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If You Are Taking a Distressed Seller to "the Cleaners," You May Be Setting Yourself Up for a So-Called "Fraudulent Conveyance" Claim ****UPDATE****

Just days after we sent out the most recent [Plain & Simple](#) on the fraudulent transfer risk inherent in real property acquisitions from distressed sellers, there was an important development in this area, which we felt merited a follow-on distribution.

As we mentioned in our February 1, 2010 [Plain & Simple](#), we had heard that title companies were leaning toward abandoning creditors' rights coverage on an industry-wide basis by the end of 2010, even for transactions that present minimal fraudulent transfer risk. That seems to be happening sooner rather than later. The ALTA Board of Governors voted just two days after our [Plain & Simple](#) to decertify the customary endorsement that had the effect of providing certain creditors' rights coverage. The ALTA Board of Governors is a national trade association for the title insurance industry and although as to coverages, it only offers recommendations to its members, shortly after the resolution was adopted two major title companies followed ALTA's lead. First American officially decided that it would no longer offer the endorsement for any transaction, and we have been informed that Fidelity is doing likewise, but has not yet made an official announcement to that effect. Some coverage would remain - for prior transactions in the chain of title - but the coverage for your purchase of property from a distressed (or even financially healthy) seller will no longer be provided by these two major title companies, with perhaps others to follow their lead.

This seems to resolve the issue of title insurance coverage (i.e. it is no longer available or will soon no longer be available); however, please keep in mind that, as we alerted you to in our prior [Plain & Simple](#), there are alternatives to addressing the fraudulent transfer risk other than title insurance, some of which we touched upon.

If you have a need for legal advice on any of the above matters, please contact any of the following partners in our [Distressed Real Estate Practice Group](#):

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