



Escrow Claims and How to Avoid Them

Gretchen Valentine

Vice President

Pacific NW Regional Underwriting Counsel

Our mission is to provide knowledgeable and responsive underwriting solutions, harnessing user-friendly technologies to support title insurance agents across America. Title Resources is dedicated to growing lifelong relationships and is committed to maintaining quality through integrity and financial stability.



Escrow Losses

Hopefully, escrow losses don't happen on *your* desk!



Avoiding Escrow Losses

You can avoid escrow losses by:

- Learning from prior claims;
- Staying focused and paying attention; and
- **Getting enough sleep!**



If you don't get enough sleep...



Human Behavior

Often escrow losses result from human behavior –

- Curiosity
- Desire to help
- Desire to please
- Human error





Social Engineering

Just how easy is it to get hacked?

You Tube video “Real Future: What Happens When You Dare Expert Hackers to Hack You (Episode 8)”

https://youtu.be/bjYhmX_OUQQ?t=1m24s



Claim #1 – Generosity to a Fault

Escrow file -

- Employee hand wrote \$144,000 on a post-it note
- Disbursement ledger said \$114,000
- Wire sent for \$144,000 to customer's account in Tennessee
- *How did this happen?*





Claim #1 – Generosity to a Fault

- Only one person sending wires
- No one checking that person's work





Claim #1 – Generosity to a Fault

Monthly escrow accounting didn't timely catch the error

At month-end, error caught, bank called, too late to put a hold on the funds





Claim #1 – Generosity to a Fault

Person receiving funds won't give them back, even though escrow company is suing him

Person receiving funds is a crook.

**BANK ERROR IN
YOUR FAVOR.
COLLECT \$200.**





Claim #1 – The Solutions

More than one person involved in sending a wire

- Two or four step process
 - #1 - Closer sets up the wire/prints it/signs it
 - #2 - Check signer confirms it's correct/signs it
 - Document e-mailed securely to accounting





Claim #1 – The Solution

Next

- #3 - Accounting person A
 - Prints the Document
 - Confirms wire information is correct
 - Confirms wire was delivered securely (not by e-mail)
 - Sets up the wire in the bank system
- #4 - Accounting person B
 - Checks the wire, approves it, and pushes it through the bank system



Claim #1 – The Solution

Accounting -

- Now, *daily* escrow accounting will more quickly catch these errors





Claim #2 – Closing Instructions Snafu

Original lot was

- An irregular shape
- Located on a hillside above a valley
- Road in front called Crescent Rim



Claim #2 – Closing Instructions Snafu

Closer prepared Supplemental Closing Instructions

- “Issue the HOP subject to exceptions 6 through 10”, shown on Schedule B, page one.
- Closer and Buyer signed the instructions, agreeing to terms

Closer didn't notice that Schedule B was two pages long. Closing instructions should have said “Issue HOP s/t exceptions 6-13.”



“Sign here to indicate you have no idea what you’ve signed for.”

Claim #2 – Closing Order Snafu

Schedule B, page two, had exception for CC&Rs and “things disclosed in the plat”

At closing, no one noticed that supplemental escrow instructions didn’t address all exceptions in commitment

Title company issued HOP with an exception for CC&Rs and “things disclosed in the plat”





Claim #2 – Closing Instructions Snafu

After closing, developer discovered

- Plat map didn't accurately reflect size/dimensions of lot and relationship of lot to road.
- No access to back of lot.
- Parcel couldn't be split.



Developer went to an attorney



Claim #2 – Closing Instructions Snafu

Attorney found

- Buyer signed closing instructions that excluded the CC&Rs and “things disclosed in the plat.”
- But policy excepted CC&Rs, and “things disclosed in the plat”





Claim #2 – Closing Instructions Snafu

Developer -

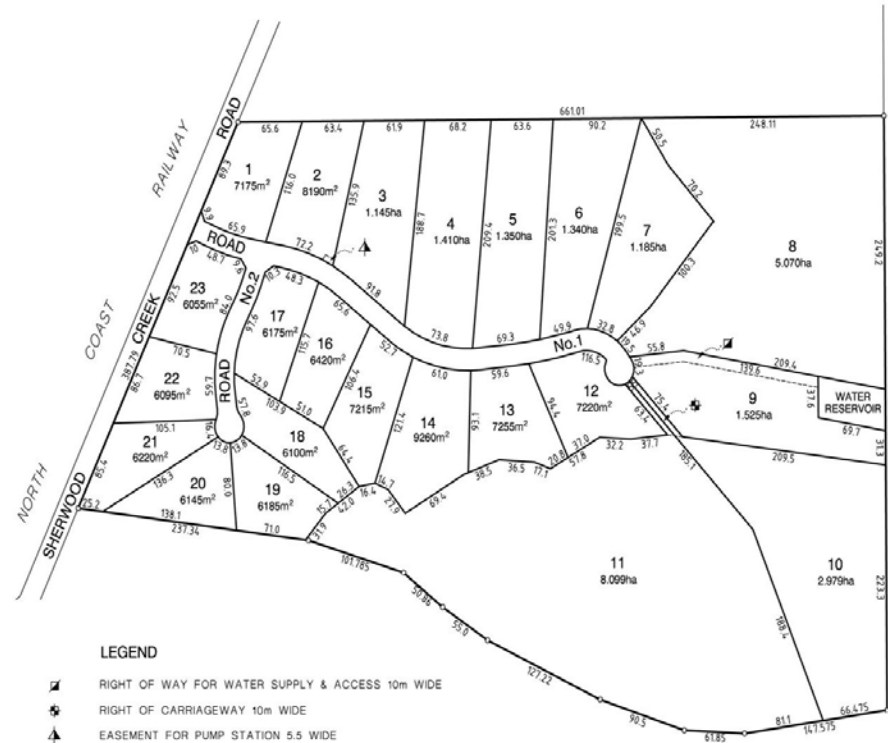
- Filed title claim for inaccurate legal description
- Filed escrow claim for breach of instructions
- Filed lawsuits against
 - Title insurer
 - Title agent/escrow company



Claim #2 – Closing Instructions Snafu

What happened?

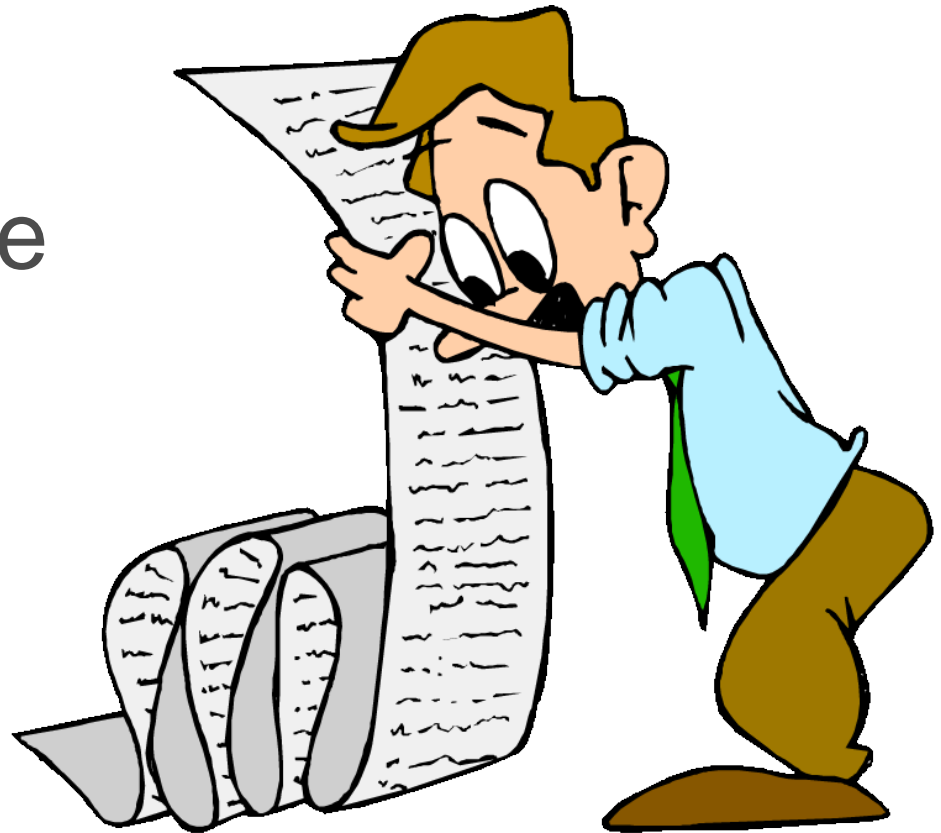
- Six figure settlement for diminution in value
- **\$700,000 loss**





Claim #2 – The Solution

Be sure you read
all pages of
Schedule B before
you prepare your
supplemental
closing
instructions





Claim #3 – No Good Deed Goes Unpunished

Buyer calls escrow and asks for copy of the CC&Rs

- Well-intentioned escrow assistant pulls what she thinks are the complete set of CCRs
- Buyer reviews and decides to buy



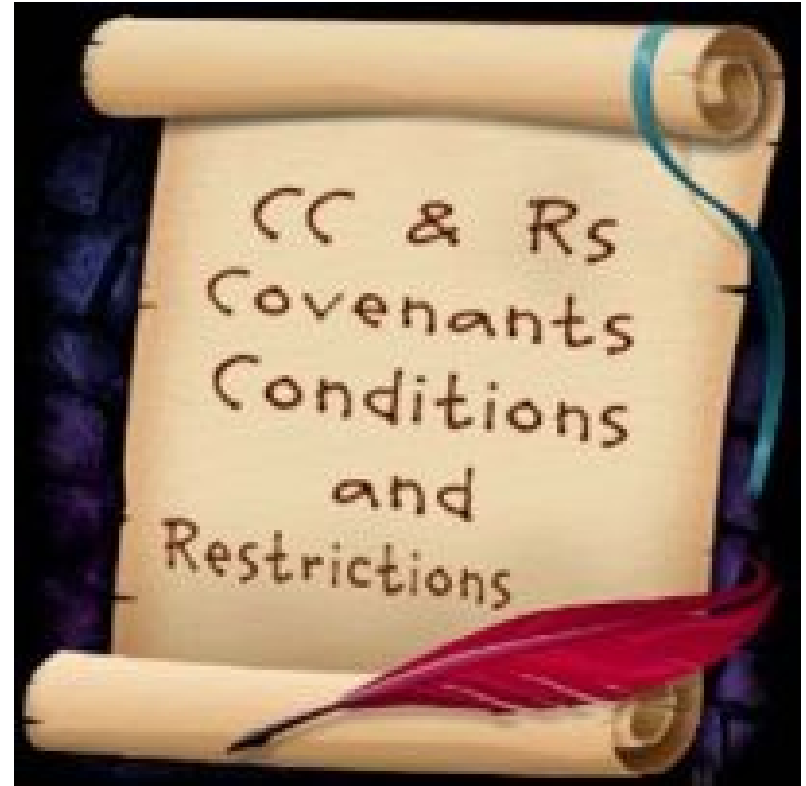


Claim #3 – No Good Deed Goes Unpunished

OOPS!

Escrow assistant missed an amendment prohibiting rentals

- Seller knew Buyer buying to rent
- Realtor knew Buyer buying to rent - had reviewed the CC&Rs
- Neither said anything to Buyer

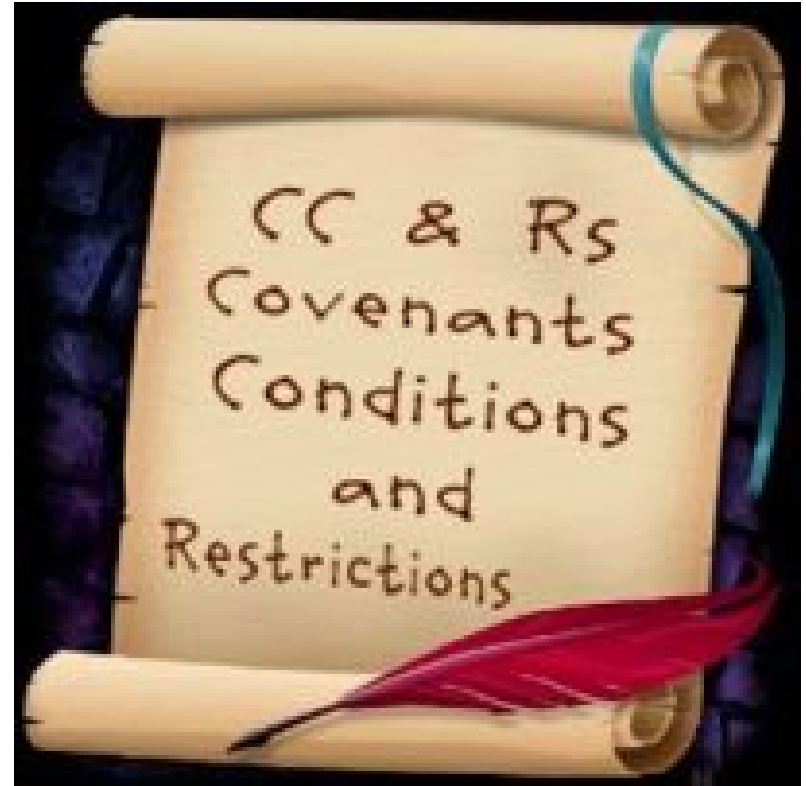




Claim #3 – No Good Deed Goes Unpunished

Buyer filed title and
escrow claims

- Title liability? **No.**
Policy excepted
CC&Rs and all
amendments
- Escrow liability?
Yes.

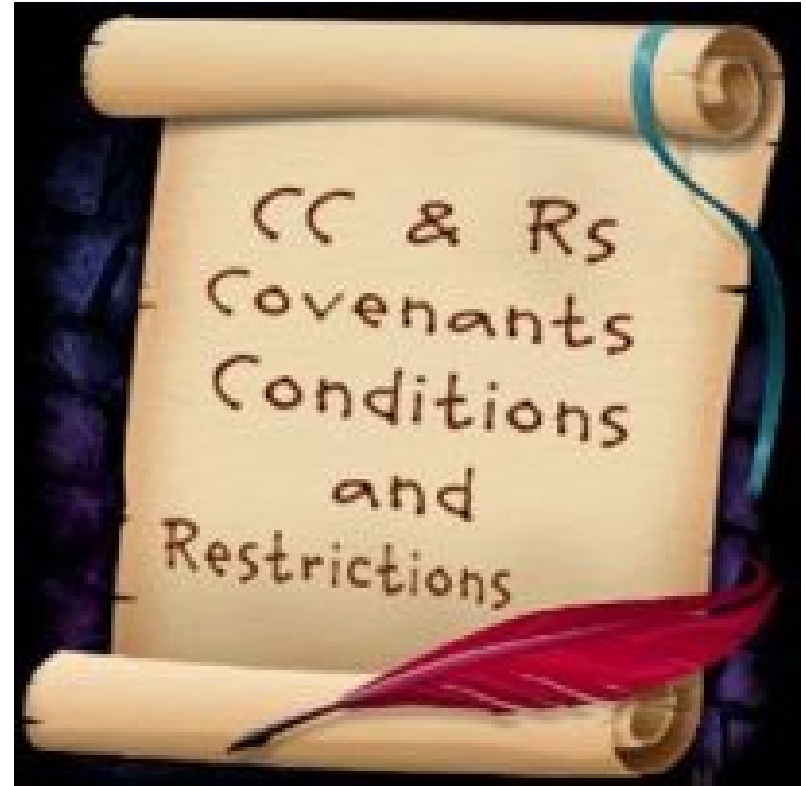




Claim #3 – No Good Deed Goes Unpunished

Two factors helped:

- Buyer sued Realtor, and Realtor paid up
- Seller on HOA Board that passed resolution prohibiting rentals
 - Close relationship
 - Encouraged Board to settle with Buyer





Claim #3 – The Solution

If you're an escrow closer, let the title officer do the title officer's job.

Offer to send an e-mail to the title officer asking that copies of the CC&Rs and all amendments be sent to the customer.





We can learn from each other...

Do you have any stories you'd like to share, that we can all learn from?





Avoiding Escrow Losses



Any questions?