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Knowing Better —

DETECTING FRAUDULENT SCHEMES



by John R. Erdmann

There is much talk within the mortgage industry these days about the need to cut costs and speed up loan closings. Many

believe that soon the typical loan origination will be shortened from 30–45 days to just five days or less.

With these advances, loan underwriting will change dramatically. Automated systems will replace human judgment in the handling of loan applications.

The obvious risk attending these changes is that greater opportunities will be created for fraud and circumvention of lender requirements.

We in the title industry, who perform closings or escrows, and who search and insure land titles, have a great opportunity to improve our level of service to the mortgage industry, and provide greater benefit to customers as a whole, by redoubling our efforts to detect and prevent fraud in real estate transactions.

The following article is derived from a course prepared for the New Jersey Land Title Association by First American's in-house counsel, John Erdmann.



New Jersey real estate closings are customarily conducted by attorneys and independent closing agents, who, for the

purposes of this article, will be collectively referred to as “closers.”

In the past several years administering claims for First American I have seen some recurring patterns in fraud cases. Most fraudulent schemes and forgeries are perpetrated by amateurs who either have not thought through the entire plan or are counting on you not asking that one question that unravels the scam. Here are some “red flag” situations to watch for.

Forgery

Forgery is still a big problem and is one of the “basic risks” typically covered by title insurance. We all rely on documents we find in the public records, and we rely on notaries to determine the identity of persons executing documents when we make a determination as to a document’s validity.

Unfortunately, people who sign their mom’s name to that note to the teacher sometimes grow up and learn to solve other problems the same way. These people rely upon us not to check for identification when we acknowledge their signature. They assume we will not compare the signature on various prior documents of record to the signature that is being presented on the document before us. We need to know better.

“Knowing Better” Rule Number One: *Always ask for positive identification when you acknowledge signatures.* It is also a good idea to photocopy the identification presented for your file. Every excuse you get

explaining why they do not have identification is a red flag. These people are buying a home and/or borrowing a lot of money. They must have identification.

I know of one refinance closing that was complete except for handing over checks when the settlement agent said “Oh, I almost forgot, the bank wants me to get photocopies of your driver’s licenses.” The woman at the closing said “I left my bag in the car; I’ll go and get it.” Her male companion waited a minute or so and excused himself to use the rest room. Neither of them ever returned, and we learned later that the woman was an imposter posing as the man’s wife.

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Rule Number Two: *An important document that has been notarized elsewhere, not at your closing, is always suspect. Add two more red flags if the document is purportedly executed by a spouse, parent or business partner. Add five red flags if it is a release or mortgage discharge.*

If the absent person is unable to come to the closing there may be a very legitimate reason. However, you can verify by phone with the notary or the person who signed the document that the document is genuine and they approve of the transaction. You may get some resistance from the parties, and if you do, you can bring your underwriter in to back you up while you check the document's authenticity. Remember, any strong resistance you may get for wanting to check the document is also a red flag.

It's always good practice to instruct your searchers to obtain photocopies of the signature pages of the back mortgages and deeds in the chain. You will then have a reliable handwriting sample to compare with the signature on the deed or power of attorney in front of you. Contrary to popular belief, most forgeries are very obvious. In almost every forgery case I have seen, the signatures are not even close. I even have a case where, according to our expert, the husband had three different "wives" sign three different mortgages, leaving his real wife home with no knowledge of any of them. Each imposter had a different handwriting style.

And never be reluctant to ask questions when a party misspells his or her own name.

Rule Number Three: *No one owns a home or property "free and clear." Only people who have hit the lottery or lived through the Depression own their homes free and clear. If you get a title report or you search the record and it shows no current mortgage on the property, check it again, you probably missed it or it's mis-indexed. If upon rechecking, the record still comes up clear, look at the releases or discharges on the prior mortgages. Any atypical form of release should raise two red flags.*

When in doubt, call the bank or mortgage company and verify that the mortgage has been paid and released. If all else fails, ask the property owner about the past mortgage. The owner just might tell you about it, or

you might hear a story about the Great Depression...or that great night at the track.

Control of Closing and "the Gap"

The time gap between the day that a document is presented to the clerk for recording, and the day it is indexed in such a way that a title searcher can find it, is a problem that varies with the efficiency of the different county recording offices. Even the best system in New Jersey takes several days, and more than a few leave us blind for several weeks.

Too many real estate scam artists know all about the gap. They know that by carefully timing their closings they can mortgage the property two or more times, promising each lender the same priority. Still others may time their mortgages to get their equity out of the property just before a tax lien or judgment lien is recorded against them.

"Knowing Better" Rule Number Four: *If you are the designated closer it is important that you, and only you, control all critical aspects of the closing.*

As discussed above, this means that you notarize all important signatures or at least verify the genuineness of signatures with great care.

This also means that you control the recording of documents and the payoff of liens or encumbrances being satisfied and cleared of record. Be wary of the customer who offers to deliver original documents for recording. My all-time favorite story is of the borrower who was entrusted with an original partial release, releasing a blanket mortgage as to just one of his properties. By the time he delivered it to the county recorder's office the "partial" release had been altered to include eighteen additional properties. And by the time this scam was discovered the properties involved were over-encumbered by more than one million dollars.

Likewise it is essential to control payoffs. Be wary of the customer who asks to receive loan proceeds earmarked to pay off prior debt, based solely on the borrower's word that the debt will be cleared in the near future from proceeds of some future deal, or by virtue of some side agreement with the prior lender. It ain't gonna happen. You will be hung by rope made up of all the red flags you ignored. Truthfully, title company executives

have been sentenced to prison for such things.

Fraudulent Affidavits of Title

Probably the most common form of fraud in our industry involves fraudulent affidavits of title, especially when the affiant has been asked to state that certain judgments turned up in a search are not against him but against persons with similar names. I have often said that such affidavits should be stored on rolls mounted in the stalls of rest rooms.

Once a money judgment is entered in court it may be perfected, under state law, to create a lien against all real property owned by the judgment debtor within the covered jurisdiction.

When a search turns up judgment liens filed against names similar or identical to the name of your customer, the title insurance we are asked to provide must include exceptions for such liens unless it can be shown, by reliable evidence, that the liens do not attach to covered property because they are against some person other than the owner with whom we are dealing.

Too many closers seem to believe that a reasonable solution to the problem of suspected judgment liens is to merely obtain the affidavit of their customer, swearing that he or she is not the person against whom the liens were filed. With this affidavit in hand the attorney or agent may then close and issue title insurance without any exception for the suspect liens. This is not good practice.

Rule Number Five: *Take the time to examine judgment liens and court records to see what additional information is supplied about the judgment debtor (i.e., addresses, name of spouse, social security number, businesses operated). Then make an informed judgment as to which liens may be ignored based on an affidavit only.*

And, of course, the same rule applies to tax liens.

Partnerships, Limited Partnerships and Corporations

The claim files of every title underwriter are full of cases involving double-dealing partners and corporate officers. The typical problem is that partnership or corporate property is mortgaged and loan proceeds

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have been used for the rogue partner's or officer's personal benefit. This is frequently claimed to be "unauthorized borrowing" which renders the mortgage vulnerable to being set aside.

Rule Number Six: *Be very careful in matters involving individual authority to act on behalf of a business entity; do not turn a blind eye to what is being mortgaged, who it benefits, and where the money really goes.*

Artificial Inflation of Property Value

This scam has been around for a long time. Two, three or more parties get together and "create" one or more transactions between them which appear of record to be arms-length transactions but in fact are not. In each transaction they inflate the purchase price to misrepresent the true value of the property. They pay the proper transfer tax and title is properly transferred in each case. There is nothing wrong with the title to the property.

Our conspirators now look either for a lender to loan them more than the actual value of the property based on its artificially inflated value, or they find some poor soul to purchase the property at the inflated value, or both. A key aspect of this plan involves the appraisal of the property by the lender's appraiser. The appraiser is either in on the plan or the conspirators rely on the fact that some appraisers may not do a thorough investigation of the property and the market when they prepare their report. These appraisers make the mistake of assuming that the prior transactions were arms-length and legitimate and they give improper weight to the artificially inflated "sales" price. Then one of our conspirators goes to the final closing, signs all the documents, takes the money and runs.

These are sometimes referred to as "straw man" or "land flip" transactions.

Where is the title insurance connection? There is none. The deeds and mortgages are perfectly good. The problem is that the lender has loaned, say \$180,000, secured by a property that in a good market may be only worth \$100,000. Probably sooner rather than

later the loan will be in default and the lender must recognize a big loss. If there is a downturn in real estate values, as we have seen in parts of New Jersey in recent years, it gets even worse.

Obviously, neither a closer nor a title underwriter should be considered responsible for problems with value or condition of a property involved in a transaction. Still, in recent years, lenders faced with major fraud losses have asserted claims, particularly targeting closers, based on allegations that the closer "knew or should have known" of fraudulent conspiracy.

I believe the majority of such claims I have seen were absolutely unfounded. Still, the pattern of these frauds presents reality to which we should adapt.

"Knowing Better" Rule Number Seven: *Avoid closing transactions where there appears to be fraud directed against a party, or where there appears to be a material misunderstanding between the parties.* If an apparent misunderstanding can't be resolved before closing, watch out!

Unqualified Borrowers

A commonly seen lender requirement in closing instructions is that the buyer or borrower bring cash to the closing, as a down payment or to help refinance existing debt.

While loan underwriting guidelines may differ between lenders, and in some cases this requirement may be more important to one loan than to another, such requirements should never be taken lightly at closing.

Sometimes the parties will, usually at the last moment, try to circumvent this requirement by claiming that a payment has been made outside closing, or by substituting some other form of consideration instead of cash. For example, a seller may agree to take a second mortgage instead of a cash down payment, or a seller may agree to accept precious gems with a stipulated value. Of course, the parties expect the closer to prepare the settlement statement for delivery to the lender indicating cash rather than the substituted consideration.

Closers should be wary of such requests, even where the loan officer appears to go along. If the lender later has to foreclose and suffers a loss, in hindsight it may be claimed

that the closer's failure to comply with this lender requirement and/or to provide an accurate settlement statement was the cause for the loan closing with an unqualified borrower.

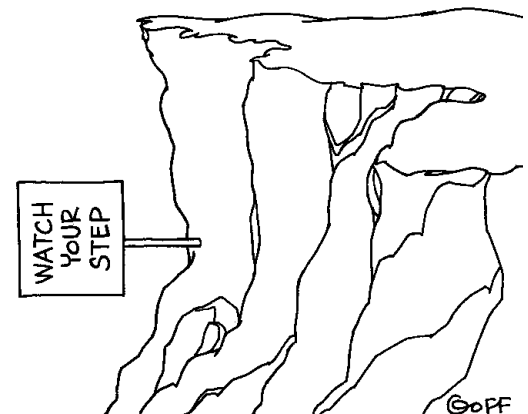
Rule Number Eight: *Do your best to comply with lender requirements, as you should do with all closing instructions. Do not knowingly issue a settlement statement that misrepresents the source, nature or value of consideration handled by the closer.*

Whenever it may be considered appropriate to include in the settlement statement consideration paid outside closing, the item should be clearly identified as "paid outside closing" or "p.o.c." and identities of parties representing the value of such consideration should be clearly stated on the settlement statement form. Note that HUD has special rules under the Real Estate Settlement Procedures Act (RESPA) and Regulation X for reporting and certification of "p.o.c." items. (See 24 C.F.R. §3500, Appendix A, and HUD Mortgagee Letter 91-9, dated February 11, 1991.)

Conclusion

As title professionals, we have a tremendous amount of knowledge and experience to be applied to every transaction. Trust your instincts. If something seems a little odd, look into it. When in doubt, take a few extra minutes and get a second opinion. Cultivate a good working relationship with your underwriter, and learn to use the underwriter's resources of knowledge and experience as effectively as you use your own.

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LINCOLN LOST HIS HOME, TWICE

by Albert Rush

For years stories have circulated that Abraham Lincoln's birthplace, as well as another childhood home, were lost by his family over land title disputes. But books currently in print are so vague on this subject that some now wonder whether the stories were ever true.

These stories originated from Lincoln himself. Preparing for the presidential campaign of 1860 he wrote for his campaign biographer, John Locke Scripps:

"From this place (Knob Creek Farm) he (Thomas Lincoln) removed to what is now Spencer County Indiana, in the autumn of 1816, (Abraham) then being in his eighth year. This removal was partly on account of slavery; but chiefly on account of the difficulty in land titles in Kentucky."

Abraham Lincoln's recollections of this move were, in fact, hazy. He was really only seven at the time. But later historians and biographers, notably Louis A. Warren, have provided us with details of Thomas Lincoln's title travails from original tax books, court records, and from interviews of knowledgeable sources.



Lincoln: During the Great Debates of 1858.

Lincoln's birthplace was on a 348-acre parcel known as the "Sinking Spring" or "South Fork" Farm near Hodgenville, Kentucky. It is now a 116-acre public park and National Historic Site.

The land was originally part of 15,000 acres owned by Richard Mather. In May



Lincoln's Birthplace: today reconstructed and enclosed in a memorial building, including what are believed to be original cabin materials found at South Fork Farm.

1805 Mather agreed to sell the South Fork site to David Vance, on terms whereby Vance made a down payment and gave Mather a promissory note, unsecured, for the remainder of the purchase price. This note was in the amount of fifteen pounds, twelve shillings, four pence, payable within eighteen months "in good trade". When the note was paid, Mather was to give Vance a warranty deed.

In November 1805 Vance sold the South Fork Farm to Isaac Bush for \$200. As proof of ownership Vance gave Bush a "title bond," an instrument commonly used at the time which was nothing more than a written promise to convey free of undisclosed liens or encumbrances.

Later, in December 1808, Bush sold South Fork to Thomas Lincoln for \$200, with Lincoln taking an assignment of the title bond given by Vance to Bush.

Thomas and Nancy Hanks Lincoln soon moved onto the land, and the future President was born there on February 12, 1809.

It is not clear when Thomas first learned there might be problems with his title. It may have been as early as 1811, when the family moved from South Fork to nearby Knob Creek. The Knob Creek land was more fertile, and better for growing corn, clover and alfalfa. It appears the family occupied

the Knob Creek Farm under a lease.

In any case, around this time David Vance was long gone and Mather remained unpaid, so Mather looked up Lincoln.

On September 1, 1813, Mather filed suit against Vance, Bush and Lincoln to recover on the note. Since Vance was in parts unknown and was believed unable to pay, Mather asked that the court impose an equitable lien against the South Fork Farm to satisfy Vance's debt.

In his pleadings, Thomas Lincoln answered that although he was aware of the note when he purchased South Fork, he had been told only a small amount was due, he believed the balance had been subsequently paid, and if any amount remained due it should be payable in goods or "trade" as originally agreed, rather than by imposition of a lien which might require payment in cash.

But Thomas' legal problems weren't limited to South Fork. In late 1815, with the Mather suit pending, Thomas was served with yet another lawsuit seeking to eject him and nine of his neighbors from their farms at Knob Creek. This lawsuit was brought by heirs of a former landowner in the area, and based on claims that the 10 defendants were trespassers.

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Underwriter Q & A



Q: A commercial parcel owned by a bankrupt developer is being sold pursuant to §363 of the Bankruptcy Code. Everything seems to be OK with respect to notice provided pursuant to the Bankruptcy Rules, etc. The problem is that we are being asked to close and insure without waiting through the 10-day appeal period. Can we insure?

P. C., Dallas, Texas

A: Generally speaking, bankruptcy court orders are appealable within 10 days. Additionally, Rule 62(a) of the Federal Rules of Civil Procedure provides for a 10-day automatic stay of execution which runs simultaneously with the appeal period. However, Bankruptcy Rule 7062 provides, among other things, that Rule 62(a) is

inapplicable to orders confirming sale under §363. And, §363(m) provides a “safe harbor” for good faith purchasers who purchase in reliance on an order confirming sale unless the order has been stayed pending appeal. Therefore, unless a specific stay order has been entered by the bankruptcy court or an appellate court, it is legally possible to close, and have an insurable title, during the 10-day appeal period.

If only life were that simple. While the safe harbor of §363(m) is routinely upheld by bankruptcy courts, it is not self-executing. Nothing stops an aggrieved party from filing an appeal. In order for our insured to avail itself of the protections afforded by the safe harbor should an appeal be filed, a motion to dismiss the appeal as moot must be made. That requires the hiring of counsel, which costs money — an expense covered by title insurance.

A number of questions should be asked before considering whether or not it makes good underwriting sense to close prior to the expiration of the 10-day appeal period. Even with favorable answers given to these questions, each situation has its own dynamics which need to be considered; underwriting assistance is a must. Some basic questions are:

1. Was proper notice of the hearing given to all parties in interest as required under Bankruptcy Rule 2002? Did the order confirming sale contain such a finding?

2. Did any party object to the proposed sale at the hearing?
3. If so, did that party request a stay order in open court from the bankruptcy judge? (This is by a motion ordinarily required to be made pursuant to Bankruptcy Rule 8005.)
4. Did the order confirming sale contain a finding that the proposed purchaser is in good faith and entitled to the protections of §363(m)?
5. Has an appeal been filed?
6. Are we aware that an appeal may be filed or a stay order sought?

It may make sense in some instances to insure during the appeal period, but with an exception in the title insurance policy deleting coverage for legal expenses which may be incurred in the event of an appeal. We should know in advance which law firm the insured proposes to hire to represent its interest in the bankruptcy case should an appeal be filed. For our own protection, we’ll want to follow the litigation ourselves, making sure the law firm representing the insured proceeds to our satisfaction. Bottom line: proceed with caution.

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The South Fork lawsuit came to trial first, in September 1816. The court ruled in favor of Mather, awarding him \$61.50 and costs of suit to be paid within 10 days. If not paid, the award was to be enforced as a lien against the South Fork Farm.

No one paid Mather, and on December 19, 1816, the land was sold by Commissioner Benjamin Wright “for ready money amounting to \$87.74” to John Welsh.

By the time of this sale, and with the Knob Creek lawsuit still pending, the Lincoln family had given up on Kentucky and were en route to the wilderness of Southern Indiana.

As a postscript, the Knob Creek lawsuit went to trial in June 1818. A jury found for the defendants, and the property reverted to George Lindsey (whom pleadings indicate had been Thomas Lincoln’s landlord).

In 1937 R. Gerald McMurtry wrote for the Indiana Magazine of History:

“Such difficulties with land titles naturally caused Thomas Lincoln to seek a new country, where there was no overlapping of land grants, and where real property was adequately surveyed into sections (square miles) and recorded with clear titles, once it was purchased. He decided that Indiana offered good opportunities.”

Although he was given a judgment against Bush, there is no indication Thomas Lincoln ever recovered any part of the \$200 he paid for South Fork. Some biographers have written, however, that before departing Kentucky Thomas sold his disputed interest in Knob Creek for ten barrels of whiskey and \$20 cash.

Albert Rush is Senior Vice President – National Counsel; Santa Ana, California.

For an expanded version of this article, including source materials, visit the *News and Reference* section at our site on the World Wide Web.

postings . . .

New for '96: Underwriting Library™ Version 3.0 (Now on CD-ROM)

First American's computerized Underwriting Library has become *the* source for title insurance information and research. Our new Version 3.0 introduces several powerful new features, as well as fully updated components from the previous version, including

- an expanded and redesigned state-by-state real estate practices guide,
- state-by-state policy and endorsement forms availability,
- a variety of transaction forms,
- dozens of new articles and publications,
- rate manuals for some states,
- and more.

A new volume has also been added describing an array of real estate-related services now available under the umbrella of The First American Financial Corporation.

The Underwriting Library is available for the first time on CD-ROM. By moving to the CD-ROM format, we have taken advantage of the enormous capacity of a compact disc and increased the volume of information from under 10 megabytes in version 2.0 to over 130 megabytes in version 3.0.

One of the Underwriting Library's most exciting new features is the inclusion of scores of scanned images of forms such as the HUD-1 Settlement Statement, transfer affidavits, tax-related forms and charts, deed and mortgage forms, and many more. You can find many of these images within Volumes II and III, and in two new publications within Volume IV: one entitled "Dimensions — A Guide To Describing Real Property" and the other "Real Estate Lawyer's Desk Reference (New York)."

Another new feature is the use of Query Templates. A Query Template is a special way to search through only desired parts of the Underwriting Library for terms or phrases in which you are interested. Some of the Query Templates are very simple, and some allow much more detailed refinement of the searching process.

For those unfamiliar with this software tool, the Underwriting Library operates in Folio VIEWS™ and consists of five Volumes:

- Volume I: Endorsement Manual
- Volume II: Title Insurance Forms
- Volume III: Real Estate Practices, A State-by-State Guide
- Volume IV: Publications and Articles
- Volume V: The First American Financial Corporation Professional Services Guide

In addition to these Volumes, a Glossary, a Directory of First American Offices, and an online User Guide are included.

The Volumes are instantly searchable by any word in the entire Underwriting Library; are linked with other resources in the Library; are more compact and portable than printed material and are far easier to use.

Look for version 3.0 of the Underwriting Library in March. Visit First American's web site on the World Wide Web at <http://www.firstam.com>. The Internet version of the Underwriting Library will be accessed through the "News and Reference" section on the Home Page. We will continue to provide the most current title information as it becomes available through our Internet site.

Pilot Program Dramatically Reduces Fraud, National Notary Association Report Reveals

Reprinted courtesy of CLTA News, a publication of the California Land Title Association.

A report just issued by the National Notary Association documents the remarkable success of a pilot anti-real estate fraud program in stemming escalating property scams in Los Angeles County. The NNA report urges lawmakers to extend the self-supporting program statewide on a permanent basis.

The anti-fraud program, in effect since January 1, 1993, and scheduled to terminate December 31, 1995, has alerted hundreds of homeowners to fraudulent acts affecting their property title and deterred impostors from forging signatures on documents transferring titles.

The program requires signers of deeds affecting real property in Los Angeles County to leave a thumbprint in the Notary's journal and authorizes the Los Angeles County recorder to notify property owners when a deed has been recorded for their property. The notification must be sent within 30 days of recording.

Since the thumbprint requirement went into effect, according to the NNA report, law enforcement and consumer affairs investigators report their forgery caseloads have significantly diminished, and in some cases, disappeared altogether.

And in just a 10-month period, more than 3,400 real-property owners were notified of deed filings they had not authorized, allowing them to take quick action to clear their titles.

The pilot program's property-owner notification option uses no monies from general tax funds. Property owners — those people who benefit from the program — pay a minimal surcharge of \$7 when they record their deeds.

The journal thumbprint and property-owner notification programs have been so effective in deterring and detecting frauds that the Los Angeles County Board of Supervisors voted unanimously on January 17, 1995, to endorse the removal of the "sunset date" to make the programs permanent.

The NNA report contains testimony and endorsement of the program by such diverse groups as homeowners, law enforcement officials, consumer advocates, attorneys, Notaries, and surety and title insurance executives. The reasons cited for support include the increased title protection, reduced monetary losses, crime deterrence, and greater ease in prosecuting perpetrators.

The CLTA will continue to follow this issue, which may be extended to a statewide law.

Editorial note: Legislation enacted January 1, 1996, now makes the thumbprint requirement applicable statewide in California, indefinitely.

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Claims CHRONICLES

Jokers Wild



Honey, I Shrank the Mortgage: Above, one of the eighteen rental properties around Ohio State.



Who Me?: The seller of this L.A. condo had us believing he wasn't the person named in a huge judgment lien.

Columbus, Ohio—In 1982 Mr. and Mrs. Charles O'Brien were owners of eighteen rental properties around Ohio State University.

A local bank held a blanket mortgage against the eighteen rentals plus the O'Briens' personal residence, for \$1.6 million.

Planning to divorce, Charles asked the bank to give a partial release of its mortgage as to his residence so it might go to his wife free of debt. The bank agreed, and the partial release was recorded.

Days later Charles contacted the bank again and falsely reported the partial release lost. Believing it was not recorded, the bank provided another original partial release which Charles picked up for delivery to the recorder's office.

On the way the strangest thing happened. Somehow, these words were added to the legal description contained in the release:

"and all other premises set forth on Schedule A attached hereto."

And, a "Schedule A" was attached containing a list of Charles' eighteen other properties.

In the years that followed Charles gave ten new mortgages totaling \$1.4 million to different banks secured by the eighteen properties. All were insured by First American without exception for the fraudu-

lently released blanket mortgage, which continued to enjoy performing status due to Charles' continuing payments.

In the spring of 1990 Charles stopped making payments and the respective lenders discovered their competing claims for priority against his assets.

Ultimately, the properties were foreclosed by mutual agreement of the competing lenders and First American paid \$472,500 to settle all claims. The Company also paid legal expenses of \$194,048.



Los Angeles, California—Robert B. had a problem—he was being sued.

After judgment was entered against him for \$178,842, an abstract of the judgment was recorded and a judgment lien was created against Robert's condo home.

Robert had a lot of equity in his condo. It was worth almost \$100,000, with only one deed of trust against the property securing \$31,000.

In late July 1993 there was recorded a second deed of trust from Robert to his father securing payment of \$55,000. Although this deed of trust was recorded after the judgment lien, it was dated as having been signed several years before. This recording may

have been an attempt to shield Robert's equity from his creditors; but we digress.

Soon Robert contracted to sell his condo for \$98,000. An escrow was opened and the ensuing title search turned up the judgment lien.

Our agent sent Robert a copy of the judgment lien and told him that unless it was otherwise cleared the lien would either have to be paid and released through escrow, or shown as an exception in new title insurance policies to be issued. The lien identified the judgment debtor by full name (Robert's) with a last known address in Woodland Hills, and included the debtor's driver's license and Social Security numbers.

By return fax our agent received a letter purportedly from Robert saying that the judgment lien "in no way has anything to do with me, either directly or indirectly." Attached were photocopies of Robert's driver's license, Social Security card and a completed statement of information showing no former residence in Woodland Hills.

Since the information given by fax did not match details shown on the judgment lien, our agent closed without clearing the lien.

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At close of escrow \$55,000 was disbursed to Robert's father, but the check was endorsed over and immediately deposited into Robert's bank account.

Our agent was later contacted by an attorney for the judgment creditors. It turned out the lien was valid against our insured property. The Social Security number which we thought was Robert's has never been issued to anyone, and the driver's license number belongs to a man living in San Jose.

Robert denies responsibility for the false fax; he implies that a real estate agent sent it.

First American negotiated settlement with the judgment creditors, paying \$57,279, and also paid legal expenses of \$3,468.



Fairfield, Connecticut — Roy Bobowick applied to several lenders for a new first mortgage against his home.

Two lenders approved and one of them ordered title insurance from an agent of First American.

Just before closing the agent performed a "last look" or bring-to-date search at the town clerk's office. Finding nothing new, the agent closed and the new lender's mortgage was insured for \$250,000.

It soon came to light that our insured first mortgage was in fact a second. It seems both of Roy's loan approvals resulted in closings. The other lender's mortgage, also in the amount of \$250,000, was recorded March 28. Our insured mortgage recorded April 11.

Our agent missed the senior mortgage on his bring-to-date search because the page

showing it was removed from the clerk's day book, admittedly by Roy, just before the agent's visit.

After foreclosure First American paid its insured \$150,000. The Company also paid legal expenses of \$12,064 to investigate and pursue recovery.

Moral: *People do the darnedest things thinking they won't get caught.*

Often they over-encumber property hoping to profit big from some new business venture or "can't-lose" investment, thinking no one will find out.

While First American is diligent in filing criminal complaints and pursuing recoveries, money stolen through a false pretense is usually impossible to get back.



The Insured Property: Even Roy's house is hidden from view.



Fairfield Town Clerk's Office: Where Roy removed evidence of his first mortgage.

postings . . .

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Covered Risk: for Mortgage Lenders

We are frequently asked to explain differences in coverage between title insurance and other forms of title assurance, such as attorney opinion letters, limited coverage policies and certified searches.

To help do this, First American has a new eight-page publication titled, "Covered Risk: for Mortgage Lenders," including true stories from our claim files.

For a complimentary copy, please contact your First American representative.

Hey Abbo-o-o-tt!

Tim Sullivan, now in charge of our home office Legal Department, was formerly a practicing lawyer.

The following, from a memorable deposition transcript, is an example of Tim's relentless cross-examination technique.

Q: Could you briefly describe the type of construction equipment used in your business?

A: Four tractors.

Q: What kind of tractors are they?

A: Fords.

Mr. Robin: Did you say "four"?

The Witness: Ford. Ford. Like the Ford. It is a Ford tractor.

Mr. Sullivan: Q: You didn't say "four," you just said "Ford"?

A: Yes, Ford. That is what you asked me, what kind of tractors.

Q: Are there four Ford tractors? Is that what it is?

A: No, no. You asked me what kind of a tractor it was and I said Ford tractors.

Q: How many tractors are there?

A: Four.