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June 2016

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New NC Title Insurance Rate Calculator Available! See [page 2](#).

Avoiding the Cyber-Fraud I Told You So



Jon W. Biggs, Esq., VP & Director of Risk Management and Education
jbiggs@invtitle.com

What are four most hated words in the English language? Some might say it is when you hear, "WE HAVE TO TALK." It is usually uttered by your spouse, your child, or your boss. Nothing good ever follows that phrase. It is an early warning sign that you will not enjoy the next few minutes because bad news is about to be delivered. Others might say that the most hated four words are "I TOLD YOU SO." Generally, you cannot do anything about hearing the phrase "WE HAVE TO TALK." You can do something, however, about hearing the words "I TOLD YOU SO."

WE HAVE TO TALK . . . about Cyber-Fraud

In a recent television commercial campaign, we have all seen the "Settlers who settle for cable" rather than opt for the presumably technologically

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View Video on this Topic
Duration: 24 min

Avoiding the Cyber Fraud "I Told You So"

Jonathan W. Biggs, Vice President Risk Management & Education
Investors Title Risk Management Seminars – Spring 2016

advanced digital satellite television entertainment. These "Settlers" are "off the grid" and hoping that they are removed from ever-increasing digital threats to our way of life. Some of these recent commercials even suggest that you cannot order a good pizza unless you are "on the grid." In today's world of "zeroes and ones," digital communication, and electronic conveniences, it would be nearly impossible to imagine representing a client in a real estate closing without

(Continued on page 3)

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invtitle.com/events/nc

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Christina Freeman Pearsell, Esq. (1 hr CLE/CPE Gen)

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NC Claims Update: What to Watch Out For

Ryan P. Hoffman, Esq. (1 hr CLE/CPE Gen)

This course outlines common claim scenarios and how to avoid them.

A Funny Thing Happened on the Way to the Courthouse

Jon Biggs, Esq. (1 hr CLE/CPE Gen)

This course covers the old and new expectations and some simple tips on how to incorporate the appropriate measures into your practice so that you can keep everyone happy.



New North Carolina Title Insurance Rate Calculator

invtitle.com > Resources > Rate Calculator

User Guide: invtitle.com/docs/calcguide.pdf

Quote/Order Request

Property Information - Enter a zip code OR select your state/county/city

* Zip Code: [Input Field] * County: [Select One]

* State: [NC] * City: [Input Field]

Loan Information

* Transaction Type: [Purchase] * Policy Type: [Simultaneous]

* Sales Price: [Input Field] * Loan Amount: [Input Field]

Prior Lender Policy / Existing Loan Orig Amt: [Input Field] Prior Lender Policy Age: [Input Field]

Prior Owner Policy / Orig Purchase Price Amt: [Input Field] Prior Owner Policy Age: [Input Field]

Unpaid Balance: [Input Field]

Property Type: [Select One] Other Endorsements: [ALTA 5/5 1 Planned Unit Development, ALTA 8 1 Environmental Protection]

Interest Rate Type: [Select One]

Loan Type: [Select One]

File/Loan Reference Number: [Input Field]

By selecting purchase it is assumed that you are requesting a simultaneous rate calculation which is an Owner's Policy and a Lender's Policy issued at the same time.

Recording Tax Calculator

[Add Endorsement](#) [Get Quote](#)

* Denotes Required Fields

Enhanced Features for Obtaining Title Insurance Quotes and Related Rate Information

- Comprehensive quotes including rates for endorsements and products not previously available
- Quote reference numbers for retrieving at a later time
- Save and print capabilities
- Enhanced TRID and closing disclosure related features
- Include recording fees in the quote

Avoiding the Cyber-Fraud I Told You So... cont. from page 1

communicating with them, the bank, and numerous others electronically.

Since you are holding sensitive information and communicating such information over the internet, you are a target for cyber-fraud. This is important enough to repeat. You are not an innocent bystander to cyber-fraud, **YOU ARE A TARGET.**

For the purposes of this discussion, I am going to assume that you are “on the grid” and aware of your status as a target. To that end, I am going to further assume that you have invested in the state of the art technology necessary to protect you from cyber-fraud, like email encryption, firewalls, antivirus protection, malware protection, updated software, and the many things that Information Technology (IT) professionals recommend and ALTA Best Practices require.

YOU NEED TO TALK . . . to the Following

If my assumption in the previous paragraph is incorrect, then you need to immediately make two calls:

- 1) To your trusted IT professional because you are attempting to exist in this digital world like one of the “Settlers” on television. Envision one of those “Settlers” starting to climb their windmill with lightning striking all around – that is you.
- 2) To your insurance agent because... well, once you have read this article you will understand the importance of this second

call. Envision yourself driving down a crowded one-way street in the wrong direction with the other vehicles trying to hit you, and not being able to use another street. You are a target for cyber criminals and you need insurance protection. It is not a matter of “IF,” it is a matter of “WHEN” you get hit by the tractor trailer that is cyber-fraud.

Even if you believe that you are on top of cyber-fraud, you still need to talk to these two individuals routinely to try to catch up. Let’s face it: when was the last time you thought about cyber-fraud? If you say anything longer than ten minutes ago, then you are behind the cyber criminals because they think about it all the time.

TALK TO YOURSELF. . . Do I Even Need Cyber-Fraud Insurance?

The first key to understanding what kind of cyber-fraud insurance protection you need is to understand the exposure that you already have. For example, if you do not have a car, then you do not need automobile insurance. If you do not think that you need cyber-fraud insurance, then you should take the following test. Two simple “Yes/No” questions:

- 1) **Do you have a computer?**
- 2) **Do you have a cell phone?**

If you answered “Yes” to either of these questions, then you need cyber-fraud insurance.

Now that YOU know that you need cyber-fraud insurance, the



second key to understanding what kind of cyber-fraud insurance protection you need is to understand the exposure that you already have.

TALK TO ME . . . What is Cyber-Fraud and What Coverage Do You Need?

Cyber-fraud is an all-encompassing term that includes a wide variety of types of fraud. It is often confused and identified with each of its sub-classes and used interchangeably. In short, cyber-fraud is a crime or theft committed using digital access to or through a computer or computer network (including phones). **The types of liability for a cyber-fraud differ by the nature of what is being stolen.**

- A. When **DATA** or **INFORMATION** is stolen, the type of liability you have and the type of insurance that you need is referred to as **CYBER LIABILITY/ DATA BREACH** insurance coverage.
- B. When **MONEY** is stolen, the type of liability you have and the type of insurance you need is referred to as **CRIME INSURANCE or CYBER THEFT INSURANCE** coverage.

Avoiding the Cyber-Fraud I Told You So... cont. from page 3

In both instances the crime or theft is usually perpetrated through some form of digital access, and therefore lumped into the same cyber-fraud term, but the insurance coverages are substantially different.

1) LET'S TALK ABOUT STOLEN INFORMATION & CYBER LIABILITY OR DATA BREACH INSURANCE

Cyber-breach is a classic form of cyber-fraud. When a cyber-breach occurs, **INFORMATION or DATA** is what is stolen. We have all read about the big breaches at Sony, Target, Home Depot, JP Morgan Chase, and other high profile cyber-breaches. Traditionally, most people rationalize away the threat by saying that, "We do not have that volume of information so we are not at risk." This self-soothing rationalization provides little comfort when your number is up and you have actually suffered a cyber-breach. Remember, you are a target.

You have in your possession and need to protect your clients' non-public personal information (NPI), which first appeared on the regulatory scene in Gramm-Leach-Bliley in 1999. The concept of keeping secrets, however, is much older and the bedrock of any trusted profession. In short, we have to

keep the secrets of our clients confidential and free from public or even private release. As with all endeavors, there is an ever-increasing risk that the procedures and protocols that we put into place yesterday will not survive the constant barrage of new threats today.

The cyber-breach fraud can be perpetrated many ways, including the following:

- Gaining credentials (login and password) for access to a computer network that contains NPI;
- Intercepting un-encrypted or improperly encrypted communication containing NPI;
- Improper disposal of NPI;
- Sharing NPI with a source that is believed to be trusted (but is not); and
- Many more.

The Cyber Liability or Data Breach Insurance coverage protects you in many of the following ways in the event of a data breach:

- To defend civil or regulatory actions filed against you
- To pay damages to third parties if you lose
- To provide research and information if a governmental agency looks into the data breach
- To notify clients in the event of a data breach
- To monitor clients for ID theft if they were subject to the data breach
- To determine the cause of the data breach and extent of the loss
- To restore data that was

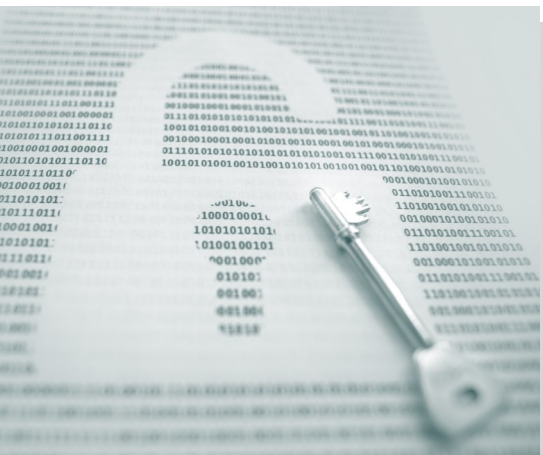
corrupted by a data breach

In inquiring about Cyber Liability Insurance for a data breach, you should inquire as to the specific coverage provided in these areas as sometimes they are not included or have a separate limitation on coverage.

The cost of data breaches is rising for companies and law firms. According to a study recently conducted by the Ponemon Institute (and paid for by IBM) the average cost of a data breach is now \$154 per record lost or stolen (or believed lost or stolen). These direct costs include employing IT professionals to repair the breach, investigating the cause, setting up hotlines for clients, and offering credit monitoring for victims. This number does not include the soft and often hard to measure costs to the firm due to a damaged reputation from adverse press. A lot of people began moving their business to Lowes when Home Depot got hit.

In order to be objective, the Ponemon Institute study left out the "mega-breaches" (like Home Depot and Target) from this number because those high-profile breaches cost more than twice as much per customer than the number stated above. This study also concluded that information allowing the criminal to steal someone's identity was much more valuable to the criminal than merely an account number or credit card number. You may not have a credit card number in your file, but you have numerous clients' home loan credit applications, which is a treasure trove of NPI and a gateway to identity theft.

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Avoiding the Cyber-Fraud I Told You So... cont. from page 4

Do a little simple math to see whether you need insurance to protect **YOU** from a cyber-breach.

Amount Charged for a Closing
- Less (Overhead Currently Incurred)

= Net Cash Flow (*What You Thought You Made*)
- Less (\$154 Per Person Involved in the Closing)*

= Real Net Cash Flow after a Breach (*What You Actually Made – OR LOST – Per Closing*)

**If you have a closing with a husband and wife on both the buy and the sell side, that is 4 X \$154 or \$612 per closing of potential risk.*

It is important to note that all of the protections that we discuss concerning cyber-fraud (encrypted email, firewalls, antivirus software) protect you and your clients. This type of cyber-breach insurance protects **YOU** and **YOUR BUSINESS**.

2) LET'S TALK ABOUT STOLEN MONEY & CRIME INSURANCE OR CYBER THEFT INSURANCE

Cyber-theft is what people generally think of when they think of cyber-fraud – someone stole **MONEY** from the trust account using the internet; however, please remember that this is a separate and distinct flavor of cyber-fraud and needs to be explicitly covered by the insurance policy. In most instances, this is covered by a Crime Insurance or Cyber Theft Insurance Policy.

Cyber-theft is a crime that involves a computer and/or a computer network in order to steal or misappropriate money. This malicious crime can occur from a network breach from

inside or outside your firm. Generally, it occurs when the unauthorized access to login credentials and passwords allows the cyber criminals to access bank accounts and transfer funds to themselves. Basically, they log into your online banking and transfer funds to themselves. Many banks will not reimburse a business for money lost if the transfer is made with the correct account number, login, and password. Cyber-theft Insurance covers the theft of money through the use of a computer when this information is stolen in order to steal money.

Determining coverage amounts for this type of cyber-fraud insurance is the most difficult because there are many factors to consider. These factors include:

- What is my **Average Daily Balance** in the trust account?
- What is the **Biggest Deal** that I handle each year?
- How Much Money Flows Through** the trust account in a day, month, or year?

Much like your car insurance, you will probably not find it to be cost effective to buy as much cyber-fraud insurance as you need; however, you will have to discuss these prominent issues with your insurance agent. They may want to know what type of protections you have in place (email encryption, firewalls, etc.). Much like if you have a burglar and fire alarm at your home, your insurance may be less expensive. Fortunately, this type of insurance is becoming more widely utilized and part of larger pools, so the underwriting is less specific to you and more

generally related to the industry.

There is one additional factor to consider and that is the State Bar. ~~If you suffer~~ When you suffer a theft of funds due to cyber-theft, you will take comfort in that the promise of insurance coverage may sway the Bar to delay in their demand that the money be restored to the trust account from your personal funds. While I cannot speak for the Bar, they have been swayed in the past to be more patient in their demand to put the clients' money back in the account.

3) LET'S TALK ABOUT GETTING TRICKED AND CRIME INSURANCE

There is another flavor of cyber-fraud that falls into the crime insurance realm. It is called Social Engineering Fraud and is possibly the most frustrating type of fraud that is prevalent in the real estate industry today. In this type of fraud, you are convinced through electronic means to send money (usually seller's proceeds) exactly where the cybercriminal wants you to send them. That is right, the criminal sends you wiring instructions on where to send them the money and you do it. Heck, you even pay the wiring fee to send it to them. Frustrating may not be strong enough, let's say infuriating. In these instances, the banks tell you that they did "exactly what you instructed them to do," and they are not liable.

Why in the world would you send money to a criminal? There is only one reason, you were tricked through FRAUD.

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Avoiding the Cyber-Fraud I Told You So... cont. from page 5

Social Engineering Fraud is a type of fraud where they gain or use the pre-existing confidence in another person and trick you into sending funds directly to them. Here is how it works:

- a) A fraudster intercepts a single or collection of unencrypted emails or mines data on the web.
- b) Sufficient details of the sale are learned, including the names of the buyers and seller. Some of this information could include the copy of a settlement statement in the email.
- c) The fraudster sends wiring instructions (or “revised” wiring instructions) that include a new ABA routing number and account number and requests funds for the transaction. The email would generally come from a similar (but different) sender’s email address; to wit:
reales-tatebroker@trustedfirm.com would be changed to reales-tatebroker.trustedfirm@gmail.com (This is just an example, but it is always a different domain.) Sometimes the true email address is embedded (e.g. RealEs-tateBroker<<realestatebroker.trustedfirm@gmail.com>>), which could mask the true email address, further hiding the true identity of the fraudster/sender.
- d) The email could be directed either to the buyer or closing attorney:

- instructions from the realtor.
- b) If to the closing agent: the closing agent is directed to wire the funds to the fraudster, believing that they are complying with the instructions from the Seller.

The stories of Social Engineering Fraud are plentiful, and this is fertile ground for fraud right now. We have repeatedly regaled you with stories of this type of fraud and steps to take to protect yourself and your client. People, however, are still getting tricked. Training your staff will only go so far-- you need crime insurance coverage to protect you against this threat. You should be certain to inquire about the inclusion of this type of coverage in your policy.

Let’s Talk Cost

We have already covered the potential costs of not having insurance to cover these losses, so what does it cost? Every business has to do a cost benefit analysis to determine what amount of insurance fits their needs. You can adjust this cost by changing the amount of coverage and the deductible, but it is still “yet another cost of doing business” in these changing times.

First, this coverage is generally determined by the number of employees in your firm. It is not determined by the number of people with access to the trust account, but the number of people with access to a phone or computer – that includes you. On average, for the firm having a total of two to five people (not attorneys, but number of people), you can generally count on these types of coverages costing you between \$1,700 and

\$2,400 a year or between \$140 and \$200 a month. You can count on it going up slightly with each additional employee; however, the cost per additional employee goes down as the number of employees goes up. No, it is not cheap – but it is cheap in comparison to a loss due to cyber-fraud. Why is it this expensive? The answer is easy. It is expensive because it is paying claims when your brethren are getting hit with cyber-fraud.

I TOLD YOU SO

If you go back through your email for just the past week, you will see that you have probably avoided some attempt at cyber-fraud. Someone emailed you about a bogus closing, a bogus wire, bogus invoice, a special gift that you have won, a racy picture, or a long lost relative that has left you a windfall. We are almost numb to some of these attempts, but they are still attempts at cyber-fraud. In most cases, cyber-fraud is committed because we let the fraudster in the house and they then take what they want. Let’s face it: you know that you are a target. You have always known. Cyber-fraud Insurance is the next logical step, we have just been trying to put off the cost as long as possible.

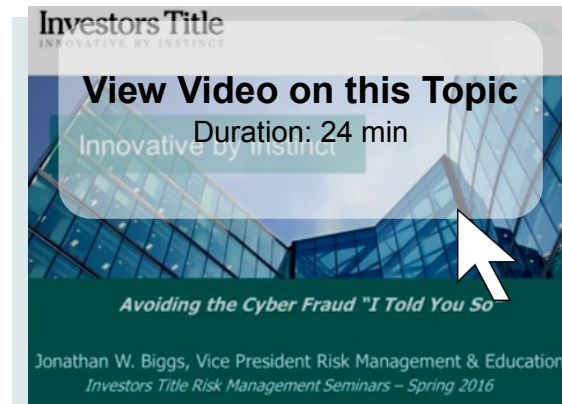
Unfortunately, we cannot avoid the phrase “**I TOLD YOU SO.**” In this instance, it will come from one of two places. First, it can come when you look in the mirror the day after the loss has occurred due to cyber-fraud, and you tell yourself these hurtful words.

Avoiding the Cyber-Fraud I Told You So... cont. from page 6

Second, it can come from your insurance agent when he or she hands you a check to cover your loss and they tell you **"I TOLD YOU THAT YOU WOULD NEED THIS COVERAGE."**

My hope for you is that you experience the second of these **"IT TOLD YOU SOs"** and not

the first. If it is the case in which you are telling yourself these fateful words, you could be living like the "Settlers," with the most modest and inexpensive way of life - and not by your choice.



CLAIMS CORNER: How to Close on a Mobile Home Without Buying a Claim

Julie Parrish, Claims Administrator

It is 9:00 a.m., closing is in one hour, and you have just found out that the residence is a manufactured home. You don't want to postpone the sale, but you also need to be sure that the home is de-titled and there is no lien against the home. Your title examiner provided you with a copy of a previously recorded Declaration of Intent to Affix Manufactured Home to Real Property (DOI) that includes the make, model, serial number, and year, and states that the title has been surrendered to North Carolina Department of Motor Vehicles (DMV). Are you ok to move forward with closing? Now, suppose your title examiner did not discover a DOI of record, but you have the information identifying the home and can record a DOI after closing. Still ok? In both cases, you may not have enough information to close without running the risk of a future claim.

As you know, a manufactured home begins its life as personal property and must be permanently affixed to the land and de-titled before it can become part of the real property.

Many people believe that if the home has been taxed as real property for a number of years, and there is a DOI of record, then there is no title. In actuality, though, a large number of the claims we receive regarding mobile homes result from incorrect information contained within a recorded DOI.

So, how do you avoid that claim? First and foremost, you must obtain all of the information you can to properly identify the home. The name of the manufacturer, model, size, and serial number(s) are key. Having an accurate serial number is critical to proper identification of the mobile home. This may mean that you need a picture of the serial number from inside the home. Many times, you may find that the serial number is provided for you on the appraisal or in the loan package; however, in both of these cases there may be a typographical error which results in a misidentification of the mobile home. Recently, for example, we received a claim where the appraisal provided a serial number. The serial number, however, began with "HDC" instead of "HON". A search using the correct serial number revealed that the home

had an active title, dated back to 1987. The title was in the name of a prior owner of the manufactured home who never held title to the real property and it showed a lien holder from 1987. In addition, HUD label numbers are often mistaken for serial numbers. They are not serial numbers, and a DMV search using those numbers will not provide you with the status of the manufactured home title.

Another potential pitfall is that older double wide manufactured homes have two titles, a title for side A and separate title for side B. Should you encounter the title for such a home, you must be certain that both serial numbers are included in any cancellation documentation.

Once you are sure that you have all of the correct information, you need to provide this information to the DMV and verify that the manufactured home is de-titled and there is no lien of record. Frequently, attorneys or paralegals call the DMV for this verification, but this, too, creates the risk of error – the communication of the serial number may not be accurate or DMV may enter an incorrect number. The only way to ensure that the correct serial

(Continued on page 8)

How to Close on a Mobile Home... cont. from page 7

number has been searched is to obtain an actual printout of the DMV title report, and verify the information is accurate. Increasingly, lenders are including a requirement within their loan closing instructions for evidence from the DMV that the manufactured home title has been canceled. A copy of the recorded DOI or recorded Manufactured Home Affixation Affidavit as provided in the lender's loan closing package does not satisfy the requirement

in the closing instructions. In order to satisfy this lender requirement, you must obtain either an actual printout of the report from the DMV reflecting the status of the title, or a copy of a recorded MVR46-G executed by the DMV. Make obtaining the DMV report a part of your standard search practice. It will not only provide you with verification that you have the correct identification information for the home, it will most likely serve as prevention

from a potential title claim resulting from search errors or failure to follow lender instructions.

There are instances where you simply cannot locate the serial number. In those cases, will an owner search through the DMV be sufficient? Maybe, but keep in mind that your search would have to extend to all property owners in the chain of title from the day the home was placed on the property, and there is still a chance of error as it is possible that the mobile home may have been owned by an individual who was not in title to the land upon which the home is now affixed.

Another alternative when you simply cannot locate the serial number is a resource known as Institute for Building Technologies & Safety (IBTS). IBTS can provide a verification letter to you by fax or email using the HUD Label numbers. The verification letter will include the label numbers, serial number, date of manufactured, name of manufacturer and plant location, and the location of the home's first destination which will most likely be the retailer. There is a form available on their website, but, be advised, there is a fee for the service.

Manufactured homes must be affixed to real property in order to become real property, but the simple fact of their affixation is not enough to show that they do not still carry a lien from their days as personal property. Following the above steps will allow you to feel better about that 10:00 a.m. closing, and greatly reduce the chances of a future call from the claims department.

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ALTA Best Practice
#2 Compliance
Assurance

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Protection

Daily Reconciliation
& Reporting

Security

Expert-Level Support
Confidence



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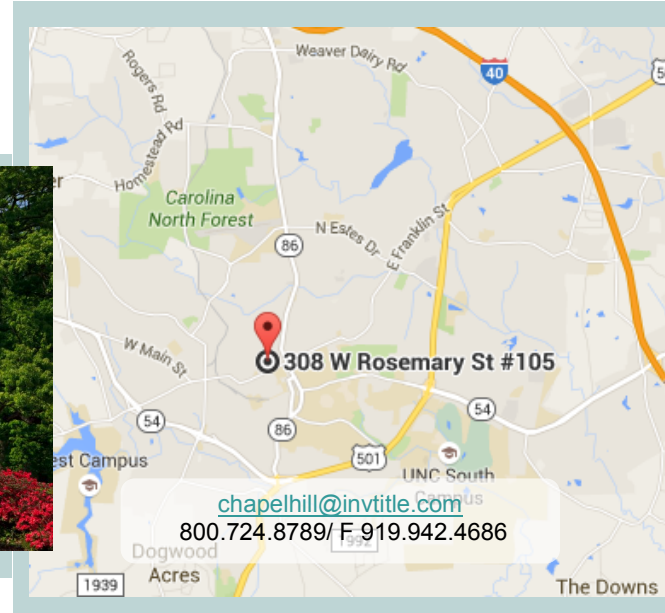
- Daily or monthly reconciliation options
- Automated matching of receipts and disbursements
- Three-way reconciliation
- Customized timely alerts of irregularities or critical errors
- Daily monitoring to help you detect potential problems before they become unrecoverable
- Consulting and training
- Audit assistance
- Cleaning up old problems and catching up prior months' reconciliations
- Integration with your bank's positive pay system
- Reverse positive pay
- Separation of conflicting duties

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Investors Title Branch Profile

Get to Know Your Local Office



The Chapel Hill Branch opened in March 1972, and Denise Ray-Eiland, who joined Investors Title in 1997, is the office manager. Underwriters Jo'el Kundra and Melissa Gillen joined the team in 2008 and 2013, respectively. Lou-Ann Craven is the Marketing Manager.

Issues with Conservation Easements as Estate-Planning Technique

A popular estate-planning technique—conservation easements—that can save a taxpayer both estate and income tax is coming under increasing scrutiny with the IRS, and a recent case from North Carolina illustrates the potential issues that can arise. Conservation easements allow a taxpayer who owns real estate to give up some or all of the development rights associated with the property. The landowner retains ownership of the property, but essentially transfers development rights to a land trust (or similar charity), which has a charitable mission that maintains the land as undeveloped property in perpetuity. The taxpayer then qualifies for an income tax deduction between the value of the unrestricted property and the value of the restricted property, with the greatest deductions going to owners who severely restrict the land's use. And not all land even qualifies—only tracks that are scenic, environmentally sensitive or historic. But the savings can be huge: nationally, more than a thousand taxpayers took advantage of the strategy with an average deduction of more than \$870,000 in 2012 (the latest year for which there is data). With those kinds of numbers, perhaps it's not surprising that the IRS challenged a group of property owners from St. James Plantation, in Southport, North Carolina, who claimed they were entitled to a \$7.9 million deduction. The Tax Court agreed with the Service, and denied the associated tax benefits. In a 60-page opinion, Judge Thomas Wells

wrote, "Petitioners have failed to present any evidence showing that the easements were made pursuant to a clearly delineated government conservation policy or for the scenic enjoyment of the general public." Legal observers who follow developments in this area call the North Carolina decision a huge "win" for the government, one likely to affect wealthy taxpayers around the country. See *Atkinson v. Commissioner*, T.C. Memo. 2015-236, 12/9/15.

--*Wall Street Journal*, 1/5/16

Observation: The IRS believes the intent of the law is being abused, mainly because among the greatest beneficiaries of the associated tax benefits are owners of golf clubs. According to the Service, a number of owners are giving up the right to develop golf courses around the country for anything other than a golf course—not high rise apartments or a commercial development. Surrendering those rights creates a tax benefit—one that the IRS says Congress never intended.

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