

September/October 2004

Official Publication of the
American Land Title Association

Title News

The Evolving Role of Title Companies in the e-Mortgage Landscape

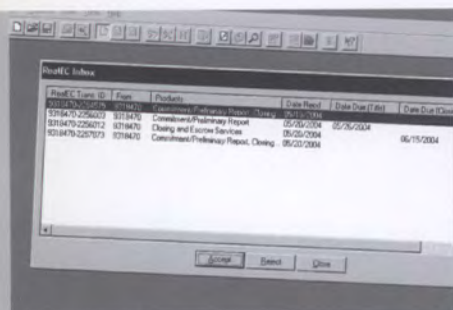
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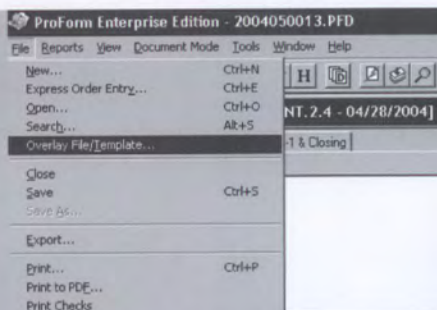
How to Use the Title Industry Marketing Kit
Does Your Web Site Pass the Copyright Test?
Updates to ALTA's Technology & Business Directories
Title Triumph Board Game Promotes Learning

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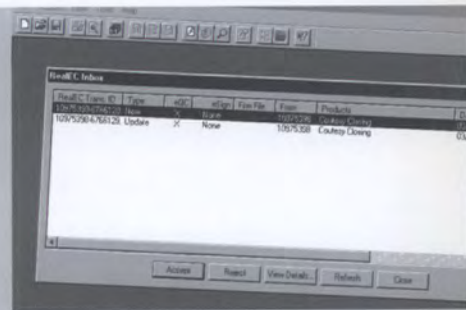
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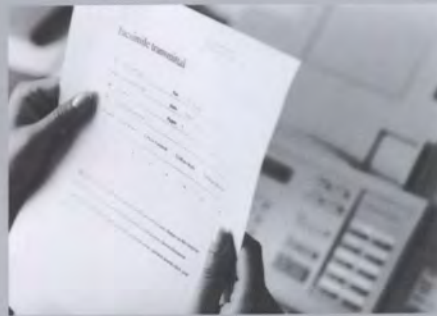
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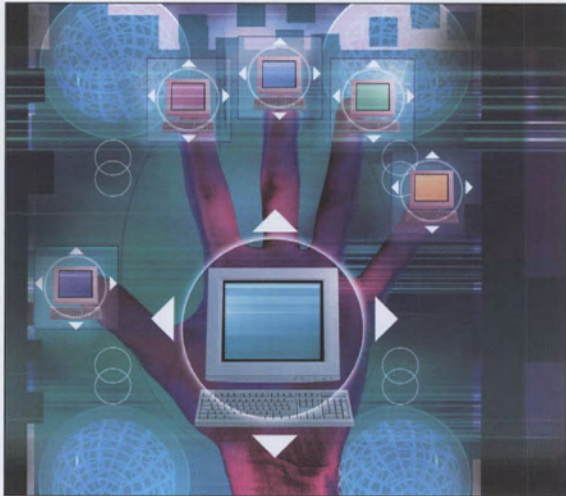
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The Evolving Role of Title Companies in the eMortgage Landscape

by Kim Weaver

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This powerful marketing tool will help you educate your real estate, lender, and consumer customers about the value of title insurance, while marketing your company at the same time. It's FREE to ALTA members. Learn how your peers are using it to help their business.

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A Message from the President

Has it Been Worth It?

At a number of the state conventions this year, I have been asked how many of them I have attended. With the exception of Nevada, which I have had a hard time pinning down, I will have attended all the state and regional conventions, starting with my first in Indiana in 2000. The follow-up question has been, "Has it been worth it?"

Tougher question but my response has been, "I'll know in two or three years."

The frustrating part of a trade or professional association presidency is that it is only one year. The challenge of that short tenure is the difficulty to accomplish anything of significance. Certainly my focus has been on increasing membership, and some progress has been made because of the actions of the Membership Committee and the input of the Ad Hoc Team I put together last fall. My goal was to double membership—without putting a time goal on that—although it was interpreted as being within my term. That would be highly aspirational and pretentious on my part—I know it will take more than one year.

And that's where the rest of the story is. The next three presidents in line are committed to the same goal. Read the columns Mark Bilbrey and Rande Yeager have written this year. Listen to the progress that Mike Wille's Agent Visioning Team has made. We recently used their suggestions as topics of discussion with senior ALTA managers to gauge their reactions. As a result of the input from these two groups, the Membership Committee has been charged with coming up with alternative dues structures to encourage membership, more equitably spread the burden, and, we hope, increase revenue.

Communication has been a constant theme repeated to me at many state meetings, and it came up strongly with the Visioning Team. The direct result was the first of a continuing series of quarterly phone briefings held by ALTA staff attended by state association elected officers and staff.

So, has it been worth it? Whether it has to ALTA remains to be seen.

On a personal level, the answer is a resounding and heartfelt YES! Becky and I both had a bit of trepidation at the beginning because we were sort of new faces, and many people didn't really know what The Fund (my employer) did.

Your reception could not have been more open or supportive. We have made many new friends all over the country, all the way to Kodiak, Alaska, and Tim Hurley with whom I'm "like this." He'll know what that means.

So thank-you for all your support. More importantly, thank-you for the support of the next administrations, which will make the last three years really worth it.

Chuck Kovaleski

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TitleNews

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ALTAnews

Thanks to Wyoming LTA

An extremely special thank-you goes to the Wyoming Land Title Association for its contribution of \$2,500 for the second year in a row to the ALTA Public Awareness Campaign. Wyoming joins seven other land title associations who have contributed to the campaign: Maryland, Minnesota, New England, Ohio, Oklahoma, Tennessee, and Utah.

Correspondence Course Testing Moves Online

Look for big changes later this year to the Correspondence Courses offered by the Land Title Institute (LTI). For more than 30 years, LTI has offered Correspondence Courses on the basics of the title industry. Students read study materials on their own and send their answer sheets for grading. Upon successful completion students receive a Certificate of Achievement. Over the past ten years more than 20,000 students have enrolled in these courses. LTI will transfer the courses to an online delivery and testing format in late 2004. This will allow easier access to the courses by students and significantly simplify the back-end procedures for LTI staff. To learn more about the Correspondence Courses, go to ALTA's home page at www.alta.org and click on Land Title Institute, then Correspondence Courses.

Calling All Speakers!

Again this year ALTA is seeking presentations for the 2005 Tech Forum, April 17-19 in Orlando, FL. This is your opportunity to share your knowledge and expertise in technology and general management with the title industry. The ALTA Technology Committee has identified four tracks and many possible topics, but your ideas are essential to create quality programming for the Tech Forum. Visit www.alta.org/meetings/techforum and click on Call For Presentations to propose a session. The deadline is October 1. If you have an idea for a session you'd like to see but no speaker in mind, please e-mail kelly_romeo@alta.org. Visit the Meetings section of the ALTA Web site for more details.

calendar

ALTA Events

October 6-9

ALTA Annual Convention
Boston, MA

September, cont.

16-18 North Carolina
16-19 Missouri
19-21 Ohio
22-24 Nebraska
23-25 North Dakota

State Conventions

September

2-4 Wisconsin
9-10 Arizona
9-11 Dixie
11-12 Maryland

November

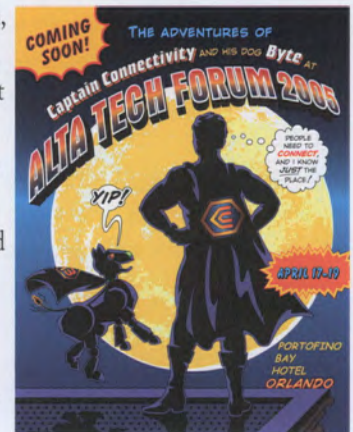
17-19 Florida

December

2-3 Louisiana

2005 Tech Forum Moves Location

ALTA's 2005 Tech Forum, April 17-19, is moving to the Portofino Bay Hotel at Universal Orlando in Florida. This hotel is next to the hotel originally booked (Royal Pacific) and is just as close to the Universal Orlando attractions. The good news is that the Portofino Bay Hotel has resort



facilities with a spa, and a golf course is only five minutes away (two things ALTA members indicated in our member-needs survey that they prefer in a convention hotel.) The fees for hotel rooms will not change. Information about programming for the 2005 Tech Forum will be mailed in early 2005 and will also be available on ALTA's Web site.

Look for Your *Title News* Readership Survey

In order to make ALTA's award-winning *Title News* an even better publication, ALTA members will receive a short readership survey via e-mail just after Labor Day. Your input will help us determine which features and departments are the most useful for you and what topics you would like to see more of in the publication. This is your opportunity to let us know what you think. We appreciate your feedback.



New Staff/ Promotions at ALTA

ALTA is pleased to announce that **Heather Pulvirenti** (formerly Heather Briggs) has been promoted to office manager. Heather has been accounting coordinator for five years and has significantly increased her responsibilities over that time. She continually receives recognition from other staff members for going above and beyond her job responsibilities.



ALTA also welcomes two new members to its staff.



Rachael Levine has joined the staff as meetings assistant. She will handle convention and committee meeting registration, work as a liaison for convention exhibitors and sponsors, and generally support the meetings department. **Anna Romero** has

been hired as ALTA office assistant. Anna will handle member phone, fax, and e-mail requests and support the association with its many office administrative activities.



ALTA Debuts New Web Site

ALTA launched a new Web site on September 1 with easier navigation, more information, and more colorful graphics. As always, the home page will be updated daily with Government News, Industry News and News from ALTA.



The new site utilizes rollover technology, which means that when you place your cursor over a main header, the rollover will tell you what information you will find under that header. This should make finding information on the site much easier. In addition, the Search Function has been enhanced to make it easier to find specific information you may need.

In order to provide increased value to ALTA membership, the ALTA Board recommended we develop a Members Only section. In this section, ALTA members will have access to the USA Patriot Search, Members Only Discussion Groups, and committee information such as minutes, rosters, documents, and much more. ALTA members will be able to pay dues and register for meetings quickly and easily since the system will automatically populate your information into the registration and dues forms.

Go to www.alta.org to see the new site and test the easier navigation. If you have questions about finding something on the new site, contact Lorri Ragan at lorri_ragan@alta.org or 1-800-787-2582.

Do We Have Your E-Mail?

If you are an ALTA member and haven't been receiving ALTA E-news every week, send your e-mail address to lorri_ragan@alta.org to be added to the list.

ALTA Leadership Met With HUD Secretary Jackson

ALTA leadership met with HUD Secretary Alphonso Jackson and key HUD Real Estate Settlement Procedures Act (RESPA) staff in July. (ALTA leadership present included Mark Bilbrey, Mike Wille, Greg Kosin, Stanley Friedlander, Theodore Chandler, Ken Jannen, and Rande Yeager.) In addition to educating HUD about the role the industry plays in insuring HUD properties, ALTA discussed the potential effects of the proposed RESPA rule issued by former Secretary Martinez on the industry. ALTA leadership indicated that packaging is occurring in the marketplace and that technology is driving the settlement process. We suggested that simplification, such as Uniform Closing Instructions, could reduce costs and should be included in any RESPA reform.

With respect to RESPA, Secretary Jackson indicated that he withdrew the rule from the Office of Management and Budget (OMB) last March because it was not ready for release. Going forward, the Secretary announced plans to meet with the industries to obtain input. However, in July he also said that the agency was in no rush to proceed. Recent reports indicate that the Secretary may begin the new RESPA process within the next 60 days.

At the time of the July meeting, HUD was expecting to send responses to the questions OMB raised about the proposed RESPA rule to that agency shortly. The Secretary said he plans to consult with the House and Senate in the RESPA process. HUD staff indicated that the agency's next steps would be to meet with their federal partners, including the Federal Trade Commission (FTC) and the Small Business Administration (SBA). FTC would be consulted about analysis of the proposed forms and other studies, and the SBA would be consulted about small business solutions. HUD hopes to identify several groups who were key to the process, select two people from each industry (a total of 10 to 12 people), and get out a proposal. The Secretary indicated that this process would not be negotiated rulemaking. In fact the agency indicated that there would be a new proposed rule. A

new proposed rule could be smaller in scope and could be issued only if 70 to 80 percent of the affected parties were in agreement. Since the title insurance industry is one of the key industries affected, we hope to be included in the process. The Secretary's indication that any reform would be as a proposed rule means that there would be several more decision points where the industry may affect the process. For more information, contact Ann vom Eigen, ALTA's legislative and regulatory counsel at: ann_vomeigen@alta.org or 800-787-2582.

HUD Issues Letter on Title Reinsurance

On August 12, 2004, HUD provided guidance to the industry on title reinsurance. ALTA had inquired in 1999 whether captive reinsurance arrangements established by builders and lenders with certain title insurers would be legal under RESPA Section 8. The HUD letter refers the industry to a 1997 opinion on mortgage insurance captive reinsurance arrangements for the appropriate standard. To read HUD's letter, go to the Government News section of ALTA's home page at www.alta.org.

Overtime Rules Effective August 23 Change Pay Practices

Sweeping new changes in the federal regulations defining the qualifications for overtime were effective on August 23, 2004. Under the rules, white-collar workers earning less than \$455 per week qualify for overtime. You should be updating your job descriptions and your practices. Failure to implement the new regulations could lead to awards of twice the overtime due. Title agencies have already been sued, and the new rules will increase focus on the issue. ALTA's September 8 telephone seminar reviewed the new rules and offered tips on compliance. To purchase a tape of this seminar, call 1-800-775-7654 and refer to Seminar# ALT 8780-0. For more information, contact Ann vom Eigen at: ann_vomeigen@alta.org or 800-787-2582.

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The Evolving Role of Title Companies in the eMortgage Landscape

A look at how eMortgages, electronic signatures and recordings will save time and money for title companies.

by Kim Weaver

With the refinance boom of the last two years slowing and the hectic pace returning to normal, title companies are looking more closely at how to serve their customers in an efficient manner while differentiating themselves by providing the best customer service. Complementing this personal-touch approach, technology has enabled title

companies to streamline some processes in the complicated steps of transferring land ownership and keeping track of liens filed against real property, as well as the transfers of funds associated with these transactions. Even with small advances in technology, there is still a mountain of paperwork in most cases and ample opportunity for documents to get misplaced, lost, sent to various parties, rerouted, and so on. And there is a lot of information to obtain from various parties and to exchange

among all the parties in the transaction, for both the title company and the lender.

With that in mind, let's look at some of the current best practices used in the real estate finance industries to make the exchange of paper and information a little easier—vendor provider networks, electronic document sharing, document imaging repositories, centralized data, and expanded systems.

The advent of vendor provider networks have enabled lenders and

Organizations Setting Data, Document, and Process Standards for Electronic Mortgages

The following organizations are setting standards for eMortgages and are always eager to have participation from people like you. This is your opportunity to help shape the future of the industry. If you and your technology provider are not involved, you should visit the Web sites below and join the effort!

TASI: The Title Abstract Standards Initiative is a subcommittee of the ALTA Technology Committee and focuses on title abstract data. The completed work of TASI will be presented to the MISMO Title Workgroup. Learn more at <http://www.alta.org/technology/tasi.cfm>

MISMO: The Mortgage Standards Maintenance Organization is a subsidiary of the MBA and focuses on data and document standards for the entire mortgage finance process. One of over 30 active work groups, the Title Insurance Work Group develops standards specific to the title industry. Join the Title Insurance Work Group listserv and learn more at www.mismo.org

PRIA: The Property Records Industry Association is a volunteer organization of county recorders from across the country focusing on standardizing electronic recording. Learn more at www.pria.us

NNA: The National Notary Association is focused on the evolving role of the notary in the paperless world. Learn more at www.nationalnotary.org

SPeRS: The Financial Services Council Committee called SPeRS (the Standards and Procedures for Electronic Records and Signatures) has published a guidebook on suggested practices for using electronic records and signatures. Learn more at <http://www.efscouncil.org>

other customers to send orders for title work and related services electronically to title companies, using either open exchange networks or a title company's own proprietary Web-based ordering system. Most title companies now return the requested title product documents electronically, whether through direct e-mail, Web post, or the ordering system. Whether used per single document or with sophisticated copier/scanning machines, document imaging has also become commonplace for many companies. This enhances the ability to share documents quickly and easily, particularly if the system supports a

good method to index the documents and allows the title company to quickly access the particular document they need.

As centralized document imaging repositories have become more popular, there has also been a rise in the use of centralized data, which is often available over Web-based systems. From the county land records office to the large title company to the smaller field office, through to the independent title examiner's home office, data is more easily shared than ever before. Often centralized data is accessed as part of a transaction management system. These systems

are evolving from supporting the distribution of information within a company to sharing that information electronically with the company's external business partners. Besides the vendor provider networks and title ordering portals, there are expanded systems that increase the amount of information beyond the requesting and sharing of preliminary title work. Closing details, closing documents, and other information related to the transaction can now be easily shared with all the parties involved in the transaction. Improving the parties' access to information—what they need, when they want it—also increases the best practice of all: exemplary customer service to all parties with a personal touch.

WHERE DO eMORTGAGES FIT INTO THIS PUZZLE?

eMortgages build upon the technology enabling these current best practices of data and document sharing and extend it to the business processes of electronically closing a mortgage loan. Although there are many definitions of what "eMortgage" means that range from completely paperless loan origination through servicing to just performing parts of the overall process electronically, two main assumptions are common to most definitions. The first is that the process (whether it's a particular step or the complete multistep process) is paperless. This means the documents are exchanged between the business partners electronically, signed electronically, and then "wrapped" with a computer-generated digital signature that can be verified to validate that no additional changes have been made to the document. The second assumption is that computer programs, without human intervention, can extract the information contained in the documents. This means the data is

cover story

labeled with common data field labels (e.g. "Interest_Rate"), and therefore the data can be exchanged between systems electronically as a separate file or embedded within the document. The document becomes more than an image, and it also becomes a container to hold the data that can be passed from system to system.

STANDARDS ADVANCE THE PROCESS

To facilitate the eMortgage vision of automating processes through the use of documents as data exchange containers, industry groups like the Mortgage Bankers Association's Mortgage Industry Standards and Maintenance Organization (MISMO), ALTA, and the Property Records Industry Association (PRIA) have worked on data standards, document standards, and process

standards. Data standards include identifying all the data fields used in a particular transaction, such as all the fields on a Note, and naming each of those data fields with industry-standard labels, for example "Interest_Rate." Document standards describe how to create mortgage closing documents in a format that includes extractable data within the document, such as the SMART Doc standard published by MISMO. Using the data and document standards as building blocks, process standards describe processes for handling these electronic original documents, from ensuring adequate procedures to obtain the consumer's E-Sign consent to electronically signing the documents, recording them in the land records, tracking who the owner of the original electronic document is and in what

electronic vault it is kept, and many other processes. These process standards have been written by Standards and Procedures for Electronic Records and Signatures (SPeRS), MISMO, PRIA, and the Mortgage Electronic Registration System (MERS). This guidance takes the form of implementation guides each group has written. Almost all of these groups are volunteers; if you are interested in helping define these standards, you can find information on how to participate on each of their Web sites. See the sidebar article.

The technologies that enabled the creation of these data, document, and process standards include: 1) a computer language called eXtensible Markup Language (XML), 2) Internet-based data transmission and exchange, and 3) the use of digital certificates. XML makes the data

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exchange possible. It provides a way to label the data in the document so it can be read by computers and used in other systems without having a person rekey the data. A unique feature of XML is that it is also easily readable

Lenders are starting to ask title companies to be able to receive and send data in the industry standard format.

by human eyes, not just computers. Additionally, each piece of information is categorized using standard data labels as defined by that industry. All the data standards discussed above use XML. Exchanging information securely over the Internet, the second technology, allows companies to share information with whomever they want in a safe and controlled manner. Third, the security for Internet-based data transmission and exchange comes from the use of digital certificates. Digital certificates use cryptography to create a unique identity for the holder of the digital certificate, and the holder of the digital certificate (whether it is a person or a company) can then use that unique identity in the digital certificate to encrypt data, sign documents, and sign XML transmissions. The recipient of the digitally signed data, document, or XML message can verify who sent it, decrypt it if necessary, and check that the data, document, or XML message content has not changed from the time the sender signed it.

This technology is already being used to simplify certain parts of the loan origination process, including some title company best practices such as communicating with vendors more efficiently and ensuring secure sharing of sensitive information among different business partners. In addition, mortgage lenders have begun to move toward a datacentric

approach. Now that the development of data sets for many parts of the loan transaction have been concluded or are close to being finalized, lenders are starting to ask title companies (and their technology vendors) to be able

to receive and send data in the industry standard format.

"MISMO has seen extensive adoption in the front-end origination services, as business partners save time and money implementing industry-standard interfaces, rather than custom one-offs," says Harry Gardner, senior director of industry technology at MBA. "We're now seeing more MISMO transaction adoption through the rest of the mortgage process. On the eMortgage front, vendors and lenders are able to provide a form's image (page) view and data in a single, immutable, electronically signed SMART Doc. This means that electronic documents can be transferred between multiple systems with no human intervention and no rekeying of data, and the data and document integrity can be automatically validated." In addition, documents and information can be shared at the speed of the Internet—for example, lenders can deliver loans to their secondary market partners almost instantly.

BENEFITS TO TITLE COMPANIES

While the benefits of eMortgages are identifiable for lenders, what about the title companies and closing agents that will be requested to do business this way by their lender customers? What are the benefits, if any, to title companies? To answer this question, let's look at some current title

company challenges.

It's fair to say eMortgages won't change the traditional rush of closings scheduled for the end of the month. But the technology that enables eMortgages might bring relief to other burdens. One such problem is that most homebuyers don't understand the value of the title search and title insurance. They just know they are required to obtain it for the lender, and most are too busy taking care of all the lender's requested conditions to ask for a detailed explanation that would explain the value of the title work, not to mention that many borrowers never even see it until they receive their final Owner's Policy (if they obtain one.) Another issue is that the closing agent, by virtue of coordinating the closing among all parties to the transaction, often becomes the focal point for the combined parties' anxiety. Even the most diplomatic of closing agents can feel the burden of ensuring that everyone's concerns are addressed in order to complete the transaction in a timely manner. A third issue is the backlog of final documents—recorded security instruments and final title policies—from the current refinancing boom. Creating the paper, even a short form title policy, forwarding it onto the lender, reminding the lender it is already in the returned closing package, etc., takes precious time. Fourth, the direction of RESPA reform and bundled services has left some smaller title companies wondering how to best compete in a possible world of prenegotiated package prices. Finally, the cyclical nature of the real estate industry also concerns title companies that may not be positioned to cross-sell other title-related services. And now, with lenders moving toward even more electronic processes, which always require some level of support by the

cover story

title company and closing agent, the question becomes: How can the title company and closing agent benefit?

Remembering that eMortgage itself is a term with many definitions, we should also recall the main concepts of eMortgages: paperless electronic documents, a datacentric focus, Internet-based methods of sharing information with multiple business partners, and the use of digital certificates to identify business partners and validate original document content.

HOW IT WORKS

Let's begin with the title request. In fact, many title companies already use versions of the following processes. With the growing use of common data names and interconnection of different systems, title orders can be received directly into the title company's system. This streamlines

the data entry process and the communication with the lender regarding the status of the order. In addition, real estate data continues to become available over the Internet. Centralizing data leads to faster turnaround of title searches, and some systems can even automate the quality control review of a title report before it is sent to the lender. And by generating documents in an electronic format, they can be easily indexed, stored, and routed to the proper recipient, sometimes with automated delivery. Tracking the receipt of the title work is simpler, along with resending a copy when needed. Archiving the documents in electronic format saves space and makes research an easier task by eliminating the dependence on paper files in storage. In addition, many title companies (and their software vendors) are

working on being able to send back, with the title documents, parts of the information that appears in title work as separate or extractable data items. For example, sending back the legal description as a data item that can be automatically imported into the lender's loan origination or document preparation system can help eliminate data reentry errors. As the standardization of mortgage industry data field names continues, lenders will continue to ask for data return and other technology-based enhancements to request and receive title work.

Besides title research, there are also technical enhancements for the tasks of scheduling the closing and preparing the closing documents. Many title companies and closing agents already allow their customers to schedule closings online or even automatically between their closing



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system and the lender's system. Some "closing Web sites" also allow the sharing of statuses, events, loan, and other information, and even documents between the other parties in the transaction. Sharing information, whether through e-mail or Web-based system, allows each party to receive and review information at their convenience, increasing the title company's customer satisfaction level because of the higher availability of closing details 24 hours a day. The closing agent's document preparation and review can be streamlined through using SMART Documents, such as for the HUD-1. With a SMART Doc HUD-1, all the fees are individually specified within the document, so both the lender and closing agent can collaborate on a true electronic HUD-1 by entering their respective fees and eliminating rekeying of lender fees by the closing agent. HUD-1's are already shared electronically using secure e-mail, Web post, or within online systems, with lenders and others prior to closing. Some of these methods also include extensive document tracking and audit trails, reducing the overhead associated with distributing the HUD-1 and other documents with all parties in a timely and efficient manner.

Another benefit of using this technology is to increase borrower and property seller satisfaction by making the closing process more transparent. Borrowers gain when they can review their loan documents ahead of the actual closing appointment and ask questions in advance. Sharing the documents electronically reduces the handling and courier costs, and also allows the closing agent to receive redraws efficiently and quickly. Some systems even version documents so that previous copies can be compared to the current one.

ELECTRONIC SIGNATURES FEATURE PROMINENTLY

Since electronic signatures are one of the defining characteristics of an eMortgage, title companies that conduct closings must learn how to sign electronically themselves as well as conduct the process with consumers. Just as there are different methods of closing document delivery today, several electronic signature systems are coming to market, and the savvy title company or closing agent will become familiar with as many as possible to serve the widest range of lenders. Forms of electronic signature include "click" signatures, where the signers click a button or icon to indicate they wish to sign the document; "text" signatures, where the signers enter some form of information such as their name or a personal identification number (PIN); "image" signatures, where the signers handwrite their signature on a signing pad that captures the handwritten signature as an image; and "digital" signatures, where the signers use a digital certificate credential to sign the document.

Because the act of signing becomes a workflow task in these systems, it means that logic can be added to prevent signers from forgetting to sign a document or signing it in the wrong place. Additionally, it can eliminate the possibility of signers "undersigning" documents (when a person signs the document using less than the name printed on the document, such as "J. Doe" instead of "Jane Doe.") And since document signers can access the same electronic documents, signing activity can be reviewed, tracked, and audited—automatically.

Electronic signatures can also be used for completing notarial acts on electronic documents. The National Notary Association has included a section on electronically notarizing

documents in their Model Notary Act and promotes electronic notarization to government and the private sector. Richard J. Hansberger, director of eNotarization for the National Notary Association says, "The National Notary Association is committed to the development of a sound and reliable eNotarization infrastructure that enables industry and government to conduct electronic transactions with all the safeguards and guarantees that Notaries provide. As a paperless economy becomes ever more realistic, the National Notary Association is preparing professional Notaries to meet the needs of this new economy."

ELECTRONIC RECORDING

After the documents have been fully electronically signed and notarized, the next step is electronic recording. The number of counties and other jurisdictions that allow electronic documents to be recorded continues to grow. Electronic recordation offers the same benefits as signing the documents electronically: ease of sharing documents with all business partners; better tracking and auditing of documents, and, when data is included in or with the document, faster document processing by the land records system. Electronic recording systems include the ability to send documents to the land records office and receive them back recorded, as well as other advantages such as automated quality control reviews of the documents to ensure no missing information or signatures, automated calculation of recording fees, and even escrow services for the payment of the recording fees.

"All participants in the mortgage process benefit greatly from electronic recording," says Paula Steger, vice president and director of the electronic recordation exchange for ACS. "With electronic delivery of both the data and the documents,

cover story

counties are able to complete the recording process and return the recorded instruments in minutes now instead of the many days and even weeks it has taken with the paper process. Once the documents are recorded, they remain electronic and are now able to be delivered to the downstream participants electronically.”

The net benefit to the title company is less time spent on the handling and tracking of documents, no more “lost” documents, and faster return of recorded documents to the lender or requesting party.

Escrow disbursement is also simplified through the use of collaborative data sharing systems. Closing agents can request, track, and receive funds online. With electronically signed documents, it’s possible to streamline the entire

process of notifying all parties when the loan has been funded. This is of particular interest in escrow closing states where the loan is normally funded after the signed documents have been received back by the lender, speeding up the disbursement and finalizing the transaction much faster.

While eMortgages are in the pilot phase of adoption, there are still many current uses for the technology that supports eMortgages as described above. Becoming familiar with this technology only increases a title company or closing agent’s revenue potential, from utilizing parts of it for small process enhancements to participating in pilots conducting electronically signed loan closings. Learn more about the new systems as they progress by reading eMortgage articles, attending workshops and conferences. Talk to your lenders

about volunteering in eMortgage pilots. Get involved with the volunteer work groups working on data, document, and process standards. The technology is there to make the title company and closing agent’s work easier and free you up to spend time on customer service. And as you become more familiar with the tools of eMortgages, you’ll be well positioned for the next big wave of business conducted electronically.



Kim Weaver is the director of product management for BCE’s Emergis e-lending business unit in McLean, VA. She has been in the mortgage industry for 12 years. She can be reached at kim.weaver@emergis.com.

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How to Use the Title Industry Marketing Kit

This powerful kit will help you educate your real estate agents, lenders, and consumers customers, while marketing your company at the same time.

by Sandra Bell

Last weekend, a friend of mine was trying to do a fairly simple home improvement project on his patio. After three frustrating hours of being unsuccessful in his endeavor, he made a quick trip to the hardware store. Upon his return with a new \$1.35 drill bit designed specifically for the task, he was done in about seven minutes—and the results were great.

The old adage proved right—you just need the right tools to get the job done.

When ALTA initiated its public awareness campaign two years ago, one of the primary goals was to educate real estate agents, lenders, and consumers about the value of the title industry in the homebuying process. Although the efforts have resulted in some very successful national messaging, it's always been known that our true success would come when individual ALTA members sent out a clear and consistent message in their local areas as well. The problem was, there were no real tools to help

them do so—until now.

Earlier this year, ALTA made available the *Title Industry Marketing Kit*. Members are already utilizing this powerful kit across the country to promote the title industry in general, and their individual businesses specifically.

misconceptions to germinate about our industry, fueled by the introduction of alternative title insurance products and an attempt to reform the Real Estate Settlement Procedures Act—both of which would have had a detrimental impact on the title industry.

You certainly don't have to be a marketing expert to utilize this "turn-key" kit. Materials were designed for members to easily create their own local marketing campaigns.

WHY WAS THE MARKETING KIT DEVELOPED?

The *Title Industry Marketing Kit* is a key component of the public awareness campaign designed to help members reach the REALTOR®, lenders and consumer audience with consistent messages about the value of title insurance.

As most of you know, our industry came under heavy fire the past few years when consumers began to question the value and cost of title insurance. In large part, this was a result of the refinance boom, when many homeowners refinanced their mortgage loans several times in as many years and began to question their closing costs. Several politicians and representatives of the news media also began to voice their concerns. This provided fertile ground for

Until that point, the title industry as a whole had not consistently promoted itself or the value of its products and services. In all reality, there wasn't a great need to do so. But the environment has changed. As an industry we must all band together to promote an understanding of the title process and how vitally important it is, in turn, to the homebuying process. The marketing kit was created to assist members in this effort. The beauty of the materials within the kit is that they are designed to help members promote their individual businesses as well.

You certainly don't have to be a marketing expert to utilize this "turn-key" kit. Materials were designed for members to easily create their own local marketing campaigns. In fact, many members are already doing just that.



Sandra Bell is a principal with Ervin Bell Advertising in Huntington Beach, CA. This article is an excerpt of her presentation at ALTA's 2004 Annual Convention in Boston.

running your business

HOW IS THE MARKETING KIT USED?

ALTA is sending very strong messages on a national basis through a media relations and advertising campaign—all with clear, consistent messaging developed as the result of qualitative and quantitative research. The campaign's ultimate success, however, will ultimately depend on individual ALTA members forwarding these messages to their local markets. That is exactly how the kit is being used. Look at the photos in this article for samples of ads that have been customized for ALTA members. In addition, you can visit the ALTA Web site and click on the ALTA Public Awareness Campaign button on the right-hand side to see more examples.

WHAT IS INCLUDED IN THE KIT?

The individual elements included in the *Title Industry Marketing Kit* were developed to give members tools to reach our various audiences. The messages were crafted carefully to focus on the benefits our industry can specifically offer each audience.

The following gives a glimpse of the audiences that can be reached by the kit's components, and the items you can use to do so.

CONSUMERS

Our research shows what we've understood for many years—that consumers have a general lack of awareness about the due diligence process that we in the title industry go through, and that many feel title coverage is unimportant until they are made aware of the issues that could arise. Additionally, most consumers aren't aware that an Owner's Policy is essential to protect their investment; many think they are covered under their Lender's Policy. Therefore, our consumer-directed messages are

Reviews of the Kit

As mentioned, many ALTA members have already put the kit to use. Here are some of their comments on the success they've realized.

"I think one of the greatest benefits of the new Marketing Kit is its ability to help everyone in our business easily communicate our messages. For those people who may be uncomfortable speaking in front of groups, for example, the video simply needs a brief introduction and closing – it tells the rest of the story on its own! With very little preparation or work on our members' part, they now have the tools that provide solid information, and make them look good when doing so."

— Anne Anastasi, Genesis Abstract, Inc.; Hatboro, PA

"...(our company) has an affiliation with one of the largest real estate companies in the region. Through that affiliation, my middle-Tennessee offices have working relationships with over 18 REALTOR® offices.... Each week I am usually presenting in at least one of those offices. The number of agents in each branch can range from 25 to 75, many of them 'boutique' agents selling premier homes. The talking points, Jim Maher's articles, and much of the other information from the Marketing Kit have been extremely helpful in educating these agents. And I've found that the agents, in turn, are taking much of this information back to their clients. Each time I speak, at least one agent (usually a heavy producer) comes up to me and thanks me for the information and asks for additional information to provide their customers. Even many of the most seasoned agents don't seem to understand the basics of title Insurance and why it's important. However, this information has caught their attention. They actively listen and interact by asking good questions. They appreciate the education and feel like the additional knowledge gives them a leg up on the competition because they can better advise their clients."

— Shawna Hulse, Realty Title & Escrow; Brentwood, TN

"The kit is very user friendly, the products are reasonably priced, and the information is very generalized and useful. We customized the Due Diligence ad for the CLTA. They placed it in the *California Journal* (a non-partisan government/political publication.) This publication reports on issues, personalities, institutions, and political activities in California."

— Charlene Gonzales, California Land Title Association; Sacramento, CA

designed to make people aware of the potential problems that can affect a homeowner's rights to their property, of the amount of work that is done prior to issuing a policy, and of the product that protects their most important asset.

Please note, however, that the following items—while created to speak to the consumer—were also developed to share information with our real estate professional, mortgage and other customers directly.

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Sometimes a secured loan
isn't completely secure.



A Loan Policy of Title Insurance issued by Realty Title & Escrow can help protect your assets. But typical Loan Policy coverage sometimes isn't enough to fully compensate for a loss. And, unless specifically requested, that coverage usually doesn't include insurance to cover survey issues.



There's a solution: an Expanded Coverage Loan Policy designed specifically for lenders. It automatically covers 125% of the loan amount, includes a generous survey insuring clause, and adds numerous other protections—all of this plus the extensive coverage already provided by the Standard Loan Policy.

Call us today about the enhanced security of an Expanded Coverage Loan Policy.

REDUCING YOUR RISKS,
ASSURING YOUR SECURITY.

REALTY TITLE

Corporate Office

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Phone: 615-377-0620
Fax: 615-371-9747

Shawna Hulse, General Manager
Middle Tennessee Operations

Chip Ames, Sr. Closing Attorney

Branches

Maryland Farms
Green Hills
Smyrna
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Mt. Juliet
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Goodlettsville
Columbia

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Realty Title in Brentwood, TN, customized this lender-directed ad and placed it in the *Nashville Business Journal*.

• "Value of Title Insurance" Video/DVD

This 12-minute video (or DVD) explains the process involved in the title search, the types of issues that arise during the search, how our industry then helps to resolve these issues and describes the insurance protection we provide. It also stresses the importance of the Owner's Policy for all homebuyers. It can be shown to consumers as they wait to close with you, at local housing fairs, or to local real estate

agent groups to give them a basic understanding of the title insurance process. The video can be customized with a member company introduction and logo. A Spanish-subtitled version of the video and DVD will also be available by the fall, helping to reach the Hispanic homebuying community throughout the nation.

- "Value of Title Insurance"
PowerPoint Presentation
Many people prefer the medium of

a PowerPoint presentation when speaking to groups. This powerful visual presentation about the title insurance process comes complete with speaker notes so that anyone can make an effective presentation before local groups, such as REALTORS®, Kiwanis, Rotary, or the Chamber of Commerce. By its nature, this flexible presentation can also have your company's logo or other information added easily.

• "Value of Title Insurance" Brochure

The kit contains some sample "Value" brochures to promote the value of what we do as an industry. These brochures can be ordered in bulk and can be customized with your company name, address, phone number, and logo. Members are already handing them out to their REALTOR® and mortgage customers who, in turn, give them to their consumer customers. Others are placing them in their lobbies. This brochure will also soon be available in Spanish.

• "Value of Title Insurance" Ad

These ads speak directly to consumers and include such headlines as: "Rest Easy. We're here to protect your American dream." These ads can be easily customized to place in your local newspapers, newsletters and magazines, or homebuilder guides.

• "Due Diligence" Brochure

This brochure explains all of the behind-the-scenes work title professionals perform before a policy is ever issued. It helps readers better understand where their one-time title insurance fee goes, and why they may not ever realize all the work done to protect them prior to the issuance of a title policy. These brochures

AVAILABLE NOW!

Your new Title Industry Marketing Kit is here!



You've been asking for it, and now it's here: your new ALTA Marketing Kit.

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- Brochures
- PowerPoint Presentation
- Video or DVD
- and More

As an ALTA member, you get your first kit for free. Additional quantities and personalized materials also are available.

For your free kit, email Lorri Ragan at lorri_ragan@alta.org, or complete the form below and fax or mail to:

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1828 L Street N.W., Suite 705 • Washington, D.C. 20036-5104 • Phone (202) 296-3671 • Fax (202) 223-5843

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PLEASE CHECK HERE FOR (CHECK ONLY ONE) VIDEO OR DVD

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Our hard work helps you make them smile.



You want your clients to be pleased. You'd also like your clients to recommend you to their friends and neighbors. Our hard work can help.

We dig into the complete history of a title by searching public records and our own title plants to make sure there are no hidden problems with the title. And if we find any difficulties, we take care of them—often without your clients ever knowing.

Indeed, our skilled title professionals invest a tremendous amount of time and energy in the process. But that investment pays off with seamless, trouble-free, timely closings that make your clients happy and help you keep them as clients.

Of course, you can add to that happiness by encouraging your clients to purchase an Owner's Policy of Title Insurance—valuable coverage for a one-time fee. If unforeseen title problems should arise, that coverage will protect your clients . . . and make them appreciate you and your service even more.

You work hard to build relationships. We welcome every opportunity to put our talents to work to help you succeed.



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The entire REALTOR®-directed ad series was customized for Chicago Title in Indianapolis, IN, for the company's use as printed handouts.

can be ordered in bulk and can be customized for your particular company. This brochure will also be offered in Spanish.

- **“Due Diligence” Ad**

The “Due Diligence” ad is a brief version of the brochure (mentioned above), explaining the work title agents perform prior to a title policy being issued. The headline reads: “Title insurance is probably the last thing a homeowner thinks

about. We want to keep it that way.” Again, customized versions featuring individual company names, logos, and information can be ordered for placement in your local publications.

REALTORS®

Our research told us that REALTORS® have a general knowledge about title insurance, and most said that they respect the title representatives that went “above and

beyond” in order to serve their particular needs. Our Realtor® messages were designed to reinforce the efforts we make on their behalf, which, in turn, benefit their clients.

Ads directed at real estate agents were developed for placement by ALTA and are running nationally in *REALTOR® Magazine*. This same ad series can be customized for individual company use in your local realtor-directed publications. Headlines such as “You work hard for them. We work hard for you” help us stress the commitment we have to serving this market's needs.

LENDERS

In our research, lenders generally had a positive opinion about the title insurance industry and want their title representatives to continue to offer true protection, products, and services to help them streamline their business. Our lender-directed ads were designed to reinforce those sentiments.

The ads were developed for placement by ALTA and to date have run in *Mortgage Banking*, *National Mortgage News*, and *Origination News*—all national trade publications that reach lenders. The ads, which can be customized for individual member company use as well, include headlines such as “It's not really a secured loan until you have title insurance.”

NEWS MEDIA

The news media is an important audience because they, in turn, write stories that reach consumers, lenders, legislators, regulators, and others. It is crucial that we keep the media informed about our business and solicit their interest in publishing articles and feature stories.

A media kit is included to help ALTA members garner positive news stories in their local markets.

running your business

REST EASY.

WE'RE HERE TO PROTECT YOUR AMERICAN DREAM.

He's ready to enjoy his new home. Thanks to title insurance professionals across the nation, he can.

Because long before his purchase was finalized, title insurance experts researched the property. They looked for potential problems and conflicts in ownership. They sought out liens, boundary disputes, and issues that might affect title. And then they fixed them.

He can relax with an Owner's Policy of Title Insurance, available for a one-time fee. So now, he's protected—including full payment of legal fees, if necessary.

When you buy a home, buy an Owner's Policy of Title Insurance. So you can sleep well for years to come.

TITLE INSURANCE.
PROTECTING THE AMERICAN DREAM,
ONE HOME AT A TIME.



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651.437.5600

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Dakota County Title & Abstract in Hastings, MN, placed a customized version of the "Value of Title Insurance" ads in the *Hastings Star Gazette*.

Elements of the media kit include a press release template, fact sheet, background information, messages, and an educational article to which members can add their byline and submit to their local newspapers. Also included are sample articles placed by your peers to give you ideas for articles in your local area. Writing and placing these kinds of articles is a great way to gain name recognition in your market.

WE NEED YOUR HELP

We encourage all members to utilize this powerful kit to help us foster a better understanding of our industry and the value of what we do. And, in the process, you'll be promoting your business as well. As we said, it just takes the right tool to get the job done.

HOW TO ORDER YOUR KIT

Each ALTA member can receive one Marketing Kit at no charge, and non-members can purchase it for \$50. Members can also order additional kits for \$50 and purchase quantities of the brochures and other materials separately. Materials can also be customized for an additional cost. You can order the kit online at ALTA's Web site at www.alta.org. Click on *ALTA Public Awareness Campaign* on the lower right-hand side, then *How to Order*. If you have questions on the contents of the kit, contact Lorri Ragan at lorri_ragan@alta.org or 1-800-787-2582.

You work hard for them.
We work hard for you.



You work hard to help your home buyers and sellers enjoy seamless transactions. So do we. But we also work hard to make your job easier and give you the peace of mind that your clients are being well protected.

Our skilled title experts invest tremendous behind-the-scenes time and energy to ensure a smooth, trouble-free, timely closing for you and your clients, providing the information and remedies needed to help them avoid the risks of title problems.

You can help your clients by encouraging them to obtain an Owner's Policy of Title Insurance. For a one-time fee, this valuable coverage can safeguard them in case title difficulties do arise.

You put a lot into helping your clients. We welcome the opportunity to work hard for you.



TITLE INSURANCE. PROTECTING THE AMERICAN DREAM. ONE HOME AT A TIME.

This REALTOR®-directed ad was customized and placed in the *New Hampshire Business Review* by Market Street Settlement Group.

Title Company Web Sites . . . Does Yours Pass the Test?

By adopting these simple rules, you will avoid costly legal problems and protect your intellectual property rights.

by John H. Rees

Doing business on the Internet has multiple traps and risks, but with careful evaluation and analysis of each of the elements of the Web site and a review of the relative rights of the elements, title companies may avoid the nightmare of litigation and the devastation of an adverse damages award. The world of electronic delivery systems has made copying and distribution of significant and protected works of others, and the infringement of important intellectual property rights, easy, quick, and inexpensive. It is critical that title companies understand some of the fundamentals of doing business on the Internet to avoid potential litigation and damages that could be devastating. The following are some

of the potential traps that title companies need to avoid:

1. Do not adopt a name, logo, or domain name without clearing it for potential trademark infringement. A domain name adopted by a title company may, in addition to functioning as a domain name, also function as a trademark and infringe on the trademark rights of another title company or unrelated person. A trademark is any word,

function as a trademark. For example, amazon.com® is a domain name registered to Amazon.com, Inc., but it is also a federally registered trademark for a computerized online ordering service featuring the wholesale and retail distribution of books, electronics, apparel and accessories, and other products, as well as other goods and services. Another example is Zionsbank.com®. Zionsbank.com® is a domain name which directs the user to a home page

If a Web site is developed by someone other than an employee of the title company, the developer will own the Web site and all of the other creative work contributed by the developer.

name, symbol, or device or any combination thereof used in commerce to identify the source or origin of goods and services. A domain name is an address used to identify and direct others to a specific location or Web page on the Internet. A domain name is obtained by registration through one of several registrars, including the registrars approved by the Internet Corporation for Assigned Names and Numbers (ICANN). As long as the domain name selected is not exactly identical to another registered domain name, the registrar will grant registration of that domain name to the applicant. However, a domain name may also

which provides banking services. However, Zionsbank.com® is also a federally registered trademark and is used to identify the source of financial services, namely banking, on the Internet.

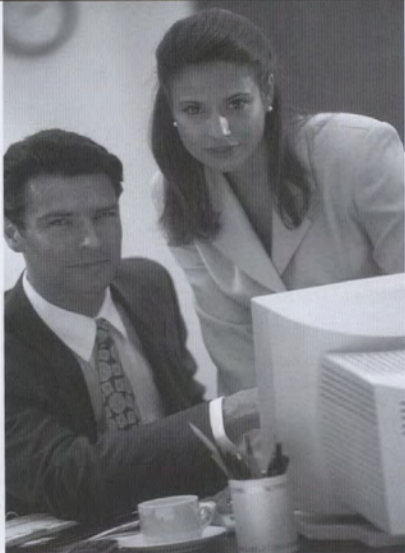
Similar to registering a trade name with the secretary of state, registering a domain name with a registrar is not sufficient to protect the user of the domain name from liability for trademark infringement. Domain name registrars do not provide any information to an applicant about whether the use of a domain name will cause infringement of another's trademark. Clearing a domain name for potential trademark infringement can be done only by conducting a trademark search. Trademark rights



John H. Rees is a shareholder with Callister, Nebeker & McCullough in Salt Lake City, UT. Rees gave a presentation on this topic at ALTA's 2004 Tech Forum.

This article is adapted from "Ten Traps to Avoid on the Internet" originally published in the *Utah Bar Journal*, October, 2003. John can be reached at jhrees@cnmlaw.com

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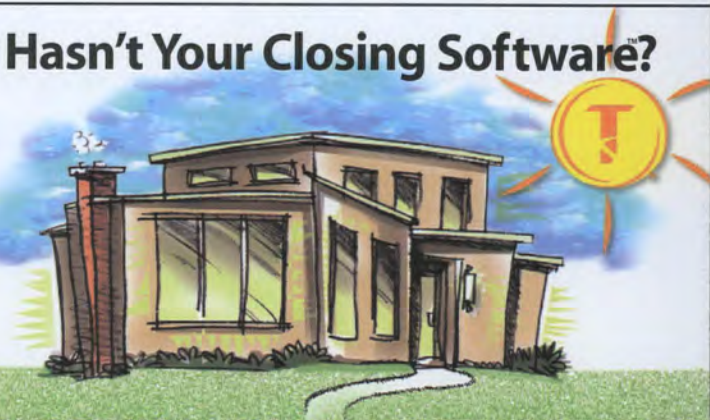
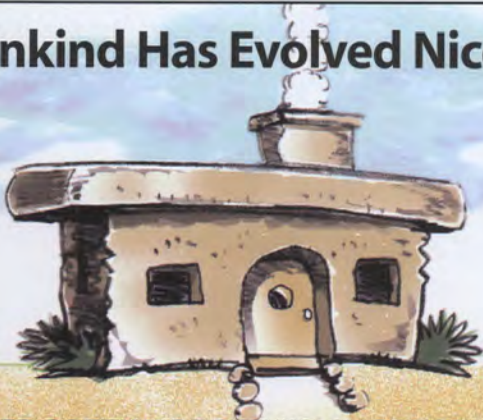
accrue at common law. One may acquire common law trademark rights by using a word, name, logo, symbol, or device to identify the source of goods and services. No state or federal registration is necessary. Registration can enhance rights, but it is not the basis for the fundamental rights of trademark protection. Inasmuch as trademark rights accrue at common law, the use of a domain name to identify the source of goods and services, such as amazon.com®, may infringe on the common law or registered trademark rights of another. The test for whether a domain name, which is also used as a trademark, infringes on the trademark of another is whether consumers are likely to be confused by the use of both trademarks in the marketplace. This is a fact-intensive test that cannot be adequately addressed in this article.

Courts consider several factors when determining whether there is a likelihood of confusion, including a comparison of the two marks and their sight, sound, and meaning, the channels of distribution of the goods and services, the sophistication of consumers, and several other factors. Although it is not the purpose of this article to articulate the likelihood of confusion test, it is sufficient to state that anytime a domain name is registered, there is a risk that it will infringe on the trademark rights of another. As a result, the domain name should be cleared by doing a comprehensive search to minimize, and hopefully avoid, any potential trademark infringement claims.

2. Do not engage a developer for your Web site without having a written contract that addresses

key issues. Too frequently, title companies and others using Web sites for advertising or conducting e-business engage the services of an independent third person to develop the Web site without having a written contract in place. A Web site is composed of several protectible elements, which include a computer software code that runs the Web site, the domain name, photographs and other graphics, text, and databases. All of these elements may be protected by intellectual property laws, including trademark, copyright, patent, and trade secrets. Unfortunately, the ownership and other protections of this valuable intellectual property are often overlooked, and the party engaging the developer fails to adequately address the intellectual property issues.

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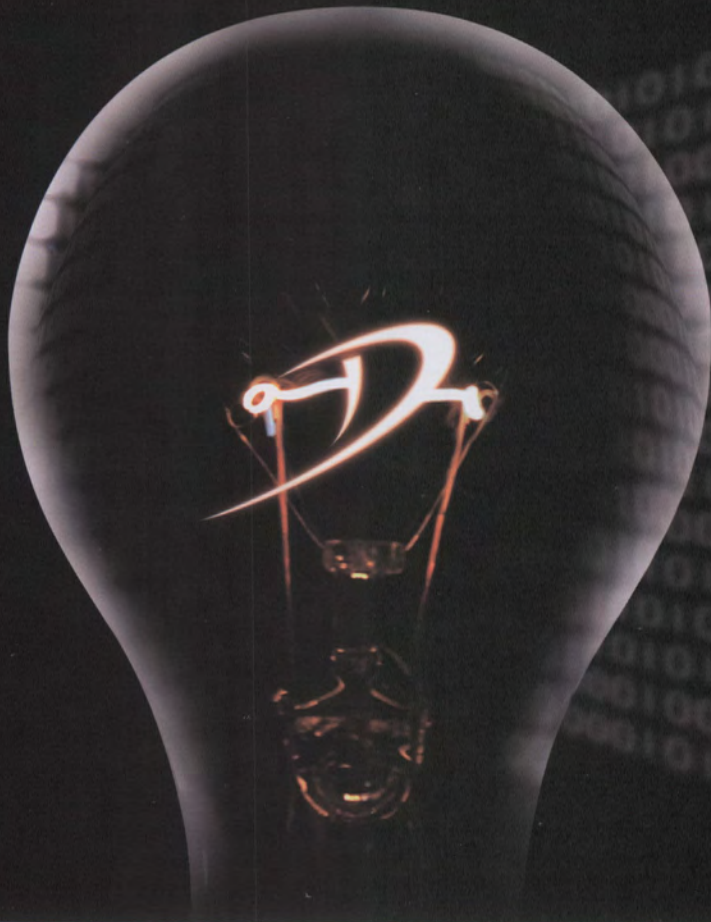
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Although some computer software may be subject to protection under applicable patent laws, generally computer software, graphics, and text will be the subject of protection under copyright law. A common misconception is that a title company may engage the services of an independent third person to develop a Web site, and by designating the work a "work made for hire," the title company then owns all of the intellectual property. Under copyright law, however, a work made for hire applies in limited circumstances that are generally not going to be applicable to a title company. A work made for hire is either a work prepared by an employee within the scope of his or her employment, or it applies in other very limited situations. As a result, if the development is not made by an

employee within the scope of his or her employment, particularly in the context of Web site development, it is not likely to be a work made for hire. If a Web site is developed by someone other than an employee of the title company, the developer will own the Web site and all the other creative work contributed by the developer. The title company will have a limited right to use the Web site, but the developer will own the intellectual property.

For example, if the developer is not an employee, he or she will have the exclusive right to modify the Web site. This means the title company that hired and paid the developer may not be able to update and make any changes to the Web site without obtaining the consent of, or a license from, the developer. Because the developer owns the copyright, it is not

sufficient for the title company to obtain a verbal promise from the developer that the Web site and the other intellectual property will be owned by the title company upon completion of the development. The title company should obtain a written assignment of the developer's rights to all intellectual property associated with the Web site. Without a full assignment of the developer's rights—not merely a license—the title company will have limited control and rights regarding the Web site.

Another frequent problem that arises with developers is the registration of a domain name. Developers, as part of the package of services, will offer to obtain a domain name for the title company. The agreement with the developer should include a clear understanding that the domain name will be registered in the

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name of the title company, not the developer. Further, the title company should confirm that the domain name is registered in its name and that the technical and administrative contacts are both under the direct control of the title company. Confirmation of proper registration can be done by visiting www.whois.com, or www.net-worksolutions.com/cgi-bin/whois/whois. There is currently no mechanism to force the transfer of a domain name to the intended registrant.

It is important for each title company engaging the services of an independent contractor for Internet development to have a written agreement which, at a minimum and in addition to addressing the timing, scope, and compensation of the project, should include an assignment of the intellectual property rights and a clear statement of the parties' intent and the obligations of the developer with respect to any domain names.

3. Do not copy photographs, text, compiled data, and other information in an electronic format without a license or permission.

Because of the ease of copying and distribution, there is a temptation to not take the appropriate steps to understand what action, if any, should be taken before using photographs, graphics, text, data, and other creative works. In general, if the owner of a copyrighted work is able to establish ownership of the work and copying has occurred, there is infringement.

Photographs, text, data compilations, and other electronic information can be protected under United States copyright law. Given that most people will probably not sit on a witness stand and testify that they have copied the works of another, courts may find copying, if the alleged infringer has access to the work and there is substantial similarity to the original work. There are other

factors to be considered, such as the filtration of unprotected elements, but for purposes of this article, there may be infringement if there is access and

Before copying a photograph, text, compiled data, or other protected elements, the title company should obtain a written license or permission to use the work.

substantial similarity. Before copying a photograph, text, compiled data, or other protected elements, the title company should obtain a written license or permission to use the work, and the license or permission should identify the scope of the permitted use, including the term of the use.

4. Do not link to another Web site or frame another Web site without permission from the other Web site and have the terms of use posted on your own Web site.

The law with respect to framing and linking on the Internet is not yet settled. Framing is including within a frame on one Web site the Web site of another. Linking is including on one Web site a hypertext link to the Web site of another. There are cases that have addressed the issues relating to framing and linking, but no clear position has emerged. There are two fundamental intellectual property areas of law at issue. First, the framing of or linking to another's Web site may constitute copying and the public display of the copyrighted work of another. The second intellectual property issue is trademark infringement and unfair competition. Under the federal law of unfair competition, no person may use any trademark for goods or services that is likely to cause confusion as to the affiliation, connection, or association of such person with another person.

Framing or linking may suggest an association, sponsorship or endorsement that is not approved or intended. Another potential problem

that may arise from framing and linking is breach of contract. Web site owners may have contracts with advertisers that limit advertising on a Web site to advertising from one specific source. If a Web site is framed by another, such as by a title company, and the title company has its own advertising, the advertising for both Web sites will be on the same screen display at the same time. This side-by-side advertising could trigger a breach of contract for at least one of the advertising Web sites. A final issue is "deep" linking. Deep linking is linking to a page behind the first or home page of a Web site. For example, www.alta.org is the home page for the American Land Title Association. On the home page there are several ways to access additional pages with additional information and purposes, such as the page located at www.alta.org/membrship/serchmem/stassc.htm, which lists all of the affiliated state associations. There is also a Members-Only page. Creating a link to the Members-Only page or the page with the affiliated state associations, without going through www.alta.org constitutes "deep" linking. In at least one case, Microsoft used a deep link to bypass the home page of www.ticketmaster.com. [Ticketmaster.com](http://www.ticketmaster.com)[®] generated substantial advertising revenue from its home page, as well as other

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economic benefits. By “deep” linking past the ticketmaster.com[®] home page, ticketmaster.com[®] suffered an economic loss. The case was settled, and Microsoft agreed to link only to the home page.

Similar to the use of any other intellectual property, the safe approach is to obtain written permission to do the framing or linking. Many Web sites include a link to a page that sets forth the terms for framing and linking and allows such activity and use so long as there is compliance with the terms. For example, on the site www.fanniema.com, there is a link titled “legal.” By clicking on the “legal” link, the user is taken to a page that includes a link titled “Linking Agreement.” The page linked to the “Linking Agreement” link sets forth the specific terms of any linking to the www.fanniema.com site.

Interestingly, the page includes a statement that “Fannie Mae welcomes links to its Internet sites.”

Although terms of use statements on a Web site may not be enforceable, the current practice on the Internet is to include them. Specifically with respect to framing and linking, the terms of use should include statements to the effect that links are provided only as a convenience and the user should not infer an affiliation between the linked Web site and the title company. Further, the user should be notified that the title company does not monitor the linked sites and the use of the links is strictly at the user’s own risk. It is possible that a onetime legitimate link may become a site inappropriate for review or use. There may be viruses or other illicit code downloaded to the user’s computer when accessing the Web site, and the site may contain information which is inaccurate, misleading, or could constitute a crime or civil violation.

The flip side of this issue is the

protection of one’s own Web site and avoiding embarrassing or legally problematic linking or framing. It would be appropriate to include a linking policy in a statement of terms of use.

5. Do not use metatags that are trademarks of others, especially your competitors. This is another trademark issue. Metatags are pieces of code embedded in a Web site that provide instructions for the operation or display of the Web site. A visit to my firm’s Web site,

Before engaging in the practice of sending any unsolicited e-mail, each title company should review and understand the new federal CAN SPAM Act.

www.cnmlaw.com, will disclose a metatag. Metatags may be displayed in Internet Explorer by clicking on “view” on the toolbar, and then on “source” from the dropdown menu. A separate window will appear, which will display any metatags. In the case of www.cnmlaw.com, there is a metatag “<meta http-equiv=“Content-Type” content=“text/html; charset=iso-8859-1”>.” In some cases, Internet search engines use metatags to help locate sites that the user of the search engine is seeking. In one case, Equitrak included a metatag of the word Copitrak[®] with the hope that users of Internet search engines would be directed to its site and not its competitor Promatek, which owned the trademark Copitrak[®]. Courts have found that when the metatag is the trademark of another, this constitutes initial interest confusion, a form of trademark infringement. Although the trademark is never displayed to the public, unless one follows the steps above, because the trademark is used, at least initially, divert the attention of the Internet

user to the Web site of another, there is confusion as to the source of goods and services. Developers may or may not disclose to a title company that metatags have been used in the Web site. The title company should include in the development agreement a representation and warranty that no metatags are included that may be another’s trademark, and the title company should personally review the metatags to confirm the accuracy of such representation.

6. Do not send spam e-mail without complying with state statutes. Spam is unsolicited e-mail and has become an enormous problem in the business world in particular. The estimated loss of productivity is significant, and, at a minimum, for most people spam is very annoying. Before engaging in the practice of sending any unsolicited e-mail, each title company should review and understand the new federal CAN SPAM Act. The limited scope of this article does not permit a discussion of the specifics of the Act.

7. Avoid unintentional disclosure of customer information, including information communicated by fax and e-mail. Privacy is a hot topic. Although privacy always has or at least should have been an issue, the advent of electronic delivery systems has made the issue more relevant than ever before. The Gramm-Leach-Bliley Act addresses the privacy of certain nonpublic consumer information by financial institutions and their service providers and

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imposes privacy obligations on such institutions. Title companies that participate in certain real estate settlement practices are within the scope of the Gramm-Leach-Bliley Act. In addition, there are other potential concerns relating to the disclosure of information that is sensitive or confidential. With the heightened standards for financial institutions and health care providers, it is conceivable that there could be a claim for negligence against one who collects sensitive and confidential information and discloses that information without the consent of the affected person. A negligence claim could arise from the failure of a title company to adequately secure the server on which data is located, both from physical intrusion as well as electronic disclosure or access.

8. Read your contracts and comply with them. Title companies and users of Web sites should read and understand the contracts that govern their relationship to intellectual property and the rights of others doing business on the Internet. Title companies should begin with the development agreement. The development agreement should be drafted to address ownership, scope of the work, timing of delivery of the work to be tested and the final product, identification of the deliverables, representations and warranties as to the originality of the work and noninfringement, the use of third-party software, indemnification for infringement claims, and an assignment of all intellectual property. Again, there may be a reason to allow the developer to maintain the ownership or license to some of the files involved in the Web site, but the issue should be negotiated and appropriately addressed in the development agreement. Title

companies should be aware of any other license agreements governing the use of intellectual property, such as software license agreements.

9. A local company doing business on the Internet may not be able to limit jurisdiction to local courts.

Title companies need to be aware that by offering services on the Internet, they may be unintentionally subjecting themselves to jurisdiction in other states. For example, if Title Company A is located in the state of Maryland but offers title report services to a customer over the Internet in the state of Florida, Title Company A may be required to go to the state of Florida to defend itself against a claim filed by the customer in Florida.

10. Protect and enforce intellectual property and other rights. Finally, a good defense is a well-executed offense. Web sites naturally include multiple intellectual property and other rights. Not only should Web site owners seek to avoid infringing on the rights of others, they should protect their own intellectual property and other rights. Obviously there are limitations, but, in general, title companies should consider copyright registration. Copyright applications with detailed instructions are available at www.loc.gov/copyright. In addition to the substantial remedies available, a certificate of registration constitutes prima facie evidence of the validity of the copyright and of the facts stated in the certificate of registration. Obtaining federal trademark registration may cost several hundred to a few thousand dollars, but the benefits are significant. Like a copyright certificate of registration, a federal trademark certificate of registration is prima facie evidence of the validity and ownership of the

registered mark. In addition to the recovery of damages and access to federal court, the owner of a federal trademark registration may enjoy the use of an infringing mark. Having a federally registered trademark can provide the leverage necessary to stop an infringer without having to file a lawsuit. Patent protection may be available for certain programs or business methods, and there may be trade secrets associated with the Web site and the business on the Web site that should be protected.

JUST LIKE TITLE WORK

Evaluating a Web site is similar to reviewing a title report on a parcel of real property. Each lien and other encumbrance must be reviewed and evaluated and an understanding of what action needs to be taken for each interest must be determined. Title companies can be much more confident doing business on the Internet if each will take appropriate steps to avoid infringement and the other problems addressed in this article and, to take the time to protect the title company's interest in its own property.

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by Patricia L. Berman

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work using "Title Triumph® The Game of Land Title Knowledge" as a staff training tool. More than 350 board games have been purchased by abstracters, title agents, underwriters, vendors, and affiliated land title associations since it was introduced last fall at the ALTA Annual Convention.

The game is being used in various formats—staff training sessions during regular working hours or lunch hour, staff meetings when a few questions are posed to the group, at underwriter training seminars, at state land title association convention tournaments, and even at holiday staff parties. Although the game can be played one-on-one, it was designed for team play (2 to 4 players on a team) to encourage team building and group dynamics.

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The ALTA Education Committee is finalizing new game questions covering more advanced topics such as water rights, endorsements, encumbrances, reinsurance and coinsurance, subdivisions, and UCC. The new questions will be tested and

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HOW CAN I ORDER MY COPY?

To order your copy of "Title Triumph® The Game of Land Title Knowledge," go to ALTA's home page at www.alta.org and click on Land Title Institute, then Board Game. The price is \$146 for ALTA members; \$196 for nonmembers. If you have questions about the game, please contact me at: pat_berman@alta.org.

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E-Recording in Florida

In an effort to record documents more efficiently, Broward County, FL, and Ingeo Systems, Inc. have implemented e-recording using PRIA standards.

Sue Baldwin, director of the county records division in Broward County, said her department has accepted more than 1,300 documents using the new PRIA standards. Implementation of e-recording allows the county to record several documents with a few keystrokes, Baldwin said.

"It's a lot less labor intensive; all it takes is a couple of keystrokes to do what once took a lot of hard work," she said. "Using PRIA's standards will help us deal with a lot more volume."

Many companies favor using paperless transactions when recording documents, said Todd Hougaard, president of Ingeo, Inc. of Logan, UT.

"Some of the companies we deal with use our service to automate their document preparation, signing, and notarization tasks, which are much more efficient in an electronic environment," Hougaard said. "Still others are using it because they have learned over time that anything that can be done electronically produces a better managed and more efficient way to run their operations."

Baldwin said her county has worked with several organizations to establish e-recording.

"Broward County and PRIA have worked hard with the Mortgage Industry Standards Maintenance Organization (MISMO), Aptitude Solutions, and the Mortgage Bankers Association to make sure we have all developed a standard we could all be happy with," Baldwin said.

Broward County completed one of the first paperless real estate transactions in July 2000.



Property Records Industry Association

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PRIA Summer Conference

A new electronic format for the newsletter, the reelection of Board members, and other new directions for the Property Records Industry Association were among the significant matters addressed by the Board of Directors at PRIA's Summer Conference in San Antonio, Texas, July 22-23.

PRIA has continued to grow steadily, and the board of directors is continuing to make changes to accommodate this expansion. Treasurer Sybille Sauerbrun reported that programs such as Conference Sponsorship Packages and sponsor benefits such as the President's Circle and Ambassador status have drawn more interest in PRIA and helped increase revenue significantly.

The future looks bright for PRIA in the upcoming year, according to PRIA President Mark Monacelli. To help steer the course of the Association, six board members were reelected at the Conference:

- Maxine Olson-Hill, recorder of deeds, Burleigh County, North Dakota
- Steve McDonald, recorder, Lancaster County, Pennsylvania
- Joan McCalmant, recorder, Linn County, Iowa
- Carolyn Ableman, chief deputy auditor, Snohomish County, Washington
- Rich McCarthy, director of research, American Land Title Association
- David Ewan, legal consultant, New Jersey Land Title Association

Other sections of PRIA continue to grow as well. State Advisory Council Coordinator Jennifer Jones reports that nine new members have joined the Council and are tackling several new initiatives to help increase general knowledge and awareness of PRIA's activities throughout the United States.

PRIA's Web site, www.pria.us, will also be expanding with new sections such as a members only section with exclusive information on new projects, programs, events, and issues such as electronic recording and other issues the association is addressing.

Another new section "PRIA on the Move" will keep members informed about conferences and events where PRIA will have a presence. The upcoming months look to be busy ones for all of PRIA!

PRIA Develops New Workgroup

Aware of the lack of formal standards for the archiving of paper-based electronic information regarding government land records, PRIA has developed a new group to create such standards.

PRIA developed the Archival, Backup and Disaster Recovery Workgroup to develop rules to archive records, PRIA President Mark Monacelli said.

"Part of this goes back to a county in Missouri that lost some, or all, of their front-end data as well as backup data," Monacelli said. "Counties have been asking for some type of guideline in helping them prepare for disaster recovery. Thus, PRIA developed this as part of the work group." Jim Harper, co-chair of the work group, said Monacelli approached him after conducting a seminar on document preservation.

"We're at the beginning stages now," Harper said. "The group will cover anything from loss of recorded documents, images on a system, hard-drive failure and natural disasters."

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member news

Movers & Shakers

ARIZONA

Gerry Ring Waltz has rejoined First American Title Insurance Company, Phoenix, as vice president, national commercial services and builder development for the Southwest region. Waltz was working for a national competitor before returning to First American.



CALIFORNIA

Wayne Johnston has been promoted to senior VP/western divisional manager for United General Title Insurance Co., Denver. He will oversee the newly formed western Division. Before joining United Title in 1996, Johnston worked for TRW/National Title.



Lawrence F. Scofield, Jr., has been appointed vice president and New England states manager of The Talon Group, a division of First American Title Insurance Company, Santa Ana. Prior to joining The Talon Group, Scofield served as senior vice president and New England states manager for a large Boston-area underwriter.



COLORADO

Zenodata Corp., Castle Rock, has two announcements. **David Granger** has been promoted to the position of vice president and chief technical officer. Previously he served as vice president of engineering.



COLORADO, CONT.

John Moinester has been named executive vice president and chief financial officer. Moinester served as chief operating officer of Healthcare Reports LLC, before joining Zenodata.



FLORIDA

Lori Adams has been promoted to assistant vice president/agency manager for Fidelity National Title Insurance Co., Miami. Most recently she was title insurance specialist.

NEW JERSEY

John Shafer has been named senior VP/eastern divisional manager for United General Title Insurance Co., Denver. He will oversee the Eastern Division. Most recently Shafer worked for Centex Title and Insurance Co.

NEW YORK

Bajan "Deak" Koepeczi-Deak has been hired as vice president and manager to head up the new Buffalo office of The Talon Group New York, a division of First American Title Insurance Company of New York. Working with him will be: Christopher C. Willett, counsel; Molly Irvin-Peter, underwriter; Katherine Rusek, agency representative; John J. Ben, counsel, underwriter and abstractor; and James G. Burke, searcher/abstractor.

OHIO

Carl J. Dyczek has joined the Cleveland office of Roetzel & Andress as a partner in the Corporate and Business Services Group.



OHIO, CONT.

Nancy Waldschmidt joins First American Title Insurance Company, Cleveland, as commercial underwriting counsel. She most recently worked as a real estate staff attorney at Thompson Hine LLP.

PENNSYLVANIA

Evan M. Zanic has been promoted to Pennsylvania state manager for First American Title Insurance Company, Santa Ana. He previously served as western Pennsylvania area manager.



TEXAS

REI Data Inc., Houston, has two announcements. **Gayle Bennett** was named vice president and national account manager for the West; and **Robert Brian Avery** has been appointed vice president and national account manager for Florida and the southeast. Bennett founded GSB Notary Inc., and worked in real estate information as a strategic account executive. Avery previously held account management and vice president roles in the real estate industry.



Avery

José Menéndez has been named national director for emerging domestic real estate markets for Stewart Title Company, Houston. Menéndez previously served as a San Antonio Zoning Commissioner.



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NEW ALTA MEMBERS

TEXAS, CONT.

Paul Moran has been promoted to senior VP/central division manager for United General Title Insurance Co., Denver. Moran will oversee the newly formed Central Division. Moran joined United General in 1988 and most recently headed the national operations and the Midwest region.



VIRGINIA

LandAmerica Financial Group, Richmond, has announced several promotions. **Brian Collins** has been named vice president—mergers and acquisitions. Collins previously served LandAmerica as assistant vice president—acquisitions. **Larry Tuliszewski** has been promoted to senior vice president—commercial services for the northeast region. He previously served as vice president and Philadelphia branch manager for commercial services. And, senior vice president and corporate controller **John R. Blanchard** will retire on December 31, 2004, after serving the company for 27 years.

Mergers & Acquisitions

First American Title Insurance Company has acquired Midland Title Agency of Northwest Ohio, Inc., and Columbian National Title Company of Topeka, KS. Also acquired was Safeco Land Title of Forth Worth, TX.

LandAmerica Financial Group, Inc. has acquired Inspections Pros, Inc. of San Ramon, CA, and Becker Engineering of Cincinnati, OH. Also acquired were Channel Islands Escrow, Inc. of Oxnard, CA, Universal Title Services, Inc. of Crystal Lake, VA, Lawyers Title Agency of North Florida, Inc., and Lawyers Title Agency of North Florida, West Division, Inc.

Stewart Title Company has acquired Whitman County Title located in Pullman, WA, and Security Title of Billings, MT. Also acquired were Carter County Abstract Co., Inc., and Executive Escrow LLC of Ardmore, OK.

The Talon Group New York has acquired All New York Title Agency, Inc. in White Plains, NY.

New Offices

Market Street Settlement Group, Inc. announced the opening of its newest office in Lancaster, PA.

The Talon Group of New York, a division of First American Title Insurance Co. of New York, has opened an office in Buffalo.

Ticor Title Insurance Company announced the opening of its new agency operations headquartered in Pittsburgh, PA.

KUDOS

The Pennsylvania Land Title Association recognized three of its most accomplished members with professional designations during its recent Annual Convention. Trish D'Amico of Fidelity National Title Insurance Co. received the Associate Land Title Professional (ALTP) designation. Maureen Reilly Montani of Abstract Professionals, Ltd., and John T. Croke of The Croke Group, Inc., received the Certified Land Title Professional (CLTP) designation. Details: Chris Reynolds 610-566-1960.

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NEW ALTA MEMBERS

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Schroering, John
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Montgomery Title Company, LLC
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Stephen Paulus
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Priority Title Services, Inc.
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