

August 2014

Official Publication of the
American Land Title Association

TitleNews

The Legal Front

Top 10 Court Decisions Every Title Professional
Should Keep on Their Radar



ALTA Education e-Kit

ALTA members have access to an Education e-Kit, which includes information in a variety of formats that can be easily downloaded and used by members to educate others about title insurance and the closing process.

What's in the e-Kit?

- ☛ *Homebuyer presentation*
- ☛ *Videos*
- ☛ *Educational articles and blog content*
- ☛ *Social media content*
- ☛ *Brochures*
- ☛ *Letter to homeowner*
- ☛ *Consumer website*
- ☛ *Details about steps in a home purchase and a refinance*



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September 8-9	Ohio <i>Columbus, OH</i>
September 10-12	Colorado <i>Vail, CO</i>
September 11-13	Missouri <i>St. Louis, MO</i>
September 11-13	North Dakota <i>Grand Forks, ND</i>
September 14-16	Indiana <i>Indianapolis, IN</i>
September 14-17	New York <i>Hamburg, NJ</i>
September 15	Maryland <i>Rehoboth, DE</i>
September 17-19	Arizona <i>Tucson, AZ</i>
September 17-19	Nebraska <i>Lincoln, NE</i>



Look at What You're Missing
in this month's Digital Issue

August 2014

TitleNews

RESPA Primer

RESPA expert Phil Schulman of K&L Gates reviews sections of the Real Estate Settlement Procedures Act and explains why the statute is important to title professionals.

Go to www.alta.org to get your copy of Digital TitleNews Today!

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TitleNews is published monthly by the American Land Title Association. United States and Canadian subscription rates are \$30 a year (member rate); \$100 a year (nonmember rate). For subscription information, call 800-787-ALTA.

Send address changes to *TitleNews*, American Land Title Association, 1828 L Street, N.W., Suite 705, Washington, D.C. 20036.

Anyone is invited to contribute articles, reports, and photographs concerning issues of the title industry. The Association, however, reserves the right to edit all material submitted. Editorials and articles are not statements of Association policy and do not necessarily reflect the opinions of the editor or the Association.

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The Importance of Being Punctual and a Great Professional Experience

In our personal lives, we get aggravated when the plumber or cable guy shows up late. Frustration sets in when an appointment at the doctor or dentist starts 15 minutes late. We expect things to be on time. When that doesn't happen, we lose trust.

Take this great example from George Washington, who was passionate about punctuality. Being on time was his way of showing respect to others. He expected to be treated with the same level of respect in return. One time, Washington's secretary arrived late to a meeting. When the secretary blamed his watch for his tardiness, Washington quietly replied, "Then you must get another watch, or I another secretary."

Punctuality is just as important in the professional world. There's a host of reasons why. First, being on time shows respect for your co-workers. With many people having multiple tasks on their plate every day, work flow can be disrupted by an employee who is habitually late. Not only can one tardy employee impact the mood of others, it can affect the efficiency and routine of the business.

Being punctual can be good for your health as well. Constantly running behind—missing important deadlines and meetings—creates unneeded stress, forces excuses and strains honesty. Simply put, being on time makes life simpler.

At ALTA, we strive to provide a great professional experience for our members. Being punctual is a significant piece of this. It's why we work hard to have meetings start on time and publications hit your desk or email in a timely fashion. We know your time is valuable. Please let us know how we're doing. Is there somewhere we can improve? Send us an email at communications@alta.org.

In the meantime, we hope the cover article addressing the top lawsuits impacting the industry is timely to your business. It is important to follow case law since it sets precedent. Rulings in other states could eventually impact how your company operates. We thank members of Title Counsel for continuously monitoring court cases and being punctual in reporting about them.

With that being said, I hope you enjoy this edition of *TitleNews*. I have to get going so I'm on time for my next meeting!



- Michelle Korsmo, ALTA chief executive officer



Marketing Guru and Former Communications Strategist for Harley-Davidson to Speak at 2014 Annual Convention

ALTA has confirmed that Ken Schmidt, the former director of communications for Harley-Davidson who played an active role in one of the most celebrated turnarounds in corporate history, will speak during the 2014 Annual Convention.

The longtime motorcycle enthusiast's formal association with Harley-Davidson began in 1985. As a specialist in corporate positioning and media relations, he was asked to work with the then-struggling Harley-Davidson to help restore the company's image and create demand for its motorcycles. Within a few short years, Harley-Davidson became one of the most visible and frequently reported-

on companies in the world, while sales of its motorcycles rocketed upward.

Schmidt will be a highlight of the Friday, Oct. 17 general session, offering growth strategies and insight on creating demand and enhancing the customer experience. He will also speak about the road to building a fanatically vocal customer base, creating a passionately loyal corporate culture, and developing leaders who inspire and motivate starts here. The Annual Convention will be held Oct. 15-18 at the Westin in Seattle.

Go to www.alta.org/meetings/annual to register and view a preliminary schedule.



ALTA Awards Three National Title Professional Designations

ALTA recently awarded three National Title Professional (NTP) designations.

The professional designation was received by ALTA board member Diane Evans of Land Title Guarantee Co. in Denver, Colo.; Nancy LoRusso of U.S. Title Guaranty Company in St. Louis, Mo.; and Shelley Stewart of Southern Title Holding Company in Daytona Beach, Fla.

"Each of these recipients demonstrates an exemplary level of dedication and service to the land title insurance

industry," said ALTA President Rob Chapman. "I congratulate them on their National Title Professional designations and appreciate their hard work, enthusiasm and commitment."

The designation has several elements, including industry and compliance prerequisites and training requirements. For more information or to apply for the NTP designation, go to www.alta.org/ntp.



ALTA Board Member Receives October Research 2014 Leadership Award

Described as "one of the most important voices in the title industry," ALTA board member John Hollenbeck received October Research's 2014 Leadership Award during the 10th Annual National Settlement Services Summit in New Orleans.

Hollenbeck, executive vice president and business director of First American Title Insurance Co., said he

was humbled for receiving the award and recognition.

Hollenbeck has become an expert in a variety of title-related areas during his 34 years in the industry. As a member of ALTA's Best Practices Task Force, he was a key contributor to the development of the association's Best Practices.



ALTA Encouraged That CFPB Director Recognizes Need for Advisory Opinions

ALTA is extremely encouraged by comments made June 18 by Richard Cordray, director of the Consumer Financial Protection Bureau (CFPB), that the bureau is considering issuing more public advisory opinions to help businesses better understand and comply with regulatory requirements.

Cordray testified before the House Financial Services Committee during a hearing titled “The Semi-Annual Report of the Consumer Financial Protection Bureau.” During the hearing, Rep. Ed Royce (R-Calif.) asked Cordray if the Bureau has a procedure to receive questions from regulated institutions and provide participants in the market with some certainty that they’re following the law.

“While laws and regulations make sense to the people who write them, They’re often less clear to those who are working to provide services to consumers in a compliant way,” said Michelle Korsmo, ALTA’s chief executive officer. “The issuance of advisory opinions should happen sooner rather than later as they are one of the best vehicles in

the regulatory process to provide answers to real-life confusion.”

In addition to public advisory opinions, ALTA suggests the CFPB encourage public input on regulatory remarks.

“In the same way people would benefit from specific answers in advisory opinions, the regulators benefit from comments on policy statements, bulletins and other guidance documents,” Korsmo said. “If these tools are meant to restate existing law, public feedback is the best way for the bureau to learn about questions business leaders may have on how to comply.”

Issuing advisory opinions and encouraging public feedback on policy statements and bulletins were both suggestions ALTA President Rob Chapman made in May during a hearing before the Financial Institutions and Consumer Credit subcommittee of the House Committee on Financial Services titled “Legislative Proposals to Improve Transparency and Accountability at the Consumer Financial Protection Bureau (CFPB).”

House Committee Approves Bill to Create Small Business Advisory Board at CFPB

The House Financial Services Committee (HFSC) unanimously approved legislation to create an advisory board for small businesses at the Consumer Financial Protection Bureau (CFPB).

The Bureau of Consumer Financial Protection Small Business Advisory Board Act (HR 4383) would establish an advisory board representing small businesses at the Bureau. The advisory board would be similar to the groups representing community banks and credit unions.

Possible members of this advisory board might include title professionals, loan officers, mortgage bankers, Realtors and data collection experts. This board would allow for more formal outreach to small business interests

throughout the regulatory and supervisory process in contrast to the “one shot” small business review panels that occur only during the rulemaking process.

On June 10, ALTA sent a letter to Rep. Jeb Hensarling (R-Texas), chair of the HFSC, and Rep. Maxine Waters (D-Calif.), the committee’s ranking member, encouraging the committee to pass HR 4383. Attendees of the Federal Conference & Lobby Day in May, this bill has 35 bipartisan co-sponsors. While it is not likely that this bill will make it into law this year, ALTA is hopeful that HR 4383 will provide a good launching pad for the next Congress. Thanks to the efforts of

ALTA Member Benefit: Access to Member Directory

There are several ways to search for ALTA members depending on whether you are looking for a specific member or searching for members who service a specific area. Go to www.alta.org/search/index.cfm to find members.

To find members who service a specific area, you can do a search by state which you can then narrow

by county. A member who services the entire state would show up in the results for every county.

To find a member by company or by individual, you can do a general search with keywords.

Additionally, you can access the membership directory from your desktop by downloading the digital directory icon.



Third-Quarter Social Strategy Conference Call

Please join us for our next Social Media Content Strategy call at 2 p.m. ET, Tuesday, Aug. 26. The 30-minute call is designed to allow industry colleagues to discuss new content strategies, social media news, the latest apps, time-saving strategies and more. All title industry members are encouraged to attend these quarterly calls. To join the call, email social@alta.org for login information.

Social Media Pro-Tip: Photos, Photos, Photos!

As you may know, Facebook continues to update its “newsfeed” feature to better engage its users. One of these newsfeed updates now ensures that photos are far more likely to show up in a user’s newsfeed more than text, links, etc. In addition to this Facebook change, Twitter has now updated its platform to make sure photos automatically appear in

a users timeline. It’s more important than ever to use photos in your digital strategy if you want users to engage with your content. Free websites such as www.canva.com and www.picmonkey.com are great resources to help liven up photo spreads on social media. To ask a question or share photos, email them to social@alta.org or tweet [@ALTAonline](https://twitter.com/ALTAonline).

#ALTA14

Are you planning to attend the 2014 ALTA Annual Convention in Seattle this October? Be sure to use [#ALTA14](https://twitter.com/ALTA14) for news and information regarding the convention and to network with your industry colleagues. Use [#ALTA14](https://twitter.com/ALTA14) for all your Instagram photos while you pack, plan and travel to Seattle. Your social media updates using [#ALTA14](https://twitter.com/ALTA14) will be featured on a social media wall at Annual Convention!

Save the Date: 2015 Social Media Summit

Save the date and plan to join us for the 2015 ALTA Social Media Summit on Wednesday, March 18, 2015 in Philadelphia. Our full-day summit will feature presentations from social media experts from around the country to help strengthen your social media programs. If you have ideas for session topics or would like to be a speaker, please social@alta.org!

Looking to Refocus Your Social Strategy?

We’re now more than half way through 2014 and many may be looking for ideas to refocus or jump-start their social strategies. Don’t forget that the presentations from our 2014 Social Media Summit are available at www.alta.org/socialsummit. You’ll find information on tools and resources, content strategies, fads and flops and much more. If you need more ideas, email us at social@alta.org anytime.

SOME THINGS ARE IMPORTANT TO KNOW...



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HOW TO PACK LIGHT:

1. Okay, so you don't have to pack like you're appearing on Survivor, but it is key to select only the most basic of requirements. Don't take backups, laundering is an option!
2. Rolling suitcases are great, but heavy. A large, wheeled duffel bag is superb. Whatever you choose, set a limit and don't budge.
3. Prioritize liquids and prepare smaller containers. If you use make up, snag samples to make the process easier!
4. Start with your heavier items at the bottom, stuff socks and underwear inside your shoes and put them in next. Next, roll several shirts together, and fill in around them.
5. If you can, rely on a tablet and phone, leaving your laptop. You can also search tourist and technology app offerings for other ways to shorten your packing list!

HOW TO SNAP A GREAT A SELFIE:

1. Taking a good selfie is an art, knowing how many and how often to post one is a virtue.
2. Know your angles and snap from slightly above your head. If you are capturing your full body, turn one shoulder slightly toward the camera, stick your neck out just a little and smile.
3. Try for natural light over the built-in flash and keep that light source in front of you and a bit above eye level. Windows offer a soft look and various apps deliver additional filters to try out.
4. You may be looking forward, but we're looking at the clutter behind you. Stage your selfie with a clean, non-distracting location. Nature is always a great backdrop!

HOW TO GET READY FOR RESPA-TILA:

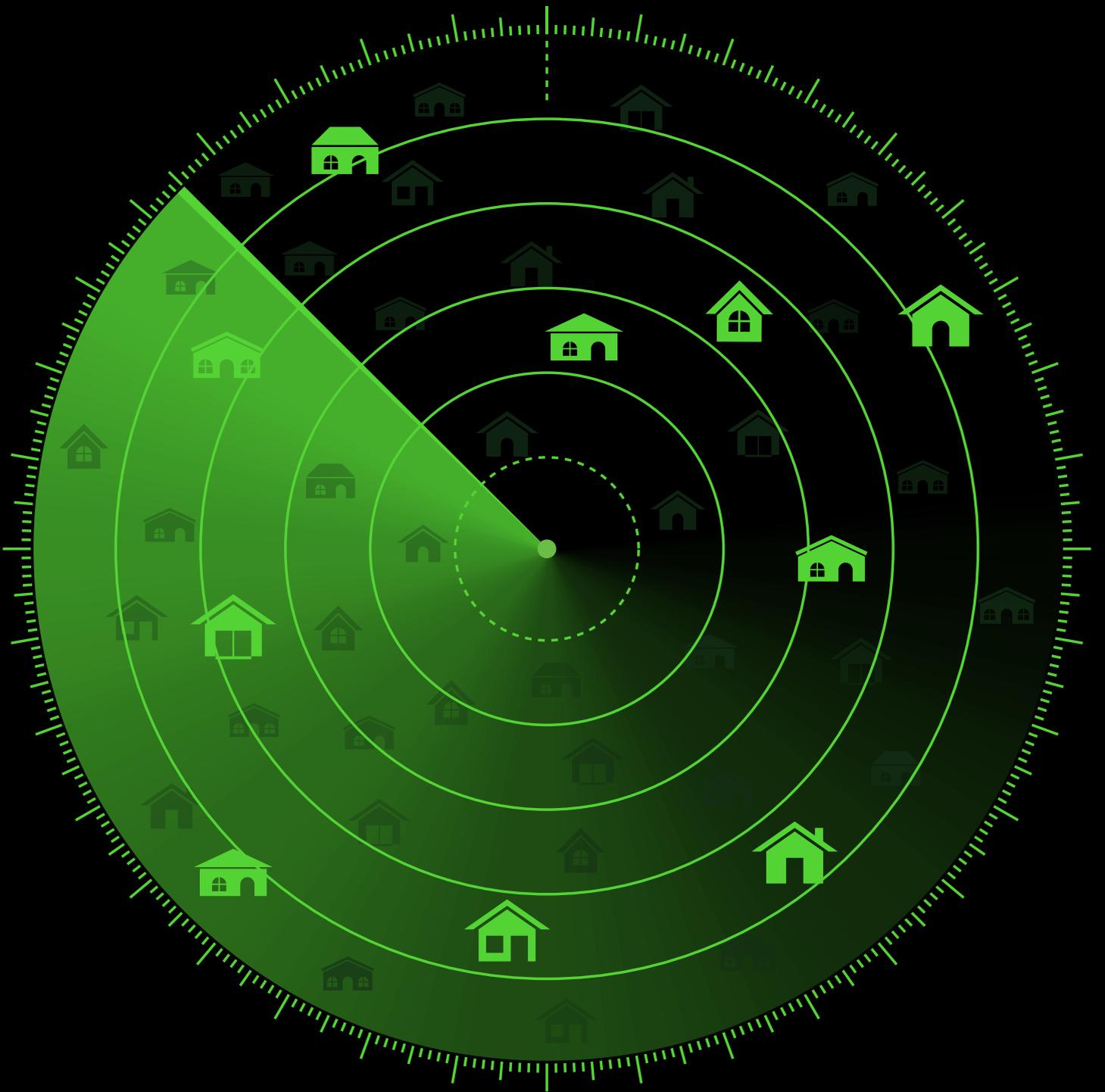
1. Adopt ALTA's Best Practices.
2. Assemble an internal task force charged with becoming experts on the regulation.
3. Begin discussions with your lender partners about the new forms.
4. Take full advantage of all of the integrations available through your software; if your software doesn't offer integrations, find one that does. (Hint: RamQuest offers more than 50 two-way integrations to service providers, lenders, banks and underwriters!)
5. Create opportunities to advocate to your customers on the basics of the new forms!



The Legal Front

Top 10 Court Decisions
All Title Professionals
Should Keep on Their Radar

For most title professionals who own or manage an operation, the main focus is growing market share and driving revenue. Reviewing court opinions is pretty far down the list of things to do. Litigation, however, remains at elevated levels, according to the 10th annual Norton Rose Fulbright's Annual Litigation Trends Survey. Overall, 82 percent of the 401 senior corporate counsel executives that participated in the survey said their companies faced at least one lawsuit in 2013. While the number of lawsuits in 2013 flattened compared to the previous 12 months, the cost to defend has skyrocketed. >>



Litigation spending rose once again in 2013, according to the survey with 71 percent of U.S. companies reporting an average of \$1 million or more spent in defense. This is up sharply from 53 percent reported in both 2011 and 2012. This trend makes following and understanding case law important for title and settlement agents.

“Simply put, case law is the interpretation of a law or regulation,” said Marjorie Bardwell, chair of ALTA’s Title Counsel Committee and director—underwriting services for Fidelity National Title Group. “Knowing about these key decisions can prove helpful in protecting a company against any unexpected liabilities. ALTA’s Title Counsel Committee is dedicated to sharing information with membership about developments in the law affecting the industry. Through ‘The Docket’ column that runs in *TitleNews Online* and our annual presentation of cases, ALTA members have access to the kind of information that a compliance officer or general counsel would consider important in identifying trends.”

In addition to Bardwell, others providing case summaries are Ken Styles of Miller Starr Regalia, Steve Gregory of Steptoe and Johnson, David Jenkins of Premium Title, Michael Aiken of Investors Title Insurance Co., sole practitioner Lance Pomerantz and Justin Early of First American Title Insurance Co.

Members of ALTA’s Title Counsel reviewed 42 cases relevant to the title industry during a meeting in May. In no particular order, the following are summaries of the facts from the top 10 lawsuits, the courts’ decisions and an explanation of why the case is important to the land title insurance

industry. From the U.S. Supreme Court to state appeals courts around the country, the cases address various issues such as vicarious liability, the Real Estate Settlement Procedures Act, rights to abandoned railroad lines, closing protection letters, bankruptcies and more.

Chicago Title Ins. Co. v. Washington State Office of the Insurance Commissioner Case No. 178 Wash.2d 120 (2013)

Facts: In this Washington regulatory action, Chicago Title Insurance Company (CTIC) had appointed Land Title Insurance Company (Land Title) as its agent for the purpose of issuing CTIC title insurance policies in four counties in Washington. Land Title and CTIC had entered into an Issuing Agency Agreement for those four counties (in which CTIC had no direct operations).

Commencing in 2005, the Office of the Insurance Commissioner (OIC) launched an investigation into the marketing practices of certain title insurers and title companies operating in Washington. After a 10-month investigation, the OIC concluded that violations of the state’s “anti-inducement” statutes had occurred. The OIC approached CTIC to enter into a “Consent Order Levying Fine,” which required CTIC to pay a \$114,500 fine. CTIC filed an administrative action, and subsequent litigation, challenging the OIC’s determination that CTIC was responsible for its agent’s violations of the state’s anti-inducement statutes.

Holding: The title insurer was liable for its agent’s violations of the state’s anti-inducement statutes, both under statutory law and under common law. Under Washington

statutes, the agent’s authority to “solicit” included the authority to “market.” Independent of the state statutes, the court held that the agent was a “general” agent (as opposed to a “special” agent) with the implicit authority to solicit and market on behalf of the principal, and thus the title insurer was responsible for the agent’s regulatory violations. One justice dissented, arguing that the parties’ agency agreement limited the scope of the agency relationship and that the title insurer was not responsible for its agent’s statutory violations.

Importance to the Title Industry:

In a majority of states, the title industry is structured with national underwriters entering into agency agreements with local agents wherein the agents handle the transaction and issue the insurer’s title insurance policy. Within those agency agreements, the underwriters seek to limit the scope of the agency relationship to exclude, for example, the agent’s activities independent from the act of issuing the title policy. This case goes to the heart of the underwriter/agent relationship. The court held that, based upon Washington statute and also state agency law, the title insurer was vicariously liable for its agent’s marketing activities regardless of its attempts to limit the scope of the agency in the agency agreement. If followed in other states, this case could significantly impact the nature and the substance of the relationship between national underwriters and local agents.

Ken Styles is a shareholder of Miller Starr Regalia and can be reached at ken.styles@mstrlegal.com.

Title Counsel

The purpose and scope of work of ALTA's Title Counsel is to promote the exchange of information within the ALTA membership about current developments in the law affecting title insurance and conveyancing.

If you are interested in joining Title Counsel or submitting a case summary relevant to the title insurance industry, please contact Steve Gottheim, ALTA's regulatory and legislative counsel, at sgottheim@alta.org. Case summaries are highlighted in *TitleNews Online*, ALTA's electronic newsletter, and *Title Law Quarterly*.

In Re: Hassen Imports Partnership

Case No. 2:13-cv-07532-CAS, US District Court, Central District of CA, Nov.25 2013

Facts: The City of West Covina entered into redevelopment agreement for an auto mall that contained several covenants as consideration, including an "Operating Agreement" which gave the city the right to approve any future operator of the dealerships. In the owner's bankruptcy, the trustee attempted to sell the property free and clear of that covenant, which the bankruptcy court allowed in spite of the fact that it recognized the covenant as an equitable servitude, on the theory that it could have been wiped out by the foreclosure of a prior mortgage.

Holding: The appeal court reversed, holding that the covenant holder could not be "compelled ... to accept a money satisfaction" for its

interest and therefore that interest would survive a sale free and clear under Section 363 of the Bankruptcy Code.

Importance to the Title Industry:

We are often asked to eliminate exceptions based upon the theory that a Section 363 ("free and clear") somehow whitewashes the property. This is a reminder that there may be exceptions that should still be properly shown, such as covenants, conditions and restrictions; easements; certain outstanding real estate taxes; and other interests that affect the title. "Free and clear" usually refers to title free of judgments and liens that can be reduced to a monetary amount. These liens then attach to the proceeds of the sale, in order of priority.

Marjorie Bardwell is director of underwriting services for Fidelity National Title Group and can be reached at marjorie.bardwell@fnf.com.

JPMorgan Chase Bank, NA v. First American Title Ins. Co. Case No. 2014 WL 1622193 (C.A.6 (Mich.), 2014)

Facts: A First American agent engaged in a fraudulent transaction to purchase property through a sham buyer. The transaction was financed by Washington Mutual (WaMU). After the fraud was discovered, First American gained possession of the property and agreed with WaMu to sell the property to cover WaMu's losses. Prior to completing the transaction, WaMu was taken over by the FDIC. The FDIC then transferred the loan and loan policy to JPMorgan Chase. Chase refused to accept the property in settlement of the claim and a lawsuit ensued. During the lawsuit, the FDIC

intervened and filed suit against First American on the basis that the FDIC had retained the rights to sustain a separate claim under the closing protection letter (CPL).

Holding: Both the district and appeals courts rejected First American's argument that the CPL was tied to ownership of the loan policy and that once the FDIC had sold its rights to Chase it no longer had standing to claim any losses under the CPL. The court instead determined that the CPL is a completely separate contract from the loan policy and that a claim can be sustained by a party even though it no longer has any rights under the title policy or the loan insured by that policy.

Importance to the Title Industry:

The ruling of this case may require considerable re-drafting of CPL language to avoid situations where claims are brought under CPLs independent of separate claims based solely on a loan policy. Anyone who handles loan policy claims and litigation may need to confirm and incorporate potential claims under any related CPLs into their resolution procedures.

David Jenkins is director of title underwriting for Premium Title Services Inc. and can be reached at davidc.jenkins@altisource.com.

Carter v. Welles-Bowen Realty, Inc.

Case No. 493 F. Supp. 2d 921 (US Court of Appeals, 6th Circuit, 2013)

Facts: The Real Estate Settlement Procedures Act (RESPA) provides that a settlement service provider may not pay fees for referrals of business. Violations subject the offender to civil and criminal liability. In 1983,

however, Congress carved out a “safe harbor” for affiliated businesses (ABAs), provided three conditions were met: (1) the arrangement must be disclosed to the client; (2) the client must be free to reject the referral; and (3) the person making the referral may not receive anything of value other than a return on the investment in the ABA. In 1996, HUD issued a policy statement that ABAs must also be “bona fide” providers of settlement services, and enumerated 10 factors to determine this. Carter, et al., sued Welles-Bowen Realty and its agency, WB Title, alleging that although the ABA met the three statutory requirements, it failed the policy statement requirement and, therefore, was in violation of RESPA.

Holding: The court of appeals affirmed the district court’s ruling in favor of Welles-Bowen and the other defendants. Judge Sutton, speaking for the court, stated that a federal agency administering a statute may not amend the statute through policy statements; the opinion distinguished *Chevron v. Natural Resources Defense Council*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984), which identified with approval an agency’s “binding interpretations” as opposed to additions to legislation as in the case at bar. In Carter, then, the HUD policy statement was not entitled to “Chevron deference.” Once Welles-Bowen and WB met the three-pronged statutory tests, they qualified as exempt from the RESPA prohibitions against referral fees.

Importance to the Title Industry: Among the enumerated factors in the policy statement were some familiar to those who have in the past considered establishing affiliated business arrangements, e.g., sufficient

start-up capital, separate employees and address from the “parent,” and so on. Carter means those considerations are no longer mandatory for viability and legitimacy. The case amplifies the importance of disclosure—make

discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements,” if Doubletree purchased a survey and paid an additional premium. Doubletree engaged a surveyor,

Carter v. Welles-Bowen Realty amplifies the importance of disclosure and not paying fees for a direct referral.

sure the client can choose freely—and not paying fees for a direct referral. CAUTION: Title insurance companies may still require certain additional factors in order to grant agency status to an ABA. Such requirements are contractual and not governed by the opinion in *Carter*.

Steve Gregory is of counsel at Steptoe and Johnson and can be reached at stephen.gregory@steptoe-johnson.com.

Lawyers Title Insurance Corporation v. Doubletree Partners LP

Case No. 739 F.3d 848 (5th Cir. 2014)

Facts: Doubletree Partners L.P. purchased a tract of land in Texas, intending to develop a luxury retirement community. In connection with its purchase, Doubletree obtained an owner’s title policy from Lawyers Title. As part of the purchase of the owner’s title policy, Lawyers Title sent Doubletree a letter offering to provide Doubletree with “a more complete title insurance policy” that would “insure [Doubletree] against loss because of

obtained a survey and paid the additional premium, all in advance of its closing on the property. The property that Doubletree purchased was encumbered by multiple easements, among them a “flowage easement” permitting the federal government the right to flood areas of the property below a certain elevation and prohibiting any structures below that elevation without the consent of the government. The surveyor did not measure elevations or consult contour maps in performing his field work, and consequently, the plat of survey he produced did not accurately plot the location of the flowage easement. Doubletree relied on the survey to begin developing its property, but in the process of attempting to rezone the property, Doubletree discovered the error in the plat of survey and found that several of the buildings it had intended to develop were beneath the prohibited elevation. Doubletree filed a professional complaint against the surveyor with the state surveying board, and also made a claim on its owner’s title policy. Doubletree argued that, by

following the procedure mandated by the Texas Department of Insurance reducing the “survey exception” to include only “shortages in area,” Lawyers Title was providing coverage for the surveyor’s error in locating the flowage easement.

Holding: The court found that, under Texas law, it was required to rule in favor of Doubletree. The court found that Doubletree and Lawyers Title each offered reasonable explanations of the effect on policy coverage that results from changing the “survey exception” from its former wording (“any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements”) to its new wording (“shortages in area”), as mandated by the Texas Department of Insurance. In Doubletree’s eyes, this language change meant that Lawyers Title was insuring against loss due to the surveyor’s failure to properly locate the flowage easement; in Lawyers Title’s eyes, under this language Lawyers Title was only insuring against loss due to failure of the survey to identify matters deleted from the exception—boundary line issues, encroachments, protrusions, or overlapping improvements—none of which included inaccuracy in locating and plotting an easement that without dispute affected the land. Because both parties had reasonable interpretations, “Texas law mandate[d] that [the court] adopt Doubletree’s interpretation.” The court noted that this was particularly true because of the letter that Lawyers Title sent to Doubletree which offered to sell Doubletree a “more complete title insurance policy” as a result of the survey.

Importance to the Title Industry:

The case calls into question the Texas Department of Insurance’s mandated language for providing what is often referred to as “survey coverage” (that is, narrowing or deleting the standard exception for common matters that would be revealed by a survey). Because the court concluded that the Texas-mandated language is ambiguous, it seems ripe for clarification by the regulator. The case also shows the inherent danger in “side letters” and other forms of extra-policy offers and communications between an insurer and its insured, because side letters and similar communications can cloud the language of the policy and create incorrect expectations that may later return to haunt the insurer.

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Marvin M. Brandt Revocable Trust v. United States **Case No. 134 S. Ct. 1257 (2014)**

Facts: The issue in this case is whether the United States has a reversionary interest in a railroad right-of-way created under the General Railroad Right Way Act of 1875. The 1875 Act provided for rights of way through public lands provided the railroads met certain criteria, i.e. construction of a railroad or filing a map detailing the proposed railroad.

In 1976, the United States patented an 83-acre parcel of land located in the Medicine Bow-Routt National Forest to Marvin Brandt. This patent granted Brandt fee simple ownership of the land subject to

several exceptions, most notably an exception for railroad purposes to the Laramie, Hahn’s & Pacific Railway Company, its successors or assigns. In 2004, following several transfers of this right and approval from the transportation board, the railroad tracks and ties were removed and abandoned from the subject property. In 2006, the United States government brought action against 31 landowners seeking judicial action quieting title to the railroad rights of way to the United States government. The government settled or obtained default judgments against all landowners except Marvin Brandt (now the Marvin M. Brandt Revocable Trust), whose position was that the right of way was nothing more than an easement and upon extinguishment, full title to the land reverted back to the underlying owner. The government argued that they retained an implied reversionary interest in the right-of-way.

Holding: Chief Justice Roberts drafted the majority (8-1) opinion finding in favor of the Brandt Trust and relying heavily on the 1942 Supreme Court decision of *Great Northern Railway Co. v. United States*, 315 U.S. 262 (1942). The government’s position in the *Great Northern* case was that the 1875 Act granted an easement rather than a fee in the property conveyed to the railroad. The court in *Brandt* relied upon *Great Northern* and found no compelling reason to upend prior precedent and adopt the government’s new position of the right-of-way as a limited fee with implied reversionary interest. The court held that a railroad right-of-way granted under the General Railroad Right-of-Way Act of 1875 is classified as an easement

and following abandonment, the easement is extinguished, and the fee owner regains full use of the land.

Importance to the Title Industry:

Innumerable titles have been insured based upon the understanding that the rights granted by these were easements upon abandonment no longer burdened the fee. The confusion caused by the Rails to Trails legislation and subsequent changes in the stance of governmental entities claiming residual interests or challenges to the abandonment process itself has at least been clarified as to the 1875 act.

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Bank of America, NA v. First American Title Insurance Company, et al.

Case No. 307756 (Michigan Court of Appeals, March 27, 2014 (unpublished))

Facts: Bank of America (BOA) sought to recover losses stemming from a fraudulent “flipping” scheme. It sued Patriot (the closing agent) based on Patriot’s own fraudulent actions, and First American based on a closing protection letter (CPL) it had issued to BOA. The CPL provided that BOA could recover “actual loss ... in connection with [the] closing” arising from “[f]raud or dishonesty of the Issuing Agent handling your funds or documents in connection with [the] closing.” At deposition, Patriot’s closer, Jennifer Kojs, had asserted her right to remain silent under the Fifth Amendment. She refused to answer questions concerning Patriot’s alleged participation in or knowledge of the fraudulent scheme.

First American asserted that there was no evidence of either mishandled funds or documents. Hence, no liability could arise under the CPL.

Holding: The court found liability under the CPL was implicated “when the HUD-1 settlement statement records disbursements of funds of [the lender to whom the CPL was addressed], as part of a fraudulent scheme of [sic] which the issuing agent is either actively participating or is aware of but failed to disclose. In other words, an issuing agent may

the fraud to Patriot. First American had previously sent underwriting alerts to its agents warning that “double-escrow” situations “suggest fraud.” Thus, Patriot “knew or should have known the transactions ... were fraudulent” but went ahead with the closings nevertheless.

Importance to the Title Industry: Fraudulent schemes perpetrated by brokers and borrowers are a major claim generator for the title insurance industry. Title agent participation in such schemes makes them more

Bank of America v. First American expands potential CPL liability for insurers even when all funds are disbursed and all documents are handled in accordance with the framework of the loan.

fraudulently or dishonestly handle a lender’s funds even when all the disbursements are accounted for in the HUD-1”

The court also held that BOA was “entitled to an adverse inference that Patriot through Kojs was an active participant in the two fraudulent real estate transactions” due to Kojs’s assertion of her Fifth Amendment rights. First American claimed the adverse inference could not be imputed to First American, because Kojs was not its employee. The court brushed this aside, pointing out that First American’s liability arose under the CPL as a matter of contract, rather than under a respondeat superior theory.

The adverse inference was not the only basis for imputing knowledge of

costly and harder to detect. This decision expands potential CPL liability for insurers even when all funds are disbursed and all documents are handled in accordance with the framework of the loan. In addition, proactive steps by the insurer, such as underwriting alerts, can backfire and provide evidence in support of the claim. (As of this writing, an application for leave to appeal to the Michigan Supreme Court had not yet been filed, but the time frame for doing so was still open.)

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Dolnikov v. Ekizian**Case No. 222 Cal.App.4th 419 (2013).**

Facts: This case involved the servient tenement owner's interference with easement rights and the easement owner's right to recover monetary damages. An access easement was originally granted in 1942 to the plaintiff's predecessor. After the plaintiff easement holder purchased the property in 1998, she obtained permits to construct two houses on her land. The defendant servient tenement owners purchased their property after construction had commenced and with knowledge of the easement.

Given the slope, curvature and soil conditions of the land covered by the easement, the plaintiff had submitted a plan that required a cut, grading and construction of a retaining wall across the face of the cut (all on the defendants' land). The plaintiff also needed to obtain a permit to construct the retaining wall. The defendants lodged complaints with the city and they refused to execute a new community driveway covenant and the retaining wall permit. Absent the defendants' consent to the permits, the plaintiff's partially-constructed home on her property could not be completed. The plaintiff filed suit seeking, among other things, monetary damages for interference with her easement.

Holding: If an easement owner is required to obtain governmental approval in order to improve real property, the neighboring property owner's refusal to consent to the development (e.g. refusing to execute consent for a retaining wall permit) may constitute an interference with easement rights and allow the recovery of tort damages. Here, the trial court held that the servient

tenement owner substantially and unreasonably interfered with plaintiff's use and enjoyment of her easement, and it awarded the plaintiff \$713,927.96 in damages and interest. The court of appeal affirmed that damage award.

Importance to the Title Industry: In situations in which an easement becomes an issue in a dispute or in litigation—whether the easement is expressly insured, is missed in a title insurance policy or constitutes a covered encroachment—California courts will consider whether the parties' actions are "reasonable" in the context of the easement right being asserted. Classically, a tort claim of interference with easement involved a physical or tangible interference or blockage of the easement.

This case involves an expansion of the tort of interference with easement to include any conduct that unreasonably interferes with an easement holder's right to use the easement. Here, the defendants' objections to the plaintiff's construction plans may have been legitimate, but the court held that the defendants' conduct was unreasonable under all the circumstances. As the court acknowledged, since "reasonableness depends on the facts and circumstances of each case," there is no one-size-fits-all resolution in any given scenario.

In the context of resolving easement claims, title insurers must carefully consider the potential for tort damages arising from the assertion of, or objection to, real property rights.

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Chultem v. Titor Title Ins. Co.**Case No. 401 Ill.App.3d 226, 229, 927 N.E.2d 289, 292, 339 Ill.Dec. 748, 751 (Ill.App. 1 Dist., 2010) and Order entered 2/7/14**

Facts: This case was remanded to the district court for further proceedings. This case is somewhat unusual in that the court permitted a class certification. The causes of action were based on violations of RESPA and two separate Illinois consumer protection statutes. The class action alleged that attorneys who referred clients for title insurance to an underwriter's direct operation under an approved attorney program (and who were receiving a substantial portion of the premium above and beyond their legal fees) constituted a violation of all three acts because the work in reviewing the title work from the direct operation was minimal. In short, it was alleged that this was merely a kickback arrangement that allowed attorneys to receive a portion of the premium as a referral fee for minimal work in reviewing the title work prepared by the direct operation prior to closing.

Holding: The court found no violations of RESPA. The court appeared to place most of its emphasis on the fact that the attorneys involved did some review despite minimal feedback and changes and that their contribution to the process was difficult to quantify. The general nature of the state consumer protection statutes meant that a failure to prove a RESPA violation prevented sustaining an action under the state statutes.

Importance to the Title Industry: This case does help the industry better understand where the dividing line might be with regard to certain categories of RESPA violations. This

case appeared to come very close to crossing the line into violation territory. The rare allowance of a class action to be brought in a case involving title insurance and the district court's own statement that the attorneys involved were likely overpaid for their work as well as some other comments from the court, seemingly indicate that with a few changes of facts, the decision might have gone the other way.

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Girl Scouts of Southern Illinois v. Vincennes Indiana Girls, Inc. Case No. 988 N.E.2d 250 (Ind. 2013)

Facts: In 1946, a university donated a parcel of land known as Camp Wildwood to a local Girl Scout council, which later became Vincennes Indiana Girls Inc. (Girls Inc.), for use as a Scout facility. When the national Girl Scouts reorganized, the national council required the predecessor to Girls Inc. to convey Camp Wildwood to

a new scouting organization, Girl Scouts of Southern Illinois (GSSI). Girls Inc.'s predecessor did as the national council demanded in 1965, but placed a covenant in the deed requiring that Camp Wildwood be used for scouting purposes for 49 years.

The covenant was backed by a possibility of reverter if GSSI violated the covenant. GSSI used Camp Wildwood for scouting purposes as the covenant required until 2009 (a period of 44 years), but then ceased using Camp Wildwood as a Girl Scout facility and tried to sell the property, even though there were five years remaining on the covenant. Girls Inc. therefore sued to enforce the possibility of reverter which its predecessor had imposed on the title.

In defense, although GSSI acknowledged that it was violating the covenant, GSSI contended that the covenant was unenforceable because in 1993 Indiana had passed a statute that invalidated any possibility of reverter 30 years after its creation. Girls Inc. responded that the statute was unconstitutional

because it violated the Contracts Clause of the Indiana state constitution, which protects vested contract rights. The case made its way to the Indiana Supreme Court.

Holding: The Indiana Supreme Court ruled in favor of Girls Inc. While the state high court noted that the statutory cap on possibilities of reverter may well have been acceptable for "naked possibilities of reverter," which it defined as "those that depend on speculation or chance, particularly about matters that do not touch and concern the land," it found that the reverter here did touch and concern the land and had "significant social utility" in promoting charitable giving, which was "the primary consideration for an otherwise-gratuitous conveyance." The state high court therefore found that the 30-year cap was unreasonable as applied to the facts of this case and held the statute unconstitutional.

Importance to the Title Industry: The case is a reminder that marketable title acts and other statutes that seek to simplify and facilitate land transactions by voiding interests created in the past are not a panacea for title problems, especially when the title problem had its origin prior to the passage of the statute and therefore could not have been created "in the shadow of the law." The case is also a reminder that even clear statutory language does not guarantee an outcome on a particular set of facts, especially when charitable intentions are at work.

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ALTA Best Practice:

Escrow Account Controls

What it means from a customer's point of view:

“**Your bank account should be with a solid financial institution
and my money is safe.**”

What it means for you:

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CFPB Enforcement Targets RESPA Violations, AfBAs

Title and Settlement Companies Reminded of Importance to Comply with RESPA

Between 2003 and 2011, the U.S. Department of Housing and Urban Development announced 13 settlement agreements with providers who were alleged to have operated or invested in “sham” affiliated business arrangements.

In July 2011, the Consumer Financial Protection Bureau (CFPB) took over enforcement of the Real Estate Settlement Procedures Act from HUD. Over the past two years, the CFPB has racked up 11 RESPA settlements and lawsuits.

Attorneys with the law firm Morrison & Foerster said that now more than ever, RESPA compliance matters.

“The risk of detection of even minor or technical errors is higher now than it has been over the last few years, because the new “cop on the beat”—the CFPB—is out in full force,” wrote Angela Klein and Donald Lampe in a blog post for the law firm.

The CFPB commenced its RESPA enforcement in April 2013 when

it announced enforcement actions against four mortgage insurers for alleged kickbacks to lenders in exchange for business. The CFPB ordered Genworth Mortgage Insurance, Mortgage Guaranty Insurance Corp., Radian Guaranty Inc. and United Guaranty Corp. to pay \$15.4 million in penalties. The mortgage insurers had entered into captive reinsurance arrangements with the lenders’ subsidiaries. The CFPB alleged the arrangements violated RESPA as this allowed the insurance firms to provide additional money to the lender.

The CFPB eye then turned to the settlement services industry, announcing a consent order against Paul Taylor Homes Limited, Paul Taylor Corp., the general partner of the home builder, and Paul Taylor, the president of Paul Taylor Corp., for allegedly accepting fees in return for the referral of settlement service business to two affiliated mortgage companies partially owned by Paul Taylor.

While Taylor and his companies never admitted to the findings, the CFPB alleged that Taylor and Benchmark Bank created an affiliated business arrangement in 1999 designed to originate mortgage loans to the home builder’s customers. Even with initial capitalization of \$50,000, the CFPB alleged the affiliated business:

- 1 conducted no origination business outside of the referrals from Taylor and the home builder
- 2 did not advertise itself to the public
- 3 did not perform essential origination services and relied on Benchmark Bank to process, underwrite, close, and fund mortgage loans
- 4 did not maintain its own office space
- 5 did not have its own employees

As part of the settlement, Taylor agreed to refrain from engaging in the settlement service business, other than the sale of homes, or maintaining an ownership interest in any entity that provides settlement services for a five-year period.

According to Phil Schulman of the law firm K&L Gates, this consent order reflects the CFPB’s focus on the same factors for bona fide affiliated businesses that HUD used to evaluate and enforce Section 8 requirements. For those who operate or are an investor in an AfBA that does not conduct day-to-day business as a separate, stand-alone entity, now is the time to evaluate business operations

according to RESPA requirements and HUD guidance in order to avoid an inquiry from the CFPB.

40-year-old Law Firm Targeted

In October 2013, the bureau filed a federal lawsuit against a law firm in Louisville, Ky. The firm, run by J. David Borders and his two sons, provides real estate closing services. The bureau claims the firm illegally paid for referrals from real estate and mortgage broker companies through a network of shell companies. The firm denies the charges, and has argued in court documents that its affiliate arrangements met the law's disclosure requirements. The case is still pending.

The CFPB alleges that Louisville law firm Borders & Borders PLC, and its principals, Harry Borders, John Borders, Jr., and J. David Borders, violated the Real Estate Settlement Procedures Act (RESPA) by operating a network of affiliated companies to pay kickbacks for referrals of mortgage settlement business.

According to the CFPB's complaint, Borders & Borders operated nine joint ventures with the owners and managers of local real estate and mortgage broker companies, and allegedly used the joint ownership to disguise illegal kickbacks as legitimate profit sharing.

The CFPB said the joint ventures were not bona fide entities and did not have their own office space, email addresses or phone numbers. In addition, all nine companies shared an independent contractor who was also an employee of Borders & Borders. Each company only issued title insurance policies for homebuyers that had been referred to and by Borders & Borders, and did no advertising to attract other business. The companies performed no substantive title work,

all of which was instead performed by the staff at Borders & Borders. The CFPB believes the entire arrangement served no significant business purpose beyond acting as a conduit for kickbacks in exchange for referrals.

The bureau alleged the firm violated RESPA Section 8 by using a network of sham affiliated business arrangements to pay kickbacks for real estate settlement business referrals. A month after the bureau filed the complaint, the Sixth Circuit issued its decision in *Carter v. Welles-Bowen Realty, Inc.*, striking down the HUD-created policy regarding the 10 elements of a lawful AfBA (See page 13). The CFPB is pushing ahead in Borders, though, arguing that in any event, the Borders AfBA disclosure did not comply with RESPA and Reg. X.

In its reply to the lawsuit, the firm doesn't dispute the existence of the joint ventures or the fact that Borders principals were part owners, but it denies that the arrangement was illegal.

"We are a family-owned firm that has been in business for over 40 years, and we would not and did not violate (the Real Estate Settlement Procedures Act)," the law firm said in a statement. "This case concerns a number of agencies that were affiliated with our firm several years ago. The title agencies were 'affiliated business arrangements' that are expressly allowed by RESPA."

Insufficient Disclosures

Inadequate AfBA disclosures were the impetus for the settlement the CFPB reached in May with RealtySouth, the largest real estate firm in Alabama. The bureau accused RealtySouth of violating Section 8(a) of RESPA because the company's

AfBA disclosure did not use capital letters and did not properly highlight the consumers' right to shop around. The CFPB also alleged that the "required language was buried in a section of text that also made marketing claims about the company's prices." The CFPB also said RealtySouth's preprinted purchase contracts either explicitly directed or suggested that title and closing services be conducted by its affiliate, TitleSouth.

The CFPB said RealtySouth's disclosure did not follow the format provided in the Affiliated Disclosure Statement set forth in Appendix D.

In addition to modifying its disclosure and ensuring that its training materials emphasize that its agents cannot require the use of affiliates, RealtySouth paid a \$500,000 civil penalty. HUD referred this case to the CFPB.

The message with this settlement is to use the correct disclosures. Schulman said the settlement makes it clear that the CFPB does not want disclosures to serve as marketing pieces for the affiliate.

"Nor may a company alter the important language in the disclosure that informs consumers that they are not required to use the affiliate and may shop around to make sure they secure the best pricing for the service," he added.

Schulman also said the settlement is important because it touches on required use. A company or individual that owns more than a 1 percent interest in an affiliated settlement service provider may not require the use of that affiliated entity. Prior to the CFPB investigation, RealtySouth modified its purchase sales agreement to eliminate the required use of an affiliate. According

to Schulman, though, the infraction served as a basis for the significant fine paid by the company.

“The bottom line is that companies that own affiliated title agencies should never require their use and should stick closely to the affiliated business disclosure statement set forth in Appendix D of the RESPA regulations,” Schulman said.

Settlement Impact on Commissioned Employees

Weeks after settling with RealtySouth, the CFPB ordered New Jersey-based Stonebridge Title Services Inc. to pay \$30,000 for paying illegal kickbacks for referrals. Stonebridge allegedly paid commissions to more than 20 independent salespeople who referred title insurance business to the company. Stonebridge solicited people to provide it with referrals of title insurance business, offering to pay commissions of up to 40 percent of the title insurance premiums Stonebridge itself received, according to the CFPB. The case also was referred to the CFPB by HUD.

Many ALTA members have asked what impact this settlement will have on title companies that have commissioned staff. Schulman said that Section 8(a) of RESPA is clear about not giving or receiving a thing of value for the referral of settlement service business.

There is, however, an exception for payments made by an employer to a bona fide employee. Per-transaction payments to an independent contractor are not permitted. In this case, although the individuals received W-2 tax forms, the bureau’s investigation determined that these individuals were independent

RESPA Primer

contractors and not bona-fide employees.

“In Stonebridge, the CFPB declared that a rose by any other name is not an employee,” Schulman said.

ALTA members can glean from the settlement that the CFPB will look beyond labels to assure that sales agents are bona fide employees. That means the sales agents must meet the IRS test for determining employment. That test primarily looks to whether the individual is under the supervision and control of the employer. Indications proving employment include: having the employee report to management; use of the employer’s equipment and work space; receipt of a W-2 form; attending staff meetings and receiving benefits—to name a few.

“The lesson learned here is that individuals receiving per-transaction payments for the referral of settlement service business must be bona fide employees, not independent contractors labeled as ‘employees.’” Schulman said.

Marx Sterbcow, managing attorney of the law firm Sterbcow Law Group, said that anyone who is paid in a transaction should perform some core functions.

“You have to justify you are doing work for the money received,” he said. “If a company is using W-2 employees, it’s a good idea to utilize

a transaction software system so employees can go in and check off the functions that they performed. Documentation for every transaction is vital in this environment.”

Analyzing the consent order, Sterbcow said the CFPB is sending some interesting messages. In the consent order, the CFPB said Stonebridge’s independent salespeople developed relationships with law firms. Sterbcow noted that if the CFPB identified the law firms there could be the potential for a class-action lawsuit. Additionally, Sterbcow hoped for some additional detail from the CFPB beyond just saying law firm.

“It would have been helpful to the industry if the CFPB specified who these people were and the job functions performed,” he said.

Sterbcow also found it interesting that the consent order mentioned that Stonebridge received premiums from consumers when purchasing policies and then remitted a percentage of the premiums to the underwriter.

“From a national perspective, this was a huge shot fired across the industry’s bow,” Sterbcow said. “Underwriters had better start policing their agents to ensure they are not doing this.” ■

How to Select and Negotiate the Proper Cyber Insurance Policy

Title and Settlement Companies have Additional Risk Exposure and Should Consider Obtaining the Appropriate Coverage

Cyber insurance can be an extremely valuable asset in an organization's strategy to address and mitigate risk associated with cyber security and data privacy. However, selecting and negotiating the right insurance product can be a challenge because of the lack of standard language and issues with "off-the-shelf" policies.

Roberta Anderson, a member of K&L Gates' firm's global insurance coverage and cyber law and cybersecurity practice groups, offers the following tips to help facilitate the selection of the proper policy.

Get a Grasp on Risk Profile and Tolerance

Companies need to have a thorough understanding of its risk profile, which is the scope and type of non-public personal information and confidential corporate data that is maintained. This includes understanding how data is used, transmitted and stored, as well as who uses and sends the data.

A complete understanding of the risk profile also entails evaluation of the organization's IT infrastructure and practices and an assessment of potential threats to the organization's (and its vendors') network security. An organization should also assess its potential exposure in the event of a data breach or network security incident.

When an organization has a grasp on its risk profile, potential exposure and risk tolerance, it is well-positioned to consider the type and amount of insurance coverage that it needs to adequately respond to identified risks and exposure.

Look at Existing Coverage

The California federal district court's recent decision in *Hartford Casualty Insurance Company v. Corcino & Associates et al*, upheld coverage under a commercial general liability (CGL) policy for a data breach that compromised the confidential medical records of nearly 20,000

patients and underscores that there may be valuable privacy and data breach coverage under "traditional" insurance policies, including under the "Personal and Advertising Injury Liability" (Coverage B) of a typical CGL policy.

There may also be valuable coverage for data breach and network security liability and network security failures under an organization's commercial property, directors and officers, errors and omissions, professional liability, fiduciary, crime and other coverages.

Purchase Cyber Insurance As Needed

In response to decisions upholding coverage for data breach, privacy, network security and other cyber risks, the insurance industry has added various limitations and exclusions purporting to cut off the "traditional" lines of coverage. Although the full reach of the new exclusions ultimately will be determined by judicial review, and it may take some time for the new (or similar) exclusions to make their way into CGL policies, the exclusions provide another reason for companies to carefully consider specialty cyber insurance products.

Even where insurance policies do not contain the newer limitations or exclusions, insurers may argue that cyber risks are not covered under traditional policies. As far as data breaches are concerned, cyber policies usually provide some form of privacy coverage. This coverage

TIAC's Underwriting Manager Offers Cyber/Privacy Risk Insurance

In addition to federal requirements, 46 states and Washington, D.C., all have enacted privacy laws that require notification of potential and actual breaches of personally identifiable information/non-public personal information (NPI). Title insurance and escrow agencies have additional unique cyber/privacy exposures and should strongly consider purchasing cyber/privacy risk insurance to protect their businesses and assets. While the cost is not high, the consequences of being without this protection can be devastating.

The Title Industry Assurance Company's (TIAC) underwriting manager, Capital Professional Insurance Managers (CPIM), offers special cyber/privacy risk insurance program for title professionals.

For more information and a premium estimate, contact CPIM at 800-233-5901, by email at cyber@cpim.com or by visiting www.cpim.com/cyber.

would typically provide defense and indemnity coverage for claims arising out of a data breach that actually or potentially compromises confidential personally identifiable information. A policy offering the privacy coverage will often provide coverage for civil, administrative and regulatory

investigations, fines and penalties and, importantly, will commonly offer "remediation" coverage (sometimes termed "crisis management" or "notification" coverage) to address costs associated with a security breach.

According to Anderson, Anderson a policy offering privacy coverage will often offer coverage for civil, administrative and regulatory investigations, fines and penalties and, importantly, will commonly offer "remediation" coverage—also referred to as "crisis management" or "notification" coverage—to address costs associated with a security breach, including:

- costs associated with post-data breach notification
- credit monitoring services
- forensic investigation to determine cause and scope of a breach
- public relations efforts and other "crisis management" expenses
- legal services to determine an insured's indemnification rights where a third party's error or omission has caused the problem.

In addition to the main coverages, insurers increasingly offer complimentary pre- and post-loss risk management services, which can be valuable in preventing as well as mitigating attacks.

Spotlight the "Cloud"

Cyber risk is intensified by the trend in outsourcing data handling, processing and storage to third-party vendors, including "cloud" providers. The Ponemon Institute's 2011 Cost of Data Breach Study, published in March 2012, found that more than 41 percent of U.S. data breaches are caused by third-party errors. Many "off-the-shelf" cyber policies, however, purport to limit the scope of coverage

to the insured's own acts and omissions (not the acts and omissions of third parties) and to network security threats to the insured's own network or computer system. This may result in illusory coverage.

Remember the Cyber Misnomer

Keep in mind that many data breaches are not electronic. They often result from non-electronic sources. Data privacy laws do not distinguish between a breach resulting from a network security failure or a breach caused by paper records stolen from a closet. Neither should a cyber insurance policy. A solid policy will cover non-electronic data—such as paper records—and provide coverage for physical breaches resulting from the theft of a laptop or loss of a USB drive, for example.

There are many other considerations and points to focus on. Anderson points out that there is an array of cyber products on the marketplace, each with their own insurer-drafted terms and conditions, which vary dramatically from insurer to insurer—even from policy to policy underwritten by the same insurer.

Because of the nature of these policies and the risks that they are intended to cover, Anderson said successful placement requires the involvement and input, not only of a capable risk management department and a knowledgeable insurance broker, but also of in-house legal counsel and IT professionals, resources and compliance personnel—and experienced insurance coverage counsel. ■

2014 First-quarter Family/Company Summary Title Premiums

Company Name	Premium Written Direct	Premium Written Non-Affiliated Agency	Premium Written Affiliated Agency	Total Premiums Written	Market Share
FIDELITY FAMILY					
Chicago Title Ins. Co.	47,466,494	176,334,754	134,944,397	358,745,645	14.78%
Fidelity National Title Ins. Co.	21,379,372	125,533,291	100,679,798	247,592,461	10.20%
Commonwealth Land Title Ins. Co.	14,014,577	61,851,409	39,276,161	115,142,147	4.74%
National Title Ins. of NY	368,403	5,920,936	19,231,622	25,520,961	1.05%
TOTAL - FIDELITY FAMILY	83,228,846	373,375,256	303,504,118	760,108,220	31.31%
FIRST AMERICAN FAMILY					
First American Title Ins. Co.	104,820,909	393,757,286	145,651,520	644,229,715	26.53%
First Canadian Title Ins. Co.	16,355,248	-	-	16,355,248	0.67%
First American Title Ins. Co. of LA	-	9,835,457	-	9,835,457	0.41%
TOTAL - FIRST AMERICAN FAMILY	127,514,314	408,350,548	145,651,520	681,516,382	28.07%
OLD REPUBLIC FAMILY					
Old Republic National Title Ins. Co.	13,637,896	319,421,599	32,370,324	365,429,819	15.05%
TOTAL - OLD REPUBLIC FAMILY	14,218,713	330,042,380	32,969,101	377,230,194	15.54%
STEWART FAMILY					
Stewart Title Guaranty Co.	26,266,717	159,329,921	79,146,870	264,743,508	10.90%
Stewart Title Ins. Co. of NY	7,042,351	39,496,799	51,818	46,590,968	1.92%
TOTAL - STEWART FAMILY	39,060,166	198,826,720	79,198,688	317,085,574	13.06%
FAMILY TOTALS	264,022,039	1,310,594,904	561,323,427	2,135,940,370	87.97%
INDEPENDENT COMPANIES					
Westcor Land Title Ins. Co.	1,381	43,614,344	18,316,661	61,932,386	2.55%
Title Resources Guaranty Co.	215,809	24,257,562	25,900,520	50,373,891	2.07%
WFG National Title Ins. Co.	2,137,190	31,608,567	2,829,515	36,575,272	1.51%
North American Title Ins. Co.	-	13,659,559	17,198,187	30,857,746	1.27%
Alliant National Title Ins. Co.	-	16,359,502	-	16,359,502	0.67%
Attorneys' Title Guaranty Fund of IL	103,068	14,043,219	11,658	14,157,945	0.58%
Investors Title Ins. Co.	4,772,997	8,443,939	129,428	13,346,364	0.55%
Connecticut Attorneys Title Ins. Co.	-	11,970,787	-	11,970,787	0.49%
National Investors Title Ins. Co.	2,945	11,889,364	-	11,892,309	0.49%
WFG Title Ins. Co.	1,378,166	4,225,495	2,006,967	7,610,628	0.31%
Security Title Guarantee Corp. of Balt.	2,166	7,328,774	-	7,330,940	0.30%
TOTAL - INDEPENDENT COMPANIES	11,169,130	200,221,639	80,594,036	291,984,805	12.03%
TOTAL - ALL COMPANIES	275,191,169	1,510,816,543	641,917,463	2,427,925,175	100.00%

Source: ALTA Note: Individual numbers do not equal total as not all underwriters are shown.

David A. Townsend Esq. NTP

Title: President, CEO

Company: Agents National Title Insurance Co.

How long have you been in the title industry and how did you get started in this profession?

I have been in the legal profession for 14 years and in title exclusively for 11. I got started as an in-house counsel for an independent title agency.

What excites you about what you do or what is the most challenging aspect of your job?

I get excited when I work with independent agents to help them increase their business. I like finding solutions for our agents that help them succeed. Growing an underwriter from scratch has been a significant challenge, especially when we do not have any affiliated business.

What's your best industry "war" story? (e.g., difficult search, interesting closing)

I was once involved in a closing where a "husband and wife" were selling a home, only to have the real wife come into the room and started a fight with the girlfriend who was posing as her. Needless to say, that deal did not close that day.

Explain why the title industry is a great career opportunity for those entering the workforce?

The title industry is a tight-knit community that takes care of its own. If you are hard working and dependable, you can find a place in our industry. We are a family-based industry with many companies being passed down through generations. If someone wants to find a career in the industry and is willing to learn, they have great opportunities within title and settlement.

What advice do you have for professionals starting their career in the industry?

Learn every aspect of the process. Start with order entry, then move to

search and exam. Learn commitment and policy production. Then learn closing. You need to learn how all the pieces work together. And get involved with your state association and ALTA. There is no better source of knowledge and networking. And above all else, read TitleNews.

Why are you a member of ALTA?

ALTA is our voice not only in Washington, D.C., but nationwide. Our involvement in ALTA is critical to maintain the high standards of our industry and protect it from legislation and regulations that can harm the industry. It is also a great organization for networking and education. Without ALTA, we would be a rudderless ship when it comes to a national presence.



ALTA Member Profiles

ALTA periodically profiles its members in *TitleNews*. If you know someone who would make a good candidate for a member profile, please send us at email at communications@alta.org and tell us why.

Tell us something that others in the industry may not know about you.

I was on the swim team in college, and we won the National Association of Intercollegiate Athletics national championship. I also coached high school swimming for six years during college and law school.

If you could have dinner with anyone, who would it be and why?

I would have dinner with my parents. They unfortunately passed away in the last three years. I would give anything to have one more dinner with them.

What's your favorite book or movie? Why?

My favorite book of all time is *Native Son* by Richard Wright. It was a powerful book that I first read in high school. It illustrated how social conditions can change a person and how a chain of events can spiral out of control.



What do you do to unwind from a stressful day?

I have two children who are four and a half and three. So my days don't end when I get home. But my favorite thing to do to unwind is to go on a long road ride on my bike. A nice 30-mile loop in the river bottoms near my home is very therapeutic. ■

Help Your Industry Reach New Heights

Join the Title Action Network (TAN)

TAN is free to join and is the premier grassroots organization promoting the value of the land title insurance industry.

www.titleactionnetwork.com

TITLE
ACTION
NETWORK



I can sum up our company's use of SoftPro in two words: "Central Hub." We have grown with SoftPro, and utilize them for HUD-1 and title commitment prep, closing/disbursing, IRS 1099 reporting, scheduling, CPL's and policy jackets, e-recording, ordering tax certifications, tracking mortgage releases, bank account reconciliation and order tracking. Every role in our company uses SoftPro 360 integrations! SoftPro's support center is also top notch in their responsiveness, friendliness and thoroughness.

Ken Kirkner

Philadelphia, PA

Trident Land Transfer Company

(a subsidiary of HomeServices of America Inc.)

The SoftPro Difference.

SoftPro's closing and title software is #1 because it combines cutting-edge technology with outstanding support to make your business run more efficiently. It is fully customizable and scalable so you can work the way you want, yet also conforms to the latest regulations so you can operate the way you need to within our ever-changing industry.

Outstanding Key Features:

- Fully Customizable
- Workflow Automation
- Award-Winning Support
- Underwriter and Vendor Integrations
- Compliant with ALTA's Best Practices
- Maximum Efficiency
- Mobile Apps for Transaction Management
- Scalable
- Robust Reporting



Attorneys' Title Guaranty Fund Marks 50th Anniversary

Company Founded in 1964 to Offer Services to Network of Law Firms and Agents

Founded 50 years ago by a small group of downstate Illinois lawyers, Attorneys' Title Guaranty Fund Inc. has evolved into a family of companies offering a broad spectrum of services to more than 4,000 lawyers in Illinois, Indiana, Wisconsin and Michigan. The company now garners

annual revenue of more than \$100 million and will issue its three millionth title insurance policy this year.

"Our 50th anniversary is a celebration of our founding members and the thousands of law firms and agents who have together built the company into the success it is today," said Peter Birnbaum, ATG president and CEO. "It's also a celebration of our staff—loyal stewards of the company who believe in our mission to be the premier lawyer service organization for the benefit of the public."

ATG was founded in 1964 thanks to the efforts of attorney Stanley B. Balbach and his law partners Richard L. Thies and Charles M. Webber.

Balbach's early efforts built the foundation, and he remained active with the organization until his retirement from the board of directors in 2007. Balbach died in 2012 at the age of 92.

In addition to Balbach, Birnbaum cited newly elected board Chair Ward F. McDonald, who served as CEO from 1970 to 1983, as the person most responsible for bringing ATG from a concept into a thriving business.



"It was Ward's unique ability to promote the ATG mission that built it into a grassroots movement, and over time—a formidable force in the legal and real estate communities," added Birnbaum, who is a member of ALTA's Board of Governors.

In the lead-up to its 50th anniversary, ATG continues in its tradition of being a good corporate citizen. ATG is a leading supporter of the Illinois Bar Foundation, the Chicago Bar Foundation, Mercy Housing, the Jesse White Foundation, the Cara Program, Big Brothers and Big Sisters, Urban Initiatives, University of Illinois College of Law, IIT Chicago-Kent College of Law and many area bar associations.

"Many of our members and a high percentage of our staff and Board of Directors have been with ATG for more than 20 years," said Birnbaum, who joined the company in 1981, and has been CEO since 1991. "For 50 years ATG has succeeded in the face of formidable odds. We should all be proud of the organization we have built." ■



Transnation Title Agency of Michigan Receives Milestone Award

The Historical Society of Michigan recently honored Transnation Title Agency with the Milestone Award. Transnation Title Agency traces its heritage back to 1856. The plaque commemorates the company's 150 years of continuous service and recognizes Transnation's endurance and key place

in Michigan's state's history as a contributor to the economic growth as well as a service provider to the people of the state.

"Like any good title examiner, we were proud to have traced our heritage back to 1856," said Marcy Welburn, regional vice president and owner of Transnation Title Agency.

Alliant National Title Implements Data Security Training

To improve employee knowledge on protecting client information, Alliant National Title Insurance Co. has engaged Real Estate Data Shield to provide training sessions on data privacy and security across its 10-state operating area.

The required training arms employees with an awareness of the laws, regulations and regulator expectations relating to

safeguarding non-public personal information.

The online training guides Alliant National associates through the different types of personal information, compliance with laws and regulations, lifecycle of files and storage, as well as data-handling operations. Associates are then required to review and acknowledge security and confidentiality policies currently in place at Alliant National.

Boise-based Pioneer Title Buys Mountain West Title

Pioneer Title Co. will expand its footprint by buying Mountain West Title & Escrow Inc. in Idaho Falls. The deal was finalized June 30. Boise, Idaho-based Pioneer Title has more than 200

employees and has offices in Nampa, Meridian, Caldwell and Coer d'Alene. Mountain West operated in Bonneville County, an area where Pioneer didn't have a presence.

TLTA Names Title Person of the Year, Honors Others

The Texas Land Title Association (TLTA) recently named its Title Person of the Year and recognized several other industry professionals during its Annual Conference and Business Meeting in San Antonio.

Teresa Frost, vice president and Texas state agency manager for National Investors Title Insurance Co., received the Title Person of the Year award, which is the highest honor bestowed by TLTA. The award recognizes significant and longtime contributions to the title industry and the association.

"Teresa has volunteered countless hours to TLTA, answering the call regularly to share her extensive industry knowledge to help develop a curriculum for continuing education and training programs," said Leslie Midgley, executive

vice president and CEO of TLTA.

Frost began her title insurance career in 1977 researching abstracts. She has been a committed TLTA volunteer since 1997, serving on or chairing numerous committees. Frost currently serves as a member of the TLTA Board of Directors.

The TLTA also honored several other members. G. Roland Love, shareholder at Winstead PC received the James H. Garst President's Award. Robin Pearson, an escrow manager and escrow officer with Central Texas Title, was honored with the Professional Excellence Award. Paul McNutt Jr., executive vice president and general counsel at Title Resources Guaranty Co., received the Professional Excellence Award.

TSS Adds Lien Release Tracking Service

TSS Software announced the integration of TitleExpress with First American SMS' FasTrax platform. The FasTrax Release Tracking service manages the process of lien release tracking and recording for recently

paid-off liens. FasTrax representatives also follow up with the lender to obtain and record release documents while providing weekly email status updates to the title agent.

Greater Illinois Title Forms National Title Services Group

Greater Illinois Title Co. (GIT), a Chicago-based real estate information services provider, formed a new division called the National Title Services Group (NTSG) to streamline its growing national business through a separate business unit.

NTSG will provide new opportunities for out-of-state residential and commercial title business development and will provide full service title insurance and settlement services for real estate transactions nationwide.

The NTSG will be headed by Guy Lundstrom, senior vice president. Lundstrom is a 30-year industry veteran and will be assisted by Vice President Dan Hyma, a 25-year industry veteran.

TitleSmart Expands with New Office

TitleSmart Inc., a Twin Cities title insurance agency, expanded its business with a new branch in Apple Valley, Minn.

The company is a certified Women's Business Enterprise, has served the Twin Cities since 2007 and currently has seven metro area locations.

"We are thrilled to provide the Apple Valley area with a convenient

NTSG will coordinate commercial title clearance, commercial escrow closing matters and commercial underwriting decisions for GIT's expanding national business.

"With GIT's thriving national business, utilizing nationwide resources and providing a single point of contact for national business will be best served by the NTSG," said Gregory Kosin, president of Greater Illinois Title. "Guy and Dan, as well as the GIT commercial group are well respected in the industry and well regarded for understanding complex commercial real estate transactions. They will be skillful and knowledgeable resources to customers of the NTSG."

location for exceptional title, escrow and real estate closing solutions," said Cindy Koebele, president and owner of TitleSmart, Inc. "We are extremely passionate about the work we do and the communities we serve and we look forward to building even stronger relationships with our partners and customers in Apple Valley."

Fidelity National Title Group NY Agency Launches Online Resource Tool

Fidelity National Title Group's (FNTG) New York Agency recently unveiled its Media Center. The portal features FNTG-sponsored seminars, events and industry data that can be accessed in a variety of multimedia formats, including:

- **Audio:** Agents can hear transcripts of the company's recent agent licensing seminars as FNTG's Frank Carroll, Ted Werner and Rich Estrella review New York State's newest legislation.
- **Video:** Agents can view FNTG's live seminar series including "Beyond the Seven Pillars." In this video production, FNTG senior management, staff counsel and industry associates discuss the

myriad of information contained in ALTA's Title Insurance and Settlement Company Best Practices, Version 2. Mike Doty of Salina Abstract and Title Agency, Inc. who attended the seminar commented, "If Best Practices are to become the norm, FNTG's seminar was very informative in terms of helping my agency comply with the new standards."

- **Documents:** PDF copies of handouts from various FNTG seminars and webinars are available for free download, including material that was distributed at the Mechanic's Lien and Building Loan Mortgages, Claims Overview, and Escrow and Recording events.

Nebraska Department of Insurance Approves Domestication of First American Title

First American Title Insurance Co. domestication in Nebraska was approved by the state's department of insurance.

"First American Title Insurance Company appreciates the support from the Nebraska Department of Insurance

during the redomestication process and looks forward to working closely with the department in the future," said Chris Leavell, First American's chief operating officer.

First American Title was previously domiciled in California.

RamQuest Promotes Schuster to Chief Product Officer

RamQuest Inc. promoted Mary Schuster to chief product officer. She will mentor and lead a team of title and settlement experts with extensive RamQuest product background. This team will define, manage, support and promote the RamQuest product offerings and will work in concert with the customer

community and the rest of the RamQuest team to further the RamQuest suite of products, the company said in a release. Schuster joined RamQuest in 2008 as director of operations where she helped build the company's implementation, training and support teams.

North American Title Appoints Managers for Southwest Region, Indiana and Ohio

North American Title Insurance Co. (NATIC) recently named Rich Griffin as its new Southwest region agency manager, while Cory Thompson joined the company as state agency manager in Indiana and Ohio. Griffin will handle

the states of Arizona, Colorado and New Mexico. He owned a title company in Phoenix for 10 years before selling it in March. Thompson previously was director of business development for an Ohio search and abstract company.

Old Republic Title Names Manager for Utah

Lincoln Scofield has joined Old Republic National Title Insurance Co. as vice president and Utah state manager. Previously, Scofield worked as an attorney

for an Oregon real estate firm, and served as vice president and general counsel for a title insurance company. In 2007, he founded Cornerstone Title Agency.

Linear Title & Closing Promotes COO

Linear Title & Closing appointed Nathan Chandler as chief operating officer. He will report to Nick Liuzza, the company's chief executive

officer. Chandler is responsible for structuring the operational policies and procedures for Linear Title & Closing and its subsidiaries.

WFG Names Underwriting Counsel for Northern New England

Elizabeth Barton has joined WFG National Title Insurance Co. as vice president and underwriting counsel for the company's agency group in northern New England. She is a member of the Real Estate Bar Association for

Massachusetts and serves on the association's Title Standards Committee and Continuing Education Committee. Prior to joining WFG National Title, she most recently worked for a northeast regional underwriter.

Title Financial Corporation Names New Chief Operations Officer

Title Financial Corporation (TFC) has announced Peggy Turner as its new chief operations officer. Turner began working for TFC in 1991 and over the years has risen through TFC's ranks by managing its First American Title Company

office in Hamilton, Mont. She then took over management of a multi-county acquisition based in Twin Falls, Idaho. In 2013, Turner joined First American Title Insurance Co. to open and manage a start-up operation in Fort Collins, Colo.

N.J.-based Fortune Title Agency Names CEO

Roseland, N.J.-based Fortune Title Agency Inc. appointed Nicole Plath as chief executive officer and majority owner. Plath brings more than 10 years of experience in information systems, software development and management to her

new role. Since joining FTA in 2008, Plath has transformed Fortune's software and business processing systems, saving the company hundreds of thousands of dollars in her first year alone, the company said in a release.

Pavaso Promotes Ayoub to COO

Pavaso Inc. promoted Chris Ayoub to chief operating officer. He will lead the strategic and operational activities of the company. Ayoub began a distinguished Air

Force and Army career in 2003 when he graduated from the U.S. Air Force Academy as a Military Distinguished Graduate and was awarded Air Force Cadet of the Year.



Celebrating 25 Years of Service to ALTA Members and the Title Industry!

Times were tough for title professionals in the 1980s. Like today, E&O insurers were either ceasing to offer coverage or raising rates dramatically. To respond to this crisis, ALTA members created Title Industry Assurance Company (TIAC) to provide a long-term stable E&O market for its members.

25 years later, TIAC is one of the longest running and successful E&O insurance providers available! Combining broad coverage, expert claims and underwriting services, and competitive rates, TIAC is the choice for title professionals!

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RamQuest

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Strong Partnerships with State Land Title Associations Vital to Industry's Success

I've seen good chunks of the United States during cross-country motorcycle rides with my wife. Each state offers a splendid uniqueness that adds to the beauty of our country.

During our trips, I've picked up on several peculiar traffic laws. For instance, honking is required before passing another vehicle in New Jersey and Ohio. In University City, Mo., it's illegal to honk the horn of another vehicle. If you do, you may be asked to prove ownership. Meanwhile, honking for anything but an emergency in Washington and New York could earn you a ticket. It's illegal in Indiana to back into parking spaces because it obscures the license plate.

As we all know, there are interesting differences from state to state in the title insurance industry. Some states have mortgages while others have deeds of trust. The closing of a loan has different meanings across the country as well. In some states, a loan is closed when documents have been signed and funds disbursed. In other states, closing isn't final until the documents have been recorded. We are one year away from implementation of the Consumer Financial Protection Bureau's final rule for integrated mortgage disclosures. The Closing Disclosure will add a new wrinkle to the importance of knowing the distinct laws each state has for real estate transactions. The final rule states that the five-page Closing Disclosure must be provided to the consumer at least three business days prior to consummation. This is going to cause a major dilemma for the settlement services industry as consummation means different things in different places.



The photo with TLTA Past President Joe Grealish. The photo was provided by Bob Daemmrich Photography).

The local expertise of the state land title associations is essential to understanding these differences. Strong state associations have solid in-state relationships, provide broad industry representation, foster local connections and understand the specific needs in their area. ALTA values its partnerships with the state associations, which are essential to the health of the industry. This is why ALTA board members, leaders and staff travel to every state land title association convention. I've already spoken at five state and regional associations (Oklahoma, California, Palmetto, Texas and Michigan), with visits in Minnesota, Maryland and Florida coming up. I treasure all of my state visits. One highlight was the Stetson cowboy hat I received from the Texas Land Title Association.

(Check out the photo with TLTA Past President Joe Grealish. The photo was provided by Bob Daemmrich Photography).

Being a member of your state association is as important as being a member of ALTA. I encourage you to get involved at the state and national level. Owning your future is easier if you do.

— Rob Chapman, ALTA president



Based on the shell and markings, it's quite likely that this fella has been around as long as Old Republic Title.

ORT has been supporting the American dream of property ownership for more than a century. We've stood the test of time by standing behind our obligations and sticking to our core values of doing business with integrity, providing unparalleled financial strength and underwriting expertise.

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From teaching you how to take control of messaging to ensure that customers understand your product to showing you how to create demand in your local markets, we're providing content to help you grow and prosper.

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Here's a look at some can't miss sessions:

- » Take Control of Explaining Your Value
- » Own Your Future and Learn About Untapped Growth Opportunities
- » This Isn't Your Father's Housing and Mortgage Market
- » How the New Closing Disclosure Will Affect the Way You Do Business

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