

January/February 2003

Title NEWS

Official Publication of the American Land Title Association

FLOODED WITH
COMMENTS ON
RESPA

HUD WHAT NOW?

PLUS

- Lawyers Speak Out on Title Industry
- Transaction Management Grows Up
- 2002 Congressional Wrap-up & What's Ahead
- Highlights from 2002 Annual Convention
- 2003 Tech Forum Promotion

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by Sheldon E. Hochberg
At press time HUD was flooded with 40,000 comments on its proposed changes to RESPA. What now? How will HUD respond? Read an excerpt of other industry comments, and understand what steps HUD will take next.

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A Message from the
President-Elect

Why Am I Here?

Why am I, someone who has spent his career in the Bar-related® title industry (we don't call them "bar funds"), involved in ALTA?

The main reason is that even with the consolidation of players in the industry, ALTA's reach has grown. Maybe it had to grow because of that consolidation.

However, as we have seen more mergers and acquisitions take place, we have seen ALTA's dues income shrink. Unfortunately our needs as an industry association have increased and become more complex. Three cases in point:

- Our efforts to fight the threat of the Radian lien protection product were addressed mostly at the state level and funded primarily by the five national families of underwriters. However, the Radian issue is not just an underwriter issue, and in the future such issues may require a broader funding and involvement by the entire industry.
- HUD Secretary Mel Martinez has promulgated new RESPA regulations. (See the cover story for some sample comments from other industry groups.) That battle is not over, and it has already taken association resources, some budgeted, some not, and will likely take more.
- At the 2002 ALTA Annual Convention, the Board of Governors announced a multiyear, multimillion dollar public relations effort. Why? Because all of us are — or should be — tired of having to explain, on a crisis basis, the value of our products and services to people like real estate columnist Ken Harney when he gets a badly advised bee in his bonnet. The public relations program will ensure that he and others know the value of our products and services before companies like Radian bend their ears.



The five national underwriters have agreed to fund about half the total cost of this program by paying one-half times their annual dues. My company, the Fund, has volunteered to do the same. And all other ALTA members received a letter explaining the need for funding for this campaign.

What Am I Getting At?

First, ALTA is our association, we get back what we put into it. If we aren't active and make sure our agents (for underwriters) and competitors (for agents) are active, we have no room to complain if ALTA isn't as effective as we would like it to be.

Second, it takes money to be effective. At a couple of the state associations I attended this year, I was asked why ALTA didn't have a balanced budget, at least based on dues income. The chances of reducing services and programs to balance the budget are remote at best. That leaves the revenue side, which means either increasing membership — really all of our collective responsibility — or increasing dues, or both.

While we may have some disagreements about policy, ALTA is still the only place for the title industry to go when we need help. It's up to all of us to keep it that way.

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LAND TITLE
ASSOCIATION



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Members Fax Toll Free: 888-FAX-ALTA
Visit ALTA Home Page: www.alta.org
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Title NEWS

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

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Who You Gonna Call?



To introduce you to another member of the ALTA staff, we are featuring Pat Berman, director of education for The Land Title Institute, Inc., the educational subsidiary of ALTA.

Pat has been with ALTA for a combination of 18 years. She worked for ALTA from 1970 to 1973 as an executive secretary and then returned in 1987 as director of education and membership services. She has been director of education since 1992.

Pat is the staff liaison for the ALTA Education Committee and the Abstracters and Title Insurance Agents Section Executive Committee. Under her stewardship of the Education Committee, the Institute's two correspondence courses were revised and upgraded; 11 title-specific videos were produced; a stand-alone CD course on escrow accounting procedures was introduced; a multitude of seminars were held around the country; and LTI's Management Development Program was developed and delivered for three years. In addition, the American Society of Association Executives awarded LTI two Education Awards of Excellence—one for an Innovative Education Program, which was the "Closing from Hell" seminar concept, and the other for "Education Curriculum/Coordinated Series of Seminars," for LTI's Management Development Program.

Pat is pursuing other distance education alternatives such as the telephone seminars and online courses, and she plans to move the LTI correspondence course testing from paper-based to online testing. She also is involved with the educational sessions of ALTA's Tech Forum and Annual Convention.

Pat can be contacted at pat_berman@alta.org or 1-800-787-2582.

TIAC Breaks Records

TIAC, the ALTA-endorsed errors and omissions insurer, continues to break records by insuring new title agents and abstracters. Because TIAC has not been forced to increase its rates due to the large insurance losses of September 2001, the number of insureds has increased from 412 to 625, and written premium has grown from \$1.4 million to close to \$2.2 million. To find out more about TIAC, visit ALTA's Web site at www.alta.org and click on the TIAC logo.

calendar

ALTA Coming Events

January

2-6
Research Committee
Key West, FL

2-6
Membership and Organization
Committee
Key West, FL

18
ALTA Board of Governors Meeting,
San Diego, CA

19-20
Large Agents Meeting
San Diego, CA

31
TIAC Board Meeting
Key West, FL

March
9-11
2003 Tech Forum
Las Vegas, NV

April
12-13
Federal Conference 2003
Washington, D.C.

May
4-6
Title Counsel Meeting
Sonoma, CA

16-20
Annual Internal Auditors Meeting,
Key West, FL

July
17-19
Education Committee
Victoria, BC, Canada

October
22 - 25
ALTA Annual Convention
Phoenix, AZ

Affiliated Association Conventions

February

TBA Alaska

April

6-8 California
9-11 Tennessee
24-26 Oklahoma

May

1-4 Palmetto Land Title
2-3 New Mexico
4-6 Iowa

June

1-4 New Jersey
6-8 Texas
6-8 Virginia
8-10 Pennsylvania
8-10 South Dakota
10-12 Illinois
10-12 Utah
13-15 Michigan
19-22 New England
26-28 Arkansas

August

7-9 Idaho
7-9 Montana
7-9 North Carolina
14-17 Wyoming
15-17 Minnesota
15-18 New York
21-23 Kansas

September

7-9 Ohio
10-13 Colorado
11-13 Maryland
11-13 North Dakota
16-19 Nebraska
18-20 Indiana
18-20 Missouri
25-27 Oregon
25-27 Washington

Customer Service Training Available

Customer service is a learned skill that can always use improvement. ALTA has reviewed a customer service training program by Telephone Doctor(R) and highly recommends it for our industry. Telephone Doctor(R) is best known for its professional, high-quality training videos. Now some of their courses are also available on CD-ROM, and several are available via the Internet. Three convenient ways to offer this training to your employees! CD-ROM and Internet courses can be taken one-on-one from your employee's desk.

Here is a sample of some of the courses available: "On Incoming Calls," "Determining Caller Needs," "Five Forbidden Phrases," "We are Customers to Each Other," and "How to Handle theirate Caller."

Videos range from \$345 to \$395. Courses on CD-ROM are \$595. Online training requires a password, which costs \$15 with a minimum order of ten. Each password is valid for 30 logins or 30 days from time of first use. For smaller offices, ALTA can purchase a password, then resell it to you. For more information on other courses offered or to use one of ALTA's passwords, contact Pat Berman at pat_berman@alta.org.

ALTA Hires New Grassroots Manager

Charlene Nieman has joined the ALTA staff as grassroots & PAC manager. In addition to the traditional grassroots and PAC responsibilities, Charlene will be charged with tracking legislation and regulations affecting our industry and planning the annual Federal Conference. Prior to ALTA, Charlene worked in government relations for the Direct Selling Association (DSA) and Ernst & Young LLP. Charlene can be reached at Charlene_nieman@alta.org or 1-800-787-2582.



Affiliated Association Conventions, cont.

October

10-11 Wisconsin

November

12-14 Florida
TBA Dixie

December

3-5 Louisiana

Recruit & Retain Employees

ALTA's Retirement Program can help you with your number one problem—retaining and recruiting valuable employees. Retirement plans are increasingly important to employees, making them a vital part of any first-class benefits package.

To meet your different needs, ALTA's retirement program can help you in three key areas:

401(k). ALTA's plan offers you a choice of 401(k) plans provided by two highly rated industry leaders. Employee education is part of the package before, during, and after sign-up.

Qualified Profit Sharing Plans. The Comparability Plan enables you, the business owner, to maximize your personal benefits by sheltering up to \$40,000 a year - both pretax and tax-deferred. That's three times the savings of a 401(k) plan.

Executive Retirement Plans.

Compensation caps have decreased in the last few years, leaving the highly compensated with a form of reverse discrimination when it comes to building retirement income. A value-added, nonqualified executive plan can be designed with a range of options while enabling your firm to select who will participate, set the vesting requirements, and decide how the plan will be designed and funded.

If you would like more information on any of these ALTA member benefit retirement programs, contact Alice Baldwin at alice_baldwin@alta.org or 1-800-787-2582.

How Much Did the Title Industry Grow?

That question is answered in the fifth annual ALTA/A.M. Best report "Title



Insurance and Industry Statistics." The study outlines the history of title insurance, and its economic growth in 2001 and examines title industry attributes, economic results and issues, regulatory environment, business risks and unique challenges in the rapidly changing real estate and insurance markets. For your complimentary copy, visit

<http://www.alta.org/membership/indrsrch/AMBEST02.pdf>.

How Would You Answer?

"How many computers in your office have access to the Internet?" That is the most recent question in a new area on ALTA's Web site called "ALTA Wants to Know." Members who answer the various questions will be entered into a drawing for a free registration to the ALTA Tech Forum 2003, March 9-11, in Las Vegas. The new section, sponsored by members of the ALTA Vendor Task Force, asks various questions about how members are using technology and posts the answers immediately for users to see. Look for the box in the lower left hand corner of the ALTA home page at www.alta.org.

government & agency news

Start Thinking Federal Conference

Sure, April seems like a long time from now, but it's January already and April will be upon us sooner than we think! The 2003 Federal Conference is scheduled for April 13-15 at the Hyatt Regency in Washington, DC. Mark your calendars now. Program information will be available shortly.



TIPAC News



Norman Ornstein (left), a resident scholar at the American Enterprise Institute for Public Policy Research, was the speaker at the TIPAC luncheon during ALTA's Annual Convention last October. Mike Wille (right), TIPAC chairman, thanks Ornstein for his insight into events affecting politics in the nation's capital.

TIPAC Has Winners

During the ALTA Annual Convention in Palm Beach, FL, last October, TIPAC held its first ever raffle to raise money and awareness. ALTA past president Cara Detring did the honors of picking the names from the bin. The first named she pulled--Cara Detring! She promptly donated her \$1,000 prize back to TIPAC. The other winners were Jim John, LandAmerica, won \$3,000; and Tom Evans of Fidelity National Financial was the top prize winner at \$5,000.

Issues Update

For the latest information on the issues that ALTA is monitoring, see the Washington Watch chart on page 6 and the full article on page 32. Additional updates are always posted on the ALTA Web site at www.alta.org. Click Government Action, then "Issues."

Dinner with the President

Several ALTA members attended the 8th Annual Republican Senatorial Dinner with President Bush this past September. Here the members, are all smiles!



Sen. Rick Santorum (R-PA), (left), Louis Meyer, Jr., NIA/Lawyers Title Agency (center), and Mike Wille, ALTA TIPAC chairman (right).



Lou Meyer (left), Mike Wille (center) and Sen. Trent Lott (R-MI).



Mike Wille (left), Sen. Jim Bunning (R-KY), and Ann vom Eigen, ALTA's legislative and regulatory counsel (right).

washington watch

an update of ALTA issues

issue	synopsis & business effect	status
Ensures the continued financial ability of insurers to provide coverage for risks from terrorism (PL 107-297)	Establishes in the Department of Treasury the Terrorism Insurance Program. This program provides a system of shared public and private compensation for insured losses resulting from acts of terrorism.	November 11, 2001- Passes House. July 25, 2002- Passes Senate with an amendment. Senate asks for conference. July 27, 2002, House agrees to conference after unanimous consent to disagree with Senate amendment. November 11, 2002, Passed House. November 19, 2002- Passed Senate. November 26, 2002- Signed by President (PL 107-297).
Simplifies the downpayment requirements for FHA mortgage insurance for single-family homebuyers (S 2239).	Requires an original lender, in conjunction with an FHA insured loan, to provide a prospective borrower with a one-page analysis of other mortgage products for which he or she would qualify, including information about: (1) rates, insurance premiums, and other costs and fees; and (2) mortgage insurance premium termination. Repeals the Government National Mortgage Association (GNMA) three-percent guarantee fee increase scheduled to take effect in FY 2005 and provides for indexing of multi family mortgage limits for FHA mortgage insurance programs.	October 17, 2002- Passed the Senate. November 15, 2002- Passed the House. November 22, 2002- Presented to the President
Strengthens the law to make it more difficult to declare bankruptcy (HR 333).	Amends Federal bankruptcy law to revamp guidelines governing dismissal or conversion of a Chapter 7 liquidation (complete relief in bankruptcy), to encourage repayment. Includes ALTA sponsored amendment overturning Ninth Circuit decision setting aside a lender's lien for an undisclosed bankruptcy.	March 1, 2001- Passed House. July 17, 2001- Passed Senate with amendment. July 31, 2001- House agrees to a conference. November 15, 2002- Passed House. Failed to be taken up in the Senate before adjournment. Will need to be reintroduced in the next Congress.
RESPA Reform	Revises RESPA disclosures and provides a new exemption from Section 8 for a lender packaged guaranteed mortgage package agreements offered to consumers.	July 26. Request for comments published. October 28, 2002 Comment period closed
USA Patriot Act/Money Laundering	Requires financial institutions, including insurance companies and real estate settlement service providers, to develop compliance plans and develop anti-money laundering plans. Existing requirements to comply with IRS cash reporting and to check the list of "Specially Designated Nationals," published by the Office of Foreign Assets Control of the Department of the Treasury remain in effect.	November 6, 2002- Treasury issued an interim final rule postponing application of requirements to establish specific anti-money laundering programs to settlement service providers.
Federal study to develop recommendation to expand E-Sign.	Department of Commerce proposal to allow "bad news" in residential real estate transactions notices for residential foreclosure, default, and eviction to be delivered electronically.	November 15, 2002- Department of Commerce issued request for comments expanding Federal pre-emption. Comments due January 15, 2002.
Federal Regulation of Insurance	Establishes an Office of the National Insurers within the Department of the Treasury to authorize the issuance of Federal charters for carrying out the underwriting and sale of insurance or any other insurance operations (HR 3766).	February 14, 2002- Referred to the Committee on Financial Services and also to the Committees on the Judiciary and Ways and Means. March 18, 2002: Referred to the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises.

This information is meant to be a summary only. For more detailed information, visit the Government Action page of ALTA's Website at <http://www.alta.org/govt>

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- ◆ *Course 2* presents an advanced curriculum, focused on more specific subjects—subdivision, encumbrances, water rights, endorsements, bankruptcy, security interests in fixtures and other personal property under UCC, to name a few. Ideal for *Course 1* graduates, experienced professionals, and recent law school graduates.

Learn more about the courses, enrollment options, and tuition. Visit the ALTA web site: www.alta.org. Click on *Education/Events*, on *Land Title Institute*, and on *Correspondence Courses* in the drop down box.

Alternatively, phone us at 202-331-7431, or email service@alta.org.



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Highlights from ALTA 2002 Annual Convention



Taking a break from their meeting, the new ALTA Board of Governors enjoys a bit of fresh Florida air.



Showing that ALTA board members DO have fun, Chuck Kovaleski tries his hand at croquet during a fierce afternoon croquet match.

Thank You Sponsors!

Special thanks and recognition to our convention sponsors:

Data Trace	Stewart Title
LandAmerica	Title Pac
SoftPro Corporation	Title Report



Frank Willey, 2002 ALTA president (right), and Stanley Friedlander, 2003 ALTA president (middle), take some ribbing from board member Mark Bilbrey at the closing banquet.



Participants learned how to use juggling balls as a metaphor for balancing work and family life. The scene in the room was pandemonium filled with laughter!

Frank Willey, ALTA's 2002 president, thanks Cara Detring, ALTA's 2001 president for her years of service to ALTA, as Cara officially rotates off the ALTA Board of Governors.



Carrie Hoyer-Abbinante, Wisconsin Title Service Co., showed that she has the right stuff during the tennis tournaments.



In addition to all of the fun and networking, the ALTA Board met to discuss the plans for the public awareness campaign.



The ALTA Technology Committee hard at work. (Notice the laptops everywhere!)

Golf is always a big hit among ALTA members. Ninety-two members participated in the golf tournaments.



After the work was done, the members sure knew how to have a good time during the closing banquet!

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HUD'S RESPA Regulations: the Proposals, the Comments, the Future

by Sheldon E. Hochberg

What happens when HUD proposes changes to its RESPA regulations that would fundamentally reshape the way in which the mortgage market and settlement service industries operate, tilt the playing field in favor of big mortgage lenders and against small lenders and mortgage brokers, and threaten the survival of small business service providers—all without any authorization from Congress? Just what you would imagine. An outpouring of comments—over 40,000—from every major industry association and consumer group, tens of thousands of mortgage lenders and brokers, title companies and other settlement service providers, and federal and state regulators. While some (primarily the major lenders and consumer groups) expressed general support for HUD's reform efforts, the overwhelming majority of comments expressed grave concerns about the impact of the proposals. And virtually all comments—including those from the lending community and the consumer groups—pointed out significant legal and practical problems that HUD failed to consider or needs to correct.

This article will discuss the HUD proposals, published for comment on July 29, 2002, and provide a thumbnail summary of what the significant players in the RESPA debate had to say to HUD. Of perhaps greatest interest, the article will also discuss the choices facing HUD—once it digests the comments—and offer an educated guess as to HUD's likely next steps.

(NOTE: a copy of the HUD proposal, a summary prepared for the title insurance industry, and many of the significant comments are available at the ALTA website: www.alta.org.)

The HUD Proposals— A Brief Summary

There are three major aspects of the proposed regulations: (1) revisions to the “good faith estimate” (GFE) regime that has been in effect since 1976; (2) a new, alternative regime for the provision to consumers of a Guaranteed Mortgage Package (GMP) via a Guaranteed Mortgage Package Agreement (GMPA); and (3) in connection with the revised GFE regime, a major change in the way in which fees paid by funding lenders to mortgage brokers (frequently referred to as “yield spread premiums” (YSPs)) must be disclosed and accounted for.

The Revised GFE Regime

Section 5(c) of RESPA specifies that within three days of receiving an application, a lender must provide to the applicant a “good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur.” The proposed GFE form, rather than providing good faith estimates of the individual charges the borrower is likely to incur, requires settlement costs to be grouped into certain categories (e.g., loan origination charges, lender-required charges, title services and title insurance, government charges, reserves/escrows)



that do not disclose the individual costs within the various categories. More importantly, the HUD proposals would require the lender to guarantee that the “estimates” given for the various categories either will not be exceeded at closing or will not be exceeded by more than 10%. The revised GFE form would also include disclosure of certain information otherwise covered by the Truth in Lending Act (TILA)—information regarding the loan, the interest rate being offered, the APR, and the monthly payment.

The new GFE, with its tolerance limits, would have to be provided within three business days of the lender's receiving a redefined “application” that need only include limited credit information, an estimate of the value of the house, and the type and amount of the requested loan. If, at the time the borrower decides to lock in, the loan interest rates have changed (or if the lender declines to make the loan after full underwriting), a new GFE has to be provided. But the amount of any category of settlement charges that is not dependent on the interest rate cannot change from the original estimate.

The Proposed GMPA Regime

Under this alternative, packagers would offer, at no cost and within three days of receipt of the revised and limited application, a guaranteed mortgage package agreement to be kept open for 30 days that would include a loan at a particular interest rate and a single price for essentially all closing costs for that loan (with no disclosure of the individual services contained in the package). Until accepted by the applicant, the interest rate on the loan can only vary based on changes in an objective and verifiable index. The making of the loan would, however, be subject to final underwriting by the lender. The package price for the closing costs could not be exceeded. Some TILA-type disclosures would also be

was the focus of thousands of comments from mortgage brokers throughout the country—relates to the treatment of mortgage broker compensation. Mortgage brokers would have to disclose their aggregate compensation from both the borrower and the funding lender as an amount paid by the borrower, with the payment from the funding lender being treated as a credit against the amount deemed paid by the borrower. Through this approach, HUD hopes to place the mortgage broker in a position where, because any yield-spread premium received from the lender for delivering a higher yielding loan will be credited toward the aggregate fee deemed to be paid by the borrower, the broker has no incentive to obtain a higher interest rate loan for the consumer.

faces is not simply a situation, which federal agencies face all the time, of trying to accommodate reasonable comments received in a rulemaking proceeding and moving ahead with appropriate final regulations. The problems and concerns raised will require, if HUD wants to avoid placing the Bush Administration and the housing and mortgage markets in a most precarious position, a fundamental rethinking of the practical and legal alternatives available to achieve HUD's objectives.

The overwhelming majority of comments expressed grave concerns about the impact of the proposals.

required. While HUD claims that anyone can provide a GMPA, the comments received make clear that because of the requirement that the GMPA include a loan at a guaranteed interest rate, only lenders will effectively be able to offer GMPAs.

To encourage the offering of discounts in prices by third-party settlement service providers, lenders who package, and those providers offering services covered by the package, would be given an exemption from RESPA §8's prohibitions on referral fees and mark-ups. This exemption would also permit lenders to require the use of their affiliated service providers without running afoul of RESPA's prohibitions on such required use.

New Mortgage Broker Disclosures

One of the most controversial proposed changes—and the one that

The Comments

Virtually all the comments I have thus far reviewed, even those from the leading proponents of packaging and disclosure reform, expressed concerns about significant aspects of the various proposals. Comments from industry tended to focus on the ways in which HUD's proposals were impractical, exceeded HUD's statutory authority, would impair the continued healthy functioning of the mortgage market, would not achieve HUD's consumer-oriented objectives, and, the most often heard theme, would adversely affect small businesses. Not surprisingly, consumer groups, on the other hand, generally felt that HUD had not gone far enough to protect consumers from unscrupulous lenders.

The fact that proposals of such dramatic and widespread impact would generate strong views will not be a surprise to HUD. What may be eye-opening for the department, however, is the enormous number and variety of significant—and meritorious—practical and legal problems and concerns that have been brought to its attention. What HUD

The Views of Mortgage Lenders

As the parties most directly impacted by the proposed changes and the industry constituency of greatest concern to HUD, mortgage lenders are likely to have the greatest weight with the department. Those views, while frequently introduced by words of praise for HUD's reform objectives and generally supportive of the packaging concept, reflected deep concerns about the wisdom and practicality of many aspects of the proposals.

For example, the Consumer Bankers Association noted that many lenders are "quite wary of the GMP option . . . but it is an experiment that must be allowed a fair chance to work." Because the GMP option will "change the face of lending" and "force a realignment of business and a reassessment of pricing that we cannot really foresee at this time," these changes "need to be entered into with care." The Mortgage Bankers Association of America (MBAA), while "embrac[ing]" the GMP proposal, particularly the exemptions from RESPA § 8, urged HUD in no uncertain terms to "clarify and revisit many of the proposed components—particularly the interest rate guarantee—before issuing any final rule."

On certain issues there was a division of views between large mortgage lenders (who generally were



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supportive of the GMP approach) and the smaller banks, credit unions, and other mortgage lenders (who felt that the GMP approach would place them at a competitive disadvantage to their larger competitors who would have greater clout in obtaining discounts from service providers). For example, in contrast to the views of the major lender groups, the Independent Community Bankers of America expressed the conclusion that "HUD's proposal will dramatically alter the manner in which mortgages are offered, making the process more confusing, removing consumer choice in the selection of individual settlement services, and decreasing consumer options for mortgage products. . . . In our view, elements of the proposal will further confuse consumers, enable dishonest brokers and lenders to hide unnecessary fees, and overall increase mortgage costs."

This division was reflected in the comments of the American Bankers Association, which represents both large and small banks. While noting that both the GFE and GMP proposals may well have merit, "both raise very serious issues of workability, consumer confusion, costs, and the ability of all types of lenders to compete fully in the changed marketplace. While unanimous agreement is unlikely in such a complex area, ABA believes it is critical that a broad-based consensus be achieved among participants in the mortgage process, or the reform effort is unlikely to be successful."

A comment (clearly coordinated) by many lender trade associations was that HUD should focus on making modifications to the GMP proposal but should not attempt to overhaul the GFE regime at this time. The concerns expressed were that lenders would face enormous costs and difficulties in adjusting to two new regimes at the same time and that a proper test of the packaging approach in the marketplace could only be

achieved if the comparison were to the existing and familiar GFE regime. (On the other hand, the National Association of Realtors urged just the opposite approach, that HUD proceed with the revisions to the GFE regime and defer the GMP proposal.)

The most frequent comment by lenders on the GMP approach was directed at the inclusion of a guaranteed mortgage loan in the GMPA proposal. Noting that settlement services and costs were the domain of RESPA, while loans and loan-related charges were the domain of TILA, lenders pointed out that there were significant conflicts in definitions and approaches between how the GMP proposal (and the revised GFE proposal) treated the mortgage loan and the requirements under TILA. As the MBAA said, "in proposing to combine settlement costs with interest rates in the GMPA, HUD is combining two costs with entirely different levels of volatility and risks for lenders." "Until RESPA and TILA are harmonized by legislation to allow a single disclosure form," commented the Consumer Mortgage Coalition, "duplication of disclosures regarding payment schedules, prepayment penalties, balloon payments, and ARM terms will be confusing and lead to legal problems for lenders." Their suggestion was to limit the GMP to settlement services and leave information regarding the mortgage loan to TILA and the Federal Reserve Board's Regulation Z.

Lender groups also repeatedly pointed out the economic and practical difficulties of (a) requiring a lender to commit to a mortgage interest rate before receiving a complete application with all of the information needed by the lender and undertaking an underwriting review, and (b) limiting changes in that rate to changes in some verifiable and objective index. The MBAA

described this as the most troublesome aspect of the GMP proposal and as "technically infeasible." Virtually all lender groups noted the difficulties and costs caused by the fact that lenders would have to hedge a loan guaranteed under a GMPA against the risk that the applicant might accept the GMPA, and that, as a result of Internet inquiries, some borrowers could file dozens of applications, thereby requiring lenders to incur the costs of hedging many loans that would never be made. Some lender groups suggested that in lieu of tying the interest rate to an index, the rate should be allowed to change on a day by day or hour by hour basis, provided that the lender's new rate be constantly disclosed on the lender's Web site or otherwise be continuously publicly available. (In contrast, associations representing smaller lenders pointed out that this might not be feasible for smaller lenders or would force them into offering a much more limited range of loan products.)

Other major comments by lender groups on the GMP proposal included:

- strong support for not having to disclose what services are in the package: "It is important that the consumer understand that all items obtained by the packager to make the loan are for the packager, not the consumer";
- if the applicant selects his or her own provider for a particular service in the package, the applicant should have to pay the fee for that service with no reduction in the GMP price;
- the 30-day period during which the GMPA would be held open should be shortened to 5 or 10 days; and
- lenders should be allowed to charge an up-front fee for providing a GMPA and a fee

when the borrower locks in the loan.

Regarding the GFE proposal, apart from urging that HUD not move ahead with modifications to the current GFE regime, the lender comments tended to emphasize:

- the conflicts between HUD's revised GFE approach and TILA requirements;
- that no limits should be placed on third-party fees that the lender cannot control;
- the need for a broad interpretation of what constitutes an "unforeseeable and extraordinary" circumstance in which tolerance can be exceeded;
- the need to allow lenders to cure technical violations of the GFE requirements (and the GMP requirements as well); and
- that the new GFE form is too long and complicated and tends to include information that is better placed and explained in the HUD Special Information Booklet.

The Views of the Title Insurance Industry

ALTA submitted its comments in early October to enable ALTA members, state land title associations, and other trade associations to consider ALTA's views when preparing their own submissions. This was an effective approach as over a thousand letters echoing themes developed in the ALTA comments were submitted by ALTA members and state land title associations. Other associations, such as RESPRO and the National Association of Realtors®, commented on ALTA's proposal for a "two-package" approach. ALTA's comments made four points:

1. HUD lacks statutory authority for the proposals it is making; the kind of firm estimates HUD wants lenders to provide was

contained in RESPA as originally enacted, but Congress repealed that provision and enacted the current provision of § 5(c) requiring only a good faith estimate that is not subject to any sanctions;

2. HUD's proposals are based on the faulty assumption that whatever services are needed by, and are good enough for, the lender will also meet the needs of the buyer and the seller in the transaction;
3. the proposals tilt heavily in favor of the GMP alternative, and that proposal would have significantly adverse affects on the title industry, particularly small businesses in the industry; and
4. HUD could achieve its objectives while avoiding these consumer and competitive problems by providing for two packages: a Guaranteed Mortgage Package that would be offered by lenders consisting of the loan and all lender-related services and charges (basically the 800 series charges on the HUD-1 form) and a Guaranteed Settlement Package that could be offered by any party and that would provide a guaranteed single price for all of the 1100 series services and charges (the title and related charges), the 1200 series charges (government recording and transfer charges), and those charges required for title assurance or closing purposes that may be listed in the 1300 series.

The Views of the Realtors® and Other Industry Groups

The National Association of Realtors® was strongly opposed to the GMP approach, noting that the goals of reform could be achieved by improving the GFE regime, that "there is not enough evidence of consumer and industry benefit to move forward with the Guaranteed Mortgage Package (GMP) at this time," and that "Congress should

address many of the changes to RESPA in this proposal." In support of its views, NAR attached an economic analysis by Ann Schnare, PhD, entitled "The Downside Risks of HUD's Guaranteed Mortgage Package."

Regarding their concern that HUD's proposal would effectively allow only lenders to offer GMPs, NAR noted: "A proposal put forward by the American Land Title Association (ALTA) recommends that HUD entertain a 'two-package approach, a lender package and a settlement package. This is a variation of the GMP that attempts to create additional opportunities for nonlenders to participate. While we have not thought through this idea, it indicates there might be alternative reforms that have not yet been considered."

The comments filed by other settlement service industry trade associations (such as associations representing escrow agents, credit

In many regards the views of consumer groups were in direct conflict with the views expressed by the lending industry.

reporting agencies, and appraisers) tended to emphasize the adverse effects on small businesses (because they would be unable to offer the same level of discounts to lenders as their larger competitors), and the adverse impact on consumers if lenders, because of their inability to pass on any increased cost incurred in transactions where more or better credit information or appraisals were required, declined to obtain such additional services that would have helped the borrower to qualify for a better loan.

The Views of Consumer Groups

In many regards the views of consumer groups were in direct

The most significant filing was made by the National Consumer Law Center (NCLC) on behalf of a broad

A recurrent comment from across the spectrum of submissions was that HUD lacked statutory authority to change the mortgage and settlement services markets in the ways it was proposing to do.

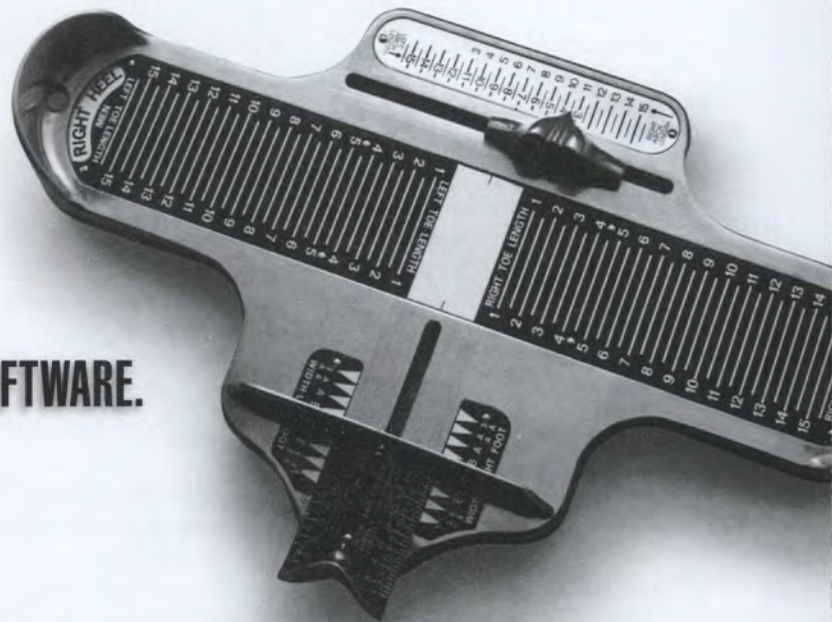
conflict with the views expressed by the lending industry. That such a fundamental chasm exists points out one of the major dilemmas facing HUD in deciding what to do. If it tries to accommodate the concerns and views expressed by consumer groups, it risks doing significant damage to the mortgage market. If it tries to accommodate the concerns and views expressed by the lending and settlement service industries, it risks consumer groups claiming that HUD has not done enough to reform RESPA.

group of national and local consumer organizations. While commending HUD for the “dramatic approach to RESPA reform advocated in these Proposed rules,” the NCLC made clear “[t]here are several overarching concerns and a myriad of important details which must be worked through to ensure that the Rule does in fact protect consumers, instead of simply providing a shield behind which mortgage originators can hide inappropriate, unfair, and illegal activities.”

The “major concerns” of the

consumer groups were: (1) the Rule as proposed will facilitate predatory lending unless HUD (a) makes clear the GMPA cannot be used in any HOEPA loan, any loan with a prepayment penalty, or any loan where the total mortgage package price exceeds 5% of the loan; and (b) in coordination with the Federal Reserve Board ensures that the prices paid for individual settlement services are disclosed in the GMPA and in the HUD-1 form so that consumers and their lawyers can ascertain when loans might violate TILA and HOEPA; (2) HUD's new regulations on the disclosure of YSPs should be in the § 8 regulations, not the disclosure regulations, so that § 8 sanctions will apply to violations; (3) the new GFE form must be changed in a number of ways; and (4) to correct the “absurd” situation that the proposed rules do not currently include any mechanisms to punish transgressors. HUD should

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establish civil enforcement penalties, remove its stated prohibition against RESPA § 8 class actions, make a lender's failure to follow the new GFE rules an unfair and deceptive act that would enable private enforcement, and make a violation of the new GMPA rules a presumptive violation of § 8. (Other consumer groups urged \$10,000 penalties for violations of the requirements.)

The NCLC also identified a "myriad of specific details which must be addressed to transform the Proposed Rule from a good idea with dangerous—and unintended consequences—into a truly progressive consumer protection regulation." With regard to the GMPA proposal, the consumer groups urged significant changes including:

- lenders—at no cost to the consumer—should provide an

offer of a guaranteed loan at a specific rate, with a fixed amount of points and a guarantee of total settlement costs, on the basis of the "application" provided by the consumer, a credit report, and asking the applicant additional questions; this commitment should only be subject to the lender's verifying the applicant's income and asset information, and the value of the collateral;

- GMPAs that are subject to "final underwriting" should not be given an exemption from § 8; indeed, "[a]ll HUD need do is remove the current regulatory barrier for volume-based discounts by requiring that the value of volume-based discounts be passed along to consumers. This seems a far simpler solution than the current construct for the GMPA;"
- affiliated business arrangements must be disclosed in the GMPA

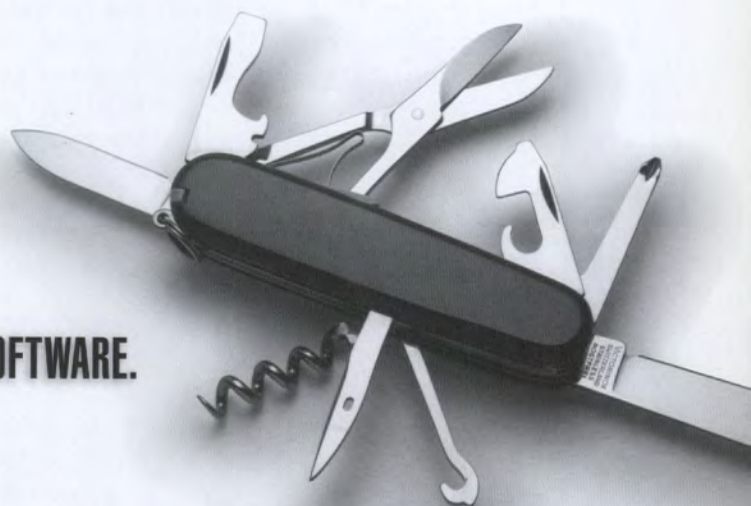
(and in the revised GFE) because such disclosures are critical in determining whether a loan is a HOEPA loan;

- HUD should reject the arguments of the lenders that the GMPA should not include a guarantee of the loan; and
- the guaranteed loan interest rate should only be allowed to change pursuant to a publicly discernible index or in accordance with changes that are publicly known (e.g., published on the lender's website).

With regard to the revised GFE regime, other consumer groups made the following suggestions:

- the lender should guarantee the interest rate included in the GFE;
- because lenders may turn down applicants in the underwriting phase and then rush them through a new, more expensive loan, a

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- revised GFE should have to be provided at least three days before the closing of the new loan; and
- the 10% tolerance for third-party fees is too high; and
- the “extraordinary and unforeseen circumstances” exception to the tolerances should be very narrowly drawn.

Preemption of State Law

One of the points repeatedly made by lender groups—particularly those reflecting the views of the larger lenders—was the importance to HUD’s reform effort of preempting state laws and regulations that lenders regard as being in conflict with HUD’s packaging approach or that would inhibit achieving the benefits HUD is seeking in the GMPA proposal. The range and variety of state laws that the lenders want HUD to preempt are nothing short of breathtaking. They include state

- anti-affiliation and tie-in restrictions;
- laws that trigger “high cost” loan requirements, to the extent they apply to the GMP price as a whole;
- disclosure laws that would require disclosing the amounts of any specific charges that make up the GMP;
- anti-mark-up laws that prohibit lenders from marking up third-party costs;
- anti-kickback and referral fee laws (mini-RESPAs);
- laws governing closing practices;
- insurance laws prohibiting rebates and “discrimination” in pricing on any grounds; and
- laws requiring lenders to permit borrower choices of service providers.

The comments filed by state regulators generally urged HUD to go slow in considering whether to preempt state laws and tended to point out that some of the state laws sought to be swept away by the

lenders are not inconsistent with RESPA and provide greater protection to consumers. It is also noteworthy that at least two of the comments (from the American Association of Residential Mortgage Regulators and the Conference of State Bank Regulators), while generally supporting revisions to the GFE regime, were much less supportive of the GMPA approach.

The coalition of consumer groups were adamantly opposed to preemption of state laws. “[T]hese laws provide significant and important protections for consumers. RESPA is the lesser important law, and its provisions should be implemented so as to facilitate compliance with these state consumer protection laws. . . . Any attempt by HUD to preempt consumer protection laws on the state level would completely {undermine} the beneficial purposes of this regulation.”

Concerns About HUD’s Lack of Statutory Authority and the Need for Legislation

A recurrent comment from across the spectrum of submissions was that HUD lacked statutory authority to change the mortgage and settlement services markets in the ways it was proposing to do. This view was expressed with regard to numerous aspects of the proposals. For example:

- the American Bankers Association stated that many banks believe that the current RESPA statutory language requiring a “good faith estimate” precludes HUD from imposing the changes incorporated in the GFE proposal;
- the Consumer Bankers Association urged HUD to defer any changes to the GFE regime until a later date, “when a more informed decision can be made about what changes are appropriate and what is within HUD’s legal authority to

accomplish”;

- the Consumer Mortgage Coalition noted that, “[w]hile HUD has clear authority to issue regulations to carry out the purposes of RESPA, it is questionable whether it has the specific authority to impose, in the context of the GFE, a zero tolerance on any cost category.” The CMC also advised HUD that it is questionable whether HUD has the authority to create the penalty that the lender must provide a refund to the applicant if it violates the tolerances;
- the Mortgage Bankers Association of America, one of the major proponents of packaging, cautioned HUD on its attempt to establish penalties for violations of its new disclosure requirements: “[I]t is not at all clear on what authority HUD can wage such a remedy in the context of the GFE. The statutory language of RESPA does not provide any remedies for noncompliant GFEs. Nor does RESPA authorize HUD to create such remedies. We are concerned that this absence of authority could lead to legal entanglements against the entire reform proposal”;
- the National Association of Mortgage Brokers pointed out that legislative changes are needed to avoid legal challenges to the final regulations: “It is uncertain as to whether HUD has the authority to make such sweeping changes to the good faith estimate requirements under RESPA. It appears that any changes . . . would be ripe for judicial challenge without corresponding legislative authority”;
- the National Association of Realtors: “While we support the concept of the Enhanced GFE, we question whether HUD has the authority to require lenders to guarantee their fees”;
- the coalition of consumer groups

noted that they had supported the GMPA concept in the past “in the context of statutory changes in the law” that would amend RESPA and TILA so as to coordinate disclosures and protections against predatory lending, but they cautioned that “attempting to address the disclosure problems of RESPA only through regulation creates serious implications for enforcing TILA requirements and removes existing protections against predatory lending”;

- law firms representing plaintiffs who have filed class-action cases against lenders warned HUD that the § 8 safe harbor HUD proposes for packaging “is beyond HUD’s legal authority to create”; and
- the Real Estate Settlement Providers Organization (RESPRO) agreed with ALTA’s analysis that the proposed HUD regimes and sanctions constituted an attempt to regulate disclosures and pricing of loan costs and settlement services that is inconsistent with the RESPA regime created by Congress.

Whether the current provisions of RESPA would support the sweeping changes and sanctions HUD is proposing is just one part of the question of whether HUD can move forward with its proposals without further legislation. Of equal significance is the fact that, as many comments noted, the HUD proposals are in conflict with, or cannot be fully implemented without changes in, other statutory and regulatory regimes including TILA, HOEPA, HMDA, and the Bank Holding Company Act. For example, providing that individual settlement costs do not have to be disclosed under the revised GFE or the GMP regimes is in conflict with TILA (which requires information on the amounts paid by the consumer for those items included in the “finance charge” and APR) and with HOEPA (which requires information on the

amounts paid for those charges that are included within the definition of “points and fees” used to determine whether a loan is subject to HOEPA’s requirements).

One comment in this regard is of particular note. The staff of the Federal Reserve Board pointed out to HUD that federal anti-tying laws that apply to banks, thrifts, and other deposit-taking entities “may affect the ability of these entities to provide customer discounts on GMPs or even to offer GMPs.” The FRB staff letter directed HUD’s attention to the 1998 joint HUD/FRB report on RESPA/TILA reform, where the Board noted that federal law prohibits banks and thrifts from “tying packaged settlement services to their mortgage loans” and urged that, if RESPA § 8 is amended to allow creditors to require the use of affiliated service providers, these anti-tying restrictions should also be amended. In short, if HUD attempts to create its proposed GMP regime without further legislation, most lenders may be unable to package or to use their affiliated service providers without facing allegations that their packaging activities violate federal anti-tying law.

What Will HUD Do Next?

HUD is facing a significant legal, political, and economic dilemma. If the stakes were not so high, HUD, in its desire to press ahead with reform, might try to give the comments received a quick review, make a few changes in the proposals, and then promulgate final regulations in the hope that any “imperfections” can be corrected later. That will not work here. The stakes are simply too high.

The mortgage and real estate markets are one of the few areas of the American economy that have been operating in a healthy and robust manner. The comments, if HUD reviews them with the care and consideration that went into their

preparation and is required of a federal agency as a matter of law and sound policy, make absolutely clear that without very significant changes and adequate legislative authorization, HUD risks, at best, creating confusion and disruption in the mortgage and real estate markets, and, at worst, a political and economic disaster that

The comments filed by state regulators generally urged HUD to go slow in considering whether to preempt state laws.

could have enormous repercussions for HUD and the Bush Administration.

I believe that the folks at HUD are ultimately reasonable people trying to do their best, as they see it, to promote the availability of housing, to protect the interests of consumers, and to ensure a healthy mortgage market. Accordingly, I think what is most likely to happen is the following.

First, the HUD staff will carefully review and catalog the various concerns, problems, and suggestions contained in the comments. Those concerns and problems cannot be written off as “the plaintive complaints of industries that do not want to see reforms that will lower their charges.” The concerns and problems raised—including those by the consumer groups—are too real and too serious.

After reviewing the comments, HUD is likely to come to appreciate (as I did after reviewing hundreds of the comments) that:

- the mortgage and settlement markets are more diverse and complicated than HUD may have understood;
- there are significant problems in trying to move ahead with the kind of reforms proposed in the absence of amendments to RESPA (to provide both statutory

authorization for the guarantees HUD wants lenders to give for interest rates and closing costs, to eliminate the need for itemization of the individual charges incurred, and to provide reasonable enforcement measures where none currently exist) and to TILA, HOEPA, HMDA, and other federal statutes that may conflict with what HUD is trying to achieve;

- a number of major “compromises” will have to be struck between the kind of reforms that HUD (and the consumer groups) would like to see made and (i) the realities of the mortgage market, (ii) the need to ensure that small business enterprises are not placed at an unfair disadvantage in an area of the economy that has been most hospitable to small businesses, and (iii) the need to ensure that purchasers and sellers in real estate transactions are able to continue to obtain the services they need that may differ from those needed by the lender; and
- there are an enormous number of banking, insurance, and consumer protection laws and regulations at the state level that HUD would have to preempt in order to make packaging work the way lenders want it to work.

The Bush Administration, without clear congressional support and direction, is not likely to be willing to engage in such wholesale preemption of state rules in this area, particularly over the adamant opposition of the consumer groups and with the prospect of successful judicial challenges to such preemption efforts.

Moreover, if HUD undertakes a review of the case law involving challenges to agency rulemaking that were alleged to exceed statutory authority, it will find that the courts are likely to strike down agency rules that, as here, (a) establish

requirements that Congress has expressly rejected (here, HUD is converting the GFE regime Congress enacted into a regime that requires firm estimates of settlement costs, a regime Congress had enacted and repealed), and (b) use an agency's exemption power to get parties to behave in a manner that the agency would have no statutory authority to require directly (here, HUD's use of its § 8 exemption power to encourage packaging).

Of particular note in this regard is a recent decision of the U.S. District Court for the District of Columbia, which struck down a 1998 regulation of the Food and Drug Administration requiring drug manufacturers to assess the safety and effectiveness of new drugs in pediatric patients. *Association of American Physicians and Surgeons, Inc. v. U.S. Food and Drug Admin.*, 2002 WL 31223411 (D.D.C. Oct. 17, 2002). After reviewing the language and regulatory approaches that Congress had enacted and the agency's claim that it had broad statutory powers to promulgate regulations for the efficient enforcement of the act, the court, on the basis of extensive precedent, concluded that such rulemaking powers do “not constitute an independent grant of authority that permits FDA to issue any regulation the agency determines would advance the public health.” The rules adopted by the agency “must be a means of administering authorities otherwise delegated to it by Congress.”

After discussing the merits of the rule and finding no statutory authority for it, the court concluded:

This court does not pass judgment on the merits of the FDA's regulatory scheme. The Pediatric Rule may well be a better policy tool than the one enacted by Congress . . . The issue here is not the Rule's wisdom. . . . The issue is the Rule's statutory authority, and it is this that the court finds lacking.

Because of the concerns about its legal authority, HUD is likely to attempt to bifurcate its reform objectives and decide what it can do in the short run without amendments to RESPA and other federal laws (and without needing to preempt state laws and regulations) and then develop a legislative package that it can propose to Congress for further reforms.

What, you may ask, is the likely scenario if HUD does not see things along the lines described above?

If HUD is determined to press ahead without seeking legislative authority, it will have to decide (a) what changes need to be made to accommodate the legitimate problems and concerns identified in the comments, and (b) what it thinks it can accomplish without the significant risk of a successful judicial challenge to its statutory authority to promulgate whatever final regulations it decides to adopt. This process is likely to take a number of months. Moreover, it is possible that during this period Congress will hold hearings on the HUD proposals, their impact on small business, and the need for congressional authorization—and participation—in any overhaul of the way in which the mortgage and settlement service markets are regulated under federal law.

Accordingly, at best, HUD is not likely to develop its revisions until mid-2003. It will then have to decide whether to promulgate its changes in the form of final regulations or to seek further public input in light of the significance of the changes made to its proposed regulations. If the changes are significant, HUD would be well advised to seek further public comment to ensure that it has all the necessary input before finalizing its reform proposals. (Federal agencies frequently engage in a second round of public comment when major changes have been made to the

proposals on which the public provided initial comments and where the agency wants to ensure it has a full understanding of the implications of its revisions.) This could mean that final regulations would not be published until late in 2003 or early 2004.

Once published in final form, a delayed effective date is virtually certain. A number of comments noted that it would take the lending and settlement services industries a significant amount of time to prepare computer programs, modify business relationships, train staff, etc., and asked for a delay of one to two years. Depending on the extent of the changes ultimately adopted, some period of delay would be needed. Moreover, the HUD Special Information Booklet would have to be rewritten and republished to reflect the final amendments, and that will take some time.

Conclusion

The realities that RESPA reform along the lines proposed cannot be implemented in short order may be upsetting to those at HUD who believe that reform is needed now. But charging ahead without giving full heed to the problems and concerns noted in the many excellent comments that have been filed would almost certainly result in successful legal challenges to the final regulations. Implementation of the regulations will either be enjoined during the time it takes to resolve the challenges, or will cause a political uproar as lenders and settlement service providers face the prospect of having to gear up for the effective date of the new regulations with the prospect that shortly before or after implementation the courts could well determine that the regulations lack legal foundation. Either possibility could be unnerving to the mortgage

markets and adversely affect the entire U.S. economy.

Sheldon E. Hochberg is a partner in the Washington, D.C., office of Steptoe & Johnson LLP. He is a nationally known expert on RESPA and has represented the title insurance industry and ALTA since 1973 in connection with RESPA matters and on other issues facing the industry, such as the Norwest TOP program. He can be reached at Shochber@Steptoe.com or through questions and comments posted on the RESPA Discussion Forum on the ALTA Web site. See the box on the homepage.



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Lawyers Speak Out on the Title Industry

by Dean A. Rogeness

Last year the Title Insurance Committee of The American College of Real Estate Lawyers (ACREL) surveyed its members on selected title insurance issues. Two hundred and eighty-three (283) ACREL members took part in the survey, an excellent response rate. The results of the survey are a clear call for a review of post-closing title services and the development of policies and standards for post-closing title services including delivery of documents. (Editors Note: Although some of ALTA's members expressed concerns about developing such standards, the ALTA Board of Governors thought the membership would still be interested in the results of this survey.)

Who is ACREL?

The purpose of the College is to gather together lawyers distinguished for their skill, experience, and high standards of professional and ethical conduct in the practice of real estate law, who will contribute substantially to the accomplishments, achievements, and good fellowship of the College and to the best interests of the bar and the general public.

The selection of a title insurer for a transaction is seen as a joint attorney/client decision in 61% of the responses.

ACREL members are among the most knowledgeable and experienced real estate practitioners, dealing with

all types and aspects of real estate transactions, including title insurance. They are involved in one capacity or another in the closing of a significant volume and dollar amount of the commercial real estate transactions in the United States in any given year and in the purchase decisions for the title insurance issued in connection with those transactions. Ninety-one percent (91%) of the respondents rated their level of knowledge of title insurance as good or average.

Why Do a Survey Now?

The Committee felt that there could not be a better time to do the survey. Consolidations and mergers among title insurers are up; the number of independent title insurance companies is down; financial reporting is more complicated and obscure than ever; cost pressures and necessary risk reassessments are ever present; people involved in the business are changing, requiring new relationships to be established; the Internet has accelerated the documentation and closing process; electronic signatures and filing are somewhere on the horizon; and title insurance has gone international. Insurance regulators, limited by budgets and traditional single state statutory frameworks, continue to regulate issues that may require sophisticated multistate approaches and solutions.

Demands for new and expanded title coverages and services are also increasing, consistent with the growth of capital markets and the increasingly national scope and institutional nature



of much of the real estate business. Competitive products are making their appearance. Low-cost credit enhancement coverage sold as an alternative to title insurance in the home-equity loan market has become a reality. There is every indication that companies selling these products have their sights set on other markets.

In addition to the above, ALTA is doing one of its periodic rewrites of many, if not all, title insurance forms.

Survey Results

The survey was divided into six distinct areas. They were:

1. who selects the title insurer;
2. analysis of retention limits and credit in the selection process;
3. rating of title industry services in specified areas;
4. effect of consolidation in the title insurance industry on specified services;
5. actions by a National Association of Insurance Commissioner's task force on the creditors' rights exclusion provision in the title policy; and,
6. suggestions for improvements in title coverages offered and services provided.

Let's look at some of the highlights of the Survey.

- The selection of a title insurer for a transaction is seen as a joint attorney/client decision in 61% of the responses. As to the balance, responses indicated that the attorney selects the title insurer in 22% of the cases and the client in 18%. Dissatisfaction with a company's service (including claims payment) or claims paying ability was an important determinative in the selection process.
- ACREL members, by a wide margin, felt that analysis of a title insurer's financial strength and retention limits should be a regular part of the selection process in both the primary and reinsurance situations. Although 61% of respondents indicated that either they or their clients do such an evaluation, declining percentages replied that they check retention limits, use rating services, inquire about reinsurance treaties, or know how companies set their own risk-retention limits.
- Forty-five percent (45%) of survey respondents felt that the attorney has a legal obligation to analyze the financial strength and retention limits of the title insurer. The challenge is how to make an informed decision in this area and fulfill a perceived legal obligation in doing so. (This article takes no position on whether or not there is such a legal obligation.)
- ACREL members want information from independent sources on how title companies set risk-retention limits. They also want companies to post current financial information and risk-retention limits on the Internet for easy access.
- Although probably all respondents exculpate themselves in their closing opinions from any liability for title matters, only 15% exculpate

themselves and their firm from any responsibility for determining credit and risk-retention limits of a title insurance company.

- With respect to title industry services, most respondents were relatively satisfied with coverages provided but relatively unhappy with post-closing services, including issuance of error-free

service, cost, and claims. In a follow-up, more focused question, substantially all responders felt that the effects will be adverse.

Coverage Needed

Two questions on the Survey required written responses. For the question, "What coverage would you like to see added to the ALTA Standard Form

With respect to title industry services, most respondents were relatively satisfied with coverages provided but relatively unhappy with post-closing services.

policies and return of documents. (Such services are all the more important to clients in the current environment of increasing scrutiny by auditors looking for completed files.)

- In this era of national transactions, increased frustrations were voiced respecting the inflexibility and premium structures of strictly regulated states, such as Texas, New Mexico, Florida, Oregon and New Jersey.
- Only 20% of survey respondents were aware that the National Association of Insurance Commissioners has been holding hearings on possible recommendations to the states to limit or prohibit the ability of title companies to provide "creditor's rights" coverage by deleting the creditors' rights exclusion from a title policy. Most felt that such prohibition or restriction would adversely affect their clients' interests but would not be willing, if the coverage were eliminated, to opine on their clients' creditors' rights exposure (or would limit the opinion in a material way).
- Initial responses were decidedly mixed to a general question on the effect of mergers and consolidations within the title industry on coverages afforded, underwriting,

Policies that is not usually included in available endorsements?," respondents listed the following:

- Zoning and certain local law coverages, including legal lot
- "Fairway" endorsement
- UCC Coverage
- Water rights
- Coverage for damages accruing during the time it takes to cure a title defect if the defect was not disclosed due to the negligence of the title company
- All items from the Comprehensive Endorsement
- Last dollar coverage Affirmative insurance against navigational servitudes
- Usury endorsement
- Endorsements generally available in other states but which are not available in highly regulated states such as Texas, New Mexico, Florida and Oregon
- Surface rights coverage over oil and minerals reservations
- Coverage against forfeiture based upon illegal funds
- Environmental

Service Improvements

In the second written question, respondents were asked, "What one improvement would you like to see in a title company?" Here are the most

frequent answers:

- Prompt issuance of final policy
- Reading exceptions to determine if they really apply to the property
- Standardization of endorsements
- Automatically included complete and legible copies of underlying documents with the commitment
- Use email to send out commitment and exceptions
- Do more online
- Better claims service
- Speedier production of the final policy
- Better trained personnel
- More proactive recommendations of endorsements and coverages
- Accuracy of final policy
- Better tracking of final policy and closing documents
- Texas joining the rest of the world
- Black-line copies of amended and supplemental commitments. The rest of the real estate world does it.

Conclusion

The author recognizes that the survey was imperfect in some respects. One respondent commented that the survey seemed biased toward the larger urban transactions and did not really speak to the type of transactions she handled in a smaller urban setting. Another commented that questions dealing with title agents, agencies, and bar-related title insurance should have been included. Other criticisms no doubt can and will be made. Notwithstanding any imperfections and omissions, if the data flowing from this survey proves useful to a variety of persons, entities, and associations involved in real estate, the survey will have been a success.

Dean Rogeness is chair of ACREL's Title Insurance Committee. He can be reached at dean@rogeness.com or 413-567-5480. This article is an excerpt from the full report. For the complete survey report, go to ALTA's Web site, click on Membership, then Industry Research.

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Transaction Management Grows Up

by Stephen Bedikian

During 1999-2000 a number of companies launched similar products, creating a new product category loosely defined as transaction management systems (TMS). Their systems integrated communications and document management and work-flow capabilities in order to improve the efficiency of the residential real estate closing process and make it more transparent, particularly for homebuyers and sellers. Their eventual goal was to support a paperless online closing that eliminated the blizzard of phone calls, faxes, and courier trips characteristic of the traditional closing process.

Despite producing award-winning products, many companies could not survive the industry's long adoption

national players have emerged to compete in the category. This group includes two of the surviving new entrants, SettlementRoom and RealtyAssist with its partner Stewart Title Co., and several established technology providers: RamQuest, FNIS and First American's SMS subsidiary. The systems currently available or expected to be relaunched shortly by these companies have matured into a legitimate product category.

Along with the maturation of these products has come a convergence in their basic functionality. Online order entry, status tracking, and online document delivery are core features of these products. Most systems provide task checklists that are customizable



represent the majority of system users until agents and service providers have time and the motivation to really learn the system.

- **Activity Log.** By recording transaction events, the activity log helps title and escrow companies and their real estate agent and broker customers make sure all regulatory requirements such as disclosures are met. This information should also be valuable in any legal action.

While system functionality is similar, the terminology used by each vendor to describe their products can be very different. The glossary on the next page is provided to define major product functionality and establish a common basis for comparison.

All these systems are Internet-based application service provider (ASP) platforms meaning they require no client software other than a Web browser and an always-on Internet connection such as a DSL line or cable modem. For most offices an expensive T1 line is not required, making TMS implementation much more affordable.

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cycle and were swallowed up by the industry's traditional technology suppliers. Realty Plus Online and its Close Your Deal platform were acquired by First American. Fidelity National Financial affiliate FNIS purchased no less than three separate platforms: iProperty's Chorus, Reez.com's product originally called Reez.com, and Expedatrix's SmartClose. Homestore's eRealtor project, later dubbed DealTrack, did not survive the company's restructuring and has never seen the light of day.

Feature Convergence

Out of this period, a handful of

for each company's unique work flow. These checklists are an important tool allowing all transaction participants to monitor progress and make sure the deal closes on time.

Two key features for title and escrow companies to look for are:

- **Automatic Notification.** Many participants in a transactions may not be 'active' in the sense of logging into the system frequently. However, with automatic notification activated, the TMS will update all participants via e-mail, fax, pager, or mobile phone of important status updates. These 'passive' users will probably

SERVICE ORDERING	There are two types of service ordering: front-end and back-end. Front-end ordering allows title/escrow company clients to submit orders through a Web interface. Back-end ordering allows title/escrow company staff to place orders with their service providers for surveys, tax information,
ORDER TRACKING	Clients can monitor order status including open/closed tasks and documents available. Most systems offer the capability for automatic notification via e-mail or fax for status updates.
DOCUMENT UPLOAD	System users can upload documents into the file using a fax with a custom cover sheet or PC file upload.
DOCUMENT MANAGEMENT	Users can modify documents in the system with multiple document versions maintained. Some systems support OCR Conversion for faxed documents and Fax Truncation of faxes into separate pages.
DOCUMENT DELIVERY	Users can distribute documents directly from the system via e-mail or fax.
CALENDAR/TASKS	Open and closed tasks are viewed as calendar or to-do list for single order or for all orders processed by the user or company. Customized checklists that mirror a company's business processes should be supported.
BRANDING	Basic 'private-label' branding is supported with broker or agent branding displayed to all users.
USER ACCESS PRIVILEDES	These are rights to view/modify tasks or documents and create/delete participants. The most flexible systems allow brokers to establish company-level default settings for different transaction types. These default settings can be modified at the user level or document level based on circumstances.
ACTIVITY LOG	All activities by file users are logged by the system. This 'audit trail' is a useful tool for company management and helps increase accountability among transaction participants.
COMMUNICATIONS	E-mail can be viewed/created from within the Web-based system. File notes are supported via bulletin-board functionality.

Different Design Philosophies

Although there is substantial functional similarity between these products, the design philosophy behind them is surprisingly different. First-generation products like Close Your Deal and SmartClose were meant to be open platforms with all transaction participants able to assign tasks, upload documents, and add new participants. This revolutionary approach to empowering consumers and agents made some title companies and lenders uneasy and may have contributed to their relatively slow adoption.

RamQuest. RamQuest was awarded the 2002 Discovery Award at NASSCON for its Paperless Closer. It is the kind of incremental solution that many title companies prefer as it represents primarily a Web interface to the Complete Closing Enterprise production system.

This seamless integration between transaction management and closing

applications was very appealing to Dallas-based Safeco Texas Land Title, Inc. According to Vicki Rutherford-Cearnal, chief operating officer, "Paperless Closer fit our need because it was fully integrated with our title production system, eliminating rekeying information, was Web based, and offered the client a choice. Use it or not, the information is there 24/7."

Although most title companies experience relatively slow adoption by their clients, Rutherford-Cearnal said usage has been strong, "From our go-live date in February, over 3,500 documents have been published for printing from the site. No paper. No fax. Digital retention of documents and pertinent data retrieval via the Internet will become the new standard, and we will already be there."

RealtyAssist and Stewart. Like RamQuest, Stewart expects the adoption of its private-label version of the RealtyAssist platform, branded

SureClose, to be driven primarily by the title company. Current user Sandy Cappell, president of Stewart Title of Vail, Colorado, says, "SureClose has given Stewart Title the ability to be proactive with customers, providing access 24 hours a day, seven days a week to real estate transactions. It is very important in the competitive business of title and closing products and in the escalating world of technology to continue to improve all aspects of our business."

SureClose makes transaction management features available to agents and consumers and is fully integrated with Stewart's title production system, AIM®. This is natural since the SureClose product is based on the RealtyAssist platform developed by California-based RealtyAssist in which Stewart has an equity investment. RealtyAssist sells its product independently of Stewart to both real estate brokers and title companies. It has been on the market

since September 2000, and Stewart officially released its version, SureClose, in November 2002.

SettlementRoom. The focus at SettlementRoom is on delivering a simple, highly customizable transaction management solution. President Jonathan Cutler believes this exclusive focus on its TMS product is essential, that "choosing a transaction management system is not something to be lumped in as an extra feature on other software. Transaction management takes some time and effort to get started, so you want a system to grow into." The ability to customize a solution to the title company's individual needs is what attracted Jim Brown of Commerce Title, a subsidiary of Dallas, Texas-based homebuilder, Centex. According to Brown, the staff at SettlementRoom worked closely with our various branch-level staffs and we have been able to customize the system to do exactly what we wanted. SettlementRoom has proved flexible enough to handle the wide range of order types we close and versatile enough to be used in all different parts of the country.

FNIS. FNIS' work flow and communications platform, Paragon TransactionPoint™, was named at the November NAR Conference as a new Realtor VIPSM Program partner of the National Association of Realtors. "TransactionPoint enables Realtors to create transactions and to-do lists, update activities, upload documents, open escrows, and monitor the entire closing process," said Bob Goldberg, NAR senior vice president of marketing and business development and head of the Realtor VIPSM program. "TransactionPoint offers Realtors a unique discount off regular retail prices and is available to brokers for bulk purchase with even more discounts through the Realtor VIPSM program," Goldberg said. This powerful endorsement should help FNIS, which sells

TransactionPoint to real estate brokers and the StatusPoint application of the TransactionPoint platform to title and escrow companies. StatusPoint allows closing companies to communicate electronically with their customers who are on the TransactionPoint platform. Effective January 15, 2003, RealEC Exchange network clients will have the connectivity and interoperability with TransactionPoint. SoftPro users will be able to fulfill orders through Real EC to users of TransactionPoint.

SMS. It remains to be seen how different the relaunched version of Close Your Deal—now branded SMS ClosingTracker.com—will be from the original. ClosingTracker.com is expected to hit the market in early 2003. SMS president Larry Davidson says Closingtracker.com will closely reflect the needs of the company's StreamLine and VISION production system customers. "Our customers have told us they want a system that provides their clients with the ability to enter orders, view status, and receive automatic notifications 24/7, while keeping the title or escrow company firmly in control. And that's what we're going to deliver. Simplicity, ease of use, and tight integration with production systems is what will propel SMS into a leadership position," Davidson said.

Usability and Integration

An individual agency's adoption rate for a TMS product depends greatly on two related system attributes: overall usability and integration with an agency's existing title production system. While the basic features offered by these products are similar, the way they are implemented varies widely. Ultimately all the little differences add up to determine the usability of each product and their suitability for an agency and its customers.

For customers, the more powerful the platform and the greater its range

of functionality, the steeper the learning curve. If an agency is targeting the TMS to its most technically sophisticated and demanding customers, a substantial learning curve may be a price worth paying for highly valued functionality. If an agency wants to service all its customers, then the company should select the simplest product that may only support online order entry, status tracking, and automatic notifications.

For employees, nothing is more important than deep integration with the existing title production system (TPS). Generally, the tighter the integration, the less additional work required of agency employees to fully utilize the product. A truly seamless integration should mean that employees virtually never leave their production software to log in to the TMS. All information regarding tasks, documents, and participants should flow between the TMS and TPS. A loose integration is likely to result in double data entry and manual performance of various tasks to update the TMS. This could diminish potential productivity gains.

TMS products offered by existing TPS vendors like RamQuest and Stewart provide very tight TMS - TPS integration. Vendors like SettlementRoom that do not sell a TPS product will develop a customized integration for their customers. Often, though, customized integrations require assistance from the existing TPS vendor, which may not be forthcoming if that vendor offers a competing TMS product.

Business Benefits

TMS vendors point to numerous benefits of using their systems. Chief among these are increased productivity related to decreases in status calls and faxes, enhanced customer service, and competitive advantage as a result of being an early adopter in their market. The

opportunity to realize productivity gains may be substantial. A study by October Research conducted in May 2001, for Expeditrix, the developer of SmartClose, identified large gains. "The research indicates that title companies realize increased productivity and efficiency, including an over 20 percent reduction in the number of outbound calls and almost 30 percent fewer inbound calls," explained John MacFarland, then executive vice president of October Research Corp. In addition the number of faxes decreased by 55 percent and courier costs by 28 percent. As a result, direct and indirect (i.e., labor) costs were reduced by \$69 per file.

While this research may overstate the gains available since not all participants are likely to use one system for all their transactions, substantial additional benefits can also come from increased customer satisfaction. Providing customers with the ability to place and track orders on a continuous basis may be a sufficient value to justify the price of a TMS, particularly if other companies in the local market decide to offer this service.

Pricing

Pricing for these products varies with most including a per order or transaction component. Expect to pay extra fees for setup and training. This structure makes sense since it implicitly recognizes that TMS adoption by real estate agents, lenders, and builders will grow slowly, and title companies should only pay for transactions that actually utilize the system.

For its SR Enterprise product, SettlementRoom pricing starts at \$29.95 a transaction and declines to under \$5, based on volume. The lite version of this product—SR Express, which offers transaction support limited to 30 concurrent transactions—is priced at \$149.95 annually, but users can purchase

multiple blocks to increase its capacity. RealtyAssist pricing also starts at \$19.95 a transaction and falls to \$9.95 based on concurrent transaction volume. RamQuest's Paperless Closer Version 5.0 is provided at no additional charge to users of its Complete Closing Enterprise production system, but users of its ASP production system, WebCloser, pay \$15 per closed transaction for Paperless Closer. SureClose's monthly fee varies based on the number of locations using the application, starting at \$350 an office, up to \$650 total. No per file, per user or per transaction fees are charged by Stewart.

Direct Operations

For direct operations, the major underwriters are planning company-wide rollouts of new Internet-enabled title production systems that offer many transaction management features including First American's FAST product family and Fidelity's Net Global Solutions under development by FNIS. Unlike First American and Fidelity, Land America has chosen not to provide title production or transaction management systems to the independent agency community. Instead, LandAmerica is integrating its TitleWave.net service with production systems offered by SoftPro (a wholly owned subsidiary of FNIS), TitleSoft, TitleExpress, Closer's Choice and DisplaySoft. TitleWave.net is a back-end service-ordering product allowing agents to seamlessly order and receive title work from LandAmerica service centers using their existing title production system.

In addition, the company rolled out its transaction management system, the LandAmerica Connection, for its direct operations in Michigan, California, Colorado, and Texas last year. Janet A. Alpert, president of Land America, estimates a minimum operational savings of \$20 to 30 per

order for the company. "The cost savings" Alpert explained, "are a direct result of fewer copies being produced and sent out via courier. Customers have online access to their orders and finished products 24 hours a day, 7 days a week." Alpert explains further, "Customers having the ability to get order-status information anytime, online, is very convenient. Customers are able to enter the orders themselves. This self-service on the part of the customer allows staff to be freed up for other customer service activities."

Looking Forward

Historically, the industry is slow to adopt new technology. It took more than five years for Internet-based property listings to enjoy widespread usage. Bringing the transaction online is likely to take just as long, but the good news is we're now nearly three years into the process. The innovative TMS products discussed in this article, along with several other credible products targeted at geographic or industry-specific niches such as GAC's GATORS, TG Express and Closing Counsel, are beginning to find traction in the

The more powerful the platform and the greater its range of functionality, the steeper the learning curve.

marketplace. Market-leading title and escrow companies are using these products to provide a new level of service to their clients and business partners and driving this next stage of our industry's evolution.

Stephen Bedikian is a consultant with Los Angeles-based Real IQ Consulting, Inc., which provides technology marketing and e-business strategy consulting for the real estate industry. He can be reached at: sbedikian@realiq.com.

2002 Congressional Wrap-up and What Lies Ahead

by Ann vom Eigen

The 107th Congress began optimistically in calendar year 2000 with a new Republican administration downtown, a Republican House of Representatives, and with Vice President Dick Cheney's vote, a Republican Senate. It began with consideration of an administration-proposed tax bill that gave every American a \$600 tax refund and American business, a better tax environment. However, because of the events of September 11, 2001, the Congress turned its attention to dealing with the new threat to the American way of life. Since that time, Congress has dealt with response to the terrorist threat, both with respect to changes to national security to protect the American public, as suggested by the Homeland Security Act, and the business response to the event,

Two changes in tax policy by the IRS will have significant effects on the title insurance industry.

expressed through airline bailout legislation and the Terrorism Insurance Act. Congress even found itself focusing on the economic security of our nation as represented by the Enron debacle and the Sarbanes-Oxley corporate

accountability act. This article reviews the changes in federal law and regulations over the last two years that have the most effect on our industry from a real estate and insurance perspective.

USA Patriot Act

Immediately after the September 11, 2001, terrorist actions, Congress enacted, and the President signed, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No.107-56). This act is commonly known as the USA Patriot Act. It requires financial institutions, including insurance companies and, through applicability of a section applying to bank holding companies, "persons performing real estate settlements," to establish compliance programs to identify terrorists.

As *Title News* goes to press, the Treasury Department has issued interim rules applicable to banks, effective April 24, 2003, and some rules applicable to insurance company investment products. As part of the war against terrorism, President Bush had issued Executive Order 13224, effective September 2001, prohibiting transactions with individuals and organizations on the list of "Specially Designated Nationals,"



published by the Office of Foreign Assets Control of the Department of the Treasury. In order to comply with Executive Order 13224, real estate settlement providers must check the names of all relevant parties in a real estate transaction against the individuals and organizations on the List to ensure that the real estate settlement provider is not engaging in such a prohibited transaction or dealing.

ALTA has established a searchable link on its Web site to the Treasury Department list to facilitate our members' ability to comply with this requirement. This interface initiates a search on a document published and maintained by the U.S. Treasury Department on its Web site.

Rules applicable to real estate settlement persons have been deferred, and it is expected that the Treasury Department will issue an advance notice of proposed rulemaking by January 2003.

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Changes in Tax Policy

The Economic Growth and Tax Relief Reconciliation Act of 2001, President Bush's centerpiece tax bill, had no provisions directly applicable to real estate. However, the economic stimulus package and its eventual effect, in combination with Federal Reserve policy on interest rates, facilitated a healthy housing market.

On a more discrete level, two changes in tax policy implemented by the IRS will have significant effects on the title insurance industry. Both of these changes, repropoed rules on reporting of fees to attorneys, and final regulations on middlemen, minimize the administrative burden of Filings of IRS Form 1099s.

Attorney Fee Reporting

The IRS and the Treasury Department amended and repropoed regulations implementing the Taxpayers Relief Act of 1997 requiring reporting on payments to attorneys. The regulations are to become effective during the first calendar year that begins at least two months after the date of publication of the final regulations in the Federal Register. It is expected that the regulations will become effective no earlier than 2005. [May 17, 2002 REG-126024-01]

The new proposed regulations contain several factual examples explaining the application of the repropoed regulations, and have several significant features as follows:

New Real Estate Exception.

There is no reporting required for payments made to an attorney in the attorney's capacity as the person responsible for closing a real estate transaction.

New De Minimis Threshold. In order to reduce the compliance burden associated with the reporting requirement, the proposed regulations adopt a \$600 annual threshold for reporting payments to an attorney.

Corporate Reporting Required.

Reporting is required even for attorneys who are incorporated. In the case of a payment by check, the attorney must be named as a sole, joint, or alternative payee for the payment to be reportable.

Middleman Regulations

Under the Internal Revenue Code, Section 6041, final regulations provide more consistent guidance for payments involving a middleman—where a person makes a payment on behalf of another person. Title companies performing closing and escrow functions would be considered middlemen.

The IRS finally issued middleman regulations that describe information reporting requirements (Form 1099-Misc) on disbursements by middlemen. The regulations do contain several relevant examples, three of which are most on point.

One example (Example 1) replaces a revenue ruling that was issued in 1993 and describes reporting requirements for construction escrow disbursements. We believe it provides a bright line test of when closing agents don't have to report. Another example (Example 3) describes a situation in which settlement agents are not required to report because they (1) do not perform management or oversight function and (2) do not have a significant economic interest in the payments. A further example (Example 4) modifies Example 3 to have the settlement agent hire a contractor. Therefore, the settlement agent performs management and oversight functions and must report.

Terrorism Insurance Act

After the September 11th terrorist attacks, reinsurance for large commercial property and casualty needs began to disappear from the marketplace. Congress began to work on a terrorism "backstop" for the insurance industry, and President Bush signed into law "The Terrorism

Risk Protection Act of 2002" (HR3210) on November 26 (Public Law No: 107-297). The Act provides temporary (three year) federal support for insurance. Under the law, the government would be responsible for 90% of insurance industry losses that exceed a minimum amount for each of three years as follows, \$10 billion, \$12.5 billion and \$15 billion.

Property and casualty insurers (but apparently not title insurers,) would have to pick up a portion of initial losses based on their total premium income. The schedule rises from 7% of premiums in 2003 to 15% in 2005.

Passage of the act effectively voids preexisting exclusions of coverage without affirmative action by the insured. While the U.S. Department of Housing and Urban Development has indicated that it will not require terrorism coverage on FHA-insured loans, other capital providers may require coverage on large projects or those in areas of "significant risk," such as New York City or Washington, DC. While the price of such insurance is now uncertain, the federal subsidy should at least deepen the market and increase the availability of coverage. With respect to captive insurers, prior to a triggering event, the Secretary of the Treasury may, in consultation with the NAIC or other state regulatory authorities, apply the program to those and other self-insured entities. On November 26, the Department of Treasury issued interim guidance to insurers on the disclosures to policyholders of the premium charged for insured losses covered by the Terrorism Risk Insurance Program.

The new law should help revive dormant commercial real estate projects. According to the Real Estate Roundtable, over \$15 billion worth of projects have been delayed since September 11 because lenders were unwilling to go forward without terrorism insurance in place. At the bill signing, President Bush noted that

the bill addressed systemic wide economic problems, as "commercial construction had reached a six-year low, thousands of hard-hat workers were kept off the job, commercial mortgage-backed securities had seen their bond ratings lowered, and teachers, police officers, and firefighters had lost money in their pension plans." Although we are now nearing the end of the construction season, acquisitions will be able to go forward, and eventually new construction will begin.

Failed to Pass

The 107th Congress made progress on several other measures that would have had a significant effect on the title insurance industry but in the end failed to pass.

Legislation to allow banks to offer interest to businesses holding checking accounts made some progress in the last Congress.

Although we hope this problem will be resolved by the time *Title News* arrives in your office, we note that Congress actually failed to reauthorize the federal flood insurance program. The temporary lapse in the authority of the federal government to issue flood insurance, if left unaddressed, could completely halt real estate originations and refinances where flood insurance is required. As *Title News* goes to press, ALTA is participating in a real estate coalition to request issuance of a Presidential Executive Order and eventual reauthorization to keep the program running.

Interest on Business Checking

Legislation to allow banks to offer interest to businesses holding checking accounts made some progress in the last Congress. H. R. 1009, the Business Checking

Freedom Act that passed the House on April 9, 2002, provides that, two years from the date of enactment, banks will be allowed to pay interest on business checking accounts. The bill may affect bank and title agency escrow relationships, since it would lift the current prohibition against banks paying interest on escrow funds.

ALTA members had voiced concerns that the interest on the business checking bill, which would repeal the current Regulation Q (Federal Reserve) prohibition on banks paying interest, would effectively eliminate certain well-established financial benefits and checking services that large depositors now receive from banks in lieu of interest. These services are provided in accordance with current guidance under Regulation Q. The service we receive in return for the large deposits we make currently subsidize our settlement service operations. ALTA sought a clear Congressional statement to that effect, which it obtained in the House-passed version of the bill. However, the Senate failed to consider the legislation.

Bankruptcy Reform

Another piece of legislation that failed to be enacted was H.R. 833, Bankruptcy Reform legislation. This legislation, designed to make it more difficult for individuals to declare bankruptcy, has been passed by both the Senate and the House in several Congressional sessions but never signed into law. This year, because of a controversy over an amendment dealing with civil bankruptcies of individuals convicted of bombing abortion clinics, the bill failed to pass the House of Representatives.

Consequently, an ALTA-sponsored amendment, dealing with a California court decision, failed as well. In McConville, the Ninth Circuit failed to apply Section 549(c) of the Bankruptcy Code to allow perfection of a lender's lien after the borrower

filed an undisclosed bankruptcy. The court limited the application of section 549(c) to transfers of fee interests only. The case was appealed to the Supreme Court, and certification was denied. ALTA consequently sought, and obtained in both the House and Senate bills, amendments to the Bankruptcy Code to clarify that a post-petition transfer is valid and exempt from the automatic stay of bankruptcy.

Federal Regulation of Insurance

Finally, legislation authorizing federal regulation of the insurance industry (H.R. 3766), the Insurance Industry Modernization and Consumer Protection Act, was introduced in the House. Rep. Richard Baker (R-LA) held a number of hearings on the measure, but the bill was never reported out of the House Financial Services Committee.

The legislative agenda for the next Congress is developing. Unlike the last session, we expect to see major Congressional action in the following areas, privacy, regulatory burden relief, and Interest on Business Checking. It is unlikely that Congress will take up major RESPA reform while the proposed rule is pending at HUD (see the cover story in this *Title News*), but some oversight may occur next year.

In any case, we can expect that Congress will work on the President's economic package, and the new political landscape—a Republican majority in the House, a marginal Republican majority in the Senate, and a Republican White House—may well have more final results.

Ann vom Eigen is ALTA's legislative and regulatory counsel. She can be reached at ann_vomeigen@alta.org or 1-800-787-2582.

ALTA thanks everyone who wrote letters to the Department of Housing and Urban Development (HUD) and their Members of Congress expressing concern with the proposed regulations to the Real Estate Settlement Procedures Act (RESPA). The individuals listed below sent us a copy of their letter to HUD. * If you wrote to HUD and do not see your name listed below please forward a copy of your letter to ALTA so your efforts may be recognized.

**AMERICAN
LAND TITLE
ASSOCIATION**



HUD received 40,000 comments on this issue. This number is double the anticipated number of comments. ALTA expects HUD to issue regulations this summer. ALTA encourages the membership to continue writing and meeting with their local Member of Congress and asking them to contact HUD on our behalf. A packet of materials to use during these meetings is available on the ALTA Web site at www.alta.org, including a follow-up report to help us recognize your visit and track the overall number of visits.

There is still time to become involved in the RESPA issue or to sign up to work on future title industry issues. Please contact Charlene Nieman, grassroots & PAC manager.

THANK YOU

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**some names have been omitted due to copy quality, etc. which made it difficult to obtain proper spelling of names and/or contact information.*

Viewpoint

by R.K. Arnold

Like most of you in the mortgage business, we've had a great year. Much of our success this year was because of the tremendous volumes our members produced and registered on the MERS[®] System. We appreciate your business.

But another big reason for our success is the depth to which we've penetrated the mortgage business over the past two years. We have almost a thousand companies registering loans on the MERS[®] System nowadays, so a good year for the mortgage industry means a good year for us.

We started MERS in 1996 and got our first real customer in 1997, First Nationwide Mortgage. We didn't get our first MOM loans registered until 1998 from Merrill Lynch and Alliance Mortgage. Some of you remember things started off so slowly that we had to be recapitalized by Fannie, Freddie and the MBA.

Today our members register about 24,000 loans every day, six days a week, and we have more than 12 million loans registered on the MERS[®] System. We're profitable, we have positive net worth, and we've paid off all our debt. In fact, it's such a good story that the Discovery Channel wants to put us on television.

All of this has happened for MERS because you stuck with us. We won't forget it. I promise.

Straight Talk

by Sharon Horstkamp

A Change in Colorado Foreclosures

In 1997 we issued the MERS Recommended Foreclosure Procedures for every state. There have not been any changes to the initial recommendation in over six years, and, in fact, the procedures have become an integral part of many of our members' own foreclosure procedures. Now, we are amending Colorado's recommended procedure because of recent changes in that state's Foreclosure Statute.

A foreclosure can still be conducted in MERS name. But if the endorsement on the Note is in Colorado and MERS holds the mortgage lien on behalf of the Owner of the Note, it is better to foreclose in the Note Owner's name. That may be the servicer of the loan. This does not impact MERS as the mortgagee, and, more importantly, no assignment from MERS to the servicer is necessary to initiate the foreclosure. The mortgage loan should remain registered on the MERS[®] System during the foreclosure process.

This switch in our recommendation is also predicated on the change in the Colorado Foreclosure Statute that now allows for a copy of the Note to be produced in lieu of the original. Now a copy can be used even if the original is available.

When using a copy in place of the original, a Certificate is needed that can only be filed by certain entities (excluding MERS, which currently is unable to act in this function). The certificate states that the foreclosing entity is the owner of the Note or debt and is a qualified entity under the Statute to use a copy of the Note. If a member chooses to institute a procedure to only use a copy of the Note to foreclose, then we advise that the member follow this revised recommended foreclosure procedure.

As always, please consult with your own counsels on how this change impacts your current foreclose procedure.

Did You Know?

All MERS members are responsible for assigning a MERS[®] OnLine system administrator within their own organizations.

Your MERS system administrator is responsible for the initial setup of roles for MERS[®] OnLine system access, setting up individual User IDs and passwords, resetting deactivated User IDs, deleting User IDs, and maintaining their member name, address, phone/fax number, URL address and contact list in the Member Information section of MERS[®] OnLine.

If this role is not currently assigned to anyone in your organization, we suggest that your MERS project manager assign someone immediately. Members in production should instruct their users to contact the assigned internal MERS system administrator for password reset or security access. Users should not contact the MERS Help Desk. Additional processes and functions are described in the MERS[®] OnLine User's Guide, which may be downloaded at www.mersinc.org. Newly assigned administrators may request training assistance by sending an email to: Training@mersinc.org, or by contacting the MERS Help Desk at 1-888-680-MERS (6377).

MERS on The Discovery Channel

Set your VCRs and grab some popcorn! MERS will be one of the companies featured in the "Pat Summerall's Champions of Industry" television show, a half-hour weekly series on The Discovery Channel.

The show will showcase MERS' history, mission, and accomplishments and will feature testimonials from industry luminaries such as MBA President Jonathan Kempner, ALTA President Jim Maher, and GNMA Executive Vice-President George Anderson, as well as Recorders of Deeds Mary Anne Rickenbach and John Frey of Pennsylvania and Virginia respectively. MERS members Countrywide and GMAC also spoke on behalf of MERS. Sports commentator Pat Summerall will host the show.

The MERS segment will air in "Pat Summerall's Champions of Industry" on Tuesday, Jan. 14, at 7 am EST.

MERS[®] OnLine Registers One Millionth Loan

Access National Mortgage Corporation registered the one millionth loan on MERS[®] OnLine on October 28, 2002. Introduced in May 2000, MERS[®] OnLine is the Internet-based access point to the MERS[®] System, giving members the power to perform all transactions in an online, real-time environment.

"MERS saves us about \$15 per loan, which translates to roughly \$60,000 in savings a year," said Michael Rebibo, president of Access National Mortgage. "Registering all our loans on MERS OnLine also makes the process easier and smoother for us."

MERS[®] OnLine was created as an alternative to a client-server based system, eliminating the need for members to purchase proprietary software and licensing agreements when registering loans on the MERS[®] System.

"One million loans registered on MERS[®] OnLine signifies a growing acceptance by small-to medium-size lenders of the MERS[®] System," said R.K. Arnold, President & CEO of MERS. "MERS[®] OnLine gives lenders like Access National Mortgage the flexibility to register loans at their own pace and at their own time."

"MERS[®] OnLine is a win-win situation for everyone involved," said Dan McLaughlin, executive vice-president of the MERS Product Division. "It's easier and less expensive for members to use, and easier for us to create and deploy enhancements."

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for the record

www.pria.us

Uniform Electronic Recording Act

Volunteers are wanted to help PRIA create a Uniform Electronic Recording Act. A model act is essential for standardizing electronic communications between recording offices and the private sector. To create standards for this model legislation, PRIA has organized a UERA subcommittee led by Carmelo Bramante of Fannie Mae and Lancaster County, Pennsylvania, Recorder Steve McDonald.

"There is a need to address this nationally," McDonald said. "We need to have a model act so we can communicate over all boundaries electronically."

The UERA subcommittee plans to work closely with both PRIA members and with the National Conference of Commissioners on Uniform State Laws while developing the model legislation.

"Right now we're looking for volunteers with a background in developing model legislation or who have experience working with NCCUSL," McDonald said.

Persons interested in volunteering can contact McDonald at (717) 299-8240, MCDONALD@co.lancaster.pa.us, or Carmelo Bramante at (202) 752-1188, carmelo_d_bramante@fanniemae.com.

Privacy Conference

A national conference to address growing concerns about privacy and the recording industry is being organized by the Property Records Industry Association.

Recent issues, such as public access to military records, are prompting lawmakers to consider a nationwide meeting about problems associated with private data in public records.

The objective of the conference is to bring consumers and the real estate industry together to find the best ways to balance privacy and access to publicly recorded information, said Carl Ernst, chair of PRIA's Records Access Policy Committee.

"Both the government and private sectors within the real property industry are concerned with accessibility and availability of identifying information about individuals in government records," he said.

PRIA hopes to include recording industry leaders at local, state, and national levels. Invitations will be sent to recording officials, land recorders, assessors, tax collectors and representatives of major mortgage, title, and lending firms. Together the groups will work to identify the most urgent privacy issues and develop guidelines for laws to help resolve them, Ernst said.

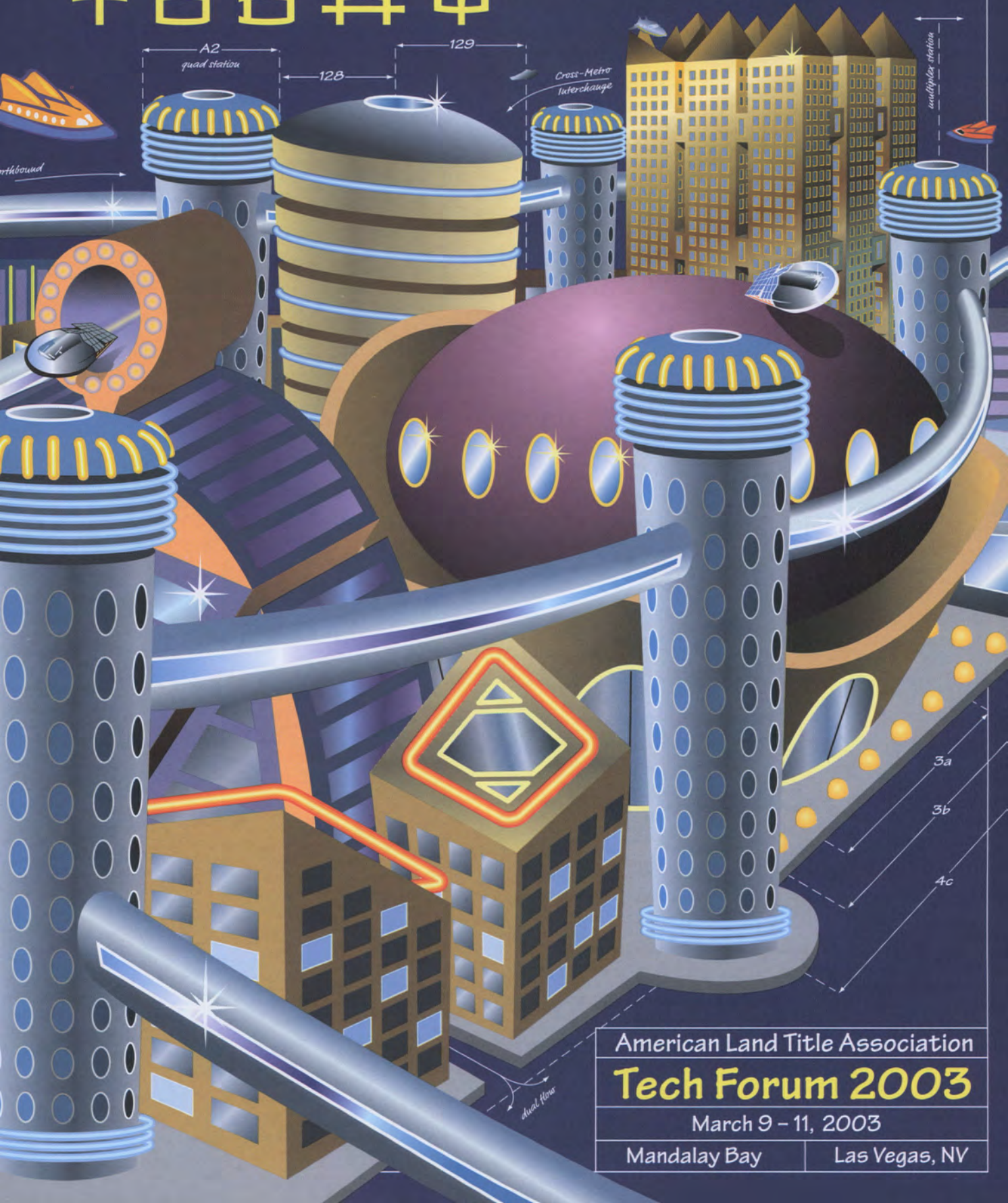
The conference is planned before the end of the year in Washington, D.C. More details on participation will be available in the near future, Ernst said.

Privacy Act Objectives

Four primary objectives have been established for the proposed Privacy Conference. They are:

1. Air the concerns of consumers, the real estate industry, and government officials about the role of each in reducing the misuse of individual identifying information available in government records.
2. Define the language and issues with respect to personal information privacy in ways that allow the real estate industry, government, and consumer advocates to find common ground to address availability of individual identifying information in government records.
3. Foster a leadership role in which the real estate industry leads other industries that submit, create, maintain, and use government-held information to increase their awareness of consumer concerns about the availability and use of sensitive individual identifying information.
4. Consider the establishment of a task force to develop principles, guidelines, standards, and model legislation to address consumer privacy concerns by educating the industry to avoid inadvertent disclosure of sensitive individual identifying information in documents.

TOMORROW'S SOLUTIONS TODAY



American Land Title Association
Tech Forum 2003
March 9 - 11, 2003
Mandalay Bay | Las Vegas, NV



American Land Title Association's TECH FORUM 2003



March 9-11, 2003 Mandalay Bay Las Vegas, NV

TOMORROW'S SOLUTIONS TODAY

Technology is a part of every decision you make, and it's changing all the time. As a business professional, you recognize the skills necessary to make your operation succeed, and this year's Tech Forum educational program will provide the crucial how-to information you need. Don't forget the expanded Exhibit Showcase and the unique opportunity to network and learn from your peers. You can't afford to miss this meeting!

SCHEDULE-AT-A-GLANCE

SUNDAY, MARCH 9

4:30-6pm
General Session

6-8pm
Exhibit Showcase
Premiere & Opening
Reception

MONDAY, MARCH 10

8-8:30am
Continental Breakfast
in the Exhibit Showcase

8:30-10am
General Session

10am-12:15pm
Educational &
Expo Sessions

12:15-1:30pm
Lunch in the
Exhibit Showcase

1:30-5pm
Educational &
Expo Sessions

5-6pm
Happy Hour Reception

TUESDAY, MARCH 11

8-8:30am
Continental Breakfast
in the Exhibit Showcase

8:30-11:30am
General Sessions

EXPO SESSIONS

ALTA Tech Forum 2003 exhibitors will feature their products and services in a casual and informative atmosphere. Sit in and ask questions. Hear firsthand about the newest technology offerings. Expo sessions will run concurrently with educational sessions and will be scheduled for each time slot listed above.

GENERAL SESSION - HIGHLIGHTS

SUNDAY,
MARCH 9

4:30pm

Tomorrow's Solutions Today: The Solution Is You!

Your energy, enthusiasm, and attitude drive your company's success. Keynote speaker Darryl Turner, CEO of The Darryl Turner Companies in Modesto, CA, explains that you really **are** the center of the universe! Darryl's presentations on effective sales and marketing are consistently upbeat, entertaining, motivating, and extremely well received by ALTA members.

These days, everyone in your operation must be a salesperson and focused on customer sales and retention, not just customer service. Whether you're the company go-getter or the behind-the-scenes leader, the 10 easy steps that Darryl will share are bound to improve your sales performance and identify specific methods to motivate your staff and make every customer-service encounter a sales opportunity. Learn exactly how your attitude can create bottom-line results and how you can use today's communication technologies to create and maintain a successful business culture.

MONDAY,
MARCH 10

8:30am

Tomorrow's Leaders Today

What do industry leaders really think of today's cutting-edge technologies? Join Moderator Randall P. Hood, Executive Vice President of Virtual Desktop, Inc., Dallas, TX, and find out. Drawing on over 20 years in technology and more than a decade in the title insurance industry, Randall will present the latest information on the most pressing technology developments impacting your business, and the panelists will weigh in with their opinions. Will electronic mortgages and paperless closings be a reality outside the top 10 markets? Will ASPs and browser-based networks result in a truly virtual workplace for all size businesses? Will you see more outsourcing, telecommuting, and job sharing? Will your bottom line be supported by alternative data sales and data mining the same way it is by ancillary services? Are title alliances the future or just the latest craze? You'll explore today's technologies, hear the opinions of industry leaders, and determine what's right for your business.

Program subject to change.

TUESDAY,
MARCH 11

8:30am

Tomorrow's Entrepreneurs Today

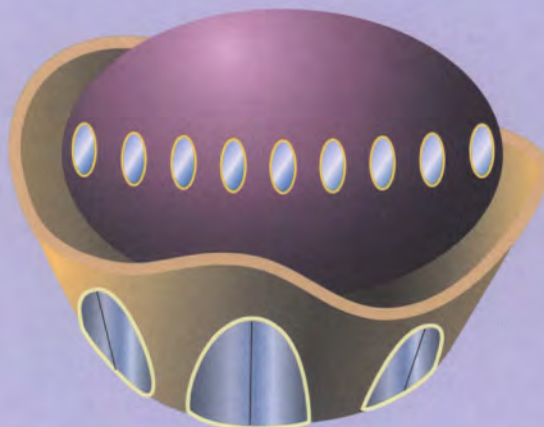
What are agents just like you doing differently to succeed these days? Join Moderator and Chair of ALTA's Abstracters and Agents Executive Section, Mark A. Bilbrey, President, Warranty Title & Abstract, El Reno, OK, to find out. Our panel of agents—large and small, urban and rural, from all over the country, will explain their perspective on business issues that matter to you. Do you need to have a serious partnership with your county recorder? What's the value of having the latest versions of the greatest technology in your office? Is a professional sales and marketing team really important? How should you prepare your staff for an eventual business downturn? What if the HUD-proposed rule does become final?

Do you have a question for the panel? These questions are just a sampling, and we're interested in your concerns. Send your question via e-mail to TechForum@alta.org or fax it with your registration form to 1-888-FAX-ALTA.

10:00am

Tomorrow's Partners Today

Learn how electronic recording actually works from the title agent's perspective. Moderator Mark Monicelli, St. Louis (Duluth, MN) County Recorder and President of the Property Records Industry Association, leads the discussion with a panel including the vendor, the recorders, and the local title agents most closely involved to discover how two counties accomplished the transition from paper to electronic recordings. Learn how you can partner with your county recorder and make sure that you have an impact on the implementation of technology solutions that affect your business.



General Session - Highlights

TECH FORUM 2003 EDUCATIONAL TRACKS

MONDAY, MARCH 10 - TRACKS & SESSIONS

SALES & MARKETING



10am

Does Advertising Work? Three Key Questions to Ask Before You Spend

11:15am

Marketing Today: The Online Way

1:30pm

Selling Everything You've Got!

2:45pm

How to Increase Title Sales Effectiveness

4pm

Technology Trends in Title Sales & Sales Management

GENERAL MANAGEMENT



10am

Using Bank Technology to Recognize and Prevent Escrow Fraud

11:15am

When Disaster Strikes! Providing for Business Continuity

1:30pm

How Will an ASP Change Your Business?

2:45pm

So You're on the Web: Do You Know the Legal Pitfalls?

4pm

Outsourcing the Boom

TECHNOLOGY MANAGEMENT



10am

Local Tech Support: Making the Right Choice

11:15am

The RFP and Y-O-U

1:30pm

Protecting Your Network From Security Threats

2:45pm

Transaction Management: With Help From a Vendor

4pm

Transaction Management: Do It Yourself

APPLIED TECHNOLOGY



10am

The True Cost of Communication: Are You Paying Too Much?

11:15am

Leveraging E-Signatures in the Title Industry

1:30pm

Financial Management and Human Resource Technology

2:45pm

Imaging for the Future

4pm

Automating Title Plant Research

HOTEL & AIRLINE INFORMATION

Mandalay Bay is a city unto itself. With its own 11-acre tropical sand beach (in the middle of the Las Vegas desert!), 17 shops and boutiques, 12 restaurants, three lounges, and 30,000-square-foot, world-class Spa Mandalay, guests could stay for weeks and never get bored. Plus, let's not forget the 135,000-square-foot casino. All the traditional games of chance are set in a tropical setting of flowing water, lush foliage, and exotic architecture.

Mandalay Bay offers large, exquisitely furnished rooms with both king and queen arrangements. The resort also features suites for those who prefer additional space in their accommodations. Make your reservations at Mandalay Bay before **February 7, 2003**, by calling 702-632-7000 or 877-632-7000. The room rate for ALTA Tech Forum 2003 attendees is \$219 single/double per night, plus tax.

Delta Airlines is the official air carrier for ALTA's Tech Forum 2003. Call 800-241-6760 and reference file #193434A for discounted airfare to Las Vegas.

American Land Title Association's TECH FORUM 2003



Important: Please read carefully

1. **Full payment** for ALTA's Tech Forum 2003 must accompany this form.

2. Your fully paid registration must be received by **February 7, 2003**, to qualify for discounted registration fees.

3. **Refunds & Cancellations:** Refund requests received in writing by **March 3, 2003**, will receive a full refund, less a \$50 processing fee. No refunds will be made after March 3, 2003. Substitutions, however, will be permitted.

Questions?

Call **1-800-787-ALTA** for prompt assistance!

Mail

Return this form with payment to:

ALTA Registrations
1828 L Street, NW
Suite 705
Washington, DC 20036

Fax

Fax this form to ALTA (toll free) with credit card payment:

1-888-FAX-ALTA or
202-223-5843

Online

Register online at:
www.alta.org

Registration includes: Educational Sessions, Expo Sessions, Exhibit Showcase Functions, Opening & Happy Hour Receptions, continental breakfast (Monday and Tuesday) and lunch (Monday.)

1. Primary Registrant (please print or attach business card)

First Name _____ MI _____ Last Name _____ Badge Name _____

Company _____

Address _____

City _____ State _____ Zip Code _____

Phone _____ Fax _____ Email _____

Additional Attendees from Office: 10% Discount! Save money by registering up to three extra individuals from the same office. Each additional attendee will receive a 10 percent discount on registration fees. Additional attendees must be registered at the same time to receive the discount.

Additional Attendee 1 _____

Additional Attendee 2 _____

Additional Attendee 3 _____

2. Registration Type

Check registration type and enter the amount in Payment Options Section.

	Before 2/07/03	After 2/07/03
ALTA Active/Associate Member	<input type="checkbox"/> \$495	<input type="checkbox"/> \$545
Non-Member	<input type="checkbox"/> \$595	<input type="checkbox"/> \$645
Additional Attendee Member	<input type="checkbox"/> \$445	<input type="checkbox"/> \$490
Additional Attendee Non-Member	<input type="checkbox"/> \$535	<input type="checkbox"/> \$580

3. Optional Tickets 4. Payment Options

Check option and enter the amount in Payment Options Section.

Extra Opening Reception Ticket \$50

Total Registration Fees (Section 2): _____

Total Optional Tickets (Section 3): _____

Total Enclosed: _____

Payment Method:

Check American Express
 VISA MasterCard

Printed Name of Cardholder _____

Card Number _____ Exp. Date _____

Signature _____

**AMERICAN
LAND TITLE
ASSOCIATION**



TF03 TN

member news

Movers & Shakers

District of Columbia

Robert M. Levenson has been appointed vice president LandAmerica 1030 exchange services in Washington, DC. He will be responsible for 1031 tax-deferred exchanges in Maryland, Northern Virginia, and DC. Levenson has 17 years of real estate experience. Most recently he provided technical assistance to HUD in the area of multifamily housing.

Montana

American Land Title Company, Bozeman and Ennis, has several new employees. **Jody Maurer**, title examiner; **Judy McCrory**, Ennis escrow officer; **Heather Hinrichsen**, Bozeman escrow officer; **Diana Brown**, Bozeman escrow assistant; **Brenda Dyche**, Bozeman title assistant; and **Lora Grigsby**, Bozeman records examiner.



Maurer



Grigsby

New York

Joel S. Peck has been named senior vice president and international commercial services transaction manager for LandAmerica Financial Group, Inc., New York. Previously he was with Ofer Group where he served since 1997 as senior finance executive with legal responsibilities.



New York, cont.

John C. Chmura has been named operations manager and title officer for Commonwealth Land Title Insurance, Buffalo. He has been in the industry over 20 years, recently serving as president of Network Title Agency of New York.

Ohio

Old Republic National Title Insurance Company, Rocky River, has added several new staff. **John R. Monacelli** has been named assistant vice president and East central division agency representative. Previously, he was agency representative for Midland Title Security, Inc., Cleveland.



Robert Wasserman has joined the company as vice president and East central division counsel. Formerly he was a senior vice president of Midland Title Security, Inc. And **John A.**



Voso, Jr., has been named vice president and East central division agency sales manager. Previously he was an executive vice president of Midland Title Security, Inc. In the Alliance office,



Edward Witman, Jr., has been named assistant vice president and East central division agency representative. Previously he was agency representative for Midland Title Security, Inc.



new ALTA members

ACTIVE MEMBERS

Alabama

Ms. Kathryn Carver
Commercial Land Title Services, LLC
Birmingham

Arkansas

Ms. Suveda Hughes
Crowleys Ridge Title Company
Jonesboro

Mr. Daniel Mullen
Mullen, Inc.
D/B/A Mullen Abstract Co.
Walnut Ridge

Connecticut

Mr. Abraham Siegel
Law Offices of Abraham J. Siegel, Esq.
West Hartford

District of Columbia

Mr. David Jenks
Avenue Settlement Corp.
Washington

Mr. Tom Kopecky
MTK of Illinois d/b/a Title Now
Washington

Florida

Ms. Doreen Jobbitt
Preferred Land Title of Coral Springs
Coral Springs

Ms. Angela Swafford
TitleNet, Inc.
Palm Harbor

Ms. Elizabeth Beyer
Integrity Title Services, Inc.
Sarasota

Mr. Corey Altenburger
Altenburger, Corey
Summerfield

Ohio, cont.

Michael F. Waiwood has been promoted to state manager for First American Title and appointed president of the company's Cleveland-based subsidiary. With more than 30 years of experience in the title industry, Waiwood's tenure with First American began in 1977 when he joined Midland Title as chief title counsel.



Texas

John S. Cominos has been named vice president and counsel for National Commercial Services, Dallas, part of LandAmerica. Before joining LandAmerica, he served as counsel for First American Title.

Stewart Information Services Corp., Houston, has done some restructuring. **Mike Davis** has been named chief information officer and will remain as president of Stewart subsidiary Landata Systems, Inc. Previously he served as chief technology officer. **Gary Morris**, vice president of the technical services division of Landata Systems, will become Stewart chief technology officer.



Virginia

LandAmerica Financial Group, Inc., Richmond, has two employee announcements. **Scott McCall** has been named senior vice president—agency services. Most recently he was senior vice president—title operations for LandAmerica OneStop. **Tamara Strickland-Meyer** has been promoted to vice president, business process manager for LandAmerica National Commercial Services. She has been with Lawyers Title since 1985.

Ross Dorneman has joined LandAmerica Financial Group, Inc., Richmond, as executive vice president – human resources. Previously he was senior vice president and human resources director for the Mid-Atlantic region of SunTrust Bank.



In Memorium

Philip D. McCulloch, ALTA president 1976-77 and president of the Texas Land Title Association 1962-63, died on November 2, in Dallas, Texas. He was 81.



McCulloch whose impressive career spanned 42 years was a prominent figure in the title industry. In 1959 he was nominated as the Texas Land Title Association's Outstanding Title Man of the Year. He also served as president of the Title Underwriters of Texas from 1959 to 1960. In addition to serving as ALTA president, Phil served as chairman of the Abstracters and Title Insurance Agents Section. He was awarded Honorary Membership in both ALTA and TLTA and served the two as a member of the rate committee for over 16 years. He was also a spokesman for the industry at numerous rate hearings before the Texas State Board of Insurance.

He most memorably served as president of Hexter-Fair Title Company of Dallas and as executive vice president of Rattikin Title Company until he retired in 1988. He is survived by his wife of 26 years, Lois, four children, and five grandchildren. Donations can be made to the Messiah Lutheran Church, 1245 W. Beltline, Richardson, TX 75080.

Florida, cont.

Mr. Bernard Baker
Premier Title Company, Ltd.
West Palm Beach

Georgia

Real Estate Title Corporation, Inc.
Acworth

Mr. Leon Chaplin
LAC Legal Research Company
Atlanta

Mr. Mark Thomas
Thomas Title
Columbus

Ms. Charlene Barker
Georgia Code Company
Conyers

Mr. Sam Knight
Sam Knight, Inc.
Flowery Branch

Mr. Edward Lunsford
Gainesville

Mr. Bryan Brabner
Lawrenceville

Mr. Robert Diggle
Metro Research Ent. Inc.
Lawrenceville

Ms. Sandra Brown
SBS Title Services, Inc.
Lawrenceville

Mr. Lawton Howard
Smyrna

Mr. Paul DeMars
Sugar Hill

Mr. Walter Brown
RTV Research, Inc.
Suwanee

Mr. Dennis Carroll
Woodstock

Indiana

Mr. John Bethell
All-American Title, Inc.
Bloomington

Mr. James Kemp
Freedom Title Services, LLC
Evansville



Mergers & Acquisitions

First American Title Insurance Co. has acquired Yakima Title & Escrow Co., of Yakima, Washington.

Stewart Title Co. has acquired First Data Systems, Inc., (a software company), and Cumberland Title Co., of Nashville, Tennessee.

New Office

LandAmerica Financial Group, Inc., has opened new full-service offices in Algonquin and Mokena, Illinois.

new ALTA members

Massachusetts

Mr. William Reed
William B. Reed Title Examinations
Byfield

Ms. Patricia Cavanaugh
North Andover

Maryland

Mr. Gilbert Kramer
Statewide Title Co.
Baltimore

Mr. Michael Sacks
National Capital
Title & Escrow, LLC
Rockville

Michigan

Ms. Rebecca Nilsen
United Title, Inc.
Clarkston

Mr. John Markoul
Nationwide Title LLC
Farmington

Ms. Linda Solomon
Associates First Title Services, LLC
Grand Rapids

Missouri

Mr. Kenneth Ashlock
Hickory County Title, LLC
Hermitage

Mr. Matthew Davis
Anchor Title & Escrow Inc.
Kirkwood

Ms. Nancy Isbell
Dunklin County Abstract Co., Inc.
Kennett

Nebraska

Mr. Kent Greder
Elite Title & Escrow, Inc.
Kearney

Mr. Joseph Frost
Homeland Title & Escrow
Omaha

New Jersey

Ms. Maddalena Messina
Accurate Title Agency, Inc.
Clark

Ohio

Ms. Amy Richard
Premier Title Services, Inc.
Cincinnati

Ms. Ericka Goodwin
Mansfield

Ms. Amy Nichols
AMS Title Agency
Ravenna

Mr. John Crawford
Hull & Associates, Inc.
Solon

Ms. Janell Cisco
Cisco Title Services, LLC
Sidney

Pennsylvania

Mr. Wesley Schrock
Exclusive Settlement Services, Inc.
Coraopolis

Tennessee

Ms. Donrue Barnes-Hulsey
Sovereign Title Company
Germantown

Virginia

Mr Stewart Sacks
Attorneys Title Agency, LLC
Chesapeake

Mr. Kay Shaheen
Alliance Title & Settlement
Hampton

Abstract Company of Virginia, LC
Richmond

Wyoming

Ms. Cheryl Ernst
Gillette Title Services, Inc.
Gillette

NEW ASSOCIATE MEMBERS

Florida

Scott Alan Salomon, Esq.
The Salomon Law Center
Coral Springs

Maryland

Mr. Marc Heyman
Mortgage Title Alliance
Finksburg

Mr. Robert Roeper
Rosenblum & Associates
Bethesda

Michigan

Mr. Kevin Hansen
Hansen Law Group, PC
Grand Rapids

New Jersey

Mr. Brian Graham
Century 21 Worden & Green
Hillsborough

New York

Ms. Yolanda McLeod
New York

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Marketplace

Situations wanted or help wanted ads are \$80 for the first 50 words, \$1 for each additional word, 130 words maximum. Insertion rate drops to \$70 for first 50 words for three or more consecutive placements. For sale or wanted to buy ads are \$250 for 50 words, \$1 for each additional word, 130 words maximum. Insertion rate drops to \$225 for 50 words for three or more consecutive placements. Placing a box around an ad costs an extra \$20 for help wanted or situations wanted, \$50 for sale or wanted to buy. Blind box service available upon request.

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.

SAMPLE: HELP WANTED

Lead Abstracter wanted for three-county Kansas operation, Must be licensed or comparably qualified. Send resume, particulars, to PO Box 888, Kansas City, KS

SAMPLE: SALE

Title Plant for sale. Florida location. Microfilm, documents, and tract books cover county for more than 50 years. Computerized posting.

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ALTA 2003 FEDERAL CONFERENCE

APRIL 13-15, 2003

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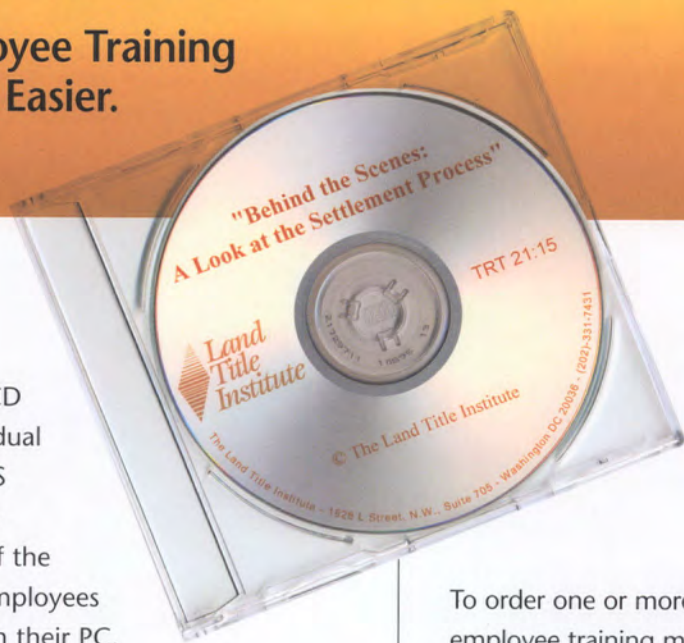
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LTI video programs available on CD are:

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- The Principles of Title Searching
- Claims Awareness
- Completing a Title Insurance Commitment Form
- A Policy Overview
- Behind the Scenes: A Look at the Settlement Process
- Closing Real Estate Transactions: Process and Problem-Solving with the HUD-1
- This Land Is My Land, That Land Is Your Land



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To order one or more CD's to supplement your employee training materials, please visit our Web site **www.alta.org**; click on "Education/Events"; the "Land Title Institute"; then "LTI Videos & CD-ROM" in the drop down box or **call 202-331-7431**.

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In 12 years, RamQuest Software has become the premier national provider of Land Title Closing, Escrow Accounting, and Imaging software products. The RamQuest Software Suite is designed for scalability and allows 1 to 1,000 users to increase productivity for any number of office locations. Recently rated #1 in the Land Title industry for *ease of use*, *ease of training*, *number of tasks performed*, and *value of investment*, it's easy to see why RamQuest products have become the standard in Land Title software.

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