TITLE INSURANCE (C) TASK FORCE

Title Insurance (C) Task Force Aug. 4, 2019, Minutes

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The Title Insurance (C) Task Force met in New York, NY, Aug. 4, 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); Al Redmer Jr. represented by Erica Bailey (MD); Steve Kelley represented by Paul Hanson (MN); Chlora Lindley-Myers represented by Gabrielle C. Porras (NV); Glen Mulready represented by Landon Hubbell (OK); Scott A. White represented by Richard J. Tozer (VA); and Michael S. Pieciak represented by Karen Ducharme (VT). Also participating were: Susan Stapp (CA); Michele Riddering (MI); Stephen Doody (NY); and Tashia Sizemore (OR).

1. **Adopted its Spring National Meeting Minutes**

Mr. Nelson made a motion, seconded by Mr. Baker, to adopt the Task Force’s April 7 minutes (see **NAIC Proceedings – Spring 2019, Title Insurance (C) Task Force**). The motion passed unanimously.

2. **Exposed its 2020 Proposed Charges**

Mr. Byrd said the 2020 proposed charges include disbanding the Title Insurance Financial Reporting (C) Working Group. The Task Force would retain the Working Group’s ongoing 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. Coordinate efforts with the Statutory Accounting Principles (E) Working Group.” Comments on the proposed charges will be collected through Sept. 16. The Task Force will meet via conference call after Sept. 16 to discuss the comments received and consider its 2020 proposed charges for adoption.

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. According to the National Association of Realtors (NAR), on average, more than 16,000 real estate transactions closed per day, representing $3.8 billion transferred in 2018. Information regarding transactions can be found readily online. Wire fraud via business email compromise is among the fastest growing cybercrimes. According to the Financial Crimes Enforcement Network (FinCEN), there were $1.5 billion in losses in 2018, with monthly reported incidents increasing by 120% from 2016 to 2018. Mr. Cronkright said 91% of cybercrimes begin with phishing. Phishing is the process of obtaining personal information, such as credit card numbers, social security details, or login credentials via fraudulent emails. The top brands used for impersonation attacks tend to be ones known and used frequently. Typically, fraudsters use phishing attacks to gain access to email accounts, utilize the email to gain transaction details, and trick the transaction participants into wiring funds straight to cybercriminals. Mr. Cronkright said the top three trends in real estate wire transfer fraud are: 1) sending fraudulent wire transfer instructions to the buyer; 2) diverting seller proceeds; and 3) diverting mortgage payoffs. All three trends require falsifying documents, which cybercriminals are doing with increasing accuracy.

Mr. Cronkright said an ideal risk management strategy for cybersecurity includes system hardware, software, training, process protocol and coordination. System hardware includes routers, firewalls and intrusion detection. Software includes email monitoring, frequent software updates, and virus detection. Employees need to be trained on cybersecurity measures, including how to identify phishing attempts. Security protocols include limiting account access, dual wire controls, identity verification, and an incident response plan. An ideal risk management strategy needs to be a coordinated effort between all of the parties to the transaction because of the shared personally identifiable information. Mr. Cronkright said banks and
Draft Pending Adoption

insurers offering errors and omissions coverage are attempting to exclude liability and coverage for wire transfer fraud through contract clauses and policy exclusions.

Mr. Byrd asked about who is most frequently targeted. Mr. Cronkright said the buyers are frequently targeted because they are typically transferring the largest sum of money. Mr. Hanson asked why the title insurer would be responsible for recovering lost funds. Mr. Cronkright said in the case of O’Neill, Bragg & Staffin, P.C. v. Bank of America Corporation, the law firm identified falsified documents and notified the bank shortly after the wire transfer, but the bank was unable to reverse the transaction. Once a wire transfer takes place, there is little the bank can do to recover the stolen funds, and they have been successful in litigation to limit their liability. Banks verify the identity of the individual requesting the wire transfer, but they will send the money to whomever is specified on the request forms. Mr. Cronkright said it is the duty of the title industry to protect consumers. Information and education regarding the prevalence of wire transfer fraud should be communicated to the consumer early in the transaction. Mr. Byrd asked about what coverage exists for title insurers to protect themselves against losses due to wire transfer fraud. Mr. Cronkright said more writers are excluding coverage from errors and omissions policies, so businesses must also purchase cyber policies to protect themselves from the stated risks. Mr. Nelson asked how fraudsters infiltrate email accounts. Mr. Cronkright shared that email accounts with weak security, as well as successful phishing attacks, can result in breached email accounts. Justin B. Ailes (American Land Title Association—ALTA) said effective regulatory controls should include both title and real estate regulation, cumbersome in states where the industries are regulated by separate state departments.

Brenda J. Cude (University of Georgia) suggested updating the NAIC title insurance consumer shopping tool and information guide to include information on wire transfer fraud. She said the New Jersey Division of Banking and Insurance regulates the title and real estate industries in the state, and it recently released Bulletin 18-04 regarding wire transfer fraud.

4. Heard a Presentation from ALTA Regarding its Homebuyer Outreach Program

Elizabeth Berg (Agents National Title Insurance Company) said homebuyers want more information about the real estate process, and it is critical to inform them about the message. In particular, ALTA seeks to explain to consumers how an owner’s title insurance policy helps protect their property rights. Ms. Berg said the results of ALTA’s 2014 survey of 1,000 homebuyers showed that less than half of respondents received information about an owner’s title insurance policy; of those who would have appreciated that information, most preferred to receive it from their real estate agent. A majority of survey respondents said they were familiar with the title search process; yet, they still selected their title company based on a recommendation from a realtor, lender or attorney. Ms. Berg said her job as a title agent is to help people protect their property rights and give them peace of mind during one of, if not the, largest purchases they will make during their lifetime. ALTA is conducting training through the state land title associations regarding the Homebuyer Outreach Program in order to better inform their customers throughout the title and closing process. ALTA is focused on helping its members build their business models to create trust with its clients by providing practical, relevant and timely information throughout the title and closing process. ALTA identified several key facts in order to inform consumers in a concise, comprehensible way. ALTA defined title as, “your ownership right to your property, transferred from seller to buyer at closing.”

According to the NAR Home Buyer and Seller Generational Trends Report 2017 and 2016 Profile of Home Buyers and Sellers, 99% of millennials, 89% of older boomers, and 77% percent of the silent generation are shopping for homes online. The homebuyer guide includes blogs, videos, templates, Power Point presentations, rack cards, and educational one-pagers. ALTA is working with title agents to encourage members to market their products and services directly to consumers. ALTA created content to be used by its members for consumers, lenders, and real estate agents. The content can be customized according to state law and local practice. Additionally, ALTA created a publicly available video regarding wire transfer fraud, accessible at https://www.alta.org/wirefraud. ALTA has over 100 marketing and educational items available to its members; many are also available in Spanish.

Mr. Nelson asked if ALTA maintains statistics on the number of owners and lenders policies purchased throughout a given year, countrywide and by state. Mr. Ailes said he believes that to be part of the quarterly financial statements, compiled by ALTA, available at https://www.alta.org. Ms. Caride asked how agents inform consumers in attorney states where only a licensed attorney may provide legal advice in connection with a contract. Ms. Berg said the program intends to generally inform consumers, not provide legal advice on more specific legal matters.
5. Heard a Presentation from First American Title Insurance Company and Old Republic National Title Insurance Company Regarding Blockchain Innovation in Title Insurance

Justin Earley (First American Title Insurance Company) said multiple blockchains exist, all with their own purpose and content to be captured. Blockchains are not infallible; they are reliant on good design and sound practice regarding data quality and security infrastructure. Blockchain creates duplicate storage of encrypted information for various participants in the blockchain. The value it creates is transparency, efficiency and accountability. The use of encryption, in this case a digital seal, keeps it transparent and the parties accountable to each other. There are three basic questions for determining a good use case for blockchain. The first question is whether there are multiple parties involved, sharing information, possibly even confidential in nature. Blockchain can create a network for sharing information. The second question is whether there is an intermediary for efficiently sharing and retaining information between the parties currently in place. Blockchain in its current form is somewhat slow and cumbersome to create. If there is an efficient system in place, blockchain may not be the best option. The third question is whether the parties need to track each element of shared data, including how its accessed and utilized. If the answer to all three questions is yes, it is probably a good candidate for blockchain. Title underwriters indemnify one another if their work, the title record, is inaccurate. In order to facilitate indemnification in an efficient, transparent manner, Old Republic National Title Insurance Company and First American Title Insurance Company have teamed up to develop a blockchain. Mr. Earley said the blockchain creates trust because the information is unalterable and encrypted, so individuals are not able to alter or modify the data in any way. Mr. Nelson asked when the blockchain would be implemented. Mr. Earley said the companies have found blockchain to be very complicated to setup, and the completion date is unknown at this time.

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