

Claims Stories: Learning from the Mistakes of Others – Volume 2



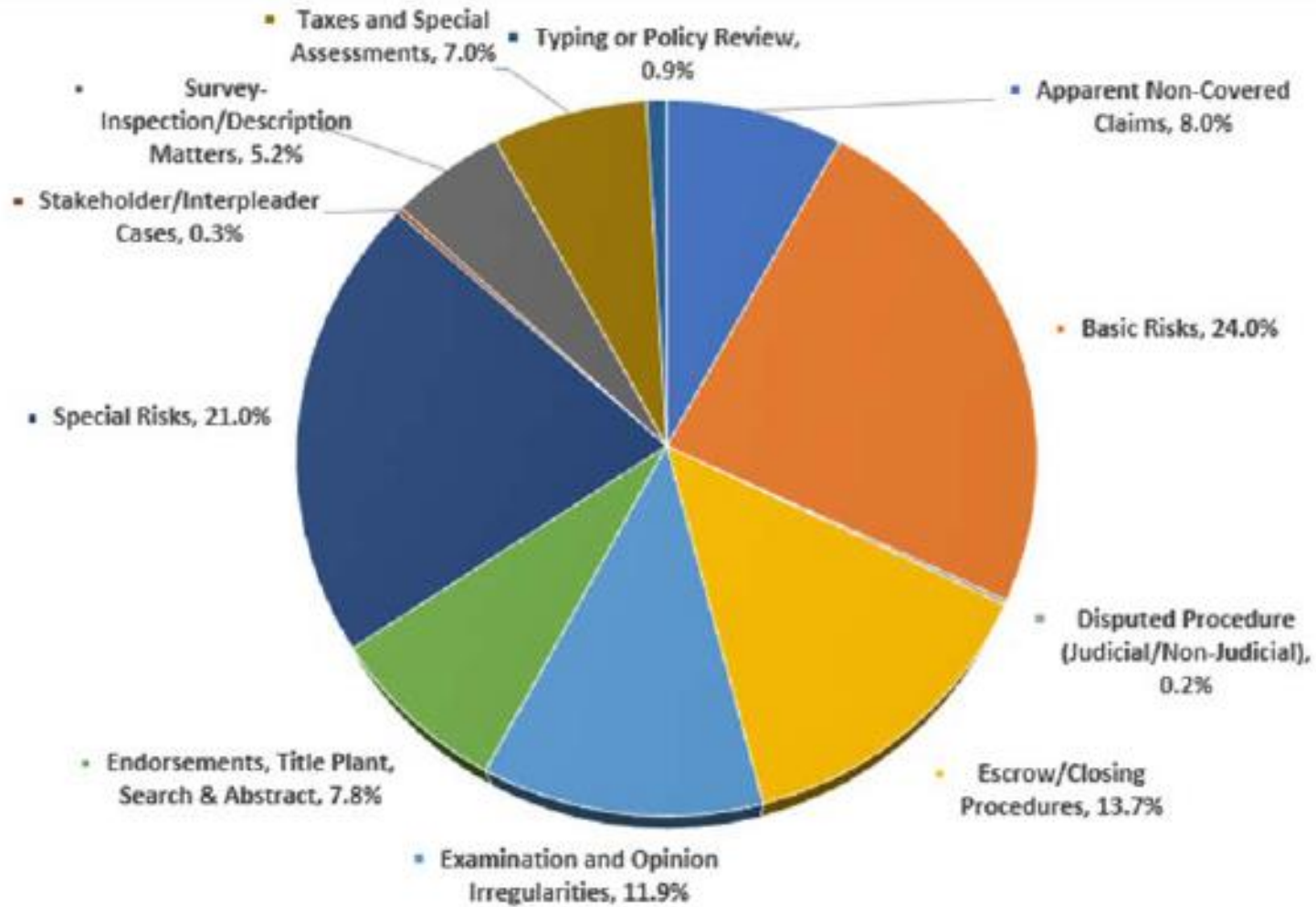
Bill O'Connell
Maryland State Manager



Daniel Lutz
Underwriting Counsel

Claims Basics

- What is a claim?
- Duty to investigate
- Loss determination
- Duty to Defend v. the Duty to Indemnify
- The Policy



Analysis of Claims and Claim Related losses in the Land Title Insurance Industry -- Milliman 2024



Common Process Errors

- Covered Claim – no process error
- Search
- Exam
- Underwriting
- Title evidence unavailable

Closing Protection Letters

- Protects Lender from defalcation or other settlement-related loss that results in the loss of priority or failure to obtain necessary documentation to establish the lender's lien.
- Read the lender's instructions carefully.
- Liability continues for one year.

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.

©2024 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF



First American Title™

THE CASE OF THE REFUSED RIGHT OF FIRST REFUSAL



First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.

©2024 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF



First American Title™

Bauxite	\$730.00	\$791.32	8.40%
Cotton	\$162.00	\$196.34	21.20%
Flax	\$172.00	\$192.32	11.80%
Textiles	\$243.00	\$310.48	28.00%
Wool	\$461.00	\$553.68	20.00%

- ## ALTA Owner's Policy Provisions Implicated:
- Covered Risk 2 – “Any defect in or lien or encumbrance on title’.
 - ROFR in the unrecorded lease was an encumbrance on the title.
 - Company incurred substantial attorneys’ fees in defending against the litigation.
 - Prevailed on summary judgment.

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.



Bauxite	\$730.00	\$791.32	8.40%
Cotton	\$162.00	\$196.34	21.20%
Flax	\$172.00	\$192.32	11.80%
Textiles	\$243.00	\$310.48	28.00%
Wool	\$461.00	\$553.68	20.00%

- Gas station parcel was marketed for sale. A tenant occupied the property at the time the property was listed.
- Lease provisions included ROFR in favor of tenant should the landlord decide to sell and outline specific instructions for timing and material terms that must be disclosed in the offer to the tenant before triggering the ROFR.
- Landlord goes under contract with third party. Sale closes and policy is issued to third party .
- Former tenant then initiates litigation claiming that it was not properly noticed and its ROFR was not triggered.

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.

©2024 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF



First American Title[™]

What could we have done differently?

- Know Your Deal
- Who are the parties involved?
- How is the property currently being used?
- Any party with possessory interest? If so, how are we dealing with that interest, e.g., policy exception, contract subject to existing lease, vacating property?

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.

©2024 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF



First American Title™

THE CASE OF THE FARMER, DEVELOPER, AND LOCAL LENDER



First American Title Insurance Company makes no express or implied warranty, respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.

©2024 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF



First American Title™

Bauxite	\$730.00	\$791.32	8.40%
Cotton	\$162.00	\$196.34	21.20%
Flax	\$172.00	\$192.32	11.80%
Textiles	\$243.00	\$310.48	26.90%
Wool	\$461.00	\$553.68	20.00%

ALTA Owner's & Loan Policy Provision Implicated:

- Covered Risk 2(a)(i) – A defect in the Title caused by forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation.; and
- Covered Risk 2(a)(ii) – A defect in the Title caused by failure of any person or Entity to have authorized the transfer or conveyance.

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.

©2024 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF



*First American Title*TM

- We're all friends . . . Right?
- The farmer looking to down size
- The developer looking to grow
- The local lender who lends on relationships
- The fateful lunch
- Enter regional bank
- The search and the “purchase money deed of trust.

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.



What could we have done differently?

	5730.00	\$791.32	8.40%
Bauxite			
Cotton	\$162.00	\$196.34	21.80%
Flax	\$172.00	\$192.32	11.80%
Textiles	\$243.00	\$330.48	36.00%
Wool	\$461.00	\$559.68	37.80%

- If we are going to read it all ... we need to read it all.

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.



First American Title™

A zombie hand with pale, cracked skin and bandaged fingers reaches up from a grave. To the right is a large, cracked, and weathered tombstone. The scene is set in a grassy field under a dark, stormy sky.

THE CASE OF THE ZOMBIE LITIGATION

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.

©2024 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF



First American Title[™]

Bauxite	\$730.00	\$791.32	8.40%
Cotton	\$162.00	\$196.34	21.20%
Flax	\$172.00	\$192.32	11.80%
Textiles	\$243.00	\$310.48	26.00%
Wool	\$461.00	\$553.68	20.00%

ALTA Owner's Policy Provisions Implicated:

- Covered Risk 2 – “Any defect in or lien or encumbrance on title”; and
- Covered Risk 3 – “Unmarketable title”

Litigation ensued

- Company denied the claim but paid a settlement to the insureds following a bad faith claim.

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.



- Unrecorded private road maintenance agreement entered into between 5/10 owners along a private road.
- One signatory to the agreement paid for improvements and then initiated litigation against the remaining signers to recover funds. No judgment entered, case left open but no docket entries for 10 years.
- Developer purchases one of the properties on the private road from one of the signatories. Becomes aware of the litigation and pays a settlement to the plaintiff then files a claim.

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.



What could we have done differently?

- Do we have an obligation to investigate each and every circuit court matter against an owner in the chain of title?
 - What if no judgment is entered?
 - What if the docket does not show a resolution to the litigation, i.e., dismissed, settled, defense verdict?
- What options do we have when we locate litigation that may implicate title?
- What kinds of things should we be investigating when insuring/underwriting private roads?

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.

©2024 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF



First American Title[™]



THE CASE OF THE HIJACKED ENTITY

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.

©2024 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF



First American Title™

Commodity	Current Price	Previous Price	% Change
Bauxite	\$730.00	\$791.32	-8.40%
Cotton	\$162.00	\$196.34	-17.47%
Flax	\$172.00	\$192.32	-10.57%
Textiles	\$243.00	\$310.48	-21.75%
Wool	\$461.00	\$553.68	-17.28%

ALTA Owner's Policy Provision Implicated:

- Covered Risk 2 – Any defect in or lien or encumbrance on the Title. Covered Risk 2 *includes, but is not limited to*, insurance against loss from:
 - a. a defect in the Title caused by:
 - i. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - ii. the failure of a person or Entity to have authorized a transfer or conveyance;

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.



- Bank forecloses and bank's special purpose Maryland entity takes title.
- Fraudster creates entity with the exact same name but forms it in another state.
- Fraudster markets and sells the property to unsuspecting buyer

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.



What could we have done differently?

Bauxite	\$730.00	\$791.32	8.40%
Cotton	\$162.00	\$196.34	21.20%
Flax	\$172.00	\$192.32	11.80%
Textiles	\$243.00	\$310.48	26.90%
Wool	\$461.00	\$553.68	20.00%

- Every entity will have formation docs that outline how the entity is structured and managed. For example: LLC operating agreement, corporate bylaws, trust agreement, etc. You must always require receipt and review of these documents.
- In addition to understanding the structure of any given entity, we also need to know who has signing authority specifically for our insured transaction.
- Often, we will get requests for a third party to sign. You will need to vet these third parties and be sure that the entity's signing authority has been appropriately delegated.

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.



*First American Title*TM

THE CASE OF THE VANISHING POND

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.

©2024 First American Financial Corporation and/or its affiliates. All rights reserved. NPT-BAF



First American Title[™]

Bauxite	\$730.00	\$791.32	8.40%
Cotton	\$162.00	\$196.34	21.20%
Flax	\$172.00	\$192.32	11.80%
Textiles	\$243.00	\$310.48	28.00%
Wool	\$461.00	\$553.68	20.00%

- ## Homeowner Policy Provisions Implicated:
- Covered Risk 6 – ‘Your title is defective’
 - This was not a covered claim. The issue is more of a contractual dispute between the developer and the insured.
 - The policy did not insure any rights to ‘Reserve A’ or any water rights or designation as a ‘lake front’ lot.

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.



The Story

- Builder and buyer go under contract for new construction home. Contract includes provision/add-on that the home will be a 'lake front' home at additional cost to the buyer.
- Just prior to signing of the contract, HOA conveys a portion of 'Reserve A' back to the developer to create two additional lots.
- The newly created lot now blocks the buyer's access to the pond/lake.
- Buyer submits a claim based on 'no lake access'.

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.

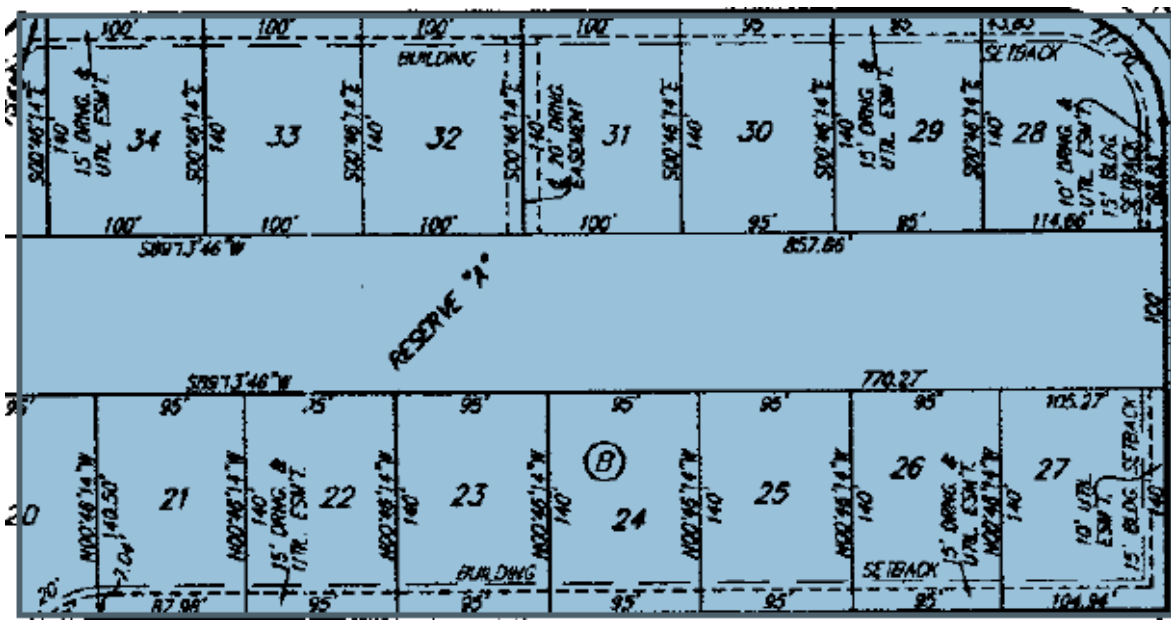
©2024 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF



First American Title[™]

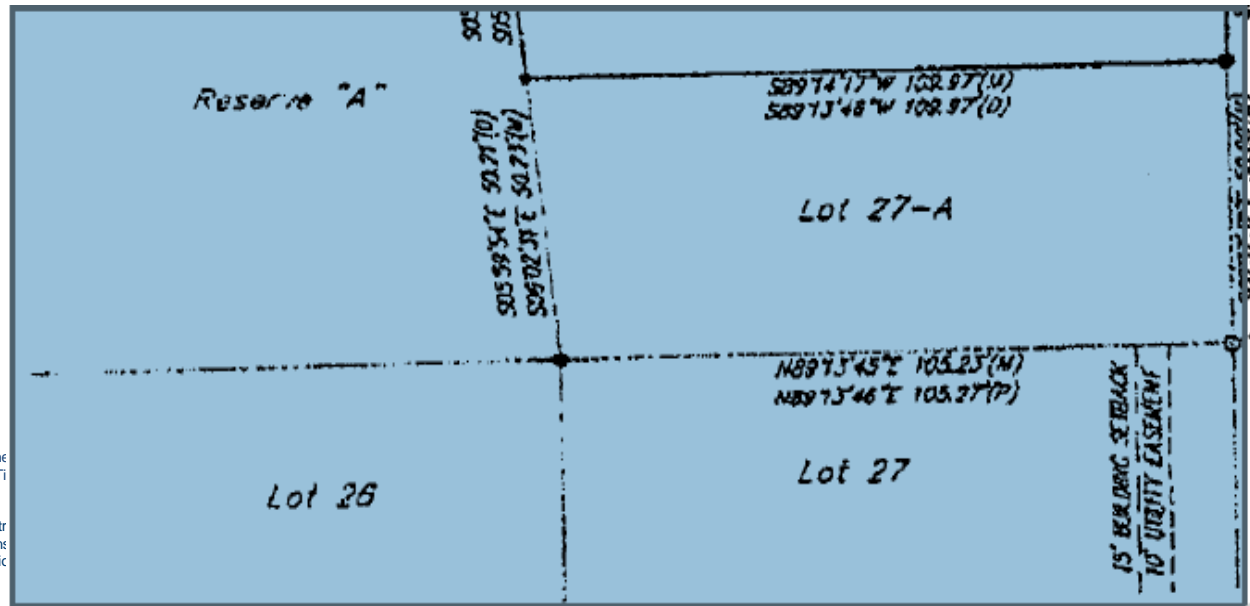
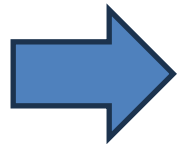
The Plats

Bauxite	\$730.00	\$791.32	8.40%
Cotton	\$162.00	\$196.34	21.20%
Flax	\$172.00	\$192.32	11.80%
Textiles	\$243.00	\$280.48	16.00%
Wool	\$461.00	\$553.68	17.80%



← Initial Plat

Plat conveying 'Reserve A'



First American Title Insurance Company makes no express or implied warranty respecting the no responsibility for errors or omissions. First American, the eagle logo, and First American TI trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as an offer of insurance. No one should rely upon anything contained herein when making legal and/or other determinations. Third party should consult with an attorney prior to embarking upon any specific course of act.

What could we have done differently?

	5730.00	\$791.32	8.40%
Bauxite			
Cotton	\$162.00	\$196.34	21.80%
Flax	\$172.00	\$192.32	11.80%
Textiles	\$243.00	\$310.48	26.90%
Wool	\$461.00	\$553.68	20.80%

- We should closely read the purchase and sale agreement when it comes in. Not all terms will be relevant to insuring the title but in the course of your settlement services, it's important to have an intimate understanding of the terms.
- Even if we had caught that the portion of 'Reserve A' had been conveyed, would it affect the policy? Assume Exhibit A specified that we were insuring only 'Lot 27'.
- How would your answer change if we insured something like Lot 27 'together with access and use of 'Reserve A'?

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, and First American Title are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything contained herein when making legal and/or other determinations regarding its practices, and such third party should consult with an attorney prior to embarking upon any specific course of action.



First American Title[™]

Any Questions?



First American Title™