September/October 2002

Title NEWS

Official Publication of the American Land Title Association

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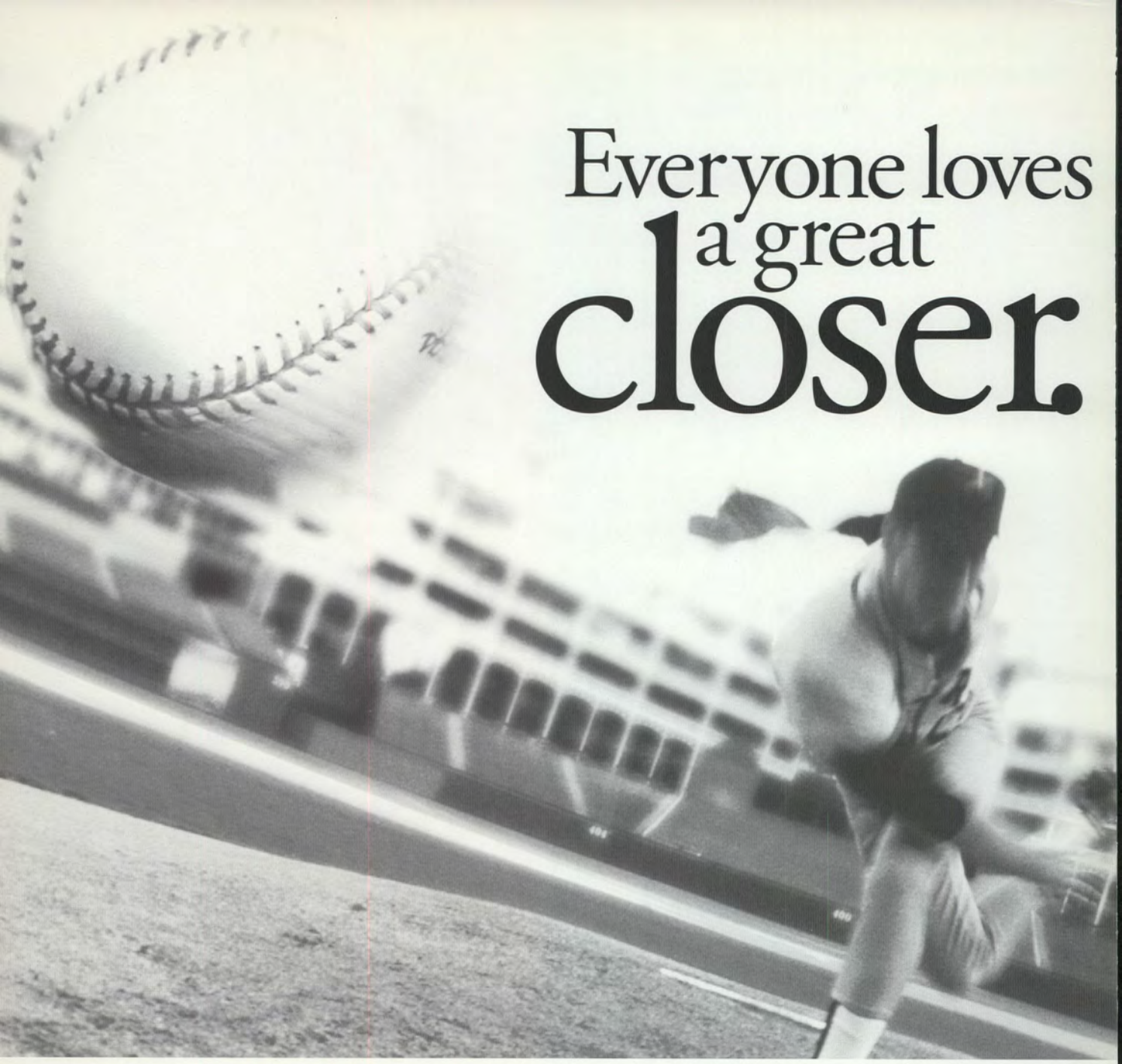

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A Tribute to You — Special Thanks

During my term as ALTA president, I had the privilege of attending numerous state land title association conventions. The installation of officers ceremony and my administration of the accompanying oath of office were always of particular significance to me. The words of the oath epitomized the character of the thousands of people I met throughout my travels and their commitment to our industry. "It is a privilege and an honor to be selected for leadership by the members of your profession. But this honor is accompanied by great responsibility. Over the years, many officers of your land title association have borne this responsibility with distinction. Today, you have been called upon to continue in the proud tradition they have established. …[A]nd yours will be no easy task. You will find the challenges frequent and the demands heavy, but your rewards will be great." Yes, I found this oath to be very true, the rewards far outweighed the demands.

There is no ALTA or state association separate from its membership—its "active and participating membership." We are an industry steeped in tradition, pride, dedication, and commitment to the high ideals and principles of those that have served before us. The common denominator or thread that binds our past, present, and future is sacrifice. At each state convention I was overwhelmed by the sacrifice that I saw so many men and women make to the high ideals and standards of our industry: the sacrifice of time to work to make things better and to raise the bar higher. It is disturbing to hear people say that they don't belong to ALTA or their state association because "I don't get anything out of it." To them I would say 'take a hard look in the mirror, because you're not putting anything into it.' Our continued success with the challenges facing our industry demands everyone's involvement and participation.

Last October when I assumed office, I pledged to devote significant time and energy to assure the demise of alternative title insurance and mortgage impairment products that illegally invade our marketplace without proper regulatory compliance. Through the efforts of hundreds of individuals devoting thousands of man-hours—we have stalled the mortgage impairment efforts.

To promote our value proposition and public image, we will launch a multimillion public relations campaign over the next three years. The campaign is designed to educate regulators, politicians, customers, and consumers about the value of our products and services and to permanently entrench our critical position in the real estate closing and conveyancing process in the very fiber of American commerce.

My heartfelt thanks to all of you that have sacrificed throughout the year. I proudly look forward to my continued association with our great industry.

Frank P. Willey

Who You Gonna Call?

To introduce you to another member of the ALTA staff, we are featuring in this issue Kelly Romeo, CAE, ALTA's director of technology.

Kelly has been with ALTA for a combination of 11 years. She worked for ALTA from 1986 to 1988 as legislative assistant and PAC administrator and then joined the staff again in 1993 as personnel administrator and Technical Projects Manager. She has been ALTA director of technology since 1998. Kelly is responsible for all the internal and external technology systems of the office and is the liaison for the ALTA Technology Committee, which is responsible for developing the sessions at ALTA's Tech Forum each February. One of Kelly's other major responsibilities is title industry liaison to a variety of technology-related groups, including the Mortgage Industry Standards Maintenance Organization (MISMO).

Kelly earned her Certified Association Executive (CAE) designation in 2001 from the American Society of Association Executives.

Kelly can be contacted at kelly_romeo@alta.org or 1-800-787-2582.

Next Issue: Liza Trey, ALTA's director of meetings and conferences.

Who's Running the Ship?

Have you wondered who is on the ALTA Board or the Title Agent and Underwriter's Section Committees? Each year at this time the respective nominating committees propose new members for each group. The current nominations can be found on the home page of ALTA's Web site, www.alta.org. The reports of the respective committees will be voted on during ALTA's Annual Convention, October 16-19 in Palm Beach, FL.

calendar

ALTA Coming Events

September
22-24
Reinsurance Committee
Beaver Creek, CO

28-Oct. 1
Annual Accountants Meeting
Portland, OR

October
16-19
ALTA Annual Convention
The Breakers Hotel
Palm Beach, FL

November
4-6
Title Counsel Fall Meeting
New Orleans, LA

23-26
TRC Board Meeting
San Francisco, CA

December
6-9
Systems Committee Meeting
Palm Springs, CA

Affiliated Association Conventions

September

5-7	Missouri
5-7	Washington
8-11	Colorado
11-13	Arizona
12-14	Indiana
12-15	Dixie
12-15	Maryland
15-18	Ohio
18-20	Nebraska
19-22	Wisconsin
TBD	Nevada

October

9-10	Kentucky

November

6-9	Florida

December

5-6	Louisiana

Data Standards Group To Meet

The Mortgage Industry Standards Maintenance Organization (MISMO) has announced face-to-face workgroup meetings to take place September 16-20, 2002, at the Ponte Vedra Inn & Club in Ponte Vedra Beach, Florida (near Jacksonville). The Title Insurance Workgroup will meet from 1:00 - 4:30 p.m. on Tuesday, September 17th. The group will discuss the data needs for the next version of the MISMO XML Title Request and Response DTD, incorporating the recent standards developed by the Real Property Information Workgroup and the County Recorders' Workgroup. The meetings are free to MISMO subscribers. Nonsubscribers pay a $295 fee for the weeklong meetings. Visit http://www.mismo.org or contact Title Insurance Workgroup facilitator Kelly Romeo at kelly_romeo@alta.org for more information and to register.

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government & agency news

HUD Proposes RESPA Changes

Secretary of HUD, Mel Martinez has announced some major changes to RESPA regulations designed to make the mortgage loan origination and settlement process easier for consumers. These changes, if they go through as currently stated, would have a tremendous impact on the title industry. Basically the changes would include a new exception to Section 8 of RESPA to allow packaging settlement services by, what really amounts to, lenders. Lenders would not be required to tell the buyer what services are in the package or who the vendors are. ALTA thinks this could severely limit consumer choice. ALTA is currently conducting interviews with members and will release a formal position on this issue shortly. For a more in-depth story on the HUD proposed rule changes, see the cover story in this issue of *Title News*.

ALTA Obtains Amendment to Bankruptcy Legislation

For the past seven years ALTA has been working to ensure that any bankruptcy legislation would include an ALTA supported amendment. The conference report recently reported in the House essentially makes it more difficult for persons to claim bankruptcy. It includes our provision which overturns a court case, so that title companies will not be held liable for undisclosed bankruptcies in which our companies do not have constructive notice of the bankruptcy. But the legislation had a hold-up in the House. Congress will bring this issue up again in mid-September.

RESPA Seminar

RESPA expert, Phil Schulman of Kirkpatrick and Lockhart, Washington, DC, will interpret the newly proposed RESPA changes in a special session for the ALTA Abstracters and Title Insurance Agents Section Members at ALTA's Annual Convention, October 16 in Palm Beach. FL. The session is free to those registered for the Convention.

For those who cannot attend the full convention but want to attend just this session, a special $50 fee is being offered. Go to the ALTA Web site to register for full convention or this session only. Unable to attend in person? You can sign up for the audiotape of the presentation for $50.

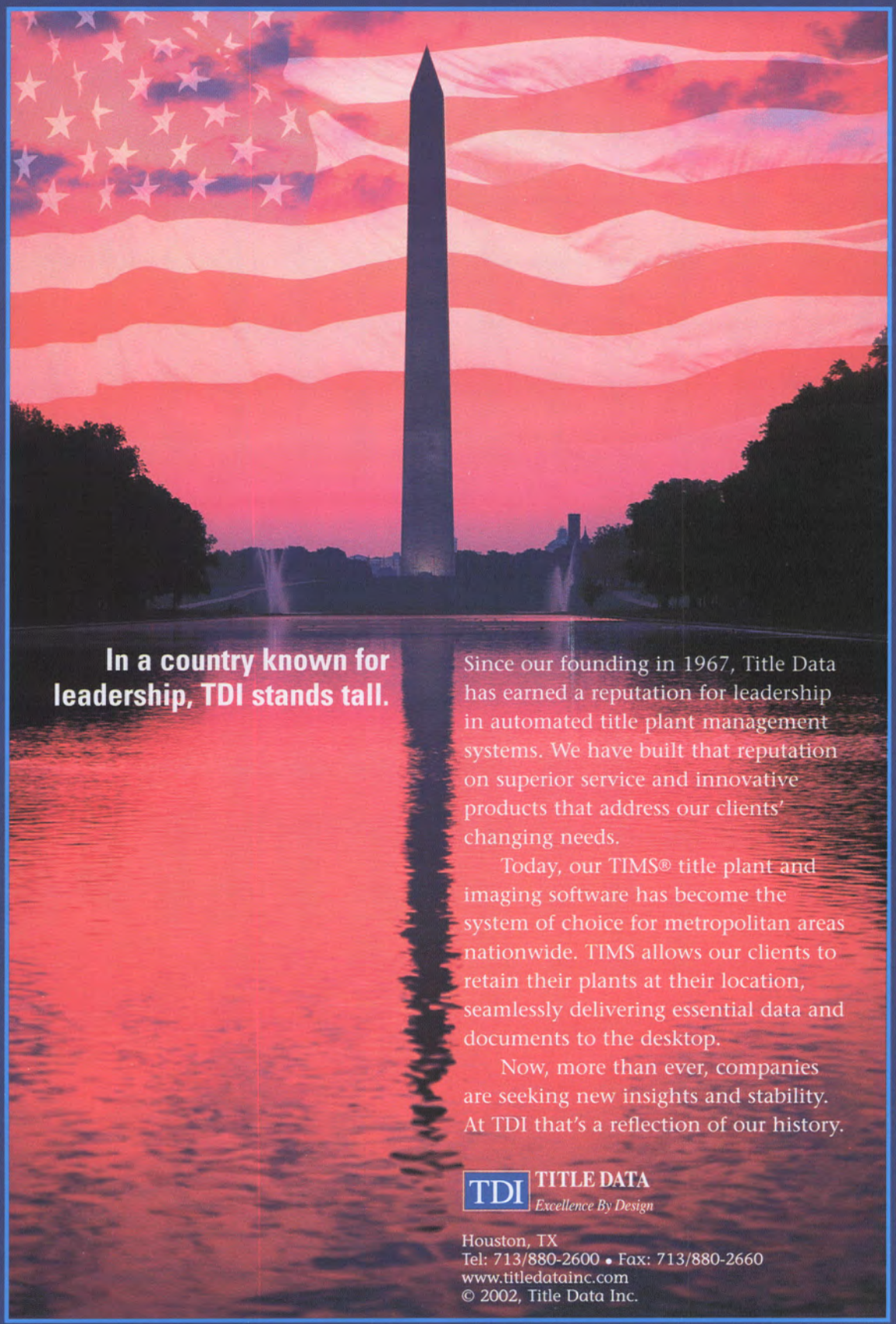
Radian Suffers Back-to-Back Blows

In a significant regulatory blow to Radian Guaranty's offerings of its Radian Lien Protection product, the California Department of Insurance issued a cease and desist order to the company in late June. In addition, the Department advised Radian that if it wanted to continue to offer its property and casualty products in California, it had to stop marketing its Radian product nationwide. The next blow came from the Pennsylvania Department of Insurance, where Radian is headquartered. The Department advised Radian that it is not to offer its Radian Lien Protection Policy in that state until it is licensed to do so. Radian has stopped marketing its product nationwide and will concentrate on "changing the rules" through state legislatures to allow it to be sold legally.

Discuss RESPA Changes With an Expert

In response to your requests to "continue the conversation" on HUD's RESPA Proposed Rule, ALTA is proud to introduce the new ALTA Online Discussion Forums. Sheldon Hochberg, respected RESPA expert and partner at Steptoe & Johnson in Washington, DC, joins ALTA Executive Vice President Jim Maher to respond to your questions and concerns about this crucial regulatory threat to your business. Post your question or opinion today and discuss the future of your business. Visit www.alta.org/forums to access the Discussion Forum on HUD's RESPA Proposed Rule or click directly from the home page. Have another topic for a forum in mind? E-mail service@alta.org with your proposed topic, and we'll work with you to identify an expert moderator.

Rep. Mark Green (R-WI) (in suit) visited the ALTA Finance and Planning Committee meetings in Washington, DC, in July to discuss his concerns about the changes in RESPA currently under review. (See cover story.) Green believes that title agents play a significant role in the closing process and worries that the proposed new system will create consolidation and lack of competition, which means less opportunities for consumers. Green would prefer oversight hearings to provide a venue for comments on the changes..



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The Title Industry Under Fire

by Peter Boisseau

Two recent threats—HUD's proposed change to the regulations under the Real Estate Settlement Procedures Act (RESPA) and the continuing misinformation put out by Radian Guaranty saying its mortgage impairment product is cheaper and provides as much protection as title insurance—have created one of the most challenging eras in memory for the title insurance industry. This article will focus on HUD's proposed changes to the closing process and the potential impact on our industry if it is adopted in final form unchanged. For an update on the Radian issue, see the accompanying sidebar.

HUD Secretary Mel Martinez bought a house in the Washington, DC, metropolitan area last year and was surprised by the complicated process. Consequently, he has pledged to make the home-buying process easier for consumers. HUD is publicizing this effort as the "Homebuyer Bill of Rights;" however, what the proposal is mainly talking about is reforming the regulatory requirements under RESPA.

HUD proposes that lenders offer consumers a flat-rate price for settlement services so they can compare that charge with other lenders, much like they now compare interest rates. HUD says this new process will provide greater choice for the home buyer in shopping for lower cost mortgages and settlement services. On first glance it sounds good for the consumer. But when you look at the intricacies of how it will be implemented, you find it will be detrimental to the title industry, Realtors®, real estate attorneys, small-sized lenders, and, in purchase/sale transactions, to consumers.

In looking at the HUD proposal, ALTA has "concerns about the lack of consumer choice in selecting settlement service providers when packages are used," according to James R. Maher, ALTA's executive vice president. From a public policy perspective ALTA has "substantial questions regarding HUD's statutory authority for certain aspects of the proposal," he added.

The New Rule

The proposed HUD rule is complicated. There are a number of ambiguities in it. The proposal abandons the regulations and Good Faith Estimate (GFE) form that have been used for almost three decades to implement RESPA Section 5(c) (which requires lenders to provide loan applicants with a "good faith estimate" of "charges for particular settlement services") and replaces it with two radically new regulatory "regimes" and disclosure forms: 1) a new Good Faith Estimate (GFE) regime, which consolidates guaranteed prices into categories, and 2) the Guaranteed Mortgage Package Agreement (GMPA) regime, under which borrowers would be offered a guaranteed single price for all settlement costs along with a loan at a guaranteed interest rate. Although the two regimes are similar in many ways, prices, payments, and arrangements between lenders who offer GMPAs and providers of services in the package would be exempt from RESPA Section 8 scrutiny, whereas Section 8 would continue to apply to the new GFE regime. (A more in-depth look at these regimes is at the end of this article, or you can download an analysis of the rule from ALTA's home page.)

HUD's proposal appears to allow anyone to offer these GMPAs. However because the package must include a loan at a guaranteed interest rate, it is questionable—if not unlikely—that anyone other than lenders would be in a position to effectively offer them to consumers.

To induce lenders and others to offer these packages, HUD is offering two carrots: As mentioned above, (1) an exemption from RESPA Section 8 for payments and prices relating to the package and to the services included in the package, and (2) elimination of the need to disclose what services are being offered or included in the package. Two enticing carrots.

The proposed packaging alternative would actually provide substantially less information to the home buyer. The fact that the lender does not need to disclose what services are, or are not, included in the package creates an even greater problem for consumers who seek to shop for these services—something HUD very much wants to encourage.

And, you know that in some parts of the country it is the seller who pays for all or part of the closing costs.

HUD's proposal would not allow that seller any choice in the selection of vendors, since they are being selected by the lender on behalf of the buyer. So the seller is completely left out of the equation. It is also unclear whether the buyer may wind up paying for costs that the seller previously had to bear.

The proposal could greatly diminish the role of Realtors® in the closing process and could threaten the continued participation of small mortgage lenders by making it even more difficult for them to compete with major mortgage lenders. And if large national and regional lenders find it more efficient to deal with fewer and bigger providers of settlement services, smaller title insurers or agents may be adversely affected. Many observers find it hard to appreciate how this decline in competition would translate into lower mortgage prices for home buyers.

The National Association of REALTORS (NAR) has yet to make official comments to HUD, but NAR supports the preservation of the current RESPA rules and opposes any broad regulatory relief for lenders who can package services today without the exemption from Section 8. NAR's historic position has been that there is no evidence that such a regulatory exemption will result in lower costs to the consumer. Like ALTA, NAR supports improved disclosures to ensure consumers have the information necessary to make informed decisions. Both trade associations have traditionally recommended that any changes to RESPA be done in a slow and deliberative process. The complexity of the marketplace and the uncertainty of future technology should be considered in any reform proposals. If the HUD proposal is implemented in final form, major money-center banks could dominate all parts of the residential property transaction in many metro areas, from buying to financing to closing.

The Mortgage Bankers Association of America has taken a position supporting HUD's initiative. Other financial trade organizations—the American Banking Association and the Consumers Bankers Association—are expected to endorse the effort as well, though it is not at all clear that HUD's proposed rule change would benefit any but the largest financial institutions. That should give pause to community banks and local mortgage companies because the mortgage lending business is already a rapidly consolidating one. In the past five years the market share of the top ten originators of residential mortgages has doubled from 25% to "control upward of 50%," according to *American Banker*.

Several points are obvious, however. It would be foolish for anyone to oppose an initiative under an umbrella called the "Homebuyer Bill of Rights." That would be like being against motherhood, apple pie, and the American way. Further, the stated objectives of HUD's thrust coincide with ALTA's long-standing positions. The devil, as they say, is in the details, and there are a lot of details to this wholesale revision of RESPA toward packaged or bundled closing costs.

The current U.S. system for the transfer and finance of residential real estate is the envy of the world for its efficiency, security, and low cost for home buyers. Clearly, it's not broke, but that doesn't mean the closing process can't be improved with an eye toward making the American dream of homeownership even more accessible to low-income, minority home buyers, which is HUD's stated objective. The trick is to make sure that changes accomplish their intended purpose and do not backfire with unintended consequences.

ALTA's official position on packaging of settlement services has always been to support "settlement services legislation or regulations that promote consumer choice and empowerment and require meaningful disclosure." ALTA also recognizes that the consumer has "a separate benefit or interest in the selection of the product or service and the pricing of each component in the package."

ALTA and other interested parties have an obligation to comment on the details of the proposed rule change. Interested parties have until October 28, 2002, to comment on the proposed changes. ALTA urges members to inform themselves on this issue and express their views on the proposed changes. If you would like to submit comments, send them in writing to: Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410-0500.

Many observers see the HUD rule change initiative as an attempt to accomplish through regulatory reform what it was not able to achieve through Congress.

The two options in HUD's current proposed RESPA rule change are summarized separately (below) from an analysis prepared for ALTA by Sheldon E. Hochberg of Steptoe & Johnson LLP, Washington.

The Revised Good Faith Estimate Process

One of HUD's regimes is the revised Good Faith Estimate process. Within three days of receiving (even orally) an application containing the most basic information, a lender must give the applicant a revised GFE form. This new form would contain the essential financial cost data (interest rate, APR, monthly payment), and also estimates of the aggregate total amounts to be paid by the borrower for each specified category of settlement charges.

(contined on page 10)

Radian Continues to Spread Incorrect Cost-Savings

On the Radian front, ALTA continues to win its legal effort to show that while a company can call its re-financing product a lien impairment protection product, if it looks, sounds and works like title insurance, it is title insurance. Regardless, companies must be licensed and regulated to sell title insurance and Radian Guaranty does not have the license.

The departments of insurance in six states have ruled in response to ALTA efforts that the Radian product is title insurance masquerading as something else. Since Radian is not qualified to sell title insurance, it cannot sell its product in those states. Illinois is the only state so far that has decided to allow Radian's product.

However, the CA Department of Insurance issued a cease and desist order to Radian and said that if Radian wants to continue to offer its mortgage insurance products in California, then it has to stop marketing the Lien Protection Product in all 50 states. As a result, Radian Guaranty says it has stopped selling its lien impairment product everywhere and will concentrate on "changing the rules" through state legislatures to allow it to be sold legally.

Radian, however, continues to mesmerize even knowledgeable real estate industry observers with promises of huge savings over traditional title insurance, which lenders can pass along to their consumers. The claim is "several hundreds of dollars" per closing and a cumulative savings of three billion dollars! The much more boring truth is this: Lenders and homeowners can enjoy the benefits of full-strength title insurance, including lien clearance, for less money than the Radian gimmick for most re-financing in most states.

On a $100,000 loan, true title insurance would cost less than Radian's $325 flat rate in 36 states. On a $150,000 loan, title insurance would be less expensive in 28 states. The key, of course, is obtaining a re-issue or other discount rate for title insurance when re-financing. ALTA strongly urges title companies to recommend these discounts to re-fi customers in all instances where sound underwriting principles allow their use.

The real issue is why would any lender be interested in the Radian product? Sure, it might save the lenders' applicants a few dollars—not the hundreds of dollars as Radian claims—and, yes, the odds of a title defect on a re-fi may be less than in a transfer of title. But the Radian product provides no protection at all to the lender on an average-size re-fi mortgage. The Radian policy protects a pool of loans not individual loans and that protection amounts to .5%—that's one-half of one percent—coverage for the entire pool of loans.

In a pool of 10 million dollars in mortgages, a single title problem resulting in a loss would mean that the lender could only recover up to $50,000 from the "insurer." There may not be many losses in a re-fi pool, but it would only take one prior failure to prevent the mortgage holder of a second title in the same pool to receive nothing in the event of a title failure. And, the fact is, title defects do occur in re-financing, though perhaps not at the same 25% rate of occurrences discovered and corrected in routine property transfer title searches.

The Radian policy would not provide any protection for the lender or homeowner from legal costs to defend the title in case of defects or problems with the title. The cost of defense is typically 35-40% of claim amounts. So, the real question for lenders is this: How do you think the homeowner is going to feel about his mortgage company making her pay $325 for "protection" against liens and getting nothing for it in the event even a minor title issue arises?

We know that typically title insurance is not needed or issued on home equity loans or second mortgages. Radian claims that it could save three billion dollars in the aggregate on re- fi's, second mortgages, and home equity loans compared to title insurance. ALTA counters that the entire title insurance business, including transfers of residential property and commercial transactions only amount to less than ten billion dollars annually. Even if title insurance in refinance transactions were free, consumers could not save three billion dollars.

(contined from page 8)

Seven categories of estimates encompass charges now found in the 800, 1000, 1100, 1200 and 1300 series on the HUD-1 form. The interest rate may change during the 30-day validity period according to the lender's normal loan underwriting, but the charges in each category of settlement services cannot change (unless dependent on the interest rate). In other words, the estimates are not estimates at all; most amounts cannot be exceeded at closing. Only charges that fall into the categories of services required by the lender where the borrower may shop for a provider (the 800 and 1000 series) or reserve or escrow for insurance and property taxes (1000 series) may exceed estimates by 10%.

With regard to title-related services, the lender's estimate must apparently include all charges, except for owner's title insurance, that would be in the 1100 series, not just the charges made and kept by the title company—including fees, even attorney's fees, wire transfers, and deliveries.

The regulations appear to assume that a single provider performs all of the title-related services because the lender is required to indicate on the GFE form whether the services are "lender-selected" or "borrower-selected." In real life, some providers may be selected by the home buyer, others by the lender.

But the interesting part is that the charges for each of the seven categories would be shown in a lump sum, not individual itemized costs. On the other hand, the lender would have to attach an itemized breakdown of the title insurance premium and the amount of charges "for title and settlement agent services, including any commissions for title insurance." HUD apparently believes that if the total amount of title agent compensation is disclosed to the borrower, she will be in a better position to negotiate lower charges.

The new GFE regime would still be subject to RESPA Section 8, which means that all costs, including any negotiated discounts, etc., must be passed along to the home buyer without any mark-up. Lenders could not require the use of an affiliated title company. There is no enforcement penalty other than a complete refund for all fees and charges if the cost at settlement exceeds the GFE, "absent unforeseeable and extraordinary circumstances."

The New Guaranteed Mortgage Package Agreement (GMPA)

The other HUD regime is the GMPA. Under this option, any entity offering a GMPA must provide, at no charge, a signed GMPA in the form specified by HUD within three days of receiving an application. The form offers: 1. A mortgage commitment, subject to final underwriting and appraisal, at a "guaranteed" interest rate for 30 days that can only increase based on a verifiable index or other appropriate measure 2. A Guaranteed Mortgage Package (GMP) at a single price that includes all lender charges; all third-party charges for services required by the lender; all title and closing-related charges, including loan title insurance (if any) but not optional owner's title insurance, and all charges required to complete the loan (recording fees, taxes, etc.); and advises the home buyer if the lender anticipates including a pest inspection, loan title insurance policy, a credit report and/or an appraisal in the package. The form commits the GMPA provider to give a copy of any such reports to the home buyer.

The GMPA provider must indicate whether the GMP portion of the package includes the last four enumerated items or not, but it does not require the provider to disclose what other individual services are included in the package or the specific cost of those services. You will probably want to reread the preceding sentence to make sure you read it correctly the first time. The Homebuyer Bill of Rights, as proposed, comes with a startling lack of consumer disclosure. How could the home buyer know if the lender's package includes title or closing services that she has separately agreed to with the seller to purchase from another source? Would she be paying for such services as part of the package that the seller has already agreed to pay for (which is the custom in many parts of the country)?

Any payments, discounts, things of value, or markups that the GMPA packager can negotiate are exempt from RESPA Section 8 scrutiny. Because of that exemption, any savings need not be passed along to the home buyer. So, any volume pressure that a packager may exert can be used to increase the packager's bottom line, subject only to competitive market pressures. Finally, any or all of the services may be provided by an affiliated business and that affiliation need not be disclosed to the applicant.

Two points are clear. First, while in theory HUD's proposal appears to allow anyone, even a title agent, to offer a GMPA, the requirement that the package include a loan at a guaranteed interest rate effectively precludes anyone other than lenders from being able to put packages together. (On the other hand, multiple providers could compete to package the GMP part of a GMPA if the GMP could be severed from the loan.) Second, clearly lenders are going to find the GMPA option more appealing from a profitability standpoint than the revised GFE.

Pete Boisseau is president of Boisseau Evans & Associates, Inc., Richmond, VA, one of ALTA's public relations firms.

Is it Time for a Modern Closing Software System?

by Scott Jones and Andrew Brooks

To find out, ask yourself these questions: Is your current system still based upon archaic aspects of MS DOS™, Windows™, or mainframe-based technologies? Are your closers and administrative staff experiencing daily frustrations with the current software closing system? Has your competition migrated to a more modern system, putting your organization at a competitive disadvantage, especially when it comes to customer service? If you answered yes to any of these questions, read on.

Implementing a modern software system to automate and enhance production workflow (order entry, production documents, escrow accounting, event scheduling, title polices, reconciliation, DOC imaging, & more) does not have to be a backbreaking undertaking, if you do your homework and are prepared. Here are a few tips that will help you manage the required reviews and ultimately make the well-educated decision to implement a modern Enterprise closing software system.

Implementing a modern software system does not have to be a backbreaking undertaking.

• Review Your Current System.
Understand your technology history, including current needs and issues. Meet with your key system users and supervisors to review problems they are having with the current closing and accounting systems. Ask them about workflow restraints and key areas that may require redundant data entry. Review whether the current system locks up often, resulting in lost data and daily rebooting of workstations. Review how much time is required to complete key tasks and specifically which tasks use the most time/resources. Review whether certain tasks are being managed by hand. Are typewriters or word processors utilized for discontinuous/manual processing?

Lastly, review those areas of the back-office (accounting) that are typically prone to errors, including disbursements, trust accounting, or reconciliation, especially when real-time changes are required at the closing table.

• Keep a log.
Keep track of the various issues and concerns with your current closing/accounting system(s) over a two/three-week period by compiling a short list. Solicit feedback from your system/network administrator. Have the system administrator also review any third-party technology requirements that are problematic, and require updates when closing software applications are updated. In many cases, third-party layers of technology add considerable costs and overhead to facilitate closing processing, beyond the obvious performance and reliability degradations that are commonplace with these often complex layers.

Today's modern title and escrow systems, in the authors view, should not require layers of expensive third-party technologies including database managers, wide bandwidth requirements for office-to-office central management of data/files, or Web hosting software such as Citrix™.

• Assign a company project coordinator.
This person would compile the findings from the two/three-week review period into a simple matrix. Ensure the most problematic areas of the current system are clearly outlined at the top of matrix. Below this should be other important processing areas that clearly need improvement. Lastly, areas not present in the current production system (the wish list)

should also be included. A one two hour group meeting should ideally be scheduled allowing everyone to compare notes on the current system and to facilitate the building of the technology/processing matrix.

• Weight System Functionality/Workflow.
Top weighting should be given to identify a comprehensive, fully integrated software solution, one that provides all the required functionality and processes seamlessly and in a centrally managed fashion. Do you currently utilize several independent or discontinuous applications to perform a series of required production tasks? If so, there may be processing areas that are most prone to errors or simply eat up considerable resources, limiting overall operational productivity. Are your currently utilizing two separate software applications to prepare the HUD-1 form and, thereafter, to perform escrow accounting? What about reconciliation including daily sweep accounts; how is this currently managed? Additionally, is one application utilized to prepare documents and another to manage event tracking and scheduling? Are executed production documents electronically stored and indexed within the closing system environment, or does this require a separate stand alone application at best for paperless document archiving? These and other key processing areas should be weighed heavily in the matrix, ensuring organization benefits from a new production system.

• Start Review Process.
It is important to review process efficiency, system reliability, high-end functionality, processing accuracy, and overall system cost, including third-party technology requirements, when determining the basic return on the technology investment (ROI). Avoid temptations to get caught up with bells and whistles or features you will not benefit from. Rather, listen to everyone's concerns but be sure to focus on the items that will positively affect your bottom line and reduce transaction costs. Always recognize that certain individuals, who are a bit anxious for an array of reasons, must dedicate time to learn the new system. The benefits to the company far outweigh aversion to change, and after implementing the new software, these same users are often pleased to be the first to recognize the benefits of the new system!

• Selecting a Software Vendor.
Ask for product demonstrations and detailed software technology reviews from the vendors. Select vendors who are interested in understanding your business model and core needs, technology history, and current production levels, versus those who wow you with the latest buzzwords, such as "ASP." Investigate software vendor references from your insurance underwriter(s). And contact other settlement/title industry peers who recently modernized their systems and would be willing to share information. It is definitely wise and important to ensure all technology reviews are performed fairly and equally with each vendor to ensure that the best-in-class production system is ultimately selected.

After preliminary discussions and reviews with vendors, it may be a good idea to intelligently narrow down the playing field to the vendors you feel most comfortable with—possibly two or three—for in-depth reviews. Schedule a software demonstration with each short-listed vendor over a one/two-week period on separate days. In many cases, very informative remote product demonstrations are possible via the Internet, facilitating timely reviews. Do not allow too much time to elapse between demonstrations so that the first demo has the same weight as the third, or human nature may work against clean comparisons.

Select vendors who are interested in understanding your business model and core needs, technology history, and current production levels.

After each software presentation is completed, compare notes as a team and summarize the pros and cons of the respective software vendor as compared to your technology/needs matrix previously compiled. Be sure to include the basic hardware, platform, bandwidth, and third-party technology requirements for each vendor's software solution, as costs may vary greatly depending on the resource friendliness each vendor provides. Also ensure that any last minute answers to questions are tracked down in a timely fashion during final reviews. Repeat this process for the short list of vendors.

Now that you have narrowed down your shortlist to several vendors based upon initial discussions, reviews, and detailed product demonstrations, it may also be a good idea to request a few customer references. It should be noted that when a vendor makes a general claim about having completed a large number of installations, it does not guarantee the customers are productive and truly satisfied. Further, a newer technology vendor may not have done many installations due to the newness of the technology; however its customers may have benefited greatly from the modern solution the vendor provides. This area may be a trap of sorts, so do your homework.

Lastly, be certain the vendor has a quality software-training program in place, including a well-defined plan to ensure your focus during the software switchover /implementation process.

Depending on your needs, this may consist of customer-site training for larger companies or training in the city where the vendor is located and an implementation outline provided to ensure a clean transition.

• Time for a Decision.
Assuming you followed these guidelines, your organization should be very comfortable making a decision on the one vendor who will meet your particular needs. Time to move your technology transition plan into high gear. A well-coordinated, live switchover should be manageable in approximately three to four weeks, consisting of software installation, onetime system/user setup, and user training.

• Something to ponder....
Always keep in mind that future business levels ideally will be greater than current levels, and you should be comfortable in making a well-educated and informed decision to purchase new technology. In the words of Teddy Roosevelt, "In any moment of decision the best thing you can do is the right thing, the next best thing is the wrong thing, and the worst thing you can do is nothing."

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Market Conduct Exams—Are You Prepared?

by Alan J. Schmitz

The market conduct examination process is one of the biggest sticks in the regulatory bag of tools and has become an increasingly common method for state insurance regulators to monitor the business activities of regulated entities across the country. A market conduct examination is a systematic, comprehensive, and in-depth review of all the facets of a title insurer's operations, transactions, and business dealings. The intended purpose behind the market conduct examination process is to allow regulators a method to monitor compliance with state insurance laws and regulations, to create a process to ensure the fair and consistent treatment of consumers, to provide for the consistent application and interpretation of law, to educate insurers about new laws, and to deter bad practices.

In 1998 the National Association of Insurance Commissioners (NAIC) put the finishing touches on a new chapter to be incorporated into the *Market Conduct Examiner's Handbook*. The result was a comprehensive guide for state insurance regulators entitled *Conducting the Title Insurance Company and Title Insurance Agent Examination*. Since 1998 some title insurance operations have proved to be easy marks for fines, penalties, and costly state-mandated remedial self-audits of past transactions, often stretching back years. Aside from the resulting monetary fines and penalties, failing to make the grade in a market conduct examination erodes public confidence, invites future regulatory scrutiny, and may impact an ability to compete effectively.

A comprehensive market conduct examination by a state insurance regulator involves the arrival of a team of examiners who literally move in-house for a period of three to six months. The examination team requires physical access and office space as well as access to both paper and electronic records for three to five prior years of operation. The examinee insurer must devote substantial resources to the examination process, including the assignment of staff to respond to regulator requests and a dedicated examination coordinator to ensure the timely flow of information and materials from the insurance company to the examination team.

Failure to manage the market conduct examination process can have a severe detrimental impact on a title insurer's operations and adversely impact the bottom line.

Additionally, regulators demand quick responses to ongoing document and report generation inquiries, including company responses for commentary on the application of insurance laws and regulations to specific transactions. The failure to supply information or respond to inquiries during a market conduct examination, often within five business days, can result in adverse "cooperation" findings in a published examination report and additional penalties even if the examinee's business practices are otherwise without fault!

Preparing for the Exam

To mitigate the costs and expenses associated with the market conduct examination process, two separate and distinct processes are necessary. The first is creating and fostering a culture of compliance before state insurance regulators arrive, and the second is effectively managing a market conduct examination after the examiners arrive. Both processes have similar short-term and long-term goals, including:

- Obtaining a clean examination report and avoiding monetary fines;
- Avoiding costly mandated self-audits of past transactions;

- Eliminating potential third-party or class-action litigation that may arise from publication of examination reports;
- Maintaining competitive advantages in the marketplace;
- Keeping consumer confidence;
- Avoiding bad publicity;
- Creating a process to self-police future corporate behavior;
- Reducing the likelihood of future regulatory scrutiny; and
- Positioning the company to compete successfully moving forward.

What Triggers an Exam?

One of the first measures a company can undertake is to understand the circumstances or events that pique regulatory curiosity and may trigger an inquiry to the company or a full-blown market conduct examination. An excellent source of information, and a way to identify business practices that raise the regulatory ire, is to review publicly posted market conduct examination reports of competitors. Many state insurance departments routinely post complete examination reports on their Web sites along with press releases and copies of administrative orders directing the examinee in question to pay fines and engage in remedial activity. Most examination reports describe, in detail, the business practices found to be in violation of statute or regulation, how the violations were identified (e.g. sampling methodology), and specific recommendations to remedy the problem. Identifying errant business practices and rectifying problems common in the industry in a given jurisdiction before regulators unearth the same problems and practices in an examination make sense and save the examinee time and money.

Moreover, there are a number of circumstances, events, and factors regularly reviewed by state insurance regulators that could trigger a regulatory inquiry or give rise to a full-blown market conduct examination of a specific insurer's operations. Understanding what these trigger events are allows a title insurer to manage affairs to avoid becoming a target for insurance regulators. These triggers are often referred to as market analysis data sources. Among the common trigger sources are:

- Frequent and persistent consumer complaints (sometimes expressed in a ratio of complaints to premium volume) referred to as complaint trending;
- Spikes or other significant increases in the frequency of consumer complaints related to a specific company;
- Dramatic changes in a given insurer's premium volume;
- Noticeable shifts in a given insurer's market share;
- Company cutbacks in recessionary market cycles that may decrease compliance efforts;
- Material shifts in a given insurer's marketing practices;
- Inquiries from other jurisdictions' insurance departments;
- Spikes in title agent complaints or inquiries related to a company's operation;
- Publicized litigation;
- Complaints from consumer watchdog or advocacy groups;
- Media coverage of insurance-related problems (including trade publications); and
- Changes in senior management.

Another proactive measure that reduces the likelihood of being targeted for a market conduct examination involves establishing effective communication with state insurance regulators on an ongoing and informal basis. This may entail simply meeting regularly with insurance department representatives. Periodic meetings with regulators may be useful in discussing topics such as recent complaint activity and how to address the issues raised, application of new or potentially ambiguous laws or regulations, and changes in business plans. Periodic informal communication serves to raise regulatory comfort levels and bolster an insurer's credibility with regulators while serving to raise and resolve problems informally.

Identifying Standards of Conduct

Understanding the standards that market conduct examiners use to measure company compliance with insurance laws and regulations provides additional insight into how to structure business practices to avoid future problems. The NAIC's *Market Conduct Examiner's Handbook* and chapter 12 of the handbook dealing with the examination of title insurance companies and title insurance agents is, by necessity, a guideline that is not based on any given state's laws and regulations. Rather it is based on model insurance laws and regulations that may or may not be reflected in a company's domiciliary state law. The essential nature of title insurance is to provide a mechanism to assist in the efficient

acquisition and transfer of real property interests. While this is true nationwide, the methodologies, laws, regulations, and governing authorities may vary from state to state. Accordingly, to understand the standards tested by market conduct examiners in any given jurisdiction, a title insurer should obtain and review the NAIC's handbook, the state-tailored version of the NAIC handbook, if any, and copies of the cited regulatory authorities that give rise to the standards described in the handbooks. Generally, the examination of the business affairs of title insurance may include a review of the following areas of business operations with not all areas applicable in all states:

- Company operations, management, and oversight;
- Administration and handling of complaints;
- Escrow compliance;
- Handling of settlement, closing, or security funds;
- Marketing and sales activity;

It may be necessary for the title insurance company to educate the examiner about the unique and sometimes confusing title business.

- Referrals, "controlled business" relationships, antirebate provisions;
- Illegal inducement issues associated with the referral of business;
- Illegal rebating;
- Management, oversight, and relationships with title insurance agents;
- Provision of services to policyholder;
- Underwriting and rating compliance, reporting and consistency; and
- Claims administration.

While it may seem abundantly clear that a regulated title insurance company needs to identify and understand the laws and regulations under which it operates, it often surprises company management to learn the differences between the law as they perceive it to be and the law as applied by insurance market conduct examiners. In the complex world of commercial transactions and the buying and selling of interests in real property, there will always be arcane rules or highly technical provisions with which a title insurer may not be in compliance, but these are not the stock in trade of market conduct examiners who are trained to test the general business practices of a regulated entity. Accordingly, a great deal of regulatory pain can be avoided by understanding the basic standards of conduct used by examiners.

Educating the Examiner

Finally, title insurance, perhaps next to directors and officers liability insurance, may be one of the most universally misunderstood types of insurance. In no other type of insurance are potential defects identified and excluded from coverage, insured over, or corrected before a commitment is issued and a policy issued to indemnify against losses (to title of real property) under a policy without expiration. Insurance departments with limited budgets and personnel may use in-house market conduct examiners to examine the affairs of property and casualty insurers, life insurers, health insurers, HMOs, surplus lines brokers, and even pre-need funeral insurance sellers. Some insurance departments may hire outside independent contract examiners to perform examinations. In any of these cases, it may be necessary for the title insurance company to educate the examiner about the unique and sometimes confusing title business with jargon entirely unique to the insurance industry. Title insurance companies should not shy away from assisting a market conduct examiner in learning more about the industry. It is considerably easier to help an examiner understand the title industry during the course of an examination, than it is to amend the written findings of a completed examination.

The market conduct examination process is here to stay. There are some very simple ways to prepare companies to be ready for the examiners and to avoid the limelight altogether. Failure to manage the market conduct examination process can have a severe detrimental, impact on a title insurer's operations and adversely impact the bottom line.

Alan J. Schmitz is a practicing attorney specializing in insurance regulatory and transactional matters. He is a shareholder in the Denver office of Shughart, Thomson & Kilroy. Alan is the author of *The Market Conduct Examination Guide - Principles in Managing Market Conduct Examinations*. He can be reached at aschmitz@stklaw.com or 303-572-9300.

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ALTA Adopts New Leasehold Endorsements

by Robert Bozarth

In October of 2001, ALTA adopted the new ALTA 13 Leasehold Owner's Endorsement and ALTA 13.1 Leasehold Loan Endorsement, replacing the 1992 ALTA Leasehold and Leasehold Loan policies. The new policies, now in endorsement format, were updated by the ALTA Forms Committee.

ALTA adopted its first leasehold policies in 1975 and has amended the policies five times since then. The previous revisions to the leasehold policies were revisions to the basic title insurance policy provisions only. The leasehold provisions had been added to the basic ALTA Owner's and Loan Policies, so it was easy to segregate those leasehold provisions from the basic policy provisions. You will find a side-by-side comparison of the new and old coverage on page 27.

The trend in demand for owner's policies instead of leasehold policies to insure leasehold interests inspired Matthew Cholewa to write the article, "Leasehold Policies: Title Insurance's Neglected Child" for the March/April 1999 Title News. Matt noted that little has been written on [leasehold title insurance], but his article changed that. It inspired the review by the ALTA Forms Committee that led to the ALTA 13 and 13.1, and that process spawned seven distinct articles on the new and old leasehold coverages, including this one.

In many transactions the tenants may have substantial investment in real estate improvements built on the leasehold.

What Changed?

Before we evaluate the new coverages, we should briefly examine the weakness of the old coverage. The 1975 policies were designed with a simple operating lease in mind. If the holder of leased space was dispossessed as a result of a defect in either the landlord's title or the lease itself, the title policy would indemnify the holder for the increased cost of leasing an alternate space and give some "Miscellaneous Items of Loss" as well. ALTA may have seen the market in 1975 as the market for simple operating leases of offices and store bays in shopping centers, but leaseholders in those markets did not sense enough coverage in the leasehold policy to make it a worthwhile hedge to the risks they faced. Consequently, the ALTA leasehold policy was never popular. The policy missed the developing markets in real estate leasing.

Leases have been used as a financing tool for decades. Sale-leaseback transactions have been commonplace since the 1960s in my own experience. In the past two decades leasing transactions have become even more significant. We see leveraged leasing of build-to-suit projects, ground leases with tenant build-to-suit projects, and synthetic leases, to name some of the recent applications.

The ALTA Forms Committee spent most of its time developing the ALTA 13 Leasehold Owner's Endorsement and then quickly conformed the ALTA 13.1 Leasehold Loan Endorsement.

Definitions. The original leasehold owner's policy added only two new definitions to the ALTA Owner's policy. "Leasehold estate" was added as Section 1(h) of the Conditions and Stipulations. The term "personal property" was not added to the definitions in Section 1 but appears in Section 15(a) because the concept of personal property only applied to the "Miscellaneous Items of Loss."

The ALTA 13 added five new definitions to the leasehold coverages and placed all seven in its first section. I will discuss two of these new definitions in detail in this article.

The definition of "lease" has changed in the ALTA 13. The Leasehold Policy limited the definition as "subject to any provisions contained in the lease which limits the right of possession." The limitation was dropped because it received so much resistance from customer groups consulted in the drafting

process. Although title insurers do not intend to protect policyholders from the consequences of their own agreements, the limitation in the policy definition of "lease" was not the only provision giving the title insurer this protection in the policy. The insurer is also protected by the "acts of the insured" Exclusion 3(a).

The remaining definitions in Section 1 are reasonably straightforward. They should require no additional explanation.

Valuation. Although the valuation provision of the ALTA 13 does not appear until Section 3 of the endorsement, it is the most significant change in the ALTA leasehold coverages.

3. Valuation of Estate or Interest Insured

If, in computing loss or damage, it becomes necessary to value the estates or interests of the insured as the result of a covered matter that results in an eviction, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the eviction. The insured claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

The most significant feature of Section 3 is its abandonment of the measure of damage specified in Section 14 of the Leasehold Policy. In short, Section 14 restricted the insured to damages measured as the "present worth of the excess, if any, of the fair market rental value of the estate or interest, undiminished by any matters for which claim is made, for that part of the term stated in Schedule A then remaining plus any renewal or extended term for which a valid option to renew or extend is contained in the Lease, over the value of the rent and other consideration required to be paid under the Lease for the same period." The constraints of that standard were the most significant impetus for changing the coverage in the leasehold policy.

The new standard in Section 3 almost goes to the other extreme. There is no method specified for valuing either the Leasehold Estate or the Tenant Leasehold Improvements. It does recognize that the Leasehold Estate and the Tenant Leasehold Improvements can be valued independently.

It limits the insured's recovery to the values, less any "salvage value" and excluding rent "no longer required to be paid for the Remaining Lease Term." The endorsement gives no definition of "salvage value" or a method for reaching it either. In short, the methods for valuing a loss and its deductions under this new endorsement are left to negotiation between the insured and title insurer when adjusting a claim.

The ALTA 13 does not eliminate the liability provisions of Section 7(a) of the ALTA Owner's Policy, so Section 7(a) still applies if it is not inconsistent with the ALTA 13. Section 7(a)(ii) imposes a standard for indemnification for actual loss, but does not go so far as to impose a method of valuing the estate or interest. Indeed, it is the more flexible standard that many leasehold title insurance customers sought by ordering an owner's policy instead of the leasehold policy. It provides:

7. Determination, Extent Of Liability, And Coinsurance.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company

Here is a look at Section 1 of the ALTA 13:

1. As used in this endorsement, the following terms shall mean:

a. "Evicted" or "eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this policy.

b. "Lease": the lease agreement described in Schedule A.

c. "Leasehold Estate": the right of possession for the Lease Term.

d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.

e. "Personal Property": chattels located on the land and property which, because of their character and manner of affixation to the land, can be severed from the land without causing appreciable damage to themselves or to the land to which they are affixed.

f. "Remaining Lease Term": the portion of the Lease Term remaining after the insured has been Evicted as a result of a matter covered by this policy.

g. "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the land by the Lease that have been built at the insured's expense or in which the insured has an interest greater than the right to possession during the Lease Term.

under this policy shall not exceed the least of:
(i) the Amount of Insurance stated in Schedule A; or, *(ii)* the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

In addition to leaving the method for valuation largely to negotiation, the new Section 3 expressly gives the insured a choice of valuing the Leasehold Estate and Tenant Leasehold Improvements either together or separately. Combined with the standard rule of construction of the policy against the insurer, these features should give the insured the upper hand in a negotiation.

Coinsurance. The 1970 ALTA Owner's Policy had no coinsurance provision. The 1975 ALTA Leasehold Owner's Policies, which were built on the foundation of the 1970 Owner's Policies, also had no coinsurance provisions. The coinsurance provisions were added to the ALTA policy forms in the 1987 revision, but the Forms Committee did not identify the difficulty that application of a coinsurance provision would have on determining the value of a leasehold estate. It is the most

In the last two decades, leasing transactions have become even more significant.

persistent problem in insuring leasehold estates, and nobody has found a policy to resolve it. We can develop formulas based upon the present value of the rent payments capitalized at a specified interest rates, but almost any method of valuation is an arbitrary, imprecise, but convenient rule to develop an essential element of the insurance contract—the amount of insurance. There is an exception. If the lease has a very long term—say 99 years—we can say that the present value of the remainder interest is almost negligible, so the value of that leasehold interest approximates the value of the land.

Most leasehold interests are shorter than 99 years, so applying the coinsurance provisions of Section 7(b) makes little sense in the leasehold endorsement. The values we must use for insuring most leasehold estates are imprecise, at best. We don't have a convenient arm's length purchase price as we do in most real estate conveyances. In the ALTA 13, the Forms Committee corrected its lapse in 1987 and made the coinsurance provision inapplicable to Leasehold Estates. It provides:

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2. The provisions of subsection (b) of Section 7 of the Conditions and Stipulations shall not apply to any Leasehold Estate covered by this policy.

However, Section 2 of the ALTA 13 may mislead the incautious insured. It does provide that the coinsurance limitations on coverage contained in Section 7(b) of the policy do not apply to the Leasehold Estate but does not make Section 7(b) inapplicable to Tenant Leasehold Improvements. If Leasehold Estates and Tenant Leasehold improvements are independent, primary items of loss, then Section 7(b) still must apply to the Tenant Leasehold Improvements. This shouldn't be too alarming. If the insured owns or builds Tenant Leasehold Improvements at the outset of the leasehold estate, it should have an investment or purchase value for those assets. It has not bargained to rent them for the term of the leasehold estate.

I think the coinsurance limitations are a lot more benign than their reputation suggests. Section 7(b) does not limit the title company's duty to defend if Section 7(b) applies, and the insured is not obligated to share in the costs of its defense. That duty of the title insurer is not as clear when the coinsurance provisions are missing. Indeed, there is an argument that a title insurer could deny a claim if there is no coinsurance provision in the policy by claiming that information material to the risk (the value of the property sets the magnitude of the risk) was withheld from it when the policy was issued. The title insurer cannot do that under Section 7(b). The worst that can happen under Section 7(b) is that a loss may be prorated if the title insurer is liable to pay a loss, or the title insurer may seek a contribution toward settlement of a claim. If the insured worked a savings on its title insurance premium at the outset by undervaluing its exposure, it seems fair to prorate its recovery under the policy if a claim arises.

You will not find a provision corresponding to Section 2 of the ALTA 13 in the ALTA 13.1, but leaving it out was no oversight. ALTA Loan policies do not have coinsurance provisions. Consequently, there is no need to include a corresponding coinsurance section in the ALTA 13.1.

Tenant Leasehold Improvements. In many transactions the tenants may have substantial investment in real estate improvements built on the leasehold. That investment is not protected by a policy that merely covers the difference in the rent on the insured premises and the rent on the replacement premises. The trend in the last twenty years or so indicates that leasehold title insurance customers were moving away from the leasehold policies in leasehold transactions, preferring the ALTA Owner's policy instead. Although it contained no explicit coverage for tenant leasehold improvements, title insurance customers thought they had a better chance of recovering their investment in the owner's policy than

they did in the leasehold owner's policy. It wasn't perfect, but it was the best they could do with the tools offered by the title insurance industry.

As we have seen, Section 1(g) of the ALTA 13 added a definition of Tenant Leasehold Improvements to protect the insured's investment in these assets. It defines Tenant Leasehold Improvements as:

> "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the land by the Lease that have been built at the insured's expense or in which the insured has an interest greater than the right to possession during the Lease Term.

The definition encompasses any improvements, including landscaping, taking a lead from the ALTA 9 Endorsement, that protects interests in "lawns, shrubbery or trees" in several sections. Recognizing landscaping as "improvements" is not unique but certainly a new development for leasehold coverages.

The definition of "eviction" in Section 1(a) of the endorsement includes eviction from Tenant Leasehold Improvements as well as eviction from the land, so it is possible to trigger a loss without a full eviction from the leasehold. Although it may be difficult to envision an eviction from the Tenant Leasehold Improvements without an eviction from the land, this definition of eviction establishes the Tenant Leasehold Improvements as a primary interest insured by the policy. It is not an "Additional Item of Loss" as we find in Section 4 of the endorsement.

Of course Section 3 of the ALTA 13 brought a recognition of damage or loss to the Tenant Leasehold Improvements to leasehold title insurance. In addition, supporting the conclusion that loss to Tenant Leasehold Improvements is a primary coverage, Section 3 empowers the insured to elect whether to have the Leasehold Estate and Tenant Leasehold Improvements valued together or separately. However, there is one other provision for valuation of Leasehold Tenant Improvements that was added in the ALTA 13.

Determining the value of Tenant Leasehold Improvements becomes really difficult if the tenant is in the process of building a significant structure on its leasehold when its right to possession is challenged. This isn't just a case of bad luck. The risk of a challenge to title is greatest during the construction of improvements because the evidence of the construction announces the tenant's claim to the land to any who see it.

An appraiser will not give a high value to incomplete improvements. Indeed, many times an incomplete project may actually reduce the appraised value of land. If the incomplete structure must be demolished as useless, the cost of removal must be deducted from the market value of the raw land. Even if the construction is only interrupted, it often costs substantially more to resume and finish the construction than it would if the construction had progressed without the interruption. If a leasehold was insured with either a leasehold or owner's policy, the title insurer might reduce or deny a claim for the value of the tenant's investment in the leasehold improve-ments by asserting that the incomplete project had little or no value.

This problem with valuation of improvements under construction is not confined to leasehold estates. It applies to any project under construction. Title insurance had never addressed this problem in a standard policy or endorsement coverage until ALTA 13 addressed it in Section 4(g) of Additional Items of Loss:

> **4. Additional Items of Loss Covered by This Endorsement:** If the insured is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estates or interests insured by this policy. . . .
> **g.** If Tenant Leasehold Improvements are not substantially completed at the time of eviction, the actual cost incurred by the insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, landscaping costs and fees, costs and interest on loans for the acquisition and construction.

Section 4(g) allows the insured to recover its investment in the construction, as well as those "soft costs" it expressly lists. It significantly expands the measure of damages under a title insurance policy, and the only reason for confining this coverage to leasehold estates is the greater difficulty that title insurers have experienced in breaking into the leasehold title market. We should expect pressure to migrate this type of coverage into fee ownership development transactions as well.

The Eviction Trigger

Section 15 of the old leasehold Policy also used the terms "Evict" and "eviction," though it did not define them. The definition added to the ALTA 13 in Section 1(a) of the endorsement should allay any concerns that the words imply a

requirement for a judicial proceeding:

> **a.** "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this policy.

Under this definition "eviction" may be either a lawful deprivation of the right of possession under the lease or the lawful prevention of the use of the land "for the purposes permitted by the lease." That's an additional nugget for the insured. Title insurance policies do not usually insure land use issues without an endorsement like the ALTA 3.1, but the ALTA 13 requires a prudent title insurance underwriter to compare the uses specified in a lease with the land use regulations that apply to the land to avoid losses under this definition.

The definition does create a coverage trigger. You must have an eviction before you can show a loss under this policy. It is important to recognize that this is no mere definition, even though it is included in Section 1 of the endorsement.

Additional Items of Loss. When the first Leasehold policies were adopted in 1975, their best feature was a set of unusual consequential damage provisions in Section 15 titled "Miscellaneous Items of Loss." This title suggests that these provisions were an afterthought. However, they were revolutionary for the title industry for their time. Title insurers avoid recognizing consequential damages as "loss" because consequential damages are so open-ended. The new title invites the policyholder to read Section 4 to find those additional coverages.

Section 15(a) of the old "Miscellaneous Items of Loss" allowed payment of the costs of relocating personal property removed from the insured land to a replacement leasehold, but the title insurer would only pay for cost of transportation for the initial 25 miles. The idea was to limit the insured to relocations in the same area as the insured land. I think this meant that the title insurer would pay for all the removing and relocating operations that take place at the origin and destination, but if the distance between the two exceeds 25 miles, the insurer would pay for the first 25 miles of travel, and the insured must pay for any additional travel.

The Section 15(a) expanded the radius from 25 ti 100 miles. There are perhaps two reasons for this wider radius. First, title insurers have experienced very little, if any, losses based on Section 15(a), so the Forms Committee saw little risk in expanding the range to 100 miles. Secondly, a 100 mile radius is more attractive to title insurance consumers than a 25 mile radius, and the Forms Committee saw an opportunity to make the ALTA 13 more appealing than its predecessor.

This change is substantive but not very material. If our experience with Section 15(a) of the Leasehold Policy is any measure, few, if any, policyholders will realize a benefit from the change. Of course, all policyholders are better off for the change because we cannot tell at the outset who the few will eventually be.

In the last twenty years customers were moving away from the leasehold policies preferring the ALTA Owner's policy instead.

For title insurance customers with bond leases with "hell or high water" provisions that require the lessee to continue paying its rent even after it has been evicted from the premises, Section 4(c) provides protection against that risk. I am mildly astonished that so few of these customers raise this issue and seek this coverage. In recent years many have demanded ALTA Owner's Policies instead of leasehold policies and have let the coverage slide in making the requirement. It should not be necessary with the ALTA 13.

Two new provisions were added to the Additional Items of Loss in the ALTA 13. We examined the valuation provisions for a new project under construction in new Section 4(g) in the discussion of Leasehold Tenant Improvements. Section 4(f) is also new and reimburses the policyholder for the expenses to get a replacement Leasehold Estate. Like Section 4(g), Section 4(f) introduces the prospect of including "soft costs" into the computation of an insured's damages. The new "Additional Items of Loss" include:

> **4. Additional items of loss covered by this endorsement:** If the insured is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estates or interests insured by this policy.
>
> **a.** The reasonable cost of removing and relocating any Personal Property that the insured has the right to remove and relocate, situated on the land at the time of eviction, the cost of transportation of that Personal Property for the initial 100 miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property

damaged by reason of the removal and relocation.

b. Rent or damages for use and occupancy of the land prior to the eviction which the insured as owner of the Leasehold Estate is obligated to pay to any person having paramount title to that of the lessor in the Lease.

c. The amount of rent that, by the terms of the Lease, the insured must continue to pay to the lessor after eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the insured has been Evicted.

d. The fair market value, at the time of the eviction, of the estate or interest of the insured in any lease or sublease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.

e. Damages that the insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the eviction.

f. Reasonable costs incurred by the insured to secure a replacement leasehold equivalent to the Leasehold Estate.

g. If Tenant Leasehold Improvements are not substantially completed at the time of eviction, the actual cost incurred by the insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, landscaping costs and fees, costs and interest on loans for the acquisition and construction.

What's Next?

The Forms Committee now turns its attention to some new projects, most notably the adoption of an ALTA future advance endorsement and a comprehensive review and revision of the 1992 Loan and Owner's policies. The future advance endorsement might be ready for adoption in October 2002. The revision of the loan and owner's policies could take years, but the process is underway.

The process of developing new leasehold coverages is on hold for the moment, but the choice of switching to an endorsement format instead of a policy format will make future variations in leasehold coverages easier to develop. There are still some unresolved issues.

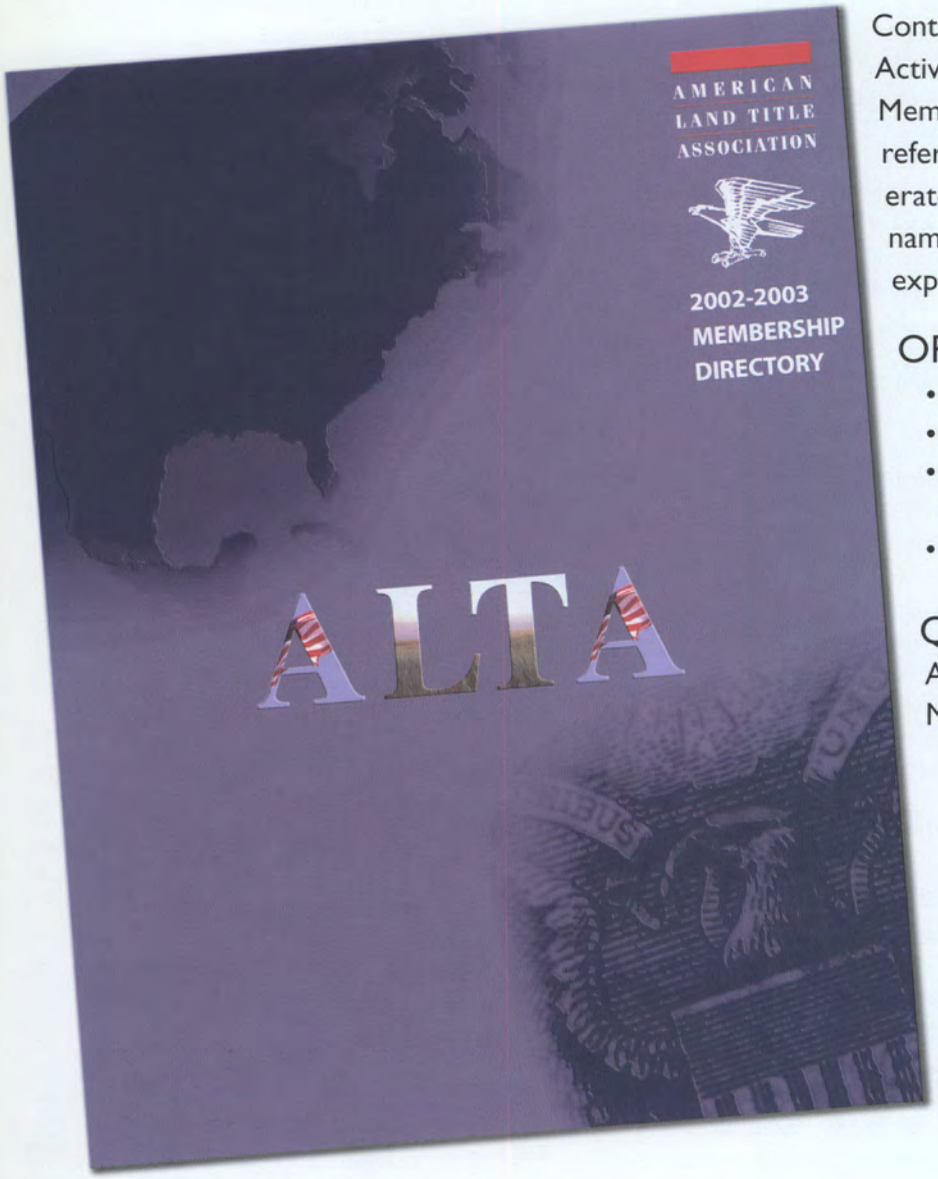
After Enron it may be unnecessary to develop synthetic lease coverages. Many companies that had placed properties into synthetic leases are unwinding those transactions in favor of more conventional financing because they are uncomfortable with off-balance sheet financing right now. However, others continue to pursue a synthetic lease strategy, and we may see a resurgence of synthetic leasing if the outrage against off-balance sheet financings wanes. There is no pressure for a synthetic lease endorsement right now.

I think there are still some issues for the leasehold loan coverages. If a tenant places a mortgage on its leasehold to secure repayment of a loan and later modifies or terminates its lease with the landlord but without the consent of the insured lender, the ALTA 13.1 does not insure that the lender can foreclose on the leasehold interest as it existed before the modification or termination. Although that would appear to be crucial coverage for a lender, the modification or termination is a post-policy events. The law on this issue is sketchy, and there was not sufficient time to resolve the issue before the Forms Committee submitted the ALTA 13.1 to the 2001 Annual Meeting. If there is pressure to add this coverage to the endorsement and if the Forms Committee finds suficient authority to become comfortable with issuing the coverage, we might see an amendement to the ALTA 13.1 or a third leasehold endorsement adopted for this risk.

The new ALTA endorsements are a step forward both in substance and in form. The substance of the new coverages should make title insurance more attractive to the leasing markets. The endorsement form gives ALTA the flexibility to react to new leasing formats and demands for additional coverages.

Bob Bozarth is vice president and senior underwriting counsel for LandAmerica Financial Group and a member of ALTA's Title Insurance Forms Committee. He can be reached at rbozarth@landam.com or 804-267-8037.

HOT OFF THE PRESS –
the NEW 2002 - 2003 ALTA Membership Directory



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COMPARISON OF ALTA 13 TO THE 1992 LEASHOLD OWNER'S POLICY

ALTA 13	1992 Leasehold Owner's Policy
1. As used in this endorsement, the following terms shall mean:	No comparable provision..
a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this policy.	No comparable definition.
b. "Lease": the lease agreement described in Schedule A.	No comparable definition.
c. "Leasehold Estate": the right of possession for the Lease Term.	This definition was added to the definitions contained in Section 1 of the owner's policy's Conditions and Stipulations: h."Leasehold Estate": the right of possession for the term or terms described in Schedule A hereof subject to any provisions contained in the Lease which limit the right of possession.
d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.	No comparable definition..
e. "Personal Property": chattels located on the land and property which, because of their character and manner of affixation to the land, can be severed from the land with out causing appreciable damage to themselves or to the land to which they are affixed.	This comparable definition was included in Section 15(a) in the 1992 leasehold policy: "Personal Property," above referred to, shall mean chattels and property which because of their character and manner of affixation to the land can be severed therefrom without causing appreciable damage to the property severed or to the land which the property is affixed.
f. "Remaining Lease Term": the portion of the Lease Term remaining after the insured has been Evicted as a result of a matter covered by this policy.	No comparable definition.
g. "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the land by the Lease that have been built at the insured's expense or in which the insured has an interest greater than the right to possession during the Lease Term.	No comparable definition.
2. The provisions of subsection (b) of Section 7 of the Conditions and Stipulations shall not apply to any Leasehold Estate covered by this policy.	No comparable provision..

ALTA 13	1992 Leasehold Owner's Policy
3. Valuation of Estate or Interest Insured If, in computing loss or damage, it becomes necessary to value the estates or interests of the insured as the result of a covered matter that results in an Eviction, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The insured claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.	The following section was added to the owners policys Conditions and Stipulations: 14. VALUATION OF ESTATE OR INTEREST INSURED. If, in computing loss or damage incurred by the insured, it becomes necessary to determine the value of the estate or interest insured by this policy, the value shall consist of the then present worth of the excess, if any, of the fair market rental value of the estate or interest, undiminished by any matters for which claim is made, for that part of the term stated in Schedule A then remaining plus any renewal or extended term for which a valid option to renew or extend is contained in the Lease, over the value of the rent and other consideration required to be paid under the Lease for the same period.
4. Additional items of loss covered by this endorsement: If the insured is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the insured but not to the extent that the same are included in the valuation of the estates or interests insured by this policy.	The following section was added to the owner's policy's Conditions and Stipulations: 15. MISCELLANEOUS ITEMS OF LOSS. In the event the insured is evicted from possession of all or a part of the land by reason of any matters insured against by this policy, the following, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estate or interest insured by this policy.
a. The reasonable cost of removing and relocating any Personal Property that the insured has the right to remove and relocate, situated on the land at the time of Eviction, the cost of transportation of that Personal Property for the initial 100 miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.	a. The reasonable cost of removing and relocating any personal property which the insured has the right to remove and relocate, situated on the land at the time of eviction, the cost of transportation of that personal property for the initial 25 miles incurred in connection with the relocation, and the reasonable cost of repairing the personal property damaged by reason of the removal and relocation. The costs referred to above shall not exceed in the aggregate the value of the personal property prior to its removal and relocation."Personal Property," above referred to, shall mean chattels and property which because of its character and manner of affixation to the land can be severed therefrom without causing appreciable damage to the property severed or to the land which the property is affixed.

ALTA 13	1992 Leasehold Owner's Policy
b. Rent or damages for use and occupancy of the land prior to the Eviction which the insured as owner of the Leasehold Estate is obligated to pay to any person having paramount title to that of the lessor in the Lease.	b. Rent or damages for use and occupancy of the land prior to the eviction which the insured as owner of the leasehold estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.
c. The amount of rent that, by the terms of the Lease, the insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the insured has been Evicted.	c. The amount of rent which, by the terms of the Lease, the insured must continue to pay to the lessor after eviction for the land, or part thereof, from which the insured has been evicted.
d. The fair market value, at the time of the Eviction, of the estate or interest of the insured in any lease or sublease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.	d. The fair market value, at the time of the eviction, of the estate or interest of the insured in any sublease of all or part of the land existing at the date of eviction.
e. Damages that the insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sub-lease made by the insured as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.	e. Damages which the insured may be obligated to pay to any sublessee on account of the breach of any sublease of all or part of the land caused by the eviction.
f. Reasonable costs incurred by the insured to secure a replacement leasehold equivalent to the Leasehold Estate.	No comparable provision.
g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the insured, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, landscaping costs and fees, costs and interest on loans for the acquisition and construction.	No comparable provision.

Viewpoint

by R.K. Arnold

We recently celebrated a huge victory at MERS.

The Appellate Division, Second Judicial Department of the Supreme Court of the State of New York upheld its order requiring the Suffolk County Clerk to accept MERS mortgage documents for recording.

Suffolk County Clerk Edward P. Romaine last year refused to accept mortgage security instruments naming MERS as nominee for the lender in the county land records, contending that MERS was not the actual mortgagee.

We filed a lawsuit to make him accept MERS documents for recording and had already received an earlier order from the Appellate Division requiring his office to record the documents. He was contesting that order. This latest decision is a major blow to his efforts to resist his statutory duties as a public servant.

We tried to work with him but finally concluded that litigation was best. The Court's decision affirms the legal basis upon which we serve our members and homeowners as mortgagee in the county land records. It's clear from the ruling that there's no legal basis for a county clerk refusing to record a MERS document.

The Appellate Division found that, "Contrary to the contention of the Suffolk County Clerk, he has a statutory duty that is ministerial in nature to record a written conveyance if it is duly acknowledged and accompanied by the proper fee."

The Court went on to say that, "Accordingly, the Clerk does not have the authority to refuse to record a conveyance which satisfies the narrowly-drawn prerequisites set forth in the recording statute." The Court mandated that the clerk record MERS documents.

We have advised our New York members doing business in Suffolk County to continue originating all new loans on MOM (MERS as Original Mortgagee) documents. The full text of the Court's ruling is available on our website at www.mersinc.org.

Industry Leaders Support New MERS® Commercial Venture

MERS will begin development in September on a new product, MERS® Commercial. By eliminating the need to prepare and record assignments, MERS will reduce costs for all involved in originating, securitizing, and servicing commercial mortgages. It is similar to the residential program but specialized for the commercial market. Initial funding was provided by Bear Stearns, Wells Fargo, Banc of America Securities, GE Capital Real Estate, and GMACC. The venture is also endorsed by the CMSA, as well as the MBA Commercial Board of Governors.

Eliminating assignments removes the threat of loan repurchase due to defects in loan documentation related to missing, incorrect, or improperly recorded assignments. It also creates a more efficient lien release process.

"We appreciate the leadership of the MBA and the CMSA in bringing together industry players to help develop this product," said Dan McLaughlin, MERS executive vice president and Product Division Manager. "With such strong support, we are confident that MERS will quickly become the preferred way of doing business in the CMBS marketplace, just as it is now for residential."

Originators and issuers will save hundreds of dollars per loan in assignment preparation and recordation costs, which is a real cost savings. All participants in the lending process will benefit by having access to a standardized final certification document checklist on the MERS® System.

"The value to the commercial world is significant, and with both the MBA and the CMSA working with their constituents to develop 'best practices,' MERS is a natural fit," said Carson Mullen, MERS executive vice president and customer division manager.

"I'm impressed with how quickly key decision-makers have grasped the concept and understood the value of MERS. We're looking forward to a fast adoption rate in the commercial world," said R.K. Arnold, MERS President and CEO.

If you are interested in becoming a development partner or would like more information, please contact Doug Danko at 703-761-4385 or via email at dougd@mersinc.org.

Did You Know?

Here is a fast and easy way to accurately enter Org IDs in MERS® OnLine:

1. From the Organization List pop-up window, double-click on the desired Org ID using your left mouse button. The Org ID will then be highlighted. Verify that you have selected the correct Member by checking the Member name against the highlighted Org ID.

2.Release the left mouse button; press the right mouse button once and select "Copy."

3.Close or minimize the Organization List pop-up window.

4.Place your cursor in the desired input field and press the right mouse button again.

5.Select "Paste," and the Org ID that you highlighted from the Organization List pop-up window will appear in the input field.

To ensure optimal results, please make sure that you are using Internet Explorer 6.0 or higher or Netscape Navigator 5.0 or higher.

Straight Talk

by Sharon Horstkamp

Recording Versus Registration: Not The Same Thing

Recently a member informed me her company was closing mortgages that were MOM mortgages, and the MERS member buying the mortgages was insisting that there needed to be a recorded assignment from the originating MERS member to MERS.

This didn't sound right, so upon further questioning I discovered that the mortgages were not drawn on a MOM document (MERS as Original Mortgagee). The company thought this was all right because they registered the mortgages on the MERS® System.

The purchasing MERS member was correct that assignments to MERS need to be prepared and recorded. In order for MERS to hold the mortgage lien, there must be a recorded mortgage or assignment to MERS in the applicable county land records.

Registering a mortgage on the MERS® System without a recorded document to MERS in the land records does not make MERS the record mortgage lien holder. Mortgage loans are registered on MERS but are recorded in county land records. There is a big difference between the two terms. A mortgage lien can only be perfected if it is recorded.

Always keep in mind that it is the document that determines whether MERS is the mortgagee, not the registration on the MERS® System.

MERS could be the mortgagee without the mortgage being registered, but it needs to be registered for us to track any changes in the servicing rights or beneficial ownership. On the flip side, even if a mortgage is registered but no mortgage or assignment to MERS is recorded in the land records, MERS will not be holding a perfected mortgage lien.

Documents are recorded in county land records and registered on MERS. Be careful not to confuse the two terms. MERS is a tracking system, not a substitute for county land records.

1595 Spring Hill Rd,
Suite 310
Vienna, VA 22182
(800) 646-MERS (6377)

Communications Manager
Kathleen McNeilly,
kathleenm@mersinc.org.

Task Force Becomes Non-profit Corporation

In a landmark move, the Property Records Industry Joint Task Force has initiated a transition to a new, nonprofit corporation—the Property Records Industry Association (PRIA)—to continue and expand its work in developing nationwide standards for the land recording industry.

Initially formed under a projected three-year lifespan, the Task Force's success in bringing together the private and public sectors of the recording industry has exceeded expectations and its original time frame.

The issues it addressed continue to expand, and these expanded needs cannot be met under the subcommittee structure. The change to an independent association will provide the organization with greater independence and open new avenues for pursuing major recording standards projects beyond its initial mandate, Task Force officials said.

"I think we're at a monumental stage in affecting the industry," said Executive Board member Steve McDonald. "A Task Force, by definition, achieves short-term goals. By shifting to an association, we will be able to set long-term goals."

"Given the complexities and changes in the industry, a new association is very appropriate," said Membership Committee cochair Mark Monacelli. "It will give us more flexibility in raising funds and education grants. Given the things going in recording technology and other areas, it's the right time for a change."

At the Task Force's June meeting in Kansas City, Missouri, bylaws and a transitional timeline for the reorganization and nonprofit incorporation status were all approved by the Executive Board.

Task Force participants who have paid their current annual membership dues will automatically convert to membership in the new PRIA. The transfer of membership will occur as of July 31.

The International Association of Clerks, Recorders, Election Officials, and Treasurers has resolved to support the transition, and Task Force officials are confident that the National Association of County Recorders, Election Officials, and Clerks will approve the change as well this summer.

Recognizing the need for national cooperation between county recorders and the business community, the Property Records Industry Joint Task Force was formed in 1998 as a subcommittee of NACRC, cosponsored by IAREOT. The Task Force successfully brought together all segments of the industry, to formulate positions for the betterment of the industry on a national basis.

The PRIA will continue as a joint effort of the public and private sectors and will remain affiliated with NACRC and IACREOT.

The current Task Force Executive Board will serve as the interim Board of Directors for the new corporation until a meeting of PRIA members is scheduled to formally elect leadership for the new association.

Task Force founding member Carl Ernst said he is delighted the group will have a chance to continue its important work.

"The level of cooperation between the public and private sectors is generations better today than before we established the Task Force," Ernst said. "It deserves an ongoing life of its own, and that's what establishing a formal association will do."

White Paper Debuts

Addressing an important issue in recording standards, the Task Force officially approved the White Paper "Essential Notary Standards and Principles in the Recording Process" at its June meeting in Kansas City, Missouri.

The White Paper is the result of more than two years of dedicated work by the Notary Public Sub-Committee, addressing the Notary's role in the recording process and offering standards to reduce rejection of notarized documents.

"This White Paper is the result of hard work as well as valuable input from Task Members," said Milt Valera, chair of the Notary Public Sub-Committee and president of the National Notary Association. "This is an important step toward developing solid guidelines for both Notaries and recording offices across the country."

"The paper will be beneficial to members of both the private and public sector of the recording industry who rely on the integrity of notarized documents," Valera said.

American Land Title Association 2002 Annual Convention

Charting Your Course for Success

October 16-19
The Breakers
Palm Beach, Florida

2002

ALTA

ALTA 2002 Convention Program Information

The Breakers

tuesday, october 15

9:00am-12:00noon
Membership & Organization/Recruitment & Retention Combined Committee Meeting

9:00am-5:00pm
Title Insurance Forms Committee Meeting

9:00am-5:00pm
Education Committee Meeting

9:00am-5:00pm
Technology Committee Meeting

1:30pm-4:30pm
Water Taxi Tour of Palm Beach*

2:00pm-4:00pm
Government Affairs Committee Meeting

wednesday, october 16

8:00am-1:15pm
Discover the Florida Everglades Tour*

9:00am-12noon
Abstracters & Title Insurance Agents Section Executive Committee Meeting (**ALL abstracter and agent members are invited and encouraged to attend**)

9:00am-12:00noon
Title Insurance Underwriter Section Executive Committee Meeting

9:00am-12noon
Title Insurance Forms Committee Meeting

9:00am-5:00pm
Lender/Life Counsel Meetings

11:00am-4:00pm
Affiliated Title Association Officer-Executive Brunch & Meeting *(open to state association staff, officers, and their guests)*

11:00am-2:30pm
Past Presidents' Luncheon

12:00pm-2:00pm
Lender/Life Counsel Luncheon

12:00noon-3:00pm
Indian Land Claims Committee Meeting

1:30pm-5:00pm
ALTA Board of Governors Meeting

2:00pm-5:00pm
Kayaking the Rivers of Palm Beach Tour*

5:30pm-6:30pm
First Time Convention Attendee Mixer

6:30pm-8:00pm
Ice Breaker Reception/Grand Opening of Exhibit Showcase – *"Hello, Florida!"*

thursday, october 17

7:30am-8:15am
TIPAC Board of Trustees Breakfast & Meeting

7:30am-8:15am
International Development Committee Meeting

8:00am-12:30pm
Exhibits Showcase

8:00am-1:00pm
Sail the Seas Tour*

8:15am-11:45am
General Session *featuring John Coursen, Chairman-Elect, Mortgage Bankers Assn.; F. Gary Garczynski, President, National Association of Home Builders; Claire Raines; and Carlo Pellegrini, The Juggling Matrix*

10:15am-12noon
Dale Chihuly Tour with Champagne Breakfast*

11:45am-12noon
Title Insurance Abstracters/Agents Section Meeting

4. optional events

	Cost	Qty	Total
Tuesday, October 15			
A. Water Taxi Tour of Palm Beach:1:30-4:30pm	$89	___	___
Wednesday, October 16			
B. Lender Counsel Meeting - Member	$65	___	___
C. Lender Counsel Meeting - Guest	$70	___	___
D. Life Counsel Meeting - Member	$55	___	___
E. Life Counsel Meeting - Guest	$60	___	___
F. Affiliate Assoc. Executives Seminar & Brunch	**Free**	___	**Free**
G. Extra Ice-Breaker Ticket	$75	___	___
H. Discover the Florida Everglades: 8am-1:15pm	$120	___	___
I. Kayaking the Rivers of Palm Beach: 2-5pm	$143	___	___
Thursday, October 17			
J. TIPAC Luncheon: 1:15-2:30pm	$75	___	___
K. Chihuly Tour with Champagne Breakfast: 10:15am- 12noon	$245	___	___
L. Sail the Seas: 8am-1pm	$175	___	___
M. Water Taxi Tour of Palm Beach: 1:30-4:30pm	$89	___	___
N. Palm Beach Mansions Tours	$215	___	___
Friday, October 18			
O. Grassroots/SLRAC Breakfast: 7-8:15am	**Free**	___	**Free**
P. Companion/Guest Brunch (Free with Guest Registration)	**Free**	___	**Free**
Q. Companion/Guest Brunch Extra Ticket	$90	___	___
R. Golf Tournament (Complete section 4a at right)	$220	___	___
S. Tennis Tournament (Complete section 4b at right)	$125	___	___
T. Fishing Tournament (Complete section 4c at right)	$220	___	___
Saturday, October 19			
U. Discover the Florida Everglades: 8am-1:15pm	$120	___	___
V. Sail the Seas: 8am-1pm	$175	___	___
W. Croquet Lessons & Tournament: 1:30-4pm	$35	___	___
X. Extra Annual Banquet Ticket	$150	___	___

Total Options: $_____

Please fax Golf, Tennis, and/or Fishing registration by **October1** to Sharon Johnson at ALTA, 1-888-FAX-ALTA.

4a. golf registration (Item "R" in Optional Events Registration to the left) $220 per person includes greens fee on Ocean Course, 4-person scramble, golf cart, boxed lunch, beverages, and awards. Proper golf attire is required for play. If we do not receive your preference by October 1, ALTA will do the pairings. Persons with whom you wish to play:

1. Name (Group Contact) _____
   Company _____ Phone _____
   Handicap or average score: _____
   Club Rental: ❒ Yes ❒ Right ❒ Left Shoe Rental: Male Size ___ Female Size ___

2. Name _____
   Company _____ Phone _____
   Handicap or average score: _____
   Club Rental: ❒ Yes ❒ Right ❒ Left Shoe Rental: Male Size ___ Female Size ___

3. Name _____
   Company _____ Phone _____
   Handicap or average score: _____
   Club Rental: ❒ Yes ❒ Right ❒ Left Shoe Rental: Male Size ___ Female Size ___

4. Name _____
   Company _____ Phone _____
   Handicap or average score: _____
   Club Rental: ❒ Yes ❒ Right ❒ Left Shoe Rental: Male Size ___ Female Size ___

4b. tennis registration (Item "S" in Optional Events Registration to the left) $125 per person. The tournament will be a mixed doubles round-robin. Proper tennis attire is required for play. Fee includes snack, court fee, balls, tennis pro, and awards

Raquet Rental: ❒ Yes ❒ No

Please indicate level of play: ❒ Beginner ❒ Intermediate ❒ Advanced

4c. fishing registration (Item "T" in Optional Events Registration to the left) $220 per person. Fee includes transportation to marina, six-pack boat, boxed lunch, beverages, snacks, fishing equipment, and awards. Don't forget sunscreen and a hat. If we do not receive your boat companion preferences by October 1, ALTA will assign you a boat.

Persons with whom you wish to fish:

1. Name (Group Contact) _____
   Company _____ Phone Number: _____

2. Name _____
   Company _____ Phone Number: _____

3. Name _____
   Company _____ Phone Number: _____

4. Name _____
   Company _____ Phone Number: _____

5. Name _____
   Company _____ Phone Number: _____

6. Name _____
   Company _____ Phone Number: _____

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  - Abstracter/Searcher
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  - Real Estate Appraisers
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  - Controlled or Affiliated Business Arrangements
- Fidelity and Surety Bonds also available

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Title Program Administrators

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Phoenix, AZ 85028
Phone: 602-383-1943 Toll free: 800-277-5680
Fax: 602-383-1945
Website: www.titleprogram.com
e-mail: nwalker@titleprogram.com

member news

Movers & Shakers

Arizona

John S. Christiansen has been named senior vice president and director of national residential services for First American Title Insurance Co., Phoenix.

California

First American Title Insurance Co., Santa Ana, has announced several employee changes. **David Jansson** has been named vice president and county manager for the company's operations in Stanislaus County. Prior to joining First American, Jansson worked for another large title insurer. **John R. Thoma** has been promoted to chief financial officer. Previously he served as northwest regional controller and chief financial officer of its subsidiary in Oregon. In addition, **Frances L. Buerman** has been promoted to president of the company's wholly-owned subsidiary, First American Exchange Corp. of California, a qualified intermediary for 1031 tax-deferred exchanges. Previously Buerman served as vice president and branch manager of the company's San Diego office.

Liz Zankich has been appointed vice president and manager of commercial services for Old Republic Title Co., San Jose. Previously she managed the commercial division at Santa Clara Land Title.

Indiana

Evansville Titles Corporation, a division of Security Title Services, LLC has announced the promotion of four employees. **Darla Lindauer**, has been appointed general manager. She has been with Evansville since 1981. **Christa Kingsbury** has been named manager of the closing department. She has been with the company since 1994. **Nina Rogers** has been promoted to director of marketing and sales for the state. She has been with the company since 1988. And **Donna Smith** has been appointed office manager. She has been with Evansville since 1982.

Nevada

Angelina Galindo has been promoted to head the new special projects business development initiative for United Title of Nevada, Las Vegas. Previously she was an escrow officer for the special projects unit.

Ohio

Jeffrey Woodard has been appointed to the newly created position of marketing director for Kasparnet, LLC. He has 15 years of writing and editing experience.

Oregon

First American Title Insurance Co. of Oregon, Grants Pass and Medford, has announced three promotions. **Dwayne Rudisill** has been promoted to southern Oregon regional title manager. He joined the company in 1969 and was most recently title operations manager for the Jackson County Crater Title Division. **Steve Swearingen** has been promoted to southern Oregon regional manager. Previously he was county manager of the company's Jackson County Crater Title Division, where he had worked since 1972.

new ALTA members

ACTIVE MEMBERS

Alabama

Meredith Carpenter
Carpenter, Meredith A.
Phenix City

Colorado

Charles Zimmerman
Canyon Title Company, LLC
Denver

Heather Axtell
Property Research Corp.
Denver

Connecticut

W. Matthew McLoughlin
MEM Title Services, LLC
East Lyme

John Kavanagh
Classic Title, LLC
Greenwich

Florida

Adam Mears
First Title of Southwest Florida, Inc.
Bonita Springs

Kelley Roark
R & A Title Services, LLC.
d/b/a Florida Title Express
Miami Shores

Diane Price
Independent Title Services, LLC
Saint Augustine

James McCollum
American Service Title & Escrow, Inc.
Sebring

Oregon, cont.

And **Jennie Thomas** has been promoted to county manager for the company's Josephine County division. She joined County Title in 1976 and was most recently escrow manager.

Kenneth Pond, senior vice president for LandAmerica Financial Group, Inc., will assume responsibility for the company's Colorado operations in addition to his current responsibilities managing Oregon Title throughout Oregon. He joined Lawyers Title Insurance Corp. in 1975.

Pennsylvania

Melissa A. Hill has been promoted to president of LandAmerica OneStop Services, Pittsburgh, a wholly owned subsidiary of LandAmerica Financial Group, Inc. Previously she was senior vice president.

Texas

Steve Otto has been named senior vice president, chief operations officer for Landata Group, Inc., Houston, a subsidiary of Stewart Information Services Corp. Most recently he was vice president for operations with Hart InterCivic in Austin.

J. Scott Sargent has joined the Dallas national commercial services office of LandAmerica Financial Group, Inc., as national accounts sales manager. He previously held management positions with other companies in the industry.

R. Wayne Norton has been promoted to executive vice president for Commerce Title, Inc., Dallas. Most recently he served as president of the company's central region.

Virginia

LandAmerica Financial Group, Inc., Richmond, has announced several employee changes. **Theodore L. Chandler, Jr.**, has been promoted to chief operating officer. Most recently he served as senior vice president after joining the company in 2000. **Robert J. Palmer** has been promoted to chief information officer. Most recently Palmer was elected president of Elliptus Technologies, Inc., LandAmerica's wholly owned technology subsidiary. And **Kenneth Astheimer** has been named executive vice president, agency services. Most recently he was president of LandAmerica OneStop, the company's provider of web-based residential real estate solutions. He joined Lawyers Title in 1974.

West Virginia

Thomas E. Campbell has been named West Virginia state manager for First American Title Insurance Co. in addition to serving as the company's Kentucky state manager. He joined First American in 1995.

KUDOS

Niki Roberts Named Top Agency Representative

Niki Roberts has been recognized as Top Agency Representative in the nation for 2001 by Fidelity National Title Insurance Co., Weston, FL. Roberts, vice president/agency manager for Fidelity's south Florida operations, finished with 88 points, 26 points more than the second-place finisher. Points are calculated on a complex formula based on 1) premiums remitted by existing agents; 2) audits completed; 3) new agents signed; and 4) new premiums remitted by new agents.

new ALTA members

Florida, cont.

Dawn Wiser
Carrollwood Title
Tampa

Robert Kanjian
Title Matters, LLC
West Palm Beach

Georgia

Charles Formaro
Charles R.Formaro, III, P.C.,
Alpharetta

George Lyseight
Realtitle Corporation
Chamblee

Shaun Byron
College Park

William Price
Price and Associates
Kennesaw

John Spangler
JBS Abstracting
Lawrenceville

Claudia Collins
CSC Title Research, Inc.
Lawrenceville

Caroline Storey
Marietta

Richard Jaffe
R.S. Jaffe Title Services, Inc.
Roswell

Iowa

Robert McCloney
United Land Title Co.
Newton

Idaho

Del Lunders
Inland Title Company
Grangeville

Roberts, who generated more than $4 million in net premiums for the company last year, oversees approximately 110 title agents in the three-county market. Details: John Jolinski, 407-281-0074.

Landata Systems Continues to Win Awards

Landata Systems was honored with seven new awards from four marketing organizations in May and June. The "Trust Your Instincts" jungle booth was awarded top honors by the American Marketing Association in the trade show display category, and the E-Outlook newsletter received a Certificate of Excellence in the e-mail newsletter category. The Houston chapter of the Public Relations Society of America awarded the jungle booth a Silver Excalibur Award in the trade show category. The Houston chapter of the International Association of Business Communicators awarded the jungle campaign and the e-Outlook newsletter with Awards of Merit. And the jungle campaign and e-Outlook were both selected as winners of the APEX Award of Excellence, presented by the Awards for Publication Excellence, a competition for communications professionals. Details: Alisha McMillen, 713-871-9222.

Mergers & Acquisitions

Metropolitan Title Company, Howell, MI, has agreed in principle to bring Summit Title Services, Inc. of Bedford, NH, under common ownership.

Amerititle has purchased Columbia Title in White Salmon, OR.

Capital Title Group, Inc. has merged with Nations Holding Group, Los Angeles, which owns United Title Co., United Title Insurance Co., and First California Title Co.

Indiana
Joanna Tibbs
Brown & Associates LLC
Carmel

Louisiana
Frank Joffrion
Celtic Title, LLC
Baton Rouge

Christa Guy
Baton Rouge

Eric Russell
Xpedient Title, LLC
Baton Rouge

Stephen Wise
Pelican Land & Abstract Co., Inc.
Lake Charles

Massachusetts
Sylvia Hurley
Hurley & Cuoco Associates
North Reading

Richard Atsma
Abstracter
Whitinsville

Michigan
Julie Roumell
Legacy Title Agency
Adrian

Mary Ann Young
Main Street Title
Ann Arbor

Lorri King
Cadillac Title, LLC
Cadillac

Don Rositano
Cornerstone Title, Inc.
Fenton

Bob Wuerfel
Lighthouse Title, Inc.
Holland

Minnesota
James Henrichsen
Grand Rapids Abstract Company
Grand Rapids

Minnesota, cont.
Charles Rethwisch
Unified Title
Plymouth

New Hampshire
Karen Sott
KLS Title Examinations Inc.
Epping

New Jersey
Bruno Genova
Allegiance Title Agency, LLC
Clark

New York
Brian Pun
Federal Standard Abstract, Inc.
Flushing

Mona Liberty
Liberty Abstract Company of Plattsburgh, Inc.
Plattsburgh

Adriene Conrad
North River Abstract Corp.
Poughkeepsie

Ohio
Edward Asher
Guardian Title & Guaranty Agency, Inc.
Cleveland

Robbin Roseberry
Farmersville

Kevin Brown
The House of Titles Agency, Inc.
Painesville

Alana LaBonte
Sole Proprietor
West Carrollton

Pennsylvania
Nicholas Karamanos
North Pointe Settlement Services, Inc.
Lancaster

John Swick
Allegheny Realty Settlement, LLC
Meadville

new ALTA members

Pennsylvania, cont.
Carl Benson
Benson Settlement Company
Wyomissing

Tennessee
Evangeline Ledford
Tri State Land Title, LLC
Copperhill

Kathy Haynes
Home Alone Abstracting
Nashville

Texas
Roma Page
Brownfield Abstract & Title Co.
Brownfield

Utah
David Moore
Township Title Insurance Agency, Inc.
Murray

Virginia
John Braswell
Morgan Title Insurance Agency, Inc.
Alexandria

Lois Watkins
Berryville

Ronald Vaught
Mountain Title, LC
Covington

Bonnie Friedman
Falls Church Title
Falls Church

Martha Anderson
MBA Title Inc.
Oak Hill

C. Wesley Black
Paramount Title Services, LLC
Roanoke

Douglas Applegate
Apple Title, L.C.
Woodbridge

Wisconsin
Erika Dalebroux
Dalebroux Title Corp.
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To place a classified ad in Marketplace, send ad copy and check made payable to American Land Title Association to: Title News Marketplace, ALTA, 1828 L Street, N.W., Suite 705, Washington, DC 20036.

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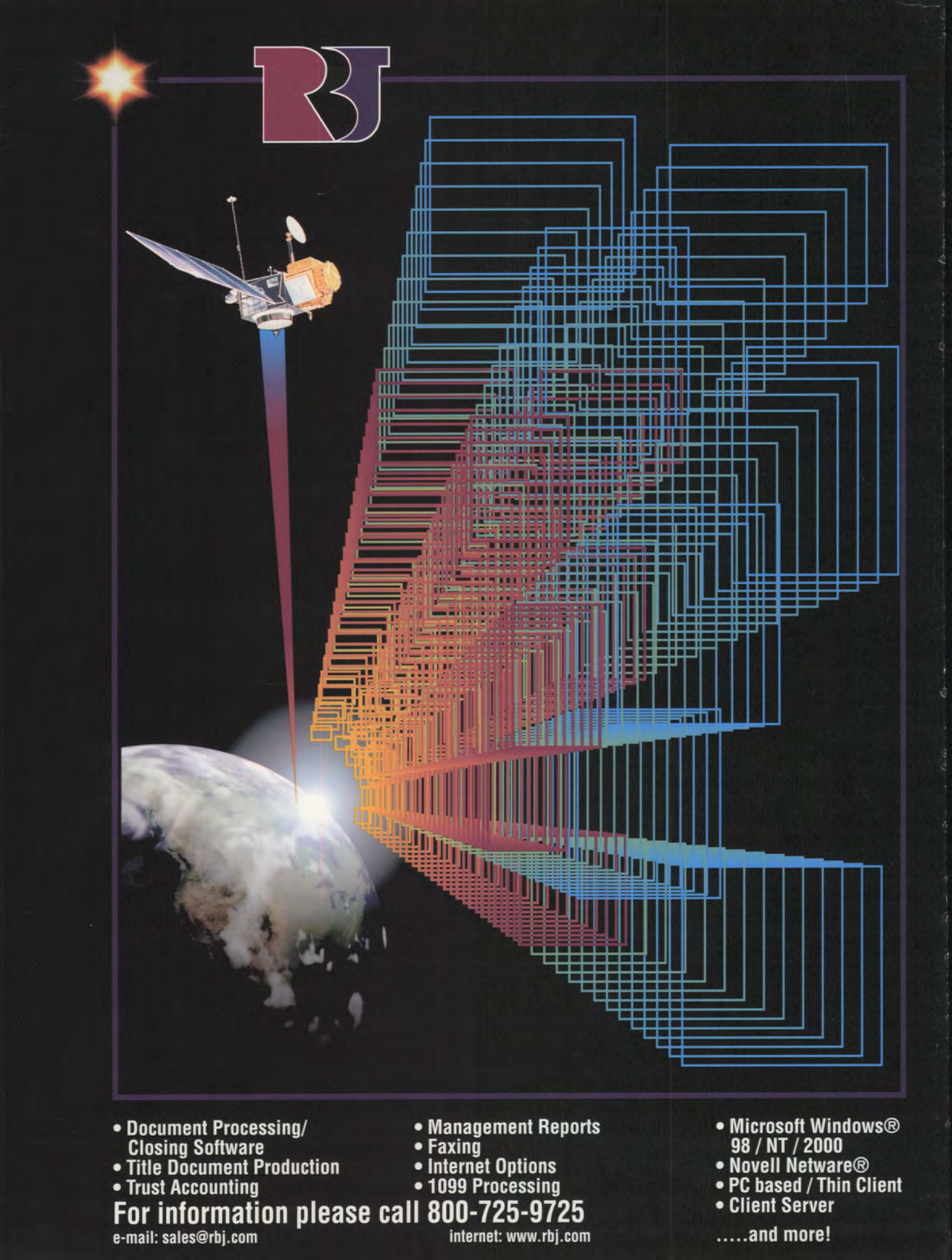

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