

Professional Ethics and Real Estate Title Fraud

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Real Estate Title Fraud Perspectives

THE BIG PICTURE of the real estate transaction

What is happening?



Who wants what?

Why is everyone in such a hurry?

Why did I become a title agent?



Real Estate Title Fraud Perspectives

THE BIG THREE

COMPETENCE

DILIGENCE

COMMUNICATION



Real Estate Title Fraud Perspectives

Attorney Professional Competence - Rules of Ethics

MD Rules of Professional Conduct

19-301.1 Competence

19-301.3 Diligence

19-301.4 Communication

DE Rules of Professional Conduct

1.1 Competence

1.3 Diligence

1.4 Communication



Real Estate Title Fraud Perspectives

Seller Fraud

- Non-primary residence
- Vacant land
- Absent property owners
- Flip transactions - ok or not?
- Parties in possession

Borrower Fraud

- Identity theft
- Home equity theft



Real Estate Title Fraud

The Basic Steps

Access to property information

Forgery

Submission of fraudulent documents

Title transfer

Sell, Lease, Mortgage



Title Fraud Prevention



FinCEN Red Flags

- * Differing signatures
- * The owner/seller lives abroad
- * Recently issued identification documents
- * A lack of knowledge about the property
- * The seller lives at a different address from the property and has no evidence, such as bills or building insurance, linking them to the property
- * The property is vacant, of high value, and/or has no mortgage
- * The seller wants a quick sale



Title Fraud Prevention

How to Prevent Title Fraud

- Proper vetting
 - Individuals
 - Business Entities
- Confirmation of legal and equitable ownerships
- Review of legal instruments
 - Deeds, Powers of Attorney, Authorizations
- Employ technology



Title Fraud Prevention

Business Entities as Parties

- What makes them distinct?
- Purposes of business entity formation and use
- Types of business entities
 - Corporation
 - Limited liability Company (LLC)
 - Partnership
 - Limited Partnership



Title Fraud Prevention

Business Entity Issues for Title Agents

1. Lien Concerns - *The Entity*

- a) State Lien Certificates
- b) Corporate Good Standing
- c) Federal Liens

2. Who can sign? - *The Individuals*

- a) Review of Entity Documents - Operating Agreement, By-Laws, Resolutions, Minutes, Other Agreements
- b) Communications with entity representatives and signors
- c) Working with the business entity PEOPLE



Title Fraud Prevention

Get to know the people involved

Ask simple and direct questions

Maintain your professionalism

Challenge the assumptions

FRAUD



Title Fraud Prevention

Title Insurance Protections

Regular Owners Policy

Forgery, fraud, impersonation,....

Unauthorized transfer....

Documents not properly authorized...

Falsified powers of attorney...

Enhanced Owners Policy

Future fraud coverages





The Changing Demands on Title Agencies

Title agents have responsibilities to multiple parties

- ▶ **Buyers** Title search, Title insurance, Transaction coordinator
- ▶ **Sellers** Private info, Lien clearance, Preparation of seller documents, Remote or Pre-signings
- ▶ **Realtors** Source of the business? - Affiliated Business Arrangement?
- ▶ **Lender** Loan documents and Loan funding
- ▶ **Payees** Everyone wants a check
- ▶ **Attorneys** Seller and/or Buyer representation
- ▶ **Underwriter** The principal title insurer
- ▶ **Government** IRS, FIRPTA, Dept of Treasury-FinCEN



The Changing Demands on Title Agencies

Managing the real estate transaction in the context of ethics and title fraud prevention

- LOOK INWARD (Competence/Diligence)
 - Office practices and procedures
 - Work product, Roles, Trusted routines
- LOOK OUTWARD (Diligence/Communication)
 - Communications with the parties
 - Transparency, Expectations, Level of trust



The Changing Demands on Title Agencies

Evolving Government Rules and Regulations

FinCEN - Beneficial Ownership Reporting

Freddie Mac - Title Underwriter Funding

Maryland and Delaware Fraud Enforcement Laws





The Changing Demands on Title Agencies

FinCEN - Bank Secrecy Act *31 USC 5311, et seq. 31 CFR Chapter X*

What is it?

Why was it created?

To what types of transactions does it apply?

Who is required to file the report?

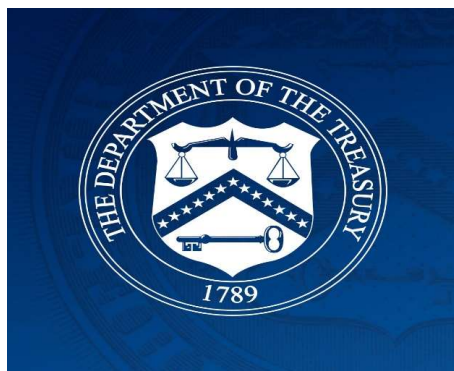


The Changing Demands on Title Agencies

What is it?

An expansion of the FinCEN geographic targeting orders for non-financed residential real estate transactions.

The reporting obligation will now be nationwide.



The Changing Demands on Title Agencies

Why was it created?

When FinCEN reviewed the existing reports from 2017 to 2024, approximately **42%** of non-financed real estate transfers that were reported were conducted by individuals or entities on which a Suspicious Activity Report had been filed.

In federal money laundering cases from 2016 to 2021, nearly **61%** involved at least one transfer in a county not covered by a geographic targeting order.



The Changing Demands on Title Agencies

To what types of transactions does it apply?

Non-financed (cash) transfers of residential property to business entities

- single family homes
- Apartment buildings and complexes
- Mixed use buildings
- Vacant land where purchaser intends to build housing

Also includes transfers financed by Seller or other lender not subject to US banking laws (private mortgage)



The Changing Demands on Title Agencies

Who is required to file the report? (in descending order of preference.) Referred to as the 'reporting cascade' PJ1

1. **Person listed as closing or settlement agent on the closing or settlement statement, or**
2. Person who prepares the closing or settlement statement, or
3. Person that files the deed or transfer document, or
4. Title insurance agent, or
5. Disbursing agent, or
6. Title searcher, or
7. Person who prepares the deed or transfer document.



Slide 21

PJ1

Papoutsis, John, 9/3/2025

Handling of Escrow Funds

Escrow account overview and maintenance:

- Internal office procedures and safeguards
- Third party access - reconciliations and bank confirmations
- Professional IT support and oversight



Handling of Escrow Funds

General Office Rules

Managing your office:

1. Dual/Multiple controls for files
2. Segregation of duties
3. Manager(s) supervision
4. Daily or weekly escrow account reconciliations
5. Internal training and audits for risks



Handling Escrow Funds

Fraud Updates

1. Mortgage loan payoff statement fraud
 - Increased sophistication, including use of fax lines
 - Electronic monitoring of communications
2. More lenders verifying recipient bank accounts
3. Verbal verification is the key



Work with your Title Underwriter

All recent title best practices and governmental requirements involve title underwriters - this trend will likely continue:

Title searches and title commitments

Transaction funding

FinCEN reporting

Experienced feedback and answers



Questions?

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