Claims Corner

Ann Harpole, Esq.
Claims Counsel

Due to the increase in foreclosure and deed-in-lieu transactions over the past few years, we have seen a dramatic increase in the number of claims based upon prior Security Deeds that remain unsatisfied of record. Generally, we are able to provide proof of payoff or obtain the release that the insured requests. However, prior Security Deeds which secure a Home Equity Line of Credit (HELOC) continue to be a thorn in our side and cause significant losses. Line of credit Security Deeds pose special risks for the title industry because a “payoff” of the outstanding balance of the loan generally does not automatically terminate the line of credit. The payoff merely creates a zero balance on an otherwise active line of credit.

HELOC claim losses result almost exclusively from the failure to successfully terminate the borrower’s line of credit account with the HELOC lender when paying off the current balance of the loan. Unless the existing line of credit is irrevocably terminated, the borrower can still obtain draws after the closing, and such subsequent advances may have the potential to obtain lien priority superior to the insured Security Deed. Often when we reach out to a HELOC lender to request a release of the prior Security Deed we are notified that a balance remains on the line of credit, and it must be paid in order to secure the requested release. In recent months, losses attributable to prior HELOC Security Deeds have ranged from $10,000 to $100,000.

Agents are on the front lines in helping Stewart combat losses due to prior HELOC Security Deeds. Here are a few things that you can do to help prevent or reduce HELOC claims:

1. All outstanding Security Deeds must be examined for provisions permitting line of credit and/or revolving advances. If a line of credit mortgage is found, the commitment must specifically identify the mortgage as securing a line of credit.

2. A standard “payoff” of the outstanding balance generally does not terminate the line of credit. Therefore, it is insufficient for the commitment to merely call for the “repayment” of the mortgage. The commitment must also require that the line of credit be closed so that no further advances can be made.

3. Only the borrower can close the line of credit. If the mortgage specifies a procedure to cancel the advances, require compliance by the borrower. Otherwise, suggest that the borrower use the “STG Request to Cancel Revolving Credit Loan” which can be found on Virtual Underwriter® and includes a payoff request. If more than one person can draw on the loan, all borrowers must request cancellation of the line of credit.

4. On the day of closing, reconfirm the payoff amount and, if possible, arrange for a same

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Hot New Issue
Facing Thousands of Homebuyers

Jeff McClung
President, McClung Surveying

In 2005, the state of Georgia implemented new stream buffer restrictions. Over the past few years, these restrictions have become a major problem for some homebuyers and existing homeowners wanting to make improvements to their property. Nowadays, you are four to five times more likely to encounter a property with stream buffer restrictions than a property being located in a flood zone. It is important to be informed about this issue facing homebuyers today. It could potentially delay a closing.

The stream buffer laws set by the state started at just 25 feet. Currently, most of the metro Atlanta counties have added an additional 50 feet to the buffer requirements, making it a total of 75 feet from the edge of the bank (the edge of the vegetation line) on each side; and it’s becoming more difficult to obtain a variance for new construction within these areas. These buffers are intended to protect the environment against pollution and increased storm water runoff. Stream buffers, also known as impervious and riparian buffers, are bands of vegetation bordering a body of water or drainage areas that play a crucial role in promoting public health by protecting water quality. The type of vegetation in the buffer varies depending upon the climate and buffers the stream from anything that flows into it, such as polluted water, eroding soil or toxic chemicals. Many fish species need cool water, and stream vegetation provides shade to keep streams cool. Leaves falling into the stream provide food for insects that fish eat. Roots help stabilize stream banks and keep dirt from washing into the streams. Plants on stream banks also provide shelter for wildlife as they drink from waterways.

This year, we have encountered as many as 30 to 40 properties per month affected by stream buffers. Some properties have had buffer lines running through the house which makes it very difficult to obtain building permits to add any new improvements to the house within the buffer areas. The total loss of value for just these three lots was around 2 million dollars for the owners. With numbers like that, I think you would agree stream buffers can be a big deal to homebuyers.

Stream buffer requirements may not show up on older surveys. Homebuyers should always get a survey of the property they are purchasing. The fact is, there is no way for them to fully understand

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what they are about to purchase without a current survey.

McClung Surveying offers a variety of free training classes for real estate professionals in groups of 10 or more. One of the classes offered is “Stream Buffers 101”. If you would like to schedule a class for your real estate professional customers, please contact McClung Surveying at (770) 434-3383.

Jeff McClung is president of McClung Surveying Services, a company started by his father – one of the most respected firms in the Atlanta area. Jeff grew up in the metro Atlanta area and attended Kennesaw State University. With over 30 years of industry experience, Jeff is called on for help by many of Atlanta's top attorneys to help resolve some of the most difficult property issues. McClung Surveying Services has surveyed everything from the Fox Theater in Atlanta, to Habitat for Humanity® homes.

Are You Technology Savvy?

Dawn Lewallen, Esq.
Senior Underwriter
and Georgia State Counsel

Today's high-tech world means that as attorneys and staff, you must be technology savvy to run your business. Why? High-tech criminals are able to steal personal information and your client's identity without breaking down doors and windows, or entering your law firm offices. According to the FBI, billions of dollars are lost each year repairing systems, including personal computers, laptops and wireless devices from cybercrime. These criminals have disrupted vital systems in banks, hospitals and 9-1-1 services around the country. In the September 2013 issue of the American Land Title Association® (ALTA®) publication, TitleNews, a California-based escrow company was shut down by the state after cyber criminals stole more than $1.5 million from the firm's trust account and wired the money to China and Russia. The escrow company reported the theft two months after the first unauthorized transfer, apparently because the company failed to properly maintain its escrow records. This and other recent reports show that criminals are turning their sites to title and settlement companies, including closing attorneys. The consequences to your firm and your business can be dire given the important financial and personal data you receive every day.

Companies and law firms of all sizes must take precautions because cyberattacks pose a real threat. This threat to your firm and your business combined with the regulatory oversight of the CFPB, which increases the responsibility and liability on lenders for acts that harm the consumer, means you must take steps now to understand, comply and embrace technology in a way that ensures protection of your client's personal and financial data information. Ask yourself – are you ready to defend your wired and wireless network from high-tech crimes? If you are not sure where to begin, here are a few steps you can take today.

1. The ALTA Best Practices provides guidance on adopting and maintaining a written policy and information program to protect non-public personal information (NPI).

2. It may be a good time to sit down with your IT professional to come up with a managed antivirus solution along with an IT security program to protect your computers and hand-held devices from attacks.

3. Stewart Agency Services can also help you jump-start your compliance program with templates on data and information security templates. To learn more about the Stewart Trusted Provider Policy Template Library and a full list of available templates, visit www.stewart.com/cfpb/policy-templates.

4. The State Bar of Georgia recently released a new Trust Accounting Handbook for real estate closing attorneys. The handbook was written to consolidate all of the various requirements for maintaining real estate closing trust accounts. It also provides tips for controls and procedures to safeguard funds. Look for this handbook at www.garealpropertylaw.com.

For more information on cybercrime, go to www.fbi.gov and www.justice.gov.
Protect Your Lenders’ Funds and Your Business’ Future

Escrow Security Bonds are one more reason why Stewart is the right choice for you.

To succeed in the new regulatory environment, you must be able to show lender customers and prospects that you have the necessary tools to provide settlement fund security and achieve CFPB compliance. Stewart Specialty Insurance Services can help you do that – and secure your place in the real estate transaction process – with an Escrow Security Bond underwritten by Lloyd’s of London®.

An Escrow Security Bond protects you from financial loss, including theft of settlement funds, due to fraudulent activities. While you may have some form of crime or theft coverage through your general liability or E&O policies, it may not protect settlement funds from theft and will not meet lenders’ needs in the new regulatory environment.

The Escrow Security Bond provides specific coverage that directly addresses the concerns of lenders resulting from the impending regulations, including:

- **Computer crime rider**
  This enhanced coverage protects against theft of settlement funds through unauthorized access to your computer network.

- **Cyber liability – Consumer data security**
  An optional enhancement, this provides you with coverage should someone steal your customers’ identities using information gained from your company.

- **Employee theft coverage**
  You know your employees are trustworthy, lenders don’t; this coverage gives lenders peace of mind that their funds are protected in case of employee theft.

- **Partner/principal theft coverage**
  While this isn’t a concern for you, lenders need the coverage this provides to be sure of the security of their funds in all possible scenarios.

The Escrow Security Bond is part of our greater effort to help your agency be more secure and protect your solvency. That’s why we’re working with one of the most respected insurance companies in the world – Lloyd’s of London® – to offer this coverage. As a Stewart-policy issuing agent, you are an integral part of Stewart’s success – and we want to be part of yours.

Please note, the above are general descriptions of coverage. Policy terms, conditions and exclusions may limit or take away some of the coverage mentioned above.

Let us help you secure your place in the real estate transaction. Apply online to secure your bond coverage today at stewartbonds.com; or, for more information contact your Agency Services manager or Stewart Specialty Insurance Services at specialtyinsurance@stewart.com or (866) 845-4676.
A CFPB Overview

Michelle Esparza

Many things changed in the U.S. economy after the market crash a few years ago. One was the establishment of the Consumer Financial Protection Bureau (CFPB). Created as part of the Dodd-Frank Wall Street Reform & Consumer Protection Act, the new government agency's stated goal is to focus on fairness and transparency in many types of consumer financial products and services.

The economic downturn and subsequent formation of the CFPB have made a particularly large impact on the real estate industry. The CFPB's proposed regulations will alter the way we do business in both the short and long term. While the bureau continues to solicit feedback from industry professionals on the details and implementation, we can expect changes in lenders’ current transaction documents, tolerance levels, annual percentage rates (APR), recordkeeping and the impact on our part of the real estate transaction. All of these changes are intended to simplify the process for consumers, help regulators keep an eye on transactions and bring transparency to the consumer real estate process.

While official regulation has not been finalized yet, it is expected to be out soon, at which time the industry will have roughly 12 to 18 months to fully implement the changes. In preparation for the final CFPB rules, Stewart is keeping an ear to the ground and sharing insights with our customers, independent issuing agencies and other stakeholders.

Stewart’s Fraud and Forgery Watch Program

Fraud and forgery is not a thing of the past, and Stewart agents are an important line of defense in detecting fraudulent transactions. Stewart's Fraud and Forgery Watch Program offers an award up to $1,000 to any Stewart agent who detects fraud and/or forgery. Agents who either prevent policy issuance or offer a curative solution, in connection with an order for a Stewart Title policy, are eligible for this award as well. If you suspect any fraudulent activity, please contact your local underwriter.
TIPS 2013

It was another great turnout at our annual Title Insurance Professionals Seminar (TIPS). We want to thank all of you who joined us. This year our seminar was held at the DoubleTree® in Roswell. There were many great speakers who provided us with valuable information and updates on key issues that affect our industry. We hope to see everyone again next year at our 2014 TIPS.

Employee Spotlight
Tracey Webb

A graduate of Texas A&M University with a B.B.A. in accounting, Tracey joined Stewart’s audit services department in Houston, Texas, in 1988. Traveling throughout the United States, she conducted routine audits of both agents and subsidiary operations, later focusing her efforts on defalcations and special projects. This experience allowed her an in-depth view of the title industry on many levels.

In 1994, Tracey transferred to the Georgia office of Stewart and served in a variety of roles within independent agency operations, including district coordinator, associate state manager and state manager. In 2011, Tracey was appointed senior vice president – southeastern states Agency Services district manager with oversight of Alabama, Georgia, Mississippi, North Carolina and South Carolina. With the support of an incredible team of southeastern associates, she is growing stronger business relationships with independent agents in the southeast.

Tracey is a past director, convention chair, and treasurer of the local land title association; and is active in various industry organizations. She is an active member of North Point Community Church and enjoys volunteering for Forever Fed, a charitable organization serving the hungry in North Georgia.

She is a certified public accountant and resides in Roswell, Georgia, with her family and her two dogs. Tracey enjoys hiking, reading, yoga, gardening and travel.