



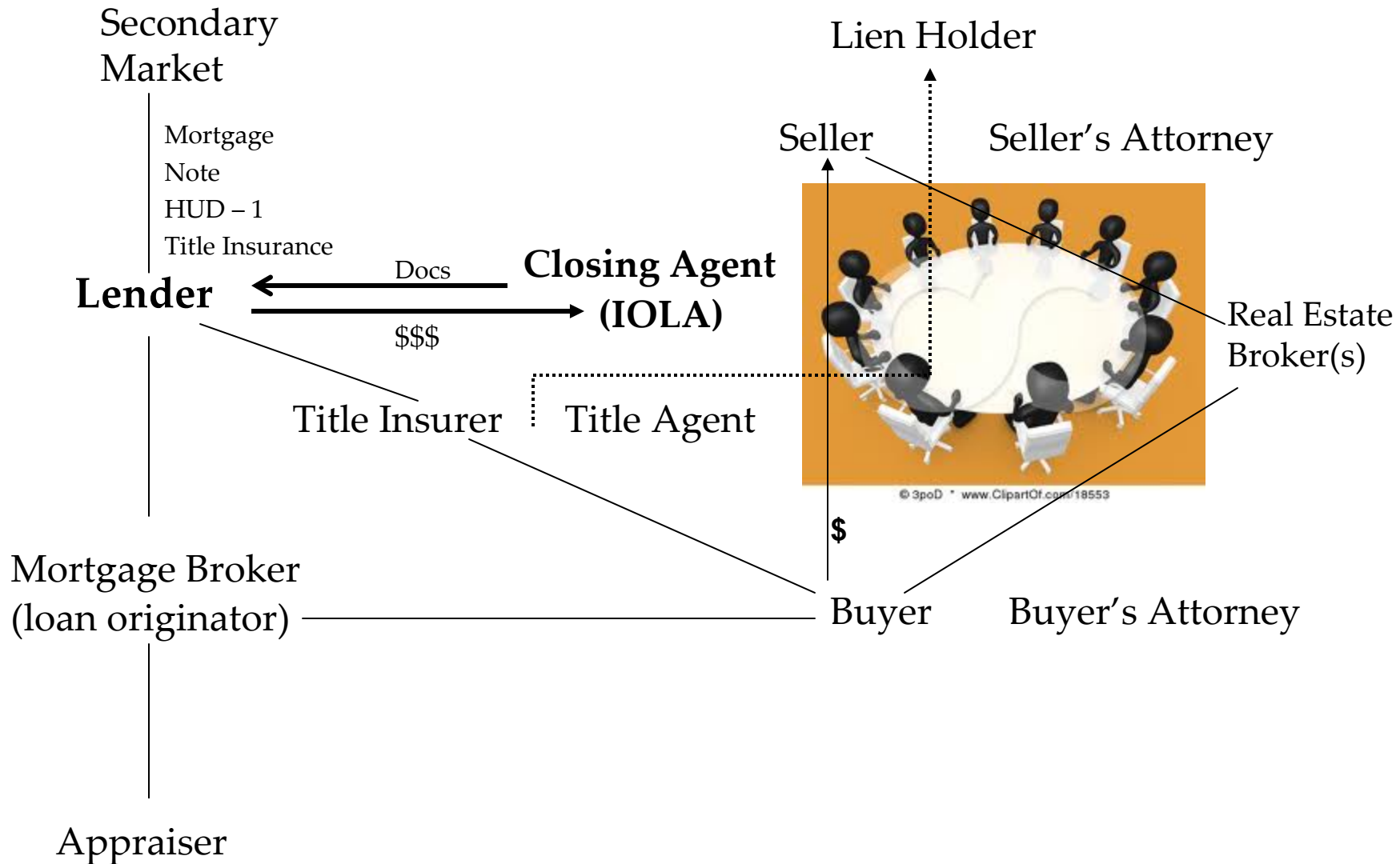
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*American Conference Institute's 7<sup>th</sup> National Forum on:  
Preventing, Detecting and Resolving Mortgage Fraud*

# Relationships



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# Settlement

(New York)

## Title Agents

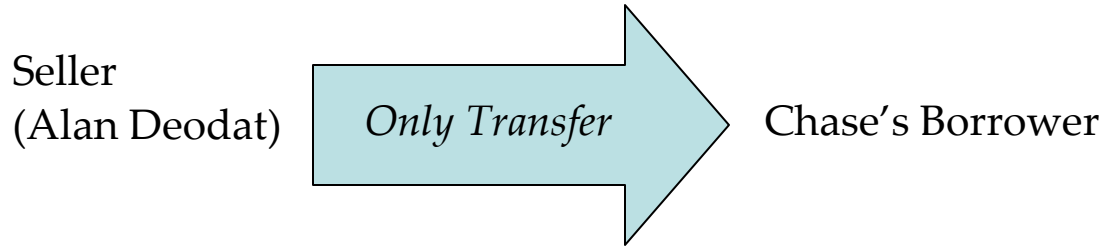
- Mark-up title report and issue title policy
- Notarize signatures
- Pick-up and deliver payoff
- File satisfaction and record mortgage
- No Closing Protection Letter

## Closing Agents

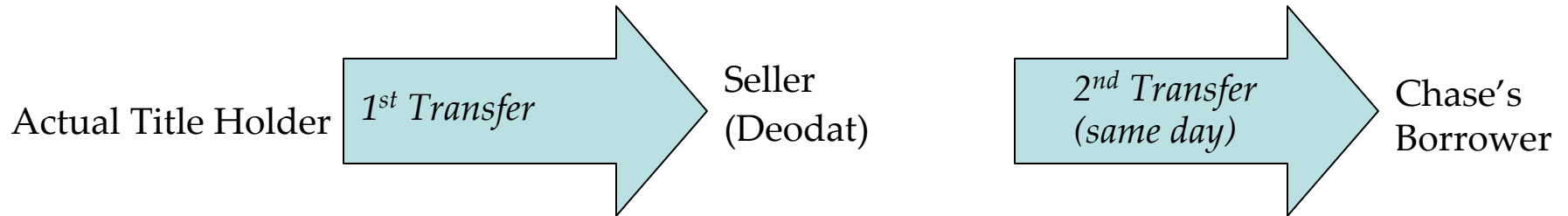
- Review title report and confirm first lien position
  - Prepare HUD-1
  - Disburse loan proceeds
  - Deliver signed documents
  - Protect lender
    - Closing Instructions (contract)
    - Duty of loyalty (fiduciary)
    - Duty of care (attorney)
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# Causation Issue

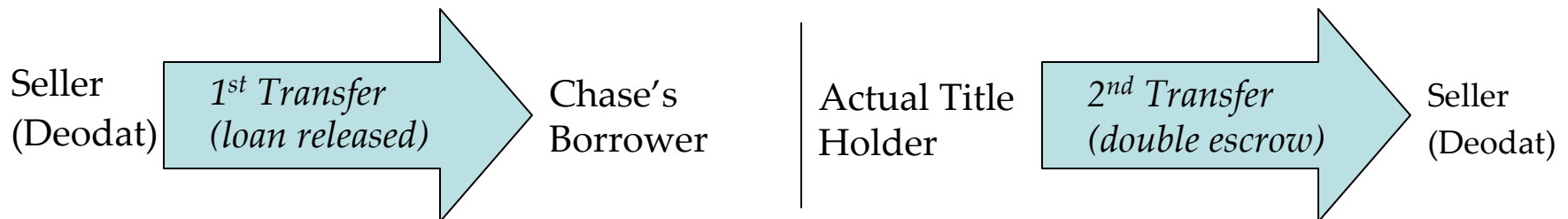
## Transaction as Represented to Chase



## How Defendants Now Claim Title Passed



## How Money And Title Actually Passed in Both Loans



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# A Few Useful Citations

- IOLA: under New York Banking Law, mortgage loan proceeds must be disbursed by, as applicable, direct deposit to customer's account, wire, bank or certified check, "or attorney's check drawn on a trust account." 3 CRR-NY 38.7.
  - Practice of law: attorney was disbarred for participating in a scheme to create an entity whose purpose was to represent out-of-state lending institutions at real estate closings in New York, "for which a New York attorney was a necessary presence," and failing to exercise any supervision over that entity or the funds entrusted to it. *In re LaMattina*, 51 A.D.3d 371, 858 N.Y.S.2d 333 (2d Dep't 2008).
  - Disciplinary rules: violation of conflict-of-interest rules could constitute malpractice or breach of fiduciary duties. *Mackley v. Sullivan & Liapakis, P.C.*, 2001 U.S. Dist. LEXIS 21723, \* 21 (S.D.N.Y., Dec. 27, 2001); *Macnish-Lenox, LLC v. Simpson*, 17 Misc.3d 1118A, 851 N.Y.S.2d 64 (Kings Sup., Oct. 23, 2007).
  - Dual representation: attorney may represent the mortgagor and the mortgagee in the same transaction, only if it is obvious that he can represent the interest of each and they give their express consent to the representation after full disclosure. New York State Bar Association's Professional Ethics Committee, Opinion No. 199 (Sep. 30, 1971).
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# A Few Useful Citations (cont'd)

- Duty to inform: client is entitled to all the information helpful to his cause within his attorney's command; attorney has a duty to furnish all the information material to the client's decision to pursue a given course of action, or to abstain therefrom. *Spector v. Mermelstein*, 361 F. Supp. 30, 40 (S.D.N.Y. 1972), *aff'd*, 485 F.2d 474 (2d Cir. 1973).
  - Title company owes a duty to speak correctly in its title certificate to a person with whom it was not in contractual privity, but for whose benefit the certification was made—such as a lender who relied on it. *Kidd v. Havens*, 171 A.D.2d 336, 577 N.Y.S.2d 989 (4th Dep't 1991).
  - Mortgage broker has a duty of care in selecting closing agent—not to control their conduct or prevent criminal acts, but rather to use reasonable care by not selecting a closing agent it knows to be dishonest in handling mortgage monies. *FDIC v. LaMattina*, 27 Misc.3d 1236A, 910 N.Y.S.2d 762 (N.Y. Sup. 2010)
  - Depository bank may have a duty to investigate heavily suspicious activity in a fiduciary account set up to handle mortgage transactions. *Home Savings of Am. v. Amoros*, 233 A.D.2d 35, 661 N.Y.S.2d 635 (1st Dep't 1997).
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