

TITLE INSURANCE (C) TASK FORCE

Title Insurance (C) Task Force April 7, 2019, Minutes

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Draft Pending Adoption

Draft: 4/11/19

Title Insurance (C) Task Force
Orlando, Florida
April 7, 2019

The Title Insurance (C) Task Force met in Orlando, FL, April 7, 2019. The following Task Force members participated: James J. Donelon, Chair, represented by Warren Byrd (LA); David Altmaier, Vice Chair, represented by Anoush Brangaccio (FL); Lori K. Wing-Heier represented by Michael Ricker (AK); Michael Conway represented by Damion Hughes (CO); Ralph T. Hudgens represented by Margaret Witten (GA); Colin M. Hayashida represented by Kathleen Nakasone (HI); Dean L. Cameron represented by Pamela Murray (ID); Vicki Schmidt represented by Heather Droge (KS); Al Redmer Jr. represented by Erica Bailey (MD); Steve Kelley represented by Martin Fleischhacker (MN); Chlora Lindley-Myers represented by Carrie Couch (MO); Mike Causey represented by Fred Fuller (NC); Bruce R. Ramge represented by Matt Holman (NE); Marlene Caride represented by Mark McGill (NJ); Barbara D. Richardson represented by Stephanie McGee (NV); Jillian Froment represented by Michelle Brugh Rafeld (OH); Jessica Altman represented by Michael McKenney (PA); Raymond G. Farmer represented by Joe Cregan (SC); Larry Deiter represented by Dan Nelson (SD); Todd E. Kiser represented by Reed Stringham and Tracy L. Klausmeier (UT); Scott A. White represented by Mike Beavers (VA); and Michael S. Pieciak represented by Karen Ducharme and Kevin Gaffney (VT). Also participating were: Susan Stapp (CA); Michele Riddering (MI); Stephen Doody (NY); and Tashia Sizemore (OR).

1. Adopted its 2018 Fall National Meeting Minutes

Ms. Rafeld made a motion, seconded by Mr. Nelson, to adopt the Task Force's Nov. 16, 2018 minutes (*see NAIC Proceedings – Fall 2018, Title Insurance (C) Task Force*). The motion passed unanimously.

Mr. Byrd reported that the Task Force met Dec. 12, 2018, in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings, to discuss the pending merger of two title insurers.

2. Received an Update Regarding the Survey of State Insurance Laws Regarding Title Data and Title Matters

Jennifer Gardner (NAIC) said the *Survey of State Insurance Laws Regarding Title Data and Title Matters* (Survey) was sent to the states in August 2018. The Survey is a rewrite of prior surveys conducted in 2008 and 2015. New questions were added to identify: 1) the department or division with regulatory authority over the title insurance industry in each state; 2) filing requirements for policy forms; 3) title and closing activities allowed to be performed outside of the state; 4) department staffing with direct duties tied to title insurance; and 5) recent market conduct activity. Forty-three states and territories responded. Additional states will be added if received. The Survey is posted on the Task Force's web page.

3. Heard a Presentation from CertifID Regarding Wire Transfer Fraud

Tom Cronkright (CertifID), co-founder and chief executive officer (CEO) of CertifID, said CertifID was developed as a result of a fraudulent event that took place at Mr. Cronkright's title agency, Sun Title Agency, LLC. CertifID was created to confirm the identity of a wire transfer recipient and securely deliver funds via wire transfer.

Mr. Cronkright explained CertifID's core title services as: 1) searching and examining records; 2) preparing and issuing title commitments; 3) underwriting; 4) issuing title policies; and 5) closing and settlements (if in accordance with local customs). However, he said escrow and closing includes: 1) coordinating transactions; 2) closing and notarizing documents; 3) preparing disclosure and closing statements; 4) collecting incoming funds for closing; 5) closing; 6) disbursing to parties and lien holders; 7) post-closing activities such as recordings and lien releases; and 8) confirming requirements to issue title insurance policies. He said roughly \$2 trillion moves in and out of title and escrow accounts annually.

Mr. Cronkright said real estate wire transfers are, on average, approximately \$200,000 per transaction, making it a lucrative and attractive target for fraudsters. Additionally, the transactions involve multiple parties all communicating electronically. Finally, so much information is public record or readily available online that it is a ripe candidate for cyber crime. Wire fraud is the fastest growing cyber crime in the U.S., with more than \$90 billion in attempted losses reported to the Federal Bureau of Investigation (FBI) from June 2016 to December 2018. In 2018 alone, the FBI reported that \$1.5 billion was lost through email compromise.

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Mr. Cronkright described the common playbook for fraudsters to commit wire transfer fraud. The first step is to identify a transaction. This can easily be done by finding a listing marked as pending on a real estate web app or web page such as <https://www.zillow.com>, <https://www.trulia.com> or <https://realtor.com>. Typically, real estate closings take approximately 42 days to close from the initial contract to the closing date. The fraudster identifies the parties of the transaction, often via public records; hacks into one of the party's email accounts; and obtains transaction details. With adequate details, the fraudster can impersonate someone in the transaction and manipulate the parties into wiring funds into the fraudster's account.

In response, Mr. Cronkright said underwriters are pivoting away from liability through recent revisions to the closing protection letter (CPL), specifically to exclude underwriter liability for losses due to wire fraud.

Mr. Cronkright said the courts in *Bain v. Platinum Realty, LLC et al*, held an agent and broker liable for 85% of wire fraud losses when a buyer wired funds to a fraudulent account. The agent and broker had a contract and fiduciary relationship with the seller. The buyer was unrepresented; however, the agent and broker representing the seller were held liable. In *O'Neill, Bragg & Staffin, P.C. v. Bank of America Corp.*, the bank was not held liable for failing to stop a \$580,000 wire transfer to a fraudster. The law firm was held liable based on the terms of its contractual agreement with the bank. Title agencies, attorneys and closing settlement agents need to be privy to the schemes that exist and have measures in place to thwart fraud, because they are being held liable in the courts.

Mr. Cronkright said his title agency, Sun Title Agency, LLC, experienced a fraudulent event in spring 2015. The agency wired \$180,000 from a forged cashier's check into the hands of a money mule operating on behalf of a fraud ring with origins in Nigeria. Mr. Cronkright described many of the people involved in the money laundering operation and explained how his agency was able to recover \$140,000 of the stolen funds. He also described how his work and testimony assisted the FBI in prosecuting members of the fraud syndicate.

Finally, Mr. Cronkright stressed the importance of consumer information. He encouraged the states to alert consumers to common methods of fraud schemes so that wire transfers are verified with the appropriate parties before any funds are moved. He stressed the importance of guidance like the *Insurance Data Security Model Law* (#668) to assist agencies in forming standards for data security.

4. Discussed Other Matters

Mr. Byrd said the Title Insurance Financial Reporting (C) Working Group has not met in more than a year, so the Task Force should consider disbanding the group. The Working Group's charge to "consider the effectiveness of recent changes in financial reporting by title insurance companies and to identify further improvements and clarifications to blanks, instructions, Statement of Statutory Accounting Principles (SSAPs), solvency tools and other matters" would not be eliminated but, rather, moved under the Task Force. Mr. Byrd said an email would be distributed to request recommendations for the Working Group. If no requests for work are received, the chair will call for an e-vote to consider disbanding the Working Group.

Mr. Byrd said an email was received from Birny Birnbaum (Center for Economic Justice—CEJ) notifying the chair of a recent court case in the Superior Court of California. Mr. Birnbaum requested that the Task Force be alerted to the case, as it relates to the pending merger between Stewart Title and Fidelity National Financial. Mr. Byrd said the case and its exhibits would be distributed to the Task Force for review.

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

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