



Lessons From Losses

Risk Management Tips for Title Professionals

V1-I4

The Unlikeliest of Crooks

Even If You Know and Trust a Company's Representative, Make Sure They Have Authority to Bind the Company Before You Allow Them To Do So

The Facts

Barney was born in Didnotseethatcoming, USA, grew up in Didnotseethatcoming, USA, and now is raising his family in Didnotseethatcoming, USA. Barney owns the town's only title company, and has a reputation for doing quality work. Since Barney was a small child, there were a number of well-established places of worship and fraternal orders in town. As the town grew, these places of worship and fraternal orders occasionally sold their land and moved to new, bigger locations where they could expand to meet their members' needs, or used the proceeds from partial land sales to upgrade existing facilities.

One Tuesday afternoon Grand Poobah Fred, head of Didnotseethatcoming's Loyal Order of Water Buffaloes, walked into Barney's office to discuss the sale of some of the Order's land. Fred had been the Order's Grand Poobah for the past five years. According to Fred, the Order was growing and its Board decided to sell a portion of its land and use the proceeds to build a new meeting hall. Fred arranged for the sale of the land to a local developer who promised to build only a few small homes on the land that would not interfere with the Order's everyday operations. Fred retained Barney's office to prepare the title work and conduct the closing. Fred advised Barney that he would be the point of contact at the Order, and would be its representative at the closing.



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After searching title, preparing the title commitments, the HUD-1, and all of the other necessary documents, Barney scheduled the closing at a time that was mutually convenient for Fred and the buyer. Fred and the buyer attended the closing in person, and signed all of the necessary documents. One of the documents that Fred signed was a document stating that he had authority to sign the closing documents on behalf of the Order. Based on Fred's stature in the community, and the fact that Barney had known of him for the past five years, Barney did not give a second thought to the fact that Fred was signing for the Order.

Shortly after the closing, Fred took a leave of absence, along with the proceeds from the closing, and left town. The Order's Board and members had no idea that the land had been sold, or that the proceeds of the sale had been absconded from the Order's bank account, which Fred had access to.

In fact, the Order did not learn of the sale until the buyer showed up on the land and began staking out the plots on which he planned to construct the new homes. The Order, of course, denied that its land had been sold, and threatened legal action against the buyer. The buyer, who had no intention of purchasing land that was not for sale, filed a claim under the title policy that Barney issued him in connection with the closing. Ultimately, the title insurance company agreed to make the buyer and his lender whole because the sale, more likely than not, would have been voided because Fred, according to the Order's by-laws, did not have authority to sell the land in question.

The Lesson

Because corporations, limited liability companies, Loyal Orders of Water Buffaloes, and other like organizations necessarily must act through representatives, it is imperative to always confirm that the representative with whom you are working has the authority that he or she claims to have – or believes he or she has. This is true even when the representative is somebody that you know and trust, or is somebody that holds a position that would lead you to believe that they have the authority they claim to have. Typically, the organization's by-laws dictate who has authority to act on its behalf, or state that a specific resolution from the Board is needed when such authority must be granted. Accordingly, before conducting any closing involving a corporation, limited liability company, Loyal Order of Water Buffaloes, or like organization, you should review the organization's by-laws (or like document) to confirm that the representative with whom you are working has the authority to bind the organization. Further, it is a good practice to make a copy of the by-laws and any resolutions so that you can demonstrate, if necessary, that you took the appropriate steps to confirm authority before allowing the signor to act on behalf of the organization.

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

Title Industry Assurance Company, RRG

7501 Wisconsin Avenue, 1500E

Bethesda, MD 20814

www.tiacrrg.com ~ info@tiacrrg.com



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