

Fraud Trends in Real Estate
 April 5, 2024



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Why Talk About Fraud?



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Recent Events


Mortgage giant Mr. Cooper hit by cyberattack impacting IT systems

By Lawrence Abrams | November 2, 2023 | 02:11 PM | 4

November 3, 2023

Mr. Cooper Cyber Security Incident

ITG has been made aware of a cyber security incident involving Mr. Cooper that occurred on October 31, 2023. In response to the incident, Mr. Cooper has locked down their systems while they work to remediate the issue. As of today, Mr. Cooper systems remain locked down. Given the uncertainty of when their systems may be operational again, transactions for which ITG has or will issue a Closing Protection Letter should not close if the transaction involves Mr. Cooper either as the lender, payee, or servicer in the transaction.



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Recent Events

US insurance giant First American confirms it was hit by a ransomware attack

News By Sean Radtke published January 3, 2024

First American data stolen and encrypted, company states

FNF cyberattack involved data breach impacting 1.3 million consumers

In its most recent filing with the Securities and Exchange Commission, Fidelity National Financial Inc. stated the November cybersecurity incident that disrupted its business involved a data breach that potentially impacted 1.3 million consumers.



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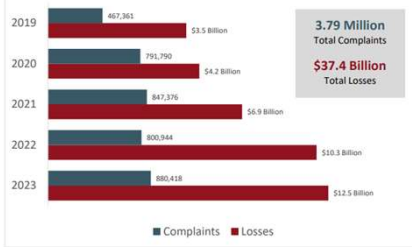
Why Talk About Fraud?

- 60% of Title Agents said the Cyberthreats concern them the most
- 73% answered negatively to "Is enough being done to prevent fraud and ensure data/escrow security"



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Complaints and Losses over the Last Five Years*



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2023 CRIME TYPES

By Complaint Count			
Crime Type	Complaints	Crime Type	Complaints
Phishing/Spoofing	298,878	Other	8,808
Personal Data Breach	55,851	Advanced Fee	8,045
Non-payment/Non-Delivery	50,523	Lottery/Sweepstakes/Inheritance	4,168
Extortion	48,223	Overpayment	4,144
Investment	39,570	Data Breach	3,727
Tech Support	37,560	Ransomware	2,825
BEC	21,489	Crimes Against Children	2,361
Identity Theft	19,778	Threats of Violence	1,697
Confidence/Romance	17,823	IPN/Copyright and Counterfeit	1,498
Employment	15,443	SIM Swap	1,075
Government Impersonation	14,190	Malware	659
Credit Card/Check Fraud	13,718	Botnet	540
Harassment/Stalking	9,587		
Real Estate	9,521		

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2023 CRIME TYPES continued


By Complaint Loss			
Crime Type	Loss	Crime Type	Loss
Investment	\$4,570,275,683	Extortion	\$74,821,835
BEC	\$2,846,830,270	Employment	\$70,234,079
Tech Support	\$924,512,658	Ransomware	\$59,641,384
Personal Data Breach	\$744,219,879	SIM Swap	\$48,798,103
Confidence/Romance	\$652,544,805	Overpayment	\$27,955,195
Data Breach	\$534,397,222	Botnet	\$22,422,708
Government Impersonation	\$394,050,518	Phishing/Spoofing	\$18,728,550
Non-payment/Non-Delivery	\$309,648,416	Threats of Violence	\$13,531,178
Other	\$240,051,059	Harassment/Stalking	\$6,677,332
Credit Card/Check Fraud	\$178,627,614	IPN/Copyright and Counterfeit	\$7,555,329
Real Estate	\$145,243,348	Crimes Against Children	\$2,031,485
Advanced Fee	\$134,516,577	Malware	\$1,213,317
Identity Theft	\$126,203,809		
Lottery/Sweepstakes/Inheritance	\$94,502,836		

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OVERALL STATE STATISTICS


33	Iowa	3,723
32	Iowa	\$59,829,482



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Frequency of Fraud

- Out of 650 surveyed consumers
 - 1 in 4 had been targeted with suspicious communications
 - 1 in 10 had been targets of fraud
 - 1 in 20 fell victim to fraud



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Wire Fraud



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Wire Fraud

- Theft of funds by an outside actor through compromised emails, fraudulent wire instructions, etc.



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CertifiD Data

- Three main scenarios:
 - Impersonation of a title agent to get buyer funds
 - Median loss \$72,000, 28% recovery rate
 - Impersonation of an owner (seller impersonation)
 - Median loss \$70,000, 18% recovery rate
 - Impersonation of a lender
 - Median loss \$257,000, 54% recovery rate



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Wire Fraud Awareness

- More than half of those surveyed were “somewhat” or “not aware” of the risk of wire fraud
- Nearly 2/3 believe it is someone else’s job to educate them on wire fraud
 - Only 16% say it should be the attorney



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Coverage for Wire Fraud

REQUIREMENTS

1. ITG issues or is contractually obligated to issue a Certificate for Your protection in connection with the Real Estate Transaction.
2. You are to be a:
 - (a) lender secured by the Guaranteed Mortgage on the Title to the Land; or
 - (b) purchaser or lessee of the Title to the Land.
3. The aggregate of all Funds You transmit to the ITG Closer for the Real Estate Transaction does not exceed \$500,000.00; and
4. Your loss is solely caused by:
 - (a) a failure of the ITG Closer to comply with Your written closing instructions that relate to:
 - (i) (a) the debasement of Funds necessary to establish the status of the Title to the Land; or
 - (b) the validity, enforceability, or priority of the lien of the Guaranteed Mortgage; or
 - (ii) obtaining any documents specifically required by You, but only to the extent that the failure to obtain the document adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Guaranteed Mortgage on the Title to the Land; or
 - (b) fraud, theft, dishonesty, or misappropriation by the ITG Closer in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Guaranteed Mortgage on the Title to the Land.
3. ITG is not liable under this letter for any loss arising from any:
 - (a) wire fraud, mail fraud, telephone fraud, facsimile fraud, unauthorized access to a computer, network, email, or document production system, business email compromise, identity theft, or diversion of Funds to a person or account not entitled to receive the Funds. Condition and Exclusion 3(a) does not modify or limit:
 - (i) Your coverage in the Certificate; or
 - (ii) indemnification in this letter for Your loss solely caused by fraud, theft, dishonesty, or misappropriation by the ITG Closer in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Guaranteed Mortgage on the Title to the Land.



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Case Study

Star Title Partners of Palm Harbor, LLC v. Ill. Union Ins. Co, No. 21-13343, 2022 WL 4075048 (11th Cir. Sept. 6, 2022).

Hoffman v. Atlas Title Sols., Ltd., No. 14-23-04, 2023 WL 3580894 (Ohio Ct. App. May 22, 2023).



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ITG's Wire Fraud Story

- Familiar parties
- Timely transaction
- No policies



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Resources

- Insurance
- ALTA Policies:
 - <https://www.alta.org/file/ALTA-Outgoing-Wire-Preparation-Checklist>
 - <https://www.alta.org/file/ALTA-Rapid-Response-Plan-for-Wire-Fraud-Incidents>
 - <https://www.alta.org/file/ALTA-Cybersecurity-Incident-Response-Plan>
- Vendors:
 - CertifiD (<https://www.certifid.com/>)
 - ClosingLock (<https://www.closinglock.com/>)



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Seller Impersonation Fraud



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What is it?

- Where an individual purports to be the owner of record for a property and sells it to an innocent buyer.
- Typical properties targeted:
 - Vacant land;
 - Unencumbered;
 - Entity Owner



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Coverage for Seller Impersonation Fraud

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, Iowa Title Guaranty, hereinafter called ITG, guarantees as of the Date of Certificate and, to the extent stated in Covered Rules 11, 13, and 14, after the Date of Certificate, against loss or damage, not exceeding the Coverage Amount, sustained or incurred by the Guaranteed by reason of:

- The Title being vested other than as stated in Schedule A.

Certificate Number: 2-27000028
Coverage Amount: \$100,000.00
Date of Certificate: June 04, 2023 at 03:00:00 PM

1. The Guaranteed is:
C/S, Bank of America and/or assignee, CEDAR RAPIDS, IA

2. The estate or interest in the Land encumbered by the Guaranteed Mortgage is:
Two Single

3. The Title encumbered by the Guaranteed Mortgage is vested in:
George Washington


4. The Guaranteed Mortgage is described as follows:
Mortgage in the amount of \$100,000.00 dated June 4, 2023, filed June 4, 2023, in Book 2023, Page 154 of the Pub. Court; Book 2023, Page 154 of George Washington and Harbo Washington, a married couple, in C/S, Bank

5. The Land is described as follows:
Lot 18 in Gulf & County Chd Plat II, an Official Plat, was included as and forming a part of the City of West Des Moines, Public County, Iowa

6. This certificate insures by reference for redemptions designated below as of the Date of Certificate:
Comprehensives - Improved Land
Environmental Protection Law (ALTA 8 1 2013 v. 01.00)
Lend Lease (ALTA 22-00)

End of Schedule A.


SCHEDULE A



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How to Avoid?


- Know the "Red Flags"
- In-person Closing
- Remote Online Notarization (weary of KBA)
- Verification Software
 - ClosingLock
 - CertifID
 - Plaid



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Resources

- ALTA
 - [https://www.alta.org/business-operations/operations/seller-impersonation-fraudation Fraud](https://www.alta.org/business-operations/operations/seller-impersonation-fraudation%20Fraud)



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Theft of Funds



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Theft

- Defalcation, misappropriation, fraud, theft of funds
- Dishonesty with funds




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Coverage for Theft


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 - (b) purchaser or lessee of the Title to the Land.
3. The aggregate of all Funds You transmit to the ITG Closer for the Real Estate Transaction does not exceed \$500,000.00; and
4. Your loss is solely caused by:
 - (a) a failure of the ITG Closer to comply with Your written closing instructions that relate to:
 - (i) the disbursement of Funds necessary to establish the status of the Title to the Land, or
 - (ii) the validity, enforceability, or priority of the lien of the Guaranteed Mortgage; or
 - (iii) obtaining any document, specifically required by You, but only to the extent that the failure to obtain the document adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Guaranteed Mortgage on the Title to the Land; or
 - (b) fraud, theft, dishonesty, or misappropriation by the ITG Closer in handling Your Funds or documents in connection with the closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Guaranteed Mortgage on the Title to the Land.



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Ancillary Coverage for Misuse



Gap Coverage Rider
ITG Endorsement
 Revised 08-06-2023

Commitment Number: C-230000128

1. The coverage provided by this endorsement is subject to compliance with Schedule B, Part I Requirement No. 5(d) of the commitment, the Exclusions from Coverage, the Exceptions from Coverage in Schedule B, and the Conditions in the Lender Form—Iowa Title Guaranty Certificate and the Owner Form—Iowa Title Guaranty Certificate.
2. ITG guarantees against loss or damage sustained by the Proposed Guarantor by reason of any defect in or lien or encumbrance on the Title or other matter included in the Covered Risks of the Lender Form—Iowa Title Guaranty Certificate or Owner Form—Iowa Title Guaranty Certificate to be issued to the Proposed Guarantor that has been created or attached or has been filed or recorded in the Public Records subsequent to the Commitment Date and prior to the recording of the Guaranteed Mortgage or deed in the Public Records.




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Case Study

Stewart Title Guar. Co. v. Law Offices of David Fleishmann, No. 3:21-1671.-GC-TJB, 2023 WL 3168320 (D.N.J. April 28, 2023).

Allowing payoff funds to be given directly to the Seller.




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How to avoid it?

- Delegation of duties for reconciliations
- Vetting employees
- Following ALTA Best Practices for Settlement



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Miscellaneous




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Federal Issues

- Corporate Transparency Act
- FinCEN Reporting Rule



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Future Offerings

- ALTA Homeowner Policy
 - Provides specific coverage for *post-policy* fraud
- Technological services
- Resources




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What does this mean for ITG Participants?

- Be vigilant!
- Check your insurance coverages!
 - 16% of title agents have no cyber insurance
 - 52% have said that the insurance they do have has gotten far more expensive, has worse coverage than before, or both.



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Questions/Discussion



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