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JULY-AUGUST 1998

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October 14-17, 1998



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# TITLE *News*

JULY•AUGUST 1998

Volume 77, Number 4

\$5 per issue (member rate) \$8 per issue (non-member rate)

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**On the cover:** Driven by the recent transformation of Times Square, New York City has become one of the hottest destinations on earth. ALTA members will become part of the fascination and excitement October 14-17 when the Association's 1998 Annual Convention is held in the Big Apple. For the details, please turn to page 10.

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*Title News* is published bi-monthly by the American Land Title Association, 1828 L Street, N.W., Suite 705, Washington, DC 20036.

U.S. and Canadian subscription rates are \$30 a year (member rate); \$48 a year (non-member rate). For subscription information, call 1-800-787-ALTA. Send address changes to: *Title News*, circulation manager, at the above stated address.

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

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# ALTA COMING EVENTS



## JULY

1998

- 24 Abstracter-Agent Research Subcommittee**  
Key West, FL
- 30 ALTA Finance and Planning Committees**  
Washington, DC

## AUGUST

- 3 Title Agents Seminar on Strategic Alliances**  
Chicago, IL
- 3-4 Accountants Meeting**  
San Francisco, CA
- 15 Title Industry Assurance Company Board**  
Manchester, VT
- 23-25 Reinsurance Committee**  
Lake Tahoe, NV

## SEPTEMBER

- 21-22 Title Insurance Agents Executive Conference**  
Las Vegas, NV

## OCTOBER

- 14-17 ALTA Annual Convention**  
New York Marriott Marquis, New York City

## NOVEMBER

- 2-3 Title Counsel**  
Santa Fe, NM
- 16 Title Reinsurance Company Board**  
San Francisco, CA

## FEBRUARY

1999

- 6 ALTA Board of Governors**  
Palm Beach, FL
- 6 Public Relations Committee**  
Orlando, FL
- 7-9 1999 ALTA Technology Forum & Expo**  
Disney's Coronado Springs Resort,  
Lake Buena Vista, FL
- 28-March 5 ALTA Land Title Institute Management Development Program**  
Houston Baptist University Campus,  
Houston, TX

## MARCH

- 29-31 ALTA Mid-Year Convention**  
Hotel Inter-Continental, New Orleans



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## A MESSAGE FROM THE PRESIDENT



The U.S. land titling business is undergoing dramatic change. To meet the needs of the lending community, members of the ALTA are integrating products and services necessary to close a real estate transaction into a one-stop shopping format. This bundling concept, by the title company overseeing the real estate transaction, is receiving widespread acceptance and proving to be efficient and cost effective. Our industry has invested heavily to bring these services together for the benefit of consumers. We are also improving turn times for delivery of our products in the face of explosive growth in the volume of real estate transactions processed.

As a by-product of processing a title, our industry is also keeping the public record accurate and up to date by identifying corrective measures that must be accomplished to properly transfer the title.

Having had the opportunity to study the real estate conveyancing process in multiple countries on three continents, I am confident that the U.S. title insurance industry facilitates one of the most efficient systems in the world.

We not only process real estate transactions efficiently to get them closed, but afford unparalleled protection in the event the customer experiences a claim. The title insurance company corrects the title problem and/or reimburses the consumer for any covered loss they may sustain.

In most countries, the risk of title failure is the owner's. Even where some government protection may exist, consumers must retain counsel to defend their titles and spend considerable time attempting recovery from the government of any loss they may have suffered.

The world is becoming a much smaller community. Businesses are expanding globally. Lenders overseas are buying interests in U.S. lenders. Our lenders are opening offices or purchasing existing foreign lending operations. It is important that the title industry replicate itself and create overseas, the kind of efficiencies and assurances on which U.S.-based lenders and owners of real estate have come to rely. If we do not meet the global needs of our customers, we could risk another less efficient system becoming the "standard" of the world, including the U.S.! It's clearly time to let our light shine and strut our stuff! Members of this Association have family ties in other countries and would have an interest in spreading our "know how" to those countries. This is our chance to expand business opportunities for ALTA members and, at the same time, do something that will be good for the world.

I recall one associate insurance commissioner marveling at the benefits achieved through the efforts of the U.S. title industry. He challenged us to help create systems to facilitate private ownership of homes in other countries. U.S. homeowners live peaceably with their neighbors, maintain their properties, support the government and pay taxes to support the welfare of their communities. The title industry is the key to supporting our real estate system making the American dream possible.

Today, interest in establishing secondary mortgage markets is blossoming around the world. Many countries have sent delegations seeking advice from Fannie Mae or Freddie Mac on how to run a secondary mortgage system. Unfortunately, the importance of title insurance to the secondary market process sometimes never surfaces.

We are at a unique time in history when ALTA members can be a part of exporting the American dream around the world. As a result, I have appointed a special International Development Committee chaired by Mark Winter, vice chair of the

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# Recent Court Decisions Shed Light on RESPA Section 8

By Sheldon E. Hochberg, Esquire

The last three years have seen a significant increase in the number of court decisions that have addressed the kickback and fee-splitting provisions of Section 8 of the Real Estate Settlement Procedures Act, as amended, 12 U.S.C. Section 2607 (1995). These decisions, many of which have been issued in suits challenging the payment of "yield spread premiums" by lenders to mortgage brokers, provide valuable insights to all settlement service providers on how the courts are interpreting Section 8 and HUD's RESPA

regulations. This article discusses these recent RESPA decisions and the lessons they may provide for the title insurance industry.

ker must pay discount points (which are charged to the borrower at closing). For "above par" loans, the lender pays the broker a "yield spread premium" (YSP).

In the last three years, a number of suits, mostly in the form of class actions, have been brought claiming that the payment of a YSP violates Section 8(a) and/or 8(b) of RESPA. Plaintiffs claim that the YSP violates Section 8(a) because it is a referral fee paid by the lender to the mortgage broker for the referral of the loan business, and violates Section 8(b) because it constitutes the payment of a portion or split of the fee for the loan that is not for services actually rendered by the mortgage broker or is in excess of the reasonable value of those services.

No court has yet reached a final decision on the merits after a trial. Rather, the decisions to date (other than those addressing class action issues) have been rendered on motions to dismiss and motions for summary judgment filed by the defendants. Motions to dismiss have been denied in a number of

these cases.<sup>1</sup> Similarly, while defendants were able to obtain summary judgment in two district court cases, not all defendants have been so fortunate.<sup>2</sup>

The two decisions granting summary judgment for the defendants merit brief discussion. In *Culpepper I*, the district court concluded that the YSP was not a referral fee, but a market-driven payment for the purchase of an asset – the loan. This decision, however, was reversed by the U.S. Court of Appeals for the Eleventh Circuit. *Culpepper v. Inland Mortgage Corp.* 132 F.3d 692 (11th Cir. 1998) ("*Culpepper II*"). The Eleventh Circuit concluded that the mortgage

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*As the cases construing Section 8 demonstrate, not all HUD interpretations will be deferred to by the courts.*

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regulations. This article discusses these recent RESPA decisions and the lessons they may provide for the title insurance industry.

## I. The Yield Spread Premium Decisions

The term, "yield spread premium," refers to payments mortgage lenders may give to mortgage brokers for certain "above-par" loans generated by the mortgage broker. This "price" a lender is willing to pay for a loan is expressed as a percentage of the loan amount and is influenced by factors such as the type of loan, the interest rate, and the "lock-in" period. For a loan of par value, the lender pays nothing to the mortgage broker. For a "below par" loan, the bro-



The author is a partner in the firm of Steptoe & Johnson, LLP, Washington, DC, and is a recognized expert on RESPA matters. He has counseled and represented

ALTA, state associations, and individual title insurers and agencies on RESPA, and has been a speaker at numerous bar and title industry seminars. In addition, he represented the title insurance industry in connection with consideration by Congress of the original RESPA legislation.

<sup>1</sup> See, e.g., *Hastings v. Fidelity Mortgage Decisions Corp.*, 984 F. Supp. 600 (N.D. Ill. 1997); *Moses v. Citicorp Mortgage, Inc.*, 982 F. Supp. 897 (E.D.N.Y. 1997); *Mentecki v. Saxon Mortgage, Inc.*, 1997 U.S. Dist. LEXIS 1197 (E.D. Va. Jan. 10, 1997); and *Martinez v. Weyerhaeuser Mortgage Co.*, 959 F. Supp. 1511 (S.D. Fla. 1996).

<sup>2</sup> Summary judgment for defendants was granted in *Barbosa v. Target Mortgage Corp.*, 968 F. Supp. 1548 (S.D. Fla. 1997) ("*Barbosa*") and *Culpepper v. Inland Mortgage Corp.*, 953 F. Supp. 367 (N.D. Ala. 1997) ("*Culpepper I*"), but denied in *DuBose v. First Security Savings Bank*, 974 F. Supp. 1426 (M.D. Ala. 1997). In addition, several decisions have denied class action status primarily on the ground that class action treatment would be inappropriate because the case-by-case analysis of the services rendered by the mortgage broker in each of the transactions involved in the class, and the appropriateness of the YSP as compensation for such services, would predominate over the common questions of law and fact. See, e.g., *Conomos v. Chase Manhattan Corp.*, 1998 WL 118154 (S.D.N.Y. March 17, 1998); *Hinton v. First American Mortgage*, 1998 WL 111668 (N.D. Ill. March 4, 1998).

broker could not be viewed as the "seller" of the loan because the transaction was table funded from the outset by the ultimate lender.

The court then concluded that the YSP was not a payment for services rendered for two reasons. First, the borrowers had paid a separate 1% origination fee to the mortgage broker for the services rendered to them. Second, in its response to interrogatories, the lender had admitted that the YSP was keyed to the interest rate on the loan, which, in the court's view, contradicted the theory that the YSP compensated the broker for services to the borrowers.

In *Barbosa*, the court considered a summary judgment motion filed by the ultimate lender in the transaction. After describing plaintiffs' "troubling tale" about how they had been told by the mortgage broker that he would obtain a loan for them at the lowest interest rate on the market, how they had paid over \$1,100 in origination, discount and processing fees to the mortgage broker, and how they discovered at closing that the broker had also received a \$2,500 yield spread payment from the lender after obtaining an above-par loan, the court nevertheless granted summary judgment for the defendant, observing that:

[h]owever compelling this story, if true, the Court does not hold a general license to ferret out alleged frauds and breaches of trust, and to punish the offenders. The instant motion presents a set of narrow questions arising under a discrete federal statute.<sup>3</sup>

Part II will now discuss the significant observations made in these and other recent decisions on RESPA issues of interest to ALTA members.

## II. SIGNIFICANT RESPA ISSUES IN RECENT DECISIONS

### A. Decisions Interpreting Section 8(a)

#### 1. Can the payment of market-determined fees violate Section 8(a)?

An issue that arises in Section 8(a) analysis is whether a payment can constitute a prohibited referral fee if the amount of the payment is determined by market forces and is consistent with comparable payments made by others.

Two district court decisions have concluded that, if all lenders are pay-

ing market-determined prices for above-par loans, "the offering of yield spread premiums will not influence a broker's choice of one lender rather than another . . . . A borrower can only claim that a yield spread premium influenced his broker's choice of lender if he or she can show that the premiums offered by that lender were substantially different from the prevailing market rate."<sup>4</sup>

This analysis, however, was rejected by the Eleventh Circuit in *Culpepper II*. In responding to the argument that market forces determined the size of YSPs, the court responded in unambiguous terms that "[t]his fact does not affect our analysis because the size of kickbacks and referral fees often is shaped by the value of the referred business. A market driven referral fee is still a referral fee prohibited by RESPA."<sup>5</sup>

The differing conclusions may be explained by the differing perceptions of the judges as to whether the YSP represented a payment (or "overpayment") for goods or services, or was simply a payment for the referral of the loan. The Eleventh Circuit panel in *Culpepper II* believed that the market value test was inapplicable because the YSP was payment "only for the referral of the loan." In other words, if a payment is simply for the referral of business, the fact that everybody is paying the "market rate" would not render the payment lawful under Section 8.

On the other hand, the district courts in *Hastings* and *Barbosa* believed that the YSP reflected payment for goods or services provided and, in that context, concluded that when a settlement service provider pays a market-determined price for goods or services, there can be no violation of Section 8.

#### 2. Does the payment of a higher fee for a service when the provider refers business violate Section 8(a)?

A recent Seventh Circuit decision has made clear that title companies should avoid basing the level of their payments for goods or services on whether the party providing the good or service is also referring business.

In *Lawyers Title Ins. Corp. v. Dearborn Title Corp.*,<sup>6</sup> the court considered an arrangement between a title company and a mortgage lender whereby the lender allowed the title company to use its premises to close transactions for a fee of \$100 if anyone else provided the mort-

gage financing, or a fee of \$300 if the financing in the transaction was provided by the lender. In affirming a district court decision that the \$200 rental "premium" constituted a violation of Section 8(a), the Eleventh Circuit concluded that:

[t]he cost of renting office space to Dearborn for conducting mortgage closings was no greater when United was the lender than when some other financial institution was. The only plausible explanation for the \$200 premium is that it was compensation to United for steering its borrowers to Dearborn to handle the closing.<sup>7</sup>

While the court recognized the possibility that the differential "conceivably" might be justified by other factors, it found that the only possible inference based on the record in the case was that the \$200 was a referral fee in violation of Section 8(a).

### B. The Scope and Meaning of Section 8(b)

There has been far more controversy regarding the scope and meaning of Section 8(b) of RESPA than Section 8(a). The full text of Section 8(b) is as follows:

No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually rendered.

Everyone agrees that Section 8(b) addresses payments other than for services actually rendered. Where there is disagreement, particularly between HUD and most of the courts that have looked at the issue, is whether Section

<sup>3</sup> 968 F. Supp. at 1553.

<sup>4</sup> *Hastings v. Fidelity Mortgage Decisions Corp.*, 984 F. Supp. 600, 612 (N.D. Ill. 1997). See also *Barbosa*, 968 F. Supp. at 1557-58.

<sup>5</sup> *Culpepper II*, 132 F.3d at 697.

<sup>6</sup> 118 F.3d 1157 (7th Cir. 1997).

<sup>7</sup> *Id.* at 1162.



8(b) only applies where a settlement service provider pays a portion of its fee to another person (e.g., to another settlement service provider) who has not rendered any real services in return, or whether Section 8(b) also applies where a settlement service provider charges the consumer for services not rendered but does not split its fee with another party.

### 1. HUD's expansive view of the scope of Section 8(b)

While HUD has not squarely addressed this issue through a duly promulgated regulation, it has, with increasing clarity, suggested that Section 8(b) applies to settlement charges paid by consumers where little or no services are provided even when the charge has not been divided between two parties.<sup>8</sup> For example, Section 3500.14(c) of HUD's RESPA regulations, as amended in 1992, provides:

A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable. Nor may the prohibitions of this part be avoided by creating an arrangement where the purchaser of services splits the fee.

Section 3500.14(g)(3) of the regulations (also adopted in 1992) goes on to state:

**Multiple services.** When a person in a position to refer settlement service business . . . receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person.

While it is not clear that these regulations are addressing charges to consumers (as will be discussed below, the only court to consider the issue has concluded that these provisions apply only in the context where a fee is split between two parties), there is less ambiguity in two other statements on this issue published by HUD.

In discussing the prohibition against referral fees in the information booklet required by RESPA Section 5, HUD states

"[i]t is also illegal for anyone to accept a fee or part of a fee for services if that person has not actually performed settlement services for the fee."<sup>9</sup> The clear implication is that accepting a fee from the consumer where services are not actually performed is a violation of Section 8(b).

HUD's clearest statement of its views on Section 8(b) was presented in the explanatory comments accompanying the release of its Statement of Policy 1996-1 on Computer Loan Origination Systems (CLOs).<sup>10</sup> In responding to the argument that Section 8(b) did not provide a legal basis for HUD's original proposed rule regulating the conditions under which borrowers could be asked to pay for CLO services, HUD made clear that:

- it disagreed with those court decisions that had concluded that Section 8(b) only applies where two parties split a settlement service fee;
- the interpretation of Section 8(b) as permitting a single settlement service provider to charge "unearned or excessive fees" so long as it does not share the fees with another party is "an unnecessarily restrictive interpretation of a statute designed to reduce unnecessary costs to consumers;" and
- Section 8(b) could apply in a number of contexts: (1) where one settlement service provider receives an unearned fee from another provider; (2) where a provider charges the consumer for third-party services and retains an unearned fee from the payment received; or (3) where a provider accepts a portion of a charge – "including 100% of the charge" – for other than services actually performed.<sup>11</sup>

The first context in which HUD says that Section 8(b) could apply is clearly contemplated by the language of the statute. As will be discussed next, although several recent court decisions have agreed that Section 8(b) can be applied in the second context – where one party "marks up" another provider's charges – reaching that result under the language of Section 8(b) is problematical.

Finally, HUD's position on the application of Section 8(b) in the third context – that Section 8(b) prohibits unearned or "excessive" fees charged by settlement service to consumers – has

far-reaching, and potentially disturbing, consequences. If correct, it could provide a basis for a challenge to any fee or charge that HUD or a consumer believes is not justified by the services rendered or is "excessive." However, as will be discussed shortly, virtually all of the courts that have considered the issue have concluded that the language of Section 8(b) will not support HUD's interpretation.

### 2. Does Section 8(b) apply to the "mark 1-up" of a third party's charge?

Two recent district court decisions have agreed with HUD that Section 8(b) is violated when a party, without providing any real services, "marks up" the charge of another settlement service provider and retains the difference.

In *Martinez v. Weyerhaeuser Mortgage Co.*, the court concluded that a lender who charged a borrower \$65 for courier fees, but was only able to produce receipts from couriers that totaled \$56.25, may have violated RESPA with regard to the "unaccounted for courier fee of \$8.75."<sup>12</sup> In *McCulloch v. Great Western Bank*, the court denied the bank's motion to dismiss a complaint alleging that the bank had violated Section 8(b) by charging the plaintiff borrower \$50 for a credit report when the credit reporting agency had invoiced the bank only \$13.50 for the report. In support of its decision, the court cited a HUD Web site of answers to frequently asked RESPA questions in which HUD stated that it would be a violation of Section 8(b) for a lender to collect an appraisal fee of

*continued on page 24*

<sup>8</sup> In a related context, "HUD's game of winking, nodding, and frowning" has been criticized as leaving the courts "with no clear administrative direction." *Barbosa*, 968 F. Supp. at 1555.

<sup>9</sup> U.S. Department of Housing and Urban Development, Office of Housing – Federal Housing Administration, "Buying Your Home: Settlement Costs and Helpful Information" (June 1997) at 13.

<sup>10</sup> 61 Fed. Reg. 29248-50 (June 7, 1996).

<sup>11</sup> 61 Fed. Reg. at 29249.

<sup>12</sup> 959 F. Supp. 1511, 1522 (S.D. Fla. 1996).





## At Convention New York City

*By Liza Trey  
ALTA Director of Meetings  
and Conferences*

**A**s President John F. Kennedy put it, New York is a verb, not a noun.

All the glitter, glamor and energy of the Big Apple will cast a memorable framework for title industry discussion and education October 14-17 when the 1998 ALTA Annual Convention unfolds at the Marriott Marquis Hotel on Times Square. Meet Me on Broadway, the theme for this year's gathering, is more than appropriate, with the headquarters hotel within blocks of major theaters. Cats, Les Miserables, The Lion King, off Broadway productions are only the beginning. Theater tickets can be ordered by calling APPLAUSE, 1 (800) 451-9930.

Driven by the recent transformation of Times Square, New York has become one of the hottest destinations on earth, ranking continually at the top as a convention and recreational site. There will be an opportunity to sample the city's myriad attractions through Convention tours and other leisure time activities described later in this article. Also described are other major points of interest.



# CONVENTION CALENDAR

## Monday, October 12

3:00 p.m.-5:00 p.m.

Convention Registration

## Tuesday, October 13

8:00 a.m.-6:00 p.m.

Convention Registration

9:00 a.m.-11:00 a.m.

Membership & Organization/Recruitment and Retention Committee Meetings

9:00 a.m.-5:00 p.m.

Land Title Systems Committee Meeting

9:00 a.m.-5:00 p.m.

Education Committee Meeting

9:00 a.m.-5:00 p.m.

Title Insurance Forms Committee Meeting

2:00 p.m.-4:00 p.m.

Government Affairs Committee Meeting

6:00 p.m.-9:00 p.m.

Public Relations Committee Meeting

## Wednesday, October 14

8:00 a.m.-7:00 p.m.

Convention Registration

9:00 a.m.-11:00 a.m.

Directory Rules Committee Meeting

9:00 a.m.- Noon

Abstracters & Title Insurance Agents Section Executive Committee Meeting

9:00 a.m.-Noon

(All Abstracter/Agent members are invited to attend)

9:00 a.m.-Noon

Underwriters Section Executive Committee Meeting

9:00 a.m.-5:00 p.m.

Title Insurance Forms Committee Meeting

9:00 a.m.-5:00 p.m.

Lender & Life Counsel Meeting

10:00 a.m.-Noon

Associate Member, Legal Division Seminar

11:00 a.m.-4:00 p.m.

Past President's Brunch

1:30 p.m.-3:00 p.m.

Affiliated Association Officer-Executive Brunch and Seminar

1:30 p.m.-5:00 p.m.

Indian Land Claims Committee Meeting

5:30 p.m.-6:30 p.m.

ALTA Board of Governors Meeting (meeting is open, unless it is in Executive Session)

6:30 p.m.-8:00 p.m.

First Time Convention Attendee Mixer

Ice Breaker Reception - Exhibits Open

## Thursday, October 15

7:30 a.m.-8:15 a.m.

TIPAC Board of Trustees and State Trustees Meeting and Breakfast

8:00 a.m.-1:30 p.m.

Exhibits Open/Continental Breakfast

8:00 a.m.-4:30 p.m.

Convention Registration

8:30 a.m.-11:30 a.m.

General Session

11:30 a.m.-Noon

Section Meetings

Noon-1:00 p.m.

Buffet Lunch in Exhibit Hall

12:15 p.m.-2:00 p.m.

TIPAC Luncheon

1:15 p.m.-4:30 p.m.

Exhibitor Information Sessions

2:00 p.m.-4:00 p.m.

TIAC Shareholders/Board of Directors Meeting

2:15 p.m.-5:00 p.m.

Agency Management Discussion Groups

## Friday, October 16

7:00 a.m.-8:15 a.m.

Abstracter/Agent Research Subcommittee Breakfast

7:00 a.m.-8:15 a.m.

SLRAC Meeting and Breakfast

8:00 a.m.-1:30 p.m.

Exhibits Open/Continental Breakfast

8:00 a.m.-4:30 p.m.

Convention Registration

8:15 a.m.-11:45 a.m.

Educational Sessions

9:45 a.m.-10:15 a.m.

Exhibitor Prize Drawings/Break

Noon-1:00 p.m.

Buffet Lunch in Exhibit Hall

1:15 p.m.-2:30 p.m.

Educational Session

3:00 p.m.-5:00 p.m.

Companion/Guest Tea

## Saturday, October 17

8:00 a.m.-Noon

Exhibits Open/Continental Breakfast

8:00 a.m.-2:30 p.m.

Convention Registration

8:30 a.m.-12:15 p.m.

General Session

1:30 p.m.-2:30 p.m.

Review of Abstracters - Agent Organizational, Operational, and Benefits Survey (invitation only)

6:30 p.m.

Reception/Final Banquet

For a comprehensive overview of the meeting, please see the accompanying calendar. Convention activity will be launched in earnest on Wednesday evening, October 14, when the Broadway Ballroom of the hotel is transformed into the streets of New York in an invitation to Celebrate the Boroughs, where those in attendance will experience the sites, tastes and sounds of the city. Broadway will be brought inside the Marriott Marquis for the closing Banquet Saturday night, where show time entertainment will be presented, along with music for dancing cheek to cheek.

Besides the informative General Sessions on Thursday and Saturday, Friday will be devoted to a far-reaching array of Educational Sessions, including those focused on workflow modeling and the reshaping of the title/closing business into a comprehensive real estate information industry through electronic commerce ordering and delivering of ancillary services. The Friday lineup also will offer a discussion centering on opportunities and survival skills for the title manager in addressing the future, along with a sample session from the upcoming new ALTA Land Title Institute Management Development Program to be held next March at Houston Baptist University.

The latest in technology available to the title industry will be showcased through Convention exhibits and accompanying information sessions and other events featuring leading exhibitors. Please see the Convention schedule on the preceding page for details.

Among the special attractions will be Friday afternoon's high tea at the T Salon T Emporium in the city's Flatiron district, which will offer an education on tea and its effect on modern society. Appearing as guest speaker during the event will be Marge Caldwell, who has shared her thoughts on the joys of living with a wide array of groups including homebuilder conventions, garden clubs, civic clubs, the Texas Credit Association and numerous other organizations. She has received the National Freedom Award for Individual Achievement.

### Buchanan, Cuomo Featured

Headliners who have accepted Convention speaking invitations at this writing include Patrick J. Buchanan, senior adviser to three former Presidents who is well known through his newspaper columns and television appearances, as well as former New York Governor Mario Cuomo.

Buchanan himself is a former Presidential candidate, running in 33 state primaries as he challenged President George Bush for the 1992 Republican Presidential nomination. His most recent published book is *The Great Betrayal: How American Sovereignty and Social Justice Are Being Sacrificed to the Gods of the Global Economy*.

After being elected New York governor in 1982, Mario Cuomo was reelected by record margins in 1986 and 1990. Beginning with his widely noted keynote address at the 1984 Democratic National Convention, he has helped define the progressive political landscape for more than a decade.

Other guest speaker luminaries who have accepted speaking invitations are Richard A. Smith, chairman and chief executive officer of Candant Corporation, world's largest franchiser of residential real estate brokerage offices, and Mitch Hill, senior vice president and chief financial officer, Disney Imagineering, who will describe his successful approach to city officials resulting in the now famous revitalization of Times Square. Highlighting the Title Industry Political Action Committee luncheon as guest commentator on Thursday will be Ken Bode, moderator of the PBS show, *Washington Week in Review*, who will handicap this year's Congressional elections.

Forward looking discussion topics that focus on the rapidly approaching challenges of the millennium accent the Convention's Educational Sessions scheduled for Friday, October 16. An example: *Building Your Business Beyond the Millennium: Will Your Title Company Be Around in the Next Century?*, a session to be moderated by Michael Hick.



A leisurely carriage ride enhances the enjoyment of Central Park, Manhattan's 843-acre Garden of Eden, a great place to exercise located in center city.



Adding stature to New York City's well deserved standing as a global leader in creative expression are the city's numerous art museums.



One of the city's landmarks in tradition and gracious hospitality is the internationally known Plaza Hotel, shown providing a backdrop for this sunny respite.



Emphasizing New York City's exciting and fascinating cultural mix are the street festivals adding their inimitable touch to the Lower East Side of Manhattan.

## Tours Widen Horizons

For an even wider perspective, these tours were being offered at press time, subject to a minimum registration of 40 per event. For more information on the tours, consult the preliminary program or call ALTA's Meetings Department, 1-800-787-ALTA.

*View Point on New York...All Around the Town.* A motor coach tour of city highlights including Times Square, Broadway, the garment district, Soho, City Hall and Wall Street. (Departs 1:00 p.m. Tuesday and Wednesday)

*Statue of Liberty and South Street Seaport.* Motor coach, then catch the ferry to the statue. (Departs 9:00 a.m. Wednesday)

*Rockefeller Mansion and Lunch.* Once the Rockefeller home, the fabulous mansion Kykuit is characterized by the luxury and splendor as incorporated by one of America's first millionaires. (Departs 8:30 a.m. Thursday)

*New York's Lower East Side: Bargains, Bagels, Bowery.* An exciting area for sightseeing, bargains, bagels and other bounty. (Departs 10:00 a.m. Thursday)

*Hyde Park with the FDR Home and Library; Lunch at the Culinary Institute of America.* First, a tour to the family home of Franklin and Eleanor Roosevelt. Then, on to lunch at the famous Culinary Institute of America, also in Hyde Park. (Departs 8:30 a.m. Friday)

*Stock Exchange and Federal Reserve Bank.* On the way to these financial fortresses, a look at some of the historic buildings in the Wall Street area. (Departs at 9:00 a.m. Friday)

*The Best of New York.* Begin with brunch at the incomparable Tavern on the Green overlooking Central Park. Then, to Fifth Avenue, site of the best shopping in the world. (Departs 9:30 a.m. Saturday)

*Luncheon Cruise Aboard A Yacht.* Enjoy a luxurious lunch cruising the Hudson River aboard a prestigious yacht. (Departs 10:00 a.m. Saturday)

## Marriott Reservations Contact

Hotel accommodations may be reserved by calling the Marriott Marquis at 1-800-843-4989, and identifying yourself as an ALTA Annual Convention attendee. Rates are \$165 single, \$177 double, plus 13.25 percent room tax and \$2 per room per night occupancy tax. The hotel cutoff date is September 14; a timely response is advised since the available room block is expected to sell out.

Convention registration fees have been set at \$435 for members and \$225 for companions and guests. ALTA members may call the Association meetings department toll free at 1-800-787-ALTA for updates, and to request registration forms.

Delta Airlines (1-800-221-1212) and American Airlines (1-800-433-1790) have been designated as official carriers for the Convention, and may be contacted regarding discounted fares. For Delta, please refer to star file #105321A; for American, star file #A4408UP. Seats are limited and certain restrictions may apply.

## A Century of Neighborhoods

One hundred years ago, 40 distinct municipalities merged to become what today is New York City. From its vast number of immigrants to artistic innovation to financial center to fashion capital, the city is a fascinating story borough by borough, neighborhood by neighborhood, block by block, building by building. No other American city represents our collective past, and future, so fully. Whether on a first visit or returning numerous times, those traveling to New York receive a lasting impression and an always present beckoning to return.

New York truly has it all. Hungry? Taste the best in the ethnic neighborhoods starting with Little Italy or Chinatown. Follow in the footsteps of F. Scott Fitzgerald and Humphrey Bogart, as well as numerous U.S. Presidents, by dining in one of the seven rooms at the "21" Club. Feast on classic American southern cooking at Gage & Tollner, a Brooklyn favorite since 1879. Looking for your basic 12 ounce pastrami on rye? Try Carnegies, a New York landmark for decades.

Jazz history? Take the A train to Harlem's Apollo Theater, launch site for the careers of Ella Fitzgerald, Billie Holiday, Duke Ellington, Aretha Franklin, Diana Ross and the Jackson 5.

Fusing it all together are the neighborhoods, which offer unlimited interest.

# Annual Convention Guest Speakers



**Patrick J. Buchanan**  
Presidential Adviser



**The Honorable  
Mario Cuomo**  
Former New York Governor



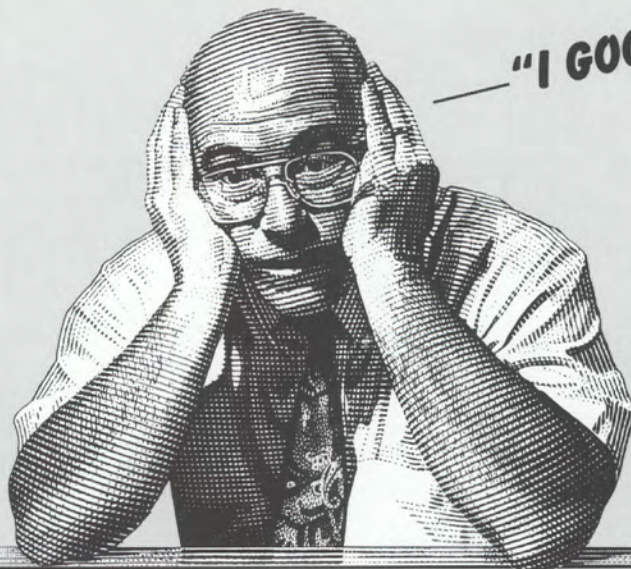
**Mitch Hill**  
Disney Imagineering



**Ken Bode**  
Washington Week in Review  
Moderator



**Michael Hick**  
Beyond the Millennium  
Moderator



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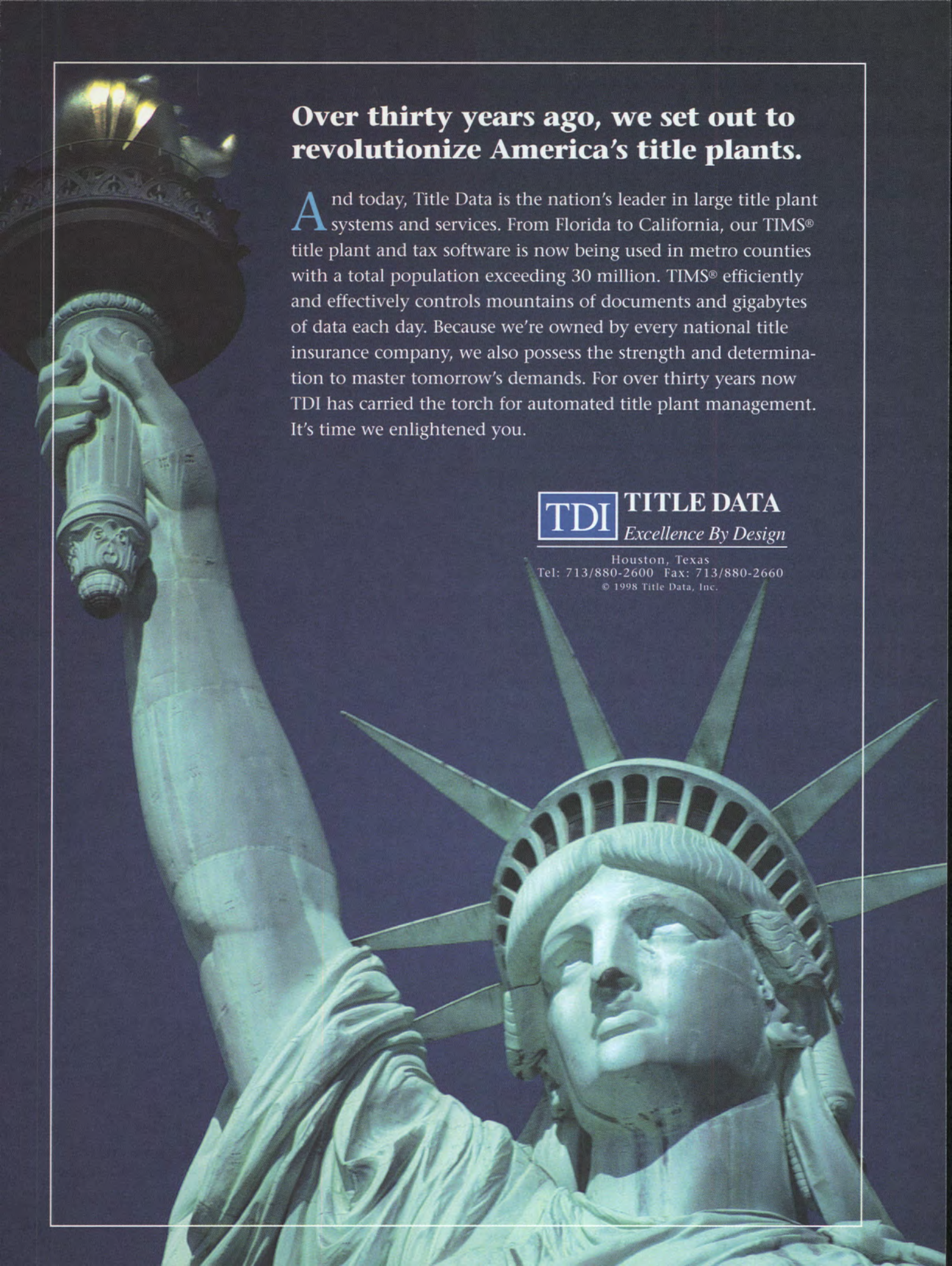
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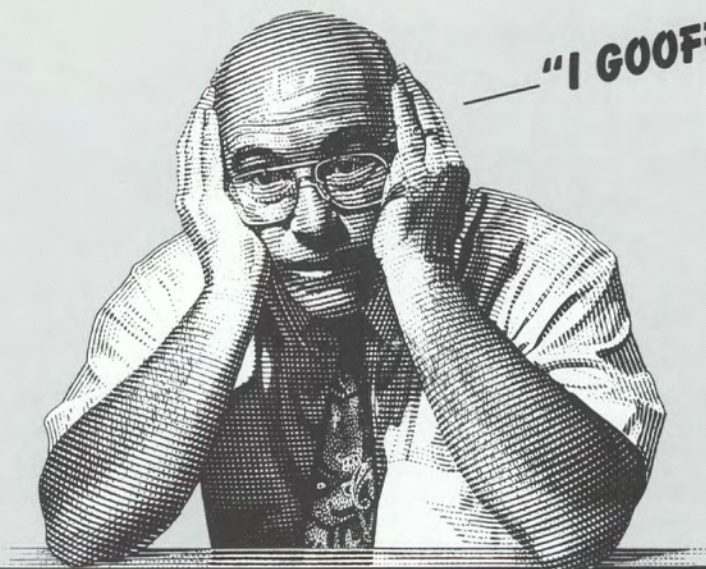
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- ▶ Title Opinions coverage
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# Proposed Far-Reaching RESPA/TILA Changes Could Adversely Impact Settlement System

By Ann vom Eigen  
ALTA Legislative Counsel

**A**LTA is beginning a concentrated effort to convince Congress, federal agencies and consumer organizations that far-reaching changes in RESPA and Truth-in-Lending as proposed by HUD and the Federal Reserve are a misdirected approach toward improving the quality and delivery of residential real estate settlement services.

At the heart of this controversy are proposals from HUD and the Federal Reserve that, if enacted, could dramatically change the present system for delivering settlement services and slash the price for title insurance and other related charges to a point where acceptable quality is threatened.

Receiving close attention from ALTA in particular are statutory changes recommended by the agencies for new alternative federal mortgage disclosures, and for a new exemption from RESPA's Section 8 anti-kickback provisions, all for the stated purpose of promoting consumer shopping and lowering the cost of settlement services.

The exemption would be designed to encourage so called "packaging" of settlement services by creditors and others, such as Realtors or title companies, who can put together a bundle of services needed to close a mortgage loan. At HUD and the Federal Reserve, the operative assumption is that advertising this bundle or "package" of settlement costs will bring pressure to lower the charges -- and that the proposed Section 8 exemption would allow lenders and others who "package" the services to seek volume discounts from those who provide them.

ALTA believes that "packaging" is already occurring without the anti-kickback exception. In the title industry, the proposed Section 8 exemption would be

seen as likely to drive down the price of title services -- but at a considerable detriment to home buyers and others who invest in real property.

These recommendations from HUD and the Federal Reserve reached Capitol Hill early in July, as a response to a Congressional directive for the agencies to seek simplification in improving mortgage disclosures required for consumers under the two major statutes regulating them -- RESPA and Truth-in-Lending. As this article heads for press, it already is late in the current session of Congress, with both Senate and House targeted for October adjournment and reconvening set for late January.

Both the Senate and House Banking Committees have heard testimony from HUD and the Federal Reserve, and may hear from affected industries and groups later this year. No legislation has been introduced to date, and Chairman Lauch Faircloth (R-NC) of the Senate Housing/Financial Institutions Subcommittee pointed out at his July hearings on the proposal that it will take time to assess the recommendations. That suggests a window remains for educating Congress and the agencies concerning their misperceptions about the title industry and the impact the reform proposal is likely to have on the real estate economy.

## Genesis of the Proposal

The reform proposal first was raised by a creditor interest group -- ironically named the Consumer Mortgage Coalition -- composed of five of the largest national mortgage lenders (Bank of America, Citibank, etc.). The proposal surfaced in a Mortgage Reform Working Group, in which ALTA has been partici-

pating, at public forums organized by the Federal Reserve Board and the Department of Housing and Urban Development, and at several ALTA meetings.

ALTA President Malcolm S. Morris, president and CEO of Stewart Title, presented the Association's perspective on RESPA/TILA Reform at Fannie Mae's National Advisory Council meeting, a body on which he serves as ALTA president. As he reported to the ALTA Government Affairs Committee at the Association's 1998 Mid-Year Convention, Art Ringwold, the Bank of America representative on the Fannie Mae Council, at that meeting stated the twofold purpose of this proposal -- to reduce lender liability under these disclosure schemes and to obtain volume discounts in settlement services. The new disclosure system and regulatory scheme initially proposed by this group, parts of which are recommended in the Federal Reserve and HUD report, would effectively create a new mortgage product advertised by large national lenders -- a guaranteed loan settlement cost -- and would negate gains that ALTA members have achieved in reaching the market and the consumer through technology. As the ALTA president pointed out, these national lenders have developed the proposals to obtain a reduction in title service prices, while increasing their own, and are seeking to lock in the point of contact with the consumer of real estate closing services to the lender.

HUD and the Federal Reserve, to a lesser extent, have endorsed the proposals because lender groups have contended that "packaging" would lower settlement costs for consumers. HUD Secretary Andrew Cuomo in transmitting the report to Congress, announced that it would save consumers millions annually in settlement costs.

The agencies jointly recommend:

- Revising the APR disclosure required under Truth in Lending to better reflect the overall cost of credit by defining the finance charge to include cost the consumer is required to pay to obtain the loan
- Requiring more firm settlement cost disclosures under RESPA through either guaranteed closing costs, or a revised good faith estimate, on which penalties would be imposed if estimates exceed a tolerance
- Revising and streamlining the timing requirements under TILA and RESPA to provide consumers with cost information earlier in the mortgage process, and
- Adding substantive protections to protect consumers against abusive lending practices.

This article focuses on the two agency proposals that most directly affect the title industry. First, under current disclosures, fees for title insurance, search, and examination, and many of the other services that the industry receives from either sellers or buyers, now are rolled into the "amount financed" disclosure under Truth in Lending. Under the new proposal, these charges would now be rolled into a different disclosure term, the finance charge. While this disclosure provision appears innocuous, it has a significant practical implication. The tolerance -- the amount by which the finance charge may be exceeded -- was adjusted in 1995 so that mischaracterization of minimal fees would not encourage class action litigation. Nevertheless, it can still be exceeded.

Consequently, if material TILA disclosures are not delivered or deemed to be inaccurate (because actual charges exceed the original disclosure), the consumers' right to rescind can be exercised *up to three years*. A lender may well see his lien on the property disappear -- the most extreme remedy for failure to comply with a disclosure, and an extremely powerful hammer on the creditor community. It is this enormous potential liability which has been driving lender's interest in the issue. This remedy has had a dramatic financial effect on the creditor community, as class actions can be filed for *up to three years* past the time the loan is originated.

The Federal Reserve and HUD recommend in the report that the finance charge be defined to include "the cost the consumer is required to pay to get the credit." Title services and other

"ancillary services" and closing fees could well be reflected in the finance charge. Further, additional services which can vary substantially based on the transaction, such as pest inspection and home warranty inspection, might conceivably be included. Consequently, if this new disclosure provision were enacted, there might well be pressure from creditors on closers to find a way to limit costs at settlement in order to stay within the tolerance. Taken to a logical end, could this mean money out of the closer's pocket to make up any shortfall to stay within the tolerance? Alternatively, would the closer have to cut service?

The second major change affecting the title industry described in the report has even more significant implications. The Board and HUD have proposed that settlement costs, now reflected in the "good faith estimate," be disclosed in two alternative ways to ensure better accuracy -- either as part of a guaranteed loan closing cost which would be exempt from Section 8, or under a revised good faith estimate, which would be subject to an accuracy standard (not detailed in the report) and penalties. The question is, what is the potential tradeoff between these two disclosures, and the potential market effects?

Under the proposed new guaranteed loan closing cost approach, creditors or others "packaging" settlement services would be granted an exemption from the anti-kickback provisions of RESPA to guarantee specific lender required settlement costs. In order to obtain the exemption, a "packager" must:

- Offer consumers a comprehensive package of the settlement services needed to close a loan,
- Provide the consumer with a simple prescribed disclosure that gives the guaranteed maximum price for the package of services through closing, and
- Disclose the rate and points offered to the consumer for the loan, with a guarantee that the rate and points will not increase, subject to prescribed conditions.

According to many of the nation's largest creditors, consumers do not shop for these settlement services, and are more interested in a "set" certain price. These creditors also have argued that consumers would be more likely to shop if they only had to compare a single price for "required" services. The Federal Reserve Board and HUD have

not addressed the possibility that the services "required" by different lenders could vary, so the guaranteed package of services could contain quite different services. According to the agencies, creditors would enter into volume based contracts with affiliated and other settlement service providers for services such as appraisals, title insurance, credit reports, or "lender required" attorney fees, and "package" all the services needed for the loan. The agencies state that "by doing so," they can obtain volume discounts that could be passed on to consumers. Under current law, these "discounts" could be considered violations of the anti-kickback provisions of RESPA.

The agencies envision a package of settlement services that would include all charges for creditor performed services, and third party fees for such items as surveys, appraisals, credit reports and mortgage broker services. Mortgage filing and recording fees might also be included. However, points and per diem interest, and other services which vary, e.g., hazard insurance, and other "optional services," might be excluded.

The report notes that a guaranteed close scheme raises two significant issues, which ALTA agrees are significant concerns. Namely, should closing costs be itemized, and should consumers be allowed to substitute service providers?

Itemization is not required, according to the report, because "the creditor may engage in average cost pricing, and if services were itemized, and then not ultimately used, consumers responsible for paying that guaranteed settlement cost might be irate, believing that, where services are not provided, that they are paying for services that were not received."

The agencies also note that, if the consumer had the choice to substitute service providers, then it would be necessary to disclose to the consumer which ones could be substituted, and the allocation of the package to that service. While this would, in effect, establish the price of the substitute service, creditors apparently argued successfully that allowing substitution could jeopardize their security interest. However, lenders and others who package would be allowed to charge a "packaging" fee.

The agencies report several negatives associated with the guaranteed

*continued on page 30*

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# Fannie Mae's Trillion Dollar Commitment Pays Dividends

**T**his year, Fannie Mae is celebrating the Fourth Anniversary of their Trillion Dollar Commitment, a program characterized by making one trillion dollars available in real estate financing that will place 10 million otherwise underserved families in homes of their own. As Vice Chair of Fannie Mae Jamie Gorelick advised ALTA members during her commentary at the Association's Mid-Year Convention earlier this year, the trillion dollar goal is far more than a commendable ambition. At mid-1998, Fannie Mae had provided over \$500 billion of the trillion in serving some six million families.

Vice Chair Gorelick expressed appreciation for the service of ALTA President Malcolm S. Morris as a member of the Fannie Mae National Advisory Council, and of ALTA Member John Cossar, who serves as a State Advisory Council member to the Fannie Mae Partnership Office in his home state of Mississippi. Their dedication toward helping with Fannie Mae activity to improve home ownership opportunities for the underserved across the nation is commendable, she said, and illustrates the vital partnership between Fannie Mae and ALTA in the housing community. Fannie Mae's state and local housing partnerships are an important element in arriving at a strategic vision for what might be done in a particular community, she added.

The Trillion Dollar Commitment includes opposition to discrimination, Gorelick said, noting that Fannie Mae last year provided \$25 billion in affordable housing to help more than 255,000 minority families. Fully 18.5 percent of Fannie Mae financing went to minority families last year, she commented. Minority homeownership is considered a key market growth area by Fannie Mae; last year, there was almost a 30 percent increase in minority home ownership

across the country while the rate among white families remained about the same.

Fannie Mae has used technology for reaching out to larger markets, Gorelick said, pointing out that the organization's web site experiences 55,000 hits per day. For the minority community, which often does not have similar access to technology, the organization has paid for connections to 17 local library systems, so individuals can use them in learning about homeownership.

Use of the organization's Desktop Underwriter automated underwriting system has increased dramatically, according to Gorelick, who said some 500

lenders will underwrite a million loans on it this year.

Among activities involving the title industry, Gorelick said Fannie Mae, at the request of the California Land Title Association, is involved in a task force to extend a legislative pilot program on electronic recording of mortgage documents, including mortgage deeds of trust and satisfaction lien releases. She pointed out that current state legislative authority allows local governments, California title insurers and Fannie Mae, to record images of these documents in

*continued on page 27*



Fannie Mae's Jamie Gorelick

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# Beyond Your Desktop - - The Year 2000 Watch

By Kelly Throckmorton

*ALTA Director of Information Systems and Technology*

**O**wners and managers of title operations all over the country are tackling the Year 2000 issue. Some have enlisted the assistance of professional consultants, while others have chosen to battle the bug themselves. Some, unfortunately, have chosen to ignore the problem altogether and take what may be the biggest business risk of their careers.

Many responsible companies have performed a software inventory and subsequent audit by contacting application manufacturers to obtain an upgrade or a Year 2000 certification or guarantee. Perhaps you have done this, too. Have you also contacted your hardware manufacturers to be sure your computers, modems, scanners and printers are compliant? What about your telephone system and security system? Are the elevators, temperature controls and fire safety systems in your building also compliant? If the Year 2000 isn't on your mind, it should be.

What could go wrong? Imagine it is January 3, 2000, the first Monday morning of the new millennium. For starters, you might arrive at your office, swipe your security card at the garage entrance or the front door - - and be ignored. Once you gain access to your building, try the elevator . . . good luck! After you struggle up the stairs, your phone and voice-mail system may have failed. Your computer password might be invalid due to programs that require periodic password changes and store password information in databases with 2-digit date fields. The validation program will look at that number, believe you haven't identified a new password since 1900 - - and lock you out of your computer system.

There are some standard steps if you decide to tackle the Year 2000 on your own. The first is an **Assessment of Human Resources and Awareness**. Are your staff members aware of the Year 2000 issue and how it might affect their lives personally and professionally? Do they understand the issue and its importance? Who in your company fully comprehends the potential problem and has the organizational skills to lead and manage an in-house Year 2000 audit? You may need to bring in a consultant at this point to help with education and organization or to actually proceed with an audit, because:

The next step is a complete **Inventory of Software & Data Resources** any of which may be affected by the rollover to a new millennium, coordinated with an **Inventory of Hardware Resources**. A hardware resources inventory should

extend beyond your computer system to include telephones, postal equipment, fax machines, and copiers. Inventory documents will include information such as: product name, model identifier, version number, serial number, purchase date, manufacturer contact information, and distributor contact information.

A **Facilities Inventory** is important for the safety and comfort of customers, staff members and business assets. A review of your physical workplace should extend to each and every aspect of your office and building environment. Your list may include building security, garage security, office/suite security, heating, cooling, elevators, escalators, fire alarms, sprinkler systems, kitchen appliances, break room machines, electric lines, and phone lines. Some companies run a **Year 2000 Contest** among employees and reward the staff member listing the largest number of software programs, hardware components, and facility items that might possibly be affected by the Year 2000 bug.

The company's **Year 2000 Strategic Plan** is your map for getting it all done in time. But how much time do you have? You may think you have until 11:59:59 on January 31, 1999, but will a problem crop up when the new federal government fiscal year begins next fall? Some experts believe that February 28/March 1, 1999, is the first crucial date because systems must be adjusted to allow for February 29, 2000, the first Leap Year in a new century year in 400 years. Don't even ask what those folks who follow the solar Julian Calendar think!

## On Your Own? Read On...

Standard steps if you decide to tackle the year 2000 on your own:

- Assessment of Human Resources and Awareness
- Inventory of Software and Data Resources
- Inventory of Hardware Resources
- Facilities Inventory
- Year 2000 Strategic Plan
- Year 2000 Guarantees and Testing

*continued on page 32*

# TECHNOLOGY *bytes*

## On The Road . . .

Since the conclusion of the ALTA Technology Forum & Expo, February 1-3 in Orlando, FL, and the ALTA Mid-Year Convention, March 15-18 in Washington, DC, technology-related events have been occurring all over the country that affect your business and your future. Here's what you might have missed:

### *MBA's National Technology in Mortgage Banking Conference, March 18-20, San Antonio, TX*

This annual meeting of technologists in the real estate and mortgage finance industry draws attendees and vendors from large lenders, title companies, the secondary market, service bureaus, and consulting firms. Speakers from industry giants like Intuit highlighted the conference.

### *ATIM, May 5-7, Huntington Beach, CA*

The Association of Title Information Managers (ATIM) met for the 14th time this year. This annual meeting is a terrific and well-received gathering of title plant owners and operators. All sessions take place in one room instead of break-out sessions, so the entire group is able to participate in every session. Underwriter and imaging panels were interactive and informative, as was the annual tour — this year of the Orange County and First American operations in nearby Santa Ana, CA.

### *MBA's Technology Work Group Meetings, May 11-15, Raleigh, NC*

This trimester meeting attracts technology professionals in lender organizations, title companies, and related businesses like tax, credit, and appraisal. In a workgroup atmosphere, interested parties gather to share electronic commerce solutions and to develop EDI transaction sets, business examples, and implementation guides. Emerging technologies and strategic implementation concepts are also addressed. Of particular interest in Raleigh was the ongoing development of a data dictionary for the mortgage finance industry. The data dictionary will define common terms like "name" and "address" and indicate how and where each is used in various EDI transaction sets in the mortgage finance process to assist in future EDI implementation and development.

### *ASCX12 Committee Trimester Meeting, June 1-5, Columbus, OH*

The American Standards Convention's X12 Committee meets three times each year, with the help of the Data Interchange Standards Association (DISA), the X12 secretariat. ALTA is a member of DISA and votes on the ballot package between trimester meetings. EDI transaction sets are developed, presented, challenged, and accepted for ballot during the week-long meeting. Attendees also work on EDI implementation guides.

During June's meeting, the first draft of EDI Transaction Set 245: Real Estate Tax Services was approved and forwarded to the technical assessment subcommittee by the Finance Subcommittee (X12-F). Such activities of X12-F often touch on the real estate and mortgage finance process and are of interest to the title insurance industry. In Columbus, work on the future of EDI architecture continued as technology professionals struggle to make certain that EDI survives and meets the challenges of interfacing with other financial data standards and new delivery options. Sparking interest in Columbus was the use of web-based tags to relate EDI data to formats like Extensible Markup Language (XML). Also discussed were Microsoft, Intuit, and Checkfree's Open Financial Exchange (OFX) and Integriion's Gold formats.

### *ALTA Land Title Systems Committee, June 8-9, San Diego, CA*

The Systems Committee met for two days in June and developed program ideas for the 1999 ALTA Technology Forum & Expo. Another project in development is a Technology Vendor Survey to be conducted this fall for publication in the January/February issue of *Title News*. An outside consultant has been retained to conduct the survey and compile the results. ALTA Members and vendor's customers will be able to refer to a published table of information about existing **and** beta products from responding vendors. ALTA intends to update the Survey annually and publish the results in conjunction with the timing of the ALTA Technology Forum & Expo. For more information on this survey or if your technology company would like to participate, please e-mail [kelly\\_throckmorton@alta.org](mailto:kelly_throckmorton@alta.org) or call 1-800-787-ALTA.

## What's On Your Mind?

**Quicker, Better, Cheaper.** This chant is being heard 'round the country and everyone is curious about how you're doing it. Has turnaround time decreased in your operation? Are you providing ancillary services or improved products and services? Have your customers demanded quicker, better, cheaper? If you've made changes to meet these challenges, *Title News* readers want to know how you did it. E-mail [kelly\\_throckmorton@alta.org](mailto:kelly_throckmorton@alta.org) with your idea for making good on the customer service promise during these ultra-busy times and we'll print selected tips in upcoming columns. If we print your tip, you'll receive a 10% discount on your registration to the 1999 ALTA Technology Forum & Expo!

**Electronic Commerce.** Between nothing and EDI, have you chosen nothing? Take the first step. Get on board with an e-mail address and try a little e-commerce today

by attaching that document to an e-mail instead of faxing or phoning. Here's something else you can try: the next time a customer needs directions to a closing, surf to Yahoo Maps (<http://maps.yahoo.com/py/maps.py>) and type in your company's address. When the map of your location appears, choose "driving directions" and type in your customer's starting point. Click on "get directions" and Voila! A customized map with step-by-step directions.

## FORUM & EXPO Happenings . . .

**Volunteers Make A Difference!** ALTA extends a very special thank-you to the committee members who served as Hosts during the 1998 Technology Forum & Expo. Members of the ALTA Land Title Systems and Education Committees were crucial to the success of the first ever meeting and, as a special reward, they will be your Hosts again in '99!! Members of the ALTA Public Relations Committee will join these hard-working volunteers next year.

**Your Ideas** are important to ALTA. Since the conclusion of the ALTA Technology Forum & Expo (see review in May/June *Title News*), staff and volunteers have been very busy discussing feedback and suggestions from attendees, vendors, leadership, and staff members as we prepare for the 1999 Technology Forum & Expo.

**Mark Your Calendar!** The 1999 ALTA Technology Forum & Expo is scheduled for February 7-9, 1999, at Disney's Coronado Springs Resort near Orlando, FL. The '99 F&E will kick off Sunday at 4:00 p.m. and run through Tuesday at 4:00 p.m. — be sure to stick around, because you won't want to miss the final General Session!

**Registration and Program** information for the 1999 ALTA Technology Forum & Expo will be arriving in your mailbox mid-October, during the ALTA Annual Convention in New York City. Didn't get information last year? Send your name, title, company, address, phone, fax, and e-mail to Kelly Throckmorton at ALTA Headquarters or e-mail [kelly\\_throckmorton@alta.org](mailto:kelly_throckmorton@alta.org).

**Expo Exhibitors** are already planning expanded activities and making their booth selections. Plan to be in Florida next February to talk with representatives from these companies and many others about how technology solutions can improve your company's performance and bottom line:

Advanced Micro Solutions  
CIM Services  
Digital Delivery, Inc.  
Elliptus  
First Banking Services  
First Data Systems, Inc.  
Landata Systems, Inc.  
Lincoln Data  
Screen Scan Systems  
SoftPro  
SMS  
Title Pac, Inc.

## Upcoming Events . . .

**MBA Technology Work Groups**  
September 14-18, Minneapolis, MN

**ASCX12 Trimester Meeting**  
October 4-9, Miami, FL

**ALTA Land Title Systems Committee**  
October 13, New York, NY

**ALTA Annual Convention**  
October 14-17, New York, NY

**MBA Annual Convention**  
October 18-21, Chicago, IL

**ALTA Land Title Systems Committee**  
December 7-8, Key West, FL

## Questions? Comments? Suggestions?

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



SECTION 8  
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\$200, pay \$175 to the appraiser, and collect the \$25 difference where services are not performed by the lender.<sup>13</sup>

On the other hand, the Seventh Circuit appears to have reached a contrary conclusion in *Durr v. Intercounty Title Co. of Illinois*,<sup>14</sup> where the court affirmed the dismissal of a complaint alleging that a title company had violated Section 8(b) by adding approximately \$8 to fees charged by the Cook County Recorder of Deeds for the recording of the deed and mortgage. Although the court's decision to deny the claim may have been influenced by its perception of the somewhat frivolous behavior of the plaintiff,<sup>15</sup> it nevertheless concluded that, while "RESPA is a broad statute, directed against many

things that increase the cost of real estate transactions' . . . under RESPA's express terms, this broad protection extends only over transactions where the defendant gave or received 'any portion, split, or percentage of any charge' to a third party."<sup>16</sup> In the court's view, the \$8 overcharge was not shared with anyone and, at most, was simply a windfall that the title company kept for itself.

While the Seventh Circuit's view that the amount of the mark up itself has to be shared with a third party is questionable,<sup>17</sup> the court's conclusion that the "express terms" of Section 8(b) do not apply where the defendant has given a portion of the fee to another person who *has* rendered services has merit. This can be seen in the following two examples.

Example 1: Consumer pays \$100 to X for a settlement service and

X pays \$25 of this fee to Y other than for services rendered.

Example 2: Consumer pays \$100 to X for a settlement service, X pays \$75 of this fee to Y for services actually rendered by Y, and retains the \$25 difference even though it provides no extra services for that amount.

Example 1 presents the case contemplated by the language of Section 8(b): a person has given, and another person has accepted, a portion, split or percentage of a settlement charge other than for services actually rendered.

In the "mark up" case presented in Example 2, however, the person receiving the portion, split or percentage (Y) *has* rendered services. It is X, the person who is paying the portion, split or percentage, who did not render any services. How, then, can a decision holding X liable be squared with the language of Section 8(b)? There are two alternative "theories," neither of which provides a compelling or comfortable approach.

First, one could take the view that it is Y that received the \$100 fee and that Y was actually splitting its \$100 fee with X where X was not rendering any services. The difficulty with this approach is that Y may never have even known that X had marked up its charge, much

<sup>13</sup> 1998 U.S. Dist. LEXIS 8226 (W.D. Wash. Feb. 10, 1998) at \*6. The page of the Web site cited by the court is <<http://www.hud.gov/fha/res/resindus.html>>. The main page for HUD's RESPA Web site is <[http://www.hud.gov/fha/res/respa\\_hm.html](http://www.hud.gov/fha/res/respa_hm.html)>.

<sup>14</sup> 14 F.3d 1183 (7th Cir.), *cert. denied*, 513 U.S. 811 (1994).

<sup>15</sup> The plaintiff, after discovering the overcharge, made no effort to clear up the discrepancy with the title company, but immediately filed a class action suit seeking recovery in an amount equal to three times all fees paid to the title company for recording, closing and title insurance.

<sup>16</sup> 14 F.3d at 1187, quoting *Mercado v. Calumet Fed. Sav. & Loan Ass'n*, 763 F.2d 269, 271 (7th Cir. 1985).

<sup>17</sup> The district court in *McCulloch* rejected the Seventh Circuit's reading of § 8(b) as unjustified because it appeared to require the existence of a fourth party (*i.e.*, a person with whom the party marking up a third party's charge would split the overcharge). *McCulloch*, 1998 U.S. Dist. LEXIS 8226 at \*7.

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less "paid" X anything out of its charge. Moreover, it seems awkward to conclude that only one party to an illegal fee-splitting arrangement (X and not the innocent Y) should be held liable.

The second approach would be to take the view that the person who is giving the illegal "portion, split or percentage" is the consumer. However, this would require a reading of Section 8(b) that would suggest that the consumer could be in violation of Section 8(b).

In short, while the practice of marking up another provider's charge may be the kind of practice that Section 8(b) *should* condemn, it is not clear how one squares such an interpretation with the actual language of Section 8(b). In any event, the fact that HUD and several courts have concluded that the mark up of another party's fees can violate Section 8(b) suggests that such practices should be avoided. Even if the company believes the mark up to be justified by additional services it has rendered, it may not be able to convince a court of that justification.

### 3. Does Section 8(b) apply when there has been no split of a settlement service charge between two parties?

As noted above, HUD has taken the position that a charge to a consumer for which no or nominal services are performed, or

*continued on page 26*

## Homeownership Rate Ties National Record

In the second quarter of this year, the nation's homeownership rate rose to 66 percent, tying the all-time record rate set in the third quarter of 1997, according to Housing and Urban Development Secretary Andrew Cuomo. The number of families owning their own home rose to 68.3 million -- highest in American history.

The nation's overall homeownership rate, measuring the percentage of families who own the homes they live in, increased slightly from 65.9 percent in the first quarter of 1998.

ALTA supports this Administration objective as a member of the National Partners in Homeownership, a voluntary group of 65 private and public real estate entities.



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which is "excessive," is an "unearned fee" and violates Section 8(b) even if the charge is not split between two parties.

This view, however, has been repeatedly rejected by the courts, which have generally held that Section 8(b) only applies to situations where two parties split the fee for a settlement service and does not apply to purported "overcharges" by a provider to a consumer.<sup>18</sup> It also appears to be in conflict with relevant legislative history.<sup>19</sup> One recent decision, *Willis v. Quality Mortgage USA, Inc.*,<sup>20</sup> is particularly noteworthy.

In *Willis* the court granted the defendant lender's motion to dismiss a complaint alleging that its charges to the plaintiff borrowers of a \$250 review appraisal fee, a \$200 document preparation fee, and an \$87 tax service contract, violated Section 8(b) in light of the fact that the plaintiffs had also paid a fee to their mortgage broker that they alleged covered the costs for such services. The plaintiffs position was that these charges violated Section 8(b) – even though they were not split with some third party – because (1) they were for unnecessary services or services not actually rendered, and (2) they were for services that were not "actual, necessary and distinct" from the primary services provided by Quality Mortgage.

In support of their first contention, plaintiffs claimed that the language in Section 3500.14(c) of the RESPA regulations – "[a] charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section" – expanded the scope of Section 8(b) so as to prohibit charges to the consumer for which no services are provided even if the charge is not split between two parties. The court rejected that interpretation, finding that "[t]he statute prohibits the splitting of fees unless a service is actually performed," and, when read in context, the above-quoted sentence does not "create an entirely new zone of proscribed conduct."<sup>21</sup> In short, the court concluded that "payments which are not split, and which are not in exchange for business referrals, do not violate Section [8]."

In support of their second contention, plaintiffs contended that the language of Section 3500.14(g) of the regu-

lations imposed a direct obligation on a settlement service provider not to charge the consumer for a service unless the service is "actual, necessary and distinct from the primary services provided by such person." Again, the court rejected this reading of the regulation:

As discussed above, HUD is empowered to interpret the statute, not to create new laws. It appears that the payment to which the regulation refers is a payment from a mortgage lender to a mortgage broker, or vice versa. It does not refer to a payment from the borrower to the broker.<sup>22</sup>

In short, by finding that these sentences in the regulations were intended by HUD to apply *only* to payments between a settlement service provider and a third person – not to payments by the consumer to the settlement service provider making the charge – the court was able to avoid a clear conflict between the regulations and the language of the statute.

Accordingly, while HUD may continue to take the position that Section 8(b) prohibits an "unearned" or "excessive" fee charged to a consumer, if current judicial precedent continues to be followed this interpretation will not be sustained by the courts.

#### 4. How a Section 8(b) analysis of reasonable compensation should be undertaken

The combined effect of Sections 8(b) and 8(c) of RESPA is that reasonable payments for goods or services made by one settlement service provider to another provider who is in a position to refer business are not unlawful under Section 8(b). How to determine whether a payment for goods or services is "reasonable" is a key question in such an analysis.

In *Barbosa*, the plaintiff argued that to determine whether the YSP constituted a reasonable payment for services rendered, the court should look to national averages as a "baseline" of reasonableness. The court rejected this approach, asserting that this would be tantamount to the court's setting legal maxima for the charges for settlement services – something that Congress did not intend in RESPA. "If Congress rejected a ratemaking role for itself and for HUD, it is inconceivable that it intended such a role for the federal judi-

ciary."<sup>23</sup> According to the court, whether a particular payment is reasonable "should not be determined by looking for some platonic form of reasonableness inherent in national averages," but by

looking to the processes that resulted in the payment of the particular fee. If arms-length bargaining in the mortgage marketplace set the payment for the broker's services, the payment is reasonable enough within the meaning of RESPA, whether or not plaintiffs can produce twenty omniscient experts who will swear that brokers in California and Maine charge thirty times less for similar services. RESPA sets processes, not prices.<sup>24</sup>

While the court is correct that what constitutes a "reasonable" payment should not be determined by national averages or other forms of surrogate "rate regulation," the validity of an "arm's-length" bargaining test is dependent on the "arm's length" nature of the relationship between the parties. In

<sup>18</sup> See, e.g., *Durr v. Intercounty Title Co. of Ill.*, 14 F.3d 1183 (7th Cir.), cert. denied, 513 U.S. 811 (1994); *Mercado v. Calumet Federal Sav. & Loan Ass'n*, 763 F.2d 269, 270 (7th Cir. 1985); *Barbosa v. Target Mortgage Corp.*, 968 F. Supp. 1548 (S.D. Fla. 1997); *Duggan v. Independent Mortgage Co.*, 670 F. Supp. 652 (E.D. Va. 1987).

<sup>19</sup> See Statement of Rep. Ben B. Blackburn, 120 CONG. REC. 29,442 (1974) ("The House Banking Committee report makes clear that this prohibition was intended to deal only with fee-splitting arrangements among participants in the settlement process"). Rep. Blackburn was one of the two main sponsors of RESPA in the House of Representatives.

The House Banking Committee report described § 8(b) as prohibiting "a person or company that renders a settlement service from giving or rebating any portion of the charge to any person except in return for services actually performed." H. R. Rep. 93-1177 at 7 (1974).

<sup>20</sup> 1998 U.S. Dist. LEXIS 7581 (M.D. Ala. May 12, 1998).

<sup>21</sup> *Id.* at 9-10.

<sup>22</sup> *Id.* at 14.

<sup>23</sup> *Barbosa*, 968 F. Supp. at 1562.

<sup>24</sup> *Id.* See also *Hastings v. Fidelity Mortgage Decisions Corp.*, 984 F. Supp. 600 (N.D. Ill. 1997) (applying *Barbosa's* approach).

situations involving the payment for goods or services by a settlement service provider to a party who also refers business, the negotiation on the price to be paid for the good or service may not always be viewed by a court as being at "arm's length." Accordingly, it may be prudent to base the price to be paid in such transactions on the market price that would prevail where the supplier of the good or service is not also a referrer of business.

### C. Other Section 8 Issues.

#### 1. Disclosure does not cure a Section 8 violation


In several of the cases, defendants have argued that the YSP cannot be a violation of Section 8 because HUD regulations recognize the existence of such payments and require them to be disclosed to borrowers in the Good Faith Estimates and in the HUD-1 Settlement Statement. The courts have uniformly rejected this argument.<sup>25</sup> Unless HUD has affirmatively determined that a payment is not a violation of Section 8, the fact that HUD's regulations may require the disclosure of the payment does not insulate it from Section 8 challenge.

#### 2. Does the borrower have to have paid the fee at issue in order to have standing to bring a Section 8 suit?

In at least two YSP cases, defendants have also tried to argue that the borrower lacks standing to bring a claim under RESPA because the ultimate lender, not the borrower, was the party paying the YSP. (Section 8(d) provides a cause of action only to "persons charged for the settlement service involved in the violation.") The courts have rejected this argument on the ground that it "ignores the underlying economic reality, recognized by HUD, that all fees and charges, whether directly or indirectly, are ultimately borne by the borrower."<sup>26</sup>

\*\*\*

In years past, anyone seeking official guidance on the proper interpretation of Section 8 would inevitably turn to the HUD regulations and informal staff interpretative letters for guidance. In the past three years, however, and with increasing frequency, such guidance is

being provided by the courts. As the cases construing Section 8(b) demonstrate, not all HUD interpretations will be deferred to by the courts. A HUD interpretation – even one intended to protect consumers – will not be sustained if it cannot be squared with the plain language of the statute. 

<sup>25</sup> See *Martinez*, 959 F. Supp. at 1522; *Mentecki v. Saxon Mortgage, Inc.*, 1997 U.S. Dist. LEXIS 1197 at \*\*10-12 (E.D. Va. 1997); *Moses v. Citicorp Mortgage, Inc.*, 982 F. Supp. 897, 901-02 (E.D. N.Y. 1997).

<sup>26</sup> *Mentecki v. Saxon Mortgage, Inc.*, 1997 U.S. Dist. LEXIS 1374 at \*5 (E.D. Va. 1997). See also *Barbosa*, 968 F. Supp. at 1556 ("Princeton [the lender] was charged in the short run, and plaintiffs in the long run").

FANNIE MAE  
continued from page 19


place of paper on the county land records. The task force, she said, is seeking to extend the sunset on this authority to 2002, and to allow more California counties to participate.

Gorelick noted that ALTA, in 1995, joined Fannie Mae in sponsoring a symposium on the Recording Standardization and Electronic Recording Act that created the partnership to legally and technically establish the pilot program in California.

Fannie Mae has joined with ALTA, Chicago Title Insurance Company, the Mortgage Bankers Association of America and the American Bar Association in supporting a task force focused on studying national recording standards to advance the use of technology in the real estate industry. Comprising the task force are members of the National Association of County Recorders and Clerks, the International Association of County Recorders, and election officials and treasurers. Gorelick said she considers it essential to explore the impact of changes on the industry to assess what kind of change will be most effective, and what it means to everyone involved.

Fannie Mae is working closely with the Texas Land Title Association, in close cooperation with Stewart Title Guaranty Company, to assess changes in title coverage resulting from a state constitutional amendment adopted last

year, which allows home equity lending.

Finally, Gorelick said she and ALTA President Morris have spoken with Mayor Archer of Detroit, to help him develop a 10-point neighborhood recovery plan that includes dealing with regulatory barriers and clearing titles. This includes teaming with Detroit title companies in developing creative approaches to insuring titles. 

PRESIDENT'S MESSAGE  
continued from page 5

Government Affairs Committee, to study the scope and direction of ALTA and determine if we should broaden the scope of the Association to encompass the global marketplace. It is my belief that we must raise the visibility of ALTA as the premier organization in the world when it comes to land titling issues. I would like to see other countries consult with ALTA on the real estate process, including introducing title assurances on mortgages sold on global secondary markets. The International Development Committee will study these opportunities and present their recommendations to the Board of Governors.

I have thoroughly enjoyed my four years moving through the chairs in this organization and having the opportunity to serve as your President. From you, I have gained a greater understanding of title issues and your concerns. I thank you for your valuable input. Becky and I are grateful for the warm hospitality and genuine friendship of the ALTA family. Each state convention gave us a treasure of new and wonderful friends. You have enriched and blessed our lives.

It will be our pleasure to host you at the American Land Title Association's Annual meeting in New York City October 13 through 17 at the fabulous Marriott Marquis Hotel in the heart of Times Square. Please make your convention plans now -- we'll be excited to see you there!

Sincerely,



Malcolm S. Morris

## NAMES IN THE NEWS

**E** Duane Ellis and Paul Carl Heinrich have been appointed executive vice president—operations and executive vice president—sales and marketing, for LandAmerica Financial Group's One Stop subsidiary, Richmond, VA. Effective September 30, 1998, Commonwealth Land Title Insurance Company's OneStop subsidiary will combine operations with Lawyers Title Insurance Corporation's SingleSource subsidiary under the LandAmerica OneStop banner. Previously, Ellis was executive vice president for the Lawyers Title subsidiary and Heinrich was senior vice president—sales and marketing for the Commonwealth subsidiary.

Elsewhere at LandAmerica, Keith A. Reynolds has been appointed senior vice president—internal audit.

Newly elected Chicago Title Insurance Company vice presidents are Linda Yoo, regional business unit controller, Seattle; Jeanne Flynn Martin, managing director, Chicago Title Cus-



Ellis



Reynolds



Martin



Brown



Heinrich



Yoo

tom Solutions, Irvine, CA, and Vince Cronkey, Chicago Title Credit Services, Inc., Kingston, NY. Mark Schoen has been named resident vice president and remains operations manager, Baton Rouge, LA, and Bob Ibler, resident vice president, has been named upper midwest manager, direct and agency operations.

Elected assistant vice presidents are Vivian Chatman and Denise Krueger

(both Chicago Title and Trust), Chicago; James Corbett (also Ticor Title and Security Union) and remains branch counsel, Newport News, VA; Bill Hagen (also to metro manager), Minneapolis/St. Paul; Claire Manning (remains underwriting counsel) and Betty Yeates (also to senior agency representative), both Columbia, SC; Paula Mazza (remains escrow specialist), Pittsburgh, and Michael Schlepner (also Ticor Title) remains assistant area counsel, Baltimore.

Elsewhere in the organization, Steve Brown, area counsel, Illinois region for Ticor Title with offices in Chicago, has also been named to that position for Security Union. Scott Mrozek has been appointed national agency technology manager, Chicago. Bruce Buckley now

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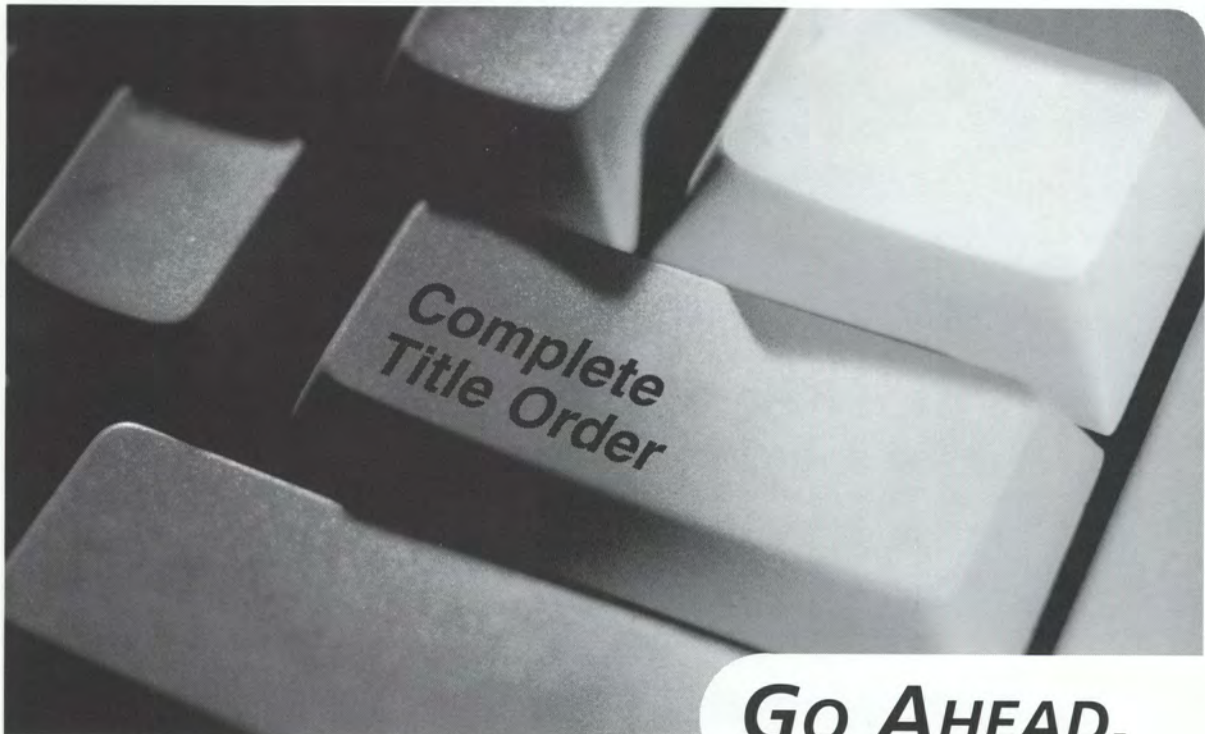


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is Arizona escrow manager; **Bob Fortney** has been named Maricopa County manager, Phoenix, and **Jim King** and **Bud Walsh** have been appointed Market Center managers, respectively, Stanislaus County (remains in that position, Merced County), and for Tulare and Kings Counties, all CA. **Brooks Barthel** has been appointed San Joaquin County Market Center Manager, Stockton, CA. **Joel Heaton** now is manager, Centralized Processing Facility, Fresno, Tulare, Kings and Madera Counties.

**Ruth A. Dillingham** has been named to the position of special counsel and lender liaison for Lenders Advantage, a division of First American Title Insurance Company based in Boston.

**Daniel J. Hunter** has been elected vice president and chief administrative officer, Ohio Bar Title Insurance Company, Columbus, OH. **Theodore A. Breznai** has joined the company as vice president. Newly elected assistant vice presidents are **Lydia J. Bellknapp**, **Cynthia M. Given**, **Michael L. Johnson** and **Wayne E. Southward**.

Conestoga Title Insurance Co., Lancaster, PA, has announced the promotion of **Taamar A. Herbert** and **John M. Nikolaus** to senior vice president, and the appointment of **John N. Papoutsis** as Commercial Real Estate Division manager.

Fidelity National Title Insurance

Company, Riverhead, NY, has appointed **Edward R. Hines**, former chief deputy, Suffolk County clerk, as an assistant vice president.

T. A. Title Insurance Company, Media, PA, has named **Chris D. Galligan** chief financial officer; **Janeane Aube** marketing director and **Thomas F. Donovan** regional sales representative.

Security Abstract and Title Co., Inc., Wichita, KS, has elected **Craig Burns**, **Glenn Edwards** and **Jennifer L. Weast** senior vice presidents. All are veteran employees of the company.

Senior management team changes at Elliptus Software Solutions, Inc., Houston, include the appointment **H. John Oechle** as chief executive officer; **Michael D. Petersen** as senior vice president of product development and chief technology officer, and **Steve G. Shubick** as chief marketing officer and senior vice president. Also, **Ken S. Kelly** now is senior vice president of support services and **Maurice C. Stokes** is senior vice president and chief financial and administrative officer.

RESPA/TILA  
continued from page 18

loan closing costs, primarily the concern that smaller, unaffiliated institutions and other settlement service providers might not be able to arrange packages and compete in a guaranteed cost environment. However, the agencies believe that allowing these lenders to provide a more accurate good faith estimate would allow them to compete, while still providing the consumer with good faith information.

### Revised Good Faith Estimate

The second alternative to increase consumer certainty would involve a less drastic change to current disclosures. Currently, the good faith estimate cost disclosures must show a reasonable relationship to the actual charges that are incurred, and some creditors are more accurate than others. However, as there is no liability if a creditor is inaccurate, many are smaller than actual settlement costs by a significant amount. Similar to the scheme now provided under TILA, a "more accurate GFE" could be required, where costs could be limited to only certain categories of costs within the lender's control. For example, if a consumer wanted to substitute a service provider, an increased cost in that service would not count against the creditor's initial quote. The report does not specify a specific tolerance, but notes that a potential penalty could be set as a flat fee or a percentage difference from the initial to actual costs. While there would be a minimal change from the current system, there would be no relief from Section 8 liability -- a strong disincentive to use this approach.

### Potential Consequences

ALTA can identify three major potential effects of the guaranteed loan closing cost proposal that would alter the service delivery system. It could well affect (1) the price and quality of title services, (2) title industry access to the customer, and, eventually, (3) the service delivery system as it could precipitate an evolution to a few, national service providers of both credit and settlement services. These projections are based on the following assumption. Lenders that "package" guaranteed loan closing costs will undoubtedly, if they obtain an exemption from the anti-kick-back provision, seek "volume discounts" in fees and services. These vol-

ume discounts will result in less revenue to the title industry, and will lead to pressures to decrease service.

Second, the title industry's access to the customer has improved to allow more direct marketing. A recent Gallup poll shows that almost 50 percent of consumers now personally shop for such settlement services as owner's title insurance. Further, the Board, in its "Economic Analysis of Packaging," states that "for particular items within the package, . . . , for the bank to serve as an intermediary may be less efficient than for the consumer to transact directly with the ancillary service provider." For example, interacting directly with the title insurance providers may be more efficient, particularly because title insurance services are now offered over the Internet, giving consumers low cost access to a wide range of choices.

However, access to consumers may well be effectively denied under this new scheme. Consumers shopping for mortgage credit will actually purchase settlement services in the loan product. Packaging of loan settlement services can limit consumer choice where a consumer believes mortgage credit would be unavailable if the provider's package was not used, and under the HUD scenario, substitution is prohibited.

"Blind" packages discourage comparison shopping. The report envisions at least one alternative which effectively denies the consumer information about the specific services, providers, and prices that make up the settlement package. Consequently, consumers cannot compare apples to apples.

The national delivery system described above would be more likely to evolve and exacerbate present consolidation in the lending industry. If the more reliable good faith estimate option is not attractive to creditors, the guaranteed loan closing cost could well become just one more part of the mortgage product. Under the proposed regime, substitution of services is impossible. Further, as these national lenders are likely to negotiate national contracts, some type of membership in a national network may be necessary in order to get into the package at all.

#### **Next Steps**

Besides the Congressional education effort, where ALTA will be seeking industry assistance, the Association also will participate in the Mortgage Reform Working Group, where we will continue

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to raise concerns that will focus on the practical transactional considerations raised by the recommendations made in the report. And ALTA will continue the task initiated by the members of the Association who participated in the Mid-Year Convention in Washington, DC and the many visits that ALTA Board and Government Affairs Committee members made to the federal agencies last spring to educate their members of Congress about the problems associated with these recommendations.

We hope we can rely on you to help. This is the beginning of a long legislative process. According to the Congressional Research Service, the research arm of Congress, it takes an average five years for a bill to become a law.

As yet, there is no legislation. We have a long way to go. If you would like to obtain a copy of the report, or locate it on the Federal Reserve Web page, or if you have comments, please contact Ann vom Eigen at 800-787-ALTA. 

*YEAR 2000*  
*continued from page 21*

Your **Year 2000 Strategic Plan** probably will begin with completing inventories, contacting hardware and software distributors and manufacturers. Coordination of updates, upgrades, and data conversions, and testing will surely be scheduled as necessary. Meeting with your building staff may also be a key priority - especially if you own the building and have tenants depending on you! Coordinating manufacturers, consultants, and deadlines with your Year 2000 manager or team is time-consuming and cumbersome, but the work will pay off once it is clear that your business is ready for the new millennium.

**Year 2000 Guarantees and Testing** are tricky to provide and sometimes difficult to obtain. A consultant may be most useful during this phase, but manufacturer updates, upgrades, and data conversions can handle the problem and provide the guarantees you require.

As you can see, there's more to the Year 2000 than meets the eye. It is unlikely that any single vendor or resource can provide you with all the answers you need. After contacting the

entities responsible for your software, hardware, communications, and facility components, you may still be left wondering how you'll fare on New Year's Day 2000. If a professional consultant isn't in your future, these resources may lead you in the right direction:

### **Non-Fiction Works**

Bourne, Kelly C.: [Year 2000 Solutions for Dummies \(For Dummies\)](#)

Chapman, Robert B.: [Practical Methods for Your Year 2000 Problem : The Lowest Cost Solution](#)

Cleenewerch, Lawrence, and Jacobs, Pamela D.: [Meltdown 2000: 25 Things You Must Know to Protect Yourself and Your Computer](#)

De Jager, Peter, and Bergeon, Richard: [Managing '00 : Surviving the Year 2000 Computing Crisis](#)

Feiler, Jesse: [Finding and Fixing Your Year 2000 Problem : A Guide for Small Businesses and Organizations](#)

Hayes, Ian S. and Ulrich, William M.: [The Year 2000 Software Crisis : The Continuing Challenge](#)  
Hyatt, Michael S.: [The Millennium Bug : How to Survive the Coming Chaos](#)

Jones, Capers: [The Year 2000 Software Problem : Quantifying the Costs and Assessing the Consequences](#)

Lefkon, Dick (Editor): [Year 2000 : Best Practices for Y2K Millennium Computing](#)

McDermott, Patrick: [Solving the Year 2000 Crisis](#)

Murray, Jerome T. and Marilyn: [The Year 2000 Computing Crisis : A Millennium Date Conversion Plan](#)

Ragland, Bryce: [The Year 2000 Problem Solver : A Five-Step Disaster Prevention Plan](#)

Yourdon, Edward and Jennifer: [Time Bomb 2000 : What the Year 2000 Computer Crisis Means to You!](#)

Zetlin, Minda: [The Computer Time Bomb : How to Keep the Century Date Change from Killing Your Organization](#)

### **Fiction**

Jason Kelly's [Y2K — It's Already Too Late](#), the only novel we could find about the Year 2000, is great summer reading for thriller fans. Viewers of the X-Files will also enjoy this one.

### **World Wide Web**

<http://www.bog.frb.fed.us/y2k/> The Federal Reserve Board's Year 2000 page

<http://2000.jbaworld.com> Starting point for

Year 2000 information, sponsored by JBA International

<http://www.2k-times.com/y2k.htm> A Year 2000 on-line newspaper

<http://millennia-bcs.com/casframe.htm> The Cassandra Project, a non-profit grassroots organization advocating planning and preparedness for the Year 2000

<http://www.y2k.com/> Legal and management information on the Year 2000

<http://www.y2knews.com/> News magazine and information source for the Year 2000

<http://www.everything2000.com/> The Everything 2000 page includes broad-appeal news and information on the year 2000

<http://www.year2000.com> For news, vendors, and links to other Year 2000 sites

<http://it2000.com/> The National Bulletin Board for the Year 2000

<http://www.sun.com/y2000/> Sponsored by Sun Microsystems

<http://www.tickticktick.com/> Sponsored by 2000AD, Inc., publisher of Tick, Tick, Tick . . . The Newsletter for Millennium Management <http://www.y2ktimebomb.com/> Sponsored by Westergaard. Year 2000 analysis and list serve.

<http://www.software.ibm.com/year2000>  
Sponsored by IBM

<http://ww1.digital.com/year2000/>  
Sponsored by Digital Equipment Corp.

### **For Fun and a Few Laughs**


<http://www.zdnet.com/wsources/topfive/t5111797.html> Amusing Unforeseen Consequences of the "Millennium Bug"

<http://www.leonardsloan.com/about/y2k/index.htm> The Year 2000 Fun Page

<http://www.garynorth.com/y2k/> Dr. North takes the historian's perspective on the Year 2000 and the likely impact on our society - not for the faint-hearted.

<http://www.ringwood.com/Y2K/> The Millennium Meltdown Clock helps you determine exactly how much time you have left to resolve your system's Year 2000 issues.

### **Finally**

Try to take the Year 2000 seriously, but not too seriously. Making sure you and your business are in good shape to succeed and serve your customers professionally is always a concern, but the Year 2000 makes it crucial. Whatever you do, make certain you can enjoy New Year's Eve 1999! 

## MARKETPLACE

Rates for situations wanted or help wanted are \$80 for first 50 words, \$1 for each additional word, 130 words maximum (per insertion rate drops to \$70 for first 50 words, \$1 for each additional word, for three or more consecutive placements). For sale or wanted to buy ads have a rate of \$250 for 50 words, \$1 for each additional word, 130 words maximum (per insertion rate drops to \$225 for 50 words and \$1 for each additional word for three or more consecutive placements). Placing a box around an ad cost an extra \$20 per insertion for help wanted or situations wanted, \$50 per insertion for sale or wanted to buy. Blind box service available upon request.

Those desiring to place classified advertising in Marketplace, send ad copy and check made payable to American Land Title Association to **Title News Marketplace**, American Land Title Association, Suite 705, 1828 L Street, N.W., Washington, D.C. 20036. Responses to classified placements should be sent to same address unless otherwise specified in ad copy. Made-up examples are shown below to provide an idea of style.

### Help Wanted

**EXECUTIVE VICE PRESIDENT, TITLE COMPANY.** We are a large national financial corporation seeking an executive vice president to head up the operations of our nationwide title company subsidiary. As director of the senior management team, you will be responsible for strategic planning, financial reporting and leading this rapidly growing enterprise into the 21<sup>st</sup> century.

The preferred candidate will have extensive title and escrow experience, with knowledge of the mortgage industry and successful management experience of increasing responsibility. Candidates will live in, or be willing to relocate to, the Dallas, Texas, area.

We offer an attractive compensation and benefits package. To be considered for this exceptional opportunity, please send resume, including salary history, to: Dept. EVP/DMN, P. O. Box 7478, Thousand Oaks, CA 91369-7478. EOE

**ABSTRACTERS WANTED NATIONWIDE** for current owner searches, tax searches, owner verifications, mortgage and assignment searches. Join our network. Call Arlene at 1-888-941-1234.

**RESUMES** are currently being accepted for the position of county manager of a large title agency operation in eastern Washington. Minimum of 5 years related experience is required, as well as a solid understanding of the business, in-depth problem solving abilities and exemplary communication skills. Excellent salary and benefits package, as well as consideration for relocation expense. Qualified applicants should respond to President, **Marketplace** Box J-132.

## TITLE NEWS ADVERTISERS

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Title Agents of America . . . . .	page 20
Title Data . . . . .	page 15
TitlePac . . . . .	page 16

## Burroughs Formerly Led PLTA, NJLTA

Word has been received of the death of Richard Burroughs, 82, Bryn Mawr, PA, former president of the Pennsylvania and New Jersey Land Title Associations, and of the National Title Underwriters Association, who died there from heart failure.

Among his industry honors was being named PLTA's Distinguished Titleman of the Year.

He was a retired senior vice

president for Title Insurance Corporation of Pennsylvania, and had served as an Army first sergeant in the Pacific Theater during World War II.

Survivors include his wife of 58 years, Kathryn D. Richter Burroughs.

The family suggests memorial contributions to American Heart Association, 625 W. Ridge Pike, Suite A-100, Conshohocken, PA 19428.

## 1998 AFFILIATED ASSOCIATION CONVENTIONS

### August

6-8 **Idaho**, The Coeur'd'Alene, Couer'd'Alene, ID

6-8 **Montana**, Best Western Kwa Taq Nuk Resort, Polson, MT

13-15 **Indiana**, Brown County Inn, Nashville, IN

13-15 **Minnesota**, Regal Hotel, Minneapolis, MN

13-16 **North Carolina**, Sheraton Atlantic Beach, Atlantic Beach, NC

20-22 **Kansas**, Hyatt Regency, Wichita, KS

20-22 **Wyoming**, Saratoga Inn, Saratoga, WY

27-30 **New York**, Royal York Hotel, Toronto, Canada

### September

10-12 **Missouri**, Holiday Inn, Cape Girardeau, MO

17-19 **North Dakota**, Holiday Inn, Bismarck, ND

17-19 **Wisconsin**, Concourse Hotel, Madison, WI

18-20 **Dixie**, Brasstown Valley Resort, Young Harris, GA

20-22 **Ohio**, Akron West Hilton, Akron, OH

23-25 **Nebraska**, Regency Inn (formerly Holiday Inn), Kearney, NE


24-27 **Washington**, Rosario Resort - Orcas Islands de San Juan, East Sound, WA

### November

3-7 **Florida**, Buena Vista Palace, Buena Vista, FL

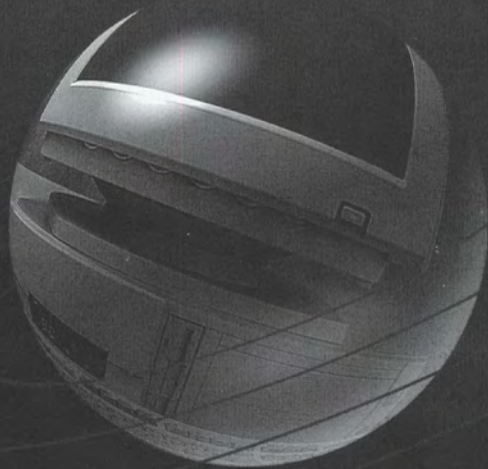
### December

3-4 **Louisiana**, Chateau Sonesta Hotel, New Orleans, LA



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