OHIO LAND TITLE ASSOCIATION
SERVING THE NEEDS OF OHIO'S LAND TITLE INDUSTRY SINCE 1910.

TITLE topics

JULY23

PRESIDENT'S MESSAGE

by Jeffery Gammell, Esq.

Since our visit to Washington in May the legislative volume has stayed very active right here in the great State of Ohio. We were very fortunate to help support and push for legislation regarding several issues affecting our industry in the State Budget Bill including, Non-Title Recorded Agreements for Personal Services or in other words Unfair Listing Agreements, The Homeownership Savings Linked Deposit Program and work to protect the judicial foreclosure process. These are covered in more detail in the Legislative Update.

We have also been involved in working with and educating legislators regarding a bill that would restrict ownership and make real property conveyances void for some foreign advisories and prohibited parties. The concern is through limited liability company and corporate structures to determine if a buyer is an adversary or prohibited person. If a transaction is later voided after it closes, and further if it has been insured, it raises a number of questions and concerns. Because of this we have been able to meet with Ohio Representatives to look at alternate avenues that would not back up a transaction by voiding it. This includes legislation that instead would potentially create cause of action by the State to place real property in receivership and force subsequent sale without disrupting the integrity of the initial closing.

Having the opportunity to serve on the Board of Trustees of the OLTA for several years, one thing I have noticed is how the legislative activity of our Association has become so important. It seems that more and more issues arise in this area each year. If we ceased to be involved with our local law makers it would dramatically impact our business in ways never foreseen. The OLTA is an important protector of our industry here in Ohio.

OHIO LAND TITLE ASSOCIATION

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Title Topics is the official publication of the Ohio Land Title Association. The views expressed are not necessarily those of the association, its staff, officers or trustees. Articles may not be reprinted without the consent of OLTA.

Announcements, including new hires and promotions, may be submitted to the OLTA office for publication in Title Topics. Announcements should include the name, his/her position, company and other relevant information. Items should not be self-promoting or commercial. Submissions are subject to acceptance and editing by the editor of *Title Topics*.

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DIRECTOR'S MESSAGE

by Mark Bennett, CAE, IOM

" THE OLTA'S ANNUAL CONVENTION REGISTRATION IS LIVE AND IN PERSON ONCE AGAIN THIS YEAR. "

OLTA Earns Victories in Biennial State Budget Bill

Governor DeWine signed the state's biennial budget bill earlier this month. There were three provisions in the final version which OLTA supported. The first was the prohibition of Non-Title Recorded Agreements for Personal Services (NTRAPS). These agreements, specifically realtor brokerage agreements, require homeowners who sign the agreement to list their property with a specific realtor when they go to sell in exchange for a cash payment. These are typically 40-year agreements and would also tie future homeowners of those properties to the same requirements. Additionally, OLTA worked with the Treasurer of State on the Homeownership Savings Linked Deposit Program which allows first-time homebuyers to contribute money into a savings program along with contributions from their families and employers to make home ownership more affordable. Finally, OLTA successfully lobbied to have a provision removed from the Welcome Home Ohio program that would have created a host of issues surrounding the judicial foreclosure process.

Be Part of OLTAPAC to Help Advocacy Efforts

The victories described above were possible in part through the strength of OLTA's Political Action Committee. Legislators have recessed for the summer and are busy with fundraisers in their home districts preparing for the elections this fall. This has been an opportunity for OLTAPAC to participate in a number of outings and let legislators know more about the important work you all do on a daily basis. We need your help to support candidates who support the work of Ohio's title professionals. You can make an OLTAPAC donation online at https://www.olta.org/donations/fund.asp?id=4707. Add your name to the list of 2023 donors today.

Plan Now to Attend the 114th OLTA Annual Convention!

The OLTA's Annual Convention registration is live and in person once again this year. Registration will open soon for the 114th Annual Convention, October 2-4, at the Renaissance Hotel in Westerville on the north side of Columbus. I always look forward to this is the marquee, must-attend event for Ohio's title industry.

Plan to join us on the evening of October 2 for a networking reception with your title industry colleagues at Topgolf Columbus. It promises to be a fun event. Tuesday will kick off our educational programming. You'll hear an update from OLTA's lobbying team on a very active legislative session, an economic update, the latest on fraud schemes, succession planning, an update on federal advocacy issues from ALTA and much more.

As always, feel free to contact me at 888-292-6582 or mark@bennett-management-llc.com.

OLTA LEGISLATIVE UPDATE

by Chad Hawley, The Batchelder Company

The end of June wrapped up the first six months of legislative action within the statehouse, before legislators left for summer recess. Many important pieces of legislation were passed during that time, most notably the State Operating Budget (HB 33), which funds government and services for another two years. The final version of the budget was over 6000 pages long! There were a wide range of policy issues included in this budget, ranging from universal school vouchers, dismantling the Ohio Department of Education, to tax cuts, higher ed reform and mental health funding to name a few. We are happy to report that OLTA had several high profile wins included in the budget or successfully removed the more problematic items. This was all due to a strong lobbying effort on the ground as well as active participation by OLTA membership.

Our number one priority going into the budget was an effort to address the growing problem of unfair real estate fee agreements in property records, known as Non-Title Recorded Agreements for Personal Services (NTRAPS). Through several meetings with legislators, we garnered strong momentum and legislative support to tackle this issue. We are pleased to say that the final version of the bill included several provisions to protect homeowners in this situation. A few of the provisions include: 1. Make NTRAPS unenforceable by law. 2. Restrict and prohibit the recording of NTRAPS in property records. 3. Create penalties if NTRAPS are recorded in property records. 4. Provide for the removal of NTRAPS from property records and recovery of damages. A big thank you to State Representative Brett Hillyer (R-Uhrichsville) for leading the charge in getting language drafted and included into the budget!

Additionally, OLTA working alongside the Ohio Realtors, Ohio Bankers League and several other housing organizations, were able to get included into the budget the Homeownership Savings Linked Deposit Program. This new and exciting program, administered through the Ohio Treasurer of State, will allow families to start a savings account with maximum yearly contribution limits, which will yield an enhanced interest rate that will then allow the funds saved to be used for the purchase of a home. It is one more and new option for potential home buyers to use that many believe will help more Ohioans overcome the financial barriers associated with owning a home in such a robust market.

Lastly, during the budget process there was language included regarding the foreclosure process as part of the "Welcome Home Ohio Program." During OLTA's review of the language, several areas of concern were identified that if left intact, would have wreaked havoc on the current judicial foreclosure process. OLTA leadership moved quickly to work with us in laying out these concerns to legislators and again we are happy to report these problematic provisions were removed in the final version of the budget.

This is just a small glimpse of some of the very important issues we have been working on during the first six months of legislative action. As you can see, successful advocacy is a team effort. We would encourage you to get involved as part of OLTA legislative advocacy. The simplest way to start is by looking up your current State Representative or Senator and reach out for a coffee to introduce yourself and share items important to the title industry. You can find your local legislator here: https://www.legislature.ohio.gov/. Until next time, have a safe and enjoyable summer!

WIN-WIN-WIN: 3 BENEFITS OF ISSUING THE ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE

by Marilyn C. Cunningham

Edited By Danielle L. Kaiser

Did you know that the American Land Title Association (ALTA) Homeowner's (HO) Policy of Title Insurance offers the highest level of protection for homeowners exceeding the coverage of ALTA's Standard Owner's policy?

The standard Owner's Policy covers documents placed of record before the insured took title, and includes outstanding interests, defective documentation, forgery, fraud, the incapacity of the sellers, unmarketability of title and a lack of legal access to the insured property. This is all important coverage, but ALTA created the HO policy to give consumers even more peace of mind with this additional coverage:

- Post-policy forgery
- Post-policy encroachments
- Post-policy clouds on title
- Post-policy adverse possession
- Post-policy easement by prescription
- Actual access to and from the land
- Building permit and zoning violations occurring in the past
- Subdivision violations occurring in the past
- Encroachment by boundary walls and fences
- Restrictive covenant violations occurring in the past
- Automatic increases in coverage as the property value increases

The HO Policy is available for a small, one-time premium payment that is a 15 percent increase over the standard policy payment. Like all title policies, this coverage protects homeowners and their heirs for as long as they own the property.

The HO Policy is available in Ohio, but is not frequently issued. It is also not available for all types of transactions. Because the HO Policy covers exactly what its name suggests – the homeowner – its coverage is limited to improved one-to-four family residences where the insured is either a natural person, or the trustee of a personal trust. Partnerships, limited liability companies, corporations, and other entities cannot purchase the HO Policy. Transactions involving raw land or large unsubdivided tracts of land also cannot be insured using the HO Policy.

Here's a closer look at some of the biggest advantages to issuing an HO Policy, and how it offers benefits not just for homeowners, but also for title agents and insurers, and other real estate professionals aiding the homebuyer.

Win for Homebuyers

Perhaps the greatest homeowner value provided by the HO Policy is protection against post-policy ownership claims arising from forgery or fraud. For value comparison, consider the frequently advertised title monitoring services offering to "lock the title to your home." For a recurring monthly fee, these companies promise to notify you about a fraudulent transfer or mortgage/lien placed against your property, but they supply no insurance to resolve the problem. The HO Policy provides a defense and covers costs associated with the fraud, and is it backed by an insurance company which is required by state law to maintain reserves to pay claims.

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The building permit violation coverage afforded to the insured under an HO policy may be helpful if a homebuyer must remove an existing structure built by an earlier owner because that owner did not comply with applicable building permit regulations. Imagine a deck built without a permit into a county easement, or an extra bedroom built out in the basement by the prior homeowners – all without benefit of the required building permit and associated inspections and approvals. The new home purchaser will have a rude awakening when they go to the county for permits to remodel other parts of the home. The county may require those unpermitted improvements be taken out – or even completely redone – to comply with local building codes. If the homeowner purchased the home without the additional protections available under an HO policy, they would sustain substantial expense and frustration with their title agent. Other valuable coverages under the HO Policy that many homeowners will likely require during the span of their ownership are those for mechanic's liens, actual pedestrian and vehicular access to the property, encroachments by a neighboring owner, and inflation (affording automatic increases up to 150 percent to cover increases in the value of the home).

Win for Issuing Agents and Others

In issuing an HO Policy, title agents demonstrate the value of working with an experienced title agent, and you can rest easy in the knowledge that you have provided the highest caliber of support and coverage available to your customers. Although it may take a few extra minutes to explain the additional coverages offered by the HO Policy, should you receive notice of a claim that is covered by the additional protections offered by the HO Policy, your agency will benefit from a long list of satisfied customers and referral partners.

In addition, you may find that the extra premium paid for the HO Policy is worth the additional policy-issuing requirements, especially as you seek additional revenue streams in a declining market. Avoiding claims that would not have been covered under other policies also reduces your financial burden. The cost to defend these types of claims – as well as the burden of potential claims against your errors and omissions insurance – far outweigh the cost to your customer for the HO Policy's increased protections.

Win for Underwriters/Insurers

But wait, what about your title insurance partner? Won't these additional coverages result in a higher claims ratio arising from the additional risks? Interestingly, in creating the HO Policy, ALTA contemplated that the additional coverage may result in higher claims, but was willing to accept that risk as long as the increase was not catastrophic. In the past five years, title insurance underwriters have paid over $1 million in claims to homeowners protected by the HO policy – which actually proves its value.

Finally, the added reserves generated by the additional premium – coupled with insurers' strong financial position and legal obligation to maintain adequate reserves to pay claims – ensure that consumers are better protected and resting safely in their "American Dream." For these reasons, the HO Policy is truly a win for all parties involved.

Marilyn C. Cunningham is Vice President, Mid-Atlantic Regional Underwriting Counsel for Doma Title Insurance, Inc. Danielle L. Kaiser is Vice President, Deputy Chief Underwriting Counsel for Doma Title Insurance, Inc.

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THE DANGERS OF DIVORCE DEEDS

by Charles A. "Chip" Brigham, III, Esq., OLTP

There is a danger lurking with divorce deeds especially when we are asked to prepare them for sellers while a domestic relations action is pending.

We understand the legal concept of lis pendens. We would not close a transaction and accept a deed from a seller while an action is pending for foreclosure, quiet title, or breach of contract and specific performance. Once those actions are filed, the court retains jurisdiction and control over the real estate subject to that action and during the pendency of that action. So, for example, if the real estate is the subject of a pending quiet title action and we accept a deed from our seller and close, we need to pray earnestly that the court will eventually quiet title to our seller. Otherwise, no prayer will provide an escape from a claim.

Do we then need an order from the domestic relations court prior to closing? Probably not because in most cases, the two parties being protected by the court's jurisdiction over the real estate are the same two parties presenting as sellers to the deed. But we still need to proceed with care and caution. It is preferred that one of the attorneys in the domestic relationship action prepare the deed. Short of that, we should seek an email from legal counsel confirming that we are being requested to prepare the deed and that there are no other unseen issues to resolve. To step into the transaction and prepare a deed for a litigant that transfers real estate subject to that litigation is rife with professional and practical issues.

Be very cautious about proceeding in an action where one of the sellers is not represented by counsel. Bad things can happen. All of us know the legal significance and consequence of a deed but we cannot presume that an unrepresented participant in a domestic relations action does. A disclosure of services agreement that specifically references a pending domestic relations case and underscores the need to seek legal counsel is the best defense.

What happens if the divorce or dissolution is final? Lis pendens no longer applies. It is common to receive a request to make a specific distribution of the net proceeds to the now unmarried sellers. Unless one of the parties has reduced the distributive award to a judgment lien, we do not need to "control and dictate" the distribution of net proceeds. *Dietl v. Sipka*, 185 Ohio App.3d 218 (Ohio Ct. App. 2009). We are acting reasonably to proceed under the direction of the sellers. If both prior litigants are sellers, have them sign a distribution agreement and instructions. If only one prior litigant is the seller, set forth the requested payment to the other as a distribution item on the closing statement.

A final thought on dower. Domestic relations attorneys are great at being domestic relations attorneys, but they usually make lousy real estate attorneys. It is common to find a deed from divorced spouses that does not properly reference the marital status of the grantor or grantors. The decree usually saves the day if it references the real estate and directs its disposition at some time post-decree. There is no law in Ohio that permits a person with an inchoate right of dower to trump and overrule an order of a court regarding the disposition of real estate held prior to a subsequent marriage. I may be wrong on that, but that is my position, and I am sticking to it.

Chip Brigham is a past president of OLTA and currently serves as general counsel for The Northwest Title Family of Companies.

BWC updates requirements for Drug-Free Safety Program training

The Ohio Bureau of Workers' Compensation (BWC) recently updated rule 4123-17-58 for their Drug Free Safety Program and Comparable program. The new rule became effective July 1, 2023. BWC emailed notifications to program participants in May regarding the following rule changes:

- Basic and Advanced Level participants must maintain all supporting documentation and be prepared to submit additional information upon request. Invoices and sign in sheets shall be included for *all* employees that have completed drug testing and training & educational requirements.
- Train-the-trainer materials need to be refreshed at least every five years. Employers are also asked to include the invoice or supporting documents with their supplemental information.
- Employers in the comparable program are now required to complete employee and supervisor refresher training annually. Previously, training was just required one time.
- Contractors must submit a DFSP testing and education plan for inclusion on the list of public improvement construction project contractors.
- For those employers that have worked on a state project during the program year, company records showing at least 5% random drug testing must be maintained or that they were included in a consortium while on the project.

For additional information regarding these changes, please visit the BWC's Drug-Free Safety Program page here: **https://info.bwc.ohio.gov/for-employers/workers-compensation-coverage/rates-and-bonuses/drug-free-safety-program**

If you have any questions regarding premium installments or the true-up process, contact our Sedgwick program manager, Cordell Walton at 614.827.0398.

DEBUNKING THE MYTH: DOWN PAYMENT ASSISTANCE PROGRAMS AND MORTGAGE DEFAULT RISK

by Veronica Khandelwal, Vice President, HFA Relations at Down Payment Resource

It has been brought to my attention that some in the real estate industry have misconceptions regarding the use of down payment assistance (DPA) programs. There are some that falsely believe that homebuyers who utilize DPA are more likely to default on their loans due to a perceived lack of personal investment in the property. For many, this belief dates back to events leading to the 2008 housing crash and their subsequent fallout.

Back then, homebuyers were offered DPA without undergoing sufficient underwriting to show that they had the ability to sustainably support the loan they were financed for. There were even unscrupulous lenders who would offer DPA to borrowers and reimburse themselves by inflating the price of the home. In these cases, DPA did not cause borrowers to default in disproportionate numbers. It was the actions of loosely regulated financial entities who did not properly vet loan applicants' ability to repay a mortgage.

The housing crisis was traumatic for the majority of people working in the housing industry – professionally, personally or both – so I see how anyone that associates DPA with the default rates of that era would think poorly of these programs. However, it's time to clear the air of these false beliefs, as they do a great injustice to the many qualified LMI borrowers who can sustainably support a mortgage loan with the help of DPA programs.

The housing market has evolved significantly since 2008 with the advent of many industry changes. To name a few, we've seen a new financial agency called the Consumer Financial Protection Bureau (CFPB) created with the oversight authority to ensure financial markets work for everyone. The CFPB simplified mortgage disclosures to help borrowers comparison shop by knowing all fees and loan risks prior to obtaining mortgage financing to purchase a home. They also implemented the SAFE Mortgage Licensing Act-Federal Registration of Residential Mortgage Loan Originators - Regulation G which protects consumers and helps reduce fraud. Source: CFPB 03/2012. Also, strict underwriting regulations were enacted, placing all homebuyers, including those utilizing DPA, under the same rigorous scrutiny.

It's important to remember what didn't work in the past to keep events from recurring. When Covid struck, the government and industry took quick action. Multiple financial relief programs were created to help eliminate high default and foreclosure rates. The program that comes to my mind is called the Homeowner Assistance Funds (HAF) which came from the American Rescue Plan Act and was distributed to states, U.S. territories, and Indian Tribes. Qualified homeowners were permitted to use these funds to pay mortgage payments and other housing expenses like utility payments and homeowner's insurance. Source: Homeowner Assistance Fund | U.S. Department of the Treasury

How about down payment assistance (DPA) programs? Have those changed over the years? The foundation of DPA has not changed. There are grants, repayable, forgivable and deferred programs, but just like other things in the lending industry DPA's are changing based on need and market volatility.

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What they are not doing is going away. Programs are revised to meet the needs of the markets and home buyers and new programs are being developed every day. For example, to help with the inventory shortage, some agencies found a way to incorporate manufactured homes and multi-units when they didn't previously allow it. Out of the 2300+ programs the purchase of manufactured homes and around 600 programs that support the purchase –two- to four-units residential properties. These programs have consistently grown quarter after quarter.

DPA programs can also help in areas that may not be thought about. With the interest rates higher, did you know there are programs that permit funds to be used to buy down the interest rate of the first mortgage? Currently, there are approximately 200 DPA programs that allow borrowers to buy down interest rates with program funds. Some even allow for reduction of mortgage insurance costs. Down payment assistance can not only help with down payment and closing costs (i.e. cash to close), but can also help reduce debt-to-income (DTI) ratios due to the payment reduction benefits that compound from a bigger down payment and other eligible uses of funds.

Lastly, it is important to understand what a down payment assistance program is NOT and has NEVER BEEN. These programs are not "alternative financing" or "sub-prime." They are not "no-doc" loans or many of the other financial products that led to the 2008 housing crisis. Any inference that DPAs are those kinds of products is patently false and misleading. Today's DPAs require homebuyer education, qualification for standard FHA, VA, USDA or conventional mortgages, and are originated responsibly with consumer success in mind.

So what does all of this mean for consumers? It means consumers have safe options. It means consumers can potentially keep their own funds for emergency purposes, to furnish their new home, to make cosmetic changes, etc. It means they could potentially get a lower rate to help keep their monthly payments affordable. It means they can shop around for not only the right home, but the right financing.

Here are some common questions asked:

Q: If someone doesn't have their own funds in a transaction isn't it easier for them to walk away?
A: No. People have to walk away from homes every day due to hardships that cannot be overcome which have nothing to do with where the DPA came from.

Q. Should we be worried about a repeat of the 2008 housing crisis?
A: We should always remember mistakes from prior years, but so many things have changed because of the 2008 housing crisis. The Consumer Protection Bureau (CFPB) was created to help oversee and supervise providers of consumer financial products and services. They also help protect families from unfair, deceptive and abusive financial practices.

Q: Are DPA programs for borrowers with bad credit?
A: No. They typically follow insurer guidelines like FHA, VA, USDA, etc. or sometimes have overlays with stricter requirements like debt-to-income and credit scores. Most DPA programs require at least a 620 FICO, if not a little higher.

Q: Do DPA providers require borrowers to not have a lot of assets?
A: No, not all programs have asset requirements or caps. Those that do have an "asset test" are typically very fair and are only looking at liquid assets to ensure their intended audience is served.

Q: Do closing times get extended?
A: Not normally. A lot of the documentation and information being obtained already is the same information agencies may want to review prior to closing. Not all even require a review before closing. They review after closing. Most DPAs do not extend or delay closing, and many DPA providers go out of their way to ensure a timely and seamless transaction.

Q: Are DPA's harder to do?
A: No, but LOs need to educate themselves on the program requirements. Like anything new there is a learning curve, but they are not difficult. As said for another question, the majority of the documents are already being obtained. It is just a matter of knowing whose forms and timing. We hear from loan officers all the time who originate high volumes of DPA transactions that they close a DPA transaction in the same amount of time as any other transaction. A savvy loan officer helps set expectations, keep the transaction moving, and close on time.

Q: How do I locate DPA programs available in my market?
A: Anyone can do a free search to get started on the Down Payment Resource website. Many MLSs around the country partner with us to provide one-click access to available DPA programs for real estate agents and their clients when looking at eligible listings.

Q. As an industry professional where can I go to gain additional education regarding DPA and building my business?
A: You can take a look at DPR's education webpage for any upcoming webinars and videos of our past recorded webinars. Additionally, you can contact your state housing finance agency or local DPA providers to inquire about their training, networking and teaching opportunities.

If you have any questions, reach out to me at veronicak@downpaymentresource.com.

BUYER SUFFERS WIRE TRANSFER FRAUD LOSS, NOT ESCROW COMPANY

by Wheeler v. Clear Title Co., Inc., 2023 WL 2662027 (Nev.App.) (unpublished)

A buyer bore the loss when she fell for the trap of phishing wire transfer instructions and wired the purchase money to a fraudster and not the escrow company. The court also found that the escrow company had no duty to warn the buyer of the risk of wire transfer fraud.

Keith Wheeler bought a house near Las Vegas for his ex-wife Sharon Wheeler to live in and purchase from him when she had saved enough money. In December of 2018, Sharon had the money and she and Keith arranged for escrow officer Ela Rose of Clear Title Company, Inc. to conduct the escrow.

Rose sent the preliminary title report to both Wheelers. A page appended to the report said that the buyer should contact Clear Title to obtain its wiring instructions. Rose and the Wheelers agreed on a closing date and appointment.

Before closing, Sharon Wheeler got an email from closingfilel2@comcast.net attaching wiring instructions. The email insisted that the money be wired that day to avoid a closing delay. The email used Ela Rose's name, but it was not sent from her email address. The wiring instructions were not on Clear Title letterhead. The name on the bank account listed on the instructions was an individual, not Clear Title.

Wheeler did not call Rose to confirm that she had sent the wiring instructions. Instead, Wheeler stopped at her bank on the way to the closing appointment and wired the money to the fraudulent account.

When Wheeler arrived at the closing, 15 minutes after the transfer, she told Rose that she had transferred the money. Rose did not want to review the written wire confirmation. Instead, Rose checked her escrow account for incoming wires. During their meeting, Keith and Sharon Wheeler signed several documents, including the escrow instructions and the legitimate Clear Title wiring instructions.

That evening, Rose called Wheeler to tell her that the wire still had not been received by Clear Title, which Rose believed was an indicator of a problem. The next day, Rose had Wheeler send her the fraudulent wire instructions. Rose realized that Wheeler had been the victim of a scam. However, it was too late to reverse the wire transfer.

Wheeler sued Clear Title in April of 2019. In October of 2019, Clear Title made an offer of judgment in the amount of $20,000. Wheeler did not respond to the offer, so it was deemed rejected.

Clear Title filed a motion for summary judgment in June, 2021 after close of discovery. The district court granted Clear Title's motion, and a judgment was entered in Clear Title's favor on all claims asserted in Wheeler's amended complaint.

Wheeler appealed. The court affirmed.

An unusual fact in this case was that Wheeler wired the money before she signed any escrow instructions appointing Clear Title as escrowee. This threw her claims into question, because they

were all based on duties of an escrowee. The appeals court said this:

> At the outset, we note that the escrow instructions were not signed until 15 minutes after the funds had been transferred to the fraudster. Wheeler provides no authority to support her argument that Clear Title was required to ensure the money was transferred before the escrow instructions were signed. Wheeler also fails to provide any authority to support her implied argument that a contract was formed before the escrow instructions were signed. Since Wheeler has failed to provide authority to support her arguments, we need not consider them.

The court continued, however, saying that even if an escrow had been formed before Wheeler made the wire transfer, her liability theories against Clear Title failed as a matter of law. It said:

> Wheeler claims that Clear Title was negligent "because they were [supposed] to work with the buyer in receiving money." Wheeler argues that this means that Clear Title should have told her that the wiring instructions had not been sent to her yet, looked at the wire documents she offered to Rose to determine the instructions were fraudulent, and should have warned Wheeler about the dangers of wire fraud. Escrow instructions define the duties of an escrow agent. *Mark Props., Inc. v. Nat'l Title Co.*, 117 Nev. 941, 946, 34 P.3d 587, 591 (2001). … The Residential Purchase Agreement, which was incorporated into the escrow instructions, states that Clear Title's duties are limited "to the safekeeping of all monies ... received by it as ESCROW HOLDER." However, the duties that Wheeler imputed to Clear Title are not found within the escrow instructions, and Wheeler provides no other authority that imposes these duties on Clear Title. Accordingly, we conclude that Clear Title only had a duty to safekeep any money that it received directly from Wheeler; further, that Clear Title did not have a duty to ensure that Wheeler transferred the money to Clear Title regardless of when the escrow instructions were signed.

Wheeler also argued that Clear Title violated an "industry standard" and its own company policy by not investigating the wire as soon as Wheeler told Rose about it, in order to uncover the fraud while there was time to reverse the wire. The court held that Wheeler had not identified an industry standard or company policy that Clear Title had violated, or how obeying such standards would have prevented the theft of the money. Importantly, the court said, Wheeler "also fails to provide any authority to show that industry standards create an additional duty for escrow companies." Therefore, it was not required to consider the argument.

The court went further. It said that, even if it considered Wheeler's argument, Clear Title had obeyed Nevada escrow standards. It noted that Nevada law requires an escrow agent to deliver a copy of the escrow instructions to the parties when they are signed. However, the law "does not specify when the wire instructions should be delivered." NAC 645A.220(10). Also, Wheeler had already received the preliminary title report that instructed her to contact Clear Title for the wiring instructions. Therefore, although Clear Title did not send the wiring instructions before the closing appointment, Clear Title complied with Nevada law and had warned Wheeler how wiring instructions would be delivered.

Wheeler also tried to shoehorn her facts into the *Mark Properties* rule that an escrow officer has a duty to disclose facts indicating that one party to an escrow is perpetrating a fraud on the other party. The court said that Wheeler "appears to argue that Clear Title allowed the fraud to occur by taking no affirmative steps to avoid the fraud until it was too late." The court observed that *Mark Properties* also held that "escrow agents do not have a duty to investigate or to discover fraud, thus the facts known by the escrow agent must present substantial evidence of fraud." The court said that the facts in this case "did not present substantial evidence of fraud." It summarized the testimony as follows:

> Wheeler told Rose that Wheeler had wired the money to Clear Title before the closing appointment, but this does not present substantial evidence of fraud. Rose testified during her deposition that she thought Wheeler received the wire instructions from either Rose's assistant or the lender and did not find it shocking that Wheeler had already wired the funds before the closing. Additionally, Rose checked the wire board throughout the day, in accordance with Clear Title's procedures. This evidence does not present substantial evidence of fraud; therefore, we conclude that Clear Title had no duty to disclose the potential fraud to Wheeler, especially since Clear Title did not suspect that fraud had occurred.

Wheeler's most tortured argument was that "Clear Title had a duty to receive the funds and breached that duty when it failed to receive the funds." The court found no such duty, saying:

> As discussed above, the escrow instructions do not include a duty to receive the funds. Instead, Clear Title was required to safekeep the money that it received. Additionally, Clear Title was only empowered to perform the acts in the residential purchase agreement to the extent that the terms and conditions were within the control of the escrow. As demonstrated by the facts in this case, Clear Title had no control over receiving funds.

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> It can only receive funds that are sent to it, and it has no control over the parties sending the funds. This case is a very unfortunate situation in which Wheeler was duped by a clever fraudster without Clear Title's involvement. Therefore, we conclude that Clear Title had no duty to receive the funds from Wheeler, since she did not send them any funds.

The court disposed of Wheeler's breach of fiduciary duty claim using the same analysis.

Wheeler also pressed a hot-button issue, by arguing that Clear Title was negligent by not giving her an advance warning about the risk of wire transfer fraud. The court both rejected and sidestepped that claim, saying:

> Wheeler's negligence claims rely on … her assertion that Clear Title had a duty to warn her about the potential for wire fraud. But at the time of the fraud, Clear Title did not have a special relationship with Wheeler—especially since the escrow instructions were not signed until after Wheeler wired the money it also did not undertake an obligation to protect her, nor did its conduct increase the risk that Wheeler would become a victim of fraud. As Wheeler provides no authority for her contention that Clear Title had a duty to warn her about wire fraud, we conclude the district court did not err when it granted Clear Title's motion for summary judgment because the duty element of negligence has been negated.

The court also held that the fraud itself was the superseding cause of Wheeler's loss, and that Clear Title did not have the kind of special legal relationship with Wheeler that required it to protect her from the fraud.

The appeals court stated that the trial court properly dismissed other claims based on the economic loss doctrine, including her claim of negligent supervision and retention of employees. The appeals court also upheld the dismissal of Wheeler's claim for intentional infliction of emotional distress. It found no outrageous conduct by Clear Title or Rose to support that claim.

This is a very good decision concerning wire transfer fraud that occurred under somewhat unusual facts. The rulings concerning the nexus between the *Mark Properties* duty to disclose known fraud and wire transfer fraud should be especially useful and instructional.

TIME IS RUNNING OUT!
OLTA 2023 AWARDS DEADLINE IS AUGUST 31

You have three more weeks to submit nominations for the Honorary Life Membership Award, Meritorious Service Award and the new Jessie L. Chapman Award.

HONORARY LIFE MEMBERS

The OLTA Honorary Life Membership (HLM) Award is the highest honor of the Association. It is intended to recognize an individual who has provided superior service to the Ohio Land Title Association and the title insurance industry in Ohio over many years. Further, the HLM Award is intended to recognize those who make superior individual contributions per se, rather than the contribution of an individual representing the accomplishments of many. This highest honor is not given lightly.

MERITORIOUS SERVICE AWARD RECIPIENTS

The OLTA Meritorious Service Award is intended to recognize persons who have provided outstanding contributions over many years to the title insurance industry in Ohio and/or the Ohio Land Title Association. It is intended as a high honor of the Association to those who do not qualify for its highest honor, Honorary Life Membership, but who have otherwise provided significant contributions. Further, individuals who are qualified through their service and accomplishments to receive the Honorary Life Member Award except for the age requirement, shall not be considered for the Meritorious Service Award. This great honor is not given lightly.

JESSIE L. CHAPMAN AWARD RECIPIENTS

The OLTA Jessie L. Chapman Award is a great honor within the Association. It is named after an early trailblazer of the title industry, Jessie L. Chapman, of Land Title Abstract and Trust Co. in Cleveland, who served as OLTA's first female president from 1918-19 and was the first woman to serve on the Executive Committee of the American Land Title Association from 1925-27. It is intended to recognize an individual who has provided significant service, vision and contributions to the Ohio Land Title Association and the title insurance industry in Ohio. This highest honor is not given lightly.

If you have any questions, contact the OLTA office at Info@OLTA.org or 888-292-6582.

OLTA ANNUAL CONVENTION
OCTOBER 2-4, 2023

Join the Ohio Land Title Association for its 114th Annual Convention. This is the title professional's opportunity to learn about the legislative priorities of the title industry, network with your title industry colleagues and learn about the latest industry trends all while earning your insurance and legal continuing education credits! The exhibits will be held October 3-4, 2023 at the Renaissance - Polaris Hotel.

HOTEL INFORMATION

If you are in need of overnight accommodations, the Ohio Land Title Association has reserved a block of rooms at the Renaissance Columbus Westerville-Polaris Hotel. When making your reservation, use the booking link below. The hotel will honor the rate until September 26, 2023. Check in is 4:00 pm; check out is 11:00 am.

Renaissance Columbus Westerville-Polaris Hotel
409 Altair Pkwy, Westerville, Ohio 43082
Booking Link: https://www.marriott.com/events/start.mi?id=1674665317234&key=GRP

EDUCATION TOPICS INCLUDE

- Claims with Endorsements and Case Law Update
- Economic Report
- Hiring the Next Generation of Title Experts
- ALTA 2023 Presentation – Finding Opportunities in a Changing Market
- OLTA Advocacy Update
- Title Insurance Agent and Attorney Ethics for Ohio
- Fraud
- Succession Planning and MORE!

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