

## HOUSEKEEPING

- Note: PowerPoint and audio for the September “Legislative Update” webinar is now available at [www.stewarttexas.com](http://www.stewarttexas.com)
- For Escrow Officer Credit please email password and attendees names to [ken.wrider@stewart.com](mailto:ken.wrider@stewart.com) for certificate (Please do this as soon as possible. Certificates will not be produced after the start of our next webinar)
- Attorneys e-mail bar card number to Ken Wrider for CLE credit
- Send to your training administrator if applicable
- We are now recording!

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## Spooky Claims 2009 Closings That Come Back to Haunt

*by Susan Withers & Sylvia Wetuski*

These are the transactions that drain time and money long after the premium is collected.

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## Who Can Afford to Throw Money Away?



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**Most claims are *preventable*.**

Avoid Claims Always with Due Diligence (AADD)

Our Top 5 Preventable Claims in 2009:

1. Prior Liens
2. Legal Documents Incorrect
3. Legal Document Recording Issues
4. Unpaid taxes and HOA fees
5. Easements and Minerals not Addressed

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**Prior Liens**

To Do Before Closing:

- \* Develop thorough search habits. Don't rely on seller.

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**Check Closely**



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## Prior Liens

### To Do Before Closing:

- \* Develop thorough search habits. Don't rely on seller.
- \* Home Equity liens released, Home Equity Lines Of Credit (HELOC) closed.

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## Prior Liens

### To Do Before Closing:

- \* Develop thorough search habits. Don't rely on seller.
- \* Home Equity liens released, Home Equity Lines Of Credit (HELOC) closed. (Bulletin 20080015)
- \* Mechanic's Liens & Abstracts of Judgment released? Document if not same person!

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## Prior Liens

### To Do Before Closing:

- \* Develop thorough search habits. Don't rely on seller.
- \* Home Equity liens released, Home Equity Lines Of Credit (HELOC) closed.
- \* Mechanic's Liens & Abstracts of Judgment released? Document if not same person!
- \* Any deceased owners? Heirs? Life Estate?

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I'm an heir!



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### Prior Liens

To Do Before Closing:

- \* Develop thorough search habits. Don't rely on seller.
- \* Home Equity liens released, Home Equity Lines Of Credit (HELOC) closed.
- \* Mechanic's Liens & Abstracts of Judgment released? Document if not same person!
- \* Any deceased owners? Heirs? Life Estate?
- \* Research all HOA debts: annual assessments, special assessments, collections and attorneys fees, etc.

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### Prior Liens

To Do After Closing:

- \* Keep complete payoff records: written payoff statement, check or wire copy, delivery evidence (runner or FedEx delivery notice).

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## Prior Liens

### To Do After Closing:

- \* Keep complete payoff records: written payoff statement, check or wire copy, delivery evidence (runner or FedEx delivery notice).
- \* Keep complete payment and delivery records for taxes and HOA payments.

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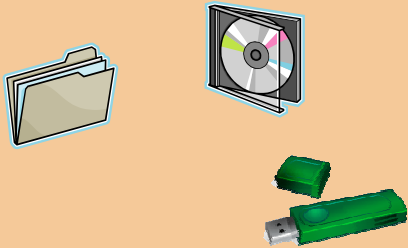
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## Paperless When Possible



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## Prior Liens

### To Do After Closing:

- \* Keep complete payoff records: written payoff statement, check or wire copy, delivery evidence (runner or FedEx delivery notice).
- \* Keep complete payment and delivery records for taxes and HOA payments.
- \* Send Payoff Lien Release(s) with payment; request return to title company

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## You Can Be Certain Releases and Assignments are Recorded By Having Them Returned To You

- If the Payoff Lender Sends the Release to the seller, it likely won't be recorded.



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## Prior Liens

### To Do After Closing:

- \* Keep complete payoff records: payoff statement, check or wire copy, delivery evidence (runner or FedEx delivery notice).
- \* Keep complete payment and delivery records for taxes and HOA payments.
- \* Send Payoff Lien Release(s) with payoff payment; request return to title company
- \* Enter all in Sure Close or other electronic database, if available.

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## Legal Documents Incorrect

Many errors that find their way into the legal documents signed at closing and, ultimately, the title chain, have their origin in a hastily prepared contract.

*EVEN WHEN IT'S NOT YOUR FAULT, IT IS YOUR CONCERN.*

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The Beginning & Basis For Real Estate Transactions



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**Legal Documents Incorrect**

To Do Before Closing:

Review the contract.

- \* Parties and their status properly identified?

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**Legal Documents Incorrect**

To Do Before Closing:

Review the contract.

- \* Parties and their status properly identified?
- \* Seller's name same as on commitment?

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## Legal Documents Incorrect

### To Do Before Closing:

Review the contract.

- \* Parties and their status properly identified?
- \* Seller's name same as on commitment?
- \* Is the address of the property correct?

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## Legal Documents Incorrect

### To Do Before Closing:

Review the contract.

- \* Parties and their status properly identified?
- \* Seller's name same as on commitment?
- \* Address of the property correct?
- \* Is the legal description correct? Match survey?

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## Legal Documents Incorrect

### To Do Before Closing:

Review the recordable documents.

- \* Documents consistent with lender's instructions and the contract?

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## Examine Carefully



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## Legal Documents Incorrect

### To Do Before Closing:

Review the recordable documents.

- \* Documents consistent with lender's instructions and the contract?
- \* Names correct on page 1, signature block, and notary acknowledgment?

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## Legal Documents Incorrect

### To Do Before Closing:

Review the recordable documents.

- \* Documents consistent with lender's instructions and the contract?
- \* Names correct on page 1, signature block, and notary acknowledgment?
- \* Legal description correct and consistent with contract, commitment, tax statement, documents and survey?

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## Legal Documents Incorrect

### To Do Before Closing:

Review the recordable documents.

- \* Documents consistent with lender's instructions and the contract?
- \* Names correct on page 1, signature block, and notary acknowledgment?
- \* Legal description correct and consistent with contract, commitment, tax statement, documents and survey?
- \* Property address correct on Deed of Trust?

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## Legal Documents Incorrect

### To Do Before Closing:

Review the recordable documents.

- \* Documents consistent with lender's instructions and the contract?
- \* Names correct on page 1, signature block, and notary acknowledgment?
- \* Legal description correct and consistent with contract, commitment, tax statement, documents and survey?
- \* Property address correct on Deed of Trust?
- \* All exhibits and addenda attached?

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## Legal Documents Incorrect

More to consider before closing:

- \* Is there a deceased party in the chain?
- \* Is there an un-probated will?
- \* Have you verified and located ALL heirs?
- \* Do you have contact information for any affiants?
- \* Does a prior deed reflect "life estate"?
- \* Have you checked divorce & probate records to verify all owners' interests are represented?

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**Legal Document Recording  
Issues**

Record closed Legal Documents

- \* Immediately

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Time is of the essence!



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**Legal Document Recording  
Issues**

Record closed Legal Documents

- \* Immediately
- \* In all applicable jurisdictions

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### Legal Document Recording Issues

Record closed Legal Documents

- \* Immediately
- \* In all applicable jurisdictions
- \* With all attachments and exhibits.

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### Exhibit "A"



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### Legal Document Recording Issues

Record closed Legal Documents

- \* Immediately
- \* In all applicable jurisdictions
- \* With all attachments and exhibits.
- \* In correct order: Power of Attorney, if any.  
Warranty Deed, if any.  
Contractor Contract w/assn., if any.  
1<sup>st</sup> Lien Deed of Trust, if any.  
Assignment, if any.  
2<sup>nd</sup>. Lien Deed of Trust, if any.  
Assignment, if any.

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### Unpaid Taxes and HOA Fees

- \* Obtain a tax certificate, but also review it

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### Unpaid Taxes and HOA Fees

- \* Obtain a tax certificate, but also review it
- \* Sec. 31.08 Texas Tax Code

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### Unpaid Taxes and HOA Fees

- \* Obtain a tax certificate, but also review it
- \* Sec. 31.08 Texas Tax Code
- \* Verify legal description – street address

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## Unpaid Taxes and HOA Fees

- \* Obtain a tax certificate, but also review it
- \* Sec. 31.08 Texas Tax Code
- \* Verify legal description – street address
- \* Multiple tax accounts possible

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## Unpaid Taxes and HOA Fees

- \* Obtain a tax certificate, but also review it
- \* Sec. 31.08 Texas Tax Code
- \* Verify legal description – street address
- \* Multiple tax accounts possible
- \* Verify exemption status. Explain to buyer.

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## Unpaid Taxes and HOA Fees

- \* Obtain a tax certificate, but also review it
- \* Sec. 31.08 Texas Tax Code
- \* Verify legal description – street address
- \* Multiple tax accounts possible
- \* Verify exemption status. Explain to buyer.
- \* Get tax proration agreements, signed by all parties. Do not refund seller escrowed tax funds until correct account shows paid by correct party in full amount.

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## Unpaid Taxes and HOA Fees

- Check appraisal district websites to confirm all taxing authorities (if near county border, check adjacent authorities).
- Compare legal description and property location as well as party name.
- If it shows paid, determine when and by who – same person as seller?

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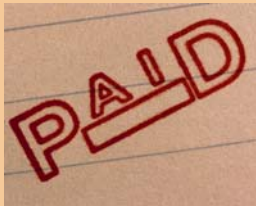
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## Was Correct Account Credited?



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## As If You Didn't Have Enough To Consider...

We can't forget to mention how important it is to:

- \* Follow Lender's Instructions – seek Underwriting's guidance
- \* Complete, correct notary acknowledgments
- \* Verify, document signor's status (officer?)

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One more thing...



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AND

- \* Common Law Liens – Section 51.901 Texas
- \* Government Code – requires underwriter approval.
- \* Intestate Law – review, not remember
- \* Homestead – TX Property Code 41.002
- \* HUD Loans not applicable to Homestead & not paid or released at closing
- \* Affidavit as Release of Lien on Homestead -TX Property Code 52.0012, AJ's after 9/1/2007

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### Manufactured Housing

- Complete Manufactured Housing documentation



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## Survey Coverage

- \* Offer to buyers prior to closing
- \* Review the survey for errors and correct metes and bounds.
- \* Surveys used in the past should still be reviewed for accuracy, if used on your new transaction.



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## Discourage Fraud

- \* Compare signatures on photo ID, previously recorded documents, identity affidavits, loan application, etc.
- \* Use a name/signature/identity affidavit.
- \* If in doubt, don't close the transaction.

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## Easements and Minerals

- \* Verify County road maps are final.
- \* Access by other than dedicated road requires access easement – or take exception.
- \* Check access all the way to the dedicated road. Examine each tract (charge multiple chains)



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Access?



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"The meek shall inherit the earth, but not the mineral rights"  
J. Paul Getty



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Flood Plain Exceptions Matter



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Water Issues



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Important Bulletins

- Texas Bulletin 10 – Waiver of Inspection and Disclosure to Owner
- National Bulletin 42 – Mailaways (mail-outs) never sent directly to party for notarized signatures

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MMLA LAST BUT NOT LEAST

- \*Complete Affidavit of Debts and Liens
- \*Complete Title Company Disclosures
- \*KNOW YOUR BUILDER
- \*Immediately record documents
- \*Removables do matter



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## Promote "AADD" in Your Office

*Avoid Claims Always with Due Diligence*

It takes the entire team in every plant and closing office, everyone, doing all that is possible to thoroughly prepare for closing, execute the closing and post closing production and issue title policies with the care and professionalism that our customers deserve.

Should you receive a call from a Claims Counsel or their assistant, we need your timely cooperation. We are working with YOUR customer – your prompt assistance helps us give prompt service!

Together we can deliver!

Susan Withers, Claims Counsel

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## FYI

- [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) Mobile Homes
- [www.rrc.state.tx.us](http://www.rrc.state.tx.us) Minerals
- [www.deathindexes.com](http://www.deathindexes.com) Death Records
- [www.sos.state.tx.us](http://www.sos.state.tx.us) Notary Verification
- <http://www.vuwriter.com> Virtual Underwriter
- <http://texasbar.com> Verify Attorney
- <http://www.tdi.state.tx.us> TX Dept. of Insurance (lists fraud indictments)
- <https://specialalerts.stewart.com/index.jsp> fraud information
- <http://www.homeclosing101.org> TLTA title associate and customer resource

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## THANK YOU!

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- Attorneys email bar card number to Ken Wrider for CLE credit
- Next Texas TIPS Online November 19, 2009, "Changes in the Title and Real Estate Industries and How the Stewart Title Reorganization Has Strengthened the Company" by George Houghton
- Questions/Comments? Email [fred.schraub@stewart.com](mailto:fred.schraub@stewart.com)
- Visit [www.stewarttexas.com](http://www.stewarttexas.com) for presentation materials within 5 business days of the webinar

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