

# TITLE *News*

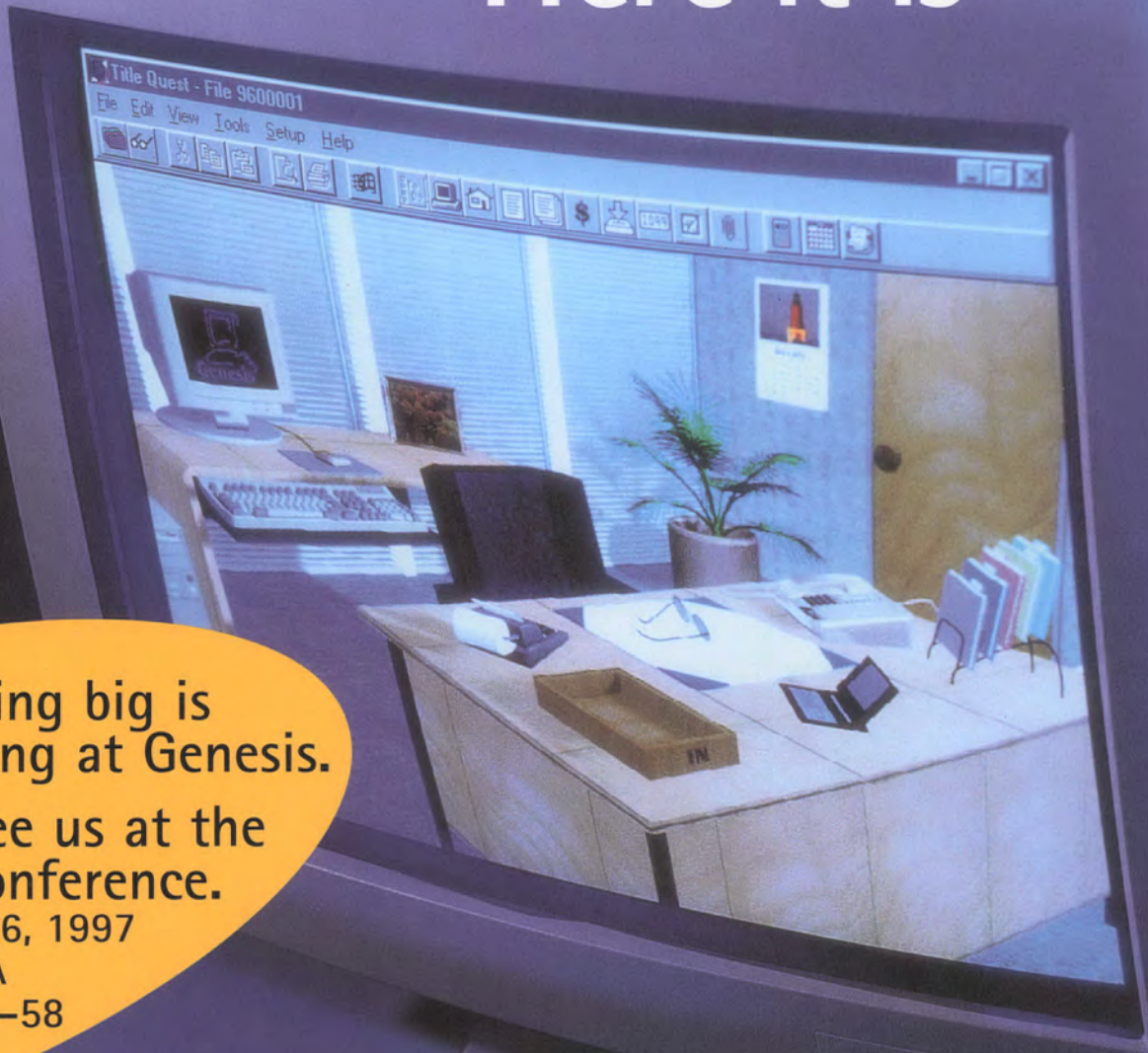
SEPTEMBER-OCTOBER 1997

## State Regulatory MYOPIA

...the problem for title insurance

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**On the cover:** Those in the title business who maintain liaison with state regulators find that supervisory nearsightedness is especially apparent when it comes to uniform coverages, seamless production and flexible pricing. Some timely adjustments would help the industry better meet the national needs of lender customers and the secondary mortgage market. For more on this, please turn to page 12.

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*By Phillip L. Schulman and Steven M. Kaplan*

The United States District Court for the Southern District of Florida has dismissed class action complaints against eight title insurance companies, offering hope in individual or class action claims that underwriters or agents violate the anti-kickback provisions of RESPA where there are state promulgated rates. Underwriters and agents should make sure agents are performing all required "core title services," and any other underwriter payments to agents are for goods actually received or services actually furnished.

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## A MESSAGE FROM THE UNDERWRITER CHAIRMAN



As this is written, final preparations are under way for the ALTA Annual Convention in Seattle. The strength of the agenda in support of the theme, "Navigating through Change," is noteworthy and reflects the value of active participation at an ALTA convention. I know no one in our industry escaping the forces of change. Meaningful insights are welcome and the convention promises to shed valuable light as to where things are headed and what you might need to be doing to enhance your own business opportunities.

Demand is way up these days for continuing education and constantly updated information on the technology front. For several years, *Title Automation 2000* has been cast as an event

within an event—a highlighted part of our convention in response to that demand. It covers important topics—it is again part of the draw for this year's convention—but it has become clear it cannot address the full scope of member demands on this front.

Members have expressed considerable interest in more comprehensive coverage of the technology issues and a forum at which to trade ideas. The subject needs to be the spotlight event. The subject needs a separate venue. Earlier this year, the ALTA Board of Governors concluded that efforts to meet the member demands must be addressed by more than *Title Automation 2000* as a subset event of the traditional convention approach.

Accordingly, the Board gave the go ahead for *Technology Forum and Expo*, designed as a fully participatory event at the industry level—which will premiere in Orlando, FL, on February 1-3, 1998.

While it is an ALTA-organized event, the *Forum and Expo* will be unlike anything historically associated with the ALTA approach. It is a different mission with a separate focus. The goal is to address the technology issues that are today's hot buttons for members of our industry, including topics and information interchange meaningful to technology managers and specialists working at various levels in our organizations.

The *Forum and Expo* has the potential to attract a set of vendors, speakers and attendees that bring more value than that achieved by any prior event. Because ALTA has established long-standing, highly respected working relationships within the real estate finance community, the *Forum and Expo* is able to attract at the outset participation from those movers and shakers from organizations that make it happen—Fannie Mae, Freddie Mac, MERS, EDS and others—as well as technological profiles for innovations and improvements from organizations on the cutting edge including those in our industry.

A major element in achieving the objectives of the *Forum and Expo* is participation and support from our industry. Other title insurance company CEOs with whom I have spoken agree that—for this new event to become all it can be—we must be an active part of what takes place. I can only speak for Lawyers Title Insurance Corporation, where designated employees will be on hand for a major learning and information-sharing experience when things get under way at the *Forum and Expo* next February. Those from the Lawyers Title data systems subsidiaries, Datatrace and Genesis, as well as representatives from our Single Source facility providing allied real estate services, will join in as *Expo* exhibitors offering the latest on systems and other services. In order to help furnish a senior management perspective to it all, I have accepted an invitation to serve on a panel whose members will discuss leading issues in technology innovation and ancillary services.

It is my hope that others throughout the industry, along with those in the vendor community, will take advantage of this singular opportunity to help make the *Forum and Expo* a powerful response to the needs of many in our business. Technology will continue to impact all of us. Responding affirmatively through the registration material you receive in the mail will be the first step toward strengthening your capability for meeting the demands exploding technology is placing on title people everywhere.

With the level of participation and support now envisioned, attending the *Forum and Expo* can aptly be characterized as a strategic investment in our future. Calling the ALTA office toll free at 1-800-787-ALTA will bring you more information on this important event, and offer an opportunity to pre-register.

Charles H. Foster, Jr.

# Fall Stretch Drive For Bank Powers

**A**s Congress moved into August recess, title industry concentration focused on grassroots lobbying of House members in the ALTA-led drive to restrict national bank sale of title insurance to holding company structures while preserving state insurance regulation through absolute functional regulation and maintaining adequate consumer safeguards.

Under a rallying cry of "Hold the Hill Amendment," title professionals across the country were looking to Capitol Hill action this fall that focuses on keeping provisions allowing achievement of these objectives, which were successfully offered in amendatory language by House Banking Committee Member Rick Hill (R-MT) as H.R. 10, the bank powers bill, was reported by that committee. After testifying in favor of the provisions now embodied in the Rick Hill Amendment during Banking Committee hearings in May, ALTA President Dan Wentzel returned to Washington for presentation of additional hearings testimony as the House Commerce Committee's Finance Subcommittee took up the measure late in July.

Testifying individually as chairman and chief executive officer of his company because of Finance Subcommittee restrictions against appearances by association representatives, President Wentzel said ALTA members remain seriously concerned over the inherent opportunity for banks entering the title insurance business to develop an anti-competitive captive market and undermine the integrity of title underwriting that now protects real estate investors. In re-emphasizing the importance of the stipulations now in the Rick Hill amendment, the ALTA president called for Congress to establish "firewalls" to protect bank solvency and prevent less than arm's length dealings between financial institutions and their affiliates.

ALTA also was heard from on a second major issue during July hearings of the Senate Banking Committee's Financial Institutions Subcommittee. Association Abstractor-Agent Section Chairman Joe Parker presented testimony calling for two specific changes in the Real Estate Settlement Procedures Act (RESPA), while recommending that Congress defer wider-based consideration of possible amendments to that section until more study and dialogue can take place among real estate industry and consumer groups now looking into the troubled settlement law. As more time is given to wider study of RESPA reform alternatives, he said Congress should immediately approve Section 8 amendments that would:



**ALTA President Dan Wentzel delivers testimony on bank powers legislation at hearings of the House Banking Committee in the top photograph while, immediately below, ALTA Abstractor-Agent Section Chairman Joe Parker testifies at Senate Banking Committee Financial Institutions Subcommittee hearings on RESPA. At right, President Wentzel is greeted by House Commerce Committee Chairman Tom Bliley (R-VA) as he arrives for bank powers hearings before the committee's Finance Subcommittee.**



- Recognize that commission or other compensation arrangements between title insurers and their bona fide agents can include compensation for solicitation of business
- Eliminate criminal penalties now in Section 8, which he characterized as inappropriate for violations stipulated in its provisions, and allow courts new discretion in determining penalties that are more appropriate than currently provided—which he said would help discourage class action lawsuits seeking judgments that are disproportionate to damages incurred by defendants


Chairman Parker said major difficulties have developed since RESPA's initial enactment in 1974 that have prevented the settlement law from working as originally intended by Congress. These include controlled business amendments approved by Congress in 1983 that allow controlled settlement service providers to furnish things of value to those referring business, giving them an unfair competitive advantage over independent providers, he added.

In addition, dramatic changes in the market structure and technology have completely blurred the distinction between acceptable and unlawful business referral arrangements, Chairman Parker pointed out. He said little regulatory guidance and a lack of effective RESPA reinforcement from HUD have placed companies seeking to comply with Section 8 at a competitive disadvantage against those who may choose to disregard the settlement law.

With this summer hearing testimony on record at the committee level in House and Senate, the immediate title industry focus turned to the House Commerce Committee, which at this writing was expected to consider and report the bank powers bill by mid-September. A full legislative effort was under way to keep the Rick Hill provisions.

In his July testimony before the House Finance Subcommittee, President Wentzel said protective "firewalls" for banks should include protecting the integrity of both federal deposit insurance funds and state insurance guaranty mechanisms; enabling all regulators to assure the financial integrity of institutions for which they are responsible, and, ensuring that, as banks receive freedom to affiliate with other financial service providers, they do not acquire unfair advantages in capitalizing based on their deposit insurance or other elements of the federal safety net.

President Wentzel added that Congress should emphasize the applicability of RESPA and appropriate state law to every entity underwriting or selling title insurance.

While testifying before the House Banking Committee in May, President Wentzel said ALTA has not changed its long-standing philosophical objections to bank entry into the title insurance business. He emphasized that, without adequate regulation, a banking institution can jeopardize the interests of consumers and—as previously has occurred in the savings and loan industry—threaten title insurance reserves. But ALTA is willing to accept bank affiliate involvement because of recent judicial developments and accompanying political realities, he added. 



**ALTA's Joe Parker talks with Senate Banking Committee Financial Institutions Subcommittee Chairman Lauch Faircloth (R-NC), left, before hearings on RESPA, top photograph. Association President Wentzel prepares to testify before the House Commerce Committee's Finance Subcommittee, center. In the lower photograph, Chairman Parker meets Mortgage Bankers Association of America President Ron McCord at the Senate hearings.**



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# The Title Industry: RESPA Target for Class Action Attorneys

By Phillip L. Schulman and Steven M. Kaplan

**C**lass action litigation involving the Real Estate Settlement Procedures Act of 1974 (RESPA) has been on the rise. Most of these class actions have been filed against mortgage brokers and mortgage lenders, but the title insurance industry has not been immune from these lawsuits. A recent federal district court order in Florida, however, did bring some relief to the title industry when the court held that promulgated title insurance rates could not be attacked under RESPA, and further, that damages in RESPA cases should be limited to three times the amount of the violation, not three times the amount of the settlement service.

Late last year, the class action attorneys filed a class action lawsuit against eight title insurance companies in Florida alleging, among other things, that defendants violated RESPA by giving fees, kickbacks or other things of value to title agents (hereinafter, the Florida Litigation).<sup>1</sup> The defendant title insurance companies include: American Pioneer Title Insurance Company; Attorneys' Title Insurance Fund, Inc.; Chicago Title Insurance Company, Inc.; Commonwealth Land Title Insurance Company; Fidelity National Title Insurance Company; First American Title Insurance Company; Lawyers Title Insurance Corporation and Stewart Title Guaranty Company.

The plaintiffs alleged that the practices of the title insurance companies resulted in "grossly overpriced title insurance premiums" and asked the court to award damages in an amount equal to *three times the amount of any charges for title insurance paid to the title insurance companies*. If the title insurance companies were found to have been in violation of RESPA, damages to the title companies would have been astronomical. To their credit, the eight title companies held their ground, insisted that their practices were in compliance with RESPA and that the fees charged to consumers were consistent with the rates approved by the state of Florida.

On July 31, 1997, the United States District Court for the Southern District of Florida issued an order dismissing the class

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**D**oes the court's ruling mean that the title insurance industry is immune from scrutiny in any state that has promulgated title insurance rates? Probably not.

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action complaints filed against the eight title insurance companies.<sup>2</sup> The order is significant because it may have a profound impact on future class action litigation in states such as Florida where insurance rates are promulgated by the state. Arguably, the court's order insulates the title insurance industry from individual or class action claims that underwriters or agents violate the anti-kickback provisions of RESPA in connection with the payment of a state promulgated title insurance rate, whether the claim is based on the total amount of the title insurance charge or the amount retained by the title agent. Moreover, the court provided that the penalty for violating Section 8 of RESPA is "three times the amount which violates RESPA," *not* the entire title insurance and title evidence charge paid by a customer. Whether other courts or the Department of Housing and Urban Development (HUD or the Department) will follow the court's ruling in the Florida litigation and/or whether the class action attorneys will continue to



*Authors Schulman (pictured here) and Kaplan are partner and senior associate, respectively, with the Washington, DC, law firm of Kirkpatrick & Lockhart LLP, where they special-*

*ize in regulatory compliance and enforcement matters affecting the title insurance industry.*

file claims against title insurance companies or agents alleging violations of RESPA, is still an open question.

This article will examine RESPA requirements, review the Florida litigation, and provide tips for avoiding scrutiny by class action attorneys and HUD.

## RESPA Requirements

In enacting, RESPA Congress sought to eliminate "kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services." To achieve this end, Section 8(a) of RESPA prohibits the payment or receipt of a fee or thing of value in return for the referral of settlement service business.<sup>3</sup> Section 8(b) prohibits the payment or receipt of a portion or percentage of any charge made or received for the rendering of real estate settlement service, other than for services actually performed.<sup>4</sup> This prohibition is subject, however, to statutory exceptions that include "payments by a title insurance company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance."<sup>5</sup>

To qualify for this Section 8(c)(1)(B) exemption, commonly referred to as the "title agent exemption," HUD has indicated that the title agent must perform certain "core title agent services," and be liable to the underwriter for any negligence in performing these services. Payments to agents that satisfy this exemption are not subject to scrutiny under RESPA.<sup>6</sup>

Violations of Section 8 are subject to a fine of \$10,000 and imprisonment for one year, or both.<sup>7</sup> Moreover, any person who violates Section 8 "is liable to the person or persons charged for the settlement involved in the violation in an amount equal to three times the amount of any charge paid for such settlement service."<sup>8</sup>

## The Florida Litigation

Title insurance rates in Florida are promulgated by the state.<sup>9</sup> Under Florida law, underwriters must retain a minimum of thirty percent (30%) of the title insurance premium.<sup>10</sup> Not surprisingly, it has become a

standard practice in Florida for title agents to receive seventy percent (70%) of the title premium and underwriters retain thirty percent (30%). The Florida title insurance industry maintained that this split complied with Florida law, and because the split was paid to the title agent for services performed in the issuance of a title insurance policy, it also complied with RESPA.

Beginning in 1992, HUD began receiving complaints that underwriters and their agents were engaging in activities in Florida that violated the anti-kickback provisions of RESPA because the title agents allegedly were not performing all of the core title agent services. In response to these complaints, HUD initiated an investigation by subpoenaing the records of a number of Florida title insurers.

On September 21, 1995, three years after initiating its investigation, HUD issued an enforcement letter setting forth initial findings and a statement of enforcement standards. HUD issued a revised enforcement letter on June 16, 1996 (hereinafter, the Enforcement Letters). Thereafter, on September 19, 1996, the Department published a Policy Statement in the Federal Register confirming the findings established in the Enforcement Letters.

HUD indicated in the Enforcement Letters and Policy Statement that, by providing title agents with "Pro Forma Commitments" or examining title evidence at less than actual costs, some Florida underwriters and their agents engaged in conduct in violation of Sections 8(a) and 8(b) of RESPA. HUD defines a "Pro Forma Commitment" as "a document that contains a determination of the insurability of the title upon which a title insurance commitment or policy may be based on which contains essentially the information stated in Schedules A and B of the title insurance commitment (and may legally constitute a commitment when countersigned by an authorized representative)."<sup>11</sup>

The Department also indicated that Florida's promulgated insurance rate was increased in 1990, in large part because underwriters sustained losses from subsidizing the costs of providing "Pro Forma Commitments" and title evidence to agents as a means of inducing referrals.<sup>12</sup>

HUD provided the Enforcement Letters to all major title insurance underwriters in Florida and asked the underwriters to distribute the Enforcement Letters to their title agents. The Department indicated that by publishing these Enforcement Letters it was providing the title industry with guidance for subsequent reviews by the state insurance commissioner and HUD. At the same time, perhaps unwittingly, the Department was providing class action attorneys a blueprint for filing class action suits against the title industry.

Based on the findings contained in the Enforcement Letters, class action lawsuits

were filed against eight title insurance companies in federal district court in Florida. The plaintiffs alleged that they had been charged "grossly overpriced title insurance premiums" as a result of actions by the title insurance companies and that these actions resulted in violations of the anti-kickback provisions of RESPA, common law fraudulent misrepresentations and/or omissions, common law negligent misrepresentations and/or omissions, and violations of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. §§ 501.201, *et seq.* The actions that plaintiffs alleged violated RESPA were the same actions that HUD addressed in its Enforcement Letters and Policy Statement,

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**T**he best way to avoid scrutiny by HUD or private plaintiffs is to ensure that the safe harbor for payments by an underwriter to its duly appointed title agent is satisfied.

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namely that title companies determined insurability for agents by preparing Pro Forma Commitments and by selling agents title evidence below cost. Plaintiffs argued that such practices amounted to giving agents "things of value" in return for the referral of title insurance business.

The plaintiffs admitted that the total amount of the title insurance premium and the percentage split of the title premium with the underwriters are explicitly allowed under Florida law. The plaintiffs, however, challenged the split as violating RESPA and alleged that the illegal kickback resulted in an increase in Florida's promulgated rates.

As penalties for these violations, plaintiffs sought judgment in an amount equal to three times the total amount of any charges for title insurance and title evidence paid to each title insurance company and/or its title agents by plaintiffs.

The court dismissed with prejudice each of the RESPA claims filed against the title insurance underwriters based on a federal doctrine called the Filed Rate Doctrine and the absence of any damages for the alleged violations. The court also dismissed the remaining state law claims for fraudulent misrepresentation, negligent misrepresentation and violation of the Florida Deceptive and Unfair Trade Practices Act for lack of subject matter jurisdiction.

With respect to the absence of damages, the court held that because the amount of the title insurance premium is set by the Department of Insurance and the plaintiffs have no legal right to pay anything but the

promulgated rate, there were no cognizable injuries to the plaintiffs. Therefore, the plaintiffs lacked standing to sue for a violation of Section 8 of RESPA.

In the alternative, the court held that the Filed Rate Doctrine bars a claim by plaintiffs challenging the reasonableness of Florida's promulgated title insurance rates. The court held that the plaintiffs' "total charge" theory would violate the Filed Rate Doctrine even if the court did not have to devise a reasonable rate to supplant Florida's promulgated rate because the Filed Rate Doctrine protects two separate interests. One interest is concerned with potential discrimination in rates as between taxpayers, and the other is concerned with the court determining the reasonableness of statutorily set rates. According to the court, the plaintiffs' proposed recovery under RESPA would result in discrimination against other purchasers of title insurance in Florida who have paid, and will pay, the promulgated rate.

Finally, the court held that the plaintiffs' damages theory "is not supported by a fair reading of RESPA, by its legislative history or by other cases addressing other types of settlement charges."<sup>13</sup> Relying on the language of the statute which provides that the "damages consisting of three times the charge paid for a settlement service may be recovered by the 'person charged for the settlement service involved in the violation,'" the court concluded that the better reading of the statute is that the damage award is limited to three times the amount which violates RESPA (not three times the total amount paid by the consumer for title insurance).<sup>14</sup> Quoting from another decision, the court stated that awarding treble damages based on the entire amount of the settlement charge is "entirely bogus in terms of both the RESPA statutory language and its purpose."<sup>15</sup>

### Effect of Court's Ruling

Does the court's ruling mean that the title insurance industry is immune from any scrutiny in a state that has promulgated title insurance rates? Probably not.

While not expressly answering this question, the court's decision appears to preclude an individual from bringing a RESPA action challenging the amount of a promulgated title insurance rate. For example, where a state's regulation of a rate is comprehensive, the Filed Rate Doctrine would preclude an individual from challenging the rate charged to the customer or retained by the title agent in accordance with state requirements. Under the court's analysis, it would not make a difference whether the title agent performed all of the core title services.

The decision, however, does not preclude HUD from bringing investigative and enforcement actions concerning such fees.

*Continued on page 26*



# State Regulatory MYOPIA


...the problem for title insurance

**A**lthough seemingly more aware that individual state regulatory schemes are essential because of the undeniably local nature of recording, conveyancing and other laws—as well as custom and practice—regulators often are seen within the title industry as having supervisory nearsightedness. This condition seems manifested in a countervailing lack of action when it comes to adjusting arcane rules and regulations that would help the industry better meet the national needs of lender customers and the secondary mortgage market.

State regulatory myopia, as viewed by many title professionals, is especially apparent when it comes to uniform coverages, seamless production and flexible pricing. Individual regulators often are found to be facing the old and familiar triple handicap—lack of resources, lack of resolve and lack of understanding—when it comes to fashioning more effective supervision of the title industry.

This somewhat ambivalent picture emerged in a *Title News* discussion of the current regulatory environment with Bill Greene, vice president and government affairs counsel for the Chicago Title and Trust family of companies. A perceived industry frustration level was borne out in an accompanying informal *Title News* survey of those in the business who maintain liaison with regulators in 16 states.

Greene points out that recent developments—including the significant involvement of individual regulators in producing the now-approved National Association of Insurance Commissioners (NAIC) Title Agent and Title Insurers Model Acts—suggest a growing interest among these officials in closer state supervision of the industry. This has emerged as Congress and the Office of the Comptroller of the Currency focus on the issue of federal pre-emption of state insurance laws where national bank insurance activity is concerned.



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Although the NAIC is on record in opposition to any federal legislation pre-empting state insurance regulatory authority, those close to the issue say it will take at least a full Congressional lobbying effort by the regulator organization and others to achieve this legislative result. State regulators already seem to recognize the need for more uniform regulation of the insurance industry generally, indicating a willingness to consider a greater level of change. The current interest in the two NAIC model title acts appears to be significant among state governments but, as Greene indicates, it will take strong support from regional and state title associations if provisions in the model acts are to become part of individual state laws.

"There is a four-volume set of books containing all of the model acts and regulations adopted by the NAIC," Greene said. "All of them have not been enacted or promulgated by the regulators. With the title industry being such a small part of the universe of the various lines of insurance, individual state regulators must prioritize the legislation they want to sponsor in a session. That means title insurance regulation can get placed lower on their wish list. So, in the end, it rests with the title industry to promote the NAIC model acts where they are viewed as desirable."

Greene also highlighted two other acts of interest to title underwriters that are on the NAIC work agenda. One affects those underwriters who are part of a regulated holding company system. The other is a model investment statute which gets into the area of limitations on investments in subsidiaries.

"These acts," Greene said, "can affect the nature of the corporate structure of title companies as well as the sale and transfer of assets and payment of dividends between affiliated entities in a holding company system."

### **Barnett Impact**

Certainly, there will be substantial impact on the state regulatory front from legislation and regulation in the aftermath of the United States Supreme Court 1996 *Barnett Bank* decision dealing with insurance sales by national banks. This decision pre-empts state insurance laws regarded as "significantly" interfering with a national bank's authority to sell insurance. At this writing, such laws and regulations are under consideration in a wide number of states. Greene believes that, if the current trend toward expansion of insurance into bank powers continues, changes can be expected in the manner in which insurance, including title insurance, is produced and marketed.

### **Constructive Results Elusive**

"I have always found regulators most responsive and aggressive in protecting the

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**T**his condition seems manifested in a countervailing lack of action when it comes to adjusting arcane rules and regulations that would help the industry better meet the national needs of lender customers and the secondary mortgage market.

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**Chicago Title's Bill Greene: Recent developments point to a growing interest among individual regulators in closer state supervision of the title industry. This has emerged as Congress and the Office of the Comptroller of the Currency focus on the issue of federal pre-emption of state insurance laws where national bank insurance activity is concerned.**

consumer public," Greene commented, "which many of them view as their primary responsibility, and for which they correspondingly target the greatest allocation of resources. On the other end of the scale, I've seen examples where certain market activities in a state are prohibited by one regulator but are viewed as permissible by another. This typically occurs in jurisdictions where regulation of the real estate transfer process is shared by a number of agencies responsible for the oversight of

insurers, agents, escrow providers, real estate brokers, lenders and attorneys, resulting in the lack of a cohesive and logical regulatory scheme."

But Greene does see a marked increase in the level of overall regulator responsiveness to title industry needs in recent years, signaling, he believes, an increasing regulator awareness of the importance of title insurance in the real estate economy, and of the proximity of title insurance to many regulator constituents.

### **Rating Bureau Interest Remains**

Another perennial area of interest Greene mentioned is in title insurance rating bureaus, which he views as originating within the title industry and not with regulators. This has included legislative proposals in California and Missouri, along with preliminary consideration in other states.

"In a number of states, the statutory authority for a title insurance rating bureau already exists," Greene said. "But, in light of the industry experience with the Federal Trade Commission challenge to industry participation in certain bureaus in 1985 and the ensuing private litigation, there's a perceived need to strengthen some of these statutes to more clearly define the scope of collective rate-making activity, and to ensure that the appropriate level of active regulatory supervision is actually mandated by law." (See article, "Rating Bureau Participation After *FTC v. Ticor*," by John C. Christie, Jr., July-August, 1997, *Title News*.)

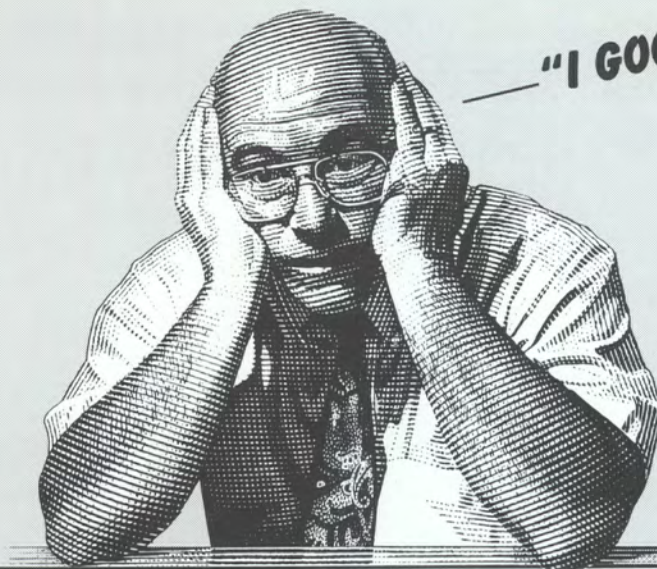
Greene added that he expects this effort toward improving rate-making definition to continue for some time. He pointed out that rating bureaus can be efficient vehicles for the title industry, and for regulators to address rate structures and administration.

### **State Liaison Reports**

In the previously mentioned *Title News* survey of industry representatives who have relationships with regulators in 16 states, there was praise among the evaluations by these leaders, and strong criticism as well. Overall, when the industry representatives were asked to assign their regulators a grade on a scale of A, B, C, or D, the overall average for the 16 states was a "gentleman's C."

As for the present, state title association leaders are continuing—with more frustration than triumph—their ongoing effort to shape a more constructive working climate with individual state regulators. Among the title association leaders contacted, those in four jurisdictions indicated their respective regulatory structures are working well. Significantly, these responses came from states generally regarded as having strong

*Continued on page 27*



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# If We All Hate Stress So Much, Why Are We in the Title Business?

If we all hate stress so much, why are we in the title business?

Tim O'Brien, Tallahassee contractor who has been involved in some 300 closings and who is with The Institute for Stress Management, presented that enigmatic question to those in attendance at the 1997 ALTA Mid-Year Convention. His take on why many title people remain in the business: They realize their contribution makes it happen in the residential, commercial and industrial real estate markets.

Stress has been defined by an authority on the subject as the rate of wear and tear on the human body, O'Brien said. Although not a disease, stress wears down the immune system so that humans become susceptible to diseases already present within themselves. Stress management can hold the key to better physical and mental health—and resulting gains in efficiency and effectiveness—for those throughout the title industry and elsewhere.

Putting it more directly, O'Brien added that, ignorance is not bliss, and what you don't know can not only hurt you, it can kill or maim you—and you need to take stress seriously."

O'Brien, a fellow of the American Institute of Stress, added that some 80 percent of the deaths from heart disease occurring in the United States (at the rate of one per 32 seconds) are stress related. He also noted that, once every 65 seconds across the nation, there is a stress related death from cancer.

In an advance survey he conducted among Mid-Year attendees, O'Brien said 95 percent of the respondents replied they believe stress can be managed—but 57 percent answered they are not currently doing anything about it. While 82 percent said they personally understand what stress is and added the overall level of stress in their respective lives is not excessive, 73 percent on the other hand replied their job stress was either high or very high and transferred over to their families.

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**S**tress management can hold the key to better physical and mental health—and resulting gains in efficiency and effectiveness...

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O'Brien continued that respondents clearly identified their title employees and customers as the respective first and second ranked causes of stress in their business lives. He characterized as techno-stress a new level arising from technology and the impact of immediacy it has brought to everyday lives.

"Technology is starting to cause us a level of stress we didn't have before, and didn't think of before, because of accessibility," he commented. "What are we doing with all the time we're saving, using all of these time-saving devices? We're adding more work into it, aren't we?"

The stress consultant has defined his personal parameters for success in the technology area as "the day when I no longer need my cellular phone, that I no longer need to be so available that I have to have call forwarding, that I'm able to go somewhere and enjoy it—and, if people need me, they would know how to get hold of me in an emergency. But life's going to go on."

## Release Emphasized

Effective stress management lies with moving past a relief orientation to a release approach that centers on finding the cause



Tim O'Brien, right, meets Robert Blough during the Mid-Year Convention.

so it can be removed, O'Brien said.

Building a stress management and relaxation program begins with a realization of how closely aligned breath, awareness and attention are, he added. Breathing with the diaphragm to help calm down and rapid breathing to combat depression are important elements here. Deep breathing with eyes closed, accompanied by wiggling the toes, for 60 seconds each hour during the day, can help relaxation at work, along with short, periodic diversions such as walks around an office or spinning around in a desk chair.

O'Brien placed particular emphasis on an exercise program after visiting a doctor for a physical examination. This can start with walking, which can be combined with a relaxation technique such as listening to a radio through headphones. Exercising when in good cardiovascular condition can enhance mental acuity and accelerate metabolism, which can help with weight control, he added. Learning about nutrition and eating less also are of obvious importance in weight control.

O'Brien cited research findings that individuals in good aerobic condition need one half to one hour less sleep per night, allowing more productive time in their lives. Aerobic exercise—raising the heart rate into a predetermined target zone for at least 20 minutes, at least three times a week—can reduce the risk of cardiovascular disease by 50 percent.

The top five aerobic exercises were ranked by O'Brien as cross country skiing, swimming, running, outdoor cycling, and walking. Overall, he listed the acronym, "SAFE," as a memory jogger for a well rounded exercise program (strength, aerobic and flexibility exercises). Besides benefiting the heart and mind through exercising, flexibility is important for injury prevention, especially with the tendons, he added.

Probably the most important aspect of stress management, according to O'Brien, is individual perception plus attitude, which equals response.

"Our one place to be able to manage the stress of technology, or the stress of employees, or the stress of clients, or anything, is at the time of our perception," he said. "If we can associate a good attitude with that perception, then we can have a positive response out of it. But, if we can't get ourselves to look at each day as being a new day, and have the opportunity to consciously decide what our response is going to be, then we are going to have an automatic amount of deleterious stress effects on our body."

The objective, O'Brien observed, is to develop an attitude of "positive expectancy."

As an overall memory prompter acronym for effective stress management, O'Brien offered, "BREAD" (breathing, relax-

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**P**robably the most important aspect of stress management... is individual perception plus attitude.

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ation, exercise, attitude and diet). And, he added "Q-TIP" (quit taking it personally), elaborating:

"Find out what your worst case scenario is. If it's covered, it's covered. If you can't cover all the bases, just get yourself as prepared as you can be and then let it go, and see what happens. Don't ruminate. That's the biggest thing most of us do.

"I'm not saying take a laissez faire view but, if you can't control it, or it's out of your control, quit taking it personally. You're just going to cause yourself unlimited grief.

In closing, O'Brien told the Mid-Year attendees:

"If land did not transfer smoothly, if titles were not secure, if people could not depend on being able to get accurate information in a timely way and be able to set definite closing times and then have those transactions come off smoothly, efficiently, and often so well that people totally overlook the fact that it was your hard work, and that of your staff and others who support you, how well would a large part of America work if you weren't there?"

"So, care enough about yourselves for those of us who know how important you are, to enter into some type of a stress program, make a commitment to yourself. That way, those of us who need you will have you there when we do." 

## Branch Opened By Commonwealth

Commonwealth Land Title Insurance Company has opened a full service Commercial Division office in Indianapolis, offering title insurance, closing and related escrow services.

James Hughey, commercial title officer and closer, is responsible for operations of the new branch.

## \$456 MILLION PRICE Lawyers Purchase Recasts Industry

Transaction closing is expected during the fourth quarter of this year on the recently announced purchase of Commonwealth Land Title Insurance Company and Transnation Title Insurance Company by Lawyers Title Corporation, holding company for Lawyers Title Insurance Corporation.

According to the purchase announcement, the resulting new organization will be called LandAmerica Financial Group, Inc., and according to 1996 title revenues will represent the largest family of title insurance companies in the nation.

Terms of the definitive agreement between the Lawyers Title parent and the owner of Commonwealth/Transnation, Reliance Group Holdings, Inc., call for a total purchase price of approximately \$456.4 million, based on the current Lawyers Title stock price and the stated value of the preferred shares.

Subject to various terms and conditions with regard to sale, conversion, and voting, Lawyers Title will issue to Reliance approximately 4,474 million shares of common stock and \$110 million of 7 percent preferred stock at stated value, which is initially convertible into 4,825 million shares of common stock and assuming the current Lawyers Title stock price. In addition, Reliance will receive \$207.5 million in cash and the proceeds from an offering of approximately 1.316 million shares of Lawyers Title common stock, to take place proximate to transaction closing. LandAmerica will be headquartered in Richmond, VA, and will have over 500 office locations across the country, along with having a combined revenue base of over \$1.3 billion, based on 1996 data.

Charles H. Foster, Jr., chairman and chief executive officer of Lawyers Title, will assume those positions at LandAmerica. Herbert Wender, Commonwealth/Transnation chairman and chief executive officer, is to become vice chairman and chief operating officer of LandAmerica.

Janet Alpert, currently president of Lawyers Title, will become LandAmerica president, with Jeffrey Tischler, presently Commonwealth/Transnation executive vice president and chief financial/administrative officer, executive vice president and chief financial officer of the new parent. G. William Evans, Lawyers Title senior vice president, treasurer and chief financial officer, will become LandAmerica executive vice president of information technology. The definitive agreement is subject to shareholder and regulatory approval.



# Training On A Shoestring Budget

By Karen E. Koogler

It's true. Knowledge is power. It's also true that the acquisition of knowledge can be cost prohibitive for small to mid-size companies, which means it is often placed last on the list of gotta haves, oughta haves, and wanna haves, and is the first to go when profits aren't there to support it. Yet, training doesn't have to be cost prohibitive. You can acquire knowledge on a shoestring budget!

Ask companies why they don't train employees and you will hear one or more versions of "lack"—i. e., lack of money, lack of time, lack of teachers, lack of enthusiasm at the prospect of learning. Yet, none of these need stand in the way of empowering your employees by providing quality education. Title professionals, like any other professionals, need quality education in the area of job skills, industry knowledge, and interpersonal skills. If your company is on a tight budget and there is little money for training, it's time to get inventive! As the saying goes, "necessity is the mother of invention!" Consider the suggestions below, which are designed to fit into any budget, time and/or personnel constraints.

## Cross-Training

No one is good at everything, but everyone is good at something. Hopefully, one of the things your employees are good at are their respective jobs. Where job skills are concerned, set up an informal cross training program where each employee is responsible for teaching someone else in the office his or her job. Informality is the key to success with this type of program. Training can be accomplished in as little as one or two hours per week over an extended period of time, or on a more concentrated schedule such as one day per week over several months.

The benefits of cross training, especially in smaller offices, are that, when a person is out sick or on vacation, there is someone else trained to step in and pick up the slack, instead of letting files and unre-

turned phone calls pile up until the person returns (and wishes he or she hadn't). You know, from personal experience, how "not fun" it is to take a day or two off and come back only to be buried under a mountain of paperwork—to the extent that you may actually forego vacations and even come to work sick, simply to avoid the backlash that would await you if you actually skipped a day or two of work. Another benefit is that it focuses the attention of the person doing the job on the job as they are teaching it. Such focus enables the "teacher" to (re)learn along with the "pupil"—generally resulting in heightened quality control and a renewed sense of personal responsibility and pride in a job well done.

## Mentoring

Similar to cross-training, but more of a long haul approach to training, is the art of mentoring. We have a rule in our office that employees cannot be promoted until they train someone to do their current job. In smaller companies, mentoring may not

seem important, especially if you have only one office and three or four staff members. However, companies do grow and mentoring is a way to be prepared to meet the demands of such growth. By taking another staff member under your wings and teaching that person what you know—job skills as well as innate knowledge that makes you good at what you do—you are prepared for the day when business is brisk enough to warrant expansion. They take your place and you move up. If you, personally, are already "up" at the top (owner, manager), then use mentoring as a way to push you "out." By "out," I mean that your mentoring "goal" should be to train someone to be as good (or better) than you at your current job, so you can move on to bigger and better things. If you are an owner/manager, training someone to replace you in-house leaves you free to pursue new business outside the company. Either way, you win.

## "Round Table" Training Programs

You don't have to reinvent the wheel when it comes to round table training programs. If yours is a small to mid-size office, consider setting aside one day a month for semi-formal training of your entire staff. Start with the basics and move forward from there. For a limited investment, you can purchase title training materials from outside sources. ALTA's Land Title Institute offers, among other training materials, its Land Title Institute Course I and II. Our company, THE KOOGLER GROUP, offers *The Title Trilogy*, a series of three textbooks providing in-house training for all facets of the business.

You can utilize such training materials in one of three ways: (1) assign reading of specific chapters to all employees and lead a monthly round table discussion of the material; (2) assign one or more chapters to each employee, who then prepares an informal presentation of the material to the rest of the staff; or (3) put one person in charge of in-office training and have



The author of this commentary for title insurance agents is managing director of THE KOOGLER GROUP, an educational design firm specializing in educational programs and

products for the title industry, as well as management skills development and human resources training for all audiences. She is the author of nine industry publications including THE TITLE TRILOGY, which consists of three best sellers: *Closing Concepts: A Title Training Manual for Settlement/Escrow Professionals*; *Title Basics: A Search and Exam Manual for Beginners*; and *Liability 101: Limiting Liability by Improving Quality Control*. She can be contacted at THE KOOGLER GROUP, 10801 Starkey Road, Suite 104-11, Largo, FL 33777 (telephone 1-813-391-6848).

that individual create *mini-courses* based on the information in the various textbooks. Easy, relatively inexpensive, and something that brings your *work family* together, around the same table, and on the same *wave length* on a monthly basis. The keys to success are *consistency* and *regularity*. Keep the quality of training high and continue training programs on (at minimum) a monthly basis.

### Regulatory Training

Title professionals (*all* employees, regardless of title or position) should be informed about the various regulatory issues that impact their profession—such as RESPA regulations, state “title rules” and the like. I hold the personal belief that people, once they *know* what the “rules” are, will *follow* the “rules”—from establishing marketing and compensation programs that are in compliance with RESPA regulations to working in concert with other settlement service professionals to provide quality services at reasonable rates to consumers.

Before you say it, let me concur that *rules, regs* and *statutes* can be...well...*boring!* That's if you can translate “*legalese*” and “*regulatese*” into English in the first place! The problem with regulatory training is that the people *receiving* the training, first hand, at title conventions or underwriter seminars, are often not equipped (*no fault of their own, mind you*) to translate what they heard into understandable terminology, so as to be able to *share* the news with co-workers. The best suggestion is to find someone who *can* translate the information and make it *interesting* as well as informative, and hire them to conduct regulatory seminars in your area. By spreading the cost of such seminars over a number of area companies, the cost becomes quite manageable, even for the *tightest* budgets. By the way, it is possible to teach rules, regs and statutes in *English* and make learning about them *fun*. We do it every day!

### Underwriter Seminars, Title Association Programs

Many underwriters provide seminars to their agents on specific *underwriting* topics. These types of seminars are invaluable when it comes time to examine title and determine insurability (*two things agents must do on RESPA-related transactions*). Since the *core title agent services* provision of RESPA makes you, the agent, liable for the title work you produce, it is vital that you understand the parameters set by your particular underwriter as to what is and is not insurable—so as to limit your *liability* by limiting *risk*. The more you *know*, the more cautious you will be when insuring title and the less *risk* you will incur overall (for yourself and your underwriter).

State title associations also are an

excellent source of education. Many associations, in addition to their annual conventions, provide mid-year educational programs. Generally, the admission price will be lower for members than non-members, so it pays to check out the offerings and price schedules of your state title association in advance and decide what is best for you and your *budget*.

### Formal Training Programs

A bit more costly, if you hire an educational consultant to create *custom* training programs for your company—but *affordable* when you combine forces with other small to mid-size agencies in your area and hire a speaker to conduct *generic* or *semi-customized* training. Another way to make formal training programs *affordable* is to enlist the assistance of underwriters who are more than willing to book the speakers of your choice on the topic of your choice in an effort to support continuing education.

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**T**he cost of training your employees is much less than the cost of the mistakes they will make if they remain untrained and uninformed.

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### Training Products

In addition to the textbooks available through ALTA and THE KOOGLER GROUP, there are *other* sources of information available to title agents. *Regulatory* information is generally free for the asking and available through state (*Title Rule!* Department of Insurance) and/or federal (*RESPA/HUD*) regulatory agencies or through your underwriter(s). Up to the minute *industry information* is available through ALTA (*Title News* magazine and *Capital Comment* bulletins), with *state-specific* news available through state land title associations. *Educational support* is available through THE KOOGLER GROUP'S *Person-to-Person News*, an information and training guide for title professionals, which covers all facets of the business from settlement/escrow and title insurance training to management and human resources articles. The best place to start in your *quest for knowledge* is to ask other title professionals what they recommend. *Word of mouth* recommendations from industry counterparts are not only *free*, but are highly *dependable* as well.

### How Much Will All This Cost?

If you still think education is something you can't afford, consider this *ballpark* price list:

#### Products, Create-Your-Own Courses

Regulatory Guidelines—Free

Industry Textbooks (average size 250-400 pages)—\$50-\$60

Industry Magazines (i. e., Title News)—\$30-\$48 annual subscription

Educational Guides (i. e., “Person to Person News”)—\$60 annual subscription

The prices for textbooks and other products often are *less* when purchasing in *bulk*. Consider asking your state title association and/or underwriters to assist you in finding *others* who want the same products, then *co-op* the purchase at reduced rates.

#### Educational Consultants, Speakers

Prices will vary based on the speaker, the topic, and the length of program. On average, you can expect to spend \$500—\$1,000 for a *half day* program to \$1,000—\$2,000 for a *full day* program, plus reimbursement of travel-related expenses and other program-related costs (such as participant handouts, etc.). The key to keeping this type of program *affordable* is to invite *other* companies to share the cost and benefits with you and/or to enlist the assistance of area underwriters.

#### Customized Training Programs

When your training needs call for *customized* training, you can still expect some portion of the programs or products created “*especially for you*” to be generic in content. The company creating the programs or products *should* be able to *guesstimate* the overall cost for you. Some companies charge by the program or product, while others charge by the hour, day, week or month. To get the best “*bang for your buck*,” be sure to engage the services of a company that *specializes* in educational programs and products for the title industry. Hiring *outside* the industry for industry-specific programs and products is not wise, in that you are paying the company to *learn* industry-specific knowledge in order to *teach* it.

*Rough cost estimate?* Small training booklets (i. e., 50 pages) may run anywhere from \$2,500 to \$5,000 (excluding printing), depending on complexity of the topic. Larger books or books requiring one-on-one consultation with the client (such as policy and procedures manuals or software-specific computer training manuals) generally will cost more. Full-

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## LEGAL COMMENT

### Florida Decision Raises Concerns

By Edmond R. Browne, Jr.  
ALTA General Counsel

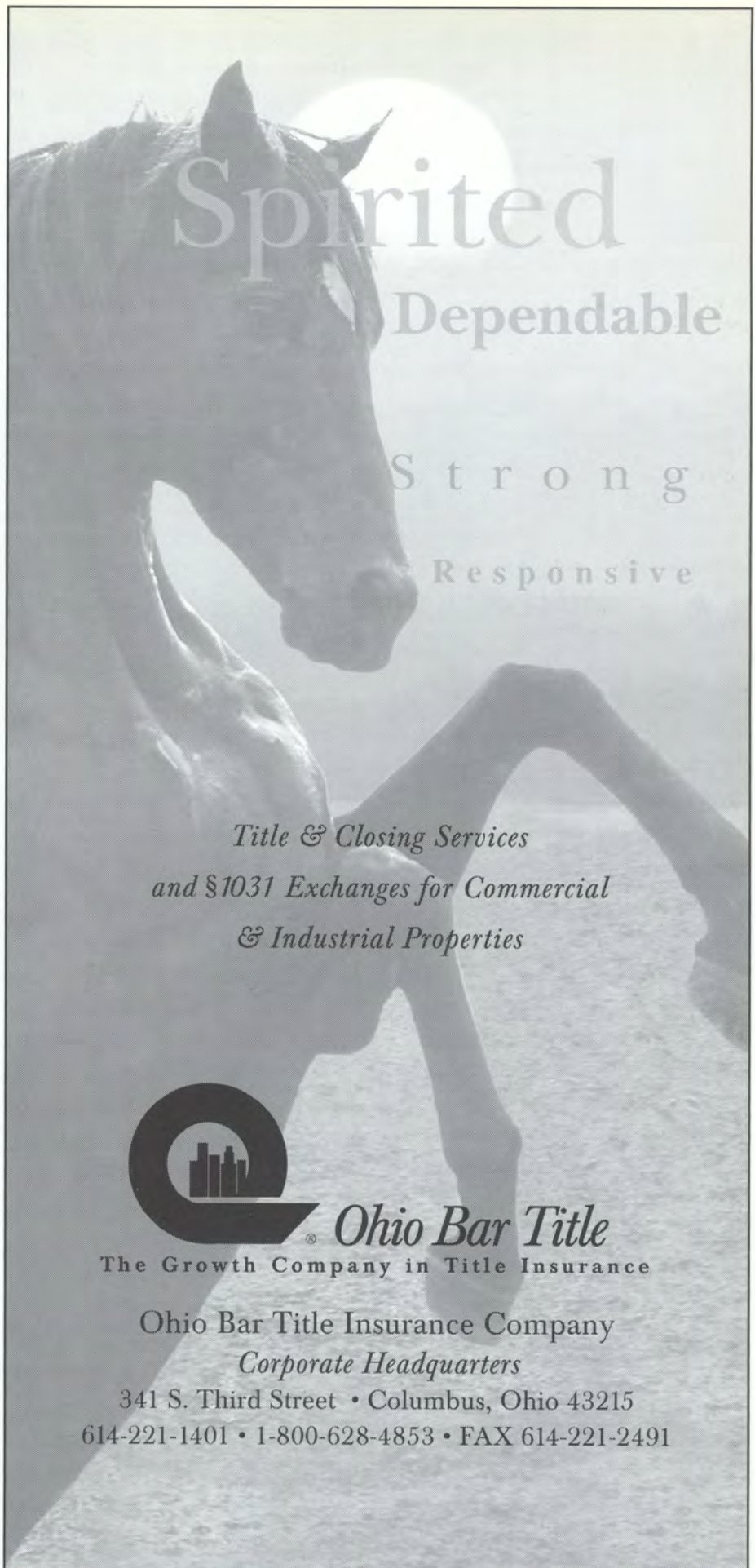
**A**LTA recently joined with the Florida Land Title Association in filing an amicus brief seeking to overturn a Florida state court decision which found Security Union Title liable for the fraud of its agent—even though the fraud had nothing to do with his role in issuing a title policy. If upheld on appeal, this case would set a dangerous precedent by making a title insurance company and its agent liable, on a conspiracy theory, for the wrongful conduct of any party to a real estate transaction. All the agent would have to do is issue a commitment or policy in connection with the transaction and know, or have reason to suspect, the wrongful conduct.

The case, *Citibank (Florida) v. Security Union Title*, involves an attorney/agent for Security Union Title who participated in two fraudulent schemes. In the first, he assisted a developer in fraudulently obtaining several acquisition and development loans based on falsely inflated property values from a bank whose assets were assigned to the plaintiff Citibank. In the second, as a member of a real estate partnership, he fraudulently induced the bank to refinance a partnership loan in violation of the loan agreements. The attorney/agent and developer were convicted of criminal charges and sentenced to jail.

At the civil trial, Citibank argued that Security Union should be liable for the attorney/agent's fraud because he used false and misleading title commitments, policies and endorsements in the fraudulent transactions to induce the bank to make the loans. The jury agreed and assessed damages of just over \$12 million, even though Security Union did not know about the fraud and the attorney/agent acted without authority. All of the attorney/agent's fraudulent acts were as an attorney representing his clients or on behalf of his real estate partners. Security Union's sole involvement was to issue title insurance commitments and policies to the bank.


The decision flies in the face of existing agency law, and numerous judicial decisions, that a title insurer is not liable for an agent's negligent acts or omissions which

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# ACDS: Electronic Compliance With Age-Old Process Statutes

By Christa Sladden  
ACDS Marketing/Strategy

## Editor's note:

This is the second in a three-part series, in which the author shares with *Title News* readers a perspective on this initiative by EDS to bring reality to a paperless closing process. For the first installment, please see the July-August edition of the magazine, page 25. Richard A. Morelli, account manager for the company's ACDS project, is scheduled to speak during *Title Automation 2000* on September 24 during the ALTA Annual Convention in Seattle.

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EDS's vision for the real estate sale and finance industry is a single, fully electronic, industry-wide process, and its Accelerated Closing and Delivery Services (ACDS) initiative is a significant step toward this transformation. ACDS is a series of state-of-the-art electronic document management and network communication services designed to replace the current paper-based real estate sale and finance processes and link the diverse players within the industry together.

Real estate sale and finance industry processes historically have been tied to paper because of age-old statutes requiring:

- Written, signed/notarized documents to legally transfer land and bind a borrower to a mortgage loan transaction
- An audit trail (trail of evidence) of changes made to these documents

ACDS provides for an electronic means of complying with these statutes. At the core of ACDS are:

- A secure, centralized image repository for mortgage documents
- Leading edge cryptography technologies that ensure these electronic documents are legally acceptable

The initial focus for application of ACDS is the loan closing function. When the facil-

itators of a closing transaction are subscribers of ACDS, the process flows electronically. One of the facilitators (usually the lender) assigns the transaction a Universal Transaction Number (UTN) and registers it onto ACDS. The multi-part UTN reflects the registering entity, the internal file number, and a check digit. The registering entity also:

- Grants access rights to the other transaction facilitators so they may view or add/replace documents on ACDS as appropriate
- Stipulates which mortgage documents must be placed on ACDS for the transaction and those that require notarization and a trail of evidence

ACDS can electronically initiate document requests to the appropriate ACDS participants. Each provider scans, faxes or captures the print file for the original document(s) that provider is contributing. Then, with the security card (token) containing the provider's identification (digital signature) inserted into the provider's ACDS-compliant PC workstation, the provider

initiates the movement of the electronic document(s) into ACDS. This done, ACDS automatically:

- Validates the identity of the ACDS participant submitting the document
- Seals each document to protect it against change

ACDS follows these same steps each time an authorized facilitator accesses one of the electronic documents thereafter.

ACDS accommodates any closing site so long as the agent can reach the EDS network, either by modem or dedicated phone line. Before and/or during closing, the agent uses his/her token to access the required documents and review them with the buyer(s) and seller(s). At the closing table, the parties sign, using a stylus and digitizer pad. Next, the closing agent initiates ACDS sealing and, if applicable:

- Signing (essentially notarization) through affixing of an encrypted version of the agent's digital signature
- Authentication of content to ensure the document really is the one executed
- Appending of a date and time stamp to track submission of the document

The agent then gives the buyer(s) and seller(s) hard copies or a diskette containing copies of the electronic closing documents.

EDS provides the complete infrastructure for the industry's application of ACDS, right down to the trusted Certification Authority, the entity with which new subscribers to ACDS register their employees for:

- A digital signature and activation of a token
- Deactivation of tokens in the event of loss or employment termination

While a move to electronic documents requires acceptance at various levels, we see evidence everywhere that electronic commerce is the direction of business. At the federal level, the United States approves



The author is the industry and marketing specialist for the EDS Real Estate and Mortgage Industry Division's Accelerated Closing and Delivery Services (ACDS) initiative, with

offices in Plano, TX. Prior to joining EDS earlier this year, she spent 22 years in mortgage banking and information systems, most recently creating and leading business design for FiServ's bankruptcy and loan processing application. In addition, she held a variety of operational management positions with Lomas Mortgage USA and Lomas Information Systems. Her background in mortgage banking focuses on loan setup, customer service, escrow administration, payment media and adjustable rate mortgage loan servicing. She is regarded as an industry expert in loan servicing.

the use of digital signatures to execute government contracts, and Congress is exploring ways to facilitate the development of electronic commerce. Approximately 12 states already have legislation accepting the validity of electronic authentication, and more states are debating the issue. As the mortgage industry transitions to electronic commerce, it may be necessary to print the note and mortgage/ deed of trust documents at closing. The fact is, though, that this is only an interim measure. The exploding electronic commerce era soon will see mortgages published electronically by the secondary mortgage market and recorded electronically by counties. ACDS will be at the hub of this transformation, making EDS's vision for a single, fully electronic, industry-wide process a reality.

(For more information, call the author at 800-433-4055.)

## Stewart Bundling Free MERS Offer

In an effort to increase the number of lenders registering loans on the Mortgage Electronic Registration System (MERS), Stewart Mortgage Information Co. is offering a major incentive.

This effort has resulted in SMI offering the first incentive package to the industry: registering the loan on MERS at no charge if the lender has purchased at least three SMI mortgage services.

SMI, one of MERS' marketing partners and a charter member, has been talking to lenders and MERS staff about the need for a MERS registration incentive program. The company is the first to offer such a service to lenders.

"The goal is to get a critical mass onto the system which will cause a domino effect," explains Wendly Faulkner, Stewart's MERS marketing and training director.

The system has 148 members and very few loans registered because everyone is concerned about the extra cost, she says. It costs \$3.50 per loan to register on the system. Lenders can register a loan and pay for a future transfer for \$9.90.

Lenders can purchase three of the following eight services and receive MERS registration at no additional cost:

- credit reporting
- real estate tax reporting
- document preparation
- flood zone determination
- loan processing
- electronic coordination and funding
- property valuation, and
- assignment, release and reconveyancing services

Through SMI's new transaction center, the bundling of these services permits a

lender to electronically order and have delivered the information and services required to complete a loan, thus facilitating the mortgage process while also accomplishing the goal of registering loans on the MERS system.

The Stewart division in which the chosen services reside will absorb the cost of the registration, Faulkner explains. For example, if a lender chooses loan processing, credit reporting and an appraisal, those divisions will split the cost of the MERS registration.

"The incentive does not present a Real Estate Settlement Procedures Act issue because SMI is not referring a settlement service to a third party," explains Thomas L. King, SMI's senior vice president and general counsel, in addressing an obvious concern.

On the back end, SMI announced last month it would offer a discount for registration of bulk loans (see *Inside Mortgage Technology*, 6-30-97). Stewart will take \$1 off its assignment processing fee if lenders decide to register bulk loans they have acquired, or from their own portfolio.

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## Contour, Day One Speed Turnaround

Through a strategic alliance between Contour Software, Inc., and Day One, Inc., the new Day One Viewer software module will be embedded in every package of The Loan Handler 4.2, which is used for mortgage broker loan origination, according to an announcement by the companies.

Day One, based in Wayne, PA, is a subsidiary of Commonwealth Land Title Insurance Company.

The Day One Viewer enables any appraiser using Day One Appraisal Forms for Windows software to complete and transmit appraisal reports to anyone using Loan Handler software, said Day One President Jeff Jennings. With the Day One Viewer within The Loan Handler 4.2, every broker using the Contour system can receive full, paperless electronic data interchange appraisals from thousands of Day One users via the Internet, Contour's 800 EDI and other communications methods.

Result: decreased turnaround time and easier to manage loan portfolios.

Contour offers software products for every facet of mortgage lending, from qualification to servicing, with customers including mortgage bankers, mortgage brokers, credit unions, commercial banks and savings institutions. Day One provides appraisal software products and services to national lenders, appraisal management companies, and independent appraisers.

## Fraudulent Loans, Double-Locks Up

The number of loans with fraudulent indicators and multiple loan applications has increased nationally in the first half of 1997. This is according to information compiled by Mortgage Asset Research Institute, Inc., from its LoanWatch database, which warehouses information on loans from registered lenders.

MARI analyzed approximately 280,000 loan applications submitted to its LoanWatch database during the first half of 1997 to identify applications with potential fraud by geographic region and by type.

The information shows that, nationally, 3.3 percent of loan applications to LoanWatch members in the first half of 1997 involved potential fraud. This amount is up significantly from loans submitted predominantly in the last half of 1996, which showed only 0.8 percent of loan applications generated fraud flags. Potentially fraudulent loan applications were put into three categories: multiple transactions, occupancy and undisclosed liabilities.

For example, a borrower that is refinancing three separate properties with different lenders, claiming all of the properties are owner-occupied, would be flagged by the database for potential occupancy and undisclosed liabilities.

Of those applications flagged for possible fraud, 65 percent included possible undisclosed liabilities, while 41 percent contained occupancy discrepancies and 40 percent had multiple transactions pending.

"These results are not surprising," says Jim Croft, MARI president, "and clearly show that mortgage fraud is a nationwide issue and appears to be on the rise."

Of the larger states, California ranked thirteenth with 3.9 percent of the loans flagged for potentially fraudulent information, Illinois ranked sixteenth with 3.6 percent and Florida ranked twenty-first with 3.0 percent. Maine ranked number one with 8.7 percent of its loans containing potentially fraudulent information.

LoanWatch also compares applications to see if there are multiple submissions by the same borrower. Nationally, 4.9 percent of applications were submitted to two different LoanWatch members. This number is up from 2.7 percent of loans submitted in the last half of 1996.

Of larger states, California ranked second for multiple applications to LoanWatch members with 7.4 percent of loans. Illinois ranked fifth with 6.8 percent and Florida ranked nineteenth with 4.7 percent. South Dakota ranked first with multiple applications for 8.0 percent of its loans.

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## TRAINING

continued from page 18

day customized training programs generally will be charged in two of three stages: (1) *development*; (2) *train-the-trainer program*; and/or (3) *direct program delivery*. *Per-presentation fees* should mirror those shown above for consultants and speakers, with *train-the-trainer* programs running slightly higher. *Development fees*, as noted above, will vary. Expect anywhere from \$2,500 to \$5,000 and *up*. When negotiating a fee for such services, you generally will find that the more "involved" you are in the creation of the end product, the *higher* the fee will be. It's sort of like taking your *car* to a mechanic. If you leave the repairs in the hands of the mechanic, it's one price. If you stand and *watch*, it's going to cost *more*. If you pitch in and *help* or insist on giving *advice* every step of the way...*you probably can't afford the fee!* True educational professionals *know* their business (and they know *yours* as well). They know what questions to ask in advance and what information they need from you on an ongoing basis. If you want to make sure your money is well spent, let the *consultant* lead you where you need to go. That's what you *pay* the consultant for.

## Summary

Consider this. The cost of *training* your employees is much less than the cost of the *mistakes* they will make if they remain *untrained* and *uninformed*. Next, take *yourself* off the hook by understanding that *the best managers* and the *most knowledgeable professionals* do NOT the *best teachers* make! With the textbooks, magazines, training guides and other information available, there is no reason in the world why you should have to *reinvent the wheel* when it comes to training. With title associations, underwriters, and educational consultants at your disposal, there is *plenty* of training available at all levels of your organization. Sometimes, the *best* way to learn is from sharing your past *mistakes* with others and encouraging them to return the favor!

At THE KOOGLER GROUP, our philosophy is, "*It doesn't have to be formal to be valid*," and our commitment to the title insurance industry always has been to keep education "*portable and affordable*" so everyone can avail themselves of quality education—which is why we continue to laud the efforts of ALTA's *Land Title Institute* and the educational arm of state title associations, as well as the efforts of underwriters to keep their agents informed and in touch with the changes occurring within the industry.

*Knowledge is power*. Empower yourself and your employees by learning all you can about the industry within which you work. Make education a *priority!* 🐉

## LEGAL COMMENT

continued from page 19

are outside the scope of the agent's authority from the underwriter. Also, it has been held that an underwriter is not liable for its agent's wrongful acts because knowledge cannot be imputed for acts adverse to the underwriter. Other cases have made a further distinction between acts committed by attorney/agents in representing their clients and those on behalf of underwriters as their agent. In the *Citibank* case, Security Union had no knowledge of its agent's fraudulent acts which clearly exceed the scope of his agency agreement. If upheld, this decision could result in title insurance companies becoming the watchdogs and insurers of all aspects of real estate transactions.

ALTA and FLTA argued that this decision would have a chilling effect on the appointment of law firms as issuing agents because they are routinely involved in real estate transactions in other capacities, such as attorneys for the parties. As such, attorneys are more likely to acquire information that would lead them to suspect wrongful conduct, but also are more likely to feel compelled not to disclose their suspicions because of attorney/client relationships and confidentiality rules. A decision is expected later this year. 🐉

## Fidelity Acquires Food Firm Interest

Fidelity National Financial, Inc., parent of firms including Fidelity National Title Insurance Company, has announced an agreement to purchase one million shares of common stock of GB Foods Corporation and 3.5 million common stock purchase warrants in GB Foods Corporation.

GB Foods operates Mexican quick-service restaurants under the trade name, "The Green Burrito." As of December 31, 1996, there were 134 Green Burrito stores—seven company owned and the remainder franchises.

Of the 3.5 million warrants, 1.5 million are exercisable at \$5 per share, one million at \$7 per share and one million at \$7.50 per share, according to the announcement. On a fully diluted basis, the common stock and warrants in the Fidelity purchase represent a 41 percent interest in GB Foods.

Filling vacancies on the GB Foods board created by resignations under the agreement are Fidelity Chairman and Chief Executive Officer William P. Foley, II, President Frank P. Willey and Executive Vice President—General Counsel Andrew F. Puzder.

## NMLTA Honors Carolyn Monroe

Carolyn Monroe, president of Albuquerque Title Company, Inc., has received the 1996-97 Omer F. Tucker Citizen of the Year Award from the New Mexico Land Title Association.



Monroe

Established in 1981, the Tucker award is the highest NMLTA honor and to date has been presented only eight times. Monroe was selected as an honoree because of her leadership and ongoing effort in proposing and lobbying for state

legislation on behalf of title insurance agents.

Monroe has 15 years of title industry experience, and was named president of Albuquerque Title in 1994. The company became a full service subsidiary of Commonwealth Land Title Insurance Company earlier this year.

## Ownership Sold At Gracy Title

ALTA Past President Bill Thurman has sold a majority interest in 124-year-old Gracy Title Company to his son, Toby Thurman, and to Larry Molinare, longtime office manager. As chairman, Molinare will continue to direct the company and its two branch offices, while Toby Thurman serves as president of the firm.

Stewart Information Services Corporation has acquired a minority interest in Gracy, which is one of the largest title operations in Austin, TX.

## Advanced Escrow Now InfoStream

Advanced Escrow and Title Systems, Inc., Tacoma, WA, has changed its name to InfoStream.

According to Jim Moats, company president, the change reflects the change of the title business from a document-centric industry to one centered on cost effectively acquiring streams of information.

The company is focused on providing workflow modeling, production software platforms and client support services designed to help accomplish specific productivity goals.

InfoStream continues as an independent provider of software, and consulting and support services, for the title industry.

September 24, 1997

Seattle, Washington

# Title Automation 2000

- Title Experts on Electronic Commerce
- EDS on the Future and Paperless Closings
- Microsoft: "Why should you upgrade from Windows 95 or NT?"

**American Land Title Association**  
**Technology Education & Information You Can Trust**

For more information or to Register, call 1-800-787-ALTA or visit <http://alta.org>



## ALTA Technology Forum & Expo

Come hear what's happening with technology in the industry. Freddie, Fannie, MBA, Lenders, and Title Experts share strategies for planning systems for the 21<sup>st</sup> Century. Expo Vendors showcase products to keep you competitive and prepare your systems to capitalize on industry initiatives and innovations.

Orlando, Florida

February 1 - 3, 1998



# TECHNOLOGYbytes

## Title Automation 2000

The annual technology program is shaping up for September 24 in Seattle, during the ALTA Annual Convention. Rick Morelli of EDS will explain and discuss EDS's Accelerated Closing and Delivery Service (ACDS). Real more about ACDS in this issue of *Title News*, as Christa Sladden's series continues. A Microsoft representative will be on hand, and a panel of title industry experts led by Landata's Darren Ross will discuss electronic commerce. You may be surprised to hear that Electronic Commerce isn't just EDI. For more information and to register for Title Automation 2000, visit the ALTA Home Page at <http://www.alta.org> or phone/fax toll free at 1-800-787-ALTA / 1-888-FAX-ALTA.

## Attend the ALTA Land Title Systems Committee Meeting

Even if you're not a member of the ALTA Land Title Systems Committee, you're welcome to attend the meeting in Seattle during the Association's Annual Convention. The committee will meet on Tuesday, September 23, at 10:00 a.m., and will be discussing current technology topics. ALTA is interested in your viewpoint, so join us in Seattle! For more information and a schedule of 1997-98 committee meetings, contact Kelly Throckmorton, staff coordinator, at 800-787-ALTA or [kelly\\_throckmorton@alta.org](mailto:kelly_throckmorton@alta.org).

## Forum Keynoter Confirmed

Now that you've marked your calendar for the ALTA Technology Forum & Expo, February 1-3, 1998, in Lake Buena Vista, FL, be sure to register and plan to arrive for the opening General Session Sunday afternoon at 4:00 p.m. **Robert X.**

**Cringely**, best selling author of *Accidental Empires: How the Boys of Silicon Valley Make Their Millions, Battle Foreign Competition and Still Can't Get a Date*, and developer of the PBS miniseries, "Triumph of the Nerds," will bring his unique mixture of humor, inspiration, and techno-knowledge to the stage as the meeting kicks off. For more information and to register, visit the ALTA Home Page at <http://www.alta.org> or phone/fax toll free at 1-800-787-ALTA / 1-888-FAX-ALTA.

## Expo Commitments Rolling In

Lawyers Title Insurance Corporation subsidiaries Genesis and Datatrace are confirmed to participate in the ALTA Technology Forum & Expo in February. Representatives from Lawyers Single Source allied real estate services division also will be on hand. Have you reserved your Expo booth? For more information and to register, visit the ALTA Home Page at <http://www.alta.org> or phone/fax toll free at 1-800-787-ALTA / 1-888-FAX-ALTA.

### Upcoming Industry Technology Meetings: MBA EDI Work Group Meetings

September 15-19, San Francisco

ASC X12 Committee Meeting  
October 5-10, Los Angeles

Title Automation 2000  
September 24, Seattle

*New ALTA Event*  
ALTA Technology Forum and Expo  
February 1-3, 1998, Orlando

## QUESTIONS? COMMENTS? SUGGESTIONS?

Contact: [kelly\\_throckmorton@alta.org](mailto:kelly_throckmorton@alta.org) 800-787-ALTA (phone) 888-FAX-ALTA (fax)

## CLASS ACTION

continued from page 10

Moreover, there is no guarantee that other courts will agree with the conclusion reached by the court in the Florida litigation.

The court's decision to limit damages to the amount of the kickback, rather than the total amount of the settlement service charge, could also have a significant effect on future actions brought by plaintiffs alleging violations of Section 8. The court's ruling would greatly reduce potential damage awards involving violations of Section 8 of RESPA.

### How to Avoid Scrutiny

Although the court's ruling appears to provide protection to title insurance companies and their title agents in states with pro-

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**T***o qualify under the title agent exemption, the title agent must perform all the core title services as defined...*

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mulgated title insurance rates, HUD will likely continue to investigate title practices it believes violate Section 8, even in states with promulgated rates. The best way to avoid scrutiny by HUD or private plaintiffs is to ensure that the safe harbor for payments by an underwriter to its duly appointed title agent is satisfied.

To qualify under the title agent exemption, the title agent must perform all of the core title agent services as defined in Section 3500.14(g)(4) of the RESPA regulations and be liable to the underwriter for any negligence in performing these services. According to its regulation, and policy statements, HUD will not consider payments to a title agent to be exempt from RESPA scrutiny unless the agent performs the following services:

- The examination and evaluation of the title evidence to determine insurability;
- The preparation and issuance of the title commitment, or other document, which discloses the status of the title as it is proposed to be insured, identifies the condition that must be met before the policy will be issued, and obligates the underwriter to issue a policy of title insurance if such conditions are met;
- The clearance of underwriting objections and the taking of those steps that are needed to satisfy any conditions to the issuance of the policies;
- The preparation and issuance of the pol-

icy or policies of title insurance; and

- The handling of the closing or settlement, where customary.<sup>16</sup>

In considering liability, HUD will examine the following considerations: the agency contract; whether the agent has errors and omissions insurance or malpractice insurance; whether a contract provision regarding an agent's liability for a loss is ever enforced; and whether an agent is financially viable to pay claims.<sup>17</sup>


If an agent and underwriter qualify under the title agent exemption, then HUD "does not normally scrutinize the payments so long as they are for services actually performed in the issuance of a policy of title insurance."<sup>18</sup> Therefore, satisfying the title agent exemption should insulate underwriters and agents from any claims in connection with the amount of the title premium retained by the agent.

Underwriters, however, may not provide title agents with "things of value" in return for the referral of settlement service business. HUD acknowledges that underwriters may sell title evidence to their title insurance agents. According to HUD, "it is evidence of a thing of value given for referrals if the title insurance company is not charging fees for title evidence that cover its costs of producing the title evidence or if the title insurance company charges less for title evidence to be used for a commitment or policy issued on behalf of the title insurance company than on another company's behalf."<sup>19</sup>

Finally, we note that a title agent may perform less than "core title services" and still receive compensation from the underwriter under the exception to the anti-kickback provisions for goods or facilities actually furnished or for services actually performed. To qualify for this Section 8(c)(2) exception, payments must be reasonably related to the value of the goods or services provided. While HUD has not provided significant guidance in determining what fees are reasonable, HUD has indicated in the past that it may be appropriate to look to fees generally charged in the marketplace for the services or to the internal cost of providing the services. It is HUD's enforcement position, however, "that it is difficult to justify the payment (or retention) of a significant portion of the title insurance risk premium to a title insurance agent who fails to perform and assume responsibility for the title examination function."<sup>20</sup>

### Conclusion

The court's decision provides some comfort to underwriters and their agents. However, the class actions lawsuits and enforcement actions may not be over. Underwriters and their agents should review their policies to ensure that title agents are performing all of the required "core title services" and that any other payments by underwriters to their agents are for goods actually received or services actually furnished.

Companies that do not satisfy these requirements should be prepared to defend their actions. 

### Endnotes

- <sup>1</sup> *Morales v. Attorneys' Title Insurance Fund, Inc.*, No. 96-2445 (S.D. Fla.); *Snyder v. Commonwealth Land Title Insurance Company*, No. 96-2468 (S.D. Fla.); *Eichelhardt v. Lawyers Title Insurance Corporation*, No. 96-2469 (S.D. Fla.); *Sutton v. Chicago Title Insurance Company, Inc.*, No. 96-2542 (S.D. Fla.); *O'Brien v. Stewart Title Guaranty Company*, No. 96-2706 (S.D. Fla.); *Diciaccio v. First American Title Insurance Company*, No. 96-2707 (S.D. Fla.); *Eliades v. American Pioneer Title Insurance Company*, No. 96-2708 (S.D. Fla.); and *Dunn v. Fidelity National Title Insurance Company*, No. 96-3088 (S.D. Fla.).
- <sup>2</sup> *Morales*, No. 96-2445 (S.D. Fla.) (Omnibus Order dismissing class action complaint, July 31, 1997); *Snyder*, No. 96-2468 (S.D. Fla.) (Omnibus Order dismissing class action complaint, July 31, 1997); *Eichelhardt*, No. 96-2469 (S.D. Fla.) (Omnibus Order dismissing class action complaint, July 31, 1997); *Sutton*, No. 96-2542 (S.D. Fla.) (Omnibus Order dismissing class action complaint, July 31, 1997); *O'Brien*, No. 96-2706 (S.D. Fla.) (Omnibus Order dismissing class action complaint, July 31, 1997); *Diciaccio*, No. 96-2707 (S.D. Fla.) (Omnibus Order dismissing class action complaint, July 31, 1997); *Eliades*, No. 96-2708 (S.D. Fla.) (Omnibus Order dismissing class action complaint, July 31, 1997); and *Dunn*, No. 96-3088 (S.D. Fla.) (Omnibus Order dismissing class action complaint, July 31, 1997) (hereinafter, collectively "Omnibus Order").
- <sup>3</sup> 12 U.S.C. § 2607(a).
- <sup>4</sup> *Id.* § 2607(b).
- <sup>5</sup> *Id.* § 2607(c)(1)(B).
- <sup>6</sup> 24 C.F.R. § 3500.14(g)(1)(ii) and RESPA Statement of Policy 1996-4, 61 Fed. Reg. 49,398, 49,399 (Sept. 19, 1996).
- <sup>7</sup> 12 U.S.C. § 2607(d)(1).
- <sup>8</sup> *Id.* § 2607(d)(2).
- <sup>9</sup> See Fla. Stat. Ann. § 627.782(1).
- <sup>10</sup> Fla. Admin. Code Ann. R.4-186.003.
- <sup>11</sup> 61 Fed. Reg. at 49,399.
- <sup>12</sup> Findings of HUD's Investigation of Florida Title Insurance Companies and Statement of Enforcement Standards, Sept. 21, 1995.
- <sup>13</sup> See Omnibus Order at 23.
- <sup>14</sup> *Id.*
- <sup>15</sup> *Id.* at 24, quoting *Durr v. Intercounty Title Co. of Ill.*, 826 F.Supp. 259, 264-265 (N.D. Ill. 1993).
- <sup>16</sup> 24 C.F.R. § 3500.14 (g)(4) and 61 Fed. Reg. at 49,399.
- <sup>17</sup> 61 Fed. Reg. at 49,399.
- <sup>18</sup> *Id.*
- <sup>19</sup> *Id.* at 49,400.
- <sup>20</sup> *Id.*

## STATE REGULATORY MYOPIA

*continued from page 13*

regulation of title insurance in which the industry has an active role—California, Florida, New Mexico and Texas.

Others responding include regional or state association leaders from Colorado, Connecticut, Illinois, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Ohio, Pennsylvania and Wisconsin.

Among the 16 states, all but two reported at least one state association representative is formally assigned to act as liaison with the state regulator concerned. Two of the state associations said access to their regulator is a problem—and both of them have representatives formally designated for regulatory liaison.

All but one of the industry leaders responding to the question said they favor funding from title industry sources to support supervision of the industry by their respective regulators.

Most of the leaders reported their organizational work to educate state regulatory staff on the title industry centers on invitations to association conventions and meetings, as well as personal visits. In Colorado, plans for a regulator seminar of the association are being pursued—while Missouri adds invitations for regulatory personnel to visit individual title company offices—and Maryland, Missouri and Wisconsin have special regulation liaison committees of their respective associations.

Only three responding state association leaders described as “excellent” or “good” the current efforts by their regulators in adjusting supervision of title insurance activity to adequately meet the needs of national lenders and the secondary mortgage market. Those states are: Nebraska, New Mexico and Texas. The remainder of those responding ranked regulator efforts in this area as “fair” or “poor.”

Here is a state-by-state summary from survey responses.

**California.** Except for rebate enforcement, regulation is sound. The insurance department lacks resources for title industry regulation; legislation to fund title industry rebate enforcement is being sponsored by the state title association.

**Colorado.** There are few consumer complaints; most directly involve title companies. The regulator is studying current legislation to determine an enforcement position. The state title association is proposing a grievance liaison committee with members appointed by the regulator.

**Connecticut.** The regulator does not take an active interest in the title industry.

**Florida.** More active enforcement is needed concerning market conduct; the state title association has requested this from the regulator. The requirement that certain types of title insurance forms—

including endorsements—be promulgated sometimes interferes with better customer service by title companies regarding new products and coverages directed to specific issues.

**Illinois.** The state insurance act was substantially revised in 1989, and mandates the licensing of all title insurance underwriting companies and agents. Grounds for license revocation include the addressing of “sham” issues.

**Maryland.** The title insurance industry is not understood by regulatory personnel, and there is a lack of state resources for enforcement. The state title association has been attempting to set up a task force, whose membership would include the regulator, to study title insurance issues such as solvency.

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**S** *State regulatory myopia...is especially apparent when it comes to uniform coverages, seamless production and flexible pricing.*

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**Massachusetts.** There is no state regulation of title insurance. Enabling and other industry-related state legislation has been sponsored by the regional title association, none of which was supported or understood by the regulator.

**Michigan.** Regulatory personnel do not understand title insurance and are not interested in supervising the industry, it is reported. The state title association is attempting to help the regulator understand why the department should supervise title insurance activity.

**Missouri.** Title insurance is reported to remain a “stepchild” of the regulator, whose personnel are not well informed on the subject and often try to supervise based on other lines of insurance. Regulatory personnel do not understand the need for rate regulation, and there is a definite lack of adequate legislation. Representatives of the state title association have met with regulatory personnel on numerous occasions, and have joined with them in different work groups. No meaningful results have been noted. A compliance manual has been drafted by the state association for review by regulatory personnel; it has been at the regulator’s office for more than a year.

**Montana.** Uninformed regulatory personnel primarily review title underwriter rate requests and administer continuing education activity.

**Nebraska.** The regulator is under-

staffed and title insurance is small among lines supervised.


**New Mexico.** Educating regulatory personnel about title insurance is a continuing problem. Annual rate hearings set rates based on prior year’s statistics—resulting in radical rate changes because of real estate cycles. The state title association has appealed a substantial rate decrease, and is seeking a regulatory change that would allow rate hearings every other year.

**Ohio.** Regulatory enforcement is erratic, and based on “tattle tale” behavior. The regulator has only a small investigative staff. Regulatory/legislative liaison by the state title association has made some headway, but the situation remains an issue.

**Pennsylvania.** With the recent relicensing of the rating bureau and 1996 amendments to the state title insurance code, the regulator is attempting to become more knowledgeable regarding title insurance. Regulation of title agents remains a major problem because of regulator understaffing and areas of the title insurance code where underwriters have no control.

Underwriters have arranged for market studies by the regulator, which have revealed areas of non-compliance by agents under the code. In recent years, the state title association has increased contact with the regulatory department as a result of code amendments that incorporate continuing education and continuing legal education requirements, along with bonding requirements.

**Texas.** Regulation presently is excellent. Funding to support state supervision of the title insurance industry already exists through a policy guaranty fee.

**Wisconsin.** The regulator takes a “hands off” position, viewing title insurance as a small part of lines needing state supervision. As long as underwriters pay claims, active regulation of the title industry is not foreseen. The state title association has formed a liaison committee to enhance communication with the regulator. 

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*In addition to Greene, appreciation is extended to the following regional or state title association leaders for their contributions to this report: Larry Green, California; Harry Paulsen, Colorado; Steven Winkler, Connecticut; Ken Jannen and Lee Huszagh, Florida; Dale Wolf, Illinois; Janine Andriole, Maryland; Joe Drum and Robert Soule, Massachusetts; Ken Lingenfelter, Michigan; Pamela Hart, Missouri; Ted Lovoc, Montana; Claude Berreckman, Nebraska; David Pyeatt, New Mexico; Larry Connor, Ohio; John O’Driscoll, Pennsylvania; Cathy Lancaster, Texas; Gerry Faller, Wisconsin.*

*Second in a series of educational notices.*

## *Questions to ask your E&O insurance company:*

### 2. How long have you been insuring title professionals?

E&O insurers come and go. Here today, gone tomorrow! Two of the largest commercial insurers, in fact, ceased insuring title professionals in 1995 alone!

Naturally, this creates potentially serious coverage problems for title agents and abstracters. To solve this revolving door problem, the American Land Title Association (ALTA) created TIAC in 1987 to provide a stable long-term E&O market for title professionals.

Now entering our tenth year, we invite you to join hundreds of other leading title professionals in the only E&O insurer wholly owned and governed by title professionals! We very much appreciate those who have placed their confidence in us, and we invite other title professionals nationwide to make TIAC *your choice* in professional liability insurance.

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## NEW MEMBERS

### ACTIVE

#### *District of Columbia*

Richard William Maybach, Jr.

#### *Georgia*

William A. Hamilton, Attorney, P. C.,  
Stone Mountain  
Neiman M. Copher, Jr., P. C., Lilburn

#### *Indiana*

Hoosier Land Titles, Inc., Martinsville

#### *Iowa*

Abstract and Title Services of Story  
County, Ames

#### *Massachusetts*

Ruth A. Dillingham, Boston

#### *Missouri*

Assured Quality Title Co., Kansas City  
Kiefer Title Company, Perryville

#### *Mississippi*

Mississippi Guaranty Title Insurance  
Co., Jackson

#### *Montana*

Rocky Mountain Title, Helena

#### *Tennessee*

Heather A. Quinn, Louisville

### ASSOCIATE

#### *California*

Escrow Expertise, San Jose

#### *Ohio*

Migrilyn Systems, Inc., West Chester

### ASSOCIATE, LEGAL

#### *Connecticut*

Stephen Maggiola, Fairfield

#### *Florida*

Alfred A. LaSorte, Jr., West Palm Beach

#### *Iowa*

Cynthia H. Danielson, Mt. Pleasant

#### *Louisiana*

William C. Wallace, New Orleans

#### *New York*

Donald L. Crumb, Jr., Rochester

## Polish Officials Hear Titleman

Walter A. Wilson, III, Stewart Title Guaranty Company, recently presented a lecture entitled, "Establishing, Insuring and Transferring Title," as part of a three-day mortgage banking program for nine visiting Polish government, banking and housing officials held in northern Virginia.

Another highlight was a presentation by John Frey, clerk of the Circuit Court of Fairfax, on operation of the Fairfax County recording system, which is scheduled for computerization in the near future.

Representatives of the Mortgage Bankers Association of America and Fannie Mae also were among those making program presentations.

## 1997 AFFILIATED ASSOCIATION CONVENTIONS

### September

4-6 **Missouri**, Holiday Inn Hotel and Conference Center, Joplin, MO

4-7 **Maryland**, Princess Royale, Ocean City, MD

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** (to be held at Seattle Westin during ALTA Annual Convention)

### 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

## Korman Installed as PLTA President

Mark S. Korman, Conestoga Title Insurance Co., has been installed as Pennsylvania Land Title Association president at the annual convention of that organization.

Other newly installed officers of the association: Anne L. Anastasi, Genesis Abstract, Inc., vice president; Thomas M. Croke, United General Title Insurance Company, treasurer, and William D. Himmelreich, Stewart Title Guaranty Company, secretary. All hold the designation of PLTA Certified Land Title Professional, highest distinction in the organization, which recognizes individual commitment to the title industry through education, service, tenure and accomplishment.

Himmelreich and Laura E. Fox, Lawyers Title Insurance Corporation, were awarded CLTP designations during the convention.

Also during the event, Herbert Bass, chairman of the real estate department at Fox, Rothschild, O'Brien and Frankel, a Philadelphia law firm, was presented with a PLTA honorary membership. A longtime member of the Pennsylvania Land Title Institute board of trustees and legal advisor to PLTA, he has been a leader in the industry effort to persuade the Philadelphia Department of Records to record and index deeds, mortgages and other encumbrances in an orderly fashion as required by present state law.



Recently installed PLTA officers (l to r) Croke, Himmelreich, Anastasi, Korman.

## NAMES IN THE NEWS

**R**ecent appointments by Commonwealth Land Title Insurance Company and Transnation Title Insurance Company include four new presidents—operations: **Stephen P. Veltri** (western operations, based in Los Angeles); **David W. Koshork** (northwest operations, based in Seattle); **Donald C. Weigel, Jr.**, (northern operations, based in New York City), and **John M. Obzud** (southeast operations, based in Baltimore).

**James E. Kilgallon** has been appointed president—National Title Services for the companies, with offices in Philadelphia, where **Jeffrey A. Tischler** has been named executive vice president—chief financial and administrative officer.

Elsewhere at Commonwealth, **Edward S. Rusky** has been appointed vice president and counsel—National Title Services, San Francisco; **Gail Dolin** has been promoted to vice president, commercial and industrial sales, Cleveland, and **LeAnn Turrentine** has been promoted to assistant vice president, National Title Services, Dallas.

**H. John Oechsle** has been appointed vice president and chief information offi-



Veltri



Koshork



Kilgallon



Tischler



Oechsle



Weigel



Obzud



Rusky



Dolin



Isenberg

cer and **Nan P. Isenberg** has been named assistant vice president—employment services, both Philadelphia, and **Leland Antcliff** now is regional agency manager, Los Angeles, both for Commonwealth and Transnation. **Margaret M. Foster** has been appointed Arizona state and Maricopa County manager for the companies, Phoenix.

Other Commonwealth appointments include **Alfred D. Santoro, Jr.**, agency manager, and **Elissa Buonarota**, underwriting counsel, both Parsippany, NJ;

**Owen Rollberg**, underwriting counsel, St. Louis; **Glyn J. Nelson**, Los Angeles and Orange counties manager, Los Angeles, and **Jeffery J. Kozak**, senior auditor, Troy, MI.

**Daniel Perry** has been named Santa Clara County manager for Commonwealth, with offices in San Jose, CA.


**James A. Fine, Jr.**, president, has been elected to the board of directors, Investors Title Company, Chapel Hill, NC. **N. Wayne Stephenson, Jr.**, has joined the company as claims counsel.

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**Antcliff**



**Isenberg**



**Santoro**



**Buonarota**



**Rollberg**



**Nelson**



**Perry**



**Stephenson**



**Bannan**

**Vincent M. Lyons** has joined Old Republic National Title Insurance Company as an agency representative with offices in Albany, NY.

**Robert G. Bannan**, First American Title Insurance Company

regional vice president, has relocated to Washington, DC, to assume responsibility for the company's Mid-Atlantic Region operations. He is a past president of the New York State and New England land title associations.

**Peter C. Norden**, also a First American regional vice president, has expanded his responsibilities to include the states of Connecticut and Rhode Island among those in the Northeast Region currently in his charge. He is a longtime member of the ALTA Education Committee.

Elsewhere at First American, **Timothy P. Sullivan** has been promoted to vice president—general counsel and **Patricia Stout** has been named vice president—



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**Brown**



**Gundling**



**Rusk**



**Stevenson**



**Wineman**

associate general counsel, both at headquarters in Santa Ana, CA. **Larry Buster** has been named vice president—county manager, Riverside County, CA, while **Peter C. Keenan** now is Louisiana state manager and **Lillian E. Eyrich** is Louisiana state counsel.

**Tom E. Blackwell** has been named president and state manager, First American

Title Insurance Company of Texas, and **Blake T. Heiner**, vice president—legal counsel for First American Title Company of Utah, has been named regional counsel for that state.

Recent promotions at the Chicago Title family of title insurers include (Chicago Title Insurance Company), new resident vice presidents, **Gustavo Abello** (remains man-

ager), Skokie, IL; **Philip Fanning** (also to regional director of business development), Hartford, CT; **Richard Smith** (remains branch manager), Waukesha, WI; **Paulette Stevenson** (remains National Business Unit manager), Minneapolis; **Christopher Valentine** (also to National Business Unit manager), Atlanta, and **Robert Wineman** (remains Division II manager), Chicago.

New assistant vice presidents at Chicago Title include **Susan Cowan** (remains accounting manager), Kansas City, MO; **Patricia Hegarty** (also to tri-county manager), Springfield, IL; **Allan Montezon** (also to Wisconsin agency manager), Waukesha, WI; **Cindy Peterson** (remains senior sales representative), Hackensack, NJ; **Carrie Ross** (remains escrow manager), Everett, WA; **Gregory Ryan** (also to National Business Unit controller), McLean, VA, and **Loretta Thomas**, Chicago.

Other Chicago Title promotions: **Donna Chin**, to title officer, Mineola, NY; **Tammy Freese**, to escrow officer (remains senior closing manager), Geneva, IL; **Jon Gundling**, to Eastern division marketing and sales representative; **Katherine Ivanyo**, to senior construction escrow officer (remains national construction escrow manager), Chicago; **Barton London**, to national agency counsel, Chicago; **Mary Anne Pecora**, to Illinois regional communications manager, Chicago; **Douglas Rusk**, to Illinois regional technology manager, Chicago; **Regina Shields**, to assistant regional counsel and assistant area counsel, Dallas; **Sally Soderstrom**, to escrow officer (remains escrow manager), Geneva, IL, and **Annette Weihman**, to National Business Unit officer, Chicago.

Promotions at Titor Title Insurance Company include **Steven Brown**, to Illinois state counsel, Chicago; **Eric Carstensen**, to assistant vice president and agency manager, Milwaukee, and **Diane Kenner** and **Ronald Otto**, to assistant vice president, Chicago.

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### Law Firm Link By Commonwealth

Commonwealth Land Title Insurance Company of Dallas has announced its affiliation with the Smith Law Firm, P.C., which serves as a closing attorney office for the organization.

The law firm is headed by Cheryl Rivera Smith, who has more than 17 years real estate experience.

### New Idaho Unit For Transnation

Transnation Title & Escrow, Inc., subsidiary of Transnation Title Insurance Company, has expanded its Idaho operations with the opening of a full service branch in Nampa.

Alan L. Bendawald has been named vice president and Canyon County manager there.

## 1997 CALENDAR OF MEETINGS

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

### September

7-9 **ALTA Reinsurance Conference**,  
Disney's Yacht Club Resort, Orlando

### November

2-4 **Title Counsel Meeting**,  
San Diego

## Genesis Data Now Elliptus Solutions

Genesis Data Systems, Inc., has changed its name to Elliptus Software Solutions, Inc.

Elliptus President Mike Franks said the change reflects a major transition including consolidating all company operations in Houston, expanding staff and making an overall commitment to premier service.

Elliptus is a wholly owned subsidiary of Lawyers Title Insurance Corporation, developing production and automation software for the title insurance industry and software solutions for electronic data interchange transactions.

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