

TITLE News



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On the Cover: The ALTA Technology Forum & Expo at The Mirage in Las Vegas next February can give you the tools you need to survive and thrive in the changing title business today. A competitive advantage in technology could be the success strategy you've been looking for. Come find out all there is to know about technology in the title insurance world, including unparalleled educational tracks, general session speakers, and technology vendors.

FEATURES

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By Parnell Black, MBA, CPA, CVA

In our rapidly changing industry, where competitors are here one day and gone (or acquired) the next, how does a reasonable executive figure out just where (and how) to steer the ship? Parnell Black from the National Association of Certified Valuation Analysts has some interesting insights on opening up your mind and affecting change in your business.

10 Grassroots Lobbying: A Powerful Partnership

*By Ann vom Eigen
and Charles Frohman*

As legislative battles continue to impact the future of the title insurance industry, the single most powerful tools we have are the "voices from home." In this article, ALTA Government Affairs staff outline the "how-to" for establishing a successful grassroots organization and the benefits that go along with it.

19 Alien Invasion: Using Today's Technology to Fight Off the Competition

Aside from the fact that in today's market, you're never really sure who your competitors are, the fact of the matter is that you need to be on the cutting edge of technology in order to even be in the game. Log onto the ALTA website or take the low-tech approach and read this article to find out how you can hold off the aliens, make the world safe for title insurance, and have a great time in Las Vegas, all at the ALTA Tech Forum 2000!

26 Changes to the Fair Credit Reporting Act Pose Problems for Title Companies

By Sheldon E. Hochberg

In addition to 1996 changes in the Act, recent opinions by staff at the Federal Trade Commission have changed the legal landscape in this area. All title companies that use third parties to provide, verify, or evaluate any kind of information on current or prospective employees must assess their risk under these new regulations. Also of significance, agents are defined as "employees" under these new rules.

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ALTA COMING EVENTS



1999

October

6-9 ALTA Annual Convention
Colorado Springs, CO

November

7-9 Title Counsel Meeting
Key West, FL

13-16 TRC Board Meeting
San Francisco, CA

December

6-7 Systems Committee
Las Vegas, NV

2000

February

13-15 Tech Forum 2000
Las Vegas, NV

**27- March 3 Land Title
Institute Management
Development Program**
Houston, TX

October

18-21 ALTA Annual Convention
Kamuela, Hawaii

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A MESSAGE FROM THE ABTRACTER-AGENT CHAIR



If there is a theme running through the state conventions that I have attended this year, it is CHANGE.

Change is also a continuing theme at ALTA, and ALTA has been working diligently to help members affect change in the industry. It seems that we have finally passed the talking stage industry-wide and are in the throes of implementation. The talk and implementation stages of change are a continuous cycle. It seems that the title industry is no different than any other industry which is in the process of change. We have to be told that things are going to change — and told over and over—until we believe it and make the changes. I prefer to say “make the change” rather

than react to change.

By the time this goes to print, we may know if there is a federally legislated change in the industry which allows national banks to sell and underwrite title insurance. ALTA policy prefers that there be no such federal mandate and that the marketplace dictate what changes are necessary to the industry, but we must work within the system. The threat of this particular change strikes fear into the heart of the independent agent and, I suspect, each underwriter. But, this threat of change is really no different than any other threat of change that has occurred through time in the title industry. Any threat of change creates the same reaction in terms of fear of the unknown. How will these new business relationships work? Will there still be a role for the independent agent to play? Who will do the work that the title industry does that we know that no one else wants to do — at least the work that no one wants to pay for?

Dr. Steve Byrum, in speaking to the LTI Management Development Program in Houston last March, told participants that change needed to be embraced and that only through taking control and being proactive about change will we feel better about the process. THAT CHANGE IS A NATURAL PART OF THE PROCESS OF OUR BUSINESS AND PERSONAL LIVES. And that each of us has the innate ability to change and to affect change. We learned at that program in Houston that there are many tools to aid in change. ALTA helps to provide many of those tools. The education programs such as the Management Development Program which are developed by the Land Title Institute are tools. The ALTA Technology Forum and Expo, the work of the Systems Committee, and the web site of ALTA are all tools. The grassroots efforts from members through the urging of ALTA's legislative counsel, Ann vom Eigen, and our grassroots director, Charlie Frohman is a tool. Ann's lobbying on the hill is a tool. Our TIPAC is a tool. The liaison work by staff with various agencies which affect our industry is a tool. Committee work in the various areas is a tool. The ability to meet together at conventions and conferences is a tool. The work of Rich McCarthy and the research committees is a tool. The new meeting next April of the Abstractor-Agent Section is a new tool. All of these “tools” help us to understand the direction from which the demand for change comes, help us to learn what change is necessary, and help us to have the POWER to affect the change. That ability to be proactive and affect the change is what makes us deal with change in a better way.

Change is always a present reality and a future promise. How we handle the demand for change and how we plan for future changes makes the difference in whether we are proactive toward change or reactive to change. Our chances to survive change are great if we are proactive. Being proactive makes our chance for success even greater. Membership in ALTA is a good start for being proactive. Take advantage of all that ALTA offers, support ALTA programs, become proactive on the political front, and learn all that you can. Your business and the entire industry may undergo change, even dramatic change. But if you are prepared and informed, you can survive. And not only survive, you can prosper.

Candice Detring

Thinking Outside The Box: Creative Business Planning Strategies

By Parnell Black, MBA, CPA, CVA

Tunnel Vision

What does thinking outside the box mean to you? Believe me, if you haven't thought about it — you should. Because being successful in this day and age requires we constantly re-evaluate, re-engineer, re-group, re-establish, re-visit, re-structure, re-direct, re-..., re-.... The dynamics one deals with in business today, I contend, are far more complicated than 50, 25 and even 5 years ago. Technology that affects the way we work and communicate is changing at an astronomical pace; competition is around every corner; costs are skyrocketing; good people are getting harder to find; we need specialists who do not exist; there just isn't enough time in a day; and the baby's crying at home. How can one possibly keep pace?

Frankly, I don't have an answer to this question. I wish I did. One thing I do know is what this pace can lead to. That is tunnel vision. Tunnel vision is the way we look at the world when we're going through the motions, taking things one day-at-a-time, living from paycheck to paycheck, keeping our head above water, hanging on by a thread, and keeping up with the Jones's.

Knowing Your Destination

Often, in an attempt to avoid stagnation and be proactive, individuals and organizations make plans for the future. They address strategy, competition, product mix, marketing channels, staffing needs, pricing, costs, budgets, resources, industry dynamics, implementation, research and development, systems, funding, cash flows, etc., etc. Planning for the future is a very important activity. All businesses should periodically take the time to plot their future

course. In my opinion, planning is as vital to business success as piloting a plane is to landing. Without it, you won't reach your destination. The problem with business planning is very few businesses know their destination. Why is this so difficult? Because most planning doesn't take us outside the box. What's the box? It's going through the motions, focusing on the same company dynamics, and same initiatives from year-to-year, e.g.,


1. Cut costs
2. Add distribution channels
3. Hire more staff
4. Increase bank lines
5. Diversify product mix
6. Buy more computers
7. Be more competitive
8. Reduce prices — increase volume

Parnell Black, MBA, CPA, CVA is the President/CEO and co-founder of the National Association of Certified Valuation Analysts (NACVA). Mr. Black's current responsibilities include overseeing the operations and activities of NACVA, a 4,000 plus member association of primarily CPAs who provide business valuation and consulting services. Mr. Black received a dual Bachelor of Science degree, in accounting and finance, from the University of Utah in 1979. He later performed his graduate studies at the University of Utah and received his Master of Business Administration (MBA) in 1981. He obtained his Certified Public Accounting (CPA) license in 1982 and his Certified Valuation analyst (CVA) designation in 1991.

9. Create strategic alliances
10. Improve customer service

All of these good intentions are meaningless if we don't quantify how and where each one of these goals will be accomplished, in effect:

1. Which costs can we cut, and what consequences will result?
2. Who will be our most likely distribution channels, and what resources will be required to support them?
3. Where is staff needed and do existing job descriptions have to be revised to accommodate these new positions?
4. What banks are most likely to increase lines from existing levels, and what might have to be given in exchange?
5. What new products do we want to offer; how will we promote them; and what product support will be required?
6. Who needs upgrades to their computer, and what advantage will this provide them and the company?
7. How specifically are we going to beat the competition, and at what cost?
8. Where do we reduce prices — across the board or with loss leaders? How, why and how much will this increase

A close-up photograph of a hand holding a silver chess piece, possibly a king or queen, against a dark background. The lighting highlights the texture of the hand and the metallic sheen of the piece.

S m a r t

M o v e s

We've **made** several. You only need to **make** one.

There are many of us who can remember when the title game didn't change much, decade to decade. That was then. This is now. Today, every move you make had better be a good one. Recently, we made some moves. A new name—Smart Title Solutions (formerly TRW Title Information Services or more recently, Experian). The release of a new, Windows™-based, single-desktop information system. So your people can now, from a single screen, call up chains of title, tax records, images, maps and other information. Separately or simultaneously. On a single property or a long list of properties. We've expanded geographic coverage into 35 major counties. Around Seattle, Detroit, Chicago, Oklahoma City, Orlando and Ft. Lauderdale. And into additional counties in Northern and Central California and Arizona. We're on track to expand even more over the next three to five years, when we expect to achieve integrated coverage in more than 200 counties, ensuring our long-held position as the nation's leading provider of title information. Now it's your move. Make it a smart one. Call us to find out more.

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volumes or will it just reduce revenue?

9. Who are the best strategic alliances; what do they have to offer; and what do we have they want?
10. How and where can we improve customer service; what controls need to be put in place and how do we measure the effectiveness?

Inside the Box Thinking

One thing that becomes apparent looking at this list is in business we have many boxes to think outside of. A business itself is not just one box. This point can best be illustrated by dissecting one initiative on the above list — “Improve Customer Service.” I find this is one of the most common areas of focus businesses and experts talk about when planning for the future. And rightfully so. Customer service is key to success for almost every organization, barring monopolistic industries and socialistic societies. Tom Peters author of *In Search of Excellence* states “There are three sustaining factors in all great, growing and profitable companies: 1) Superior Quality; 2) Superior Service; and, 3) Constant Innovation.” And, I believe it requires constant innovation to stay thinking outside the box.

What is the Box?

There are many ways businesses can improve customer service, but more often than not, initiatives become mere “lip service.” Converting initiatives to action is the challenge, and that, I contend, requires thinking outside the box. What are some typical inside the box policies and initiatives companies make to improve customer service?

1. Take a follow-up customer satisfaction survey.
2. Assign customers a personal representative from the company.
3. Greet everyone with a smile.
4. Send customers a thank you card or gift.
5. Don't make customers wait on the phone.
6. Use a phone messaging system that allows customers

7. Communicate with newsletters and company publications.
8. Monitor phone calls to insure service representatives are handling customers politely and competently.

Customer service is key to success for almost every organization, barring monopolistic industries and socialistic societies.

9. Set-up a problems resolution department.
10. Be nice at all times.
11. Find out what it is the customer really wants – “how can we make them happy?”
12. Don't ever argue.
13. Accept product returns without question.
14. Remember: The customer is always right.
15. Call customers to remind them of your meeting a day in advance.
16. Say “thank you.”
17. Respect your customers time.
18. Come prepared.
19. Make customers at ease with loose conversation; tell some jokes, or talk about the weather.
20. Know your product; be prepared to address all questions.
21. Improve delivery time, shorten turnaround — “we want a turnkey operation.”
22. Take clients to lunch.
23. Hand out peanuts for snacks.
24. Offer self-service — “people like that.”
25. Keep customer's water glass full.
26. Serve coffee.

You get the idea.

All of these initiatives have merit, some more so depending on the organization. But what most lack is an action plan — a way to get the initiative off the ground. Superior customer service also requires commitment. Commitment

must come from those who will implement the policies and initiatives that comprise an organization's definition of superior customer service.

Getting Outside the Box

Two months ago, I read an article titled “Earning My Mouse Ears — A Disney Approach to Customer Loyalty,” written by Ronald J. Baker, CPA and published by Harcourt Brace. It really caught my attention. Actually, the article was given to me by one of our Department Directors six months ago because she thought I would find it enlightening. For some reason, I didn't read it — maybe the title made me think it would be childish. It wasn't until the article was once again put on my desk that I read it, and was I ever impressed. What I learned was Disney Corp. truly understands customer service, and attributes this to their long-term success. There is too much in the article to repeat here, but one thing I learned: Superior Customer Service comes from “exceeding customer's expectations.” Not just occasionally, but as a rule. Disney defines three levels of customer service:

One — Passive which is satisfaction based, i.e., never taking the customer relationship beyond fulfilling a particular need. This is where 75% of businesses fall.

Two — Active which is performance based, i.e., soliciting customer feedback to better identify their needs and wants. This is where 20% of businesses fall.

Three — Interactive which is commitment based, i.e., creating a partnership with customers to help **anticipate wants and needs**. To achieve this, an organization must create a process for obtaining continuous feedback from customers on how you're doing and on what they want and expect. This is where 5% of businesses fall. The article also defines this as world-class service.

I spent considerable time contemplating how we at NACVA can be a world-

class service providers. This might sound idealistic, but I believe a worthy goal. In the area of customer service, I rank NACVA as exceptional. But, I also believe, as Disney does, world-class service requires constant work, anticipating wants and needs, and keeping customer satisfaction always in the forefront of your employee's minds. It is not possible to implement a few "New Policies" and expect them to work, or to be remembered. So, to improve customer service where do you start – where did I start?

Policies Don't Cut It

Initially, I asked every employee at NACVA to read the article for group discussion at our monthly company meeting. Frankly, when the meeting started I had no idea where I was going with this topic. I knew, however, I wanted everyone to be conscientious of customer service, and I wanted a mechanism to take NACVA's customer service to a higher level. It was important this mechanism lead to a process for keeping us on a path of constant improvement.

It was also imperative the employees participate in this discussion because any new policies would be ineffective without their commitment. This was another challenge – getting their commitment. Throughout the discussions it became apparent each employee saw "improving customer service" from a different perspective. I realized this perspective was based on their own strengths and weaknesses in the area of customer service, and their unique role in this organization. At this point, it was starkly clear no policy, or policies, could possibly address all the areas needing change or improvement. The changes required were different for each employee, and this included me.

Raising the Bar

During the meeting various individuals talked about what they could do to improve their own level of customer service, i.e., "raise the bar." This thought process lead to the decision to meet again in two weeks when each employee would share with the group an area in customer service they felt they were weak, and what action they could take to raise the bar. Each employee was asked to identify only one area needing

improvement and one change (action) in how they functioned to get the desired result: improvement in customer service. I felt we would be more successful in reaching our goals if each of us set our sights on one initiative. However, with 24 employees, the overall effect would be tremendous. Essentially, we were establishing 24 policies to improve customer service.

This thought process lead to the decision to meet again in two weeks when each employee would share with the group an area in customer service they felt they were weak, and what action they could take to raise the bar.

A Win/Win Proposition

The second meeting was quite revealing — everyone was open and honest. The meeting was also very powerful. In my opinion, it's the best one we have ever had at Headquarters. Each employee was prepared, and each had a clear idea how they were going to improve. Most importantly, what came out of the meeting was a commitment to change. This is because each one of us is doing something that we want to do; can do; helps us perform better; makes us feel better about ourselves; helps our members feel even better about us; and, something that will help NACVA continue to grow and prosper benefiting us as individuals and our members by ensuring the continued health of the Association.

Commitments To Be Remembered

To help each of us remember our commitment, each employee came up with an action step put into a short phrase (an "Affirmation"), to be posted in their office as a daily reminder of their commitment and action to effect change. Headquarters produced individualized plaques for each employee with their Affirmation on top; listed in smaller in-

scription on the bottom of the plaque are the other employee's Affirmations as a reminder everyone is committed to the process. What's most interesting? If you string all the Affirmations together it sounds like a policy statement for Superior Customer Service that could be adopted by any organization. I believe the process we went through was extremely effective, and anticipate we will go through this process on a regular basis. This is our first real step towards being a world-class service provider and with some more "outside the box thinking," I believe some day we can say "NACVA is a world-class service organization."

Speaking on a few points made earlier, which I hope are now more clear, in planning for the future you need to address all the "boxes" housed by the business. In each case, you have got to know your destination. Improving customer service is one box. **World-class service is our destination.**

In parting, I will leave you with a few of our Affirmations — the employee's names have been omitted to protect the innocent (mine does not appear here):

- Repeat the names of everyone I meet.
- Relate to every customer on a personal level.
- Return all calls within 4 hours.
- I can create solutions.
- Problems are not obstacles.
- Treat everyone like the CEO.
- Treat customers like they are standing in front of me.
- Don't point a finger – lend a hand.
- Go the extra mile with a smile.
- Be driven by what is important, not by what is urgent. 🐼

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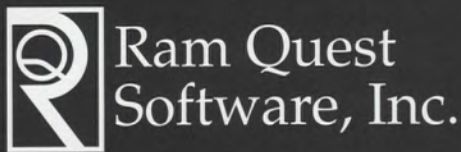


TAKING YOU TO THE TOP

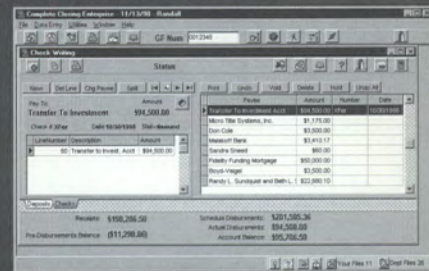
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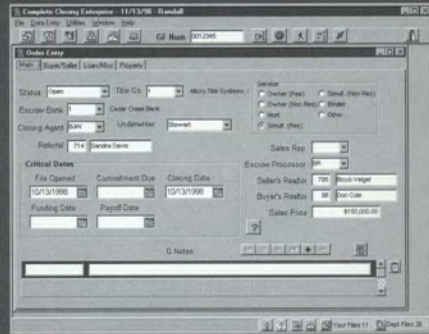
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GRASSROOTS LOBBYING: A POWERFUL PARTNERSHIP

*By Ann vom Eigen and
Charles Frohman,
ALTA Government Affairs*

The title industry is facing a dramatically changing world. ALTA is attempting to help its membership meet the new millennium by providing information that you can use to do strategic planning for your business. In most instances, you can use that information to make your own judgment about the best way to proceed. However, in approaching the issues that we face in Congress, we at ALTA recognize that we don't just advise you. Rather, we are in a partnership, in which the lobbyist and TIPAC (the political action committee) play a supporting role to you, the individual members of the industry who are not only the key but absolutely essential to any successful effort to achieve industry goals in Congress.

This partnership has several features. Our attorneys can represent you by filing briefs and appearing in Court on your behalf. We can sue Federal agencies as well as the banks that are entering the business without playing by the rules. We can file rule comments and appear before Federal agencies to explain the potential effects of Government proposals on our industry. In addition, we can represent you before Congress by appearing on your behalf, and lobbying members of Congress and the agencies. We also fly in the ALTA Leadership to visit with members of Congress. Ideally, when the ALTA lobbyist visits Congressional offices, we hope to follow up on a constituent contact to that member. This follow-up approach is one of our hopes because, in this phase of our industry partnership, we are invariably asked one key question by a member of Congress. We are **always** asked: "How does this proposal affect my constituents?"

Our best response is to be able to say, "You have heard from 'Jim', in your district, and we hope that you can understand our position on this issue."

Right now we're facing political threats. These are real political threats, and they aren't going away. The banking industry will continue to seek ways

to develop fee income from our industry. Federal agencies will continue to come up with broad proposals, such as requirements for us to report payments to attorneys to the IRS that have unintended consequences that inadvertently affect our industry. These threats will always be there, but they can be moderated through this partnership.

Individuals can really serve an invaluable role. Keep your own business intact and your margins up by getting involved with ALTA's grassroots program. Getting involved can mean as little as a phone call to your representative or a \$100 contribution to TIPAC. But if our industry is to be successful, we need to do more. You need to MEET your member of Congress and discuss current issues.

Uneven playing fields & unfair regulations

The major threat ALTA is facing right now is competition from bank-associated title companies that may not have to comply with the same state regulations independent companies do because their national bank regulator, the Office of the Comptroller of the Currency (OCC), has preempted and will preempt again state regulations. Second, if Congress acts on proposed RESPA Reforms which provide a new exemption to Section 8, the antikick-back provision of RESPA, our industry may be forced to give substantial price discounts to lenders or even be excluded completely from "bundled" closing cost packages developed by lenders. However, we can play a role in this process, attempting to ensure that we still are a part of the real estate industry, as we work together to educate members of Congress.

We have outlined several easy steps that you can undertake to help build a relationship with a member of Congress—the ultimate goal:

(1) Make sure you are in the ALTA grassroots e-mail database and network

Step one is giving ALTA your e-mail address. ALTA will be moving into e-mail as the primary means of commu-



nication to its membership, and in particular in the Government Affairs arena. Only by receiving and reading the numerous e-mails you can expect to receive from ALTA's Government Affairs Department can you have the chance to do enough reading on the issues to know what to do once you're asked. And ask we will!

(2) You can send one fax & e-mail, can't you?

Step two is to do the faxing and e-mailing immediately once you receive ALTA's sample letters. Congressional offices do not bring an issue to the attention of their boss until they receive 50 letters on an issue. Only by receiving letters from yourself, your coworkers, your fellow professionals will a staff person handling your issue even raise it with their boss. Send the faxes and e-mails, and then get every title professional you know to do the same. Most important, get title agents and underwriters who live in the districts of relevant members of Congress in your state to do the faxing and e-mailing. If an important Banking Committee member does not hear from any title professionals in his or her district, the member of Congress will properly believe the issue does not resonate "back home."

Speaking of volume, we should mention a good example: Marilyn Mannarino, president, Tower City Title Agency, Inc., Ohio (see photo), with her employees sent almost 100 letters from her own branch offices in northern Ohio to relevant members of Congress.

(3) Members and their staff need to hear from you

Step three of ALTA's grassroots plan is for you to follow up your faxes and e-mails with telephone calls, both to the member of Congress **and** his or her relevant staff person. As former congressional aides, ALTA Government Affairs staff can attest to the fact that staff are almost as important as and sometimes more important than the Representative or Senator. In your phone calls with members and staff, keep in mind that they are as normal as anyone else you might contact for a sale (that's right, you're "selling" our issues). Don't be too complex, yet don't oversimplify the issue — just tell the truth and be practical. Let them know how an issue impacts their congressional district, both good and bad.



ALTA member Marilyn Mannarino, President of Tower City Title Agency in Ohio, breaks ground on Habitat for Humanity project. House Banking Committee member Bob Ney (R-OH), to her right, lends a hand.



Greg Kosin, President of Greater Illinois Title Company and Illinois State Trustee lobbies House Banking Committee Rep. Luis Gutierrez (D-IL) on H.R. 10 and RESPA packaging.

Don't get rolled: Close the deal!

Warning: Don't forget to "close the deal." This industry is involved in transactional work every single day. We want to make sure that these deals close too. There are a thousand ways to say "no." Often, we tell members ourselves that if they don't say "Yes, I will help," it's really a "no." Too often we have nice conversations with members of Congress or their staff but afterwards fail to remember whether we got a "commitment" or not. If a member or staff says "we'll take care of 'ya" or "we'll look into it," that's a signal that they appreciate the education you provided, but you need to follow up in order to get a commitment. You also need to follow-up to make sure that commitment is fulfilled.

(4) Look them in the eye, face-to-face

Step four is the face-to-face meeting you need to schedule with your Representatives and Senators, either in one of their district offices or in your home office. Telephone calls and faxes are good, basic grassroots, but meeting with the member takes your relationship to a whole new level. After you've met with a member a few times over a few years, a first-name based relationship will commence, and you will have

become a true "grassroots advocate." Don't forget to send a thank you note. Also, feel free to follow up with more phone calls, particularly if you did not get a commitment of support out of the Rep. or Senator. Representative Frank Pallone(D-N.J.) has spoken up for our industry many times on Financial Services Modernization Legislation. This year, when ALTA was putting on a full court press to preserve the affiliation amendment in H.R. 10, Maureen Crowley Unsinn, assistant vice president and manager, Fidelity National Title Insurance Company, New Jersey, had this to say about a meeting she scheduled with House Commerce Committee Representative Frank Pallone, Jr.:

"I feel the face-to-face meeting was definitely beneficial to our cause. ALTA has worked with Rep. Pallone for years. However, after the reinforcement provided by the meeting, Rep. Pallone offered the "explicit state action before parity" amendment. While the amendment was not agreed to, the Commerce Committee did add report language listing several laws with which bank title agencies would have to comply."

Don't worry if some of your meetings are with staff!

Meeting with staff is almost as important as meeting with members of Congress. Sure they might not understand what you're talking about (especially if they are not homeowners), but that just means you have a responsibility to follow up with the staffer enough times until he or she understands or even supports our issues. As John W. Dozier, Jr., executive vice president, Columbian National Title insurance Company, Kansas, says, "Put a staff member in the same perspective as you would a good golf pro's caddy."

Invite them to visit your title company

In addition to meeting with your members of Congress in their district office, you can invite them to meet with you in your office. A huge success story showing the value of face-to-face meetings involved Jack Rogers, president, Ticor Title Agency of San Antonio, Texas. After inviting several members of Congress from the San Antonio area to visit his title "plant," the pictures from it that he published — one Representative a week in the local real estate press — increased his name recognition and improved his relations with important legislators. The political capital earned from merely inviting members of Congress to visit

your place of business can be huge, and don't doubt that the Representatives and Senators appreciated the press when Jack published the photos in the local magazines! Showing their community that they are accessible to voters is a key to the success of a member of Congress

From ALTA's perspective, Jack's relationship with Rep. Charlie Gonzalez (D-TX) demonstrates how easy it is to develop these relationships with members of Congress. Last year, ALTA held a meeting of the ALTA Board and the Title Insurance Executives Conference in San Antonio, TX. ALTA invited Mr. Gonzalez by to meet the group, and was impressed by his knowledge of the industry. TIPAC subsequently supported him in his campaign for the U. S. House of Representatives. After his successful election to the U.S. House of Representatives, Jack Rogers invited Rep. Gonzalez to visit his office, and began to develop a personal relationship. TIPAC continued to support Representative Gonzalez, both because of his assignment on the Banking Committee, and because of his relationship with Jack. We were very grateful that Rep. Gonzalez took the time to visit with Jack and learn more about our industry. Rep Gonzalez subsequently cosponsored the amendment ALTA had sought for the title insurance industry with Rep. Rick Hill (R-MT).

Jack's leadership is not limited to the title industry. He is often asked political advice by his friends from the homebuilders and Realtors. It helps make him an expert in a new area in his community.

Invite legislators to your state conventions

Linda Benehoff, formerly of Chicago Title and now a Metropolitan Title employee, recently invited Rep. Donald Manzullo (R-Ill) to speak to the Illinois Land Title Association membership.

As Rep. Manzullo explained, "The first year I served on the Banking Committee, I voted against the ALTA amendment." Linda contacted him after the Banking Committees's consideration of the bill, to explain the effect of the amendment. This June, when the same amendment came before the House Banking Committee, Rep. Manzullo supported the amendment. Clearly, the constituent explanation helped.

We should see every event as a political opportunity. By raising a few thousand dollars for a relevant member of Congress at a reception during your convention, you have just jump-started your relationship with that Representative or Senator. Invite them to breakfasts, lunches, receptions or dinners.

(5) Persistent follow-up needed to close the deal

Step five is to follow up via e-mail, phone calls and meetings until you get a commitment. Members of Congress work for their constituents and thus must expect your persistence. Don't be ashamed to be aggressive in trying to solicit a definite "yes" or "no" from a member of Congress. If they don't support us, consider that an opening to get involved with the campaign, and try to replace the Representative or Senator with a new candidate.

(6) Help the candidate, using time and money

Step six is political involvement, from volunteering to help the campaign to hosting a fundraiser. To volunteer on a candidate's campaign, simply call their office and ask when you can come down to help out. The campaign manager will probably have you stuff envelopes, make phone calls to build attendance at a coming function or to raise contributions, drop literature in neighborhoods, put up yard signs or fliers, or drive the candidate to partic-

L to R, Rep. Diana DeGette (D-CO) and Patrice Hauptmann of United Title in Colorado exchange information as they discuss H.R. 10, the Bank Powers bill. Clyde Edwards of Rep. DeGette's staff and ALTA Legislative Counsel Ann vom Eigen look on.



Charles H. Foster, Jr. Chairman of the Board and Chief Executive Officer of Land America Financial Group, Inc.; Commerce Committee Chairman Tom Bliley (R-VA); and Jan Alpert, President, Land America Financial Group, Inc., discuss Financial Services Modernization.



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ular events.

An example of campaign volunteering comes from John Casbon, regional vice president for First American Title Insurance, Louisiana. John delivered speeches and otherwise helped Senator Mary Landriue in her earlier campaign for governor. John and TIPAC helped get the Senator to Washington. Once the senator arrived in Washington, D.C., she NEVER forgot our help. On May 6, in fact, John and ALTA together worked to convince Sen. Landriue to file pro-ALTA amendments when the Senate passed S. 900, its version of the Financial Services Modernization Act.

Give to TIPAC

Consider contributing a portion of your hard-earned income to TIPAC. Each ALTA member should budget a small amount each year to give to both TIPAC and your federal representative. Money in TIPAC allows us to attend D.C. fundraisers where we show our support for key members of Congress who will be voting on these issues. ALTA targets the PAC to those jurisdictions where we know members are already active, or will actively follow up.

Host a small breakfast fundraiser, 10 RSVP's x \$50 = \$500

A simple, no-way-to-fail idea is to call ALTA and ask for help with a fundraiser for the candidate. Ted Lovec, a TIPAC trustee at American Title & Escrow, ALTA, and the Montana Land Title Association are cosponsoring a breakfast for Rep. Rick Hill (R-MT) at the MLTA convention.

ALTA can help organize a small breakfast fundraiser. If you can get 10 of your friends to cough up \$50 to a \$100 each in personal checks, you can get a hour's time with your Representative or Senator, and he or she will walk away with a greater appreciation for you, our industry, a nice meal, and an easier campaign. If you do a fundraiser for a Senator or a more senior Representative, you may try and ask each participant to send \$250.

You can also raise money via a golf tournament, reception at your annual state convention, PAC auction, or raffle. Contact Ann vom Eigen, ALTA legislative counsel, or Ameer Dedrick (at ann_vomeigen@alta.org or amee_dedrick@alta.org) for details on how to either contribute to TIPAC or host a fundraiser or other PAC event.

(7) Get involved locally

Step eight of grassroots includes political opportunism, such as using your positions in life to help ALTA. For example, you may belong to the Lion's Club, local Chamber of Commerce, or the state bar. Through participation in community activities you will befriend influential local leaders, including politicians who may be in a position to help the cause. "Don't limit yourself to just ALTA issues; care about local issues, quality of life issues," says John Casbon, who helped create a "local business board" for the local sheriff. Frank Tauches, Jr., executive vice president, Ladison Abstract, Inc., flies to Washington, D.C. for meetings all the time because of his involvement with the U.S. Marines and a local water authority. Participation in either Habitat for Humanity events (see picture of Marilyn Mannarino with House Banking Representative Bob Ney (R-OH)) or home-buying seminars is an excellent way to educate the press and public about your good will and the "team spirit" of the industry.

(8) Build accountability by assembling in Washington, D.C.

Step nine of grassroots is to be in Washington, D.C. There is no better way to gain a complete picture on

where the title industry stands with respect to federal regulations and legislation than to RSVP for the new Year 2000 Federal Conference. While we still are in the planning stages for this event, attendance at these types of functions allows you to hear from a broad array of regulators, politicians, and staff from relevant committees. You can also easily meet with all of your members of Congress in one afternoon, as well as have sporadic meetings back home in the state.

Many of you already know your members of Congress. For example, Stan Friedlander of Continental Title Agency Corp. of Cleveland, Ohio and his wife, a judge, are friends with House banking Rep. Stephanie Tubbs Jones. "We've always involved ourselves in local politics, and Rep. Tubbs Jones has been a personal friend for some time. She's always been supportive of our issues." This shows the benefit of long-term relationships.

State fly-in's, once a year

In addition to attending an annual legislative conference and organizing meetings with your members of Congress back home, you can also organize a fly-in of about five to ten agents and underwriters, for a day of meetings on Capitol Hill. ALTA can help



L to R, Jodi Stottlemire of Trenton Abstract in Missouri, Pamela S. Hart of Preferred Land Title, Rep. Jo Ann H. Emerson (R-MO), Henry Eschenbrenner of Metro Title Insurers in Missouri, and Cara L. Detring of Preferred Land Title.



Cara Detring, ALTA Board Member, and President of Preferred Land Title Co. (MO), secures Commerce Committee member Karen McCarthy's support for ALTA's H.R. 10 position.

Rep. Roy Blunt (R-MO) and Karan Ashlock, of Preferred Title Co., Nixa, MO, find time amid the complexities of H.R. 10 to enjoy a higher moment.



L to R, Henry Eshenbrenner, President of Metro Title Insurance in MO; Karan Ashlock of Preferred Title Co. in Nixa, MO; Rep. Roy Blunt (R-MO); Ken Ashlock of Preferred Title Co. in Nixa, MO; and Cara L. Detring, President of Preferred Land Title Co. in Farmington, MO seem to enjoy the chance to exchange views.



you with scheduling, by providing a sample meeting request letter. Let us know with whom you need help in securing a meeting. We can provide you with ALTA materials for your visits, and once you're in D.C., we'll brief you on the issues, give you packets both for you and your members of Congress, and accompany you to all of your meetings. As Cara Detring, president of Preferred Title, Missouri, says:

"The Missouri folks who were part of the fly-in are much more comfortable and confident in talking to their Representatives. The fly-in went so well that our members are really enthusiastic about getting involved."

Your civil right and responsibility

Keep in mind that it is your right and duty to follow the behavior of your elected members of Congress on your issues. If you don't advise them of your opinions, they will hear only the opinions of the other side, and you will lose. Hank Shulruff, vice president of business development, Attorney's Title Guaranty Fund, Illinois, said:

"We devote many resources to government affairs. You've got to participate in the process or you will be sitting on the sidelines


when decisions are made which intimately affect your business. We had no problem getting in to see the Illinois delegation [in Washington, D.C.] and they were very helpful."

John Casbon "encourages young people to get involved in the political process, to realize it's not a dirty business. If your intentions are pure, you'll have success. You'll be able to work the process and find it's not too complicated."



In the foreground, left to right, President Bill Clinton and Senator Mary Landrieu (D-LA) speak with John Casbon of First American in New Orleans about title insurance issues, while staffers look on.

Conclusion

The ultimate goal of ALTA's grass-roots program is to enhance our members' existing personal relationship with members of Congress and help ALTA members develop new relationships with new members. Congress is a dynamic institution which is completely reconstructed after the elections every two years. However, the personal relationships of our membership and our lobbyist can hopefully endure and respond to these changes. These relationships are our best resource to maintain and build a voice in Congress to influence the legislative forces which can change our industry. 

WORKING TO UNDERSTAND
OUR NEEDS

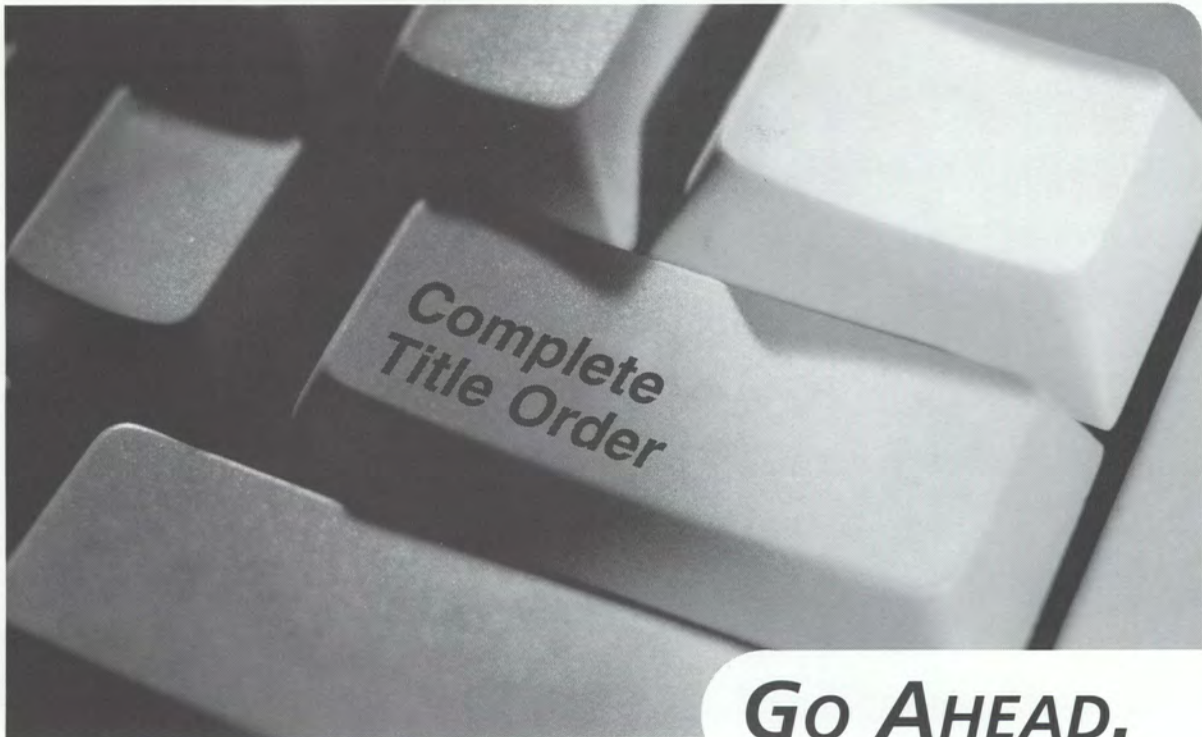


(r-l) Jack Rogers of Ticor Title Agency gives Congressman Henry Bonilla a tour of their office.

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OF SAN ANTONIO

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Jack Rogers (right) of Ticor Title of San Antonio, TX gets media mileage out of grass-roots visit by Congressman Henry Bonilla (R-TX) at Jack's office.



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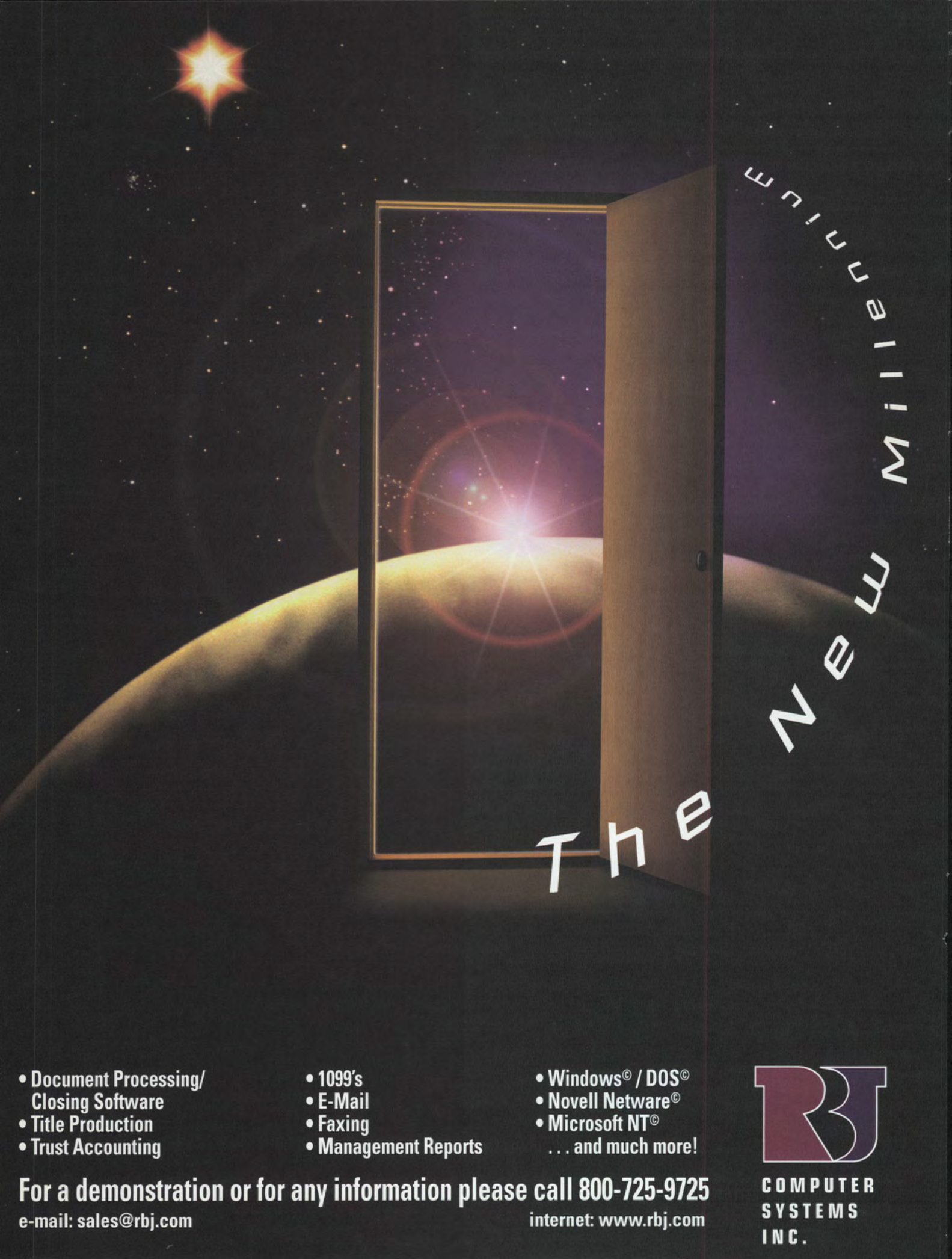
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Are you prepared? Let ALTA's Tech Forum prepare you for the future! Don't miss ALTA's Technology Forum & Expo, February 13 - 15, 2000, in fabulous Las Vegas, Nevada. The Tech Forum is fast becoming the top technology conference in the industry — and with good reason. ALTA brings you the most knowledgeable experts in the industry at a great low price. Your Tech Forum registration guarantees you:

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- Consistently Low Prices
- Hands-On Learning
- The Latest Information Straight from the Source

starring
AMERICAN LAND TITLE ASSOCIATION'S TECH FORUM 2000
FEBRUARY 13 - 15, 2000 LAS VEGAS, NEVADA

Pre-Conference Continuing Education — Join your peers for Ethics education, Sunday, February 13. You'll get the C.E. (or C.L.E.) credits and still have time for Tech Forum 2000's valuable sessions!

Sensible Prices — 1999's low prices still apply to this state-of-the-art conference. Register by January 17, 2000 for only \$445.00* per attendee (*non-ALTA members slightly higher.) Register up to three extra individuals from the same office and get a 10 percent discount on their registration fees.

More Technology Vendors — Each year, ALTA's Technology Forum generates more interest from technology vendors. Plans are under way to bring you the biggest variety of vendors possible.

Educational Sessions & Tracks Overview

Four Specialized Educational Tracks have been developed to provide you the best information and help your company excel! You are welcome to follow one track throughout the conference, or mix and match sessions to meet your needs.

Monday	Executive	Operations	Technical	Sales & Marketing
10:00 a.m.	Recorders' Technology Strategies	Network Architecture	NT vs. Novell	YourCompany.com
11:15 a.m.	Internet Skills For The CEO	Internet E-Commerce Shootout	Thin Client Solutions	Are County Recorders Becoming The Competition?
2:30 p.m.	E X P O S E S S I O N S			
3:45 p.m.	E X P O S E S S I O N S			
Tuesday				
8:30 a.m.	Is Electronic Document Delivery Right For You?	Network Administration For Small Operations	Bring On The Bandwidth	Contact Management Solutions That Work
9:45 a.m.	Technology Options for You (TOYS!)	Beyond Y2K	Connectivity And Security	Using Electronic Document Delivery To Attract And Keep Customers
11:00 a.m.	Protecting Your Company With Technology Policies	Online Search And Retrieval	E-Commerce From EDI To XML	Using The Internet To Increase Business

Executive: Attend the Executive Track for a high-level view of available technologies. Make your business grow and your bottom-line thrive! You'll also learn how using technology can make you work more efficiently and flourish as a leader.

Operations: Follow the Operations Track for a nuts and bolts approach to network administration and productivity solutions in today's title operation. You'll learn how to plan and implement business technologies to meet current needs and accommodate future expansion.

Technical: The Technical Track offers an up-close look at how technology is changing right now. Arm yourself with the knowledge to make critical decisions about hardware, software, connectivity, and e-commerce. Increase your company's effectiveness.

Sales & Marketing: Sales & Marketing Track attendees will learn to apply technology to their jobs. Come see how technology can make and keep personal connections with customers and prospects. You'll learn about contact management solutions, website design, and how you can leverage your company's technology to close the deal!

Tech Forum 2000 — Calendar of Events

Sunday, February 13, 2000

1:00 p.m. - 4:00 p.m.	Continuing Education Session <i>(Plan to attend this course on Ethics.)</i>
5:00 p.m.	General Session
6:30 p.m. - 8:00 p.m.	Expo Hall Premiere & Opening Reception

Monday, February 14, 2000

7:30 a.m.	Continental Breakfast
8:00 a.m. - 5:00 p.m.	Expo Hall Open
8:30 a.m.	General Session

10:00 a.m.	Educational Sessions
12:15 p.m.	Luncheon & Special Guest Speaker
1:30 p.m.	Dessert In The Expo Hall
2:00 p.m.	Expo Sessions
4:15 p.m. - 5:00 p.m.	Expo Hall Happy Hour

Tuesday, February 15, 2000

7:30 a.m.	Continental Breakfast
8:00 a.m.-Noon	Expo Hall Open
8:30 a.m.	Educational Sessions
Noon - 2:00 p.m.	Luncheon & Closing General Session

About Las Vegas ...

If you haven't been to Las Vegas recently, then you haven't been to Las Vegas. Las Vegas has expanded its attractions to include much more than all-night gambling and bargain-priced buffets. Las Vegas is now considered one of the best family vacation destinations in the world.



The Mirage stands out as probably the best example of "the New Las Vegas." From the moment you arrive at The Mirage, you are sure to be impressed, starting with the hotel's trademark volcano that erupts as you leave your car.

Next door to The Mirage, you'll find a real live pirate battle, taking place every night and can watch as they sink a full-sized ship! While in town, you can choose from two "Cirque du Soleil" shows. The acrobatics and showmanship of this French Canadian troupe cannot accurately be described — you have to see it to believe it. Don't forget to say hello to the family of bottlenose dolphins living just beyond the lagoon-style pool!



While checking in, you'll be amazed to see live sharks swimming in a giant aquarium behind the counter. (You'll also stroll through a tropical rainforest with exquisite orchids growing all around you on your way to your room.)



Be sure to find time to visit the white tigers' habitat, located just off the casino, where these rare creatures play day and night.

Add to that top name comics, magicians, and the highest quality shows anywhere and you'll find that Las Vegas is a truly amazing town.

We've reserved a low room rate of \$149.00 for single or double occupancy, plus current local taxes of 9 percent. This convention rate applies from Thursday, February 10, 2000 through Friday, February 18, 2000, so you'll have plenty of time to play before or after the Tech Forum. To make your hotel reservations call The Mirage at 800-374-9000. For best availability, be sure to make your reservations early, (no later than Monday, January 10, 2000) especially if you're arriving early or staying later. A one-night deposit must accompany reservations. There is a 72-hour notice of reservation cancellation. Rooms canceled within the 72-hour time frame forfeit a one-night deposit.

You'll find mild weather in February with highs in the 70s and lows in the 50s, making it the perfect get away from the long cold winter.

For more information on Tech Forum 2000, visit the ALTA home page at www.alta.org. To learn more about The Mirage go to their web site at www.themirage.com. Or call ALTA directly with questions at 1-800-787-ALTA. We'll be happy to assist you.

President's Postcard

By R.K. Arnold

We are delighted to welcome Countrywide Home Loans aboard as the newest big member of MERS. Countrywide rolled out its correspondent program this month to more than 1300 of its correspondents. Countrywide joins Bank of America and Norwest as the other major wholesalers with MERS Correspondent Programs. Chase and Homeside will roll-out their MERS Correspondent Programs this fall.

Another important event with long-term significance for MERS occurred with far less fanfare. The MERS Board of Directors approved the next major phase of development for the MERS® System at its strategic planning conference. Beginning in mid-2000 our members will be able to register loans using a web-based browser built by our technology partner, EDS. The browser will provide another way for our members to register loans on the MERS® System and give us another opportunity to bring value to the mortgage industry.

Finally, let me recap the numbers: our members have registered almost 600,000 loans so far. Almost 50,000 of those are MOM (MERS as Original Mortgagee), which means they have saved well over \$1,000,000 in assignment costs. Old Kent Mortgage, Merrill Lynch Credit and Alliance Mortgage are the biggest MOM producers.

MOM Changes

By Sharon Horstkamp

Fannie Mae and Freddie Mac recently revised their uniform security instruments. The authorized MOM language changed a little bit under the revised form, but the changes are minimal.

The one major change affecting the MOM language is the addition of a definition section to each state's respective instrument. MERS will now be defined in every state's instrument, which should clear up any confusion over the capacity in which MERS holds the mortgage.

An example of representative language is: "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and is located at P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

Lenders should contact their doc prep vendors to get the revised MOM security instruments, or call MERS at (800) 646-6377. Lenders have until next July to begin using the revised security instruments.

Merrill Lynch Hosts Fifth MERS Integration Forum

By Carla Haase

Thank you to Merrill Lynch Credit Corporation for hosting the MERS Integration Forum on June 24, 1999 in Jacksonville, FL. Ninety-one participants representing 42 companies attended the largest Forum to date.

Members who have completed integration shared their expertise on topics covering every aspect of the MERS implementation process, such as organizing a project team, developing correspondent relationships, mini-bulk sales, servicing issues and enhancements to loan origination and servicing systems. Representatives from MERS, Fannie Mae, Freddie Mac, Ginnie Mae and the MBA gave updates and answered questions.

Aurora Loan Services is the host for the next MERS Integration Forum scheduled for October 25-26, 1999 in Denver, CO. Call (800) 646-MERS (6377) for details.



MERS to Roll Out August 1999 System Release

By Weyman Lew

Our members have told us that their Y2K software freeze policies will prevent some of them from accepting any software updates from MERS from September 1999 through early 2000.

To work within these constraints, we have decided to implement the most critical functionality in an August 1999 release, and to delay non-critical items until April 2000. These enhancements are summarized on page two of this newsletter. User acceptance testing (UAT) for this release is scheduled for the second week of August. We will also execute a regression test for Year 2000 compliance.

Please call Weyman Lew at (703) 761-1273 if you have any questions.

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MERS Upgrades Web Site

By Dan McLaughlin

Beginning in late July, the MERS web site will have a new look and will offer improved functionality for MERS members. Depending on your location and Internet service provider, it may take up to two weeks after the initial launch for the new web site to be propagated across the entire World Wide Web. Our goal is to leverage web technology to improve communication with our members and the mortgage industry at large.

In addition to offering more information about MERS, we have implemented "Members Only" access that provides expanded member directory information, newsgroup functionality and the ability to offer future services tailored for MERS members. The newsgroup functionality enables MERS to obtain feedback from members on issues ranging from Y2K readiness, to proposed enhancements, to changes in pricing. The "Members Only" access also enables the introduction of new products such as value-added access for title companies.

To access the "Members Only" functionality, click on the "Members Only" button on the upper right-hand corner of the www.mersinc.org home page. Then enter the Organization ID Number assigned to your company and the same User ID and Password that you use to access the MERS® System.

We hope that the enhanced MERS web site makes it easier for you to do business with MERS.

Thriffs and MOM

By Sharon Horstkamp

Can thriffs use MERS as the Original Mortgagee (MOM) when they originate loans? This question was raised by some of our members affiliated with federal thrift institutions. Specifically, they wanted to know whether the use of MERS as Original Mortgagee (MOM) affects the lending authority granted to federal thriffs under federal law. Our outside counsel, the Washington DC law firm Covington & Burling, concluded in a memorandum that MOM does not change a federal thrift's lending authority under federal law. Federal thriffs continue to be governed and protected under the preemption authority of the OTS regulations when they use MERS as the mortgagee.

For example, the right of a federal thrift to charge a pre-payment penalty cannot be restricted by a state law. This principle is applicable regardless of whether the federal thrift designates MERS as its nominee on the security instrument.

Any MERS Members that are thriffs can request a copy of this Memorandum by contacting me at (800) 646-6377 or e-mailing me at sharonh@mersinc.org.

Foreclosures Active

by State

AK	4	MS	8
AL	13	MT	2
AR	18	NC	28
AZ	56	ND	4
CA	389	NE	7
CO	6	NH	0
CT	17	NJ	147
DC	10	NM	4
DE	6	NV	40
FL	320	NY	169
GA	52	OH	89
HI	25	OK	39
IA	7	OR	18
ID	5	PA	178
IL	123	RI	4
IN	60	SC	27
KS	19	SD	1
KY	10	TN	22
LA	32	TX	192
MA	7	UT	6
MD	91	VA	74
ME	2	VT	1
MI	25	WA	25
MN	39	WI	22
MO	35	WV	1
		WY	4

Total: 2483

Foreclosures Complete

by State

AK	4	MS	2
AL	3	MT	1
AR	3	NC	4
AZ	13	ND	0
CA	79	NE	0
CO	1	NH	0
CT	0	NJ	1
DC	1	NM	2
DE	0	NV	6
FL	24	NY	3
GA	16	OH	3
HI	0	OK	7
IA	2	OR	1
ID	2	PA	2
IL	7	RI	0
IN	3	SC	2
KS	2	SD	0
KY	0	TN	3
LA	2	TX	53
MA	2	UT	0
MD	10	VA	6
ME	0	VT	0
MI	6	WA	1
MN	5	WI	2
MO	8	WV	0
		WY	0

Total: 292

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Ivanhoe Financial, Inc.:

Implementing MERS at the Start-Up of a New Company

By Ron Crowe

Ivanhoe Financial, Inc., a new mortgage company located in Orlando, FL, recently opened its doors for business and made MERS an integral part of their start-up operations. By baking MERS in from the beginning, Ivanhoe was able to start saving money and eliminating assignments on new originations by using MOM documents from the very first loan they closed.

Headed by Paul Reich, President, and an experienced senior management team comprised of Betsy Cavanna, H. Hunter Wylly, and Linda Mittan, these seasoned mortgage veterans realized there would be tremendous value to Ivanhoe if they could implement MERS as soon as possible. Ivanhoe drafted a MERS implementation plan in April. We were happy to help. Phase I included using the MERS software to register loans on the desktop. Phase II will include having their new loan origination system, Foresight Mortgage Systems, develop a direct automated interface with MERS.

To further increase savings through MERS, Ivanhoe selected Colonial Bank as its warehouse bank. As a MERS Member, Colonial Bank has eliminated the unrecorded assignment usually required by warehouse banks. Ivanhoe can now pre-register loans (pre-closing) on MERS naming Colonial as the Interim Funder.

Please call Ron Crowe at (770) 761-3226 to see how we can help you implement MERS.

August 1999 System Release Enhancements

By Weyman Lew

•Transfer Of Beneficial Rights Option 2(TOBR2)/Transfer Of Servicing Rights (TOS)

Allow a MIN to be processed simultaneously in a TOBR2 and TOS transaction for delivery to another member (non-Agency delivery.)

•Multi-Step Registration

When a MIN is registered via the desktop software with the same lien position, borrower and property address, as another registered MIN, provide a warning message prior to accepting the registration.

•Co-borrower Social Security Number (SSN) Edit Relaxed

Provide a warning message rather than rejecting the registration when a co-borrower SSN equals the primary borrower SSN. This change will also allow an SSN to be accepted on a corporate borrower during a batch registration transaction.

•Transfer Of Beneficial Rights (TOBR) Batch Confirmation

Allow confirmation of an entire TOBR batch directly from the "Batch" tab rather than from the "MIN List" tab when using the desktop software.

•Payoff Reject Report Error Message Modification

When an investor attempts to confirm a "paid in full" MIN through batch processing and the MIN is still active, the resulting error message is unclear. Change the error message to clarify that the MIN is not yet in a "paid in full" status.

•Pre-registration Verification Report

Produce a Pre-registration Report when a MIN is pre-registered, the Interim Funder releases its interest in the loan and then the loan is registered during the same processing day.

•Daily Billing Report Modification

Group together all MINs that fall within the same pricing tier on the daily Billing Report.

•MIN Find Option Summary

Display the exact number of MINs that meet the search criteria when a MIN Find search yields more than 5,000 MINs.

New Telephone Seminar on IRS Rules

ALTA is once again holding a telephone seminar to cover the constantly changing tax reporting requirements: "The New IRS Rules — How to Comply with the Upcoming IRS Reporting Requirements."

This year, on Tuesday, November 10, Ann vom Eigen, ALTA legislative counsel, Chip K. Collins, partner at KPMG Peat Marwick, LLP, and Benson J. Chapman, vice president of Alleghany Corporation, will cover the newest IRS requirements including the latest in attorney fee reporting, TIN Solicitation Requirements, and escrow disbursement.

Starting at 3:00 p.m., Eastern time and running for an hour and a half, these three speakers will share the most current information in tax laws today in "plain English." During the last half-hour of the program, there will be a question-and-answer session to allow the participants an opportunity to ask the speakers more specific questions.

All you need is a touch-tone phone, or a speaker phone if there is more than one participant, and you can learn all you need to know without leaving the office.

Title owners and managers, closers, settlement officers, processors, escrow closers, and attorneys will all benefit from this seminar. For a one-time connection charge that covers the entire site and as many people as you want to invite, this is a not-to-miss educational event.

The registration fee of \$125 (\$140 after October 25) covers:

- One telephone connection (and no long distance charges)
- One set of handout materials
- Unlimited attendance at a site

KRM Information Services will be the service provider for the seminar and will handle the registrations. Approximately one week prior to the seminar, each registrant will receive the toll-free number to dial in for the seminar, their unique pin number, and handout materials.

If you can't join in on November 10, an audiocassette and material package will be available after the event (the audiocassettes will include the question and answer session). The purchase price is \$140 plus \$5.50 shipping and handling.

Questions? Please call Amee Dedrick at 1-800-787-ALTA.



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Nancy Walker

CHANGES TO FAIR CREDIT REPORTING ACT POSE PROBLEMS FOR TITLE COMPANIES

by Sheldon E. Hochberg

The Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.* (FCRA), was amended substantially in 1996 to impose significant new obligations on businesses that obtain "consumer reports" in connection with "employment" decisions. These amendments were intended to enhance the privacy protections afforded to individuals in the workplace by ensuring that: i) certain kinds of information about them are not obtained by employers without their consent, and ii) they have an opportunity to review and correct errors in reports that may be a factor in a decision adversely affecting their employment.

Recent opinions by the staff of the Federal Trade Commission (FTC), which is responsible for administering the FCRA, have highlighted the expansive scope of the terms "consumer report" and "employment." These opinions underscore the need for all title companies (both insurers and agents) that use third parties to provide, verify, or evaluate any kind of information on current or prospective employees to be aware of the potential applicability of the FCRA and to take the steps necessary to avoid liability for violations of the Act.

In particular, the FTC staff has recently concluded that, for purposes of the FCRA, individual title insurance agents should be considered "employees" of the title insurers they represent. This opinion, by itself, is of concern because it imposes significant and potentially impractical burdens on insurers in their relationships with their agents that were not contemplated by Congress when it decided to expand the rights of employees in 1996. Even greater problems arise when this opinion is considered in conjunction with another recent FTC staff opinion, which has concluded that a report pro-

vided by an "outside organization" (such as a law firm) to assist an employer in the investigation of a sexual harassment claim constitutes a "consumer report" covered by the FCRA.

When the two staff opinions are read together, the implication is that investigations conducted by third parties—and possibly investigations conducted by the insurer — of possible fraud or misbehavior by individual agents or individuals who work for corporate agencies are subject to the FCRA. If this is the case, significant problems may be created for insurers and agents in investigating and taking action on agents or employees involved in wrongful conduct.

This article is divided into three parts. Part I provides a brief review of the coverage of the FCRA in the employment context. Part II discusses the obligations imposed on employers who use "consumer reports" in making employment-related decisions and explains why "consumer reports" include far more than credit reports obtained from credit reporting agencies such as Equifax. This discussion will be of interest to all title companies that rely upon third parties

for information or assistance in making employment-related decisions. Part III discusses the recent FTC staff opinions, some of the potential problems created by those opinions, and why they are misguided.

I. Coverage of The FCRA¹

The FCRA applies to "consumer reports" provided by "consumer reporting agencies" (CRAs). As the FTC staff has cautioned, "[t]hose in the business community who believe the FCRA is limited to credit reports are misreading the law."²

A "consumer report" is any written or oral communication by a CRA of any information that bears on any of seven personal factors where the information is used, expected to be used, or collected for certain specified purposes, including "employment purposes:"³ i) credit worthiness, ii) credit standing, iii) credit capacity, iv) character, v) general reputation, vi) personal characteristics, or vii) mode of living. (Because the type of information provided in a consumer report goes well beyond "credit information," such information will be referred to in this article as "Personal Information.") A CRA is any person that, for a fee, regularly engages in the "assembling or evaluating" of Personal Information for the purpose of furnishing consumer reports to third parties.⁴

Under these definitions, credit bureaus or credit reporting agencies are clearly CRAs. But private investigators, employee screening services, companies that provide background checks or public record information, and potentially lawyers and law firms, are also CRAs if they regularly⁵ engage for compensation in assembling or evaluating such information for the purpose of



Sheldon Hochberg is a partner in the Washington, D.C. law firm of Steptoe & Johnson LLP. In addition to representing ALTA, state land title

associations, and title companies on RESPA and banking-related issues, he has provided advice to the title insurance and property/casualty industries on Fair Credit Reporting Act issues.

furnishing reports to be used for employment, credit, insurance underwriting, or other purposes covered by the FCRA.

A consumer report is used for "employment purposes" not only when it is used in connection with a decision to hire an applicant, but when it is used in deciding whether to promote, reassign, or terminate a current employee, or in connection with an investigation into potential wrongdoing by the employee.

The combination of (i) the expanded obligations imposed by the 1996 amendments on businesses that obtain "consumer reports" for "employment purposes;" (ii) the broad definitions of these two terms in the Act and in recent FTC interpretations; and (iii) the civil liabilities (including the possibility of punitive damages) imposed on employers who violate the Act, suggests that all title companies should carefully review their information-gathering practices in connection with employment and agency-related decisions.

II. Obligations of Employers Who Use Consumer Reports

The FCRA imposes four separate sets of obligations on persons that obtain consumer reports to be used for employment purposes.⁵

1. Before obtaining a consumer report, the employer must:

- make a clear and conspicuous **disclosure** to the consumer in writing "in a document that consists solely of the disclosure" that a consumer report may be procured for employment purposes; **and**
- obtain the consumer's written **authorization** to procure the report.⁷

The FTC staff has clarified that the disclosure and authorization may be contained in the same document, so long as no other information is contained in it.⁸ More importantly, the staff has made clear that, if properly drafted, an employer may obtain a one-time authorization from applicants and current employees that would permit the employer to obtain a consumer report at any time during the application process or the employee's tenure.⁹ Obtaining such a one-time authorization obviates the problem of having to obtain the employee's

consent to procuring a consumer report during a confidential investigation or at a time when the employee may be unwilling to provide such consent.

2. Before taking any "adverse action" based in whole or in part on a consumer report, the employer must provide the consumer with:

- a copy of the report; and
- a written description of the consumer's rights under the FCRA, as prescribed by the FTC.¹⁰

"Adverse action" includes "a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee."¹¹

The Act does not specify how long the employer must wait to take the adverse action after it has provided the copy of

A consumer report is used for "employment purposes" not only when it is used in connection with a decision to hire an applicant, but when it is used in deciding whether to promote, reassign, or terminate a current employee, or in connection with an investigation into potential wrongdoing by the employee.

the report and notice of the consumer's rights. The FTC staff has indicated that five days may be appropriate, "although the facts of any particular employment situation may require a different time."¹²

3. If the employer takes adverse action based in whole or in part on information contained in a consumer report, it must provide to the consumer:

- notice of the adverse action;
- the name, address, and telephone number of the CRA

that provided the consumer report and a statement that the CRA did not take the adverse action and is unable to provide the reasons why the action was taken; and

- a notice of the consumer's right to obtain a free copy of the report from the CRA and to dispute any inaccuracies in the report.¹³

These requirements must be complied with even though there is some overlap with the information provided by the employer in the "pre-adverse action" phase.¹⁴

4. Separate additional requirements are imposed if the employer seeks to obtain an "investigative consumer report." An "investigative consumer report" (ICR) is a type of consumer report that is developed through personal interviews with neighbors, friends, associates, or others who may have knowledge about the consumer being reported on. In addition to complying with the obligations discussed above applicable to all consumer reports (e.g., obtaining the consumer's written authorization for procuring a consumer report), an employer:

- may not procure an ICR unless, not later than three days after requesting the report, it has mailed or delivered a notice to the consumer that (a) "clearly and accurately" informs the consumer that such a report may be made, and (b) informs the consumer of his right to request additional disclosures regarding the nature and scope of the investigation requested; and
- must provide such additional information on the nature and scope of the investigation within five days of a request by the consumer.¹⁵

While employers who request ICRs from the well-known consumer reporting agencies can generally count on them to provide information on these obligations, employers may sometimes seek reports that fall within the definition of "investigative consumer report" from parties, such as private investigators, who may

not realize that they are "consumer reporting agencies"—and, hence, who may not themselves be in compliance with, or may not alert the employer to its requirements under, the Act.

For example, the FCRA would be triggered in any of the following scenarios where an employer: i) requests information on an individual's driving record or criminal convictions from a provider that gathers such information from public sources;¹⁶ ii) obtains a drug test on an employee from a party that is indisputably a CRA (e.g., an employment screening service); or iii) uses an intermediary to evaluate the information provided by a drug testing laboratory.¹⁷ Similarly, a company that provides screening services for employers—criminal history searches, education and employment verifications, or reference checks—would be a CRA even if it never provided information relating to the individual's credit. If that company made phone calls simply to verify information, it would be providing a consumer report but would not be engaged in preparing an investigative consumer report. If, however, the company went beyond verifying facts, and asked whether the applicant was a good student, or a good worker, or took drugs, the information gathering would constitute an "interview" and the FCRA provisions on ICRs would be triggered.¹⁸

In addition to possible enforcement actions by the FTC (which may include civil penalties of up to \$2,500 per violation for a "knowing violation, which constitutes a pattern or practice of violations"), employers who violate their FCRA obligations face potential civil liability to the affected consumer. In the case of willful non-compliance with any requirement, the employer may be liable for actual damages of not less than \$100 nor more than \$1,000, plus punitive damages as the court may allow and court costs and attorney's fees.¹⁹ In the case of negligent noncompliance, the employer is liable for actual damages, plus court costs and attorney's fees.²⁰ In addition, state attorneys general are authorized to bring actions on behalf of the residents of their states to enforce their rights under the FCRA.²¹

III. FTC Staff Interpretations on Insurer-Agent Relationships and Third-Party Investigations of Workplace Incidents

Two relatively recent staff interpreta-

tions have pointed out that the coverage of the FCRA may extend to reports and organizations that are far afield from the kind of reports and organizations that are commonly understood to be the focus of the FCRA. It should be noted that the FTC does not have authority to promulgate legislative or trade regulation rules under the FCRA that have binding effect on the public and the courts. Accordingly, the FTC's published Commentary on the FCRA²² and FTC staff opinions merely reflect the agency's views on how the Act applies, but are not binding on the courts as would be the case with regulations authorized by statute.

Against this background, the FTC's opinion in the Kane-Solomon Letter appears to have added yet another level of obligations and complications for insurers who need to obtain consumer reports on their agents.

A. Insurance Agents Are "Employees" of an Insurer for FCRA Purposes – the Kane-Solomon Letter (10/7/98)

Prior to the Kane-Solomon letter, there were three possible bases on which CRAs could provide reports to insurers on individual agents or on principal owner/operators of corporate agencies.²³

First, such reports could be provided "in accordance with the instructions of the consumer to which it relates."²⁴ Accordingly, a title insurer can always obtain a consumer report on an individual agent, or on an owner, officer or employee of the agency, if it has received the authorization of that individual.²⁵

Second, there is language in the FTC Commentary and case law supporting the view that reports obtained on individuals in connection with a business they own and operate are not "consumer reports" even if the information is provided by a CRA.²⁶ The essence of this view is that the use to which a report is put determines whether or not the report is a "consumer report" covered by the Act (i.e., if the report is used for

making a decision on a business operated by the consumer it is not a report on the individual in his capacity as a "consumer".)

Third, a number of courts interpreting the language of the FCRA as it existed prior to 1996 have determined that, if the CRA collected the information in connection with its "consumer reporting" business (as would likely be the case regarding a credit report from a credit bureau), the report it provides is a "consumer report" but the business entity requesting the report has a permissible purpose to obtain the report under §604(b)(3)(E) (i.e., that the requesting party "has a legitimate business need for the information in connection with a business transaction involving the consumer").²⁷ Indeed, this language was found to provide a permissible purpose for a title insurer to obtain a credit report on the principal owner of one of its agencies.²⁸

The language as amended in 1996 now provides that a consumer report may be provided by a CRA to a person who has a "legitimate business need for the information . . . in connection with a business transaction **that is initiated by the consumer.**"²⁹ The new requirement that the transaction has to be "initiated by the consumer" should allow an insurer to continue to obtain a consumer report in connection with its consideration of an application by an individual to become an agent. Whether it is broad enough (like the prior language) to allow an insurer to obtain a consumer report after the agency relationship has been established (e.g., in connection with an audit or investigation of the agency) is not as clear.³⁰

Against this background, the FTC's opinion in the Kane-Solomon Letter appears to have added yet another level of obligations and complications for insurers who need to obtain consumer reports on their agents. The letter responded to an inquiry whether individuals who enter into agency relationships with a title insurance company (including individuals with whom the insurer has an agency agreement but who are employed by a corporate agency) are "employees" of the insurer for FCRA purposes. This is an important issue for insurers because the FCRA imposes significant additional obligations on the use of consumer reports in the "employment" context that are not imposed if such reports are deemed to be used in connection with "business

transactions" involving the consumer.³¹

In reaching the conclusion that agents are "employees" for FCRA purposes, the Letter cited the Isaac-Allison Letter (2/23/98) in which the staff concluded that individuals retained as drivers by trucking companies are "employees" even though they own and operate their own trucks. The Isaac-Allison letter had cited *Hoke v. Retail Credit Corp.*, 521 F.2d 1079, 1082 (4th Cir. 1975), cert. denied, 423 U.S. 1087 (1976), in which the court ruled that, because of its "broad remedial purposes," the FCRA definition of "employment" should not be constrained by the common law concepts of master and servant, and that personal information furnished by a CRA to a state Board of Medical Examiners to aid in the assessment of a physician's application for a medical license should be deemed to be furnished for "employment purposes."

While it is understandable that the FTC would not want to draw a bright line between individuals hired as "contractors" and individuals hired as "employees," treating individuals who operate an insurance agency business as "employees" of the insurer is neither required nor justified by the earlier FTC precedents. The staff could just have easily concluded that the insurer-agent relationship was covered by the "business transaction" language of §604(a)(3)(F).

While a key FTC staff member has indicated that the staff would be willing to discuss their interpretation with representatives of the insurance industry (they recognize that the Kane-Solomon Letter affects all insurers, not just title insurers), they have indicated that the prospects of the staff changing its view are not great. In their opinion, the problems (which they recognize may exist) are created by the language of the FCRA, not by their interpretation of that language. While consideration should be given to presenting the legal and policy arguments to the staff as to why agents should not be treated as employees for FCRA purposes, relief on this issue may only be obtainable through legislative action.³²

The need for regulatory or legislative action on this issue is further highlighted by the FTC staff opinion in the Keller-Vail Letter, discussed next.

B. Sexual Harassment Investigations—the Keller-Vail Letter (4/5/99)

The Civil Rights Act of 1964 prohibits discrimination in employment, and ob-

ligates employers to investigate acts of sexual harassment in the workplace and to take appropriate corrective or disciplinary action. EEOC guidelines mandate prompt investigations of disputed allegations of harassment and a commitment to employees that such allegations will remain confidential to the extent consistent with the need to conduct an investigation.³³

There is little question that if, in the course of an investigation of a workplace incident, an employer requests a credit report from Equifax on an employee, the FCRA would apply to that report. On the

The staff's interpretation could have significant and negative unintended consequences for employers who utilize the assistance of third persons, such as law firms and investigators, in addressing and resolving discrimination and other workplace disputes (e.g., violence in the workplace).

other hand, does the FCRA apply when an employer retains a lawyer or law firm to investigate on its behalf and report on a sexual harassment claim when the only information collected or evaluated by the lawyer is information from the employer's records and workforce? The Keller-Vail Letter concludes "yes" and the implications of that conclusion are profound.

The letter can be summarized in short order:

- an employer's decision after a sexual harassment investigation may constitute "adverse action" against an employee, as that term is defined by the FCRA;
- an employer who seeks the assistance of an "outside organization" in connection with such an investigation is therefore seeking assistance

in connection with an "employment" decision, as defined by the FCRA;

- the report of that outside organization will concern information "bearing on a consumer's . . . character, general reputation, personal characteristics, or mode of living" and, hence, would constitute a "consumer report" if the outside organization is a "consumer reporting agency";
- if the organization (law firm) "for monetary fees . . . regularly engages, in whole or in part in the practice of assembling or evaluating" personal information for use in employment decisions by its clients, the organization falls within the definition of a consumer reporting agency;
- the fact that the outside organization only collects and reports on information from the employer's own records and from its work force is irrelevant because the FCRA does not make a consumer report dependent on the source of the information used in the report; and
- if the investigation by the outside organization involves personal interviews with "neighbors, friends, or associates" (fellow employees) of the consumer being reported on—which will almost always be the case—the report is an "investigative consumer report." Accordingly, all of the other obligations imposed on the employer in connection with an investigative consumer report (discussed in Part II, above) are applicable and the law firm now has to satisfy all of the obligations imposed on a CRA that provides investigative consumer reports.

The staff's interpretation could have significant and negative unintended consequences for employers who utilize the assistance of third persons, such as law

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firms and investigators, in addressing and resolving discrimination and other workplace disputes (e.g., violence in the workplace). Among the many problems and ambiguities created by the conclusion are:

- will it deter employers from seeking advice and assistance in investigating and resolving such workplace issues?
- will it effectively disable smaller companies from conducting necessary investigations and obtaining necessary legal advice?
- will it deter law firms from providing such assistance (not only does the law firm have to meet the obligations of a CRA, but the "reports" it prepares for the client are likely to be deemed "investigative consumer reports," thereby triggering the additional obligations imposed on CRAs in connection with such reports)?
- what if employees involved in such claims refuse to give authorization for the employer to obtain the "consumer report" from the employer's attorney or outside consulting firm?
- how does the attorney-client privilege and attorney-work product doctrine apply if the law firm's report is a consumer report that must be provided to the employee, and the law firm is a CRA that must make its "files" on the employee available to the employee?

And this is just the beginning of the list.

It may well be impossible for employers and law firms to undertake in a proper and effective manner the work that has to be done (in some cases, as a matter of statutory obligation) to investigate and resolve workplace incidents and, at the same time, fully comply with FCRA obligations. This Hobson's choice has been created by the fact that the FCRA regulatory scheme was not really designed to apply in the circumstances

of a lawyer's investigation of workplace misconduct and is a "bad fit" when applied to such investigations. As more companies and lawyers come to appreciate the ramifications of the Keller-Vail Letter, it would not be surprising to see efforts undertaken to encourage the FTC to re-examine the issue or to obtain a legislative amendment to the FCRA.

C. The Implications of the Conclusions in the Kane-Solomon and Keller-Vail Letters

When considered in tandem, the two staff opinions may raise significant prob-

When considered in tandem, the two staff opinions may raise significant problems for title companies.

lems for title companies.

First, title companies that obtain information or evaluations from third parties, such as a credit bureau, investigator or private attorney, to assist in investigating the possible fraud of an employee, and title insurers that retain such outside assistance in connection with an investigation of an individual agent, are now potentially subject to all of the FCRA obligations regarding consumer reports used for "employment" purposes.

Second, where an insurer, utilizing only its own in-house staff, investigates the potential wrongdoing of an employee or officer of a corporate agency and prepares a report on its findings that is shared with the agency, such report could be viewed as a "consumer report" **if the insurer itself is deemed to be a "consumer reporting agency."** The report no doubt bears on Personal Information of the employee and could be used as a factor in an "employment" decision regarding that employee. The pertinent question, therefore, is whether the insurer is a CRA in connection with the preparation of the report. While good arguments can be advanced that the insurer is not providing this report to the agency "for a monetary fee, dues, or on a cooperative non-profit basis," and that the insurer's purpose in preparing the report was for its own protection—rather than "for the purpose of

furnishing consumer reports to third parties"—it is not clear whether the FTC staff would reach the same conclusion.

Conclusion

The circumstances in which an insurer may conduct investigations of its agents and obtain information on them has historically been determined by (a) the terms of the agency contract between the parties and (b) the "privileges" granted by state statutes or the common law for communications of information about a third party between a person who has such information and a person who has a legitimate reason for obtaining that information. These regimes have not led to any problems that necessitate the application of the burdensome and ill-fitting requirements of the "employment" provisions of the FCRA to the insurer-agent relationship, nor have they prompted the need to treat reports by third parties on workplace incidents as "consumer reports" covered by the Act. Whether the FTC or the Congress can be made to appreciate that fact, and therefore to reverse the staff determinations reflected in the Kane-Solomon and Keller-Vail Letters, remains to be seen. 🐉

Endnotes:

¹ State law may also be applicable to the use of consumer reports in the employment context. While state laws addressing certain FCRA requirements are preempted, for most of the matters discussed herein state laws are not preempted unless the state law is inconsistent with the FCRA and then only to the extent of the inconsistency. FCRA §624, 15 U.S.C. §1681t. State laws that impose more burdensome obligations are not inconsistent with the FCRA if a person can comply with both obligations. See *Credit Data of Arizona v. State of Arizona*, 602 F.2d 195 (9th Cir. 1979).

² Haynes-Poquette Letter, 6/10/98. The FTC staff opinions (which are identified by the name of the FTC staff person writing the letter and the name of the person to whom the letter was written) are available at the FTC's website (<http://www.ftc.gov/os/statutes/fcra/>).

³ FCRA §603(d)(1), 15 U.S.C. §1681a(d)(1). Other purposes include establishing the consumer's eligibility for credit or insurance to be used primarily

for personal, family or household purposes, or by a person who has a legitimate business need for the information in connection with a business transaction that is initiated by the consumer.

⁴ FCRA §603(f), 15 U.S.C. §1681a(f).

⁵ A conversation with an FTC staff member suggests that the staff views the word "regularly" as meaning "with any degree of frequency."

⁶ The Act also imposes obligations on users of consumer reports not to request such reports unless they have a "permissible purpose" (FCRA §604(f), 15 U.S.C. §1681b(f)), and not to obtain such reports under false pretenses (FCRA §619, 15 U.S.C. §1681q).

⁷ FCRA § 604(b)(2), 15 U.S.C. §1681b(b)(2). Before providing such reports, CRAs are required to obtain the employer's certification that it has complied with the notice and authorization requirements, that it will comply with its obligations in the event it takes "adverse action," and that the information in the report will not be used in violation of any

applicable Federal or state equal employment opportunity law or regulation. FCRA §604(b)(1), 15 U.S.C. §1681b(b)(1).

⁸ Lamb-Steer Letter, 10/21/97.

⁹ Haynes-James Letter, 8/5/98; Isaac-Brisch Letter, 6/11/98 (making clear that the notice and authorization requirements must be met even where the employer is requesting a consumer report on a current employee suspected of criminal misconduct).

¹⁰ FCRA §604(b)(3), 15 U.S.C. §1681b(b)(3).

¹¹ FCRA §603(k), 15 U.S.C. §1681a(k).

¹² Brinckerhoff-Weisberg Letter, 2/27/97.

¹³ FCRA §615(a), 15 U.S.C. §1681m(a).

¹⁴ Haynes-Hawkey Letter, 12/18/97.

¹⁵ FCRA §606, 15 U.S.C. §1681d.

¹⁶ Haynes-Lewis Letter, 6/11/98. If the employer obtains such information directly from the public records source,

the FCRA is not triggered because the public records source is not deemed a "consumer reporting agency" and, hence, the information it provides are not "consumer reports."

¹⁷ Haynes-Islinger Letter, 6/9/98. If the employer deals directly with the drug testing laboratory, the FCRA is not triggered. This is because the laboratory is reporting on its own experiences with the consumer and, hence, is not a CRA. CRAs assemble or evaluate information about the consumer from third parties.

¹⁸ Haynes-Beaudette Letter, 6/9/98.

¹⁹ FCRA §616, 15 U.S.C. §1681n.

²⁰ FCRA §617, 15 U.S.C. §1681o.

²¹ FCRA §621(c), 15 U.S.C. §1681s(c).

²² The Commentary is reproduced at 16 C.F.R. Part 600, Appendix.

²³ Reports on the corporate agency itself are not covered by the Act since

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they are not reports on "consumers" (i.e., individuals).

²⁴ FCRA §604(a)(2), 15 U.S.C. §1681b(a)(2).

²⁵ Such authorization might be obtained at the time that the agency contract is entered into or renewed, or at any other time.

²⁶ See FTC Comment 603(d)-3(C) ("Reports used to determine the eligibility of a business, rather than a consumer, for certain purposes, are not consumer reports and the FCRA does not apply to them even if they contain information on individuals, because Congress did not intend for the FCRA to apply to reports used for commercial purposes"); Comment 603(d)-6(B) ("A report on a consumer for credit or insurance in connection with a business operated by a consumer is not a 'consumer report' and the Act does not apply to it."). See also *Matthews v. Worthen Bank & Trust Co.*, 741 F.2d 217 (8th Cir. 1984) (FCRA does not apply to credit report obtained on individual in connection with the individual's application to purchase a

liquor store and lease space in a mall); *Yeager v. TRW, Inc.*, 961 F. Supp. 161, 162 (E.D. Tex. 1997) ("FCRA does not apply to business transactions, even those involving consumers and their credit information," citing earlier cases in support).

²⁷ See, e.g., *Commeaux v. Brown & Williamson Tobacco Co.*, 915 F.2d 1264 (9th Cir. 1990); *Ippolito v. WNS, Inc.*, 864 F.2d 440 (7th Cir. 1988).

²⁸ *Cambridge Title Co. v. Transamerica Title Ins. Co.*, 817 F. Supp. 1263 (D. Md. 1992), *aff'd*, 989 F.2d 491 (4th Cir. 1993) (title insurer had a "legitimate business need" for obtaining a credit report on the President and principal owner of an agency in connection with its annual reviews of the agency and an investigation into an apparent shortfall in the agency's escrow accounts).

²⁹ FCRA §604b(a)(3)(F), 15 U.S.C. §1681b(a)(3)(F) (emphasis added).

³⁰ A reasonable reading of this language would be that the agency relationship represents a continuing "business transaction." If the agency relationship was entered into on the basis of an application

submitted by the agent, the "business transaction" should be viewed as having been "initiated by the consumer" even if the individual was first approached by the insurer to sign up as an agent.

³¹ As discussed in Part II, above, an employer who requests a consumer report to be used in the employment context must (a) provide the consumer with a separate disclosure that a consumer report may be procured, (b) obtain the consumer's written authorization to procure the report, and (c) provide the consumer with a copy of the report before taking "adverse action" against the consumer. These requirements are not imposed on persons who obtain consumer reports under §604(a)(3)(F) in the case of "business transactions" with the consumer.

³² This was the route taken by the trucking industry in light of the Isaac-Allison Letter, discussed above. See FCRA §§ 604(b)(2)(B) & (C), and 604(b)(3)(B) & (C), added by Pub. L. 105-347 (November 2, 1998).

³³ See EEOC "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors," available at www.eeoc.gov/docs/harassment.hmt.


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NAMES IN THE NEWS

In Milwaukee, WI, employees and customers at Wisconsin Title Service Company, Inc. recently celebrated the firm's 50th anniversary. **Nic Hoyer**, principal at Milwaukee's oldest independent title agency, said "We are proud to celebrate this milestone for our company. . . Our solid reputation has been built on knowledgeable employees, sound business practices, and continued innovation in serving our customers."

At Chicago Title & Trust Co., or one of its subsidiaries, the following have received promotions: **Jeanna Ayala**, to Westside area escrow manager at TICOR Title in Beaverton, OR; **Richard Bales**, to assistant regional counsel and assistant area counsel, CTIC, in Wheaton, IL; **Anna Batten**, to agency operations officer, at CTIC in Birmingham, AL; **Barb Haskins**, to branch escrow manager, at TICOR Title in Tualatin, OR; **Neal Herman**, to assistant vice president at CTIC and TICOR Title, remaining assis-



Bales



Lucchesi

tant NBU manager in Washington, DC; **David Johnson**, to resident vice president, TICOR Title, remaining manager in Schaumburg, IL; **Alan Kalas**, to senior escrow officer, at CTIC in Wheaton, IL; **Rebecca Killion**, to resident vice president, CTIC and TICOR Title, remaining NBU operations manager in Washington, DC; **John Lancaster**, to claims manager, remaining associate regional counsel and assistant vice president in Seattle.

Also promoted at Chicago Title are: **Richard Lucchesi**, to resident vice president, TICOR Title, remaining Loop/NTS manager, Chicago, IL; **David Nelson**, to assistant regional counsel at CTIC in Geneva, IL; **Jeffrey Pallin**, to Massachusetts state manager, remaining vice president in Boston, MA; **Jeffrey Rezwin**, to

assistant area counsel at CTIC, NBU, in Chicago, IL; **Andrea Scott**, to assistant vice president, TICOR Title, remaining Loop residential manager, Chicago, IL; **David Scott**, to assistant vice president at TICOR Title, remaining DuPage County manager, Wheaton, IL; **Joy Selenis**, to resident vice president, TICOR Title, remaining Oak Lawn and Orland park manager in Oak Lawn, IL; **Sally Soderstrom**, to senior escrow officer and construction escrow manager at CTIC in Geneva, IL; **Adrienne Verdone**, to resident vice president, CTIC and TICOR Title, remaining Eastern Pennsylvania area manager in Philadelphia, PA; **Yvonne Williamson**, to branch escrow manager, TICOR Title, Portland, OR.

In Dallas, TX, Chicago Title Insurance Company's southwest Commercial Center has announced new leadership and new Downtown Dallas offices in a major re-structuring of commercial real estate operations. The new leadership includes the following individuals: **Thomas F. Garner**, **Lamar Tims**, **Dennis Noebel**, **Konrad Kaltenbach**, and **Suzanne Williams**.

Richmond-based LandAmerica Financial Group, Inc. has announced the elec-

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tion of **Russell B. Goodman** to senior vice-president of Lawyers Title Insurance Corporation. Goodman, a Michigan native, attended Flint Junior College, Parks Business College, Florida Junior College, and the University of North Florida, before joining Lawyers Title in 1988. **David L. Huffstetler**, is a newly-elected vice president of Lawyers Title managing the Raleigh office; he joined the firm in 1995, having previous experience as an attorney in private law practice. In Asheville, NC, **Patricia Wilde Cothran** is newly elected vice president of Lawyers Title Insurance. Also in North Carolina, **Nancy S. Ferguson** is the newly-elected vice-president managing the Greensboro and Winston-Salem offices of Lawyers Title Insurance Corporation. Further north, **Barry S. Wolfensohn** has been appointed branch counsel in the Fredericksburg, VA, operations center. He graduated from Roosevelt University in Chicago with a B.M. degree and with honors from DePaul University, also in Chicago, with a J.D. degree.

Also at LandAmerica Financial Group, **John S. Elzeer** has been promoted to na-



Garner



Tims



Williams



Cothran



Noebel



Kaltenbach



Goodman



Ferguson



Huffstetler



Wolfensohn

tional commercial services counsel in the company's NCSA office in Tampa, FL. Elzeer joined the firm in 1995 as a claims attorney. In their Western Pennsylvania agency, Lawyers Title Insurance Corporation has appointed **Alfred V. Watterson, Jr.**, manager. At the headquarters of LandAmerica in Richmond, VA, **Richard H. Crane** has been named vice-president and director of information services for the company's National

Commercial Services division. At Elliptus Technologies, Inc., a sub-

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sidiary of LandAmerica Financial Group, Inc., **John F. Saelens** has been newly appointed president. Prior to joining Elliptus, Saelens was senior vice president for UniFi Products Group, a division of Fiserv, Inc.

At First American Title Insurance Company in Florida, **Mitchell "Mitch" Corriveau** has been appointed vice president of agency services and regional timeshare development. Corriveau has been in the title business for 26 years, with the last 12 at First American. In addition, **Scott F. McKee** has been promoted to First American's agency technology manager for the state of Florida.

Working out of the Santa Ana, CA corporate office of First American, **Rebecca L. Pelletier** has been named vice-presi-

dent, major accounts division, where her responsibilities include national and international account development. In Osceola County, Fidelity National has expanded its staff through the additions of **Kathleen Cape, Waleska Cruz, and Arlette Budka**, all of whom had been with another title insurance company in the area.

Metropolitan Title Company, based in Howell, Michigan, has acquired Emmet County Abstract & Title Company Inc. of Petoskey, Michigan, and Huron County Abstract Company, Inc., in Bad Axe, Michigan. With these acquisitions, Metropolitan Title now employs a staff of more than 1,100 employees in 82 offices in Michigan, Indiana, and Illinois.

"We're very pleased to add these markets to our strong foundation in the state


of Michigan," said **Ken Lingenfelter**, president of Metropolitan Title.

Stewart Title Guaranty Company in Houston, TX, recently announced the promotion of **Ginny Abiassi**, senior vice president and senior underwriting counsel, to director of communications. While retaining her senior underwriter status, Ginny will direct the marketing and advertising, publications and corporate office special events effort.

At Stewart Title in Schaumburg, IL, **Thomas E. Schnitzius** will be running in the 100-mile, Leadville, CO, Ultra-Marathon to support a charitable cause benefiting the homeless in the Chicago area. To participate as a sponsor or to find out more information, send a fax to 847-240-0643.

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1999 Affiliated Association Conventions

September

9-11 **Missouri**, Westin Crown Center, Kansas City, MO

12-14 **Ohio**, Dayton Marriott, Dayton, OH

16-18 **Dixie**, Grand Casino, Gulfport, MS

16-18 **North Dakota**, Gladstone Inn, Jamestown, ND

16-18 **Wisconsin**, Stone Harbor, Sturgeon Bay, WI

17-19 **Maryland, DC, VA**, Cavalier Hotel, Virginia Beach, VA

22-24 **Nebraska**, Mid Town Holiday Inn, Grand Isle, NE

23-26 **Washington**, Coeur d'Alene, ID

November

3-5 **Arizona**, Gold Canyon Golf Resort, Gold Canyon, AZ

10-13 **Florida**, Westshore Hotel, Tampa, FL

December

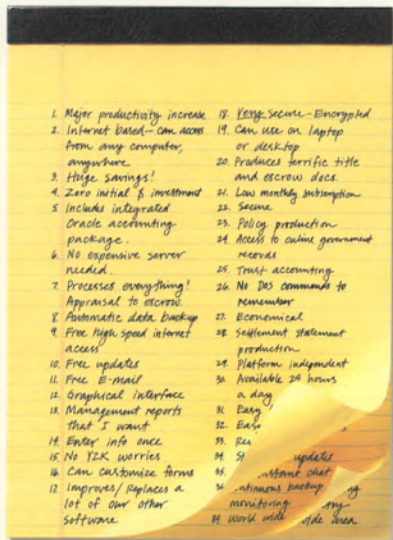
2-3 **Louisiana**, Chateau Sonesta, New Orleans, LA

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