



# Lessons From Losses

*Risk Management Tips for Title Professionals*

V<sub>3</sub>—I<sub>2</sub>

## Don't Let the Finish Line Become A Starting Line for Trouble



Remember when Grand Poobah Fred sold the Loyal Order of the Water Buffaloes' land without authority and absconded with the proceeds of the sale ([The Unlikeliest of Crooks, Volume 1 – Issue 4](#)) ... well fraud is not the only reason to make sure the person signing corporate documents has authority to do so. Even honest mistakes by a buyer or seller, when they are not caught by the title agency, can lead to significant losses. Imagine the following ...

### The Facts:

Ms. Bigshot got her start forty years ago when she bought a small farm on the outskirts of town. Ms. Bigshot thought that too many chemicals were being introduced into the farming process, so she decided to grow her own fruits and vegetables without chemicals. When Ms. Bigshot learned that many others in town shared her opinion, she saw a market. Ms. Bigshot's farm was the first and, for a long time, the only organic farm in the state.

Ms. Bigshot started small. Initially she planted only tomatoes, harvested them herself, and sold them in the local market. Her tomatoes flew off the shelves. Ms. Bigshot's idea of selling organic food was a hit. She quickly expanded her farming and business operations.

Initially, Ms. Bigshot incorporated her business – Organic, Inc. Next, she created several subsidiary companies to manage the various

aspects of the business. These companies included, but were not limited to, a company that employed workers to harvest the crops – Organic Pickers, a company that managed distribution of the crops – Organic Movers, and a company in which the business' real estate holdings were held – Organic Owners.

As time went on, the Organic businesses grew, and so did Ms. Bigshot's family. Ms. Bigshot had kids, and her kids had kids. Everyone wanted to be in, and was welcome in, the family business. The ownership and leadership structure was complicated, but yet simple. While all of the kids and grandkids had a hand in different aspects of the companies and had authority to act within their own areas of the company, Ms. Bigshot oversaw all areas of the companies. Each and every company's operating agreement stated that Ms. Bigshot's signature was needed for any significant transaction, including the buying and selling of land. CONTINUED

---

Three years ago Organic Owners decided to purchase another farm. Ms. Bigshot's granddaughter, Littleshot, took the lead on every aspect of the transaction. Littleshot negotiated the price and terms of the sale, found a lender to finance the purchase, and found the title company to conduct the closings. While Ms. Bigshot attended some of the meetings, she was not particularly involved in what was being discussed. Rather, she sat back and smiled proudly as Littleshot ran the show. When the time came to close the transaction, because Littleshot had been calling the shots all along, she, and only she, signed all of the documents on behalf of Organic Owners. Nobody questioned, or thought twice about Littleshot's authority to sign the documents. The title company recorded the documents and issued owners and lenders policies.

The organic farming business hit a rough patch; Organic Owners fell behind in its payments and the lender commenced foreclosure. At that point it was discovered that in addition to Ms. Bigshot not signing the documents, Littleshot had no authority to act on behalf of Organic Owners. Littleshot, officially, had authority to act on behalf of only Organic Movers, where she had started when she joined the family business. In financial distress, Organic Owners contested the validity of the mortgage that only Littleshot had signed.

The lender tendered a claim to the title insurer. The title insurer resolved the claim -- and then pursued a claim against the title company for not checking the corporate records and obtaining the necessary signatures to properly complete the transactions.

**The Lesson:**

It is important to work closely with your corporate clients to ensure that everything is in order and the right person is signing the documents on behalf of the right corporate entity. This is particularly important when there are multiple entities within the corporate structure and people (particularly family members) move frequently within the corporate structure. As discussed in *The Unlikeliest of Crooks*, request and maintain a copy of the corporate by-laws, which typically state who has authority to sign on behalf of the entity. Sometimes, as was the case with Organic, Inc., multiple signatures are needed to bind a corporation. If there are no by-laws, ask for a specific resolution from the board of directors which grants the signor the necessary authority. Further, be sure that the correct entity is listed on the relevant documents. Particularly when you are dealing with companies under common ownership that have similar names, it is important to make sure that the right person is signing for the right company. If the right person signs for the wrong company, it can be as if the document was never signed in the first place.

In summary, when you get to the end of the transaction, after doing all of the heavy lifting, slow down and make sure that the proper people are taking you over the finish line. If you don't, the finish line may be the starting point for trouble.

*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](http://www.tiacrrg.com) ~ [info@tiacrrg.com](mailto:info@tiacrrg.com)

While *Lessons From Losses* draws upon the claims handling experience of TIAC's claims counsel, Loss, Judge & Ward, LLP and Troutman Sanders LLP, the circumstances described are for illustrative purposes only. This material is not intended to establish any standards of care or to serve as legal advice appropriate for any particular factual situations. *Lessons From Losses* also does not create an attorney-client relationship; please consult counsel for appropriate advice regarding the specific circumstances of any claim or transaction.

---