

# State Farm - Former Chief Operating Officer - UCC Division at First American Title Insurance Company

Interview conducted on December 07, 2022

## Topics

Title Insurance, Escrow Services, Regulation, Technology, Joint Ventures, Opinion Letters, Title Plants, Competition

## Summary

A Tegus Client speaks with a former COO of a title insurance company about the handling of escrow and wire fraud prevention. They discuss the regulation of the industry and the challenges of building relationships with clients. The expert explains that major title companies prefer to handle escrow due to concerns about hacking and funds being stolen. They also discuss the importance of verbal verification to prevent wire fraud. The Tegus Client asks about the legality of offering referral fees for escrow work and the use of joint ventures in the residential title industry. They also discuss the importance of careful contract writing and the value of title plants in saving time and cost by providing historical data. The former COO emphasizes the importance of technology in improving accessibility and efficiency in the industry.

## Expert Details

Commercial Real Estate Counsel

Former COO-UCC Division at First American Title Insurance Company. The expert worked in the title industry for 20 years. The expert's division issued policies called: UCC Insurance. It covered protection under Articles 8 and 9 of the Uniform Commercial Code for mezzanine transactions in large commercial real estate transactions. It was in addition to the traditional title policies covering real estate. The UCC policies covered the pledging of the equity that owned the real estate. I have no expertise in traditional title insurance.

Commercial Real Estate Counsel. The expert is responsible for Counsel and consultant on commercial real estate transactions involving mezzanine financing and Articles 8 and 9 of the Uniform Commercial Code.

The expert was the Chief Operating Officer - UCC Division at First America Title.

The expert worked in the title industry for 20 years. The expert's division issued policies called: UCC Insurance. It covered protection under Articles 8 and 9 of the Uniform Commercial Code for mezzanine transactions in large commercial real estate transactions. It was in addition to the traditional title policies covering real estate. The UCC policies covered the pledging of the equity that owned the real estate. I have no expertise in traditional title insurance.

Expert is comfortable consulting on commercial real estate transactions, mezzanine financing, condominiums, and cooperative apartments, public records – filing and searching, articles 8 and 9 of the Uniform Commercial Code, and the business of title insurance.

Q: How familiar are you with the margins, pricing laws and competitive landscape within the title insurance underwriting industry?

A: Regarding the writing of UCC Insurance policies: it is a very profitable product. Written only by the title companies – not by agents. If underwritten properly, little risk of loss short of fraud. Agents and commercial offices receive a commission but nothing like the premium splits the agencies get on real estate title work. Unlike real estate title policies, there is no ALTA UCC Insurance policy. Each title company has its own unique policy and each has its own pricing structure.

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Q: Can you speak to the barriers to entry for new competitors within the title insurance underwriting industry?

A: The four major title companies write UCC Insurance. First American and the Fidelity group write the vast majority and have significant staffs. Stewart and Old Republic write little and are only filed in a few states with limited staff. AmTrust has offered a UCC policy but is not a big commercial real estate writer.

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**Tegus Client**

Hello. Thank you so much for taking the time to meet with me today. So maybe to start, I was looking forward to this call just because so much of the nuance of title can be kind of a local business in terms of like the customs of how it's done. And I have not yet spoken to somebody who's an expert in kind of the New York area.

So I had some questions that are kind of basic actually about the New York area. So maybe to start, how frequently is the escrow agent in the New York area? How frequently is that the attorney versus the title agent versus an independent?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

If the transaction is being done with one of the major title companies, it will always be the preference of the title companies to handle escrow. There's been major concern and you may have read about it. About the concerns of hacking into escrow. And the title companies have been very much aware of this. In fact, they've scrutinized some of the agencies and the law firms that they work with as to the protections that they have on their Internet access and so forth.

Being concerned that if they were to handle the escrow funds, they could be hacked or somehow divert it away. So the title companies, for the most part, are requiring that all escrow run through the title company itself. There are major pieces of software that have been introduced. I've seen it with all the major title companies are basically trying to protect themselves against hacking and funds being stolen.

I've seen less of it, but apparently, I read something just a few days ago that there continues to be a problem of funds being stolen in transactions. Now when money comes in and money goes out, there are several controls that are required to verify that the information as to where money is coming from and where money is going to is verified by the parties before any funds are released.

So you're talking about particularly in the area that I work, which was commercial. You're talking about a lot of money, sometimes tens of millions of dollars. And there's a great concern that those funds need to go where they are supposed to go. So there's a lot of control. And for the most part, the title companies want it running through their office, not through an independent escrow officer or the law firm.

**Tegus Client**

The best way to prevent wire fraud is to call the recipient of the wire and know your customer and make sure if you don't know them, you've verified who they are.

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Yes that's now become part of the protocol.

**Tegus Client**

Verbal verification, there's no work around.

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Right.

**Tegus Client**

And when you say the title companies want to control escrow, do you mean title agencies or do you mean Big

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Four title underwriters?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

No, the major title underwriter, the agents, again, part of it for the agents is that they don't want the responsibility. They don't want the liability also that's associated with it. So they are very comfortable having the funds run through the offices of the title companies.

The issue comes into play as you're talking about New York, and maybe New York City. So for the major title companies, they have their own offices here in the major cities. Sometimes when you get to more suburban areas or outside of a large metropolis like New York, the large title companies, Fidelity, First American, Stewart, they may not have an office there, and it may have to be going through the agent who is handling the transaction. There may not be any choice.

**Tegus Client**

I view the bigger opportunity set is probably being residential then commercial, just in the sense that commercial clients are going to be much more sophisticated and price-sensitive and probably have stronger relationships.

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

I mean there are several differences. Number one, the size of the commercial deals are extraordinary. And the other part is on the residential side, you're talking about volume compared to commercial, which is a much smaller amount, but just much larger transactions. And you're right, when you talk about commercial, they're at that heavy connection.

Most large law firms, most large agents, they are connected to very specific title companies. But on the residential side, not so much. I have no way of knowing who I should be working with. So residential is a very different animal than commercial. Commercial is pretty well set. Residential, as you mentioned, that could be open to anybody.

**Tegus Client**

One basic question I haven't been able to get a clear answer on and maybe it's a difference state by state. But I recognize that title insurance rates are regulated.

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

I mean there are several databases available. But New York, for example, is the filed rate state, which basically means that all the title companies are writing their policies, basically are charging the same premium for the same dollar amount of a policy.

But there are a lot of states that don't have filed rates. And then it becomes much more of a negotiation at to what those rates are. But in a major state like New York or California, those rates are filed, but you go down to a state, say like Virginia, Rates are not filed. When I was going around doing seminars for the UCC insurance product.

Initially, it was my belief, which was an error that the UCC rates were always going to be much less, which were filed than the real estate rates. But if I go out to a state like Virginia, which does not have filed rates. So that becomes negotiated. But in a state like New York, yes, they're filed rates and everybody is playing by the same numbers.

**Tegus Client**

If one wanted to charge less than what their filed rates were, are they allowed to? Or they can't charge more or they have to charge the filed rate regardless?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

No, filed rate is the filed rate with New York, the New York Land Title Association, along with actually get the agency now. It's the financial something now which regulates the title industry.

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**Tegus Client**

The CFPB.

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

CFPB is special. There is a New York agency, which now has taken oversight of I think not only the banks but also the title industry. And no, basically, the title industry now basically is determined by service and technology. And the technology has become a major part of how the various title companies distinguish themselves.

Service, of course, has always been a part of it, how quickly you can get a commitment out, how quickly you can make the terminations and be able to issue commitments. But the technology now has added a component that really wasn't there five years ago. And it's basically allowing attorneys to do a lot of work while off of tablets and off of their phones and off of their laptops, which was not the case of five years ago.

So yes, part of what has changed in the last five years when I first came into the industry, 20 years ago, it was a lot of perks given to customers, ball games, theater, all types of things. That has now been eliminated. It started, I think, in the state of Washington and then grew to California and now New York. Such things are not allowed anymore.

**Tegus Client**

This is RESPA specifically?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Yes. And you can no longer treat your customers. Basically, in all honesty, it became insane, the giveaways that were being handled by the title companies, and it's now forbidden. So the outings and all of the other perks, which became associated with the title industry are no longer available. So in many ways, it really just simplified the competition that you're now dealing with service and as I mentioned, technology now, which has been added and has become a major piece.

**Tegus Client**

So I want to go there, but just before we do because there are some things that I don't fully understand about what we discussed so far. When a state like New York or California is a filed rate state. Can you maybe explain more about how that works?

So does each title insurance underwriter have their own filed rates? And if so, if a company wanted to charge less than competitors, could they do it just by filing a filed rate structure that was less but they'd have to just stick to it?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

No. The rates are set through the various associations of the title industry in that particular state, the New York Land Title Association, so the rates are set. There is no variation of those rates. There can be some variation depending on what is and isn't filed regarding certain types of endorsements. There is an issue sometimes of adding work fees depending on the complexity of the transaction, but the actual rate for lender's or a buyer's policy, those are set. That competition is not there. The rates are set.

**Tegus Client**

Why does that exist? I understand why a rate cap would exist legislatively, especially when you have kind of an oligopoly business structure of basically four big title underwriters that control 90% market share. I'm not sure if it's a legislation or policy, but why would it make sense to have regulations that say a competitor can't charge less? Like who does that benefit?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

I think it's basically being thing that this is a determination by the state, allowing the title companies to operate within that state and setting the actual dollar amount that can be charged. New York has relatively

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high rates compared to some other states. It's the nature of the industry, it's been called into question over time as to why that is the case?

Why it is set? And why it is so regulated? You may have read periodically, where the industry is again, sometimes states want to take over that business and saying we don't need title companies anymore the state can now assure these transactions. It's a regulated industry. Very simple. It's a very profitable normally industry, but it is a regulated industry, technically trying to protect the consumer.

**Tegus Client**

I'm not saying I would do this, what would happen if I went and started a title insurance underwriter. And I got whatever approvals I need from the state and put whatever capital reserves I need to and whatever kind of account I need to be considered a legitimate underwriter. And let's say, the filed rate is 35 basis points. And I say I'm going to charge 25. would I actually get in trouble and lose my license for charging the consumer less and giving them better deals.

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Yes. Your licenses would become under question. That's why in states where the rates are not final, it's totally competitive to the point of the rate per 1,000 can be ridiculously low, but that's the competitive nature of it.

**Tegus Client**

Like if you look at a policy, let's just say, a random policy costs \$1,000 of the \$1,000 at least in residential, \$850 of it is going as a commission to the agent who is not really doing much. And then you have \$150 of the \$1,000 that's actually going to the underwriter who's providing the insurance. And of that \$150 of the \$1,000 that a person paid, the underwriter is probably making a 60% margin.

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

You just spelled out the very interesting nature of underwriters and agents. And it's the nature of the industry.

**Tegus Client**

So let me ask you, in New York, if you had unlimited time and money and just wanted to maximize how much profit potential you can make with your time or with your money? And maybe those are two different constraints time versus money. What would you be doing and you could do anything you want in this industry. Where do you think the ripest opportunity is? Would you start a title agency? Would you start a business that helps with technology on this stuff, an underwriter? Would you not touch any of it?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

I can only deal with New York. There are what they call super agents dealing with the commercial side again, who do very well. And they've built up a customer base and they basically have a unique flow. Most of the bigger agents have deals with more than one major title company.

And actually how they decide what goes where, I can't really tell you. But that sometimes becomes a matter of service, who they're more comfortable with. And who they feel will help them the most to satisfy their customers. There was a period of time when some of the major title companies, particularly in the large metropolitan area like New York, preferred to use their in office staff to handle deals.

But I've been seeing more and more advertising and so forth of the title companies really advertising to the agencies. They're looking to pull in more agents. And I think that's simply a competitive issue now. So yes, profit and loss, I can't really speak to that. But agents do very well, but you're talking about having to build up a base of business. And if the law firms, for the most part, determine where the business goes.

**Tegus Client**

And that's on commercial specifically?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Yes, I don't believe that would be the case on the residential side.

**Tegus Client**

Yes, in residential, I think it's the realtors.

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Absolutely.

**Tegus Client**

Do they have the same concept in commercial as residential, where title agencies form JVs with the referrer be it a layer or a realtor and say, we know unrest but we can't make a direct commission. We can't pay you the referrer a direct commission, but we can give you ownership in this JV, and you can have a profit share. But it's not tied to any one deal as a loophole around RESPA. Does that happen in commercial too? And is it happening with the attorneys?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

My answer would be I've heard rumors of such things. There are certain things which are not allowed, whether or not they're happening or not, I really can't speak to it.

**Tegus Client**

Maybe let me ask it more broadly, how does one title agent differentiate themselves from another?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Becomes a connection. You become very comfortable dealing with a particular member of the staff, you know that you can rely on them to push their deal particularly through. Commitments can become very complicated, and little things can really stall. Getting a deal done and getting it closing on track and dealing particularly on residential stuff.

No little local laws that require you to do this and that in order to get approval to get a deal done. It's relying on that party. You don't want to just be making a general call into an office and hoping that they pay attention to you. It's building up a relationship with normally a very particular member of that firm.

And I've seen individuals move from one agency to another. And there's no question, just like when a salesperson moves from one title company to another. They tend to take business with them because people feel very comfortable dealing with that party and feeling that they will take care of them and get around the small issues that need to be dealt with.

Building up that clientele that takes a fairly long time, that takes very long time. The agents that I've known now for more than 20 years, they've been around for quite some time. But again, there's also a lot of movement of moving from one agency to another and knowing that they're taking business with them.

They've got a book of business that they're taking with them. And the same on the actual title, the title agencies, the title company's side. You got someone moving from First American to Fidelity to Steward, they're all taking business with them. Starting from scratch pretty tough.

**Tegus Client**

You mentioned at the beginning of the call in terms of the idea of like the question of who does escrow. You mentioned in major metropolitan areas, the title underwriters who wanted it to run through their office, but maybe not as much in residential, in suburban or rural areas. Who do you think would generally be doing escrow in those areas?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

The attorneys.

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**Tegus Client**

Are there any independent escrow agencies that just do escrow?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Sure. There are escrow companies around that will just handle escrow, partially because sometimes the parties involved or the attorneys involved are just not comfortable or depending on their malpractice insurance. They'll basically said don't do that. So they will look for someone else to carry it. And again, if and when possible, they love with the title company that they're working for to handle it for them.

I mean the exposure on handling escrow is tremendous. If you make a mistake, not only in case we get hacked, but even just who's supposed to get the money and how much of the money is supposed to go, it requires a lot of accounting and a lot of law firms just don't want to handle it.

As I mentioned about eight years ago, I worked with several people within First American, we did a bunch of seminars down in Florida. We traveled around to about five states. And part of the presentation with that particular group was directed to the law firms, trying to verify protections that they have for their Internet connections and so forth.

And trying to make sure that if, in fact, they did handle escrow funds technically on behalf of the title company that they were doing so and we're properly prepared and had enough have tech guards to be able to handle escrow funds.

**Tegus Client**

When an attorney handles escrow, and they mess something up. The way this would probably work is they would get sued and their malpractice carrier would have to cover it?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

But they're technically representing the title company. So it doesn't bode well for the title company. Technically, their agent has that type of problem. And if the title company is not wanting to have that type of negative PR.

**Tegus Client**

And what about when it's an independent escrow company, an independent escrow agent from like an escrow only company?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

They're taking it on. Normally, they are bonded and so forth, either one of those escrows companies need to investigate all of that, that they are properly bonded to be able to handle the funds that they've already deposited.

**Tegus Client**

Do you think in your experience that title underwriters, and maybe it's different because there's four of them, but do you think the title underwriters, if they had a third-party escrow company would they want to hand that off if they felt comfortable that it was fully bounded, insured.

Or had reserves or whatever was needed to know that they don't have to worry about the risk because escrow company is owning it. And going to make it easy if there's a screw up to make it right. Do you think that there's an appetite for that or they don't even want to deal with this?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Well, I think that becomes a matter of they want to be able to show their customers that they're capable of doing that. I think by handing it off to an escrow company, it's so much like you're giving up a responsibility that you should be able to handle. So I'd be very questionable whether or not any of the major title companies would be willing to do that.

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But the fact that they've spent a lot of money creating all types of protection regarding anyone trying to hack in. I know I used to actually sit in our office near where escrow went through. And there was a huge amount of confirmation, as you mentioned, about phone calls and about confirmations of numbers. And the quickly of getting the last minute phone call changing something, a red flag to say the least.

And I'm sure it's still going on. I have a feeling there's less of it when it's being handled by the major title companies, but I have a feeling that it's still being handled by locals. There's still some of that going on. And you're talking about a lot of money.

**Tegus Client**

And title insurance underwriters get paid an additional fee when they do escrow? Or is it all included in their regulated title insurance rates?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

I believe there is a fee for escrow. But like certain things when you're doing a transaction, that's outside of the premium, which is filed. That's something that I'm assuming it would be negotiated. Now the part that's filed is the premium based upon the coverage of the policy. Other services and so forth, they'd be things that could be negotiated.

**Tegus Client**

If a title agency wanted to do escrow, would the underwriter allow them to, if they could prove that they were capable of it, like they had a burning desire to do it?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

I assume that could be negotiated. I know what the preference would be as for the residential side because of the volume of the title company is may be more receptive. On the commercial side, my answer would be no. But on the residential I could see them being, again, if they're comfortable that, the law firm normally, has the protection and is be able to do it.

And part of this becomes a matter of relationships. If it's a long-standing agents that they have a history with, which have shown themselves to be capable of handling this type of thing and doing it correctly, they'd probably go along with it. So it really is an industry based upon relationships, really is.

**Tegus Client**

So I'm assuming escrow services are not governed under RESPA?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

There wouldn't be anything for them to be regulated for.

**Tegus Client**

What if somebody started a title agency where residential or maybe commercial, but let's just say residential first, where the main referral partner generally is realtors. And they say to the realtor would love to do your title work. And we can't pay anything for the referral fee because of RESPA. But we also do escrow work. And if you send us the escrow work, we will pay you a referral fee for the escrow work. And you could send us escrow with that title, but we happen to do both. Would there be anything wrong with that under RESPA?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

I mean, you'd have to be a licensed official agent of one of the major title companies. I could see it possibly running into some prohibitions possibly even under the license agreement between the title company and the agent. That would be based upon that relationship.

**Tegus Client**

So I guess it's really a question, though, with the relationship and what you negotiate in your license agreement. So if the title underwriter is willing to allow it to happen, you don't see a RESPA issue with it?

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**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Probably not, but it's not being impacted by what's being charged on premium. But the industry has had major issues in the past regarding JVs and such. So there is a great deal of concern and people are very watchful about things that may be happening, which are not totally upfront. Part of it is if you do everything upfront and everything is presented accordingly, that's one thing. The issue in the past had been some JVs that were created in my understanding that no one knew anything about.

**Tegus Client**

So in the research I've done so far on the residential, side JVs are rampant and widely discussed and there seems to be a view that they are a legitimate workaround RESPA. Like if you ask me, not as an attorney, just is like from a common sense perspective, it is a widely known like loophole that's being exploited.

That is against the spirit, but maybe okay based on the letter of RESPA. That's what it strikes me as. They're doing these JVs on the residential side, title agency to realtor, where they say it's not directly linked to any one transaction because you own profit and/or loss of the JV. And as long as you get the document signed, acknowledged it from the client, the home purchaser acknowledging that there's this affiliate relationship than everything fine because it's not linked to a single transaction.

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

That exposure is always done every transaction?

**Tegus Client**

That's what it sounds like. Maybe not every transaction, but it sounds like this is a very widely used system across the country in residential.

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

I know going back a long time, probably more than 15 years. There were some issues about JVs and some of them were deemed to be illegal because they were not properly exposed. And I think if things are not necessarily upfront, they can run into some regulatory issues.

**Tegus Client**

I mean, but you see where I'm going, about the pay referral fee for the escrow work, you're technically paying them. If that idea were to work, you would be paying them a referral fee for escrow work.

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

And that's why you get into trouble when you start using the term referral fee. New York State is very anti-referral-fee. I can tell you from the legal profession and other professions. They don't like basically someone getting paid for nothing. And I think I can understand that it may be out there, but I think is always a potential risk of being regulated and potentially if they decide to go after those types of JVs as they could all find themselves in some type of trouble regarding any licensure from the state.

**Tegus Client**

This whole thing is like it's funny in a way to me. Just as an outsider trying to learn about this industry because it's saying, well, on one hand, we have to make sure that people aren't getting paid for nothing and to protect consumers.

But at the same the regulator is going to look at this and say but we can't allow people to charge a lower price even though that is the ultimate thing that helps the consumer because convincing us of what to do are being paid by the big Four, and they don't want the margins cut.

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

I have to tell you, New York state and the title industry have been at loggerheads for quite some time. There

have been efforts to truly regulate the title industry, losing the ability to entertain clients with a major, major blow to the title industry. Although in all fairness it saved them a hell of a lot of money because they were not dealing out all of these perks. But New York is one of the states that basically has tried very heavily to regulate the title industry.

And there was a point in time about five years ago, when there were some proposals within the legislature to take over the issue of title insurance by the state. It didn't go very far, but there was that discussion and that discussion has come up in some other states as well. I'm not aware of any state that's actually done it.

But periodically, that comes up in discussions. The most recent discussions have been about opinion letters. And I'm not sure if you've seen the correspondence about that. Opinion letters have always been out there as a replacement for title. It's attorneys basically doing the same thing supposedly that a title company would do, reviewing the transaction.

And then writing their opinion letter after whether or not it is possible to transfer the title to the buyer. Obviously, being an attorney writing it, there charges could probably be much less than title insurance. The question is just how valuable that opinion letter is if and when something goes wrong.

### **Tegus Client**

I've spoken to somebody who's trying to do it. And I said, well, what if something goes wrong, and he said, "Well, you're covered by the attorney's insurance policy."

### **Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Maybe.

### **Tegus Client**

That struck me as something that might work in the short term, but maybe not in the medium and long term if it ever caught on. Like devil's advocating with you a little bit to tell me if you poke holes in this.

So let's say you get the regulators are okay with it, and you start doing this as a widespread practice or attorneys start doing this. And then you wind up having a whole bunch of people effectively giving title insurance via opinion letters, and I know it isn't title insurance, but it's just the product via an opinion letter.

So instead of having four companies do it, you might have 4,000 in a state. And you're going to have a few that do it well and a few that don't. And of the 4,000 attorneys maybe you have 500 that don't really know what they're doing and just kind of do it and write these policies.

And then they have high losses because they didn't really do the research. They wrote an opinion letter out of their small firm's office with no backing and no research. And then the claim comes in and they go to their insurance. And the insurance company is going to say, "Well, yes, we insured, but we never really thought you'd be doing this." And there'll be a debate about whether or not they pay.

And either they pay or they don't. If they pay, they're going to start looking and asking attorneys when they write them insurance policies. Are you writing opinion letters for title? Because if you are, we can't charge you the normal rate. We have to charge you three times the normal rate because you're taking on a lot of risk, the same way that they would do for a doctor, if the doctor is a surgeon or a non-surgeon.

If they're a surgeon, malpractice insurance is going to be three times if they're a non-surgeon because the odds of having a problem are substantially greater if you're a surgeon than if you're just seeing people in your office. Or option B, so option A was the insurance pays, but they realize that they underwrote a risk that they didn't mean to underwrite and they have to raise premium. So that's option A.

Option B, they don't pay because they say, this wasn't what we signed up for. And then the consumer paid an attorney for a work product that was a substitute for title insurance and didn't actually get the benefit of having a risk mitigated. And then the regulators come in and say this doesn't work anymore.

### **Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

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Well, opinion letters are a legal product, which is not being regulated by the state for the most part, opinion letters are written about a whole lot of things. I worked on the UCC side, Article nine. And the UCC insurance that we were writing, basically, you could get an opinion letter on the UCC transaction.

But most of the time, it won't cover all of the aspects of basically verifying proper security interest in a particular personal property. The same thing is going to happen on the title side. Attorney is going to have to wind up using a title company to do the necessary searches to verify that someone is able to transfer a good title to real estate. The other question is what happens when things come up in the process or after that the attorney didn't know about like mechanics liens and things like that.

Where all of a sudden, there's a potential claim. Now they're going to write an opinion letter. You're not going to see something covering like a whole title policy would be, which very specifically fills out what they are insuring and what they're not insuring and an opinion letter is not going to go into that detail. It's a way of trying to get a cheap coverage, and I don't think it's going to work.

I was in the public records business for a long time regarding searching and filing. And then for the last 20 years, I was in the title industry. Most transactions go along merrily, and there are no problems. Money is borrowed, a period of time goes by, money is repaid, everybody's happy.

And no one ever looks at the original documents. When something goes wrong, that's when everybody goes back to the original document and say, what did I agree to and who can I blame now that things have gone wrong. It's a small percentage.

And technically, that's the nature of insurance. You're betting that this particular transaction won't go wrong. The same thing with opinion letters. Attorneys are willing to issue opinion letters, but the hope is nothing goes wrong. If it does, they have huge exposure.

#### **Tegus Client**

I totally agree, with your point of most things don't go wrong, but when they do, it's high impact. And that's why people pay lawyers to write contracts in a careful way is because the 1% of the time or whatever it is, when it goes wrong, it's like a major impact.

#### **Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

It's always the joke. No one ever looked at those papers, but if something goes wrong, a lot of a sudden, we got to go back to the paper we signed six years ago, what the hell we agreed to and who made the mistake, so we can go after them.

I mean, anything could be totally wrong, I know in the public records business, we sometimes issues where you filed in the wrong name or your files in the wrong jurisdiction. But you know something, the transaction went fine. Everyone got paid off and no one ever paid attention to the mistakes that were made.

#### **Tegus Client**

On a totally different note, I'm curious, do you believe that title plants have value anymore?

#### **Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Yes, they do. They do because it basically short circuits the necessary searching that needs to be done. When you have data at your fingertips without having to go through local accounting researches and so forth if you have that database available to you by just hitting a keyboard on a computer.

That saves you a lot of time and a lot of cost. And you can always go forward from that date. You can basically say, All right, I'm good through nine months ago or three years ago, and you can search going forward, but you have all of that back stuff going because of the data that was already in place.

#### **Tegus Client**

I guess there's always something, but in a world where more and more counties have their land records online.

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### **Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Yes. But you know something, you'd be amazed. And when you start talking about residential, there's a lot of paper still out there. There were several companies that slowly but surely, we're computerizing. I know here in New York, slowly but surely started to get their stuff on paper.

There's some old paper out there. People have owned some of their properties, 40 and 50 and 60 years and some of that is still on paper. It's very difficult. Real estate is one of those things that ownership doesn't expire. It expires when you sell it. Otherwise, it stays on record. And not everything can be picked up immediately and particularly, God, you go into any rural areas. You're still working on measurements from a stump, 14 yards into the river.

### **Tegus Client**

I came to the conclusion that title insurance, while it does serve a purpose is just priced at such a level where it's a giant rip-off. And that was just my view, right? If I pay x dollars and I know that 92% of the money that I'm spending is really in waste for commissions and things like that, why do it? So I just really wanted to understand the title search myself.

I had a search done and I like try to really understand the mechanics of how it worked. And it was exactly as you described. There's a pipe in the ground, turn left, go 100 feet, turn right 40 degrees, go to this marketing, it was like really antiquated.

### **Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

And trust me, that particular one was never recorded anywhere on a computer. But it's the nature. I mean, it's easier in cities like a lot. It's easier when there have been transactions within a reasonable amount of time. So there's a history and there's documentation to work from. And that was certainly true in the work that I was doing regarding mezzanine financing. Where most of those deals were only five years, and you could trace back when the equity had been pledged.

### **Tegus Client**

So let's say I'm buying this house in the rural area. And I'm getting title insurance. The title insurer and they don't have online records. The title insurer is still going to have to send somebody to the courthouse to make sure nothing has been filed since the last date that they actually pulled documents on my house on this subject property. So if they're already sending somebody there?

### **Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Yes, you're going to have to deal with a location.

### **Tegus Client**

But where I'm going with this is, let's take two scenarios. Scenario A, company has a title plan. So they have this historical database that they haven't looked at my particular property for two years, but they already have this historical database that shows the 100 years starting in 2020 before. But they don't have 2020 to 2022.

So somebody is physically going to have to go to the courthouse anyway or not the courthouse but the recorder of deeds. Somebody is going to have to physically go to the office anyway to pull the last two years to make sure nothing new has been filed. So if you're already going. Why is there any value to scenario A, where you have '19/'20 to 2020, if you already have to send somebody there anyway.

### **Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Because if they had to go back to day one, potential of doing that to become very difficult depending on the complicated transactions in the past and the availability of that actual documentation, which could be a paper going back to 2000, to going back to 1942.

### **Tegus Client**

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So it might be in a different place, you're saying the paper?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Absolutely. It'll be in stored some place, could have been in a room like a burlap ground.

**Tegus Client**

So if you didn't have the title plant, you're stuck waiting for a government agency to go and take three weeks to get you the documentation you need them by then you've already caused a delay.

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

Yes. And there's also a cost factor there. When you start dealing with local searchers, particularly when you're dealing in an area that maybe there's only one guy who does it, that becomes a cost factor. You're going to wind up having to pay him probably a premium compared to someone who's one of a 10 in the jurisdiction and they're all available to do the same searching.

I was in the public records business. You got into a country where there was only one guy who searched the UCC records, for example, and he was charging a hell of a lot more than the guy who was working in a metropolitan area and had a lot of competition.

**Tegus Client**

When you talk about the technology advantages, what are they specifically?

**Former Chief Operating Officer - UCC Division at First American Title Insurance Company**

When I first got into the industry 20 years ago, a lot of the service companies, particularly the one I was working for at the time, had developed this new technology where attorneys could look at transactions and see the information regarding their commitments and searches and so forth online and they could do it on a phone or on a tablet or on a computer.

And there wasn't a great deal of acceptance at that time. And I'm an old attorney, all right? I go back to the days, and I always had a comment of attorneys like they charge by the pound. So the more paper you send them, the more they could charge. But there's been a transition. And what has happened was 20 years ago, the people who are doing these major transactions were maybe in their 40s and 50s.

And they have grown up outside of the technology. But within the last five years, a lot of the same technology has now been brought forward and even more so, more so perfectly for a phone or a tablet. But now the people who are doing these deals are now in their 40s and 50s and they grew up with the technology, they're much more receptive to it. So every little piece of technology and this stuff has improved every year.

They introduce something in 2019, that same piece of software has been enhanced in '20 and '21 and '22 and will be enhanced again in 2023. That's a major piece now of how you convince attorneys to work with a particular title company. How easy it is to work with their technology and how accessible it is. If they want to look at something while they're driving, they don't have to wait for the paper to be delivered.

And that's been a big change. That's the attorneys that you're dealing with now who've grown up with computers and know what the value of this stuff is and that moves transactions along very quickly. They're not waiting for the 25 pound commitment to be delivered to their offices.

**Tegus Client**

Awesome. Thank you so much for chatting. Goodbye.

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