



# Lessons From Losses

*Risk Management Tips for Title Professionals*

V<sub>3</sub>—I<sub>1</sub>

## Manifest Destiny—Be Careful Along the Way

*Technology has made it easier than ever to operate in more than one jurisdiction. Technology, however, has not eliminated the potential pitfalls associated with doing so. Rules and customs are different from state to state, and sometimes county to county.*

**The Story:** It was a cold winter day in the Northeast. The wind was howling, snow-banks were growing, and most residents were shuttered inside their homes thinking about staying warm, not refinancing. Louie and Clarkston were at work bemoaning the fact that business always drops with the mercury in the thermometer. It was at that moment that Louie had a thought. Why work only in the Northeast? It's a big country and modern technology allows businesses to operate in more than one place at the same time. For the rest of the dark, cold winter Louie and Clarkston discussed and planned expansion. By the next winter, Louie and Clarkston had established a second location in the Southwest. Despite the fact that there was two feet of snow in the Northeast, for Louie and Clarkston business was booming ... 2,500 miles away.

In order to control costs, Louie and Clarkston staffed their Southwest location with a single employee, Jimmy, who recently had graduated from Cactus University. Jimmy had no knowledge of the title industry – national or local. Louie and Clarkston were running the show and teaching Jimmy along the way.

During their first month of operation, Louie and Clarkston conducted fifteen closings. For each closing Louie and Clarkston addressed the issue of mechanic's liens in the same way that they did in the Northeast. Specifically, Louie and Clarkston checked the courthouse's electronic records for filed mechanic's liens, and asked the sellers if any contractors had worked on the property within the last 90 days. In each instance the seller confirmed that no work had been done in the last 90 days.

Unbeknownst to Louie, Clarkston and, not surprisingly, Jimmy, the time allowed for filing mechanic's liens in this Southwest state was longer than where Louie and Clarkston long had been operating in the Northeast. Louie and Clarkston learned this lesson the hard way. Within a month of conducting their first closings in the Southwest, a claim was filed against a title policy that they had issued. As it turned out, one set of sellers had work done on their home 150 days before their closing. CONTINUED

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The contractor who remodeled the kitchen and two bathrooms, and who still was owed \$35,000 for the project, had 180 days to file a lien against the property – and did so. In order to clear the lien from the property, Louie and Clarkston’s underwriter paid the contractor’s outstanding bills. Unfortunately, the sellers who did not pay the contractor’s bills in the first place were long gone, so the underwriter looked to Louie and Clarkston for recovery of its loss.

**The Lesson:** Technology has made it easier than ever to operate in more than one jurisdiction. Technology, however, has not eliminated the potential pitfalls associated with doing so. Rules and customs are different from state to state, and sometimes county to county. When operating in more than one jurisdiction, check and familiarize yourself with all of the local rules. For anything that has a timing element associated with it, make sure you know the timing in each jurisdiction and customize your forms and/or checklists accordingly. Further, be sure to know and understand each jurisdiction’s rules concerning notarization, as those tend to be quirky and vary significantly from jurisdiction to jurisdiction.

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