

Anatomy of A Claim

Description

[Queue the Dragnet theme The story you are about to read is true â?? only the namesâ? and amountsâ? and addressesâ? andâ? you get the pictureâ? have been changed to protect the insuredsâ?.]

This is your lucky day. Just yesterday you questioned your decision to leave OCD Title, with its endless checklists and procedures (intake, title order, examination, settlement prep to name just a few), to strike out on your own and form WMW Title & Escrow â?? a title company dedicated to the concept that less is more, that it is far easier to simply trust the information provided to real estate agents and loan officers is accurate and correct. The first year was hard, but you moved from your basement to offices in McLean and hired staff. The silver lining to a lack of experience was that you didnâ??t have to pay as much and, as you keep reminding yourself, sleep and family are overrated. With the end of the month and the preparation closings piling up, however, you caught yourself reminiscing about the good old OCD days.

Then Joe walked into your office. You learned that he lives in Prince Georgeâ??s County, Maryland and that he is in the business of buying and selling properties in Maryland, the District of Columbia and Virginia. Joe has heard that you work in all three states and promised lots of business, starting with a deal that just fell into his lap. With that, he handed you a signed, unrecorded deed from Sadie Barnes for a property in the District of Columbia. The consideration is \$150,000.00 and partially legible seal told you that the deed was notarized in Montgomery County, Maryland.

Joe told you he still couldnâ??t believe his good fortune. Sadie was sitting on the front steps of her property when Joe asked her if she was interested in selling. Not only was she interested in selling, she was willing to wait for her money until Joe resold the property. Because of Sadieâ??s low sale price, Joe was able to flip the property to Sam for \$400,000.00. Given his oral contract, Joe did not want Sam to know about Sadie, so he asked you to hold onto Sadieâ??s deed until closing and, since you are recording the deed, to report Joe as the owner of the property on the commitment. You agree and Joe tells you he will have Sam give you a call to set things up. When asked how he found you, Joe tells you Bill â?? one of your good realtor friends â?? sent him in your direction. You know a lot of real estate agents named Bill and you promise yourself that you will thank them all, especially after Joe tells you he plans to send you two to three deals like this a month.

Sam calls you not five minutes after Joe has left and the deal gets even better. Sam has also flipped the deal by assigning Joeâ??s contract to a new buyer â?? Great Expectations, LLC â?? for \$95,000.00. Elwood, the sole member of Great Expectations, lives in Prince William County and was introduced to Sam, who lives in Front Royal, at a real property investment seminar given by Joe.

Your telephone call with Sam is followed by a call to Elwood at the number given to you by Sam. Elwood tells you that Great Expectation is using Elwoodâ??s 401K plan to buy the property for cash and he plans to re-sell the property as soon as minor renovations are completed. He also tells you what you will later find once the title search comes back â?? that the property is assessed at

\$650,000.00. When Elwood asks if you would be willing to discount your settlement fee for any potential buyer, you smile, start doing the math on the full premium you intend to charge, and tell Elwood it will be no problem.

After Elwood hangs up, you call your spouse. Dinner is on you tonight and this new closing calls for something special. Forget Taco Barn â?? the two of you will be dining at Steak Shack tonight.

Elwoodâ??s comment about the property value is supported by the Tax Records that arrive with the abstract of title. You also learn at that time that the property is free and clear; that means no payoff and no lender to slow things down. Just a nice, quick closing. All you have to prepare is a commitment for Great Expectations showing Joe as the owner of the property, a Deed from Joe to Great Expectations and a settlement statement showing Joe as the seller for \$400,000.00 and a line item showing the \$95,000.00 assignment fee.

On the day of closing, Elwood wires funds from his Prince William County bank to cover the \$400,000.00 purchase price, the \$95,000.00 assignment fee and the closing costs. Joe provides you with wiring instructions for his bank in Prince Georgeâ??s County, Maryland. Sam, it turns out, is only 20 years old and does not have a bank account. He provides you with wiring instructions for Bobâ??s Construction, a firm in Front Royal that is run by one of his friends. As the property is located in the District of Columbia, you disburse at the table, wiring Samâ??s \$95,000.00 to Bobâ??s Construction and to Joe the sum of \$250,000.00 (\$400,000.00 less Sadieâ??s \$150,000.00). You proudly issue a table policy to Great Expectations insuring it for \$400,000.00.

The only hiccup in closing is the need for a Form FP7-C, the recording submittal form required by the District of Columbia Recorder of Deeds, which must be signed by Sadie Barnes. Joe assures you that he spoke to Sadie about this and she will sign an FP7-C when she comes in to pick up her check.

A week goes by with no sign of Sadie. You call Joe and he promises to call her and get her in the office. At the end of the following week, Joe promises to send Sadie a letter, a copy of which he sends to you, demanding that she come in to pick up her check and sign the FP7-C. Alarm bells are starting to ring in the background. After all â?? if you canâ??t record Sadieâ??s deed, you canâ??t record the deed to Great Expectations.

A month after closing, you get a frantic call from Elwood. A man claiming to be Sadie Barnesâ?? son showed up while Great Expectations was renovating the house and demanded to know what Great Expectations was doing. When Elwood advised the son that Great Expectations had purchased from the man to whom Sadie had sold her house, he learned that Sadie is an 85 year old woman who has resided in a nursing home for the last two years and is not competent to sign anything. Sadieâ??s son had promptly changed the locks on the property and told Great Expectations to stay out.

Joe is shocked â?? shocked â?? when you call him. He insists that Sadie gave him the deed to the house and is outraged that someone else is claiming she is not competent. When you ask him to wire the sale proceeds back while you straighten things out, he apologizes and tells you he has already reinvested the sale proceeds. He promises, however, to get you the funds once he closes on another deal he has in the pipeline. You wonder why that closing is not in your office and you ask Joe if he got any identification from Sadie. He replies in the affirmative and e-mails you a copy of the license.

It is a California driver's license; Sadie's last name is spelled B-A-R-N-S on the license; according to the license, Sadie Barns is 58 years old.

You grab the deed and begin to search the online database of Maryland Notaries. You reach for the antacids once you determine that the notary on the deed does not exist.

You call Elwood and come clean. While somewhat surprised that Joe was not the owner at closing, Elwood is very sympathetic. He also wants his money back – all of it – now. You call Bob's Construction only to be told that they already gave the money to Sam – that you need to speak to Sam about the return of the \$95,000.00. Sam is not answering his cell phone number. When you search the number under a reverse look-up, it does not belong to Sam. When you confront Joe about the driver's license, he insists that he, too, is the victim of a fraud and suggests that you speak to his lawyer. Joe's lawyer advertises on the internet that he is a criminal lawyer; Joe's lawyer wants a full release of liability in exchange for the money.

You realize with a sinking feeling that Elwood is only covered by title insurance up to \$400,000.00; he wired you over \$500,000.00 in order to pay Sam's assignment fee and closing costs.

The next day your head processor appears at your door looking a little pale. On line 1, there is an attorney representing Great Expectations. On Line 2 there is another lawyer representing Sadie Barnes. On line 3, an FBI agent wants to talk to you about your settlement.

You finally decide it might be time to call your underwriting counsel.

The scenario above is an open window on what can go wrong when workload, experience and/or greed intersect with the good practices that we have developed in our industry for the transfer and insuring of title. Every day settlement attorneys and settlement agents are called upon to maintain profitable businesses in what sometimes feels like a race to the bottom. At the same time, they are called upon to serve as a final safeguard in what, for many, is their largest financial transaction. Disregard of the carefully developed practices of search, examination, situational analysis, and settlement procedures can have a ripple effect that reaches far beyond those sitting at the settlement table.

This was a perfect storm brought about by an insufficiently experienced and overworked staff. The first red flag should have been why a gentleman from Prince George's County, Maryland was walking in to a title company in McLean, Virginia to set up a closing on a property located in the District of Columbia. The second was a deed handed to a perfect stranger with the expectation that consideration would be forthcoming at a later date. We at the Examiner encourage our readers to take advantage of the new, open and interactive format to point out the red flags and break-downs in process. In our next episode, we will review the responses of our readers, explore the ramifications, and provide the true twist of an ending.



Jeffrey W. Thompson is an underwriting counsel for Westcor Land Title Insurance Company where he provides guidance and advice to the agents in Virginia, Maryland and the District of Columbia. His work over the last 30 years has touched on many aspects of the title industry from abstracting to residential title examination and settlements, to complex commercial transactions for a national title insurer. He has presented and/or coordinated seminars on topics ranging from title examination and settlement practices to the impact of technology on the industry.

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Author

vltaexaminer