

# TITLE *News*

SEPTEMBER-OCTOBER 1995



**Major Realtors  
Target  
Title Business  
Entry**

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Volume 74, Number 5

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**On the cover:** Most of the 250 largest Realtor firms view title insurance and closing services as their next business "target of opportunity," according to a study of their one-stop shopping experience and plans. A preview of the study is presented in an article beginning on page 4 of this issue. (Cover design by Halford Design and Graphics)

## FEATURES

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### **4 Major Realtors Target Title Business Entry**

*By Dr. Weston E. Edwards*

Over the past 18 months, there has been a 50 percent increase in point-of-sale mortgage lending among the largest Realtors. Indications from the findings of a study by Weston Edwards & Associates point to more rapid entry by these Realtor firms into closing services and title insurance. According to Dr. Edwards, Realtors turning to closings and title insurance expect to provide a superior service to that available "on the street."

### **7 Title EDI Goes Video**

As the result of an initiative led by ALTA President Mike Currier, each ALTA member company is being sent—*free*—a new video on the basics surrounding the emergence of electronic data interchange (EDI) in the title business. The ALTA president has expressed growing concern over a lack of EDI understanding among title owners and managers as the technology has become more established in real estate lending and the title sector. Content of the video is designed to provide a management-level grasp of EDI without the need for time-consuming research in technical publications.

### **11 The NAIC Model Acts: A Good Beginning**

*By Richard W. McCarthy*

After a three-year effort accented by frustration and occasional regulator exasperation, the National Association of Insurance Commissioners drafting of separate but related model acts for title agents and title insurers is drawing to a close. ALTA and individual title industry representatives, and others, have remained actively involved in the developmental process from the beginning. The model acts may well be considered by individual state legislatures in 1996.

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## A MESSAGE FROM THE PRESIDENT-ELECT



I am not sure what it takes to be an "old timer" in this business. Although I may never be considered to be one, occasionally one or another old timer may be heard bemoaning the fact that so many people in the title insurance industry are not "title people." This comment, I assume, refers not only to those involved in the "newer" disciplines which have become part of our world, such as the ubiquitous computer support staff, but also to many of us who have less than several decades of title experience.

Some members of the industry feel that this is a criticism well taken. I might agree with them, if I were not so acutely aware of the need for increasingly diverse skills. For one thing, the title industry is more than 100 years old and, while a good many activities have been modernized, there still are some pockets of tradition where things are being done in the same way they were a century ago. Just think of the changes in technology in the last decade.

I would assume that every entity of significant size in our industry has learned to accept modern financial practices and controls, sophisticated asset management and the people with the expertise to develop and maintain these systems. As the industry has come under greater scrutiny from financial rating agencies and the investment community, we have had to become more sophisticated in the financial disciplines. In a similar fashion, as the many activities of the real estate transaction process have grown to be more complex and technologically advanced, so must our industry evolve in order to meet the demands of a new environment.

Our customers are more knowledgeable than ever about our products, attitudes and underwriting philosophies. They demand faster turnaround, quicker responses both from agents and direct operations, and prompt resolution of claims and other inquiries. The laptop PC has replaced the green eyeshade, even for some of the old timers, who can no longer afford the luxury of their old work methods.

The business cycles which we have come to expect, the pitfalls and temptations of the marketplace, the constant pressures on profitability and the sometimes inconsistent conduct of regulators are only a few of the factors which perpetuate the fragmentation of our industry. And, in a business which has seen many of its competitors either disappear or be acquired, in which the failure of just one company could have a serious, adverse impact on all of us, it becomes that much more important to stand together and embrace modernization.

If I may borrow from Dickens, this is the worst of times, but it is also the best of times, because it forces us to review and reappraise our operational strategies and look for ways to utilize the many advances of modern technology to reduce our operating costs, increase efficiencies and remain competitive—not merely with one another, but with the rest of the world. The results of these efforts will help us through the bad times and be even more beneficial as the market improves. In the long run, there is little to lose and much to gain from bringing 21st century technology into our business.

It's something to think about.

Herbert Wender



By Dr. Weston E. Edwards

*(Editor's note: The following represents the views of the author and does not necessarily reflect those of ALTA.)*

In the last year and a half there has been a 50% increase in the 250 largest Realtors' participation in point-of-sale mortgage lending (i.e. from 43% to 66%, and for Billion Dollar firms from 74% to 94%). While title insurance or closing services currently are offered by only 27% of the 250 largest Realtors (yet 38% of the Billion Dollar firms), they are viewed by most large Realtors as their next "target of opportunity."

This is most dramatically confirmed in the accompanying Table 1, which identifies among the Billion Dollar firms (the 34 Realtors that sold more than \$1 billion of real estate in the year before last) what those not currently participating in title insurance are considering doing.

These and many other critical issues were the focus of a six-month landmark study performed by Weston Edwards & Associates under the sponsorship of Fannie Mae, Freddie Mac, GECMC, Chicago Title and EDS - several of the key findings of which are summarized in this article. In-depth interviews were conducted with 230 of the top 250 Realtors in the country (the largest firms were almost all visited personally, while the less large firms were interviewed by phone) to discover the history of their providing

one-stop-shopping services to the home buyer, exploring both structure and motivation. Taking as many as four hours, the interviews focused on what each of the Realtors did in the past, how their view of and motivation for providing these services has changed, and how they see the future for these services and of their participation in them.

**Table 1**

**Among Billion Dollar Firms,  
Reasons Why Not In Title Insurance**

	<i>Billion Dollar</i>
Actively Considering At This Time	30%
Receptive To Offers	25%
Want To Master Lending First, But Then Most Interested	5%
Prohibited By State Law:	
Actively Working To Change Law	10%
Prospects Of Change In Law Look Good	15%
Not Interested At This Time	15%

# Realtors Target Title Business Entry

## Much Can Be Learned From Realtors' In-House Lending Experience That Will Impact Their Title Insurance And Closing Services Entry

Some of the most critical and painful lessons Realtors have learned over the last 15 years in attempting to provide point-of-sale lending services have been:

### 1.

Residential sales associates generally would prefer to use an outside loan originator rather than an in-house alternative, because if something goes wrong (even if the sales associate were in part to blame), they can blame the lender and probably keep their commission, while if the home buyer uses an in-house service it is difficult for the sales associate to dodge the blame and their commission is more in jeopardy. The twelve or more Realtors that have been highly successful (achieving 30% or better buy-side capture rates and generally earning from \$300-\$500 per loan) have done so by providing a superior service, but for every success there have been about 10 failures.

*Having learned this lesson well, Realtors entering the title insurance and closing services businesses expect to provide a superior service to that available on the street.*

### 2.

With the exception of the Billion Dollar firms who generally concluded they were large enough to establish their own mortgage company, the great majority of the remaining large Realtors en-

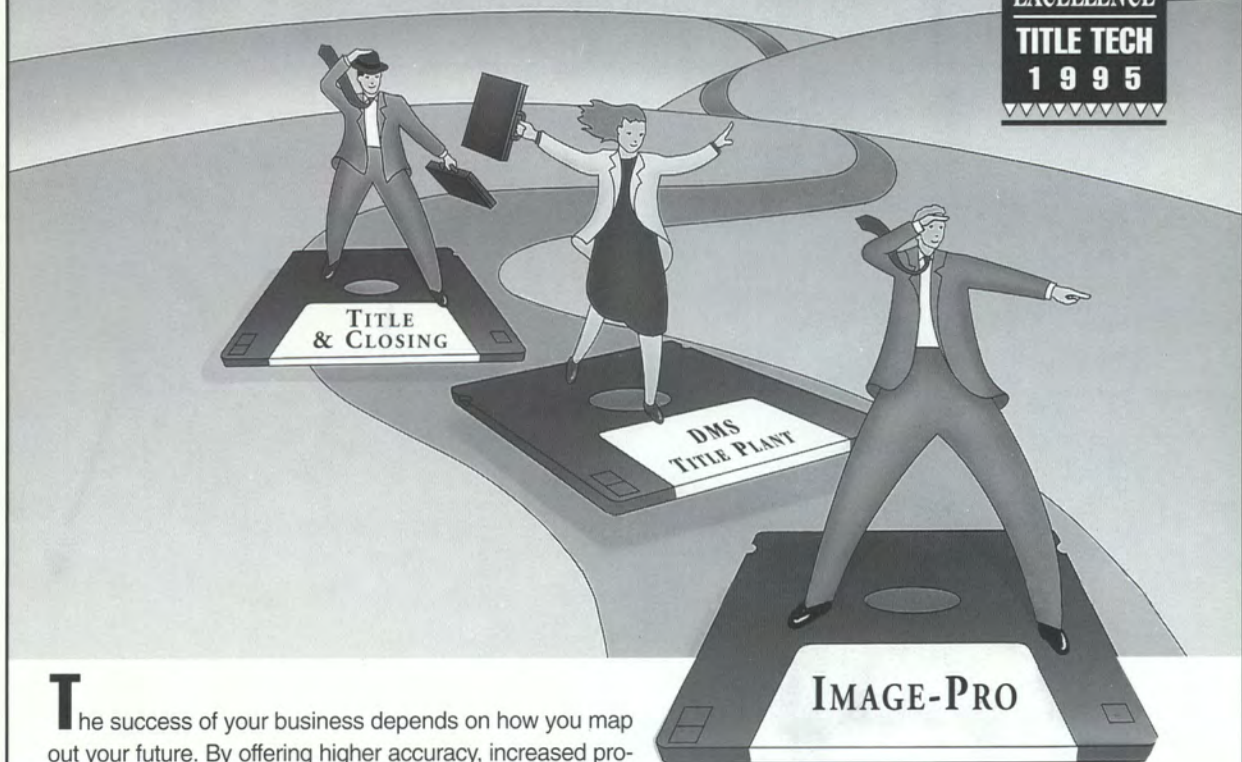
*continued on page 17*



*The author has headed his own consulting firm, Weston Edwards & Associates, Laguna Beach, CA, for the past eight years, assisting industry leaders in all aspects of the home buying and financing process. He has built and managed title insurance, mortgage finance, residential brokerage and relocation businesses for more than two decades. This has included financial leadership for a major title insurer, management of residential production for one of the nation's largest mortgage banking operations, building a leading relocation company and building a residential brokerage firm with over 300 owned offices and over 8,000 sales associates. In 1981-82, he founded and has since chaired Housing Roundtable, a policy advisory and action group committed to removing obstacles to a healthy housing market, and to encouraging home ownership and the attainment of affordable housing.*

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# TITLE EDI Goes Video



**L**ater this year, each ALTA member company will receive—free—a new "heads up" video alerting the viewer to basics surrounding the emergence of electronic data interchange (EDI) in the title business.

Production of the new VHS video resulted from an initiative led by Association President Mike Currier, who has expressed growing concern over a lack of EDI understanding among title owners and managers as the technology has become more established in real estate lending and the title sector.

"I am extremely proud of our ALTA Education Committee and Land Title Systems Committee, and their staff coordinators, who have answered the challenge from our Association Board of Governors with the production of a basic video for those who need to learn what EDI is without becoming bogged down in technical publications," the Association president said.

Entitled, "Electronic Data Interchange: Changing The Way *You* Do Business," the video combines a rudimentary explanation of EDI in title operations with actual examples of successful use already being

achieved by title executives. Produced by the Association and its subsidiary, Land Title Institute, the video emphasizes that title customer demand for speed and accuracy will expand steadily.

Those not ready to participate in the EDI movement face the possibility of being left behind by the competition, the video continues. And, it is pointed out that installation of EDI need not be overly expensive or disruptive for an existing title organization.

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**P**roduction of the new VHS video resulted from an initiative led by Association President Mike Currier, who has expressed growing concern over a lack of EDI understanding among title owners and managers...

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Besides retaining customers who demand electronic speed and accuracy from their providers of title services, companies with EDI capability can be placed in a better position to build business and improve their internal processes, the video points out.

#### **Title Executives Featured**

Appearing on camera in the production are Fred Hemphill (Commonwealth Land Title), chairman of the Systems Committee EDI Subcommittee, who delivers the technical and business-related explanatory passages in easy-to-understand language, and two title executives with EDI operations that are up and running. Providing their market-level perspectives as successful end users of the technology are Greg Kosin (Greater Illinois Title) and Nick Moroz (Lawyers Title).

Adding emphasis in the production is a segment taped by Fannie Mae Vice Chairman Franklin Raines, who describes the strong movement of the secondary mortgage market toward converting the entire mortgage processing function to electronic communication including EDI.

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"EDI's going to become such a standard in the industry that I believe it will become very difficult to be a full participant...unless you've embraced EDI," the Fannie Mae senior officer comments. "We've incorporated EDI standards into our new technology we've rolled out to lenders and, over time, the systems are only going to be recognizing the EDI transmissions and other kinds of electronic transmissions...lenders are not going to want to have to key in information as they have been in the past."

Hemphill in the video defines EDI as the electronic exchange of information between computers using an industry standard format, which makes it easier for all participants. He notes that ALTA has shown leadership in EDI implementation for the title industry—developing through its EDI Subcommittee the approved Transaction Set 265 for title services ordering and

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**B**esides retaining customers who demand electronic speed and accuracy from their providers of title services, companies with EDI capability can be placed in a better position to build business and improve their internal processes, the video points out.

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the currently pending Transaction Sets 197 and 199 for electronic transmission of title evidence and settlement information, respectively.


The Subcommittee chairman also discusses the development of a trading partner agreement, which includes the rules under which a title company and its customer exchange data electronically.

In his video appearance, Kosin recalls the decision for an EDI conversion was made in his company when a lender customer advised that its operations would be changed to that format. Since partnering with the customer to develop an EDI ordering system, Greater Illinois Title has been able to reduce title insurance order processing time by two days, he added. A previous fax-mail-manual handling setup has been replaced by EDI capability that allows

the title ordering process to begin through computer transmission of the necessary data.

Moroz added that transitioning to EDI should prove relatively easy for any title office with a computer system in place. This proved to be the case in his Lawyers Title branch office. Moroz added that calling upon a qualified EDI representative can be helpful.

Besides Hemphill, Systems Committee and EDI Subcommittee members involved in the production include Steve Evans (Evans Title), Pete Nichols (Chicago Title) and Mike Franks (Genesis Data). Education Committee participants are Stanley Friedlander (Continental Title), Peter Norden (First American Title), Jack Rattikin III (Rattikin Title) and Betty Sagatelian (Realty Title).

Pat Berman and Gary Garrity of ALTA staff served as producers during the video effort. The production company is Business Television, Inc., which has handled various educational video assignments for LTI. 

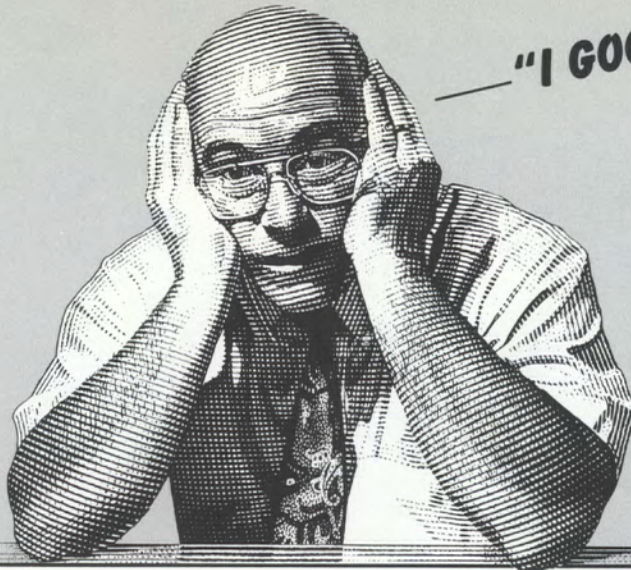
## Fidelity National Adds Credit Facility

Fidelity National Financial, Inc., parent of organizations including Fidelity National Title Insurance Company, has announced agreement on terms of a \$35 million credit facility with a banking syndicate led by Chase Manhattan Bank N.A.

The facility includes a \$22 million term loan and a \$13 million revolving credit facility, according to the announcement. Fidelity advises that the term loan will be used to refinance existing higher rate indebtedness and for general corporate purposes. The revolving credit facility will be available to fund a portion of the recently announced acquisition of Nations Title, Inc., by Fidelity, and to provide additional liquidity.

## Credit Data Firm To Chicago Title

Chicago Title and Trust Company has acquired Credit Data Reporting Services, Inc., a privately-held credit reporting and data collection firm located in Kingston, NY, through an exchange of Credit Data common stock for the common stock of Chicago Title's parent, Alleghany Corporation, according to an announcement from the parties concerned.



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# The NAIC Model Acts: A Good Beginning

By Richard W. McCarthy  
ALTA Director of Research

**A**fter a three-year effort charged with frustration, contentious exchanges and occasional regulator exasperation, the National Association of Insurance Commissioners drafting of separate but related model acts for title agents and title insurers is drawing to a close.

In September, the full NAIC membership approved the title agent model act, making it available for the consideration of individual state legislatures in 1996. At this writing, the NAIC Title Insurance Working Group continues work on the insurer model act; realistic projections indicate its final approval could be achieved in March of next year.

ALTA and individual title industry representatives have been heavily involved in the work since the early going, when it became clear the NAIC was determined to produce increased regulation of the title insurance business. Throughout the process, there was a prevailing NAIC concern to increase the protection of title insurer solvency.

Particularly effective through the drafting of the Agent Model Act were ALTA Abstractor-Agent Section Chairman Dan Wentzel, North American Title, and his predecessor in that office, Joe Parker, Parker Title Agency. Both represented that section skillfully, and forcefully when necessary. Their dedication was especially important because other diverse interests were on hand to advocate positions contrary to ALTA's position during the NAIC drafting sessions.

Although at times ALTA's position on certain issues was weakened by a lack of agreement among some in the business as the drafting proceeded, the resulting

model acts are more palatable than their initial versions. Given the inevitability of the Working Group's drive to produce the model acts, it should be remembered that the versions finally approved reflect sound input from the industry and must be considered at least a good beginning.

In the now-approved model agent act, there are a number of issues that reflect a great deal of ALTA effort during the drafting

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process. Victories were won with some of these, but not all. Of particular importance to the title industry side are those pertaining to:

- Licensing
- Disclosure of insurer relationship
- Errors and omissions and fidelity insurance requirement
- Referral fees
- Controlled business

- Remittance of funds to title insurer
- Fiduciary holding of funds
- Prohibition of sub-agents
- Requirement of financial statement
- CPA audit of escrow, settlement/closing, security deposit accounts
- Insuring over monetary liens

More will be said about these in forthcoming paragraphs. But first, how did the NAIC drive to produce model acts for title agents and insurers begin?

## Changing Business Conditions

The genesis and tasking of the Working Group can be traced to the fall of 1991, a time when the title insurance business already had suffered through three consecutive years of operating losses. Title USA of Texas had gone into liquidation after financial difficulty and one other large title insurer seemed to be on the brink of failure. By the fall of 1991, the industry over the preceding five years had suffered numerous agent defalcations.

At the same time, the loss ratio for the industry—losses as a percentage of premiums—had doubled between the early 70s and the early 90s, from 5 percent to 10 percent.

Adding to the problem was a *New York Times* article written by Eric Berg, which stated that the title industry was under-reserved and headed for failure, and was going to take Fannie Mae, Freddie Mac and the entire real estate sector down with it.

Following publication of the Berg article, a number of the major title insurers responded individually, basically saying through the media: "We are financially strong; our competitors are not as strong."

This generated a good deal of confusion, both within and outside the industry. In these individual efforts, underwriters passed up what would have been a better tactic for all—a unified response that could have correctly stated: The entire title industry is strong and Eric Berg is exaggerating.

Following the negative press and deteriorated operating environment, the NAIC, at the end of 1991, appointed a Title Insurance Working Group to assess the situation and, if necessary, take action to assure the solvency of title insurers.

Since the basic job of a regulator is to assure that any insurance company will remain in business to meet its future obligations, the NAIC focus on solvency is understandable. Much of the agent model act is solvency oriented, and is written to protect or minimize the exposure of the title insurer. The contractual relationship for which the regulator has protective responsibility is that which is between the insurer and the insured. The regulator has no direct responsibility for the middle man, the sales person, the agent.

Behind the scenes, regulators clearly know the agent in all lines of insurance—especially title insurance—plays a significant role. They are well aware that, without agents, title insurance would not be available in many parts of the country where it is not feasible to have direct underwriter operations. However, title insurer solvency was a major consideration for the regulators from the early stages of the agent model act and had to be addressed accordingly by the title industry side.

### **A Challenging Educational Process**

Not the least of what was accomplished by ALTA and others from the industry was bringing members of the Working Group to a considerably better understanding of the title business. Aiding the regulators in learning more about the nuances of the title industry has been critical in the achievement of industry objectives during the drafting of both model acts.

As an example, the regulators know from their existing frame of reference that commissions to property-casualty agents generally are below 20 percent. Also, they are aware that the P&C agent does little but sell the product. With the exception of some preliminary underwriting on the sales end, the P&C agent concentrates on sales and sending applications to the home office. P&C agents who bind coverage generally are large and few in number, and usually are called "managing general agents."

From the P&C side, underwriting and

delivery of a policy are fairly uniform across the country. The application for auto insurance from Allstate is basically the same, in California as it is in New York as it is in Florida.

When the Working Group turned to the title industry, the members were bewildered to find that commissions to agents generally are above 50 percent and exceed 80 percent in some jurisdictions. It was up to the industry to explain in detail the difference between the two kinds of agent—and why the title agent earns such a large percentage of the work charge.

Of course, having the sales person perform underwriting violates one of the basic operational rules of property-casualty insurance. In P&C, the agent is out there to generate as many applications as possible, while the underwriting function is to reject applications.

Another difference that troubled the P&C-oriented regulators is the contrast in

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**T***he model acts remain a work in progress as individual state officials consider tailoring them to best fit the needs of their respective jurisdictions.*

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how title insurance is underwritten and delivered from county to county. During the drafting of the agent model act, they were exposed to a wide array of operations—from large, corporate agents in California, to the sole practitioner approved attorney in North Carolina, to the unlicensed agent in New York, to the attorney-agent in Connecticut.

The regulators were concerned when given an idea of the sizable amount of funds—closing funds or mortgage monies—handled by title agents when conducting closings, this with few controls and generally without fidelity insurance or a bond to protect the depositor or title insurer. This presented a dramatic contrast to the P&C agent selling auto or home owner insurance, who accepts a minimum deposit with the balance of the premium billed by mail and generally handles no other funds.

After ALTA representatives spent a great deal of time pointing out the differences between what is done by a P&C agent and by a title agent, a basic understanding was reached. The regulators now grasp the role

of the title agent in property description, loss prevention, title search, examination, and underwriting. Since that time, no one from NAIC generally has questioned the title commission levels. There may be disagreement among the regulators as to whether an 80 percent commission is appropriate—whether the level should be 90 percent or perhaps dropped to 70 percent. But no one from the NAIC side has been heard to say: Why isn't it 20 percent?

### **The Drafting Begins**

As the improvement of regulator understanding with regard to the title industry progressed in line with ALTA's explanation that title underwriting in the field is based on local law and custom, and land records are at the county level, members of the Working Group naturally responded that title agents really are similar to managing general agents (MGAs), for whom the NAIC already has a model act.

There are similarities between MGAs and title agents. Both represent the insurer, do underwriting and bind coverage, issue the policy, and collect and disburse premiums. But the typical title agent is nowhere near the size of an MGA. Under the NAIC model act for MGAs, they are required to be licensed, have annual audits, be insured, and have fidelity insurance in place. Also, most importantly, there are limits on how much an MGA can write for a company in a given year.

As 1992 began, it became clear that the Working Group intended to overlay its MGA requirements on title agents through written regulations—and that ALTA would need to move from providing input on the sidelines to a more active role in the process. By the following year, the ALTA leadership had designated an *ad hoc* committee of agents and underwriters, with myself as staff, to develop our version of a model title insurance act.

A few months later, the ad hoc Committee had prepared a draft model act that was six pages long, which frankly was inadequate. This was presented to the Working Group, which at the same time issued a draft of its own model title insurance act. All parties ultimately agreed that the Working Group draft was too comprehensive. In spring, 1993, a number of title industry representatives were appointed technical advisors to the Working Group to develop acceptable model acts.

### **Progress Is Made**

At the beginning of this article, mention was made of important issues encountered along the way that reflect victories, defeats

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and compromises for the title industry side. Here is a summary.

*Applicability to lenders.* As we worked on a draft definition of the "Business of Title Insurance," the Real Estate Service Providers Association (RESPRO)—representing controlled business entities and including Norwest among its membership—recommended language in both model acts to the effect that any guarantees or warranties to status of title as made by a mortgage lender without a direct charge to the buyer or seller of the property would not be title insurance. ALTA objected, and the NAIC finally agreed to have this provision stricken from both model acts; this attempt by lenders to circumvent state regulation failed.

*Licensing.* Included in the model act is a provision that each agent be licensed, and that the license either name each employee who may act on behalf of the agency, or each such employee must be individually licensed. ALTA argued that this could create an uneven playing field between title agents and insurers—since, in competing with a direct operation or branch of an insurer, an agent would have to hire licensed employees while a competing insurer would not have to do so. Since this requirement already exists in numerous states, the Working Group let it stand. The Working Group members believe they presently have enough regulatory tools to make licensing of underwriter employees unnecessary—but that they fall far short of this on the agent side. Further, title agency owners and managers in states with licensing generally report competing with insurers has presented no particular problem for them. And, there is a certain protection for the investment of corporate title agents in allowing only qualified, licensed individuals to compete for their business. Hence, the regulators decided to retain this provision.

*Disclosure of Title Insurer Relationship.* A provision that each agent must disclose on all correspondence that he/she is acting for a particular title insurer was felt by some to be an unnecessary increase in cost, with the printing of stationery, etc. But this requirement, common in P&C lines, clears up some confusion and did not draw strong opposition.

*Errors and omissions, fidelity insurance requirement.* The regulators correctly believe that title insurance is not, and should not provide, professional liability or fidelity insurance for title agents. Hence, the model act requirement that the agent have in force an E&O policy for its erroneous acts, or omissions, and must include coverage for any agent functions delegated to a third

party, or the third party must have its own E&O policy. In addition, an agent handling escrow funds is required to have fidelity coverage for the benefit of the depositor and/or the title insurer. Because E&O and fidelity coverage can, at times, be either difficult to obtain or expensive, ALTA successfully argued for a provision indicating that the commissioner may promulgate rules specifying acceptable alternatives to these insurance requirements. That is, if E&O or fidelity insurance is not available or is too expensive, the commissioner can promulgate some other rules and regulations.

*Referral fees.* ALTA opposed RESPRO and came out strongly against referral fees, recommending prohibition of rebate and fee-splitting—along with a competitor's right of action. The Working Group accepted this recommendation.

*Controlled business.* Controlled business was the most widely discussed issue in

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**O**ver the past three years, the communications gap between the NAIC and ALTA—along with others from the title industry—has been greatly narrowed.

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the model act. ALTA and RESPRO were natural adversaries on this issue and proved to be strong opponents at the various drafting sessions. Although the ALTA Abstracter-Agent Section vigorously called for a controlled business prohibition, the title insurer side was silent—because most insurers have controlled business arrangements. In my view, title insurers—if asked individually—would privately express a preference for ending all controlled business arrangements. But, with controlled business a reality in a very competitive marketplace, no insurer can afford to take this position publicly. So, with the insurers generally abstaining and some state title associations opposing a 20 percent controlled business limitation as proposed by ALTA, the agent model act emerged with a disclosure provision and an optional 20 percent limitation.

*Remittance of funds to title underwriter.* Again following a common P&C requirement, the regulators proposed requiring the agent to render accounts to the title insurer, including all funds due the insurer, within 45 days after effective date of the pol-

icy. ALTA explained how difficult it would be for an agent who generally ships policies to the insurer on a monthly basis, to accomplish the bundling, billing by the insurer, and disbursing a check to the insurer within 15 days after the month of policy issuance. For example, fees would be required to be paid to the insurer on February 15 for policies issued on January 1. ALTA requested that the language be changed to 45 days **after** the end of the month in which the policy is issued. Therefore, for the aforementioned January 1 policy, the requisite date to render all accounts to the title insurer would be March 15. NAIC agreed to the ALTA request to allow more flexibility and changed the language.

*Fiduciary holding of funds.* Yet another P&C requirement that could not be opposed calls for all funds collected by the agent for the title insurer to be held in a fiduciary capacity, in a separate and exclusive account.

*Prohibition of sub-agents.* ALTA asked for a prohibition against sub-agents, defined as any person other than an employee of an agent, who, on behalf of the agent, determines insurability and issues title insurance reports or policies based on the performance or review of a search or abstract of title. The objective here is to protect legitimate agents from "sham" agents fronting for sub-agents who do the work. The NAIC agreed with ALTA and incorporated this provision in the agent model act.

*Requirement of financial statement.* Under the model act, the agent must provide each insurer with which it has a contract, a statement of financial condition containing an income statement and balance sheet as of the previous December 31. While this may seem burdensome, the original NAIC proposal called for a CPA-audited balance sheet. After ALTA pointed out that having a CPA do the preparation could be very expensive, the Working Group changed the requirement so use of a CPA no longer is mandated.

*CPA audit of escrow, settlement/closing, security deposit accounts.* The Working Group held with its original draft requirement that an agent handling closing funds must have an annual CPA audit of its escrow, settlement/closing and security deposit accounts. Although ALTA contended this could be difficult and expensive, the regulators disagreed, pointing out that such an audit need not be costly and is a cost of doing business that should be borne by the agent. It was noted that small agents operate throughout Texas, presently are required to have an annual audit of their escrow accounts, and apparently are not



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crow accounts, and apparently are not being forced out of business by this requirement.

*Insuring over undisclosed monetary liens.* At the urging of California's insurance department, it initially was proposed by the Working Group that an agent or insurer direct operation be required to disclose at the time of commitment all unsatisfied monetary liens placed on a property—whether or not they are enforceable—even if an insurer intended to write over such liens. After ALTA contended this would dampen real estate transactions, tending to cause buyer refusal to go to settlement even when the insurer would write over the lien and issue its policy, the regulators agreed not to require listing on the commitment the liens that were to be insured over. Naturally, those not written over, which would have to be satisfied before closing, would be listed.

### Model Insurer Act Provisions

While the model insurer act continues in the drafting stage as this is written, there has been much input by ALTA. An excellent example centers on an initial NAIC prohibition against the title insurer issuing closing protection or insured closing letters.

ALTA argued that, in a state where agents and insurers compete for business, agents would be at a disadvantage if insurers were not permitted to issue closing protection letters on behalf of their agents. It was pointed out that no lender would do business with an agent without a closing protection letter—the lender could instead deal with an insurer having "deep pockets" which has an "implied closing protection letter" in its corporate assets.

ALTA scored a victory here. Title insurers, through the model act, would be authorized—subject to state law—to issue closing protection letters to their proposed insured upon request, if they issue a preliminary report, a binder or a title policy. Closing protection would indemnify a proposed insured solely against the theft of settlement funds by the agent, provided the agent fails to comply with written closing instructions from the proposed insured that have been agreed to by the agent.

This provision narrows the exposure of the title insurer through closing protection letters. No longer would closing protection letters be used to coerce the title insurer to buy back mortgages because the paperwork was not completed in time and the lender could not sell the mortgage in the secondary market.

When the regulators drafted this provi-

sion, they added another sentence, stating that "the commissioner **shall** promulgate or approve a charge for the closing protection." ALTA argued that requiring a charge for the closing protection would again set up an uneven playing field. The agent would be required to impose a charge for his/her product that the direct operation would not have to impose—resulting in a price advantage for the direct operation.

NAIC agreed with ALTA and changed the language so that, now, the provision says the commissioner **may** promulgate or approve a charge for closing protection but is not required to do so.

An additional gain has been achieved by ALTA, outside the direct content of the model act now being drafted. This came when the NAIC proposed a new section in Schedule N of its title insurer financial statements that title insurers routinely file with their individual state regulators.

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*Although there was frustration and disagreement...the regulators are to be commended for their patience and perception in working with a diverse and sometimes troubled group.*

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As proposed, an amended Schedule N would have required insurers to list the total escrow deposits held by all agents, meaning they would have to collect data from each agent. Also, insurers would have been required to list individually the escrow deposits held by each agent providing more than 1 percent of an insurer's total premiums.

ALTA finally convinced the NAIC this was a useless addition that would have been unduly burdensome for both insurers and agents. The NAIC agreed to remove the proposed change and leave Schedule N as it previously existed, meaning that insurers are required to report only their own interest bearing and non-interest-bearing escrow balances in the financial statements.

### Fair Treatment, Good Beginning

Assuming that the title insurer model act is approved by the NAIC by early next year, both measures will be in the hands of state legislatures soon. The model acts remain a work in progress as individual state officials

consider tailoring them to best fit the needs of their respective jurisdictions. Hopefully, the title industry will continue its involvement at the state level—shaping regulation that is both effective and workable.

Over the past three years, the communications gap between the NAIC and ALTA—along with others from the title industry—has been greatly narrowed. Besides improving the two model acts, the recent drafting process has established a foundation for more productive communication in the future.

Although there was frustration and disagreement during the drafting process, the regulators are to be commended for their patience and perception in working with a diverse and sometimes troubled group. Everyone was heard. The effort was constructive. And the resulting model acts embody the very real concerns of NAIC members dedicated to protecting the title industry and the public. 🐾

## Fidelity Purchases Los Angeles Firm

Fidelity National Financial, Inc., parent of organizations including Fidelity National Title Insurance Company, has announced the purchase of Southern California Title Company, an underwritten concern based in Los Angeles. The company now operates as an underwritten company of Fidelity, under the name of Fidelity National Title Company of California.

The Los Angeles acquisition accomplishes the parent's long-range objective of acquiring at least two underwritten companies in California, according to Fidelity National Financial Chairman William P. Foley II. Earlier this year, the parent organization announced the acquisition of Butte County Title Company in the northern part of the state.

## Montana Concern Is Award Winner

American Land Title Company of Montana, Inc., Bozeman, is one of six winners in this year's Family Business Day competition sponsored by Montana State University.

There were 60 entries in the 1995 competition.

Bradley C. Stratton is president of the award-winning title company.

continued from page 5

tered joint venture or rent-a-desk arrangements. Partly this was because the less large firms found themselves playing "catch-up" with their larger and more successful competitors. Others saw this as a less risky way of entering and learning the business, leaving open the opportunity to later take more risk for a greater return.

Generally, Realtors will be receptive to joint venture and rent-a-desk arrangements because they understand title insurance is a highly specialized business that they must provide in a superior manner.

**3.**

The primary motivation for almost all Realtors in providing one-stop-shopping services is to increase their profitability. RE-MAX and other 100% commission companies have created a bidding war for sales associates that has driven the typical Company Dollar (that portion of the total commission dollar

**W**hile title insurance or closing services currently are offered by only 27% of the 250 largest Realtors ...they are viewed by most large Realtors as their next "target of opportunity."

which the broker/owner has left after paying sales associate commissions) down from 50% to about 33%, or only \$1,000 for one-side (either listing sold or home purchased) of a \$100,000 property. After paying office manager's compensation, space costs, all advertising, support staff, etc., the broker owner typically brings to the bottom line only 7-8% of the company dollar, and sometimes not that. With home values averaging for most large Realtors (depending on their markets) from \$100,000 to

\$200,000, the profit per transaction side averages \$100 to \$150. With mortgage profitability per transaction for the more successful firms running two to four times that of brokerage, it is not surprising that several firms are making more total dollars from mortgage lending than residential brokerage.

Although title insurance profitability varies more by market than does mortgage lending, the experience of those successfully in the business is that they are making more per transaction than from brokerage, but generally not quite as much as from lending. Many of the large broker/owners said that if it weren't for the profit enhancements that lending and title insurance are bringing or will bring, they do not think they would continue in the brokerage business.

**4.**

The New RESPA Ruling announced on November 2, 1992, on the eve of the elections, apparently favoring the Realtors, did not turn out to be a decisive element, as the lenders had feared and the

**Table 2**

**"Side Who Pays" Capture Rate of Title Insurance Versus Buy Side Capture Rate**

**Buy-Side Mortgage Capture Rate**

	No Mortgage	Under 10%	10% to 19.9%	20% to 29.9%	30% to 39.9%	40% to 49.9%	Total
Under 10%							
10% to 19.9%							
20% to 29.9%	50%	25%	23%				19%
30% to 39.9%	25%	25%	15%				13%
40% to 49.9%	25%	25%	31%	38%			28%
50% to 59%			8%	50%			16%
60% to 69%			15%	13%	100%	50%	16%
70% to 79%		25%	8%			50%	9%

Realtors had hoped. Instead the Ruling was immediately challenged in court and by the new Democratic Administration. Enforcement which first stiffened is now almost non-existent. The recent surge of Realtors into lending can be said to have taken place in spite of a confused and frustrating RESPA environment rather than because of it.

*The political currents seem to be moving away from legislative and regulatory barriers separating parts of the home finance and conveyancing transaction, and that is likely to become even more true as the process is more thoroughly automated as Fannie Mae and Freddie Mac are determined and actively proceeding to accomplish.*

## 5.

The single most important question that the key sponsors of this study wanted answered is whether Realtor-based mortgage operations would add, disturbingly, to the quality control problems of the mortgage finance industry. Counter intuitively, the study found that POS (point-of-sale) lending operations, when past the start-up stage, produce above-average quality mortgages. While the study discovered several contributing factors, the main reason is that Realtors have learned that only by delivering high quality mortgages to the lender/investors can they get the best rates, terms and service which the POS lending service must have to gain the support of sales associates who would prefer to work with outside LOs whom, as was mentioned, they can blame if anything goes wrong.

In the start-up stage there is usually a period of "testing" when the sales associates bring some of their hardest and most marginal cases to the in-house originator (even some cases that have already been rejected by other lenders). The sales agent's attitude is frequently, "if you are as good as you say, see how you can handle this one." This is primarily why most who are not successful, have tried once, twice or even three or more times, with either a different structure or a new management.

*Losses associated with the defalcation of title agents seem to be one of the most disturbing and difficult challenges of title underwriters today. Although other elements are involved in this problem and can be expected to continue, some believe that the effect of Realtor-based title agencies operated at above-average quality*

*standards may well result in a reduction in this source of losses.*

## 6.

Contrary to the impression one gets from trade publications, not a single one of the largest Realtors we studied has elected to use a CLO (a "computerized loan origination" system, which a sales associate or home buyer use to originate a mortgage). In varying degrees, they employ laptop computers and automated processing systems, but it is clear that technology is not yet a driver of the business, at least not for those now in the lending business.

Among the Billion Dollar firms, it is common for the originators to have laptops, but uncommon for them to use them either to take live apps or input the apps later and transmit them electronically.

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*...Realtors entering the title insurance and closing service business expect to provide a superior service to that available on the street.*

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With Loan Prospector (Freddie Mac) and Desktop Underwriter (Fannie Mae) in the process of being rolled out, it is expected that instant loan approvals (within 10 to 15 minutes) soon will become what is generally available and the home buyer expects. This in turn will drive POS lenders (as well as traditional lenders) to be fully automated so that they can provide the "cream puff" and even "middle of the road" home buyer with his or her instant loan approval. One large pilot under Loan Prospector was recently getting 61% of their conforming loans approved in 10 minutes.

*Along with credit approval within minutes, Freddie Mac has introduced collateral approval within 72 hours, with the likelihood that further automation will reduce that even further. This puts great pressure on title insurers in some markets to speed their processes so that they avoid being the "critical path" problem. Also as the mortgage is more often and more instantly available at the Realtor's office, the home*

*buyer will more naturally expect that title insurance and closing services are available there also.*

## **Although Most Realtors Are Waiting until They Are Successful In-House Lenders Before Becoming Title Insurers, Those Who Are Providing Both Services Generally Get Even Higher Acceptance Services Of Title Services**

The experience of the large Realtors is that their sales associates and their home buyers are considerably more concerned with the choice of a mortgage (which the sales associate usually helps the home buyer select) than with the title insurance or closing services decisions. Also, we frequently were told that when the title insurance and closing service is handled well in-house, that the sales associate often prefers it to an outside source because if there are last minute problems, the associate seems to feel he or she can get more responsive corrective action from an in-house service.

This is demonstrated in the accompanying Table 2 that compares the "Side Who Pays" capture rate for title insurance with the Buy Side Capture Rate for mortgages.

Two other factors working in favor of even higher capture rates for title insurance than for mortgages is that cash deals (10-15% on average) still require title insurance, and wealthy and relocating home buyers who have prearranged their mortgage financing often still will be agreeable to using in-house title insurance and closing services.

## **Definitive Study Reveals and Explores Many Other Critical Issues**

The 175-page report of this definitive study contains 56 tables charting Realtors involvement in providing settlement services to the home buyer at the point-of-sale.

## **Information Available On Purchasing Study**

Information on purchasing the study, entitled, "Large Realtors Are Increasingly Opening Title Agencies or Acquiring A Piece of One- -an In-Depth Study Details Large Realtors' One-Stop Shopping Experience and Plans," may be acquired by contacting:

Weston Edwards & Associates  
361 Forest Avenue, Suite 205  
Laguna Beach, CA 92651  
Telephone: (714) 376-0590

A sampling of the more important additional issues documented and discussed follows:

- "The observance and delineation of a three-stage developmental cycle in successful POS operations, with particular emphasis on Stage One (achieving profitability and at least a 10% capture rate), and Stage Three (profitability rising to where it exceeds residential brokerage and a capture rate approaching 50%).
- "When in the three-stage process are Realtors most likely to successfully enter title insurance, closing and escrow services; and how have Realtors applied what they have learned from POS mortgage operation to other POS operations.
- Several case studies illustrating the arduous and painful journey most POS operations have taken, and illustrative of broker-owned, joint venture and rent-a-desk solutions, and the pros and cons of each.
- Detailed review of mistakes made in the past, as well as the different successful routes firms have taken.
- The extent to which major Realtors are providing homeowners insurance, personal lines insurance, home warranty services and other financial services, the rewards and obstacles for doing so, and their plans for expansions in these areas.
- Many charts and discussion about the in-house mortgage originator, including a summary of compensation plans, with special focus on overage concerns.
- Some "Catch 22" scenarios some POS managers have gotten into with their in-house originators, and how best to avoid them.
- A detailed examination of the POS selection of and relationship with lenders/investors.
- A detailed examination of what were the key reasons for the real estate agent or home buyer selecting a lender and a particular mortgage, as well as the reasons the in-house alternative was not used.
- The extent to which technology is a barrier to POS entry, with particular focus on the needs of smaller offices, and the current testing of interactive video insertions on remote controlled application taking and mortgage

counseling PC screens.

- An explanation and analysis of why CLOs have not been selected by leading Realtors.
- The Realtors' technology nightmare regarding how interactive TV and the Internet will change their business, and a comparison of this transition to the elimination of fixed commissions in the securities business.
- The nature of inducements extended to office managers and individual sales agents to get their POS support, including the frequency, logic and success of plans that permit office managers and sales agents to own a share in the business and the frequency and nature of RESPA violations.
- Attitudes of those not providing POS services.
- The effect of narrowing spreads for being a mortgage banker versus being a mortgage broker who tables funds.
- The three to five-year goals of major Realtors in POS services, a multifaceted analysis of their reasonableness—leading to a suggestion of what it is reasonable to expect will happen. ➤

## Technology Survey Sent to Members

ALTA recently has sent a technology survey to some 450 randomly-sampled Active member abstracters and agents. Drafting of the survey was accomplished with assistance from the organization's Land Title Systems Committee.

Designed to help the Association better serve member needs, the survey is structured to provide an assessment of the current level of technology among the abstractor-agent segment of the title industry.

Through the survey, the Association is focusing on future negotiations with such organizations as HUD, Fannie Mae and Freddie Mac, who exert a strong influence on the use of technical advances in the title industry. Survey results will be reported in a future issue of *Title News*.

## Security Acquires Iowa Abstracter

Security Land Title Company of Omaha, NE, has announced the purchase of Monona County Abstract Company, Onawa, IA.

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## NAMES IN THE NEWS



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Recently appointed vice presidents at Chicago Title Insurance Company include **Cheryl Piderit**, formerly resident vice president and Chicago metro area sales and communications manager; **Patricia Weinstein**, formerly resident vice president and northwest Chicago metro area manager, northwest area; and **Mary Beth Ballard**, named vice president, commercial sales, Cleveland.

Other promotions in Chicago include **Stephany Impson**, to resident vice president and remains associate regional counsel, National Business Unit Services division; **Stephen Flanagan**, to director of publications and marketing communications; **Mary Curran**, to regional human



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resources officer; **V. Gina Giannelli**, to assistant regional counsel; and **Robin Carlucci** and **Loretta Thomas**, NBU officers. **Marcus May** has been named resident vice president and remains northern Ohio area manager, Cleveland.

**Jacob Yonkman** has been named the company's Great Lakes regional counsel, Indianapolis; **Carole Sawdon** now is director, commercial and industrial sales, Boston; **W. Danny Slaton** has been appointed Delaware state manager, Wilmington; and **L. Wally Zbilut** now is assistant vice president and Wisconsin state counsel, Milwaukee. **Deborah Marl** has been appointed assistant vice president and senior commercial closer, NBU, Washington, DC, where **Neal Herman** now is assistant manager.

Elsewhere at Chicago Title, **Steven Brown** has been named assistant vice president, Miami, and **Bruce Hawley** now is assistant vice president and special assistant to the regional manager, Stamford, CT. **Rhonda Utecht** has been appointed assistant vice president and

remains agency manager, Miami, while **Ralph Bone** has been named Southern California area NBU manager, Los Angeles. **Kathie Healy** has been appointed Columbia County manager, St. Helens, OR, and, Illinois. **Myrna Fese** now is construction loan officer, Wheaton, and Sharon Kirkpatrick has been named title officer, Skokie.

Recently-announced promotions in the Lawyers Title Insurance Corporation central Virginia branch office, Richmond, include **Jerry C. Booth, Jr.**, to title attorney II; **James E. Cooke, Jr.**, to chief title examiner; **Craig F. Holmes**, to commercial accounts representative; **S. Page Kalbaugh**, to residential sales and marketing supervisor; and **William C. Stewart**, to office services supervisor.

Elsewhere at Lawyers Title, **Alfred D. Santoro, Jr.**, has been named New Jersey area manager, with offices in Parsippany; **Carl H. Atkins** now is area sales manager, New Orleans; and **Chapman Sellers Morrow** has been appointed assistant claims counsel, Memphis.



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**Ted M. Moore** has been named vice president-county manager, Orange County, CA, division, and **Anthony R. Merlo, Jr.**, vice president-branch manager, Pittsburgh, for First American Title Insurance Company. **Larry Buster** is now assistant vice president-regional underwriting counsel and manager, Orange County, where **Laurie Grushen** has been appointed regional claims counsel.

**Troy X. Kelley** has been named sen-

ior vice president and general counsel for First American Title Company of Los Angeles, a wholly owned subsidiary.

**Paula M. Armstrong** has been appointed vice president and county manager, San Francisco and San Mateo counties, Commonwealth Land Title Insurance Company, with offices in San Francisco. **Alan K. McCall** has joined Commonwealth and Transamerica Title Insurance Company as vice president and

Florida division underwriting counsel, Orlando.

In Commonwealth's recently opened National Title Services division office at



**Moore**



**Merlo**



**Kelley**



**Armstrong**



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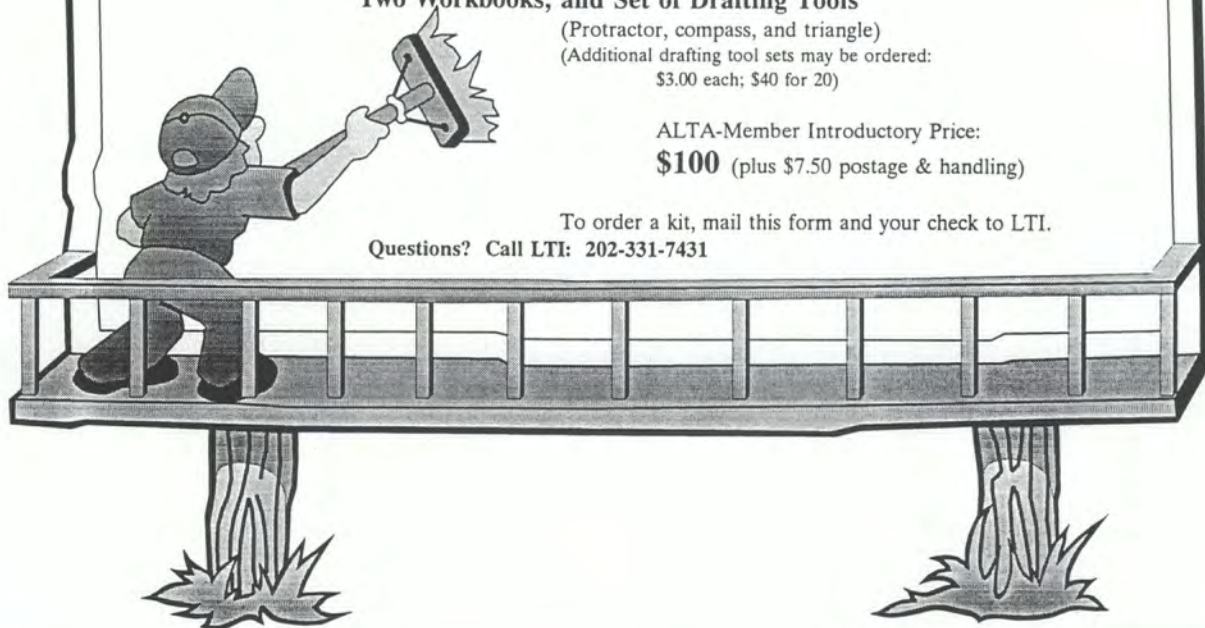
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Cleveland, **Robert L. Mowls** has been named vice president and manager; **George W. Klag** has been appointed vice president and national accounts representative; and **Diane Underwood** has been named NTS coordinator. **Vincent L. Johnson** has joined Commonwealth as Kansas-Missouri-Nebraska underwriting counsel with offices in St. Louis, and **Edwin J. March** has been promoted to Kane County branch manager for the company, St. Charles, IL.

**Kenneth R. Kraemer** and **Indi E. Rogers** have joined The Security Title Guarantee Corporation of Baltimore as manager-education and regulatory services and marketing-public relations consultant, respectively.

## Two Acquisitions For First American

The First American Financial Corporation, parent of First American Title Insurance Company, has announced two acquisitions.

The property inspection and preservation operations of Lomas Field Services, Inc., have been purchased from Lomas Mortgage USA and operates as a subsidiary of First American Real Estate Information Services, Inc., as First American Field Services. Founded in 1986, the Dallas-based operation serves mortgage banks and savings and loans nationwide. Bryand D. Poer, formerly executive vice president of Lomas Field Services, continues to manage operations of the new subsidiary.

Also, First American Title has purchased Security Title Company of Southern Utah, an exclusive agent for the underwriter for over 30 years, from its owner, Karen Robison.

## NJLTA Awards CTP Designations

Two title executives recently have been designated as Certified Title Professionals (CTP) by the New Jersey Land Title Association, according to Joseph A. Grabas, Investors Title Agency, who is second vice president and CTP committee chairman for the association.

They are Richard A. Wilson, Transamerica Title Insurance Company and Commonwealth Title Insurance Company of New Jersey, and Joseph Petrucci, Republic Title Agency.

“To err is human...  
To omit is human, too.”

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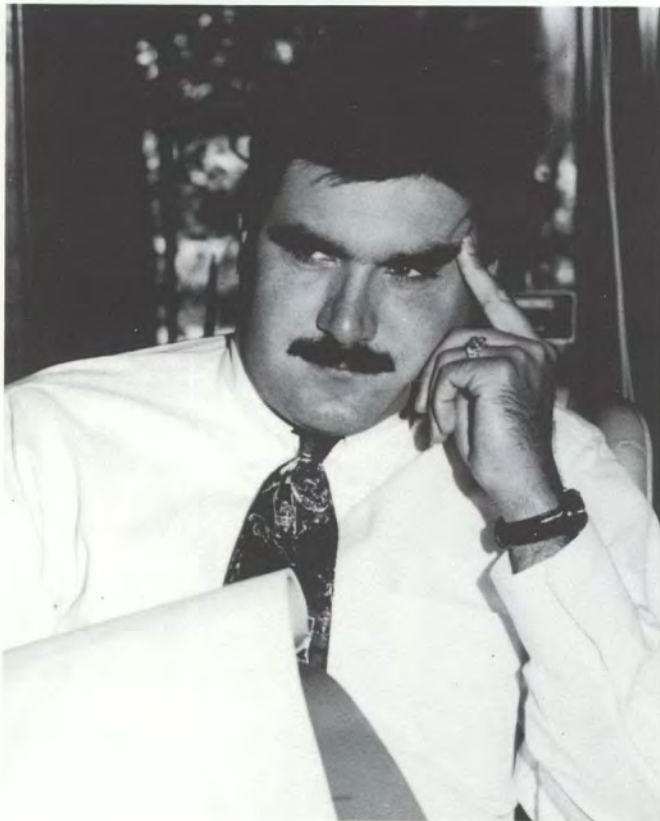
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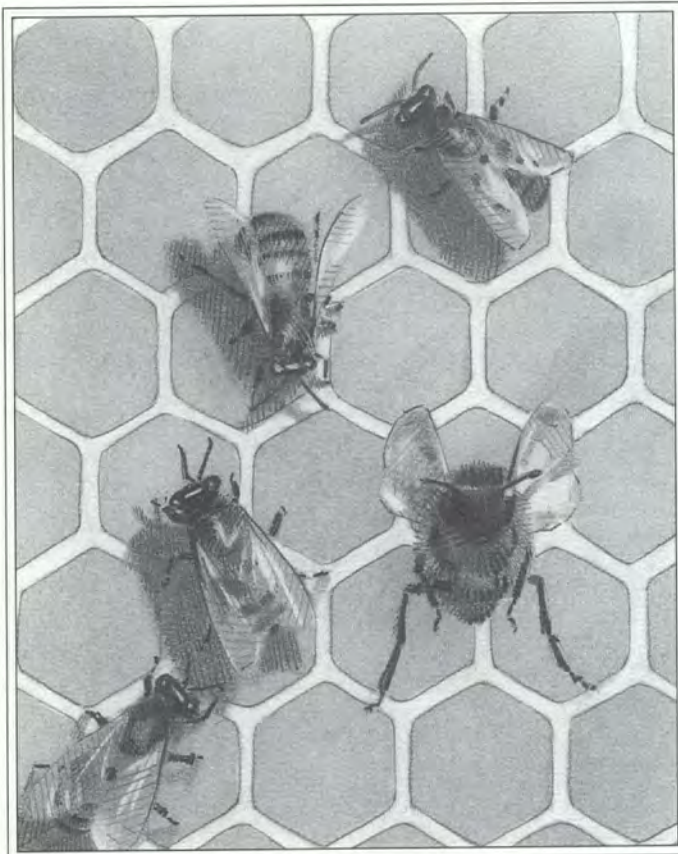
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## Regional Seminars Planned for 1996

Two 1996 regional seminars now are on the planning agenda for the ALTA Education Committee. Both will be co-sponsored by ALTA's Land Title Institute and the state title association in the locale concerned.

The regional events will be held in Indianapolis April 11, and in Tulsa on September 13.

In addition, the Illinois Land Title Association has requested co-sponsorship with LTI for a regional seminar to be held in that state during 1997.

Members of the Education Committee also are planning another "Closings from Hell" interactive educational session for the 1996 ALTA Annual Convention, which will be held in Los Angeles October 16-19. A similar event was well received when presented by the committee at the time of the 1994 ALTA Mid-Year Convention.

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## 1995 AFFILIATED ASSOCIATION CONVENTIONS

### *September*

6-8 **Nebraska**, Ramada Inn, Kearney, NE

7-9 **Missouri**, Holiday Inn Executive Center, Columbia, MO

7-10 **Nevada**, Hilton, Reno, NV

8-10 **DC-MD-VA**, Hilton, Williamsburg, VA

14-15 **Wisconsin**, Lake Lawn Lodge, Delavan, WI

14-16 **Dixie**, Eola Hotel, Natchez, MS

14-16 **North Dakota**, Site to be announced, Watford City, ND

17-19 **Ohio**, Marriott Society Center, Cleveland, OH

21-24 **Washington**, Chateau Whistler Resort, Whistler, British Columbia, Canada

### *October*

29-Nov. 1 **Florida**, PGA National Resort, West Palm Beach, FL

### *December*

4-5 **Louisiana**, Omni Royal Orleans Hotel, New Orleans, LA

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## Wille Installed as WLTA President



Recently-installed Wisconsin Land Title Association President Mike Wille, The Title Company, left, is congratulated by ALTA Title Insurance Underwriters Section Chairman Malcolm Morris, Stewart Title, right, and William Malkasian, Wisconsin Realtors Association executive vice president. Wille is chairman of the Title Industry Political Action Committee.

## ALTA CONVENTION CALENDAR

### Annual Conventions

#### 1995

October 18-21, Wyndham Anatole Hotel, Dallas, TX

#### 1996

October 16-19, Westin Century Plaza Hotel and Towers, Los Angeles, CA

### Mid-Year Convention

#### 1996

March 18-20, Mid-Year Convention/Federal Conference, Stouffer Renaissance Mayflower Hotel, Washington, DC

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RB	03/23/95		Receive Survey	memo	01	95-00005	02/24/95	RB
RB	03/23/95		Receive Survey	memo	01	95-00006		
RB	03/23/95		Order Survey	memo	01	95-00014		
RB	03/23/95		Order Tax Cert.	memo	01	95-00014		
RB	03/23/95		Receive Survey	memo	01	95-00007		
RB	03/23/95		Receive Survey	memo	01	95-00008		
RB	03/23/95		Commitment Due	memo		95-00001		
RB	03/24/95		Closing Room 2	memo	01	95-00004		
RB	03/24/95	08:30am	Closing Room 1	memo	01	95-00005		
RB	03/24/95	09:30am	Closing Room 1	memo	01	95-00007		
RB	03/24/95	01:00pm	Closing Room 1	memo	01	95-00007		
RB	03/24/95	03:00pm	Closing Room 3	memo	01	95-00008		

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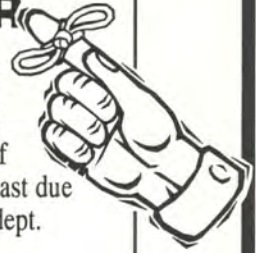
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