



# Lessons From Losses

*Risk Management Tips for Title Professionals*

*V1—I2*

## Closing Open Lines of Credit

### **The Facts**

The closing was set for Friday, and Fifty Percent Title had identified all of the liens that needed to be addressed. One of the liens secured a HELOC from The First Bank of Misdirection.

Fifty Percent had been aware of the HELOC since running the first title search on the property. Fifty Percent had contacted The First Bank of Misdirection, and obtained a payoff statement. According to the payoff statement, the outstanding balance on the HELOC was \$50,000. The payoff statement contained two addresses. One address was the address to which the payoff funds were to be sent. The other address was for providing notification that the outstanding balance was \$0, and that the line of credit should be closed.

At closing, Fifty Percent listed \$50,000 on the HUD-1 and sent \$50,000 to The First Bank of Misdirection, at the payoff address. Fifty Percent, however, did not send a letter closing the HELOC to the specified address. Since the HELOC was paid down to zero at the closing, Fifty Percent, thinking that the line of credit appropriately had been addressed, did not include an exception for The First Bank of Misdirection's

corresponding lien on the final title policies that Fifty Percent issued to the buyers and their lender after the closing. Fifty Percent also did not ask The First Bank of Misdirection to release its lien on the property.

Six months after the closing, the sellers, Mr. and Mrs. Crooked, who were getting ready to relocate to Timbuktu, received a letter from The First Bank of Misdirection. In the letter, The First Bank of Misdirection asked if the Crookedes were interested in drawing on their \$50,000 line of credit, which had been at \$0 for six months. The Crookedes drew \$50,000 on the line of credit, then called their real estate agent in Timbuktu to discuss buying a bigger house in which they would enjoy their retirement.

Not surprisingly, after the Crookedes got settled in Timbuktu, they did not send their monthly payment to The First Bank of Misdirection. The First Bank of Misdirection, after a few months of sending letters that were returned "undeliverable," began foreclosure proceedings.

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***"Paying an open line of credit down to zero is not enough."***

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Mr. and Mrs. Sincere, who purchased the property from the Crookeds, learned of the foreclosure when notice of the same was delivered to their doorstep. The Sinceres immediately contacted their lender, Didn't See That Coming Bank, and Fifty Percent. The Sinceres and Didn't See That Coming Bank immediately filed claims under the title policies that Fifty Percent had issued in connection with the Sinceres' purchase of the property. The title insurer resolved the claims, then pursued reimbursement from Fifty Percent.

### ***The Lesson***

Paying an open line of credit down to zero is not enough. In addition to making sure that the outstanding balance is paid, the title company must make certain that the line of credit is closed and/or that the corresponding lien on the property is released. If the title company does not take these steps, an unscrupulous seller can continue to borrow against the line of credit, and leave the buyers, new lender, title insurer, and ultimately, the title company, potentially responsible for the outstanding balance.

In order to prevent dishonest sellers (or even honest, but confused sellers) from continuing to borrow against a line of credit that is not closed in connection with a closing, title companies should include closing the line of credit in their pre- and post-closing checklists. This will help guarantee that lines of credit are closed – not just paid off – and that sellers like the Crookeds will be unable to borrow against property they no longer own.

**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.cpim.com/tiac](http://www.cpim.com/tiac) ~ [tiacinfo@cpim.com](mailto:tiacinfo@cpim.com)



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