



# Lessons From Losses

## *Risk Management Tips for Title Professionals*

V2—I1

### **“Great Scott” ... If You See Something Out of the Ordinary, Report It!**

#### ***The Facts***

It was a quiet day in Hill Valley. Marty had a long list of title searches to run at the Courthouse, and plans to meet Jennifer for lunch at the lake. In order to get to the lake in time, Marty had to be on the road by around 10:00. Marty’s goal, accordingly, was to complete the title searches in the most efficient manner possible. In Marty’s mind, that equated to reporting only what he considered to be absolutely necessary.

The Courthouse opened early, and Marty began working immediately. At 9:30, Marty had only one property left to search – 1640 Riverside Drive. The Property formerly was owned by an eccentric inventor, Emmitt, who vanished about a year ago. Rumor around town was that he invented a time machine and was somewhere in the future, or past. When Marty pulled the records for the Property, there were countless entries. Despite being short on time, in order to determine which entries needed to be reported, he dutifully reviewed them all. To Marty’s surprise, after reviewing all of the entries, he determined that the Property was unencumbered. In fact, the only lien of record was a line of credit that had been recorded against the Property in 1955, and released that same year. Thereafter, the entries included a litany of documents that only can be described as utter nonsense. For example, Emmitt recorded documents entitled “Ambassador of Time,” “Keeper of the Clocks” and a Power of Attorney in favor of Einstein, his dog. Because Marty determined that only the 1955 documents were relevant to transferring ownership of the Property, those were the only documents that he noted in his title search.

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*While a determination of what should and should not be reported in a title search is state specific, if you see something that is particularly odd, best practice is to report it. Such documents are red flags that something may be amiss with the property, and banks or potential owners will want to know the same before completing a transaction on the property.*

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When Marty left the Courthouse, the clock tower read 10:04. Marty had plenty of time drop his work off at the office and get to the lake to meet Jennifer. Based on the information provided in Marty's search, the Town, which had deemed the Property abandoned and seized it, sold it to Mr. Tannen. Marty's title company conducted the closing.

Shortly after Mr. Tannen purchased the Property, a foreclosure notice arrived in the mail. To Mr. Tannen's surprise, the bank that opened the line of credit for Emmitt in 1955, a line of credit against which Emmitt was borrowing from as recently as one year prior to the foreclosure notice being sent, was foreclosing on the Property.

After investigating the matter, Marty learned that the bank's employees had no information about the line of credit being closed in 1955. To the best of their knowledge, it always was open and active. When Marty questioned how a document releasing the line of credit was date-stamped 1955, the bank's attorney sarcastically responded: "maybe Emmitt invented a time machine and went back to 1955 to pay off the loan when it was small."

That may be what happened! Turns out that Emmitt had been increasing the line of credit since 1955, and borrowing against the same to fund his conversion of a Delorean into a time machine. When he finally completed the project, he had no money left to repay the bank. Instead of defaulting on the loan, he apparently traveled back to 1955 and paid off the minimal amount owed on the original line of credit. Paying off the loan in 1955 must have disrupted the space-time continuum and set off a chain reaction of events that erased any subsequently recorded activity on the loan.

According to Mr. Tannen, who had known about Emmitt's fascination with time travel for years, if he had known about the strange entries in the Property's records, he never would have purchased the Property. Mr. Tannen sued Marty and his title agency. While Marty thought that he did the right thing by reporting only those entries that he deemed necessary, in retrospect, he wishes that he had reported the strange entries as well.

### ***The Lesson***

Since we cannot travel back in time, we should learn from the above and report anything out of the ordinary. While a determination of what should and should not be reported in a title search is state specific, if you see something that is particularly odd, best practice is to report it. Such documents are red flags that something may be amiss with the property, and banks or potential owners will want to know the same before completing a transaction on the property.

*TIAC thanks Jordan Rubinstein, Esquire, of Troutman Sanders LLP, for writing this article.*

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