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JANUARY-FEBRUARY 1997

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ALTA STRATEGIC PLAN

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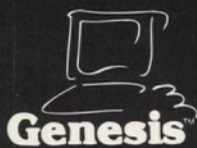
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JANUARY • FEBRUARY 1997

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On the cover:

Recognizing that trade associations clearly are a business with members as customers who are interested in value for their dues dollar, ALTA leaders have selected strategic planning and strategic management as the response to challenges, opportunities and choices linked to continuing effectiveness of the organization. For an overview of the ALTA strategic planning process that began in the fall of 1995, please turn to page 9.

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Members of the ALTA Board of Governors have approved a balanced operating budget for implementation of the ALTA Strategic Plan.

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A MESSAGE FROM THE PRESIDENT-ELECT



Rating Bureaus Important to Protect The Public and Preserve Our Industry

Since joining this industry in 1956 when Stewart Title began its expansion outside of Texas, I have been fascinated to discover the many different ways that states have chosen to regulate the business of title insurance. One method that most impressed me was rating bureaus. No company is forced to join, so there is always the opportunity for a company to "think outside the box" and design their own unique rate plan. However, when such a plan is filed,

the department of insurance has the composite numbers of the rating bureau as a guide to make an informed, intelligent decision regarding the proposal. Rating bureaus also give new entrants to a state, a benchmark for preparing a business plan. This can be seen as promoting competition.

After all, the task of the state insurance departments is to guarantee the solvency of title insurance companies for the benefit of the policyholders. By regulating rates, reserves, forms, and premium splits, insurance commissioners can assure the policyholder that reserves will be in place to cover future claims on title insurance policies.

Rating bureaus met their demise when the "crusaders" (lawyers portrayed as consumer advocates) filed a myriad of lawsuits alleging price fixing. With the conclusion of these lawsuits, the Supreme Court has given guidelines for the re-establishment of the rating bureaus.

Since the rating bureaus ceased functioning, we have seen an industry torn by short-term rate wars. Consumers have not been well served when they can no longer find their title agent, because they are out of business. Many title insurers' surpluses have not grown as they should, and reserves put up by some insurers as a percentage of a shrinking premium dollar may prove inadequate. As a result, the NAIC is requiring at the end of 1996 that all title insurers have their reserves actuarially reviewed.

Larger liability-based reserves will be required by the states in the name of consumer protection. When one title insurer failed, customers told their agents, "It was you who picked the company. I chose you." Many agents paid their insurers' claims to retain their customers. Now, rating agencies - S&P; Duff and Phelps; Moody's; Bests; Demotech; Lace; and Fitch - have begun rating title insurers and it seems we are back in school with some companies making all As on their report cards.


It is time that we confer with our state regulators and discuss creating solid consumer protection that comes from a strong title insurance industry. We must begin the process of restarting rating bureaus following new stringent guidelines enunciated by the Supreme Court:

- A stated statutory intent to displace competition with state control of the business of insurance
- Statutory provision for rating bureaus for title insurers
- Actual rate review and findings by commissioners that the rate filed by the rating bureau is adequate and reasonable prior to use
- Public hearings available on request (30 days notice)

The results - rates fair to the public and non-confiscatory to the industry, with adequate reserve requirements and rating mechanisms. Regulators can obtain data to best apportion the total charges among the different participants in the title insurance process, depending on the type of work each performs. I believe this is the only way that we will ever come up with rate mechanisms that are beneficial to the consumer and healthy for the title industry.

HUD will never be able to develop *one* national guideline to govern business done in

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The Time Has Come for Re-Inventing

By Gregory M. Kosin

Like software magnate Bill Gates, many independent title agents have become well aware they need to reinvent themselves -soon- if they hope to remain competitive.

Adding to his legend, Microsoft's visionary head man candidly admitted he probably underestimated the Internet's incredible power and potential. Having said this, he swiftly moved to refocus the company's corporate vision, taking dead

array of battlefronts. Technology certainly is part of the picture, but agents have an even wider need, to discern and respond effectively among critical developments centering in government affairs and the marketplace. Those who visualize accurately and take prompt action will be the

players in the title industry of the next century.

Rapid technological advances clearly are causing those who guide many businesses, including title companies, to rethink their current operating models and plans. But the need to move information around more quickly and effectively is only one of the factors dictating the type of makeover title owners and managers must consider.

In addition to automation issues, title agencies have been especially vulnerable to fundamental changes in the regulatory process. In an era of growth for controlled business arrangements and affiliations of numerous kinds, agents have been watching customers become competitors at an alarming rate. As a category, the title business seems to be near the top of the list of enterprises into which lenders, real estate brokers and attorneys believe they should be expanding.

The reality is this: Bad things can happen to good companies. To effectively face the future, title agents of all sizes must sort out potential threats and figure out which ones are more than likely to gather momentum -and which will not. There is a need to constantly scout the competitive landscape, looking out for trends and developments that have the potential to change business practices.

Rewrite RESPA

Recent developments on the regulatory front have done little to frustrate the ambitions of customers on their way to entering the title business. Witness the Real Estate Settlement Procedures Act (RESPA), which was passed by Congress as a measure to protect consumers by thwarting illegal kickback schemes in the settlement

Threats are opportunities.
Strategic plans are important but strategic actions -taking concrete steps or a series of incremental changes consistent with your plan- are absolutely essential...

aim at competitor Netscape and the lead that Silicon Valley firm forged as creator of the industry's premier web site browser.

Pet Microsoft projects were quickly scrapped, and the entire energy of the multi-billion dollar software giant was hurled at overtaking Netscape as the Internet access instrument of choice.

Results have been impressive. The consensus is that this massive effort greatly enhanced the chances Microsoft will prevail.

Like Bill Gates, independent title agents during 1997 will be facing their own formidable challenge -which is spread over an



The author is a member of the ALTA Abstractor-Agent Section Executive Committee, is vice chairman of the Association Government Affairs Committee, and is a past president of the Illinois Land Title Association. He is president of Chicago-based Greater Illinois Title Company, and is chief executive officer of H. B. Wilkinson Company, which is located in Morrison, IL.

process. Since RESPA became law, the statute has evolved as a heavily lobbied, continually changing and generally bewildering set of regulations that are out of touch with the rapidly changing business environment and resulting paradigm shift in the real estate and settlement service areas.

Cutting to the bottom line, RESPA needs to be rewritten in the public interest. The statute does not protect consumers as originally intended - and never has. Its well meaning home buyer disclosure requirements do little besides add to the burgeoning confusion.

The primary RESPA problem is that federal regulators always have been deficient in enforcing many of its provisions. From the beginning, regulations designed to prevent illegal kickbacks in the settlement business have been easy to ignore as other abuses have emerged as well. The sad truth is that offenders have not been inclined to heed the RESPA rules because of a realization that, should they be in violation, there isn't anyone from the federal government to chase them down.

In 1997, the title industry is moving toward an interconnected network of products and services never envisioned by RESPA's Washington architects. Technical innovation and process engineering are leading to dramatic reductions in costs and improvements in service. The whole business of financing and transferring title to real property is being compressed from days and hours into minutes and seconds. To make this work, the title industry is embracing shared systems, jointly developed software and controlled access to proprietary databases.

In an industry wired in this way, keeping track of meaningful relationships and disclosing these to consumers in a sensible way under RESPA is practically impossible - and irrelevant.

Revisit Controlled Business Stance

Just as the time has arrived for Congress to try something else with RESPA, the title industry has reached a point where rethinking has become imperative in its traditionally steadfast opposition to all controlled business. The battle is over. It's time to start looking for strategic partners with a mutual interest and clear vision of the future. We cannot solve today's problems with yesterday's solutions.

In the past, the title industry has resisted legislation that would enable banks to branch into the title insurance business as underwriters or agents. So far, Congress has yet to grant any new permissive powers to

banks in the area of insurance, thanks to intensive lobbying by insurance groups including ALTA. However, the outlook for 1997 suggests a deal will be made on Capitol Hill in which banks would be permitted to own insurance companies and insurance companies would be allowed to own banks.

Familiarize yourself with the changing legislative and regulatory winds that blow through our nation's capital. Keep in close touch through ALTA. There is a strong possibility of enduring impact for title companies of all sizes.

NAIC Model Acts: Uncertainty

Some title agents were hopeful that the National Association of Insurance Commissioners (NAIC) was going to use its influence to help rein in the more egregious

Independent title agents need courage, vision and objectivity....For many, it may take a personal transformation to enable acceptance of a new competitive framework.

controlled business shams. After countless meeting hours produced two NAIC model acts for the title industry, the insurance regulators involved backed away from mandating anything they put in the agents act. Instead of seizing the opportunity to introduce national standards, NAIC decided it was best to allow individual states to determine if, how and when any of the provisions in the agents model act would be implemented.

Independent Agents Endangered?

In the battle for survival now taking place throughout the title industry, the field has been tilted in favor of business entities not directly involved as market players in the past. Dramatic shifts are indeed under way that will impact all elements of the settlement services business. As all of this unfolds, some are questioning whether the traditional independent title agent has become an endangered species.

Unquestionably, the double threat of a rapidly growing and evolving settlement process and increasing competition from

industry outsiders is shaking the collective psyche of the title business and eroding the status quo. Although the challenge now appears to be more focused on urban markets, the rural agent supposition that he or she is less susceptible may prove illusory. For example, as large banks move into smaller markets, they will bring large bank ideas with them. And further consolidation has brought national or regional banks to smaller communities as replacements for locally owned institutions.

Technology not only effectively shrinks the world we work in so that small towns are only a "point and click" away - but makes possible the impossible. Smaller town agents and abstracters need to be well aware that what happens in the bigger cities eventually will make it out to the hinterlands. My advice: be prepared.

To survive, independent title agents will need to move with the swift decisiveness of a Bill Gates. They will need to remain innovative and open minded when considering what is best for their organizations. As this takes place, the importance of ALTA and regional/state title associations cannot be overstated when it comes to information and networking that facilitate keeping abreast of change.

Senior title managers need to be ready for scenario planning that improves their chances for avoiding a freefall when the ground shifts. When a decision finally is made to pursue a particular strategic path, it will take nearly all the energy an organization has in order to succeed against the able, aggressive competition. Keep the strategic direction clear and pursue objectives with a vengeance.

Key Strategies

In attempting to position a company to move in a number of different directions, strategies must be developed that build the kind of organization needed for quick and decisive action with an eye on market trends. Any successful company strategy must include a plan that considers such items as the following:

1. Developing ancillary businesses to the core title agency functions
 - Sell real estate information to customers and competitors from proprietary title plants
 - Sell technology developed in house
 - Sell your knowledge through consulting arrangements or training programs

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ALTA STRATEGIC PLAN

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By James R. Maher and Edmond R. Browne, Jr.

(The authors are ALTA Executive Vice President and General Counsel, Respectively)

Although it isn't typical to think of trade associations as businesses, they clearly are. Trade associations have customers -- their members. Trade associations have to market their services and compete for business. Corporate consolidations and "re-engineering" mean that executives don't participate in trade association activities out of a sense of duty any more -- they want value for their dues dollar. Trade association executives must manage their costs and meet the "bottom line" expectations of their board. Trade associations, like their member companies, are affected by changes in the business environment, technology and government policy. The ALTA is no exception.

ALTA faces many of the same challenges, opportunities and choices as its members. The first step is to recognize that these challenges, opportunities and choices exist. The next, and undoubtedly most important step, is to determine how to respond. Perhaps the most critical decision facing ALTA's leadership over the past few years has been whether to continue doing things the way they have always been done, or to face the future head on. A little over a year ago, ALTA's leadership chose the latter alternative and at the same time embraced strategic management to help guide ALTA through the maze of choices.

Strategic planning and its cousin, strategic management, have experienced somewhat of a rebirth recently. Once the sole province of the corporate elite in large organizations, strategic planning fell out of favor during the late 1980s as companies, buffeted by competition and an indifferent economy, scrambled to downsize and re-engineer their

operations. In the 1990s, however, companies have changed their focus to improving the profitability of their streamlined operations and are looking once again to strategic planning for help. It is now a much more open process than in the past, often involving market research and interaction with key customers.

What is strategic management?

Briefly stated, strategic management is a process by which an association identifies present and future member needs, assesses its strengths and weaknesses, and authorizes volunteers and staff to provide the products and services that respond to those needs. Strategic management differs from strategic planning primarily through its emphasis on strategic thinking as well as implementation. Many organizations develop strategic plans; very few ever implement them. Strategic management also focuses on using the strategic plan as the driving force behind resource allocation, success measurement and the evaluation of staff. Strategic management involves the following three steps:

- Front Loading -- Gathering information on likely future trends and the opinions of important association constituencies to give association leaders a solid basis for decision-making;
- Strategic Planning -- Creating a vision of the future and what you need to do today to achieve it;
- Strategic Implementation -- The process of translating a strategic plan into detailed programs and budgets -- the work plan -- and evaluating them to be sure they meet customer needs.

ALTA has completed the first two steps of the process and has begun the third. Let's discuss next some of the specific steps that were taken to get there.

1 See "Strategic Planning," *Business Week*, August 26, 1996.

2 The discussion relating to strategic management is derived from the strategic quality management model created by The Forbes Group of Fairfax, Virginia which serves as consultants to ALTA. The Forbes Group is a 15-year-old management counseling firm that specializes in helping organizations think, plan and act strategically. The efforts of Paul S. Forbes, Chairman and CEO, in the development of the ALTA's Strategic Plan are greatly appreciated. The Forbes Group can be contacted at (703) 691-2440 and <http://www.forbesgroup.com>.

What approach did ALTA use to adopt strategic management?

ALTA's strategic management process began in the fall of 1995 when The Forbes Group was retained and began the "front loading" process by performing preparatory research and conducting personal interviews with ALTA staff. Next, telephone interviews were held with ALTA leaders and key outside constituents in government and the real estate finance industry. Last, but certainly not least, a questionnaire was faxed to every ALTA member. This process focused on obtaining input from staff, members and outside constituencies about:

- Opportunities and threats presented by the critical issues affecting the title industry and ALTA;
- ALTA's strengths and weaknesses in addressing these opportunities and threats;
- What activities ALTA should focus on to prepare its members to respond to the critical issues and trends affecting the title industry.

Vision 1999

By the year 1999, ALTA will be:

- The pre-eminent association representing information and service providers supporting the real property transaction
- Operated more like a for-profit enterprise, consistent with member interests
- Focused on issues that are common to the broad base of its membership
- An effective voice that articulates the interests of the industry at the federal level and works with state/regional associations to provide advocacy at the state level
- Preparing its members and customers to compete successfully in a changing marketplace

Mission Statement

The mission of ALTA is to prepare members to compete successfully in a changing real estate marketplace by providing information, education and technology services; by advocating member concerns; and by communicating with and providing related services to important constituents.

A surprisingly large number of responses revealed some very interesting insights about the concerns of ALTA's membership. The most important issues affecting both the title industry and ALTA were identified as competitors entering the title business and technology. Members identified the most important issue affecting ALTA as the conflicting interests of agents and underwriters.

Members expressed confidence in the ALTA by identifying as strengths its staff, lobbying and educational programs. Interestingly, ALTA's consolidated membership (agents and underwriters) was viewed by many as both a strength and weakness. While this may seem contradictory, it makes sense. Having both constituencies as members gives ALTA a unique perspective and voice in legislative and regulatory issues; but increasingly divergent views about the industry can create conflicts that some may view as a weakness. Finally, when members were asked about what ALTA's principal activities should be in the future, lobbying and government relations were considered by far the most important. Communication and education were also high on the list, especially when related to keeping members informed about new developments in technology.

The results of the interviews and fax survey provided the basis for a strategic assessment of ALTA which served as the informational basis for a one-day strategic planning retreat with the ALTA Board of Governors facilitated by Paul Forbes, chairman and CEO of The Forbes Group. The Board also drew upon its business experience to consider the challenges the industry faces from:

- The constant demand for quicker, better and cheaper products;
- Possible universal access to information through new technology;
- Customers becoming our competitors;
- Pressure to bundle services for customer convenience; and
- The evolution of title insurance from a product to a commodity.

At the strategic planning retreat, the Board developed a *vision* for ALTA which describes the characteristics that it is hoped the organization will be known for in the future. Next, the Board crafted a new *mission* for ALTA which identifies the Association's most critical priorities in realizing its vision. Finally, the Board agreed on several *goals* which grew out of the mission. The goals are results-oriented, long-term

and ranked in the order of priority (please see the accompanying list).

The staff role in strategic management is to develop action plans, budgets and procedures, and to implement the plans within the policy guidelines set by the Board. Staff can provide input, but the Board develops the Association's mission, goals, objectives and strategies. In May, 1996, the Board adopted the ALTA's first Strategic Plan.

Once the Board reached a consensus on the Association's policy direction, staff was asked to propose tactics to implement the policies set by the Board. These are measurable and have deadlines for accomplishment. Individual staff members were assigned the responsibility to implement, with the assistance of volunteer leadership, each objective, strategy and tactic within a specific time frame. The Strategic Plan and the related work plan prepared by staff will be implemented through the budgetary

process by allocating appropriate financial, staff and volunteer leadership resources in accordance with the goals and priorities set by the Board. As an example, please see the accompanying excerpt from the Strategic Plan.

The final element in strategic management is evaluation and feedback. Staff, with volunteer leadership assistance, will develop the plans to achieve the goals and objectives established by the Board. They will be evaluated on their ability to achieve the desired results.

What does strategic management mean for ALTA?

ALTA's strategic management process cannot be successful without substantial input from its members. The Strategic Plan will be updated at least annually and members will have the opportunity to actively participate in the review process. Members who are interested in reviewing ALTA's strategic plan should request a copy by calling 1-800-787-ALTA. Your comments and suggestions are welcome.

The strategic management process was adopted by ALTA to help the Association and its members prepare for the challenges of the future. It involves constantly monitoring emerging trends in business, technology and government. It requires listening to members and advocating their concerns. As a result, ALTA will become a stronger and more efficient organization which will be more responsive than ever to the changing needs of its members. ➤

Program Goals

Goal 1: Achieve effective two-way communication with all important constituencies and engage in effective advocacy of member concerns

Goal 2: Provide educational and training opportunities that give members the skills and competencies that are required to succeed in a changing environment

Goal 3: Maintain a comprehensive database of reference information that members need to compete successfully in a changing environment

Goal 4: Position ALTA at the cutting edge of technological change so that members will be at a competitive advantage in the use of information and communication systems

Management Goals

Goal M1: Streamline the decision-making process by adopting the strategic management process as the governing framework of ALTA (Structural Goal)

Goal M2: Improve communications and understanding between agents and underwriters, and between ALTA and affiliated title associations, through new forums at the national and state level (Cultural Goal)

Goal M3: Ensure that ALTA has the financial and human resources required to reach its goals (Resources Goal)

Strategic Plan Excerpt

Goal: Provide educational and training opportunities that give members the skills and competencies that are required to succeed in a changing business environment

Objective

Establish an ongoing program to assess changing member educational needs and the effectiveness of ALTA programs in meeting those needs

Strategies

- Develop mechanisms for identifying member educational needs including assessing underwriter and affiliated association educational approaches
- Identify niche educational needs within the industry and related groups, and a system for continually updating those niche needs

Oregon President



Jim Parker has been elected president of the Oregon Land Title Association. He is senior vice president, Fidelity Title of Oregon.

Strategy Change For Lawyers Title

Lawyers Title Insurance Corporation has announced a change in investment strategy for its title insurance subsidiaries, designed to move investments away from equity securities and into fixed income securities.

Projected for completion at the end of 1996, the move involves sale of approximately \$60 million in equity securities and is expected to result in one-time after tax capital gains of approximately \$10.5 million, or \$1.18 per share, for the fourth quarter of the year.

Proceeds of the sale of the equity securities are being re-invested in fixed income securities, according to the company.

This re-positioning of the Lawyers Title portfolio will eliminate the exposure that the regulated surplus of the insurance companies have to market fluctuations inherent in equity portfolios, the announcement said.

Metropolitan Title Opens 47th Office

Metropolitan Title Company, Michigan's largest title insurance agency, has announced the opening of its 47th office in that state, in a Port Huron location.

With the addition of this office, Metropolitan now serves customers in 30 counties statewide. Corporate headquarters of the company are in Howell, MI.

RE-INVENTING

continued from page 8

- Develop the ability to utilize title plant information for a future property valuation system for automated appraisals
 - Develop a plan to become a title insurance underwriter, if you are large enough, or develop the ability to partner with an underwriter to better position your company for changing market conditions
2. Developing the ability to go directly to the consumer through the creation of formal or informal ties at the point of sale
 3. Keeping a close eye on banks in your market, and determining how they will react or plan utilization under their soon-to-be realized bank insurance powers
 4. Forming alliances with customers and others that fit your strategic profile. Affiliations, joint product development, joint educational and training sessions, and getting involved in your customer's business and business processes are ways to ensure you will be close to the decision makers who may impact your operation.
 5. Being open-minded and willing to consider alternative title products. The "writing is on the wall": the title industry must provide products that meet customer needs - *not necessarily* specific title company needs.
 6. Developing a means to conduct electronic commerce via electronic data interchange (EDI), the Internet and direct system links to customers. As the industry moves toward; an interconnected hub of settlement service providers, customers - and consumers - are becoming accessible through various electronic distribution channels. Prepare for conducting electronic closings.
 7. Developing a plan to offer title services on a regional basis. Many customers are "regionalizing" their operations with centralized processing hubs which have multi-county or state responsibilities. If you want the business, follow your customers.
 8. Acknowledging and accepting the new breed of employee. These "Generation Xers" clearly are different from traditional workers. They often excel

in technological competence, are driven by different values and sometimes are impatient with older workers and more entrenched values. If you want to be on the cutting edge, get close to the people who will get you there.

9. Creating cross-functional teams within your company to develop or recommend new or additional strategies, and assist senior management in planning. They will provide encouragement along with adding innovation and entrepreneurial thinking, as well as providing added buy-in for dramatic changes which must be quickly implemented.
10. Developing a strategic plan so everybody in the organization knows where the company is going, how it is going

T *Technology and innovation are the driving forces...shaping the future of the title industry. Improving upon your competitive advantage - and that of your customer - are the keys to survival.*

to get there, what the contingency plans are, and how key people will individually fit in for the future. This is a great tool for making certain the decisions made are consistent with long range goals and objectives.

A Simple Option

Positioning a title agency to move in a number of different directions is difficult and confusing, but necessary. The world around us is changing rapidly. Intense price competition, shrinking margins, changing demographics, new customer behavior patterns, saturated markets, aggressive competitors, changing skills and competencies, along with the growth of controlled business, all are critical issues that present key planning challenges.

Technology and innovation are the driving forces that are shaping the future of the title industry. Improving upon your competitive advantage - and that of your customer - are the keys to survival.

Threats are opportunities. Strategic plans are important but strategic actions - taking concrete steps or a series of incremental changes consistent with your plan - are absolutely essential if a title company is to become aligned with the new order that is reshaping the industry. Opportunities will be lost if the old ways of business are continued for too long. Putting off decisions on shifting resources can be costly.

Independent title agents need courage, vision and objectivity to be a viable part of the future. For many, it may take a personal transformation to enable acceptance of a new competitive framework. That may be the most difficult change of all.

It's really very simple. We must change or die.

Has anyone felt like a dinosaur lately? 🦖

PRESIDENT-ELECT

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50 different styles in this country. State insurance regulators can do this with the help of state independent rating bureau statistics and filings that help them better understand the industry they regulate. How about getting your state association to appoint a committee to meet with your own state department of insurance and devise a plan, including legislation where necessary, to implement a title insurance rating bureau in your state?



Malcolm S. Morris

Fidelity Expands In Tax Service

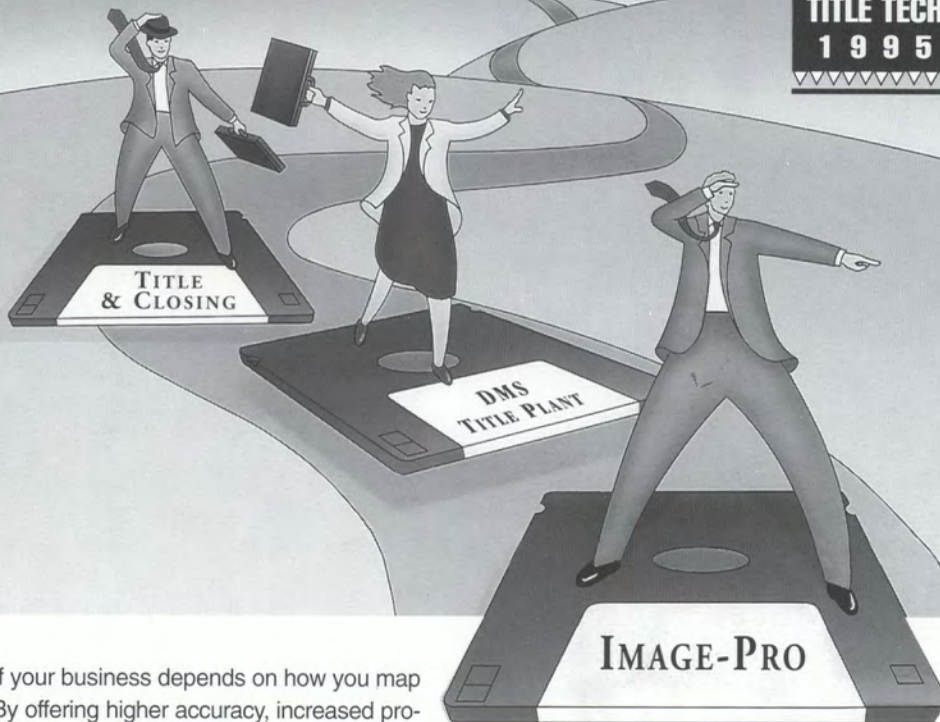
Fidelity National Financial, Inc., has announced the acquisition of 80 percent of CRM, Inc., an innovator in real estate information services with concentration in tax service and flood certification.

According to the announcement, the interest was acquired for \$3,250,000 - payable \$1 million in cash and \$2,520,000 in Fidelity National Financial common stock. Under certain circumstances, Fidelity National Financial may purchase the remaining 20 percent.

Fidelity National Financial intends to combine its tax service business currently being handled by a subsidiary with that of CRM, the announcement stated.

If You Travel On The Information Highway, You'd Better Plan For The Trip.

TECHNOLOGY
AWARD
OF
EXCELLENCE
TITLE TECH
1995



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Congress:

What Did They Do? How Did We Do? What's Next?

By Ann vom Eigen
ALTA Legislative Counsel

In January, 1995, there was considerable fanfare when the 104th Congress convened. This fully Republican Congress was more than ready to establish a new order. The House of Representatives, under the leadership of Speaker Newt Gingrich (R-GA), already had outlined the goals of his new conservative agenda in the principles articulated in the Contract with America, and was ready for action. Many new members of the Congress had campaigned on the Contract, and Newt had pledged the platform would pass the House in the "First 100 Days."

What has happened since? You could call it gridlock and glory—as well as challenging times for the title industry.

When January, 1996, arrived, much of the platform had passed the House—but the government was literally shut down as President Clinton and the Republicans engaged in brinkmanship to see who would blink on budget issues. While the GOP was vowing to balance the budget on its own terms, voters back home were starting to wonder why government workers were being paid for not working, and members of the Congress was beginning to wonder if their "take no prisoners" approach was going to pay off.

As members headed home more often with the 1996 elections drawing nearer, the possibility of actually achieving some of

their goals was enhanced as political compromise became more expedient. When they finally adjourned last October, 17 laws containing Contract proposals had been enacted—11 of them during that year—and 333 bills acted on by the 104th Congress had been signed into law.

While the Contract scorecard shows completion of the line-item veto as its first element, it—like most elements of the Contract—is not directly relevant to the title insurance industry. Of the items most significant to those in the title business, product and service liability legislation—tort reform—flattered in conference for many months and finally was vetoed by the President. Property rights legislation, which in some forms would have expanded the exclusion on Clause C of the ALTA Mortgagee Title Insurance Policy by broadening the definition and category of eminent domain, passed the House but was never considered in the Senate.

Congressional concerns
may have some positive
effect on bank sale of
insurance.

With particular respect to the Contract, how did we do as an industry?

Only one provision of the Contract which was enacted impacts the title insurance business. As part of the effort by Congress to improve the quality of life for children in America, the Contract proposed an improvement in enforcement of state court child support orders. Translated into federal legislation, however, it unfortunately involved a proposal to require states to accord full faith and credit to liens against property arising in other states, without registration of the underlying child support order.

Fortunately, ALTA was able to convince the Congress that recording liens, "in compliance with the procedural rules related to recording or serving liens within the state," would be preferable—and such a provision now appears in PL 104-93. As a practical matter, from a title perspective, the Congressional mandate to require states to develop uniform forms, provide expedited procedures for establishing paternity, and establish modifying and enforcing support obligations, should bring more child support liens on real property in every state.

Bank Powers

Critics have contended that the Contract was overly ambitious, and that the country was not ready for the radical change that was embodied in its sweeping proposals. The same analysis might apply to legislation designed to expand the power of national banks.

Legislation was introduced in both the Senate and the House early in the 104th Congress (S 337 and HR 814, the "Depository Institution Affiliation Act"), which would have allowed banks to affiliate with (buy) title companies and agencies, and operate them through a holding company structure. This legislation was introduced in the Senate by Senator Alfonse D'Amato (R-NY), chairman of the Senate Banking Committee, and proposed in the House by Representative Richard Baker (R-LA), a senior member of the House Banking Committee.

After substantial work by the House Banking Committee, two bills actually were reported by that body. ALTA held the line against expansion of banks into title insurance, in both measures. With respect to title insurance, Section 240 (b) 2 (B) of HR 1858, the Financial Institutions Regulatory Relief Act of 1995 as reported by the committee July 18, 1995, prohibited national banks from "engaging as principal agent or broker" in title insurance as "incidental to banking." The language in this bill vali-

dated the title industry litigation victory in *ALTA v. Ludwig*, which prohibits national banks from selling title insurance outside small towns, and implicitly recognizes the public policy issues that arise in combining bank and title insurance activities.

On bank holding company legislation, Section 121 of HR 1062, The Financial Services Competitiveness Act of 1995, reported in May, 1995, retained the "financial in nature and incidental to banking" language that Banking Committee Chairman Jim Leach (R-IA) had discussed as the basis for his "more modest, but nonetheless significant financial services modernization bill." Obtaining the "financial in nature and incidental to banking" language in Section 4 C (8) of the Bank Holding Company Act retained existing statutory prohibitions and limitations on at holding companies.

As a result of ALTA efforts, the accompanying committee report explicitly recognizes that holding company activities could not expand, namely through a prohibition against underwriting and sale of title insurance, activities that have been prohibited by the Federal Reserve Board under its existing rulings, and interpretations continue to be effective under the categorization of the above mentioned section made by the bill.

The committee report states: "The current restrictions should be maintained, and future applications of a similar nature should be rejected."

In March, 1996, the US Supreme Court handed the banking industry a major victory in deciding, in *Barnett Bank of Marion County, NA, v. Gallagher*, 116 S. Ct. 11031, March, 1996, that federal law (Section 92 of the National Bank Act, the so-called "small towns" provision) pre-empted a Florida statute prohibiting banks from affiliating with insurance agencies. As a result of the court's unanimous decision, states could not prohibit national banks from selling insurance from small towns. However, the language in the decision suggested that the state would not be "deprived of the authority to regulate national bank's sales."

After the decision, Chairman Leach circulated several legislative drafts which attempted to bring the banking and insurance industries together by setting standards that would not limit national sale of insurance, but would require such states to be regulated by state law.

While ALTA continued to seek a prohibition on national banks selling and underwriting title insurance, the Association encountered strong opposition to its proposal from state banking associations in Virginia, Michigan and Georgia. Respond-

A*fter many years of work, ALTA was successful in assuring that title insurers are included within the exemption for lenders from lender and fiduciary liability under Superfund.*

ing to this pressure, Chairman Leach scheduled another bill for House Banking Committee consideration in June of 1996, which would have permitted national banks to sell title insurance in states where state banks had any insurance sales authority.

Reps. Steve Stockman (R-TX) and Gerry Weller (R-IL) helped the title industry by filing amendments to Chairman Leach's proposal to (1) roll back previous opinions by the Office of the Comptroller of the Currency, the regulator of national banks, issued in the early 1990s to allow banks to sell and underwrite title insurance from operating subsidiaries, and (2) to exempt title insurance from the section of the proposal that would have allowed banks to buy insurance companies and agencies through a holding company structure.

The Banking Committee never voted on the title insurance amendments, as Chairman Leach decided there was insufficient support for his legislation to have it positively voted out of committee.

In another effort to rein in the banking industry, Rep. Jerry Solomon (R-NY), chairman of the House Rules Committee, on July 17, 1996, offered an amendment to an appropriations bill that would have placed a moratorium on the Comptroller's issuance of rules permitting banks to engage in the insurance business. It was a triumph for the banking industry as the Solomon amendment failed, 312 to 107.

In the end, although the House Banking Committee held several markups and reported several pieces of legislation prohibiting national banks from selling title insurance, the 104th Congress adjourned without enacting legislation broadening insurance powers for national banks. Nevertheless, the Congress also failed to enact legislation curbing the authority of the Comptroller to broaden bank powers.

The title industry retained its litigation victory in the federal Second Circuit, *ALTA v. Ludwig*, which holds that the exclusive

authority for national banks to sell insurance is Section 92 of the National Bank Act, the so-called small towns provision. Consequently, ALTA will be able to litigate, if national banks should decide to sell or underwrite title insurance from small towns outside the Second Circuit (encompassing New York, Connecticut, New Hampshire).

Since Congress adjourned in early October, the OCC has taken several administrative actions to broaden bank powers. On October 8, the Comptroller issued final guidelines on bank sale of insurance. On November 4, the OCC issued an interpretive letter to First Union Corporation regarding the scope of insurance activities in which a national bank in a "small town of 5,000" may engage. While First Union did not request permission to sell title insurance, the OCC interpreted the small town provision to permit a national bank to use any sales marketing technique within a state that an agent operating in the same state might use, as long as there is a bona fide "managing" agency physically located in a small town.

In addition, on November 16, the OCC issued a final rule allowing national banks to engage through operating subsidiaries in activities that are part of, or "incidental to," the business of banking under USC 24 (Seventh). This is an additional expansion of bank authority beyond the "small town" exception, as the OCC now will allow a bank to provide through an operating subsidiary services which it cannot offer directly from the bank outside a small town.

Although title insurance does not appear to be specifically included in the list of eligible activities of an operating subsidiary, OCC will argue they have already deemed sale and underwriting of title insurance legally eligible activities based on their opinions issued in 1986 and 1991.

RESPA

Legislation introduced at the beginning of the 104th Congress, in both the Senate and the House (S 650, the Economic Growth and Regulatory Reduction Act of 1995, and HR 1362, the Financial Institutions Regulatory Relief Act of 1995) envisioned major alterations in the administration of the Real Estate Settlement Procedures Act (RESPA). The legislation would have moved jurisdiction over the title insurance industry for enforcement of Section 8, the antikickback provision of the act, to the Federal Trade Commission. Jurisdiction over the presentation of disclosure information required under RESPA and the associated enforce-

ment would have been transferred to the Federal Reserve Board and the various financial services regulatory entities for the parties involved.

The legislation also stipulated that no new rules interpreting RESPA could be issued unless the regulatory agency engaged in a procedure called "negotiated" rule-making, which essentially involved a process through which the parties affected by a proposed rule attempt to develop a compromise proposal in a series of formal discussions moderated by an expert.

In the end, the law finally enacted contains a moderation of the criminal liability standard of intent, a change in name from "controlled" to "affiliated" business, and a requirement that the Federal Reserve Board and HUD should simplify and improve disclosures for the Truth in Lending Act and RESPA, and should propose changes in regulations to implement such simplification within six months. The law also requires that the Board and the HUD Secretary submit a report recommending any legislative changes for RESPA and Truth in Lending simplification.

Controlled business arrangements, as suggested earlier, are redesignated "affiliated business arrangements" in the new law. The law also specifies a new process for disclosure of affiliated business arrangements by telephone or electronic media. In addition, the law delays the effective date of the June 7, 1996, HUD RESPA regulation relating to compensation from employees to bona fide employees until July 31, 1997.

FHA Mortgage Insurance

The law providing appropriations 1997 appropriations for HUD (PL 104-204) includes several changes to the FHA program. Congress reduced the FHA insurance premium by 25 basis points (from 2.25 to 2 percent) for first time home buyers. Additionally, family members may now provide loan down payment assistance, instead of an outright gift. A one-year pilot program testing a simplified down payment calculation also will be implemented in Alaska and Hawaii.

Superfund

After many years of work, ALTA was successful in assuring that title insurers are included within the exemption for lenders from lender and fiduciary liability under Superfund. The new law also exempts title insurers from liability for the petroleum underground storage section of the Resource Conservation Recovery Act. (Sec. 201 et seq, PL 104-208).

Although title insurance does not appear to be specifically included in the list of eligible activities of an operating subsidiary, OCC will argue they have already deemed sale and underwriting of title insurance legally eligible activities....

Form 1099 Reporting

ALTA was successful in having a "technical correction" included in HR 3448, the Small Business Job Protection Act of 1996, PL 104-188 (see companion article by Ann vom Eigen and Chip Collins in this issue of *Title News*), clarifying that real estate reporting persons can recover their costs for reporting gross proceeds of real estate transactions to the Internal Revenue Service. The law also is retroactive to 1988, to address class action litigation in Pennsylvania (*Burns*), which dealt with the issue of the separate charge.

Since 1986, real estate reporting persons have been required to file Form 1099-S with IRS when real estate transactions are closed. (26 IRC 6045 (e)) The form is intended to provide IRS with information on gross proceeds from a transaction, which IRS can use to check taxpayer reporting on capital gains associated with the sale of a home. (26 USC Sec. 6045 (a) (e)) It is unlawful for a real estate reporting person to separately charge any customer for complying with this requirement (26 USC 6045 (e) (3))

Since 1991, ALTA has sought a legislative provision to clarify that the statutory prohibition does not prohibit real estate reporting persons from taking into account costs of complying with this requirement (other than a separate charge for complying with such requirement). This campaign was undertaken in order to address uncertainties regarding treatment of the costs associated with the 1099-S reporting requirement in states where the title insurance industry must document all costs and charges with state regulators. This provision was included in Section 1704 (o) of Subtitle G of HR 3448, the Small Business Job Protection Act of 1996 (PL 104-188).

As the ban on a separate charge remains in the statute, closing agents should not line item a charge in order to recover any costs incurred in complying with the 1099-S reporting requirement. However, it is acceptable to include documented costs for general 1099-S compliance efforts in charges reflecting general administrative overhead or other closing-related costs.

The statutory language, with the amendment from PL 104-188 italicized, is below:

IRC Sec. 6045 (e) (3) Prohibition of separate charge for filing return—It shall be unlawful for any real estate reporting person to separately charge any customer for complying with any requirement of paragraph (1). (Paragraph (1) requires the filing of a Form 1099-S information return with the IRS and provision of the statement to the transferor.) *Nothing in this paragraph shall be construed to prohibit the real estate reporting person from taking into account its cost of complying with such requirement in establishing its charge (other than a separate charge for complying with such requirement) to any customer for performing services in the case of a real estate transaction.*

Telephone Numbers

Section 1201 of HR 2337, the "Taxpayer Bill of Rights" (PL 104-168) requires that persons providing information returns, including real estate reporting persons providing Form 1099-S, must include telephone numbers on statements required to be furnished after December 31, 1996. According to IRS, the telephone number must provide direct access to an individual in an organization who can answer questions about the form. The requirement is in addition to the present specification to include a name and address on the form.

The IRS has stated that, because the legislation was enacted after the 1996 forms were printed, failure to include a telephone number on the 1996 statements will be considered to have arisen from an event beyond the control of the filer. As a result, the penalty under Section 6722 of the Internal Revenue Code will be waived for reasonable cause if the next statement required to be provided (generally for 1997) includes the telephone number. (Announcement 96-88 Telephone Numbers on Statements—Forms W-2G, 1098, 1099, and 8308—Penalty Waiver) The 1997 forms revised by the IRS include a new space for telephone numbers.

What's Next?

Since the elections in November, Congress has taken only preliminary steps to or-

ganize at this writing, and has yet to establish an agenda for the 105th Congress. The Republicans in the House maintained their majority, but the political setbacks with the government shutdowns in early 1996--along with recognition that Democrats mounted a serious challenge at the polls--may be enough of a threat to chill the House appetite for sweeping reform and grand gesture.

On the Senate side, Sen. Trent Lott (R-MS), the new Senate majority leader, has been quoted as saying: "Next year, with the new majority being Republican, we will continue what we have started." He is known as a leader who keeps to schedules

and who can force a compromise. And, he has said: "There will be no First 100 Days."

Among issues being closely watched by ALTA as the new Congress begins are the following.

Contract Revisions and Amendments

In all likelihood, Congress will spend time on tort reform in 1997. While the House previously has passed caps on both product and service liability, the Senate passed a much narrower version limited to products. The final bill was vetoed by the President during the last session. Hope for a narrower version remains high in many industries.

RESPA

There may well be some Congressional action on RESPA in 1997 for a variety of reasons. Both HUD, which administers RESPA, and members of Congress recognize that the settlement procedures law is not working well. Since RESPA was enacted in 1974, the real estate industry has changed dramatically. In 1974, a potential purchaser selected a home with the assistance of a real estate agent, who subsequently helped the buyer find a lender, a title agent, a settlement attorney, a pest inspector, and the other service providers who performed

continued on page 22

Congressional Scoreboard at a Glance

<i>Issue</i>	<i>104th Congress Proposed</i>	<i>104th Congress Action</i>	<i>105th Congress Outlook</i>
Bank Powers	Expand national bank powers authority to sell, underwrite title insurance from banks and bank holding companies	No major legislation enacted	Legislation expected, House Banking Committee action certain
RESPA	Move jurisdiction over Section 8 (anti-kickback) to Federal Trade Commission--RESPA disclosure to Federal Reserve Board; require "negotiated" rulemaking for proposed new rules	Legislation passed modifies criminal intent liability standard, calls for a study of simplified and improved disclosure	Legislation to make specific changes may be introduced, driven by major issues including lender affiliation and employee compensation
FHA Mortgage Insurance	Reduced premium for first time buyers, family assistance--low down payment, pilot program for testing simplified down payment calculation	Passed	Uncertain
Superfund	Major Superfund reform, Includes title insurers within exemption from lender and fiduciary liability, exempt title insurers from liability-- petroleum underground storage section of RCRA	Lender/title insurer passed	Major reform likely to be considered
Form 1099 Reporting	Telephone numbers required on 1099s	Real estate reporting persons can recover their costs for reporting transaction gross proceeds to IRS	
Non-Judicial Foreclosure	Administration seeks legislation allowing cost saving federal pre-emption of state law	Defeated	Continuing Administration advocacy
Child Support Liens	Legislation proposes silent liens; improved enforcement likely to result in greater number of liens, recorded in place for interstate law	Passed	
Tax			Introduction likely for capital gains tax legislation

IRS Reporting Compliance

By Chip Collins and Ann vom Eigen

Can you face the new year confident that you are complying with Internal Revenue Service information reporting requirements?

As you review your year end results and your potential tax liabilities, you probably are focusing on your annual profits and corporate tax payments to the IRS due on March 15. However, your bottom line may be altered if you fail to comply with IRS information reporting requirements. With a possible \$50 penalty for each error, failure to correctly file information returns can cause a substantial reduction in your transactional profit.

IRS reporting requirements are not limited to the Forms W-2 you file for employees. Depending on your operations, you may face a myriad of reporting obligations. To identify other IRS reporting rules that may apply to you, read on.

There are several types of filings that the IRS requires on real estate transactions:

- *Form 1099-S*, which must be sent to the IRS and the seller for commercial and land real estate closings. Congress made two important changes to the 1099-S requirements this year, which are highlighted below.
- *Form 1099-MISC*, which must be filed for certain escrow fund disbursements if "oversight" is performed (described in more detail below).
- *Form 8300*, which must be filed for certain large cash transactions in order to combat money laundering.

Companies should also be aware of potential withholding requirements (typically imposed only on transferees) pursuant to the FIRPTA provisions when the transferor is a non-U.S. person.

Real Estate Reporting: Form 1099-S

In 1996, Congress enacted major tax changes for the treatment of real estate, such as changing the passive loss treatment of commercial property. The administrative burden which fell most heavily on the title industry, however, was the expansion of broker requirements to include the reporting of real estate transactions. This provision was initially enacted due to Congressional concern that capital gains on some transactions were not reported as income on the seller tax returns.

Congress instituted real estate reporting on *residential* transactions under the belief that individuals would be more likely to honestly report their gains on sales of residential property to the IRS if they knew the businesses performing their closings already were sending that information to the IRS.

Author Collins is national director, information reporting practice, KPMG Peat Marwick LLP, with offices in Washington. Previously, he was a senior manager for another big six accounting firm located in the nation's capital, and before that was an attorney/advisor for the Internal Revenue Service, Office of Chief Counsel (International). Author vom Eigen is staff legislative counsel for ALTA, previously serving as associate legislative counsel for the Mortgage Bankers Association of America and working on Capitol Hill in staff positions with the Senate Environment and Public Works Committee and Senate Budget Committee. Both recently served as members of the IRS Information Reporting Program's Advisory Committee, vom Eigen as the real estate sector representative on that body. The aforementioned committee is one of only two publicly constituted groups advising the IRS commissioner on tax policy and administrative matters.

Expanding the initial statutory direction in Internal Revenue Code Sec. 6045 (e), the IRS established the framework for reporting requirements in Reg. 1.6045-4, effective January 1, 1991, and applicable to a broader range of reporting.

Who Reports

Essentially, the regulations provide that, if a Uniform Settlement Statement under the Real Estate Settlement Procedures Act is used, the person listed on the form as the settlement agent is responsible for reporting. If no settlement statement is used, the person who prepares the closing statement is responsible for reporting. If no closing statement is used, the person responsible for reporting the transaction is based on the following hierarchy:

1. The attorney for the transferee who is present at the delivery of either the transferee's note or a significant portion of the cash proceeds to the transferor, or who prepares or reviews the preparation of the documents transferring legal or equitable ownership, or
2. The attorney for the transferor who is present at the delivery of either the transferee's note or a significant portion of the cash proceeds to the transferor, or who prepares or reviews the preparation of the documents transferring legal or equitable ownership, or
3. The disbursing title or escrow company that is most significant in terms of gross proceeds disbursed.

If there is no person who can be identified as responsible for closing the transaction based on the list above, the list expands to:

4. The person who lends new funds in con-

nection with the transaction

5. The transferor's real estate broker
6. The transferee's real estate broker
7. The transferee who acquires the greatest interest in the property

The parties to a transaction also have the flexibility to designate certain persons as the reporting person.

On What Property

Unless it is within a specified exempt class, or the transferor is an exempt transferor, any transaction that is in whole or part a sale or exchange is subject to reporting. Thus, even if an individual seller may exclude capital gains on his personal residence under the "once in a lifetime" exclusion available to those who have reached age 55, the transaction is deemed a sale under federal tax law and thus is reportable. The individual seller will be responsible for filing a Form 2119 with his annual income tax filing, to report the transaction.

Like kind exchanges also are reportable transactions.

In general, transactions exempt from reporting include: gifts or bequests, financing or refinancing that is not an acquisition, foreclosure or transfer in lieu of foreclosure, abandonment, and *de minimis* transfer of less than \$600.

Exempt transferors that are not subject to Form 1099-S reporting include corporations, governmental units (including foreign governments or international organizations), and "exempt volume transferors" who sell or exchange at least 25 separate items of real estate each year with at least 25 separate transferees. If a transaction has one or more exempt transferors, and a non-exempt transferor, the reporting person is required to report for the non-exempt transferor.

Reportable real estate is defined as a present or future ownership interest in: improved and unimproved land including air space; any inherently permanent structure including residential, commercial or industrial buildings; condominium units; and stock in a cooperative housing corporation. Ownership interests do not include options to buy real estate.

1997 Revisions to Form 1099-S

If you have been filing Form 1099-S, probably for years, you are accustomed to obtaining the standard information on the name, address, and taxpayer identification number (TIN) of the transferor. It is incorrect TINs that cause the most headaches for title companies and agents when the IRS sends a notice of incorrect filing and a pen-

alty assessment for the second preceding tax year. These penalties can be challenged under the "reasonable cause" regulations described below. As always, reporting persons must include a general description of the property, the gross proceeds, non-cash property or services, and, since 1992, real property tax proration amounts.

New Phone Number Requirement

Of the two new reporting provisions enacted in 1996, one is a new requirement and the other a release from prior constraints. Under a pro-consumer provision in the "taxpayer bill of rights," persons providing information returns—such as banks providing Form 1099-INT and real estate reporting persons providing Form 1099-S—must include phone numbers on statements required to be furnished after December 31, 1996. (Sec. 1201 of HR 2337,

D*epending on your operations, you may face a myriad of reporting obligations.*

the "Taxpayer Bill of Rights," P. L. 104-168) This requirement is in addition to the present specifications to include name and address.

The IRS now has stated that, because the legislation was enacted after the 1996 1099-S Forms were printed, a failure to include a phone number on the 1996 statements will be considered to have arisen from an event beyond the control of the filer. As a result, the penalty under Section 6722 of the Internal Revenue Code will be waived for reasonable cause if the next statement required to be provided (generally for 1997) includes the phone number. (Announcement 96-88, Telephone Numbers on Statements—Forms W-2G, 1098, 1099, and 8308—Penalty Waiver)

With respect to the information required on the 1997 form, IRS recognizes there will be a variation in the way companies' phone systems are structured, as many have central 800 numbers. The legislative history accompanying the act suggests that a payor may include the phone number for the department with the relevant information. It is intended that the telephone number provide direct access to individuals with immediate resources to resolve a taxpayer's questions in an expedi-

tious manner. Individual names would not necessarily be helpful because employees often are reassigned.

Modification, Prohibition On Separate Charge

Since 1988, it has been unlawful for any real estate reporting person to separately charge any customer for the title company's cost in sending the information required on the 1099-S to the IRS (26 USC 6045 (e) (3)).

Since 1991, when this legislative prohibition created problems in Pennsylvania, ALTA has sought legislation to clarify that the statutory prohibition did not preclude real estate reporting persons from taking into account costs of complying with this requirement (other than a separate charge for complying with such requirement). This campaign was undertaken in order to address uncertainties regarding treatment of the costs associated with the 1099-S reporting requirement in states where the title insurance industry must document all costs and charges with state regulators. This provision finally was included in Sec. 1704 (o) of the Small Business Job Protection Act of 1996 (PL 104-188).

As the ban on a separate charge remains in the statute, closing agents should not line item a charge in order to recover any costs incurred in complying with the 1099-S reporting requirement. However, it is acceptable to include documented costs for general 1099-S compliance efforts in charges reflecting general administrative overhead or other closing-related costs.

The statutory language, with the 1996 amendment from PL 104-188 highlighted in bold face type, is below:

Code Sec. 6045 (e) (3) Prohibition of separate charge for filing return—It shall be unlawful for any real estate reporting person to separately charge any customer for complying with any requirement of paragraph (1) (paragraph 1 requires the filing of a Form 1099-S information return with the IRS and provision of the statement to the transferor. **Nothing in this paragraph shall be construed to prohibit the real estate reporting person from taking into account its cost of complying with such requirement in establishing its charge (other than a separate charge for complying with such requirement) to any customer for performing services in the case of a real estate transaction.**

Escrow Disbursement Reporting

Settlement agents, practitioners, and

IRS agents have been increasingly confused about the potential Form 1099-MISC reporting requirements for escrow fund disbursements. The confusion has escalated in recent years due to Rev. Rul. 93-70, 1993-2 CB 294. In essence, this ruling held an escrow company would be required to file Forms 1099-MISC for disbursements from construction loan escrows if the company exercised "oversight" with respect to that escrow. The "oversight" activities described in the ruling include: (1) inspecting the construction site to determine if work has been completed, but not to determine the quality of the work; (2) evaluating and assessing the cost of the project; and (3) communicating any budgetary concerns about the project to the general contractor and owner.

Rev. Rul. 93-70 described a unique type of escrow arrangement used in California for commercial real estate construction, which is not typical in other areas of the country. The ruling did not address the more common type of escrow (described below) established for real estate sales. Clearly, therefore, Rev. Rul. 93-70 is distinguishable from this more common escrow arrangement.

Nevertheless, it appears that IRS agents in some states have threatened penalties for escrow agents that fail to file Forms 1099-MISC. The IRS's position in these cases appears to be that, as a result of Rev. Rul. 93-70, any settlement agent that writes a check for services is required to file a Form 1099-MISC, even if the settlement agent has not exercised oversight.

Consequently, ALTA, through its membership on the Internal Revenue Service's Information Reporting Program Advisory Committee (IRPAC), has argued that the typical escrow fund arrangement used in real estate sales is distinguishable and should not require reporting by the settlement agent for the following reasons:

- Since disbursements from the escrow are based only on specific instructions from the principals, the disbursing entity does not exercise "oversight" within the meaning of Rev. Rul. 93-70.
- The disbursing entity serves only a ministerial function--it makes disbursements when told to do so. The disbursing entity therefore acts purely as a paying agent on behalf of the principals.
- Since the disbursing entity is only a paying agent, it does not have any Form 1099-MISC reporting requirement. Instead, any reporting obligation would fall on the principals. See,

e. g., Temp. Reg. Sec. 35a.9999-3, Q/A 1; Reg. Sec. 31.3406(a)-2(c)(1); Private Letter Rulings 9635012 and 9643004.

In a paper we presented at the Information Reporting Program Advisory Committee (IRPAC) meeting in Washington on November 19, 1996, we outlined the following "typical" real estate transaction, described below, as well as the potential Form 1099-MISC reporting requirements.

Assume that seller (S) wants to sell his home, and buyer/purchaser (P) agrees to purchase it. The agreement is negotiated with the help of real estate brokers (REB), and a real estate contract is signed. Depending on the jurisdiction, Seller, or, more likely, Buyer, approaches a settlement agent (SA) to perform the settlement function. The settlement agent works from the instructions in the real estate contract, and the loan closing instructions provided by the lender financing the transaction. These

Essentially, the regulations provide that, if a Uniform Settlement Statement under the Real Estate Settlement Procedures Act is used, the person listed on the form as the settlement agent is responsible for reporting.

later instructions include, at a minimum, standardized closing instructions, e. g., regarding wire transfers and requirements for payoff of a prior mortgage, and may also include specific instructions for a particular transaction.

In performing the settlement, SA will be receiving funds and making disbursements according to the instructions of the various parties to the transaction. These instructions generally will be in writing, but also may include instructions from the principals for unforeseen occurrences at the closing itself. For example, S may instruct SA to pay Company One for a survey, and P may instruct SA to pay Company Two for a termite/pest inspection. At closing, S may verbally instruct SA at closing to pay Company Three for the repair to the roof of the home performed by Company Three, based on recommendations stemming from an on-

site inspection by a home inspector that was performed after the contract was initially signed.

At settlement, SA receives funds from P's lender, Bank A, to finance the purchase of the home. Pursuant to the instructions of S and P, SA disburses these funds to different parties including: (1) the lender of the existing mortgage, Bank B, to pay off that lien, the Real Estate Brokers for the sales commission, and Companies A, B and C for various services. SA does not exercise any discretion with respect to these disbursements; instead, SA merely acts on the instructions of the principals. The disbursements are made by checks written by SA.

With respect to all of the disbursements, SA is not the payor since it is acting only as a paying agent. The true payors, S and P, will have a Form 1099-MISC reporting requirement for the broker commission and the payments to Companies A, B and C, but only if S and P make such payments in the course of a trade or business (and assuming the payees are unincorporated).

At the IRPAC meeting, the IRS offered some encouraging statements, agreeing that the transaction described above would not result in a reporting requirement for the settlement agent. However, the IRS also noted that there were "gray areas" between the facts in the Rev. Rul. 93-70 situation and the fact pattern described above, so caution and attention to your corporate policies and practices regarding disbursements is advisable.

Also, be aware that, if oversight is exercised and Form 1099-MISC reporting is required, TINs must be obtained from the payees in order to avoid a 31 percent backup withholding requirement under Section 3406. If backup withholding is required but not performed, the payor can be held liable for the amount that should have been withheld.

Cash Reporting: Form 8300

Generally, any person in a trade or business who receives more than \$10,000 in cash in a single transaction, or in two or more related transactions, must file Form 8300 (under Section 6050 I). Reporting also is required if monetary instruments (that is, cashier's checks, bank drafts, traveler's checks, or money orders) with a face amount of \$10,000 or less are used in a transaction where the recipient knows that the instrument is being used in an attempt to avoid Form 8300 reporting.

Typical examples of persons subject to Form 8300 reporting include dealers in jewelry, furniture, boats, aircraft or automobiles. Settlement agents, however, also may

be subject to this requirement, depending on the transaction. For example, a purchaser may arrive at a closing where \$50,000 in the remaining down payment and closing costs are required to complete the transaction. If the purchaser arrives with five \$9,000 and one \$5,000 cashier's checks, the settlement agent may suspect that the purchaser is attempting to avoid a Form 8300 reporting requirement.

If required to report, you must generally file Form 8300 with the IRS within 15 days. (Reg. 1.605011 (e) (1)). You also must give a written statement to each person reported on Form 8300, showing the name and address of your business, the total amount of reportable cash you received from the person during the year, and a statement that you also are reporting this information to the IRS. This statement must be furnished to the person by January 31 of the year after the year in which you receive the cash.

FIRPTA

A series of provisions enacted in 1980, collectively referred to as "the Foreign Investment in Real Property Act" (FIRPTA) established special rules applicable to gains of foreign persons attributable to dispositions of interest in U. S. real property. Most notably, Section 897 (a) provides that gain or loss of a foreign person from the disposition of a U. S. real property interest is taken into account for U. S. tax purposes as if such gain or loss were effectively connected with a trade of business within the U. S.

Unlike other real property transfers, the Code generally imposes a withholding obligation of 10 percent when a U. S. real property interest is acquired from a foreign person (Section 1445). The withholding obligation generally is imposed on the transferee (and, in limited situations, on the agent of the transferor or transferee). Therefore, the transferee—not the settlement agent—shoulders the burden of complying with the FIRPTA provisions. Similarly, FIRPTA reporting requirements (Forms 8288 and 8288-A) generally fall on the transferee alone.

In contrast, Form 1099 filers—primarily real estate settlement agents—generally have no withholding or reporting obligations under FIRPTA. Thus, settlement agents have no obligation, under FIRPTA, to identify foreign transferors. Further, under the FIRPTA rules, no withholding is required for sales of primary residences of \$300,000 or less. Section 1445 (b) (5).

Certain procedures can help ensure that transferees comply with FIRPTA. Withholding by the transferee generally is not re-

quired if the transferor furnishes to the transferee an affidavit stating, under penalty of perjury, that the transferor is not a foreign person and providing the transferor's taxpayer identification number (Section 1445 (b) (2)). Also, the withholding may be reduced or eliminated if the transferee receives a qualifying statement issued by the IRS that the transferor is exempt from tax or either the transferor or transferee has provided adequate security or made other arrangements for payment of the tax (Section 1445 (b) (4)).

Abatement for Reasonable Claims

During August or September each year, the IRS sends a computer-generated notice (Notice 972CG) that proposes penalties for Forms 1099 filed with incorrect/missing TINs or for Forms 1099 filed late. Probably the most common penalty facing settlement agents relates to incorrect TINs pro-

Unless it is within a specified exempt class, or the transferor is an exempt...any transaction that is in whole or part a sale or exchange is subject to reporting.

vided by sellers who were reported on Form 1099-S.

Fortunately, the standard for requesting an abatement of incorrect TIN penalties is fairly clear. Under the "reasonable cause" regulations, the IRS will not assess a penalty if a filer establishes: (1) that the error was due to "events beyond the filer's control" (Regulation 301.6724-1(c)); and (2) the filer acted in a "responsible manner" (Regulation 301.6724-1 (d)).

When applying this test to Form 1099-S filers, the filer must first explain to the IRS that the seller provided an incorrect TIN to the filer, thus establishing that the error was due to an event beyond the filer's control. Second, the filer must explain that it requested the seller's TIN in the manner required under IRS regulations. Current regulations require that the solicitation: (1) be in writing; (2) state that the seller is required by law to furnish a correct TIN, and that civil or criminal penalties may apply for failing to provide a correct TIN; (3) provide a space for the person's TIN, name,

and address, and for the person to certify, under penalties of perjury, that the TIN is correct. The solicitation must be retained for four years following the close of the year in which the sale took place. Regulation 1.6045-4(1).

For penalties other than incorrect TINs, filers also may show reasonable cause by establishing the existence of "significant mitigating factors," as described in the two regulations. Regulation 301.6724-1(b).

Taking the time to ensure compliance with IRS reporting rules can be as important to preserving your bottom line as any other activity you enter into. Companies that ignore these requirements may learn a very painful and expensive lesson that the IRS is quite serious about compliance with these rules. 🐦

Fidelity Introduces Closing Software

Fidelity National Financial, Inc., has introduced ACS ExpressNET, a fully integrated software solution for electronic commerce, which was designed by its subsidiary, ACS Systems, Inc., to electronically connect all parties involved in the real estate closing process.

The electronic data interchange software features lender and Realtor modules and includes national order, escrow closing and title policy production capabilities. Its on-line "connectivity" provides a vehicle by which data such as appraisal, credit, flood, home warranty and inspection is quickly transferred among title, escrow, Realtor, lender and other service providers.

ACSEXPRESSNET software connects transaction originators, service providers and title production to and from any location, providing for electronic transfer of preliminary reports, commitments, title orders, closing documents, status reports and customized messages.

Endress Acquired By Lawyers Title

Lawyers Title Insurance Corporation has acquired The Endress Title Company, Cuyahoga Falls, OH, which now is known as the Endress Title Division of the company.

Former Endress Title President Terrence Endress continues to direct operations of the new branch.

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CONGRESS

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due diligence and provided services to facilitate a transaction. A loan processed in 1974 might well sit on a desk for weeks until a loan committee met, and the philosophy of prohibiting compensation for mere referrals, as opposed to work, seemed logical.

Two decades later, the proliferation of faxes and computers has created expectations that information will be immediately available. Driven by automation, the time consumed in the loan origination process has shortened dramatically. Consumers expect, and receive, instantaneous loan approval as credit scoring becomes more prevalent—and view computerized loan origination systems as a useful tool. Expectations of 60-second service delivery are spilling over to the title industry as well. Computers are doing a lot of the work, and the compensation structure and service still are evolving. In addition, the providers themselves have changed from a service delivery system with numerous small, independent, locally based service providers to a more consolidated system of national lenders and Realtors.

Frustration in the real estate industry is based on a belief the industry has changed and RESPA has gone awry. The scheme has become overly complicated, and enforcement is widely regarded as too sporadic. A recognition is prevalent that something else would work better. But the big question is what. Big picture issues like lender pay or industry self regulation may result in long-term change.

In the short term, that is the next session of Congress, banking industry pressure to allow compensation of employees of affiliates may force action on Capitol Hill if these concerns are not addressed by HUD this spring. The law delaying until July 31, 1997, the effective date of the June, 1966, final RESPA regulation relating to employer/employee compensation opens the door for HUD to act. In addition, Congressional directions to HUD and the Federal Reserve Board to recommend changes to RESPA and Truth in Lending by the spring of 1997 also may generate some recommendations for change—along with some actual Congressional action.

Non-Judicial Foreclosure

Conserving federal legal and judicial resources and saving taxpayer dollars. With a theme like that, the Justice Department has convincing arguments that non-judicial foreclosure will save the federal government millions. Coupled with contentions

that a national non-judicial foreclosure program would promote the federal interest in preserving and protecting the nation's housing supply, and would provide greater protection than most similar state laws, the policy concerns appear equitable and the financial issues compelling. Consequently, ALTA expects to see the Administration continue to push for legislation to allow federal pre-emption of state law.

Privacy

Revisions to the Fair Credit Reporting Act passed during the last Congress established a new statutory regime for credit providers and users. However, consumer concerns about the use of credit reports and other information privacy issues remain of interest on Capitol Hill. Although oversight of privacy matters may not directly affect the title business, it does impact those title entities affiliated with credit reporting companies.

Congressional concerns may have some positive effect on bank sale of insurance. Further, use of consumer information may affect credit scoring, and thus the mortgage origination process.

Taxes

Capital gains reinstatement has been on the priority wish list of every business man and woman for years, and 1997 may finally bring the reward. Historic Congressional support of capital gains reinstatement has, in the past, been tempered by Administration reluctance to undertake a tax cut that would increase the deficit. But, if potential changes to the Consumer Price Index could moderate deficit growth without increasing indexed tax revenues, the potential for a tax cut increases.

If hope wanes for a general reduction in the capital gains tax, a pet provision of Rep. Bill Archer (R-TX), chairman of the House Ways and Means Committee, instituting capital gains treatment for residential real estate might be carried through. Chairman Archer always has been supportive of capital gains tax reduction, and has in past Congressional sessions introduced legislation providing substantial help to Texas. He has proposed recognition of capital loss on sale of a personal residence in several prior sessions. There might actually be room for a small fix of this kind if a larger tax bill moves in 1997.

While the 105th Congress may be a legislative body of moderation, the result of its efforts could well be changes for the business environment. 🐼

Problem of the Century

By Paul Sakrekoff

Historically, in the computer industry especially when it was dominated by mainframes, you have small amounts of random access memory (RAM) and small amounts of disk space in which to execute your programs and save your data. Because of these small amounts, programmers tended to optimize, which meant cut out seemingly unnecessary parts from programming coded data so as to keep programs and data as small as possible.

Unfortunately, one of the things that was deleted in most programs was "century". Later on, as programmers moved down to mini and eventually PC environments, they continued to not put "century" in -- although century itself was not an issue because the cost of RAM and DASDI or disk or storage space, was getting 10 times cheaper every 18 months. The programs themselves that originate in the mainframe and then in the mini and finally a PC environment, for compatibility left "century" out.

Now here we are on the edge of the twenty-first century in the title insurance industry, and we find we have many programs that don't have a century field -- so it says "month and date" and not century. What I mean by "century field" is you have a field that says "7/8/99" -- it should say 7/8/1999 and the "century field" is where the "19", the two characters...that's what's missing. It should also say 7/8/2000 but, because the 19 or 20 is missing, designating the century 1900 or the century 2000 -- the computer is going to make several assumptions that are going to put a 200-year spread on interest owed or interest due in your escrow, closing and payoff funds.

Let me list some examples:

1. It's Christmas, 1999, and you have an old program that doesn't have the century

...the computer is going to make several assumptions that are going to put a 200-year spread on interest owed or interest due in your escrow, closing and payoff funds

field properly in it. You are entering your bills for January 2000 into your old program. Well, when it comes to the date field, you will have to enter "00" for the century. So what will end up happening is your bills will suddenly be listed as the year 1900 rather than the year 2000! And the program will say that all your bills for January 2000 are actually bills for January 1900! And they are 100 years overdue! This is no exaggeration. There are programs right now that will list your closing, escrow or payoff funds as 100 years overdue because of that issue.



The author is a past chairman of the ALTA Land Title Systems Committee and currently is director of electronic commerce for Real Estate Transaction Information Group, Ocean-side, CA. Besides ALTA systems activity, he has been an active participant in Mortgage Bankers Association of American technology work groups.

2. Another issue is, say you are in January, 2000 -- when you enter the checks that you wrote for all your bills during Christmas. So you enter all checks that you wrote during Christmas, 1999, except when it goes to the date field, all you have there is "00" -- you are not allowed to enter "19" for the year "1900" or you are not allowed to enter "20" for the year "2000". So it just takes the year "00" in that spot. While the year 00 is entered at that point to be the year 2000. So, you start balancing and it says, "Well, wait a second -- you're balancing checks you wrote in the year 2100", because it won't automatically jump back to the year 2000. Obviously, your escrow funds, closing funds and payoffs could all have a major problem if you are calculating interest based on a hundred years in the future transactions.

I hear of a study that talks about a similar problem. It says that, in 1995, 20 percent of all computer systems used in business are going to be affected by the century issue at some point -- and that 80 percent of all computer systems in use by the year 2000 will be impacted.

But, it's not as dismal as it may seem. There are quite a number of companies in the title insurance industry that are addressing this issue. It calls for either maintaining separate systems or going through the data and adding the "19", and then modifying the program to accept the "19" and the "20", which may or may not be a major issue depending on the size of the company involved.

Needless to say, around the year 2000, we should all be aware so that, if we are doing a closing, an escrow or a payoff, and we suddenly find the interest rates owed or projected to be very wacky, we will know

what the problem is.

I suggest right now, that anyone unable to get a satisfactory answer from their vendor temporarily set up a system along the lines mentioned above, with dates for a couple of transactions that are just before and just after the century, do some standard transactions and observe how they are calculated. If either the future or past problems exist, it's time to ask your vendor what he intends to do about it.

If the problem doesn't arise, send your vendor a box of candy. And profusely thank him for the hundreds and thousands of hours of heartache and pain saved you and the customers. 🐼

Chicago Service Adds UniSource

A reorganization allowing UniSource Real Estate Services to become part of the company's Real Estate Related Service Group has been announced by Chicago Title and Trust Company.

UniSource, based in Conshohocken, PA, specializes in serving national residential, first, second and home equity lenders.

Other members of the Chicago Title Service Group include National Flood Information Services, Inc.; Credit Data Reporting Services, Inc.; Market Intelligence, Inc., and National Mortgage Services.

Beard Designated 'Boss of the Year'

ALTA Education Committee Vice Chair Herschel Beard has been named "Boss of the Year" by the Madill, OK, Business and Professional Women's Chapter, where he is the owner of Marshall County Abstract Co.

In submitting the winning nomination, Marshall County Abstract employees June Moran Beal, Caroleta Jackson and Ann Walthall wrote: "He is always kind and considerate. He is always honest and straightforward. He takes great pride in the work he produces and he expects us to take great pride in the work we produce."

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Ordering Information

Note: 1996 issues of Title News are available to members at \$5.00 each, and to non-members for \$8.00 each. Call toll free at 1-800-787-ALTA.

Profile: The New Junior Loan Policy

By Joseph C. Bonita

The new ALTA Residential Limited Coverage Junior Loan Policy approved by Association Active member in October is designed to provide lenders making second mortgages on residential properties with limited title insurance protection as one of the bases for making these loans. It was created to provide a vehicle for members of the Association to remain competitive in the second mortgage loan business, which is increasingly at risk of being taken over by credit reporting companies and other information providers. We also hope it will assist the growth of the secondary market for these loans in the same way as the ALTA Loan Policy did for residential first loans.

The policy operates if the land is a one-to-four family residential property or an individual condominium unit. No commitment is required and there is an updating endorsement, explained below. In this sense, it is much like the USA policy form used for federal land acquisitions. The following is a general summary of the features of the new policy; however, the terms of the policy govern in the event there is any conflict.

Subject to its exceptions and exclusions, it provides insurance against loss resulting from the following:

1. The grantee named in the policy is not the grantee named in the last deed conveying title to the land recorded in the public records.
2. The description of land in the policy is not the same as the land description in that deed. This coverage was added at the request of Bank of America, which has taken a great interest in the development of this policy and provided a

It was created to provide a vehicle for members of the Association to remain competitive in the second mortgage loan business....

number of suggestions for our consideration.

3. Any monetary lien recorded in the public records which affects the title to the land. "Monetary liens" are liens securing the repayment of money and "public records" are defined in the same way as in the ALTA Loan Policy. This coverage includes judgment liens and mortgage liens, whether they are created before or after the date of the deed mentioned above and regardless of by whom they were created. However, condominium and PUD assessment liens are covered only to the extent there are specifically filed notices claiming delinquencies.



The author chairs the ALTA Title Insurance Forms Committee, and is senior vice president and chief underwriting counsel for Chicago Title Insurance Company. He received his juris doctorate from DePaul University

College of Law in Chicago, and is a member of the bar in Illinois and Colorado. He began his title insurance career in 1968.

4. Ad valorem taxes, or assessments of a governmental taxing authority which constitute a lien on the land if they appear in the ad valorem property tax records at the effective date of the policy.
5. Costs of defense of claims against covered matters until the time the insurer elects to pay the insured the loss which the insured sustains.

The policy also provides for the optional statement of property tax information which may be required by the lender. This could include the basis for real estate tax computations, assessed valuation and payment dates.

A short form version of the policy also was created. It provides identical coverage but consists of a single page, incorporating the provisions of the standard policy by reference. An addendum was created for use if there is insufficient space on the short form for exceptions or requested tax information.

The policy has two endorsements, which are designated Endorsement Form JR1 and Endorsement Form JR2. Both are designed to be issued at the request of the insured lender after its mortgage is recorded. Endorsement Form JR1 insures against loss from deeds or monetary liens which are recorded in the public records subsequent to the effective date of the policy and prior to the effective date of the endorsement unless they are excepted. It also provides the recording information for the insured's mortgage. Finally, as a result of customer input, it contains optional language to provide for insurance for covered matters recorded in the searching gap that usually exists at the time of recording.

Endorsement JR2 was created to pro-



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If you're still tied down to doing real estate closings manually, then ProForm automated closing software is your ticket to freedom.

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vide coverage for the priority of mortgages for revolving credit or other future advances at variable interest rates. These are probably the most prevalent of the types of second mortgages made. The coverage for future advances is subject to several conditions. First, the mortgage must create a lien on the land. Second, the mortgagor must be the owner when the advance is made and must not be in bankruptcy at that time. Finally, the mortgage must state that it secures payment of future advances. Loss from invalidity, unenforceability or loss of priority due to variable interest rate provisions is covered if the mortgage sets out how the variable interest rate is calculated. Exclusions from these coverages include real estate taxes and assessments, federal tax liens, environmental protection liens, liens known to the lender at the time it makes an advance and mechanics' liens. Also excluded are the effects of usury and consumer credit protection laws.

Two new endorsement forms also were approved by the membership. The following is a general summary of their features. Again, their actual terms govern their effect in the event there is any conflict.

ALTA Endorsement 11 (Mortgage Modification) provides coverage against loss if the modification renders the insured mortgage lien invalid or unenforceable, or causes a loss of its priority over intervening matters. A provision is made for the insurer to take exception to those matters it declines to insure. The endorsement also includes a creditors' rights exclusion with respect to the modification. This was thought to be desirable because so many modifications take place in the context of a "work out" structure which may create creditors' rights problems.

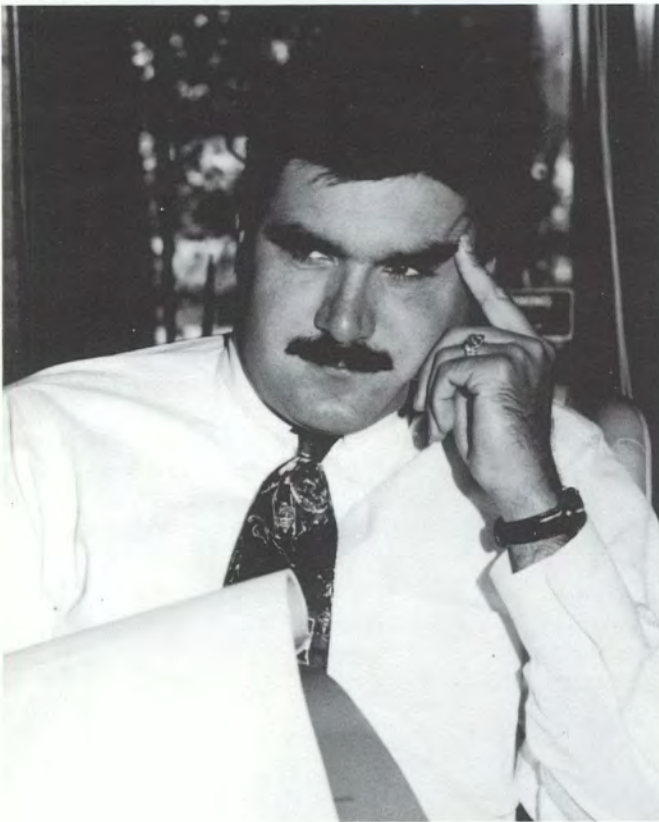
ALTA Endorsement 12 (Mortgage Aggregation) is a "tie-in" endorsement for multiple site mortgage transactions in which separate loan policies cover each of the mortgages securing the same loan. Its purpose is to provide a measure of inflation relief to the insured lender if the insured loss is a serious title defect. When issued at the loan closing, this endorsement substitutes the aggregate of the face amounts of all loan policies issued for each individual policy's face amount. This creates an aggregate liability pool available to pay claims made under any policy, with the value of the land being the ultimate limiting factor in most cases rather than the face amount of the policy. Anything which would raise or lower the available insurance on each individual policy will raise or lower this aggregate amount, pro tanto. 

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To omit is human, too.”

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Puerto Rico Mid-Year: Sunny Beaches Offer Ideal Setting for Industry Updates

By Leigh A. Vogelsong
*ALTA Director of Meetings
and Conferences*

Briefings on the latest title industry topics and issues will be offered during a sunny respite from winter's chill when the 1997 ALTA Mid-Year Convention is held April 14-16 at the Hyatt Regency Cerromar Beach near San Juan, Puerto Rico.

Featuring 270 miles of beaches and lush tropical landscape, Puerto Rico was discovered by Columbus in 1493, on his second voyage to the new world. Besides its Caribbean setting, Puerto Rico offers the fascination of Old San Juan, which still includes massive defenses constructed in the early 1500s when the island was Spain's most important military base.

The Convention agenda unfolds starting on Sunday, April 13, when activities will include tours and committee meetings. Tours and committee meetings also will be on the calendar Monday, along with meetings of the ALTA Board of Governors, Abstractor-Agent and Underwriter Section Executive Committees, the affiliated regional/state title association officer-executive seminar and the Ice-Breaker Reception.

Educational sessions and golf/tennis tournaments will be added to the mix on Tuesday, and a general session also will be among the highlights. Activities will wind up at mid-day Wednesday.

For an overview of the schedule, please see the accompanying Convention Calendar.

Additional Convention information and registration material will be sent to ALTA members early in the year. Questions may be directed to the ALTA meetings department by calling toll free, 800-787-ALTA. 🐼



Puerto Rico features 270 miles of Caribbean beaches and lush tropical landscape, and was ceded to the United States by Spain in 1917.

1997 ALTA Mid-Year Convention Calendar

Sunday, April 13

- 8:30 a.m.-5:00 p.m. Title Insurance Forms Committee Meeting
- 9:00 a.m.-5:00 p.m. Education Committee Meeting
- 10:00 a.m.-5:00 p.m. Land Title Systems Committee Meeting
- 10:00 a.m.-5:00 p.m. Various Tours (*Optional*)
- 2:30 p.m.-5:00 p.m. Government Affairs Committee Meeting
- 6:00 p.m. Public Relations Committee Dinner

Monday, April 14

- 8:00 a.m.-5:00 p.m. Various Tours (*Optional*)
- 8:00 a.m.-7:00 p.m. Convention Registration
- 9:00 a.m.-12 noon..... Abstracter-Agent Section Executive Committee Meeting
- 9:00 a.m.-12 noon..... Underwriter Section Executive Committee Meeting
- 9:00 a.m.-5:00 p.m. Title Insurance Forms Committee Meeting
- 9:00 a.m.-Noon Directory Rules Committee Meeting
- 9:00 a.m.-5:00 p.m. Lender/Life Counsel Meetings
- 9:00 a.m.-5:00 p.m. Legal Division Meeting/Luncheon
- 11:00 a.m.-4:00 p.m. Affiliated Regional/State Title Association
Officer-Executive Brunch/Seminar
- 11:30 a.m.-1:30 p.m. Past Presidents Luncheon
- 12:30 p.m.-5:00 p.m. Automation Exhibits Open
- 1:30 p.m.-5:00 p.m. Board of Governors Meeting
- 3:00 p.m.-5:00 p.m. Membership and Organization Committee Meeting
- 6:30 p.m.-8:00 p.m. Ice-Breaker Reception

Tuesday, April 15

- 7:00 a.m.-8:00 a.m. Exhibitor Educational Sessions/Continental Breakfast
- 7:00 a.m.-8:30 a.m. Abstracter-Agent Research Subcommittee Meeting
- 7:00 a.m.-8:30 a.m. TIPAC Board of Trustees Meeting
- 8:00 a.m.-1:00 p.m. Automation Exhibits Open
- 8:00 a.m.-2:00 p.m. Convention Registration
- 8:30 a.m.-11:30 a.m. Management Educational Session
- 9:30 a.m.-11:30 a.m. Companion Brunch
- 12:00 noon-5:00 p.m. Golf Tournament
- 12:00 noon-5:00 p.m. Tennis Tournament
- 1:45 p.m.-5:00 p.m. Various Tours (*Optional*)
- 4:30 p.m.-6:00 p.m. Reception with Exhibitors

Wednesday, April 16

- 7:00 a.m.-8:30 a.m. TIAC Board of Directors Meeting/Breakfast
- 8:00 a.m.-10:00 a.m. Convention Registration
- 8:00 a.m.-11:00 a.m. Automation Exhibits Open
- 8:30 a.m.-12:00 noon..... General Session

Balanced Budget For 'Vision 1999'

*By David R. McLaughlin
ALTA Vice President-Administration*

Adding to the already busy and successful year of ALTA in 1996, the Association governors and staff have been well occupied with implementation of the organization's first strategic plan and its budget, working under its appropriate name, "Vision 1999".

Supporting this three-year plan is a balanced operating budget beginning with 1997 that was approved by the Board of Governors during the 1996 Annual Convention. (Please see Exhibit 1). The Association projects spending \$3,220,630 with revenue equaling that figure, augmented by a draw of some \$615,000 against our Reserve Asset Fund.


The Board also has approved reducing the balance of ALTA's Reserve Asset Fund to a level of \$4 million, to be accomplished over the next four years. Currently, the Reserve Asset Fund totals slightly over \$5 million. Since membership dues will not be increased, it was necessary to utilize funds from the reserve to begin complying with the Board's objective and have funds available to service 1997 strategic planning goals. Careful staff management and internal financial controls have contributed to several annual operating surpluses that have brought the Reserve Asset Fund balance to its present level.

Exhibit 2 (pie charts) shows the percentages of income sources and expense items as they relate to the total budget. Dues as a revenue source is down 9.5 percent, which corresponds directly with investment and reserve fund income rising 10.5 percent (as a result of proposed draws on reserves discussed above). Legal and professional services as a percentage of total expenses show an increase of 3 percent,

while personnel expenses have decreased by the same amount. ALTA members should be in receipt of 1997 membership renewal invoices by mid-December of 1996. Remember, ALTA has opted to pay the lobbying (proxy) tax, making annual membership dues payments fully deductible as a business expense.

We should conclude 1996 with an operating deficit of approximately \$190,000--almost exclusively attributable to expenses incurred supporting state affiliated land title associations in various regulatory and judicial battles. Otherwise, our goal of a balanced budget would have been close to being attained. Noteworthy activities and accomplishments for 1996 are, (1) increased staff technical support for the Land Title Systems Committee and other areas; (2) creation of an ALTA World Wide Web site; (3) support of state-level efforts to bring the TOP Program under individual state regulatory supervision; (4) assistance to the Virginia Land Title Association in opposing an unauthorized practice of law challenge with respect to conducting closings in that state; and (5) the upgrading of the ALTA office computer system.

The ALTA membership level remained stable during 1996, which is a positive indicator considering the current experience of other associations.

With 1996 now in the books, the ALTA governors and staff look forward with a sense of dedication and purpose to 1997 and "Vision 1999" as a vehicle for increasing ALTA effectiveness and service. To ensure that member interests are being appropriately maintained, an audit of ALTA's financial position will be conducted early in the year. 

*... ALTA has opted to pay the lobbying (proxy) tax,
making annual membership dues payments fully
deductible as a business expense*

Exhibit 1

1997 Approved ALTA Income And Expense Budget

General Fund Income

Dues	\$1,838,000
Investment Income --	
Operating	30,000
Investment Income --	
Reserve	614,980
Membership Processing Fees	3,750
Conventions	575,400
Title News	75,000
Directory	49,000
Product Services	20,000
Other Income	14,500
Total Income	\$3,220,630

General Fund Expense

Legal & Professional	
Services	\$375,000
Conventions	488,400
Committees	180,350
Public Relations	30,000
Rent - Occupancy	201,000
Personnel - Salaries	900,000
Personnel - Benefits	141,220
Personnel - Pension	113,860
Travel	157,500
Telephone	32,000
Postage	66,000
Supplies	10,500
Computer/Word Processor	25,000
Duplicating	10,800
Title News	65,000
Directory &	
Leadership Telephone Book	35,000
Bulletins	58,000
Dues & Subscriptions	6,400
Insurance	22,000
Audit	17,600
Product Services	20,000
Miscellaneous	15,000
State Legislative &	
Regulatory Fund	150,000
Depreciation	65,000
Lobbying Tax	35,000
Contribution to Reserve	0
Total Expense	\$3,220,630

General Fund Income

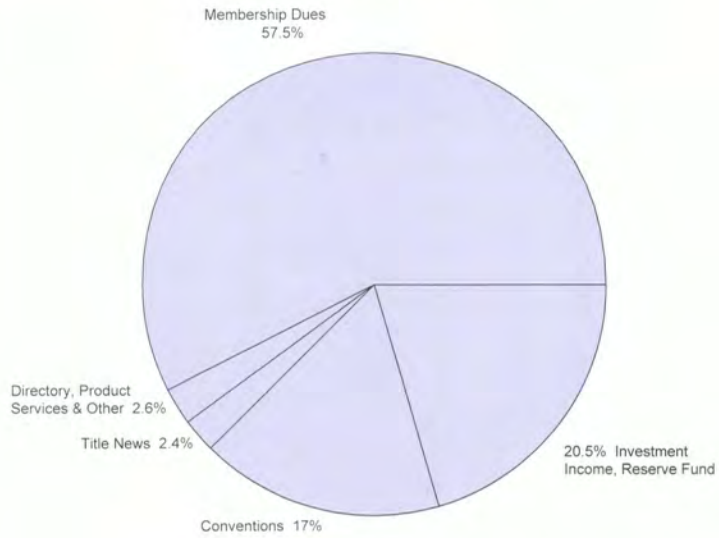
Over Expense 0

Tipac Admin. Fund Income \$32,000

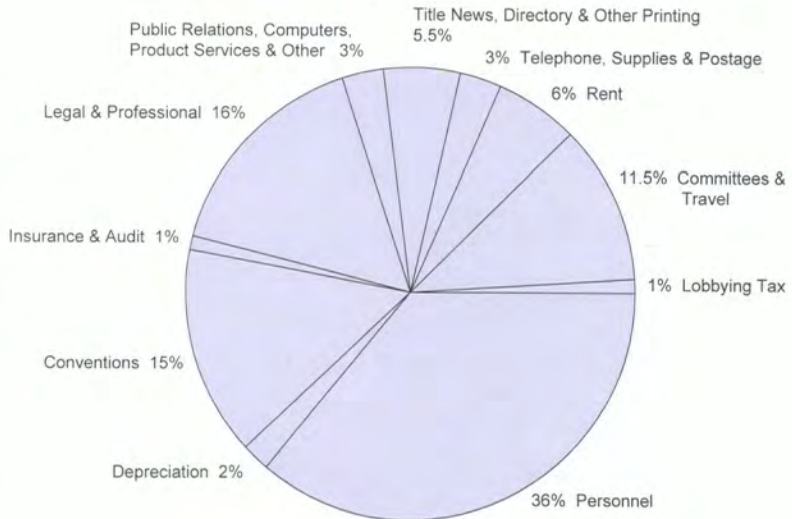
Tipac Admin. Fund Expense \$32,000

Exhibit 2

ALTA \$\$\$ Sources



ALTA \$\$\$ Expenditures



NAMES IN THE NEWS



Rau



Pollay



Toft



Morris



Sartin



Leslie



Petersen



Kermott

John Rau, former president and chief executive officer of LaSalle National Bank, has succeeded **Richard L. Pollay** as president and chief executive officer of the Chicago Title and Trust Family of Title Insurers effective January 1. That includes Chicago Title Insurance Company, Ticor Title Insurance Company, and Security Union Title Insurance Company.

Pollay retired at year end after 40 years with Chicago Title. He remains on the company board of directors and continues to represent the organization in industry affairs. **Pollay** was re-elected to the ALTA Board of



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Brown



Sindoni



Reichow

Governors during the Annual Convention of the Association in October.

Rau also succeeds **Richard P. Toft** as president and chief executive officer of Chicago Title and Trust Company. **Toft**, an ALTA past president, also retains his responsibilities as non-executive chairman of the combined boards of directors of Chicago Title and Trust and Chicago Title Insurance. In addition, **Toft** has been elected chairman and chief executive officer of Alleghany Asset Management, Inc., investment management and advisory services subsidiary of the Chicago Title Family parent, Alleghany Corporation.

Elsewhere at Chicago Title, **Theodore W. Morris, Jr.**, and **Kathryn Sartin** have been named vice presidents and **Karen Fischer Prange** is a new vice president, Chicago Trust Company, all Chicago. Recently named assistant vice president are **Sally Danmeier** and **Randolph Dawdy**, both Bloomington, MN; **Charles Duke**, Washington, DC; **Sharon Leslie**, Aurora, IL; **Kristie Vehovec**, **Mary McFadden** and **Mary Moran**, all Cleveland; **Mary Lou Ryce**, Orlando, and **Carrie Shaikh-Bahai**, New York City.

Promoted to quality control officer are **Pam Baker** (also audit supervisor), Pompano Beach, FL, and **Jeanette Litzinger**, Atlanta. **Debbie Adreani** has been named assistant title officer, Chicago, and **Roberta Chacon** agency operations officer, Miami. **Don Randolph** is now regional agency coordinator, Seattle, and **Fran Baskin** is market center manager, Alameda County, CA, while **Mel Manapat** has been named compli-

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phia, has been promoted to president and chief operating officer of Commonwealth Relocation Services, Inc., and CRS Financial Services, Inc., both subsidiaries; he replaces **William G. Walsh, Jr.**, who has been promoted to president of Commonwealth OneStop, a division.

Recently named as vice presidents by Lawyers Title Insurance Corporation are **Thomas R. Klein** (business development) and **Brian L. Carr** (branch office title attorney), both in Richmond, VA, and **Alfred D. Santoro, Jr.** (area manager), Parsippany, NJ. **Nancy I. Shirar** has been named manager of the company's national division office, Dallas, while **Michael E. Hastings**, formerly in that position, continues as an assistant vice president with additional responsibility for managing the office's relocation business located in St. Louis.

Lawyers Title of North Carolina, a subsidiary, has announced the appointment of the following vice presidents: **David L. Huffstetler** (also counsel), Raleigh; **Vera C. Gaddis**, Charlotte; **Ann D. Schultz**, Greensboro, and **Patricia Gayle Wilde Cothran**, Asheville. **Caroline Hayden Desio** has been named office manager/marketing representative, Monroe.

Elliott M. Eiseman has joined T. A. Title Insurance Company, Media, PA, as manager of sales and business development. **Paul D. Cannavino** has been appointed regional sales manager for the company subsidiary, T. A. Financial Services, Inc.

Rob Musser has been named vice president and regional underwriting counsel for The Security Title Guarantee Corporation of Baltimore.

H. Alan Holly has joined Houston Title Company as vice president, commercial division.

Anessa Finger has been appointed to staff the recently opened Investors Title Insurance Company office, Gastonia, NC.

Christi Davey has been promoted to escrow officer/closer, Rattikin Title Company, Fort Worth, TX.

Susan M. Markancek has joined First Land Title Company, Fort Wayne, IN, as a marketing/closing representative.

Shannon Badger has been named vice president, national division, by AES Group Inc., national land surveying firm based in Newburgh, IN.

ance manager, Pasadena, CA.

Pete Peterson has been promoted to Illinois state manager for Chicago Title's subsidiary, Ticor Title Insurance Company.

Gary L. Kermott has been promoted to executive vice president, First American Title Insurance Company, Santa Ana, CA, succeeding **Lawrence M. White**, former chair of the Title Industry Political Action Committee, who retires after 37 years with the organization.

Also at First American in California, **Jan P. Cobb** has been named regional vice president, Santa Barbara County; **Paul L. Hammann** has been promoted to vice president-associate senior underwriter, Santa Ana headquarters, and **Robert D. Musante** has been named vice president-county manager, San Mateo County.

New assistant vice presidents for the company in Virginia include **David Robertson**, Roanoke; **Dee E. Kitterman**, Fredericksburg; and **Frances H. Greene** and **Robin M. Lusk**, both Fairfax. Named assistant vice president in Washington, DC, are **Richard Scott-**

Burow and Cindy Wright.

Elsewhere at First American in California, **Arnold B. Slotte** has been named president-county manager, Mendocino County; **David Little**, **Terry D. Strickland** and **Paul Santy** have been named vice president and county manager for the counties of Monterey and Sonoma, and for Fresno, respectively, and **Brian J. Coe** has been named county manager, San Bernardino County. Also, **Pat Bailey Brown** has joined the company as sales and marketing representative, Jackson, MI, and **Lori K. Hahn** has been named customer service specialist, Fairfax, VA.

Recent promotions at Commonwealth Land Title Insurance Company include **James E. Sindoni**, Philadelphia, to vice president and division manager, and **Toni Reichow**, St. Paul, MN, to assistant vice president. **Judith Ann Marcotte** and **Lloyd Draper** have been named respective presidents of company subsidiaries, Commonwealth Land Title Company of Dallas and Commonwealth Land Title Company of Fort Worth. **Albert J. Chihego**, Philadel-

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1997 AFFILIATED ASSOCIATION CONVENTIONS

February

20-21 **Alaska**, Regal Alaska Hotel, Anchorage, AK

April

5-8 **Tennessee**, Opryland Hotel, Nashville, TN

24-26 **Oklahoma**, Marriott, Oklahoma City, OK

May

1-3 **New Mexico**, Inn of the Mountain Gods, Ruidoso, NM

2-4 **Palmetto**, Savannah Marriott, Savannah, GA

4-6 **Iowa**, Best Western, Holiday Lodge, Clear Lake, IA

13-16 **California**, The Ritz-Carlton-Rancho Mirage, Palm Springs, CA

June

5-7 **Texas**, Renaissance Austin Hotel, Austin, TX

6-9 **New Jersey**, Star of the Seas Cruise-Miami to Bahamas

8-10 **Pennsylvania**, Nemocolin Woodlands Resort, Farmington, PA

12-13 **South Dakota**, (Site to be announced), Watertown, SD

13-14 **Arkansas**, Ramada Inn, Batesville, AR

19-22 **New England**, Wequassett Inn, Chatham-Cape Cod, MA

22-24 **Oregon**, Ashland Hills Inn, Ashland, OR

26-29 **Colorado**, The Keystone Resort, Keystone, CO

July

10-12 **Illinois**, French Lick Resort & Spa, French Lick, IN

17-19 **Utah**, Sun Valley Lodge, Sun Valley, ID

20-22 **Michigan**, Grand Traverse Resort, Traverse City, MI

August

7-9 **Montana**, Marina Cay Resort, Big Fork, MT

14-16 **Idaho**, Shore Lodge, McCall, ID

14-16 **North Carolina**, Williamsburg Lodge, Williamsburg, VA

17-20 **New York**, The Hershey Hotel, Hershey, PA

20-23 **Wyoming**, The Chutes Best Western, Douglas, WY

21-23 **Indiana**, Radisson At Keystone Crossing, Indianapolis, IN

21-23 **Kansas**, Topeka West Holiday, Topeka, KS

21-23 **Minnesota**, Radisson Arrowwood Resort, Alexandria, MN

September

4-6 **Missouri**, Holiday Inn Hotel & Convention Center, Joplin, MO

7-9 **Ohio**, Holiday Inn, French Quarter, Toledo, OH

10-12 **Wisconsin**, The Regency Suites, Green Bay, WI

11-13 **Dixie**, Grand Hotel, Point Clear, AL

11-13 **North Dakota**, International Inn, Minot, ND

24-27 **Washington**, ALTA Annual Convention, Seattle, WA

October

8-10 **Nebraska**, Interstate Holiday Inn, Grand Island, NE

November

5-7 **Arizona**, (Site to be announced), Prescott, AZ

5-8 **Florida**, Ponce de Leon Resort, St. Augustine, FL

December

4-5 **Louisiana**, (Site to be announced), New Orleans, LA

1997 CALENDAR OF MEETINGS

(For the latest updates on ALTA meeting information, visit the Association Home Page at <http://www.alta.org>)

January

(All meetings at Westin Mission Hills Resort, Rancho Mirage, CA)

17 **Title Industry Assurance Company Board**

17 **Membership and Organization Committee**

17-18 **Public Relations Committee**

18 **Government Affairs Committee**

18 **Land Title Systems Committee**

18 **Education Committee**

19 **Title Industry Political Action Committee Board of Trustees**

20 **ALTA Board of Governors**

20-21 **Title Insurance Forms Committee**

March

17 **ALTA Land Title Institute/New Jersey Land Title Association Regional Seminar**, Sheraton Woodbridge Place, Iselin, NJ

April

14-16 **ALTA Mid-Year Convention**, Hyatt Regency Cerromar Beach, San Juan, PR

May

5 **ALTA Land Title Institute/Illinois Land Title Association Regional Seminar**, Lisle-Naperville Hilton, Lisle, IL

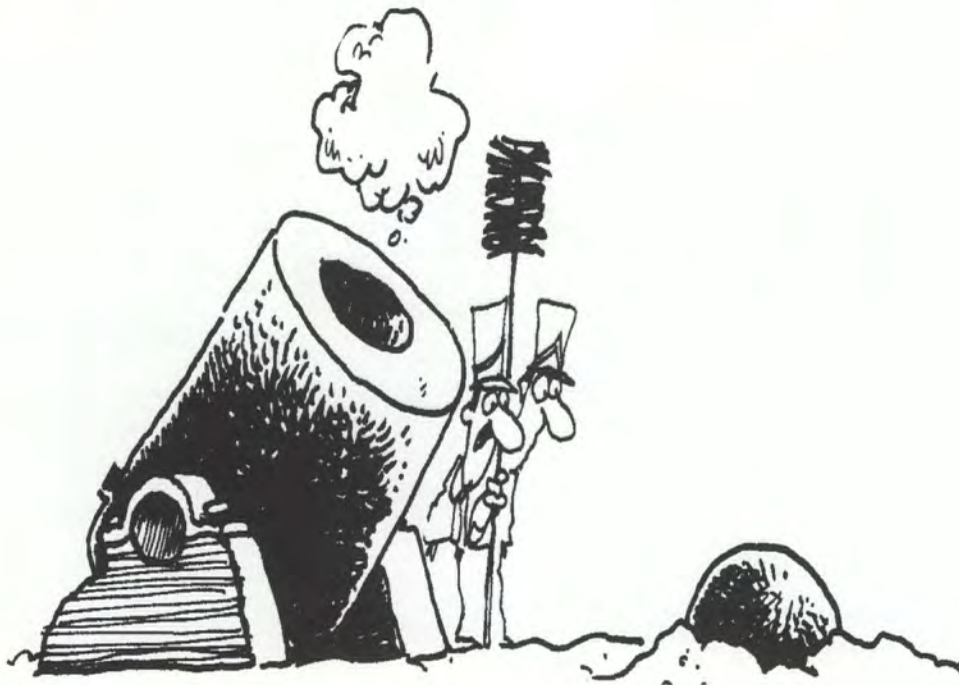
18-20 **Second Annual Legal Symposium/Title Counsel Meeting**, Omni Royal Orleans, New Orleans

19-21 **Committee on Internal Auditing**, Marriott's Reach Resort, Key West, FL

September

24-27 **ALTA Annual Convention**, Westin Seattle Hotel, Seattle

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Directory Cards Due by March 14

Listing cards for the 1997-98 *ALTA Directory* are being mailed to Active and Associate members early in January with a return date of March 14. Those not returning cards with updates and corrections by the aforementioned date will have their listings appear without change from that appearing in the 1996-97 edition.

Publication for the 1997-98 *Directory* is scheduled for early July.

Single copy prices for the 1996-97 edition are \$40 for members and \$120 for non-members, with reductions as indicated for quantity orders. Active and Associate members receive one complimentary copy per office listed in the publication.

Questions concerning the *Directory* may be referred to Carol Hoston in the Association Washington office (toll free number, 800-787-ALTA).

LTI Seeking State Examination Credit

Under the new ALTA Strategic Plan (see separate article, this issue of *Title News*), the Association Education Committee is developing final examination questions for Land Title Institute Course 1, for submission later this year to appropriate state regulators in a move to qualify the course for continuing education credit.

Committee members have developed a list of 200-plus new test questions, from which the actual examinations will be compiled. Volunteers are being sought to take a sample final exam of approximately 90 questions.

Those who completed Course 1 in 1996 and who are willing to help are invited to fax Association Director of Education Pat Berman toll free at 888-FAX-ALTA, to advise of their interest in receiving one of three draft final exams.

In addition, committee members recently have revised and updated the content of three Course 1 chapters—Chapters 14 (title insurance rates), 17 (development of title business) and 18 (management—leadership). New literature describing the updated course may be requested from LTI by calling 202-331-7431 or writing the organization at Suite 705, 1828 L Street, N. W., Washington, DC 20036.

Both Course 1 and Course 2 continue to be available at no increase in previously established rates, which are available from LTI. As described by the organization,

MARKETPLACE

Rates: Situations wanted or help wanted, \$80 for first 50 words, \$1 for each additional word, 130 words maximum (reduces to \$70 for first 50 words, \$1 for each additional word, three or more consecutive placements). For sale or wanted to buy, \$250 for 50 words, \$1 for each additional word, 130 words maximum (reduces to \$225 for 50 words, \$1 for each additional word, three or more consecutive placements). Additional charge for box around ad: \$20 per insertion for situations wanted or help wanted, \$50 per insertion—for sale or wanted to buy. Send copy and check made payable to American Land Title Association to Title News Marketplace, American Land Title Association, Suite 705, 1828 L Street, N. W., Washington, DC 20036. Responses to classified placements should be sent to same address unless otherwise specified in ad copy.

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Course 1 is for new or less experienced title employees and Course 2 is designed to provide advanced study for Course 1 graduates, experienced title industry personnel and recent law school graduates.

Among LTI educational offerings on the calendar for 1997 are two regional seminars co-sponsored with state-level organizations. One will be on March 17, offered in conjunction with the New Jersey Land Title Institute at Sheraton Woodbridge Place Hotel, Iselin, NJ. In addition, LTI will hold a seminar with the Illinois Land Title Association on May 5 at the Lisle-Naperville Hilton, Lisle, IL.

Program information on the regional seminars will be available through LTI and the respective state organizations at a later date.

New Slide Show Currently Available

Copies of the new, 20-minute ALTA color slide presentation emphasizing the superior quality and value of full title insurance coverage now are available for purchase through the Washington office of the Association. (See descriptive article in the November-December edition of *Title News*.)

Prices per item are \$50 for the "loose" slides set and \$75 for the computer disk version. Orders must specify which version is desired and be accompanied by check made payable to American Land Title Association. Send orders to: Slides, American Land Title Association, Suite 705, 1828 L Street, N. W., Washington, DC 20036.

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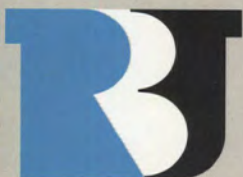


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