

# Stories to Build Confidence in Your Understanding

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## What to expect.

- What is a claim and what happens when it comes in?
- Common types of claims.
- Claims avoidance - Where can we prevent claims in the Process?
- Five claims to help you remember – you will be asked “How can we avoid this one in the future?”
- If you have questions, please raise your hand or shout it out. There are no dumb questions. If you have a question, I am sure someone else in the audience has the same question.



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## Why are we starving for claims stories and data?

- We can't see them in a drive by or on TV.
- The product is not like any commonly understood concept of insurance.
- We want to learn from and avoid the mistakes of others.
- It helps us learn how the product we sell works in real life.
- It helps us sell our product to our customers.




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## What is a claim?

Show me your hands:

*Which of the following is a Title Insurance Claim?*

1. An owner claims the neighbor installed a fence over the boundary.
2. A lender claims the Land is going to tax sale.
3. A lender claims it cannot foreclose because the legal description on their deed of trust has errors.
4. An owner files a claim because he lost control of his car and took out a portion of his garage.


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**The answer is . . .**

**They are all claims!**

Some or all may be denied, but they all must be addressed by the Insurer.

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# Back to Basics

## Anatomy of a Title Insurance Policy

**What is a Title Insurance Policy?**

Title insurance is a contract between a policyholder and a title insurance company. The policyholder pays a premium to the title insurance company, and the title insurance company provides a title insurance policy to the policyholder. The title insurance policy is a contract that guarantees the title to the property is clear of all liens, encumbrances, and other claims. If there is a problem with the title, the title insurance company will pay for the cost of the problem.

**Why do I need a Title Insurance Policy?**

When you buy a home, you need to make sure that the title to the property is clear of all liens, encumbrances, and other claims. This is why you need a title insurance policy. The title insurance policy will protect you from any problems that may arise with the title to the property.

**How do I get a Title Insurance Policy?**

You can get a title insurance policy from a title insurance company. You will need to provide the title insurance company with information about the property and the purchase price. The title insurance company will then issue a title insurance policy to you.

**What are the benefits of a Title Insurance Policy?**

There are many benefits to having a title insurance policy. One of the most important benefits is that it protects you from any problems that may arise with the title to the property. Another benefit is that it provides you with peace of mind knowing that your investment is protected.

**How much does a Title Insurance Policy cost?**

The cost of a title insurance policy varies depending on the purchase price of the property. Generally, the higher the purchase price, the higher the cost of the title insurance policy.

**When do I need a Title Insurance Policy?**

You need a title insurance policy when you buy a home. You will need to provide the title insurance company with information about the property and the purchase price. The title insurance company will then issue a title insurance policy to you.

**What are the different types of Title Insurance Policies?**

There are two main types of title insurance policies: owner's title insurance and lender's title insurance. Owner's title insurance protects the owner of the property from any problems that may arise with the title to the property. Lender's title insurance protects the lender from any problems that may arise with the title to the property.

**How do I choose a Title Insurance Company?**

When you choose a title insurance company, you should look for a company that is licensed and has a good reputation. You should also look for a company that offers competitive rates and excellent customer service.

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## What is in the Title Insurance Policy?

- Insuring provisions - Covered Risks.
- The Duty to Defend.
- Exclusions – Character, use, and regulation of the Land. Matters created or agreed to by the Insured. Creditor's rights.
- Conditions – Definitions, proof of loss, options of insurer, duty to cooperate, extent of liability.
- Schedule A – Date and Amount of Policy, Insured, Vesting, Estate and Land.
- Schedule B – General and Special Exceptions.



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## When a claim comes in, how is it evaluated?

After we investigate, we ask ourselves three questions:

1. Does the asserted title defect fall within the insuring provisions for the policy (i.e., one of the Covered Risks)? [If yes, proceed to question two. If no, the claim will be denied.]
2. Does the asserted title defect fall within an Exclusion in the policy? [If no, proceed to question three. If yes, the claim will be denied.]
3. Does the asserted title defect fall within an Exception in the policy? [If no, the matter is covered under the policy. If yes, the claim will be denied.]



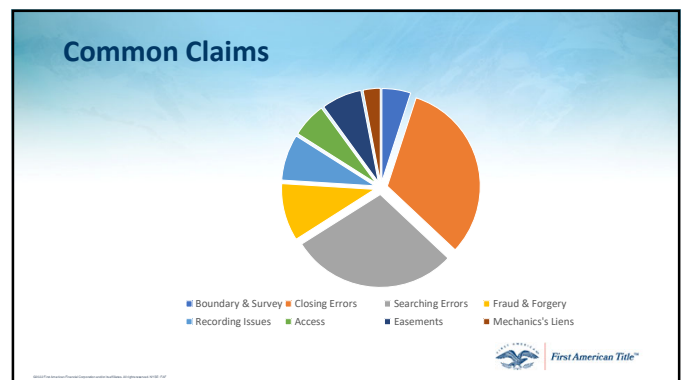
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## COMMON CLAIMS

Survey says . . .

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## Common Closing Errors.

- |  |  |   |  |
|--|--|---|--|
| Missing, incorrect or incomplete legal descriptions. | Failure to pay or attempting to pay incorrect voluntary and involuntary liens. | Failure to deliver instructions to lender to close HELOC. | Failure to have all title holders execute instruments. |
| Incomplete acknowledgments.                          | Failure to timely record instruments.  | Title examination error.                                  |  |
- 


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## Common searching errors.

- Missed break in the chain of title.
- Missed tax, judgment or other liens.
- Missed front foot declarations.
- Missed covenants contained in a deed.
- Missed easements.

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## Fraud!

- Changed wire instructions.
- Email compromise.
- Fake wire instructions.
- Imposters.
- Over payment schemes.

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## CLAIMS PREVENTION

Yes, we can!



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## Keep your eyes Open!

- Closing Errors – Most happen at the table.
- Search & Exam – Read every document.
- Underwriting – Follow your Underwriter's Guidelines.



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## The Case of the Bankruptcy Trustee Sale.

Things are not always as  
they appear






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## Policy provisions implicated – ALTA Owner's Covered Risk 9?

9. Title . . . being defective . . . as a result of the avoidance . . . of a transfer . . . of the title to . . . the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer . . . . under federal bankruptcy, state insolvency, or similar creditors' rights laws; or . . . .




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## But on reflection . . . “the catch all.”

ALTA Owner's Covered Risk 1 and 2

1. Title being vested other than as stated in Schedule A or being defective.
2. Any defect in . . . the Title.



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### The sale on the courthouse steps.

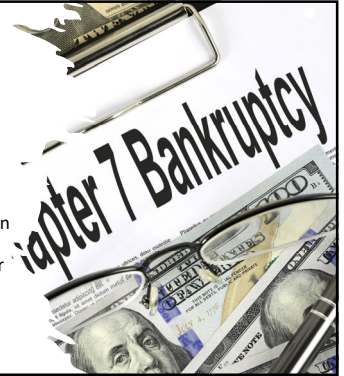
- Borrower defaults on loan secured by the property.
- FC Trustee files action to foreclose and receives the “all clear” to go to sale.
- Foreclosure sale takes place at 8:30 am as noticed and advertised.
- Property sold to third party who makes the \$25k deposit



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### The bankruptcy.

- Borrower files Chapter 7 at noon on the day of the foreclosure and files “suggestion of Bk” in foreclosure proceeding that same day.
- Nothing further gets filed in the foreclosure case.
- 18 months later Bk Trustee obtains an order allowing the sale of the property to a *bfp* to which the lender agreed.
- Bk Trustee communicates with FC Trustee to get payoff figures.



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### Bankruptcy Trustee sells the property.



- Two months later Bk Trustee sells the property, pays off all liens against the property, and uses the proceeds to pay unsecured creditors.
- Loan and owner policies are issued without exception to the foreclosure and bankruptcy.
- One month later FC Trustee returns the \$25k deposit to the high bidder at FC sale and dismisses the case.
- One month later high bidder files motion to set aside Bk Trustee Sale as the “gavel fell” on the FC sale before BK filed.



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### How can we avoid this one in the future?

- That is why we sell title insurance!
- Don't be fooled when asked to insure over a known risk . . . We have enough claims on stuff we don't know about and have no ability to know about.



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### The Case of the Disputed Access.

Alias Smith and Jones



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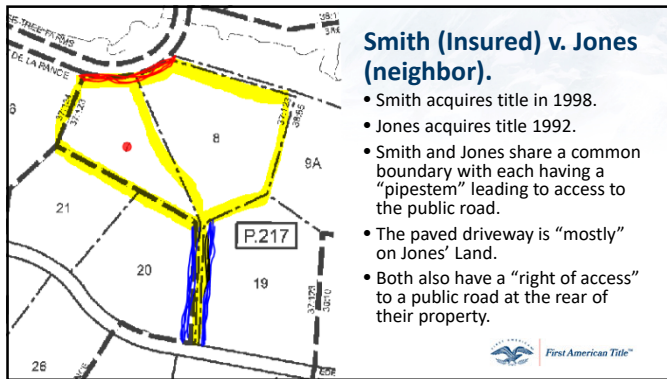
### Policy provisions implicated – ALTA Owner's Covered Risk 2 & 4/Homeowner's Covered Risk 11

2. Any defect in . . . the Title.
  4. No right of access to and from the Land.
11. You do not have actual vehicular and pedestrian access to and from the Land, based upon a legal right.

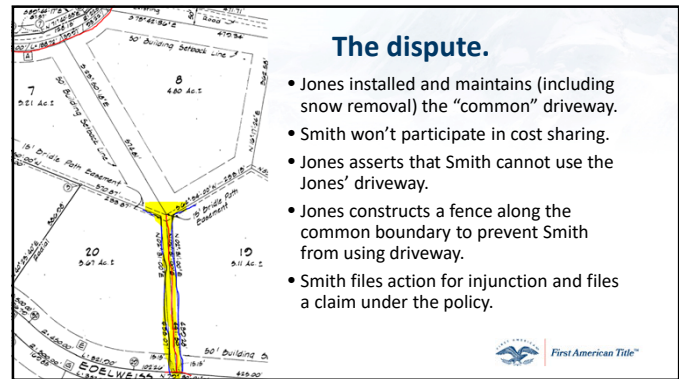


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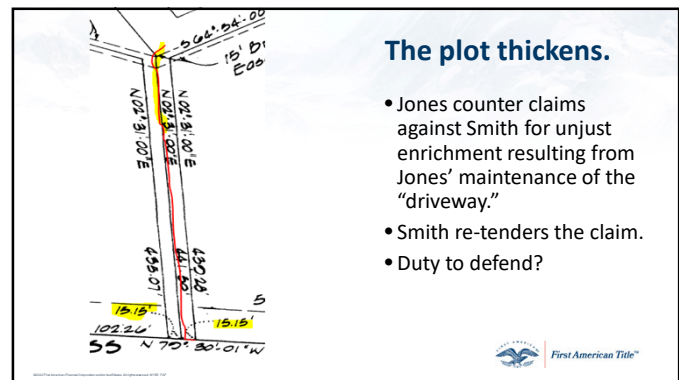
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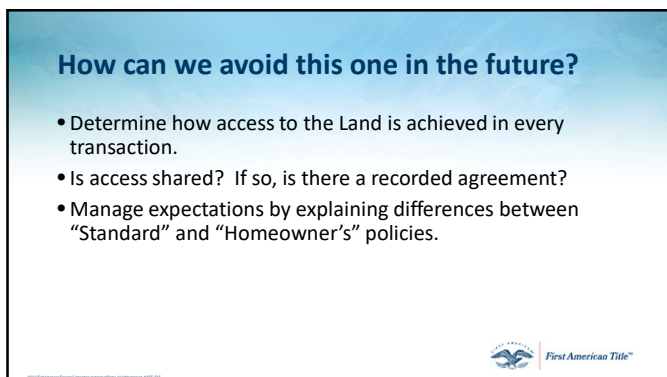
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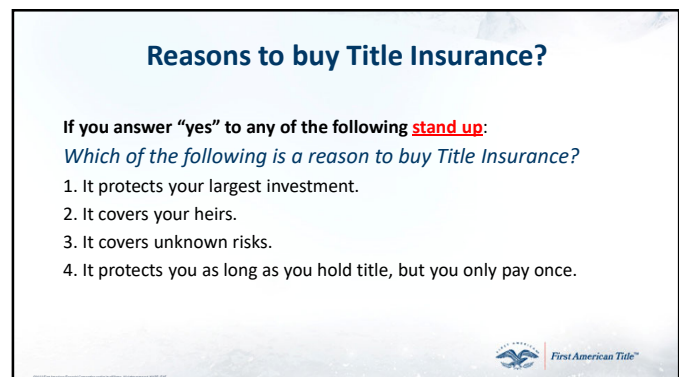
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## The case of the Rich Guy and the Trusty Assistant.

The story of "Dick and Jane"



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## Policy provisions implicated - ALTA Loan Covered Risk 2(a)(i) and (ii).

2. Any defect in or lien or encumbrance on the Title. ~~This~~ Covered Risk 2 includes, but is not limited to, insurance against loss from
- (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, Incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;



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## The Motley Crew.

- Rich Guy we call "Dick"
- Trusty Assistant, "Jane"
- Top Loan Officer at Big Bank



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## The Loan.

- \$250k Line of Credit
- This will be great!
- The deal is sealed
- Call Jane if you need anything!



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## One thing leads to another. . .

- Jane has lots of practice signing Dick's name.
- The new dress.
- We need more money.
- Don't worry Big Bank has Dick covered.



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## Cue the Title Agent.

- We still need more money.
- Loan now up to \$2 million, but the loan underwriter now says we need security.
- Loan Officer sends Jane a new note and deed of trust.
- Loan Officer opens a title order. Yeeee Haaaa!
- The forgery was easy after all!
- Title agent records the deed of trust and issues the loan policy.



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## How can we avoid this one in the future?

- Don't lose control over the insured documents or the signing process.



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## The case of the Buyer who Filed Bankruptcy After Closing.

Really?

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## Policy provisions implicated - ALTA Loan Covered Risk 13(b).

13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title ...
- b. because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law by reason of the failure:
- to timely record the Insured Mortgage in the Public Records after execution and delivery of the Insured Mortgage to the Insured; or
  - of the recording of the Insured Mortgage in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.



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## It's Perfect!

- Buyer finds dream home and puts 20% down.
- He obtains a loan for the balance of the purchase price from institutional lender.
- Ooops. The lien certificate is late arriving.
- Documents get rejected once because a required document missing.



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Ugh!

- 10 days after closing the buyer files Chapter 7.
- Eventually the deed and deed of trust get recorded.
- A month later the letter from the Bankruptcy Trustee arrives.



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## How can we avoid this one in the future?

- E-record whenever possible.
- Don't close until you have everything you need.
- Act like it's a race to the courthouse.



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## The case of the Boundary Dispute and the New Fence

I love my neighbor!



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## Policy provisions implicated - ALTA Homeowner's Covered Risk 28.

28. Your neighbor builds any structures after the Date of Policy—other than boundary walls or fences—that encroach onto the Land.



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## I Got a Homeowner's Policy!

- Insured acquires title in 2003.
- In 2010 Contractor Neighbor offers to replace the old fence between the properties.
- Insured does not think the fence needs replacing but says "okay" to be a good neighbor.



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## Why did you do that?

- When fence went back up, Neighbor grabbed an extra 18 inches and installed a patio flush with the new fence line.
- Insured complained to neighbor but was ignored.
- Finally, neighbors says "prove it."



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## I Don't believe it.

- Insured obtains a survey of the boundary.
- Survey shows that fence is now 18 inches over the property line.
- Surveyor marks the pin he found at the corner where the two properties meet.
- Insured shows survey and stake to neighbor who says "I think it is wrong. I will get my own survey."
- Exasperated insured files claim.



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We had to sue the neighbor.

The lawsuit took almost a year to complete.



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### How can we avoid this one in the future?

- We can't.
- We assume certain risks in the Homeowner's policy that cannot be avoided by anything we do.



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## Thank you!

"Let's be careful  
out there."



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