online and attempt to intercept wire transfer and/or instructions. Preventive measures include enhanced communications with parties, use of secure/password protected systems, and increased consumer awareness.

Director Ramage asked via chat if the industry maintains any statistics on CPL claims versus other title claims and whether there are loss statistics on file. Mr. Blitenthal said some underwriters might track those separately, but he is not aware of

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those statistics being collected on an industry basis.

Mr. Cregan asked how frequent claims by a lender citing to the CPL occur and if they are typically ultimately resolved by the firms' errors and omissions coverage to recoup what was paid to the lender. Mr. Blitenthal said the coverage would be invoked in certain situations, but there is not a typical claim. Every situation would differ by the facts of the claim. Mr. Cregan asked if a representative from the title insurance industry could provide the Task Force with a sense of the volume and frequency of claims. Mr. Fleck said he is not sure if the industry collects such data. Ms. Blosser said she would investigate it and report back to the Task Force.

Mr. Byrd asked what the key differences are between a CPL from the buyer versus one for the seller. Mr. Blitenthal said the text will not necessarily be different, but what each wants from the CPL is different. The borrower wants a clean property title and the seller wants to make sure they get their money. There is no policy for the seller, but there is a policy for the buyer and the lender, if applicable.

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

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