

## ALTA Position Statement:

The American Land Title Association (ALTA), which represents the real estate settlement services, abstract and title insurance industry, supports efforts to protect consumers by prohibiting the filing of unfair real estate fee agreements in property records, a practice that creates impediments and increases the cost and complexity of selling, refinancing, or transferring real estate. ALTA advocates for state laws and regulations preventing enforcement of Non-Title Recorded Agreements for Personal Services (NTRAPS).

AMERICAN  
LAND TITLE  
ASSOCIATION



## Non-Title Recorded Agreements for Personal Services (NTRAPS):

NTRAPS are filed in property records to provide notice evidencing an owner's agreement for a future service in exchange for upfront monetary compensation paid to the owner upon execution of the agreement. Regardless of what these agreements are called, they are recorded even though they do not constitute a real property interest. Additionally, the implied nature of these documents (mortgages, liens, covenant of security interests, etc.) raises questions about compliance with legal and regulatory requirements regarding lending and licensing.

## Background:

The practice of submitting Non-Title Recorded Agreements for Personal Services (NTRAPS) for inclusion in property records characterized as liens, covenants, encumbrances, or security interests in exchange for money has recently emerged throughout the country. These agreements obligate the current owner to use the other party's services in the future, and further attempt to bind successor owners by purporting to create a real property interest. Failure to comply with these agreements may give rise to a lien against the property to secure liquidated damages.

The way these agreements are marketed to property owners and the terms, duration, and enforcement of these agreements are concerning. There are no regulatory disclosure requirements regarding these agreements. As a result, consumers may not fully understand the implications of these agreements. In addition, the act of recording these agreements in property records can create a long-term barrier to the sale or refinancing of real estate or hamper estate administration.

## ALTA Principles:

Agreements should be equitable.

*The duration, terms and enforcement of any agreement should be fair, equitable and in compliance with state law, including those concerning unfair and deceptive practices.*

Property rights should not be unreasonably restrained.

*ALTA members protect property rights, knowing homeownership often represents the largest financial investment of a lifetime. Good public policy should support certainty of landownership by ensuring there are no unreasonable restraints on future ability to sell or refinance property due to unwarranted transactional costs.*

Real property covenants should touch and concern the land.

*The benefit and burden of real property covenants should touch and concern the land. Non-Title Recorded Agreements for Personal Services (NTRAPS) in and of themselves DO NOT create a valid interest in real estate. Treating these agreements as real property covenants erodes the certainty of property rights and unreasonably restrains transferability.*

Non-Title Recorded Agreements for Personal Services (NTRAPS) should not involuntarily bind future Homeowners.

*A successor owner should not be financially liable for benefits provided exclusively to a previous homeowner as part of an agreement. Efforts to enforce agreements executed without the consent or knowledge of a future homeowner are unfair and deceptive. Additionally, this anti-competitive practice creates long-term adverse financial impact by purporting to bind subsequent homeowners to pricing that does not accurately reflect the evolving market.*

The reliability of property records should not be negatively impacted by the filing of Non-Title Recorded Agreements for Personal Services (NTRAPS).

*Public property records are accessed, reviewed, and used in every real estate transaction, including refinancing of home loans. Reliable land records are critical to the safe and dependable transfer of real estate. Property recordings should be limited to documents legitimately affecting the title to real estate. The timely release or termination of NTRAPS currently filed in property records must be appropriately conducted as required in compliance with state law.*